



'Help way earlier!'

How Australia can transform child justice to improve safety and wellbeing

2024



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WARNING: the following pages contain distressing content and coarse language.

Acknowledgement of Country

The Australian Human Rights Commission acknowledges the Traditional Custodians of Country throughout Australia, and recognises their continuing connection to land, waters and culture. We pay our respects to their Elders—past, present and future.

In particular, we respectfully acknowledge and thank the Elders, Custodians and communities across Australia who supported this project.

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Australian Human Rights Commission
GPO Box 5218, SYDNEY NSW 2001
Ph: (02) 9284 9600 Web: [humanrights.gov.au](https://www.humanrights.gov.au)



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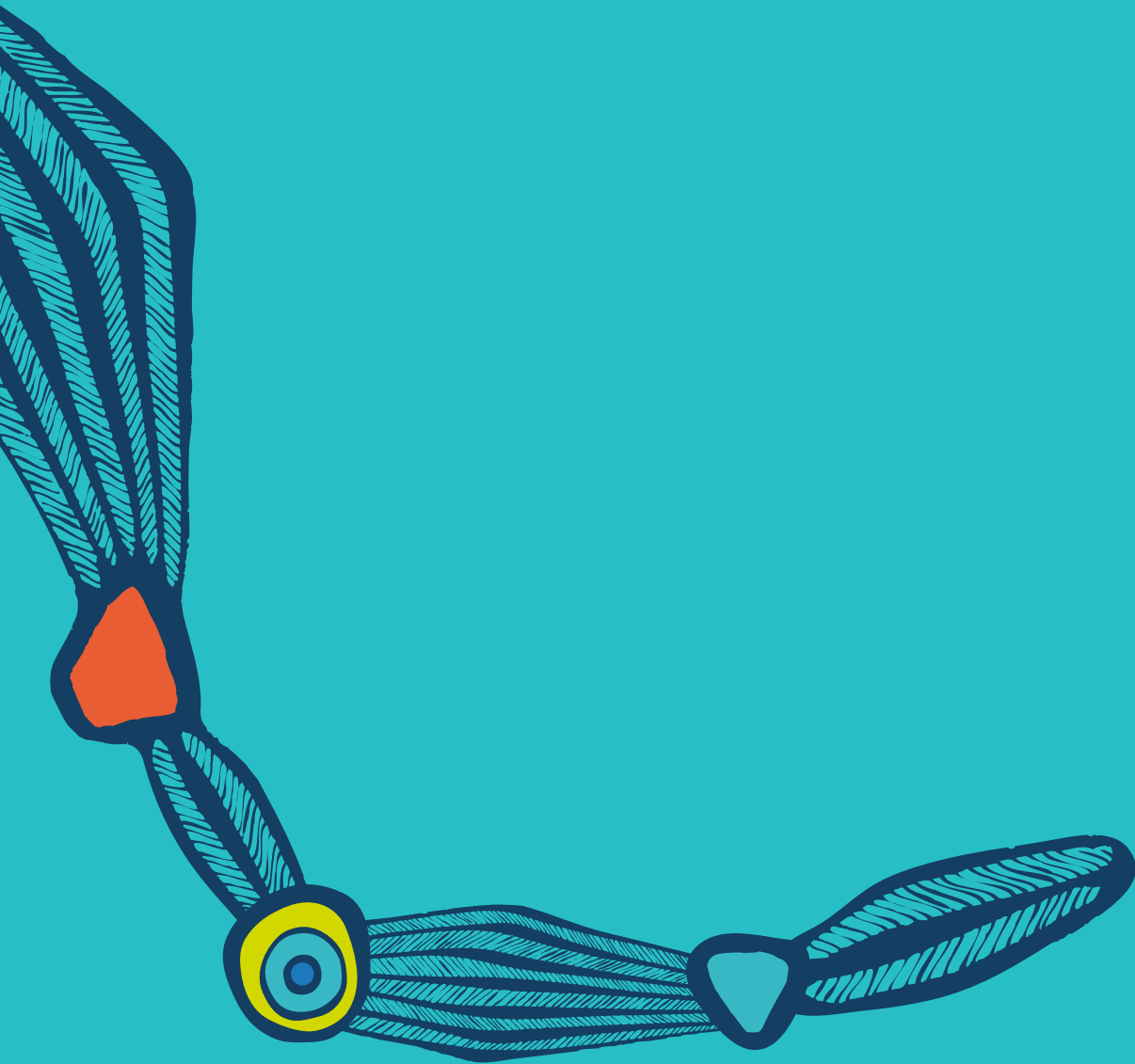
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21 June 2024

The Hon Mark Dreyfus KC MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney,

'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing

I am pleased to present to you the **'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing**, in accordance with section 46MB of the *Australian Human Rights Commission Act 1986* (Cth) (the Act). The Act provides that I may submit reports relating to the enjoyment and exercise of human rights by children in Australia as I consider appropriate.

The report investigates opportunities for reform of child justice and related systems across Australia, based on evidence and the protection of human rights. It examines why Australia is failing to implement evidence-based reforms to protect child rights and reduce offending. It makes recommendations for a national approach to reform of child justice and related systems across Australia.

The report places children and young people, families, and communities at its centre, including their views on why children come into contact with the criminal justice system and what needs to be done to prevent their involvement in that system. It also draws on written submissions and stakeholder consultations.

I look forward to discussing the recommendations and pathways forward with you.

Yours sincerely,

A handwritten signature in black ink that reads "Anne Hollonds".

Anne Hollonds
National Children's Commissioner

Australian Human Rights Commission
T: 02 9284 9600
Website: www.humanrights.gov.au



Support Services

Crisis and suicide prevention

- If you or someone else are in immediate danger call Triple Zero 000
- Lifeline: 13 11 14 or visit www.lifeline.org.au

Mental health support and advice

- Kids Helpline: 1800 55 1800 or visit www.kidshelpline.com.au
- Beyond Blue: 1300 22 4636 or visit www.beyondblue.org.au
- MensLine Australia: 1300 78 99 78 or visit www.mensline.org.au
- 13YARN: 13 92 76 or visit <https://www.13yarn.org.au>
- QLife: 1800 184 527 or visit <https://qlife.org.au/>

Family domestic and sexual violence support

- 1800Respect: 1800 737 732 or visit www.1800respect.org.au

Child sexual abuse support and advice

- BraveHearts Support Line: 1800 272 831 or visit www.bravehearts.org.au

Links and contact details for support services for parents and carers

- **New South Wales:** Parentline NSW on 1300 130 052 or visit <https://www.parentline.org.au/>
- **Australian Capital Territory:** Parentline ACT on (02) 6287 3833 or visit https://raisingchildren.net.au/_media/external-links/p/parentline-act
- **Northern Territory:** FACES Family Support Line on 1800 999 900 or visit <https://tfhc.nt.gov.au/children-and-families/territory-faces>
- **Queensland:** Parentline Queensland and Northern Territory on 1300 301 300 or visit <https://parentline.com.au/>
- **South Australia:** Parent Helpline South Australia on 1300 364 100 or visit <http://www.cyh.com/SubContent.aspx?p=102>
- **Tasmania:** Parentline Tasmania on 1300 808 178 or visit http://www.health.tas.gov.au/service_information/children_and_families/parentline
- **Victoria:** Parentline Victoria on 132 289 or visit <https://services.dffh.vic.gov.au/parentline>
- **Western Australia:** Ngala Helpline on (08) 9368 9368 (metropolitan) or 1800 111 546 (regional callers) or visit <https://www.ngala.com.au/service/ngala-parenting-line-2/>



Acronyms and Abbreviations

ACCOs	Aboriginal and Torres Strait Islander Community-Controlled Organisations
ACCHO	Aboriginal Community-Controlled Health Organisation
ADHD	Attention Deficit Hyperactivity Disorder
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
ARACY	Australian Research Alliance for Children and Youth
Commission	Australian Human Rights Commission
CRC	Convention on the Rights of the Child
CRIA	Child Rights Impact Assessment
FASD	Fetal Alcohol Spectrum Disorder
FGC	Family Group Conference
FIFO	Fly in fly out
IDS	Indigenous Data Sovereignty
JR	Justice Reinvestment
LGBTQIASB+	Lesbian, Gay, Bisexual, Trans and/or Gender Diverse, Queer, Intersex, Asexual, Sistergirl, and Brotherboy
MACR	Minimum Age of Criminal Responsibility
NCC	National Children's Commissioner
NDIS	National Disability Insurance Scheme
NGOs	Non-government organisations
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP3 CRC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure

RJ	Restorative Justice
RoGS	Report on Government Services
SCAG	Standing Council of Attorneys-General
SNAICC	SNAICC—National Voice for our Children
SPT	United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN Committee	United Nations Committee on the Rights of the Child

Child justice system

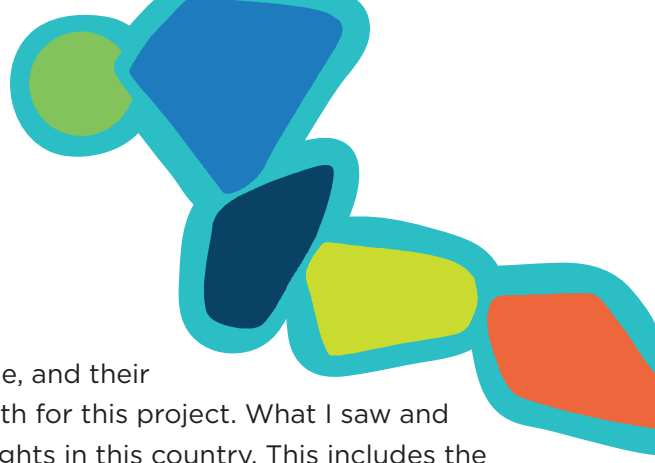
Throughout this report, the term ‘child justice system’ is used instead of ‘youth justice system’, for accuracy and to better reflect a child rights approach.

Under the *United Nations Convention on the Rights of the Child* (CRC), a child is defined as a person below 18 years. The newly re-drafted General Comment 24, issued by the United Nations Committee on the Rights of the Child (UN Committee), uses the term ‘child justice system’ instead of ‘juvenile justice system’ as used in the previous version of the General Comment.¹

During this project, numerous stakeholders submitted that taking a children’s human rights approach requires different language to be used when talking about children who come into contact with criminal justice systems. They pointed out that using the term ‘youth justice’ is confusing and potentially misleading when it is children, some as young as 10 years, who are dealt with by the criminal justice systems in Australia.²

When citing others, or where the term ‘youth justice’ is embedded in laws, policies or titles, this report retains the term ‘youth justice’.

Foreword by the National Children's Commissioner



'We need help way earlier'. This is what one child said to me.

This echoes the pleas of many other children and young people, and their families, across Australia whom I had the privilege to speak with for this project. What I saw and heard is evidence of the most egregious breaches of human rights in this country. This includes the way that vulnerable children are treated in detention.

The voices of these children are the heart of this report. I urge you to listen.

Tragically, by not addressing their human rights early on, and instead taking a punitive approach to their offending, we are essentially criminalising some of the most vulnerable children in Australia. Many are First Nations children dealing with intergenerational trauma and disadvantage, and children with disabilities, mental health issues, and learning problems. Many of these children and their families are living with poverty, marginalisation and systemic racism. For some, their most basic needs are not being met, such as a safe home to live in. The systems that are meant to help them, including health, education and social services, are not fit-for-purpose and these children are falling through the gaps. It is clear that, to date, we have approached offending by children the wrong way. We cannot 'police' our way out of this problem, and the evidence shows that locking up children does not make the community safer.

We need to turn our attention and our resources to the underlying causes, and to the barriers that stop us taking national action on evidence-based systems reform.

As a federation we have repeatedly ignored our national obligations under the *UN Convention on the Rights of the Child* (CRC). We need to recognise the principles in the CRC as a compass to guide our policy decisions, for the wellbeing of Australia's children and the whole community.

This project has been a powerful and often heart-breaking experience for me as National Children's Commissioner. I have been deeply moved by speaking with children and families whose lives have been marred by our failure to support the needs of vulnerable children. We can do much better than this, but we need to pull together across the federation to make child safety and wellbeing a priority for National Cabinet.

Thank you to all the stakeholders, including members of the community, who contributed to this report, and the academic advisors who supported us.

Most of all, I thank the children and young people we spoke with. It was a true privilege to meet each of you and to hear what you think needs to happen to protect the human rights and wellbeing of all children across Australia.

Anne Hollonds

National Children's Commissioner





Elijah's story*

I don't know if you've ever seen your brothers and sisters in one room together, hungry ... but it's a bad, bad feeling.

I was removed at 4. I can't even remember all the carers but eventually I got placed with my family and that was worse than some of the other ones. I ended up having to raise my family by myself with my grandparents.

I started getting into crime to make money and support my family. If we stole a car, it was to sell it – it wasn't for nothing, it was to feed your family.

The reality is, no one is going to look at a little Black kid twice for a job. And we can't go to school because we can't fit in at school. So some kids can't help it.


My neighbour wakes up and goes to work like his dad did – I wake up and do what my dad did.

Show them more love and support in school!

I should've stayed in school – now I regret it. But out here you've got to earn a kid's trust. They don't feel comfortable at school, their brothers and sisters have told them it's a waste of time and they've had negative experiences before they even get here.

I loved primary school where there's a teacher who actually cares and asks if you're okay before the day starts. But the structure in high school – changing classes, moving around, reading timetables, it's all this pressure. There's no connection with any of the teachers.

You have to remember, most of the boys are from broken homes and that's why you won't see them at school. You go to high school and you lose connection. I hated it, so I'd leave and go home or go back to my mates.



You can help a kid only so much if you're gonna put them straight back into the same environment.

Some kids have families with problems – and the parents just don't have a clue. All they know is that if the kid gets to juvie there will be some help. There will be some support from court.

But once you're locked up ... if you don't have a good family behind you, someone to visit you, someone to call – you lose your mind in there.

When kids get out, YJ is supposed to help them, but all they care about is you turning up to your appointments.

My brother – he was getting regular visits from a service while he was in juvie. But the second he was out, not one visit. From day one he was set up to fail. Two weeks later, he was back in youth detention.

A job might help them adjust but you can't just leave them while they're still adjusting. It can take a while. Most boys don't know how to talk or ask for help. They're not scared – they just don't know how to. If you don't meet or have a connection with anyone, good luck.

We want people who understand us and what we've gone through.

You need kids to go out and do stuff instead of sitting around and stealing. Like those programs where they go out hunting and shooting. The mentors that you get here – they're not like, strict. He can have a joke around and he knows how it feels. He knows my big brothers already. We all are Aboriginal so they understand you.

There's more support inside juvie than outside, and it'd be nice to know you're gonna have these specific things when you get out.

***Pseudonym. This account is a composite of real quotes and stories from children and young people who participated in our consultations.**



Executive summary

The treatment of children in the criminal justice system, some as young as 10 years old, is one of the most urgent human rights issues facing Australia today. Numerous inquiries and reviews, including Royal Commissions, as well as UN Committees, have highlighted serious breaches of rights and systemic problems with our child justice and related systems over many years. However, Australia continually fails to implement evidence-based reforms to our child justice systems which would reduce offending behaviour and make our communities safer.

This report investigates opportunities for reform of child justice and related systems across Australia, based on evidence and the protection of human rights. It is the result of a project undertaken by the National Children's Commissioner (NCC) in 2023–24. The project included a submissions process, consultations with children and young people, families, community members, and interviews and roundtables with government and non-government stakeholders across Australia.

Australia is not protecting the rights of children

Children's rights are set out in the *United Nations Convention on the Rights of the Child* (CRC), and other international instruments that Australia has ratified. Australia's lawmakers and decision-makers have obligations to take all possible measures to help all children in Australia realise their rights. However, reports and inquiries continue to highlight how our systems fail to protect their human rights.

Many children at risk of or in contact with the criminal justice system are dealing with multiple and complex issues in their lives which often contribute significantly to their chances of offending and reoffending. Their lack of basic

rights often manifest as the drivers of their contact with the justice system in the first place, including poverty, intergenerational trauma, violence and abuse, racism, homelessness, and inadequate healthcare. These social determinants of justice show that children's rights to health, safety, culture, participation, non-discrimination, adequate standards of living, and education are not being realised.

When children enter the justice system, they may face additional breaches of their rights. For example, despite what we know about the harmful effects of detention on children, children as young as 10 can be detained in most parts of Australia. The overwhelming majority of these children are unsentenced, on remand, with some detained because there is no safe place for them to live while on bail. When they enter detention, many have disabilities and mental health issues, and are harmed by the conditions in detention, including extended periods of time in isolation in their cells, as noted in numerous official reports. First Nations children and young people continue to be overrepresented in the criminal justice system, and particularly in detention.

Children and young people told us what children need in order to stay out of trouble

The voices of 150 children and young people are at the centre of this report. Children and young people said that children want to be safe and to have a place to live. They want to participate in positive activities, and they want friends and supportive family relationships. Children want to be heard and have their views taken seriously. They want to be able to go to school and one day get a job. Children want to get extra help for themselves and their family members when it's needed.



Children and young people said these things would help children to stay out of trouble with the police and reduce their contact with the child justice system.

A national, child rights-based approach to reform is required

Recommendations from many inquiries, including Royal Commissions, have attempted to guide reform, in particular by focusing on prevention and early intervention in both child justice and child protection systems. However, responses have been piecemeal, uncoordinated and inadequate.

Despite evidence of the social determinants that are the root causes of offending behaviour, policy responses to these children are often only tinkering with the symptoms, with tougher policing, stricter bail laws, and incarceration. This is done under the guise of keeping the community safe. However, human rights and community safety are not opposing goals. The solutions lie in transformational thinking and action to address systemic disadvantage.

Many stakeholders, in submissions, interviews and roundtables, argued that the scale of the child rights crisis in Australia requires a nationally coordinated approach to reform. This type of reform should be driven by:

- Australian Governments establishing a National Taskforce for Reform of Child Justice Systems, that develops a 10-year cross-portfolio National Roadmap to reform
- the Australian Government appointing a Cabinet Minister for Children
- the Australian Government establishing a Ministerial Council for Child Wellbeing, chaired by the Minister for Children, and reporting to National Cabinet

- the Australian Government legislating a National Children's Act as well as a Human Rights Act, incorporating the *Convention on the Rights of the Child*.

Reform also requires positioning children at the centre of policy-making and service delivery; empowering First Nations children, families and communities; optimising community-based action; building a capable and child specialised workforce; basing systems on data and evidence; and embedding accountability for the rights of children.

Multiple barriers have stood in the way of child rights and evidence-based reform

Stakeholders, in interviews, roundtables and submissions to this project, identified barriers to achieving critical reform. They argued that unless these barriers are addressed, transforming the child justice and wellbeing landscape in Australia will not be possible. Barriers include systemic racism; the fragmented way our governments operate; limited workforce capacity; lack of political commitment to evidence-based reform; pervasive 'tough on crime' rhetoric; and our persistent failure to make child wellbeing a national priority.

These barriers to reform will not be addressed by a 'business as usual' approach. Transformational reform requires political will at all levels, including states and territories, and strong leadership, collaboration and coordination at the national level.

Australian governments should coordinate across the federation to protect the rights of children in their laws, policies and service systems, and in doing so create a safer community for all.



1 Introduction

This report is the result of a project, undertaken in 2023–24 by the National Children’s Commissioner, that investigated opportunities for reform of child justice and related systems across Australia, based on evidence and the protection of human rights.

The report draws on previous reports and information from stakeholders, including the voices of children and their families. It examines why Australia is failing to implement effective, child rights-based approaches to reform of child justice systems, despite evidence that this works to reduce offending by children.

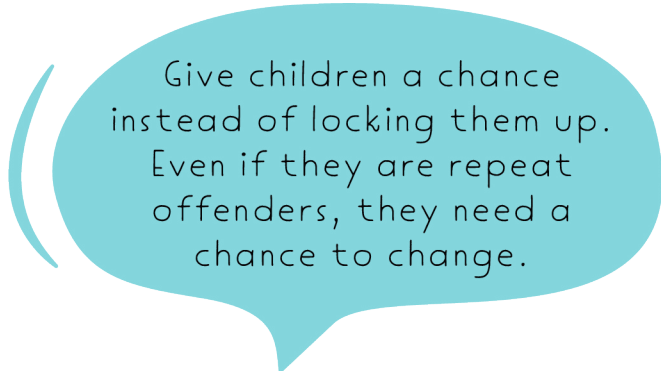
The report concludes that the way we have approached offending by children in this country has been ineffective and is not based on evidence. Our tendency to rely on punitive approaches, including detention of children, is not working to keep the community safe and is doing further harm to already traumatised children.

The recommendations in this report go straight to the highest level of national accountability, proposing a role for National Cabinet in this reform, as we have been doing with other national crises, such as women’s safety. The report also provides recommendations that can be enacted immediately by jurisdictions and incorporated into a national coordinated approach to reform of child justice and other related systems that should be keeping our children safe and well.

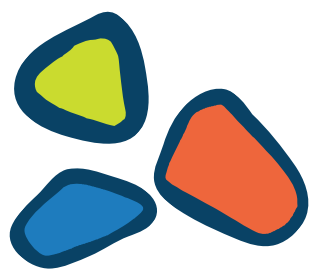
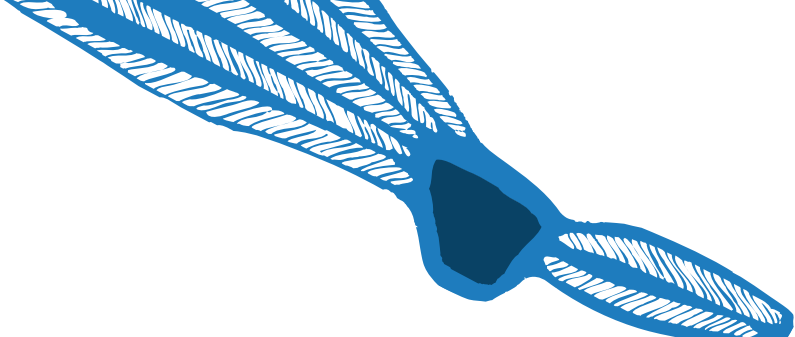
The report explains the practical value of human rights principles to guide our policy decisions, providing a much needed ‘compass’ in an environment where crime committed by children and young people can be the focus of sensationalism and polarising political and ideological positions.

Children cannot vote. That is why adults have a duty to ensure that the voices of children are heard and that the best interests of children are our primary consideration when making decisions that affect their lives.

The views of 150 children and young people were sought for this project. Of these, 27% were currently in detention, and a large proportion had been in detention on two or more occasions. 67% were First Nations children, and over half were from regional or remote locations. A large proportion of children reported that they were ‘waiting to go to court’.



Give children a chance instead of locking them up. Even if they are repeat offenders, they need a chance to change.



We need something to change. It has to stop somewhere.




Many children who come into contact with child justice systems are living with poverty and disadvantage. Children, young people and families asked for help to make their lives better. They said that ‘they are just kids’ and ‘need an opportunity to go in the right direction’. They want better support even though they have ‘done not alright stuff’.

Children and young people said that they needed ‘help way earlier’. They said: ‘stop it before it happens’, and ‘don’t wait until it all falls apart’.

Children and young people also spoke of needing supportive relationships, and a sense of belonging and community. They talked about needing caseworkers and other support services to take the time to ‘get to know you’, and for them to care about their wellbeing. They also discussed the importance of family and their fears about family, domestic and sexual violence.

Children and young people said that meeting these basic needs would help stop them from becoming caught up in a repeated cycle of crime. Their views are discussed in section 3.

Contributions by children and young people to this project are consistent with the findings from decades of research reported in the literature.³



1.1 Recommendations

Priorities to enable national reform

Recommendation 1: Australian Governments establish a National Taskforce for reform of child justice systems. This Taskforce should report to Ministers responsible for child justice and child wellbeing across jurisdictions.

Recommendation 2: The Australian Government appoints a Cabinet Minister for Children, with responsibility for the human rights and wellbeing of children in Australia.

Recommendation 3: The Australian Government establishes a Ministerial Council for Child Wellbeing, chaired by the Minister for Children, and reporting to National Cabinet.

Recommendation 4: The Australian Government incorporates the *Convention on the Rights of the Child* into Australian law through a National Children's Act as well as a federal Human Rights Act.

Key evidence-based actions for reform of child justice systems

Recommendation 5: Australian Governments provide integrated, place-based health, education and social services for both children and their families.

Recommendation 6: The Australian Government increases the level of income support payments for children, young people and families.

Recommendation 7: Australian Governments urgently prioritise access to safe and affordable housing for children and families, including those in the child protection and justice systems.

Recommendation 8: Australian Governments prioritise access to comprehensive and culturally safe healthcare, including for children with multiple and intersecting needs.

Recommendation 9: Australian Governments resource schools to be community hubs integrated with health services and providing flexible learning options.

Recommendation 10: Australian Governments prioritise investments in prevention and early intervention through Aboriginal Community Controlled Organisations.

Recommendation 11: Australian Governments improve availability of free and accessible community sport, music, other social activities, and cultural programs, addressing barriers such as lack of public transport.

Recommendation 12: Australian Governments resource and expand the availability of evidence-based diversionary programs for children, including those by Aboriginal and Torres Strait Islander Community-Controlled Organisations, and other culturally safe programs.

Recommendation 13: Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.

Recommendation 14: Australian Governments resource the redesign of services to be place-based and informed by evidence and local community priorities, in line with Priority Reform 1 of the *National Agreement on Closing the Gap*.

Recommendation 15: Australian Governments develop nationally consistent minimum training requirements for workforces in the child justice and related systems, including child protection and police. Training should include child rights, child development, mental health, neurodevelopmental disabilities, cultural competence, and trauma-informed practice.

Recommendation 16: Australian Governments ensure that all child justice matters are heard in specialised Children's Courts or by child-specialist magistrates.

Recommendation 17: Australian Governments collect key data on children in the child justice system, disaggregated by age, sex, disability, geographic location, ethnic origin, and socioeconomic background, including data disaggregated at the local level to support service design and delivery. This data should be publicly available and accessible.

Recommendation 18: The Australian Government withdraws its reservation to Article 37(c) of the *Convention on the Rights of the Child*.

Recommendation 19: Australian Governments legislate to prohibit solitary confinement practices in child detention facilities, and prohibit the use of isolation as punishment in any circumstance.

Recommendation 20: Australian Governments raise the age of criminal responsibility in all jurisdictions to 14 years and undertake a review of the application of the presumption of *doli incapax*.

Recommendation 21: Australian Governments agree to implement nationally consistent standards for monitoring detention facilities for children.

Recommendation 22: Australian Governments fully implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by designating National Preventive Mechanisms that have child rights expertise in all jurisdictions.

Recommendation 23: Australian Governments conduct Child Rights Impact Assessments on laws and policies that affect children.

Recommendation 24: The Australian Government ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, that will allow children to make complaints to the United Nations Committee on the Rights of the Child about breaches of their rights.

1.2 Why we did this project

The treatment of children who become involved in the justice system, and our failure to address the root causes of this involvement, is one of Australia's most urgent human rights challenges today.

There is widespread agreement that current systems are failing children and failing our communities. However, we lack urgency for reform and accountability for acting on available evidence of what works.

Children who come in contact with the justice system have multiple and intersecting needs which have not been addressed by the service systems that are meant to help them, including health, education, social services and child protection systems. Experts argue that current systems are not 'fit-for-purpose', and that we are waiting too long and allowing problems to escalate before offering help.⁴ Some children who are 'at risk' and in need of help, end up being considered 'a risk' and are punished in the criminal justice system.

Many of these children experience poverty, family, domestic and sexual violence, child abuse and neglect, out-of-home care, homelessness, drug and alcohol abuse, mental health issues, neurodevelopmental disabilities and learning problems. First Nations children, who are also struggling with the effects of intergenerational disadvantage and trauma, with its roots in colonisation and dispossession from their lands, make up a disproportionate percentage of the child justice population. These social determinants of justice are discussed in detail in section 1.3.

Under the CRC, governments are required to take special measures to protect the rights of children at risk of, or in contact with, the child justice system. Their basic rights to care and protection, to be safe, to have access to education and healthcare, and to be listened to and heard on matters that affect them, are regularly breached.⁵

These rights are set out in UN *Convention on the Rights of the Child* (CRC) that Australia ratified in 1990. This includes their civil, political,



economic, social and cultural rights, as well as additional rights for children, in recognition of their unique vulnerabilities and developing maturity and capabilities. See Appendix 1 for a summary of key rights relevant to child justice in Australia. Other important treaties and instruments that are especially relevant to children involved in child justice are included in Appendix 2.

Despite substantial evidence of social determinants being the root causes of offending behaviour, our policies have historically focused on punishment, rather than prevention and early intervention. Policy responses have typically been at the criminal justice end, including tougher policing, stricter bail laws, longer sentences, and incarceration. 'Community safety' is given as the reason for punitive measures, which include breaching the human rights of children.

Unless the social determinants of justice that drive children's offending are addressed, it will be impossible to progress necessary reforms. Barriers to achieving such reform are detailed in section 5.

Currently, investment is primarily focused on the management of detention in the child justice system. In 2022–2023, total recurrent expenditure on detention-based supervision, community-based supervision and group conferencing was \$1.3 billion nationally, with detention-based supervision accounting for the majority of this expenditure (64.7%, or \$855.3 million).⁶ It costs taxpayers \$2,827.47 per day,⁷ which equates to approximately \$1.03 million per annum to lock up a child. In contrast, nationally in 2022–23, the average cost per day per young person subject to community-based supervision was \$305.⁸

A holistic focus on prevention and early intervention requires the redesign of systems that address the underlying causes of offending by children, especially across health, education, social services, and child protection systems.



As the Standing Council of Attorneys-General (SCAG) Working Group Report on the Age of Criminal Responsibility (the SCAG MACR Working Group report) points out, 'almost all of the underlying causes of negative behaviour displayed by children lie beyond the reach of the youth justice system'.⁹

Calls for reform have been made over several decades. The United Nations Committee on the Rights of the Child (UN Committee) has repeatedly raised concerns about the treatment of children in Australia's child justice systems and has made recommendations for the rights of children to be fully realised and achieved. The Australian Human Rights Commission (the Commission) has also recommended using a human rights perspective to improve children's wellbeing in various reports such as the *Children's Rights Report 2019*,¹⁰ *Keeping kids safe and well: your voices (2021)*,¹¹ and *Scoping project for National Child and Family Investment Strategy (2023)*.¹²

There have also been numerous inquiries across all jurisdictions in Australia, including Royal Commissions, investigating child protection and child justice systems. Many of these have recommended greater investment in prevention and early intervention, combined with the implementation of evidence-based reforms that could make positive differences to child wellbeing.

The National Children's Commissioner (NCC) asked the Australian Institute of Family Studies (AIFS) to analyse 12 years of reports and inquiries on child protection and youth justice in Australia from 2010 to 2022, with the support of The Ian Potter Foundation. This investigation analysed 61 reports with 3,005 recommendations.¹³ While many of these included an examination of issues and processes specific to jurisdictions, the systemic issues that they identified were similar across jurisdictions and repeated over this time. The following 6 recurring and overlapping systemic issues in child justice and child protection systems were identified:

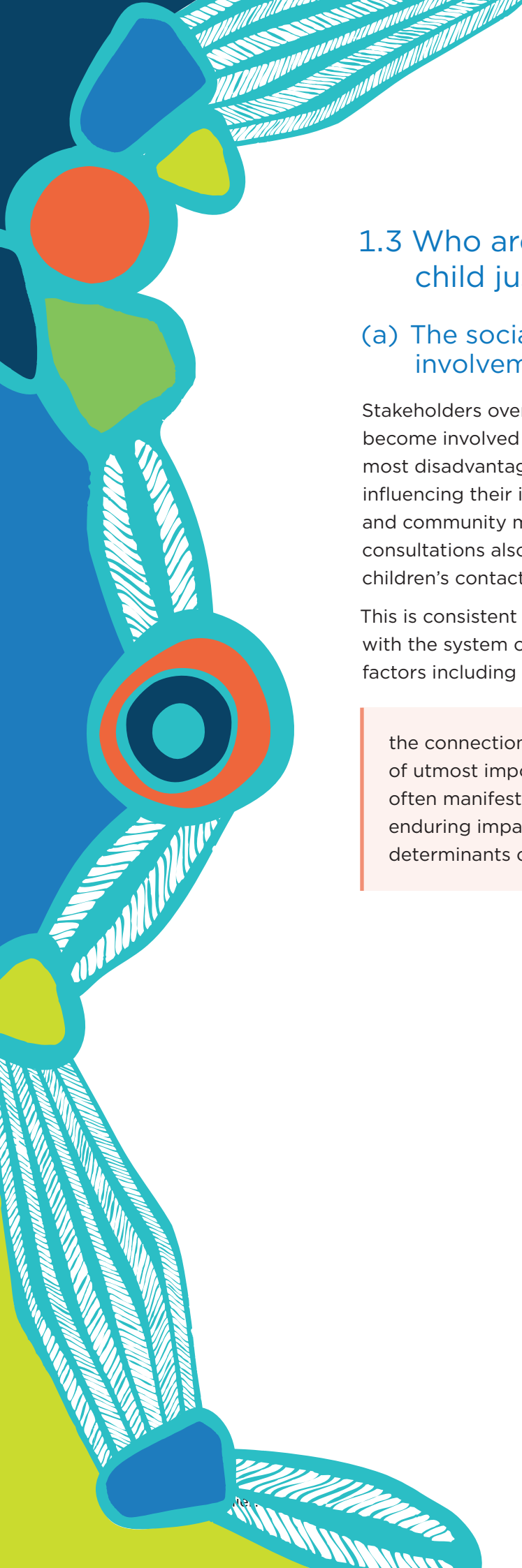
- inadequate cross-system information sharing, collaboration and coordination
- limited First Nations partnership and self-determination
- limited child protection and child justice workforce capacity and support
- inadequate levels of investment
- lack of mechanisms for oversight, monitoring and transparency
- limited opportunities for child voice and participation.¹⁴

The consistent repetition of these 6 themes suggest that these core issues have not yet been successfully addressed by governments.¹⁵ These issues are discussed further in section 5.

Dr Garner Clancey, Sindy Wang and Brenda Lin analysed key reviews and inquiries into child justice between 2016 and 2019 and found similar recurring themes among hundreds of system reform recommendations. They concluded that detention should be a last resort, and recommended raising the minimum age of criminal responsibility (MACR), more frequent use of diversion (where appropriate), and finding alternatives to remanding children in custody.¹⁶

Criminal justice is largely the responsibility of state and territory governments. Across all jurisdictions in Australia, there are formal mechanisms designed to respond to child offending and there have also been a number of child justice-related strategies and initiatives in recent years (see Appendix 3). These state and territory child justice systems have historically been built upon the adult criminal justice systems (see Appendix 4).

However, Australia's federal system of government is not an excuse for lack of national action on child rights. By ratifying international human rights treaties, the Australian Government is both empowered and obligated to play a key role in ensuring children's human rights are protected.¹⁷ Under our federal structure, the Australian Government must provide national leadership to state and territory governments to ensure legislative and policy measures that are fully compliant with our human rights obligations.¹⁸



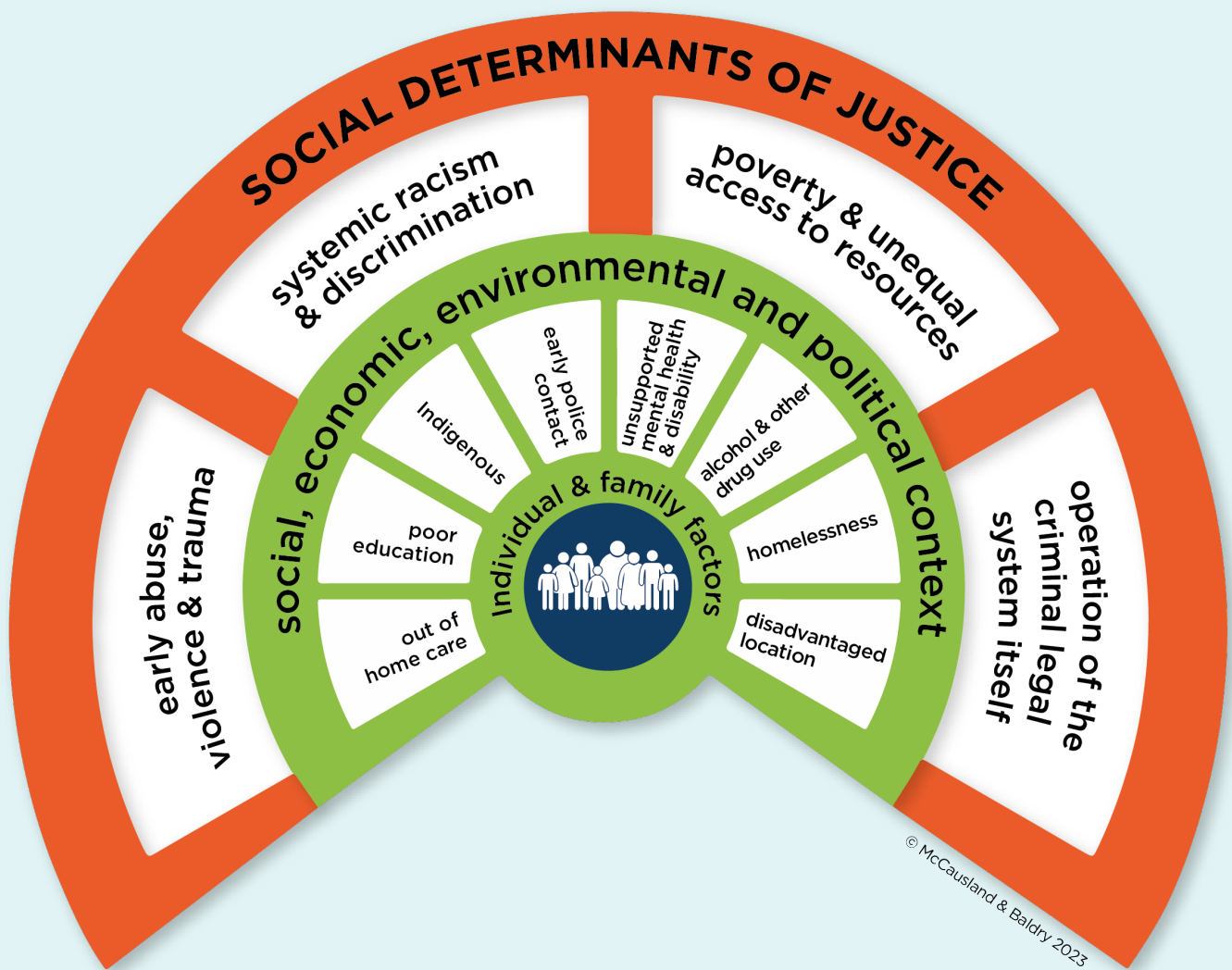
1.3 Who are the children in contact with child justice systems in Australia?

(a) The social determinants of justice system involvement

Stakeholders overwhelmingly told us that most children who become involved with the child justice system are among the most disadvantaged and vulnerable, with complex social issues influencing their involvement with the system.¹⁹ Children, family and community members (including victims of crime) in our consultations also described the complex factors associated with children's contact with the law (see section 3).

This is consistent with research which shows that a child's contact with the system often presents with a complexity of issues and factors including adverse childhood experiences.²⁰ It suggests that:

the connection between family harm and youth crime is of utmost importance, understanding that youth crime often manifests as a result of intergenerational trauma, the enduring impact of poverty, and various social and cultural determinants of health and wellbeing'.²¹



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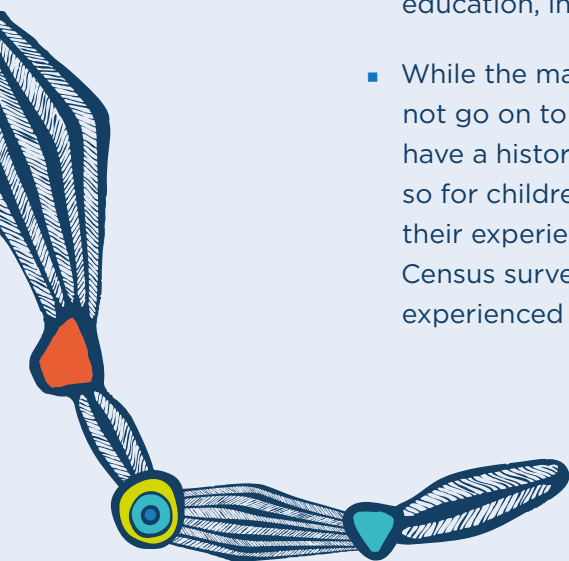
Diagram 1: The social determinants of justice²²

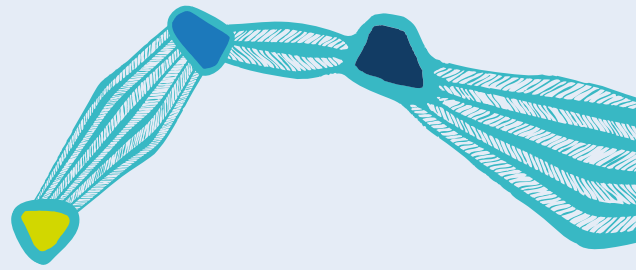
Dr Ruth McCausland and Professor Eileen Baldry describe structural and background factors as the ‘social determinants of justice’. These are illustrated in Diagram 1 above.²³ The model is ‘constituted by the individual or intermediary social, economic and geographic factors that contribute to the likelihood of coming into

contact with and experiencing poorer outcomes in criminal justice systems’.²⁴ They argue the social determinants of justice are underpinned by ‘the systemic dynamics in the broader socio-economic, environmental and political context’.²⁵ In order to reduce crimes by children, these system factors need to be addressed.

While there is little national data, available statistics indicate that children involved with the criminal justice system experience overlapping adverse childhood experiences. For example:

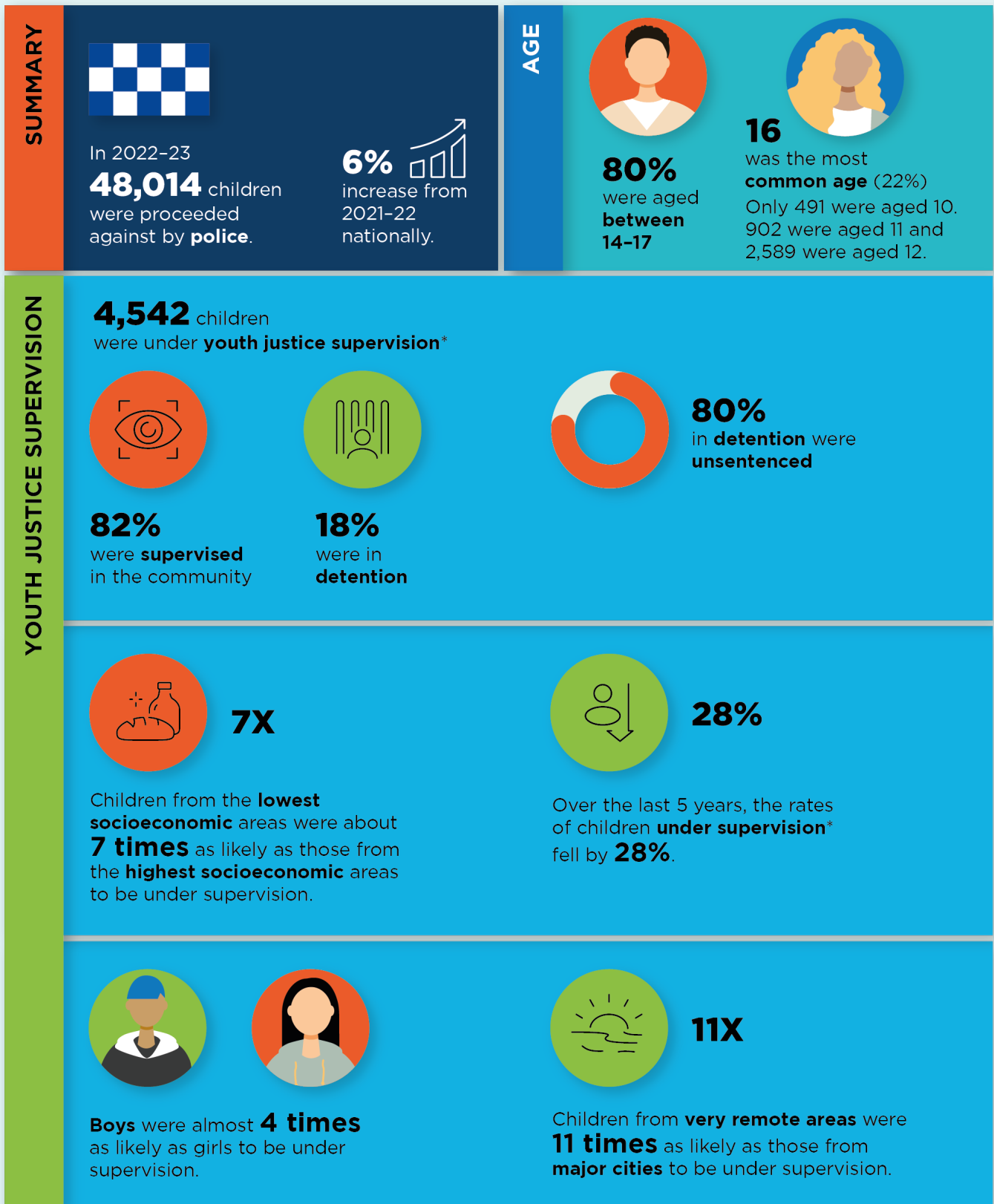
- A survey of **14 - 17-year-olds** in contact with the justice system between 2016 and 2018 in Queensland and Western Australia, found that about two thirds had at least one mental health disorder. As many as **23%** had attempted suicide, nearly six times as high compared with their peers in the general population, and **14%** reported that they had made a suicide attempt in the past 12 months.²⁶
- Drug and alcohol disorders are highly represented in the child justice population, with one report indicating that as many as **64%** of those in child justice systems have a drug and alcohol disorder compared to **5.1%** in the community.²⁷
- Many children involved in child justice systems experience poverty and unstable or unsuitable accommodation. National data shows that **almost 2 in 5 children (38%)** under youth justice supervision on an average day in 2022-23, were from the lowest socioeconomic areas, compared with **about 1 in 20 young people (4.9%)** from the highest socioeconomic areas.²⁸
- The Queensland Youth Justice Census survey indicated that as many as **48%** of young people coming under youth justice supervision surveyed were not enrolled in education, in training, or in employment.²⁹
- While the majority of children who experience maltreatment do not go on to offend, a large proportion of children who do offend have a history of child abuse and neglect, and this is particularly so for children in detention.³⁰ Although no national figures on their experiences of family violence, the Queensland Youth Justice Census survey showed that **53%** of the young people surveyed had experienced or been impacted by domestic and family violence.³¹





- A high proportion of children are considered ‘crossover’ or ‘dual system’ involved, which means they are in both the criminal justice and child protection systems.³² **More than half of children (53%) aged 10 and over** under child justice supervision during 2021–22 had received a child protection service in the 5 years from 1 July 2016 to 30 June 2021.³³ Research completed in South Australia shows that **of 3,058 children** who experienced child justice contact, **84%** had been notified to child protection, and **a third** had experienced out-of-home care.³⁴
 - A study at Banksia Hill, Western Australia showed that **89% of young people in youth detention** between May 2015 and December 2016 had at least one domain of severe neurodevelopmental impairment and **36% had Fetal Alcohol Spectrum Disorder (FASD)**.³⁵
 - In 2022, **25% of people** entering prison in Australia reported that one or more of their parents or carers had been in prison when they were a child.³⁶ This percentage rises to **42% for those aged 18–24** and **36% for First Nations peoples**.³⁷ The Queensland Youth Justice Census survey in 2023 showed that **25% of the young people surveyed** had at least one parent who spent time in adult custody.³⁸
- Children **aged 10–13** are more likely than other justice-involved children to experience future criminal justice involvement.³⁹ Younger children are also more likely to be First Nations children, to have child protection involvement, and to have a neurodisability.⁴⁰

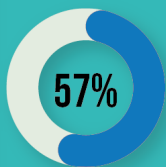




*on an average day

Diagram 2: Child Justice in Australia key statistics (2022-23)⁴¹

FIRST NATIONS CHILDREN



About **57%** of children under supervision* were First Nations children.

