

10 October 2024

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

Submitted via upload to portal: <https://www.aph.gov.au>

Dear Committee Members,

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

The Australian Psychological Society (APS) appreciates the opportunity to contribute to the Senate Legal and Constitutional Affairs Committee *Inquiry into Australia's Youth Justice and Incarceration System*.

About the APS

The APS is the leading professional association for psychologists in Australia. Psychologists work in diverse ways and contexts to unlock the full potential of individuals, organisations and communities through the application of psychological science and knowledge. At the APS, we are dedicated to advancing the scientific discipline, ethical practice and application of psychology. Our work is informed by United Nations human rights treaties and conventions¹ and the United Nations Sustainable Development Goals (SDGs)² and Conventions. We advocate for a fair, inclusive and environmentally sustainable world, recognising the evidence that national and global prosperity, now and in the future, hinges on prioritising the wellbeing of people and the planet³.

As experts in child development and prevention, early intervention, treatment and rehabilitation science, psychologists are acutely aware of the urgent need for comprehensive, evidence-based reform of the child justice system and are uniquely positioned to contribute to the national conversation on this issue.

Please find our response to the consultation terms of reference on the following pages. If any further information is required from the APS, I would be happy to be contacted through the National Office on (03) 8662 3300 or by email at z.burgess@psychology.org.au

Yours sincerely

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

In our submission, we use the term "child justice" in alignment with the current language of the United Nations General Comment on the Convention on the Rights of the Child and to make clear the matters discussed are about people less than 18 years of age. However, when referencing the work of others, we retain their terminology, which may use "youth justice."

Enduring child justice system failures and persistent calls for reform

Several high-profile ABC *Four Corners* investigations documented longstanding practices within the Australian child justice system that subject children to dehumanising treatment and abuse^{22,23}. In Western Australia (WA), for example, children were shown being forcibly restrained, and between October 2021 and September 2022, a number of complaints of excessive force against child detention staff were investigated. Concerns were also raised about the use of prolonged lockdowns, solitary confinement and increased self-harm and suicide attempts among detained children.

Similar abuses were highlighted in a 2016 *Four Corners* report about child detention practices in the Northern Territory (NT), which triggered a Royal Commission²⁴. Despite this, ongoing mistreatment in NT detention facilities was exposed again in the 2022 *Four Corners* report.

In a joint statement following the 2022 *Four Corners* program, the Australian Human Rights Commissioners called for urgent action, noting that:

"Australia's lamentable treatment of young people in detention has long been well known, and the Commission has repeatedly raised these issues with Australian governments. We urge them to heed the advice of senior judges, prison officials and child development experts calling for alternative approaches" – The Australian Human Rights Commissioners, 2022¹

Recently, several comprehensive Australian reports, building on decades of evidence and grounded in a human rights approach, have provided clear, detailed pathways for child justice reform, for example:

- The 2024 Australian Human Rights Commission report *"Help Way Earlier!: How Australia Can Transform Child Justice to Improve Safety and Wellbeing"*²⁵, submitted to Attorney-General the Hon. Mark Dreyfus KC MP, and
- The 2023 Save the Children report, *Putting children first: A rights respecting approach to youth justice in Australia*²⁶

Both reports above highlight Australia's failure to address the root causes driving children into the justice system as the nation's most pressing human rights challenge and the urgent need to recast the foundations of the child justice system to align with a child rights approach to improve outcomes for children, young people and the system as a whole.

