

Legal and Constitutional Affairs Reference Committee
Inquiry into Australia's youth justice and incarceration system

October 2024

**Advocacy and
collaboration to
improve access and
equity**

Royal Australian and New Zealand College of Psychiatrists submission

Inquiry into Australia's youth justice and incarceration system

About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP has more than 8500 members, including more than 6000 psychiatrists.

Introduction

Current medical and health evidence confirms that detention is harmful for all children, and that internationally accepted human rights standards call for an increase to 14 years as the bare minimum age of criminal responsibility to protect the rights and health of young children.[8,22,25] Children in our criminal legal system have high rates of additional neurocognitive impairment, trauma and mental health issues.[23] First Nations Australian's are overwhelming overrepresented in youth justice systems.[2] Those between 10 to 13 years of age that are forced through a criminal legal process during their formative developmental phases suffer immense and enduring harm.[15] State and territory governments must urgently commit to funding comprehensive, culturally safe community-led diversion programs to ensure children and youth are provided the necessary psychosocial response to reduce unnecessary and potentially harmful interaction with the justice system.[15]

Key recommendations

People with mental health conditions are more likely to experience interactions with the justice system.[1] To help address the issues faced by young people interacting with the justice the RANZCP recommends efforts to:

- Increase the minimum age of criminal responsibility to 14 years to better align with developmental medical consensus and international human rights obligations.
- Prioritise diversion programs that address underlying mental health and behavioral needs to prevent entry into the justice system.
- Develop and implement culturally safe, Indigenous-led diversion programs to reduce Aboriginal and Torres Strait Islander youth's overrepresentation in the justice system.
- Create enforceable national minimum standards for youth justice that uphold the rights of children.
- Mandate a national ban on the use of spit hoods and other harmful restraint practices in youth detention.
- Expand access to mental health services, particularly for children and adolescents in contact with the justice system.

About the RANZCP

The RANZCP welcomes the opportunity to contribute to the inquiry into Australia's youth justice and incarceration system (the Inquiry). The recommendations contained within this submission are based on extensive consultation with the RANZCP's Committees, including the Faculty of Child and Adolescent Psychiatry Committee, the Faculty of Forensic Psychiatry Committee, the Section of Child and Adolescent Forensic Psychiatry Committee and the Section of Psychiatry of Intellectual and Developmental Disabilities Committee, which include community members and psychiatrists with explicit lived experience.

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As the peak body representing psychiatrists in Australia and New Zealand, the RANZCP is in a unique position to comment on youth justice and child wellbeing. In July 2020, the RANZCP joined the [Raise the Age \(RTA\) campaign alliance](#), advocating for the minimum age of criminal responsibility to be raised to 14 years, in collaboration with [other agencies](#).

The RANZCP was a signatory to two Raise the Age Open Letters and one Joint Colleges letter to the Standing Council of Attorneys-General. Additionally, Branches of the RANZCP sent letters to Attorneys-General in their respective jurisdictions to further our advocacy efforts on this issue. The RANZCP has also released statements and submissions addressing human rights and the minimum age of criminal responsibility:

- 4 July 2022 – [RTA letter to the newly elected Attorney-General The Hon. Mark Drefus QC, MP, Minister for Indigenous Australians The Hon. Linda Burney MP, and Minister for Youth and Minister for Early Childhood Education The Hon. Dr Anne Aly, MP.](#)
- 16 November 2022 – [Letter from RACP, ACEM, CICM, RACGP and RANZCP to the Standing Council of Attorneys-General.](#)
- 8 December 2022 [RANZCP expresses concern for global human rights violations.](#)
- 21 April 2023 – [RTA letter to the Standing Councils of Attorneys-General.](#)

Additionally, the RANZCP has developed several key position statements pertaining to youth justice and interactions with the incarceration system:

- [Position Statement 59: The mental health needs of children in care or at risk of entering care](#)
- [Position Statement 111: Children with conduct disorder](#)
- [Position Statement 61: Minimising and, where possible, eliminating the use of seclusion and restraint in people with mental illness](#)
- [Position Statement 32: Abolition of torture and other inhuman treatment](#)
- [Position Statement 100: Trauma-informed practice](#)

Terms of Reference

a. The outcomes and impacts of youth incarceration in jurisdictions across Australia

Developmental Stage and Raising the Age of Criminal Responsibility

Individuals aged below 14 are still developing, which makes the current age of criminal responsibility a significant concern. Incarcerating young people during this formative period can inhibit their growth and worsen pre-existing mental health issues.[15] Given that children's brains are still developing, exposing them to the trauma of detention can have long-lasting negative effects on their emotional and cognitive development.[15] This indicates an urgent need to raise the age of criminal responsibility to better align with developmental science.

Impact of Incarceration on Mental Health

The impact of incarceration on children's mental health and wellbeing health is significant and well-documented. The [Draft Final Report 2020 by the Standing Council of Attorneys-General](#) emphasises that detention can lead to severe mental health challenges, which are frequently compounded by existing conditions. Incarceration, even for brief periods, is deeply traumatic for young people and can lead to long-

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term consequences that contribute to ongoing criminal behavior.[15] Such practices do not fit with current evidence bases surrounding trauma-informed care (See [RANZCP Position Statement #100: Trauma-informed practice](#)). Evidence shows that mental health issues are closely linked to initial offending and recidivism, creating a vicious cycle of justice system interactions that are difficult to break.[2,3,26]

Alternative Pathways to Incarceration

To mitigate these harmful effects, alternative pathways to incarceration should be a priority. Diversion programs present a viable and effective solution, offering supportive environments that focus on addressing underlying issues faced by young offenders rather than taking punitive measures.[20] These programs are designed to prevent young people from entering the justice system in the first place and provide them with constructive support to address their mental health and behavioral needs.

Evidence Supporting Diversion Programs

Contemporary evidence indicates that diversion programs have the potential to effectively address young people's treatment needs, particularly for mental health and substance use issues. Activities associated with these programs include participation in sporting teams, arts and creative engagement, community outreach, and culturally appropriate mentorship programs.[27] Evidence from the [Australian Capital Territory](#) shows that such engagement significantly reduces the likelihood of interaction with the justice system.[21] Data from New South Wales demonstrates that community mental health interventions reduce youth offending, and so too does the establishment of safe and secure housing options.[15] [The Links program in Western Australia](#), which offers clinical mental health support and alternatives to sentencing, found that 81% of participants experienced improved mental health outcomes, and 85% showed a reduced risk of self-harm or harm to others.[28] In Victoria, the Children's Court Youth Diversion (CCYD) program has successfully overseen more than 6,000 diversions since 2017, with a 90% successful completion rate. Currently Victoria has the lowest rate of youth under supervision in the country, along with a 75% reduction in the sentenced detention rate since the programs conception.[26]

Ineffectiveness of Incarceration and the Cycle of Recidivism

There is a growing body of evidence that incarceration is ineffective in addressing and reducing young people's interaction with the justice system.[23] Rather than rehabilitating, detention often exacerbates existing problems, creating a cycle of recidivism and future issues, including ongoing mental health challenges and repeated interactions with the justice system. The financial burden of youth custodial care, particularly for those with mental health conditions is significant, costing 300% more than community supervision orders.[15] By investing in diversion programs and alternative support systems this cycle can be broken and instead healthier development can be prioritized by reducing the long-term societal costs associated with youth incarceration. Proactive engagement and support are well-evidenced for fostering positive outcomes for young people, rather than subjecting them to the detrimental effects of incarceration.

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b. The over-incarceration of First Nations children

Over-Incarceration of First Nations Children

In Australia, Indigenous youth are severely overrepresented in the justice system, with incarceration rates 20 times that of non-Indigenous youth. In the Northern Territory, the youth incarceration rate is particularly severe, standing at approximately [1 per 1000 young people](#), with more than [95% of those incarcerated being Aboriginal or Torres Strait Islander](#). Young Indigenous offenders are less likely to receive diversion and are much more likely than non-Indigenous young people to be issued a court summons.[20] This is indicative of a systemic inequality facing Indigenous Australians.