First Nations children were **23 times** as likely as non-Indigenous children to be under **supervision**.

First Nations children were **28 times** as likely as non-Indigenous children to be in **detention**.



First Nations children were **over-represented** under youth supervision in every **state** and **territory**.

First Nations children under supervision were **younger** than non-Indigenous children (**6.1% aged 10-13**, compared with **2.3%**).

Children in the **child protection system** are **12 times as likely** as the general population to be under youth justice supervision.



Almost **1 in 4 First Nations** children in detention have an **intellectual disability**, compared with **1 in 12 non-Indigenous** children.



RETURN RATES‡



Of children released from **community-based supervision**:

57% were **returned** to sentenced supervision within **12 months**.



Of children released from **supervised detention**:

85% were **returned** to sentenced supervision within **12 months**.

In general, the **younger** that people were when they were released from sentenced community-based supervision, the **more likely** they were to receive another supervised sentence within 12 months:



73% of children **aged 10-13** when released from sentenced community-based supervision were returned to sentenced supervision within **12 months**



compared with **53%** of children **aged 16** at release.

*on an average day ‡2020-21 data

(b) Child justice key statistics

Despite some increases in child offending over the past 2 years, the number of children in contact with the child justice system in Australia has fallen steadily since 2008, which is consistent with international trends.⁴² However, while numbers have decreased, it is argued that the complexity in the lives of children in contact with the criminal justice system has increased.⁴³

There has also been a notable change in the types of offences committed by children. For example, the numbers of children charged with theft have generally declined since 2008–09, albeit with some increase occurring in the period 2021–2023.⁴⁴ The number of children who committed ‘acts intended to cause injury’ has steadily increased since 2008, although there were some decreases between 2010–11 and 2014–15.⁴⁵ The category ‘acts intended to cause injury’ does not include ‘homicide and related offences’ or ‘sexual assault and related offences’. The rates are low for these more serious crimes.⁴⁶ New technologies may also be contributing to a change in the profile of children who offend, including increasing concern around offences related to online radicalisation.⁴⁷

Recent research points out that while there has been a reduction in low level offending, there is no reduction in the ‘more persistent or chronic offending among young people’.⁴⁸ Polglase and Lambie suggest that it is those children entrenched in the child justice system who are engaging in more ‘chronic offending behaviour’,⁴⁹ which reflects the shift in the types of offences being committed by children.

Further, as shown in Diagram 2, data also indicates that the younger a child is when under justice supervision, the more likely they are to return to supervision within 12 months.⁵⁰ Almost three-quarters (73%) of children aged 10–13 when released from sentenced community-based supervision were returned to sentenced supervision within 12 months.⁵¹ Research conducted in South Australia has shown that ‘if a child has their first contact with youth justice between the ages of 10–13, 91% will experience at least one night in detention, 83% will experience

3 or more supervision orders, and 75% of those will return to sentenced supervision at least once by age 18’.⁵²

National data consistently shows the overrepresentation of First Nations children in both the child justice and child protection systems.⁵³

There are multiple and complex reasons for the continuing overrepresentation of First Nations children in these systems. Many stakeholders attribute this to Australia’s history of colonialism, cultural dispossession, and discriminatory laws and policies, which have affected, intergenerationally, the social, economic and mental wellbeing of First Nations peoples.⁵⁴

On an average day in 2022–23, First Nations children were 23 times more likely than non-Indigenous children to be under youth justice supervision. They were 28 times more likely to be in detention.⁵⁵ This is despite First Nations children making up only 5.7% of the Australian population aged 10–17.⁵⁶

First Nations children are particularly overrepresented at younger ages with 6.1% aged 10–13 years compared to 2.3% of their non-Indigenous counterparts.⁵⁷

Also, children aged 10–17 from very remote areas were 11 times more likely to be under supervision compared to those from major cities.⁵⁸ The Australian Institute of Health and Welfare (AIHW) suggests that this largely reflects the higher proportions of First Nations Australians living in these areas.⁵⁹

National data also shows that First Nations children (aged 10–16) are more likely to return to youth justice supervision. Of the 1,151 First Nations children released from community-based supervision in 2020–21, nearly 2 in 3 (64%) returned within 12 months.⁶⁰ A lower proportion of non-Indigenous children released from community-based supervision returned within 12 months (50%).⁶¹ These differences were also apparent for children released from detention with 88% First Nations children and 79% non-Indigenous children returning within 12 months.⁶²

While First Nations children are overrepresented in the child justice system, they are underrepresented in terms of access to basic services.⁶³ For example, school attendance rates for First Nations students continue to be lower than for non-Indigenous students.⁶⁴ Despite some notable improvements reported for the 2024 Closing the Gap targets on education for First Nations children,⁶⁵ only the early childhood Target 3 is 'on track' to be met by 2030.⁶⁶ Target 4, on increasing the proportion of First Nations children assessed as developmentally on track, is worsening.⁶⁷

There are no national data on children from culturally and racially marginalised communities, but stakeholders indicated that these children are also overrepresented in the criminal justice system, and their families have poor access to basic services. For example, children from African communities are over-represented in custody in the state of Victoria.⁶⁸

1.4 How information was collected for this project

This report draws on information collected through multiple sources, including submissions, consultations, and reviews of previous reports relevant to child justice.

In keeping with children's right to participate (Article 12, CRC), seeking the views of children and young people formed a core component of the information gathering process. Face-to-face and online consultations with children and young people, families and community members were conducted across Australia.

Children are defined as those under 18, in keeping with the definition of a child under the CRC, and young people as those between 18–25 years. In a few cases, young people older than 25 with

lived experience of the child justice system also participated in our consultations.

The insights of children and young people were also recorded through a short survey. Consultations with children and young people were also informed by a review of reports of previous consultations with children at risk of child justice involvement.

The NCC also held roundtables and interviews with stakeholders including youth justice departments, police, judicial officers, academics, First Nations representative organisations, state and territory children's commissioners and guardians, and non-government organisations. The term 'stakeholder' is used throughout this report to refer to the individuals and organisations who provided submissions and those who participated in these interviews and roundtables.

Members of an academic advisory group provided advice on the project.

Diagram 3 details the number of submissions received, surveys completed and the numbers attending consultations, interviews, and roundtables during 2023-24.

The issues raised in the consultations, surveys, submissions, interviews and roundtables were analysed to identify broad themes. All information was then coded under these themes, and these themes are reflected in sections 2, 4 and 5 of this report.

A detailed discussion of the project methodology is presented in Appendix 5.

Appendix 6 contains demographic information about the children and young people who participated in the consultations.

Appendix 7 provides a list of written submissions received by the NCC.



Diagram 3: Details of number of submissions received, surveys completed, and the numbers attending consultations, interviews and roundtables during 2023–24.

1.5 Understanding this report

This report examines the key issues relating to a child rights and evidence-based approach to reform of justice systems in Australia, drawing on multiple sources of information, including consultations and submissions.

While the report provides some examples of different initiatives and approaches to child justice systems in Australia and internationally, it was beyond the scope of the project to provide analysis of the effectiveness of these in reducing children's involvement in crime. There are significant data gaps and limited investment in evaluations, making comparisons difficult.

Further, the report does not review the different child justice systems in each Australian jurisdiction, including current laws, sentencing guidelines, operational practices, policing practices, and diversionary programs. We recommend that this work be included in the future national reform roadmap, along with an analysis of other approaches internationally.

Section 2 of this report outlines 4 priority actions required to enable transformational, national reform of our justice and child wellbeing systems across Australia to protect children's rights and wellbeing.

Section 3 presents the views gathered from children and young people, families, and community members about their experiences of contact with child justice and related systems, through our consultations and survey responses.

Section 4 contains further recommendations to drive evidence-based reform that can be

implemented separately by jurisdictions but would be more effective as part of a nationally-coordinated approach to reform proposed in Recommendations 1-4.

Section 5 reports on the numerous barriers and challenges to child justice and child wellbeing reform in Australia based on submissions and stakeholder consultations, including the views of children, families and community members.

Section 6 concludes the report, reinforcing the need for a national approach to achieve sustainable and meaningful child justice and child wellbeing reform in Australia.

The voices of children and young people who participated in this project are interspersed throughout this report. Direct quotes from children and young people, and families and community members, are included in text and in 'speech bubbles' throughout the sections. These have been de-identified. Where the quotes are from family or community members, this has been indicated. All other quotes in 'speech bubbles' are from children and young people.

Stakeholder quotes, drawn from submissions, interviews and roundtables, are also highlighted throughout the report.

Several case studies illustrating the experiences of children and young people are also included throughout this report. They are a composite of real quotes and stories from children and young people who participated in our consultations. These accounts reflect the life experiences and challenges that children repeatedly shared across the country. Identifying details have been removed and pseudonyms have been used.



2 Priorities to enable national reform

National leadership is required to reimagine a new approach to youth detention and lift it out of the political ‘tough on crime’ cycle.⁶⁹

Recent years have seen growing public frustration with the child justice system, and its ineffectiveness at keeping both children and the community safe. Successive state and territory governments tasked with implementing reforms recommended by Royal Commissions and inquiries have failed in implementing recommendations, and their piecemeal approach has resulted in children and communities continuing to suffer.

This demonstrates that reform of policy affecting children and their families is hard to achieve in Australia and faces numerous barriers.

In Australia, child justice systems have been the responsibility of states and territories. However, increasingly, there is support for a nationally coordinated approach to child justice reform.⁷⁰ This is consistent with other social problems that are benefiting from a national approach, such as the *National Plan for Ending Violence Against Women and Children 2022-2031*.⁷¹

There is also agreement that reform needs to take place in a wider context.⁷² Decades of evidence show that criminal justice systems alone cannot fix offending by children, and that prevention and early intervention requires coordinated action from systems across health, education and social services.

This systems reform crosses portfolios and appropriately requires the attention of National

Cabinet.⁷³ The Law Council of Australia in its submission argued that:

A national approach will better ensure the development of consistent standards, policies, and practices across jurisdictions, reducing disparities and promoting equitable treatment of young people in the justice system, and coherence and consistency in the development of laws and policies.⁷⁴

Youth Law Australia suggested that:

Adopting a uniform national approach will assist in recasting the policy issue as addressing the human rights and wellbeing of children, rather than addressing a ‘crime problem’.⁷⁵

Adopting a national approach ensures that the best interests of children are made a primary consideration in all actions concerning children.⁷⁶ It also means placing children at the centre of our efforts, and recognising, understanding and responding to their needs and developing capacities.⁷⁷ This approach recognises that the rights of children are of significance to the nation and to the whole Australian community.⁷⁸

The CRC identifies governments as the primary duty bearers when it comes to realisation of child rights. National leadership is critical to the full realisation of these rights, ensuring that all governments across Australia are meeting minimum standards for child wellbeing. As stated in one submission:

It is vital that the UNDRIP and the CRC form the basis of any reform. The assumptions and values on which we build our justice systems shape the entire system. Reforms to improve youth justice and child wellbeing in Australia will inevitably fail if they are not based on the key principles of children's human rights.⁷⁹

The idea of taking a national approach is not new. It has been recommended in numerous previous inquiries. For example, the Atkinson Report on Youth Justice in 2018, strongly supported a national approach:

A national framework for Youth Justice would see a consistent, evidence-based approach advocated and delivered across Australia through the identification of core service elements, objectives and measurable outcomes.⁸⁰

A national approach to reform of child justice would build on agreed principles and parameters to support each jurisdiction in their reform journey.

To achieve reform, it will be necessary to establish mechanisms which provide leadership and support for implementing evidence-based actions to drive change. This includes establishing a National Taskforce for reform of child justice systems; appointing a Cabinet Minister for Children; establishing a Ministerial Council for Child Wellbeing, chaired by the Minister for Children; and incorporating the CRC into Australian law through a National Children's Act and a Human Rights Act. These recommendations are discussed in the following subsections.

2.1 National Taskforce for reform of child justice systems

A majority of stakeholders agreed that a national approach is needed for meaningful reform to child justice.⁸¹ They suggested various ways to achieve a national approach, including through the establishment of a National Taskforce for reform of child justice systems.⁸²

They also noted existing examples of national leadership and shared responsibility across jurisdictions in health, agriculture, housing, and education, providing precedent for a mechanism such as a National Taskforce.⁸³ While key priorities for the National Cabinet include 'Women and Women's Safety' with a coordinated National Plan of Action underpinning reform, the safety and wellbeing of children is not currently a priority for National Cabinet.⁸⁴

Previous reports have emphasised the need for elevating child justice to a national level through a national agenda.⁸⁵ This 'would facilitate national benchmarking, consistency of legislative frameworks, identification and sharing of best practice' to reduce, in particular, the disproportionate rate of First Nations representation in the criminal justice system.⁸⁶ The development of a formalised national approach at Ministerial level could provide a forum to focus on systems changes.⁸⁷

A National Taskforce will need to include mechanisms for cross-portfolio collaboration and coordination, consistent with a holistic, public health approach to child justice and child wellbeing (see section 4.1). This is needed to address one of the key barriers to a national child rights approach to reform – the siloed and fragmented approach to the delivery of services for child wellbeing.⁸⁸ Silos in policymaking and service delivery lead to children with multiple and intersecting needs falling through the gaps, which in turn can lead to child justice involvement,⁸⁹ and other harms to children and the community.

Actions for the National Taskforce should include:

- developing a 10-year National Roadmap for evidence-based reform of child justice systems in all jurisdictions
- building on existing national strategies that prioritise hearing the voices of children, and partnership and collaboration with First Nations peoples, as in Action 8 of the *Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023–2026*,⁹⁰ and the Closing the Gap National Agreement
- prioritising systems reform to support vulnerable children and their families, including children with neurodevelopmental and cognitive disabilities, children with mental ill-health, children at risk of family, domestic and sexual violence and other child maltreatment, and children living with homelessness and poverty
- reviewing all child justice related laws and policies for consistency with the CRC, Convention Against Torture and its Optional Protocol, Convention on the Rights of Persons with Disabilities and other relevant international treaties and instruments, such as the Declaration on the Rights of Indigenous Peoples.
- identifying evidence-based approaches, both in Australia and internationally, that protect child rights and reduce offending
- strengthening the National Standards for Youth Justice in Australia, to ensure they have greater force and public accountability
- developing a national monitoring and evaluation framework, including a minimum set of indicators for measuring child justice initiatives
- undertaking specific actions to address Closing the Gap targets relevant to child justice and wellbeing for First Nations children.

Recommendation 1: Australian Governments establish a National Taskforce for reform of child justice systems. This Taskforce should report to Ministers responsible for child justice and child wellbeing across jurisdictions.

2.2 Cabinet Minister for Children

Positioning the rights and wellbeing of children at the centre of all decisions that affect them, including legislation, policy and service delivery, requires accountability at the highest levels of government and to the National Cabinet. Child rights and wellbeing need to be made a national priority in the governance of the federation.

Numerous submissions suggested appointing a Cabinet-level Minister with designated responsibilities for child wellbeing.⁹¹ This Minister would have distinct responsibilities for co-ordinating policy for children, which is currently widely spread across different portfolios.⁹²

A Minister for Children in Cabinet (similar to the Minister for Women) will provide national leadership and accountability for Australia's obligations for ensuring the rights and wellbeing of children.

States and territories should mirror this cross-portfolio and holistic approach to child rights and wellbeing in their government structures, including in relation to child justice responsibilities.

Recommendation 2: The Australian Government appoints a Cabinet Minister for Children, with responsibility for the human rights and wellbeing of children in Australia.



2.3 Ministerial Council for Child Wellbeing

Ministerial Councils provide the architecture for federal, state and territory Ministers to work collaboratively on key issues, often reporting to National Cabinet. The Women and Women's Safety Ministerial Council provides an example of how these forums can be used to drive progress on reform of key social policy issues.

A Ministerial Council for Child Wellbeing, chaired by the Minister for Children, would provide the mechanism for monitoring and responding to emerging policy issues affecting the safety and wellbeing of children and their families. This would include national plans addressing child wellbeing, poverty reduction, coordinated national investment, and a national child wellbeing workforce strategy. The Ministerial Council should develop an overarching, cross-portfolio National Plan for Child Wellbeing, including child wellbeing budget reporting.

Recommendation 3: The Australian Government establishes a Ministerial Council for Child Wellbeing, chaired by the Minister for Children, and reporting to National Cabinet.

2.4 National legislation to protect children's rights and wellbeing

Australia has made international commitments to uphold the CRC and has a moral and legal obligation to ensure these rights. The Australian Government, by agreeing to international human rights treaties such as the CRC, is both empowered and obliged to play a key role in ensuring child rights are protected.⁹³

However, legal protections of child rights in Australia continue to be piecemeal and inconsistent across the country and do not provide children with an effective remedy for any

child rights violations, especially for children in the child protection and justice systems.

There is currently no federal legislation that directly and adequately incorporates the full spectrum of child rights, and that can effectively hold the Australian Government to account for protecting child rights across the nation. Policy affecting children is uncoordinated, widely spread across portfolios, and there is a lack of monitoring and accountability for reform.

Under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), all bills introduced to Parliament must be accompanied by a statement of compatibility with human rights. The definition of human rights includes the CRC. While this has provided some consideration of human rights, there are ongoing concerns about the effectiveness of this process.⁹⁴ The Commission has proposed amendments to the *Human Rights (Parliamentary Scrutiny) Act 2011* to ensure that human rights concerns are more fully considered by the Parliament, in its Position Paper on a national Human Rights Act, released in 2023.⁹⁵

Australia does not have a federal Human Rights Act and international law is not binding in domestic courts. Only three jurisdictions (Australian Capital Territory, Victoria and Queensland) have passed human rights legislation.⁹⁶

The UN Committee has recommended that the Australian Government enacts comprehensive national human rights legislation that fully incorporates the CRC and provides clear guidelines for its consistent and direct application throughout the states and territories. It has also called for the Australian Government to ensure that the government assesses the impacts of all legislation on child rights.⁹⁷

Legislation is important for ensuring government accountability, and for driving greater understanding and commitment to child rights principles at all levels of government, civil society and the community. From their studies of legal incorporation of the CRC internationally, Professors Kilkelly and Lundy found that, aside from the legal significance of this measure,

experience shows that giving effect to the CRC at a national level has impacts outside the legal system too:

It means that decision-making by policy makers is better informed by the rights of the child, and it gives leverage to those whose job it is to hold government to account on behalf of children for the protection and promotion of their rights. It has also been shown to generate a greater culture of respect for children as individuals, leading to important reforms and other progressive changes in how children are treated.⁹⁸

There are a variety of ways that child rights can be incorporated into national laws. In some countries, the CRC has been directly incorporated into domestic law in its entirety upon ratification. Direct and full incorporation can be an important way to ensure systematic and effective implementation of the CRC at a national level. Countries like Norway, Belgium and Spain have incorporated the CRC comprehensively into their domestic legislation.⁹⁹

More recently, Scotland enacted the *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*, that incorporates the rights in the CRC in full.¹⁰⁰ The legislation places public authorities under a duty not to act incompatibly with the CRC and provides legal remedies should they fail to do so. They also must publicly account for their compliance by reporting against a scheme – a child rights impact assessment – and make a statement of compatibility with the CRC.¹⁰¹

Other nations have incorporated certain key rights into overarching legislation, for example a Human Rights Act, and some alongside a Children’s Act (for example in the United Kingdom), in order to ensure that the unique needs of children are not overlooked. Others, like Australia, have incorporated only a few key rights into specific state, territory and federal legislation in a more inconsistent fashion.¹⁰²

Stakeholders to this project recommended comprehensive human rights legislation as a means of better protecting the rights of children in the justice system.¹⁰³ This would not only provide a mechanism for legally enforcing child rights, but also a change in culture and norms. For example, the Law Council of Australia suggests that:

In the context of youth justice, human rights legislation would facilitate change in the culture and norms underpinning the youth justice policy. Specifically, it would assist to ensure that the best interests of the child are a primary consideration in driving reform. Under the Law Council’s preferred federal Human Rights Act model, explicit duties would be imposed on public authorities to act compatibly with human rights, and to give proper consideration to human rights in the development of policy and the making of decisions. This would encourage a shift in the focus of law and policy reform from the current retributive narratives to an approach centred on children’s wellbeing.¹⁰⁴

In its report on Australia’s Human Rights Framework, released on 30 May 2024, the Parliamentary Joint Committee on Human Rights recommended that a national Human Rights Act be introduced. The Committee endorsed the model Human Rights Act proposed by the Commission in 2023.¹⁰⁵

The Commission’s proposed model for a Human Rights Act includes all civil, political, economic, social and cultural rights; a ‘participation duty’ requiring that children, First Nations peoples and persons with disability be given a ‘voice’ on matters that affect them; and an interpretative clause that requires that all human rights are interpreted consistent with the CRC. It would provide a complaints pathway to the Commission where rights are breached, and in circumstances where this does not resolve complaints, access to the courts, with capacity for representative actions.¹⁰⁶

The Commission's model would provide comprehensive coverage of child rights and apply to all public authorities at the federal level. A public authority would include all departments and federal government agencies, as well as service providers that are contracted to provide services on behalf of the federal government.

In endorsing this model, the Parliamentary Joint Committee on Human Rights also recommended that once the Human Rights Act is enacted, the first review of its operation should consider whether 'additional rights relating to specific groups, such as ... children ... should be included' in the future.¹⁰⁷

While a federal Human Rights Act would apply to federal laws and federal public authorities, it also provides a template for updating existing Human Rights Acts in Victoria, Queensland and the ACT, and for the introduction of such legislation in the other states and territories.¹⁰⁸

State and territory governments are not exempt from international agreements and are obliged to play an active role to incorporate conventions into domestic legislation. By the federal government ratifying the CRC, it is committing all Australian Governments to comply with the human rights protected therein.

For this reason, there is also value in considering a National Children's Act to complement a Human Rights Act, such as by establishing minimum standards of treatment for children that would apply at the state and territory level. This might include a legislative basis for national out-of-home care standards and new child justice standards; and minimum standards on places of detention of children (consistent with Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(OPCAT)). It could also provide a place for the legislative enshrinement of commitments in various national frameworks – such as the Closing the Gap framework – where stronger protection may be warranted.


A National Children's Act could also provide a framework for the engagement of children in policy making processes, and national monitoring processes associated with these – for example, by setting out minimum requirements for Child Rights Impact Assessments and when such assessments should be mandatory (see section 4.6).

These more detailed and specific protections go beyond what would be covered in a national Human Rights Act, by providing an architecture for the implementation of child rights across different levels of government.

The scope of a National Children's Act should be negotiated with the community sector, children, and children's organisations, in accordance with principles of co-design in national frameworks such as *the National Framework for Protecting Australia's Children 2021–2031*.¹⁰⁹

Recommendation 4: The Australian Government incorporates the *Convention on the Rights of the Child* into Australian law through a National Children's Act as well as a federal Human Rights Act.

Further recommendations for evidence-based actions are made in section 4 of this report. These actions would be facilitated by a coordinated national approach but can also be independently pursued by jurisdictions.



3 What children and young people said about their lives, and experiences of child justice

This section reports on what 150 children and young people and 49 family and community members said about their lives and experiences of the child justice system. 67% of consultations were with First Nations children and young people. The information provided through these consultations held across the country forms the core of this report and drives the recommendations.

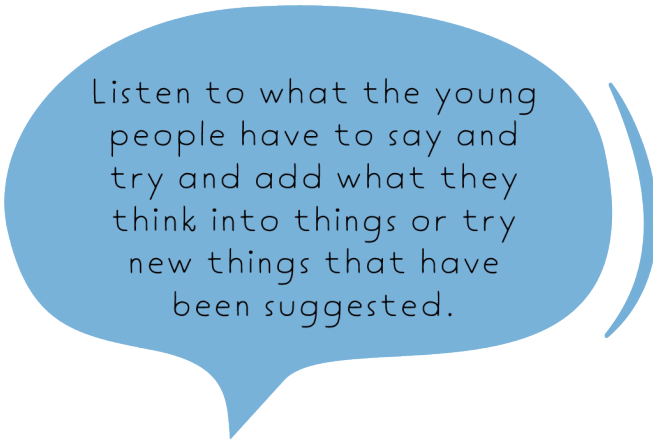
As children and young people, families and community members described in consultations, there are multiple and co-occurring risk factors that are associated with their contact with the law. These are consistent with the social determinants of justice, as discussed in section 1.3.

Children and young people in consultations often came from low socioeconomic backgrounds, including insecure housing, family, domestic and sexual violence, drug addiction, abuse and neglect. This was often compounded by mental health concerns and unsupported disability. In our consultations, more than one in five children and young people (22.2%) indicated that they had a disability and had poor access to appropriate support services. Over one-third of children and young people said that they had been or were currently in out-of-home care (37.5%). Many spoke about being disengaged from school. Some spoke of their immediate family members being in prison.

As indicated in section 1, it has been long-established that many children who are at risk of, or in contact with child justice systems 'are the most vulnerable and disadvantaged in our society'.¹¹⁰ These multiple and intersecting needs and risks become more pronounced as involvement in the child justice system increases.¹¹¹ Experts describe the impact of

'criminal intervention' on these children as the 'criminalisation of social need'.¹¹²

Children and young people told us that they know what they need to make their lives better. They want to be heard and have their ideas taken seriously. They stressed the importance of being able to express their views and being able to participate meaningfully in the design of services that are meant to be supporting them.



Listen to what the young people have to say and try and add what they think into things or try new things that have been suggested.

At the end of consultations, children and young people were invited to complete a short survey, including a question about what would help to keep children strong and out of trouble. The list of options was informed by the National Children's Commissioners' previous consultations, reports and research.

The top 6 selections made by children and young people were:

1. A safe home or place to live (84.3%)
2. Positive activities to do (83.3%)
3. Cultural and traditional activities (71.3%)
4. Training for a job (68.5%)
5. Going to school (67.6%)
6. Services and supports for me (64.8%).

Similar key issues emerged in the face-to-face consultations, echoing what children and young people have said in previous consultations.

3.1 A safe place to live

Article 27 CRC: Every child has the right to food, clothing and housing

When asked what helps children to not come into contact with police, we heard that children and young people need a 'roof over your head', having 'their accommodation and all basic needs met', and being 'safe at home'.

Children and young people, families and community members commonly spoke about their challenging living circumstances and the lack of safe, secure and stable housing options available to them.

Children and young people spoke clearly about the connection between a lack of stable housing and the offending behaviour. One child said, 'If a kid is homeless that's not going to help them to not be in contact with Youth Justice'.

They described situations where they or children known to them had been kicked out of their family homes and were living in unsafe environments, including on the streets. This often led them to engage in criminal activity.

For me and people I know, offending is often for money not for fun. We come from the street and there is not enough money for food, clothes and the basic things you need to live.

The connection between insecure housing, poverty and offending behaviour has been well documented in other reports.¹¹³

Jesse's story*

I first got into trouble with the police when I was 12.

I've been in and out of juvie ... stealing cars. It's addictive behaviour, get a high off driving expensive cars, thrill of flash cars, you can't afford them.

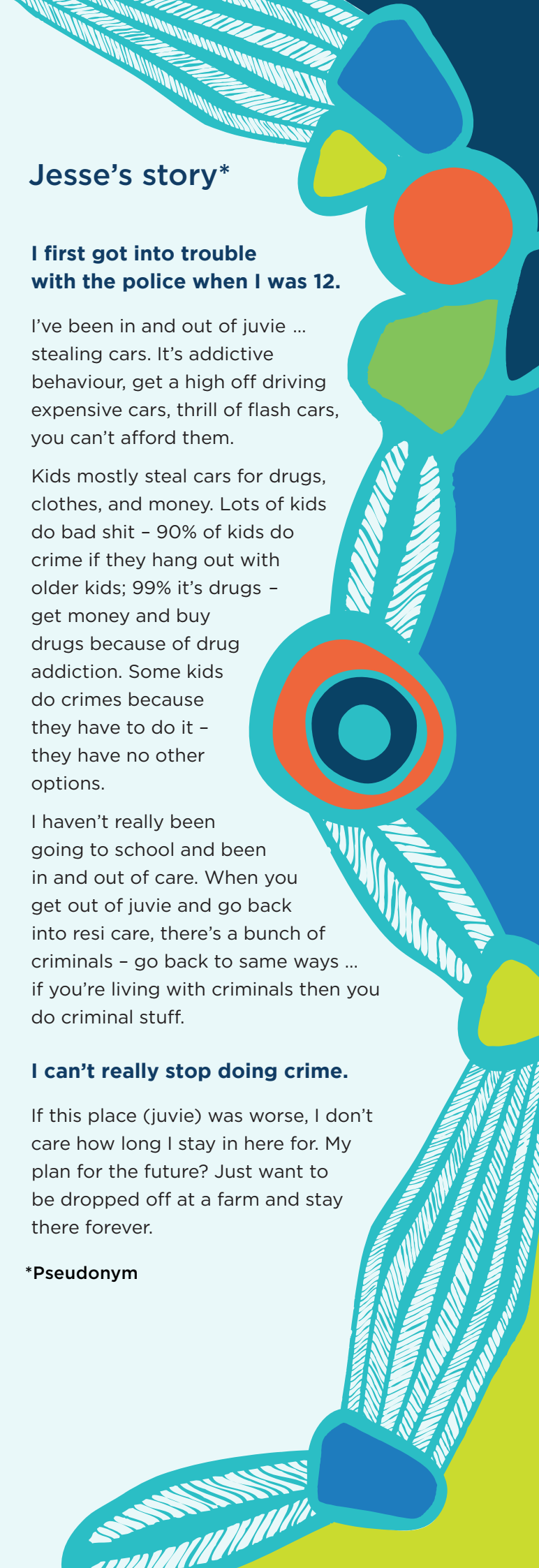
Kids mostly steal cars for drugs, clothes, and money. Lots of kids do bad shit - 90% of kids do crime if they hang out with older kids; 99% it's drugs - get money and buy drugs because of drug addiction. Some kids do crimes because they have to do it - they have no other options.

I haven't really been going to school and been in and out of care. When you get out of juvie and go back into resi care, there's a bunch of criminals - go back to same ways ... if you're living with criminals then you do criminal stuff.

I can't really stop doing crime.

If this place (juvie) was worse, I don't care how long I stay in here for. My plan for the future? Just want to be dropped off at a farm and stay there forever.

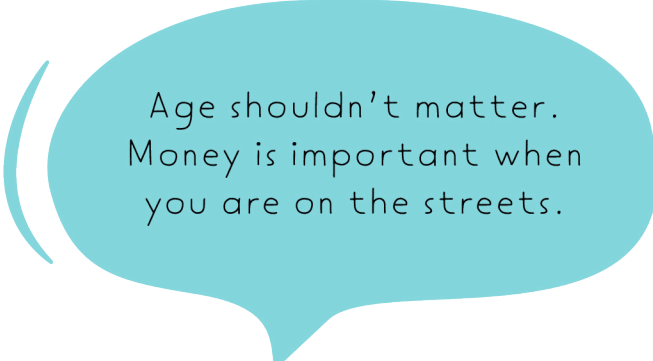
*Pseudonym



Family and community members expressed concerns about living in homes that were 'too crowded' for children to live there. Others reported that parents were living in hostels and their 'kids have nowhere to go' so they 'couch surf'.

Older children reported problems with securing rentals if they were under 18 years of age, with landlords saying that 'they don't want the responsibility'.

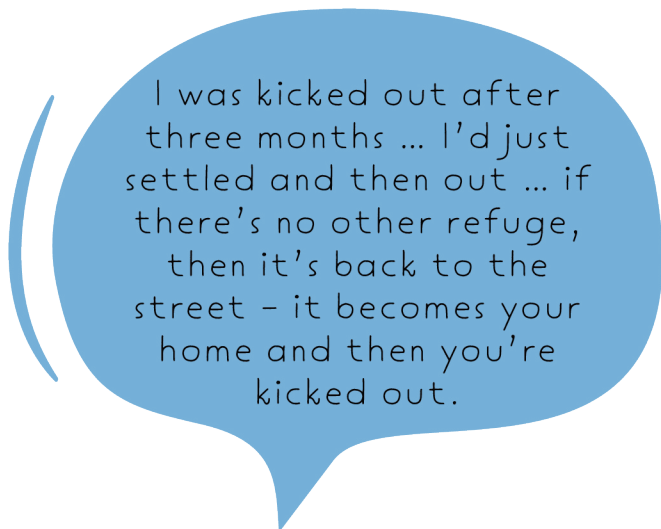
Other children and young people expressed frustration with Centrelink processes which make it difficult to access benefits required to keep them off the streets. They talked about having to be over 16 years of age and needing to have an address as requirements to get Centrelink payments, and so 'what else are you expected to do?'



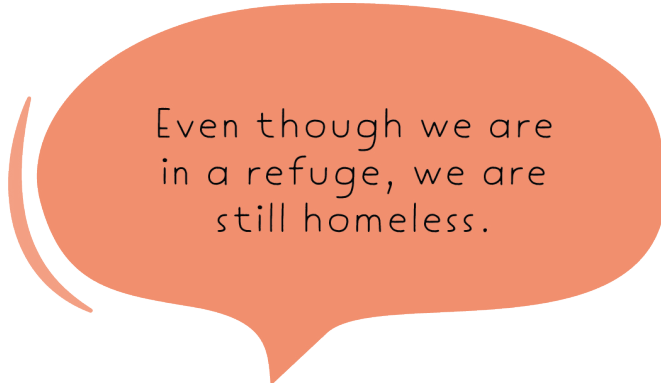
Age shouldn't matter.
Money is important when
you are on the streets.

Some children and young people raised concerns about the transient nature of refuges and the lack of support provided to them when living in refuges.

They talked about the difficulties of only being able to stay in a refuge for three months, asking 'how can you change 16 years of your family environment in three months?'



I was kicked out after
three months ... I'd just
settled and then out ... if
there's no other refuge,
then it's back to the
street - it becomes your
home and then you're
kicked out.



Even though we are
in a refuge, we are
still homeless.

Children and young people said that they expected 'to be supported' while living in refuges. However, they reported that mostly refuges were 'just a bed to sleep in at night', with them being 'kicked out' at 8 am and told 'not to come back until 5pm'. They also spoke of unsanitary living conditions.

They said that refuges rarely supported them to reconnect with their families and did not help them to get to day programs or to school. They complained of not having anything to do all day. Some attributed this to low staffing levels in refuges.

The geographic locations of some refuges were also raised as problematic. Often refuges with vacancies were far away from where the children and young people usually lived. This often made it difficult for some children to travel to and attend their usual schools.

Frequently, children and young people living in unstable housing emphasised their need for normalcy. They said that they wanted the stability and predictability that other children have in their daily lives and to have the same opportunities as them.

Couch surfing, the housing waiting list is 10 years ... Not safe at home but nowhere else to go.

As noted in section 3.1, homelessness and the lack of safe and affordable accommodation for children and families has been raised consistently with the NCC. In 2021, the NCC recommended action by multiple portfolios across Commonwealth, state, and territory governments in relation to housing.¹¹⁴

Australia's housing crisis is well-known.¹¹⁵ Secure and affordable housing for children and families, and long term and supported accommodation for vulnerable children and young people, including when leaving youth detention centres, is of critical importance.

Not 'crowded houses' is a happy house.

3.2 Positive activities to do

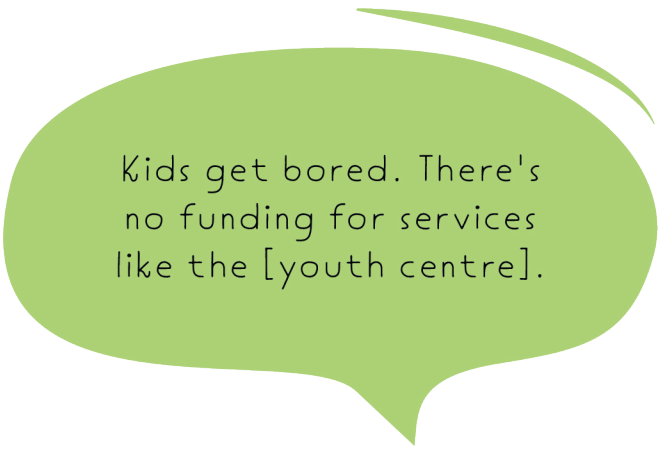
Article 31 CRC: Every child has the right to rest, play and take part in cultural and artistic activities

The majority of children and young people (83.3%) in the survey agreed that having positive activities to do (like sport, music, dance, art) were important for keeping them out of trouble.

Children and young people, families and community members repeatedly talked about the lack of positive activities available to them in their communities, including sport and youth activity centres. Many attributed children and young people's engagement in criminal activity to them having nothing to do and being bored. Often this resulted in them hanging out in shopping malls and on the streets where they often started getting into trouble.

Most of the time you get in trouble because you're bored and you need money. You need money for clothes, food, anything.

Some kids are just doing it for fun because they're bored.



Kids get bored. There's no funding for services like the [youth centre].

Children and young people who had access to activities and centres said that this helped them to stay away from crime. They spoke favourably about youth centres, with access to 'a computer room', 'gym', 'X-box', 'BMX bikes', 'rock climbing wall' and 'something to keep them occupied'. Some children and young people said that 'programs run by community and not police' were preferable and would 'be chockers full of kids'.

Other children and young people enjoyed access to youth clubs that offered a variety of activities, like Police Citizens Youth Clubs, including night programs, boxing and basketball, with some also providing breakfast and transport to and from the centres.

Having positive activities to engage in was also seen as important for connecting with peers. Being able to access positive activities can provide a circuit-breaker to negative peer influences. Many children and young people discussed the role of 'bad influences' and 'peer pressure' in their antisocial behaviour, including not attending school, drug use and criminal activity. They reported that problems at home lead them to 'branch out to different friend groups that may not be good'. Children and young people described a sense of belonging with peers that shared similar home lives, while 'with other young people you feel judged by them, can't connect with them'.

While emphasising the need for activities and programs to help keep children out of trouble, children and young people, families and community members raised the cost of participation, including the lack of transport as major barriers to access.

Many said that sports registration, uniforms, equipment, and travel to training and sports events were unaffordable. They want sport to be made 'more accessible' and 'affordable' for all children, including the provision of buses for local sports clubs, particularly in regional and remote locations. Innovative solutions to improve access should be investigated, such as free registrations and using local schools as a hub for enrolment, as discussed in section 4.1.

In one consultation, members of culturally and racially marginalised communities reported racism and discrimination as additional barriers to their children's participation in sporting activities:

Some clubs have racism and discrimination. I used to coach African youth for more than three years. When it is time to choose the good player, they choose different colours in an order. And the African kids see this.
—Family or community member

Children and young people also raised music and social activities like school barbecues, camps and holiday programs as a positive use of time that improved their social connections and overall wellbeing. The benefits of accessible and affordable positive activities are discussed in section 4.3. Social connections are the cornerstones of health and wellbeing for children and have a critical effect on child development.¹¹⁶

3.3 Cultural and traditional activities

Article 30 CRC: Every indigenous child or child from a minority has the right to enjoy their own culture, religion and language

First Nations children and young people, families and community members described the importance of activities and programs run by First Nations organisations to meet their cultural connection needs.

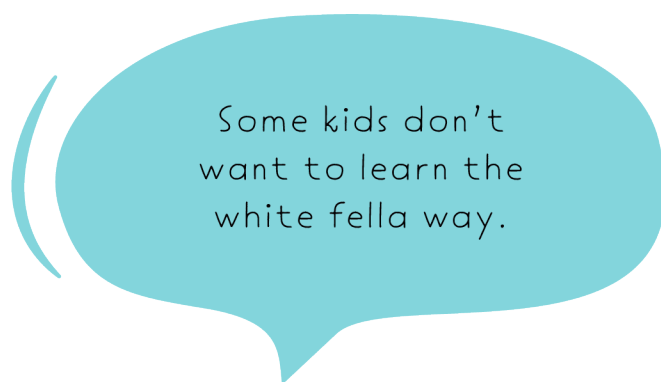
However, some spoke of programs offered by Aboriginal and Torres Strait Islander Community-Controlled Organisations (ACCOs) being discontinued in their communities and expressed anger at this. First Nations community members emphasised the need for greater investment in ACCOs for children, saying that ‘we know our kids better than any government organisation, police, or anything’.

Many children and young people, families and community members also spoke about a lack of cultural sensitivity, respect and awareness in mainstream education, child protection and child justice.

With respect to mainstream education, they expressed concern about the lack of First Nations staff in schools. One community member said, ‘there are no Aboriginal people (working) in the schools’, and this prevents First Nations children from feeling a sense of belonging and connection to culture at school.

Some First Nations children, young people and family members expressed frustration at First Nations languages not being taught at school, with one family member saying that schools are ‘teaching Spanish and other languages, why not our own?’

First Nations children and young people told us that it is important to them that teachers can speak and understand their languages. They said it makes them ‘sad and angry’ when they are not able to learn in language.



Children and young people, families, and community members also discussed the ways in which the child protection and child justice

systems were not meeting their need for cultural connection. First Nations children and young people with child protection histories reported being placed with non-Aboriginal families with no connection to culture. This leads to ‘anger’ and ‘rebellion’.



First Nations community members spoke about the ongoing trauma experienced by their children when they are removed from their families and placed with non-Aboriginal carers. A family member said ‘they take the kids away from the family. They have a human right to learn their own culture. They lose their language and their story’.

First Nations children and young people want and need opportunities to take part in cultural and traditional activities. First Nations children and young people said that cultural activities and programs like being out bush, Men’s business, Tribal Warrior, Clontarf, and Girls Academy help to keep them out of trouble.

Connection to community and culture is a crucial protective factor for First Nations children and children from culturally and racially marginalised communities, fostering their health and social wellbeing, healing and building a deep sense of identity.¹¹⁷ They value cultural support and programs where they learn about and experience their traditions.¹¹⁸

Children, young people and families from culturally and racially marginalised communities also mentioned the benefits of learning about their culture and connecting with mentors or figures of cultural authority.

African mentors -
learn about your
tradition.

Cultural support
[helps]. [Program] for
Islander kids, where they
learn about traditions and
culture. This is somewhere
for them to go and
something different
for them.

We want to finish
school to get
good jobs.

I want to get
an apprenticeship
as a mechanic.

I really want
to get a job.

Children and young people described the benefits of finding a job, including keeping their minds active, keeping to a schedule, feeling a sense of self-worth, and staying away from crime.

It's a good
feeling to have
your own job.

3.4 Training for a job

Article 28 CRC: Every child has the right to an education

Article 29 CRC: Children's education should help them fully develop their personalities, talents, and abilities

More than two-thirds of children and young people who completed the survey indicated that job training and getting a job helped them to stay out of trouble (68.5%). During general consultations and individual interviews, many children and young people said that they wanted to find good jobs.

Some children and young people spoke about attending programs which offered training to help them become more employable and supported them to gain employment.

However, many children and young people described the difficulties that they experience when trying to find a job, including lack of education, skills and training, no transport to get to jobs and feeling 'less than' other children who do not face the same challenges as them.

Reading and writing is important, it's hard to get jobs if you can't read and write.

If you can't read and write, you can't get a job so you do crime.

Its easier to get locked up than get a job.

In one consultation, children and young people talked about how they perceived themselves differently to other children when applying for jobs. They were aware of clothing differences, saying 'other kids wear a formal shirt' whereas they do not have this type of clothing. Some children from culturally and racially marginalised backgrounds said that their identity made it more difficult for them to find employment.

