

Inquiry into Australia's Youth Justice and Incarceration System



Acknowledgement of country

No to Violence acknowledges First Nations Peoples across these lands; the Traditional Custodians of the lands and waters. We pay respect to all Elders, past, present and emerging. We acknowledge a deep connection with country which has existed over 60,000 years. We acknowledge that sovereignty was never ceded, and this was and always will be First Nation's land.

About No to Violence

No to Violence (NTV) is Australia's largest peak body for organisations and individuals working with people using violence to end family violence. We provide support and advocacy for this work, which includes but is not limited to, Men's Behaviour Change Programs, case management, individual counselling, policy development and advocacy, workforce development, and research and evaluation.

NTV delivers a range of frontline services, including the Men's Referral Service, Brief Intervention Service, Men's Accommodation and Counselling Service, and the Family Advocacy and Support Service. We also provide a range of training for the specialist family violence workforce, including a Graduate Certificate in partnership with Swinburne University and professional development for workforces who come into contact with people using family violence. NTV is a leading national voice and plays a central role in the development of evidence, policy and advocacy to support the work to end people's use of family violence.

As a pro-feminist organisation, the safety and dignity of women and children is at the centre of everything we do. It is by ending people's use of violence that families can have happier, safer and more fulfilled lives.

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Recommendations

1. Increase the minimum age of criminal and civil responsibility in all Australian states and territories to at least 16.
2. This inquiry centres the voices of the people and communities most impacted by the youth justice system: Aboriginal and Torres Strait Islander people, culturally and racially marginalised people, and people with disabilities.

Introduction

The *Inquiry into Australia's Youth Justice and Incarceration System* is a crucial opportunity to drive positive change at a critical moment in time. The recent political backpedalling in the Northern Territory and Victoria on the minimum age of criminal responsibility will undo years of progress towards protecting young people from the devastating impacts of incarceration.

A significant proportion of children and young people in the youth justice system are victims of family violence.¹ As Australia's largest peak body for organisations and individuals working with people using violence to end family violence, NTV and our members have a deep understanding of the trauma and risk and protective factors that can influence the behaviour of children and young people. This knowledge is particularly informed by NTV's members who deliver dedicated services for children and young people.

This submission illustrates how Australia's youth justice system influences pathways into and out of family violence. It shows how the system perpetuates the disadvantage of marginalised children and young people. We argue the punitive nature of the current system harms Australia's efforts to end family violence. This submission is based on a nationwide survey of our members on criminalising children and consultations with our community legal colleagues.

Missed opportunities for disruption: how the youth justice system influences pathways into and out of family violence

Australia's punitive youth justice system reduces opportunities for disrupting pathways into using family violence (i.e. prevention and early intervention) and prevents the work that needs to be done to enable pathways out of using family violence (i.e. response, healing and recovery).

For children and young people using, or at risk of using, family violence, criminalisation creates barriers to living a life free from family violence. This is especially true for children and young people who are incarcerated. Being removed from their families and communities has devastating life-long impacts as these networks are crucial for supporting the psychosocial development necessary for youth to transition out of harmful behaviours.² Incarcerated children and young people often also face significant societal stigma, making it harder for them to reintegrate into society and avoid future

¹ Armytage & Ogloff. (2017). Executive summary. In P Armytage & J Ogloff (eds), *Youth justice review and strategy: Meeting needs and reducing offending*.

² Cavanagh. (2022). Healthy adolescent development and the juvenile justice system: Challenges and solutions.

criminal behaviour.³ Furthermore, prison environments reinforce harmful gender stereotypes and constructions of masculinity. In doing so, prisons can encourage incarcerated boys and young men to adopt violent behaviours to establish their 'manhood'.⁴ These impacts mean that Australia's youth justice system, at best, misses opportunities to intervene early and disrupt the development of harmful family violence behaviours, and at worst, drives pathways into using family violence.

Member insight on the impacts of criminalisation

The major limitations in responding to children and young people alleged of using family violence are overcriminalisation and a lack of focus for support and rehabilitation of those young people most at risk of becoming entrenched in a cycle of violence and locked in the criminal justice system, including First Nations young people, kids in out of home care, and CALD young people.

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Australia's youth justice system does not enable the work needed to support children and young people to never start or to stop using family violence. While best practice family violence responses to children and young people emphasise trauma-informed therapeutic approaches⁵, prisons are primarily designed for punishment rather than rehabilitation. Whole-of-family and community-based interventions are critical for supporting trauma recovery and a sense of belonging⁶, but the youth justice system cuts children and young people off from these networks. Furthermore, strengths-based and culturally appropriate approaches need to be centred for Aboriginal and Torres Strait Islander children and young people using family violence⁷. However, the youth justice system is not culturally safe for Aboriginal and Torres Strait Islander children and young people. Instead, it perpetuates colonial power structures and systemic racism, characterised by poor physical infrastructure, limited cultural spaces and inadequate access to cultural programs.⁸

³ Motz et al. (2019). [Does contact with the justice system deter or promote future delinquency? Results from a longitudinal study of British adolescent twins.](#)

⁴ Cesaroni et al. (2023). [Incarcerated Young Men, Masculinity, and Trauma.](#)

⁵ Campbell et al. (2023). [WRAP around families experiencing AVITH: Towards a collaborative service response.](#)

⁶ Campbell et al. (2023). [WRAP around families experiencing AVITH: Towards a collaborative service response.](#)