The comprehensive suite of child justice system reforms proposed in these reports overlaps and includes calls for:

- **National leadership and governance for child justice reform** through measures such as:
 - the establishment of a National Reform Taskforce and coordinated child justice reform across jurisdictions
 - the appointment of a Cabinet Minister for Children and a Ministerial Council for Child Wellbeing
 - Legislating human rights protections by developing a National Children's Act and Human Rights Act
 - Co-designing National Child Justice Standards that reflect the evidence and international best-practice
- **Raising the age of criminal responsibility** and incarceration to at least 14 years in all Australian jurisdictions in accordance with United Nations recommendations.
- **Increased investment in prevention and early intervention programs** to address the underlying factors leading to children's involvement in the justice system such as mental ill-health, trauma and social disadvantage. Community based prevention services for child protection, family support, education and employment are also needed based on empirical evidence around prevention and desistance.
- **Increasing access and availability of diversion programs** to ensure ample monitoring while providing services to address the unique risks and needs of each child.
- **Improving detention practices** to reflect international standards and the evidence base about effective, culturally safe, trauma-informed and rights-respecting practices, including ratifying and implementing the 3rd OPCAT to improve oversight of child detention facilities.
- **Empowering First Nations communities** to lead culturally safe, trauma-responsive support that is driven by and for First Nations children, families, kin and communities.
- **Implementing workforce reforms that require all part of the child justice system** to deliver therapeutic, trauma-informed, family-inclusive and culturally responsive child-centred models and programs.

The APS position on Australian child justice reform

The APS has a strong record of evidence-informed advocacy around matters pertaining to justice systems throughout various jurisdictions in Australia (e.g.,⁴), including child justice systems (e.g.,⁵). We also advocate for safeguards against maltreatment and torture in detention settings, calling for Australia's ratification of the international human rights Optional Protocol to the Convention Against Torture (OPCAT) and for full and consistent compliance with OPCAT across all jurisdictions to ensure preventive inspections and protection against ill-treatment (e.g.,^{6,7}).

Jointly with the Australian Indigenous Psychologists Association (AIPA), the APS has been especially vocal in our condemnation of the persistent overrepresentation of First Nations children in detention⁴. First Nations young people not only enter child justice supervision at a younger age than their non-Indigenous counterparts, but they are also placed under supervision and detention at significantly higher rates⁵. More than half (55%) of young people aged 10–17 supervised in the community are First Nations children, and First Nations children aged 10–17 (30 per 10,000) are about 27 times as likely as non-Indigenous children to be in detention (1.1 per 10,000)⁵.

Structural racism and discrimination contribute significantly to the trauma and behavioural issues that lead to over-policing and higher detention rates for First Nations children⁶. Addressing these systemic issues is crucial to broader reforms in the child justice system and to reducing the disproportionate impact on marginalised communities.

The APS shares the public concerns about the impacts of child offending on community safety. However, “tough on crime” discourses and child justice systems that focuses on punitive sentencing responses for children as young as 10 years of age, do little to deter offending or improve community safety^{7,8}. The age of incarceration is a known criminogenic factor, with children first sentenced between 10 and 12 being far more likely to reoffend than those sentenced later in life⁹.

Child detention is especially counterproductive, as it not only fails to tackle the root causes of offending behaviour, but it also exacerbates trauma, disrupts healthy child development and increases exposure to deviant peer influences¹⁰. This approach results in long-term psychological harm and deeper disadvantage for children but also significantly increases the likelihood of reoffending, with up to 85% of children returning to sentenced detention within 12 months of release⁷. Thus, detaining children should be considered only as a last resort¹¹.

Current approaches to child justice in Australia fail to adequately invest in addressing the underlying social determinants (e.g., poverty, social exclusion and racism, education, early childhood development, mental health) and adverse childhood experiences (ACEs) (e.g., household dysfunction, individual and international trauma) that drive child offending and reoffending behaviour^{12–14}.

Diverting resources from justice system contact toward community-led preventative and diversionary initiatives that address risk factors associated with criminal behaviour and reoffending, and are culturally safe, has been demonstrated to reduce recidivism, build stronger communities and achieve long-term cost savings. For example the Maranguka Program in Bourke, NSW reported a 38% reduction in youth crime, a 14% reduction in bail breaches and a 31% increase in the Year 12 retention rate¹⁵. In the Northern Territory, 77% of young people released from detention return within 12 months, but 64% of those who complete a diversion program do not reoffend in the same timeframe¹⁶.

