

**Submission:**  
**Senate inquiry into  
Australia's youth justice and  
incarceration system**

October 2024

## The Focus of this Submission

The Centre for Excellence in Therapeutic Care (CETC), a division of the Australian Childhood Foundation, welcomes the Senate's inquiry into Australia's youth justice and incarceration system. We hope that following this inquiry, and other important recent developments in the youth justice space in Australia and internationally, we will be able to build an evidence-based system that is therapeutic for children and young people, and that creates better futures for them, their families and supporting communities.

CETC presents this submission to underscore the significant challenges that children and young people in contact with the youth justice system face, particularly those who are also involved in the child protection system. The introduction and adoption of enforceable national minimum standards in the youth justice space have the potential to mitigate some of these challenges for both young people and practitioners working within the systems across Australia.

Common national standards in youth justice will:

- improve consistency across jurisdictions;
- promote and protect the rights of children and young people;
- clarify the aim of the justice system to rehabilitate, not punish;
- introduce clear accountability and oversight;
- reduce disparities between different jurisdictions and jurisdictional practices;
- improve conditions for young people in custodial settings and promote greater and more comprehensive use of diversion;
- better support vulnerable young people;
- align the Australian youth justice system with international best practices;
- protect against systemic abuse;
- unify practice to be therapeutic and trauma-informed, which will, in turn, improve rates of recidivism and community safety.

The Optional Protocol for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) has yet to be implemented in Australia. This Protocol has the potential to lay universal and independent foundations to protect the rights and safety of young people in custodial facilities across Australia.

In this submission, we argue for linking national standards in youth justice to already established standards in out-of-home care as well as to guidelines and frameworks in other related systems to create a better coordinated and more holistic support service system for vulnerable children and young people, more consistent treatment and better continuity of care. We also argue that the implementation of OPCAT will bring essential accountability through independent oversight that is internationally recognised.

## About the Australian Childhood Foundation, Centre for Excellence in Therapeutic Care (CETC)

The Australian Childhood Foundation, established in 1986, has been at the forefront of advocating for and supporting children and young people with adverse childhood experiences and trauma across Australia. It is committed to preventing child abuse and mitigating its impact through dedicated trauma counselling, education, and a broad spectrum of community awareness initiatives.

In 2018, Australian Childhood Foundation established the Centre for Excellence in Therapeutic Care (CETC) with the explicit vision of ensuring children and young people living in out-of-home care and in contact with youth justice systems are provided with specialist support that is attuned, compassionate and responsive to their needs. The CETC is dedicated to upholding the rights of children and young and supporting them to heal from trauma.

Since its establishment, CETC has worked extensively with government departments and organisations that serve vulnerable children and young people in out-of-home care and youth justice. Across Australia, a high proportion of children and young people in contact with youth justice systems live with mental health conditions, have been diagnosed with cognitive disability, face challenges with drug or alcohol use and have experienced childhood trauma. This group of young people have needs that can be complex, often requiring intensive therapeutic support. Protecting Australia's children means keeping them out of environments and systems that are harmful and providing evidence-based supports to children and their families to prevent a trajectory into the justice system.

The CETC advocates for compassionate care for children and young people built on safety, trust and genuine relationships. Positive relationship-building is particularly important for children who have experienced multiple types of adversity, including abuse, neglect and maltreatment. In Australia, most children and young people in contact with the youth justice system fall within this category.

CETC's knowledge base is drawn from research, the direct experiences of children and families, practitioners, foster and kinships carers, managers and policy makers in out-of-home care and child protection, as well as in other related systems, including youth justice. Over the last few years, CETC has worked extensively in the space of capacity building, training and workforce development in youth justice within some Australian jurisdictions. We have strongly advocated for the development of common frameworks, models and principles of therapeutic, trauma-informed care in work with vulnerable and at-risk children and young people.

Children need to stay the focus of everything we do. The fact that after several international children's rights resolutions, conventions and national inquiries, commissions and calls for action, we continue to argue for children's rights to be respected and adhered to in the youth justice settings in Australia is not adequate. We need a broader paradigm change to build a system that has children's needs and rights in the centre and can provide real outcomes in both shorter and longer terms.

## Recommendations

Australia needs a nationally driven and enforceable unified approach to youth justice.

