



## NAPCAN Youth Speak Out (NYSO)

*Call for submissions: Youth Justice and Child Wellbeing Reform across Australia*

[NAPCAN's Youth Speak Out](#) is the youth advisory council for the National Association for Prevention of Child Abuse and Neglect. In preparing this submission, NAPCAN organised an information webinar (featuring Justice Reform Initiative, PeakCare and Youth Advocacy Centre Qld) designed to provide young people (from NYSO and other groups) with an overview of issues relating to youth justice, and supported NYSO to create this submission as a representation of the voices of the young people themselves. The submission has been largely prepared by the NYSO Chair and First Nation NYSO members.

**If we are building more child prisons, is our system actually working or is it time to focus on alternatives?**

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

Young people who interact with Australian youth justice systems often present with vulnerabilities and various complex needs, which are often exacerbated by time in custody and subsequent isolating segregation (Clancey, Wang & Lin 2020). These complex needs are not to be understated. Disproportionately large numbers of justice-involved young people (JIYP) experience an array of hardships, including but not limited to – mental health conditions; cognitive disabilities; experiences of abuse and/or neglect throughout childhood; fractured experiences and opportunities to receive education at primary and secondary levels; and accounts of struggles with substance misuse (Clancey, Wang & Lin 2020). These factors were underscored by Clancy et al (2020) where they reported that 83% of young people in custody were living with at least one psychological condition, while 68% had experienced childhood abuse and/or neglect. It is also noted that an overwhelming number of JIYP were raised, and live, amongst difficult home circumstances. Experiences of socio-economic disadvantage and poverty, accounts of family and domestic violence, threats of possible homelessness, as well as histories of familial offending have all been noted as contributing factors to the offending of young people (Armytage & Ogloff 2017). These findings call for increased attention towards the impact of childhood trauma on neurological function. It is known that the impact of childhood abuse can entrench individuals in a constant state of hypervigilance and stress so as they can perceive a sense of protection against potential re-victimisation. In particular, the amygdala may be affected by trauma, which impairs the way in which one processes fear and stress, alongside the calibration of their reward system (think cost-benefit analysis, etc.) (Laricchiuta, Garofalo & Mazzeschi 2023). To decrease hypervigilance, children need to be in a physically and emotionally safe environment and become aware of their present safe experience. This re-trains their brain (specifically the amygdala) to recognise it no longer needs to be on high alert. The briefly

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aforementioned introductory information highlights that rather than a classical notion of criminality, evident in political ‘tough on crime’ campaigns which emphasises rational choice and individuality, the offending of JIYP is rather intertwined with an array of nuanced structural factors.

The impact of structural disadvantage and maltreatment in relation to criminal behaviour are difficult to refute when considering the notion of the ‘care-to-custody pipeline’ (Baidawi & Sheehan 2019: 2). This term refers to the correlation between large populations of JIYP who have also received child protection services. Baidawi and Sheehan (2019) note that children in contact with the child protection system are more likely to have poorer life outcomes. One of these outcomes which presents alarming concern is the overrepresentation of these young people, known as ‘crossover kids’, in the criminal justice system. The AIHW (2018) notes that young people who are exposed to the Australian child protection systems are nine times more likely than other children to interact with Australian youth justice systems. In particular, they are more likely to be sentenced at a younger age, with “crossover kids” in Victoria three times more likely to be sentenced under the age of fourteen (Sentencing Advisory Council 2016). This young age of contact is associated with maltreatment and childhood adversity, with 73% of these children having at one-point experienced family and domestic violence, while also presenting with higher likelihoods of parental death, physical and mental health concerns, foetal alcohol spectrum disorder, intellectual challenges, homelessness, and early parenthood (Baidawi & Sheehan 2019). Not only do these experiences link to the above paragraph, but they also highlight the need for improved family support to disrupt this trajectory.

