



SUBMISSION
to the Senate Inquiry into Australia's
Youth Justice and Incarceration System

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every child thriving
aracy



Senate Inquiry into Australia's youth justice and incarceration system

ARACY, October 2024

About ARACY

ARACY's purpose is to champion all Australian children and young people to thrive. As our children's and young people's needs grow and change, so too must the support systems that surround them. Striving for best practice and policy to prevent disease and provide the best conditions for their holistic health.

Today's fast-paced world challenges parents, carers, educators, health professionals, and policymakers to continuously adapt. Governments must lead the charge in systemic improvements, navigating the complexities of various jurisdictions and sectors to truly prioritise young Australians. Our team stands at the forefront of this mission, bringing together the latest evidence, practitioners and policymakers to develop child-centred strategies that make a real difference.

We listen to and amplify the voices of young people. Amplifying their issues and solutions. When we say 'thriving' and 'wellbeing', we mean living a life of value as defined by children and young people. Focused on holistic wellbeing, including health, we aim for sustainable system changes to prevent diseases and promote early intervention. Our commitment to the complete wellbeing of young people drives us to seek meaningful and continual improvements.

Executive Summary

All children and young people should have the opportunity to thrive despite their race, ability, socioeconomic background, physical or mental health conditions. However, young people of specific demographics are over-represented in the youth justice system, demonstrating inequitable systems and processes.

Many of the predictors of contact with the justice system are present from the point of conception or occur very early in life, such as First Nations identity and early childhood experiences. Yet the public narrative as well as resourcing around youth justice focuses on punitive measures and interventions which occur very late in this trajectory, such as incarceration.

The present youth justice system, and specifically incarceration, does not improve the long-term trajectories of young people, exacerbates complex social and mental health factors contributing to cyclical contact with the youth justice system, and heighten the risk of poorer long-term social, mental, and physical outcomes.

To address this, risk factors for youth offending should be conceptualised through an ecological model and across the life-course to facilitate a systematic approach to addressing the complex, multi-factorial drivers of youth offending. We argue that policies and interventions should focus on preventing contact with the youth justice system through a public health model. This means addressing the complex, multi-factorial drivers of youth offending beginning early in life – including

pre-conception factors such as historical trauma - and coupling this with effective diversionary and holistic rehabilitative efforts for young people who are already in contact with the justice system.

Specific opportunities for prevention include the known association between adverse early childhood experiences and subsequent development of antisocial behaviours in children - a strong predictive factor of youth offending - as well as addressing racial prejudice and discrimination across systems, communities, and services to reduce inequities for Aboriginal and Torres Strait Islander children and young people.

Recommendations

- Embed mechanisms for children and young people with lived experience of youth justice systems to have a say in how the youth justice system can meet their needs. This should occur at the individual level through dedicated opportunities to discuss their needs, as well as at service provider and policy level through for example youth advisory groups.
- Australia's youth justice and incarceration system should be reformed to align with a public health approach to crime prevention. This means:
 - Conceptualisation of an individual within the context of their families, communities, and the systems that operate around them i.e. an ecological model. See [ARACY's submission to the National Children's Commissioner's consultation on transforming child justice](#) for more information.
 - Conceptualisation of an individual's needs as holistic and interconnected, as in ARACY's [The Nest](#) framework. Youth crime cannot be addressed without addressing the individual as a whole.
 - Ensuring interventions target factors throughout the life-course. This includes acknowledgment of historical trauma i.e. pre-conception factors such as intergenerational trauma.
 - Systematically addressing drivers and mitigators of youth crime through primary, secondary, and tertiary interventions with proportionate allocation of resources as outlined in ARACY's [Inverting the Pyramid](#).
- Primary interventions we recommend include:
 - National implementation of the [right@home](#) sustained nurse home visiting program to vulnerable families to address risk factors for youth crime which arise in the child's first 1000 days of life (from conception until age two years).
 - Reorientating the education system to supporting wellbeing holistically, in alignment with the principles in [Reinventing Australian Schools](#).
 - Quarantining a percentage of Departmental funding for primary prevention initiatives. For comparison, the Commonwealth Department of Health and Aged Care is aiming to

commit 5% of funding to preventative health, although this falls well below the principles of a public health model.

