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AMA submission to the Australian Human Rights Commission - National Youth Commissioner's consultation on Youth Justice and Child Wellbeing Reform across Australia

By email only: youthjusticereform@humanrights.gov.au

The Australian Medical Association (AMA) welcomes the opportunity to submit to the National Youth Commissioner's [consultation on Youth Justice and Child Wellbeing Reform](#). The AMA believes all children have a right to a healthy start to life, a safe and secure environment in which to live, and equitable access to opportunities to help them learn, develop, and thrive.

The medical evidence is clear, jailing harms children mentally and impairs their physical development.¹ Society's response to youth justice should be informed by the Convention on the Rights of the Child², with a focus on health and wellbeing. This should include investment geared towards community empowerment and rehabilitation for at risk children who have contact with the legal system.

The AMA looks forward to following the progress of the reforms suggested through this consultation, in the National Children's Commissioner's Statutory Report, when it is handed to the Commonwealth Attorney-General in due course.

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

Australia has one of the lowest ages of criminal responsibility in the world and our history of colonisation and dispossession continues to be reflected in incarceration statistics. The criminalisation of children in Australia disproportionately impacts Aboriginal and Torres Strait Islander children. Although only about 6 per cent of young people aged 10–17 in Australia are Aboriginal or Torres Strait Islander, almost half (49 per cent) of the young people aged 10–17 in detention on an average day in 2020–21 were Indigenous.³ Intergenerational trauma and systemic racism continue to impact aspects of childhood and youth such as feeling safe in the community, getting an education, staying strong in culture and pursuing dreams and aspirations.

The AMA maintains that the minimum age of criminal responsibility should be raised to a 14 years of age across all jurisdictions.⁴ It is important to raise the age of criminal responsibility to 14, because studies have shown that the younger the child is when first having contact with the legal system, the higher the rate of recidivism. The current system is not designed to

rehabilitate, with government policy instead ensuring that certain children have prolonged contact with the legal system, rather than being given other rehabilitation options. A total of 4,536 young people aged 10 and over were under youth justice supervision on an average day in 2021–22 and 8,982 young people were supervised at some time during the year.⁵ Just over 3 in 4 (76 per cent) of young people in detention on an average day were unsentenced — that is, awaiting the outcome of their legal matter or sentencing.⁶

Most children in prison come from backgrounds that are disadvantaged, with intersectional disadvantage increasing likelihood of contact with the legal system. These children often experience violence, abuse, disability, homelessness, and drug or alcohol misuse. Social and cultural determinants of health and systemic inequalities, including poverty impact a child's likelihood of contact with the system. Criminalising the behaviour of young and vulnerable children creates a cycle of disadvantage and increases the likelihood of ongoing experiences within the legal system.

2. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people?

The AMA recognises that prolonged detention can be harmful to physical health and mental and emotional wellbeing, and that this is particularly the case for children, with their rights and wellbeing needing to be protected. The 'tough on youth crime' stance in states and territories needs to be reframed to a position that is informed by human rights, focussing on child health, emotional wellbeing and supporting justice reinvestment. The AMA recommends that the Commonwealth and state and territory governments support developmentally and culturally appropriate health, education, and rehabilitative-based alternatives to the legal system.⁷

As previously stated, the AMA maintains that the age of criminal responsibility should be raised from 10 years of age to a minimum of 14 years of age across all jurisdictions in Australia. Many 12-year-old children are still in primary school, and 13-year-old children are just beginning their secondary education. Our position is informed by medical evidence — jails are no place for children⁸. These facilities offer limited rehabilitation opportunities and can have serious adverse effects on child development and mental and emotional wellbeing.

The disproportionately high rates of incarceration of Aboriginal and Torres Strait Islander peoples in Australia must be redressed through fundamental policy and legislative reform, investment into community-driven diversionary and rehabilitation programs. These changes must be informed by the recommendations of the Royal Commission into Aboriginal Deaths in Custody.⁹ The impacts of systematic racism in the Australian legal system must be redressed, as well as more broadly across education, health, housing, employment, and land rights to ensure that Aboriginal and Torres Strait Islander people experience self-determination, good health, and equal opportunities.

The AMA is extremely concerned about the health and wellbeing of young people, many of whom are Aboriginal and Torres Strait Islander children, who are detained at the Don Dale Youth Detention Centre. The lack of urgency shown by successive Northern Territory

governments to implement the recommendations arising from the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory — now more than five years old, is of ongoing concern.¹⁰ We have ongoing concern for the health and wellbeing of children detained in the facility who are subjected to extended periods of isolation in inadequate conditions.

The AMA also acknowledges cases of children as young as 13 being held in solitary confinement for weeks in Cleveland Detention Centre in Queensland,¹¹ purely due to workforce shortages.¹² Queensland's Attorney General has recently stated that the government will hold firm on keeping the state's minimum age of criminal responsibility to 10 years old, which the AMA maintains goes against available medical evidence.¹³

The AMA also notes that whilst the Australian Capital Territory has committed to raising the age of criminal responsibility to 14, in a staged process with a first step of 12, then to 14, it still has the highest incarceration rates of Aboriginal and Torres Strait Islander people in the country. Aboriginal and Torres Strait Islander people are now 20 times more likely to be in prison in the ACT than non-Indigenous people, representing 26 per cent of the Alexander Maconochie Centre prison population and whilst the total number of people in the prison has gone down and is at its lowest since 2014–15, there has not been a reduction in the number of Aboriginal and Torres Strait Islander detainees.¹⁴ This is a trend also seen in the ACT's youth incarceration population.¹⁵