In addition, the impact of colonisation on the realities of Indigenous JIYP is of utmost importance in understanding youth justice populations and their complexities. Colonisation and its effects – e.g Social and economic marginalisation, and racism within the criminal justice

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system – contribute to disadvantage and structural oppression, seen in the Australian prison population’s overwhelming overrepresentation of First Nations peoples. This presents a significant human rights issue (Cunneen, Russel & Schwartz 2021), with Indigenous kids in Australia sixteen times more likely than non-Indigenous kids to be under supervision (AIHW 2022). The isolation of youth detention presents alarming concerns for Aboriginal and Torres Strait Islander children, exacerbating disconnection to culture, Country, and community reminiscent of the Stolen Generations’ forced removal policies (Krakouer et al. 2022). The intergenerational trauma bestowed upon and inherited by our First Peoples from colonial structures (such as youth justice and child protection) manifests into concerning risk factors for potential justice system entrenchment.

These factors, ranging from experiences of trauma, to crossover kids, and the realities of Aboriginal and Torres Strait Islander peoples when interacting with youth justice systems, present an embedded structural issue of critical urgency.

**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 are various aspects of the youth justice system that need to be changed in Australia to protect the rights and wellbeing of children and young people. Overwhelmingly, Australian youth justice and related systems are punitive in their approach; lack co-ordinated service design and delivery; are in dire need of effective cross-agency collaboration; and are failing Indigenous young people through the system's inattentiveness to the importance of cultural awareness, sensitivity, and safety within institutional settings. In its most crucial aspects, it is argued that systems of youth justice are failing in ensuring the wellbeing and rights of young people are protected in modern Australia.

Youth justice systems in Australia are currently operated mostly on a punitive basis. Justice-involved young people (JIYP) are perceived by the system *as* risk rather than 'at risk', and it is this rhetoric which in part permeates Australian systems of youth justice. When policy and procedure are constructed around young people 'as risk', it positions anti-social behaviour as an issue of law and order and an extension of criminality (Kemshall 2008). However, when positioned around young people 'at risk', focus is shifted to the vulnerabilities that have served as drivers of criminal behaviour. Through the latter, attention can be given to these contributing factors, and young people in youth justice systems can be appropriately supported. Though, this is not the reality of present youth justice systems, with many young people susceptible to re-traumatisation while in detention. Our children languish in a system of which they are at risk of becoming entrenched within due to its institutional failure in addressing reasons for youth offending (Justice Reform Initiative 2023a). Aforementioned 'tough-on-crime', 'as risk', notions of JIYP plague politics, which shape policy, with governments considering punitive measures to

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be more politically expedient (Justice Reform Initiative 2023a). Simply put, this system and its ‘as risk’ notions are not effective. Children are left to fall behind in a system which fails to deter, rehabilitate, support, or protect them (Justice Reform Initiative 2023a). With this knowledge, the urgent need for a reality of trauma-informed operations and staffers within Australian systems of youth justice is highlighted.

However, there are of course barriers to introducing trauma-informed care within youth justice systems. Despite its heavily publicised closure, Tasmania’s Ashley Youth Detention Centre (AYDC) is an effective example of the obstacles and implications displayed in operative models which deny trauma-informed care. AYDC was, for most of its tenure, unable to meet the diverse needs of JIYP through a lack of trauma-informed approaches, which contributed to compromised safety of these peoples, increasing rates of recidivism and criminal justice system entrenchment alongside intensifying traumatic experiences (Noetic Solutions 2016). This detrimental systemic failure occurred due to reliance on overly punitive amenities, poor agency collaboration, and deficits within occupational training and culture (Noetic Solutions 2016). A reality for most youth justice settings, incarceration and its subsequent traumatic environments are not conducive to the promotion of child safety and wellbeing. Rather, what is needed is a serious attempt to cultivate a youth justice system in which its current deficits – e.g., the briefly mentioned failures of AYDC – are ameliorated. This would include the employment of trauma-informed approaches and staff who are appropriately trained in such areas. In emerging from the ‘one-size-fits-all’ model of youth justice, appropriate evaluation regarding the underlying cause of youth offending should be developed and implemented, while also considering alternatives to detention as influenced by various factors relevant and most suited to each young person’s unique circumstances (Pooley 2020; Justice Reform Institute 2023).