This includes:

- **The development and implementation of national strategies, policies and standards to keep the states accountable and consistent in delivering just, safe and therapeutic services for children and young people that are focused on children's rights.**
- **Full integration of the Convention on the Rights of the Child, including best interest principles, in domestic law.**
- **A unified approach to reporting, sharing of information, assessment and planning.**
- **Sufficient jurisdictional flexibility to successfully respond to variations and differences of different cohorts of children and young people across state and local government areas.**
- **Policies focussing on prevention, early intervention and diversion, prioritising children and their needs.**
- **Consultations with diverse stakeholders, including therapeutic services working with vulnerable and at-risk children and young people in the space of youth justice and related systems.**
- **Close collaboration with lived experience groups and individual young people in the development, implementation and evaluation stages of any frameworks and practice guidelines that directly affect them.**
- **Clearly established roles for independent bodies to provide oversight over broader systemic issues, and advice about operational and practice considerations. This includes access to custodial and other youth justice settings being available to national and international oversight agencies.**
- **Review of systemic barriers and creating real pathways to promote and enhance cross-systemic collaboration and information-sharing, with a view to services always being in the best interest of the child.**
- **A decisive move away from criminalising and punitive approaches towards therapeutic, rehabilitative approaches on all levels of the youth justice system.**

## Background

The past year has seen many regressions across Australia in regard to youth justice policy. This has been politically driven and has involved ongoing concerns about the use of isolation in detention, a lack of deterrence approaches that are based on evidence about what works and continued over-representation of Aboriginal and Torres Strait Islander young people.

This year has seen the Victorian Government abandon its commitment to raise the minimum age of criminal responsibility, the Northern Territory announcing their intentions to lower the age of criminal responsibility and the altering of the Charter of Youth Justice Principles in Queensland that saw the removal of the principle of 'detention as a last resort'. There have sadly been two tragic and unnecessary deaths of young people in custody.

In many states and territories, they are pursuing punitive and incarceration-focused approaches despite efforts to support prevention, early intervention, and culturally safe practices. These approaches have had a history of failing to adhere to child rights and often undermine intended outcomes of reducing recidivism and improving community safety.

The CETC has worked with multiple youth justice facilities over the past three years. This work has included delivering the Certificate IV in Youth Justice, clinical work and capacity building of staff and therapeutic interventions with young people. It has been observed that there is much inconsistency in approaches throughout Australia, in regards to practices, coordination, staff support and training and resourcing. There are consistent themes, however, despite variations in the admission demographics of young people entering custody. These are:

- We must always reduce first contact with police and first admissions into a youth justice facility.
- States need a greater range of diversionary programs that are culturally created and supported by ACCOs to reduce over-representation.
- States must urgently expand the reach of therapeutic, evidence-informed programs across the country so that all children and young people in contact with the youth justice system have timely access to therapeutic support.
- Custody must be used as a last resort.
- Communities need more investment into social factors that increase risks for children and young people entering the youth justice system.
- Facilities need consistent and rigorous oversight.
- Staff need to be appropriately qualified and resourced to do their roles.

- We must reduce numbers of young people on remand in custody, or not admit those on remand at all.
- Programs must cater for all young people and their complex needs.
- Trauma-informed approaches must be adopted to create safe environments for everyone.
- Each state must adopt a nationally agreed minimum age of criminal responsibility with programs to support the younger age group that are not punitive and do not contain options to prosecute. It must be at least 14 years, with no exceptions.

## Impact of incarceration on young people

Evidence strongly suggests that children and young people in custody are at particular risk of a range of poor wellbeing and developmental outcomes. Incarceration is often re-traumatising for children. It impacts neurodevelopment in critical stages of young people's life trajectories and typically has lasting effects which influence mental and physical health outcomes across the lifespan<sup>1</sup>.

The majority of children and young people who are admitted into youth justice facilities enter the system after they have already experienced significant trauma, which is often a result of childhood abuse, maltreatment, family violence and disadvantage. Longitudinal data tells us that exposure to trauma in early childhood is predictive of engagement in the behaviour that leads to involvement with the youth justice system<sup>2,3,4</sup>. In community epidemiological surveys among incarcerated adolescents, total trauma exposure has been estimated to be at least three times higher than that for non-incarcerated children and adolescents<sup>5,6</sup>. Statistical data from Victoria also tells us that among children and young people in contact with the criminal justice system, 53% were a victim of abuse, trauma or neglect as a child. Almost half (49%) presented with mental health issues and many had cognitive difficulties that impacted on their daily functioning. Over half (52%) had a history of alcohol and drug use. Many young people lived in unsafe or unstable housing<sup>7</sup>. Despite all this, not enough is known or understood about social determinants of youth justice within the system of youth justice itself.

There is a critical need to better understand and meet the needs of children and young people in custodial settings as well as in broader justice responses. Whilst trauma-informed models of youth justice have been emerging and developing across the Australian states, a profound shift in paradigm from a punitive, point-and-reward philosophy to a rehabilitative culture across the states, is still needed. Effective models must balance the criminogenic, clinical and wellbeing needs of children and young people and be based on a robust understanding of the child or young person's history.