Going for a job is difficult ... people will look at you different. You just want acceptance.

Children and young people in child justice centres indicated that they needed more support to enrol and complete training courses and help to undertake practical training at workplaces. They also wanted assistance to connect with potential employers.

They should set you up better before you leave.

There's nothing when you get out, not many good opportunities to stop getting in trouble.

They need courses on how to do certain things, such as applying for job. Without that, they'll go back to what they know, the crime.

One child said that being in custody during critical stages of development meant that they were not in a context where most children are learning about jobs and university. They miss out on a period where 'kids are figuring out what to do'.

Some children and young people were aspirational about their futures. They talked about finding jobs that they enjoyed, with views to having careers. Others were uncertain about whether this was something they could achieve, with one child stating that working at 'Maccas is the biggest you can aspire to'.

3.5 Going to school

Article 28 CRC: Every child has the right to an education

Article 30 CRC: Every indigenous child or child from a minority has the right to enjoy their own culture, religion and language

In the survey, just over two-thirds of children and young people (67.6%) indicated that going to school helped keep children strong and out of trouble. Across face-to-face consultations and individual interviews, children and young people said that not attending school was the key reason for coming in contact with child justice systems.

Many children and young people reported being disengaged from school, often from very young ages. Their reasons for disengaging included not understanding the schoolwork, not being able to relate to the content of the schoolwork, being 'picked on by teachers', 'bullied' by peers, not being able to 'sit in class for a long time' and not able to concentrate for extended periods of time.

Children and young people said this often led to them getting into trouble for 'wagging' or for 'bad' behaviour in the classroom. Sometimes they would get suspended from school which would then lead to them falling further behind their peers. Some children and young people discussed feeling 'shamed' or 'too scared to ask for help at school'. This resulted in them losing motivation to attend school and so stopped attending.

[It] got to the point where I couldn't ask a single question. They just put effort into the kids they think will succeed.

I hated my life when I was in Grade 4. I got suspended at 9 years old. No one cared about my poor behaviour.

Some children and young people said their parents did not encourage or support them to attend school, which in turn contributed to their non-attendance.

School was the only place outside of my home where there was an opportunity to help ... but they didn't do it and by the time they could it was too late. School let me down.

Other children and young people spoke about feeling lost when they transitioned to high school. They said that they could not cope with the complex timetabling, multiple teachers, and felt lost in the bigger environment. Many children and young people thought that mainstream education was aimed at 'one learning style when all children are different'. Some felt that the priorities of mainstream schools were 'wrong' with 'schoolwork placed above mental health' and teachers 'treat every student like they are living the white picket fence and don't understand where the students are coming from'.

Mainstream schools need to be more supportive. If you're from a broken-down home, you're more likely to go off path.

Some schools don't care what's going on as long as you get your assignment in on time, but it should never be all about work in life.

Families from culturally and racially marginalised communities felt that cultural competence could be improved within schools.

There is lack of cultural appropriateness in schools ... For example, in African culture, you don't look an adult in the eye and some of the kids keep that, so teachers think that they are lying.

—Family or community member

The views of children and young people were consistent with families and community members, for example:

I see the effect from the education system. Children are in school, but the way they discipline them, it doesn't fix the problems. That continues until they graduate and then their life has already collapsed.

—Family or community member

[We] need to transform how we do school.
—Family or community member

Children and young people who had experiences with alternative education, such as flexi-schools, special schools, and schools in custodial settings, identified many benefits of these, including supportive teachers and being able to work at their own pace.

Supportive teachers with check-ins, [where] if something is wrong they want to talk. Breaks to get something to eat. Go and do your exam outside.

A school for kids to be able to do work in their own time.

Special programs in schools were also spoken about favourably. For example, some First Nations children and young people reported that the only reason they attended school was the Clontarf Foundation, an organisation that assists in the education and employment of young First Nations men. They mentioned that Clontarf supports them to 'be the best we can', and 'without Clontarf we'd probably all be dropped out or kicked out'.

Children and young people, families and community members suggested several ways that mainstream schools could better support children at risk of contact with child justice. This included providing more mental health support, especially culturally appropriate mental health support, and teachers taking the time to understand the individual circumstances of children and being patient with those that act out.

Stuff might be happening at home and the teachers don't understand, like being late because of family stuff.

Teachers don't know your life story.

I wish I felt more connected to school - I didn't feel left out or anything but they hadn't been in the system like me.

Children and young people want schools to be places where they can get help - 'not just education'. They said that all teachers should know how to respond to disclosures and know how to 'look out for these signs'.

There was discussion about the importance of intervening early with one young person stating, 'if school had helped earlier, in primary school, it would have made a big difference'.

Children and young people recognised the importance of education, with those that had graduated or gained certificates expressing a sense of pride and achievement.

Doing a certificate makes you feel really good and proud and brings a lot of good attention towards you.

Children and young people, families and community members overwhelmingly agreed that disengagement from school contributed to children coming into contact with the child justice system. This is consistent with existing literature.¹¹⁹

3.6 Services and supports for me

Article 19 CRC: Every child has the right to protection from violence, abuse and neglect

Article 23 CRC: Every child with a disability has the right to special care and assistance

Article 24 CRC: Every child has the right to the highest attainable standard of health

Article 33 CRC: Every child has the right to protection from using, making, carrying or selling harmful drugs

Almost two-thirds (64.8%) of children and young people who completed the survey agreed that to avoid contact with the child justice system, they needed support services to keep them safe. However, during consultations, children and young people, families, and community members said that support services were not meeting their needs and were often inaccessible. Concerns were frequently raised in relation to family supports, health, mental health and disability services, including interactions with child protection, police, and child justice systems.

(a) Family and community supports

In consultations, children and young people said that most crime begins at home. They discussed growing up in families with ‘no mother or father figure’ and where ‘parents do not put enough time into kids’. Children and young people described households filled with abuse, neglect, family, domestic and sexual violence, drug and alcohol addiction and family histories of offending behaviour.

I know for me and everyone I knew going into youth justice, we all had issues with our family ... might have been in care, or they used drugs or were in and out of justice themselves.

Kids have poor role models in families ... drugs, parents in jail, grow up around negative stuff.

Families and community members also raised ‘family dysfunction’ as a precursor to child justice involvement, with one stating that children ‘need someone to look up to’. Another pointed out that it is ‘hard to break the cycle’.

They say parenting doesn't come in a manual. Parents only know how they were raised.

—Family or community member

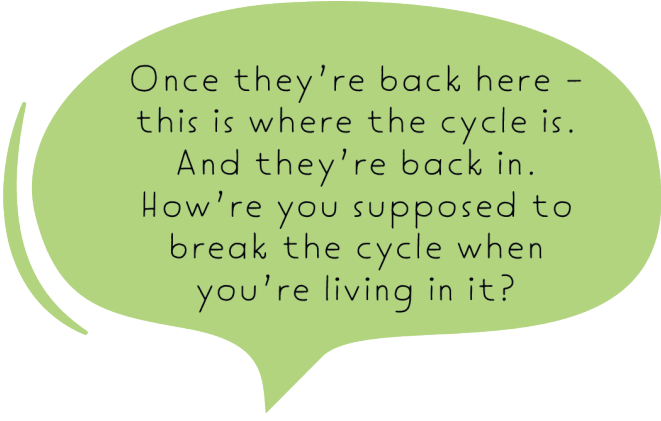
Dads not around, mothers not responsible, neglect ... abuse, they don't want to be at home, need an escape route.

—Family or community member

Children and young people, families and community members all emphasised the need for services that provide ‘help for the whole family’ as ‘no one is helping the adults’. One child said that ‘one child being in detention is not just about that one child if the family is struggling’.

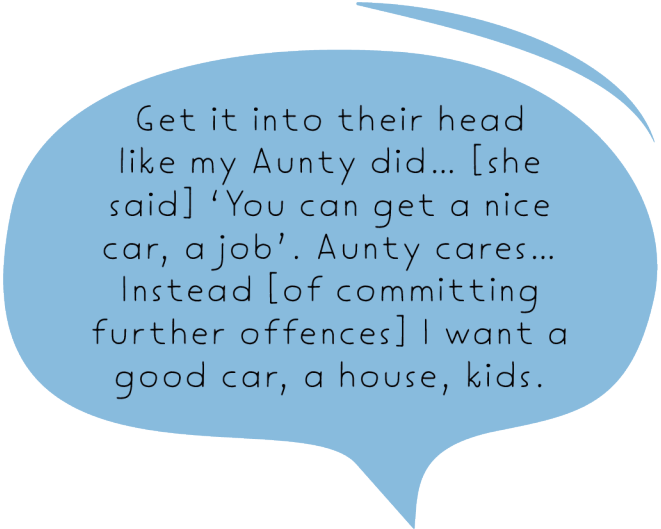
There should be a program for parents and kids together. So they can heal together.

Some community members talked about children returning home after time in detention to the same ‘family dysfunction’ and how this made it difficult for children to stay out of trouble despite their good intentions. Children also described returning to the same environments and being unable to change their behaviour without support.



Once they're back here – this is where the cycle is. And they're back in. How're you supposed to break the cycle when you're living in it?

First Nations children and young people frequently raised the positive impact of their relationships with Elders and First Nations leaders in their communities. Several participants cited these relationships as central to their reintegration into the community, and to building a positive identity outside of their criminal behaviour.



Get it into their head like my Aunty did... [she said] 'You can get a nice car, a job'. Aunty cares... Instead [of committing further offences] I want a good car, a house, kids.

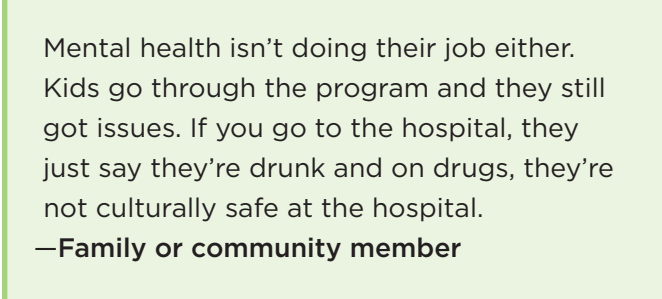
(b) Health, mental health, and disability support services

Children and young people, families and community members all raised concerns about the suitability and availability of mental health and drug and alcohol services.

First Nations children and young people, families and community members specifically reported that existing services are not meeting their needs.

They want to see more culturally appropriate mental health supports, especially in schools and hospitals, including staff completing courses such as *Aboriginal and Torres Strait Islander Mental Health First Aid*.¹²⁰

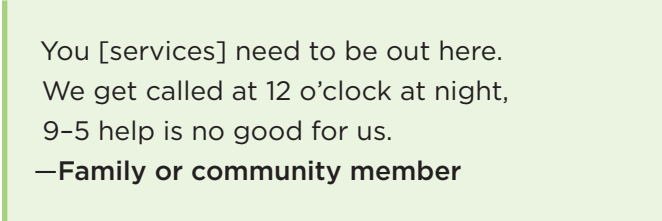
One First Nations community member said:



Mental health isn't doing their job either. Kids go through the program and they still got issues. If you go to the hospital, they just say they're drunk and on drugs, they're not culturally safe at the hospital.

—Family or community member

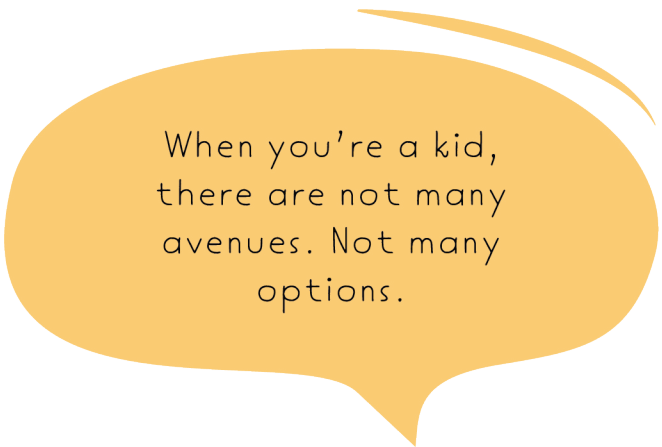
In this same community, community members talked about the lack of afterhours support for children and the lack of quality mental health services:



You [services] need to be out here. We get called at 12 o'clock at night, 9-5 help is no good for us.

—Family or community member

Children and young people described long wait times to access mental health support, as well as poorly trained mental health workers and no choices in terms of those allocated to work with them.



When you're a kid, there are not many avenues. Not many options.

More adequate support
- overall. For social
workers, making sure they
are suited to the client.

The needs of
young people are
different.

It is well documented that children, particularly First Nations children, want greater support for their mental health and other related issues.¹²¹

Consistent with existing literature, children, young people and adults reported that substance misuse and mental health difficulties contribute to offending behaviour.¹²² Recent research also confirms that at risk children are distinguished by complex and co-occurring health problems, such as high rates of mental illness, substance abuse and neurological disability.¹²³

Children and young people who had custodial sentences particularly expressed concern for those in custody with undiagnosed cognitive or mental health disabilities.

Kids with
disability are
being locked
up.

My friend is
disabled—they're not
meant to go in jail. And
they put him in for a
year and a half.

This reflects findings from recent research that children with disabilities globally are over-institutionalised.¹²⁴ It is also consistent with the broader findings made by the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability that children with cognitive disabilities are overrepresented in the criminal justice system,¹²⁵ particularly First Nations children.¹²⁶

People from culturally and racially marginalised communities highlighted additional difficulties in receiving diagnoses for their children:

[It's] difficult for multicultural people to get a diagnosis. Some people having to go to the GP more than three or four times. This is especially the case with things like autism and intellectual disabilities and delayed development.

—**Family or community member**

Children and young people also commented on the difficulties that they experienced in terms of diagnosis and treatment.

The doctors should just
say it straight up, 'you
have schizophrenia', not
in smart wording, so the
kids aren't confused... The
pills just put you to sleep
- they're crazy!

ADHD – I've tried so many times to go get tested. Kids struggle with money. The price for specialists shouldn't be a thing.

(c) Interaction with child protection, police and child justice

Article 20 CRC: Every child has the right to special care and protection when separated from families

Article 2 CRC: Every child has the right to nondiscrimination

Article 37 CRC: Every child deprived of liberty has the right to prompt legal help

Article 40 CRC: Every child accused or convicted of a crime has the right to be treated with dignity and respect for human rights, and to have their age and need for reintegration into society taken into account

Children and young people had mixed feelings about their interactions with child protection, police, and child justice systems. They suggested that supportive encounters helped them to want to make positive changes in their lives. However, negative interactions often exacerbated their problems, leading to further offending.

Some children and young people reported positive experiences with caseworkers. They attributed helpful and understanding caseworkers to reducing their offending

behaviour. They said that their relationship with their caseworker was extremely important, and they did not want to disappoint them. Other children and young people said that they found it easier to develop a good relationship with younger caseworkers that had similar life experiences to them.

Children and young people talked about the differences between 'supportive' and 'unsupportive' caseworkers. Supportive caseworkers 'realise what potential you have', 'did things for me', gave 'support to get jobs', and 'take me out to eat'. When caseworkers were unsupportive, children and young people said they 'didn't help at all' and they just tell them what they should do.

(i) Child protection

Children and young people often reported negative experiences of the child protection system, stating that it greatly affected their feelings of safety and wellbeing. They discussed how child protection services 'take away kids from their families when they don't need to' and that the 'system doesn't support kids who don't have a family'.

They also talked about being removed and placed far away from their local area, families and communities. They found this isolating and wanted to be closer to the people that they care about.

They need to provide more options for where you can live. Then you wouldn't have to steal a car to get out and go to an area you knew.

First Nations children and young people shared that having a safe bed was important, but not at the expense of connection to culture. They emphasised that family and kinship support, and other 'bush' family were the things that kept them strong.

Some children and young people talked about their negative experiences in residential care. Consistent with previous consultations, they reported that living in residential care often increases their involvement in criminal behaviour.¹²⁷ For example, 'if living with criminals, then [you] do criminal stuff' and when living in residential care, 'they don't give you stuff, so you steal'. The cycle from residential care to child justice was raised repeatedly by children and young people.

They described residential care as a lonely and isolating experience.

One young person recounted how they made friends in residential care but then were moved away from that residence which made them sad. Another said, 'I get lonely and sick of being moved around'. Some talked about running away from residential care, leading them to 'make wrong decisions'.

The children and young people's concerns are consistent with other research where children have spoken about the negative impacts of removal, entering the foster and residential care systems.¹²⁸

Resi care is failing youth.

It's lonely and boring ...
they cut us off from
everyone.

There's nothing in the
fridge to eat.

They treat you like shit.

They won't take you out
on school holidays.

(ii) Police

Children and young people had mixed experiences when talking about their interactions with police.

Those that had positive experiences talked about police 'giving us chances', 'good ones explain the rules' and 'police who tell kids to go home'. Children and young people in regional and remote areas said that police are 'better out bush where they get to know you'.

Younger children were more likely to describe police as being 'kind' and 'talking to them and buying them a feed'. They described 'good cops' as ones that took the time to get to know them and their families.

However, negative interactions with police were more commonly reported. Some children and young people reported feeling unsafe when interacting with police. They recalled incidents of abuse and mistreatment, racial profiling, and lack of support. This is consistent with other research which points to children's largely negative interactions with law enforcement.¹²⁹

Several children and young people reported physical mistreatment by police.

Some police are nasty,
rough with kids when
arresting them.

My brother was
coughing up blood in
a paddy wagon.

Others said they had been verbally abused, harassed, with illegal searches carried out on them. One child described being strip searched by police at the age of 12 years. Often children and young people said they did not know enough about their rights or what police were allowed to do. Some reported that police set them 'up for failure' and treated them like adults rather than children.

One time they searched my bumbag, they found nothing but my phone and money and stuff. It was only \$6 and they said it was stolen. I'd just got that from my dad! Then they searched me, I had handcuffs on [and they're like] 'Where'd you get the \$6 from, did you steal it?'

Old school cops are the worst.

At any moment I can be arrested with no evidence at all. They'll be treating me like I'm already guilty.

Don't treat everyone like a criminal right away - especially Black kids.

Children and young people said that authoritarian policing approaches resulted in children not asking police for help, instead taking matters into their own hands when they are in an unsafe situation, often leading to more criminal behaviour.

Some children and young people spoke about police behaving in cruel and uncaring ways when they really needed support from them.

When my dad bashed me, the police were just like 'if it happens again call 000' but they were willing for it to happen again. Why did other young people get help? If their parents bashed them, some parents go to jail, but the police gave mine zero consequences.

I wanted to kill myself and the police came out and didn't give a flying shit. Just searched my school bag which embarrassed me ... they were nasty, just checked out my bag but decided nothing in there that [I] could use to harm myself and left.

Many First Nations children and young people discussed experiences of racial profiling by police. They said that 'police are racist', with them being 'targeted from birth' if they have the 'wrong skin colour' and are 'always assuming Aboriginal kids are at fault'.

Community members agreed:

They [children] walk around in a group because they're all family. But the police will pull up and get their age and name because they're targeted. So that by the time they're 18 they're already in trouble, and they'll find trouble down the line.
—Family or community member

Children and young people also spoke negatively about 'fly in fly out' (FIFO) police that 'make assumptions', 'don't understand', 'confuse young fellas' and have 'no language' and 'no respect'. Children and young people perceived FIFO police as having no connection with communities or roots in communities. This negatively impacted on children and young people, with them reporting 'they just chuck you in the cage and taser you. There're no witnesses and no one there to listen. It makes you feel bad.'

When a good cop comes, they get moved on because they get too close to the community. They get transferred. And there's one of them [good ones] against 100 others.

—Family or community member

Children and young people described this type of treatment by police as fuelling anger, trauma, and distrust in authority:

They're a child, you're the professional. It makes that child think professionals are not a safe person and will just bash you ... it stays with you forever and damages your view of the world and what's a safe place ... You won't trust a schoolteacher, youth worker, police ... after all that because they're a professional too.

A young person needs support, not to be bashed, you're just causing further trauma. You're just making that child a lot more angry at the system.

In my contact with police, they have not helped me to change.

(iii) Child justice

Children and young people, families and community members raised a number of issues relating to the child justice system, including custodial detention, issues with bail laws and raising the minimum age of criminal responsibility.

Life in custodial detention

Some children and young people reported life in custodial detention as being better than life in the community where they do not have safe and stable homes. They said that, while in custody, they feel safe, have their basic needs met including 'three meals a day, a bed, a toothbrush'.

There's more support inside juvie than outside, and it'd be nice to know you're gonna have these specific things when you get out.

They spoke of people being nice to them and having access to education and other programs. Community members shared similar views, which were also consistent with research reporting that some children prefer to be in custody than at home, viewing it as safer than their home environment.¹³⁰

Christmas time is when they want to be in detention because they get a feed and a Christmas present.

—Family or community member

Some children and young people described custody as a positive experience when they could relate to their youth justice officers. They appreciated it when the officers 'call you by your name' and 'listen and try to help you'. Some children and young people reported being able to establish a better connection with younger officers, and liked having a say in who their worker was. They would make them feel comfortable, chat to them in the kitchen, be less formal and try to build a genuine rapport with them.

In some jurisdictions, children and young people recounted negative experiences with officers and said that 'when they are bad, they do the job just for the money', and 'in juvenile justice centres some staff talk to us like dogs'.

Some children and young people described situations where youth justice officers had treated them badly and they were ignored when they made a complaint. Children and young people said that they often felt powerless to effect any change and this resulted in further negative behaviour.

I know about making a complaint, but even if I do complain, I do not think it will change.

If a young person is making a complaint, why can't you listen to them? It takes a lot for a young person to make a complaint, so if it doesn't go anywhere, they just lash out.

There were children and young people who said that they want youth justice staff to have a better understanding of the trauma that they had been through and show more empathy.

If one officer was rude to me, I went on the attack ... took it very personally.

Generally, children and young people perceived that custodial sentences did not stop them from getting into further trouble when they were released. They said being in custody causes them to feel 'even more hopeless'. This hopelessness makes them feel that they are 'already on a path and see no point turning back'.

Some told of the impact that other children and young people had on them whilst they were in custody, especially repeat offenders. For example:

Being here just makes you want to do crime more.

The younger children exposed to detention become the next generation of repeat offenders. This is what happened to me, and I have seen it happen to other children in detention. Detention turns children into criminals.

[The] Youth Justice system is messed up. It's not helping us, it is breaking us to make us to what we don't want to do which is get into trouble.

First Nations community members agreed that custodial sentences were not rehabilitative for children, with one saying, 'jail is not the answer for our children ... let the Black people deal with it. Train us up because we know it's about compassion with our kids and our kids respect us'.

Some First Nations children and young people also raised their overrepresentation in child justice centres:

Do you see any white boys in here? No. I see white boys getting out real quick.

Families from culturally and racially marginalised communities discussed the need for greater cultural awareness and trauma-informed practice across the sector:

I don't think they understand cultural awareness ... I had to fight years to get a Pacific Islander Liaison Officer ... others don't understand the culture, the way we do things as a collective, our cousins, siblings, parents, grandparents etc get to have a say to see what's best for my two boys to try to find a way. Youth Justice don't understand the culture.

—**Family or community member**

Background of the parents of young people influences how they parent... Their history is complicated, there's trauma, warzones - traumatised physically, mentally, emotionally. Parents can't cope.

—**Family or community member**

Bail laws

Issues with bail laws were raised in several consultations and interviews. Children and young people commented that the laws have become 'too harsh' and that the 'youth justice system sets you up for failure' as it is too easy to breach bail conditions. Previous work has documented children's calls for more supportive bail conditions.¹³¹

Children and young people reported that current breach of bail laws can have the unintended consequence of increasing offending behaviour, by causing them to feel powerless and hopeless. Children and young people described making positive change in their lives only to have their bail revoked:

I know that in the past I have done the wrong thing and made bad decisions. But more recently I have made good changes, and I was actually doing well out of detention. But the police said I breached my bail conditions when I went to the local shops to buy food without supervision and my bail was revoked.

Children and young people described the psychological impacts of having their bail revoked. One child said:

Locking me up made me feel like giving up, makes me feel like no one is on my side, and then I think more about crime. I was reintegrating into the community and I was feeling good about it but my bail was revoked. I have been in detention 22 times, and I was finally feeling good about getting away from crime, but now I am locked up again. I know friends who have also tried to do better but their bail was revoked too. I think revoking bail is justified if there is new offending, but not revoking bail for small issues like breaching conditions or one or two charges that are a big improvement on previous history.

Some children and young people perceived racial bias in bail decisions. For example, 'If a rich white kid did this shit ... they get bail'.

Some children and young people raised the impact of long remand periods either in custody or in the community. Sometimes the length of time impacts on employment opportunities.


I've had to put my life on pause. I can't gain employment until I know what happens at court, until I have a sentence.

This was also raised in the context of engaging in therapeutic programs. Some children and young people were unable to engage in therapeutic programs whilst on bail or on remand. This was particularly the case for children and young people charged with sexual offences. For some, this meant that they did not receive any therapeutic care because the length of their remand was longer than their final sentence.

Minimum age of criminal responsibility

Raising the age of criminal responsibility was mentioned in some consultations by children and young people, families and community members. Generally, there was consensus that it should be raised. One child in custody said, 'they messed up when they put 10-year-olds in here'.

Some family and community members pointed out that there should not only be a focus on chronological age but also on developmental age, taking into account neurological conditions and individual circumstances. These views are consistent with advice from the UN Committee which suggests that, if not automatically excluded, children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders should be individually assessed.¹³²



4 Key evidence-based actions for reform of child justice and related systems

This section includes recommendations for evidence-based actions that would be facilitated by a coordinated national approach, and that can also be independently pursued by jurisdictions.

Children and young people, families and community members, as well as stakeholders in submissions, interviews and roundtables, repeatedly identified that we are waiting too long to act and over-relying on the justice system to address offending by children. Key areas for evidence-based action that should underpin reform include positioning children and families at the centre of all decision-making in policy and service delivery; empowering First Nations children, families, and communities; optimising community-based action; building a capable and child-specialised workforce; basing systems reform on data and evidence; and embedding accountability for the human rights of children.

Similar key actions have been recommended in numerous previous reports, inquiries and reviews of child justice and child protection systems.¹³³

The Standing Council of Attorneys-General (SCAG) Minimum Age of Criminal Responsibility Working Group (SCAG MACR Working Group) released a report in November 2023 on raising the minimum age of criminal responsibility across Australia. The Working Group report represented all jurisdictions and clearly demonstrated the existing broad agreement across the federation on the types of system reforms required.¹³⁴

Importantly, this cross-jurisdictional report acknowledges that the justice system alone cannot address the ‘underlying causes’ of youth crime:

Almost all of the underlying causes of negative behaviour displayed by children lie beyond the reach of the youth justice system. It is vital that health and mental health, disability, education, social care and other services form part of an integrated, multi-agency response that supports the child’s wellbeing. These same services should intervene with at-risk children and families before their experiences manifest themselves in negative behaviours.¹³⁵

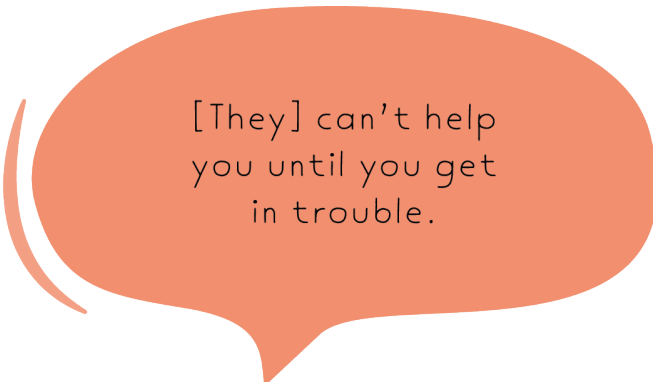
We have an opportunity now to build on this agreement and commit to whole-of-government action across the federation in order to address the causes of children’s involvement with the criminal justice system.

4.1 Centring children in policy and service delivery

Children who come into contact with justice systems have multiple intersecting needs and should be seen holistically within the context of their families and the communities in which they live. Such an approach requires the ability to reach across administrative silos and to prioritise co-ordination across departments. It requires a willingness to listen to what children and their families say they need and how they need to be helped, in order to ensure that our service systems are fit for purpose for the people who need help. Coherent laws, policies and service systems across regions and jurisdictions would ensure children and their families are not disadvantaged because of where they live in Australia.¹³⁶

(a) Taking a public health approach

As noted in section 1.3, children involved in the criminal justice system are among the most vulnerable and disadvantaged in our community. The justice system is not equipped or designed to provide the kind of holistic early intervention and support that children and families need. Taking a public health approach to children's involvement with the criminal justice system means focusing on prevention and early intervention, addressing the social determinants of crime, and meeting the basic needs of children, their families and communities, including in health, education, and social services such as housing and income security.¹³⁷



[They] can't help you until you get in trouble.

It is now understood that children's involvement in the justice system is a failure of the systems which should have helped them earlier.¹³⁸ Stakeholders in interviews and submissions repeatedly called for a focus on prevention, early intervention and addressing the drivers of offending by children. They cautioned that unless there is systemic investment in preventative efforts upstream, we will fail 'to reduce the flow of children into the carceral system'.¹³⁹

The UN Committee, in General Comment 24, reiterates the importance of prevention and early intervention, and of protecting children's rights at all stages of the child justice system.¹⁴⁰ It urges government to conduct research on root causes

of children's involvement in the child justice system and undertake research to inform the development of a prevention strategy.¹⁴¹

Capturing the principles of a child rights-based approach, a public health model spans the service continuum, from universal service delivery, to responsive support services, through to targeted support where harm to children has already occurred.¹⁴²

Submissions also advocated for a trauma informed justice system that addresses the holistic wellbeing needs of children.¹⁴³ At the apex of the public health model, tertiary supports must provide evidence informed, specialist interventions for those engaged in the justice system.

Recent research highlights that offending by children often arises from a complex interaction of multiple factors, especially for what has been termed 'life course persistent' offending. Using a public health model may effectively target interventions for those with particular vulnerabilities, and support provision of trauma informed supports and interventions.¹⁴⁴

Taking a public health approach to crime prevention has been used internationally for many years. For example, the UK Government has adopted public health terminology and an epidemiological approach, highlighting the need to identify the causes of crime and apply effective interventions to prevent its impact.

As illustrated in Diagram 4, the CAPRICORN model developed by Public Health England, recognises the ultimate goal of preventing children from having any involvement with the justice system while also sensitively responding to those children already within the system. This approach requires investment in both upstream and downstream prevention efforts.¹⁴⁵

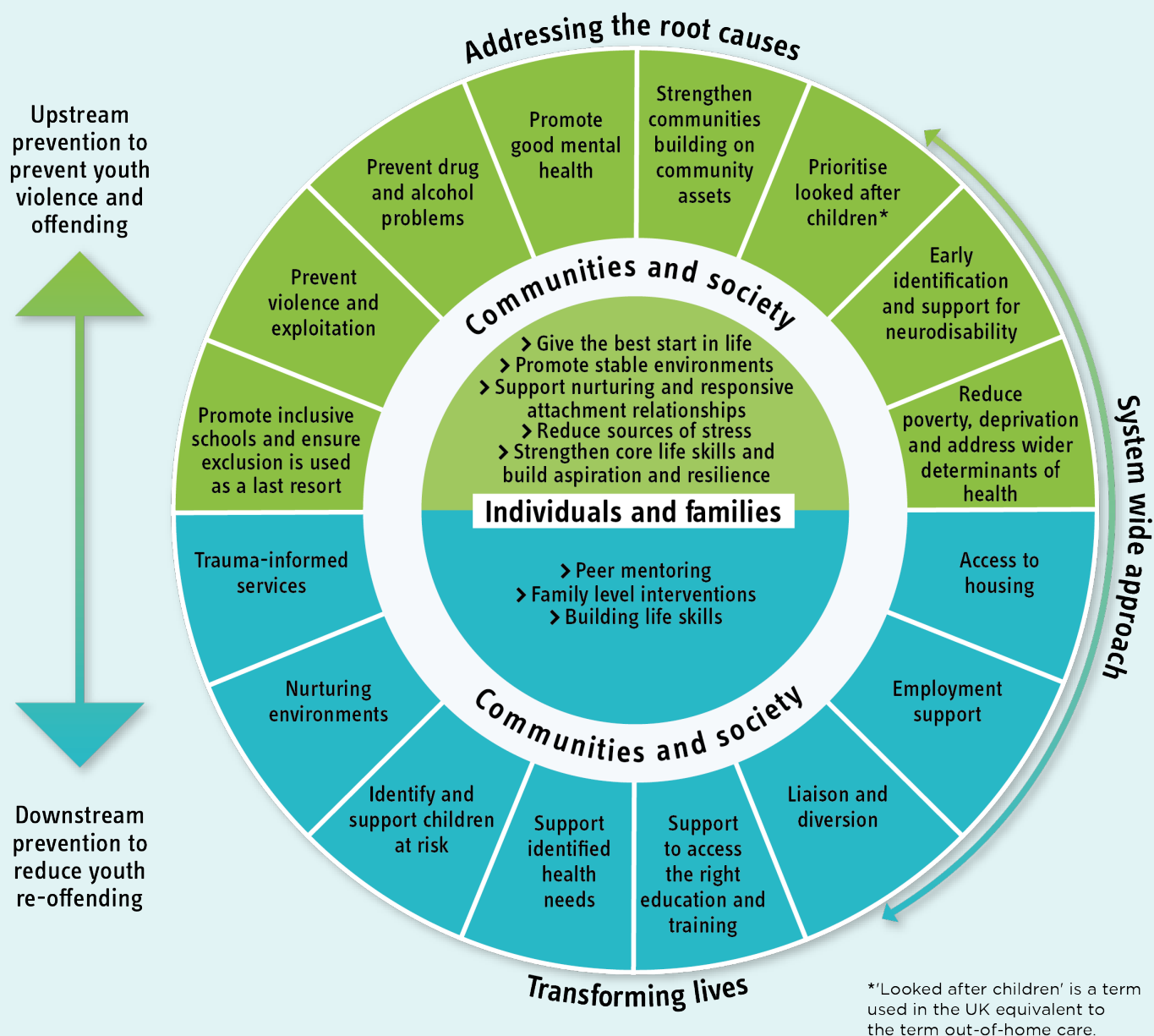


Diagram 4: The CAPRICORN model¹⁴⁶

A public health approach has been internationally recognised as an effective primary model in responding to and preventing children and young people’s involvement in violence. From a developmental and life course perspective, this approach is premised on the idea that children’s safety and wellbeing exist on a continuum and that the risk factors and the social determinants of ‘youth violence’ are considered when providing these support services to vulnerable or ‘at-risk’ groups.¹⁴⁷

A public health approach has never been fully adopted across all jurisdictions in Australia.¹⁴⁸ Klose and Gordon argue that ‘in Australia ... the discourse and application of the approach are not as widely understood’.¹⁴⁹ While it is cited in some national frameworks and strategies – such as the *National Framework for Protecting Australia’s Children 2021–2031*¹⁵⁰ and the *Early Years Strategy 2024–2034*,¹⁵¹ it is not clear how it is being implemented in practice.

Children who are involved with the justice system are often viewed as different from the children

with multiple and intersecting needs targeted in other frameworks and strategies. In reality, they are often the same children, living with the same vulnerabilities and in the same communities. As noted in the Relationships Australia submission:

they are the children in the Close the Gap reports, *Stronger Futures for Children*, *Australia's Disability Strategy*, the *National Children's Mental Health and Wellbeing Strategy* and the *National Plan to End Violence against Women and Children*, as well as others. In fact, they are the focus of these reports.¹⁵²

Using a public health lens shifts the focus from seeing offending as being an individual issue alone towards considering it as a whole-of-community concern. It requires attention to evidence about the causes of crimes by children and necessitates action to mitigate these at a population level.¹⁵³ As the Australian Research Alliance for Children and Youth (ARACY) argues in their submission:

we support a public health approach to youth justice given the attention given to holistic wellbeing and determinants of wellbeing applied to young people and the reframing of youth justice towards a support based, societal challenge rather than a punitive-based individual problem.¹⁵⁴

Other submissions called for reform 'to rethink this from a public health perspective and develop an effective comprehensive approach'.¹⁵⁵ They suggested:

a comprehensive therapeutic public health approach to address this complex issue, of poor child wellbeing exemplified by the youth justice system, including primary, secondary and tertiary prevention. A major focus on child wellbeing is needed.¹⁵⁶

(b) Co-ordination across service systems

Taking a child-centred and public health approach to children's involvement in crime requires co-ordination across service systems including health, education and social services. Stakeholders in submissions highlighted that vulnerable children and their families find it challenging to navigate disparate service systems and find it difficult to get the help they need.¹⁵⁷ The importance of service system coordination in addressing children's needs has been acknowledged in many national strategies and action plans such as the *National Children's Mental Health and Wellbeing Strategy*, the *Early Years Strategy 2024-2034* and the *National Aboriginal and Torres Strait Islander Health Plan 2021-2031*.¹⁵⁸


The Victorian Aboriginal Community Controlled Health Organisation and The Balit Durn Durn Centre called for a breaking down of silos between government departments and funded programs:

It is important to have a national approach to youth justice and child wellbeing reform that addresses and breaks down silos, particularly when it comes to funding for early years education and health and wellbeing programs ... A siloed approach also risks duplicating functions, unnecessary competing for resources, and missing opportunities to work collaboratively to improve outcomes.¹⁵⁹

Improved co-ordination and integration of services supports the optimisation of resources and enhances capacity of service providers. Stakeholders also said that a national approach would facilitate consistency across jurisdictions, promoting equal treatment of children regardless of their location and ensure effective continued support.¹⁶⁰

Children and their families are often clients of various departments and services, with little coordination between them.¹⁶¹ Hence numerous

inquiries and reviews have recommended improved information sharing, collaboration and coordination, monitoring and transparency, and oversight mechanisms, particularly across child protection and child justice systems.¹⁶² Currently the children who most need help are falling in the gaps between systems that are failing to provide the ‘scaffolding’ they need to be safe and well.



If different people [services] keep messaging me it pisses me off. I don't want a bunch of people – 1 or 2 supports is enough to call for help.

Research also supports the need for better sharing of data, not only across relevant departments but also with the community and in place-based initiatives. Sharing data can provide for a more holistic understanding of systemic barriers faced by children and their families as well as opportunities to better meet their needs.¹⁶³

Stakeholders raised the importance of funding models that support collaboration across service systems and allow for longer term sustained support for children, their families and their communities. They advocated for departments to collaborate on budget items and policies instead of viewing housing, health, education and justice as separate issues.

Service system co-ordination requires a fundamental shift towards person or child-centred approaches. Research has described multiagency collaborative approaches which place the child and their family at the centre with a focus on strengths and protective factors.¹⁶⁴

The Whole System Approach adopted by the Scottish Government was highlighted in submissions as offering one positive example of early and effective intervention, diversion, court support, community alternatives and reintegration.¹⁶⁵ In Scotland, the adoption of Regional Violence Reduction Units had significant

success in addressing rates of serious crime, including homicide and youth knife crime.¹⁶⁶

In reviewing the effectiveness of the Scottish approach, the importance of working across multiple sectors including housing, youth services, policing and community supports was emphasised, noting that that ‘no young person is an island’ and multisector collaboration is required.¹⁶⁷

A similar approach appears to have been successful in New Zealand in the form of the Social Wellbeing Board. This Board provides the architecture for Senior Executives from health, education, housing, justice, police and other government ministries to discuss and collaborate on complex issues and share expertise.¹⁶⁸ This approach has supported joined-up responses to national issues of concern in New Zealand, including in response to family, domestic and sexual violence.¹⁶⁹

Importantly, in both examples, initiatives were able to be scaled up and shared across other parts of the country.

Instead of individualised, episodic responses to children and families, holistic approaches that cut across portfolios, funding grants and government silos are required to address their needs. This approach aligns with the Australian Government's commitment to a national wellbeing framework and to a community where children are healthy, safe and feel a sense of belonging.¹⁷⁰

(c) Recognising the importance of family support

Children and young people said that the support of family is important to help children avoid contact with police and the justice system. However, they were concerned that adult family members were unable to get help for problems like drug and alcohol addictions and family, domestic and sexual violence.

Stakeholders spoke about the importance of family as the single most protective factor in a child's trajectory.¹⁷¹ There is evidence which demonstrates the importance of supporting and engaging the family in efforts to prevent

offending and re-offending by children.¹⁷² Children and young people also said that families need more support, and when this does not happen, children continue to live in the same circumstances which led them to offend. As pointed out in a submission by the Public Health Association of Australia to the *Select Committee on Intergenerational Welfare Dependence*, children's lifelong development and outcomes in education, income, health and wellbeing are closely aligned with their parents' situations'.¹⁷³

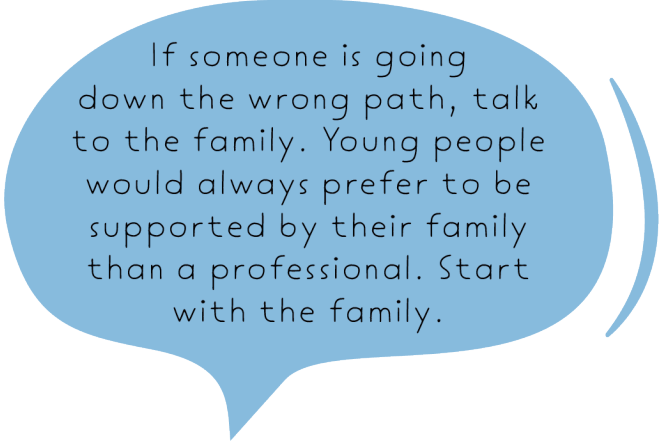
Stakeholders also stressed the need to acknowledge the importance of culture and collective community responsibilities associated with parenting. This was identified as significant for First Nations communities.¹⁷⁴ The African Youth Support Council and the Queensland Program of Assistance to Survivors of Torture and Trauma also stressed the importance of engagement with whole families in a way that proactively strengthens collectivist approaches to raising children.¹⁷⁵

A focus on relationships and working closely with family and community was highlighted as an important part of therapeutic, trauma informed work. Anglicare and Berry Street, amongst others,¹⁷⁶ pointed to the success of Multi Systemic Therapy programs in working holistically, including with families and community networks, not just the child in isolation.¹⁷⁷ Such programs provide targeted support for children and families including family interventions, behavioural interventions and address holistic needs. The importance of working with families and caregivers therapeutically, alongside young people, was also highlighted by stakeholders such as the Salvation Army.¹⁷⁸

One submission from Replanting the Birthing Trees and the SAFeST Start Coalition argued that 'there needs to be much higher investment in services and programs that can work holistically, over longer periods of time and across systems to support families who are struggling'.¹⁷⁹ Stakeholders advocated for working with families in a strengths-based way and supporting them at their various points of need, including providing wraparound support.¹⁸⁰

The CRC states that governments should 'render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities'.¹⁸¹ To do this, governments are obliged to 'ensure the development of institutions, facilities and services for the care of children'.¹⁸²

Supporting families in a timely way to meet their needs is a critical part of supporting child-rearing, including through investment in prevention and early intervention supports. However, the inadequacies in our upstream service systems often results in family problems escalating, and statutory child protection and justice systems becoming involved.



If someone is going down the wrong path, talk to the family. Young people would always prefer to be supported by their family than a professional. Start with the family.

As highlighted in section 1.3, early abuse, violence and trauma are among the social determinants of child justice. Stakeholder submissions suggest that many children in the justice system have been victims of violence and abuse prior to their contact with the system.¹⁸³ While the majority of children who are abused and neglected do not go on to offend, a large proportion of children who do offend have these histories,¹⁸⁴ and this is particularly so for children in detention.

Further, the prevalence of child abuse and family, domestic and sexual violence among the broader population is of national concern.¹⁸⁵ The Australian Child Maltreatment Study surveyed young people aged 16-24 years about their experiences of maltreatment in childhood. Overall, 62.2% of the population have experienced one or more types of child maltreatment including: physical abuse (28.2%), sexual abuse (25.7%), emotional abuse

(34.6%), neglect (10.3%) and exposure to domestic violence (43.8%).¹⁸⁶ The study also confirmed substantial existing evidence that child maltreatment has broad and long-lasting impacts, finding that almost half (48%) of those who experienced maltreatment in childhood met criteria for a mental health disorder, compared with 21.6% of those who did not experience child maltreatment.¹⁸⁷

It is clear that to date we have not invested sufficiently in the evidence-based systems reform required to address complex family problems and to help children much earlier.

Some submissions advocated for high quality, universally accessible services including health and family support services that encourage healthy neurological, physical and psychological development.¹⁸⁸ There was a call for significant investment in children's early years, in maternal and infant healthcare and in early childhood education, including through ACCOs.¹⁸⁹ The Commission has previously made recommendations in relation to the availability of evidence-based, early intervention services in areas of identified need.¹⁹⁰

Research and other national policies and action plans, such as the new *Early Years Strategy 2024-2034*, emphasise the importance of prevention and early intervention for children and families. This includes support in the first 2000 days, parenting programs and support at important developmental phases in the life course, including pre-conception, early childhood,¹⁹¹ school entry/transition and young adulthood.¹⁹² Children and young people themselves called for earlier supports, stating 'don't wait until there is a crisis or it is too late'.

A submission by Emeritus Professor Ross Homel highlighted the importance of prevention and early intervention being tailored to life phases, focused on transitions and fully ecological,

involving interventions at the individual, family, community and school level.¹⁹³ He argued that some of 'the most effective preventative approaches are focused on disadvantaged communities or subgroups of the population where adverse childhood events and risk factors are most highly concentrated'.¹⁹⁴

Existing policy measures being implemented by the Australian Government, include the *Stronger Places, Stronger People* initiative which involves investment in locally led, place-based solutions in identified communities facing disadvantage. The *Entrenched Disadvantage package* in the 2023-24 Budget is targeting intergenerational disadvantage with the goal of improving child and family wellbeing.¹⁹⁵ There are also a variety of existing state and territory initiatives.

