

*Acknowledgement: We acknowledge that this consultation took place on Gadigal Country, and we acknowledge that sovereignty was never ceded. This country always was and always will be Aboriginal land.*

*This document was written by NAPCAN Youth Speak Out (NYSO) Council, a diverse group of 20-young people aged between 13-25 living across Australia with diverse backgrounds and lived experiences. Below is a set of recommendations from their diverse and intersectional perspectives and backgrounds.*

*We also believe that it is important to highlight some powerful quotes that NYSO members mentioned during our consultation.*

***“The system was never broken, it is doing exactly what it is designed for”*** - Joshua Morris, Co-Chair of the NAPCAN Youth Speak Out

***“Youth are seen too young to make decisions and be involved in our welfare, but old enough to have decisions made on your behalf for the rest of your life”*** - NYSO Member.

***“Hurt people hurt people” - children are oversimplified and do not take into account that perpetration is often from victimisation”*** - NYSO Member.

***“At 10, [children] are old enough to remember but young enough not to understand moral rights and wrongs”*** - Ruben Sheriff, NYSO member and pakana man from lutruwita, Tasmania.

***“LORE over LAW - therapy on country is needed for First Nations children”*** - Ruben Sheriff, NYSO member and pakana man from lutruwita, Tasmania.

***“Youth incarceration doesn’t just affect a young people, but it affects every person that is connected to them - there are lifelong repercussions for community that we should not ignore”*** - NYSO Member.

***“What even is the aim of youth incarceration? Is it to punish or protect children and their communities?”*** - NYSO Member.

***“[Justice] is about power seeking, rather than applying justice”*** - NYSO Member.

## **Overview of Recommendations:**

### **1. Raising the Minimum Age of Criminal Responsibility to 14**

**1.1** We call upon all Australian states and territories to align with the international human rights standards by raising the minimum age of criminal responsibility from 10 to 14.

### **2. Alternative Methods to Youth Incarceration:**

**2.1** Develop culturally responsive alternatives to incarceration for young people, especially First Nations youth, by implementing community-led programs that engage young people with mentors, Elders, and traditional practices, supporting their development and rehabilitation in a culturally safe place, especially on country for First Nations youth.

**2.2** Establish diversionary programs offering alternatives to detention, including community service, cultural opportunities, and mentoring initiatives that connect young people with positive role models and supportive networks.

### **3. Early Prevention Education:**

**3.1** Introduce culturally safe educational initiatives that incorporate and celebrate First Nations culture, history, and perspectives within the curriculum. These initiatives aim to foster a sense of belonging and pride in identity among First Nations students, reducing disengagement and mitigating pathways to incarceration.

**3.2** Engage caregivers in early prevention education by providing training focused on effective, non-punitive parenting strategies and integrating culturally safe educational initiatives

### **4. First Nations Justice:**

**4.1** Establish a youth advisory body under the National Children's Commissioner specifically for Aboriginal and Torres Strait Islander children and young people. This body would ensure that the voices of young people inform ongoing policy development and hold governments accountable for implementing meaningful and sustained measures to address the overrepresentation of First Nations youth in incarceration.

## **Evidence Base:**

The ongoing overrepresentation of children and young people in the justice system, particularly among Aboriginal and Torres Strait Islander youth, is an integral issue that Australia must address. Raising the minimum age of criminal responsibility from 10 to 14 is crucial in aligning Australia's legal and human rights frameworks with international standards. Currently, Australia has one of the lowest minimum ages of criminal responsibility globally, a position that fails to recognize the developmental stages of children and their capacity for understanding the consequences of their actions.

In 2023, Aboriginal and Torres Strait Islander young people made up more than half (59%) of all those in detention aged 10 and over, while non-Indigenous young people made up 41%.<sup>1</sup> This alarming statistic, reinforces the systemic inequalities faced by First Nations youth in Australia. The overwhelming overrepresentation of First Nations young people in the justice system has been influenced by ongoing effects of colonisation, including but not limited to intergenerational

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<sup>1</sup> Australian Institute of Health and Welfare, Youth Detention Populations in Australia 2023. <Web Page, 2023>  
<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/first-nations-young-people>

trauma, socioeconomic disadvantage, and racism and discrimination within health, education, social and legal systems.<sup>2</sup> There is thus a strong emphasis needed for targeted policy interventions and recommendations that address the root cause of First Nations overrepresentation of incarceration and promote alternatives that also effectively address the effects of colonialism.

Targeted policy interventions and recommendations are essential for addressing the root causes of overrepresentation and incarceration of Indigenous youth in Australia. These strategies should not only confront the ongoing impacts of colonialism but also celebrate and elevate the strengths and richness of Indigenous cultures. For instance, practices such as restorative justice, which involves the participation of Elders, serve as effective diversion and intervention measures. By integrating these culturally informed approaches, we can foster a justice system that values healing and rehabilitation while simultaneously acknowledging the resilience and wisdom inherent in Indigenous traditions.

