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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

SUBMISSION TO INQUIRY INTO AUSTRALIA'S YOUTH JUSTICE AND INCARCERATION SYSTEM

The Justice Reform Initiative (JRI) welcomes the opportunity to provide this submission to the Senate Standing Committee on Legal and Constitutional Affairs regarding Australia's youth justice and incarceration system ('the inquiry').

The treatment of children in detention is one of the most significant human rights issues facing Australia. Countless inquiries, reports, and media exposés into the state of youth justice in Australia have found that the rights of children in detention are not upheld. Imprisonment of children is characterised by punitive, harmful, and often violent adversarial environments. For decades, the states and territories charged with the administration of youth justice have failed to keep children safe.

However, the failure of youth justice is not just about the failure to uphold the rights of children in detention. Justice systems run by the states and territories have also comprehensively failed when it comes to addressing the social drivers of children's incarceration. The evidence is very clear that contact with youth justice systems entrenches and exacerbates disadvantage, causes ongoing harm and trauma, and in fact *increases* the likelihood of future criminal justice system contact.

The recently released National Children's Commissioner's report, *'Help way earlier!' How Australia can transform child justice to improve safety and wellbeing*,¹ clearly articulates the experience of incarcerated and criminalised children who have been failed by multiple systems, prior to their incarceration. We note below our support for the recommendations in that report that call for national leadership on this issue.

There is an urgent need to embrace a transformative, child rights and safety-based approach to reform that is defined by national leadership and coordination, evidence-based public policy, recognition of the social determinants of incarceration, and the sustainable resourcing of supports, services and community-led programs that genuinely build pathways outside of the justice system.

It is a national responsibility to ensure that there are systems, services and supports available to *all* Australian children who need help, and that the rights of the most vulnerable children are upheld. As the recent findings of the Disability Royal Commission confirm,

¹ Australian Human Rights Commission (2024). *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*.



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Australia overwhelmingly imprisons children with multiple and intersecting disadvantage, who have *never* had the help, support, care, programs, education and opportunities in the community that they need.

We view this inquiry as an important opportunity to chart a pathway to much-needed transformative change in relation to child and youth justice in Australia.

Our approach to the Terms of Reference for the inquiry is outlined in our recent JRI Position Paper ***Children, Youth Justice and Alternatives to Incarceration in Australia*** ('the JRI Position Paper'), which is attached.

The 12 principles for change outlined in the JRI Position Paper, and also reiterated directly below, offer a framework for thinking about the multiple pieces of reform that are required to transform youth justice and uphold the human rights of Australia's most vulnerable children. Alongside these principles, we note the importance of Commonwealth leadership, and make recommendations about the mechanisms for reform that are required at a national level to drive this change.

12 PRINCIPLES FOR REFORM IN YOUTH JUSTICE

1. **The answers to the problems of the over-incarceration of children are located outside of the justice system.** Significant additional government investment is required, to build the capacity of community-led alternative responses (including responses led by First Nations communities). This investment needs to be long-term, flexible and coordinated.
2. **All police interactions with children should be focused on moving children away from the justice system.** Police should develop appropriate key performance measures, to ensure discretion is exercised to divert children from the criminal justice system.
3. **Alternative first responder models** (including those led by First Nations people, youth workers, and health practitioners) and **co-first responder models** (where police work alongside other key community workers) are required to ensure that, wherever possible the option of pre-charge diversion is prioritised, and to elevate the importance of addressing the social drivers of incarceration if children do come into contact with police.
4. There should be a **presumption in favour of bail** for all offences for all children charged with a criminal offence.
5. **Community-led bail support programs**, including supported housing, should be resourced in every jurisdiction, in recognition of the extraordinarily high levels of children imprisoned on remand and the current absence of supports in the community available to support this group. This should include First Nations-led and culturally-modelled options.



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6. **Evidence-based alternative court and other options**, including restorative, therapeutic, transformative and First Nations-led justice models should be made available in all jurisdictions.
7. Every jurisdiction should establish and adequately resource **separate specialist courts for children**, in recognition of the specific developmental needs of children, when they come into contact with the justice system. All children who attend these specialist children's courts should be provided with access to developmentally-appropriate court support services.
8. **First Nations children should have access to First Nations led support**. The most effective responses for First Nations children are those that are culturally modelled, designed and delivered by local First Nations communities and organisations, and which foster a genuine sense of community ownership and accountability. Many First Nations people have intergenerational and/or personal experience of mainstream services working against them. Ensuring First Nations communities have community control and cultural authority (as well as long-term and sustainable funding sources) will ensure programs are modelled on local systems and circumstances, and more effectively meet local priorities and needs.
9. Children should never be excluded from support, on the basis of age, perceived complexity of need, past offending behaviour, or geographic location. Services and supports should be resourced to work with children with multiple support needs, including children who are living in regional and remote areas. **Support should be holistic, child-centred, long-term (when needed) and wrapped around the individual needs of the child and their family (when needed)**. Support services should be appropriately resourced, so they are able to provide support services 24 hours per day, 7 days per week.
10. The Federal Government and all state and territory governments should commit to **raising the age of criminal responsibility to at least 14** (based on all available medical evidence). There is clear evidence that 14 is the **minimum** age, developmentally and neurologically, that children could or should be held criminally responsible.
11. **Youth detention should only be considered as a sentencing option of absolute last resort** and reserved only for those who present a specific and immediate risk to someone's physical safety. Children should never be held in police watch-houses or adult prisons. The use of solitary confinement, either as punishment, a management tool or because of staffing issues, should never be used for children.
12. For children who are currently detained by the state because they have broken the law, the environment, in which they are detained (and the responsibility for their detention) must be urgently reformed. Secure facilities should be **therapeutic and trauma-informed**. If any child is to be detained, the environment in which they are held should be –
 - Home-like (rather than prison-like);
 - Therapeutic (rather than punitive);



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- Trauma-informed (supporting children to build and maintain relationships and connectedness at the individual, family and community levels, including through leave of absences);
- Small in scale;
- Run by highly skilled staff, who specialise in the health, well-being and support of children; and
- Place-based, culturally-modelled, and run by community-led and -based services.

NATIONAL LEADERSHIP AND ENABLING REFORM

Alongside these principles for youth justice reform, the JRI endorses the 24 recommendations included in the report by the Australian Human Rights Commission, *'Help way earlier!'*

In particular, the JRI notes the first four recommendations about the **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.

The JRI submits that, once established, the proposed National Taskforce, Cabinet Minister for Children, and Ministerial Council for Child Wellbeing develop a **National Child Justice Action Plan** to reform the youth justice system across Australia, as a matter of urgency. Such an Action Plan should be based on the *12 Principles for Change* noted above and detailed in the attached JRI Position Paper.

Under the National Child Justice Action Plan, the Federal Government and all state and territory governments would be required to report annually on progress in meeting specified targets in addressing the deliverables that form part of the *12 Principles for Guiding Change*, as well as specific targets about reducing the overall number and rate of children incarcerated in Australia. These targets should re-emphasise the youth justice target included in the National Agreement on Closing the Gap that Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system – i.e. *Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17) in detention by at least 30 per cent.* This annual report should be presented by the Ministerial Council for Child Wellbeing to National Cabinet and tabled in Parliament.



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RESPONSES TO THE TERMS OF REFERENCE

The JRI's specific responses to each of the Terms of Reference for the inquiry are included in the attached JRI Position Paper, as detailed below:

a) the outcomes and impacts of youth incarceration in jurisdictions across Australia

This is detailed on **pp.9-14** of the attached JRI Position Paper.

Please also see Attachment B for a visual snapshot of the state of youth incarceration in Australia.

b) the over-incarceration of First Nations children

This is detailed on **pp.12-13** of the attached JRI Position Paper.

c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention

This is detailed on **pp.15-23** of the attached JRI Position Paper.

d) the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights

This is detailed on **pp.14-15** of the attached JRI Position Paper.

e) the benefits and need for enforceable national minimum standards for youth

As noted in the attached JRI Position Paper (**p.15**), minimum standards for youth detention facilities (prisons for children) are established domestically in the Australasian Juvenile Justice Administrators' *Standards for Youth Justice* (the AJJA Standards), which are modelled closely on the United Nations (UN) *Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules). Australian legislation relating to the imprisonment of children recognises the importance of respecting children's human rights, including the right to be treated humanely and respectfully.²

Together with Australia's international obligations under the UN Convention on the Rights of the Child (the CRC) and International Covenant on Civil and Political Rights (ICCPR), these international treaties and standards lay the foundation for a rights-compliant youth justice system and 'represent an effective benchmark against which law, policy and practice can be measured'.³

The critical issue is the enforceability of national minimum standards, ensuring a youth justice system that complies with human rights standards. This requires key leadership and direction from the Federal Government. The establishment of the National Taskforce, the Cabinet Minister for Children and the Ministerial Council for Child Wellbeing, and development of a National Action Plan to reform the youth justice system across Australia,

² Australian Children's Commissioners and Guardians (ACC&G). 2016. 'Human rights standards in youth detention in Australia: the use of restraint, disciplinary regimes and other restricted practices'. April 2016. 4.

³ Ursula Kil Kelly. 2008. 'Youth Justice and Children's Rights: Measuring Compliance with International Standards'. (2008) 8(3) *Youth Justice* 187, 191.



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as set out in the above recommendations, provides a mechanism to ensuring a youth justice approach that complies with both the spirit and the letter of these minimum standards.

f) justice consistent with our international obligations

The JRI submits that the 24 recommendations included in the *'Help way earlier!'* report by the Australian Human Rights Commission provide a viable pathway to ensuring a youth justice system that is consistent with Australia's international obligations. In particular, the first four recommendations in relation to the **priorities to enable national reform** will facilitate the establishment of the necessary governance framework to ensure appropriate accountability and transparency.

An essential part of this framework is the incorporation of the CRC into Australian law through a National Children's Act as well as a federal Human Rights Act. These legislative instruments would lay the foundation for a rights-compliant youth justice system and provide an effective benchmark, against which law, policy and practice can be measured.

g) any related matters

The attached JRI Position Paper provides an overview of Australian and international programs that have delivered positive outcomes, in terms of reducing young people's contact with the justice system (**pp.23-44**).

In addition to noting evidence-based examples of programs outside of the justice system, the JRI Position Paper details the significant impact of discriminatory policing practices and the operation of police discretion on the imprisonment of young people (**pp.44-47**). We also note the significant majority of children in detention in Australia are unsentenced, having been denied bail after being charged with a criminal offence. The attached Position Paper also provides details regarding the importance of the right to bail for children charged with criminal offences (**Appendix C of the report, pp. 55-56**).

We note that, around Australia, there are currently extremely limited community-led alternatives for children available to courts to use as diversionary, bail support and sentencing options. There is also very limited access to specialist support for children who are at risk of justice system involvement. There are many effective services on the ground doing excellent work all around Australia (including pre-charge diversion programs, bail support and accommodation, First Nations place-based alternatives, intensive family support, early intervention and prevention programs). However, these are chronically under-resourced, are often unable to meet demand, and are inaccessible to children living in remote and regional areas. As a consequence, these services do not have the capacity to make a significant impact on incarceration rates. They are also often operating in a policy context where the investment in punitive policing and incarceration models effectively nullifies the impact of those programs designed to interrupt cycles of incarceration and disadvantage.

An essential pre-requisite in achieving a youth justice system that is consistent with Australia's international human rights obligations is increased and sustainable resourcing for supports, services and programs *outside* of the justice system. This includes long-term and coordinated resourcing for evidence-based programs and supports that have been shown to prevent and reduce contact with the justice system. There is the need for increased resourcing and access to:



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- early intervention and prevention services;
- child-centred and family-inclusive holistic wrap-around support services;
- culturally-modelled support for First Nations children and their families and communities;
- access to:
 - alcohol and other drug, mental health, social and emotional wellbeing, and disability support;
 - disability support;
 - bail support;
 - supported accommodation;
 - bail, throughcare and post-release support; and
 - place-based supports.

The JRI welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee. We would be more than willing to appear before the Committee to further discuss our submission.

Yours sincerely,

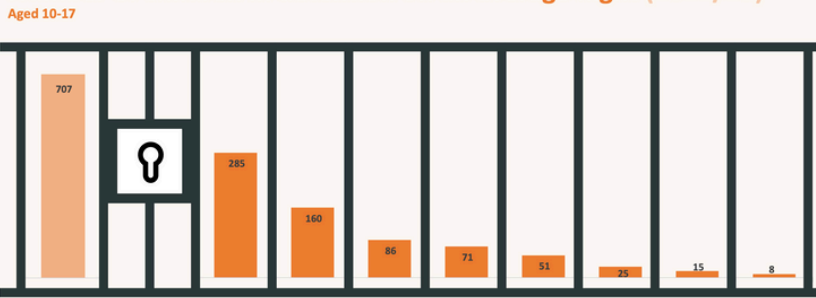
Dr Mindy Sotiri (Executive Director, JRI)
Dr Lou Schetzer (National Research and Policy Coordinator)
Aysher Kerr (Queensland Coordinator)

Child justice and wellbeing in Australia

An overview of children's imprisonment 2023

Over half of all children incarcerated across Australia on an average night and throughout the year are from Qld and NSW

Number of children in detention on an average night (2022/23)



Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.1.

Number of children received into detention over the course of a year (2022/23)



Source: Australian Institute for Health and Welfare (2024). Youth detention tables, table S103a.

Number of children released over the course of a year (2022/23)



Source: Australian Institute for Health and Welfare (2024). Youth detention tables, table S104a.



Rate of change: Children in detention (2022/23)

Aged 10-17

	2013/14 – 2022/23	2018/19 – 2022/23
Queensland	74%	20%
Victoria	15%	-36%
Northern Territory	4%	42%
ACT	0%	88%
Australia	-10%	-8%
Tasmania	-24%	8%
NSW	-42%	-22%
Western Australia	-45%	-31%
South Australia	-50%	-32%

Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.1
Productivity Commission (2015). Report on government services 2015: Youth justice services, table 16A.4.

The rate and percentage of children's imprisonment is disproportionately growing in Qld and the NT at the same time that punitive and regressive 'tough on crime' policy reforms have been implemented in these jurisdictions

Rate of children's incarceration (2022/23)

per 10,000, aged 10-17



Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.5.

Rate of change: Children's incarceration rate

Aged 10-17

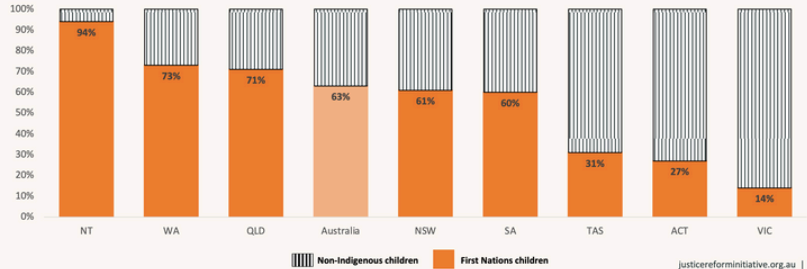
	2013/14 – 2022/23	2018/19 – 2022/23
Queensland	31%	9%
Tasmania	13%	4%
Northern Territory	6%	39%
Victoria	-2%	-42%
ACT	-16%	62%
Australia	-23%	-16%
NSW	-47%	-26%
South Australia	-50%	-35%
Western Australia	-52%	-38%

Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.1
Productivity Commission (2016). Report on government services 2016: Youth justice services, table 16A.4.



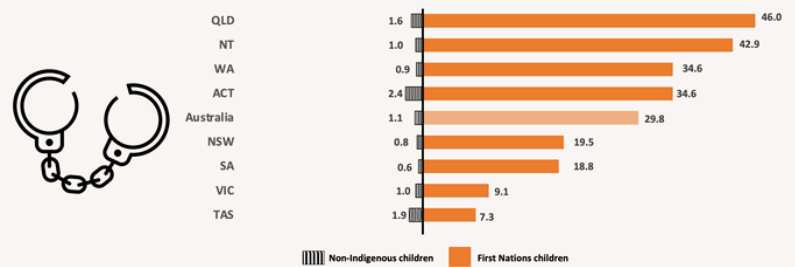
First Nations children are disproportionately incarcerated by state and territory governments

Proportion of detained children who are First Nations (2022/23) Aged 10-17



Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.5.

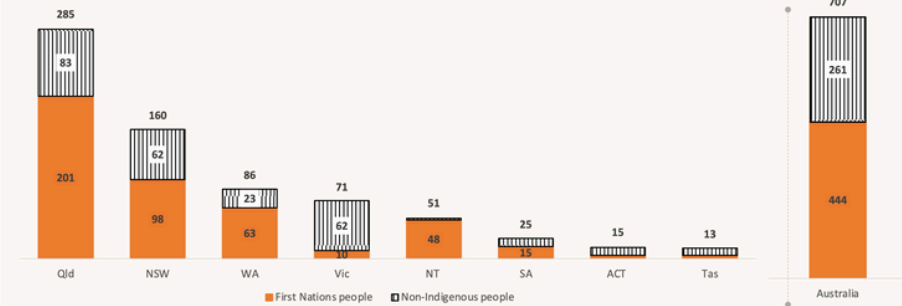
Crude incarceration rate by Indigenous status (2022/23) per 10,000, 10-17 years



Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.5.

Almost half of all First Nations children incarcerated by state and territory governments on an average night are Queensland children

Number of children in detention by Indigenous status (2022/23) Aged 10-17



Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.5.



Closing the Gap Targets 10 and 11 are not on track to be met. Qld and the NT are disproportionately incarcerating First Nations children at higher rates.

Summary: Justice

Targets are not on track to be met by 2031.



Aboriginal and Torres Strait Islander adults are being incarcerated at an increased rate and the target of a 15% reduction by 2031 is not on track to be met (Target 10).



Aboriginal and Torres Strait Islander young people continue to be overrepresented in the criminal justice system – there has been no progress made (Target 11).

Rate of change: Children in detention by Indigenous status Aged 10-17

	2013/14 – 2022/23		2018/19 – 2022/23	
	First Nations children	Non-Indigenous children	First Nations children	Non-Indigenous children
Tasmania	300%	-10%	-20%	29%
Queensland	68%	34%	17%	28%
Northern Territory	4%	0%	37%	100%
Australia	-4%	-20%	-3%	-16%
Victoria	-9%	22%	-47%	-33%
ACT	-20%	11%	100%	67%
NSW	-28%	-54%	-8%	-35%
South Australia	-38%	-58%	-29%	-38%
Western Australia	-48%	-32%	-34%	-15%

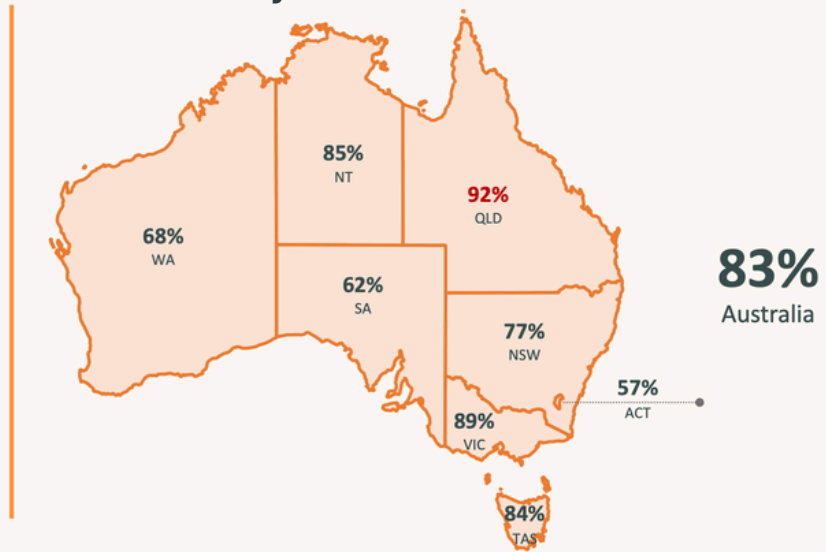
Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.1
Productivity Commission (2016). Report on government services 2016: Youth justice services, table 16A.4

The majority of children incarcerated by state and territory governments are yet to be sentenced. Queensland has the highest percentage of children on remand in the country.

Proportion of children in detention on remand (2023)

Aged 10-17, March Quarter 2023

Source: Australian Institute of Health and Welfare (2023). Youth detention population in Australia 2023, tables S14 and S32.



The number of children on remand is increasing in most jurisdictions.

Proportional increase: Children in detention on remand

Aged 10 – 17, March quarter

	2013-2023	2018-2023
Victoria	41%	58%
South Australia	38%	122%
Australia	2%	22%
Queensland	-1%	8%
Tasmania	-5%	13%
Western Australia	-12%	29%
NSW	-16%	10%
Northern Territory	-21%	-8%
ACT	-51%	-14%



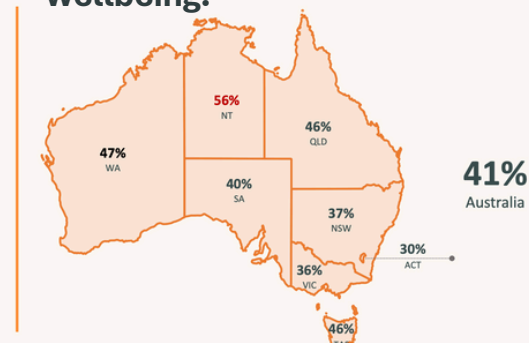
Source: Australian Institute of Health and Welfare (2023). Youth detention population in Australia 2023, tables S14 and S32. Australian Institute of Health and Welfare (2014). Youth detention population in Australia 2014, tables S8 and S18.

Note: Rate of change was calculated across the change of proportions of the numbers of children on remand.

The evidence is overwhelmingly clear that prison is the least effective and most expensive response when it comes to child justice and wellbeing.

Proportion of children in detention with more than one sentence

2000/01 – 2021/22



Source: Australian Institute of Health and Welfare (2023). Young people returning to sentenced youth justice supervision 2021–22, table S7.

Government expenditure on youth detention-based services (2022/23)

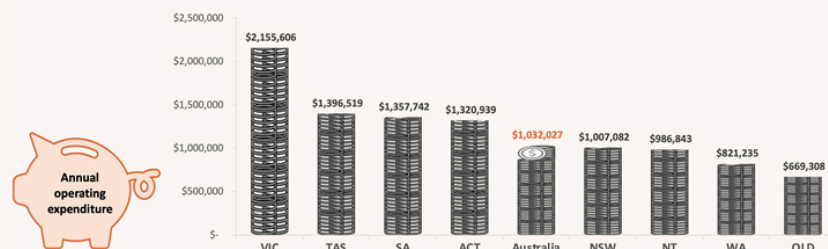
\$'000



Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.10.