However, some stakeholders shared that the experience of children and their families is that it is difficult to get the help they need in their local community.¹⁹⁶

We don't have a wellbeing infrastructure in our communities. There are no youth centres. We don't have local governments providing these kinds of facilities.¹⁹⁷

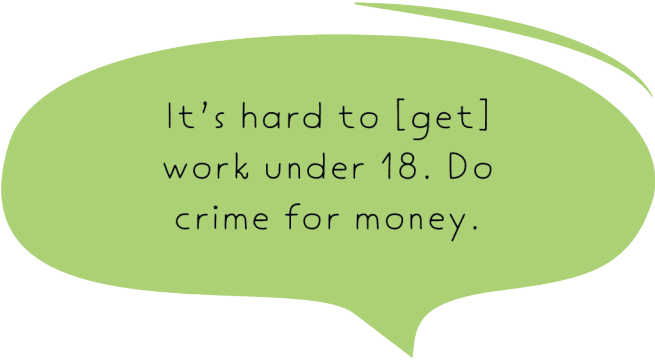
Integration of basic public services should be made the default model in the communities where families live, designed with the participation of the people whom these service systems are meant to be helping.

Recommendation 5: Australian Governments provide integrated, place-based health, education and social services for both children and their families.

(d) Ensuring other service systems meet children's needs

Stakeholders emphasised that other services systems, especially the 'universal services' of health and education, must be improved to better meet the needs of children and families.¹⁹⁸ They described how these services have the potential to help much earlier to address the drivers of children's involvement in the criminal justice system.

As noted previously, when asked what helps keep them out of trouble, children and young people identified a safe home or place to live, going to school and accessing support services as essential items needed to keep them safe. These equate to a lack of some basic rights outlined in the CRC, such as the right to an adequate standard of living, including access to food, clothing and housing (Article 27, CRC); to enjoy the highest attainable standard of health (Article 24, CRC); to get an education (Article 28, CRC); and to be protected from violence and abuse (Article 19, CRC).



It's hard to [get] work under 18. Do crime for money.

The United Nations Committee on the Rights of the Child has raised serious concerns about specific socio-economic issues facing children across Australia, such as high rates of violence and abuse, mental illness and homelessness.¹⁹⁹ Further, some children experience additional inequity in accessing universal services, such as First Nations children, those living in poverty, those experiencing violence, those in out-of-home care, those who are homeless, and those who are Lesbian, Gay, Bisexual, Trans and/or Gender Diverse, Queer, Intersex, Asexual, Sistergirl, and Brotherboy (LGBTQIASB+).²⁰⁰

(i) Housing and basic standard of living

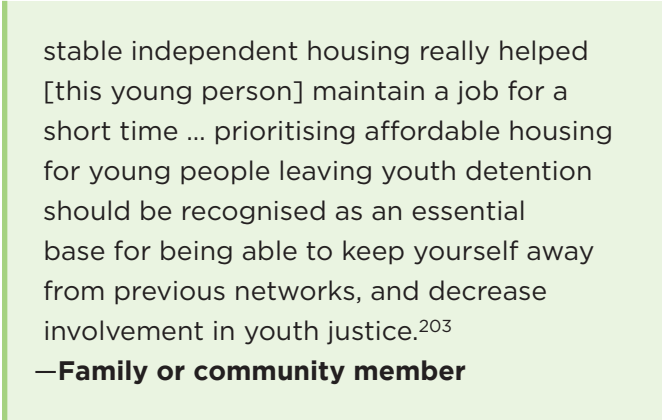
The lack of safe and affordable housing is one of the most common issues raised in consultations with children and young people, families and community members. As described in section 3, unstable living arrangements are seen as contributing to offending by children.

Homelessness and basic costs of living are significant issues for many children and families across Australia. While there are some national measures to address access to housing, such as the *National Housing and Homelessness Agreement*, *National Youth Homelessness Strategy* and programs such as Reconnect and the Leaving Care program, there is a critical shortage of housing affecting the ability of families to keep their children safe and well,

Children and their families in regional and remote areas can face particular challenges in securing accommodation.²⁰¹ While there is much greater public awareness now about the housing crisis in this country and the connection with family, domestic and sexual violence, there is less understanding about the intersections with crime and mental health.

Unstable living conditions can increase the risk of offending and re-offending behaviours, leading to arrest and detention. They can also contribute to the likelihood of being in detention, if a child is unable to provide an appropriate bail address when applying for bail.²⁰² Further, the lack of stable and secure housing on release contributes to the risk of reoffending.

As one family member explained:



stable independent housing really helped [this young person] maintain a job for a short time ... prioritising affordable housing for young people leaving youth detention should be recognised as an essential base for being able to keep yourself away from previous networks, and decrease involvement in youth justice.²⁰³

—**Family or community member**

Poverty remains a shameful reality, not often discussed, with one in 6 children in Australia living with poverty.²⁰⁴ Children and young people told the NCC that young children are stealing from shops because ‘kids are hungry’.

Some submissions called for measures to address intergenerational poverty,²⁰⁵ noting that:

poverty contributes to criminalisation as it drives survival-driven behaviours such as theft and drug offences. This is exacerbated by inadequate income support payments, such as Youth Allowance, which make it difficult to meet basic living costs.²⁰⁶

They called for measures to reduce poverty²⁰⁷ and improve mechanisms to ensure children and families in Australia are aware of and are receiving the supports for which they are eligible.²⁰⁸ They also point out some structural administrative barriers that affect access to these entitlements, such as arduous claim and reporting systems focussed on compliance, and the shift from face-to-face to digital and phone services that has resulted in delays.²⁰⁹

The Commission and many others have previously recommended increasing the levels of income support for children and their families,²¹⁰ as well as supporting them to navigate and access income support payments to which they are eligible.²¹¹ It has also recommended that the Australian Government develops a national poverty reduction plan that explicitly focuses on children.²¹²

Recommendation 6: The Australian Government increases the level of income support payments for children, young people and families.

Recommendation 7: Governments urgently prioritise access to safe and affordable housing for children and families, including those in the child protection and justice systems.

(ii) Healthcare

Children and young people, families, and community members raised the importance of being able to access basic health services in order to reduce offending and reoffending (see section 3.6).

Academic research recommends that children deprived of liberty should enjoy the same standards of healthcare that are available in the community and have a much greater need for ‘high quality, coordinated, and continuous health care’.²¹³

Screening and assessment for health conditions such as hearing impairment, communication difficulties, neurodevelopmental disability, learning difficulties and mental ill-health have the potential to divert children away from the justice system if timely treatment is provided. Children with these undiagnosed and unsupported needs are often suspended from school and likely to become involved in negative behaviours and come to the attention of police.²¹⁴

Under both the CRC (Article 23) and the *Convention on the Rights of Persons with Disabilities* (Article 7), children with disability have the right to special care and assistance, so they can fully enjoy their rights on an equal basis with other children.

The UN Committee has been concerned about the overrepresentation of children with disability in child justice systems in Australia, stating that children with developmental delays or neurodevelopmental disorders or disabilities should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility.²¹⁵

The UN Committee also stated that, such children should be individually assessed.²¹⁶ Many children, families, community members and stakeholders, raised concerns about the lack of diagnoses both prior to and during children's contact with the child justice system, and lack of access to the ongoing treatment and support they need.²¹⁷

The ADHD Foundation and the Australian Alcohol and Other Drugs Council, among other submissions, stressed the importance of children having comprehensive health assessments.²¹⁸ This includes Alcohol and Other Drugs and FASD screening, as well as cognitive and intellectual function assessment, when entering the justice system.

The need for better screening and diagnosis has been identified in national strategies. For example, the *National Fetal Alcohol Spectrum Disorder Strategic Plan 2018–2028* states that the screening and diagnosis of FASD is a national priority and includes objectives to increase screening, diagnostic skills and knowledge in frontline professionals and improve capacity for screening, diagnosis and surveillance.²¹⁹

Australia's Disability Strategy 2021–2031 also recognises that together with access to early intervention health services and rehabilitation, regular health assessments are critical for people with disability.²²⁰ This improves long-term outcomes for individuals and can help reduce further costs of care and support.²²¹

The Royal Australasian College of Physicians, in its policy on the *Health and Wellbeing of Incarcerated Adolescents*, stresses that a period of an child's incarceration may represent a 'window of opportunity' to provide well targeted health services, which should be continued in the community and ideally include carers and a whole of government approach.²²² It advocates for an ongoing health plan for children in child justice settings which addresses a wide range of health needs, including immunisations, sexual, mental, dental and physical health. The plan should provide for a child's continuing health needs after release, including access to specialist services and ongoing supports.²²³

In many submissions, stakeholders called for culturally appropriate and responsive health care services, particularly for First Nations children. They advocated that health services for First Nations children in justice settings be provided by Aboriginal Community-Controlled Organisations.²²⁴

The National Mental Health Commission stressed the importance of children in detention having access to quality health services, including the Medicare Benefits Schedule. It argued for improved connections between justice and community mental health providers.²²⁵ This was echoed in other submissions which called for expanded access to Medicare, the Pharmaceutical Benefits Scheme and National Disability Insurance Scheme (NDIS) for those incarcerated.²²⁶

Currently our most vulnerable children are missing out on basic health care before and during their contact with the justice systems. Children who are detained in police watch houses and youth detention facilities are particularly at risk, including after they are released from detention. The lack of access to physical and mental health services is a failure to protect their human rights and causes further harm to children and the community.

Recommendation 8: Australian Governments prioritise access to comprehensive and culturally safe healthcare, including for children with multiple and intersecting needs.

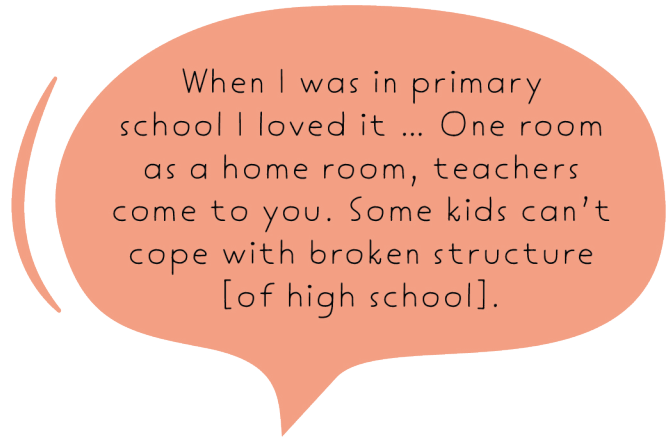
(iii) Schools, education and training

Stakeholders identified school engagement as a key protective factor for children, both in averting child justice contact and in fostering rehabilitation and wellbeing.²²⁷

Children and young people spoke about the importance of schools offering more than education, and being a place where they could get help and support for their different needs (see section 3.5).

The Council of Australian Governments' *National School Reform Agreement* reinforces the strong links between wellbeing and education, and the importance of quality school education to future opportunity, pointing out that 'the wellbeing of all students is fundamental to successful education outcomes'.²²⁸ The Agreement acknowledges the need to support particular cohorts of children under a national approach, such as First Nations children, those living in rural, regional and remote locations, children living with disability and those from backgrounds of educational disadvantage.²²⁹

Children and young people said that they would like to go to school, but feel they do not belong, and many disengage in primary school or Year 7. Stakeholders advocated for earlier action to prevent children's disengagement, greater use of partnerships between schools and community and youth services, and improved guidelines around behaviour management.²³⁰ They pointed out that there should be greater sensitivity to educational transitions for children and supporting them during these transitions, particularly between primary and secondary school. For example, one young person said:



When I was in primary school I loved it ... One room as a home room, teachers come to you. Some kids can't cope with broken structure [of high school].

One submission also indicated that it was critical to address barriers to access and attendance, such as providing children with free public transport to school.²³¹

KidsXpress and other submissions called for schools to be community hubs, providing support for children and families, which could ensure timely access to professional support for mental wellbeing and other needs.²³²

Redesigning schools to be community hubs has been repeatedly recommended in the past, including by ARACY.²³³ The Commission has also recommended that schools are integrated or co-located with health and family support services.²³⁴ Improved co-ordination and integration across the basic 'universal' systems of health and education would significantly improve access to support for children with multiple and intersecting needs.

Stakeholders raised the importance of providing meaningful learning opportunities and equipping children with vocational and life skills. They emphasised the need to keep children engaged in education and supporting them to achieve nationally recognised qualifications, set goals and build skills for the future.²³⁵

The Office of the Custodial Inspector in Tasmania highlighted the importance of linking children to vocational training opportunities and life skills training, including mentoring.²³⁶

This was echoed by the Community and Public Sector Union, suggesting the development of a national approach to curriculum in child justice settings and improved access to Vocational Education and Training and TAFE programs.²³⁷ The opportunity to continue with education post release is associated with reduced offending.²³⁸ The need for better links between education and justice was raised in many submissions²³⁹

Alternative or flexible school models can support children who have experienced trauma and disengagement from school. The associated impacts of trauma on executive functioning, memory concentration and language development may make it difficult for these children to manage in mainstream educational settings.²⁴⁰

Stakeholders also joined existing calls for measures to improve school engagement for First Nations children, such as learning on country, and incorporating Indigenous languages into the Australian Curriculum.²⁴¹ This may address the 'mixed emotions' of 'sadness and anger' that some children and young people described as a result of being forced to choose between

learning how to read and write in their first languages and getting a high school education 'in town', as discussed in section 3.

Recommendation 9: Australian Governments resource schools to be community hubs integrated with health services and providing flexible learning options.

(iv) Child protection

As shown in section 3, children and young people and their families spoke about the need for child protection systems to support families more and earlier. Stakeholders also highlighted that 'most government expenditure is at the tertiary ends'²⁴² and there is a need for investment in prevention and early intervention.²⁴³

Usually when I do crime it's because I don't have anything ... [residential care] don't give you anything, even clothes.

Children aged 10-13 years who come into contact with the justice system have more complex issues, and a higher proportion of them come from the child protection system.²⁴⁴ Evidence also suggests that, 'while only comprising a minority of children charged with offending and under youth justice supervision, 10-13 year old children are more likely than other justice-involved children to experience future youth justice involvement'.²⁴⁵ These children have critical needs that have not been met and it should be our priority to address these gaps. This requires both upstream systems reform as well as reform of child protection systems.

Resi care doesn't work. Putting them out of juvie into a place where people are out of juvie. [You] go back to same ways and use drugs.

Research points to the high cost of child protection services, particularly tertiary intervention efforts which mainly focus on investigation and child removal.²⁴⁶ Armytage and Ogloff highlight that with respect to the child justice system, it focusses 'too heavily on the tertiary end, neglecting early intervention and step down and transition support—both are critical to breaking the cycle of offending from the first contact with youth justice'.²⁴⁷

The importance of prioritising prevention and early intervention in the child protection system has also been raised by many inquiries, as noted in a recent analysis of 3,005 recommendations in reports from inquiries held between 2010-2022.²⁴⁸ This report indicated that the recommendations relating to early intervention 'are potentially of most interest' for governments 'due to the extensive evidence-base supporting the effectiveness of prevention and early intervention supports'.²⁴⁹

More support from child safety. [They're] too busy, don't answer.

Child protection systems across jurisdictions are well-known to be overwhelmed and struggle to find sufficient kinship and foster carers.²⁵⁰ While some jurisdictions have agreed to progress delegation to ACCOs (see section 4.2.),²⁵¹

there remains a need to build the cultural competence of our child protection systems. Further, as noted in section 4.4, the child protection workforce needs to be trained and equipped to be more supportive of children with multiple and intersecting needs, including neurodevelopmental disabilities, mental ill-health and trauma.

Relying on the statutory systems of child protection and justice as our primary response to children with multiple and intersecting needs is a costly and ineffective policy. Harms to children are preventable and can be addressed by redesigning, and investing in, the up-stream systems that are currently not fit-for-purpose for children and their families.

Child protection systems, including legislation, should be reviewed alongside reform of child justice systems. In recognition of the significant number of children who are involved in both child protection and justice systems, there should be co-ordination across these two systems. This may include ‘cross-over’ courts such as those in New Zealand, and multidisciplinary teams that can support the child’s rehabilitation with therapeutic interventions and practical help with basic needs such as supported accommodation, as mentioned in section 4.4.

Reform of child protection systems should be included in the cross-jurisdictional work being done under the *National Framework for Protecting Australia’s Children 2021-2031*.²⁵²

4.2 Empowering First Nations children, families and communities

There is an opportunity for First Nations children and their communities to be empowered through self-determination as part of a national approach to reform. Self-determination remains an important part of improving outcomes in the child justice system, noting the relationship between child justice contact and disempowerment of communities as a result of colonisation.²⁵³

(a) Enhancing and embedding self-determination

There is an opportunity to strengthen government commitment to First Nations’ self-determination through genuine shared decision-making and the introduction of additional accountability mechanisms.

Calls for self-determination from First Nations peoples have been met with a range of commitments by successive governments, as far back as the response to the Royal Commission into Aboriginal Deaths in Custody (1991).²⁵⁴ Currently, the *National Agreement on Closing the Gap* (National Agreement) contains a number of actions for government to improve wellbeing outcomes for First Nations children and reduce their contact with the child justice system. In particular, Outcomes 10 and 11, committing to *Justice for All*, and Outcomes 12 and 13, committing to *Strong Families*, are important commitments that already have national agreement.²⁵⁵ This is a strong platform on which a national approach to child justice reform can be built.

The *Commonwealth Closing the Gap 2023 Annual Report and 2024 Implementation Plan* reflect ‘some progress towards achieving outcomes and objectives in the National Agreement’ but note that some targets are not on track and yet to be met, including justice targets.²⁵⁶

For example, Target 11 of Closing the Gap, to reduce, by 2031, the rate of First Nations young people (10–17 years) in detention by 30%, has not made significant progress. Nationally, the trend for that target shows no change from the baseline in 2018–19.²⁵⁷ Further, governments are not on track to deliver on Target 12, to reduce, by 2031, the rate of overrepresentation of First Nations children in out-of-home care by 45%.²⁵⁸ Progress on Target 12 is inextricably related to progress on Target 11, as many of the measures needed to address the root causes of contact with child protection systems are also needed to address First Nations children’s contact with child justice systems.

The Productivity Commission's Review of the National Agreement on Closing the Gap (the Review) noted that while the principles of self-determination are contained throughout the National Agreement, governments are 'not adequately putting them into practice'.²⁵⁹ It stated that:

- power needs to be shared with First Nations peoples
- Indigenous Data Sovereignty needs to be recognised and supported
- mainstream government systems and culture needs to be fundamentally rethought
- stronger accountability is needed to drive behaviour change.²⁶⁰

The Review raised specific concerns about the approach to the child justice system:

It is too easy to find examples of government decisions that contradict commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. This is particularly obvious in youth justice systems.²⁶¹

Some progress has been made to improve self-determination in the child protection system, providing a useful example of power-sharing and systems reform in action. Some jurisdictions have begun to progressively delegate the authority for some child protection decisions to ACCOs.²⁶² Support for First Nations-led decision-making in these matters from governments and ACCOs stems from an acknowledgement that ACCOs 'are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services'.²⁶³ Submissions suggested that divesting decision-making power to ACCOs will 'go a long way towards reforming the current harmful practices' in the child protection system, and help reduce the disproportionate rates of child removal from

First Nations families.²⁶⁴ Noting the 'extreme prevalence' of children with an out-of-home-care background in the child justice system, improvements in this area will help ameliorate the overrepresentation of First Nations children in the justice system.²⁶⁵

Self-determination for First Nations peoples can also be enhanced by embedding the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in Australia's domestic legislation. As outlined in the Australian Human Rights Commission's proposal for a Human Rights Act for Australia, this could be achieved by including key UNDRIP rights in a federal Human Rights Act.²⁶⁶ The Commission's recommendation for a 'participation duty' applicable to the executive and reviewable by courts (see section 2.4) has been included in the Human Rights Act model recommended by the Parliamentary Joint Committee on Human Rights in its review of Australia's Human Rights Framework.²⁶⁷ This would mean public authorities would be required to engage in participation processes, including with First Nations communities, to demonstrate their 'proper consideration' of human rights implications, including implications for the right to self-determination.²⁶⁸ These proposals would assist in improving consistency and accountability of rights realisation for First Nations peoples.

(b) Acknowledging culture as protective

First Nations communities must be empowered to leverage the protective characteristics of connection to culture to support the wellbeing of First Nations children.²⁶⁹ This reflects an understanding that the challenges First Nations communities are exposed to are systemic and grounded in the shared colonial history of the state, requiring national and systemic solutions. Under UNDRIP, the State also has an obligation to operate in a way that recognises that 'respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development'.²⁷⁰

Connection to land, spirituality, ancestry, family and community has been found to improve wellbeing and provide sources of resilience for adults and young people.²⁷¹ A number of stakeholders raised the healing effects of connection to culture, noting the role of intergenerational trauma and colonialism as drivers of justice contact.²⁷²

For example, school attendance is understood to be a protective factor against offending (see section 2.3). However, many schools are not equipped to meet the needs of First Nations children. Many children and young people said that they do not feel safe or that they belong at school.

Culturally cannot attend mixed classes or with younger kids. Education needs to address this conflict.

I used to teach Black fella histories, bush medicines, Sorries. I quit because there's nothing for us in the schools.

—Family or community member

One stakeholder shared that bringing First Nations community members into schools to provide culturally appropriate healthy relationships education and other cultural concepts made school more relevant and accessible for these children. This stakeholder noted that despite the negativity many First Nations children report around schooling, if she 'came in (to the school) three times a week, that means (First Nations students) come in three times a week'.²⁷³

Similarly, support networks and cultural activities can be protective factors against offending.²⁷⁴ Stakeholders and children raised the benefits of on country programs, formal and

informal mentoring, and access to traditional knowledges and activities as a strength-based way to encourage positive social connection and use of time.²⁷⁵ Children and young people rated cultural activities highly. As discussed in section 3, they shared that 'picking them up and taking them on country', 'connecting with the land', and connecting with 'people with status ... Elders, people who run our law' were important opportunities for prevention, as well as for connection and improved overall wellbeing.

It is a duty for all levels of government to involve First Nations children and peoples in decision-making processes affecting them. Under the CRC and UNDRIP, Australia has recognised the right of First Nations families and communities 'to retain shared responsibility for the upbringing, training, education and wellbeing of their children'.²⁷⁶ A national child rights approach requires that First Nations communities are empowered in all Australian institutions, including education and service provision. Similarly, the National Agreement on Closing the Gap has already generated commitment from parties that First Nations cultures are prioritised and promoted as 'fundamental to improved life outcomes for Aboriginal and Torres Strait Islander people'.²⁷⁷

Schooling models should enable Aboriginal and Torres Strait Islander children and young people to access education in language, as well as evidence-based culturally safe programs operated by teachers engaged with the community and trusted by them.

(c) Empowering the Aboriginal and Torres Strait Islander community-controlled sector

Across all jurisdictions, stakeholders consistently emphasised that the most effective and holistic services for First Nations peoples were those provided by ACCOs.²⁷⁸ Service provision by ACCOs is part of an important shift away from deficit ways of working toward more strengths-based practice. Compared to mainstream services, ACCOs are more equipped to provide services that go beyond cultural safety to harness the strengths of First Nations cultural and

community knowledges to improve outcomes. Parties to the National Agreement on Closing the Gap acknowledge that community control is an act of self-determination, and that these services achieve better results for First Nations people.²⁷⁹

There are opportunities to improve consistency and good practice in the ways that all governments interact with ACCOs, addressing the current barriers raised in section 5. This means comprehensively funding ACCOs to reflect their more holistic operations, instead of through separate government portfolios. It also means moving away from short term and grant-based funding models toward more sustainable funding for core functions. This model supports more sustainable development of the sector and provides greater workforce stability than grants-based funding models.²⁸⁰

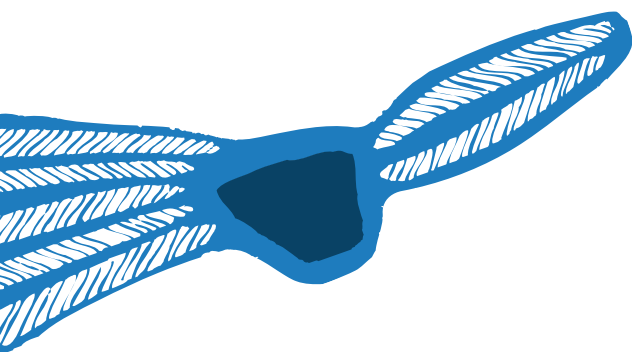
SNAICC has previously recommended that the Australian Government also ‘play a key role in reorienting investment towards early support’ when funding ACCOs.²⁸¹ This is in line with the well-evidenced benefits of investing in upstream supports, as opposed to tertiary interventions that may come too late. Importantly, key agreements including the *Aboriginal and Torres Strait Islander First Action Plan 2023-2026*²⁸² under the *National Framework for Protecting Australia’s Children 2021-2031*²⁸³ and Priority Reform 2 (Building the Community-Controlled Sector) under the National Agreement on Closing the Gap, represent a shared understanding and commitment to growing and supporting ACCOs. Specifically, these agreements between governments and First Nations leaders prioritise an increase in the amount and reliability of funding for these organisations, including for the provision of prevention and healing services.²⁸⁴

Recommendation 10: Australian Governments prioritise investments in prevention and early intervention through Aboriginal and Torres Strait Islander Community-Controlled Organisations.

(d) First Nations-led court and sentencing models

First Nations legal systems existed long before colonisation and have much to offer Western systems of justice for all communities. However, for First Nations children, these legal systems can offer important restorative and connective opportunities that engage their cultural rights. They also generate justice outcomes that have greater relevance to children and community, and that receive better engagement and a higher degree of confidence.²⁸⁵

First Nations sentencing models, including Circle Sentencing, Koori, Nunga and Murri Courts, now operate in most Australian jurisdictions. While operating differently between jurisdictions, these models have a number of key features that evaluations suggest are key to their success. Firstly, by engaging Elders and community during sentencing, magistrates’ decisions are informed and strengthened by cultural and community knowledges.²⁸⁶ Elders and community also contribute to rehabilitative plans and supports to address underlying risks to the child and family.²⁸⁷ These plans generally include offence-specific programs, and initiatives to reinforce cultural connection and assist with education, accommodation, health, and housing. Benefits can include quantifiable reductions in recidivism, as well as the qualitative, longer-term benefits of positive role-modelling and improved social and emotional wellbeing.²⁸⁸



Most of us were on the street, none of us had a role model. We were each other's role models. [An Aboriginal Liaison Officer] has become the role model, father figure, big brother... He was there the whole way to help me through. Before I met him I had no one. No one to teach us right from wrong.

Similar culturally-informed sentencing models exist internationally. The New Zealand Rangatahi Youth Court is one example of good practice that has seen improved outcomes for Maori children and young people. A notable difference between the New Zealand model and those offered in Australia is the higher degree of child participation in New Zealand, and greater emphasis on cultural connection.

In Rangatahi courts, fewer submissions are made by lawyers and a 'lay advocate' is often present to increase the cultural competence of the young person.²⁸⁹ The young person is invited and supported to be able to recite a *pepeha* (an introduction that establishes the person's links to ancestors and to land), and a *mihī* (a formal speech used in a welcome ritual). Young people reported that this demonstration of cultural pride is significant, and evaluations have reported that these practices demonstrate to community the court's commitment to strengthening cultural connections.²⁹⁰

One report acknowledged that there may be additional complexities in the Australian context, noting that 'it would be necessary to have language tutors in at least half a dozen Aboriginal languages, it might require considerable research (including interviewing Elders) and to understand each clan group's history'.²⁹¹ The protocols and language elements would also need to be tailored to meet the

needs of diverse First Nations Communities and cultures. However, centring connection to culture, in line with the New Zealand approach, may generate higher levels of engagement and other positive impacts on wellbeing.²⁹²

Within a national child rights approach, these models should be used consistently and align with best practice and self-determination principles. Eligibility criteria to access these models should be harmonised across jurisdictions with criteria based on evidence and views of communities.²⁹³

At present, there is also a shared understanding that the level of support given to First Nations sentencing models by a magistrate can be a significant determinant of success, and that efficacy and trust can be hampered by magistrates who do not show respect for the process or do not support sentences decided on by Elders.²⁹⁴ Mechanisms for true self-determination, First Nations-led decision-making and respect for culture will be required within all institutions as part of any effective path forward.

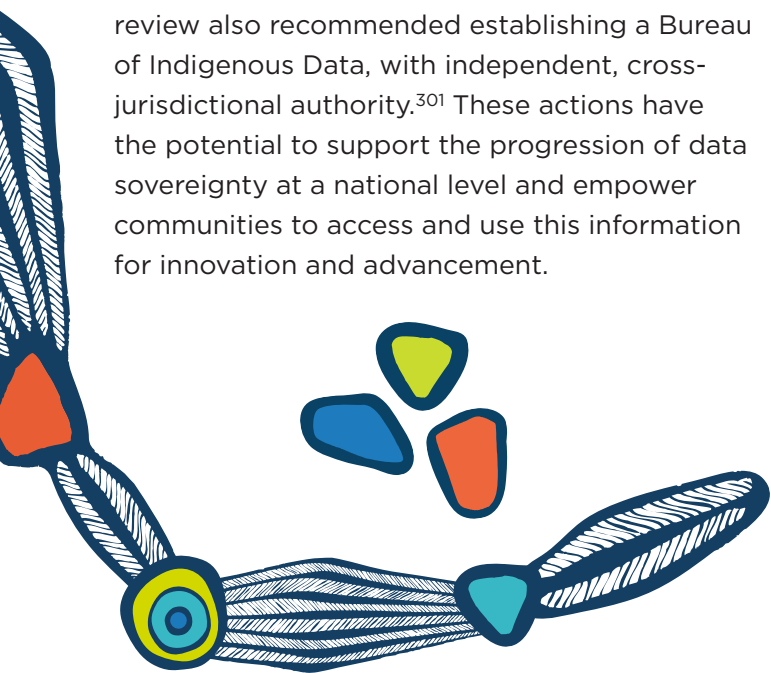
(e) Data sovereignty

To achieve self-determination and to promote more effective, community-driven child justice interventions, communities must have control over data collected about them, and be able to access that data for community advancement.²⁹⁵

Indigenous Data Sovereignty (IDS) is an essential aspect of self-determination, and an opportunity to improve transparency and accountability for the way governments fund initiatives and services in First Nations communities.²⁹⁶ The *National Agreement on Closing the Gap* included agreement from Parties that disaggregated data helps First Nations communities to 'obtain a comprehensive picture of what is happening in their communities and make decisions about their futures'.²⁹⁷ Specifically, Parties have agreed to tangible actions in line with Priority Reform 4—shared access to data and information at a regional level.²⁹⁸ The Agreement affirms that First Nations people must have access to locally-relevant data to drive their own development.²⁹⁹

The Maiam Nayri Wingara Indigenous Sovereignty collective has developed Indigenous Data Sovereignty Principles, definitions and governance protocols that should be applied consistently and nationally to improve practice in the sector.³⁰⁰

The Productivity Commission's Closing the Gap Review found that progress towards First Nations-led data and shared decision-making under Priority Reform 4 would be improved by a commitment to Indigenous Data Sovereignty, as defined by this collective. The review also recommended establishing a Bureau of Indigenous Data, with independent, cross-jurisdictional authority.³⁰¹ These actions have the potential to support the progression of data sovereignty at a national level and empower communities to access and use this information for innovation and advancement.



4.3 Optimising community-based action

This section discusses the importance of community and place-based approaches for prevention, both for responding to offending by children, and for rehabilitation after children's contact with child justice systems.

(a) Community safety and belonging

Children and adults in the community have a right to be safe and protected from violence and abuse. Some stakeholders were critical of political leaders presenting the human rights of children as being in conflict with community safety. This is a false dichotomy and fails to recognise that children who come into contact

with the justice system are frequently victims of crime themselves.³⁰²

The Association of Children's Welfare Agencies highlighted that, in order to keep both communities and children safe, there is a need to recognise that children's own experiences of harm can drive offending. It is critical to address the multiple and intersecting needs of children who use violence 'to understand and modify behaviour, to improve their own safety as well as that of others and heal from their own experiences'.³⁰³

Evidence-based prevention and early intervention, in the communities where children and their families live, includes supporting connection and a sense of belonging for children. This is consistent with research showing that positive social connectedness is associated with lower risk-taking behaviours and emotional distress, including mental ill-health.³⁰⁴

Community connectedness can be influenced by children's sense of overall safety in their communities, the quality of interactions between children and adults, as well as children's opportunity to have input into their communities and feeling welcome in public spaces.³⁰⁵

Micah Projects gave examples of positive community initiatives that support connection and belonging, such as welcoming and supportive schools, and community centres providing safe youth hubs and youth outreach. They called for further investment in safe spaces for children which are accessible, culturally safe and offer meaningful activities, as these can effectively facilitate positive social engagement and develop their talents and abilities.³⁰⁶

Parents and community members also raised the benefits of these types of initiatives. For example, one parent reflected that greater access to 'sporting teams', or opportunities to ride bikes 'legitimately' in a social setting may have helped their child avoid contact with the justice system, but that there 'aren't any programs that do that'. As discussed at section 3.2, another parent said that sport was an important outlet for her children to be 'part of a community and it is about belonging', but they struggled with the

costs of transport, uniforms and registration. The lack of public transport options and accessible activities was particularly acute in regional and remote areas, and outer suburbs of cities.

As well as speaking about the importance of sport, children and young people also said that ‘rapping, singing, jazz, gaming – regular people’s hobbies’ would help them. They explained that peer friendships were critical, particularly for children from unstable homes, but that in these friendship circles ‘you’ve got to get a hobby so that you’re not doing bad stuff together.’

Children and young people from culturally and racially marginalised communities, as well as stakeholders in submissions and researchers, have highlighted the importance of cultural strengthening programs and relationships with community authority figures.³⁰⁷ Children and young people said that activities run by mentors from their communities gave them access to ‘more community support’ and a chance to ‘learn about your tradition’. Community leaders explained that through these activities, children can develop a positive identity and ‘can then become a role model for other kids’.

Some submissions called for greater investment in culturally-specific community organisations to offer restorative cultural models for afterschool, in school, school holiday and gender specific initiatives.³⁰⁸

These recommendations were repeated in our consultations and submissions, reinforcing that improving access to community sport, music and other social and cultural activities should be an immediate priority action for all governments. This should include addressing barriers like cost and improving basic infrastructure including public transport.

Recommendation 11: Australian Governments improve availability of free and accessible community sport, music, other social activities, and cultural programs, addressing barriers such as lack of public transport.

(b) Effective diversionary options

Governments should, where appropriate, deal with children who commit a criminal offence without resorting to judicial proceedings, and make available a variety of age-appropriate and proportionate alternative dispositions for children (Article 40(3)(b), CRC).

While diversion is a principle of child justice systems in all jurisdictions in Australia, its availability and its forms differ widely across the states and territories. For example, a judicial officer spoke about the lack of programs in their jurisdiction for older children that were culturally specific, and available programs were oversubscribed. This meant there were few options for sentencing, other than detention, a suspended sentence or a good behaviour bond. What was needed was ‘a sentence that provided for wrap around care’ for children.³⁰⁹

There are also concerns about inequitable access to diversionary options. For example, First Nations young people are less likely to receive a police diversionary option than non-Indigenous young people.³¹⁰

Interventions which leverage resources and leadership in the community can be successful when responding to social issues, including offending by children. A submission by Professor Rob White highlighted the importance of social belonging and the duality of responsibility, both individual and societal.³¹¹ He suggested that models which draw on sense of belonging, mutual relationship and respect are important. He argued that ‘strengthening social belonging and crafting respect involving young people is an intentional social process that is premised on activity, reflectivity and receptivity’.³¹² This centres around respect for others, respect for place, respect for oneself and the respect of others in the community.³¹³ For this to work well and engender a sense of social responsibility, children need to feel a sense of belonging to, and being valued by, their communities.³¹⁴

As noted in section 1.3, there has been a general decline in offending by children that has fallen steadily since 2008.³¹⁵ Research suggests that

this may be due to a shift in children's behaviour away from high risk and antisocial activities, changes in social norms and technology, and greater use of diversionary practices.³¹⁶ Interestingly, recent research suggests that there may have been a reduction in access to, and underutilisation of, police-led diversion for children in recent years and therefore 'increases in police led diversion is not a key contributor to the youth crime decline in Australia'.³¹⁷

While police are often seen as the gatekeepers of community safety, many stakeholders called for police to be only one part of a wider community-based approach, noting that 'we cannot arrest our way to a safer community'.³¹⁸ Some stakeholders considered that police should not have the central responsibility for diverting children from the justice system and were critical of their discretionary power and approaches.³¹⁹ As noted in section 4.4, others also suggested improvements to police training.

In supporting measures to move towards community solutions, one submission outlined the value of taking a public health approach to policing which considers the 'broader needs of the family and community rather than approaching a problem through an individual enforcement or jurisprudence lens'.³²⁰ Such an approach involves broad youth engagement and prevention work at a whole of population level, secondary intervention through providing safe transport and co-responder models and then tertiary interventions through evidence-based trauma informed responses to conflict and de-escalation. This is supported by other research which advocates for a public health approach to policing.³²¹

Diversion is an option often used at the discretion of police. It can occur at any stage of legal proceedings prior to a finding of guilt and provides an opportunity to divert a child from formal criminal sanction, instead referring them to programs and support.³²² Diversion can reduce a child's chance of becoming entrenched in the justice system and provides a range of benefits including the opportunity to desist

from offending without any further action, safer communities, and cost-savings overall.³²³

International and domestic evidence continues to show that the vast majority of children who participate in diversion programs do not reoffend.³²⁴

Diversionary measures are often used by police at their initial point of contact with a child or can be employed at a pre-sentencing stage with the consent of police prosecutors.³²⁵ The Youth Affairs Council Victoria and Youth Disability Advocacy Service suggested that pre-charge diversion, such as police cautioning, is the most effective form of diversion, highlighting the importance of competent and well-trained police at these crucial junctures of child justice system involvement.³²⁶

It is essential to support police to work collaboratively with service providers and community-based organisations to facilitate referrals as part of any pre-court diversion efforts.³²⁷ These relationships can assist in intervening early and stemming escalation in offending.³²⁸

Social Reinvestment WA, in its *Blueprint for a Better Future*, calls for prioritised diversion of young people from justice systems, using any early contact as a 'touchpoint' to link children to the supports they need and prevent future justice contact. It advocates for youth workers to be used as first responders, alongside police, given their specialist skills in engagement and ability to form positive linkages to local services.³²⁹ The Justice Reform Initiative, in its submission, also highlighted the importance of alternative first responder models, including First Nations, youth worker and health practitioner-led approaches, and co-first responder models.³³⁰

Recent research has highlighted the need for expanded intensive diversionary options for children who may have more chronic, entrenched patterns of offending behaviour. These children may require access to 'community based, case managed support to address social, health, cultural, educational and welfare needs linked to their offending behaviour'.³³¹

Recommendation 12: Australian Governments resource and expand the availability of evidence-based diversionary programs for children, including those by Aboriginal Community-Controlled Organisations, and other culturally safe programs.

(c) Restorative justice, including family group conferencing

Restorative justice approaches have been embraced in many Australian jurisdictions and incorporated into a number of initiatives and models across the country. However, the models and accessibility vary widely.

At its core, restorative justice prioritises accountability and reparation of harm over punishment and retribution. Restorative justice recognises that relationships are key to rehabilitation and community safety and can involve a process of collective resolution with those affected by an offence – for example, the offender and a victim.³³² With similarities to traditional First Nations justice processes, these elements are increasingly being used across Australia through initiatives such as circle sentencing, youth and family group conferences, Koori and Murri Courts, and victim-offender mediation.³³³

While most evaluations of restorative justice processes show positive results, replicating these results can be challenging, noting the variety of models and the multitude of variables that can impact implementation, including lack of appropriately trained facilitators.³³⁴ Stakeholders spoke of the need for more skilled facilitators who can tailor their approach to ensure it is developmentally and culturally appropriate.³³⁵

However, there is evidence to suggest that restorative justice conferencing has positive impacts in relation to offender and victim satisfaction with the justice system.³³⁶ Stakeholders such as Relationships Australia and Jesuit Social Services highlighted the positive

impacts of these processes. They reported that such practices can be associated with improved social skills, reduced aggression and reduced exclusion and reoffending.³³⁷ They can also enable children to gain a greater sense of understanding about the impact of their actions on others,³³⁸ an increased sense of empathy and foster greater accountability for their actions.³³⁹ For example, one child explained that:

I learned more from Restorative Justice (RJ) than anything in detention. It was RJ that I learned remorse and started to feel bad about my offending. For example, I thought victims would be fine because insurance would cover everything, but I learned that this is not true and I started to feel bad about it.

By providing a safe and contained forum for discussion of a child's behaviour, restorative justice processes can allow for greater insights, promoting responsibility, reparation and reintegration. They also have the potential to empower families and can promote healing for victims by providing an acknowledgement of the harm that they have experienced and an opportunity for their voices to be heard.³⁴⁰ There are other important associated outcomes, including conflict resolution, reintegration of marginalised children into communities, and healing benefits for all parties. For example, for victims of crime, research has indicated that such processes have potential to reduce feelings of fear and promote a sense of safety.³⁴¹

Australia's approach to children in the child justice system must focus on restoration and rehabilitation, and also be trauma informed

and culturally safe. Some stakeholders noted that restorative justice processes need to acknowledge systematic racism and disadvantage, and the historic victimisation of many children who offend, in order for these processes to achieve their intended outcomes.³⁴²

One stakeholder pointed out the reforms in New Zealand and the central role that diversion and restorative justice practices play in its child justice system including the standard use of family group conferencing (FGC).³⁴³

Many children in New Zealand are successfully diverted from court with Family Group Conferencing addressing underlying education, health and family issues.³⁴⁴ When matters do come before the Youth Court, the judge, in most circumstances, gives consideration to plans formulated in FGCs and decides whether to approve these plans. This model is assisted by a judicial system where Courts have a dual role in child justice and child protection, facilitating a more holistic view of the child's needs. The New Zealand model continues to develop with increased use of Rangatahi and Pasifika Courts. Children can have their conference plans monitored by a specialist court, with events held on a marae venue or community hub, with Elders actively involved in follow up activities.³⁴⁵

Some submissions also recommended community leaders and families from culturally and racially marginalised communities should play a greater role in child justice interventions to improve community engagement and ownership of responses, including in sentencing processes and restorative justice practices.³⁴⁶

Stakeholder consultations highlighted that while justice responses are required for some children with multiple and intersecting needs, often the most sustainable solutions are found in communities. As Judge Skinner, President of the New South Wales Children's Court, noted:

Any intervention by outsiders must recognise the need to support both the child, and the people who matter to the child. Families and communities are capable of raising their children safely but sometimes they need our help. It is important to see the value in what we do while remembering the gold is in the community.³⁴⁷

Recommendation 13: Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.

(d) Place-based solutions and Justice Reinvestment

Stakeholders agree that place-based initiatives, tailored to the needs and strengths of communities, are central to improving wellbeing outcomes and reducing child justice involvement.³⁴⁸ Consistent with a need to address the social drivers of crime, place-based approaches provide the opportunity to invest in prevention and early intervention. The Justice Reform Initiative summarises this as the prioritisation of 'physical infrastructure, employment, education, community capacity building and cultural connection as ways to address the social drivers of crime'.³⁴⁹ The holistic approach of community-led responses are well placed to respond to children's multiple needs.

There is a risk that unnecessary contact with the justice agencies and police may inadvertently propel children deeper into the justice system.³⁵⁰ By promoting the use of support services and wellbeing-oriented organisations, a child is more likely to receive holistic, wellbeing support to meet their needs as opposed to late interventions addressing only criminogenic risk.



This principle of local, community-based investment can also be applied to other stages of justice involvement. This may include community-owned and locally tailored interventions relevant to the cultural and geographical context. At the tertiary end, this may include moving away from centralised youth detention facilities to small, decentralised supervised accommodation facilities which are used only as a last resort.

Justice Reinvestment (JR) is a place-based approach to child justice operating across Australia, with a number of sites now at different levels of maturity. While JR initially began in the United States, in the Australian context all of these initiatives have a focus on First Nations community-led investment, in line with the right to self-determination and the goal of reducing overrepresentation.

Stakeholders have outlined some of the strengths of the current approach to JR in Australia. The first is the readiness process that creates space for community members and local organisations to assess their own preparedness and interest in JR initiatives, as well as their own strengths and challenges.³⁵¹ The establishment of ‘backbone’ organisations to implement JR, and models of First Nations self-governance are also key.³⁵² However, the Australian approach has so far resisted the ‘reinvestment’ elements of the approach, instead investing in new initiatives using additional funds. This has been attributed to governments’ preference for ‘funding programs and service provision rather than initiatives aiming for more systemic change’.³⁵³ Stakeholders, in interviews and in written submissions, called for JR and an end to the ‘carceral logic’ that pervades the current criminal justice system, reiterating that carceral responses will not address social issues and that sustained, systemic reform is required.³⁵⁴

As pointed out by Dr Catia Malvaso, from the University of Adelaide:

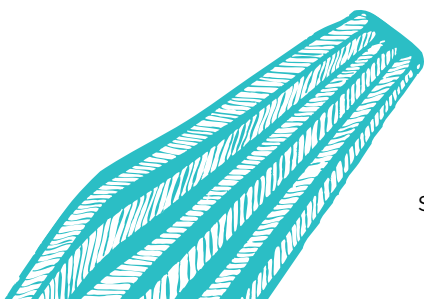
it is also important that responses to youth crime are informed by locally relevant evidence and knowledge. This is critical, for example, in addressing the impacts of intergenerational disadvantage and trauma where upstream and preventative approaches must be linked with program investments made at a local level, including through the provision of place-based, community-focused justice reinvestment programs that prioritise the importance of holistic support to prevent and overcome disadvantage.³⁵⁵

Recommendation 14: Australian Governments resource the redesign of services to be place-based and informed by evidence and local community priorities, in line with Priority Reform 1 of the National Agreement on Closing the Gap.