As pointed out in the recent Australian Human Rights Commission report on the child justice system in Australia<sup>8</sup>, in order to profoundly transform this system and achieve consistency of policy and practice as well as adhere to our commitment to uphold our obligations under international children's rights laws and legislations, a national approach to youth justice reforms is needed. This includes recommendations such as the establishment of a national taskforce to reform the child justice system, appointment of a Cabinet Minister for children, establishment of a ministerial council for child wellbeing, and legislating a National Children's Act and a Human Rights Act, which incorporates the Convention on the Rights of the Child.

We also call for the need to establish a therapeutic youth justice model of care, which incorporates clear minimum standards of care of justice involved young people, which are enforceable and overseen by an independent body. This model of care must be based on the knowledge we have of neurodevelopmental and cognitive processes and abilities of children and young people, as well as on evidence of the impact of adverse childhood experiences and trauma on children's emotional and social functioning and behaviour.

A recent CETC/ACF's report<sup>9</sup> based on the review of practice and operational frameworks for Ashley Youth Detention Centre in Tasmania showed that there are clear indications that critical dimensions of trauma-informed youth justice include:

- clinical services – assessment, services and interventions, and cultural competence;
- attention to the agency context including youth and family involvement;
- workforce development and support;
- promoting a safe agency environment;
- agency policies, procedures, and leadership; and
- system level considerations including cross-system collaboration, system-level policies and procedures and quality assurance.

## Cross-agency and cross-system collaboration

There is a profound need to establish more connected systems, which are able to support young people at different points before they are criminalised, and incarcerated. We know that most incarcerated young people are known to services well before they become involved in the criminal justice system. These support systems are however often not operationalised in a way that is most beneficial to an individual child, which makes children systemically fall through the cracks. Opportunities to support children before they reach the critical point of youth justice involvement are missed.

Many children and young people in custodial settings have a history of out-of-home care. Dual engagement of children and young people with child protection and youth justice systems is particularly common, with this group facing poorer outcomes to their peers who are only involved in one system.

National standards for out-of-home care (OoHC) in Australia have existed for many years. They are built on an understanding that Australian children and young people have the right to be safe, receive loving care, and access services and support that will allow them to reach their potential later in life. Implementation of OoHC national standards has been challenging. Continuing weaknesses and failures in the OoHC systems have been:

- the lack of opportunity for early identification of health and developmental needs,
- unreliable access to intensive therapeutic support,
- instability of placements for many children and young people,
- lack of participation for children and young people in decision-making,
- poor planning and follow through with leaving care,
- insufficient training and support for carers (paid & voluntary).

Children and young people in OoHC and in youth justice have similar trajectories, experiences, and are often the same children. We also know that children and young people in OoHC are far more likely to find themselves in custody, as a result of maltreatment, multiple care placements, damaging institutional cultures, social disadvantage, psychological harms and differential treatment in the criminal justice system.<sup>10</sup> Trauma experiences of Aboriginal and Torres Strait Islander children are further compounded by the OoHC and criminal justice systems.<sup>11</sup>

These systems should respond to children's needs equally. More connected systems, particularly OoHC, youth justice and mental health, including parallel vision in the aim, quality and implementation of the national standards across systems, would ensure consistent practice approaches and better support and continuity of care. With increased alignment in national standards between systems, there is also an increase in the needed emphasis on accountability across agencies, ensuring that the rights of children are protected and that the care they receive is appropriate. Better inter-agency collaboration also promotes more positive transitions and more overall stability and permanency that this cohort of children and young people desperately need.

## OPCAT as a foundation for minimum standards

The Optional Protocol for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international treaty that aims to prevent torture and ill-treatment through regular visits and inspections to places where people are deprived of their liberty.

Australia ratified OPCAT in December 2017 but the implementation in states and territories has not occurred.



OPCAT upholds transparency, accountability and human rights and ensures the care, conditions and treatment provided by institutions comply with an agreed set of endorsed standards. In the youth justice sector, OPCAT can bring oversight, rigour and monitoring to ensure that rights of people who are being detained are being respected and they are not held in conditions that breach their rights.

Through national preventative mechanisms, OPCAT can:

- Support advocacy to reduce reliance and misuse of remand, the number of young people on remand and advocacy to increase the support for young people on remand.
- Ensure the development of more community-based and culturally safe alternative sentencing options to ensure alternatives to detention that focus on the therapeutic needs and rehabilitation of the child or young person.
- Design youth detention centres based on therapeutic, non-punitive and trauma informed principles.
- Promote the rights of young people in detention, and provide them with a language, process and opportunity to object about their treatment without fear of retribution.
- Identify what constitutes minimum standards, and promote a universal language that protects, promotes and brings transparency to the youth justice sector.
- Provide education about the identified minimum standards of facilities across Australia and enable a set of standards to be established and enforced.
- Support the growing of initiatives in preference of custody, such as community based or restorative justice programs, particularly those that divert First Nations young people away from custodial admissions.
- Provide transparency through a clear data set on the use of restrictive practices and isolation, to advocate for systemic change.

