



YOUTH JUSTICE AND CHILD WELLBEING REFORM ACROSS AUSTRALIA

National Children's Commissioner

Submission of the Community Restorative
Centre

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CRC acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water, and community and pay respects to Elders, past and present. This always was, always will be Aboriginal Land.

The overrepresentation of First Nations children and young people in criminal legal systems across this continent is a national shame. We recognise the harm caused by these systems and the tireless advocacy of First Nations individuals, families and communities to reduce the criminalisation of their kin. Given the significant proportion of young people in the criminal legal and child welfare systems, any conversations about the criminalisation of young people must centre the voices and expertise of First Nations individuals – including young people – their families, communities, and Aboriginal community-controlled organisations, and their solutions must be adequately resourced and supported.

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1. INTRODUCTION: YOUTH JUSTICE REFORM IN AUSTRALIA

Thank you for the opportunity to provide comment into opportunities for youth justice reform in Australia. This submission is informed by our experience and expertise as an organisation working in frontline service delivery with criminalised populations for over 70 years, as well as research projects members of the Research, Policy and Advocacy Unit (APRU) at CRC have been involved in. In this submission, we provide responses to the questions set out by the Australian Human Rights Commission (AHRC) and provide information specific to the Community Restorative Centre's (CRC) model of post-release support for people leaving prison.

Attached to this submission are several publications which we believe are of relevance to the AHRC inquiry. These include:

- Sotiri, M., McCausland, R., Reeve, R., Phelan, L. and Byrnes, T. Phelan, L. (2021) *'They're there to support you and help you, they're not there to judge you'. Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centre's AOD and reintegration programs*. UNSW/Community Restorative Centre: Sydney.
- Cunneen, C., Goldson, B., and Russell, S. (2016) 'Juvenile Justice, Young People and Human Rights in Australia', *Current Issues in Criminal Justice*, 28(2), pp. 173-189.
- Baldry, E., Briggs, D.B., Goldson, B and Russell, S. (2018) "'Cruel and Unusual Punishment": an inter-jurisdictional study of the criminalisation of young people with complex support needs', *Journal of Youth Studies*, 21(5): 636-652.
- Cunneen, C., Russell, S. and Schwartz, M. (2020) 'Principles in diversion of Aboriginal and Torres Strait Islander young people from the criminal jurisdiction', *Current Issues in Criminal Justice*, 33(2): 170-190.

2. ABOUT THE COMMUNITY RESTORATIVE CENTRE

The Community Restorative Centre (CRC) is the lead NGO in New South Wales (NSW) providing specialist support to people affected by the criminal justice system, with a particular emphasis on the provision of post-release and reintegration programs for people with multiple and complex needs. CRC has over 70 years specialist experience in this area. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal justice system involvement, and build pathways out of the criminal justice system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social isolation, physical and mental health, disability, employment, education, family relationships, financial hardship, and histories of trauma. All CRC services utilise a human rights framework which recognise the inherent value of all people and aim to create genuine opportunities for people affected negatively by the criminal justice system. People leaving prison and their families have the right to be treated fairly and have the ability to make genuine choices about building pathways out of the criminal justice system and into the community. CRC has historically focused on the provision of services to adults, however we noticed a significant gap in community-based service provision for children and young people at risk of criminal justice system contact and those leaving custody and since 2021 have supported this group through our Pathways Home Program.

2.1. The Pathways Home Program

The Pathways Home Program is a long-term, holistic, intensive youth work and care coordination project supporting at risk young people to build sustainable pathways out of the criminal justice system. The program provides a through-care model of support for young people aged 10-24 years of age exiting custody or previously incarcerated residing in Central, Eastern and Western Sydney who also have a history of problematic alcohol and/or drug use. Pathways Home aims to address holistically the individual, social and structural causes of incarceration, including drug and alcohol use, homelessness, social isolation, physical and mental ill health, disability, access to education, access to



employment opportunities, family relationships, financial hardship and histories of trauma. In 2021/22, the program provided 37 clients with intensive casework support. 62% of Pathways Home Program participants are First Nations and 17% are from culturally and/or linguistically diverse backgrounds. Pathways Home is currently funded for 3 positions, 2 of which are First Nations identified.