- Addressing the drivers of racial prejudice and discrimination, including through self-determination of First Nations communities.
- Commitment to addressing child maltreatment through
- Commitment to supporting effective parenting programs

➤ Secondary interventions we recommend include:

- Immediately increase the minimum age of criminal responsibility to 14 years of age without exception across all jurisdictions in Australia, in alignment with human rights, international standards, and current neurodevelopmental science.
- Increased utilisation of diversion alternatives to being remanded in custody.
- Working in genuine partnership with First Nations communities to create culturally safe and locally adaptive alternatives to incarceration

➤ Tertiary interventions include:

- Australia uptake and enforce both the UN Standard Minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty as a priority, guided by principles outlined in the UN Approach to Justice for Children guidance note [1] and children and young people themselves.
- Optimising opportunities for bail and supports to facilitate bail (such as accommodation) to prevent cyclical contact with the youth justice system.
- Screening all children for hearing impairment and foetal alcohol spectrum disorder at first contact with the youth justice and/or child protection system
- Rollout of ARACY's [The Common Approach](#) to all frontline workers across Australia's youth justice and child protection systems, as well as key policy-makers and decision-makers to support holistic care models aligned with current best practice.

Response to Terms of Reference

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

Key points

- All children should be supported to reach their full potential despite adversity.
- However, young people of specific demographics are over-represented in the youth justice system, demonstrating inequitable systems and processes.
- Many of the predictors of contact with the justice system are present from the point of conception or occur very early in life, such as First Nations identity and early childhood experiences. Yet the public narrative as well as resourcing around youth justice focuses on punitive measures and interventions which occur very late in this trajectory, such as incarceration.
- Furthermore, youth incarceration does not improve the long-term trajectories of young people. Indeed, incarceration can exacerbate complex social and mental health factors, contributing to cyclical contact with the youth justice and compounding the risk of poorer social, mental, and physical long-term outcomes for children and young people.

- Policies and interventions should seek to prevent contact with the youth justice system through a public health model. This means addressing the complex, multi-factorial drivers of youth offending beginning early in life and coupling this with effective diversionary and holistic rehabilitative efforts for young people who are already in contact with the justice system.
- Importantly, resourcing should align with concepts outlined in ARACY's [Inverting The Pyramid](#), whereby the bulk of resourcing goes towards primary prevention initiatives which are also the most cost-effective long term. Primary prevention initiatives which are also the most cost-effective long term.

Recommendations

- Youth justice should be reformed, taking a primary health approach that incorporates primary, secondary, and tertiary interventions with proportionate resourcing.
- Primary interventions include addressing the known associations between early childhood experiences such as poor maternal mental health, hostile parenting practices, child maltreatment, and subsequent development of antisocial behaviours in children (a strong predictive factor of youth offending).
- Secondary level interventions include increased utilisation of diversion, increased utilisation of alternatives to being remanded in custody, screening for hearing impairment and foetal alcohol spectrum disorder at a child's first contact with the youth justice and/or child protection system, raising the minimum age of criminal responsibility to 14 years of age, and incarceration as an option of last resort.
- Tertiary interventions include optimising bail conditions to facilitate bail, and ensuring the provision of holistic, effective support programs and education to detainees that support their transition out of the justice system.
- The creation of media guidelines and their adoption by those in the industry is vital. The current media landscape overwhelmingly concentrates on dramatic incidents of crime, often vilifying children and young people. Critical journalism needs to question the systemic causes and profiling solutions with an evidence-based lens. This will subsequently empower decision-makers to reorientate the youth justice system to be holistic and child-centred in alignment with public opinion.

