



Jesuit
Social Services
Building a Just Society

Inquiry into Australia's youth justice and incarceration system

Submission by Jesuit Social Services

October 2024

We acknowledge the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for their love and care of people, community, land and all life.

Jesuit Social Services: Who we are and what we do

Jesuit Social Services has been working for more than 45 years delivering support services and advocating for improved policies, legislation and resources to achieve strong, cohesive and vibrant communities where every individual can play their role and flourish.

We are a social change organisation working with some of the most marginalised individuals and communities, often experiencing multiple and complex challenges. Jesuit Social Services works where the need is greatest and where we have the capacity, experience and skills to make the most difference.

Our services span Victoria, New South Wales and the Northern Territory, where we support more than 57,000 individuals and families annually.

Our service delivery and advocacy focus on the following key areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs including mental illness, trauma, homelessness and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees, and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment
- **Gender justice** – providing leadership on the reduction of violence and other harmful behaviours prevalent among boys and men, and building new approaches to improve their wellbeing and keep families and communities safe
- **Ecological justice** – inviting discussion on what practices, policies and actions can be taken by governments, individuals, organisations and the community services sector within Australia to build an ecologically just society.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experience of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence people's lives and improve approaches to address long-term social challenges.

We do this by working collaboratively with governments, business and the community sector to build coalitions and alliances around key issues, and building strong relationships with key decision-makers and the community.

Our Learning and Practice Development Unit builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to working with participants and communities across our programs.

Australia's youth justice and incarceration system

Jesuit Social Services welcomes the opportunity to respond to the Legal and Constitutional Affairs References Committee's Inquiry into Australia's youth justice and incarceration system.¹

National Children's Commissioner Anne Hollonds has called the treatment of children in the criminal justice system 'one of the most urgent human rights issues facing Australia today.'¹ Jesuit Social Services concurs with this assessment, having advocated on this issue for decades. Our advocacy arises from our daily work alongside children whose rights are systematically breached, and our observation of the effects that their treatment in the justice system has on them, their families and communities.

There is clear evidence on what works, what causes harm and what is needed. What is required now is a genuine commitment to protecting children's rights, and doing what is required to achieve this. This means a focus on implementation – and adequately resourcing it – and building in robust mechanisms for accountability.

In 2023, we made a submission to the National Children's Commissioner's project, Youth Justice and Child Wellbeing Reform across Australia, emphasising this evidence and providing recommendations based on our experience.

The National Children's Commissioner's report *Help Way Earlier! How Australia can transform child justice to improve safety and wellbeing* (henceforth "the NCC report") makes a comprehensive case for a national approach to child justice reform, and discusses a wide range of factors key to the success of such reform, captured in 24 recommendations.

Jesuit Social Services supports the report's recommendations and its case for a national approach to child justice reform. This submission outlines key reforms we believe are entailed by a commitment to protecting children's rights, and some of the changes critical to their success.

¹ The National Children's Commissioner's report *Help Way Earlier! How Australia can transform child justice to improve safety and wellbeing* calls this system the 'child justice system,' highlighting the importance of referring to children as children. We agree with this approach and adopt this terminology in this submission. Australian Human Rights Commission (2024). *Help way earlier!: How Australia can transform child justice to improve safety and wellbeing*. Sydney: Australian Human Rights Commission, p. 4.

A genuine commitment to protecting children's rights

The NCC quotes the Australian Greens in her report:

By ratifying international human rights treaties, the Australian Government is both empowered and obligated to play a key role in ensuring children's human rights are protected.²

Despite ratifying international agreements that obligate the Australian Government to ensure that children's rights are upheld, serious breaches of children's rights have been and continue to be recorded on a range of fronts by a range of reviews and inquiries, including instances of cruel and degrading treatment in the child justice system.

