



Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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The Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA) appreciate the opportunity to provide a submission to the Senate Legal and Constitutional Affairs References Committee's Inquiry into Australia's youth justice and incarceration system. While many ANZCCGA members may make individual submissions, the following submission reflects collective support for the need to urgently reform the current framework for youth justice in Australia.

The ANZCCGA comprises national, state and territory children and young people commissioners, guardians, and advocates. The aim of the ANZCCGA is to promote and protect the rights, safety, and well-being of children and young people in Australia and New Zealand and ensure that the best interests of children and young people are considered in public policy and program development across Australia and New Zealand.

ANZCCGA members support the National Children's Commissioner's recently released report, [\*'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing!\*](#). Collectively, we call upon the Australian Government to bring the issue of youth justice and incarceration to the attention of National Cabinet in a manner that focuses attention on upstream preventative and diversionary responses centred first and foremost on enhanced support that improves outcomes for children and young people (hereafter referred to as children) within the context of their families and communities.

The state of youth justice in Australia is at a crisis level and requires immediate and substantive reform if we are to increase public safety and change the life trajectories of those children who come to the attention of our justice systems. Continuing to tackle this through tougher justice approaches fails to recognise the complex and compounding interplay of intersectional disadvantages that impact those children most at risk.

It is well recognised that the children who come into contact with the justice system are some of the most vulnerable and disadvantaged members of our communities. Often, they have come from communities of entrenched socio-economic disadvantage and/or from Aboriginal and Torres Strait Islander communities living with the legacy of colonisation, intergenerational trauma, and institutional racism.<sup>1</sup>

Children in the justice system have fragmented education experiences, marked by periods of exclusion and expulsion, resulting in poor educational outcomes. They have precarious living arrangements including homelessness and/or placements in out-of-home care. They have often experienced drug and alcohol related addiction, struggle with complex, unresolved trauma, and live with mental illness and/or disabilities.<sup>2</sup>

Children in the justice system have higher rates of speech, language and communication disorders, ADHD, autism spectrum disorders, FASD, and acquired/traumatic brain injury.<sup>3</sup>

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<sup>1</sup> Chris Cunneen, 'Arguments for Raising the Minimum Age of Criminal Responsibility' (Research Report, Comparative Youth Penalty Project, University of New South Wales, 2017).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

The United Nations Independent Expert on Children Deprived of Liberty, Manfred Nowak observes:

*“The most important reason for the large number of children in detention is the lack of adequate support for families, caregivers and communities to provide appropriate care to children and encourage their development. Such support and effective cooperation between parents, child welfare, social protection, education, health, law enforcement and the justice system would prevent children from being placed in institutions and coming into conflict with the law.”<sup>4</sup>*

It also needs to be recognised that children’s brains are still developing during adolescence. This impacts their ability to reason, predict consequences, control impulses, and comprehend criminal proceedings.

The evidence is well-established and clear – the younger a child is when they come into contact with the justice system, the greater the likelihood that they will continue to offend, that their offences will become more serious in nature, and that they will progress to engagement with the adult justice system. The diversion of matters away from the criminal justice system and into appropriate alternative programs and support services should be the preferred option for children.

The ANZCCGA is concerned that children aged as young as 10 years old are still being sentenced in courts and locked up in detention centres across Australia. This is contrary to human rights standards and the recommendations of the United Nations Committee on the Rights of the Child who, in September 2019, issued General Comment 24 in which they indicated that the internationally recognised standard should be a minimum of 14 years of age.

The lifelong consequences of imprisonment and institutionalisation of children are multifarious. Children deprived of liberty often experience post-traumatic stress disorder (particularly when isolated), their risk of developing or exacerbating mental health conditions increases tenfold, and there is a correlation between higher rates of early death of children in detention than their community peers, attributable to drug overdose, suicide, injury and violence.<sup>5</sup> Where detained, younger children are also at greater risk of violence or negative influence from older children.<sup>6</sup>

The ANZCCGA has long recommended that the age of criminal responsibility in all states and territories be raised to at least 14 years, without exceptions. Raising the minimum age of criminal responsibility should not be regarded as reducing accountability for children who engage in offending or other anti-social behaviours. Instead, socio-educational pathways to accountability and rehabilitation within a family setting exist and have been shown to have positive outcomes.

In support of this, the ANZCCGA calls for governments to move from a justice response for children under 14 years to a developmentally appropriate, trauma-informed, and culturally safe early intervention model that supports children in their families and communities.

Alongside reforms to increase the minimum age of criminal responsibility and introduce preventative and diversionary supports to reduce the number of children coming into contact with the justice system, ANZCCGA members also recommend the development of enforceable minimum youth justice standards that are agreed and endorsed federally or, at minimum, at the state and territory Government level instead of these being signed off by system administrators as is currently the case.

### **Better support for children and their families contributes to improved outcomes for children, their families, and the broader community.**

*The contact person for this submission is Ms Jodie Griffiths-Cook, ACT Public Advocate and Children and Young People Commissioner.*

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<sup>4</sup> Manfred Nowak, *Global study on children deprived of liberty* GA Res 72/245, UN GAOR 74th session, Item 68(a), UN Doc A/74/136 (11 July 2019) [94].

<sup>5</sup> *Ibid* [29].

<sup>6</sup> *Ibid* [5]; Kelly Richards, ‘What makes juvenile offenders different from adult offenders?’ (Richards 2011) (Australian Institute of Criminology, Trends & issues in crime and criminal justice No 409, February 2011) 7.



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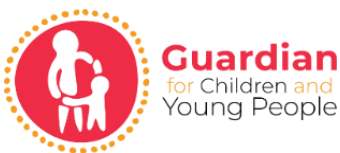
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