Annual cost per child in detention (2022/23)

Daily cost x 365



Source: Productivity Commission (2024). Report on government services 2024: Youth justice services, table 17A.21. Note: Annual costs have been calculated by multiplying daily costs by 365.





A POSITION PAPER BY THE JUSTICE REFORM INITIATIVE

CHILDREN, YOUTH JUSTICE & ALTERNATIVES TO INCARCERATION IN AUSTRALIA

September 2024

CHILDREN, YOUTH JUSTICE AND ALTERNATIVES TO INCARCERATION IN AUSTRALIA

A position paper by the Justice Reform Initiative

September 2024

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INTRODUCTION

The over-incarceration¹ of children in Australia, especially of First Nations children requires immediate action. Currently we are unnecessarily incarcerating thousands of children each year – often on remand, for short, harmful, disruptive periods of time. Children are being ‘managed’ in prisons, rather than receiving support, care, programs, education and opportunities in the community.

This position paper proposes building on the substantial evidence base about ‘what works’ to reduce incarceration and re-orienting our approach to one that prioritises community led diversionary and support options. What might happen for instance, if police, magistrates and judges around Australia were able to easily refer children who came into contact with the justice system into community led alternatives? What might happen if community led programs and supports that have an evidence base of addressing the drivers of incarceration, were well resourced and accessible to *all* children who are at risk of contact, or in contact with the justice system? What might happen if detention was genuinely only used as a last resort? What might happen if children attending court were always given the option of a specialist children’s court? For those children currently in prison, what might happen if rather than being placed in punitive detention centres, there was a genuinely therapeutic and human rights-based approach, in which children were able to access supports, education, cultural and family connections, and holistic healthcare?

Around Australia there are currently extremely limited community led alternatives for children that are available to courts to use as diversionary, bail support and sentencing options. There is also very limited access to specialist support for children who are at risk of justice system involvement. There are many effective services on the ground doing excellent work all around Australia (including pre-charge diversion programs, bail support and accommodation, First Nations place based alternatives, intensive family support, early intervention and prevention programs), but these are chronically under-resourced, are often unable to meet demand, and they are often inaccessible to children living in remote and regional areas. As a consequence, these services do not have the capacity to make a significant impact on rates of incarceration. These projects are also often operating in a policy context where the investment in punitive policing and incarceration models effectively nullifies the impact of those programs designed to interrupt cycles of incarceration and disadvantage.

The over-use of imprisonment in Australia has been a policy failure. There is significant evidence about how we might build an alternative response. This position paper overviews the failure of our current system of children’s imprisonment and outlines the evidence base that should guide the required shifts in legislation, policy, the justice system, social and community support systems and resourcing. There are some specific legislative reforms (raising the Minimum Age of Criminal Responsibility and Bail Reform) that are outlined in more detail in the appendices of this position paper.

¹ In this paper we use the terms ‘incarceration’, ‘imprisonment’ and ‘prisons’ interchangeably with the more commonly used ‘youth detention’. This is to accurately reflect the model of youth detention we currently have in Australia, which is comparable to, and modelled on systems of adult imprisonment.

4 KEY REFORM AREAS

Youth justice in Australia requires transformative change. There are four broad key areas of reform that provide a framework for understanding the different kinds of changes that are required in order to build a different justice system for children. What the evidence shows very clearly is that while there is no single 'fix' to reduce the numbers of children in the justice system, there are multiple proven, cost-effective reforms that can work together to bring about change. Many of these reforms are already catalogued in government and non-government reports and reviews. In addition, there are clear examples and case studies, both in Australia and internationally, that point to approaches led by the community and health sectors which can make a profound difference in disrupting entrenched criminal justice system trajectories for children.

Four reform areas are noted below. It is useful to note from the outset that **this position paper is primarily focused on the on first two reform areas (community sector and justice system reform)**. We note in Appendix **B and C** some further detail with regard to legislative reform including Raising the Minimum Age of Criminal Responsibility and Bail Reform.

1. **Community sector reform**, including increased and sustainable **resourcing for supports, services and programs outside of the justice system**. This includes long-term and coordinated resourcing for evidence-based programs and supports that have been shown to prevent and reduce contact with the justice system. There is the need for increased resourcing and access to: early intervention and prevention services; child-centred and family-inclusive holistic wrap around support services; culturally modelled support for First Nations children and their families and communities; access to mental health and social and emotional wellbeing support; access to alcohol and other drug support; access to disability support; access to bail support; access to supported accommodation; access to throughcare and post-release support; and access to placed based supports.
2. **Justice system reform**. This includes changes to **policing** (different first responder models, different use of discretionary powers); changes to **courts** (specialist children's court models; restorative and transformative justice opportunities) and changes to the way that children who are currently imprisoned are treated (this means an urgent shift from the current model of harmful detainment to one that genuinely respects the human rights of children who are incarcerated, is child-centred, and trauma-aware).
3. **Legislative reform**. This includes raising the Minimum Age of Criminal Responsibility; ending mandatory sentencing; restoring the presumption in favour of bail and embracing a human rights framework. This means assessing all proposed legislative and regulatory frameworks that govern youth justice and detention, and auditing all existing legislative and regulatory frameworks, to ensure they are consistent with Australia's international obligations under the following United Nations Conventions to which Australia is a signatory:
 - *Convention on the Elimination of All Forms of Racial Discrimination* (CERD) (entry into force 4 January 1969; entry into force for Australia 30 October 1975);

- *International Covenant on Civil and Political Rights* (ICCPR) (entry into force 23 March 1976 and 28 March 1979; entry into force for Australia 13 January 1980 and 28 January 1993);
 - *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (entry into force 3 January 1976; entry into force for Australia 10 March 1976);
 - *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) (entry into force 26 June 1987; entry into force for Australia 7 September 1989) and the *Optional Protocol to the CAT* (entry into force for Australia 15 December 2017);
 - *Convention on the Rights of the Child* (CRC) (entry into force 2 September 1990; entry into force for Australia 16 January 1991).
4. **Systems change reform.** This includes recognising and responding to youth justice as a whole-of-government and whole-of-community responsibility; locating the responsibility for children who are at risk of justice system involvement outside of the justice system; recognising the pipelines between child-protection and education with youth justice and implementing a whole-of-government strategy to address this. Systems change reform also includes ensuring transparent and independent monitoring of places of detention, in accordance with Australia's international obligations under the *Optional Protocol to the CAT* and government implementation of recommendations made through such mechanisms.

12 PRINCIPLES FOR GUIDING CHANGE

Alongside the four reform areas, we are proposing 12 principles based on the evidence for guiding change in this area. Each of these principles is discussed in more detail in relation to the evidence base underpinning these approaches throughout this position paper.

1. **The answers to the problems of the over-incarceration of children are located outside of the justice system.** Significant additional government investment is required to build the capacity of community led alternative responses (including responses led by First Nations communities). This investment needs to be long-term, flexible and coordinated.
2. **All police interactions with children should be focused on moving children away from the justice system.** Police should develop appropriate key performance measures to ensure discretion is exercised to divert children from the criminal justice system.
3. **Alternative first responder models** (including those that are First Nations, youth worker, and health practitioner led) and **co-first responder models** (where police work alongside other key community workers) are required to ensure wherever possible the option of pre-charge diversion is prioritised, and to elevate the importance of addressing the social drivers of incarceration if children do come into contact with police.
4. There should be a **presumption in favour of bail** for all offences for all children charged with a criminal offence.
5. **Community led bail support programs**, including supported housing should be resourced in every jurisdiction in recognition of the extraordinarily high levels of children imprisoned on remand and the current absence of supports in the community available

to support this group. This should include First Nations led and culturally modelled options.

6. **Evidence based alternative court options** including restorative, transformative and First Nations led justice models should be made available in all jurisdictions.
7. Every jurisdiction should establish and adequately resource **separate specialist courts for children** in recognition of the specific developmental needs of children when they come into contact with the justice system. These should operate as a separate Magistrates' Court and not just as a division of the existing Magistrates' Court. As part of these separate, specialist children's courts, all children who attend these specialist children's courts should be provided with access to developmentally appropriate court support services.
8. **First Nations children should have access to First Nations led support.** The most effective responses for First Nations children are those that are culturally modelled, designed and delivered by local First Nations communities and organisations, and which foster a genuine sense of community ownership and accountability. Many First Nations people have intergenerational and/or personal experience of mainstream services working against them. Ensuring First Nations communities have community-control and cultural authority (as well as long-term and sustainable funding sources) will ensure programs are modelled on local systems and circumstances, and more effectively meet local priorities and needs.
9. Children should never be excluded from support on the basis of age, perceived complexity of need, past offending behaviour, or geographic location. Services and supports should be resourced to work with children with multiple support needs including children who are living in regional and remote areas. **Support should be holistic, child-centred, long term (when needed) and wrapped around the individual needs of the child and their family who require assistance.** Support services should be appropriately resourced so that they are able to provide support services 24 hours per day, 7 days per week.
10. The Federal Government and all State and Territory Governments should commit to **raising the age of criminal responsibility to at least 14** (based on all available medical evidence). There is clear evidence that 14 is the **minimum** age, developmentally and neurologically, that children could or should be held criminally responsible. This is discussed in further detail in **Appendix B**.
11. **Youth detention should only be considered as a sentencing option of absolute last resort** and reserved only for those who present a specific and immediate risk to the physical safety of another person or persons.
12. For children who are currently detained by the state because they have broken the law, the environment in which they are detained (and the responsibility for their detention) must be urgently reformed. Secure facilities should be **therapeutic and trauma-informed**. If any child is to be detained, the environment in which they are held should be –
 - Home like (rather than prison like);
 - Therapeutic (rather than punitive);

- Trauma-informed (supporting children to build and maintain relationships and connectedness at the individual, family and community levels including through leave of absences);
- Small in scale;
- Run by highly skilled staff who specialise in the health, well-being and support of children;
- Place-based, culturally modelled, and run by community-led and based services.

Children should never be held in police watch-houses or adult prisons. The use of solitary confinement either as punishment, a management tool, or because of staffing issues should never be used for children.

A SNAPSHOT OF CHILDREN'S IMPRISONMENT IN AUSTRALIA

The most recent Report on Government Services (ROGS) data shows that there are **1,422 permanently funded beds in Australian youth detention centres (prisons for children)**.² The average number of children in prison each night around Australia over the course of the year is **828**.³ On an average night, **63% of children that the government is holding in custody are First Nations children**.⁴

The total number of children who cycle in and out of prison over the course of the year is significantly higher than the average nightly number. When designing policy responses to over-incarceration, it is the flow through data that requires close attention. ROGS data shows that in 2022-2023 there were **4605 individual children** who were imprisoned over the course of the year.⁵

When we look at release, reception, and length of time in custody, we begin to get a much clearer sense of what is actually happening for these 4605 children. The Australian Institute of Health and Welfare (AIHW) data shows us that each year there are **8,965 receptions (constituting 4,265 individual children)** into custody⁶ and **9,066 releases (constituting 4,417 individual children)**.⁷ Children have on average 2 releases from custody over the course of a year.⁸

On an average day in 2022-2023, **83% of children in prison were unsentenced**.⁹ In some jurisdictions, this is even higher. For instance, in Queensland 92% of children in prison were unsentenced.¹⁰ The flow through data shows us a much more comprehensive picture of the over-use of imprisonment for unsentenced children. **98% of children received into custody in 2022-2023 were unsentenced**¹¹, with **92% of children released from custody also released from unsentenced detention**.¹²

For those children who were released from unsentenced imprisonment, 60% ended up being released on bail (into the community).¹³ 38% of unsentenced children completed their remand period.¹⁴ According to data from 2021-2022, of those unsentenced children who completed their remand period, only 20% are ultimately sentenced to a period of imprisonment.¹⁵

The question for us as a community is why are young people being incarcerated in this way? Why are so many children who are unsentenced and have not had the courts determine either

² Productivity Commission. 2024. Report of Government Services (ROGS) 2024: Youth justice services, table 17A.2

³ Ibid, table 17A.21.

⁴ Ibid, table 17A.5.

⁵ Ibid, table 17A.9.

⁶ Australian Institute for Health and Welfare (AIHW). 2024. Youth detention tables, tables S103a + S103b

⁷ Ibid, table S104a + S104b

⁸ AIHW. 2024. 'Youth Justice In Australia' (Web Page) < <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/detention>>.

⁹ AIHW (n 6), tables S14 and S32

¹⁰ AIHW (n 6), tables S14 and S32.

¹¹ AIHW (n 8).

¹² Ibid.

¹³ AIHW (n 8), Figure 5.3.

¹⁴ Ibid.

¹⁵ AIHW. 2023. *Youth Justice in Australia 2021-22*, 23.

their culpability or their penalty being incarcerated? Why is prison being used for children so regularly, when it is well known that the experience of imprisonment increases the likelihood of future offending? Prison is criminogenic. **85% of children released from sentenced imprisonment in Australia return within 12 months.**¹⁶

Although it is more complex to collect recidivism data for children who were unsentenced, it is clear from the sheer numbers of children who churn through the system that there are significantly high rates of return to custody for children who have spent time in unsentenced imprisonment as well. Denial of bail increases the likelihood of incarceration and is a major contributing factor in causing children to become further entrenched in the criminal justice system. Bail legislation needs to provide for a presumption in favour of bail for all children charged with a criminal offence. This is discussed in detail in **Appendix C**.

In Australia, the cost of incarcerating one child in custody for one day is \$2,827.¹⁷ The cost of incarcerating one child in custody for a year is \$1,032,027.¹⁸ Across Australia **\$855,257 million** is spent each year on locking up children.¹⁹ This does not take into account the cost of new capital works. It also does not account for the cost of crime, disconnection from family and community, the absence of education, disability and mental health, and the life-long costs in terms of risks of entrenched justice system involvement.

THE IMPRISONMENT OF DISADVANTAGE

Most children who enter the youth justice system come from backgrounds where they have already experienced disadvantage and trauma, with a significant number also having experienced out of home care. Prison increases disadvantage and disconnection. Children in the youth justice system need family and community support, education, and life opportunities, not punishment that compounds disconnection and disadvantage.

For many decades, the social determinants of health research has shown the way that social and structural factors (including poverty, disadvantage, geography, and access to supports and services) impact on health outcomes and life expectancy. More recently, Australian researchers have used linked administrative data to unpack the social determinants of incarceration.²⁰ These include:

1. having been in out of home (foster) care;
2. receiving a poor school education;
3. being Indigenous;
4. having early contact with police;
5. having unsupported mental health and cognitive disability;
6. problematic alcohol and other drug use;
7. experiencing homelessness or unstable housing; and
8. coming from or living in a disadvantaged location.²¹

¹⁶ AIHW. 2023. Young people returning to sentenced youth justice supervision 2021–22. Catalogue number JUV 141. Available online <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/summary>>.

¹⁷ Productivity Commission (n 2), table 17A.21.

¹⁸ Ibid. Note: Annual costs have been calculated by multiplying daily costs by 365.

¹⁹ Productivity Commission (n 2), table 17A.10.

²⁰ Ruth McCausland and Eileen Baldry, *Who Does Australia Lock Up? The Social Determinants of Justice*, International Journal for Crime, Justice and Social Democracy, April 2023.

²¹ Ibid.

The fact of disadvantage²² cannot be used to discount the consequences of crime. However, it is crucial to understand the context in which most crime is committed²³ to build and implement effective policy to reduce the numbers of people in custody and strengthen genuine alternatives to prison.

Recent research from the Victorian Youth Parole Board notes of the children in custody:

- 55% had experienced being subject to a child protection order;
- 72% had experienced abuse, trauma or neglect as a child;
- 50% had experienced family violence;
- 62% had accessed mental health support in relation to their diagnosed mental illness;
- 28% had a history of self-harm, suicidal ideation or suicide attempts;
- 29% had an active cognitive difficulty diagnosed or documented by a professional;
- 66% had a history of use or misuse of alcohol;
- 87% had a history of use or misuse of drugs (illicit or prescription).²⁴

Comparable findings have emerged from other studies around Australia into the drivers of children's incarceration. A 2015 survey of young people in custody in NSW confirmed that only 27% of survey participants had attended school in the six months prior to entering custody, with the median school leaving age at just 15 years.²⁵ In addition, 53.6% of respondents indicated they had at least one parent who had been in prison, and First Nations young people were twice as likely to have at least one parent who had been in prison. 66.4% of First Nations young people had a previously incarcerated parent.²⁶

1 in 5 children under youth justice supervision in Australia come from areas of extreme social and economic disadvantage.²⁷ In addition, children who received an alcohol and other drug treatment service have been found to be 30 times as likely as the Australian population to be under youth justice supervision.²⁸

Surveys of children in prison also indicate that children who are subject to care and protection orders have an increased likelihood of coming into contact with the criminal justice system. Children in prison are more likely to have a history of abuse and neglect and to have experienced family violence, and less likely to have attended school in the period prior to their imprisonment.²⁹ 19% of adults in prison in Australia had previously been incarcerated as a child

²² For example, AIHW. 2023. 'The Health of People in Australia's Prisons' (Web page) <<https://www.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022/contents/about>>.

²³ For example, see analysis in Cunneen, Chris, Baldry, Eileen, Brown, David, Schwartz, Melanie, Steel, Alex, and Brown, Mark (2013) *Penal Culture and Hyperincarceration: the revival of the prison*. Advances in Criminology . Routledge, Farnham, UK.

²⁴ Youth Parole Board. 2021. Victoria Government Annual Report 2020-21.

²⁵ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW. 2017. *2015 Young People in Custody Health Survey: Full Report*. 14, 17-18.

²⁶ Ibid; Remond M, Zeki R, Austin K, Bowman J, Galouzis J, Stewart K & Sullivan E 2023. Intergenerational incarceration in New South Wales: Characteristics of people in prison experiencing parental imprisonment. *Trends & issues in crime and criminal justice* no. 663. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/ti78863>.

²⁷ AIHW (n 8).

²⁸ Ibid.

²⁹ Youth Parole Board (n 24), 31; Justice Health & Forensic Mental Health Network and Juvenile Justice NSW. 2017. *2015 Young People in Custody Health Survey: Full Report*. 14; Australian Law Reform Commission, '[Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#)' (ALRC 2017) (Report No 133, December 2017) 73-74.

on at least one occasion.³⁰ For First Nations people in prison, 25% have previously been in imprisoned as a child on at least one occasion.³¹

IMPRISONMENT OF FIRST NATIONS CHILDREN

63% of children imprisoned by state and territory governments in Australia are First Nations children.³² State and territory governments consistently imprison First Nations children (and adults) at higher rates than the non-Indigenous population. Productivity Commission data notes that state and territory governments are 27 times more likely to imprison First Nations children compared to non-Indigenous children.³³ This is higher in some jurisdictions. For instance, in Western Australia, the state government is 38 times more likely to imprison First Nations children than non-Indigenous children.³⁴

Incarceration for all children, including First Nations children, is trauma reinforcing. Children are removed from their carers, kin and communities, and often unable to participate in meaningful activities, or further education, employment, or vocational training. For First Nations children who are disproportionately represented in prison, trauma is amplified by the removal from Country and community, and disconnection from culture.

The disproportionate incarceration of First Nations children both reflects and reproduces many forms of structural disadvantage, systemic racism, and continued institutionalisation and dispossession. Colonialisation and the “eroding of First Nations peoples’ ways of knowing, being and doing” has contributed to current levels of over-incarceration.³⁵

The Uluru Statement from the Heart noted:

*'Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.'*³⁶

The Victorian Aboriginal Legal Service notes many First Nations children in prison have expressed feelings of inevitability that they will eventually reunite with their family members in adult prison.³⁷

Children who are subject to care and protection orders or are placed in out-of-home care also have an increased likelihood of coming into contact with the criminal justice system.³⁸ First

³⁰ AIHW. 2023. 'The Health of People in Australia's Prisons' (Web Page) <<https://www.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022/contents/socioeconomic-factors/detention-history>>.

³¹ AIHW. 2019. *The health of Australia's prisoners*. 2018. Cat. no. PHE 246. Canberra: AIHW. 21. Table S16.

³² Productivity Commission (n 2), table 17A.5.

³³ Ibid.

³⁴ Ibid.

³⁵ Helen Milroy, Marshall Watson, Shraddha Kashyap and Pat Dudgeon. 2022. 'First Nations Peoples and the Law'. *Australian Bar Review*, Volume 50, Part 3. Available online <https://www.lexisnexis.com.au/__data/assets/pdf_file/0008/420974/Australian_Bar_Review_ABR-Volume50_Part3.pdf>.

³⁶ '[Uluru Statement from the Heart](#)'. National Constitutional Convention, 26 May 2017.

³⁷ ALRC (n 29), 44, 43, and 81.

³⁸ Ibid 73-74; Megan Davis. 2019. '[Family is Culture: Independent Review Of Aboriginal Children and Young People in OOHC](#)'. Review Report. November 2019. 2.

Nations children continue to be disproportionately subjected to care and protection orders.³⁹ In 2021-2022, state and territory governments were 9 times more likely to involve First Nations children in child protection services than non-First Nations children.⁴⁰ The Victorian 2021 survey found 37.9% of children in prison had at some stage been subject to a child protection order.⁴¹ An earlier piece of research looking at children in custody in NSW found that over 27% of participants had been placed in care as a child, with this being more common for young girls and young First Nations people.⁴² Given that being strong in culture and connected to Country/community are known protective factors for First Nations children's health and wellbeing, First Nations children who are separated from kin and placed in First Nations environments often experience distress beyond their non-First Nations counterparts.⁴³ For many, current practices of child removal are reminiscent of past racist assimilationist policies.

The Uluru Statement of the Heart further noted:

*'When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.'*⁴⁴

First Nations communities have the solutions. Respect for self-determination and the handing back of decision-making authority to First Nations communities is key to reducing the over-incarceration of First Nations children in Australia.