3. A PICTURE OF CHILDREN AND YOUNG PEOPLE IN THE CRIMINAL LEGAL SYSTEM

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

3.1. Poverty, marginalisation and the intersection of multiple and complex support needs

Decades of research on the criminalisation of young people and their involvement with the criminal legal system has uncovered that they typically experience compounding forms of marginality and intersecting complex support needs, and that these shape their pathways into and out of the criminal legal system^{1,2}. Typically, criminalised children and young people come from backgrounds of entrenched disadvantage and marginalisation, have fragmented experiences with education systems, have experienced housing precarity, have serious substance use concerns, and high levels of mental and cognitive disability^{1,2}. In addition to this, they often have unresolved trauma and high levels of contact with child welfare systems³. This picture is reflective of clients of CRC's Pathways Home Program.

Table 1 Prevalence of disadvantage amongst NSW youth custodial populations^{3,4}

Disadvantage	Prevalence in NSW youth custody
Cognitive disability	18%
Borderline cognitive disability	39-46%
Mental health disorder	83%
Child protection	53%
Ever expelled from school	56%
Homeless or unstable accommodation prior to custody	28%

It is important to point out, that due to the ongoing impacts of colonisation, many First Nations children in contact with the criminal legal system experience these above disadvantages at significantly higher rates⁴. Research has shown that disability and disadvantage amongst young people is indeed criminalised.¹

3.2. Settler colonial context and the overrepresentation of First Nations children

In NSW, First Nations children make up 6.2% of those in the general population but **45%** of those under community based and custodial supervision. The overrepresentation is more pronounced for those in custody (53%) in comparison to those who are supervised in the community (43%)⁵. This means First Nations children aged 10-17 in NSW are **13 times** as likely as non-Indigenous young people to be under any form of criminal justice supervision, and **17 times** more likely to be in youth prison – the most punitive form of youth justice intervention⁵.

It is important to note that youth offending rates have actually decreased over the past decade in NSW. In 2011-12, 23,537 young people were proceeded against by police. This compares to 16,885 in



2021-22. This equates to a **39% decrease** in the number of young people proceeding against by police in the last decade⁶. While the number of young people in prison has reduced significantly in NSW in recent years, the *proportion* of First Nations children in prison has *increased*. For example, in 2011-12, 40% of the youth prison population were First Nations, and in 2021-22, **45%** of the youth prison population is First Nations. This shows that First Nations children are not benefiting from the reductions in youth prison populations in the same way as non-Indigenous children and young people.

The contemporary reality of the overrepresentation of First Nations children in the criminal legal system cannot be divorced from the historical and ongoing processes of colonisation. First Nations people continue to experience significant health inequalities in comparison to non-Indigenous Australians. CRC recognises that First Nations people have been exposed to systematic injustices, and that as a result they have higher rates of chronic disease, mental illness and substance use issues than the general population, all of which can drive cycles of criminalisation and imprisonment⁷. These health disparities are driven by complex social, cultural and historical factors, including the ongoing impacts of colonisation, racism and intergenerational trauma. Alongside this, First Nations children are subject to disproportionate levels of surveillance, intervention, punishment which has compounding negative impacts^{2,8}.

3.3. The intersections of child welfare and criminal legal systems

Across Australian states and territories, more than half (**53%**) of the children who are in contact with the criminal legal system have also had an interaction with the child protection system³. Young people in prison are **more likely** than those supervised in the community to have had contact with the child protection system. These figures are higher for **First Nations children**: where **64%** have also had an interaction with the child protection system. The figures are also higher for **females**: where **71%** have also had an interaction with the child protection system.³ Research has found children and young people are criminalised in the context of their placement in OOHC⁹. For instance, police may be called in circumstances which would not ordinarily warrant police attention².

4. PROTECTING THE RIGHTS AND WELLBEING OF CHILDREN AND YOUNG PEOPLE

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?

4.1. Reducing the criminalisation and imprisonment of children and young people

Over the last decade there have been **more than 30 reviews** undertaken by oversight bodies into the conditions of youth justice system in Australian states and territories. These inquiries have detailed serious human rights abuses and infringements related to: treatment of young people in prison; inhumane conditions; punitive environments; use of spithoods and restraints; use of isolation and solitary confinement; strip-searching of children; lack of education; imprisoning children in adult facilities and unlawful detention, amongst others^{10,11}. These reviews and inquiries have also reported failings in relation to the systems capacity to address the needs of particularly vulnerable young people including: a lack of disability specific support and understanding of disability and complex support needs; lack of trauma-informed support; lack of case management. There have also been related specific problems relevant to staffing and the culture within youth justice systems, including: the overreliance on the use of casual staff; a lack of training for staff; serious misconduct by staff; frequent lockdowns due to staff shortages.



