



Commissioner for Children and Young People
Western Australia

Our reference: 25/319

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary,

Submission to the Senate Inquiry into Australia's youth justice and incarceration system

As Commissioner for Children and Young People, I welcome the opportunity to provide this submission to the *Inquiry into Australia's youth justice and incarceration system*.

The Commissioner is established by the Western Australian Parliament in the *Commissioner for Children and Young People Act 2006 (WA)*. The Commissioner undertakes projects, commissions research, publishes reports, and hosts events to highlight specific aspects of children and young people's wellbeing. Using research and the other evidence available, the Commissioner seeks to positively influence legislation, policy, services and attitudes.

Under the *Commissioner for Children and Young People Act 2006*, the Commissioner is required to have special regard to the interests and needs of Aboriginal children and young people and Torres Strait Islander children and young people, and children and young people who are vulnerable and disadvantaged for any reason.

In undertaking these responsibilities, I must also have regard for the *United Nations Convention on the Rights of the Child* (the UNCRC) which upholds the right of all children and young people to be protected from harm, to be safe, feel safe and be respected wherever they are, and to participate in decision making that affects them.

I support all the recommendations on [Help Way Earlier! Report](#) by the National Childrens Commissioner

The report examines reform opportunities in Australia's child justice system, highlighting children's rights and evidence-based insights from various stakeholders, including children and families. The incarceration of children as young as 10 highlights a critical human rights issue. Despite clear links between social disadvantage and offending behaviour, current policies prioritise policing and stricter bail laws, often worsening trauma and inequality. National Children's Commissioner Anne Hollonds emphasises that neglecting early human rights issues contributes to the criminalisation of the most vulnerable children. The National Children's Commissioner highlighted that the systems intended to support

children—such as health, education, and social services—are often fragmented, uncoordinated, and inadequately designed for their intended purpose.

This submission discusses Australia's youth justice and incarceration system focusing on Western Australia.

Since I began my term in office, I have been deeply concerned about the situation facing children and young people in detention in WA.

In early in 2023, there were several incidents that raised serious issues regarding the wellbeing and safety of both staff and detainees. I announced my intention to conduct an Inquiry into the implementation of the new care model at Banksia Hill Detention Centre in early October 2023. Tragically, shortly thereafter, WA experienced its first death in custody of a minor.

During the Inquiry, we conducted face-to-face interviews with 43 children and young people in January and February 2024, and collected valuable feedback through an anonymous online survey that included responses from 40 staff members and 20 service providers. Full report [Hear Me Out \(ccyp.wa.gov.au\)](https://ccyp.wa.gov.au)

During the interviews with children and young people, it became clear that many struggled to connect their actions with consequences, a challenge often linked to their developmental stages and complex needs, such as neurodivergence, intellectual disabilities and other disabilities including history of trauma. This is crucial for staff to grasp, as misconceptions can lead to misunderstandings and hinder the development of relational security which has a snowball effect. WA age of criminal responsibility is ten years. Research indicates that children under 14 lack the cognitive and neurodevelopmental capacity to make informed decisions. This is crucial for staff to grasp, as misconceptions can lead to misunderstandings and hinder the development of relational security which has a snowball effect.

'We are not rehabilitating, kids that have a chance of changing and want to be given the opportunity to do so, away from those that don't want this at the time but may change when they see what can be achieved. Reward good behaviour, consequences for bad.' Staff at BHDC – Inquiry 2024.

We need transformational change that prioritises child well-being, guided by evidence and human rights principles. In line with national and international evidence, I advocate for youth justice approaches that prioritise holistic early intervention, prevention and diversion, rehabilitation and integration and therapeutic methods. Children and young people deserve early support to enhance their emotional, social, cultural and physical well-being. The current punitive approaches in youth justice through incarceration, restrictive practices and facilities, expose children and young people to trauma and re-traumatisation. This is unacceptable.

Additionally, children from disadvantaged families face challenges such as poverty, homelessness, health and mental health issues, disabilities, and learning

difficulties. For many Aboriginal children and families, systemic racism and intergenerational trauma compound these struggles.