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Furthermore, cultural sensitivity and a coordinated service design featuring agency collaboration need to be two key points of additional consideration when discussing what is to be changed within youth justice systems. As seen in AYDC, service design and agency/staff involvement reflected a siloing of services, causing reduced access to health and education amenities, missed opportunities to divert young people away from the justice system entrenchment, and ultimately, a youth justice system in which the level of care and rehabilitation provided to JIYP was severely compromised (Noetic Solutions 2016). This needs to be changed through fostering agency collaboration and creating a service design interdisciplinary in nature and intrinsically targeted towards the best possible outcomes for young people. Moreover, practitioner collaboration may foster positive relationships with JIYP, which is crucial to positive intervention responses (Pooley 2020). Adopting a business model best suited to young people would also acknowledge the gross overrepresentation of First Nations children in youth detention, and detect an alarming need for the inclusion of culturally sensitive practices and the promotion of culturally safe environments. Indigenous youth suffer in detention at rates higher than any other peoples, and disconnection from culture through the denial of much needed place-based programs compounds cultural disconnection which is detrimental to Indigenous communities (Uluru Statement 2017; Justice Reform Initiative 2023a; Krakouer et al. 2022). Not only is this imperative to reducing First Nations instances of recidivism (Pooley 2020), but it also has the potential to be deadly – and not in the ‘awesome’ blak-English sense.

Described at present are not suggestions to merely consider. They must be taken seriously, and they must be enacted. JIYP are not rationally thinking adults. As explained in Question 1, there are numerous complexities behind youth offending. Further, these ‘offenders’ are just children. To deny advice that has been effective in reducing recidivism and promoting safety, rights, and wellbeing (see Justice Reform Initiative 2023a: 37-38) would not only be

foolish, but an immense failure imparted to the young people of Australia. Our children deserve a proper chance.

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

While Australia's punitive approach to criminal justice is not unique in comparison to other western countries, the rich Indigenous culture, history and disproportionately incarcerated First Nations people are. With this in mind, it seems appropriate to focus on Australian and Aboriginal and Torres-Strait Islander based and focused reforms that point to positive outcomes to reducing children and young people's involvement in the criminal justice system and that consider cultural nuances.

Historically in Australia, incarceration has been driven by a highly politicised and capitalist framework to justice, with little to no evidence of rehabilitation or long-term community safety. Evidence by organisations such as the [‘Justice Reform Initiative’](#) paints clear evidence-based alternatives; early intervention, community-led programs and tertiary intervention. These methods have shown to be hugely beneficial at:

- Reducing crime rates and recidivism
- Improving community safety
- Diverting children who are at risk of encountering the criminal justice system
- Improving the health, wellbeing and/or cultural engagement of children who have been or may be detained



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Examples of community-led and early intervention programs that have shown to work are:

Rante-rante Ampe Marle and Urreye (Tangentyere) (NT). Evaluations of the educational programs 'Girls Can Boys Can' and 'Old Ways are Strong' were conducted in 2020-21 to study the impact of the primary prevention projects. The programs focus on drivers of violence, gender inequality and early childhood gender equitable resources. The programs, as well as other educational programs such as NAPCAN '[Love Bites](#)', have proven to successfully challenge young people's views on gender, violence and stereotypes and reduce harmful attitudes (Brown, C., Homan, S., Simpson, C., & Leung, L., 2021).

Youth Partnership Project (WA). Through a collective state, local government and community sector approach the project focuses on early identification of complex needs within young people and targeted community services to prevent involvement with the justice system. They have evaluated the benefits of their program, this evaluation saw the Government saving millions due their intervention and a 50% reduction in reoffending who completed their program (Youth partnership project, 2021).

WEAVE - Youth and Community Services (NSW). Weave was created in response to the dire community needs in addressing the over-representation of Aboriginal people in the criminal justice system. It provides culturally safe support for Aboriginal young people (on release from custody). It has found that only 4.11% of the 93 young people engaged in the program over the 3-year evaluation period reoffended. In comparison to Bureau of Crime Statistics and Research (BOCSAR) reoffending rates for Indigenous youth which are 57.3% for a similar cohort (Schwartz & Terare, 2020).

Backtrack Youth Service (NSW). Backtrack was founded by Bernie Shakeshaft in 2006. Since then this program has supported 1,000 children and young people, mostly Indigenous, who are

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at risk of being involved with the criminal justice system or have already had contact with the justice system. The program reports that 87% of the young people who leave Backtrack have gone into employment or education. UNSW reports that the program has reduced crime in the local area of Armidale by 35%. This indicates an increase in community safety (Backtrack, 2021).