These reviews highlight there are systemic problems within youth justice systems. Often, recommendations stemming from inquiries are repeated from one to the next with little systemic change occurring. It is our view that there must be a legislated requirement for governments to respond and commit to recommendations from government inquiries and accountability if they fail to do so. One key theme emerging from repeated reviews and inquiries is that prison **should be a measure of last resort** (in line with human rights frameworks which Australia is a signatory to)¹⁰.

The idea that prison be a measure of last resort for young people is also bolstered by the reality that these systems are *criminogenic*, in that those who have been to prison are more likely to return. Research has shown that imprisonment is not an effective intervention for children and young people, and that criminalisation more broadly is ill-suited to meeting the goals of harm prevention and community safety¹². Children and young people have high rates of reoffending. Data from NSW shows that **47%** of young people found guilty in 2020 reoffend within 12 months. These figures are higher for First Nations young people (**57%**), and for young children (aged 10-13 years) who reoffend at a rate of **62%** compared to **46%** for young people aged 14-17 years¹³. Against the backdrop of profound disadvantage experienced by criminalised young people that we note that the behaviours of children and young people that are currently treated as ‘offending’ are better treated as indicators of need.

A concerning factor in NSW and other Australian jurisdictions is the high proportion of young people in custody on remand. Almost 3 in 4 (**72%**) people in youth prison are unsentenced (and are bail refused), which means they are awaiting the outcome of their court matter or have been found guilty and are awaiting sentencing. Many young people end up remanded into custody due to a lack of appropriate alternative accommodation¹⁴. We note the importance of holistic, community-based, housing-first approaches to ensure young people are not unnecessarily held on remand.

We also note that the small numbers of young people in custodial settings means young people are frequently detained in prisons long distances from their families and communities. Many families do not have the financial resources to be able to travel to visit their loved ones locked up. This is particularly the case for girls, where there is only one female youth prison. The location of youth prisons also has particular negative impacts for First Nations young people who are dislocated from family and off Country.

5. REDUCING CHILDREN AND YOUNG PEOPLE’S INVOLVEMENT IN THE CRIMINAL LEGAL SYSTEM

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?

We note the importance of community-based approaches to reducing criminal legal system contact. In particular we draw attention to CRC’s model of community-based support, the positive evaluative evidence of this approach, and the way it has formed the basis of the youth-specific Pathways Home Project.

5.1. CRC’s model of community-based support

CRC’s model of community-based support has shown to be effective in supporting people to break cycles of disadvantage and imprisonment. This model is based on the following principles:

1. **Reintegration framed outside the lens of individual rehabilitation:** There is a need to create and facilitate pathways for people leaving prison that are not explicitly focused on addressing



offending behaviour, but rather focused on the creation of an identity outside of the criminal justice system and addressing systemic barriers to reintegration.

- 2. Service delivery incorporating systemic advocacy:** service delivery must include a significant advocacy component that addresses the structural barriers for individuals (such as access to housing, employment, education, health and social security benefits), and advocates systematically for change when this is required. Systemic advocacy sees workers walking alongside people leaving custody and challenging the multiple and forms of perpetual punishment experienced by people with criminal records.
- 3. Pre-release engagement:** Meeting and working with people prior to release is necessary with respect to building the engagement necessary to sustain the casework relationships, building trust between someone in prison and the community organisation on the outside, and practically planning for re-entry into the community with complex needs populations.
- 4. Holistic, relational and long-term casework models:** People with long histories of trauma in combination with 'referral fatigue' experienced by this group, require long-term support in order to build engagement and trust. Long-term support also allows people the opportunity to develop the skills required to navigate frequently hostile or unwieldy service systems. Many CRC clients also require support with living skills and adjusting to life outside of institutional environments. For First Nations people, support must be culturally safe.
- 5. Community based outreach:** services that work with people with long histories of criminal justice system involvement need to operate outside of the criminal justice system, and in the communities in which people are living.
- 6. Housing first approaches:** support must be concrete. Most people require a solid base from which they can try and make the changes required to stay out of prison.
- 7. Genuine collaboration and work with people with lived experience of incarceration:** at all levels of program delivery. The expertise of people who have themselves been to prison is critical in both the design and the delivery of community-based reintegration services^{15,16}.

In 2021, the CRC published an evaluation of its Alcohol and Other Drugs (AOD) and reintegration programs which was conducted with the University of New South Wales and funded by a grant from NSW Health. This evaluation investigated the efficacy and impact of support provided by CRC to adults leaving custody or at risk of incarceration, with a particular focus on populations requiring support around the use of drugs and alcohol. The evaluation took a mixed methods approach involving five distinct studies: (1) Qualitative Study, (2) Client Survey Data Study, (3) Quantitative Analysis of CRC Client Outcomes, (4) Quantitative Databank Comparison Study and Costs, (5) Matched Comparative Case Studies and Costs.