The NCC report notes that these breaches often become the drivers of children's contact with the child justice system – such as violence or abuse, lack of housing or healthcare.³

In addition to the United Nations Convention on the Rights of the Child (CRC) and the Universal Declaration of Human Rights (UDHR), to both of which Australia is a signatory, protecting children's rights entails that Australia fully implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).⁴

Recommendation 1: Fully implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Existing state and territory-based approaches to protecting children's rights have failed. As such, we support the call for a national approach to protecting children's rights.

The NCC report discusses the ways in which the federal system of government, coupled with siloing and fragmentation of portfolios and responsibilities between and across government departments, constitutes a barrier to reform.⁵

The NCC report recommends a national approach to child justice reform constituting a National Taskforce for reform reporting to Ministers responsible for child justice and child wellbeing across jurisdictions; a Cabinet Minister for Children; and Ministerial Council for Child Wellbeing, chaired by that minister and reporting to National Cabinet.⁶

Jesuit Social Services supports these recommendations. But a national approach must not mean uniform services or programs across all jurisdictions or communities. The approach must be flexible and place-based, and allow communities to determine what solutions suit their needs, while benefiting from nationally consistent standards and coordination. In particular, it must enable First Nations communities to make decisions for their own

² The Australian Greens, Submission No 119 to the Australian Human Rights Commission, *Youth Justice and Child Wellbeing Reform Project* (30 June 2023) 3, quoted in *Help Way Earlier!*, p. 15.

³ *Help Way Earlier!*, p. 8.

⁴ In line with NCC report recommendation 22. *Help Way Earlier!*, p. 13.

⁵ *Help Way Earlier!*, pp. 101–103.

⁶ In line with NCC report recommendations 1–3. *Help Way Earlier!*, p. 12.

communities, and Aboriginal Community Controlled Organisations (ACCOs) to run services and programs tailored to First Nations children and families in their communities.

Recommendation 2: Adopt a national approach to child criminal justice reform that provides flexibility for place-based and local solutions, including appointing a Cabinet Minister for Children, convening a National Taskforce for reform, and a Ministerial Council for Child Wellbeing to be chaired by the Minister for Children.

Jesuit Social Services has been advocating for the introduction of a federal Human Rights Act for a number of years.⁷ A genuine commitment to protecting children's rights must be legislated as many of the most common breaches of children's rights occur as breaches of their human rights – lack of housing, lack of healthcare, and so on. At times, this includes severe and shocking breaches of children's human rights, such as torture.

Legislating a federal Human Rights Act will also enable greater accountability and give governments, policy-makers and others a foundation and understanding of what is minimally required in order to protect children's (and people's) rights.

We support the NCC report's recommendation to introduce a federal Human Rights Act.

Recommendation 3: Introduce a federal Human Rights Act.⁸

The evidence on what works and what is needed to protect children's rights and reform the child justice system has been available for a long time. For example, in a review of available evidence published this year, the Australian Institute of Family Studies (AIFS) analysed 61 reports and inquiries produced over approximately a decade, including over 3,000 recommendations, on the child protection and justice systems.⁹ The AIFS report sets out numerous evidence-based recommendations for change, including in relation to information sharing and coordination; First Nations self-determination; oversight and transparency mechanisms; workforce capacity; levels of investment; and child voice and participation.

The NCC report offers a comprehensive set of considerations, and outlines a set of features to be incorporated in reforming the child justice system. Yet it highlights the ways in which 'Australia continually fails to implement evidence-based reforms to our child justice systems which would reduce offending behaviour and make our communities safer.'¹⁰ Further, Commissioner Hollonds stated in her National Press Club address that 'it seems like a kind of madness that we continue [...] contrary to the evidence of what prevents offending.'¹¹

The focus now must be on implementing the necessary changes based on the evidence of what works. This must be done in a concerted and prompt way and must be properly resourced. Too often, valuable programs or services are not resourced sufficiently to enable them to properly fulfill their function.

⁷ See for example Jesuit Social Services' 2023 submission to the Inquiry into Australia's Human Rights Framework. [Link](#).

⁸ In line with NCC report recommendation 4. *Help Way Earlier!*, p. 12.