IMPRISONMENT OF CHILDREN WITH COGNITIVE IMPAIRMENT

There is a causal link between disability and contact with the criminal justice system.⁴⁵ Lack of responsiveness to cognitive and physical impairments can hinder participation in the criminal justice system and lead to enmeshment in the correctional system.⁴⁶ People with disability, including children, are overrepresented across the criminal justice systems in Australia, and are at heightened risk of violence, abuse, neglect and exploitation in criminal justice settings.⁴⁷

A 2018 study by the Telethon Kids Institute and the University of Western Australia showed 9 out of 10 children who were incarcerated in WA had some form of neuro-disability, ranging from dyslexia or similar learning disability, language disorder, attention deficit hyperactivity disorder, intellectual disability, executive function disorder, memory impairment or motor coordination disorder.⁴⁸ More than one in three of these children had Foetal Alcohol Spectrum Disorder (FASD). This is among the highest reported rate of neuro-disability among children and young

³⁹ ALRC (n 29), 73-74

⁴⁰ AIHW 2023, [Child protection Australia 2021-22](#), TableS2.3 (21 July 2023).

⁴¹ Youth Parole Board. 2022. Annual Report 2021-22. Available online <<https://www.justice.vic.gov.au/youth-parole-board-annual-report-2021-22>>.

⁴² ALRC (n 29), 43

⁴³ Commonwealth of Australia. 1991. [Royal Commission into Aboriginal Deaths in Custody](#). Final Report. 1991. 334.

⁴⁴ 'Uluru Statement from the Heart' (National Constitutional Convention, 26 May 2017).

⁴⁵ [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. 2020. Issues Paper - Criminal Justice System](#). 14 January 2020. 5. Available online <<https://disability.royalcommission.gov.au/system/files/2022-03/Issues%20paper%20-%20Criminal%20justice%20system.pdf>>.

⁴⁶ Ibid, 5.

⁴⁷ Harry Blagg, Zoe Bush and Tamara Tulich. 2015. '[Diversions Pathways for Indigenous Youth with FASD in Western Australia: Decolonising Alternatives](#)' (2015) 40(4) *Alternative Law Journal* 257, 257.

⁴⁸ Martin Drum and Riley Buchanan. 2020. *Western Australia's prison population 2020: Challenges and reforms*. The University of Notre Dame Australia and the Catholic Archdiocese of Perth. Available online <http://csswa.perthcatholic.org.au/wp-content/uploads/2022/05/FINAL-WA-Prison-Population-Report-2020_WEB.pdf>.

people sentenced to detention worldwide.⁴⁹ There is no evidence to suggest that this is any different in other jurisdictions.

YOUTH JUSTICE LEGISLATION AND INTERNATIONAL LAW

Each state and territory in Australia has its own youth justice legislation, policies and practice, all with a unifying principle that children should only be detained as a last resort and for the shortest period possible.⁵⁰

This principle aligns with Australia's international obligations, including under the UN Convention on the Rights of the Child (the **CRC**). The CRC affirms that in 'all actions concerning children...the best interests of the child shall be a primary consideration'⁵¹ and specifies a range of relevant rights, including the right to education, safety, good health and respectful treatment. It emphasises the importance of treating incarcerated children 'in a manner consistent with the promotion of the child's sense of dignity and worth', which takes into account 'the desirability of promoting the child's reintegration and the child's assuming a constructive role in society', and of diverting children away from the criminal justice system.⁵² Article 37 states that 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment'. Article 37(c) states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.⁵³ It is important to note that Australia has maintained a reservation in relation to article 37(c) on the basis that geography and demography make it difficult to always detain children in youth justice facilities and simultaneously allow children to maintain contact with their families.⁵⁴

The International Covenant on Civil and Political Rights (**ICCPR**) states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.⁵⁵ Article 10(2) specifically states that all accused young persons shall be separated from adults and have their matters adjudicated as speedily as possible.⁵⁶ In 1991 Australia agreed to be bound by the First Optional Protocol to the ICCPR. This means that the UN Human Rights Committee can hear complaints from individuals in Australia who allege that the Australian Government has violated their rights under the ICCPR.⁵⁷

⁴⁹ Telethon Kids Institute (2018) '[Nine out of ten young people in detention found to have severe neuro-disability](#)' (13 February 2018).

⁵⁰ AIHW. 2020. '[Youth detention population in Australia](#)'. Bulletin No 148. February 2020. 3.

⁵¹ [Convention on the Rights of the Child](#), opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1).

⁵² *Ibid*, arts 19, 24, 28, 29, 31, 37 and 40.

⁵³ *Ibid*, art 37.

⁵⁴ Australian Government, *Australia's Combined Second and Third Reports under the Convention on the Rights of the Child*, (2003), para 467. Available online <http://www.dfat.gov.au/hr/downloads/australia_2nd_3rd_reports_convention_rights_child.pdf>.

⁵⁵ [International Covenant on Civil and Political Rights \(ICCPR\)](#), opened for signature 16 December 1966 General Assembly resolution 2200A (XXI), (entered into force 23 March 1976) art 10.

⁵⁶ *Ibid*, art 10 (2)(b).

⁵⁷ [Optional Protocol to the International Covenant on Civil and Political Rights](#), opened for signature 16 December 1966 General Assembly resolution 2200A (XXI), (entered into force 23 March 1976).

Other international instruments, such as the Rules for the Protection of Juveniles Deprived of their Liberty (the **Havana Rules**) which regulate the use of disciplinary regimes in youth detention, set out minimum standards for the treatment of incarcerated children.

Collectively, these international treaties and standards lay the foundation for a human-rights compliant youth justice system and 'represent an effective benchmark against which law, policy and practice can be measured'.⁵⁸

Minimum standards for youth detention facilities (prisons for children) are established domestically in the Australasian Juvenile Justice Administrators' *Standards for Youth Justice* (the **AJJA Standards**), which are modelled closely on the Havana Rules. The child prison system in Australia is ideally meant to treat children differently from adults.⁵⁹ Australian legislation relating to the imprisonment of children recognises the importance of respecting children's human rights, including the right to be treated humanely and respectfully, in order to successfully rehabilitate and reintegrate them into the community upon their release from detention.⁶⁰

RECENT HUMAN RIGHTS FAILURES IN AUSTRALIAN YOUTH JUSTICE

Following the deeply confronting ABC Four Corners episode 'Australia's Shame', aired in July 2016,⁶¹ which exposed systemic abuse of children in prison in the NT, sustained debate has emerged over the extent to which Australia protects children's human rights.⁶²

Practices of abuse, neglect and mismanagement have occurred (and continue to occur) in children's prisons in every state and territory in Australia. For example, in all jurisdictions, solitary confinement is used unlawfully, inappropriately and punitively on children who are held in conditions that fall well short of minimum standards. Children across the country are systematically denied access to education, exercise and family visits.⁶³

In addition to the Don Dale Youth Detention Centre in the NT, particular concerns have been raised in relation to the Ashley Youth Detention Centre in Tasmania, the Banksia Hill Detention Centre in Western Australia and the Cleveland Youth Detention Centre in Queensland. In Victoria concerns have been raised about the overuse of lockdowns and isolation for young people in Parkville Youth Detention Centre and the Malmsbury Youth Detention Centre. Similar concerns have been raised regarding the Kurlana Tapa Youth Detention Centre in South

⁵⁸ Ursula Kilkelly. 2008. '[Youth Justice and Children's Rights: Measuring Compliance with International Standards](#)'. (2008) 8(3) *Youth Justice* 187, 191.

⁵⁹ AIHW. 2017. '[Youth Detention Population in Australia](#)', Bulletin No 143; Ian Kysel. 2016. '[Banishing Solitary: Litigating an End to the Solitary Confinement of Children in Jail and Prisons](#)'. (2016) 40 *N.Y.U Review of Law and Social Change* 675, 693.

⁶⁰ Australian Children's Commissioners and Guardians (ACC&G). 2016. '[Human rights standards in youth detention in Australia: the use of restraint, disciplinary regimes and other restricted practices](#)'. April 2016. 4.

⁶¹ ABC News. (2016). *Four Corners – Australia's Shame*, (Web Page) <<https://www.abc.net.au/news/2016-07-25/australias-shame-promo/7649462>>.

⁶² Caro Meldrum-Hanna and Elise Worthington. 2016. '[Child hooded, strapped to mechanical restraint chair in Northern Territory](#)'. *ABC Four Corners*. 25 July 2016. Available online <<https://www.abc.net.au/news/2016-07-25/child-hooded-to-mechanical-restraint-chair-in-nt-detention/7659008>>.

⁶³ See, for example, Commission for Children and Young People (Vic). 2017. [The Same Four Walls: Inquiry into the Use of Isolation, Separation and Lockdown in the Victorian Justice System](#). Final Report. 23 March, 2017; Ombudsman (Vic). 2013. [Investigation into Children Transferred from the Youth Justice System to the Adult Prison System](#). 11 December 2013; Office of the Inspector of Custodial Services (WA). 2018. [2017 Inspection of Banksia Hill](#). 17 April 2018; Ombudsman (NSW). [2016 Annual Report 2015-16](#). 27 October 2016; The ACT Human Rights Commission. 2011. [The ACT Youth Justice System: A Report to the ACT Legislative Assembly](#). July 2011; Nick Clark. 2013, '[Court blast for Ashley Detention Centre Locked in Isolation](#)', *Mercury* (Hobart), 20 September 2013.

Australia. In NSW's Baxter Youth Detention Centre, Correctional Service Officers have undertaken full strip searches of young people circumventing laws that only permitted partial strip searches.

The cruel and degrading treatment of children in prison is in violation of Australia's international obligations under the CRC and the Havana Rules.

NORTHERN TERRITORY – DON DALE YOUTH DETENTION CENTRE

A Royal Commission into the Protection and Detention of Children in the NT was established in response to the abovementioned 2016 ABC Four Corners episode. The final report revealed that a staggering number of children in prison, some just 10 years old, were mistreated, verbally and physically abused, humiliated, or placed in solitary confinement for extended periods of time. The Commission concluded that youth detention centres in the NT were not fit for accommodating, let alone rehabilitating, children and young people. They were characterised by harsh, prison-like conditions and oppressive and unnatural environments, with limited options for children to engage with provided services, education, and rehabilitative programs. The Commission also found that procedures and requirements of law were either not known by staff or not followed, with systems and practices failing to comply with basic human rights standards which apply to the treatment of young people.⁶⁴

Despite the Royal Commission's harsh criticism of the NT's youth justice system, reports of mistreatment in Don Dale Youth Detention Centre (Don Dale) continue.⁶⁵ For example, on 6 November 2018, a group of children aged 13-17 escaped from their cells and set the facility's school on fire. Police used CS tear gas and pointed their guns at the children to "diffuse" the situation.⁶⁶

In 2022 the NT Children's Commissioner reported on the ongoing use of spit-hoods and restraint chairs used by the NT Police on children held in police watch-houses. In June 2023 the Commissioner called for legislation banning the use of spit hoods and restraint chairs in any setting, including police and youth justice custody.⁶⁷

More recently in 2024, the NT Territory Response Group (TRG), who are under ICAC investigation for allegations around racism, were called in to respond to a fire at the education centre and children who were on the roof of Don Dale. Following this incident, children were placed in indefinite lockdown. Legal experts have again highlighted the appalling conditions in which children are being held.⁶⁸

Despite the urgent need to close Don Dale being clearly identified by the Royal Commission in 2017, construction of a youth justice centre to replace Don Dale is still not complete (and more

⁶⁴ Commonwealth of Australia. 2017. [Royal Commission into the Protection and Detention of Children in the Northern Territory](https://www.royalcommission.gov.au/child-detention/final-report). Final Report, Volume 1, 17 November 2017. 9, 12. Available online <<https://www.royalcommission.gov.au/child-detention/final-report>>.

⁶⁵ Jesuit Social Services. 2018. '[New Darwin youth justice facility must be fast-tracked](https://jss.org.au/wp-content/uploads/2018/11/MR-New-Darwin-youth-justice-facility-must-be-fast-tracked)'. Media Release 7 November 2018. <<https://jss.org.au/wp-content/uploads/2018/11/MR-New-Darwin-youth-justice-facility-must-be-fast-tracked-Jesuit-Social-Services.pdf>>.

⁶⁶ ABC Darwin Staff. 2018. '[Don Dale riot: What is going wrong at the NT's largest youth justice centre?](https://www.abc.net.au/news/2018-11-07/don-dale-youth-detention-riot-territory-families-police/10472746)'. ABC News. 7 November 2018. <<https://www.abc.net.au/news/2018-11-07/don-dale-youth-detention-riot-territory-families-police/10472746>>.

⁶⁷ Office of the Children's Commissioner Northern Territory. 2023. *Use of Spit Hoods and Restraint Chairs on Children*. Position Paper June 2023.

⁶⁸ Neve Brissenden. 2024. 'Lawyers blame Don Dale riot on 'appalling conditions.' *Canberra Times*. 4 April 2024. <<https://www.canberratimes.com.au/story/8580248/lawyers-blame-don-dale-riot-on-appalling-conditions/>>.

than two years behind schedule).⁶⁹ Early estimates were that the new centre would have 44 beds and cost \$70 million to build.⁷⁰

TASMANIA – ASHLEY YOUTH DETENTION CENTRE

In August 2022, the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings received evidence giving accounts of the use of excessive force by guards at the Ashley Youth Detention Centre (AYDC), serious assaults committed by children and young people at the behest and active encouragement of guards, and invasive strip searches. In the previous two years the Tasmanian Government's Abuse in State Care Compensation programs received over 300 applications detailing acts of abuse within the AYDC.⁷¹

In 2021, the Tasmanian Government committed to shutting down AYDC and constructing two new therapeutic centres by 2024.⁷² The time-frame for the closure of AYDC has now been revised to be 2026.⁷³ However, both the National Children's Commissioner and the Tasmanian Commissioner for Children have stated that it should be closed immediately, given the numerous accounts of abuse and neglect in the AYDC.⁷⁴

WESTERN AUSTRALIA – BANKSIA HILL YOUTH DETENTION CENTRE, UNIT 18 CASUARINA PRISON

The Banksia Hill Youth Detention Centre is the only prison for children in Western Australia. More than 600 children are imprisoned in the facility every year, many of them First Nations children, and with various cognitive impairments and/or mental health conditions. Throughout 2022, the WA Government received extensive criticism regarding the harsh and punitive conditions within the detention centre amid ongoing reports of self-harm, suicide attempts and destruction of cells at the facility. In April 2022, the WA Inspector of Custodial Services described the treatment of young people in the Banksia Hill intensive support unit as 'cruel, inhuman and degrading' and has called for urgent change of direction to a welfare focused and trauma informed intervention. A review commissioned by the Western Australian Government in

⁶⁹ Thomas Morgan. 2023. 'Years after the NT Royal Commission why has Don Dale still not been replaced?'. *ABC News*. 4 October 2023. <<https://www.abc.net.au/news/2023-10-04/nt-don-dale-youth-detention-centre-replacement-facility-delays/102929238>>.

⁷⁰ Thomas Morgan, Jesse Thompson and Jane Bardon. 2023. 'World-class' new Darwin Youth Justice Centre's location next to Holtze prison sparks alarm from co-commissioner Mick Gooda'. *ABC News*. 20 September 2022. <<https://www.abc.net.au/news/2022-09-20/nt-don-dale-replacement/101457426>>.

⁷¹ Australian Associated Press. 2022. '[Staff at youth detention centre provoked fights 'for sport', former detainees says](https://www.theguardian.com/australia-news/2022/aug/25/former-detainee-says-staff-at-tasmanian-youth-detention-centre-provoked-fights-for-sport)', *The Guardian*. 25 August 2022. <<https://www.theguardian.com/australia-news/2022/aug/25/former-detainee-says-staff-at-tasmanian-youth-detention-centre-provoked-fights-for-sport>>; Lucy MacDonald. 2022. '[Ashley youth prison guards 'encouraged fights between inmates for sport', inquiry hears](https://www.abc.net.au/news/2022-08-25/ex-ashley-detainee-says-guards-encouraged-fights/101370144)'. *ABC News*. 25 August 2022. <<https://www.abc.net.au/news/2022-08-25/ex-ashley-detainee-says-guards-encouraged-fights/101370144>>; Lucy MacDonald. 2022. '[Female detainee tells of Ashley prison abuse and 'favouritism' of some male inmates by staff](https://www.abc.net.au/news/2022-08-24/ashley-commission-of-inquiry-charlottes-story/101366928)'. *ABC News*. 24 August 2022. <<https://www.abc.net.au/news/2022-08-24/ashley-commission-of-inquiry-charlottes-story/101366928>>.

⁷² Tasmanian Government. 2022. 'Northern Correctional Facility- Public Consultation on future use of the Ashley Youth Detention Centre'. (Fact sheet) <https://www.justice.tas.gov.au/_data/assets/pdf_file/0008/676907/January-2022-Project-Update.pdf>.

⁷³ Matt Maloney. 2023. 'Ashley Youth Detention Centre could shut much later than promised'. *The Examiner*. 29 September 2023. <<https://www.examiner.com.au/story/8367060/detention-could-remain-open-for-another-three-years/>>.

⁷⁴ Carol Rääbus. 2022. '[Australia's youth detention centres failing vulnerable children says National Children's Commissioner](https://www.abc.net.au/news/2022-09-09/australia-youth-detention-failing-children-commissioner/101414528)'. *ABC News*. 9 September 2022. <<https://www.abc.net.au/news/2022-09-09/australia-youth-detention-failing-children-commissioner/101414528>>.

early 2021 identified several problems with the Banksia Hill facility and recommended a move away from punitive control to a model of youth justice that was based on therapeutic care.⁷⁵

In November 2022, CCTV footage of guards employing excessive force and restraint holds on children was screened on the ABC Four Corners episode 'Locking up Kids: Australia's failure to protect children in detention'.⁷⁶ The footage displayed the use of a restraint hold known as 'folding up' where three guards restrain a young person, and one of the guards twists the young person's legs until they are crossed behind him and then sits on them.⁷⁷ The practice is considered extremely dangerous as it can cause suffocation and carries with it a significant risk of serious injury or death. The WA Department of Justice has since announced that the practice will be phased out and an alternative method of restraint for children will be introduced (although this will not be made public).⁷⁸

During 2022 in Banksia Hill there were also incidences of 'rolling lockdowns', where young people in detention were confined in their cells during those hours when they would otherwise be allowed to leave their cells and engage in educational or recreational activities. These practices involved the young people being detained in their sleeping quarters for long hours on frequent occasions, a practice described by the Supreme Court of Western Australia as a severe measure 'effectively confining them in isolation' and subjecting children to solitary confinement on a frequent basis.⁷⁹ In declaring such practices unlawful the Supreme Court stated that subjecting children to solitary confinement on a frequent basis is inconsistent with basic notions of the humane treatment of young people and has the capacity to cause immeasurable and lasting damage to an already psychologically vulnerable group.⁸⁰

Following a series of violent incidents, a number of children from Banksia Hill have been moved to 'Unit 18', a unit in the adult prison at Casuarina. The conditions inside Unit 18 and the conditions in Banksia Hill continue to raise ongoing and significant concerns with regard to the safety of the children who are held there. The Office of the Inspector of Custodial Services has described the situation as a crisis.⁸¹ At the time of writing, the conditions within Unit 18 were the subject of a coronial inquest into the death of 16-year-old Cleveland Dodd who died in October 2023 after self-harming in his cell at Unit 18. The coroner has heard evidence from a youth custodial officer that it was not possible to ensure that young people are treated lawfully, humanely, fairly and equally at Unit 18, in accordance with Department of Justice policy. Another officer stated that the cells in Unit 18 were damaged prior to young people being transferred to them, describing the cells as "unliveable". He said that the unit was originally set

⁷⁵ ABC Four Corners. 2022. [Boys handcuffed, held down by guards and sat on in dangerous youth detention 'folding' restraint](https://www.abc.net.au/news/2022-11-14/video-shows-dangerous-youth-detention-restraint-on-teenage-boy/101632832). ABC News 16 November 2022. (Web Page). <<https://www.abc.net.au/news/2022-11-14/video-shows-dangerous-youth-detention-restraint-on-teenage-boy/101632832>>; Sarah Collard. 2022. [Plan to overhaul troubled Banksia Hill youth detention centre commissioned but kept secret](https://www.theguardian.com/australia-news/2022/dec/02/plan-to-overhaul-was-troubled-banksia-hill-youth-detention-centre-unlikely-to-be-made-public). *The Guardian*. 2 December 2022. <<https://www.theguardian.com/australia-news/2022/dec/02/plan-to-overhaul-was-troubled-banksia-hill-youth-detention-centre-unlikely-to-be-made-public>>.

⁷⁶ ABC News. 2022. [Four Corners – Locking up Kids: Australia's failure to protect children in detention](https://www.abc.net.au/news/2022-11-14/locking-up-kids:-australias-failure-to-protect-children-in-detention). 14 November 2022. <<https://www.abc.net.au/news/2022-11-14/locking-up-kids:-australias-failure-to-protect-children-in-detention>>.

⁷⁷ ABC News (n 75).

⁷⁸ Alicia Bridges. 2022. [Details of new youth restraint method for Banksia Hill Detention Centre will not be made public, department says](https://www.abc.net.au/news/2022-12-21/secret-restraint-folding-up-banksia-hill-youth-detention-centre/101797454). ABC News. 21 December 2022. <https://www.abc.net.au/news/2022-12-21/secret-restraint-folding-up-banksia-hill-youth-detention-centre/101797454>.

⁷⁹ *VYZ by Next Friend XYZ v Chief Executive Officer of the Department of Justice* [2022] WASC 274, per Tottle J, at paragraph 71; *CRU by Next Friend CRU2 v Chief Executive Officer of the Department of Justice* [2023] WASC 257, per Tottle J, at paragraphs 4, 7.

⁸⁰ *CRU by Next Friend CRU2 v Chief Executive Officer of the Department of Justice* [2023] WASC 257, per Tottle J, at paragraph 7.