Furthermore, the overrepresentation of Aboriginal children and young people in the youth justice system is a pressing issue that needs urgent attention, alongside the need for culturally appropriate and diverse education and programs. Addressing these concerns is essential for creating a more just and effective youth justice system.

Detention should be a last resort for children and young people, yet current juvenile justice systems primarily react to situations rather than emphasising prevention, intervention, and rehabilitation. Research shows that detention does not enhance community safety or provide necessary therapeutic support, particularly for those under 14, who often cannot comprehend the consequences of their actions. Many youths in detention experience disabilities, cognitive impairments, and developmental delays, indicating a crisis among at-risk children.

While the implementation of the Model of Care instruction in juvenile detention is a step forward, it must be accompanied by efforts to reduce the number of youths in detention and provide holistic, child-centered support through restorative practices. A comprehensive child and family strategy should focus on early intervention and address health, education, mental health, poverty, and family support needs, necessitating collaboration across multiple government agencies.

Minimum legislated standards for youth justice administrators are vital for a fair and effective system. They ensure consistency in treating young offenders, establish quality assurance for services and protect individual rights. By emphasising accountability and rehabilitation over punishment, these standards tackle the root causes of youth offending, leading to positive outcomes for young people. Prioritising these standards fosters a humane approach that benefits both youth and society.

There is need to prioritise the enhancement of youth justice initiatives in Western Australia to effectively prevent crime and support our young people. While progress has been made through early intervention and diversion programs, many of these efforts fall short due to inadequate follow-up assistance. I advocate for increased resources and better coordination among agencies to ensure that every young person who is diverted from the justice system receives the comprehensive support they need. By investing in therapeutic and trauma informed approaches, we can address the root causes of offending behaviour and foster more positive future for our youth.

Scotland and Spain offer innovative approaches to reducing youth detention by emphasising rehabilitation and support over punishment. In Scotland, the *Whole System Approach (WSA)* provides early interventions and community alternatives to detention, while the Children's Hearing System prioritises child's welfare through

community-based recommendations. Restorative justice practises are also expanding, allowing young offenders to understand the impact of their actions. In Spain, the *Diagrama Foundation* focuses on education and rehabilitation in juvenile centres significantly reducing recidivism. Additionally, education and vocational training, along with community-based support programs, help young offenders reintegrate into society.

These strategies underscore the importance of addressing the root causes of offending and providing the necessary support for positive change.

Research has shown that community corrections play a vital role in preventing youth detention through evidence-based practices that provide crucial supports in mental health, education, training and employment. Programs that include mental health services, such as counselling, effectively address young offender's psychological needs and reduce reoffending¹. Educational initiatives engage youth in learning, leading to better academic outcome and lower recidivism rates². Additionally, vocational training and evidence-based job placements services equip young people with essential skills and employment opportunities³. By investing in these community-focused approaches, we can empower young people to build stable futures and ultimately decrease the need for detention.

The Australian and New Zealand School of Government emphasises that a safe custodial environment is vital for reducing reoffending. The government has an opportunity to broaden its review of the Young Offenders Act, incorporating insights from various recommendations, including those from the Royal Commission into Institutional Responses to Child Sexual Abuse. Ultimately, reform is needed to ensure that detention serves not as punishment but as a constructive measure for rehabilitation.

I look forward to improvements in Australia's youth justice and incarceration system.

Yours sincerely,

Jacqueline McGowan-Jones
Commissioner

28 January 2025

¹ Chitsabesan, P., Kroll, L., Bailey, S.U.E., Kenning, C., Sneider, S., MacDonald, W. and Theodosiou, L., 2006. Mental health needs of young offenders in custody and in the community. *The British Journal of Psychiatry*, 188(6), pp.534-540.

² Flores, J. and Barahona-López, K., 2021. Correctional education and the impact on educators' lack of training. *Curriculum Perspectives*, 41(2), pp.237-244.

³ Mendel, R., 2023. Effective alternatives to youth incarceration. *The Sentencing Project*, June, 28.