

Australian Human Rights Commission
Ms Anne Hollands
National Children's Commissioner
youthjusticereform@humanrights.gov.au

15 June 2023

Dear Ms Hollands,

Thank you for providing an opportunity for the NSW Advocate for Children and Young People (ACYP) to provide a submission to the Australian Human Rights Commission's enquiry into Youth Justice and Child Wellbeing Reform across Australia.

ACYP is an independent statutory office overseen by the NSW Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, wellbeing and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged. The Office of the Advocate for Children and Young people, with the support of the Advocate, make it a priority to visit the young people in NSW youth justice centres often. ACYP is supported by the NSW Department of Communities and Justice to conduct consultation, exit interviews and general wellbeing visits that focus on ensuring the voices of children and young people in contact with the criminal justice system are heard by government decision makers.

Please find below answers to the four questions posed by AHRC's call for submissions.

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

It is well established that children and young people in contact with the criminal justice system "frequently present with an array of vulnerabilities and complex needs"¹. Recent Australian research has reflected on children in contact with the child protection system² and children with disabilities³ as being at higher risk of contact with the criminal justice system than their peers. The over-representation of Aboriginal young people at all stages of the criminal justice system is also "a matter of long-standing and justified public concern"⁴ that

¹ Clancey, Wang and Lin. Australian Institute of Criminology, Trends and Issues in crime and criminal justice, *Youth justice in Australia: Themes from recent inquiries*. October 2020, p5

² Baidawi, S., Ball, R., Newitt, R., Turnbull, L., Kembhavi-Tam, G., Avery, S., & Sheehan, R. (2022). Research Report – Care Criminalisation of Children with Disability in Child Protection Systems. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

³ Boiteux, S. & Poynton, S. (2023). Offending by young people with disability: A NSW linkage study (Crime and Justice Bulletin No. 254). Sydney: NSW Bureau of Crime Statistics and Research.

⁴ Bureau of Crime Statistics and Research, Aboriginal over-representation in the NSW Criminal Justice System, December 2022 update. https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Aboriginal-over-representation.aspx

was acknowledged by the UN Committee on the Rights of the Child in their concluding observations to Australia's country report in November 2019⁵. The children and young people we speak to who have come into contact with the criminal justice tell us that their personal and social environments, combined with a lack of access to support persons and services, a lack of a sense of belonging, mental health difficulties, substance misuse, lack of connection to culture, disengagement from school and trauma as key contributors to their offending behaviour⁶.

2. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

There is an urgent need to ensure that all government run and/or funded services and agencies are committed to principles of prevention and early intervention with the aim to make available services that could help to minimise risk factors associated with offending behaviour.

When a child or young person first makes contact with the criminal justice system every effort must be made to focus on diversion options and that the children and young people, together with their families, are supported to address environmental and personal risk factors that may be contributing to offending behaviour. Detention, including remand, must be an option of last resort.

Where children and young people are under government supervision in a remand or detention centres, they must have access to at least the same level of services that are available to their peers in the community. This includes access to federal health systems such as Medicare and the National Disability Investment Scheme. A small number of children with complex needs in NSW youth detention facilities have access to therapeutic supports including a psychologist, occupational therapist and a speech pathologist as part of the Enhanced Support Unit at Frank Baxter Youth Justice Centre⁷. This intensive support model should be replicated throughout Australian youth justice centres and made available to any child or young person in detention who would benefit from these services in recognition that many children and young people in contact with the criminal justice have not had access to necessary health services. Access to these services are a proven way of addressing and reducing risk factors associated with offending behaviour⁸.

⁵ United Nations Committee on the Rights of the Child, Concluding observation on the combined fifth and sixth period reports of Australia. 1 November 2019. CRC/C/AUS/CO/5-6

⁶ Office of the NSW Advocate for Children and Young People. *What children and young people in juvenile justice centres have to say*. 2019.

⁷ NSW Government, Youth Justice, *Youth Justice NSW Enhanced Support Unit Operating Framework*. November 2019 (published as exhibit 27-309 of Disability Royal Commission, <https://disability.royalcommission.gov.au/publications/exhibit-27-309-nsw007500140001-nsw-government-youth-justice-youth-justice-nsw-enhanced-support-unit-operating-framework>)

⁸ Insert

Listening to the voices of children and young people who have had contact with the criminal justice system is key to understanding and effectively responding to the needs of this diverse group. ACYP supports the creation of a Lived Experience Youth Justice Advisory Group made up of children and young people who have experience of the criminal justice system. This group would give children and young people the rare opportunity to share their stories and provide independent advice to government decision makers on matters impacting children and young people in contact with Australia's criminal justice systems.

ACYP recommends that the rights of children and young people in contact with the criminal justice system and those that enforce and work in the criminal justice system(s) be brought together in a document outlining minimum standards for Australia's treatment of children and young people in contact with the criminal justice system. These minimum standards should reflect best practice expectations set out in international instruments including the Convention on the Rights of the Child, the Convention on the Rights of People with Disabilities, the Beijing Rules⁹, the Riyadh Guidelines¹⁰, the Havana Rules¹¹ and the Vienna Guidelines¹².