⁹ Stevens, Emily & Gahan, Luke. (2024). Improving the safety and wellbeing of vulnerable children: A consolidation of systemic recommendations and evidence, p. 4. [Link](#).

¹⁰ *Help Way Earlier!*, p. 8.

¹¹ Anne Hollonds, National Press Club Address, 2 October 2024. [Link](#).

Jesuit Social Services has been running the Victorian Government-funded Youth Justice Community Support Service since 2008. The Youth Justice Community Support Service provides intensive and integrated support for children and young people aged 10–21 who are involved with the youth criminal justice system in Victoria through case work, outreach and supported referrals. However, this service is only available to approximately 40% children in the child justice system – despite the cost of supporting a child in the community costing approximately \$9,500–10,000 annually,¹² compared to approximately \$1 million annually in custody.¹³

Recommendation 4: Focus on implementing evidence-based solutions, and provide appropriate resourcing to ensure their success.

Children in Australia have been let down for a long time, as have their families and communities – yet none more so than First Nations children. The report from the Royal Commission into Aboriginal Deaths in Custody was released in 1991; the *Bringing Them Home* report in 1997; and the first report from Victoria’s Yoorrook Justice Commission in 2022 – among others. Yet in spite of a raft of well researched and resourced inquiries and their numerous recommendations, little has changed. This year, the Productivity Commission’s Review of the National Agreement on Closing the Gap stated that governments are failing to adequately implement the principles of self-determination committed to in the Agreement; that they often make decisions that contradict the Agreement; and that these decisions often worsen the discrimination and disadvantage experienced by First Nations people, especially in the youth justice systems.¹⁴

Commitment to reforming the child justice system must be paired with genuine accountability. Implementing change must include systems for monitoring, evaluation, transparency and accountability to ensure that governments are held to account for their commitments. This is key if change is to take place.

Achieving fewer violations of children’s rights is not enough. The government must commit to full protection of children’s rights in all Australian jurisdictions as its minimum standard. A national approach will only work if the goals to which it is answerable are not too low.

Recommendation 5: Build in robust monitoring mechanisms, including monitoring, evaluation, reporting and transparency.

A number of other critical reforms necessarily flow from a genuine commitment to protecting children’s rights.

¹² Jesuit Social Services data.

¹³ *Help Way Earlier!*, p. 14.

¹⁴ *Help Way Earlier!*, p. 66.

Critical reforms

The United Nations Convention on the Rights of the Child, adopted in 1989 and ratified by Australia in 1990, stipulates under Article 40(3) that states should create laws, processes and bodies specific to children who have allegedly committed a crime, including establishing a minimum age 'below which children shall be presumed not to have the capacity to infringe the penal law.'¹⁵

Medical research in the intervening decades has found that children lack the capacity to form criminal intent under the age of 14: the prefrontal cortex, responsible for impulse control, planning and decision-making, is still developing, and children lack the capacity to understand the meaning and repercussions of their actions, and the impulse control to regulate their them.¹⁶

Taken together, it is clear that the age of criminal responsibility should not be lower than 14.

In addition, the justice system response leads to an increase in reoffending, and the younger a child is at the time of first contact with the justice system, the more likely they are to reoffend and ultimately become entrenched in the system.¹⁷

Recommendation 6: Australian governments raise the age of criminal responsibility to at least 14.¹⁸

Bail laws vary across states and territories, and can be harmful in a range of ways. Most importantly, they can undermine children's ability to successfully navigate the justice system, and to successfully rehabilitate: they can be unreasonably difficult to comply with, and children who do not reoffend but fail to successfully comply with bail conditions (such as a curfew) can be sent back into custody. In some states (such as Queensland and Western Australia), this can constitute an additional offence.

Children may be required to comply with requirements that they lack the capacity to meet. For example, a child with a cognitive impairment may lack the capacity to attend multiple meetings in particular locations without support to do so; and a child who lives remotely may lack the public transport or funds to be able to attend meetings in particular locations. Yet children may be sent back into custody for failing to meet such requirements.