Evidence

The current youth justice system is inequitable, disadvantaging children and young people from specific backgrounds.

Marginalised groups of children who are over-represented in the justice system include First Nations children, those living remotely, from low socio-economic backgrounds, homelessness, children with experience of family violence, abuse, or neglect, and those in alternative care arrangements, as well as children with cognitive disabilities and mental health conditions [2]. Overlap between contact with the child protection system and youth justice systems ranged from about 30 to 60% in various states across Australia [2].

There are also high levels of hearing and cognitive impairment among incarcerated children. Almost 90% of children aged 10 to 17 years in Banksia detention centre had at least one domain of severe neurodevelopmental impairment [2]. More than a third of children at Banksia detention centre were diagnosed with Foetal Alcohol Spectrum Disorder by researchers, with almost 95% of children having not been diagnosed prior to the study [2].

Young Australians with lived experience of the youth justice system recognise the impact of race and discrimination on offending. For example, young people with CALD background were more strongly affected by isolation, exclusion and labelling. Stereotyping was particularly significant among Pacific Islander young people while Aboriginal young people felt that criminal activity was normalised from an early age and could not even conceptualise alternatives to offending [3].

The inequities in the Australian justice system and the failure of incarceration to address the underlying drivers of crime underpin calls for justice reform in Australia, such as the Jailing is Failing campaign [4].

Many predictors of contact with the justice system are present from the point of conception or occur very early in life and should be addressed by the youth justice and other systems collectively.

Risk factors for involvement with youth justice systems include maternal substance use, maternal mental health problems, family conflict, harsh or inconsistent parenting, poverty, involvement with the child protection system, and problems at school - all of which relate to experiences in early childhood and the development of antisocial personality traits [5, 6, 7, 8]. Conversely, positive parenting behaviours support the development of prosocial behaviours and anger regulation as protective factors for involvement in the youth justice system [8]. This presents a key opportunity for primary prevention through the provision of supports to vulnerable families from the point of conception of their children. This requires cross-portfolio collaboration, especially between justice, health, education, and child protection.

Incarceration contributes to cyclical contact with the youth justice system is a risk factor for poorer physical, mental, and social long-term outcomes.

A Victorian review found that once children have been in contact with the system, offending patterns remain the same and life outcomes are poor, particularly with younger age of first offence and higher number or prior offences [3]. Victorian youth who served a custodial term found over 80% reoffended [3]. When consulted, young Australians with lived experience agreed that incarceration reinforces offending [3].

Young people in contact with the youth justice system frequently have complex needs contributing to their risk of offending, including experience of family violence and/or child maltreatment, cognitive impairment, mental health issues, and hearing impairment [9]. A survey of NSW young people in custody indicated 83% of which have a psychological disorder and 68% experience child maltreatment [9]. These complex needs can be exacerbated by time in custody, especially through practices such as seclusion [9].

Long-term effects of youth incarceration in Australia are limited. International data associates contact with the youth justice system with poorer educational outcomes, including school drop-out, lower attendance, and lower academic performance [10]. Similarly, incarceration in adolescence is associated with poorer long-term outcomes, including poorer physical health, mental health, and functional ability in adulthood [11].

The detrimental effects of incarceration on short and long-term outcomes for children provide a powerful argument for strong prevention initiatives, incarceration as an option for last resort, and robust, holistic supports for children who are in custody to support them to exit the justice system.

A public health approach to youth justice is imperative to improve outcomes for children and communities.

A public health approach to societal challenges involves the application of a prevention framework aimed at systematically addressing the underlying drivers of the disease or behaviour. A public health approach to child maltreatment has long been advocated [12, 13] and the strong links between child maltreatment and engagement with youth justice are well established [14]. International evidence emerging from Scotland indicates a public health approach to youth violence has been effective [15].