Barriers to implementation of best practice includes the lack of resourcing for support services critical to minimizing risk factors associated with offending behaviour, barriers to information sharing for criminal justice professionals, tough on crime rhetoric and the lack of opportunity for the voices of child and young people to be heard on issues impacting them.

3. Can you identify reforms that show evidence of positive outcomes, including reductions in children' and young people's involvement in youth justice and child protection systems, either in Australia or internationally?

To reduce a young person's risk of homelessness and maintain a minimum standard of wellbeing, all Australian states and territories need to extend support to young people in out-of-home care to at least the age of 21. NSW recently extended their out-of-home care aftercare supports to young people from 18 years to 21 years. This reform is critical to ensuring young people with experience of out of home care are able to maintain safe and stable accommodation. This reform should be extended throughout Australia.

It is also critical that programs and other resources are available and accessible that focus on the many underlying factors that contribute to children and young people involvement in the youth justice system. Greater investment and a stronger focus on intensive early intervention, prevention and diversion services is required to identify and address personal factors that contribute to offending behaviour. Services in NSW that ACYP has observed have had positive outcomes for participants include:

- The **Tracker's Network** of programs, including Backtrack, FlatTrack,, RuffTRACK that engage vulnerable young people to develop life and work skills

⁹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985

¹⁰ United Nation Guidelines for the Prevention of Juvenile Delinquency, 1990

¹¹ United Nations Rules for the Protection of Juvenile Deprived of their Liberty, 1990

¹² Guidelines for Action on Children in the Criminal Justice System, 1997

- **LeaderLife** that work holistically with individuals families and the community to support children and young people (Dubbo)
- **Boys to the Bush** runs mentoring programs and camps for at risk young men
- **ConFit** is all about fitness, community and mindset and creates second chances for ex-inmates to give back to their communities
- **BlackFit Fitness** promotes the opportunity of Aboriginal children to learn and practice their culture alongside healthy lifestyle choices
- **RISEUP** (NSW Police) incorporates job ready programs, mentoring and vocational training for young people aged between 15 and 18
- **Waratah Pre release Program** is designed to help students in youth detention successfully reintegrate back into the general community through tailored case plans and transition support.
- The **Enhanced Support Unit** (ESU) is a high intensity support unit for young people with complex needs and behaviours available to a small number of young men in the NSW youth detention system
- **Pacifica Program** that is currently run in schools and youth justice centres that focus on culturally appropriate learnings for children and young people from Pacific Island communities.

Raising the minimum age of criminal responsibility to 14 would help put pressure on authorities to ensure these early intervention services were available, accessible and effective.

ACYP also supports community-led and place-based approaches including responses driven by Aboriginal communities. Specialist Aboriginal Children's Courts, such as the NSW Aboriginal Youth Koori Court, should be made available to all eligible young people throughout Australia.

4. From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

Though states and territories have responsibility for the administration of youth justice systems, much of the broader government systems and funding levers that promote protective factors and reduce risk factors, such as health and education services, sit at the national level. To be most effective, a coordinated approach is required that sets out the standards to which each jurisdiction must strive to achieve international best practice.

Creating a document outlining national expectations of minimum standard expectations for young people in contact with the criminal justice system in Australia would allow all states and territories to work towards a set of common standards. This instrument would be most effective if it was adopted by all States and Territories and featured measurable and comparable outcomes that required regular reporting. Further, it could be accompanied by the establishment of a national data set that could report on the provision on services as well

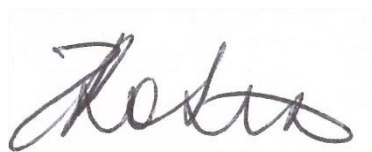
as health and wellbeing outcomes of children and young people in contact with Australia's Youth Justice and Out of Home Care systems¹³.

Future iterations of national frameworks that focus on children and young people, such as the National Action Plan for the Health of Children and Young People, the National Framework for Universal Child and Family Health Services and the Early Years Strategy, must specifically acknowledge and address the particular vulnerabilities of children in contact with the OOH and YJ systems as well as promote the role of early intervention in minimising lifelong adverse outcomes for vulnerable children and young people.

Included with this letter is some quotes drawn from our work with children and young people, so that young people's perspectives, in their words, might inform the findings of this project. They reflect on the impact of their experience in the community including homelessness, difficulty accessing services, home and family, education, bail conditions, health services, their own communication difficulties and the impact of being subject to a legal process they don't understand. To elevate these voices, we advocate for the creation of a national lived experience Advisory Group with members who have experience in the youth justice system, and supported by health, wellbeing and child rights advocacy experts that could advocate for children and young people at a state, national and international level.

Thank you for the opportunity to respond to your enquiry. Please do not hesitate to contact me at zoe.robinson@acyp.nsw.gov.au or my Senior Policy Advisor, Kasey Tyler at Kasey.Tyler@acyp.nsw.gov.au if we can be of any assistance.