¹⁵ UN General Assembly, *Convention on the Rights of the Child*, United Nations, Treaty Series, vol. 1577. [Link](#).

¹⁶ For example, see United Nations Committee on the Rights of the Child, *General Comment 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) para 22. [Link](#).

¹⁷ *Help Way Earlier!*, pp. 21–22.

¹⁸ In line with NCC report recommendation 20. *Help Way Earlier!*, p. 13.

One child quoted in the NCC report stated:

'More recently I have made good changes, and I was actually doing well out of detention. But the police said I breached my bail conditions when I went to the local shops to buy food without supervision and my bail was revoked.'¹⁹

Bail conditions may undermine children's ability to undertake rehabilitation. In some instances, a child may spend a significant amount of time on bail or remand, which means that they do not participate in any therapeutic programs or rehabilitation, and are subsequently sentenced to no additional time. This means that they have not received any therapeutic care throughout their contact with the justice system.

Bail laws may also undermine children's ability to reintegrate into the community. For example, restrictions on where they may go may limit their ability to gain work.

Article 40(4) of the CRC states that, in relation to a child who has been accused or convicted of an offence:

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.²⁰

Article 40(1) before this states that:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.²¹

Before this, Article 37(b) states that:

States Parties shall ensure that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.²²

It is clear that current bail laws do not meet these Articles: they do not ensure that children are dealt with proportionately to their offence or circumstances; they do not ensure that alternatives to institutional care are genuinely available; they do not take into account the desirability of promoting the child's reintegration; and they do not use imprisonment solely as a last resort, nor for the shortest appropriate period of time.

Recommendation 7: Reform bail laws, removing the presumption against bail and bail offences, and ensure that bail and remand last for the shortest amount of time possible.

¹⁹ *Help Way Earlier!*, p. 52.

²⁰ UN General Assembly, *Convention on the Rights of the Child*. [Link](#).

²¹ *Ibid.*

²² *Ibid.*

As noted above, the Article 37(b) requires states to ensure that imprisonment is only ever used as a last resort, and for the shortest possible time. Yet this is not currently the case.

The evidence shows that diversion works,²³ and that time in custody increases recidivism among children.²⁴ The community is therefore made less safe when children are incarcerated, and children are more likely to become entrenched in the child justice system.

Diversion options require expansion and investment to develop further and increase in scale or location where appropriate. These should be place-based, culturally appropriate and, where appropriate, led by ACCOs.

Recommendation 8: Increase and improve diversion options for children.²⁵

Restorative group conferencing and restorative practice more broadly have been shown to be effective in reducing recidivism²⁶ and improving outcomes for victim-survivors, children who have caused harm, and their families and communities.

Restorative practice is a holistic process that recognises the relational impacts of offending, is grounded in community, and does much to promote the rights of the victim-survivor, of the child who has caused harm, and of their families and community.

Jesuit Social Services runs restorative group conferencing with children and young people in Victoria and the Northern Territory, and we see first-hand its significant positive outcomes. We have also been advocating for expanded use of restorative practice in additional settings, such as schools.

Recommendation 9: Increase the use and scope of restorative justice.

In her National Press Club Address, Commissioner Hollonds described youth detention centres as 'the places where the most egregious breaches of the human rights of children are happening right now'.²⁷

We know that prisons are harmful to children, and that, as noted above, the younger a child is at the time of first contact with the justice system, the more likely they are to reoffend and become entrenched in that system.²⁸ In other words, they do harm and they do not work.

Therefore, children should be kept out of carceral settings to the greatest extent possible.

Recommendation 10: Raise the minimum age of incarceration to 16.

²³ *Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report* (Report, Volume 2B, 2017) 259; Centre for Justice Innovation, *Valuing Youth Diversion: A Toolkit* (March 2024) 12. Cited in *Help Way Earlier!*, p. 72.