A public health approach is applied through three tiers of intervention which are primary, secondary, and tertiary interventions. Primary interventions are whole population initiatives implemented before the problematic behaviours or disease occurs. Secondary measures are targeted at families with vulnerabilities or risk factors, while tertiary measures aim to recurrence or severity. A public health approach requires proportionate allocation of resourcing, with the greatest amount of resourcing invested in primary interventions. Presently, incarceration is analogous to the ambulance at the bottom of the cliff; preventative measures need to begin much earlier in a child's life. Importantly, there are strong arguments for the cost effectiveness of prevention and early intervention efforts. As stated in ARACY's [Better Systems, Better Chances](#) "it is clear that investments in the early years and in prevention and early intervention more broadly yield significant financial returns. The return on investment for prevention and early intervention is consistently greater than costly remedial responses. Getting it right in the early years reduces downstream expenditure on remedial education, school failure, poor health, mental illness, welfare reciprocity, substance misuse and criminal justice" [16].

Supporting children in the first 1000 days is a critical window of opportunity.

One well-evidence intervention is the right@home sustained nurse home visiting model, which recruits vulnerable mothers during pregnancy and provides intensive supports until the child is aged two years [17]. A randomised controlled trial of this intervention demonstrates significantly reduced parental hostility, increased parental warmth, improved maternal mental health, and a reduction in maternal emotional abuse – all factors influencing child maltreatment and later involvement with youth justice systems [18, 19, 17]. Importantly, the study has followed children up to school entry – 3 years after the intervention ended - and found sustained improvements in warm parenting as well as a trend towards improved social and emotional outcomes for children [20].

Hearing and cognitive impairment is prevalent in the adult and youth justice systems and has been implicated in the over-representation of First Nations people in the justice system.

The association between hearing impairment in Aboriginal adults in contact with the criminal justice system is well-established: a study in the Northern Territory found that 94% of First Nations inmates has significant hearing loss, with most unaware of their impairment [21]. A submission by Deafness Forum Australia notes that hearing impairment may present communication difficulties that compound difficulties interacting with the justice system by causing an individual to “appear confused or defiant, speak too loudly or at the wrong time, respond inappropriately to questions, appear to be non-compliant or withdraw into themselves” [22]. The World Health Organisation has identified Australian Aboriginal children as having among the highest rates of severe otitis media in both the developed and developing world [23].

Similarly, foetal alcohol spectrum disorder along with other neurodevelopmental impairments are prevalent in people in contact with the youth justice system. A recent study of children aged 10-17 years in detention in Western Australia found that 36% met the diagnostic criteria for Foetal Alcohol Spectrum Disorder (FASD) with 89% having at least one domain of severe neurodevelopmental impairment the majority of which had not been previously identified [24]. Features of FASD include impairment with brain function involved with associating cause and effect [25]. The UN CRC explicitly states that “Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, foetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility” [26].

Bail is a mechanism to reduce cyclical contact with the justice system.

Emphasis should be given to the importance of well-supported bail to prevent of cyclical contact with the justice system. A young person that has secure housing, access to education, is healthy and has a supportive family are less likely to be refused bail or breach bail conditions, thus becoming entrenched in the justice system and experiencing continued contact. Important factors include insufficient resourcing of bail support programs, insufficient wrap-around support for young people on bail (housing, family/community support), and legislation criminalising bail breaches [27].

Responsible journalism is a critical lever in systems change.

The role and influence of the media needs to be called out in this debate. Collectively, media coverage is exaggerating the amount of crime allegedly committed by children. In reality, just 42 children aged 10 to 13 years were in detention across Australia in June 2023 [28]. The average daily number and rate of supervision for all youth has fallen over the last 5 years [28]. In addition, media conflates children under 14 in the justice system with other “youth” which includes people up to 17 years of age. In reality, almost 3 in 4 (72%) young people under supervision on an average day were aged 14–17 [29]. This is compounded by a low level of public literacy about the age of criminal responsibility. In a 2021 Amnesty International Poll, revealed only 1 in 10 Australians knew the correct age of criminal responsibility, with more than two thirds believing it was already 14 years or older [30].