The quantitative component of the evaluation found that people leaving prison and receiving CRC support was correlated with a significant reduction in criminal justice system contact relative to a comparison cohort. It found that CRC support was associated with a dramatic impact on clients' trajectories and a reduced contact with the criminal justice system (including time in custody and rates of reoffending). These improvements could result in significant cost savings to the justice system. For an annual cohort of 275 new CRC clients, the estimated net benefit to the justice system over three years is between \$10 million and \$16 million.

The qualitative study highlighted that there is a need to understand the practical and relational kinds of support people require within the context of structural and systemic disadvantage. It found that incarceration disadvantage is itself located in the context of a lifetime of other kinds of disadvantage.

The evaluation showed that CRC's flexible, outreach, relational, long-term throughcare program achieved change in a range of areas, including breaking cycles of recidivism and alcohol and other drug use. Meeting basic welfare, housing, health and support needs were shown as fundamental to building a life outside of the prison system and reducing violence. The way in which support was provided and the manner in which people who have experienced incarceration and disadvantage were treated by



workers (respectful, non-judgemental, compassionate, consistent) was a fundamental factor in achieving a change¹⁷. A copy of the evaluation is attached to this submission.

CRC's youth Pathways Home Program is based on CRC's model of support described above. However the program diverges in that it is an age-appropriate response and works with families in order to appropriately support young people. Pathways Home was originally funded as a two-year pilot program but has recently received funding until the end of 2024. As it is a relatively new project of CRC, it has not yet been independently evaluated, however the following case studies provide insight into the way it supports young people.



Pathways Home client case study – Heath

Heath was referred to Pathways Home in July 2021, only a few weeks before his release from custody. During AVLs Heath presented as a likeable, intelligent young person who was highly energetic and easily distracted. He was easy to talk to and down-to-earth. Heath seemed eager and open to support, although there were clear indications that there were many topics from his past he was not yet willing to discuss. Heath was released during the peak of COVID lockdowns into temporary accommodation, at which point he struggled to stay connected with supports and manage the expectations of Housing, as he was moving from one location to the next, struggling to manage public transport to locate the properties and maintain communication. The tasks seemed insurmountable. After a couple of weeks, he breached his parole orders and was returned to custody.

The Pathways case worker was notified of his return to custody and booked the next available AVL with Heath. Heath initially expressed frustration and feeling ashamed; however, he began to open up to his case worker about his experiences and his past. Heath described moving to Australia with his mother and five siblings from a country with significant civil unrest as traumatic and difficult. Heath and his family struggled to find their way in Australia, clinging together for support in the family unit and with other refugee families, working hard to try and succeed in a new country and adapt to a new culture and language while trying to reconcile their past and the atrocities they had witnessed.

Heath found the gulf between his two worlds difficult to navigate, however he persisted. He did well at school and went on to tertiary education, where he struggled to manage his thoughts and emotions. As a result, Heath began using substances to cope. He was living with his brother, who was leading a hardworking, substance-free lifestyle. However, Heath struggled to manage the demands of daily life and his use of substances increased. Eventually Heath's life spiralled out of control and he ended up in the criminal justice system.

Heath told his case worker he couldn't handle the cycle of release, substance use and custody, and that he wanted to resume life in the community with his family. This stint in custody was to be his last. Heath was working towards his earliest release date, however he faced an additional charge that resulted in a very harsh sentence, and his time in custody increased dramatically. Heath was demoralised and struggled to cope with the news of his extended custodial sentence. The Pathways Home team worked closely with his lawyer to appeal the sentence, speaking in greater detail with Heath about his life, the circumstances around the additional charge and his plans for his future to write a comprehensive support letter for his appeal. Heath's appeal was successful and his sentence was reduced significantly.

Heath has spoken about his increased determination to succeed, as well as opening up on topics he has previously not felt comfortable to discuss, both important steps towards healing from his past and moving towards his future. Heath is currently working with his case worker on his plans for exit from custody, including making sure supports and services are in place, practising strategies and increasing his wellbeing and stability to ensure that he has the best chance possible of successful reintegration and avoiding previous stumbling blocks.



Pathways Home client case study – Kelly

Kelly is an 18-year-old pregnant First Nations young person. Kelly was referred to Pathways Home while she was in custody. Kelly has an extensive history of criminal justice involvement, childhood trauma, experience of the out-of-home-care system, mental ill health and distorted attachments. Kelly has worked with many support services over the years and struggles to trust and connect with support staff.