The AMA advocates that fundamental human rights of people in custodial settings must be upheld in custodial settings, including through equity of access to safe and appropriate health care. The health service delivery models in custodial settings must be appropriate for diverse populations including Aboriginal and Torres Strait Islander peoples, women and children, people living with a disability, people who identify as LGBTQIA+, and people of culturally and linguistically diverse backgrounds. This includes access to culturally safe health care, which must be prioritised through staff training and appropriate health programs at all stages of the custodial cycle. Equal access to support for mental health and wellbeing is essential. So too is access to education and vocational programs, and opportunities for young people to maintain connection to their communities whilst in custodial settings.¹⁶

3. What are the barriers to change, and how can these be overcome?

The AMA makes the following strength-based recommendations, to move away from criminalisation of children and punitive systemic responses. We maintain that children's health and wellbeing should be central to policy making and legislative reform in this area.

Justice reinvestment

Justice reinvestment is key to ensuring that young people are diverted away from the legal system, with better community support. The legal system takes children away from their families, communities, and other support, and pushes them down a path that often leads to adult prison. But other solutions exist. There are hundreds of community-led alternatives to prison around Australia that are already in place and working. Governments need to scale up

and fully-fund services that help children get their lives on track rather than sending them to prison.¹⁷ Governments at all levels must substantially and meaningfully invest in the social and cultural determinants of health to increase equity of access to educational opportunities, secure housing, safety and security and good health, especially for the most disadvantaged groups in Australia.

The AMA also asks that governments, as well as those services working in the legal system with youth, commit to further assisting people to be reintegrated into the community through targeting areas such as comprehensive release plans, social service integration through primary health care providers, housing and homelessness, and links with family and community. A commitment by governments is needed, to actively work towards decreasing criminalisation and recidivism rates. This should be done by detecting individuals with health issues that could put them at risk of imprisonment while in the community and working with them to treat those issues to prevent potential offending/reoffending.

Aboriginal and Torres Strait Islander community-led responses

Aboriginal and Torres Strait Islander peoples' knowledges, traditional community governance, capability and workforce have a central role to play to reduce incarceration, support people passing through the legal system and maintain strong integration to community and services after release.

The AMA recognises the importance of diversionary and justice reinvestment programs that are developed and led at local levels by Aboriginal and Torres Strait Islander communities to support young people thrive and avoid the cycle of incarceration.¹⁸ We recognise that cultural determinants play a strong and positive role in health and wellbeing, and this is relevant to health care and health outcomes across the entire spectrum of the legal system. To address the barrier of social and cultural determinants, investment must be made by the government to help reach the Closing the Gap outcomes.

Implementation of the Uluru statement, which calls for action on the disproportionate rate of Aboriginal and Torres Strait Islander peoples in custody¹⁹, is another vital step to helping address the cultural and social determinants that impact youth involved in the legal system, and their wellbeing. As already stated, we strongly recommend implementation of the recommendations from the Royal Commission into Aboriginal Deaths in Custody.

The AMA reaffirms that within custodial settings, health services need to deliver a culturally safe and competent service by employing greater numbers of Aboriginal and Torres Strait Islander health professionals, as well as working in partnership with Aboriginal Community Controlled Health Organisations (ACCHOs) or other services.²⁰ These services must be adequately resourced by all governments in order to provide culturally appropriate, community-centred and sustainable care in custodial settings.

4. 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?

In response to this question we have outlined examples of programs with positive outcomes. *Walali Bili* is a diversionary program based in Rockhampton Queensland, which helps divert at risk young people from coming into further contact with the legal system. The program works with young people aged 10–17 who have completed their youth justice commitments such as Youth Justice Conferencing, Community Service Orders, or detention. *Walali Bili* aims to encourage positive lifestyle choices and prevent re-offending behaviour. The program works in partnership with parents, care givers, other services, Elders, and the community.²¹

The *Tirkandi Inaburra Cultural and Development Centre Program*, is a program based in the Riverina region of New South Wales. The program provides a 10-week residential program for Aboriginal boys aged 12–15 who are at risk of contact with the legal system and in danger of falling behind in the education system. It involves on-country activities like heading out bush with elders, learning to dance and speak Wiradjuri language and exploring sites of cultural significance, and it employs a trauma-informed approach.²²

Youth justice is also being reformed by the introduction of *The Koori Court*, an opportunity for Aboriginal and Torres Strait Islander people to sit down with Elders and Respected Persons, a Koori court officer, the prosecutor, community correction officer, their lawyer and family.²³ Aboriginal Elders or other respected persons at this meeting may give cultural advice to help the magistrate make a judgment that is culturally appropriate and helps reduce the likelihood of reoffending.

Programs such as *Walali Bili* and *Tirkandi Inaburra*, and systemic reforms like The Koori Court, build on the strengths of community and culture, to help divert young people from the path of contact with the legal system, and recidivism. This leads to better outcomes for young people, with support networks in place to assist with diversion away from custodial settings.²⁴

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Contact

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- ¹³ Lydia Lynch (2023) *A-G rules out change to age of criminal responsibility*. Retrieved June 2023 from: <https://www.theaustralian.com.au/nation/politics/queensland-confirms-age-of-criminal-responsibility-will-remain-at-10-years/news-story/b8bcf2294d1c465a26a7900fa0c81b1a>
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