All too often the media has been found misusing their editorial powers to vilify children via daily reports and headlines which only focus on alleged graphic incidents of crime [31]. The preventable, systemic failures which led them to police contact is rarely examined or critiqued. There is a lack of transparency in the Youth Justice systems such as the conditions in Queensland watchhouses. This means we rely on rare, leaked footage to expose State maltreatment and breaches of human rights [32]. The media could play a greater role in investigating and holding State-sponsored injustices to account.

Front page headlines lack empathy about the barriers to the individual's development which have been disregarded by the State's Education, Health and Social Service systems in the lead up to their contact with police. Some of that fire needs to be turned towards fixing those systems and preventing children from contact with police. Media outrage in interviews with politicians puts pressure on them to create "tougher laws" despite punitive policies not making the community any safer. The media must accept a portion of the responsibility of putting more children in jails, scaremongering and creating a negative public opinion about children and young people.

Combined, the current media landscape is having a chilling effect on efforts to raise the criminal age of responsibility. In the recent NT where the Opposition won the election with a commitment to lower the age of criminal responsibility from 12 back down to 10 years of age. In Victoria media pressure caused the Government to abandon its commitment to raise the age of criminal responsibility from 12 to 14. It is critical for journalists and media companies to question the systemic causes of youth contact with police. They must also profile solutions with an evidence-based lens is fundamental to reframing the present narrative. Important questions that media should be posing to decision-makers includes:

- What are the costs and consequences of locking more children and young people up?
- What are the alternatives?
- What are the conditions in detention centres conditions like?
- Which systems failed requiring police and or legal system contact in the first place?
- How does youth justice work in other countries that are doing well in relation to youth detention? E.g. Scotland has recently gotten all children out of prison [33]. There was minimal coverage of this achievement in the mainstream traditional media with only one ABC Radio article found from Perth [34].

b) the over-incarceration of First Nations children;

Key points

- The over-representation of First Nations children in contact with the justice system is significant. While representing only 5% of the population of children 10 to 17 years in Australia, more than half the children in detention are Aboriginal and/or Torres Strait Islander [2, 35].
- Reasons for over-representation include over-policing, systemic biases, racism, intergenerational trauma, and forced separation of First Nations families [36, 2].

Recommendations

Note that all recommendations provided here are those advocated for by First Nations-led organisations.

- Raising the age of criminal responsibility to 14 years of age across all jurisdictions without exception [2, 37].
- Adequately resourcing and supporting Aboriginal and Torres Strait Islander community controlled organisations to provide rehabilitative and diversionary programs, as well as health, mental health, education, family support, legal, cultural connection, disability, and others that provide communities with holistic supports to end intergenerational disadvantage [37, 38].
- Ensuring that self-determination underpins all efforts to address the over-representation of First Nations children [37].
- Setting dedicated justice ‘Close the Gap’ targets aiming to reduce over-representation of First Nations children in prison [2, 38].
- Ensuring children who have not been sentenced remain out of prison, including by ensuring adequate accommodation and additional supports so they are not denied bail due to welfare concerns [38, 37].

Through the Koori Youth Council, First Nations children with lived experience of the youth justice system have also asked for [39]:

- Services that work – by funding culturally safe, trauma-informed services that reach children when and where they need support
- Keeping children safe and strong in their culture, families, and communities
- Address disadvantage so that communities are supported to nurture children in their culture
- Support Aboriginal communities to design and lead support systems
- Create just and equitable systems through a whole-of-government approach, embedding the guiding principles of self-determination, youth participation and culture, family, Elders, and communities.

Evidence

Aboriginal and Torres Strait Islander children are vastly overrepresented in the juvenile justice system. 54% of young people aged 10-17 years in Australia under juvenile justice supervision are of First Nations heritage despite making up only 5% of young people nationally [35]. This gross overrepresentation is evidence of institutional racism, in that political structures and practices are significantly disadvantaging a marginalised group.