(e) Therapeutic and rehabilitative detention and post-detention models

The CRC states that detention should only be used as a last resort, and for the shortest appropriate period of time, providing care which supports the rehabilitation and reintegration of children (see Appendix 1).

UN studies have highlighted the potentially harmful effects of detention on children, especially their health, mental health and development.³⁵⁶ Although there is a need for more research on the impacts of detention,³⁵⁷ it is clear that many children enter detention with existing health conditions, and that these may be exacerbated by being in detention, with some health conditions developing as a result of deprivation of liberty.³⁵⁸



As highlighted in section 1.3, many children are entering detention with pre-existing vulnerabilities, such as neurodevelopmental disabilities and mental ill-health. Current models of detention are likely to compound trauma for these children. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability found that detention settings exacerbate the vulnerabilities of children with disability who often lack access to therapeutic support and trauma-informed care.³⁵⁹

Recognising this potential for harm, the UN Committee urges nations to immediately embark on a process to reduce reliance on detention to a minimum.³⁶⁰ This requires the development of effective and responsive community-based alternatives to detention. Stakeholders submitted that the lack of access to diversionary alternatives to detention undermines the principle of detention of children as a last resort.³⁶¹

A genuinely therapeutic and rehabilitative model should promote positive social connection with a child's family, community and culture, and be focused on building connections and relationships.³⁶²

Many submissions suggested that detention centres should be small scale, locally sited and integrated within the surrounding community.³⁶³ They should promote 'relational and differentiated security' with a focus on therapeutic and individually tailored responses.³⁶⁴ These should include opportunities for education and life skills and address offending behaviour alongside mental health, substance misuse and other health and wellbeing needs. There should be a strong focus on resocialisation and reintegration.³⁶⁵

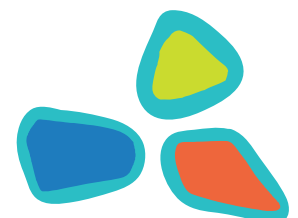
Stakeholders provided international examples of alternative detention models. These models were trauma-informed, involving multiagency, multidisciplinary collaboration.³⁶⁶ For example,

the Diagrama model used in Spain takes a non-punitive approach to care for children in custody, and is staffed by educators who focus on social skills, education, and boundary setting, paired with care and encouragement.³⁶⁷ The Northern Territory Legal Aid Commission noted the Diagrama model involved highly qualified staff, comprehensive case management, a full schedule of activities and an educational focus to create routine for children in 'normal and engaging environments'.³⁶⁸

Another example is provided by the Missouri Model and the Close to Home program in New York City, that stemmed from an acknowledgment that children were being re-traumatised in large youth detention facilities, and were separated from family and community who could be instrumental in their rehabilitation.³⁶⁹ These approaches involved establishing small residential facilities, providing children and their families with targeted supports, reconnecting children with their families and community, and supporting educational attainment.³⁷⁰

The Salvation Army in its submission drew attention to a justice approach in Hawaii, which involved investment in mental health and substance addiction treatments and saw a significant reduction in youth detention which reportedly allowed the facility to be repurposed in 2018 to a healing youth and family wellness centre.³⁷¹ The Hawaii example was also referred to by many stakeholders as a positive example of system change.³⁷²

A key aspect of keeping communities safe is creating opportunities for genuine rehabilitation and reintegration of children into community after any offending behaviour. The Law Commission of Australia called for comprehensive planning and support for children leaving detention to reduce the risk of their experiencing homelessness and reoffending.³⁷³



Social Reinvestment Western Australia suggested that:

consistent and intentional support for children transitioning out of custody is one of the most critical components in transforming the child justice system and reducing recidivism. Evidence shows that tailored case management approaches that empower children to drive pathways into education, employment and independent living are the most effective at reducing recidivism.³⁷⁴

Creating opportunities for children to find their place in the community after detention is critical. Children leaving detention can face significant structural barriers, including lack of housing, poor educational and employment opportunities, and lack of access to help for mental health and substance addiction issues. These can be compounded by experiences of discrimination, social exclusion and family problems. To address these issues, children may benefit from longer term case management support, with staff working alongside the child and their family post release with support being reduced over an extended period of time.³⁷⁵

The Community Restorative Centre pointed out that reintegration is about creating identity outside the justice system and addressing systemic barriers to reintegration. It advocated for the use of community-based outreach, housing support and genuine collaboration with people with lived experience. It argued that successful throughcare approaches require understanding of the 'practical and relational kinds of support people require'.³⁷⁶

This is consistent with literature on desistance which suggests that 'desistance from crime consists of more than just criminal justice and good practice. Instead, desistance 'requires engagement with families, communities, civil society and the state itself'.³⁷⁷ This suggests that it is necessary to address intersectional needs

and assist children to develop more positive social behaviour and identity.

Stakeholders suggest reconnection processes should begin early in creating bridging services to support transition. The Queensland Office of the Public Guardian argued that reintegration plans are critically important when planning for safe and appropriate accommodation upon release.³⁷⁸ SHINE for Kids highlighted the benefits of mentoring programs which can provide practical assistance such as getting a Medicare card, looking for housing, and offering a safe person to discuss ways to manage in the community. It emphasised that the provision of such support is associated with positive impacts, such as compliance with probation, educational retention and lower rates of reoffending.³⁷⁹

An approach based on evidence and human rights prioritises opportunities for children to participate in their communities through leveraging community strengths and involving community in creative solutions. It creates space for children to return to community and be supported after contact with the child justice system. This will assist to reduce offending and make the community safer.

4.4 Building a capable and child-specialised workforce

Competent, supported and well-trained personnel are critical for working with vulnerable children, particularly in the child protection and justice systems.

In our consultations, children and young people consistently reported that their experiences of the justice system were predominantly shaped by the adults they interacted with and whether they felt supported and understood by them. This included youth justice case workers, police, detention officers, lawyers and judges. Many also spoke about their child protection officers and residential care workers. Children are highly attuned to the quality of these relationships, whether positive or negative. A well-trained, culturally competent, well-resourced, and trusted


workforce is essential across service systems to protect children's rights and for reducing children's contact with justice systems.³⁸⁰

This section highlights some of the crucial needs within the child justice workforce and related workforces, and its central role in achieving much needed reform.

(a) Workforce capacity and staffing levels

Stakeholders noted that many of the current challenges in the child justice system relate to an under-resourced workforce which is reliant on inexperienced and casualised staff, as discussed at section 5.3.³⁸¹

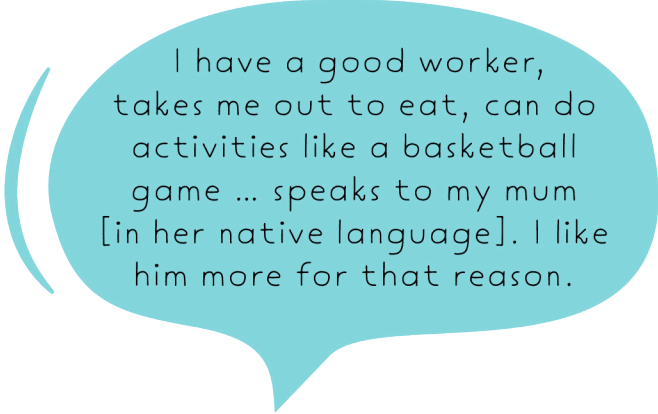
Improving workforce conditions would help to reduce attrition and burnout risk and improve the ability of staff to provide support to children.³⁸² This could include additional financial incentives to retain qualified staff in regional and remote locations. As one report noted, this could also include finding ways to remunerate First Nations staff and other staff who bring additional value through lived experience, and who are often required to 'operate outside of their scope'.³⁸³



There are staffing issues, so that means lockdown most weekends, missing school lessons, late lunches, limited sunlight hours.

A review of the Victorian Legal Aid Remand Services found that there was a lack of expertise around child justice matters in parts of the sector, and that high caseloads and lack of funding reduced the adequacy of representation and contributed to high remand rates in child justice overall.³⁸⁴

Stakeholders also raised the need for more diversity in the child justice workforce.³⁸⁵ This should include First Nations staff, staff from specific culturally and racially marginalised communities, as well as people with disability and LGBTQIASB+ staff.



I have a good worker, takes me out to eat, can do activities like a basketball game ... speaks to my mum [in her native language]. I like him more for that reason.

Stakeholders called for holistic workforce planning and investment at a national level, using national workforce strategies in nursing and the NDIS as models for assessment of workforce sustainability, capability and performance.³⁸⁶ A data-driven national picture of all workforces working with 'at risk' children—in particular child protection staff, youth workers, detention staff and therapeutic and diagnostic roles—could support sustainable workforce development and improve quality of support.³⁸⁷

(b) Training and upskilling of staff across the sector

Children have the right to access services and supports which are specifically designed to address their needs and vulnerabilities. Historically, child justice systems have been based on the adult penal system with iterative changes over time to make these more relevant to children (see Appendix 4).³⁸⁸ This means that those working within child justice systems typically are not offered the necessary training and skills required for providing care for children with complex needs and disabilities. At the tertiary end, this includes police, judicial officers, case/youth workers, and custodial officers.

However, noting the overwhelming agreement across the sector that universal supports and prevention should be prioritised (see section 4.1),

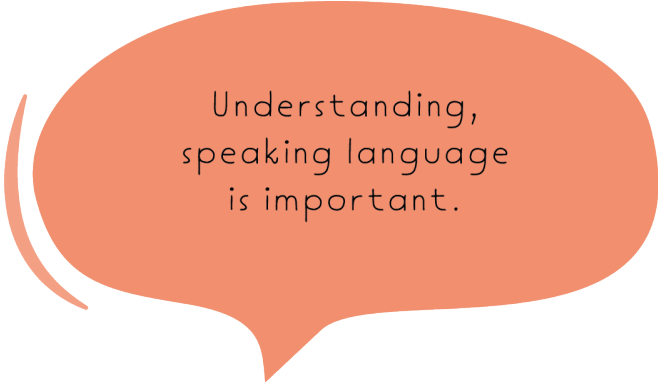
any analysis of the child justice workforce must also address the staffing needs of the other 'upstream' services. Of critical importance is support for the child protection workforce, in acknowledgement of the overrepresentation of this cohort of children in the justice system. Like much of the child justice sector, cultural diversity, gender balance, First Nations cultural competence, and disability and LGBTQIASB+ awareness will need to be addressed to improve service provision.³⁸⁹ However, a key challenge is that research, and feedback from frontline staff themselves, is that staff are 'inadequately prepared for the complex and skilled work required to recognise and assess risk of harm of child abuse and neglect.'³⁹⁰

The Create Foundation recommended that child protection staff, including residential workers, foster and kinship carers, should be offered more training and resources to address complex needs and challenging behaviours.³⁹¹ This included upskilling staff across a range of capabilities, including trauma-informed practices, culturally safe care, conflict resolution and the application of diversionary strategies.³⁹² A number of stakeholders and children and young people also raised the urgent need for child protection staff to be equipped to manage challenging behaviour without criminalising children.³⁹³ Children and young people also said that child protection staff need to be better equipped at managing challenging behaviour, with one child sharing their frustration that child protection services were 'getting paid to look after me ... but most of the kids are in there [detention centres] because of the [child protection] system'.

One stakeholder explained that the behaviours children exhibited when frustrated or dysregulated would often be considered tolerable in a home environment but would result in police being called in an out-of-home-care setting.³⁹⁴ They explained that this contributed to the early criminalisation of these children.

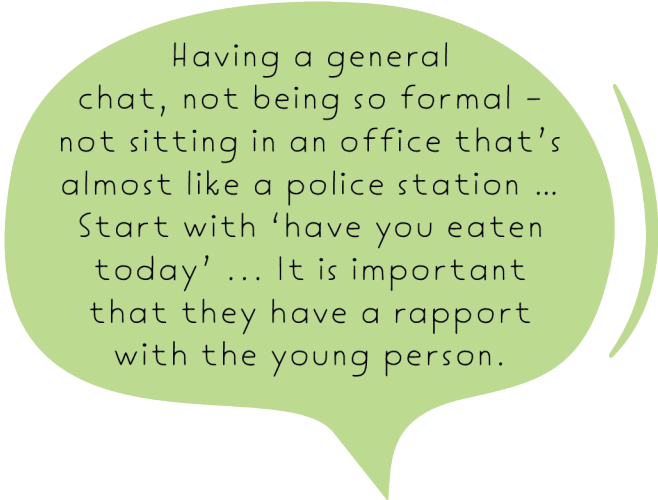
Children and young people said that when they are involved in the justice system, they want to be able to connect with youth justice caseworkers and staff, build supportive

relationships with them, and have positive behaviours modelled. Language skills, cultural competence and awareness of different learning styles were highly valued.



Understanding, speaking language is important.

Mission Australia, in its submission, encouraged the recruitment of a child justice workforce that 'understands, and is empathetic towards, young people who are currently in need of assistance' and able to meet the relational needs expressed by children.³⁹⁵ Building trust in these relationships is critical to addressing the multiple and intersecting needs of these children.



Having a general chat, not being so formal - not sitting in an office that's almost like a police station ... Start with 'have you eaten today' ... It is important that they have a rapport with the young person.

Submissions highlighted the importance of a child justice workforce that is trained in child-centred and trauma-informed approaches.³⁹⁶ Berry Street submitted that 'trauma-informed principles focus on increasing professional competence around trauma and creating physically and psychologically safe environments'.³⁹⁷ Dr Catia Malvaso explained how this helps to avoid 'criminalising childhood adversity and trauma'.³⁹⁸ All training should be child-specific and age appropriate.

The need for greater workforce capacity on trauma informed practice in Australia is also recognised in a number of existing national strategies.³⁹⁹

Based on recommendations in the Atkinson Report, staff training could include minimum qualifications (for example, Certificate 4 in Youth Justice for staff in custodial settings); practical competency training modules in child rights, cultural rights and cultural competency; disability awareness; and LGBTQIASB+ awareness.⁴⁰⁰

Induction training for staff was seen as important, with the need for it to be mandatory and for staff to be taken offline to complete it.⁴⁰¹ Training also needs to be tailored to specific organisational requirements and responsibilities. To facilitate staff engagement, they should be provided with supportive conditions and higher remuneration for upskilling.⁴⁰²

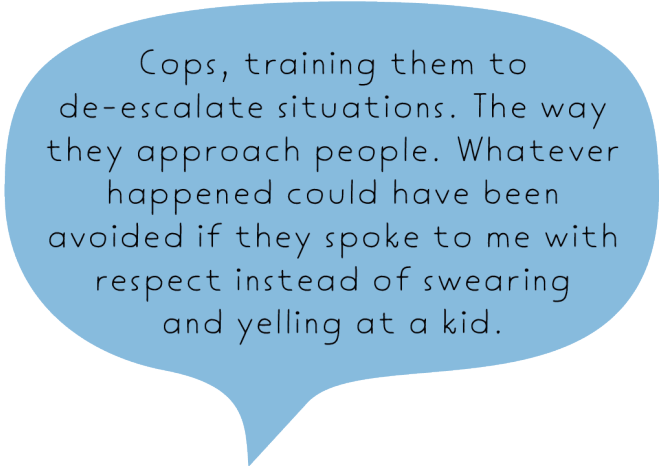
Currently, staff report that they are not always adequately supported to participate in training when it is offered.⁴⁰³ Training can vary in quality and may be inconsistent in how it is provided.⁴⁰⁴

It would be beneficial to develop nationally consistent minimum training requirements for the child justice sector.⁴⁰⁵

During consultations, children and young people discussed both negative and positive interactions they had with police and raised a number of areas of potential improvement (see section 3.6).

Some stakeholders also raised specific concerns about interactions between children and police, suggesting that police could benefit from additional upskilling and support.⁴⁰⁶

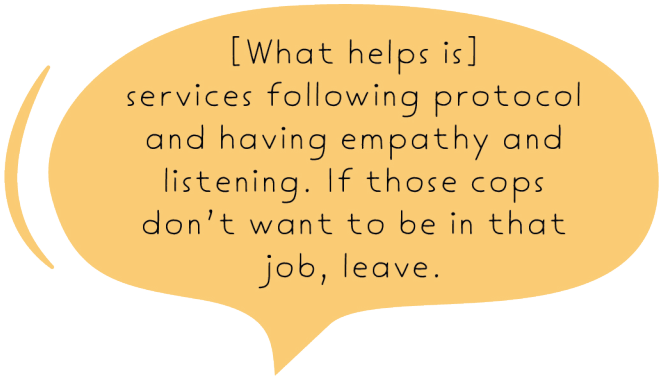
These concerns are consistent with research which found that not all police understood or considered child development and the specific vulnerabilities of children in their decision-making.⁴⁰⁷



Cops, training them to de-escalate situations. The way they approach people. Whatever happened could have been avoided if they spoke to me with respect instead of swearing and yelling at a kid.

One example of child-related training is the Australian Centre for Child Protection partnering with Western Australian Police Force to develop a series of online training modules. It draws on the latest research and practice knowledge in understanding and responding to abuse and neglect, including child safeguarding, mandatory reporting and reportable conduct. This training is a requirement of all Western Australian police officers.⁴⁰⁸

The role of child-specialist police has been noted as ‘crucial in maximising police usage’ of diversionary options, and building the capacity of other police to interact with children in rights-based and effective ways.⁴⁰⁹ Some judicial officers have suggested that having full-time, specialist children’s police would improve the use of diversion, but have also recognised that all officers would benefit from a deeper understanding of the unique needs of children and the diversionary options available for them.⁴¹⁰ Noting the underutilisation of diversion for First Nations children and children from culturally and racially marginalised communities, unconscious bias and cultural competence training is also likely to support better police decision-making.⁴¹¹



[What helps is] services following protocol and having empathy and listening. If those cops don’t want to be in that job, leave.

Recent research has highlighted that expanded access to police-led diversionary options for First Nations children and children from culturally and racially marginalised communities needs to be a priority in child justice reform. Part of this process is building better relationships between police and children ‘noting that an enduring lack of trust in police has been cited as a key inhibitor to productive discussions around diversion’.⁴¹²

However, it is important to note that even with additional training and support for police, diversion programs and supports still need to be available for these referrals to take place. Special attention should be paid to the quality and availability of these programs, particularly in regional and remote locations.⁴¹³

It has also been argued that specific training on setting appropriate bail conditions would be beneficial for both police and for judicial officers.⁴¹⁴ This is likely to reduce the rates of child criminalisation and incarceration for breaches of bail, and better aligns with Australia’s obligations to detain children only as a last resort.

Some submissions suggested ways to remedy problematic or harmful policing practices, including introducing First Nations-led community patrols, cooperative initiatives between police and communities, and legal reform to reduce police discretion.⁴¹⁵

Recommendation 15: Australian Governments develop nationally consistent minimum training requirements for workforces in the child justice and related systems, including child protection and police. Training should include child rights, child development, mental health, neurodevelopmental disabilities, cultural competence, and trauma-informed practice.

(c) Children’s Courts and child-specialist magistrates

The importance of making Children’s Courts and child-specialist magistrates available in all child justice matters was raised in the literature, stakeholder interviews and written submissions.⁴¹⁶

Specialist courts play an important role in facilitating children’s access to justice.⁴¹⁷ The Royal Commission into the Protection and Detention of Children in the Northern Territory found that child-specialist courts and judicial officers were more equipped to consider evidence on child development and child psychology in their decision-making and should be provided with regular professional development in these areas as well as on emerging research.⁴¹⁸

This specialisation has positive flow-on effects for understanding and more effectively addressing complex matters involving children.⁴¹⁹ Other advantages include increased consistency in court decisions, and greater protection for children against the stigma associated with the adult court system.⁴²⁰

In addition to the right to access age-appropriate services, Children’s Courts are also better placed to ensure a child’s right to participate in matters that affect them. For example, some magistrates encourage more informal seating arrangements, and the use of child-friendly language which is more comprehensible for all children.⁴²¹ Children’s Courts also commonly take a trauma-informed approach, recognising the impact of trauma on a child’s development and decision-making capability and using this to inform sentencing decisions and rehabilitative needs.⁴²² The key role of specialist, interdisciplinary training for these judicial officers has also been acknowledged.⁴²³

This aligns with the views that children and young people shared during consultations for this project. Some children and young people explained that judges themselves had the potential to be a positive element of the child justice system when they made themselves understood, particularly using age-appropriate language. One child noted the benefits of judges being able to ‘enlighten kids with what they say’.

Some submissions highlighted the importance of therapeutic jurisprudence which recognises how the law and sentencing can be used as ‘a therapeutic tool’,⁴²⁴ or ‘social force’.⁴²⁵ This includes the value of Youth Therapeutic Orders which can mandate drug and alcohol treatment,

including in therapeutic residential environments, for children with significant difficulties and who do not voluntarily engage in treatment. Providing intensive therapy orders can address the root causes of behaviours and provide access to timely therapeutic supports to address underlying mental health or substance abuse issues.⁴²⁶

Solution-focused courts can take an integrated approach, promoting collaboration across government and non-government services and using judicial monitoring to progress matters.⁴²⁷ Such approaches promote participation of children and their families, ensuring underlying drivers of offending are attended to and encourage multiagency collaboration in promoting the wellbeing of children and communities.⁴²⁸

One submission raised the use of 'cross-over lists' with Children's Courts having the ability to oversee both criminal divisions alongside family/care and protection proceedings.⁴²⁹ This has the potential to allow a more holistic view of children's circumstances and appears to have been effectively used in New Zealand.

In New Zealand, the *Oranga Tamariki Act 1989*, which was amended in 2019, governs the law in relation to both care and protection of children as well as the child justice system. It has provisions for the 'cross-over' of children involved in both systems and has an overarching focus on the wellbeing of children and their families. There is a strong focus on coordination of services centred on children's rights and best interests.⁴³⁰ A central feature of the Act is the standard use of Family Group Conferences, as discussed in section 4.3. The judges in New Zealand Youth Court hearings, including 'cross-over' courts, are supported by a multidisciplinary team including representatives from education, health, child protection, child justice, as well as cultural advocates to support the child before the court.

Since 2007, there has been information sharing protocols between the Youth Court and Family Court in New Zealand, reflecting the importance of holistic understanding of vulnerable children's needs and facilitating a more coordinated response to these. For example, there is some provision to consider whether the child should be dealt with via criminal proceedings or whether their needs would be better addressed as care and protection matters in the Family Court. There is a strong 'emphasis on not instituting criminal proceedings against a child if there is an alternative way of dealing with the matter'.⁴³¹

The cross-over lists aim to ensure that information is available from the Family Court about a child's circumstances and there is coordinated decision-making, including considerations about further assessments and matters such as bail. Judges can have the benefit of both the Youth Court file and Family Court file in these determinations.⁴³² It is also possible for a child justice FGC to consider information regarding care and protection and make plans which address these issues.⁴³³

Other models, like drug, mental health, and family violence courts that support a more comprehensive and fulsome sense of children's needs, include multidisciplinary therapeutic panels to coordinate case management of children and families.⁴³⁴ Such panels are designed to respond to the unique needs of children and ensure relevant assessments and referrals for support are undertaken.

An ongoing challenge is the availability of specialist magistrates and Children's Courts in regional and remote areas, specifically noting the overrepresentation of these children in the justice system.⁴³⁵

Recommendation 16: Australian Governments ensure that all child justice matters are heard in specialised Children's Courts or by child-specialist magistrates.

Ashley's story*

[Content warning: child sexual abuse, self-harm and family, domestic and sexual violence]

A lot of crime begins at home. That's where bad things start to happen.

I first came into contact with police when I was nine, because Dad called the cops on my Mum.

Mum was an addict, but she knew how to clean the house, so child protection walks in and sees it and then it's all fine. Someone trained could spot the signs or ask deeper questions. Child protection didn't do enough to see the signs of child sexual abuse. I moved out at 12.

The main point about DV, especially where women are getting battered, or emotionally abused, is that children see it and they get in peer groups that normalise it.

School needs to be a place you can get help. Not just education.

There needs to be schools to help keep an eye on children. Someone to ask the question 'why don't you have a pen?' or whatever. I had to pay for school fees from Grade 8, no one paid for me. I couldn't afford the school computer.

All teachers should have a form of training for when a child discloses to you about something, so they can take it to the necessary authorities.

I've had severe mental health following a traumatic childhood.

I'm on meds, I had a blackout, and I assaulted some officers. I woke up in a hospital bed and then I was taken to the watch house.

I was then held in a watch house for a week and not told why and was very confused. I was just covered in bruises and carpet burn on my wrist and arms.

I was on suicide watch because of my mental health history, but they did not follow the protocols and check on me. I pressed the call button in the watch house, but they turned off my call button for five days straight. I was cold, I didn't have a blanket. They didn't give me breakfast. I assume that's because I assaulted officers.

Some police took me to a separate room. I asked them, 'did I try to commit suicide?', because I didn't know why I was in there. One told me, 'Next time, do a better job'.

Some police are in the wrong job.

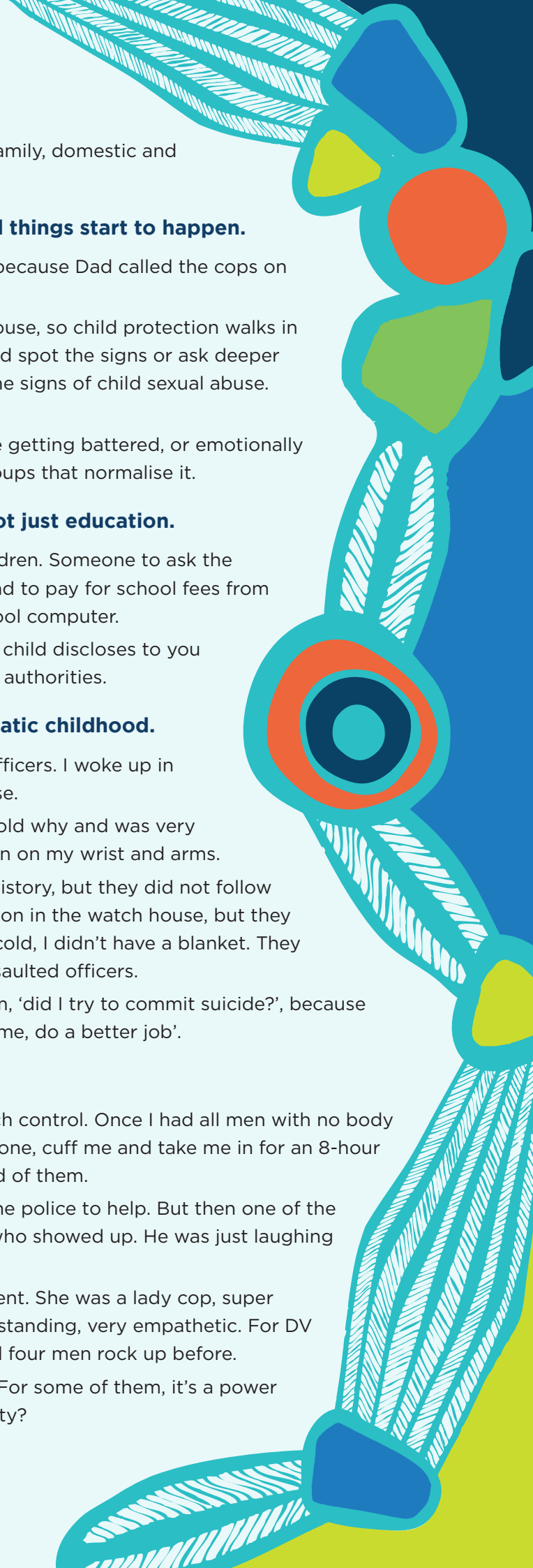
Cops are so weird and inconsistent. They have so much control. Once I had all men with no body cameras, sirens blaring, jump out at me, smash my phone, cuff me and take me in for an 8-hour interview. I didn't even do anything. So now I'm scared of them.

Once, I tried to take my own life, so someone called the police to help. But then one of the officers who was rough with me before was the one who showed up. He was just laughing and didn't help. That really traumatised me.

The one good experience I had was during a DV incident. She was a lady cop, super lovely and helped me to take my time. She was understanding, very empathetic. For DV incidences, they need to have a woman there. I've had four men rock up before.

There needs to be a standard to who authorities hire. For some of them, it's a power trip. Like - is this person here to protect the community?

*Pseudonym



4.5 Basing systems reform on data and evidence

It is critical that appropriate data are collected, shared effectively, and used to make evidence-informed decisions. This means addressing gaps in data, collecting data consistently, and incorporating lived experience and different knowledge systems.

(a) Addressing gaps in data

Submissions highlighted the barrier to evidence-informed policy caused by current national data gaps.⁴³⁶

The UN Committee has raised concerns about the paucity of national data relating to children in Australia, and on children in the justice system specifically.⁴³⁷ These gaps include data on some demographic groups of children, including children with disability, LGBTQIASB+ children, and children from culturally and racially marginalised communities. For example, some culturally and racially marginalised communities are overrepresented in child justice systems, particularly children from Sudanese, Maori and Pacific Islander backgrounds, but there is no national data on the level of overrepresentation of these specific groups or a national picture of their needs.⁴³⁸ The Australian Human Rights Commission's National Anti-Racism Framework reflected that a lack of longitudinal, quantitative and qualitative data was a 'significant impediment' to understanding racial discrimination in the justice system.⁴³⁹

The Report on Government Services (RoGS) data on child justice indicators over a 10-year period (2014-2024) shows that the Productivity Commission was unable to report against some key indicators due to the unavailability of data from relevant jurisdictions. These included equitable access to youth justice services (indicator introduced in 2018); timely access to diversionary services; securing housing on exit from youth justice detention; family engagement with youth justice services (indicator introduced in 2018); and completion of programs that aim to address offending behaviour.⁴⁴⁰ Other

identifiable gaps in the RoGS data include lack of information about children with disabilities and recidivism rates.

There is also a lack of national data on the long-term socio-economic outcomes of children who have been in contact with the child justice system, such as education, employment, and housing outcomes.

The UN Committee recommended that Australia ensure better data collection covering all areas of the CRC, in particular relating to children in situations of vulnerability and for children in conflict with the law.⁴⁴¹

A considered and coordinated approach between governments and non-government organisations is required to identify all data gaps and to adjust data collection mechanisms.

Addressing these types of data gaps will support the establishment of national datasets that are intersectional and can be disaggregated to improve decision-making and interventions.

Recommendation 17: Australian Governments collect key data on children in the child justice system, disaggregated by age, sex, disability, geographic location, ethnic origin, and socioeconomic background, including data disaggregated at the local level to support service design and delivery. This data should be publicly available and accessible.

Once made available, the benefits of linking data are well-known. Dr Catia Malvaso's submission outlined a program of research using linked data to understand the relationship between childhood adversity and maltreatment, and offending behaviour by children.⁴⁴² This research was able to confirm the high prevalence of child maltreatment amongst the children with justice contact.⁴⁴³

This study also noted that other sources of information such as surveys and interviews can provide additional detail from children with lived experience directly, to strengthen

bodies of research.⁴⁴⁴ This type of research is invaluable in terms of informing policy responses, including the rationale for trauma-informed, whole-of-family, and rehabilitative approaches.

Linked and longitudinal data sets are now increasingly being used at a national level. In 2023, AIHW completed a scoping study for the establishment of a Child Wellbeing Data Asset Development Framework and Roadmap. This data asset will include the Australian Early Development Census, Child Protection National Minimum Data Set, Youth Justice National Minimum Data Set, National Community Mental Health Care Database, Medicare Benefits Scheme and Pharmaceutical Benefits Scheme.⁴⁴⁵

By developing an asset that links these data sets, policymakers and other users will have access to child-centred data across sectors, including the child justice system. This project has the potential to provide national insights into wellbeing issues, to clarify how children are accessing services, and to support governments to measure the impact and success of initiatives.⁴⁴⁶ This will support better decision-making and allow the sector to anticipate problems and needs.

(b) Incorporating First Nations knowledge systems

Some stakeholders raised the challenges associated with Western methods of data collection and evaluation, particularly in relation to the harms of exploitative and stigmatising research and evaluation practices.⁴⁴⁷ Western methods predominately focus on what is quantifiable, with less regard for what is meaningful to communities, such as quality of life, strengths of culture, cultural safety and community safety.⁴⁴⁸

Emerging literature suggests that findings and recommendations arrived at using culturally informed evaluation methods may enjoy higher levels of confidence within communities.⁴⁴⁹ This issue was also raised by stakeholders.⁴⁵⁰

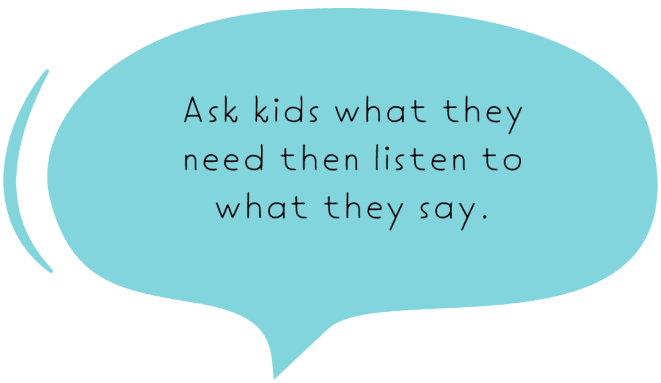
Such methods may also generate higher levels of engagement and better data to inform findings and improve their usefulness.⁴⁵¹ For example, to effectively evaluate the impact of an initiative in a community with First Nations service users, local knowledge of the ‘historical, social, economic, cultural and geographical circumstances’ is critical to define who are the affected communities in order to measure impact.⁴⁵² This is particularly true where communities may be transient or spread across boundaries and locations.⁴⁵³ It is for these reasons that culturally informed evaluation models, and methods that are responsive to social and emotional wellbeing must be supported by governments.

Traditional Owners are the ones who know what the children are doing. People need to speak to parents and grandparents ... The instructions for our young people come from the older people, it's been that way for a long time. But no one comes and asks.
—**Family or community member**

(c) Incorporating lived experience in evaluation and service system design

Listening to the views and experiences of children and young people provides useful evidence for the design of child-friendly service systems.

During consultations for this project, children and young people repeatedly said that they wanted to be involved in decision-making that affect them. They asked for policymakers to listen and ‘hear what we are saying’. This is consistent with the findings of other work completed with children which concluded that children want to have meaningful input into programs and decisions that concern them in the child justice system.⁴⁵⁴



Ask kids what they need then listen to what they say.

In addition to upholding children's rights to participate in the decisions that affect them, there are practical benefits to incorporating their lived experience into evaluation and service design. Their insights on the design of specific services, like child-friendly complaints processes or online resources is understood to improve the credibility, effectiveness and take up of these initiatives.⁴⁵⁵

Children's views must be incorporated into reviews and evaluations of programs as well as data collection processes. This requires establishing spaces that are physically, psychologically and culturally safe for children to share their views; providing age-appropriate information; being clear about how information will be used, and being transparent with children about how their feedback will be acted on.⁴⁵⁶ To ensure that a diverse range of voices are included in these processes, stakeholders have recommended formalising the structures for lived experience input.⁴⁵⁷

Seeking children's views about the delivery of programs and services is also a fundamental requirement for child safety. In implementing the National Principles for Child Safe Organisations, the views of children and their families need to be included in regular reviews and evaluations, and any complaints by children should be analysed to identify causes and systemic failures.⁴⁵⁸

(d) A consistent approach to evaluation

Some stakeholders said that a key benefit of taking a national approach to child justice reform will be an improved child justice evidence-base

through more consistent evaluation and sharing of best practice.⁴⁵⁹ They explained that a consistent approach to evaluation, based on agreed definitions and shared understandings of 'success', will make it easier to compare like-for-like programs and initiatives and improve practice overall.

At the outset, this is likely to require a more holistic and accurate understanding of offending by children. There is a growing understanding in the justice sector that 'all crimes are not created equal', and that any analysis of crime rates should be weighted by the level of harm.⁴⁶⁰ It is well understood that some offences have a greater negative impact on communities than others. For example, shoplifting is considered less serious than an offence involving violence. Despite this, some crime rate statistics record only the number of offences, not seriousness of offences. Without an analysis of offending rates weighted by seriousness, risk assessments can be distorted, and resources allocated inappropriately.⁴⁶¹

The Atkinson Report also recommended using a combination of different metrics to measure success. In addition to First Nations knowledges, there is the potential to include other outcomes such as 'education, mental health and family functioning, as well as factors that are important to communities, such as feeling safe and secure, less frequent offending, less harmful offending, and community confidence' within success metrics.⁴⁶²

There are also benefits to taking more consistent and collaborative approaches to evaluation. This may involve developing guidelines which identify outcomes and best practice across comparable initiatives, or establishing a common rating system that can be applied to a range of programs, as is available in the United States of America.⁴⁶³

Consistent with the literature, submissions raised concerns about the lack of funding allocated to monitoring programs and to completing long-term evaluations.⁴⁶⁴ Some stakeholders recommended establishing a national centralised body to fund, carry out, guide and share evaluations of child justice initiatives.⁴⁶⁵

As pointed out in a submission made by Dr Catia Malvaso:

It is also critical that YJ agencies (and other agencies involved in prevention efforts) not only implement evidence-informed services and interventions, but also that these initiatives are evaluated in order to generate both quantitative and qualitative insights into ‘what works’, when and for whom and to use this information to achieve continuous quality improvement.⁴⁶⁶

A national monitoring and evaluation framework with a minimum set of indicators would be one action considered by the National Taskforce for Reform of Child Justice. This could improve the consistency and quality of child justice related evaluations across jurisdictions. This framework should incorporate culturally appropriate and holistic metrics for successful initiatives and be developed in partnership with First Nations peoples and informed by the views of children.⁴⁶⁷

4.6 Accountability for the human rights of children

A national approach would promote greater accountability and transparency in the delivery of youth justice and wellbeing services and initiatives.⁴⁶⁸

If there is not a coordinated, joined up approach across all parts of Government (horizontal) and across all levels (vertical), there is a lack of ultimate responsibility and accountability for Australia’s children.⁴⁶⁹

The need for robust governance and accountability mechanisms was raised consistently by stakeholders in both interviews and submissions and has featured in numerous previous inquiries.

Under the CRC, Australia is required to undertake ‘all appropriate legislative, administrative, and other measures for the implementation of child rights’ (Article 4). In the context of child justice, this includes reviewing laws for consistency with the CRC, establishing effective administration of child justice, providing children with access to remedies for violations of their rights, monitoring at all levels of government and by independent monitors, and the collection of sufficient and reliable data on children.⁴⁷⁰

The principles within the CRC provide practical guidance for developing better laws and policies that protect children’s rights and wellbeing and reduce offending by children.

(a) Child justice laws and policies consistent with child rights

To ensure maximum protection of children, laws and policies should embed key child rights as set out in the CRC, and these should be consistent across the nation. The UN Committee has reiterated its previous recommendations that Australia ensure its laws and policies are consistent with the CRC. This includes recommending that Australia withdraw its reservation to Article 37(c) in relation to separating children from adults in detention; explicitly prohibiting solitary confinement practices in child detention facilities; and raising the minimum age of criminal responsibility to 14 years in all jurisdictions.⁴⁷¹

Age of criminal responsibility should be raised. Police talk to kids like adults ... Kids don’t understand what they’re being charged with.

—**Family or community member**

While there is recognition of child rights principles in some child justice laws across Australia, the approach has been inconsistent and inadequate to ensure protection of children’s rights.

(i) *Best interests of the child*

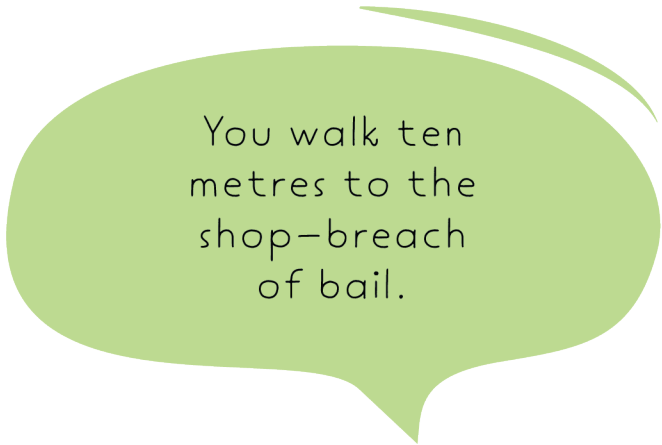
Article 3 of the CRC requires decision-makers to make the best interests of the child a primary consideration, and to ensure that decision-makers understand how the principle can be applied in the interpretation of all other rights in the CRC. In Australia, the principle is incorporated into state and territory child protection laws,⁴⁷² and, at the federal level, is included in the *Family Law Act 1975* (Cth), the *Criminal Code Act 1995* (Cth) and the *Crimes Act 1914* (Cth).⁴⁷³ However, the principle is inconsistently applied in youth justice laws and is included as an overarching principle only in Victoria and the ACT, where youth justice and child protection laws are combined.⁴⁷⁴ Further, in Victoria, the overarching ‘best interests’ principle is not applicable to the youth justice section of the Act.⁴⁷⁵ Stakeholders told us that there continues to be uncertainty as to whether, and how, the ‘best interests’ principle is being implemented by decision-makers throughout both child justice and child welfare systems⁴⁷⁶ (see section 5.6).

(ii) *Detention as a last resort*

The CRC requires Australia to ensure that the ‘arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’ (Article 37(b)).

However, restrictive bail laws directed at children who offend have undermined both the principle of detention as a last resort, and ongoing efforts to reduce the numbers of children in detention. More unsentenced children are being held in detention. Across Australia, the proportion of those in unsentenced detention has increased nationally,⁴⁷⁷ with most young people in unsentenced detention being on remand.⁴⁷⁸ Of all children in detention on an average day in 2023, almost 4 in 5 were unsentenced (80%), with only 1 in 4 (25%) serving their sentence in detention.⁴⁷⁹

In Victoria, amendments to the *Bail Act 1977* in 2018, that increased the threshold for bail, directly contributed to the growing number of children and young people held on remand.⁴⁸⁰ The Youth Affairs Council of Victoria found, in 2019, that the proportion of young people on remand had doubled compared to a decade earlier.⁴⁸¹ In August 2023, the Victorian Government announced it was repealing the bail offences under these laws, as they were shown to have a disproportionate impact on women, children and First Nations peoples.⁴⁸²



You walk ten metres to the shop—breach of bail.

In Queensland, the government passed laws in 2023 to make breach of bail a criminal offence and other changes aimed at reducing serious offending.⁴⁸³ This move was criticised by youth advocates, the Queensland Human Rights Commissioner and others for posing a risk of greater numbers of young people in detention, with little improvement of community safety.⁴⁸⁴ Further, on 1 May 2024, the Queensland Government introduced amendments to its Charter of Youth Justice Principles that would replace the words ‘detention as a last resort’ with alternative wording.⁴⁸⁵ These proposed amendments have been criticised.⁴⁸⁶

In March 2024, the New South Wales Government passed legislation⁴⁸⁷ to tighten bail laws for children in that state, which some stakeholders consider is ‘going to make it more difficult for children to get bail than for adults’ and will lead to more children in custody.⁴⁸⁸

Come up with new bail laws. [They] get you back in trouble ... feels like a trap.

Mandatory minimum sentencing laws can also undermine the principle of detention as a last resort.⁴⁸⁹ The UN Committee has repeatedly raised concerns about their application to children in the Northern Territory and Western Australia.⁴⁹⁰ The Northern Territory has since repealed many of its provisions, but in Western Australia, minimum mandatory sentences for certain offences still apply to children.⁴⁹¹ Article 40 of the CRC confirms that criminal justice responses for children must be age-appropriate, proportionate, and rehabilitative. The principle of proportionality means that mandatory sentences of any kind, and particularly of detention, contravene the CRC.⁴⁹² They also have a disproportionate impact on First Nations peoples.⁴⁹³

(iii) Separating children from adults

Stakeholders provided examples where children had been held in adult facilities, and where they have not been kept safe from harm in those facilities.⁴⁹⁴

In Western Australia, a separate wing of the Casuarina Prison, called Unit 18, has been used to detain children from mid-2022, following a series of incidents at Banksia Hill Detention Centre.⁴⁹⁵ Initially seen as a circuit-breaker for the frequency of critical incidents, Unit 18 continues to be used to detain children.

In Queensland, children are being detained in adult watch houses, some for extended periods of time.⁴⁹⁶ This has resulted in 'undesirable breaches of human rights for children and young people who are in custody at watch houses throughout Queensland as the detention centres

have not capacity to accommodate them'.⁴⁹⁷ Watch houses are usually attached to a police station, designed to hold people (with or without being charged) for a short period of time. Police watchhouses were designed for adults to be held for a short period, not for children who are being held for many weeks at a time. While children may be held in a separate cell, the facilities can include adult detainees who can be seen and heard by the children.

When my dad went to bail [my brother] out of the watch house ... They were lying about the cameras being broken and stuff. He had [the] biggest thing on his face from smashing into stuff.