These policies would not only promote justice and equity but also contribute to a broader societal recognition of the unique cultural contributions of Aboriginal and Torres Strait Islander peoples. This alignment with Indigenous perspectives can lead to more meaningful engagement and outcomes in youth justice.

Aligning Australia's minimum age of criminal responsibility with international standards is not just a matter of compliance; it is a critical ethical obligation that reaffirms the country's commitment to justice and human rights. In 2021, 31 countries urged Australia to raise the minimum age of criminal responsibility,<sup>3</sup> highlighting a global consensus on the necessity of treating children with dignity and respect. This international call emphasises the urgent need for Australia to reassess its youth justice approach, especially considering compelling evidence that early incarceration not only fails to deter criminal behaviour but also harms young people's development and future opportunities

By prioritising the well-being of young people and promoting alternatives to incarceration, Australia can create a more just society where every child has the opportunity to thrive. Research from the Australian Institute of Health and Welfare,<sup>4</sup> shows that children initially placed in detention are much more likely to face subsequent sentences before they turn 18 compared to those who receive community-based supervision. This reinforces the harmful effects of early incarceration and highlights the need for preventive and rehabilitative approaches.

In addition to legislative reform, there is an urgent need for comprehensive early prevention initiatives and culturally safe educational programs that honour and integrate First Nations culture and history into the curriculum. Such strategies are essential for fostering a strong sense of identity and belonging among Indigenous youth, particularly for young people and children who may feel a disconnect from their culture due to ongoing effects of colonisation. This can effectively reduce disengagement and mitigating pathways to incarceration. Ultimately, raising the age of criminal responsibility presents an opportunity for Australia to prioritise rehabilitative and supportive alternatives over punitive measures, ultimately aiming to lower recidivism rates.

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<sup>2</sup> Chris Cunneen, Racism, Discrimination and the Overrepresentation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues. <Web Page, 2006> <https://www8.austlii.edu.au/au/journals/CJCrimJust/2006/1.pdf>

<sup>3</sup> Human Rights Law Centre, UN Review Highlights Need For Australia to Raise the Age of Criminal Responsibility <Web Page, 2021> <https://www.hrlc.org.au/news/2021/1/20/un-review-highlights-need-for-aust-to-raise-the-age-criminal-responsibility>

<sup>4</sup> Australian Institute of Health and Welfare, Young people returning to sentenced youth justice supervision Web Page, 2023> <https://www.aihw.gov.au/getmedia/4c4147a4-b243-4021-a9e1-6a3bda4f8cc7/aihw-juv-141.pdf?v=20230801105939&inline=true>

To address the overrepresentation of children and young people in Australia's justice system, a holistic approach must be adopted. This is because youth incarceration is not a stand-alone issue, but rather one that affects children's health, education, and social networks. There must be a targeted strategy that integrates legislative changes, community engagement, and the implementation of culturally responsive interventions that prioritise the well-being and rehabilitation of all young people. By taking these critical steps, Australia can work towards a justice system that is equitable, supportive, and reflective of the rights and needs of all its youth.

### **Recommendation One: Raising the Age**

The foundation of our submission is to ensure that this recommendation is embedded in every subsequent recommendation outlined below. Raising the minimum age of criminal responsibility in Australia from 10 to 14 is not merely a legislative adjustment; it is an imperative step toward safeguarding the future of our youth and fostering healthier, more resilient communities. By preventing the criminalisation of young children, Australia can foster a more compassionate and rehabilitative approach to youth justice. This change would allow young individuals to avoid the detrimental effects of incarceration, such as stigma, trauma, and disruption to education and family connections. Reducing the number of young people in detention can further alleviate the social impacts associated with youth offending, including healthcare, legal, and welfare expenses. As it stands, youth incarceration is the most costly and least effective method for deterring criminal behaviour. The following recommendations outline how raising the age of criminal responsibility can effectively achieve this goal.

### **Recommendation Two: Alternative Methods to Youth Incarceration**

Recommendation 2.1 and 2.2 highlight the need for the development of community-led programs that engage young people with mentors, Elders, and traditional practices. This is essential in creating culturally safe environments for rehabilitation. Evidence suggests that culturally relevant interventions significantly improves health and wellbeing outcomes for First Nations youth.<sup>5</sup> For instance, programs that incorporate cultural practices, such as language, art, and storytelling, foster a sense of identity and belonging, which are critical components of healing and rehabilitation. Cultural approaches to connection can lower recidivism rates by fostering self-esteem and resilience among participants, especially for children and young people who have been disconnected from their communities. By engaging individuals in culturally relevant practices, these programs can foster a sense of identity and belonging, which are crucial for successful rehabilitation and reintegration into society.