Yours Sincerely,



Zoë Robinson
Advocate
Office of the Advocate for Children and Young People

¹³ The importance of developing a national data collection focused on the health of young people under youth justice supervision was explicitly stated in the National Advisory Group on Aboriginal and Torres Strait Islander Health Information and Data (NAGATSIHID) *Strategic Plan 2016-2020*. Improving national information in this area also supports the agreed standard for practice to be delivered by juvenile justice administrators, as set out by the Australasian Juvenile Justice Administrators (AJJA) in the *Juvenile Justice Standards 2009*.

Appendix: Quotes from children and young people reflecting on their experience in the community and in the legal system

“(Young people) need a place where they can kind of... like a rehab, but for, I don’t know, but not for like people who are on drugs and that they need like a rehab for emotional stability and stuff”. (2023)

“We need like, I reckon, a one stop shops where all of it is. Cos like to get paid you gotta go from Centrelink and then, from Centrelink you gotta go to another place to get housing, from there you gotta go to another place to get a reference or referral to a refuge and then you gotta go to a refuse. But it they were one person all in the one sport that could do it all for you, that would be better”. (2019)

“If people had their own workers who were dedicated to them, they wouldn’t come in here”. (2019)

“When I was out, I had to go to Juvenile Justice twice a week, go to TAFE and go to counselling for drug and alcohol and then had to go to behavioural counselling as well, so like, all that in one week, you have no time for anything else. And then I would get breached for not going to my appointments because all of them would be set as Juvenile Justice from the court and stuff so like, you just get breached for no attending like 6 appointments a week”. (2019)

“Most boys in here... they need a role model, someone they look up to”. (2019)

“Yeah they should have like a room in the school, for boys that muck up in school, go in there and learn, you know what I mean... Yeah, we’re not at the school, youn know, that’s when we’re getting bored, we sitting around with nothing to do, we may as well do this or... next think you know we’re in here...”. (2019)

“I’ve got a son to look after when I get out. I want to be able to provide for him, you know, but if no one’s going to accept me, like in a job or something, then how am I going to do that?”. (2019)

“We want help to try and get jobs and that on the outside, cos if we haven’t got it, the environment we just go back to ... we just gonna end up back in crime cos we got no jobs offered and we don’t know where to start to get one”. (2019)

“If my dad didn’t kick me out, I wouldn’t have been in here I reckon.” (2019)

“That’s the thing that makes us reoffend is when we get out there and there’s nothing for us to do.” (2019)

“Kids grow up with their mum and dad drinking and fighting, and they see their older brothers and sister using so they think it’s okay and they do it.” (2019)

In our unit, we are lucky. We have a speech pathologist... we got our own psych... also got an OT – an occupational therapist...”. (2023)

"That's one thing I want to get across to the government, taking young Aboriginal kids out of their homes, it affects us, you know what I mean, and probably half the reasons why we are in here, you know, I know that's one of the reasons why I'm in here." (2019)

"Our culture's sleeping at the moment. We need to wake it back up, we need to learn more about our culture. We need someone there to help us do that cos we can't just do it on our own." (2019)

"[I like the Aboriginal Medical Service] cos like I know the workers very well like they're my Aunties and all that. I can understand them more than I can understand the other people. I can open up to them and like if I go to that other doctor I won't open up to him, I won't tell him what's wrong with me or nothing." (2019)

"I like having yarns with the psychs." (2019)

"When we are in here we have people to ask for help but when we are on the outside we don't know who to go to to help us ... we have different organisations that try to do different things for different reasons but they aren't linking up so we don't know what to do." (2019)

"Some boys' Mums and Dads don't even come and visit them." (2019)

"To help you get ready for the community just because everyone else is doing drugs and alcohol doesn't mean you have to." (2019)

"I could be let out from court and not have any preparation." (2019)

"Everyone deserves to understand what's going on, because otherwise it would be like taking advantage of them... And then when they get out they'll just re-offend not knowing what they did wrong again". (2023)

"It half does like set you up to fail, you know, like they put you on conditions that you can't handle and then you just go out and f**k them up and come back and get the same ones and then they just like do it all like, um, what is it like they just sentence you for it more ..." (2023)

"I don't feel like they explain it to, like, a point where I could understand, you know?" (2023)

"And then it took that long and then cause the, they kept adjourning it and like I was getting sick of it. So that's why this time I plead guilty to everything..." (2023)

"Like when I got first arrested they told me about the doli incapax. Like you know that they said Yeah, yeah. Like they said that straight away to me. And I was like, I don't know what the f**k that is. Like I don't know why you're saying that to me..." (2023)

"No, I didn't understand. Nothing to be honest. Nothing. Nothing at all". (2023)

"(Koori court) is probably better cause us boys get more of a speech. Like we get more of a say in what happens with us than less. Instead of like JJ and lawyer saying what programmes we have to do when we don't want to do it. Yeah. Yeah. Yeah's like we can tell them what programmes we want to do, like what people we wanna work with, not what they want us to do..." (2023)