⁸¹ Office of the Inspector of Custodial Services. 2023. Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One). 8 June 2023. Available online <<https://www.oics.wa.gov.au/reports/148-inspection-of-banksia-hill-detention-centre-and-unit-18-at-casuarina-prison-part-one/>>.

up for adults, not young people, and that it was set up to fail. The inquest was told that the sheer volume of self-harm incidents contributed to staff becoming desensitised to the severity of the risk involved in actual or threatened self-harm.⁸²

QUEENSLAND – CLEVELAND YOUTH DETENTION CENTRE

Queensland currently has three prisons for children, with Cleveland Youth Detention Centre in Townsville operating as the only centre located outside of Brisbane. Cleveland Youth Detention Centre in particular has received extensive public scrutiny regarding inhumane treatment of children (who are mostly First Nations children), with some describing the conditions 'like Guantánamo'.⁸³ There have been widespread reports of children being locked in solitary confinement for extended and repeated periods, primarily as a result of staff shortages.⁸⁴ This has resulted in reports of children being denied access to education, rehabilitation programs, and visits (including from service providers). In June 2023, it was reported that an Aboriginal child with an intellectual disability spent more than 744 days locked in solitary confinement for over 20 hours a day across the two years that they were remanded in the centre.⁸⁵ This is just one of many reports of this kind – and these reports are not isolated to Cleveland. Queensland prisons separated children over 30,000 times in 2021-2022, and over 84% of children who staff separated were First Nations children.⁸⁶

The human rights failures within the Queensland youth justice system extend well beyond the walls of Cleveland Youth Detention Centre. In March 2023, the Queensland Government made the decision to override the Queensland Human Rights Act for the first time since it has been in effect, to implement a raft of punitive changes including bringing in breach of bail as an offence for children.⁸⁷ In August 2023, the Queensland Government introduced and passed further amendments in an unrelated bill that gave the government the power to hold children indefinitely in adult watch houses and adult prisons.⁸⁸ This decision saw the state override its Human Rights Act for the second time within the space of six months.

⁸² Cason Ho. 2024. 'Humane treatment of youth at Unit 18 not possible, inquest into Cleveland Dodd's death hears'. *ABC News*. 10 April 2024. <<https://www.abc.net.au/news/2024-04-09/cleveland-dodd-inquest-told-humane-treatment-impossible-unit-18/103683698>>; Cason Ho. 2024. 'Cleveland Dodd inquest told by youth custodial officer that Unit 18 was 'chaos' and 'set up to fail''. *ABC News*. 5 April 2024. <<https://www.abc.net.au/news/2024-04-05/cleveland-dodd-inquest-told-by-officer-unit-18-set-up-to-fail/103667322>>; Keane Bourke, Cason Ho and Daryna Zadvirna. 2024. 'Inquest into Cleveland Dodd's death in custody reveals extensive history of self-harm'. *ABC News*. 4 April 2024. <<https://www.abc.net.au/news/2024-04-03/inquest-into-cleveland-dodd-death-reveals-history-of-self-harm/103662192>>.

⁸³ Ben Smee. 2023. 'Like Guantanamo: The children locked in solitary for weeks at a time'. *The Guardian*. 6 June 2023. <<https://www.theguardian.com/australia-news/2023/jun/06/like-guantanamo-the-children-locked-in-solitary-for-weeks-at-a-time-in-queensland-youth-prison>>.

⁸⁴ Ben Smee. 2023. 'Senior prison officials court testimony at odds with government spin on Queensland youth detention'. *The Guardian*. 17 July 2023. <<https://www.theguardian.com/australia-news/2023/jul/17/senior-prison-officials-court-testimony-at-odds-with-government-spin-on-queensland-youth-detention>>.

⁸⁵ SBS. 2022. 'Locked in a Cell for 20 Hours a Day'. 27 June 2023. <<https://www.sbs.com.au/news/article/locked-in-a-cell-for-20-hours-a-day-queensland-youth-prisons-accused-of-torture/vb55ku4ux>>.

⁸⁶ Queensland Parliament. 2022. Question on notice (No. 774). Available online <<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/774-2022.pdf>>.

⁸⁷ Queensland Government. 2023. Strengthening Community Safety Bill, Statement of Compatibility. Available online <<https://documents.parliament.qld.gov.au/bills/2023/3130/Strengthening-Community-Safety-Bill-2023---Statement-of-Compatibility-249b.pdf>>.

⁸⁸ Queensland Government. 2022. Child Protection (Offender Reporting and Offender Prohibition Bill, Statement about Exceptional Circumstances. Available online <<https://documents.parliament.qld.gov.au/tp/2023/5723T1198-22EA.pdf>>.

VICTORIA – PARKVILLE YOUTH DETENTION CENTRE, MALMSBURY YOUTH DETENTION CENTRE (NOW CLOSED)

In Victorian youth prisons the systemic use of solitary confinement has been highlighted by several organisations. In 2017 the Victorian Commission for Children and Young People reported increasing use of isolation, separation and lockdown of children in the Parkville and Malmsbury Youth Detention Centres, sometimes for 24 hours or more, in breach of the United Nations Rules for Protection of Juveniles Deprived of their Liberty (the Havana Rules).⁸⁹ The practice of isolation continues to be used routinely in Victorian youth prisons. In 2023 the Yoorrook Justice Commission reported that in one detention centre they visited, children in one part of that centre had in the previous two months been allowed only 30 minutes out of their room each day for exercise, washing, making phone calls, etc. The Commission expressed its concern about the excessive lockdowns and human rights breaches of young people in prison, noting reports of continuing use of lockdowns of young people in prison for up to 22 hours a day.⁹⁰

In April 2024 the Victorian Government expressed support in principle (not full support) to the Commission's recommendation for the Victorian Government to ensure adequate resourcing so that the practice of lockdowns and isolation would end.⁹¹

NSW – BAXTER YOUTH DETENTION CENTRE

In 2021 the NSW Ombudsman expressed concern to the NSW Government that it was lawful in NSW youth prisons for prison staff to undertake fully naked strip searches of children and young people in prison. The Ombudsman furnished a special report to parliament detailing a 2019 case involving three children in a youth prison who were subjected to a full strip search in which they were made to completely undress and spread apart their buttocks. The strip searches occurred after Correctional Services NSW (CSNSW) took control of the Baxter Youth Detention Centre following a violent incident at the centre.

The Ombudsman's report noted that a memorandum of understanding signed between Youth Justice and Corrective Services NSW allowed for those laws that only permitted partial strip searches to be circumvented. This had the effect of a youth prison becoming legally 'cloaked' as an adult prison when Correctional Services NSW officers have control of it. The Ombudsman recommended legislation to close this loophole to ensure that searches involve the least intrusive search method and involve the removal of no more clothing than is necessary.⁹² The NSW Government has refused to follow this recommendation.

SOUTH AUSTRALIA – KURLANA TAPA YOUTH DETENTION CENTRE

In 2023 the South Australian Children's Guardian observed that children in the Kurlana Tapa children's prison were being locked in their cells for up to 23 consecutive hours, partly due to

⁸⁹ Commission for Children and Young People (Vic) (n 63).

⁹⁰ Yoorrook Justice Commission. 2023. Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems. 322-323.

⁹¹ Victorian Government Response to the Yoorrook for Justice Report, April 2024. Available online <<https://www.firstpeoplesrelations.vic.gov.au/response-yoorrook-for-justice-report>>.

⁹² Ombudsman New South Wales. 2021. Strip searches conducted after an incident at Frank Baxter Youth Justice Centre – A special report under section 31 of the *Ombudsman Act 1974*. 8 June 2021; Ombudsman New South Wales. 2022. Strip searches in youth detention. 12 May 2022.

staffing shortages. The prolonged lockdowns were resulting in increased incidents of self-harm, reduced hours of school attendance for children in prison and difficulties for children to be able to meet with their lawyers.⁹³ In November 2023 the official Training Centre Visitor (TCV) reported to parliament that:

- Nearly three in four ambulance attendances over the financial year were responding to young people self-harming;
- Two in five individuals involved in incidents throughout the year self-harmed or expressed self-harm ideation during their admission;
- Aboriginal young people, young people with a disability, and young people in care are all seriously overrepresented. All experienced a greater likelihood of having force used against them, and higher rates of self-harm;
- At times, over 90% of young people housed in the segregation unit were those with disability – including autism, intellectual disability and psychiatric condition/s.⁹⁴

CHILDREN'S PRISONS AND IMPRISONMENT OF CHILDREN IN WATCH- HOUSES AROUND AUSTRALIA

There are currently 18 children's prisons in Australia. These are:

Jurisdiction	Existing Children's Prisons
ACT	Bimberi Youth Justice Centre
NSW	Acmena Youth Justice Centre Cobham Youth Justice Centre Frank Baxter Youth Justice Centre Orana Youth Justice Centre Reiby Youth Justice Centre Riverina Youth Justice Centre
Northern Territory	Alice Springs Youth Detention Centre Don Dale Youth Detention (Darwin)
Queensland	Brisbane Youth Detention Centre Cleveland Youth Detention Centre West Moreton Youth Detention Centre
SA	Kurlana Tapa
Tasmania	Ashley Youth Detention Centre
Victoria	Parkville Youth Justice Precinct Cherry Creek Youth Justice Precinct
WA	Banksia Hill Detention Centre Unit 18, Casuarina Prison

⁹³ Sarah Collard. 2023. 'Children self-harming to escape prolonged confinement in cells, South Australian watchdog says'. *The Guardian*. 30 June 2023. <<https://www.theguardian.com/society/2023/jun/29/children-locked-in-cells-for-up-to-23-hours-at-south-australias-youth-detention-centre>>.

⁹⁴ Training Centre Visitor. Annual Report 2022–23. Office of the Guardian for Children and Young People, Adelaide 2022.

At the time of writing, there are plans in Queensland to build three new prisons for children: a new 80 bed centre in Woodford at a cost of \$627 million⁹⁵, a new 40 bed centre in Cairns⁹⁶ (there are not clear costings for this centre at the time of writing), and a new 76 bed remand centre in Wacol at a cost of \$250 million (which will be used as an adult remand centre once the new youth detention centres are built).⁹⁷

In Victoria, the new 'Cherry Creek' Youth Justice Centre (which cost \$420 million)⁹⁸ sat empty for many months after completion, provoking debate as to the extent to which the building of the centre had been a mistake as the children's prison population in Victoria had reduced.⁹⁹ However, Cherry Creek started receiving children in August 2023. It has 140 beds¹⁰⁰ and has now replaced Malmsbury Youth Detention Centre, which closed at the end of 2023.¹⁰¹

CHILDREN IN ADULT WATCH-HOUSES

In Queensland there are hundreds of children held each year in adult police watch-houses.¹⁰² In 2022-2023, the Queensland Children's Court reported that there were more than 8,000 receptions of children into Queensland watch-houses during the year (around 556 unique children each month).¹⁰³ This has led to widespread concerns about child human rights abuses occurring in adult watch-houses in Queensland. There have been public reports of children being denied adequate food, legal support, medical attention, education, access to sunlight, and privacy when accessing amenities; as well as reports of overcrowding, sexual assault, use of force, strip searches, suicide attempts and excessively long periods held in watch houses (sometimes for weeks at a time).¹⁰⁴

⁹⁵ Queensland Premier. 2024. 'Construction Starts on Youth Detention Facility at Woodford' (Media Statement). 27 February 2024. <<https://statements.qld.gov.au/statements/99792>>.

⁹⁶ Ibid.

⁹⁷ Queensland Premier. 2023. 'New Youth Remand Facility to be Built at Wacol'. (Media Statement). 5 October 2023. <<https://statements.qld.gov.au/statements/98865#:~:text=A%20new%20youth%20remand%20facility%20will%20be%20fast%2Dtracked%20and.by%20a%20%24250%20million%20investment>>; Queensland Premier. 2024. 'New-rapid built Wacol Youth Remand Centre on track for 2024'. (Media Statement). 27 March 2024. <<https://statements.qld.gov.au/statements/99987>>.

⁹⁸ Victorian Government. 2022. Contemporary Detention Environments (Volume 15). Available online <<https://www.vic.gov.au/victorian-government-annual-report-2022-royal-commission-institutional-responses-child-sexual-abuse-10>>.

⁹⁹ Victorian Liberal Party, 2023. 'Empty Prisons Won't Get Young Offenders on the Right Path'. (Media Statement) 5 February 2023. <<https://vic.liberal.org.au/media-releases/2023-02-05-battin-empty-prisons-wont-get-young-offenders-on-the-right-path>>.

¹⁰⁰ Victoria State Government. 2022. Cherry Creek Youth Justice Centre. (Web Page) <<https://csba.vic.gov.au/our-projects/cherry-creek-youth-justice-centre>>.

¹⁰¹ Shannon Schubert. 2023. 'Troubled Malmsbury Youth Justice Centre closed but ex-staff, union say problems aren't over'. ABC News. 22 December 2023. <<https://www.abc.net.au/news/2023-12-22/malmsbury-youth-justice-legacy-centre-victoria-crime/103255038>>.

¹⁰² Queensland Family and Child Commission. 2023. 'Who's Responsible? Understanding why young people are being held longer in Queensland Watch Houses'. Report. November 2023. Available online <<https://www.qfcc.qld.gov.au/sites/default/files/2023-12/FINAL%20-%20Watchhouse%20Review%20-%20Who%27s%20Responsible%20-%20November%202023.pdf>>.

¹⁰³ Children's Court of Queensland. 2022. Annual Report 2022-23. Available online <https://www.courts.qld.gov.au/_data/assets/pdf_file/0010/786466/cc-ar-2022-2023.pdf>.

¹⁰⁴ Ben Smee. 2023. 'Strip searches and suicide attempts: the reality for children in Queensland watch houses'. *The Guardian*. 26 August 2023. <<https://www.theguardian.com/australia-news/2023/aug/26/queensland-watch-houses-laws-kids-teens-strip-searches-suicide-attempts#:~:text=On%20Thursday%2C%20the%20Queensland%20government.in%20adult%20police%20watch%20houses>>; Rachel Riga and Kate McKenna. 2023. 'Advocates say children are being held in adult watch houses in Queensland for weeks at a time'. ABC News. 7 February 2023. <<https://www.abc.net.au/news/2023-02-07/children-held-in-adult-watch-houses-youth-justice-system-crisis/101936438>>; Ben Smee. 2024. 'Boy, 13, allegedly sexually assaulted while being held in crowded Cairns watch house cell'. *The Guardian*. 15 February 2024. <<https://www.theguardian.com/australia-news/2024/feb/15/boy-13-cairns-watch-house-cell-alleged-sexual-assault>>; Ben Smee. 2024. 'Cairns watch house worker sounds alarm over 'mass deterioration' in children's physical and mental health'. *The Guardian*. 24 January 2024. <<https://www.theguardian.com/society/2024/jan/23/queensland-youth-detention-cairns-watch-house-children-physical-mental-health>>; Ben Smee. 2024. 'More than 550 issues raised on behalf of

Despite the ongoing scrutiny and criticism of this practice, in August 2023 the Queensland Parliament made an express declaration to override their own *Human Rights Act* in order to further legitimise and expand this practice.¹⁰⁵

In Tasmania, the Children's Commissioner has also raised concern about the practice of holding children in both adult reception centres and watch-houses.¹⁰⁶ Similarly in South Australia, the Children's Commissioner identified that over the course of a year more than 2000 children under the age of 18 were held in adult watch-houses.¹⁰⁷

In Western Australia, the Children's Commissioner has noted that information on the number of children and young people arrested and detained in police watch-houses, and the length of time for which they are held, is not readily available. However, reports indicate that Aboriginal children and young people in regional centres are disproportionately affected by the practice. The Commissioner noted that children may be detained in police lockups for longer than 24 hours if the child is in a regional location, or if the Banksia Hill Juvenile Detention Centre does not have capacity to admit additional children into the centre. The Commissioner expressed concern that there is no independent systemic oversight of police custodial facilities.¹⁰⁸

In Victoria, under section 347A of the *Children Youth and Family Act 2005* (Vic), a child may be temporarily detained in a police watch-house for no more than two working days, with requirements that include keeping the child separate from adults and making reasonable efforts to meet the child's medical and cultural needs. In 2021 the Victorian Commission for Children and Young People reported that several children with whom they had consulted spoke about spending multiple days or weeks in regional police watch-houses, with some reporting poor conditions such as being cold and not being provided with blankets or clothing.¹⁰⁹

EVIDENCE BASED PROGRAMS THAT REDUCE CONTACT WITH THE YOUTH JUSTICE SYSTEM

This section outlines some recent research and evidence in Australia and internationally. The list of programs noted below is by no means exhaustive. We have focused on programs that have independent and published evaluations that directly connect the outcomes of the programs with reductions in justice system contact. There are multiple programs around Australia achieving excellent outcomes, which have not had the resources or opportunity for evaluation,

children in police lockups this year, Queensland public guardian says'. *The Guardian*. 9 March 2024. <<https://www.theguardian.com/australia-news/2024/mar/08/queensland-children-in-police-watch-houses>>.

¹⁰⁵ Nicky Jones. 2023. 'Queensland is not only trampling the rights of children it is setting a concerning legal precedent'. *The Conversation*. 29 August 2023/ <<https://theconversation.com/queensland-is-not-only-trampling-the-rights-of-children-it-is-setting-a-concerning-legal-precedent-212377#:~:text=In%20March%2C%20the%20parliament%20passed,declared%20a%20serious%20repeat%20offender>>.

¹⁰⁶ Commissioner for Children and Young People Tasmania. 2024. 'Adult Prison is no place for children'. (Media Release). 8 February 2024. <<https://childcomm.tas.gov.au/opinion-piece-adult-prison-is-no-place-for-children/>>.

¹⁰⁷ Commissioner for Children and Young People South Australia. 2022. 'Bail Conditions for Children'. Position Brief. November 2022. Available online <<https://www.cyp.com.au/wp-content/uploads/2022/11/Position-Brief-Bail-Conditions-Screen.pdf>>.

¹⁰⁸ Commissioner for Children and Young People WA. 2017, Oversight of services for children and young people in Western Australia, Commissioner for Children and Young People WA, Perth. 55-56.

¹⁰⁹ Commission for Children and Young People (Vic). 2021. *Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2021. 428-429.

or that are focused on a different set of measures. We are hoping that this overview will provide a useful collection of programs as a starting point and marker of the extensive evidence that exists about what is currently working and enable us to explore how we might further build on these successes.

EVIDENCE-BASED EARLY INTERVENTION & DEVELOPMENTAL CRIME PREVENTION

Investment in a wide-variety of community-based early intervention as well as developmental crime prevention policies and initiatives is key to preventing offending and diverting children away from the justice system.¹¹⁰ Early intervention (secondary crime prevention) aims to intervene early in an individual's developmental pathway to address risk factors associated with offending and strengthen protective factors that support engagement in pro-social behaviour.¹¹¹ Early intervention commonly occurs early in life, but it can also occur later in life at a crucial transition point on a pathway to offending.¹¹² Children who are at risk of justice system involvement often experience a number of individual, family, peer, and school/community risk factors such as disconnection from education, unstable home environments, homelessness, and poverty.¹¹³ Programs that work to reduce contact with the justice system tend to address a multitude of these factors at once.¹¹⁴ Primary crime prevention focuses on modifying 'criminogenic' factors in physical and social environments to stop crime before it starts.¹¹⁵

While there are clear limitations in studies that focus primarily on costs, these findings are important in framing the significance of the impact of early intervention and prevention, not just financially, but in terms of a range of social and health wellbeing measures. A study of children at risk of criminalisation in NSW found that 7% of individuals under the age of 25 will account for half the estimated costs of the state's social services by the time they are 40 years old. Additionally, 1% of this cohort will be responsible for 32% of NSW justice service costs, highlighting that early intervention targeting a small percentage can significantly reduce future costs.¹¹⁶

¹¹⁰ National Crime Prevention (1999) *Pathways to prevention: Developmental and early intervention approaches to crime in Australia*. National Crime Prevention, Attorney-General's Department: Canberra. Available online <https://eprints.qut.edu.au/4482/1/4482_report.pdf>.

¹¹¹ Paul J. Brantingham and Frederic L. Faust. 1976. A Conceptual Model of Crime Prevention. *Crime & Delinquency*, 22(3), 284–296.

¹¹² National Crime Prevention (n 110).

¹¹³ David Farrington. 2007. Childhood risk factors and risk-focused prevention. The Oxford handbook of criminology; Tony Vinson and Margot Rawsthorne. 2015. *Dropping off the edge 2015: Persistent communal disadvantage in Australia*. Jesuit Social Services/Catholic Social Services Australia. 2015. Available online <<https://www.ourcommunity.com.au/files/Edge.pdf>>; Drum, Martin and Buchanan, Riley, "Western Australia's Prison Population 2020: Challenges and Reforms" (2020). *Catholic Social Outreach Series*. 1. <<https://researchonline.nd.edu.au/cso/1>>; Candace L. Odgers. (2015). 'Income inequality and the developing child: Is it all relative?'. *Am Psychol.*, 70(8):722-31; AIHW. 2015. *Vulnerable young people: interactions across homelessness, youth justice and child protection —1 July 2011 to 30 June 2015*. Cat. no. HOU 279. Canberra; AIHW. 2018. *National data on the health of justice-involved young people: a feasibility study*. Cat. no. JUV 125. Available online <<https://www.aihw.gov.au/reports/youth-justice/health-justice-involved-young-people-2016-17/summary>>.

¹¹⁴ National Crime Prevention (n 110).

¹¹⁵ Brantingham and Faust, (n 111).

¹¹⁶ NSW Government. 2019. *Forecasting future outcomes: Stronger communities investment unit – 2018 insights report*. Available online <<https://www.nsw.gov.au/sites/default/files/2023-01/Forecasting%20Future%20Outcomes%20Report%202018.pdf>>.

A recent economic analysis of early intervention resourcing in Australia found that one dollar invested in early childhood education yields a return of two dollars.¹¹⁷ The cost of late intervention in Australia has been estimated to be \$15.2 billion per year, including \$2.7 billion (18%) for youth crime.¹¹⁸ Research findings support investing in capacity-building strategies that scale up community-based approaches to early intervention. Building on the success of relatively small-scale and economically efficient community-led innovations that create the conditions for healthy development pathways early in life can be a path to larger-scale crime prevention.¹¹⁹

There remains a genuine opportunity in Australia to further invest in early intervention responses and build capacity for sustainable, scalable, place-based primary youth crime prevention.¹²⁰ Alongside this investment, adjacent research in this area is needed so that there is sufficient high-quality data and evaluations that can drive evidence-based policy and investment. There is a particular need for longitudinal studies, using some form of matched-group comparisons at baseline to determine the impact of existing and new early intervention programs to reduce offending and improve community safety.

