



ARACY Submission

Inquiry: The Australia's youth justice and incarceration system



About ARACY

The Australian Research Alliance for Children and Youth (ARACY) is a leading national organisation dedicated to championing the fundamental right of all Australian children and young people to thrive.

Our concept of 'thriving' and 'wellbeing' is defined by the children and young people themselves, encompassing their complete physical, mental, and social health. We stand at the forefront of driving systemic improvement by bridging the gap between research, practitioner experience, and policymaking. We convene key leaders across diverse jurisdictions and sectors to translate the latest evidence into child-centred strategies that ensure the best conditions for holistic development and health.

Our focus is on:

- achieving sustainable system changes that prioritise prevention and early intervention to reduce harm and promote lifelong health
- ensuring that systemic reform is grounded by actively listening to and amplifying the voices, issues, and proposed solutions of children and young people.

Key recommendations for Federal Government

1. Lead a fundamental, structural transformation of Australia's youth justice and incarceration system by adopting a comprehensive Public Health Approach to Crime Prevention. This strategy necessitates an Ecological Model (as outlined in ARACY's previous submission and *The Nest* framework), recognising that an individual's behaviour is inseparable from their family, community, and the systems operating around them.
2. The Commonwealth must mandate and provide dedicated, sustained funding for all state and territory youth justice systems (both custodial and community-based) to establish formal and continuous mechanisms for the co-design and evaluation of services and policy by children and young people with lived experience.
3. Appoint a Cabinet Minister for Children (0-12). A single Cabinet Minister responsible for children's safety and holistic wellbeing cuts through the bureaucratic hurdles that currently diffuses responsibility.
4. For Federal and all States and Territories to formally designate Child Safety Wellbeing as a standing, priority agenda item for National Cabinet meetings and for this designation to be used to lead the development and implementation of a 10-year National Plan for Child Safety and Wellbeing (The National Plan).

Key recommendations for State and Territory Governments

1. Raise the age of criminal responsibility to 14 years for all offences.
2. Implement a national shift in the youth justice system's core operational philosophy, ensuring that therapeutic and trauma-informed support is consistently and comprehensively embedded at every point of contact, spanning the entire spectrum from pre-charge diversion through to post-release reintegration.

Response to Terms of Reference

ARACY welcomes the opportunity to provide an updated submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into Australia's Youth Justice and Incarceration System.

This submission will focus on new and emerging data, research, and evidence that have been published in the last 12 months and that reaffirm and strengthen ARACY's previous submission in addressing the Terms of Reference (ToR) and the inquiry's directives.

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

Young people with neurodevelopmental conditions, particularly fetal alcohol spectrum disorder (FASD), experience a significantly higher likelihood of encountering the justice system compared to their peers without such conditions (Robards, F.J., Milne, B., & Elliot, E., 2024).

FASD is a permanent, brain-based disability caused by exposure to alcohol before birth. Individuals with FASD frequently interact with the justice system due to difficulties with impulse control, decision-making, understanding cause and effect, memory, attention, and comprehension. They may also struggle with emotional regulation, following instructions, and tend not to learn from past mistakes. Furthermore, behaviours associated with FASD are often mistakenly perceived as intentional misbehaviour or defiance.

In one study at the juvenile detention centre Banksia Hill in Western Australia, 36% of young people in detention were found to have FASD, and 89% had at least one domain of severe neurodevelopmental impairments (Bower, 2017). Neurodevelopmental conditions like FASD are shaped by complex social and environmental factors. Understanding these causal factors forms a critical part of the picture when considering preventative approaches to youth justice. Yet, an independent 2022 review of the National FASD Strategic Action Plan found that many jurisdictions still lack recognition of FASD in the criminal justice system (Curtis et al., 2022).

By investing in screening, early diagnosis and intervention, trauma-informed and culturally responsive care, community-based services, and education and training for professionals across all levels of child protection and justice systems, we can help reduce the need for contact with the justice system. Detention should be the last resort for these children and young people.

Early contact with the justice system is also associated with poorer educational and employment prospects. The younger a child is at first sentencing, the more likely they are to reoffend – highlighting the long-term harm of low age thresholds (ANTAR, 2025).

Recommendation:

- Mandate the immediate and comprehensive screening of all children for hearing impairment and Fetal Alcohol Spectrum Disorder (FASD) at first formal contact with the youth justice and/or child protection system, ensuring identified needs immediately trigger appropriate therapeutic and medical support, rather than punitive responses.
- Resource and implement genuine partnerships with First Nations communities to co-design and deliver culturally safe and locally adaptive alternatives to incarceration, ensuring responses are community-led and trauma-informed.