Kelly commenced working with the Pathways Home case worker five weeks prior to being released from custody. This timeline was extremely important as it allowed Kelly to build a relationship and the foundations of trust with her case worker. Kelly engaged well with her case worker and discussed her goals around accommodation, her baby's health, her substance use and transitioning back into the community. Kelly's goals also included diversion away from past problematic relationships and engaging in illegal activities.

In the lead-up to her release, plans were put in place for Kelly to be supported in a rehabilitation program in Far West NSW. Kelly was offered autonomy and supported by her case worker to explore her options, including alternatives, before she committed to this plan.

On the day of her release from custody Kelly felt sufficiently comfortable with her case worker to further discuss her goals and plans. Based on the relationship they had built prior to her release, Kelly was able to communicate honestly and openly. She decided not to attend the rehab program and was supported by her case worker to explore all suitable options for accommodation and ante-natal supports. Kelly has faced challenges being back in the community, however she is managing well with trusted supports to continue to walk alongside her.

Kelly has maintained contact with her case worker following her release from custody and is being supported to attend parole and medical appointments. She is also working towards other case plan goals, including those around her pregnancy and substance use. Kelly engages positively in case management and is able to work honestly and communicate positively with her case worker. Kelly has maintained consistent contact with the program and continues to work towards maintaining a positive position in the community.

5.2. Diversion of young people from the criminal legal system

Given the significant harm caused by the criminal legal system, and in line with international human rights agreements such as the United Nations Convention on the Rights of the Child, we note the importance of early intervention and diverting young people from the criminal legal system. In diverting First Nations people from the youth justice system, we refer to the good practice principles of diversion outlined by Cunneen et al (please see article attached to this submission)¹⁸.

1. Self-determination: diversion programs should be Aboriginal and Torres Strait Islander community developed, owned and driven, and incorporate young people's voices.
2. Consistent with the principle of self-determination, discretion to access diversionary programs should not be solely in the hands of police.
3. Diversionary programs should ensure cultural safety and cultural security.
4. Programs should incorporate elements of Aboriginal and Torres Strait Islander custom and law.
5. Programs should deliver family-centred support based on a holistic view of Aboriginal and Torres Strait Islander health and wellbeing¹⁸.



5.3. Raising the minimum age of criminal responsibility

The minimum age of criminal responsibility is the primary legal barrier to entry into the criminal legal system. We support calls by academics, community sector workers, and Aboriginal leaders to raise the minimum age of criminal responsibility to at least 14 years¹⁹. We note that a low age of criminal responsibility **particularly affects** vulnerable children. For example, Across Australian states and territories, of those aged 10 at their first youth justice supervision **81%** had also had an interaction with the child protection system³. We note that the system **does not work** for young children who have particularly high rates of reoffending. **62%** of younger children (aged 10-13 years) reoffend within 12 months, compared to 46% of older children (14-17 years).

We highlight Chris Cunneen's work which outlines arguments for raising the minimum age of criminal responsibility¹⁹.

1. **Australia is out of step with the global norms:** The minimum age of criminal responsibility in the European Union is 14 years.
2. **Australia is contravening international human rights standards:** The UN has an established framework for safeguarding the rights of children who are in conflict with the law. The UN Committee on the Rights of the Child has recommended 12 years is the absolute minimum age for states to implement.
3. **Developmental arguments:** Children and young people are less psychosocially mature which affects decision-making and impulsivity.¹⁹
4. **High levels of mental health disorders and cognitive disabilities amongst young people in conflict with the law:** In recognition of the high rates of complex support needs amongst those in custody.
5. **Disproportionate impacts on First Nations children:** The majority of very young (under 14 years) children who end up in the youth criminal legal system are First Nations children.²⁰
6. **The views of key stakeholders:** A large study of youth justice systems in Australia found that key stakeholders working in youth justice system overwhelmingly agree that the age of criminal responsibility should be raised in Australia.²

Research from UNSW on raising the minimum age of criminal responsibility to 14 years argued for a non-criminalising, multi-agency, best interests-oriented response with a central role for local community-based organisations. This should include services and methods of intervention that are oriented towards physical and mental well-being, education and family support.¹²

6. TAKING A NATIONAL APPROACH TO YOUTH JUSTICE REFORM

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?

It is our view that there should be a national approach to safeguarding the human rights of children and young people enmeshed in the criminal legal system which reflects Australia's obligations under international human rights agreements such as the United Nations Convention on the Rights of the Child. This includes reforms to the minimum age of criminal responsibility, the use of restraints such as spit hoods, and mandatory sentencing.



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