AUSTRALIAN EARLY INTERVENTION AND PREVENTION PROGRAMS

CHILD SKILLS TRAINING & BEHAVIOURAL CHANGE PROGRAMS (AUSTRALIA AND INTERNATIONAL)

In young people, the pre-frontal cortex (the part of the brain that controls executive functioning) is still developing. This means that children and young people are still developing the cognitive processes required in planning, controlling impulses, and weighing up the consequences of decisions before acting.¹²¹ There are various examples of programs that aim to build children's skills and cognitive abilities in areas that are often related to anti-social behaviour and offending (for example areas like self-control/impulsiveness, perspective-taking, and delayed gratification). Systematic reviews examining randomised-controlled trials of child skills training programs reported such interventions decrease anti-social behaviour by anywhere between 24-32%.¹²² Similarly, systematic reviews of interventions that involve cognitive-behavioural therapy have shown effects on youth offending with anywhere between a 21-35% reduction in recidivism.¹²³

¹¹⁷ The Front Project. 2019. *A smart investment for a smarter Australia: Economic analysis of universal early childhood education in the year before school in Australia*. June 2019. PWC. Available online <https://www.thefrontproject.org.au/images/downloads/ECO_ANALYSIS_Full_Report.pdf>.

¹¹⁸ W. Teager, S. Fox and N. Stafford. 2019. *How Australia can invest early and return more: A new look at the \$15b cost and opportunity*. Early Intervention Foundation. The Front Project and CoLab at the Telethon Kids Institute, Australia. 5. Available online <<https://colab.telethonkids.org.au/siteassets/media-docs---colab/colii/how-australia-can-invest-in-children-and-return-more---final-bn-not-embargoed.pdf>>.

¹¹⁹ Homel, R., Freiberg, K., & Branch, S. (2015). CREATE-ing capacity to take developmental crime prevention to scale: A community-based approach within a national framework. *Australian & New Zealand Journal of Criminology*, 48(3), 367-385. <<https://doi.org/10.1177/0004865815589826>>.

¹²⁰ Ibid.

¹²¹ Richard J. Bonnie and Elizabeth S. Scott. 2013. 'The teenage brain: Adolescent brain research and the law'. *Current Directions in Psychological Science*. (2013) 22(2), 158-161. Available online <<https://journals.sagepub.com/doi/pdf/10.1177/0963721412471678>>.

¹²² David P. Farrington, Hannah Gaffney and Howard White. 2022. 'Effectiveness of 12 types of interventions in reducing juvenile offending and anti-social behaviour'. *Canadian Journal of Criminology and Criminal Justice*. (2022) 64(4), 47-68; Andreas Beelmann and Friedrich Lösel. 2021. 'A comprehensive meta-analysis of randomized evaluations of the effect of child social skills training on antisocial development'. *Journal of Developmental and Life-Course Criminology*. (2021) 7(1), 41 – 65; Alex R. Piquero, Wesley G. Jennings, Brie Diamond, David P. Farrington, Richard E. Tremblay, Brandon C. Welsh and Jennifer M. Reingle Gonzalez. 2016. 'A meta-analysis update on the effects of early family/parent training programs on antisocial behavior and delinquency'. *Journal of Experimental Criminology*. (2016) 12, 229–248.

¹²³ Koehler, J. A., Lösel, F., Akoensi, T. D., & Humphreys, D. K. (2013). A systematic review and meta-analysis on the effects of young offender treatment programs in Europe. *Journal of Experimental Criminology*, 9(1), 19–43. <<https://doi.org/10.1007/s11292-012-9159-7>>; Mark W. Lipsey, Nana A. Landenberger and Sandra J Wilson. 2007. 'Effects of

COMMUNITIES THAT CARE (AUSTRALIA AND INTERNATIONAL)

There is a strong evidence base in Australia and overseas for primary prevention models such as the Communities That Care (CTC) model.¹²⁴ These models mobilise communities to address risk factors that increase the risk of justice system involvement, including harmful substance use, low academic achievement, early school leaving, and violence. A recent study evaluated the impact of the CTC model across communities in Victoria, between 2010 and 2019. This study supports the existing evidence base showing CTC is effective at preventing youth crime at a population level, with findings demonstrating significant reductions in crimes associated with CTC including a 2% annual reduction in risk for crimes against persons and a 5% annual reduction in risk for crimes of property and deception.¹²⁵

RESOLVE (LOGAN, QUEENSLAND)

Resolve is an early intervention program for young people aged 12 to 16 years old who are at risk of justice system involvement. The program is delivered in Logan through a joint partnership between Youth and Family Service (YFS), Griffith University, Overflow Foundation, and Queensland Police Service. The program includes community outreach as well as intensive case management that uses a flexible, relational, and strengths-based approach. In 2023, a Griffith University evaluation of the program found that participation in the program resulted in a significant reduction in risk levels evident in relation to housing, schooling, family relationships, social connections, physical health, drug and alcohol use, mental health and safety and the law, and considerable increases in young people's hopefulness both in relation to their sense of agency and confidence in goal achievement.¹²⁶ Despite the success of this program ongoing funding was unable to be secured.

SPORT PROGRAMS (AUSTRALIA AND INTERNATIONAL)

There are limited evaluations in Australia with sound designs that evaluate the effectiveness of sport programs in preventing and reducing crime. However, a recent systematic review and meta-analysis of 13 control-group evaluations (two in Australia and the remainder overseas) found sport programs significantly protect against offending behaviour and related antisocial attitudes, as well as significantly increase self-esteem and psychological wellbeing.¹²⁷

PARENTING PROGRAMS (AUSTRALIA AND INTERNATIONAL)

Parenting programs found to be the most effective at reducing antisocial behaviour and youth crime include parent-child interaction therapy, the Triple P (Positive Parenting Program), and the Incredible Years Parenting Program.¹²⁸ These programs typically involve training and

cognitive-behavioral programs for criminal offenders'. *Campbell Systematic Reviews*. 13 August 2007. 6. Available online <<https://onlinelibrary.wiley.com/doi/10.4073/csr.2007.6>>.

¹²⁴ John W. Toumborou, Bosco Rowland, Joanne Williams, Rachel Smith and George C. Patton. 2019. 'Community Intervention to Prevent Adolescent Health Behavior Problems: Evaluation of Communities That Care in Australia'. *Health Psychology*. 2019, Vol. 38, No. 6, 536–544; Hawkins JD, Oesterle S, Brown EC, Abbott RD, Catalano RF. Youth problem behaviors 8 years after implementing the communities that care prevention system: a community-randomized trial. *JAMA Pediatr*. 2014 Feb;168(2):122-9. <doi: 10.1001/jamapediatrics.2013.4009. PMID: 24322060; PMCID: PMC3946405>.

¹²⁵ Rowland B, Kelly AB, Mohebbi M, Kremer P, Abrahams C, Abimanyi-Ochom J, Carter R, Williams J, Smith R, Osborn A, Hall J, Hosseini T, Renner H, Toumbourou JW. Evaluation of Communities That Care-Effects on Municipal Youth Crime Rates in Victoria, Australia: 2010-2019. *Prev Sci*. 2022 Jan;23(1):24-35. doi: 10.1007/s11121-021-01297-6. Epub 2021 Oct 9. PMID: 34626325.

¹²⁶ Jugl, I., Bender, D. & Lösel, F. (2023). 'Do sports programs prevent crime and reduce reoffending? A systematic review and meta-analysis on the effectiveness of sports programs', *Journal of Quantitative Criminology*, 39:333–384.

¹²⁷ Ibid.

¹²⁸ Piquero et al (n 122).

education that supports parents to develop positive parenting skills as well as strong relationships with their children.¹²⁹ Systematic reviews of parenting program evaluations have estimated such interventions have resulted in anywhere between a 34-48% reduction in problematic child behaviour.¹³⁰

YOUTH PARTNERSHIP PROJECT (WA)

The Youth Partnership Project (YPP) brings together state government, local government, and the community sector in a place-based, collective impact approach to youth justice. The project focuses on early identification of young people aged 8 to 12 years old with complex needs, and the delivery of targeted community services to prevent their involvement with the justice system.

The Armadale Youth Intervention Partnership (AYIP) as part of the YPP achieved a 50% reduction in reoffending for those who completed the program.¹³¹ Evaluation of YPP social outcomes used modelling to estimate that without the intervention, participants were likely to cost the government ~\$3 million in the future. It concluded that if the YPP Youth Justice Model reduces participants' future reliance on government by 10%, the program almost pays for itself, with approximately \$300,000 of reduced government costs.¹³²

YOU GOT THIS (QUEENSLAND)

The University of Sunshine Coast conducted an independent evaluation of the Johnathon Thurston Academy 'You Got This' initiative, which aims to boost courage and self-belief in young people aged 9 to 16 years old experiencing disadvantage. The Queensland Government noted the success of the program, outlining that the evaluation (based on the data of 39 participants, and also interviews with staff members and stakeholders) found successes in diversion, school re-engagement and a reduction in offending. The evaluation found there was a reduction in the number of offences committed by the young people who were at-risk and who participated in the program in Cairns. Nine out of 10 young people with a prior offending history who participated in the program in Cairns did not reoffend within 9 months after completing the program.¹³³

INTERNATIONAL EARLY INTERVENTION AND PREVENTION PROGRAMS

AFTER-SCHOOL PROGRAMS (INTERNATIONAL)

Evaluations have shown after-school programs that incorporate skills training, mentoring and/or academic components may reduce anti-social behaviour. Two robust systematic reviews of

¹²⁹ Ibid.

¹³⁰ Farrington et al (n 122); Piquero et al (n 122); Baumel A, Pawar A, Kane JM, Correll CU. Digital Parent Training for Children with Disruptive Behaviors: Systematic Review and Meta-Analysis of Randomized Trials. *J Child Adolesc Psychopharmacol*. 2016 Oct;26(8):740-749. doi: 10.1089/cap.2016.0048. Epub 2016 Jun 10. PMID: 27286325.

¹³¹ Sophie Stewart. 2020. *The Case for smart justice alternatives: Responding to Justice issues in WA through a justice reinvestment approach*. Discussion Paper. Social Investment WA. Available online <<https://static1.squarespace.com/static/59c61e6dbefafb0293c04a54/t/5ef5632af22174273c5d18d5/1593140018902/SRWA+Discussion+Paper+on+Justice+Reinvestment+in+WA+March2020+%281%29.pdf>>.

¹³² Youth Partnership Project. 2021. *Youth justice model: 2021 practice framework & evaluation summary*. Available online <<https://resourcecentre.savethechildren.net/pdf/2021-YPP-YJ-Evaluation-Summary.pdf>>.

¹³³ Queensland Government. 2023. 'Study finds success in Far North youth program'. (Media statement) 4 May 2023. <<https://statements.qld.gov.au/statements/97670>>.

after-school program evaluations estimated between a 6-14% decrease in anti-social behaviour.¹³⁴

ANTI-BULLYING/ANTI-CYBER BULLYING PROGRAMS (INTERNATIONAL)

Bullying is a known predictor of future offending and violence. Anti-bullying and anti-cyber bullying programs have the potential to contribute to reduced youth offending. There are various examples of programs in Australia and overseas that aim to intervene early (mostly during the school years) to reduce bullying. Several systematic reviews of anti-bullying and anti-cyberbullying program evaluations have estimated such interventions result in a reduction in bullying anywhere between 10%-35%.¹³⁵

FAST TRACK (UNITED STATES)

Fast Track is an evidence-based early intervention program in the United States that focuses on disrupting the school to prison pipeline. The program delivers a series of multi-level, developmental, and age-appropriate interventions to support children (from the age of 5 onwards), families, and schools over a long-term developmental period. A 10-year longitudinal study found children who were randomly assigned to the intervention displayed a reduction in violent offences (31% reduction) and drug offences (35% reduction) as well as significantly lower internalising problems, externalising problems and alcohol and other drug use.¹³⁶ Fast Track costs \$58,000 per child over the 10-year investment period, which is much more cost-effective than incarcerating a child for just one year.¹³⁷

HOME VISITATION PROGRAMS (UNITED STATES)

Pre-natal and infancy home visitation programs show positive outcomes in terms of improving the health and wellbeing of children and families and reducing contact with the criminal justice system.¹³⁸ Within these programs, health professionals visit new parents (typically mothers or expected mothers) to provide support, care, and education pre-and-post birth. The most common home visiting programs involve sustained nurse home visiting (SNHV). The Elmira Nurse-Family Partnership program is an evidence-based SNHV program that originated in the United States.¹³⁹ This program has been shown to have sustained effects on outcomes for children and mothers within several randomised-controlled trials in the US, the Netherlands, and the United Kingdom.¹⁴⁰ In the US, young girls whose mothers participated in the program were less likely to be arrested than those who did not participate in the program.¹⁴¹ In addition,

¹³⁴ See Farrington et al (n 122); Taheri A. Sema and Brandon C. Welsh. 2016. 'After-school programs for delinquency prevention: A systematic review and meta-analysis'. *Youth Violence and Juvenile Justice*. (2015) 14(3), 272 – 90; Kremer KP, Maynard BR, Polanin JR, Vaughn MG, Sarteschi CM. Effects of after-school programs with at-risk youth on attendance and externalizing behaviors: a systematic review and meta-analysis. *J Youth Adolesc*. 2015 Mar;44(3):616-36. doi: 10.1007/s10964-014-0226-4. Epub 2014 Nov 22. PMID: 25416228; PMCID: PMC4597889.

¹³⁵ Farrington et al (n 122).

¹³⁶ Dodge KA, Bierman KL, Coie JD, Greenberg MT, Lochman JE, McMahon RJ, Pinderhughes EE; Conduct Problems Prevention Research Group. Impact of early intervention on psychopathology, crime, and well-being at age 25. *Am J Psychiatry*. 2015 Jan;172(1):59-70. doi: 10.1176/appi.ajp.2014.13060786. Epub 2014 Oct 31. Erratum in: *Am J Psychiatry*. 2015 Jan;172(1):100. PMID: 25219348; PMCID: PMC4485380.

¹³⁷ Ibid.

¹³⁸ Piquero et al (n 122).

¹³⁹ Social Programs That Work. 2020. Evidence Summary for the Nurse Family Partnership. Available online <<https://evidencebasedprograms.org/document/nurse-family-partnership-nfp-evidence-summary/>>.

¹⁴⁰ Ibid.

¹⁴¹ Eckenrode J, Campa M, Luckey DW, Henderson CR Jr, Cole R, Kitzman H, Anson E, Sidora-Arcoleo K, Powers J, Olds D. Long-term effects of prenatal and infancy nurse home visitation on the life course of youths: 19-year follow-up of a randomized trial. *Arch Pediatr Adolesc Med*. 2010 Jan;164(1):9-15. doi: 10.1001/archpediatrics.2009.240. Erratum in: *Arch Pediatr Adolesc Med*. 2010 May;164(5):424. PMID: 20048236.

participation in the program was shown to be associated with significantly reduced reports of child abuse and neglect, amongst other benefits.¹⁴²

MENTORING PROGRAMS (INTERNATIONAL)

Internationally, evaluations have found mentoring programs are effective at reducing offending and supporting children and young people to engage in prosocial behaviour.¹⁴³ One study that reviewed 25 experimental and quasi-experimental evaluations of mentoring programs and their impact on delinquency found a 19-26% reduction in behaviours of concern.¹⁴⁴

THE PERRY PRE-SCHOOL PROJECT (UNITED STATES)

Pre-school programs provide early intervention and support for children at a crucial transition point in their development. There is a strong evidence base noting the relationship between behaviours in childhood that might be indicative of future offending.¹⁴⁵ In the US, the Perry Preschool Project is recognised as an evidence-based program that supports children from disadvantaged backgrounds to prevent the onset of offending. The Perry Preschool Project provides high-quality pre-school education to children aged three and four years old in small school-based sessions delivered by qualified teachers. In addition, teachers conduct a weekly home visit to support parents with at-home learning. An evaluation of the Perry Preschool Project found the program produced sustained effects well into adulthood. Positive outcomes included improved educational attainment, fewer teen pregnancies, reduced likelihood of spending time in prison, lower arrest rates for violent crimes, higher median incomes and reduced likelihood of receiving government assistance.¹⁴⁶

YOUTH ADVOCATE PROGRAM (UNITED STATES)

The Youth Advocate Program (YAP) was developed in the United States. It is a strengths-based intensive support and advocacy program that provides individually tailored and wrap-around support to young people who are at risk of, or already experiencing, involvement with the justice system. Evaluations have shown the program is more cost-effective than incarceration, and that it reduces justice system involvement and improves other factors in children's lives.¹⁴⁷

YOUTH CRIME ACTION PLAN, NEW ZEALAND

The New Zealand 10-year Youth Crime Action Plan¹⁴⁸ is an approach to reducing youth offending rates, with a focus on the overrepresentation of Māori people in the justice system.

¹⁴² Ibid.

¹⁴³ Patrick Tolan, David Henry, Michael Schoeny, Arin Bass, Peter Lovegrove and Emily Nichols. 2013. 'Mentoring interventions to affect juvenile delinquency and associated problems: A systematic review'. *Campbell Systematic Reviews*. 10. Available online <<https://onlinelibrary.wiley.com/doi/10.4073/csr.2013.10>>; Raposa EB, Rhodes J, Stams GJJM, Card N, Burton S, Schwartz S, Sykes LAY, Kanchewa S, Kupersmidt J, Hussain S. The Effects of Youth Mentoring Programs: A Meta-analysis of Outcome Studies. *J Youth Adolesc*. 2019 Mar;48(3):423-443. doi: 10.1007/s10964-019-00982-8. Epub 2019 Jan 19. PMID: 30661211; Christensen KM, Hagler MA, Stams GJ, Raposa EB, Burton S, Rhodes JE. Non-Specific versus Targeted Approaches to Youth Mentoring: A Follow-up Meta-analysis. *J Youth Adolesc*. 2020 May;49(5):959-972. doi: 10.1007/s10964-020-01233-x. Epub 2020 Apr 15. PMID: 32297173.

¹⁴⁴ Patrick et al (n 143).

¹⁴⁵ Batchelor S, Carr A, Elias G, Freiberg K, Hay I, Homel R, Lamb C, Leech M & Teague R 2006. The Pathways to Prevention project: doing developmental prevention in a disadvantaged community. *Trends & issues in crime and criminal justice* no. 323. Canberra: Australian Institute of Criminology. <<https://www.aic.gov.au/publications/tandi/tandi323>>.

¹⁴⁶ Social Programs That Work. 2021. Perry School Project. Available online <<https://evidencebasedprograms.org/programs/perry-preschool-project/>>.

¹⁴⁷ Youth Advocate Programs Inc. Evidence supporting YAP's model. Available online <<https://www.yapinc.org/Portals/0/Docs/YAP%20Evidence%20Base%20-%20booklet.pdf?ver=2020-11-22-003401-663>>.

¹⁴⁸ New Zealand Ministry of Justice. 2013. Youth Crime Action Plan 2013-2023. Available online <<https://www.justice.govt.nz/assets/Documents/Publications/YCAP-full-report.pdf>>

The program has sought to have a 'genuine partnership with communities' by involving Māori communities, frontline practitioners, and schools, to allow 20 communities across New Zealand to develop their own solutions to youth offending problems.¹⁴⁹ In 2015, the New Zealand Justice and Courts Minister reported that the number of young people (aged 10-16) appearing in court had more than halved since 2007.¹⁵⁰

¹⁴⁹ New Zealand Associate Justice Minister. 2013. 'Action Plan the next step forward for youth justice'. (Media Release). 31 October 2013 <<http://www.beehive.govt.nz/release/action-plan-next-step-forward-youth-justice>>.

¹⁵⁰ New Zealand Justice and Courts Minister. 2015. 'Lowest number of youth in court in 20 years'. (Media Release). 24 March 2015 <http://beehive.govt.nz/release/lowest-number-youth-court-20-years?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+beehive-govt-nz%2Fportfolio%2Fcourts+%28Courts+-+beehive.govt.nz%29>.

EVIDENCE-BASED TERTIARY RESPONSES FOR CHILDREN & YOUNG PEOPLE

Children – especially young First Nations children – need off-ramps from the criminal justice system into effective community-based supports and interventions. Tertiary prevention programs occur after a young person has come into contact with the justice system with the aim of preventing recidivism and repeat victimisation.¹⁵¹ Community-led services and strategies for children and young people in contact with the justice system encompass diversion and sentencing alternatives, in-prison programs and post-release support. Youth-focused options consider the specific needs of young people and their families.

AUSTRALIAN TERTIARY CRIME REDUCTION PROGRAMS FOR CHILDREN AND YOUNG PEOPLE

A PLACE TO GO (NSW)

The A Place to Go pilot has been operational in the Nepean Police Area Command and Parramatta Children's Court since November 2018. The program aims to improve supports and deliver a better service response for 10 to 17 year old children in contact with the justice system, with a focus on young people on remand. It draws on services from across NSW Government and non-government service providers to deliver a coordinated and multiagency service solution that can support a young person to change their life trajectory. A Place to Go uses a young person's contact with police and/or the court as an opportunity to intervene early by linking them with appropriate community supports and services, court liaison staff, cross-agency panels and dedicated short-term transitional accommodation. An independent evaluation found that young people were supported in finding stable and appropriate accommodation, accessing health services, removing barriers to education, and connecting with their communities.¹⁵²

BACKTRACK YOUTH SERVICES IMPACT REPORT (NSW)

Over the last ten years, the intensive, holistic and relational case work provided by BackTrack Youth Services has supported 1,000 children and young people at risk of criminal justice system involvement or entrenched in the justice system. An impressive 87% of the young people who leave BackTrack transition into employment or education. A University of NSW report of the impact of the program on the local community in Armidale found a 35% reduction in crime because of the engagement of young people in the program.¹⁵³

BOOST YOUTH MENTORING PROGRAM, AUSTRALIAN COMMUNITY SUPPORT ORGANISATION (ACSO) (NSW)

In response to the urgent need for targeted interventions addressing domestic and family violence offences among adolescents, ACSO piloted a mentoring program developed in collaboration with NSW Police, NSW Youth Justice, and the University of Wollongong. The program was designed for young people aged 14 to 17 who had breached or were at risk of

¹⁵¹ Brantingham and Faust, (n 111).

¹⁵² NSW Government. 2022. *A Place to Go – Overview and referral pathway*. June 2022. 2-3.

¹⁵³ Backtrack. 2021. *Annual report 2020*. Available online <https://backtrack.org.au/wpcontent/uploads/2021/06/Backtrack_AnnualReport_2020.pdf>.

breaching an existing Apprehended Violence Order (AVO) to address the root causes of violent behaviours. The program was piloted in the Illawarra region of NSW. Based on the program's success and at the request of the local magistrate, Boost expanded its catchment to include the Sutherland Shire. The program ended in August 2023 as ongoing funding was not secured.