In a review of the increasing use of watch houses, the Queensland Family and Child Commission showed that the length of detention of children in watch houses was increasing significantly.⁴⁹⁸ Data also showed that children as young as 10 were being detained in watch houses.⁴⁹⁹

Magistrate Eoin Mac Giolla Ri described the unsatisfactory conditions of watch houses, when considering a bail application for a 15-year-old Aboriginal boy with FASD and an acquired brain injury. He had been detained at a Mt Isa watch house for the last 15 days:

It suffices to say that conditions in watchhouses are harsh and that adult detainees are often drunk, abusive, psychotic or suicidal. Although children may be kept in separate cells, those cells are usually open to the sights and sounds of the watchhouse. Equally, there is no facility to deliver education or the therapeutic interventions that are sometimes available in detention centres.⁵⁰⁰

The Youth Advocacy Centre has shared similar concerns over several years as raised by children held in Queensland watch houses. These concerns included a lack of access to family, adequate food and nutrition, information about their rights, health care, exercise, hygiene, education and activities.⁵⁰¹

During a public hearing before the Queensland Youth Justice Reform Select Committee, the NCC gave evidence about the conditions that she observed at watch houses:

I saw cells with no windows, no natural light, no fresh air. I was told there was no education, no rehabilitation, no recreation provided and that kids were being held in there for about six weeks at that time ... But probably the thing that shocked me the most was when I asked about the training of the people caring for them. Of course, they are police officers. I was told they are doing their best. Some of them are dads and they really care, and they are trying to do their best, but they have been given no training to care for these really traumatised children.⁵⁰²

Under the CRC, ‘every child deprived of liberty must be separated from adults unless it is considered in the child’s best interests not to do so’. (Article 37(c)).

The Australian Government has a reservation to this article, stating previously that its geography and demography make it difficult to always detain children in juvenile facilities, while also allowing children to maintain contact with their families.⁵⁰³ However, the UN Committee has pointed out that the Australian Government’s concerns are already taken into account by the article, which states that incarceration with adults is prohibited unless it is considered in the child’s best interests not to do so and also that a child shall have the right to maintain contact with his or her family.⁵⁰⁴ Further, the above examples—where children have been detained alongside adults—do not relate to the stated justification for the reservation being necessary. Children have

been detained alongside adults predominately in major metropolitan centres and towns, and where considerations of geography are not the relevant barrier.

By removing the reservation to Article 37(c), the Australian Government will be signalling to the states and territories that it is serious about meeting its obligations under the CRC, and that detaining children in facilities designed for adults is unacceptable.

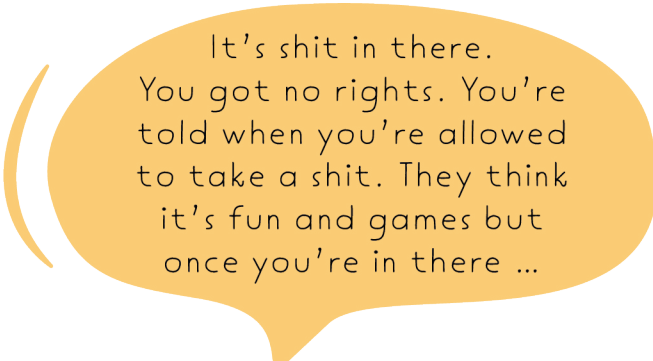
Recommendation 18: The Australian Government withdraws its reservation to Article 37(c) of the *Convention on the Rights of the Child*.

(iv) Right to be treated with humanity and respect

The CRC makes clear that children should not be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37(a)). This extends ‘not only to acts that cause physical pain but also to acts that cause mental suffering to the individual’.⁵⁰⁵ Children deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person, and in a way that takes into account the needs of a person their age (Article 37(c)).

To prevent such treatment, restraint should never be used as a means of punishment, but only when the child poses an imminent threat of injury to themselves or others, and solitary confinement should never be used for a child.⁵⁰⁶ The UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) define solitary confinement as the physical isolation of individuals ‘for 22 or more hours a day without meaningful human contact’.⁵⁰⁷ Although in Australia the power to isolate a child in a detention facility is subject to statutory limitations, these protections vary by jurisdiction, and no jurisdiction prohibits solitary confinement.⁵⁰⁸

Official inquiries continue to find that children have been impacted by mistreatment in detention, including being subjected to prolonged isolation, across the nation.⁵⁰⁹ For example, in June 2022, the Western Australian Inspector of Custodial Services found that children detained in the Intensive Support Unit of Banksia Hill Detention Centre were often being held in conditions akin to solitary confinement and in breach of international human rights agreements.⁵¹⁰ Due to staffing shortages, children were often locked into their cells for most of the day, preventing meaningful social interaction with peers and staff. They faced long periods of alone time in cells that are often in a poor state and are small. This typically led some children to act out and increasingly there were more children self-harming.⁵¹¹



It's shit in there. You got no rights. You're told when you're allowed to take a shit. They think it's fun and games but once you're in there ...

On 11 July 2023, the Supreme Court of Western Australia held that three young people were unlawfully locked in their cells at Banksia Hill Detention Centre and Unit 18 at Casuarina Prison for prolonged periods, amounting to solitary confinement.⁵¹² The three children were held in these conditions for a combined total of 167 days in 2022.⁵¹³ Justice Tottle found that subjecting children to solitary confinement frequently was not only inconsistent with the Western Australian child justice law, but also with basic notions of the humane treatment of young people, with the capacity to cause immeasurable and lasting damage to an already psychologically vulnerable group. It amounted to a systemic failure caused by a shortage of qualified staff, inadequate infrastructure and a consequent inability to manage detainees with difficult behavioural problems.⁵¹⁴

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability also heard evidence of the concerning treatment of children with disability within the Banksia Hill Detention Centre, including examples where children with disability were provided with very limited education and therapeutic support, and instances of solitary confinement.⁵¹⁵ It concluded that isolation amounting to solitary confinement is overused in child detention facilities across Australia. It recommended that states and territories should prohibit solitary confinement in child justice settings, and prohibit the use of isolation as punishment in any circumstance.⁵¹⁶

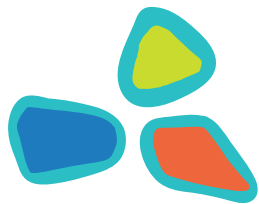
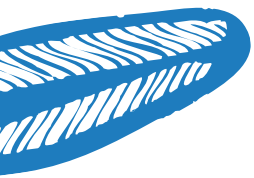
In Queensland, the Child Death Review Board's 2022-23 Annual Report highlighted how two First Nations boys, both of whom had disabilities and cognitive impairments, were subjected to extended periods of separation during their time in detention.⁵¹⁷ It described how such practices can impact on children, especially those with experiences of significant disadvantage and marginalisation, creating an environment of re-traumatisation.⁵¹⁸

Australian and New Zealand Children's Commissioners, Guardians and Advocates have long called for an end to the harmful practice of isolating children and young people in detention. They have called for nationally consistent definitions and minimum standards for isolation practices in child justice detention, which are in accordance with international human rights standards.⁵¹⁹

Recommendation 19: Australian Governments legislate to prohibit solitary confinement practices in child detention facilities and prohibit the use of isolation as punishment in any circumstance.

Australian Governments should undertake comprehensive reviews of their child justice legislation and associated policies to ensure consistency with child rights. In particular, reviews should consider provisions relating to the best interests of the child, isolation and

separation in detention, bail restrictions and mandatory minimum sentencing. A review of all child justice related laws and policies could be undertaken as an action of the National Taskforce for reform of child justice systems.



(b) An age-appropriate minimum age of criminal responsibility

One of the clearest opportunities for application of a national child rights approach is in relation to the minimum age of criminal responsibility.

The CRC requires governments to establish a minimum age below which children will be presumed not to have the capacity to infringe the criminal law (Article 40(3)(a)). This recognises that maturity and abstract reasoning are still evolving for children, and that younger children are unlikely to understand the impact of their actions or to comprehend criminal proceedings.

While the CRC does not specify the age which governments should set as a minimum, the UN Committee has considered documentary evidence in the fields of child development and neuroscience. This demonstrates that maturity and the capacity for abstract reasoning are still developing in children aged 12 to 13 years because their frontal cortex is still evolving.⁵²⁰ Therefore, it has encouraged governments to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age.⁵²¹ It has specifically urged Australia to consider raising the age, without exceptions.⁵²²

Up until 2023, the minimum age of criminal responsibility across all jurisdictions in Australia, was set at 10 years,⁵²³ with an individualised assessment of responsibility through the courts, under the common law presumption of *doli incapax* ('incapable of wrong'), for children under 14 years.⁵²⁴

Australia has made some progress on raising the age. In 2022, the SCAG agreed that a Working Group would develop a proposal to increase the age.⁵²⁵

Since then, a number of states and territories have moved to raise the age in their jurisdictions:

- In August 2023, the Northern Territory raised the age of criminal responsibility from 10 to 12 years, implementing a recommendation of the 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory,⁵²⁶ with a view to raising the age to 14.⁵²⁷
- In November 2023, the Australian Capital Territory passed legislation to raise the age from 10 to 12 years, and then to raise the age to 14 in 2025. The changes include limited exceptions for serious and intentionally violent offences for young people aged 12 or 13 years.⁵²⁸
- In April 2023, Victoria announced that it will raise the age in two stages, from 10 to 12 years without exceptions, and then to 14 with exceptions for serious crimes for 12 to 14-year-olds, in legislation to be introduced by 2027.⁵²⁹
- In December 2023, Tasmania, as stated in the Tasmanian Government's *Youth Justice Blueprint* report, committed to raising the age of criminal responsibility from 10 to 14 years, with no exceptions, by 2029, in addition to raising the minimum age of detention to 16 years.⁵³⁰

However, the remaining states, and the Commonwealth, have yet to commit to raising the age of criminal responsibility, in keeping with the UN Committee's recommendations. Children as young as 10 years in most jurisdictions in Australia can still be apprehended, prosecuted and detained.

These inconsistent minimum ages and fragmented approaches to reform risk exacerbating existing inequalities and creating discriminatory outcomes for children. They also do not align with how the stages of child development impact on children's conceptions of responsibility and accountability.

This area of reform must have national leadership to coordinate legislation across the Commonwealth in line with the minimum age of 14 recommended by the UN Committee. First Nations and disability advocates, in particular, have emphasised that a consistent, rights-based and national approach to raising the minimum age to 14 years, will assist with addressing the overrepresentation of marginalised children in custody. There was also general consensus among children, families and communities, as discussed in section 3, that the current minimum age is too low and that early interaction with police often had negative impacts overall.

Further, while the SCAG MACR Working Group report was aimed primarily at raising the age of criminal responsibility, it also recognised that:

It is crucial that MACR reform is conceived as part of this broader continuum of approaches that seek to mitigate the drivers of justice system contact among children and their families, and that jurisdictions prioritise reforms in these approaches alongside MACR reform.⁵³¹

On this basis, a national approach to reform of the MACR would assist with implementing broader evidence-informed policy on child justice. There are a number of concerns raised about the application of *doli incapax* in Australia. A recent academic study, focused on Victoria, found that the presumption should be applied, interpreted and recorded in a more consistent and rigorous manner by police, clinicians undertaking *doli incapax* assessments, and the Children's Court.⁵³² The study suggested some recommendations for reform. These include that national standards be produced to guide clinicians conducting *doli incapax* assessments; the presumption rests on the prosecution to rebut; police and Children's Courts in Australian jurisdictions clearly record and retain data concerning the application of the presumption; and Children's Courts adopt a routine practice (with judicial discretion) of

releasing *doli incapax* assessment reports to the defence.⁵³³

The SCAG MACR Working Group report emphasised that any jurisdiction that continues to prosecute children under 14 will need to consider how *doli incapax* operates and whether reform is required.⁵³⁴ It also highlighted that if the MACR is raised, jurisdictions should also consider reviewing the presumption in that context.⁵³⁵ The SCAG MACR Working Group report urged jurisdictions to achieve consistency in the operation of the presumption to the extent possible.⁵³⁶

Finally, while raising the MACR to 14 years is an important step, a national approach to supporting those aged under 14 is also required. Research suggests children who have early contact with the child justice system are more likely to have complex needs.⁵³⁷ These young children are especially vulnerable, and because of their complex support needs, they must have access to specialist therapeutic supports as opposed to punitive responses. As pointed out in a submission by Dr Catia Malvaso:

While raising the MACR from 10 to 14 is one way to prevent a small absolute number of children ... from having early YJ system contact, the real challenge is to improve the circumstances of these children to prevent later system contact and promote prosocial behaviour and connections.⁵³⁸

Stakeholders noted the Australian Capital Territory's approach to raising the MACR in 2023, which includes the establishment of a Therapeutic Support Panel for children in the 10–14 years age bracket.⁵³⁹ The panel is mandated to assess the causes of a child's harmful behaviours, recommend treatments, and develop a therapy plan.⁵⁴⁰ Panel members include social workers, psychologists, and First Nations representatives, and are experienced in the developmental needs of children.⁵⁴¹ The Therapeutic Support Panel works with and can receive referrals from a range of people and

agencies. This includes teachers, parents and health practitioners—as opposed to any exclusive gatekeeping of referrals by agencies associated with criminogenic exposure, such as police.

Recommendation 20: Australian Governments raise the age of criminal responsibility in all jurisdictions to 14 years and undertake a review of the application of the presumption of *doli incapax*.

(c) Consistent standards and monitoring

Having consistent standards for monitoring the provision of child justice services across the country is central to ensuring children’s rights are being protected. Currently, there are no legally binding national standards for child justice systems.

The Australasian Youth Justice Administrators,⁵⁴² have developed both Principles and Standards for Youth Justice. The ten Principles of Youth Justice in Australia were endorsed by all states and territories in October 2014.⁵⁴³ The National Standards for Youth Justice in Australia were revised in 2023.⁵⁴⁴ These revised Standards include a reviewer’s checklist, under 12 domains, to be used by youth justice administrators from interstate jurisdictions as part of a newly established peer review process. While an additional process of review is welcome, participation by jurisdictions remains voluntary, and implementation of recommendations coming out of the review will be at the discretion of the host agency. Although these Standards have been agreed to by all jurisdictions, they remain only ‘aspirational standards of practice’.⁵⁴⁵

Given the extensive concerns raised about the rights and wellbeing of children in detention in a large number of reports and inquiries, it is evident that these non-binding Standards have been insufficient to ensure the protection of children.⁵⁴⁶ Further, there is no mechanism for public accountability on how these Standards are being implemented. One of the areas of

action for the National Taskforce for reform of child justice systems should be to strengthen these agreed national standards, to ensure they have greater force and public accountability, and enable the protection of children and their human rights.

Some states and territories focus accountability efforts specifically on the treatment of children in detention facilities, with oversight and monitoring by statutory inspectors and ombudsmen. They have developed their own standards to guide the inspection and monitoring of youth justice centres in their jurisdictions.⁵⁴⁷ However, these standards are not consistent between jurisdictions, with variability in data collection, public reporting, accessible complaints mechanisms and consequences for improper conduct.⁵⁴⁸

The development of an integrated network of National Preventive Mechanisms (NPM), as required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), presents an opportunity to coordinate these efforts, and develop nationally consistent standards for child justice facilities, based on international human rights obligations and standards. It also presents an opportunity to improve the collection of national data on conditions in detention. However, progress on implementation has been slow. Australia failed to meet the earlier deadline for establishing the NPMs, then extended to 20 January 2023. To date, only 6 of the 9 jurisdictions have formally nominated their NPMs.⁵⁴⁹ By ratifying OPCAT, Australia is also required to accept visits from the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).⁵⁵⁰ However, the SPT decided to suspend its visit to Australia in October 2022, due to obstacles in carrying out its mandate to visit places of detention in New South Wales and Queensland.

Australia needs to urgently set standards of care for children held in detention and to have comprehensive independent monitoring with transparency and accountability.

Recommendation 21: Australian Governments agree to implement nationally consistent standards for monitoring detention facilities for children.

Recommendation 22: Australian Governments fully implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by designating National Preventive Mechanisms that have child rights expertise in all jurisdictions.

(d) Participatory and complaints mechanisms for children

A rights-based approach demands a shift from children and young people's silence to actively creating ways to facilitate their voice and participation in matters affecting them. It requires a recognition that children and young people's capacities are constantly evolving, and children and young people will increasingly possess insight and expertise into matters affecting them. It demands a far more active role for children and young people in the development of laws, policies and processes designed to ensure children and young people enjoy their rights under the UNCRC.⁵⁵¹

The right of children to meaningfully participate in matters impacting them is set out in Article 12 of the CRC. The UN Committee specifically points out the obligations on States to uphold a child's right to access justice, in acknowledgement of their 'dependent status, their lack of knowledge about their rights and the capacity to claim them as well as the lack of accessible and effective complaints mechanisms and child-friendly court processes'.⁵⁵²

An approach to reform based on child rights recognises that children themselves can be part of solutions. It supports positive participation of children in communities, facilitates their voice and takes their perspective seriously. Stakeholders argued that listening to, and acting on, the voices of children and their families is critical to create meaningful and realistic reform.⁵⁵³ It is especially important to hear from particular groups of children who are overrepresented in the justice system, such as children from First Nations and culturally and racially marginalised communities, those with out-of-home care histories and children with disability. As noted in section 3, children and young people have said that they want to have meaningful inputs into programs and decisions, consistent with the literature.⁵⁵⁴

Stakeholders argue that for genuine and sustainable reform to take place, there is a need to go beyond tokenistic approaches and embody codesign principles with children as partners in solutions.⁵⁵⁵

Action to instil children's participation is, in part, found in the 'participation duty' included in the Human Rights Act model recommended by the Parliamentary Joint Committee on Human Rights in its review of Australia's Human Rights Framework⁵⁵⁶ (see section 2.4). This duty will require age-appropriate methods of communication with and information for children, and creating environments which they feel are safe and not intimidating. This is for 'all matters affecting the child'.⁵⁵⁷

Tools such as child rights impact assessments provide a useful guide for policymakers on how to consider child rights at all stages of the policy cycle.⁵⁵⁸ Australia's first national Child Rights Impact Assessment (CRIA) tool—Safeguarding Children—provides one mechanism for strengthening the voices of children and prioritising their needs. It provides an opportunity for decision-makers, across all jurisdictions, to assess and monitor the impacts of policy and legislation on children's rights and wellbeing, not only in emergency situations, but in all government decisions that affect children


and their families every day.⁵⁵⁹ As required under the CRIA tool, regular opportunities should be provided for children to give their views in relation to policy and legislation that affect them.

Recommendation 23: Australian Governments conduct Child Rights Impact Assessments on laws and policies that affect children.

Children’s ability to make a complaint when their rights have been breached, and have that complaint resolved, comprises an important component of accountability under a rights-based approach.


There are a number of existing monitoring and complaints mechanisms in each jurisdiction. These include, where applicable, inspectors of custodial services, visitor schemes, state and territory Ombudsmen, and Children’s Commissioners and Guardians.⁵⁶⁰

While a variety of internal and external complaint mechanisms exist, these primarily focus on children in detention and only in some jurisdictions can children make complaints of a breach of child rights more broadly under the CRC. In Victoria, Australian Capital Territory and Queensland, children can complain of breaches of child rights under the human rights legislation in those jurisdictions.⁵⁶¹ At the Commonwealth level, under the *Australian Human Rights Commission Act 1986* (Cth), the Australian Human Rights Commission has the power to investigate and conciliate individual complaints of breaches of the CRC. However, this function applies only for violations by or on behalf of the Commonwealth or a Commonwealth agency. Moreover, any children’s rights complaints not resolved by conciliation cannot be enforced in the courts—unlike the remedial pathway that is available under the four Commonwealth anti-discrimination laws.⁵⁶²



YJ needs a better complaints system. We need to be heard.

Existing complaints mechanisms in Australia are rarely used by children.⁵⁶³ However, this does not mean that they do not have concerns. Rather, they may experience significant barriers to reporting rights violations.⁵⁶⁴ In 2019, the UN Committee noted that children in child justice lack awareness of their rights and how to report abuses. This issue has been highlighted in a number of reports,⁵⁶⁵ and by stakeholders.⁵⁶⁶ Children have called for better response times and more active responses to complaints.⁵⁶⁷ As discussed in section 3, children and young people said that they were unsure about their rights in their interactions with police, and that complaints systems within detention were not working for them. They also spoke about the positive feeling of being listened to when they spoke up about an incident. When children feel listened to and that their opinions are valued, they are more likely to trust others and seek help.



When sergeant took my complaint seriously, I felt so much better. Felt like I was heard.

The development of a network of NPMs under OPCAT presents an ideal opportunity to ensure complaints systems for children in detention are child-friendly and responsive.

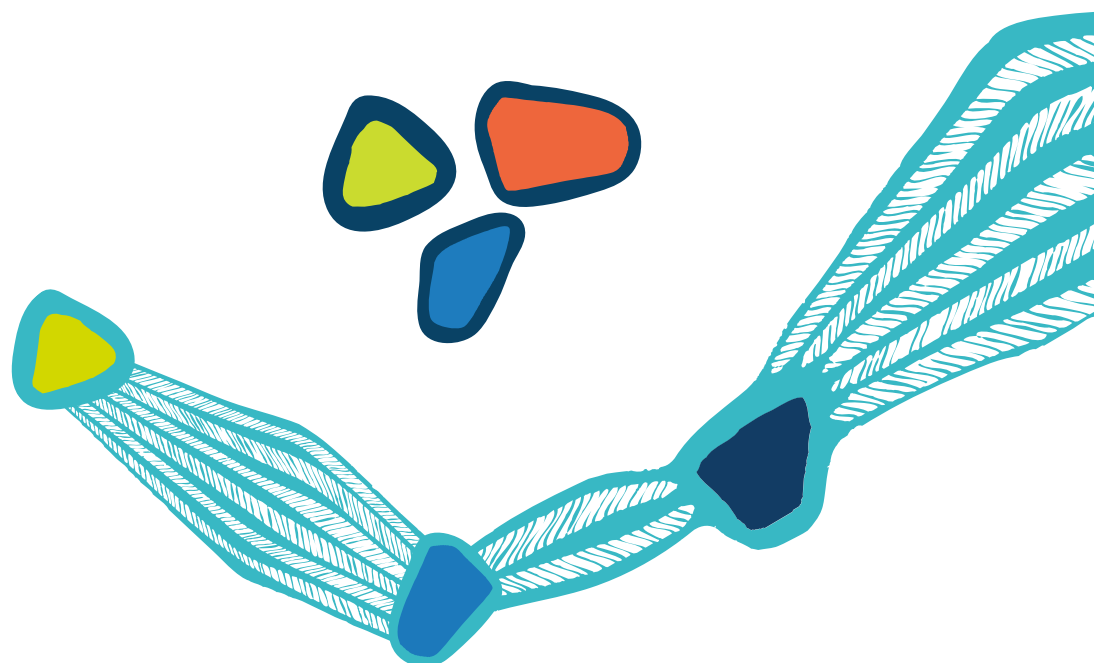
As discussed in section 2.4, legal protections of child rights in Australia continue to be


limited, and do not provide children with an effective remedy for any child rights violations. When rights are not sufficiently protected at the national level, it is critical that there be a system to turn to at the international level in order to address violations.⁵⁶⁸ In 2019, the UN Committee recommended that Australia ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP3 CRC), that allows children to bring a complaint of breaches of the CRC directly to the UN Committee.⁵⁶⁹ Australia has not yet implemented this recommendation.

Ratification of the OP3 CRC would provide new protections for children, ensuring that their rights are given a similar level of accountability that exists for adults.⁵⁷⁰ It would also mean that children could make complaints about breaches across the whole spectrum of rights under the

CRC. Before a child or their representative could make a complaint to the UN Committee, they would be required to have exhausted domestic remedies that are available. Ratification would require Australian Governments to improve children's access to domestic complaints systems and processes. As of February 2023, 52 countries have ratified OP3 CRC, enabling their children to lodge complaints about breaches of their human rights to the UN Committee.⁵⁷¹

Recommendation 24: The Australian Government ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, that will allow children to make complaints to the United Nations Committee on the Rights of the Child about breaches of their rights.





5 What are the barriers to child justice and child wellbeing reform in Australia?

Members of the public, including victims of crime advocates, justice and legal experts, child rights advocates, and children and their families, have all raised serious concerns about current justice systems and have advocated for change. In addition, decades of reports from Royal Commissions and inquiries have identified problems with child justice systems in Australia — they are failing to protect our children and are failing to make the community safer. The kind of transformational reforms that have been recommended in the past are not being implemented.

This section examines what stakeholders in submissions and consultations identified as barriers that need to be overcome for any kind of transformational reform to happen. Barriers include systemic racism; the way governments operate, such as the federal system of government; limited workforce capacity and use of punitive responses; lack of political commitment to evidence-based reform; pervasive ‘tough on crime’ rhetoric; and our persistent failure to make children a national priority.

5.1 Barrier: Systemic racism

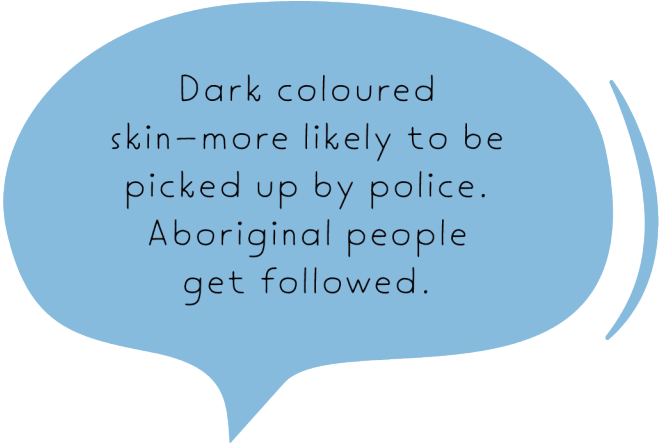
Addressing racism in the system is essential and until we get brave and address institutionalised racism and acknowledge that it’s baked in everywhere we will never really be able to meet the needs of our children.⁵⁷²

(a) The legacy of colonialism

As highlighted by Save the Children in its submission, the intractability of ‘historical and ongoing systemic racism and the impacts of colonisation, dispossession and intergenerational trauma’⁵⁷³ are significant barriers to reform. This barrier speaks to issues that encompass more than child justice. However, stakeholders who raised it agreed that for as long as there is a failure to address the root causes of racial profiling and disproportionate representation of First Nations children in the criminal justice system, it will continue unabated.⁵⁷⁴

While systemic racism and discrimination can be drivers of child offending — it is the failure to invest in self-determination for First Nations communities that constitutes a significant barrier to child justice and child wellbeing reform in Australia. This barrier is singular to the lives of First Nations children, with one stakeholder pointing out that ‘no other children in this country live the lives of our children who have to deal with the horrific impact of colonisation’,⁵⁷⁵ including disconnection from culture, language and kinship structures.⁵⁷⁶ Furthermore, child justice and child protection policies have further contributed to the disadvantage and trauma experienced by First Nations communities.⁵⁷⁷ For First Nations women and girls, family, domestic and sexual violence, as well as poverty, homelessness, substance abuse and poor mental health are understood to increase their vulnerability to contact with the justice system.⁵⁷⁸

One stakeholder contended that ‘there is an over-surveillance of First Nations children’⁵⁷⁹ and they ‘encounter so much conscious and unconscious bias’,⁵⁸⁰ facing scrutiny in the workplace, at schools, in accessing health care, and the justice system.⁵⁸¹



Dark coloured skin—more likely to be picked up by police. Aboriginal people get followed.

Furthermore, literature argues that data about First Nations peoples and communities have historically been controlled by governments and Western institutions. Indigenous peoples across the globe ‘have often been the unwilling targets of policy interventions with little say over the collection, use and application of data about them, their lands and cultures’.⁵⁸²

In its submission to the Yoorrook Justice Commission on Systemic Injustice in the Child Protection and the Criminal Justice Systems, the Victorian Aboriginal Child Care Agency noted that First Nations peoples are one of the most studied populations, but with almost all research and data unavailable to the communities where they originated from.⁵⁸³ Current data collection practices fail to capture the families that are doing well. It was often ACCOs who are able to tell these positive stories because they have more sustained interaction and stronger relationships with families, but they do not have equal access to data about the communities where they operate.⁵⁸⁴ This limits their ability to act on the evidence.

In submissions to this project, stakeholders said that child justice systems themselves are discriminatory, and are reinforcing ‘intergenerational cycles of disadvantage’.⁵⁸⁵ Systemic racism is reflected in laws and policies that, throughout Australia’s history, have disproportionately criminalised First Nations people, which ‘undermine the wellbeing of First Nations children and youth and exposes them disproportionately to criminal justice contact’.⁵⁸⁶

The Law Council of Australia, for example, submitted that the disproportionate representation of First Nations young people in detention stems from unconscious bias and institutional racism within the criminal justice system.⁵⁸⁷ It refers to the Australian Law Reform Commission’s *Pathways to Justice* report (2018) that highlights how ‘Aboriginal and Torres Strait Islander peoples fare worse at every stage of the criminal justice process, compared to non-Indigenous people’.⁵⁸⁸ Specifically, the report shows that Aboriginal and Torres Strait Islander peoples were seven times more likely to be charged with a criminal offence and appear before the courts, 11 times more likely to be held in prison on remand awaiting trial or sentence, and 12.5 times more likely to receive a sentence of imprisonment following conviction.⁵⁸⁹

(b) Dominance of Western standards

There is limited First Nations partnership and self-determination in child justice and child protection systems.⁵⁹⁰ Systemic racism manifests in a variety of ways, including, as noted in one submission, through ‘culturally insensitive laws, policies and procedures ... embedded within our social fabric and institutions; in childcare, education, health, welfare, policing, child protection and the justice sector’.⁵⁹¹

This systemic racism manifests in ‘both subtle and powerful ways’, including low expectations in the classroom, racism in the media, and deficit narratives propagated by institutions.⁵⁹² An extension of this can be the language and data used. The Yoorrook Justice Commission noted that the ‘deficit data focused on First Peoples disadvantage, disparity and deprivation’ characterises current and harmful ways of working with First Nations communities.⁵⁹³

In educational settings, where all children should be safe to explore their world, to learn, and to develop socially, First Nations children face ‘continuous and pervasive influences of Eurocentric supremacy and the

consequent racism, marginalisation, social inequity, loss of identity and culture and issues of intergenerational trauma'.⁵⁹⁴ Research over 20 years has found that Aboriginal youth and their families:

continue to experience racism in the educational system in the form of discrimination from teachers, media and the school materials that position Aboriginal people as inferior and the projection of low expectations of success. Added to these projections of white dominance through the extensive erasure of Aboriginality that occurs in classrooms through a colonial curriculum. These conditions are impacting classroom engagement and are placing Aboriginal students in a space where they are excluded in both subtle and powerful ways.⁵⁹⁵

The Salvation Army submitted that the child justice system as it stands fails to fully acknowledge — and is indeed often in direct conflict with 'the strengths of Aboriginal and Torres Strait Islander culture ... including kinship systems, cultural values and cultural law, which have been broken down through intergenerational cultural genocide'.⁵⁹⁶

The intergenerational nature of systemic racism and discrimination means that unless it is addressed, and we overturn the effects of assimilation policies over the last 200 years,⁵⁹⁷ the cycle will go on and continue to prevent meaningful change for First Nations children.

(c) Poor resourcing of First Nations community-controlled organisations and solutions

Failure to acknowledge systemic racism and its impacts impedes action to overcome it, as well as preventing realisation of cultural rights, non-discrimination and equality. In Australia, one of the ways this is manifesting is in the level of support provided to First Nations community-controlled organisations. As SNAICC points out,

'ACCOs are doing some of the most impactful work for children and families unfunded'.⁵⁹⁸ There is inadequate investment in community-led solutions to child justice problems with ACCOs being 'chronically underfunded'.⁵⁹⁹ With its pervasive focus on institutional responses, particularly the detention of children,

the current funding and service provision does not demonstrate the recognition of and the call for community-led and place-based approaches to address Indigenous youths' specific developmental and cultural need ... This raises the question of whether funding non-Indigenous NGOs for downstream preventive programs is the most effective way of delivering services and achieving the best outcomes for Indigenous youth.⁶⁰⁰

Furthermore, existing programs are disparate and not designed by the communities that need them. SNAICC submitted that the bulk of the money still bypasses ACCOs who are best placed to provide early support.⁶⁰¹ *Deadly Inspiring Youth Doing Good* provides an interesting case study of this through their Cairns Atlas.⁶⁰² It shows that:

ACCOs provide proportionally more high intensity services, that is services related to youth justice, child safety and mental health. Approximately two-thirds of Indigenous youth services are high-intensity support services for children already experiencing difficulties related to youth justice, child safety, or mental health. As such, ACCOs provide proportionally more downstream/crisis intervention than upstream/wellbeing support.⁶⁰³

However, the more general preventative wellbeing services, that should be closely aligned with an Indigenous social and emotional wellbeing model of care, are being delivered by non-Indigenous non-government organisations (NGOs). These services are usually provided

without First Nations communities or ACCOs contributing to program design or the provision of culturally safe services.⁶⁰⁴ In SNAICC's *Stronger ACCOS, Stronger Families* Final Report, a participant said:

I am so disappointed when the funding comes through a non-Indigenous organisation, by the time the funding gets to us we are being told how to use it and we try to run the programs their way, but it doesn't work for our communities and then we don't get the program numbers because people don't want to come.⁶⁰⁵

A key part of this dynamic is that 'the current system benefits those who have funding'.⁶⁰⁶ This is not just about the amount of money for services. Competitive grant and tender processes disadvantage ACCOs, because 'larger non-Indigenous organisations have the advantage of economies of scale that can mean lower costs',⁶⁰⁷ even if they may not be culturally safe or responsive. This dynamic means that innovative, community-led programs are overlooked in favour of high-profile NGOs in any competitive bidding process. The funding that is allocated to ACCOs is often delivered:

under strict programmatic guidelines, meaning that funding can only be used under pre-determined activities and timeframes. In most cases these guidelines do not cover the type of support that ACCOs know are most useful and effective.⁶⁰⁸

SNAICC also explored this in *Stronger ACCOS, Stronger Families*, where a participant noted that:

the reliance on the ACCHO to do the work is a frequent experience, where Indigenous funding sits within a non-Indigenous agency and there are no established trust or community connections and the model is not culturally responsive, the community does not engage (unless facilitated by the ACCHO).⁶⁰⁹

In addition to systemic racism, poor resourcing of ACCOs is compounded by other barriers, including fragmentation of government policy and departments and lack of political will. This leaves ACCOs underfunded and First Nations children and families without the supports they need.

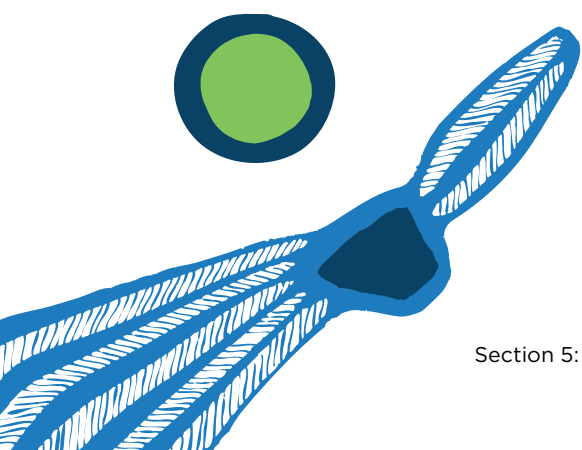
Government agency values don't align with ours culturally and don't give us the autonomy to how we need to work.⁶¹⁰

5.2 Barrier: The way governments operate

Government policy-making and service delivery is siloed by ministerial and departmental portfolio and programs rather than organised around people, communities and outcomes.⁶¹¹

No agencies seem to link together well.⁶¹²

Fragmentation and siloing of government departments, within and between jurisdictions, was raised frequently by stakeholders as a systemic barrier to protecting rights and wellbeing of children and young people,⁶¹³ and a barrier to reforming laws, policies and practice.



One stakeholder argued that that there is currently an ‘inability to prioritise youth justice because of the way we actually structure our public service’.⁶¹⁴

To date, reform efforts have focused primarily on what can be done within the existing child justice systems — to apprehend, divert, prosecute, sentence, detain and release — rather than looking at what other departments and service systems can do to address the multiple and intersecting needs of children and to prevent offending and reoffending.

Numerous reports have pointed to the need for whole-of-government action on reform. For example, the Atkinson Report highlighted the potential benefits of a ‘high level, collaborative strategy to tackle youth crime at a national level’ in order to enable systemic change in a bipartisan matter.⁶¹⁵ The SCAG MACR Working Group report identified that ‘almost all of the underlying causes of negative behaviour displayed by children lie beyond the reach of the youth justice system’.⁶¹⁶ However, ‘youth crime’ is still regarded as a problem for the justice systems to solve alone.

(a) Limited youth justice system engagement with health, education and social service systems

Stakeholders agree that there is a distinct ‘lack of coordination among agencies’,⁶¹⁷ which is a ‘massive issue’.⁶¹⁸ For example, the child justice system often operates in isolation from other systems, such as child protection and mental health services, leading to fragmented and ineffective support for children and young people who have multiple and intersecting needs.⁶¹⁹ Currently, Victoria and the Australian Capital Territory are the only jurisdictions in which child justice legislation and child protection legislation are merged.⁶²⁰

The lack of co-ordination across these systems is a barrier to multi-sectoral and multi-agency reform.

Silos in service delivery lead to children falling through the gaps, which can lead to preventable child justice involvement⁶²¹ and further harm to children. This risk cannot be overstated, and the ‘large crossover between children in contact with both child protection and youth justice systems is particularly damning’.⁶²² These ‘cross-over kids’,⁶²³ are disproportionately represented in the child justice system. Many of these children start in the child protection system because they are at risk of harm. They ‘frequently come from backgrounds characterised by intergenerational poverty’⁶²⁴ and are ‘often vulnerable victims’.⁶²⁵ Child protection systems are overwhelmed and there is a lack of coordinated responses for these children who have experienced developmental trauma and childhood adversity.⁶²⁶

The pathway from residential out-of-home care to child justice system involvement was raised repeatedly by children and young people in consultations. Reform to the child protection, health and education systems is needed to ensure that children’s safety and wellbeing needs are met, and ‘so that it does not set children up to be funnelled into the child justice system and on a pathway to recidivism and poor wellbeing’.⁶²⁷

‘Poor cross-agency communication and poor decision-making processes and accountability’ are recurring problems in the child justice system.⁶²⁸ The budget bidding processes internal to government typically do not require or support shared responsibilities across portfolios.⁶²⁹ There can be barriers to data and information sharing, which can further impede multidisciplinary efforts.⁶³⁰

The lack of cross-departmental cooperation can present obstacles in court, with one stakeholder explaining that children have separate legal representatives for hearings in Children’s Court care and protection, and another for criminal matters, and information from the two systems cannot be shared across those systems.⁶³¹ In contrast, New Zealand has special ‘cross-over’ court hearings, and for all youth court hearings, officers from education, health, child protection and youth justice departments are present,

along with cultural advocates, providing a multidisciplinary team to assist the court and the child.⁶³²

(b) The federal system of government

Some stakeholders attribute inconsistent laws and siloed decision-making on child wellbeing issues to the federal system of government. For example, states and territories have responsibility for the administration of child justice systems, but ‘much of the broader government systems and funding levers that promote protective factors and reduce risk factors, such as health and education services, sit at the national level’.⁶³³

The perception that child justice is a state issue⁶³⁴ suggests the narrowest possible definition of ‘child justice’ and overlooks the extent to which it is bound up in child wellbeing. Highlighting these various divisions, one stakeholder said that ‘youth justice is not being viewed as a shared responsibility’.⁶³⁵

Several stakeholders pointed out that the fragmentation in child justice legislation has led to inconsistency across jurisdictions.⁶³⁶ For example, as noted in section 4.6, the minimum age of criminal responsibility differs between states.⁶³⁷ Another stakeholder suggested that while police have arrangements for some cross-jurisdictional support services, ‘the legislation for each jurisdiction is quite different in how we support them’.⁶³⁸ Similarly, bail rules and conditions vary across jurisdictions (see section 4.6).

Despite Australia ratifying the CRC 34 years ago, the federal system continues to operate as a barrier to meeting our obligations to protect children’s rights. Our apparent inability to achieve coordinated evidence-based reform means that our most vulnerable children are falling in the gaps and are victims of our failure to make child wellbeing a national priority across the federation.

However, there are many examples where the jurisdictions are acting collaboratively to address complex policy problems. For example, ‘Women and Women’s Safety’ is considered an issue of national significance and a key priority for National Cabinet.⁶³⁹

Within criminal justice there are also examples of collaboration between jurisdictions, such as the joint operational arrangements for counter-terrorism teams. Children who have been radicalised online often have complex issues like mental health and neurodevelopmental disabilities, and have disengaged from the education system, similar to other children who offend.⁶⁴⁰ However, on this issue, the federal system does not serve as barrier to collaborative action.

(c) Fragmented funding makes holistic service provision impossible

The problem of fragmented funding is a familiar barrier for child and family policy including child maltreatment and child wellbeing. The Productivity Commission’s *Expenditure on Children in the Northern Territory Report* pointed out that siloed decision-making had resulted in overlapping funding arrangements and complex service systems creating new problems, rather than resolving existing ones.⁶⁴¹

Similarly, the Productivity Commission’s *Mental Health Inquiry Report*⁶⁴² and the Department of Communities and Justice (NSW) *Family is Culture Report*⁶⁴³ both emphasise the detrimental effects of siloed decision-making and investment. Rather than considering the needs of the whole child, services and systems that are supposed to be supportive are fragmented in their responses. This seems to serve the internal administrative needs of government, rather than the needs of the child and their family. Systems are service-centred, not person-centred,⁶⁴⁴ operating in ‘disconnected ways that are not centred on the needs and circumstances of the children and young people they should be serving’.⁶⁴⁵

We have 20 – 30 services here – but it’s all tick and flick. They give you about 5 minutes, and they don’t speak to each other so they’re working with the same kids so that they can reach a threshold of the number of kids.

—Family or community member

To secure government funding, organisations often are required to design programs that align with the priorities of government departments,⁶⁴⁶ which can limit their ability to establish jointly funded arrangements. This also limits flexibility in program design and collaboration across sectors, reducing holistic support for children.⁶⁴⁷ This also serves to constrain innovation as organisations are unable to get funding for solutions that go beyond the goalposts set by governments.⁶⁴⁸

According to one submission, funding for child justice initiatives is not flexible enough to provide for long-term investment in education and employment programs and partnerships between mainstream and community-led initiatives for children and young people.⁶⁴⁹

The way that governments work is itself a barrier to reform because it does not put the child and their family, and the community in which they live, at the centre of policy.

5.3 Barrier: Limited workforce capacity and use of punitive responses

Stakeholders criticised the ‘limited knowledge of workers’,⁶⁵⁰ particularly around the provision of trauma-informed care and cultural awareness. It was highlighted that while some service providers used child-centred and child rights approaches, the institutional cultures of child justice workforces typically did not allow for this, with punitive measures being the default position for first responders and custodial staff. Stakeholders explained that this was in part due to chronic workforce turnover and under-resourcing, limiting the sector’s ability to provide

basic services and supports, let alone upskill or implement the latest best practice.

(a) Punitive measures are the default

First responders and frontline service providers fail to use options which limit or prevent incarceration. The Aboriginal Legal Service (NSW/ACT) Limited stated:

Police often fail to use diversionary options with Aboriginal and Torres Strait Islander children and young people, those with a disability and from multicultural or multi-faith communities. Police discretion and practices in Australia often undermine diversion from the youth justice system and limit the rights of children and young people.⁶⁵¹

As highlighted in section 1.3, children who are in contact with both child protection and child justice systems are overrepresented in the child justice system. The Victorian Aboriginal Legal Service submitted that:

children in care are far more likely to experience criminalisation for behaviours that would not warrant legal interventions for children who are not in care ... this is because those who work in residential care facilities are not adequately trained to respond to behavioural incidents and instead default to calling the police ... residential care workers don’t have the skills required to respond to incidents so instead call the police to ‘teach the kids a lesson’ to deter similar behaviour in the future.⁶⁵²

The Northern Territory Aboriginal Justice Agency and Aboriginal Peak Organisations NT observed that ‘custodial staff too readily resort to the use of force and restraint techniques’.⁶⁵³ However, while it is widely acknowledged that trauma-

informed training can reduce the use of force on children in detention,⁶⁵⁴ it has been noted that there is little trauma informed training available, leading to a ‘trauma-ignorant’ workforce (see section 4.4).⁶⁵⁵

One stakeholder suggested that some police were refusing to believe that trauma-informed approaches even exist.⁶⁵⁶ This way of working has a direct impact on children in the child justice system, informing their expectations of the system and of their own safety in their community. Children and young people spoke about the impacts on them of negative interactions with police (see section 3.6).

I do not feel safe around police. I cannot trust the Police. I would not call Police if something is wrong because I think they have it out for me and I will be worried about getting hurt. I am more likely to try to take things into my own hands, which then leads to more crime ... even if I do complain, I do not think it will change.

One stakeholder said that the police needed to be called out for ‘discriminatory policing practices and outright discrimination’.⁶⁵⁷ They said that within the police force there is resistance to change, partly because of a ‘this is how we do it’ mentality, but also because of the power they have as gatekeepers within the system, and their political power.⁶⁵⁸

As noted in this report, research has shown that punitive measures are often ineffective in reducing reoffending and that restorative justice approaches that focus on rehabilitation and responsibility, and that address the underlying causes of offending behaviours, are more

effective in promoting positive outcomes. For example, a study by the National Child Traumatic Stress Network found that children and young people who received trauma-informed care had significantly lower rates of reoffending than those who received traditional punitive approaches.⁶⁵⁹ One submission from a young person said:

children who are new to crime are put in detention where they are introduced to repeat offenders. In detention they learn about more serious offending, their attitudes are influenced by older peers in detention. When they get out of detention, they get in contact with these repeat offenders and are likely to join and follow the more serious behaviour those peers engage in. Therefore, the younger children exposed to detention become the next generation of repeat offenders ... Detention turns children into criminals.⁶⁶⁰

The Youth Advocacy Centre submitted that the current punitive stance of governments will result in an increased rate of incarceration of children and young people.⁶⁶¹ A study from Victoria shows that there has been a decline in the use of diversionary practices by police, suggesting that ‘more diversion could have resulted in substantially less repeat offending’.⁶⁶²

(b) Workforce turnover and under-resourcing

Workforce turnover was described by some stakeholders as being a chronic problem,⁶⁶³ compromising institutional knowledge and children’s safety.