The Royal Commission into Aboriginal Deaths in Custody noted that “systemic bias contributed significantly” to high incarceration rates among First Nations people [35].

Policing powers are also a contributing factor, with police officers having discretionary powers over cautioning versus being charged as well as via their surveillance behaviours. For example, Australian police were caught photographing and profiling First Nations children without permission. Of the children involved only 4% had been involved in any offence [35]. Similarly, first Nations young people

are twice as likely to be arrested or issued a warrant compared to non-indigenous young people (49.6% vs 24.6%), who are more likely to receive a caution (39.1% versus 20.3%) [35].

What First Nations Children Say

To achieve the Closing the Gap Target 11 (reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30%) we must listen to what they have to say [40]. In the powerfully worded Imagination Declaration, Indigenous and non-Indigenous young people have come together and stated “we are not the problem, we are the solution” [41].

In a review of consultations undertaken with children in Australia, First Nations children with lived experience of the youth justice system [39]:

- Highlight the distinction between their behaviour, their context, and who they are as people.
- Highlight their need for support in exiting the youth justice system.
- Highlight the overlapping systemic failings between the child protection and youth justice systems.
- Point to love, belonging, having positive role models, strong connections to culture and country, and community supports as important ways they can be supported.

“People think that I am bad. I am not bad. I did wrong, but I am not bad” – Aboriginal child detained in Don Dale Youth Detention Centre, NT [2]

“When an out-of-home care kid goes into juvenile justice, and they’re looking at release, they won’t release them unless they’ve got a placement to go to. But because they’re teenagers and they’re troubled, there’s no one that wants them. So, what happens? They’re just stuck there” – Young Aboriginal advocate, lived experience of out-of-home care, NSW [2]

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;

Key points

- Instances of gross violations of children’s human rights have been described occurring in Australian youth detention, including physical, psychological, and sexual abuse, deprivation of basic needs such as food and bedding, and employment of humiliating and degrading practices such as spit-hoods and ‘hog-tying’¹ [36].

Recommendations

- Australia uptake and enforce both the UN Standard Minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty as a priority.
- Uptake of the National Principles for Child Safe Organisations across all jurisdictions and facilities.
- Implement a mechanism for reporting against compliance with these minimum standards and child safe principles.

¹ Hogtying being the practice where prison guards tie or cuff children’s hands and ankles, behind their back, joined together.

Evidence

A report by the National Aboriginal and Torres Strait Islander Legal Services to the UN Subcommittee on the Prevention against Torture found that human rights violations “included regular, repeated and distressing mistreatment of children and young people that was ignored at the highest levels of government” [36].

These violations have been described in a report to the UN Subcommittee on the Prevention Against Torture and include [36]:

- Physical and psychological abuse, such as the use of tear gas, physical restraints, spit-hoods, solitary confinement, and “hogtying”
- Deprivation of basic needs, such as food, water, personal hygiene restrictions and the use of toilets
- Sexual abuse, especially towards incarcerated girls
- Allegations of unauthorised physical abuse, including being choked, dragged across the ground, and being punched or kicked while restrained
- Strip searches, especially in an age where alternatives are available that retain children’s dignity
- Imprisonment of children from ten years of age in adult facilities including adult watch houses, which have no access to outdoors

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

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

Key points

- Australia has an international obligation to abide by the UN Convention on the Rights of the Child (UN CRC) and the International Covenant on Civil and Political Rights (ICCPR) as signatories to both.
- There are multiple instances of Australia contravening both declarations (see response to Term of Reference ‘c’).
- Implementing enforceable national minimum standards for youth promotes fairness and equity, helping ensure that all youth regardless of their background receive fair and consistent treatment within the justice system.
- Any national minimum standards should be based upon the best interests of the child and align with the UN CRC.