ACSO commissioned an evaluation of the pilot which found that:

- Young people's overall wellbeing improved;
- The program contributed to a lower AVO breach rate among young people in the program when compared with the 'comparison group', and particularly among First Nation participants;
- Protective factors were strengthened for young people, including understanding of their AVO and confidence to remain offence free, developing prosocial relationships and increased engagement in education and employment;
- Young people experienced the program as meaningful, meaning that these protective factors are more likely to be sustained.¹⁵⁴

GRIFFITH YOUTH FORENSIC SERVICE (QUEENSLAND)

Griffith University delivers the Griffith Youth Forensic Service (GYFS) in Queensland, which provides state-wide multisystemic and specialist assessment and treatment services for young people adjudicated for sexual offences. In 2015, a study evaluating the impact of treatment provided in this service found it was equally effective at preventing sexual recidivism for First Nations and non-Indigenous youth. It also prevented violent and other recidivism for non-Indigenous youth living in remote and non-remote locations.¹⁵⁵

EMBEDDED YOUTH OUTREACH PROGRAM (VICTORIA)

The Embedded Youth Outreach Program (EYOP) provides after-hours outreach support to young people who come into contact with police. EYOP pairs a police officer with a Youth Support and Advocacy Service (YSAS) youth worker at the first point of police contact. The pilot began in 2018 with the aim of supporting the complex needs of young people at high risk of antisocial or criminal behaviour. The program provides young people with support and refers them to services tailored to their individual needs. It also refers young victims of crime to support services and works with them to reduce the likelihood of future victimisation. The pilot was delivered in Wyndham, Hobsons Bay, Maribyrnong, Dandenong, Casey, and Pakenham. In July 2023, the Victorian Government announced an expansion of these locations to include Brimbank, Melton and Shepparton.¹⁵⁶

The program was evaluated by Swinburne University. The evaluation compared a group of young people who had been subjected to YSAS/police contact (the treatment group) and a group that hadn't (the control group). The evaluation found that there was a 9% reduction in re-offending between the treatment and control group but that this was not statistically significant. However, for young people without a history of offending, there was a drop in family violence re-

¹⁵⁴ Australian Community Support Organisation (ACSO). The Impact of ACSO's Boost Program on Youth Justice Reform (Web Page). 5 April 2024. <<https://www.acso.org.au/the-impact-of-acsos-boost-program-on-youth-justice-reform/>>; ACSO. Boost Program Empowers Young People to Break the Cycle of Violence (Web Page). 20 July 2023. <<https://www.acso.org.au/boost-program-empowers-young-people-to-break-the-cycle-of-violence/>>.

¹⁵⁵ Troy Allard, Susan N. Rayment-McHugh, Dimity Adams, Stephen Smallbone and Nadine McKillop. 2016. 'Responding to youth sexual offending: a field-based practice model that "closes the gap" on sexual recidivism among Indigenous and non-Indigenous males'. *Journal of Sexual Aggression*. (2016) 22:1, 82-94.

¹⁵⁶ Victoria Police. Embedded youth outreach program (Web Page) <<https://www.police.vic.gov.au/embedded-youth-outreach-project>>.

offending in the treatment group. Similarly, for young people with a history of offending there was a decrease in re-offending rates for property and deception offences in the treatment group.¹⁵⁷

The evaluation found that young people who had been supported by the police/YSAS partnership had future numbers of field contact with the police stabilise rather than increase as it did with the control group. (However, not all police contacts lead to a field contact being submitted, so this finding is not conclusive of all contact with police.) The evaluation found that all groups of young people who had first contact with the police went on to have future contact with the police. However, the number of future contacts was lower for the group who had been contacted first by the police/YSAS partnership.

The researchers noted that, even with the modest outcomes, the EYOP program is likely to result in 1000 fewer offences on an annual basis. They found that this offers value for money and outweighs its expenses. Overall, the evaluation provides support that multi-disciplinary response teams are better at reducing crime than police alone. It also supports that youth worker presence may lead to a stabilising in police contact rather than an increase.¹⁵⁸

INTENSIVE CASE MANAGEMENT (QUEENSLAND)

In February 2023, the Queensland Government published a report summarising findings from a 2022 Nour Group evaluation of the government-led Intensive Case Management (ICM) program. ICM is modelled on evidence-based practice frameworks including multi-systemic therapy,¹⁵⁹ Collaborative Family Work,¹⁶⁰ the Good Lives Model,¹⁶¹ and Strengthening Families Protective Factors.¹⁶² This evaluation found 42% of ICM clients did not reoffend (some for as long as three years post intervention). Additionally, the evaluation showed ICM resulted in a 51% reduction in the frequency of offending (in comparison to a 29% reduction for young people receiving alternative youth justice supports) and a 72% reduction in the proportion of crimes against the person (in comparison to a 13% reduction for young people receiving alternative youth justice supports). It is estimated that the program results in an \$8.1-\$15.7 million saving through reduced frequency and severity of offending and reduced time in custody.¹⁶³

SUPERVISED COMMUNITY ACCOMMODATION (QUEENSLAND)

In 2019, Griffith University conducted an evaluation of the Supervised Community Accommodation (SCA) program for young people in Queensland. This evaluation found SCA provided young people with a high-level of service delivery that addressed the drivers of offending and provided long-term safe and stable accommodation in a home-like environment. This evaluation highlighted the relatively strong integration of case management partnerships

¹⁵⁷ Luebbers. S., Pichler. A.S., Fullam. R. & Ogloff. J. R. P. (2019). Embedded Youth Outreach Program Evaluation, Final Report.

¹⁵⁸ Ibid.

¹⁵⁹ Porter M, Nuntavisit L. An Evaluation of Multisystemic Therapy with Australian Families. Aust N Z J Fam Ther. 2016 Dec 37(4):443-462. doi: 10.1002/anzf.1182. Epub 2016 Dec 20. PMID: 28979064; PMCID: PMC5599972.

¹⁶⁰ Chris Trotter. 2013. *Collaborative Family Work: A practical guide to working with families in the human services* (1st ed.). Routledge.

¹⁶¹ The Good Lives Model of Offender Rehabilitation. *Welcome to the Good Lives Model website* (Web Page) <<https://www.goodlivesmodel.com/>>.

¹⁶² Center for the Study of Social Policy. *Strengthening families: The Protective Factors Framework*. Florida Office of the Governor. (Fact Sheet) Available online <https://www.flgov.com/wp-content/uploads/childadvocacy/strengthening_families_protective_factors.pdf>.

¹⁶³ Nour Group. 2023. *Evaluation of Intensive Case Management* (summary report). Department of Children, Youth Justice, and Multicultural Affairs. 10 February 2023. Available online <<https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/program-eval/summary-report-evaluation-of-intensive-case-management.pdf>>.

between youth justice staff and non-government service providers operating the facilities.¹⁶⁴ In 2020, Ernst and Young produced a follow-up evaluation and comparative analysis of SCAs in comparison to other residential care and bail support services. This evaluation concluded that SCA and residential care are higher in cost/less cost effective than bail support programs due to offering 24/7 housing. It also found over 70% of young people did not offend while residing at SCAs, but 83% of young people reoffended after exiting the program.¹⁶⁵

TALDUMANDE - BAIL ASSISTANCE LINE (NSW)

The Bail Assistance Line (BAL) takes referrals for children and young people aged 12 to 17 years who have come into contact with the law (but have not committed a crime that warrants detention at the time of arrest) and are in need of crisis accommodation. The child or young person is given a placement (for a maximum of 28 days) and provided with a range of supports to transition to longer-term accommodation or a return to home if it's legally able and safe for them to do so. Supports during the placement may include advocacy and referral pathways for employment, education, health, drug and alcohol and disability services as well as other case management services. Fees for the service are covered by Taldumande Youth Services, Youth Justice NSW and the Bail Assistance Line.¹⁶⁶ An evaluation released in 2021 showed that while the numbers of children and young people accessing the service was extremely low, those placed by BAL were 10.5% less likely to be in any form of custody within six months of their contact date, compared with those children and young people who couldn't be placed due to lack of services.¹⁶⁷

TARGET 120 (WA)

Target 120 focuses on children between 10 and 14 years who have already had multiple contacts with police but have not yet been in detention. The program was first rolled out in 2018 in Bunbury and Armadale, and has since been expanded to Kalgoorlie, Kununurra, Northam, Albany, Port Hedland, Mirrabooka, Geraldton, Rockingham, and Midland in 2022-2023. A government evaluation was conducted in 2020, and in announcing an expansion of the project, the WA Government noted that 50% of people who participated in the program had not gone on to offend. Target 120 provides individualised support for young people at risk as well as additional coordinated support for their families for a period of 12 months.¹⁶⁸

TED NOFFS FOUNDATION (QUEENSLAND, NSW)

The Ted Noffs Foundation runs a residential alcohol and other drug treatment service called Program for Adolescent Life Management (PALM) for young people aged 13 to 18 years old with problematic substance and crime-related behaviours. A recent evaluation of this program analysed three pre-referral trajectories of convictions (no or low, moderate, or high incline convictions) for over 891 young people referred to the PALM service in NSW. This study found

¹⁶⁴ Dr William R. Wood, Dr Hennessey Hayes and Griffith University Criminology Institute. *Supervised community accommodation: Final report*. Department of Children, Youth Justice, and Multicultural Affairs. Available online <<https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/qu-sca-evaluation.pdf>>.

¹⁶⁵ Ernst and Young. 2020. *Supervised Community Accommodation Evaluation, Multi-Criteria Analysis and Policy Options Report* (Evaluation report). Department of Children, Youth Justice, and Multicultural Affairs. September 2020. Available online <<https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/sca-december-2020-report.pdf>>.

¹⁶⁶ Taldumande Youth Service. Bail Assistance Line (Web Page) <<https://www.taldumande.org.au/page/100/bail-assistance-line>>.

¹⁶⁷ Ilya Klauzner. 2021. *An evaluation of the youth Bail Assistance Line*. Crime and Justice Bulletin No. 237. Sydney: NSW Bureau of Crime Statistics and Research.

¹⁶⁸ Government of Western Australia 2022. \$11.1 million boost to Target 120 program to address drivers of youth crime. (Media Statement) 3 May 2022 <[https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/\\$11.1-million-boost-to-Target-120-program-to-address-drivers-of-youth-crime-20220503](https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/$11.1-million-boost-to-Target-120-program-to-address-drivers-of-youth-crime-20220503)>.

treatment was associated with a significant decrease in convictions for the high incline convictions trajectory, with 4.36 fewer convictions on average over five years post referral.¹⁶⁹

THE Y NSW (ALTERNATIVE SUSPENSION PROGRAM)

Originally created in Canada, the Alternative Suspension Program is currently being piloted in NSW by The Y NSW. When an incident, accumulation of incidents, or reasons for concern occur (that would warrant a suspension), partner schools have the capacity to refer the student to the program with the permission of their parent/s. Once referred, a program youth worker supports the young person through a range of individual and group activities as well as their schoolwork. Return to school involves a range of meetings with the young person, their parents, youth worker and the school. The youth worker conducts follow-ups at 4-6 weeks post program (with the young person, their parents and the school) and 3 months post program (with the school). The purpose of the program is to reframe the period of suspension as a positive and highly supported experience.¹⁷⁰ An evaluation of the program in Canada found that up to 9 months after the program more young people who had completed the program than young people from a control group had met school academic expectations and improved their behaviour at school. Furthermore, the decrease in the number of disciplinary actions for young people who had completed the program was significantly higher (61.5%) than for the control group (39.6%).¹⁷¹

TRANSITION TO SUCCESS (QUEENSLAND)

In 2018, Deloitte undertook a six-month outcome evaluation of the Queensland Government Youth Justice run Transition to Success (T2S) voluntary vocational and therapeutic service for young people.¹⁷² Following this, Deloitte released further analysis evaluating outcomes from the program over a 12-month reporting period. This analysis found, when compared with a comparison group, T2S participants with a youth justice history had a lower reoffending rate (58% compared to 73% reoffended), a reduction in custody nights (0.7 decrease in average custody nights compared to a 1.7 increase in average custody nights), and a reduction in the average supervision days (1.4 decrease in average supervision days per month compared to a 1.9 increase in average supervision days per month). Additionally, the evaluation found for every \$1 spent on the T2S program, the program results in \$2.13 of benefits.¹⁷³

TRIPLE CARE FARM (NSW)

Triple Care Farm is a youth drug and alcohol program offering withdrawal, rehabilitation and aftercare support for people aged 16 to 24 years of age from anywhere in Australia. Located on 110 acres in the NSW Southern Highlands, the program is voluntary, holistic, evidence-based and offers the following time options: 2 - 4 weeks (Withdrawal Program) or 12 weeks (Residential Rehabilitation). Up to 6 months of aftercare is provided to support young people on their return to the community. An evaluation showed that six months after completion of the

¹⁶⁹ Tyson Whitten, Jesse Cale, Sally Nathan, Megan Williams, Eileen Baldry, Mark Ferry, Andrew Hayen, Influence of a residential drug and alcohol program on young people's criminal conviction trajectories, *Journal of Criminal Justice*, Volume 84, 2023, 102026, ISSN 0047-2352, <https://doi.org/10.1016/j.jcrimjus.2022.102026>.

¹⁷⁰ The Y NSW. Alternative Suspension (Web Page) <[https://www.ymcansw.org.au/community-services/youth/alternative-suspension/#:~:text=Alternative%20Suspension%20\(AS\)%20transforms%20the,fostering%20personal%20development%20and%20autonomy](https://www.ymcansw.org.au/community-services/youth/alternative-suspension/#:~:text=Alternative%20Suspension%20(AS)%20transforms%20the,fostering%20personal%20development%20and%20autonomy)>.

¹⁷¹ Danièle Lalibertè .2017. *Evaluation of the Alternative Suspension Program Research Report: 2017-R008*. Public Safety Canada: Canada. Available online <<https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2017-r008/index-en.aspx>>.

¹⁷² Deloitte Access Economics. 2018. *Transition to success: Evaluation report*. Department of Child Safety, Youth and Women. September 2018. Available online <<https://www.cyima.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/t2s-evaluation-report.pdf>>.

¹⁷³ Ibid.

Withdrawal Program, 80% of young people had a reduction in chronic use of drugs and alcohol; 80% of young people were engaged in training or education; and 100% were in stable housing.¹⁷⁴ Triple Care Farm is run by Mission Australia. An evaluation using a 'Social Return on Investment' frame by Social Ventures Australia in 2015, found that the program facilitated long term, sustainable changes amongst a cohort of young people with multiple, intersecting and complex disadvantage. It specifically noted positive improvements in physical and mental health and well-being, stronger relationships with friends and families, and increased engagement in education and employment. The evaluation also noted a strong economic return on investment, noting that \$39.5 million worth of social value was generated. For every \$1 invested in the program, approximately \$3 of social value was created.¹⁷⁵

WEAVE CREATING FUTURES PROGRAM (NSW)

This independent three-year evaluation of the WEAVE Creating Futures program (which provides intensive, culturally safe case work support to First Nations young people on release from custody) found that only 4.11% of the 93 young people engaged in the program over the period of the evaluation reoffended. This was compared to BOCSAR reoffending rates for young First Nations people which are 57.3% for a comparable cohort.¹⁷⁶

WHITELION: DEADLY DIVERSIONS YOUTH SUPPORT SERVICE (WA)

The Deadly Diversions project is a collaboration between WA Police and Whitelion aimed at preventing young people in Perth's Northern suburbs from continuing their cycle of criminal justice system involvement. The 2023 Productivity Commission Report on Government Services noted that the WA Government spent \$63 million on children's incarceration in 2021/2022.¹⁷⁷ The program provides 28 individuals with intensive case management support and addresses the root causes of their offending through individualised support, mentoring, and social engagement activities. The program focuses on improving long-term outcomes and addressing social factors such as education and literacy, connection to culture, housing, parenting, and counselling.¹⁷⁸ Outcomes from the service include: 73% of participants feel they have become more independent; 71% of participants feel better about the future; and there is evidence of a reduction in crime and antisocial behaviour.¹⁷⁹

INTERNATIONAL TERTIARY CRIME PREVENTION PROGRAMS

DIAGRAMA MODEL (SPAIN)

Diagrama is an international non-profit organisation and operates over 35 custodial centres across Spain for young people aged 14 to 23 who have been remanded or sentenced to custody. The Diagrama model has demonstrated that it reduces rates of recidivism and its

¹⁷⁴ Sir David Martin Foundation. Triple Care Farm (Web Page) <<https://martinfoundation.org.au/youth-programs/triple-care-farm/>>.

¹⁷⁵ SVA Consulting. 2015. Triple Care Farm, Baseline Total Return on Investment Project. May 2015. Available online <<https://www.parliament.nsw.gov.au/lcdocs/other/11330/Additional%20document%202%20-%20Mission%20Australia.PDF>>.

¹⁷⁶ Melanie Schwartz and Mareese Terare. 2020. *Creating Futures: Weave's intensive support service for young people leaving custody or involved in the criminal justice system* (Evaluation report). Available online <<https://apo.org.au/node/306819>>.

¹⁷⁷ Productivity Commission (2023). ROGS 2023, table 17A.10.

¹⁷⁸ Government of Western Australia. 2018. 'Deadly Diversions kicking goals in the northern suburbs' (Media Statement) 29 May 2018. <<https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/Deadly-Diversions-kicking-goals-in-the-northern-suburbs-20180528>>.

¹⁷⁹ Social Reinvestment Western Australia. Programs that work: Existing alternatives to the justice system for young people 10 Case Studies. Available online <<https://static1.squarespace.com/static/59c61e6dbefafb0293c04a54/t/615bf3ac17e47d7acf388f44/1633416111307/RTA+Case+Studies+Programs+that+Work.pdf>>.

operational costs are comparable to or lower than those of other providers. The model has been implemented across France and the UK. A study of 757 young people who had attended a Diagrama re-education centre in 2011 found that by December 2017, only 13.6% had been placed back in custody.¹⁸⁰

¹⁸⁰ Centre for Innovative Justice (CIJ). 2018. A European alternative approach to juvenile detention. RMIT University. 13 December 2018. Available online <<https://cij.org.au/news-and-views/a-european-alternative-approach-to-juvenile-detention/>>. Diagrama Foundation. 2019. A blueprint for change: Adapting the lessons of the Spanish Youth Justice System to the Northern Territory. Report on Diagrama visit. October 2019. 14-15, 25. Available online <<https://ddhs.org.au/sites/default/files/media-library/documents/Blueprint%20for%20Change%20-%20Diagrama%20Foundation%20Report%20FINAL.pdf>>.

EVIDENCE-BASED CASE STUDIES: WHAT WORKS IN ALTERNATIVE COURT PROCESSES FOR CHILDREN?

Every jurisdiction should establish a separate specialist court for children. This would involve a judge being appointed as President of the Children's Court. The President, in assigning a magistrate to the Court, would be required to consider the magistrate's experience in matters relating to child welfare and youth justice. In order to enhance their experience in this specialist area, judicial officers assigned to the Court would be required to attend training and education seminars relating to child welfare and wellbeing, therapeutic, trauma-informed and integrated service delivery, and models of therapeutic intervention for children.

The needs of children who come into contact with the justice system differ significantly from adults. Specialist children's courts that are aware of the principles and latest research regarding children's development and its impacts on children's participation in the justice system are therefore a vital component in developing a service focused justice system that emphasises the best interest of children. Having a Children's Court division as part of a generalist adult court does not allow the court to develop the necessary level of expertise, understanding and awareness of the developmental needs of children. Such divisions are therefore unable to maximise the potential for children to access the necessary services and supports that will address the underlying causes of criminal offending.

A specialist Children's Court can support children to participate in court processes meaningfully with due regard to their age and maturity. It can implement effective problem solving, collaborative and multidisciplinary practices to deal with youth justice and child protection matters. A specialist Children's Court can ensure the necessary expertise amongst all professionals at the court – judges, magistrates, court staff, lawyers, youth justice and child protection professionals, and support service professionals – by ensuring there is continuous training and professional development in key subject areas and practices relevant to children.¹⁸¹

Some of the identified challenges faced by courts in dealing with youth justice issues include:

- Challenges in facilitating the understanding and meaningful participation of children and families in court processes;
- The complexity of the issues being experienced by children and families appearing in court, including in relation to intergenerational disadvantage and trauma, disability, mental health, harmful alcohol and other drug use, and family violence;
- The high proportion of children appearing in both youth justice and child protection proceedings;
- The large volume of cases to be heard, especially in child protection jurisdictions;
- The disproportionate representation of children who are First Nations, as well as children from culturally and linguistically diverse backgrounds; and
- Challenges in expanding specialist court approaches, especially to rural and regional locations.¹⁸²

¹⁸¹ CIJ. 2020. *Specialist Children's Court Approaches*. September 2020. RMIT. September 2020. 47. Available online <<https://cij.org.au/cms/wp-content/uploads/2019/07/specialist-childrens-court-approaches-report.pdf>>.

¹⁸² Ibid.

A specialised Children's Court should be staffed with appropriate specialised judicial officers and court staff who are able to implement court-based therapeutic, trauma-informed, diversionary and targeted intervention strategies to support children charged with criminal offences who come before the court. The establishment of the Children's Court and the way in which it should operate should be clearly outlined in legislation. In addition, the physical location of the Children's Court should ideally be in an integrated services hub, which enables easy referral to support services that are identified as relevant and appropriate for children who come before the court.

AUSTRALIAN COURT ALTERNATIVES FOR CHILDREN AND YOUNG PEOPLE IN AUSTRALIA

BROADMEADOW CHILDREN'S COURT PILOT (NSW)

The Broadmeadow Children's Court Pilot (Pilot) is a multiagency service program that provides a coordinated response to the needs of young people coming before the Broadmeadow Children's Court in Newcastle. The Pilot also operates at Singleton and Raymond Terrace Courts. All young people who present before Broadmeadow Children's Court have access to integrated, multidisciplinary support from the court-based team. This team provides support to the young person through the court process and assists the young person to engage with specialist services, supports and education pathways. An independent evaluation of the pilot found that:

- The pilot supported young people to address a wide range of needs, including urgent and immediate needs.
- Young people were supported to find accommodation, access mental health supports, engage in an appropriate educational pathway or employment and access victim's services.
- There is evidence that the initiative offers the court alternatives to placing young people on bonds, community service orders or in custody, as participation in the Pilot can be a factor in the decision of the court when sentencing young people.¹⁸³

CHILDREN'S COURT YOUTH DIVERSION (VICTORIA)

In Victoria, the Children's Court operates a Youth Diversion Service based on restorative justice principles which aims to assist participants to take responsibility for their actions, repair harm and increase insight into the impacts of their offending upon the victim, their family, and the community. Children and young people can have court proceedings adjourned for up to four months to participate in diversion programs or services. They must acknowledge responsibility for the offence. An evaluation report found that the program was successful in diverting young people from the formal justice system. The magistrates working across the pilot sites for the program uniformly agreed that it provided them with an important additional option to their decision-making process. All stakeholders and young people agreed that the program offered a positive alternative and filled an important gap to help keep the young people diverted from the formal justice system.¹⁸⁴

¹⁸³ NSW Government. 2022. *Broadmeadow Children's Court Pilot, Overview and referral pathway*. June 2022. 5-6.