A largely casualised child justice workforce, with limited qualifications or experience makes standardised training difficult,⁶⁶⁴ and in turn, places children at risk of further harm.⁶⁶⁵ A casual and transitional workforce makes it more difficult to build relationships with children, and effectively support them.⁶⁶⁶ Workforce attrition and poor training compromises any efforts to ‘connect services and have family and

young people at the centre', and also means that services need to 'restart all the time'.⁶⁶⁷ The Community and Public Sector Union explained that for detention facility workers in particular, this high attrition was driven by poor working conditions and the self-perpetuating challenge of understaffed facilities.⁶⁶⁸ Assaults on staff and associated leave, poor mental health support despite vicarious trauma risks, and limited investment in training and upskilling for staff were submitted as key contributors.⁶⁶⁹

The unpredictability of funding can also contribute to attrition.⁶⁷⁰ For example, programs are sometimes piloted and then can disappear entirely, meaning the skills of staff, community linkages and accumulated body of practice experience are permanently lost. Similarly, when there are government delays in decision-making about the future of projects, staff and resources can be lost.⁶⁷¹ This issue led some stakeholders to suggest that reform will be difficult because capacity is not widely available.⁶⁷²

Stakeholders also noted that no reform to the child justice system can be achieved without the requisite workforce capacity.⁶⁷³ They explained that while the responsibility for realising reforms and improving outcomes for children is often borne by staff across the sector, high workloads and a lack of resources have created unsupportive conditions for implementation. One stakeholder explained how pressures on staff who were 'just doing what they could to get through the day' led to a continuation of the 'default position' and stymied meaningful change.⁶⁷⁴

Implementation of trauma-informed and culturally-safe interventions which require training and monitoring were described as challenging 'in a system grappling with consistent workforce "churn"... "change fatigue" brought on by multiple youth justice inquiries and reviews as well as the many traumatic stressors staff encounter in their everyday work'.⁶⁷⁵

5.4 Barrier: Lack of political commitment to evidence-based reform

There's no incentive for any federal politicians right now to do anything about this at a national level. There's just zero.⁶⁷⁶

(a) Poor leadership and lack of understanding

Stakeholders highlighted the lack of political will to reform the child justice systems across the federation. Save the Children contended that the dominant 'tough on crime' narrative inhibits action on reform,⁶⁷⁷ while others suggested that the lack of will is symptomatic of a broader resistance to systems change within the justice system,⁶⁷⁸ or a 'lack of strong leadership and commitment to change'.⁶⁷⁹

Some submissions have suggested that the paucity of commitment among politicians to improve the child justice system is due to a limited grasp of 'the scale of change required to their systems, operations and ways of working ...'.⁶⁸⁰ Relationships Australia also highlighted the 'blocked pipeline' of knowledge translation that makes evidence of what works inaccessible to governments and policy-makers.⁶⁸¹ They acknowledged that while there is evidence available, the unique systems across jurisdictions, and individualised reviews and assessments paint a 'complex scene of a fragmented youth justice system' and make it difficult for policy-makers to recognise similarities and implement necessary changes.⁶⁸²

(b) No accountability to act

The election cycle is a huge barrier, the solutions that work take time and if governments were responsible for how things looked in 20 years it would be approached differently.⁶⁸³

It is not just poor leadership that has inhibited substantive, child-centred changes to government policy and practice. Governments across Australia have been criticised for failing to act on recommendations from numerous inquiries and Royal Commissions,⁶⁸⁴ with no accountability for these successive failures.

As noted in section 1.2, a recent AIFS report showed that there had been at least 61 reports and inquiries into child protection and child justice between 2010-2022, producing 3,005 recommendations for reform of the systems.⁶⁸⁵ Moreover, it showed that only 2% of these recommendations pointed to the need to monitor, consider and/or address the recommendations arising from previous inquiries or reports.⁶⁸⁶ Further, AIFS noted that relevant governments responded to just over half (51%) of the reports and inquiries in some way.⁶⁸⁷

The very limited response by governments has been criticised by Dr Sharynne Hamilton and Dr Raewyn Mutch, who said:

the impunity and failure to implement recommendations resulting in ongoing mistreatment of children by and within justice systems can appear as intentional disregard of clear and detailed instructions to do differently; the harmful practices are malignant to the children involved with justice services for their lifetime. Ultimately, it demonstrates an ongoing lack of political will and courage to do things differently.⁶⁸⁸

Dr Garner Clancey and Laura Metcalfe suggest that the plethora of reports have created a ‘crowded policy space’, making prioritisation difficult.⁶⁸⁹ They conclude that ‘fatigue can arise in this context’, and that:

meaningful change is difficult to achieve at the best of times, let alone when confronted with a volley of recommendations arising from diverse agencies in a short period of time.⁶⁹⁰

This is in line with the views of one stakeholder, who pointed out that short-term political cycles mean that ‘governments balk at taking a child rights approach’,⁶⁹¹ which requires long term investment. Often, ‘they say they want to hear the voice but rarely follow through with the programs’.⁶⁹² Several stakeholders supported this view, saying that rights-based reform is outweighed by political considerations.⁶⁹³

Stakeholders have drawn attention to the fact that there is ‘ample evidence of positive outcomes in child justice reform, but any action based on that evidence is hindered by a lack of political will’.⁶⁹⁴

Youth justice is frequently politicised in such ways that short term calculations, populist imperatives and electoral anxieties carry more weight than scientific evidence, accumulated knowledge and the lessons that derive from practice experience/wisdom.⁶⁹⁵

The Northern Territory Legal Aid Commission contended that ‘people in power have neglected the evidence about what actually works to reduce crime’.⁶⁹⁶ The political will for long-term change that benefits children is not there, and there are no accountability mechanisms,⁶⁹⁷ such as an independent monitoring mechanism, to hold governments accountable for responding to inquiry recommendations and to the evidence. As one judicial officer said, it ‘requires political will to make the investments and make the changes that are required. It’s as simple and as difficult as that’.⁶⁹⁸

(c) Resistance to acting on the evidence

Concerted evidence-based action is limited among policy makers and some service providers, with inconsistency compromising ‘integrity and quality of practice’.⁶⁹⁹ One stakeholder suggested that it is ‘naïve’ to suggest that policymakers do not know the evidence.⁷⁰⁰ They do, but ‘it’s a broader political issue’, and broader actions that

target the drivers of crime are not prioritised. Another stakeholder described a paradigm within the system ‘where we know what to do but we don’t do it’,⁷⁰¹ due to resistance from governments. This can lead to ‘a lot of focus from NGO sector on trying to bash bureaucrats over the head with evidence’.⁷⁰²

One stakeholder argued that justice departments do not ‘have expertise or willingness to deal with child wellbeing and justice issues combined’.⁷⁰³ Others pointed out that there was often ‘resistance to change from management’.⁷⁰⁴

There may be resistance from within the justice system or other stakeholders who may be reluctant to shift from punitive approaches to more rehabilitative and supportive approaches.⁷⁰⁵

5.5 Barrier: Pervasive ‘tough on crime’ rhetoric

While there are some moderating voices, the media and political rhetoric in Australia is often dominated by harsh, punitive ‘tough on crime’ language, which has created a culture that magnifies ‘youth crime’ and demonises children. Stakeholders agree that the persistence of such narratives constitute a major barrier to child justice reform.

(a) Media and political sensationalism

Stakeholders expressed concerns about harmful media narratives depicting vulnerable children in contact with the justice system.⁷⁰⁶

Because of new technologies, there is a plethora of video footage available from police bodycams, closed-circuit television, and mobile phone videos on social media. Children’s offending is often sensationalised in the media, with techniques like repeatedly showing old footage when ‘youth crime’ topics are being discussed. Some images of children can include identifying

features and may depict them and others in distressing circumstances.

Media cycles can influence ‘reactive decision-making based on single incidents which receive intense media attention’.⁷⁰⁷ In these cases, the exceptions are ‘put forward to the public as the norm and that is the basis upon which the Government gets its social licence to progress punitive law reform’.⁷⁰⁸

Stakeholders said that governments respond to alarmist media-driven public sentiment about certain incidents with knee-jerk, unevidenced ‘tough on crime’ measures.⁷⁰⁹ Decision-making about critical policy and legislative reform then focuses on political rather than evidence-based policy outcomes.⁷¹⁰

For example, in March 2023, the Premier of Tasmania adopted ‘tough on crime’ rhetoric while on the campaign trail, announcing a new strike force to target ‘juvenile career criminals’.⁷¹¹ This was countered by the Tasmanian Commissioner for Children and Young People as showing ‘blatant disregard for the rights of children and our obligation as adults to care for them and to support their development’.⁷¹²

‘Tough on crime’ narratives dehumanise and demonise children and young people and fuel misguided assumptions about why children and young people offend.⁷¹³ One young person said that ‘the news just reports the “bad shit”, nothing about the health of kids who do crime or those that are at-risk of doing crime’. There is failure to see crime committed by children as a symptom of social determinants and no impetus to prioritise family wellbeing as the single most protective factor in the life trajectory of children.⁷¹⁴

However, techniques used by the media in their reporting on children in contact with the law can give rise to a more generalised fear within sections of the community, which can be exploited by politicians and media conflating community safety with punishment and detention of children. This sentiment can be intensified through social media platforms and lead to vigilante sentiments and behaviour, particularly towards First Nations communities.⁷¹⁵

Media discourse ‘both reflects and influences public discourse’,⁷¹⁶ and child justice gets caught in a ‘tough on crime’ cycle,⁷¹⁷ or ‘as some kind of bogeyman’.⁷¹⁸ Media codes of practice generally include safeguarding the privacy of children, but they do not include explicit protections for children in contact with the child justice system. Reform in this area is difficult due to the complex regulatory framework around media. Furthermore, enforcement of existing codes of practice and codes of conduct is largely reliant on complaints processes, not proactive protection.

The politicisation of youth, justice and youth crime in general is a huge barrier to reform.⁷¹⁹

Stakeholders called for more effective guidelines or regulation of the media,⁷²⁰ which would need to be consistent across broadcasters, press outlets and social media platforms.⁷²¹ This could be in the form of national guidelines or a statement of general principles, grounded in child rights, covering issues including privacy, reporting on people in distress, and child vulnerability in the justice system. These could be informed by existing guidelines, such as those on family, domestic and sexual violence,⁷²² which guard against victim blaming, industry codes of practice,⁷²³ and the United Nations Children’s Fund (UNICEF) guidelines and principles for journalists reporting on children’s issues.⁷²⁴

Academics also suggested that the media would be important in any public education efforts, and that there would be ‘potential for academics to use the media in a positive way in this space’.⁷²⁵

(b) Community attitudes

A number of stakeholders spoke about the role of community attitudes as a barrier to child justice reform. Micah Projects, for example, argued that ‘the perpetuation of sensationalised messaging and misinformation through the media has negatively impacted the community’s relationship with young people’.⁷²⁶ Another

stakeholder suggested that ‘people who don’t live and breathe this work every day’ do not understand what drives children to offend, leaving ‘the view that these young people are out of control and they need a harsh consequence to learn from their behaviour’.⁷²⁷

Phronesis Consulting submitted that:

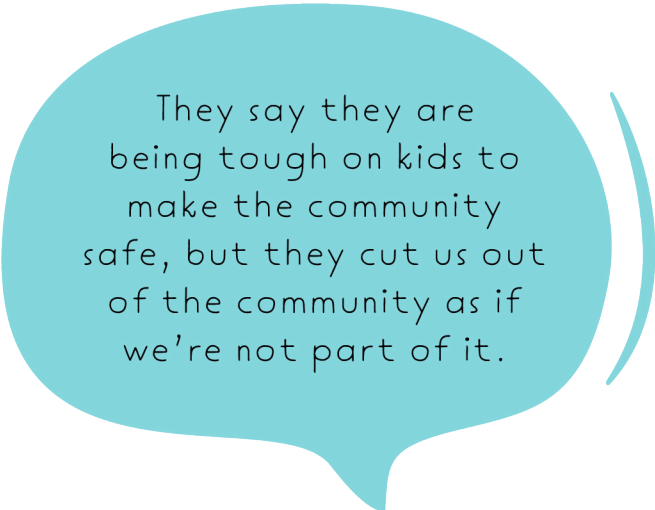
The majority of the general population has limited understanding as to the ineffective nature of punitive measures, particularly with regards to childhood development and behaviour and this needs to be addressed in order to gain more public support for such measures to be taken. Public support would also address the ability of different political influences and agendas which are often exacerbated by media reporting.⁷²⁸

It is beyond the scope of this project to measure community attitudes. However, research by the Insight Centre suggests that there is some community disillusionment with ‘tough on crime’ policies.⁷²⁹ Evidence of non-punitive solutions reducing recidivism,⁷³⁰ which could actually help to strengthen community safety,⁷³¹ is not as prevalent in media reporting as the sensationalised reporting of isolated crimes.

While community concerns about personal safety are real and the voices of victims need to be heard, victims of crime advocates interviewed for this report also expressed frustration that their calls for more effective prevention and early intervention were not being acted on by governments. One stakeholder explained that governments have ‘got to do more’ to provide early intervention and meet basic needs of children at ‘the front end’.⁷³²

However, fear within sections of the community and negative societal attitudes can be exploited by politicians for short term political gain. Longer-term policy reform based on evidence is a ‘harder sell’, and so the public doesn’t get to hear what needs to be done, based on evidence of what works to reduce youth crime and keep the community safer.

In consultations, one child said that ‘politicians just want to raise awareness about the laws they are making to make themselves look good’. Rather than seeking solutions that involve all of the community – including children who offend – the political response is to cut out the child, irrespective of their needs and rights, under the guise of keeping the community safe.



They say they are being tough on kids to make the community safe, but they cut us out of the community as if we're not part of it.

Employing a child rights-based approach and focusing on community safety are not opposing goals.⁷³³ A mindset that pits community safety against child rights fails to recognise that child wellbeing is critical for ‘short-term and sustained community safety’.⁷³⁴

The politics of fear is detrimental to the wellbeing of marginalised children. It prevents rehabilitation and does not foster restorative justice between victims and offenders. All that may be gained by this rhetoric is votes.⁷³⁵

In the absence of ‘greater investment in multi-disciplinary research that includes public education intervention’,⁷³⁶ this barrier will continue to dominate.

(c) Detention as the default measure

The over-use of incarceration in the NT has been fuelled by a politicised approach to justice policy.⁷³⁷

Negative attitudes and the persistent youth crime crisis narrative often reinforce the idea that incarcerating children is the only way to break the cycle of crime,⁷³⁸ and for them to ‘learn their lesson’.⁷³⁹ Some argue that they should be detained ‘for their own good’, in ‘correctional facilities’.⁷⁴⁰ ‘Tough on crime’ often becomes synonymous with ‘detention’. Detention as a consequence is easily understood by the public.

It is the expression of ‘carceral logic’, which is ‘a punishment mindset that views retribution and control, including by physical constraint (e.g. imprisonment), surveillance (e.g. electronic monitoring via ankle bracelet), or violence, as central components of a public safety system’.⁷⁴¹ Historically, deprivation of liberty has been the logical response to crime, irrespective of the age or capacity of the offender. Crime is dealt with by removing the offender from the community.

This often leads to the public perception that detention is the only way to change the behaviour of children and make the community safer, which may also explain the refusal of bail and a reluctance to prioritise diversionary practices.

The Office of the Children’s Commissioner in the Northern Territory in its submission pointed out that these perceptions seem to be particularly strong in relation to First Nations children.⁷⁴² For example, the overuse of incarceration in the Northern Territory has been fuelled by a politicised approach to justice policy,⁷⁴³ with successive Northern Territory governments from each side of politics competing to promote a ‘tough on crime’ agenda and labelling options such as diversion and therapeutic detention models as being ‘soft on crime’.⁷⁴⁴ There may be no votes for politicians promoting child rights,⁷⁴⁵ but there is a perception that there are ‘lots of votes in locking children up’,⁷⁴⁶ particularly First Nations children.

Relationships Australia argued that First Nations children are often used as political scapegoats, weaponised in political attempts to appear tough on crime.⁷⁴⁷ Often these approaches are knee-jerk reactions to heightening community or media

opinions rather than evidence-based responses to social issues.⁷⁴⁸

Detention is considered a fundamental aspect of child justice systems in Australia. Ongoing investment in detention — illustrated by the recent opening of Cherry Creek Youth Justice Precinct in Victoria,⁷⁴⁹ the reopening of the refurbished Alice Springs Youth Detention Centre,⁷⁵⁰ the development of a new child justice facility in Darwin,⁷⁵¹ and the announcement of a new child detention facility at Woodford in Queensland⁷⁵² — enforces the paradigm. Australia continues to move in the opposite direction to other countries that have explored alternative approaches (see sections 4.1, 4.2 and 4.3).

(d) ‘Responsibilisation’ of children

The ‘tough on crime’ language has the effect of blaming children directly for their crimes. It overlooks research about the developing capacity of the child and the notion that a child’s capacity increases as they approach maturity. The ‘tough on crime’ language ‘responsibilises’ children.⁷⁵³

Orygen’s submission points out that the singular focus on individual young people and their actions ‘ignores the systemic issues that impact communities, families, and young people’.⁷⁵⁴ The submission goes on to suggest that this language has the effect of politicising ‘responsibilisation’ and effectively absolving government of their role and duty to children.

One stakeholder has suggested that it is politically advantageous for politicians to use this rhetoric to shift blame away from systems and institutions within their spheres of influence. They argue that this occurs because ‘it’s not an easy sell for politicians to say they have failed those kids, those families’.⁷⁵⁵ While politicians ‘should be accountable for where they have failed, including the political motivations for failed approaches,’ politicians address upstream system failures ‘by shifting accountability onto our most marginalised individuals, through our policing, other first responders, courts and prisons’.⁷⁵⁶

For example, in the debate on raising the minimum age of criminal responsibility, the Leader of the Opposition in the Northern Territory is calling for the age to be lowered again so that children ‘are accountable’ for their actions.⁷⁵⁷ Likewise, the Victorian Shadow Attorney-General said that ‘raising the age of criminal responsibility to 12 will mean that 10 and 11-year-olds who knowingly commit crimes ... will have no legal accountability for their actions’.⁷⁵⁸

The pervasive ‘tough on crime’ rhetoric demonises children, and excuses governments that have failed to reform the systems that are meant to help children and their families.

5.6 Barrier: The rights and wellbeing of children are not a national priority

Children and young people are not respected or taken seriously as rights-holders.⁷⁵⁹

One of the key barriers to reform of child justice systems in Australia is a culture that does not prioritise the rights and wellbeing of children. This culture is reflected in our persistent failure to embed children’s rights in laws, policies and practice. Despite Australia’s obligations to protect children’s rights set out the CRC, there is limited implementation of child rights into Australian laws, and, in practice, the value of applying a child rights approach to policy is not well understood. Further, governments successively fail to recognise the needs of children most marginalised, continuing to apply harmful and punitive laws and policies.

(a) Limited commitment to international child rights obligations in laws and policies

Despite ratifying the CRC in 1990, Australia has not created legislation that entrenches the CRC in our laws and policies, unlike some other Western countries (see section 2.4).

For example, despite being one of the key principles under the CRC, the best interests of the child principle (Article 3, CRC), is inconsistently applied in laws and policies that relate to child justice and child wellbeing across Australia (see section 4.6). Stakeholders maintain that governments in Australia are ineffective in applying this principle in policy, and do not take the commitment seriously.⁷⁶⁰ One submission pointed out that while the best interests principle is referred to in the *National Framework for Protecting Australia's Children 2021-2031*,⁷⁶¹ it fails to define what it is and does not discuss how to implement it.⁷⁶²

Little attention is given to understanding and educating state actors about the Convention [on the Rights of the Child], and ways for effectively enacting the principles of the Convention in federal and state government systems. This is a critical gap in the education of those responsible for administering child protection, criminal justice, health, education, and social services.⁷⁶³

The submission also questioned whether obligations under the CRC are well understood, particularly by those who have direct contact with children — social workers, teachers, police, and court workers — arguing that the principle of ‘best interests of the child’ is not applied in practice.⁷⁶⁴ For example, only half of First Nations children in out-of-home care are placed with First Nations carers,⁷⁶⁵ despite obligations to adhere to the Aboriginal Child Placement Principle, and in keeping with Articles 7 and 14 of the UNDRIP, and Article 30 of the CRC.

We see and hear very little that truly pays attention to the ‘best interests’ of children.⁷⁶⁶

Australia’s limited commitment to child rights is also demonstrated by our failure to implement the recommendations of the UN Committee, including removing the reservation to Article 37(c) of the CRC, and ratifying the Optional Protocol on a Communications Procedure (see section 4.6).

This lack of engagement with international commitments shows that there is a poor culture of upholding child rights in Australian policymaking. This absence:

manifests in the ongoing significant violations of rights seen in youth justice and child wellbeing broadly across Australia, and in the lack of direction and accountability by governments to address these violations.⁷⁶⁷

(b) Failure to recognise harmful aspects of detention

Although there have been decreases in the numbers of children in detention over the last five years (section 1.3), the principle of last resort is not being implemented in any sustainable way and is actively undermined by bail and other laws (see section 4.6).

Despite what we know about the harmful aspects of incarcerating children, we continue to exercise ‘carceral logic’ and a default punitive approach. Detention is applied as a first rather than as a last resort, suggested by the fact that 80% of children in child justice detention are still unsentenced.⁷⁶⁸

Incarceration has negative outcomes for children⁷⁶⁹ and makes the community less safe.⁷⁷⁰ According to one submission, punitive measures:

- can trigger or exacerbate their trauma and lead to further disengagement from society

- can deteriorate youth mental health by increasing feelings of isolation, hopelessness, and depression
- can undermine the potential for rehabilitation and positive outcomes for young people.⁷⁷¹

Save the Children submitted that incarcerating children results in the criminal justice system itself retraumatizing children while failing to respond to the impacts of trauma, medical and developmental challenges, and institutional racism.⁷⁷² These adverse childhood experiences and intergenerational trauma ‘correlate with worse health and social outcomes across their life course’.⁷⁷³

Furthermore, stakeholders spoke of how the use of carceral logic carries additional historical weight for First Nations people — from colonial policies of control through to the Stolen Generations to the over-surveillance of children and young people⁷⁷⁴ — which affects other areas of their lives, such as in the workplace.⁷⁷⁵ This is regarded as ‘further punishment of Aboriginal and Torres Strait Islander families and their experiences of disadvantage, vulnerability and trauma’.⁷⁷⁶

(c) A culture of punishing the most marginalised children

Acknowledging the social drivers of contact with the justice system as outlined in section 1.3, stakeholders identified the ways in which the child justice system exacerbates disadvantage and vulnerability. Dr Sharynne Hamilton and Dr Raewyn Mutch highlighted that:

Talking about youth justice obfuscates violations and silences the lived reality. Youth justice is not about youth nor is it about justice. The term youth justice obfuscates that it is children who are incarcerated. Children as young as 10 years. There is no justice for incarcerated children; their lived realities have been iterative injustices across their life-course and across nearly every domain of their lives. Incarcerating children does not address the

embodied harm of their lived injustices nor remediate the behavioural consequences of those lived harms.⁷⁷⁷

Orygen submitted that:

Persisting with the youth detention model is not going to solve the systemic issues that contribute to offending behaviour. Building new detention centres based on the same out-dated model is not going to change the experience of young people or staff. The rhetoric of providing trauma-informed care is empty as long as the environments themselves are trauma-inducing.⁷⁷⁸

Save the Children argued that the system is ‘not grounded in an understanding of child development and the impacts of trauma’.⁷⁷⁹ A 2018 report, *Exploring the Potential of Justice Reinvestment in Cowra* concluded that ‘until funds are excised out of policing and the criminal justice systems, and transferred to community-based social services, health and education services, the ‘best interests of the child’ will not even begin to be addressed’.⁷⁸⁰

One stakeholder suggested that this shift is complicated by different understandings of prevention and early intervention.⁷⁸¹ Prevention and early intervention must address the social determinants, and currently this is not occurring.

Overcoming these and other barriers to reform will require bold leadership that is guided by evidence and a commitment to human rights. These barriers are persistent and entrenched and will not be addressed by a business-as-usual approach.



6 Conclusion

Current approaches to addressing ‘youth crime’ in Australia demonstrate that we have misunderstood the core nature of this problem. By helping earlier, maltreatment of children in our communities and in the child justice system can be prevented—we cannot police our way out of this situation.

Children and young people in this report spoke about how offending by children can be prevented. Their insights reinforce that crime committed by children is a symptom of childhood needs not being met.

As one child said during the consultations, adults should ask children who commit offences ‘why they are doing something’ and ask ‘how can I help?’.

Children and young people’s solutions were about improving their wellbeing across all aspects of their lives. Many spoke about wanting family support and a safe home. They want to feel they belong at school, and to have training opportunities and to get a job. Some described accessible health services, including mental health support. They wanted to be connected to their culture and to be active participants in their communities. Children and young people also wanted to feel safe and valued in their community. They want to feel they belong.

However, as described in this report, many children in the child justice system have multiple and intersecting needs, such as poverty, homelessness, neurodevelopmental disabilities, learning problems and mental health issues. They often come from families who are struggling with intergenerational disadvantage, marginalisation, racism, and complex problems like family, domestic and sexual violence, and substance or gambling addictions.

These are our community’s most vulnerable children, and we have been unable to help them because of upstream systems failure.

Health and education, which are meant to be universal systems, are out-dated and not fit-for-purpose for children with multiple and intersecting needs and their families. The children in this report, who most need help, are underrepresented in those upstream systems, and they miss out on getting help. For example, if a child is suspended from school, or has disengaged from school because of learning problems, they are lost to the education system. We need to ask ourselves why do we accept such health and education inequity in Australia, while continuing to spend extraordinary amounts on criminalising the children who have fallen in the gaps?

Business-as-usual methods perpetuate intergenerational harms with increasing costs for the community in the future.

Offending by children is a symptom of underlying causes we are failing to address. A public health approach to address the social determinants of justice requires upstream reform to improve child health, learning and wellbeing.

This report points to the need for governments and the community to pivot towards a different approach. Transformational change is needed. This will require making child wellbeing a national priority, as we have done for other crises, such as ‘Women’s Safety’.

Reform of child justice systems requires all jurisdictions to come together in a National Taskforce for reform of child justice systems to build a national roadmap for reform based on evidence. Effective evidence-based reform would be supported by establishing a Minister for Children, a Ministerial Council for Child Wellbeing, and legislation to strengthen accountability for the rights and wellbeing of Australia's children.

A national approach to child justice and wellbeing reform requires political will at all levels, and a willingness to see that this requires whole-of-government commitment.

The human rights and wellbeing of children must be made a national priority to 'create a more humane and socially just system of youth justice in Australia',⁷⁸² and in doing so create a safer community for us all.



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Section 6: Conclusion

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Appendices

Appendix 1: Key child rights relevant to child justice in Australia

The **UN Convention on the Rights of the Child** (CRC) is the main human rights treaty for children. Four main principles guide the CRC:

	Every child has to the right to non-discrimination (art 2)
	Every child has the right to have their best interests made a primary consideration in all decisions that affect them (art 3)
	Every child has the right to life, survival and development (art 6)
	Every child has the right to be heard and to have their views taken into account in decisions that affect them (art 12)

Some other important rights for children involved in child justice (in the CRC and other treaties):

	Protection from violence, abuse, including sexual abuse, and neglect (art 19)
	Special care and protection when separated from families (art 20)
	Rights of children with disability to special care and assistance (art 23) including in legal matters (art 13, CRPD)
	Right to the highest attainable standard of health (art 24)
	Right to benefit from social security (art 26)
	Right to adequate standard of living, including food, clothing and housing (art 27)
	Right to an education (art 28) that helps them develop their personalities, talents and abilities (art 29)
	Rights of indigenous and minority children to enjoy their own culture, religion and language (art 30)
	Right of indigenous peoples to self-determination (art 1, ICCPR; art 1, ICESCR; art 3, UNDRIP)
	Right to rest, play and take part in recreational, cultural and artistic activities (art 31)
	Protection from harmful drugs, including using, making, carrying or selling them (art 33)
	No torture or other cruel, inhuman or degrading treatment or punishment (art 37(a))
	Detention only as a measure of last resort and for the shortest appropriate time (art 37(b))
	When deprived of liberty, the right to have their age taken into account, including being held separately from adults and being able to stay in contact with family (art 37(c))
	Age-appropriate measures that promote the physical and psychological recovery and social reintegration of a child victim (art 39)
	When accused or convicted of a crime, the right to be treated in a way that promotes a child's dignity and self-worth, with respect for human rights, and that takes into account their age and the need for their reintegration into society (art 40(1))
	Children accused or convicted of a crime should be dealt with without resorting to judicial proceedings (art 40(3)(b)) and there should be a variety of appropriate and proportionate measures available (art 40(4))
	A minimum age of criminal responsibility is established (art 40(3)(a))

International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of Persons with Disabilities (CRPD), United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Appendix 2:

Key international human rights treaties and instruments relevant to child justice in Australia

Relevant **international human rights treaties** or **declarations** that Australia has ratified or agreed to uphold:

- *Convention on the Rights of the Child (CRC)*¹
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*²
- *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*³
- *International Covenant on Civil and Political Rights (ICCPR)*⁴
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*⁵
- *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*⁶
- *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*⁷
- *Convention on the Rights of Persons with Disabilities (CRPD)*⁸
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*⁹

Relevant **international standards** and **rules** that provide guidance on international treaties:

- *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*¹⁰
- *United Nations Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules)*¹¹
- *United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*¹²
- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*¹³
- *United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)*¹⁴

Endnotes

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Appendix 3: List of key state, territory and commonwealth government child justice related strategies and initiatives

Jurisdiction	Key child justice strategies and examples of other interrelated initiatives
ACT	<ul style="list-style-type: none"> ■ ACT Closing the Gap Implementation Plan ■ ACT Aboriginal and Torres Strait Islander Agreement 2019–2028 ■ Next Steps for Our Kids 2022–2030, ACT strategy for strengthening families and keeping children and young people safe, ACT Government, June 2022 ■ RR25BY25 Reducing Recidivism in the ACT by 25% by 2023, 2020 to 2023, Justice and Community Safety, ACT Government
NT	<ul style="list-style-type: none"> ■ Northern Territory Youth Justice Strategy 2023–2033, Territory Families, Housing and Communities, NT Government ■ Closing the Gap – NT Implementation Plan ■ 10-Year Generational Strategy for Children and Families in the NT (2023–2033) ■ NT Aboriginal Justice Agreement 2021–2027 ■ Education NT Strategy 2022–2031 ■ NT Child and Adolescent Health and Wellbeing Strategic Plan 2018–2028 ■ NT Disability Strategy 2022–2032 ■ NT Housing Strategy 2020–2025
NSW	<ul style="list-style-type: none"> ■ Youth Justice Disability Action Plan 2021–2024 ■ Department of Justice Multicultural Plan 2022–2025 ■ NSW Implementation Plan for Closing the Gap ■ National Strategic Framework for Aboriginal and Torres Strait Islander Peoples’ Mental Health and Social and Emotional Wellbeing 2017–2023
VIC	<ul style="list-style-type: none"> ■ Youth Justice Strategic Plan 2020–2030 ■ Wirkara Kulpa – Aboriginal Youth Justice Strategy 2022–2032 ■ Burra Lotjpa Dungaludja – Victorian Aboriginal Justice Agreement ■ Korin Korin Balit-Djak, Aboriginal health, wellbeing and safety strategic plan 2017–2027 ■ Wungurilwil Gapgapduir Aboriginal Children and Families Agreement ■ Wungurilwil Gapgapduir Aboriginal Children and Families Agreement Strategic Action Plan ■ Victorian Closing the Gap Implementation Plan ■ Marrung; Aboriginal education plan 2016–2026 ■ Balit Murrup Social and Emotional Wellbeing Framework 2017–2027 ■ Victorian Aboriginal Economic Development Strategy 2013–2020 ■ Dhelk Dja Safe Our Way: Strong Culture, Strong Peoples, Strong Families Agreement 2018–2028

Jurisdiction	Key child justice strategies and examples of other interrelated initiatives
QLD	<ul style="list-style-type: none"> ■ Working Together Changing the Story: Youth Justice Strategy 2019–2023 ■ Youth Justice Framework for Practice (June 2020) ■ Our Way – A generational strategy for Aboriginal and Torres Strait Islander children and families (2017–2037) ■ Queensland Closing the Gap Implementation Plan
SA	<ul style="list-style-type: none"> ■ Youth Justice State Plan (2020–2023) ■ SA Government Partnership Agreement on Closing the Gap ■ South Australia’s Implementation Plan for the National Agreement on Closing the Gap ■ Youth Action Plan 2024–2027 (under development by the Department of Human Services)
TAS	<ul style="list-style-type: none"> ■ Youth Justice Blueprint 2024–2034 – Keeping children and young people out of the youth justice system ■ Keeping Kids Safe, A plan for Ashley Youth Detention Centre until its intended closure (as at 31 July 2023) ■ Tasmanian Housing Strategy 2023–2043 and Action Plan 2023–2043 ■ Tasmanian Implementation Plan for Closing the Gap (2023–2027)
WA	<p>At Risk Youth Strategy 2022–2027</p> <ul style="list-style-type: none"> ■ Young People’s Mental Health and Alcohol and Other Drug Use: Priorities for Action 2020–2025 ■ State Disability Strategy 2020–2030 ■ All Paths Lead to a Home: Western Australia’s 10-Year Strategy on Homelessness 2020–2030 ■ WA Housing Strategy 2020–2030 ■ Closing the Gap Jurisdictional Implementation Plan ■ Aboriginal Empowerment Strategy 2021–2029 ■ Suicide Prevention Framework and Action Plan 2021–2025 ■ Aboriginal Community Controlled Organisation Strategy 2022–2032

Key Commonwealth strategies and initiatives related to child justice

Safe and Supported – the National Framework for Protecting Australia’s Children 2021–2031

Australia’s 10-year strategy to reduce the rates of child abuse and neglect and its intergenerational impacts.

National Plan to End Violence against Women and Children 2022–2032

The National Plan sets out the overarching national policy framework that will guide actions towards ending violence against women and children over the next 10 years.

National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030

The National Strategy is a 10-year, whole-of-nation policy framework for preventing and responding to child sexual abuse in all settings.

National Agreement on Closing the Gap (2020)

The National Agreement commits all Australian governments to change how they work with Aboriginal and Torres Strait Islander peoples and improve life outcomes, equal to all Australians.

National Action Plan for the Health of Children and Young People 2020–2030

This National Action Plan provides national approach to improving the health outcomes of all children and young people.

National Children’s Mental Health and Wellbeing Strategy (2021)

The National Children’s Mental Health and Wellbeing Strategy focuses on children from birth through to 12 years of age and outlines the requirements for an effective system of care for children.

National Fetal Alcohol Spectrum Disorder (FASD) Strategic Action Plan 2018–2028

This Strategic Action Plan aims to reduce the prevalence and impact of FASD in Australia.

National Drug Strategy 2017–2026

The National Drug Strategy provides a framework for preventing and minimising alcohol, tobacco and other drug related health, social and economic harms.

Australia’s Disability Strategy 2021–2031

Australia’s Disability Strategy recognises that all levels of government are responsible for supporting people with disability, and provides national leadership towards greater inclusion of people with disability.

National Aboriginal and Torres Strait Islander Health Plan 2021–2031

The Plan is the main policy document to guide all action to improve health and wellbeing outcomes for Aboriginal and Torres Strait Islander people. In alignment with the National Agreement on Closing the Gap (July 2020) this includes a strong focus on:

- identifying opportunities to strengthen and prioritise the community-controlled health sector
- outlining the necessary mechanisms for mainstream health services to provide culturally safe and responsive care.

Key Commonwealth strategies and initiatives related to child justice

Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability (2017)

The Plan aims to enable Aboriginal and Torres Strait Islander people with disability to achieve improved life outcomes and overall social, emotional, cultural and economic wellbeing.

Early Years Strategy 2024–2034

The Australian Government has developed an Early Years Strategy, which sets out the Government's vision to best support Australia's children and their families.

National School Reform Agreement (2019–2023, extended until 31 December 2024) (Department of Education)

The National School Reform Agreement is a joint agreement between the Commonwealth, States and Territories to lift student outcomes across Australian schools.

Appendix 4:

Historical overview of Australia's child justice system

Colonisation of Australia began in New South Wales in 1788, a territory which included the future states of New South Wales, Victoria, Queensland, Tasmania and parts of South Australia.¹

As such, Australia adopted many of the laws in force in England, including the laws of the criminal justice system, which 'made few concessions to youth'.² Children who committed offences were treated the same as adults; they were tried in adult courts and generally subject to the same penalties. Thus, there was no specific legislation or procedures for dealing with children as they were not recognised as a separate or distinct legal group.

The most important concessions which the English law made to children were expressed in two common law presumptions.³ There was a irrebuttable presumption that a child under seven years was incapable of committing a crime, and a rebuttable presumption (known as *doli incapax*) that applied to children between 7 and 14 years to the same effect unless the prosecution could prove that the child understood the act to be wrong.⁴

As children convicted of crimes were generally liable to the same penalties as adults, available records show they were executed, flogged, sentenced to transportation or to work in road gang's or imprisonment.⁵ In the absence of adequate data determining the actual numbers of children imprisoned during that early period, from the available figures it seems that many children were incarcerated for vagrancy (a crime of poverty) rather than for substantive crimes.⁶

It was not until the mid-nineteenth century that Australia saw movement toward treating children differently from adult offenders. Influenced by the British reformatory movement

thereby adapting its policies to local conditions, movements towards establishing a separate criminal justice system for children began with the introduction of the *Infant Convicts Act 1849* (13 Vic.No.21) which changed how courts heard offences related to them. This legislation applied to children aged under 19 years convicted of a felony or misdemeanour, whereby they could be assigned by the Supreme Court to persons willing to provide for their maintenance and education.

Shortly thereafter, the *NSW Juvenile Offenders Act* (14 Vic.No.2) 1850 led to further changes, the purpose of which was to ensure 'the more speedy trial and punishment of juvenile offenders (14 Vic.No.2)'.⁷ The Act provided for summary conviction of children under 14 years charged with larceny and associated offences which 'allowed for different and lesser penalties to be applied to juveniles convicted of larceny than were applied to adults for the same crimes'.⁸ The objective of this legislation was to reduce the delay between a juvenile's offence and trial and 'by avoiding long periods of remand in custody it was sought to reduce corrupting contacts with adult prisoners'.⁹

Between 1863-1874, another significant change occurred in Australia, with most jurisdictions implementing industrial and reformatory school Acts which established industrial schools for 'neglected' children and reformatory schools for convicted children.¹⁰ However, reformatories and industrial schools were often combined, which undermined the distinction between 'neglected' children and young offenders.¹¹ Thus, 'the mixing of welfare and criminal cases within the systems of detention became the hallmark of dealing with young people in the juvenile justice system well into the contemporary period'.¹²

The late nineteenth century saw the introduction of separate children's courts across Australia: in South Australia in 1895 (which also applied to the Northern Territory); New South Wales and Tasmania in 1905; Victoria in 1906, and Queensland and Western Australia in 1907. These courts were established to ensure that children were tried separately from adults and that they were dealt with in a more therapeutic manner.¹³ The legislation establishing these courts gave them jurisdiction to hear criminal matters (youth crime) and welfare matters (neglected children).¹⁴

Of note, the separation of criminal from welfare matters occurred in Australia from the late 1970s. Until the 1980s, children were deemed 'at risk' because of behaviours such as truancy and running away were dealt with by the Children's Courts in accordance with the relevant state and territory legislation. This meant that these children could be dealt with at court and

detained 'for their own good' in 'correctional facilities', together with those who were charged with criminal offences.¹⁵ The 1980s saw the paradigm shift in all state and territory children's courts from this 'welfare' or 'best interests' model to a 'justice' model, otherwise known as 'needs of the child' to the 'deeds of the child'.¹⁶ This shift was due to 'well based concerns that children with 'welfare needs' were receiving longer, more punitive and more intrusive sentences than those who had committed criminal offences.'¹⁷ The shift to a justice model in Australia occurred at about the same time as similar moves in other common law jurisdictions, such as in England, Wales, Canada and the United States of America.¹⁸

Overall, the reforms which took part in the latter half of the 19th century and early 20th century laid the foundations for Australia's children's courts and how children are dealt with more broadly under the criminal justice system.

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- 16 Judy Cashmore, 'Juvenile Justice: Australian Court Responses Situated in the International Context' in Rosemary Sheehan and Allan Borowski (eds), *Australia's Children's Courts Today and Tomorrow* (Springer, 2013) 198.
- 17 Judy Cashmore, 'Juvenile Justice: Australian Court Responses Situated in the International Context' in Rosemary Sheehan and Allan Borowski (eds), *Australia's Children's Courts Today and Tomorrow* (Springer, 2013) 198.
- 18 Judy Cashmore, 'Juvenile Justice: Australian Court Responses Situated in the International Context' in Rosemary Sheehan and Allan Borowski (eds), *Australia's Children's Courts Today and Tomorrow* (Springer, 2013) 199.

Appendix 5: Methodology

PANEL framework

A human rights-based approach guided all aspects of this project. The most common description of a human rights-based approach is the PANEL framework:

PANEL Principles: A human rights-based approach



Participation: everyone has the right to participate in decisions which affect their lives. Participation must be active, free and meaningful, and give attention to issues of accessibility, including access to information in a form and a language which can be understood.



Accountability: accountability requires effective monitoring of compliance with human rights standards and achievement of human rights goals, as well as effective remedies for human rights breaches. For accountability to be effective there must be appropriate laws, policies, institutions, administrative procedures and mechanisms of redress in order to secure human rights. This also requires the development and use of appropriate human rights indicators.



Non-discrimination and equality: a human rights-based approach means that all forms of discrimination in the realisation of rights must be prohibited, prevented and eliminated. It also means that priority should be given to people in the most marginalised or vulnerable situations who face the biggest barriers to realising their rights.



Empowerment: everyone is entitled to claim and exercise their rights and freedoms. Individuals and communities need to be able to understand their rights and to participate fully in the development of policy and practices which affect their lives.



Legality: a human rights-based approach requires that the law recognises human rights and freedoms as legally enforceable entitlements and the law itself is consistent with human rights principles.

How the consultations were safe for children

The Commission's Child Safety and Wellbeing Policy guides all its activities involving children, young people, and families. It is available at: <https://humanrights.gov.au/our-work/commission-general/child-safety-and-wellbeing-policy-2020>. The Policy is based on the National Principles for Child Safe Organisations, developed by the former National Children's Commissioner (NCC), and endorsed by all states and territories.

The Commission's Child Safety and Wellbeing Policy covers core processes and procedures that must be complied with by staff, including seeking consent, involving families and communities, respecting equity and diversity, ensuring staff are suitable and supported, child-focused complaints systems, disclosure and reporting, staff training, and ensuring safe physical and online environments.

All staff working on this project held New South Wales Working with Children Checks.

Consistent with the Commission's Child Safety and Wellbeing Policy, the Child Safety Risk Assessment tool, developed by the Commission for organisations to comply with the National Child Safe Principles, was applied to this project.

Methodology for children's participation

Consultations were guided by the Lundy model of child participation (Lundy model).¹ This model takes a child rights approach by engaging in ways which effectively implement the intricacies of article 12 of the United National Convention on the Rights of the Child.

Research undertaken by Doel-Mackaway with Aboriginal children and young people in the Northern Territory found that Aboriginal children wanted their parents and Elders in their community to be approached before seeking to engage directly with them.²

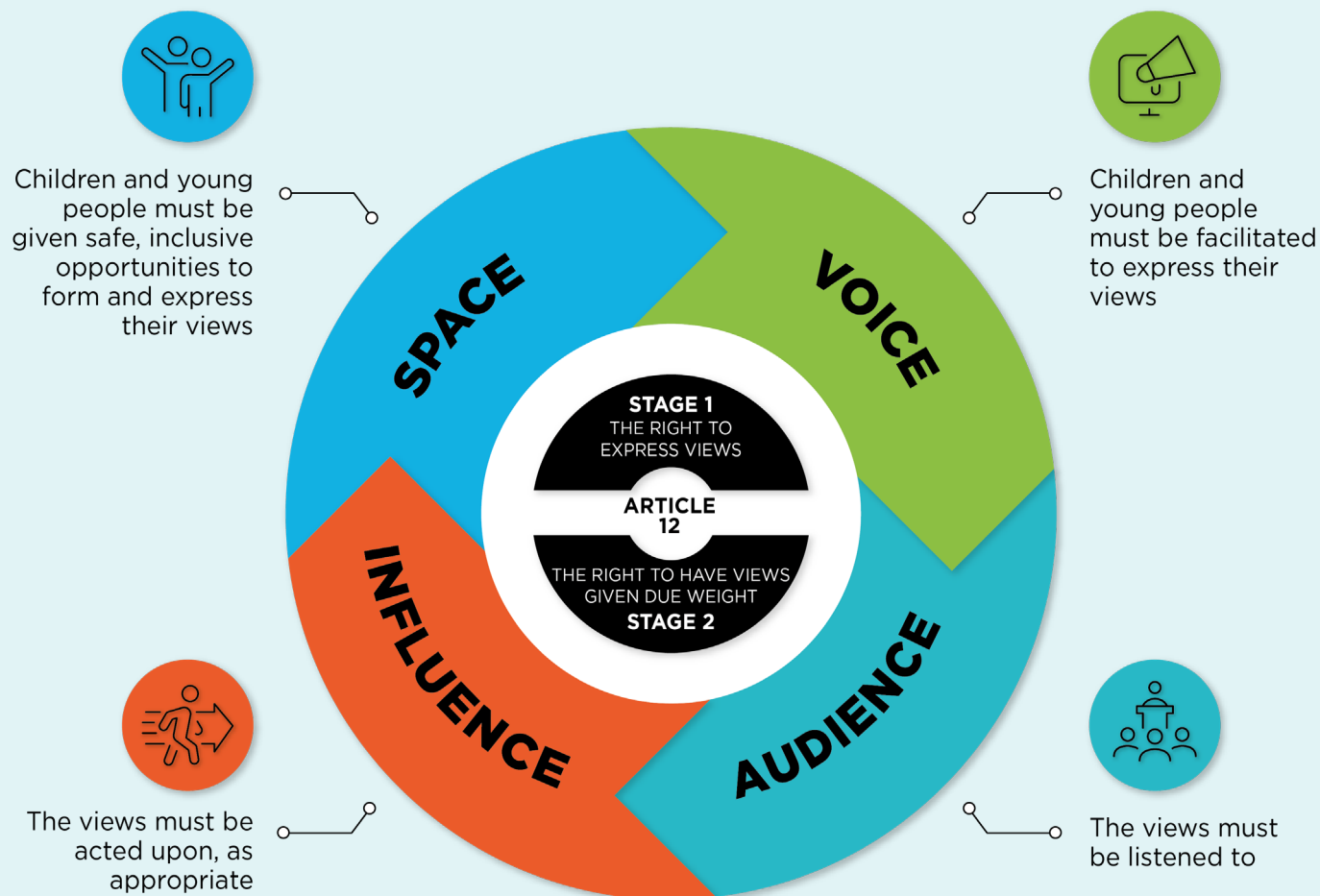
These children and young people spoke about protocols to follow where governments wish to talk with Aboriginal children and young people. These included writing a letter to parents, to an Elder in the community or to the school, indicating they want to talk with Aboriginal children and young people.³

These protocols were followed for these consultations. Making contact through service providers already working with and supporting children and families also ensured that prior contact was made with key community stakeholders, including discussing the most appropriate ways of consulting with specific First Nations Communities. These protocols supported a culturally safe approach to engagement.