(b) the over-incarceration of First Nations children

(f) any related matters

Analysis from the *Cost of Late Intervention* report shows that Australia spends \$22.3 billion on late intervention for children and young people. The costs for court and health expenses related to youth crime account for 14% of the spending (O'Connell, 2025) and total \$3.1 billion.

The report also found that spending has increased despite a decline in the number of youth offenders and young people on community-based supervision orders (O'Connell, 2025).

A finding from The State of Australia's Children report showed that the Australian government spent \$1.5 billion on Youth Justice in 2024, compared to \$0.8 billion in 2019. This figure accounts for inflation and population growth.

Further, the rates for Aboriginal and Torres Strait Islander children have increased, and they remain chronically overrepresented in youth detention - 27 times that of non-Indigenous children (2023-24) (Australian Institute of Health and Welfare, 2025).

Community-led and culturally grounded approaches are essential for creating positive pathways and reducing inequities, particularly for those facing compounded disadvantage.

Youth justice systems across Australia continue to favour punitive approaches over diversionary and restorative models, despite clear evidence that incarceration causes significant and often irreparable harm to children. Children as young as 10 years old—one of the lowest ages of criminal responsibility globally—are detained, often while awaiting sentencing. These practices contravene international child rights standards including the use of detention of children only as a last resort; and fail to address the underlying causes of youth offending.

There is a need to recognise historical trauma and engage Aboriginal and Torres Strait Islander Leadership to ensure culturally appropriate care: “Because of the way in which State services have been and continue to be seen as unsafe and untrustworthy for First Peoples, many First Peoples do not trust these services and are therefore less likely to engage early in need for fear of being reported to Child Protection and experiencing unsafe cultural practices where services they are referred to are provided by CSOs” (Yoorrook Justice Commission, 2023).

Recommendation:

- Implement a minimum requirement for all relevant Commonwealth and State departmental funding (e.g., Social Services, Health, Education) to be explicitly quarantined and committed to Primary Prevention initiatives. This commitment should be targeted towards 5% initially, with a view to increase alignment with international best practices for preventative health spending.
- Support the immediate implementation of the recommendations from the Royal Commission into Aboriginal Deaths in Custody and specific reforms like investing in Aboriginal Community-Controlled Organisations (ACCOs) for diversion and rehabilitation.

Conclusion

ARACY urges the Senate Legal and Constitutional Affairs Committee to lead systemic reform that ensures every child has the conditions to thrive and take decisive action to transform Australia’s youth justice system into one that is evidence-based, trauma-informed, and child-centred.

Current punitive approaches fail to address the root causes of youth offending and perpetuate cycles of harm, particularly for First Nations children and those with neurodevelopmental conditions. Detention must become a true measure of last resort, consistent with international child rights standards.

This transformation requires sustained investment in prevention, early intervention, and culturally safe, community-led alternatives to incarceration. By embedding co-design with young people, prioritising therapeutic responses, and implementing the recommendations of landmark inquiries, Australia can shift from reactive spending on late intervention to proactive strategies that foster wellbeing and reduce inequity.

References

ANTAR. (2025). Raising the Age. <https://antar.org.au/issues/justice/raising-the-age/>

Australian Institute of Health and Welfare. (2025b). Youth Justice in Australia 2023-24.

Bower, C., Watkins, R. E., Mutch, R. C., D'Antoine, H. A., Geelhoed, E., Marriott, R., Freeman, N., & O'Donnell, M. (2018). Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ Open*, 8(1), Article e019605. <https://doi.org/10.1136/bmjopen-2017-019605>

Curtis, A., Patafio, B., de Andrade, D., Coomber, K., Baldwin, R., Harries, T., Hutchinson, D., Sweet, L., Vasilevski, V., Craig, J., & Miller, P. G. (2022). Three-year formal review of the implementation of the National Fetal Alcohol Spectrum Disorder (FASD) Strategic Action Plan 2018-2028: Final Evaluation Report, June 2022.

O'Connell, M. (2025). The Cost of Late Intervention 2024, The Front Project, Melbourne.

Robards, F. J., Milne, B., & Elliott, E. (2024). Addressing the challenges of FASD for adolescents in the justice system. *Judicial Quarterly Review*, 2(1), 11-26.

Yoorrook Justice Commission. (2023). Yoorrook for justice: Report into Victoria's Child Protection and Criminal Justice Systems. Yoorrook Justice Commission.