Engaging Elders and community mentors can create a bridge between traditional knowledge and contemporary challenges, offering young people guidance and support that is deeply connected to cultural heritage. By prioritising relationships and community involvement, these programs can help young people reconnect with their identity, reducing feelings of isolation often experienced in the justice system .

Further, the establishment of diversionary programs presents an integral opportunity to reduce state and territory government reliance on detention. Programs such as community service, cultural programs, and mentoring initiatives are methods that can sprout supportive environments that foster social responsibility and community engagement.

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<sup>5</sup>Yaqoot et al. Cultural Identity and Social and Emotional Wellbeing in Aboriginal and Torres Strait Islander Children <Web Page, 2022>  
[https://link.springer.com/chapter/10.1007/978-3-031-12224-8\\_4](https://link.springer.com/chapter/10.1007/978-3-031-12224-8_4)

### **Recommendation Three: Early Prevention Education**

Early education is essential in preventing youth incarceration by equipping young people with vital social, emotional, and academic skills that build resilience and decrease behavioural problems. While there are many effective prevention programs available at NAPCAN, we strongly believe that community plays a crucial role in creating supportive environments where young people can thrive.

Recommendation 3.1 highlights the importance of education that highlights the ongoing impacts of colonisation and incorporates First Nations culture, history, and perspectives into the curriculum. This recommendation can aid in creating a safe environment where Aboriginal and Torres Strait Islander students feel a deep sense of belonging, connection, and pride, in their identity. This is more than just adding cultural content in the educational curriculum, but rather addressing the intersection of colonisation and youth incarceration at its core. To ensure this is effectively delivered, it is crucial to engage with Indigenous educators and community leaders in the curriculum development process. This initiative aims to decolonise and integrate Indigenous knowledge into the curriculum, following the expertise and best practices of Indigenous educators, especially to support the most disadvantaged children and young people.

Recommendation 3.2 is integral in implementing programs designed specifically for caregivers of primary-aged children, focusing on effective, non-punitive parenting strategies. The early years of a child's life are crucial for emotional and behavioural development. Non-punitive approaches lead to more positive outcomes in children's emotional regulation and behaviour, reducing the likelihood of future involvement with the justice system.<sup>6</sup> Caregiver training should focus on strategies for creating a supportive home environment, highlighting the importance of effective communication, emotional intelligence, and positive reinforcement. Should an approach like this be integrated, there must also be a large emphasis on integrating culturally safe educational initiatives with targeted support programs for caregivers.

### **Recommendation Four: First Nations Justice**

Recommendation 4.1 highlights the need for a creation of a youth advisory body under the new National Children's Commissioner for Aboriginal and Torres Strait Islander children and young people. This is essential to ensure their voices are heard in the policymaking process. This body would serve as a platform for young First Nations individuals to share their experiences and perspectives, directly influencing policies that affect their lives. By actively involving young people in discussions about youth justice, education, and community services, the government can develop more effective and culturally appropriate strategies to address the overrepresentation of First Nations youth in incarceration. There is consistent evidence that indicates when young people are engaged in the decision-making process, it leads to better outcomes and more relevant policies.

The advisory body would not only empower young individuals but also hold state and territory governments accountable for implementing policies that align with their needs. Additionally, this initiative can foster greater awareness among policymakers about the unique challenges faced by Aboriginal and Torres Strait Islander youth, ultimately contributing to more meaningful and sustained measures to reduce incarceration rates.

To ensure effective youth engagement, this advisory body must be a paid position, emphasising

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<sup>6</sup>Australian Institute of Criminology. Cross-over kids: Effective responses to children and young people in the youth justice and statutory Child Protection systems <Web Page, 2019> <https://www.aic.gov.au/sites/default/files/2020-05/Cross-Over-Kids-Report-Dec2019-v2.pdf>

the involvement of Indigenous youth with lived experience of incarceration. Amplifying their voices is critical to developing policies that are truly reflective of their needs and realities. This advisory group should have the autonomy to shape youth justice strategies and work directly with policymakers, ensuring that culturally safe and community-centred approaches are prioritised.

## **Conclusion**

Raising the minimum age of criminal responsibility is not just about reaffirming Australia's commitment to human rights, but it must be about prioritising the well-being and potential of our young people. The proposed recommendations, including community-led programs and culturally safe educational initiatives, represent a profound shift in how we approach youth justice and support systems. Australia has the opportunity to reshape its justice system into one that truly reflects the values of fairness, compassion, and respect for human rights, and it must do so by creating a community that believes in their potential. Through this, we can take one step closer to a justice system which is just for all.

***"Justice, not just incarceration."***