Effects of Intergenerational Trauma

The effects of intergenerational trauma are profound and ongoing. Historical factors such as the removal of children from their families have lasting impacts, contributing to the erosion of culture, identity, and community cohesion.[15] This trauma not only affects individual mental health but also perpetuates a cycle of Aboriginal and Torres Strait Islander youth and justice system involvement. Parental incarceration often removes key household income providers as well as positive role models for young people, further perpetuating financial disadvantage and negatively impacting the overall mental health of young people.[15] The resulting social instability perpetuates the cycle of incarceration and trauma, making it increasingly difficult for affected communities to break free from these patterns.

Need for Culturally Safe Services

To effectively address these challenges, the development and implementation of culturally safe care and services are essential. These services must be co-designed and led by Indigenous peoples to ensure they are culturally relevant and responsive to the unique needs of Aboriginal and Torres Strait Islander youth (See [RANZCP Position Statement 105: Cultural safety](#)). Indigenous-led diversion programs are crucial for reducing the overrepresentation of First Nations children in the justice system.[29] Cultural safety is at the forefront of all risk assessments and interventions to prevent further disenfranchisement and trauma within these communities. When assessing the effectiveness of Indigenous-led diversion programs Indigenous information sovereignty must be upheld.[30] Indigenous health services should be empowered to own, control, access and possess data that is derived from them, and which pertain to their members and knowledge systems.[31] Such initiatives are vital for fostering a more equitable system that recognises and addresses the specific challenges faced by Indigenous youth.

c. The degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention:

International Obligations and Compliance Status

Australia has critical obligations as a signatory to the [United Nations Optional Protocol to the Convention Against Torture \(OPCAT\)](#). [25] Currently, there is a lack of coordination among state, territory, and federal governments in meeting these responsibilities. The [RANZCP has repeatedly urged](#) the Federal Government to take meaningful action to fulfill its OPCAT obligations. Such actions would enhance transparency and accountability regarding human rights violations in youth detention facilities across Australia. Currently, [New South Wales, Queensland, and Victoria](#) have not designated National Preventive Mechanisms (NPM) to monitor OPCAT compliance, resulting in significant gaps in oversight and protection for vulnerable youth. In 2016, the [National Children's Commissioner](#) highlighted that the human rights

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breaches observed at Don Dale Youth Detention Center 'could have been prevented or revealed in a more timely manner had the necessary oversight mechanisms of OPCAT been in place.'

Need for National Transparency and Accountability

Queensland currently has the highest number of incarcerated children in Australia and maintains a minimum age of criminal responsibility of 10 years.[32] In the past year, six children died within the state's youth justice systems, underscoring the urgent need for reform.[33] The Queensland Family and Child Commission's Child Death Review Board [Annual Report 2022-23](#) emphasises that the justice system should be trauma-informed and equipped to respond to children and young people's needs. Instead, the current system utilises a punitive approach that entrenches a detrimental cycle of repeated contact with the justice system through incarceration and arrests.[20] The failure to address these issues indicates a severe violation of the rights of children and is counterintuitive to reducing rates of crime in the community.

Benefits of National Data Collection and Coordination

A national approach is crucial for enhancing transparency, accountability, and effectiveness in addressing the human rights of children in detention. The current system is hindered by inadequate communication between psychiatrists, health providers, and carer services due to the variation in regulations and practices from state to state. Establishing a coordinated national framework would facilitate improved knowledge sharing and advocacy efforts, and in turn, better outcomes for youth in detention (See [RANZCP Position Statement 47b The roles and relationships of psychiatrists and other service providers in mental health services](#)).[34]