Target 120 (WA). First rolled out in 2018 in Bunbury and Armadale, the program has since expanded across WA and focuses on children ages 10 - 14. A government evaluation in 2020 revealed 50% of people who participated in the program had not gone on to offend (Justice Reform Initiative, 2023).

Foetal Alcohol Spectrum Disorder (FASD) is a massive contributor for young people being incarcerated and is overwhelmingly unrecognised, misunderstood and under diagnosed. The Australian Medical Association (AMA) emphasises the need for a diversionary approach that shifts towards the underlying, undiagnosed and unaddressed health needs (like FASD) of Aboriginal and Torres-Strait Islander people who are at high risk of entering the criminal justice system. Additionally, the prevention of conditions like FASD by promoting accessible, in-language knowledge on the risks of consuming alcohol while pregnant for First Nation parents (ALRC, 2018).

Above are just a few existing programs that are proving to be effective or suggested ones from AMA. The Justice Reform Initiative report has shown that early intervention and prevention strategies have helped reduce anti-social and problematic behaviours up to 48% and have a 5-31% annual reduction on specific crimes (Justice Reform Initiative, 2023). Prevention methods prove extremely effective when compared to pre-sentencing detention methods that have shown a 33% increase in recidivism for children and young people (Justice Reform Initiative, 2023). However, it is important to note that while these programs are effective, they are not perfect. This is largely due to lack of support and funding from the government.

**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?**

There are a plethora of benefits that come with taking a national approach to youth justice and child wellbeing reform in Australia but there are also many limitations around varying jurisdictions. The above examples of early intervention and community-led programs highlight the importance of federal and state government funding, support and resourcing towards organisations that focus on care, culture, education and opportunity for young people rather than punitive ‘tough on crime and criminals’ (Justice Reform Initiative, 2023). National funding would allow for these organisations to include further evaluations of their success and allow them to increase their support for young people who are at-risk of encountering the criminal justice system or help those who already have. A federal and state government approach towards these programs and evaluation will increase the sector's ability to share and build on top of each other's work and further evidence-based solutions (Justice Reform Initiative, 2023).

Furthermore, federal and state governments should look towards the root of the cause and why some children may be pushed into unfortunate circumstances which lead them into the criminal justice system (previously mentioned throughout question one). A root cause solution should include investments into safe and affordable housing, access to mental health services and disability support, employment and education along with all other basic Human Rights (Justice Reform Initiative, 2023). Currently many Australian children do not have access to fundamental, basic human rights, with over 750,000 children and young people living below the poverty line (Australian Council of Social Services, 2020) and 43.8% are being exposed to Domestic and Family Violence according to the recent Australian Child Maltreatment Study (ACMS) (ACMS, 2023). These factors increase a child's likelihood of encountering the justice system. This only further

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emphasises the need for increased government support and improvements for developing healthy family and relationship dynamics, support for out-of-home care services and housing.

While there are many limitations around differing jurisdictions there needs to be a greater push towards changes in policies, laws and significant education and training towards the 'Gatekeepers' of the criminal justice system - the Police Force. Changes around bail legislations in the Northern Territory have seen child incarceration rates increase (Justice Reform Initiative, 2023), diminishing any hard work done to lower the figures after the 2017 Interim Report of the Royal Commission into the Protections and Detention of Children in the Northern Territory (White & Gooda, 2017). Making it harder for these negative changes to legislation to be implemented and pushing for alternative solutions needs to happen on a national scale approach. Changes to the education and training of police is essential, the police have significant power and discretion when it comes to young people coming into contact with the system. Changes to education and training here may see police having increased knowledge on particular health related or family issues, increased sympathy and therefore would be more likely to divert young people to appropriate health or family support services instead of incarcerating.

Lastly, but arguably most importantly, a national based approach that comes from the people is fundamental to change. Educating society about the discourse of the current system and the benefits of alternatives will help provoke understanding. A social understanding that children are victims of crimes before they ever commit crimes needs to be established. An understanding that the current system negatively impacts a child's brain and neurological pathways and does not cater for existing mental and physical illnesses and disabilities amongst children who are incarcerated. A social movement on a national level is ultimately the key to influencing the political motivations of our government.

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