A lack of understanding, potential resistance of facilities, resource constraints and lack of clear legislation are challenges to the implementation of OPCAT in Australia. The implementation of OPCAT must be driven, resourced and supported by the federal government, not left to states alone.

The implementation of OPCAT is an essential component of a number of measures that can work towards oversight for rights-based compliance, protect young people against torture, identify what constitutes minimum standards and meet international obligations.

## Benefits of enforceable minimum national standards for youth justice

### Benefits of enforceable minimum national standards for children and young people in youth justice custodial settings

We need minimum standards to bridge the inconsistency in policy and practice across Australia, to uphold the safety and focus on best interest of children and young people.

Minimum standards would provide transparency about expectations, address inequalities and introduce a reliable framework which we can protect against mistreatment in custody and misuse of custody too early and for prolonged periods of time that yield no positive outcomes.

Custodial admissions do not afford young people long term benefits and in fact have detrimental impacts, increasing their likelihood of further admissions in the future.

Minimum standards help young people know their rights, expectations and obligations. They also clarify children's rights to make complaints when there are clear breaches relating to their treatment across the system, in custody and beyond.

### Benefits of enforceable minimum national standards for youth justice practitioners

Service provision in youth justice is typically divided into several different service areas and young people are often left unsupported, navigating service system on their own. Unified national standards would make better streamlining of services possible and would put greater emphasis on practitioners to work in collaborative and holistic way. Social services, law enforcement, courts, health and educational services can be linked better together, and provide shared accountability.

National standards would provide practitioners with more practice guidelines regarding the overall aim and goals of practice, and clearer expectations of their service, and their work. They would distil key messages for the workforce. Standards would also define roles, responsibilities and procedures more clearly, and would therefore put more emphasis on organisational accountability and create a transparent overall system.

Concurrently, national standards would reduce legal risks and offer more support to practitioners, ensuring that they follow established procedures, not violate young people's rights and reduce the likelihood of complaints.

Through promotion of rights, fairness and equity, these same concepts which must be applied to children and young people can support the work and roles of practitioners. Therapeutic environment and trauma-informed practice also need to be systemically-driven. They need to be applied across the organisational settings and include support for clinicians and practitioners.

## Benefits of enforceable minimum national standards for cross-system work and collaborations

Alignment of national standards across the systems that work with young people who are vulnerable and at risk means that coordination and consistency of service delivery is improved. There is more focus on compliance with international obligations and alignment with international best practices.

Less fragmentation of services provides a holistic approach to addressing young people's needs and better levels of support.

An increased alignment of standards across the system also ensures evidence-based practice, and translation from theory to practice, and vice versa, more plausible. There are clear benefits to shared expectation and shared language. In the absence of this, workforce training and support work across Australia is confusing.

National standards also help clarify how resources should be distributed across systems. This ensures better efficiency in service provision, better use of budgets and more targeted service delivery.

Collaborative service system increases credibility and trust in services not only for young people, but for their families and/or networks and communities which can support young people beyond the systemic engagement. Collaborative approach is empowering and leads to more stability and better outcomes for young people.

## What next

Australia has evidenced the key issues, through inquiries, commissions, investigations and reports. We have heard from countless children and young people about their wishes, fears, needs and views. Australia now needs to move from evidencing to action.

Changes to the youth justice systems across Australia must be implemented consistently across jurisdictions and at a national level to create a transformational shift in youth justice. The development of national youth justice standards and a national approach to the minimum age of criminal responsibility would serve to bring states and territories together in their efforts to reform the system. Furthermore, improving oversight of youth detention facilities and legislating human rights protections would foster a culture of respect for human rights across all jurisdictions.

We must creatively rethink youth justice in Australia. We must change the negative narrative we use about young people and facilities and instead recognise the role of trauma, social determinants of justice and systems abuse that result in so many young people in Australia being in custody.

Ideally, we want to reduce young people entering custody and promote its use as a very last resort, and never for a child aged under 14 years. For those who may be required to serve a term of imprisonment for very serious crimes, we must protect their rights and treatment and give them very chance to never return. The implementation of OPCAT, with national consensus on minimum standards and resourcing to uphold these standards is a thorough first step. This can only be led with diverse stakeholders, including those with lived experience, a strong representation from the Aboriginal and Torres Strait Islander communities, those living with disability and culturally and linguistically diverse communities.

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