¹⁸⁴ Professor Stuart Thomas, Dr Marg Liddell and Dr Diana Johns. 2016. *Evaluation of the Youth Diversion Pilot Program (YDPP: Stage 3)*. 16 December 2016. Available online <https://www.childrenscourt.vic.gov.au/sites/default/files/2020-11/YDPP%20Stage%203%20Final%20Report%20Dec%202016%20-%20Executive%20Summary_%28final%29.pdf>.

PRE-COURT DIVERSION FOR CHILDREN (AUSTRALIA)

Children and young people may undertake pre-court diversion that involves an intervention (for example they are required to participate in a formal diversion program) or no intervention (for example they just receive a caution, reprimand, or warning).¹⁸⁵ Systematic reviews of studies that compare children who were diverted with children who were processed through formal court proceedings show pre-court diversion is associated with a decrease in recidivism anywhere between 9-36%.¹⁸⁶ Pre-court diversion programs that include services and supports have been found to be significantly more effective than diversion on its own.¹⁸⁷

RESTORATIVE JUSTICE CONFERENCING FOR CHILDREN AND ADULTS (AUSTRALIA & NEW ZEALAND)

The evidence on the impact of restorative justice on reoffending is mixed. According to 2012 research from BOCSAR, restorative youth justice conferences under the *Young Offenders Act 1997* (NSW) (YOA) are no more effective than the NSW Children's Court in reducing juvenile reoffending among young people eligible for a conference.¹⁸⁸ However, there is a significant body of research which suggests that restorative justice has positive impacts for both victims and young people who commit offences. Internationally, studies have found restorative justice conferencing is cost effective in terms of reducing repeat reoffending.¹⁸⁹ In Australia, restorative youth justice conferencing has also been shown to reduce reoffending in circumstances where young people are remorseful, and their conference outcomes are reached via consensus.¹⁹⁰ According to an internal 2018 12-month program evaluation of restorative youth justice conferencing in Queensland, 59% of young people who participated in restorative justice conferencing did not reoffend within six months of their conference.¹⁹¹ The Queensland Government has since reported that it has invested \$65.1 million towards restorative youth justice conferencing, with 77% of participants who either did not reoffend or decreased the magnitude of their offending.

Regardless of reoffending outcomes, restorative youth justice conferencing results in positive outcomes for victims and communities through actions that repair the harm caused by the young person's offending.¹⁹² 70% of victims in Queensland reported youth justice conferencing helped them to 'manage the effects of the crime'.¹⁹³

¹⁸⁵ Farrington et al (n 122).

¹⁸⁶ Wilson DB, Brennan I, Olaghere A. Police-initiated diversion for youth to prevent future delinquent behavior: a systematic review. *Campbell Syst Rev.* 2018 Jun 1;14(1):1-88. 5. doi: 10.4073/csr.2018.5. PMID: 37131366; PMCID: PMC8427984; Anthony Petrosino, Carolyn Petrosino, Sarah Guckenbug, Jenna Terrell, Trevor A. Fronius and Kyungseok Choo. 2019. 'The effects of juvenile system processing on subsequent delinquency outcomes'. In *The Oxford Handbook of Developmental and Life-Course Criminology*. ed. David P. Farrington, Lila Kazemian and Alex R. Piquero, 553–75. New York: Oxford University Press; Wilson, H. A., & Hoge, R. D. (2013). The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review. *Criminal Justice and Behavior*, 40(5), 497-518. <https://doi.org/10.1177/0093854812451089>; Farrington et al (n 122).

¹⁸⁷ Petrosino et al (n 186).

¹⁸⁸ Nadine Smith and Don Weatherburn. 2012. 'Youth Justice Conferences versus Children's Court: A comparison of re-offending'. NSW Bureau of Crime Statistics and Research (BOCSAR). *Crime and Justice Bulletin – Contemporary Issues in Crime and Justice*. Number 160. February 2012. 15-16.

¹⁸⁹ Sherman, L.W., Strang, H., Mayo-Wilson, E. *et al.* Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review. *J Quant Criminol* 31, 1–24 (2015). <https://doi.org/10.1007/s10940-014-9222-9>.

¹⁹⁰ Hennessey Hayes and Kathleen Daly. 2003. Youth Justice Conferencing and Reoffending. *Justice Quarterly*. (2003) 20(4). Available online <https://www.researchgate.net/publication/29457142_Youth_Justice_Conferencing_and_Reoffending>.

¹⁹¹ Restorative Justice Evaluation Team (Youth Justice Policy, Research and Partnerships). 2018. *Restorative Justice Project 12-month program evaluation*. 20 May 2018. Available online <<https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/restorative-justice-evaluation-report.pdf>>.

¹⁹² Ibid; Hayes and Daly (n 190).

¹⁹³ Restorative Justice (n 191).

Jesuit Social Services in Australia run restorative justice conferences in Victoria and the Northern Territory. In a recent evaluation by Swinburne University, it was found that group conferencing was associated with a reduction in recidivism of between 24-40% compared to mainstream justice processes. This evaluation also found conferencing was extraordinarily cost-effective (running one conference costs about the equivalent of keeping a child in custody for four days).¹⁹⁴

In New Zealand, family-group conferences are used at different stages of interaction with the youth justice system,¹⁹⁵ including where there is an intention to charge, as a court-ordered option pre-or post-sentencing, when a young person is remanded (to explore alternative community-based options), and where there is a care and protection consideration (for children aged 10 to 13 years old).¹⁹⁶ Importantly, this model focuses on ensuring young people receive community-based supports that address the drivers of offending.

There have been some important critiques in Australia of the way in which restorative conferencing has not always adequately engaged in a meaningful or respectful way with First Nations communities. The research in this space notes the importance of ensuring restorative programs are developed and implemented by First Nations communities with appropriate self-determination and resourcing.¹⁹⁷

¹⁹⁴ Jesuit Social Services. 2023. 'New youth justice spending data highlights effectiveness of restorative justice programs' (Web Page) 24 January 2023 <<https://jss.org.au/news-and-media/media-releases/new-youth-justice-spending-data-highlights-effectiveness-of-restorative-justice-programs/>>./

¹⁹⁵ McElrea, J.F. The New Zealand Model of Family Group Conferencing. *European Journal on Criminal Policy and Research* 6, 527–543 (1998). <https://doi.org/10.1023/A:1008696514447>.

¹⁹⁶ Judge Andrew Becroft. 2017. *Family Group Conferences: Still New Zealand's gift to the world?*. Mana Mokopuna Children and Young Person's Commission. December 2017. Available online < <https://www.occ.org.nz/documents/98/OCC-SOC-Dec-2017-Companion-Piece.pdf>>.

¹⁹⁷ Coker, D. (2006). Restorative justice, Navajo Peacemaking and domestic violence. *Theoretical Criminology*, 10(1), 67-85. <https://doi.org/10.1177/1362480606059983>; Brian Jarrett and Polly E. Hyslop. 2014. 'Justice for all: An Indigenous community-based approach to restorative justice in Alaska'. *Northern Review*. 38 (2014):239–268.

FIRST NATIONS PLACE BASED APPROACHES

Place-based approaches seek to address complex social problems at the local level rather than through top-down policies. They draw on the unique capabilities and strengths, as well as the difficulties, faced by First Nations communities and challenge governments to develop genuine partnerships with communities to alleviate complex disadvantage.¹⁹⁸ Place-based initiatives prioritise physical infrastructure, employment, education, community capacity building and cultural connection as ways to address the social drivers of crime.

AUSTRALIAN FIRST NATIONS LED APPROACHES

COMMUNITY JUSTICE GROUPS (QUEENSLAND)

Community Justice Groups (CJGs) were first trialled in three Queensland communities in 1993 in response to the Royal Commission into Aboriginal Deaths in Custody. The program has since been expanded state-wide, with First Nations-led CJGs now operating in 41 communities across Queensland. CJGs work with key stakeholders to coordinate place-based responses that support First Nations people interacting with the justice system. A 2010 KPMG-led evaluation found stakeholders involved in Queensland CJGs widely supported the initiative and that it is closely aligned with state and national justice priorities. However, the evaluation found that CJGs required greater resourcing and support to improve their capacity to deliver responses that reduce the over-representation of First Nations people in prison.¹⁹⁹ Following this evaluation, Queensland Government released a Framework for Stronger CJGs and allocated an additional \$19.1 million over four years in the 2019-2020 state budget to enhance the initiative. Myuma Pty Ltd is currently undertaking a second outcome evaluation of the CJG initiative (was due for completion in December 2023). A Phase 1 implementation evaluation report was released in November 2021, which noted the extensive outputs of CJGs and provided recommendations to strengthen program implementation and inputs during the program enhancement phase.²⁰⁰

DEADLY CONNECTIONS (NSW)

Deadly Connections is a specialist First Nations-led organisation based in NSW working to break cycles of disadvantage and trauma and address the overrepresentation of First Nations people in the child protection and justice system/s. Deadly Connections offers a range of different programs and services for justice-impacted individuals including people leaving prison. In 2022, Deadly Connections published an impact report overviewing the outcomes of the organisation's services between 2019 and 2021. The report also highlighted the findings of an independent outcomes evaluation of Deadly Connections' work. These findings included that there was a 42% improvement in health and wellbeing and a 40% increase in connection to First Nations culture. Of the clients that had already participated in the Breaking the Cycle

¹⁹⁸ Robyn Gilbert. 2012. 'Place-based initiatives and Indigenous justice'. Research Brief 13. Indigenous Justice Clearinghouse. June 2012. Available online <<https://www.indigenoujustice.gov.au/wp-content/uploads/mp/files/publications/files/brief013.v1.pdf>>.

¹⁹⁹ KPMG. 2010. *Evaluation of the Community Justice Group Program, Final Report*. Department of Justice and Attorney General. November 2010. Available online <https://www.courts.qld.gov.au/_data/assets/pdf_file/0004/519898/final-report-community-justice-group-evaluation.pdf>.

²⁰⁰ The Myuma Group. 2021. *Phase 1 Report: Evaluation of Community Justice Groups*. Queensland Courts. November 2021. Available online <https://www.courts.qld.gov.au/_data/assets/pdf_file/0011/738974/cjg-evaluation-annual-report.pdf>.

program (focused on people with recent justice involvement), 41% reported improved wellbeing compared to clients that were new to the program.²⁰¹

MARANGUKA JUSTICE REINVESTMENT PROJECT (NSW)

The independent review of the Maranguka Justice Reinvestment Project at Bourke in 2016-2017 found the following:

- A 23% reduction in domestic violence offending;
- A 38% reduction in the number of youth proceeded against for driving offences;
- Increased rates of school retention; and
- Estimated savings of \$3.1 million over the course of a year.²⁰²

The close partnership between the community and police was critical to the success of this work, with regular meetings between police and community members, sharing of data, and working together to identify community members in need.²⁰³

OLABUD DOOGETHU (WA)

The Kimberley-based Olabud Doogethu project is Western Australia's first justice reinvestment site. Olabud Doogethu aims to create stronger communities, more resilient families and young people, and reduce youth involvement in the criminal justice system in the Halls Creek Shire. The project's focus is community-driven and First Nations-led initiatives that build local community cohesion, capacity, leadership and infrastructure; tackle disadvantage; and create local justice support opportunities. 90% local First Nations employment has been achieved for all Olabud Doogethu service programs.²⁰⁴ Data provided by WA Police for the period 2017-2020 showed significant reductions in youth crime at the site, including:

- 63% reduction in burglaries;
- 43% reduction in oral cautions;
- 69% reduction in arrests;
- 64% reduction in First Nations persons admitted to police custody (aged 10+); and
- 59% reduction in theft of motor vehicles.²⁰⁵

THE YIRIMAN PROJECT (WA)

The Yiriman Project – which is run by the elders of four Kimberley language groups to reconnect their young people to culture while also reducing contact with the criminal justice system, harmful substance use and suicide – has received numerous awards and positive evaluations.²⁰⁶ Yet it has struggled over the past two decades to secure the funding it needs to

²⁰¹ Deadly Connections. 2021. Impact Report 2019-2021. Available online <<https://deadlyconnections.org.au/wp-content/uploads/2022/08/Deadly-Connections-Impact-Report-2019-2021.pdf>>.

²⁰² Just Reinvest NSW. 2018. Maranguka Justice Reinvestment Project Impact Assessment. KPMG. 27 November 2018. Available online <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/maranguka-justice-reinvestment-project-kpmg-impact-assessment-final-report.pdf>>.

²⁰³ Fiona Allison and Chris Cunneen. 2022. Justice Reinvestment in Australia – A Review of Progress and Key Issues. Justice Reinvestment Network Australia. July 2022. Available online <https://jrna228913579.files.wordpress.com/2022/07/national-report_jr.pdf>.

²⁰⁴ Olabud Doogethu Aboriginal Corporation. The impact (Web Page) <<https://olabuddoogethu.org.au/about-us/the-impact/>>.

²⁰⁵ Ibid.

²⁰⁶ Kathryn Thorburn and Melissa Marshall. 2017. The Yiriman Project in West Kimberley: An example of justice reinvestment. Current Initiatives Paper. Indigenous Justice Clearinghouse. 31 July 2017. Available online <<https://apo.org.au/sites/default/files/resource-files/2017-07/apo-nid116631.pdf>>; Dave Palmer. 2013. Yiriman youth justice diversion program business plan 2016. Evaluation report. December 2013. Available online <<http://kalacc.org/wp-content/uploads/2018/06/yiriman-youth-justice-diversion-business-plan-2016.pdf>>; The Centre of Best Practice in Aboriginal &

continue its services. Children and young people aged 15 to 25 years are taken out on country to visit Elders where they are involved in deep learning and transmission of culture and language, workshops, making of artefacts and taking care of the land. A three-year evaluation found it reduced participants' subsequent contact with the criminal justice system, with some concluding it was better than most other sentencing and diversionary options in this regard.²⁰⁷

YUWAYA NGARRA-LI (NSW)

Yuwaya Ngarra-li, a community-led partnership between the Dharriwaa Elders Group and the University of New South Wales, aims to improve the wellbeing, social, built and physical environment and life pathways of First Nations people in Walgett, NSW, through collaboration on evidence-based initiatives, research and capacity building. A 2022 report from Yuwaya Ngarra-li evaluating change in youth justice outcomes since the commencement of the partnership in 2018 showed:

- Overall increases in diversions in 2019 and 2020 (but decreases again in 2021);
- Overall reductions in charges and court cases; and
- Reductions in youth custody episodes.

The report noted the need for ongoing work to embed systemic change.²⁰⁸

POLICING OF CHILDREN

The way policing operates around Australia has a significant impact on imprisonment rates. Reducing the number of prisons for children requires an examination of the 'front end' of the justice system, including the role, function and operations of police. To stem the flow of children unnecessarily funnelled into the prison system, there is a need to rethink policing, particularly in communities that are over-policed.

Nearly all contact with the criminal justice system starts with police contact, and early police contact is a social determinant of incarceration.²⁰⁹ Police discretion can work in favour of, or against, a child suspected of criminal conduct.²¹⁰ How police use their powers and discretion determines whether - and how far - a child further progresses in the criminal justice system. Discretionary powers can be used to either de-escalate or to escalate in each of the following interactions between police and young people:

- Whether to stop a young person, question them and request identification;
- Whether to direct a person to 'move-on';
- Whether to conduct a personal search or a strip search in the field;
- The assessment as to whether certain behaviour or language is 'offensive';

Torres Strait Islander Suicide Prevention. (Web Page) <<https://cbpatsisp.com.au/clearing-house/best-practice-programs-and-services/programs-for-preventing-youth-suicide/>>.

²⁰⁷ Dave Palmer. 2016. "We know they healthy cos they on country with old people": Demonstrating the value of the Yiriman Project, 2010-2013. Final Report. Yiriman Project, Kimberley Aboriginal Law and Culture Centre 2013. Available online <<https://researchrepository.murdoch.edu.au/id/eprint/42383/1/Yiriman%20Project.pdf>>.

²⁰⁸ Dr Rebecca Reeve, Dr Ruth McCausland and Peta MacGillivray. 2022. *Has criminal justice contact for young people in Walgett changed over time? Analysis of diversions, charges, court, and custody outcomes 2016-2021*. Yuwaya Ngarra-li Research Report. Available online <https://www.igd.unsw.edu.au/sites/default/files/documents/YN%20Research%20Report%20Has%20criminal%20justice%20contact%20for%20young%20people%20in%20Walgett%20changed%20over%20time_1.pdf>.

²⁰⁹ McCausland and Baldry (n 20).

²¹⁰ ALRC (n 29), paragraph 14.23.

- The decision whether to issue a warning or a caution, rather than issue a Penalty Notice;
- Whether to arrest a young person;
- The decision to use of force in making an arrest and the assessment as to what is 'reasonable force';
- The decision whether to formally charge a young person;
- Whether to consent to court-based diversion.

POLICE DISCRETION

In relation to the discretion to divert children from the criminal justice system, there is strong evidence to suggest that police are less likely to divert First Nations children than non-First Nations children. For instance, according to the Victorian Crime Statistics Agency, Victoria Police are less likely to issue cautions to children in lower socio-economic areas and to young First Nations people accused of offences.²¹¹

There is also increasing concern regarding the discretion of police to prioritise resources into particular policing activities that target children. In this regard, children are regarded by police to be a 'suspect population' who are considered as more likely to break the law. As a 'suspect population' children are then targeted for discretionary policing activities such as stop and search, request for identification and arrest, and may be subject to these activities on multiple occasions on the one day.²¹² This is based on the concept of 'focused deterrence', which refers to the relocation of police resources toward a relatively small number of people responsible for a disproportionately large fraction of crime. The frustration experienced by children to this form of continued police engagement can then result in an escalation of the police interaction to one that is confrontational, resulting in serious criminal charges.²¹³

An example of such a focused deterrence program was the NSW Police Suspect Target Management Program (STMP), which began operation in 2002. The objective of STMP was to reduce crime by identifying individuals considered to be a high risk of offending, notifying them that they are to be the subject to enhanced supervision and then proactively policing such individuals. This involved officers from the corresponding Police Area Command regularly conducting person searches, bail compliance checks and issuing move-on directives.²¹⁴

A 2017 study of how STMP applied to children and young people found that the STMP disproportionately targeted children and First Nations people. The study also found that young people were subject to a STMP in circumstances where they had only minor, non-violent prior convictions or no prior convictions but extensive prior contact with police.²¹⁵

The NSW Law Enforcement Conduct Commission (LECC) conducted a 5-year review that looked at how the NSW Police Force used the STMP on children and young people under 18 years. In its final report released in October 2023, the LECC concluded that:

²¹¹ Legislative Council, Legal and Social Issues Committee, Parliament of Victoria (Victoria Parliament CLSIC), *Inquiry into Victoria's criminal justice system* (Report, March 2022). 214.

²¹² Mike McConville, Andrew Sanders, Roger Lang. 1991. *The Case for the Prosecution – Police Suspects and the Construction of Criminality*. Routledge, London. 1991. 14-17.

²¹³ Ben Bowling and Coretta Phillips. 2007. 'Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search' (2007) 70(6) *Modern Law Review* 936.

²¹⁴ Steve Yeong. 2020. An evaluation of the Suspect Target Management Plan (Crime and Justice Bulletin No. 233 revised). Sydney: NSW Bureau of Crime Statistics and Research. 2.

²¹⁵ Dr Vicki Sentas and Camilla Pandolfini. 2017. *Policing Young People in NSW – A Study of the Suspect Targeting Management Plan*. Youth Justice Coalition. 2017. 14-15, 20.

- The STMP disproportionately targeted First Nations young people, suggesting the ongoing discriminatory effect of the policy;
- Most young people targeted by the STMP had complex needs, but police mostly ignored these needs when they applied the STMP to them;
- Police used strategies that were highly intrusive and disruptive in the life of the young person, and which increased the likelihood of a young person's interactions with the criminal justice system
- The STMP review and evaluation process did not robustly evaluate whether the program helped to reduce a young person's offending.²¹⁶

In October 2023, the NSW Police Force advised LECC that it had discontinued using the STMP on young people, and that by the end of 2023 it would discontinue using the STMP for adults. The NSW Police further advised that it was developing a replacement program that will improve outcomes for young people engaged in or at risk of repeat offending.²¹⁷

The JRI agrees with the LECC that this new approach should:

- Not disproportionately impact First Nations young people;
- Remedy past problems with selection bias;
- Reduce police's reliance on heavy-handed and oppressive policing strategies to intervene in young people's lives;
- Introduce robust record keeping and evaluation processes to ensure accountability of policing actions.²¹⁸

Similar risk-based databases are used by Victoria Police (VicPol) and the Queensland Police Service. VicPol use the 'Youth-Networked Offender database' and the 'Victoria Police Priority Target Management Plan'. In March 2017, VicPol commenced 'Operation Wayward' - an intelligence driven crime operation whereby local detectives engage in ongoing monitoring and case management of children who have been involved in aggravated burglaries and home invasions and deemed at high-risk of reoffending. The Queensland Police Service introduced the 'Serious Repeat Offender Index' in 2021 as part of the Youth Justice Taskforce 'Intensive Multi-Agency Case Management' model. In both Victoria and Queensland, there is evidence to suggest that the strategies result in disproportionate targeting of multicultural and First Nations children.²¹⁹

The way in which police discretion is utilised reflects the culture and operational structures of policing. JRI considers that all police interactions with children should be focused on moving children away from the justice system. This requires a shift in the cultural and operational norms of police officers to ensure discretion is exercised to divert children from the criminal justice system. Policing culture should be focused on developing cooperative working relationships and increasing trust with communities, initiating actions that promote diversion from the criminal justice system, using non-forceful responses to situations, and making appropriate referrals to support services for children in need.