Centralised data collection and sharing would increase coordination between services and support the provision of targeted, effective interventions for children and young people. It would also increase transparency and accountability for jurisdictions obligations to protect and uphold the human rights of the children and young people under their care within the justice system.[35]

d. The Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights

National Ban on Spit Hoods

Spit hoods must be federally banned from use in youth detention, as this practice poses significant risks to the dignity and safety of young people. Spit hoods are condemned by the [United Nations Subcommittee for the Prevention of Torture](#) as they pose a serious risk to the rights of children and freedom from torture. As a form of restraint, they have the potential to cause trauma and re-traumatisation for individuals, families, and staff involved. In 2016, the Northern Territory banned spit hoods following recommendations from a [Royal Commission](#) that highlighted their harmful use.[36] In 2023, [the Australian Federal Police](#) prohibited their use on adults following a [report](#) which found that "the risk of using spit hoods outweighed the benefits of their use". Despite this, spit hoods are still permitted for use on adults in the Northern Territory and Western Australia. Wayne 'Fella' Morrison died after being restrained with a spit hood in South Australia in 2016, highlighting the dangers of this practice.[37] The reinstatement of spit hoods must be nationally banned to ensure the safety and protection of incarcerated youths. The RANZCP maintains that mental health services across Australia must work toward minimizing and, where possible, eliminating the use of this harmful restraint method [See [RANZCP Position Statement 61 Minimising and, where possible, eliminating the use of seclusion and restraint](#)).

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Systemic Failures and Youth Justice

Young people's interactions with the justice system are significantly influenced by various coexisting factors that impact their mental health.[38] These interactions often violate the Commonwealth's international obligations concerning basic civil rights.[39] Shortcomings in addressing fundamental educational, social, economic, and community needs contribute to this issue.

Poverty, removal from family through out-of-home care, substance use, and cultural or racial background are critical factors driving young people, particularly those with mental health conditions, into the justice system.[15] Unstable living conditions, especially in regional and remote areas, only heighten the risks of these children falling into patterns of offending and reoffendings.[2,3] These systemic failures not only undermine their rights but also perpetuate cycles of disadvantage and mental health issues.[15] Addressing these root causes is essential for fulfilling Australia's commitments to uphold the rights and dignity of all children and providing a holistic approach to child welfare.

e. The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

Raise the Age of Criminal Responsibility to 14 Years

The RANZCP unequivocally supports raising the age of criminal responsibility to 14. Raising the minimum age of criminal responsibility (MACR) to 14 is crucial for enhancing the health and well-being of young people and aligning Australia with its international human rights obligations. Evidence shows that a higher MACR correlates with positive outcomes, including reduced rates of recidivism and lower initial offending rates.[15] Countries in the European Union, which maintain higher MACRs and provide greater resources for community therapeutic programs, experience significantly lower youth offending rates.[15] Research from Denmark indicated strongly that a lower MACR leads to increased recidivism and a rise in youth offenses, while also negatively impacting educational outcomes.[23] Despite the clear consensus indicated both domestically and internationally, only the Australian Capital Territory has committed to raising the MACR to 14, while Victoria and the Northern Territory have increased it to only 12, with the Northern Territory government contemplating a rollback to 10.[40] It is of utmost priority that a national minimum standard of 14 years for age of criminal responsibility is instated.

Youth Court Reforms

Legislative changes, including reformation of the current processes and functions of youth courts have potential to promote better outcomes for young offenders.[22] Procedures that diminish the adversarial nature of youth court processes generally lead to improved child welfare. [The RANZCP Professional Practice Guideline 3: Australian Family Court](#) proceedings emphasises this. In the NSW Children's and Koori Courts, enabling lawyers and magistrates to refer young offenders with identified mental health conditions to court clinicians has shown significantly positive effects on rehabilitations.[41] These reforms can create a more supportive environment for young people, helping them navigate the justice system while addressing their mental health needs effectively.[15]