The Lundy model is used widely in Australia and internationally.⁴ For example, it is the cornerstone of the Irish Government's National Strategy on Children and Young People's Participation in Decision-Making 2015–2020 and has also been adopted by the European Commission, UNICEF and World Vision.⁵

Professor Lundy maintains that 4 separate factors require consideration to involve children and young people in meaningful decision-making. These are space, voice, audience and influence, as reflected in the following figure:⁶

The Lundy model





Space

- **Have children's views been sought actively?**
- **Is there a 'safe space' in which children can express themselves freely?**
- **Have steps been taken to ensure that all children affected by the decision can take part?**

How the NCC addressed these questions

We actively sought children's views by letting them know they were the experts, that we were there to learn from them, and that there were no right or wrong answers.

Participants were recruited through service providers supporting those at-risk of, or in contact with the child justice system, as well as those in youth justice centres. This ensured support was available for participants during and after the consultations.

All service providers indicated their capacity to provide support to children, families, and community members if they chose to participate, as well as providing their views on the best ways to engage with them.

Service providers approached children, families, and community members to gauge their interest in being involved in the project. This included First Nations children, families, and community members, children with disability, children in out-of-home care, children from culturally and racially marginalised communities, and Lesbian, Gay, Bisexual, Trans and/or Gender Diverse, Queer, Intersex, Asexual, Sistergirl, and Brotherboy (LGBTQIASB+) children.

All children consented in writing and/or verbally to take part in individual interviews and group consultations, including written consent from parents, carers or guardians for those under 15 years.

Verbal consent was also obtained from all children at the beginning of individual interviews and group consultations. It was reiterated that their participation was voluntary, including that how much they participated was entirely up to them and that they could pause or withdraw their participation at any time without consequence.

Given that the children were those with lived experience of vulnerability and disadvantage, individual interviews and group consultations mostly occurred in the presence of a trusted adult (teacher, youth worker, counsellor, case worker). This involved the person(s) being present during the interview/consultation or the person(s) co-facilitating the consultation. Consulting in this way also allowed for support, if necessary, to be available after the consultation.

Children, families and community members were provided with \$30 gift vouchers and a certificate of participation signed by the NCC at the end of each session, and offered a list of support agencies that could assist them.



Voice

- **Do children have the information they need in an appropriate format to enable them to form a view?**
- **Have children been given a range of options as to how they might choose to express their opinion?**

How the NCC addressed these questions

Service providers provided children and their parents/carers/guardians with verbal and written information about the project prior to them agreeing to participate.

Empowering children is the key to minimising their vulnerability and promoting their safe participation. Children were offered a variety of ways to express their views, engaging in group discussions, making submissions, and completing anonymous surveys.

At the beginning of each consultation, the NCC and/or her staff discussed the project and the issues to be addressed, including the following two key questions which were informed by a review of literature involving previous consultations with children at risk of child justice involvement:

- Why do some young people come into contact with the youth justice system?
- What helps young people so they do not come into contact with the youth justice system?

The NCC and/or her staff reinforced to children that their participation was completely voluntary, providing multiple opportunities for children to express any concerns, and enabling them to cease their participation if they chose.⁷



Audience

- **Who is the 'audience' for children's perspectives?**
- **Is there a process for communicating children's views?**
- **Does that person/body have the power to make decisions?**

How the NCC addressed these questions

The Australian Government, via the Statutory Report, is the initial audience for children's perspectives. State and territory governments are also a key audience for the report given their primary responsibility for operating child justice systems, and the findings from the report will be shared with the community more broadly when the report is tabled.

The Australian Government has the power to influence decisions made about child justice across the country.



Influence

- **Were the children's views considered by those with the power to effect change?**
- **What process is in place to ensure that children's views inform decisions that affect children?**
- **Have children been informed of the ways in which their opinion may impact decisions?**
- **Have the children been provided with feedback explaining the reasons for decisions taken?**

How the NCC addressed these questions

We told children that we would present their views to the Australian Government in the form of a Statutory Report to parliament.

We will provide a copy of the report and a child-friendly version of the report to the organisations that supported the consultations with children, young people, families and community members. This is one way of providing feedback to children on the ways that their views have been incorporated into the decision-making process.

Submissions

A call for submissions was made public on 8 May 2023 via the Australian Human Rights Commission's website.

Letters of invitation were also sent to relevant government Ministers, government agencies, children's commissioners and guardians in all states and territories, academics, and First Nations organisations with expertise in youth justice. Submissions closed on 30 June 2023, with some extensions granted beyond this date. A total of 168 submissions were received. Of these, 11 were confidential.

The call for submissions asked for responses to the following questions:

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

4. From your perspective, are there benefits in taking a national approach to youth justice and youth wellbeing in Australia? If so, what are the next steps?

Consultations with children, young people, families and community members

Face-to-face and online consultations with children, young people, families, and community members were conducted across Australia between July 2023 and February 2024. Some were individual interviews and others were group consultations. For the purposes of this project, we have defined children as those under 18, and young people as those between 18–25. In a few cases, young people older than 25 with lived experience of the child justice system also participated. Young people over 18 with previous child justice contact provided valuable insights into the impact of this system on the lives of children into adulthood, and reflections on what may help children at an earlier age.

The National Children’s Commissioner spoke with 150 children and young people, and 49 family and community members.

Some children and young people, but not all, completed short surveys. The surveys recorded demographic data and responses to 14 multiple-choice questions. A total of 108 surveys were filled out. See Appendix 6.

Stakeholder interviews

Face-to-face and online interviews were conducted across 86 organisations including 176 representatives between June 2023 to April 2024. These interviews explored current approaches in different jurisdictions, systemic barriers to reducing children’s involvement in youth justice, and opportunities for systems reforms. Stakeholder interviews included youth justice departments, police, judicial officers, First Nations representative organisations, state and territory children’s commissioners and guardians, non-government organisations (NGOs), victims advocates, and leading academics in the area of youth justice.

Stakeholder roundtables

Three online and one face-to-face stakeholder roundtables were held between August and November 2023. A total of 50 participants attended these roundtables. Two of these were with non-government advocates and service providers, and two were with leading academics in the field. They explored the four key questions posed in the call for submissions with a focus on addressing barriers to action and charting the way forward for a national approach.

Advisory Group

The project was guided by an academic advisory group. Members included Professor John Tobin, Professor Barry Goldson, Dr Hannah McGlade, Dr Yannick van den Brink, Associate Professor Faith Gordon. These members were chosen based on their breadth of knowledge and expertise in the field of youth justice and human rights.

Analysis of the consultations, surveys, submissions, interviews and roundtables

The issues raised in the consultations, surveys, submissions, interviews and roundtables were analysed to identify broad themes. Information was then coded under these themes.

Limitations

The NCC spoke to children and young people, families and communities across the country to gather insights on the changes that needed to be made in the child justice system, and the barriers to those changes. These consultations do not constitute academic research, and participants should not be considered a representative sample of the child justice population.

To avoid over-consultation, the NCC did not conduct consultations in Tasmania due to the recent Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings.

The NCC arranged consultations through the services and supports that children were already involved with, in the interests of child safety and wellbeing. This means that the NCC did not consult with children not currently engaged with services and supports. These children and young people are an important group and could be a focus for future consultations. This project also did not consult with children below the age of 8.

Endnotes

- 1 Laura Lundy, 'Voice is not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33(6) *British Educational Research Journal* 927, 933; Elizabeth Welty and Laura Lundy, 'A Children's Rights-Based Approach to Involving Children in Decision Making' (2013) 12(3) *Journal of Science Communication* 2.
- 2 Holly Doel-Mackaway, 'Ask Us ... This Is Our Country': Designing Laws and Policies with Aboriginal Children and Young People' (2019), 27(1) *International Journal of Children's Rights* 56.
- 3 Holly Doel-Mackaway, 'Ask Us ... This Is Our Country': Designing Laws and Policies with Aboriginal Children and Young People' (2019), 27(1) *International Journal of Children's Rights* 56.
- 4 Department of Children and Youth Affairs (Ireland), National Strategy on Children and Young People's Participation in Decision-Making 2015–2020 (June 2015) <<https://www.gov.ie/en/publication/9128db-national-strategy-on-children-and-young-peoples-participation-in-dec/>>. See also Joint Standing Committee on the Commissioner for Children and Young People (WA), *In their own voice: the participation of children and young people in parliamentary proceedings* (Discussion Paper, November 2020) 12–13 <[https://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/DCCC5179771AE5064825862A002A2C78/\\$file/20201116+-+Discussion+Paper+-+In+their+own+voice+-+Final+-+with+signature+FOR+WEB.pdf](https://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/DCCC5179771AE5064825862A002A2C78/$file/20201116+-+Discussion+Paper+-+In+their+own+voice+-+Final+-+with+signature+FOR+WEB.pdf)>.
- 5 Elaine Garret, 'How to Empower Children? Stand Up for Their Rights!', Academic Stories (Web Page, 23 February 2021) <<https://academicstories.com/story/emphasizing-equality/how-to-empower-children-stand-up-for-their-rights>>; UNICEF, Engaged and Heard! Guidelines on Adolescent Participation and Civic Engagement (Guidelines, July 2020) <<https://www.unicef.org/documents/engaged-and-heard-guidelines-adolescent-participation-and-civic-engagement>>; World Vision, *Children and Young People's Participation: An Essential Approach for Ending Violence against Children* (Report, 21 February 2017) <<https://www.wvi.org/sites/default/files/WV-Children-and-Young-People-Participation-%20essential%20component%202017-09-11.pdf>>.
- 6 Elizabeth Welty and Laura Lundy, 'A Children's Rights-Based Approach to Involving Children in Decision Making' (2013) 12(3) *Journal of Science Communication* 1, 2.
- 7 Tim Moore, Debbie Noble-Carr and Morag McArthur, 'Changing things for the better: the use of children and young people's reference groups in social research.' (2016) *International Journal of Social Research Methodology*, 19(2), 241–256 <<https://www.tandfonline.com/doi/full/10.1080/13645579.2014.989640>>.

Appendix 6:

Demographic details of children and young people who participated in consultations

Detailed demographic data was obtained from surveys completed by children and young people, supplemented by information provided by service providers assisting with the consultations.

Number of children and young people consulted

The National Children’s Commissioner (NCC), supported by the Children’s Rights Team, held consultations between July 2023 and February 2024 with a total of 150 participating children and young people, seeking their views about children’s contact with the child justice system. For the purposes of this project, we have defined children as those under 18, and young people as those between 18–25. In a few cases, young people older than 25 with lived experience of the child justice system also participated.

As part of this process, the majority of these participants completed or partially completed an optional survey.

Locations of consultations

The consultations took place in all states and territories, except Tasmania.

The NCC did not conduct consultations in Tasmania in order to avoid ‘over-consultation’ with children, due to the recent Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings.

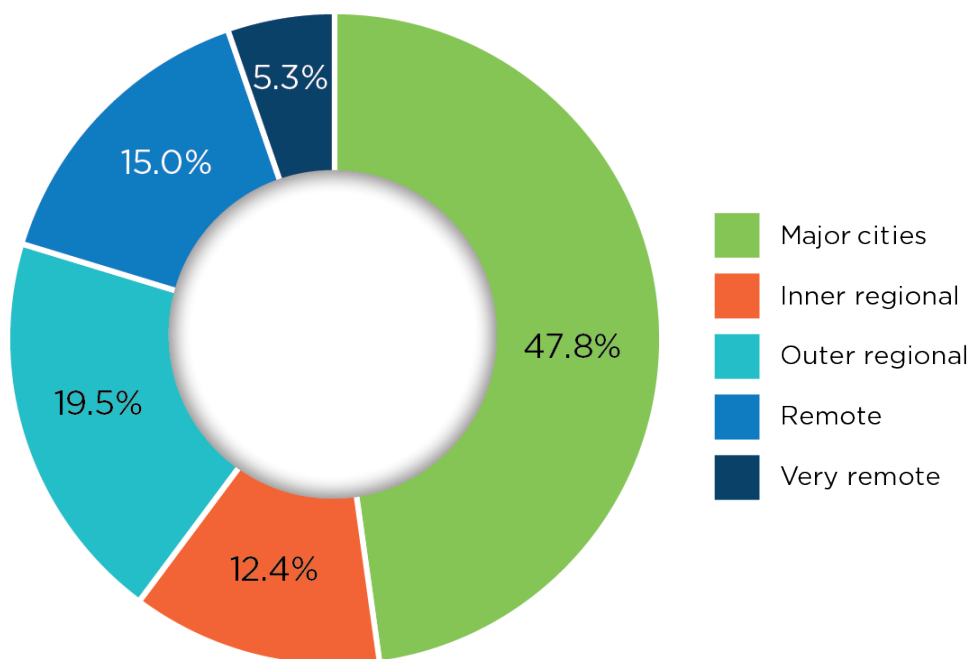
Figure 1 shows the number of children and young people who participated from each jurisdiction.

Figure 1: Project participation by jurisdiction



Figure 2 shows the usual residence of participants by remoteness classification.¹

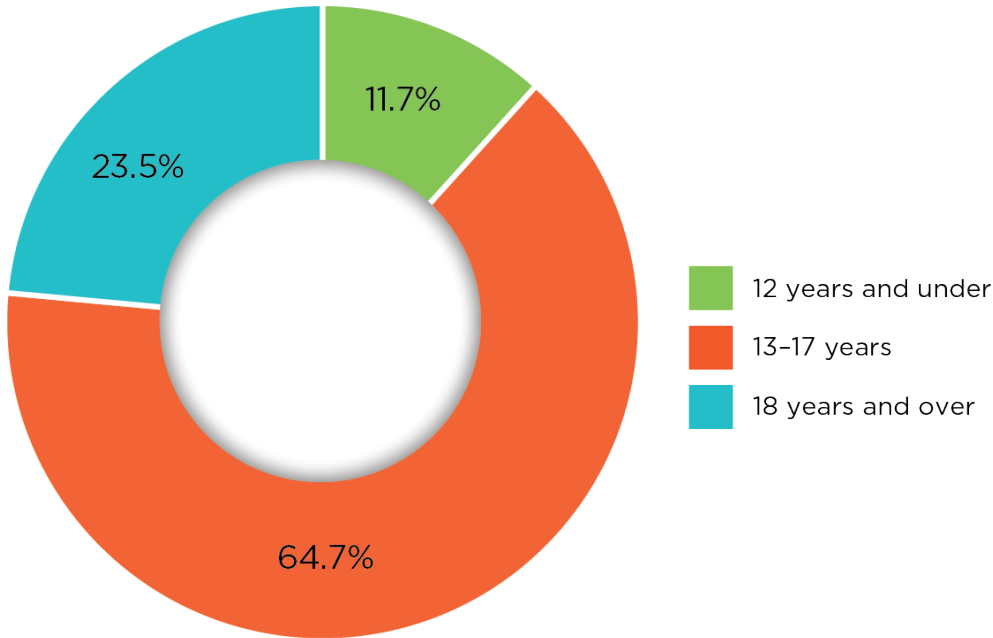
Figure 2: Participants by remoteness classification



Age

Age ranges were recorded for 149 participants. Fifteen were aged 12 years and under, 99 were aged 13-17 years and 35 were aged 18 years and above.

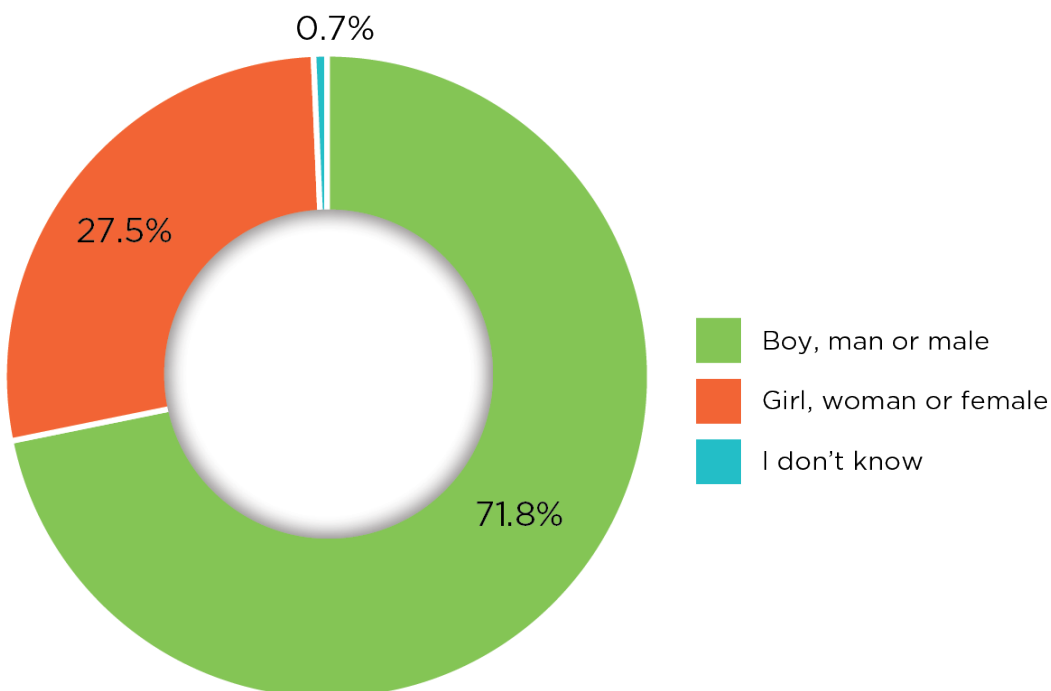
Figure 3: Age breakdown of participants



Gender identity

Gender was recorded for 149 participants. When asked to describe their gender, 41 participants identified as girl, female or woman; 107 identified as boy, male or man and one young person reported that they did not know.

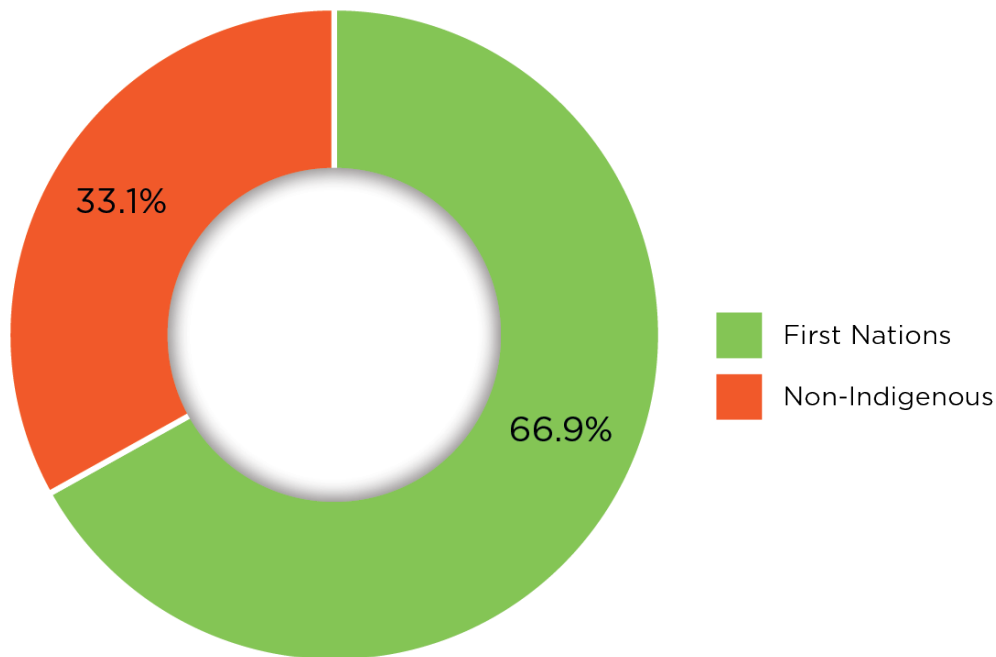
Figure 4: Gender of participants



First Nations peoples

Of the 130 total recorded responses, 87 participants identified as First Nations peoples.

Figure 5: First Nations participants



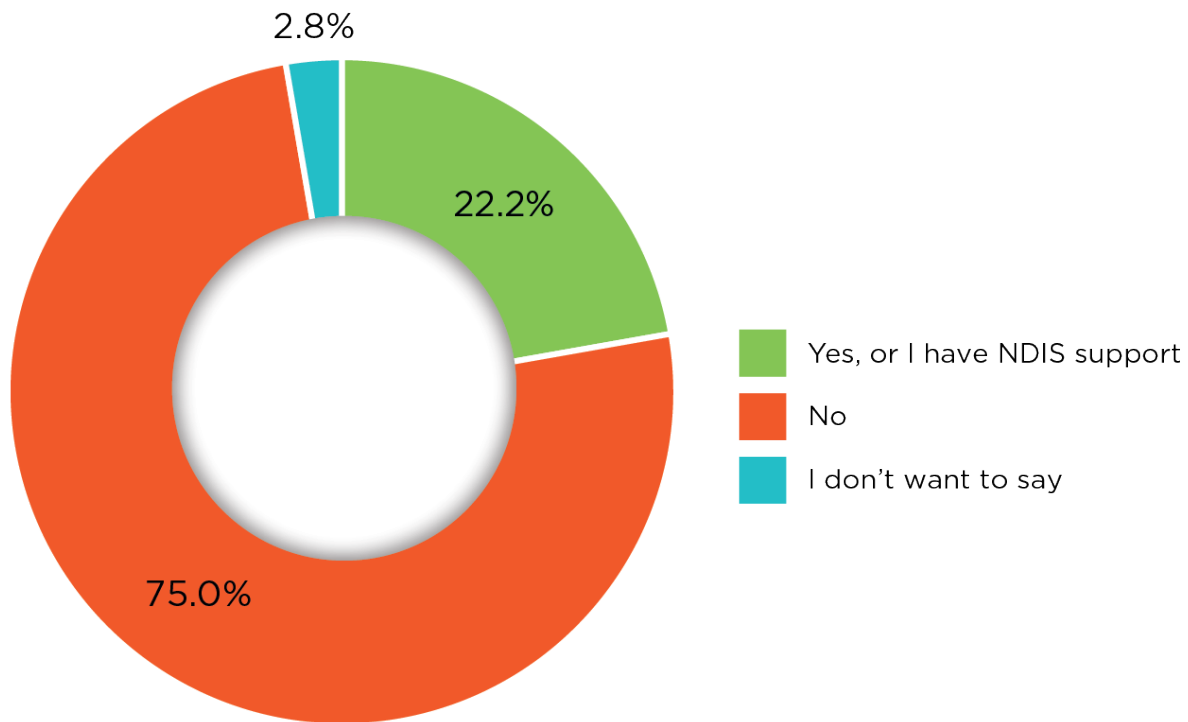
Cultural or ethnic background

Of the 100 total recorded responses, 21 participants were from culturally and racially marginalised (CARM) backgrounds, and seven did not provide information relating to cultural or ethnic background.

People with disability

Of the 108 total recorded responses, 24 participants reported that they had National Disability Insurance (NDIS) support or disability. As some people may not describe their experience using the term 'disability', the option to select 'I have NDIS support' was provided.²

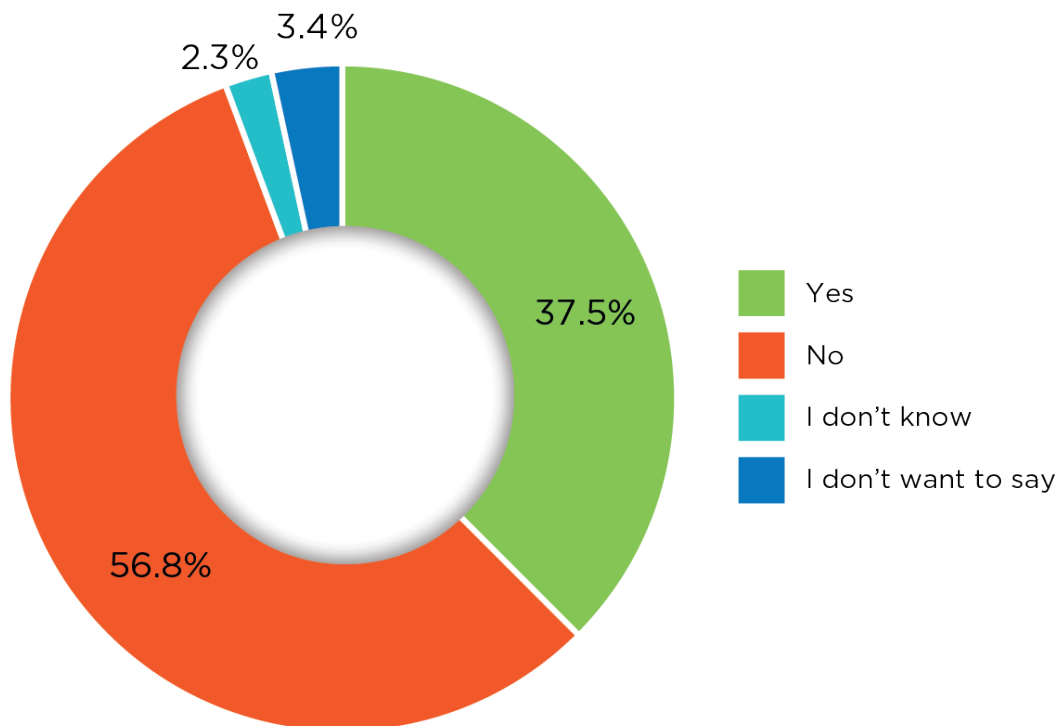
Figure 6: People with disability



Out-of-home care experience

Of the 90 total recorded responses, 33 participants reported that they had experiences of being in out-of-home care, including kinship care, foster care, and residential care.

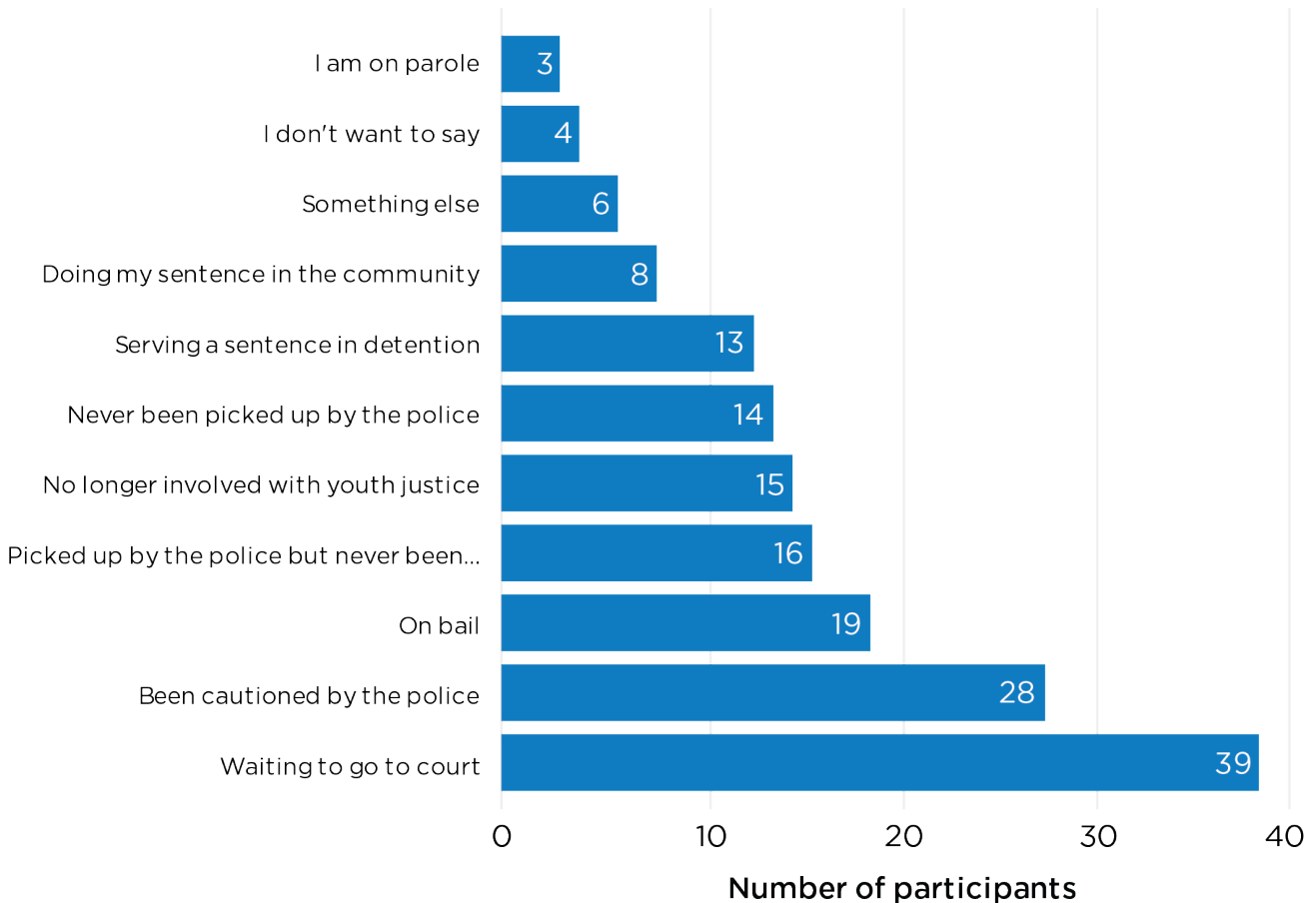
Figure 7: Out-of-home care experiences



Current contact with the child justice system

Children were consulted in a range of settings, including within youth detention centres. This cohort represented 27% of children and young people who participated in the project. Figure 8 shows participants' current contact with the child justice system at the time of responding to the survey (103 responded to this question).³

Figure 8: Current contact with the child justice system



Age at first contact with police or the law

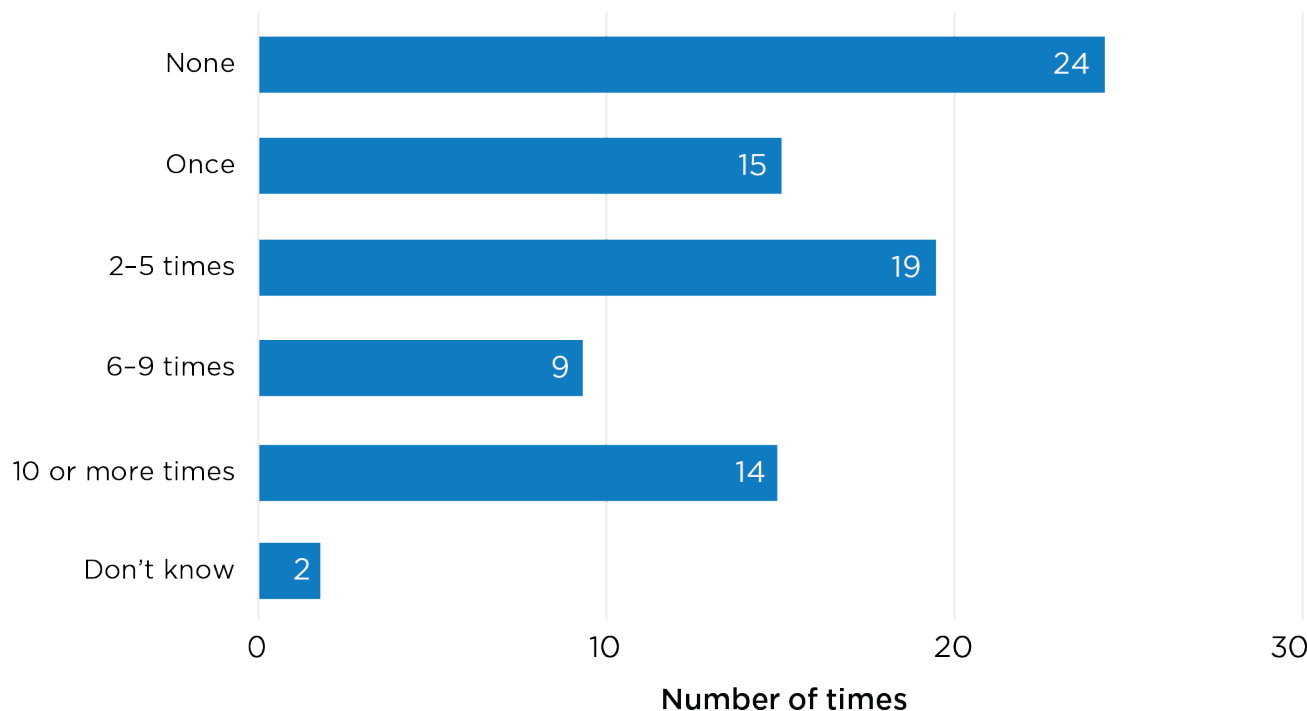
Where participants had previous contact with the police or the law, they were asked how old they were when this contact first occurred. Of the 97 total recorded responses, 15.5% of participants reported being 10 years of age or under; 51.5% were aged 11-13 years; and 33.0% were aged 14-17 years.

Number of times in detention

Participants who had spent time in youth detention centres were asked how many times they had been held on remand or had been sentenced.

Of the 83 total recorded responses, 22.9% of participants had been held on remand between two and five times; 10.8% between six and nine times; and 16.9% had been on remand 10 or more times.

Figure 9: Number of times in detention on remand



Of the 79 total recorded responses to the question about serving sentences, more than half (55.7%) of participants reported that they had never served a sentence in detention; 21.5% had served one sentence in detention; 17.7% had served two or more sentences in detention and the remainder were not sure of the number of sentences that they had served.

Endnotes

- 1 'Australian Statistical Geography Standard (ASGS) Edition 3, July 2021 – June 2026', *Australian Bureau of Statistics* (Web Page, 20 July 2021) <https://www.abs.gov.au/statistics/standards/australian-statistical-geography-standard-asgs-edition-3/latest-release>.
- 2 People With Disability Australia, *PWDA Language Guide: A guide to language about disability* (Language guide, August 2021).
- 3 Some participants nominated contact with multiple parts of the justice system, for example where they had several matters underway at different stages of prosecution or sentencing. For this reason, responses will not produce a combined value of 100%.

Appendix 7:

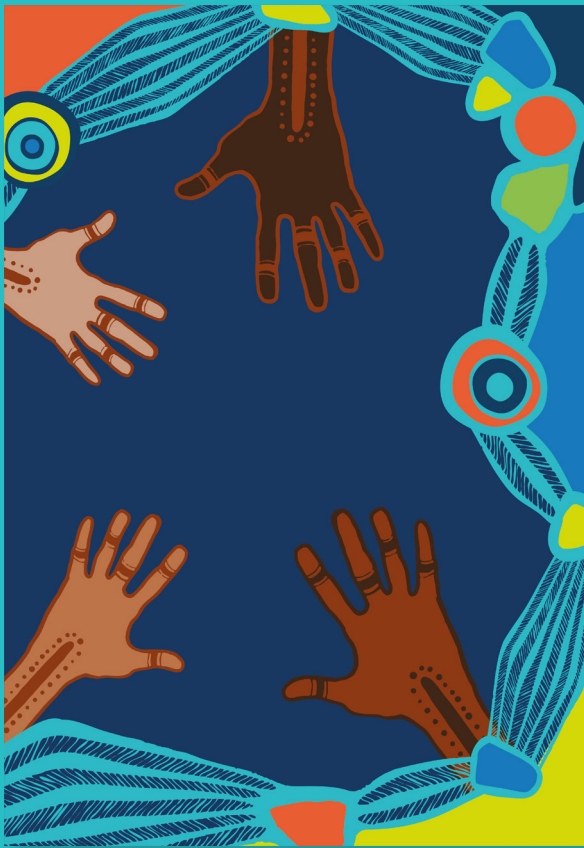
Submissions made to the National Children's Commissioner

Submission	Location
1	Australian Youth Commission
2	Professor Stuart A Kinner, Curtin University
3	KidsXpress
4	Dr George Manos
5	Confidential
6	QUT Australian Centre for Health Law Research
7	Office of the Custodial Inspector Tasmania
8	Confidential
9	Confidential
10	Professor Rob White, University of Tasmania
11	Anne Jackson
12	Confidential
13	Confidential
14	Berry Street
15	Confidential
16	Minderoo Foundation
17	Helen Manos
18	Queensland Office of the Public Guardian
19	WA Police Force
20	Legal Aid NSW
21	The Salvation Army Australia
22	OzChild
23	Anti-Discrimination NSW
24	Dr Michael Levy AM
25	Justice Reform Initiative
26	Engage Pasefika Inc.
27	South Australia Health Chief Child Protection Officer
28	National Mental Health Commission
29	Alcohol & Drug Foundation
30	Orygen
31	Sexual Assault Services Victoria
32	Victorian Aboriginal Community Services Association Ltd.
33	Queensland Council of Social Service Ltd
34	The Association of Children's Welfare Agencies
35	Local Time.
36	Brisbane Youth Service

Submission	Location
37	Micah Projects
38	Vacro
39	Law & Justice Foundation of NSW
40	Brotherhood of St Laurence
41	HALT
42	Fams and Youth Action
43	Deadly Inspiring Youth Doing Good
44	Youth Advocacy Centre
45	African Youth Support Council (QLD African Communities Council)
46	NSW Office of the Advocate for Children & Young People
47	Confidential
48	Centre for Excellence in Child and Family Welfare
49	Australian Alcohol & Other Drugs Council
50	Whitelion
51	Queensland Program of Assistance to Survivors of Torture and Trauma
52	Barnardos Australia
53	Dr Catia Malvaso, University of Adelaide School
54	Victorian Ombudsman
55	QLD Department of Youth Justice, Employment, Small Business & Training
56	ACT Human Rights Commission
57	Save the Children
58	Speech Pathology Australia
59	Public Interest Advocacy Centre
60	Professor Fiona Stanley AC
61	The Royal Australian & New Zealand College of Psychiatrists
62	Emeritus Professor Barry Goldson, The University of Liverpool
63	The Royal Australasian College of Physicians
64	Australian Association of Social Workers
65	The Victorian Aboriginal Child Care Agency
66	Aboriginal Legal Rights Movement
67	NAPCAN Youth Advisory Council
68	Seeds of Infinity: Pathways for Women
69	Jesuit Social Services
70	Emeritus Professor Ross Homel AO, Griffith University
71	South Australian Government
72	ANTAR
73	NPY Women's Council
74	Anglicare Victoria
75	Change the Record
76	Community Restorative Centre
77	Square Peg Round Whole Advocacy Group
78	Queensland Youth Policy Collective
79	South Australian Council of Social Services
80	Confidential

Submission	Location
81	Lodden Mallee Aboriginal Reference Group
82	Children in Care Collective
83	Office of the Children's Commissioner Northern Territory
84	Aboriginal Medical Services Alliance Northern Territory
85	On the Cusp Productions
86	Northern Territory Legal Aid Commission
87	Dr Sarah Moulds, University of South Australia
88	CREATE Foundation
89	Youth Empowered Towards Independence
90	Youth Law Australia
91	Queensland Human Rights Commission
92	Health Justice Australia
93	Queensland University of Technology - Centre for Inclusive Education
94	The Shopfront Youth Legal Centre
95	Australian Medical Association
96	Members of the Australian National Preventive Mechanism
97	ADHD Foundation
98	As One Nyitting Limited
99	Victorian Aboriginal Health Service
100	Youth Affairs Council of South Australia
101	Angela Sdrinis Legal
102	SHINE for Kids
103	Telethon Kids Institute
104	Confidential
105	Community and Public Sector Union
106	Australian Research Alliance for Children & Youth
107	Social Reinvestment WA
108	Relationships Australia
109	Matthew Wilson
110	Confidential
111	The National Justice Project
112	The Partnership for Justice in Health and Lowitja Institute
113	Office of the Inspector of Custodial Services WA
114	Noetic Solutions Pty Limited
115	Replanting the Birthing Trees and the SAFeST Start Coalition
116	Sisters Inside Inc.
117	Indigenous Allied Health Australia
118	Queensland Indigenous Family Violence Legal Service
119	The Australian Greens
120	Confidential
121	Professor Kitty te Riele, Peter Underwood Centre, University of Tasmania
122	Yuwaya Ngarra-li Partnership
123	Women's Legal Services Australia
124	VACCHO and The Balit Durn Durn Centre

Submission	Location
125	UNICEF Australia
126	Sankhaja Polwaththa Gallage
127	Dr Jade Purtell and Associate Professor Joanne Evans, Monash University
128	Youth Affairs Council Victoria
129	Transforming Justice Australia
130	Dr Fiona Robards, University of Sydney and others
131	Dr Sharynne Hamilton and Dr Raewyn Mutch, University of Technology Sydney
132	Close Don Dale Now
133	Smart Justice for Young People
134	Dr Garner Clancey, University of Sydney
135	Queensland Law Society
136	Commissioner for Children and Young People Tasmania
137	Victorian Aboriginal Legal Service
138	Training Centre Visitor, Office of the Guardian for Children and Young People SA
139	Phronesis Consulting & Training
140	Terez Nagle
141	SNAICC
142	Dr Adam Deacon
143	Paul Ramsay Foundation
144	Community & Public Sector Union Civil Service Association of WA
145	Aboriginal Legal Services (NSW/ACT) Limited
146	Jennie Payens
147	Northern Territory Mental Health Coalition
148	Northern Australian Aboriginal Justice Agency and Aboriginal Peak Organisations NT
149	National Legal Aid
150	Magistrate Jennifer Bowles (Churchill Fellow)
151	Commonwealth Attorney-General's Department
152	Law Council of Australia
153	Rachel Stephen-Smith MLA, Minister for Families and Community Services, and Emma Davidson MLA, Assistant Minister for Families and Community Services, ACT Government
154	National Aboriginal Community Controlled Health Organisation
155	Queensland Family and Child Commission
156	Kimberley Aboriginal Law & Cultural Centre
157	Dr Susan Baidawi, Monash University
158	Emeritus Professor Chris Trotter and Dr Phillipa Evans, Monash University
159	Koomba Birdal Hut
160	The Hon Roger Jaensch MP, Minister for Education, Children and Youth, Tasmanian Government
161	Centre for Innovative Justice
162	Name Withheld
163	Justice Action
164	Name Withheld
165	Dr Geoff Kewley and others
166	Children's Commissioner for England
167	Thriving Queensland Kids Partnership
168	Economic Justice Australia



ARTIST ATTRIBUTION

“Moving Forward, Stay on Track” by Bernard Lee Singleton with Saltwater People.

ABOUT THE ARTWORK

‘Moving Forward, Stay on Track’

The motifs – including the hands of our people, and both river to beach stone (freshwater) and the fish bone pattern (saltwater) – reflect community and cultural approaches needed to best support children and young people navigating the youth justice system.

The hands represent a community-led approach; acknowledging each community has its own way of supporting young people.

Our cultural way of working is to make sure there is a community approach which emphasises a cohesion of support including Elders guiding and advising; it is never just one voice speaking for other families.

The stones (rocks), from our river systems, represent the strong foundations and pathways we have built, ready for supporting resources to deliver culturally flexible and appropriate care.

The traditional fish bone pattern signifies staying connected and grounded to culture or being open to healing. This reflects our cultural responsibilities to our young people and the healing journey ahead.

ABOUT THE ARTIST

Bernard Lee Singleton

“I paint, craft and make artefacts to ground myself. Through the process of making a spear or shaping the figure of a spirit, I connect with my ancestors and they help bring my work to life. My work is a way for me to acknowledge and remember the times of my great-grandmothers and great-grandfathers. My designs are inspired by the laws of nature and the forms found in the creation stories around me. Using these basic forms or designs, I work to represent the bond of art and the continuation of culture.”

Bernard Lee Singleton is an accomplished craftsman, curator and designer, born and living in Cairns. Singleton grew up in Coen, Cape York. His mother is a Djabuguy woman born in Mona Mona mission near Kuranda and his father is an Umpila (east coast Cape York)/Yirrkandji man from Yarrabah mission.