²¹⁶ Law Enforcement Conduct Commission (LECC) 2023. *An investigation into the use of the NSW Police Force Suspect Target Management Plan on children and young people – Operation Tepito, Final Report*. October 2023. 9-10.

²¹⁷ Ibid, 10.

²¹⁸ Ibid, 2.

²¹⁹ Ibid, 18-19.

Police are frequently called upon to perform a 'first responder' role that would be better performed by social and community support services and networks. Due to an under-resourced social services sector, police are often called upon to 'manage' children young people in need of support services, rather than these young people receiving the care, support and assistance that is required in the community. These young people should not be 'criminalised' in their interactions with police, just because alternative pathways outside of the criminal justice system are not available.

In Australia and internationally, there are alternative models of positive policing where interactions with police result in improved outcomes in terms of both community safety and reducing the likelihood of criminal justice system involvement. In the Justice Reform Initiative Policing Position Paper, we discuss alternative responder models in more detail. This includes discussion of policing and alternative first-responder models that:

- Reduce criminal justice system involvement and lessen likelihood of arrest;²²⁰
- Halve the rate of crime and justice system involvement;²²¹
- Significantly reduce levels of specific crime;
- Improve health and wellbeing (especially for people with mental health conditions);²²² and
- Address the social drivers of incarceration while avoiding contact with police.²²³

All police interactions with children should be focused on moving children away from the justice system. Police should develop appropriate key performance measures with the aim of shifting the behavioural norms of police officers to ensure discretion is exercised to divert young people from the criminal justice system. This also requires significant investment from governments to ensure community-led diversion and bail support options at the point of police interaction are adequately resourced in each community. These measures should place premium value on developing cooperative working relationships and increasing trust with communities, initiating actions that promote diversion from the criminal justice system, using non-forceful responses to situations, and making appropriate referrals to support services for young people in need.

²²⁰ Susan E. Collins, Heather S. Lonczak and Seema L. Clifasefi. 2019. Seattle's law enforcement assisted diversion (LEAD): program effects on criminal justice and legal system utilization and costs'. *Journal of Experimental Criminology* (2019) 15:201–211 <https://doi.org/10.1007/s11292-019-09352-7> 1. Available online <https://leadbureau.org/wp-content/uploads/2023/08/2019-LEAD-Eval_HaRRT-Peer-Reviewed.pdf>.

²²¹ New Zealand Justice and Courts Minister (n 150).

²²² Pamela Henry and Nikki Rajakaruna. 2018. *WA police force mental health co-response evaluation report*. The Sellenger Centre for Research in Law, Justice and Social Change, Edith Cowan University. 29 March 2018. Available online <[https://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4011830c6f17958a776124a04825830d0003e135/\\$file/tp-1830.pdf](https://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4011830c6f17958a776124a04825830d0003e135/$file/tp-1830.pdf)>; Harry Blagg. 2015. 'Models of best practice: Aboriginal community patrols in Western Australia'. October 2015. Available online <https://www.researchgate.net/publication/282866234_Models_of_Best_Practice_Aboriginal_Community_Patrols_in_Western_Australia>.

²²³ Porter, A. (2016). Decolonizing policing: Indigenous patrols, counter-policing and safety. *Theoretical Criminology*, 20(4), 548-565. <https://doi.org/10.1177/1362480615625763>; Blagg (n 222).

CONCLUSION

Youth justice systems across Australia are failing. They are failing to act in the best interests of the children who are in contact with them, and they are failing to address the drivers of crime and criminal justice system contact. Despite Australia's international obligations to act in the best interests of the child, the youth justice systems in operation in each of the states and territories exhibit a punitive culture, fuelled by law-and-order rhetoric that seeks to ignite community fear about youth crime.

This paper details the failures of the youth justice system in Australia as it currently operates including some of the cruel and punitive practices in prisons for children that have been brought to light in recent years. These practices are clear examples of institutional abuse and mistreatment which serve to compound the trauma and social exclusion that characterises the lives of many of the children who come into contact with the youth justice system. Too many children in prison come from backgrounds of trauma, deep disadvantage and marginalisation. All of this is exacerbated through interaction with the youth justice system. First Nations children in particular are affected at a disproportionate rate by the punitive nature of the youth justice system.

The current model fails to provide children with the support they need to address the underlying causes of offending. The absence of resourcing for therapeutic and community led approaches ultimately compounds the cycle of offending and undermines the very community safety which state and territory governments state that they are seeking to protect by way of a more severe and punitive system – a system that sets children and young people up to fail, as well as failing the community.

Many children who are trapped in a cycle of incarceration and disadvantage are being 'managed' in justice system settings. It is abundantly clear that this could be avoided if effective and well-resourced supports were available in the community. This paper details the community initiatives and programs that have demonstrated considerable success in providing necessary supports for children who come into contact with the criminal justice system, improving their health and wellbeing and reducing the likelihood of further criminal offending. This paper also details the early intervention and prevention supports and First Nations place based programs that make a difference. The problem to date has been that while we have as a community continued to funnel more and more money into building children's prisons, we have not invested in the evidence-based alternatives that we know will genuinely make a difference when it comes to building safer communities.

Substantial investment by governments in evidence-based programs and services, run by the community sector (including First Nations led organisations), that address the social drivers of incarceration will lead to a significant reduction in recidivism, a significant reduction in police interactions with children, and significant reduction in care and protection orders. This shift in approach will also result in significant cost-savings, and substantial improvements in health and wellbeing.

Investing in evidence-based services instead of incarceration will break entrenched cycles of engagement with the criminal justice system and recidivism. In addition to creating substantial

cost-savings to government, this approach will have enormous benefits for populations who have too often been 'managed' in justice systems rather than being supported in the community.

'Tough on crime' rhetoric does not make the community safer, nor does our current over-use of imprisonment for children. If we genuinely want to build a safer, more cohesive community, we need to invest in community-led programs that address the drivers of crime and incarceration.

We need programs that provide opportunities for children to rebuild their lives in the community. We need to embrace a criminal justice model that genuinely relegates prisons to a position of last resort, and instead centres community-led interventions that really work to break cycles of disadvantage, reduce reoffending, and build safer communities.

APPENDIX A: MULTIPLE ADVOCATES WORKING FOR CHANGE

The Justice Reform Initiative recognises that many of the principles and ideas outlined above have been identified by First Nations experts and advocates over decades of advocacy in this space. We also recognise the leadership and work of Aboriginal and Torres Strait Islander led organisations and leaders more broadly, over many decades in progressing reform when it comes to the over-representation of First Nations people in the criminal justice system. In addition, in recent years there have been some additional and significant contributions to advocacy and policy in youth justice by expert advocates. This includes recent important contributions about changing youth justice nationally from:

- **Save the Children** and their 2023 publication calling for a rights-based approach, '*Putting Children First: A rights respecting approach to youth justice*'.²²⁴
- **Jesuit Social Services** who have been committed to long-standing policy, research and advocacy work and have produced multiple publications on this topic of youth justice.²²⁵
- **Amnesty International** who have been campaigning on a range of youth justice issues, including their work outlined in their *National Plan for Youth Justice*.²²⁶
- **Change the Record** who along with the **Human Rights Law Centre** have been leading the *Raise the Age* campaign.²²⁷

There have been many other local service providers and local advocacy organisations campaigning on the specific needs of their jurisdictions and the Justice Reform Initiative acknowledges this important expertise. For instance, in 2022 the Social Reinvestment Western Australia (SRWA) coalition put out a comprehensive blueprint for reform in WA: *Blueprint for a Better Future – Paving the Way for Youth Justice Reform in Western Australia*.²²⁸

In Queensland multiple organisations including PeakCare Queensland, the Youth Advocacy Centre, QATSICPP and Sisters Inside have been campaigning specifically around the over incarceration of children in Queensland. In Victoria, Smarter Justice for Young People,²²⁹ West Justice and the 'Target Zero' campaign,²³⁰ and many others have been working on reform. In the NT, the long-standing Central Australian Youth Justice (CAYJ) have also been campaigning and advocating in this space.²³¹ There are community-based advocates, researchers, campaigners and service providers in every state and territory who have enormous expertise in the area of youth justice. There is also enormous stakeholder expertise and goodwill. A growing

²²⁴ Save the Children. 2023. *Putting children first: A rights respecting approach to youth justice in Australia*. April 2023. Available online <https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/putting-children-first-a-rights-respecting-approach-to-youth-justice-in-australia_april-23.pdf.aspx>.

²²⁵ Jesuit Social Services. 2017. *#JusticeSolutions: Expanding the conversation*. 28 August 2017. Available online <<https://jss.org.au/policy-submissions/justicesolutions/>>.

²²⁶ Amnesty International. 'Enough Kids have suffered in Prison. Time for National Change.' (Web Page) <<https://action.amnesty.org.au/act-now/cie-national-plan-of-action-kids-in-detention>>.

²²⁷ Change the Record. '#Raise the Age'. (Web Page) <<https://www.changetherecord.org.au/raisetheage>>.

²²⁸ Social Reinvestment Western Australia. 'Blueprint for a Better Future: Paving the Way for Youth Justice' (Web Page) <<https://www.socialreinvestmentwa.org.au/blueprint-for-a-better-future>>.

²²⁹ Federation of Community Legal Centres (Vic). 'Smart Justice for Young People' (Web Page) <https://www.fclc.org.au/smart_justice_for_young_people#:~:text=Smart%20Justice%20for%20Young%20People%20is%20a%20coalition%20of%20over,contact%20with%20the%20justice%20system>.

²³⁰ Westjustice. 'Target Zero' (Web Page) <<https://www.westjustice.org.au/media-and-events/target-zero>>.

²³¹ Central Australian Youth Justice. 'A Connected Youth Justice System' (Web Page) <<https://www.cayj.org.au/new-page>>.

coalition of First Nations leaders and communities, researchers, community sector practitioners, people with lived experience of incarceration, and a diverse group of advocates are all committed to sharing this expertise and supporting decision makers throughout Australia to develop and properly resource evidence-based approaches to criminal justice.



APPENDIX B: RAISING THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY TO 14

The Justice Reform Initiative recognises the need for multiple legislative, policy, social, health, and human service reforms to be enacted, so that historically over-incarcerated and disadvantaged populations have opportunities to thrive in the community. Raising the Minimum Age of Criminal Responsibility (MACR) to 14 is one of these critical changes.

The evidence is clear that 14 is the **minimum** age, developmentally and neurologically, that children could or should be held criminally responsible.²³² There are compelling developmental arguments to suggest this age should be even higher. The United Nations Committee on the Rights of the Child has pointed to developments and neuroscientific evidence that shows adolescent brains continue to mature beyond teenage years and has therefore 'commend[ed] States Parties to have an even higher minimum age, for instance 15 or 16 years.'

The evidence states that children aged between 10 and 14 years of age are not at a cognitive stage of development where they are able to be held criminally responsible. This creates significant doubt on the capacity for children of these ages to appropriately reflect before embarking on a course of action involving criminal behaviour.

According to the UN Committee on the Rights of the Child:

*Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence.*²³³

The consequences of imprisoning young children extend well beyond the futility of this in terms of what we know about children's developmental capacity. By criminalising the behaviour of children who may not be aware of the consequences and nature of their conduct, a dangerous cycle of disadvantage is initiated causing children to become entrenched in the criminal justice system. Several studies confirm that when children are drawn into the criminal justice system at a young age there is a significantly higher likelihood of subsequent reoffending and a lower likelihood of that child completing their education or securing employment. The experience of youth detention is one of the key predictors of longer-term justice system involvement.²³⁴

²³² Kelly Richards. 2011. 'What makes juvenile offenders different from adult offenders?'. *Trends & issues in crime and criminal justice*. Paper No. 409. 18 February 2011. 4; Laurence Steinberg. 2007. 'Risk taking in adolescence: new perspectives from brain and behavioural science'. (2007) 16(2). *Current Directions in Psychological Science*. 55, 56; See also E. Farmer. 2011. 'The age of criminal responsibility: developmental science and human rights perspectives'. *Journal of Children's Services*. 6(2); Chris Cunneen. 2017. 'Arguments for Raising the Minimum Age of Criminal Responsibility'. Comparative Youth Penalty Project. Sydney. University of New South Wales. 2017. Available at <<http://cypp.unsw.edu.au/node/146>>; Australian Medical Association. 2019. AMA submission to the Council of Attorneys-General – Age of Criminal Responsibility Working Group Review'.

²³³ United Nations Committee on the Rights of the Child. 2019. *General comment No. 24: Children's rights in the child justice system*, CRC/C/GC/24 (18 September 2019). Paragraph 22.

²³⁴ AIHW. 2016. *Young people returning to sentenced youth justice supervision 2014–15*. Report, Juvenile justice series no. 20. 22 July 2016. Available at <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-youth-justice-supervision-2014-15/contents/table-of-contents>>; AIHW, *Young people aged 10–14 in the youth justice system 2011–12*. Report 25 July 2013. Available online <<https://www.aihw.gov.au/reports/youth-justice/young-people-aged-10-14-in-the-youth-justice-system/contents/publication>>.

The Justice Reform Initiative is of the view that there should **not** be any exceptions on the MACR, on the basis of the 'type' or severity of the offence or behaviours. The frame around which decision-making should be made with regard to the minimum age should be medical and developmental – not political. If a child is not able to be held criminally responsible for offences that might be considered 'less serious' (for instance, shoplifting) then there is no reason why they could be held criminally responsible for more serious offences. This is especially the case for offences that require specific intent, for example, the requirement for murder that the person intended to cause the person's death or cause serious harm to the person.

The Justice Reform Initiative notes that in January 2021 as part of Australia's Universal Periodic Review before the UN Human Rights Committee, 31 UN Member States called on Australia to raise the age of criminal responsibility to 14 years of age.²³⁵

In addition, the UN Committee on the Rights of the Child has recommended that the minimum age of detention be set to 16 years of age, with exceptions allowed where there are genuine public safety or health concerns.²³⁶ This recognises that 'the use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers her/his reintegration into society.'²³⁷ Detention should therefore always be considered as a measure of last resort.

In its 2020 draft report (publicly released in December 2022), the Council of Attorneys-General Age of Criminal Responsibility Working Group recommended that the age of criminal responsibility across all jurisdictions in Australia be raised to 14 years-of-age.²³⁸ The report was informed by more than 90 public submissions, including the Australian Medical Association, First Nations organisations, health, legal and human rights organisations and experts.

The Justice Reform Initiative is keen to promote a decision-making environment in governments around Australia in which the framework for this important policy and legislative decision is driven by medical evidence, rather than any political challenges associated with legislative reform. All governments in Australia should commit to the principle of raising the age to 14 so that this is the starting point for the development of the necessary service framework.

There is a need in all jurisdictions around Australia to develop an alternative service delivery and support framework for children who have historically been 'managed' in the youth justice system. Although there are challenges with regard to making this change, and gaps in service delivery that require a response, we believe that these issues are resolvable, based on observations in other jurisdictions internationally, and more recently in the ACT.

We believe that once the principled decision to raise the age to 14 has been made, governments will then have the opportunity to draw on a wealth of experts (including First Nations led organisations, medical experts, community sector service delivery experts,

²³⁵ Oliver Gordon. 2021. 'Australia urged by 31 countries at UN meeting to raise age of criminal responsibility'. ABC News. 21 January 2021. <<https://www.abc.net.au/news/2021-01-21/un-australia-raise-the-age-of-criminal-responsibility/13078380>>.

²³⁶ United Nations Committee on the Rights of the Child. 2019. *General Comment No 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019). 30.

²³⁷ *Certain Children v Minister for Families and Children [No 2]* (2017) 52 VR 441, 522 [262](c), quoting UN Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice, 44th sess, UN Doc No CRC/C/GC/10 (25 April 2007) 5 [11].

²³⁸ Draft Final Report, 2020 - Council of Attorneys-General Age of Criminal Responsibility Working Group, 79.

researchers and advocates) to assist in the thoughtful development of an alternative multi-agency response to children aged between 10 and 13.

To this end, we recommend that all governments around Australia:

1. Make a public commitment to raising the age of criminal responsibility to 14 (based on the available medical evidence). This has occurred in the ACT, Tasmania and Victoria.
2. Make a public commitment to raise the age of detention to 16 (as has occurred in Tasmania).
3. Make a public commitment that no child under the age of 18 should be subject to youth justice detention unless there are exceptional circumstances concerning community safety warranting such detention.
4. Make a concurrent commitment to oversee a comprehensive review process of the youth service and youth justice systems with the view of ensuring a gaps and needs analysis is carried out, prior to the development of a road-map for implementation and subsequent legislation.

APPENDIX C: THE RIGHT TO BAIL AND THE PRESUMPTION OF INNOCENCE

The significant majority of young people in detention in Australia are unsentenced, having been denied bail after being charged with a criminal offence. These are children who have not yet been found guilty of the criminal offence with which they have been charged. Remanding a young person in custody is a serious decision that interferes with that young person's right to liberty, the right to the presumption of innocence and the right not to be punished prior to a finding of guilt.

On an average day in 2022-2023, 83% of young people in detention were unsentenced and on remand, having been denied bail.²³⁹ The estimated annual national cost for holding children in detention on remand is over \$670 million (based on the average total daily cost per young person subject to detention of \$2,827.47 per day).²⁴⁰ Reducing the numbers of young people in detention on remand will result in significant savings.²⁴¹

Bail legislation around Australia for children should always involve the presumption in favour of bail. Denial of bail increases the likelihood of incarceration and is a major contributing factor in causing children to become further entrenched in the criminal justice system. In no circumstances should there ever be a presumption against bail for a child charged with a criminal offence. The onus should always be on the prosecution to demonstrate that bail should not be granted to a young person charged with a criminal offence, due to there being a specific and immediate risk to the physical safety of another person, a serious risk of interfering with a witness, or the person is posing a demonstrable flight risk. A young person charged with a criminal offence should not be subject to any 'reverse onus' provisions in bail legislation.

In order to facilitate access to bail for children and young people, there is a need to increase resources for bail support programs which provide supported accommodation for children with opportunities for education, health and other necessary support services.

ELECTRONIC MONITORING

The Justice Reform Initiative does not support electronic monitoring, or other forms of onerous electronic surveillance for children on bail. The Queensland Human Rights Commissioner has indicated that electronic monitoring devices are not appropriate for children charged with offences and released on bail.²⁴² Moreover, requiring a child on bail to wear an electronic monitoring device creates a significant level of stigma for that child making it difficult for them to attend school, find employment, or secure safe accommodation. Such a child will need significant family support for the desired effect of electronic monitoring to be achieved. For many children in this cohort such family support will not be available. This is particularly the case for First Nations children who make up a disproportionate number of children under child protection orders, for whom the parent is the state.

²³⁹ AIHW (2023). Youth detention population in Australia 2023, tables S14 and S32

²⁴⁰ Productivity Commission (n 2), Youth justice services, table 17A.21.

²⁴¹ Jarrod Ball. 2019. 'Australia pays the price for increasing rates of imprisonment'. *Opinion Article*. Committee for Economic Development of Australia. 2 July 2019. Available online <<https://www.ceda.com.au/Digital-hub/Blogs/CEDA-Blog/July-2019/Australia-pays-the-price-for-increasing-rates-of-imprisonment>>.

²⁴² Kate McKenna. 2021. 'GPS trackers set young criminals up for failure, Human Rights Commissioner says'. *ABC News*. 5 February 2021. <<https://www.abc.net.au/news/2021-02-05/youth-crime-justice-couple-killed-brisbane-gps-human-rights/13117336>>.

The requirement for some children on bail to wear electronic monitoring devices inflames the already present concerns of the growing vigilante responses to youth crime.²⁴³ The devices may make it easier to identify the children on bail making them more vulnerable when in public.

A recent UK systematic review of the effectiveness of electronic monitoring in several countries found that electronic monitoring works best with people convicted of sex offences; but when extended to broader populations, there was no significant positive effect compared to non-monitoring.²⁴⁴

There is very little benefit in incurring the substantial cost of introducing electronic monitoring of children on bail, given the evidence that there is no significant positive effect in terms of crime reduction. We are also concerned of the substantial risk that children required to wear such a device will be set up to fail resulting in increased incarceration for this vulnerable cohort.

²⁴³ Peter McCutcheon. 2021. 'Why the growing number of vigilantes in response to youth crime in Townsville is worrying the Indigenous community'. *ABC News*. 2 March 2021. <<https://www.abc.net.au/news/2021-03-02/townsville-youth-crime-vigilantes-worry-indigenous-community/13192838>>; Michael Atkin. 2016. 'Townsville police issue vigilante warning as youth crime rates soar.' *ABC News*. 13 December 2016 <<https://www.abc.net.au/news/2016-12-13/townsville-police-vigilante-warning-youth-crime-rates-soar/8115002>>.

²⁴⁴ Jyoti Belur, Amy Thornton, Lisa Thomson, Matthew Manning, Aiden Sidebottom, Katie Bowers. 2017. *What Works Crime Reduction Systematic review Series – No 13 A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders*. UCL Department of Security and Crime Series, University of London. 2017. Available online <https://whatworks.college.police.uk/Research/Systematic_Review_Series/Documents/Electronic_monitoring_SR.pdf>.



The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, who are further supported by a movement of Australians of good-will from across the country who all believe jailing is failing, and that there is an urgent need to reduce the number of people in Australian prisons.

The Justice Reform Initiative is backed by eminent patrons, including former Governors-General Dame Quentin Bryce AD CVO and Sir William Deane AC KBE as patrons-in-chief.

The list includes: former justices of the High Court, a former state Chief Justice and judges from other courts; respected Aboriginal and Torres Strait Islander leaders; a former Federal Police Commissioner, Director of Public Prosecutions, former Australians of the Year and numerous former Federal and state Ministers from both sides of politics. A list is available [here](#).

The Justice Reform Initiative deeply appreciates the support of the Paul Ramsay Foundation.

The Initiative respectfully acknowledges and supports the current and longstanding efforts of Aboriginal and Torres Strait Islander people to reduce the numbers of Indigenous people incarcerated in Australia and, importantly, the leadership role which Indigenous-led organisations continue to play on this issue. We also acknowledge the work of many other individuals and organisations seeking change, such as those focused on the rate of imprisonment for women, people with mental health issues, people with disability and others.

www.justicereforminitiative.org.au

info@justicereforminitiative.org.au

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