Evidence-based early intervention, treatment and rehabilitation focusing on the underlying causes of offending rather than punishment are also essential for addressing the behaviour of sentenced child offenders¹⁷. Programs that offer therapeutic support, mental health care and skill development can help children overcome challenges such as trauma, poverty and social disadvantage (e.g.,^{18,19}). Trauma-informed and culturally responsive rehabilitation, particularly for vulnerable groups like First Nations children, is key to supporting long-term wellbeing and successful reintegration into society^{20,21}.

Psychologists, including forensic, educational and developmental, clinical and counselling psychologists, work directly with children, families and kin impacted by the child justice system. Psychologists not only support individuals in contact with the child justice system but are also uniquely positioned to help shape systematic and institutional policies, strategies and programs for prevention, early intervention, treatment and rehabilitation. Their expertise is vital in addressing the complex needs of vulnerable children and their families, creating evidence-based solutions that promote long-term wellbeing, rehabilitation and stronger community outcomes.

The APS position on Australian child justice reform

The APS calls for a more just and effective child justice system that aligns with Australia's international human rights obligations and that equally promotes the wellbeing and safety of children, families, kin and the broader community.

This will require **an immediate shift from the current child justice system rhetoric, policy settings and practice across Australian jurisdictions that subjects children who offend to severe and inhumane punishment** under the flawed assumption that it protects the community. Perpetuating a punitive child justice system encourages reoffending and causes long-term damage to individuals, families, kin and communities.

Thus, we urge the Australian Government to **take immediate action toward implementing a nationally coordinated suite of child justice system reforms**, firmly grounded in child rights and backed by the wealth of robust evidence in child development and prevention, early intervention, treatment and rehabilitation science.

As a priority, all Australian jurisdictions **must raise the minimum age of criminal responsibility to 14** in accordance with Australia's international obligations to the United Nations Convention on the Rights of the Child. Taking immediate action to prevent early criminalisation will reduce long-term harms to children and better safeguard the community.

The APS also calls for increased adoption of **justice reinvestment** approaches. These redirect resources from crisis response and detention toward community-led preventative and diversionary initiatives that address the underlying social determinants and systemic causes of child offending. These approaches have been particularly effective in improving justice outcomes for First Nations peoples, addressing systemic issues and promoting more equitable and culturally responsive solutions.

As experts in child development and prevention, early intervention, treatment and rehabilitation science, psychologists are uniquely positioned to support individuals in contact with the child justice system and help to shape systematic and institutional policies, strategies and programs.

APS recommendations

We urgently call on the Australian government to:

1. **Provide national leadership and drive a coordinated policy and legislative reform agenda across all Australian jurisdictions, that is grounded in child rights and backed by robust evidence.** The suite of required systemic reforms for a more just, effective and child-centred approach to child justice in Australia are clearly articulated in the 2024 Australian Human Rights Commission report, *"Help Way Earlier!: How Australia Can Transform Child Justice to Improve Safety and Wellbeing"*²⁵, and the 2023 Save the Children report, *Putting children first: A rights respecting approach to youth justice in Australia*²⁶.

We also recommend the following, which highlight the contributions of psychologists and psychological science:

2. **Ensure that all courts have access to expert evidence from qualified psychologists, including forensic psychologists, during sentencing.** This will enable comprehensive assessments of risk, rehabilitation needs, and the broader psychological factors influencing offending behaviour, supporting the judiciary in making informed, evidence-based decisions that prioritise both public safety and the rehabilitation of young offenders.
3. **Develop formal avenues for collaboration between the judiciary and the APS to provide training and expert advice on matters related to sentencing and offender management.** This should include understanding the causes of crime, recidivism, and rehabilitation needs, ensuring that judicial decisions are informed by the latest psychological evidence and practices to promote more effective, evidence-based outcomes.
4. **The capacity of existing specialist courts, such as Mental Health and Special Circumstances Courts, should be expanded, and new specialist courts should be developed to prioritise the principles of therapeutic jurisprudence.** These courts place rehabilitation at the core of their approach, ensuring that justice practices contribute to both the rehabilitation of individuals and overall community safety. By focusing on tailored, evidence-based therapeutic interventions, these courts can address the underlying causes of offending and support long-term positive outcomes for both individuals and society.
5. **Ensure an adequate number of psychologists with specialised training are available to provide comprehensive, trauma-informed, and culturally safe assessments of children's emotional, cognitive, and behavioural needs in child justice and forensic settings.** These assessments should be conducted upon entering detention and include ongoing monitoring. While evaluating the risk of reoffending and harm to self or others is crucial, assessments must also address physical and mental wellbeing, cognitive and communication difficulties, complex trauma, co-occurring mental health issues, substance abuse, and biopsychological strengths and challenges. Thus, a holistic assessment approach and improved diagnosis to identify the strengths and difficulties is essential to meeting the complex needs of many vulnerable children in detention.
6. **Ensure an adequate number of psychologists with specialised training are available to provide evidence-based psychological support and interventions in child justice and forensic settings.** Psychologists play a critical role in addressing the underlying trauma and behavioural challenges that contribute to offending. Their involvement ensures that best-practice interventions, proven effective for children in justice settings, are implemented.

This includes therapeutic approaches tailored to reduce reoffending, promote mental health recovery and foster positive social reintegration. Expanding access to trauma-informed care and psychological interventions will significantly improve outcomes for vulnerable children in detention and diversion programs, supporting long-term rehabilitation and wellbeing.

7. **Child offenders in detention should have access to targeted rehabilitation, reintegration and post-release services that address both their risk factors and broader developmental needs.** These services must include a range of healthcare options and evidence-based interventions beyond offence-related programs, such as drug and alcohol treatment, education and employment training, cultural programs, family reunification support and leisure/recreational opportunities. These services should be delivered by appropriately trained professionals, such as psychologists, and focus on reducing risk and fostering pro-social behaviour to equip young offenders with the skills and structure necessary for successful reintegration into the community and adequate support for their families.

8. **Behaviour management policies should be grounded in evidence-based approaches such as positive behaviour support, which prioritises humane and rehabilitative methods proven to promote positive behaviour and reduce reoffending.** Use of excessive force, restraint, and prolonged lockdowns or solitary confinement should be prohibited. They are known to harm the wellbeing and development of child offenders, likely compounding psychological and behavioural concerns due to pre-existing trauma, displacement, mental health diagnoses, disrupted attachment and limited self-identity. Such processes can exacerbate behavioural concerns of incarcerated children, as well as create staffing issues, due to worker injury and assault and high staff attrition rates.
9. **The recruitment and suitability of officers working in child detention centres must be prioritised to ensure the safety and wellbeing of detained children.** Recruitment policies should include comprehensive screening processes to ensure that staff are adequately equipped to work in trauma-informed, culturally respectful ways, ensuring their ability to effectively engage with young people from diverse backgrounds and foster a rehabilitative environment that prioritises the needs of vulnerable children. Psychologists can play a crucial role in the screening of staff, ensuring they are prepared to handle the unique challenges of working with children who have experienced trauma and social disadvantage, and contributing to the creation of a supportive and rehabilitative detention environment.
10. **Mandatory, ongoing education should be provided to all staff working in child detention** about culturally appropriate and trauma-informed care, mental health first aid, positive behaviour support and effective de-escalation techniques. This training must be delivered by qualified professionals, including psychologists and tailored to the context of young people in detention, many of whom have histories of trauma and mental health disorders. Staff with the appropriate competencies need to be trained to undertake dynamic risk assessments to reduce the subjectivity of such assessments, particularly regarding future violence. Managers within facilities should receive values-based leadership education and mentoring, including skills in providing feedback on managing ethical dilemmas and regular monitoring of cultural responsiveness for accountability and effectiveness.

In summary, the APS calls for this inquiry to move beyond further reports and ongoing discussions. It is time for Australian Governments to take concrete steps to achieve meaningful action in child justice reform.

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time and evidence-informed knowledge, experience and research to this submission.

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