⁷ Campbell et al. (2020). [The PIPA project: Positive interventions for perpetrators of adolescent violence in the home \(AVITH\).](#)

⁸ SNAICC. (2024). [Re: General Comment No. 27 on Children's Rights to Access to Justice and Effective Remedies;](#) Commission for Children and Young People. (2021). [Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system.](#)

Member insight on best practice responses to children and young people

There is a need for targeted programs that address the risk of young people using violence where they have had a history of trauma and/or exposure to domestic and family violence. There also needs to be a huge investment in healing and recovery programs that are therapeutic and domestic and family violence informed to break the cycle of violence

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As a result, we recommend the minimum age of criminal and civil responsibility is increased to at least 16. The harmful impacts of criminalisation disproportionately experienced by marginalised children and young people, and the need for trauma-informed therapeutic approaches, underpin the need to raise the minimum age of criminal responsibility.⁹ Similarly, civil justice responses – such as intervention orders – are inappropriate for children and young people, who often do not understand the implications of the orders. These responses fail to address underlying drivers of violence such as trauma from previous and ongoing adult-perpetrated violence, and enable pathways into criminalisation by being charged with breaches.¹⁰ For more information the inappropriateness of intervention orders for children and young people, see Victorian Legal Aid’s submission to this inquiry.

The current system drives cycles of disadvantage

Australia’s federal, state and territory governments are responsible for ensuring Australia’s youth justice is equitable, fair and upholds the safety and dignity of children and young people. However, the current system perpetuates the disadvantage of marginalised children. Marginalised children are disproportionately targeted by the system through racial profiling and over-policing practices¹¹, and for Aboriginal and Torres Strait Islander children and young people, the ongoing impacts of colonisation.¹² This results in the overrepresentation of marginalised children in the criminal justice system, including Aboriginal and Torres Strait Islander children¹³, children with disabilities¹⁴, and culturally and racially marginalised children.

⁹ No to Violence. (2024). [Position Statement: Minimum Age of Criminal Responsibility](#).

¹⁰ Campbell et al. (2020). [The PIPA project: Positive interventions for perpetrators of adolescent violence in the home \(AVITH\)](#).

¹¹ Hopkins & Popovic (2024) [Do Australian police engage in racial profiling? A method for identifying racial profiling in the absence of police data](#); O’Brien (2021) [Racial Profiling, Surveillance and Over-Policing: The Over-Incarceration of Young First Nations Males in Australia](#)

¹² Yoorook Justice Commission. (2023). [Report into Victoria’s Child Protection and Criminal Justice Systems](#).

¹³ Australian Institute of Health and Welfare. (2024). [Contact with the criminal justice system](#).

¹⁴ Bower et al. (2018). [Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia](#)

The punitive youth justice system diminishes opportunities for disrupting pathways into and out of using family violence by placing marginalised children and young people—particularly First Nations children—at greater risk of criminalisation and further disadvantage. When marginalised children are overrepresented in the youth justice and carceral systems, there is an overfocus on only their displays of harmful behaviours. This means the harmful behaviours of privileged children and young people are obscured. While marginalised children often receive a punitive response, privileged children who exhibit similar behaviours are often provided with tailored, non-punitive interventions, such as private counselling. This significantly reduces their likelihood of entering a cycle of incarceration. No to Violence advocates for such non-punitive and therapeutic-based responses to be prioritised for all young people.

Member insight

The federal government must urgently pass national legislation to raise the age of criminal responsibility with no carve-outs, exceptions, or new police powers. It should do so as part of a national approach to youth justice that foregrounds evidence-based interventions to support desistance among children and young people in their communities. This approach should include national coordination of a response to the needs of children and families of people who are incarcerated, placing obligations on state and territory governments to formally recognise and coordinate service delivery to this cohort

Vacro

No to Violence maintains that the current youth justice system is in contradiction to realising the Commonwealth Government’s commitment to Closing the Gap. Progress toward Closing the Gap targets is stagnating, particularly in reducing the incarceration rates of Aboriginal and Torres Strait Islander children and young people.¹⁵ Governments continue to fail to heed Aboriginal and Torres Strait Islander leadership and proposed solutions to improving responses to children and young people. For example, the Victorian government's decision not to support critical recommendations of the Yoorrook for Justice Report around the minimum age of criminal responsibility risks ensuring the youth justice system will continue to hinder Closing the Gap objectives.¹⁶ Current rates of youth criminalisation and incarceration are only set to worsen with the decisions to lower the minimum age of criminal responsibility in the Northern Territory, abandoning commitments to raise it in Victoria, and reversing the presumption of bail for children in Queensland. No to Violence emphasises the urgent need to listen to Aboriginal and Torres Strait Islander voices and prioritise investment in community-led solutions.

¹⁵ Australian Government Productivity Commission. (2024). [Closing the Gap Information Repository, Target 11.](#)

¹⁶ Yoorrook Justice Commission. (2023). [Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems. Recommendations](#); Victorian Government. (2024). [Victorian Government Response to Yoorrook for Justice Report.](#)

Australian governments continue to prioritise a punitive response to children and young people accused of youth crime, despite strong evidence for the effectiveness of therapeutic and diversion approaches.¹⁷ Australia's work to end family violence within a generation and realise a more equitable society will not be achieved until governments prioritise rehabilitation over punishment.

¹⁷ KPMG. (2018). Maranguka Justice Reinvestment Project: Impact Assessment.; Department of Justice and Community Safety. (2020). Youth Justice Strategic Plan 2020–2030.