Prioritising Health-Led Programs Over Justice-Led Programs

Justice-led programs often prioritise security, protection, and punishment over addressing the underlying trauma that young offenders may face.[15] Given the high prevalence of mental health issues among youth in conflict with the law, treating these underlying conditions is vital for improving their long-term

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outcomes.[3] This approach aligns with findings from the [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#), which advocate for a therapeutic model in youth justice that includes the involvement of mental health professionals before, during, and after legal proceedings.[18]

International consensus recognises that health-led approaches are the best means of advancing child well-being. Ensuring access to critical support services for mental health, socio-economic needs, and cultural sensitivities is paramount for preventing future offending.[18] Early intervention with targeted mental health and social support is key to long-term prevention efforts.[19]

When custodial settings are deemed necessary, it is essential that they provide safe and effective health services.[42] These services must be health-led, adequately funded, and inclusive of Indigenous staff and diverse genders to ensure comprehensive care. Funding should not originate from corrections departments, as their conflicting priorities often hinder effective service delivery. Clinical care in custodial settings requires expert forensic health teams, free from competing interests. Spit hoods should be banned in all jurisdictions. The RANZCP strongly advocates for these multidisciplinary services to be led by psychiatrists trained in forensic, and child and adolescent care, as these professionals are best equipped to ensure that the well-being of young people remains the primary focus in all interventions.[34] By prioritising health-led approaches, we can better support the rehabilitation and reintegration of youth into society, ultimately fostering safer communities.

f. Related matters: mental health and the justice system

Young people in contact with the justice system are highly vulnerable, with mental health issues being a significant factor. A third of young offenders have mental health needs.[2] and these issues are prevalent in both custodial and community settings.[3] However, this vulnerable population is significantly overrepresented in the justice system. Access to early intervention mental health care and treatment is crucial to reducing incarceration rates. Identifying the prevalence and nature of mental health conditions will help facilitate better understanding of the individual determinants that lead to justice system interactions for youth:

- **Serious Mental Illness (e.g., Psychosis):** Young offenders have a tenfold higher prevalence of serious mental illnesses like psychosis compared to their peers.[3] Effective psychiatric treatment can improve community integration and reduce recidivism.[24]
- **ADHD and Autism Spectrum Disorder:** ADHD is significantly more common in youth custody (20-45%) than in the general population.[1,4] Young people with untreated ADHD are more likely to be convicted and incarcerated, with increased recidivism rates.[5] Individuals with autism are more likely to interact with the justice system, often due to social difficulties rather than higher offending rates.[7] Afflicted youth's responses to overwhelming situations can lead to police involvement.[9] Law enforcers must be better trained in handling individuals experiencing emotional distress as a result of a psychosocial condition.
- **Intellectual Disabilities (ID):** People with ID are overrepresented in the justice system, with rates 3-4 times higher than the general population.[11] There is a critical need for specialists in neurodevelopmental disorders within the youth justice system.
- **Conduct Disorder (CD):** CD accounts for 80% of criminal activity, leading to higher police involvement and justice system interaction.[12] Psychiatrists and those around the child should be prepared to approach the child's needs holistically to effectively treat their conduct disorder and improve their wellbeing (See [RANZCP Position Statement 111 Children with conduct disorder](#)).

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The issues faced by young people with mental health challenges indicates the need for early intervention. The RANZCP highlights a shortage of child and adolescent psychiatrists in Australia, with only 10% of the psychiatry workforce specialising in this area.[43] Many children with severe disorders do not receive the necessary care.[3] Barriers such as cost and workforce shortages lead vulnerable populations to avoid public mental health services, worsening their conditions.[43] Increased funding for mental health services, particularly for child and adolescent psychiatry, is essential to improve access and reduce future offending.

Summary

The RANZCP would welcome the opportunity to provide further evidence and comment on this important area. Many of our members are heavily involved in forensic health systems and have a wealth of practical knowledge. If you have any queries regarding this submission, please contact Nicola Wright, Executive Manager, Policy, Practice and Research Department via nicola.wright@ranzcp.org or on (03) 9236 9103.

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