Recommendations

- Australia uptake and enforce both the UN Standard Minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty as a priority.
- Implementation of the minimum standards in the Australian context should be done in partnership with children, young people, and families with lived experience of the youth justice system.
- Implementation should be guided by the guiding principles outlined in the UN Approach to Justice for Children guidance note [1], based on evidence of what works, and coupled with

rigorous monitoring and evaluation to ensure the best interests of the child are being maintained.

Evidence

The UN CRC Article 37 states that “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” [26]. Similarly, the ICCPR includes the right of children to special protection in relation to deprivation of liberty, such as the right to be separated from adults and have their matter adjudicated as quickly as possible [42]. The CRC further clarifies that children deprived of their liberty must [26]:

- Be treated with humanity and respect, and in a manner, which takes into account the needs of a person of their age
- Shall be separated from adults unless it is not in their best interests
- Have the right to maintain contact with family through correspondence and visits
- Have the right to prompt legal access, to challenge the legality of the deprivation before a court with a prompt decision
- Not be subject to torture, cruel, inhumane, or degrading treatment
- Not be subject to capital punishment nor life imprisonment

Based on our response to part c) of this submission, Australia has contravened Article 37 of the UN CRC (relating to the humane treatment of children deprived of liberty). A case could also be made that Australia has contravened Article 19 of the UN CRC (relating to prevention of maltreatment of children through legislative and other means) and Article 27 (relating to children’s right to an adequate standard of living) based on allegations of maltreatment and deprivation of basic needs occurring within youth detention. The failure of the youth justice system to provide basic material needs, reports of maltreatment, as well as the poorer life trajectories associated with youth imprisonment are evidence of contravention of the youth justice system to abide by these declarations.

f) justice consistent with our international obligations; and

Key points

- Australia has one of the lowest ages of criminal responsibility in the developed world and has received international criticism for this [43]. The global average is 14 years [43].
- The current minimum age of criminal responsibility in most Australian jurisdictions (except the ACT) does not align with current understanding of brain development or international standards. Children are still developing cognitive functions such as impulse control, decision-making, and planning.

Recommendations

- Immediately increase the minimum age of criminal responsibility to 14 years of age across all jurisdictions in Australia and without exception, based on neurodevelopmental evidence and international standards.

- Couple this legislative change with evidence-based services and supports for children who fall below the minimum age of criminal responsibility so as not to inadvertently deprive children below the minimum age of needed programs and supports they would have otherwise received.

Evidence

Australia has received international criticism for a low minimum age of criminal responsibility.

In 2021, 31 countries collectively recommended Australia increase the minimum age of criminal responsibility to 14 years of age following a review of Australia's human rights performance [44].

Australian health and medical organisations support increasing the age of criminal responsibility to 14 years of age on neurodevelopmental grounds.

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) has high-level expertise in both forensic psychiatry and child and adolescent psychiatry and represents the medical perspectives of over 6700 members. The RANZCP advocates for an increase in the minimum age stating "Raising the age of criminal responsibility has been long overdue. The RANZCP will continue to advocate to increase the age of criminal responsibility to 14 years" [45].

Raising the minimum age of criminal responsibility has been strongly and openly supported by other medical institutions including the Royal Australian College of Physicians, the Royal Australian College of General Practitioners and the Australian College of Emergency Medicine [46]. An open letter from multiple medical associations to the Standing Council of Attorneys-General argues that "Children aged 10 to 13 in the youth justice system are physically and neurodevelopmentally vulnerable and require a different response to behavioural issues than older children" that the "harms from incarcerating very young children are severe and long lasting" [47].

A media release by the Royal Australian College of Physicians states "Children of this age have relatively immature brain development when it comes to decision-making, organisation, impulse control and planning for their future. We shouldn't criminalise actions that may be developmentally normal for children of this age and they should not be incarcerated as a consequence...The Royal Commission has recommended raising the minimum age of criminal responsibility and this is a recommendation we fully support from a health perspective" [46].

g) any related matters

Not addressed.

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