²⁴ *Help Way Earlier!*, pp. 21–22.

²⁵ In line with NCC report recommendation 12. *Help Way Earlier!*, p. 12.

²⁶ Bonett, R.J.W., Lloyd, C.D., & Ogloff, J.R.P. (2022). *Group Conferencing Effects on Youth Recidivism and Elements of Effective Conferences*. Centre for Forensic Behavioural Science, Swinburne University of Technology, Melbourne Australia.

²⁷ Anne Hollonds, National Press Club Address, 2 October 2024. [Link](#).

²⁸ *Help Way Earlier!*, pp. 21–22.

Children should never be held in adult prisons. These settings harm children, increase their likelihood of reoffending, and are clearly inconsistent with their wellbeing.

Article 37(c) of the CRC states:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.²⁹

In ratifying the CRC, Australia expressed a reservation to this part of Article 37, and indicated that it would not comply with it.³⁰ The NCC report recommends that Australia withdraw its reservation.³¹ Jesuit Social Services supports this recommendation.

Recommendation 11: Prohibit the detainment of children in adult prisons.

As noted above, Australia has not fully implemented OPCAT, which prohibits the use of torture. Various forms of torture have been exposed in Australian youth justice facilities, including the use of spit hoods. Despite significant public outcry and a damning report by the Royal Commission into the Protection and Detention of Children in the Northern Territory in 2016–2017,³² spit hoods remain in use.

Isolation and solitary confinement are also used punitively and inappropriately. In 2018, Jesuit Social Services raised the alarm on the use of isolation in Victorian custodial settings,³³ prompting an investigation by the Victorian Ombudsman which found that 'children and young people in Victorian prisons and youth justice systems are being damaged rather than rehabilitated through excessive use of isolation and separation'.³⁴ Yet, five years later, our staff tell us that participants in our programs who are in custody continue to be subjected to these practices. This often occurs due to staffing shortages and inadequately trained staff in custodial settings.

Article 37(a) of the CRC states:

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.³⁵

²⁹ UN General Assembly, *Convention on the Rights of the Child*. [Link](#).

³⁰ See the Australian Child Rights Taskforce report card. [Link](#).

³¹ In line with NCC report recommendation 18. *Help Way Earlier!*, p. 13.

³² Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017). *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*. [Link](#).

³³ See for example Jesuit Social Services' issues paper, 'All Alone: Young adults in the Victorian justice system,' 2018. [Link](#).

³⁴ Victorian Ombudsman, *OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people* (2019). [Link](#).

³⁵ UN General Assembly, *Convention on the Rights of the Child*. [Link](#).

This standard is clearly not being met at this time; Australia is breaching children’s rights by subjecting them to torture and other cruel treatment.

Recommendation 12: Prohibit the use of isolation and all forms of torture in all custodial settings.

Healthcare in custody often does not compare in quality, accessibility or availability to healthcare in the community, and it is inconsistently provided, in particular during a child’s transition out of custody. This means children are often denied the healthcare they need.

Jesuit Social Services staff have worked with children who, for example, receive the first part of a dental treatment in custody, but do not receive the necessary follow-up if they happen to have exited custody before the treatment is completed.

Healthcare is a human right. Children in (or transitioning in or out of) the justice system must receive the same level of care as children in the community.

Recommendation 13: Ensure children in the justice system receive good healthcare and there is a continuum of care between community and custodial settings.

Ending overrepresentation

Entrenched systemic racism and compounding disadvantage means that First Nations children are 28 times more likely to be in detention than non-Indigenous children.³⁶ This violates the right set out in Article 2(1) of the CRC, which requires states to ‘ensure the rights of each child to within their jurisdiction without discrimination of any kind’.³⁷

In order to protect the rights of First Nations children, their overrepresentation in the child justice system, and in detention in particular, must end.

This over-representation is mirrored by the underrepresentation of First Nations children in systems such as education and health.³⁸ This similarly constitutes a breach of their rights and must be addressed.

This involves a suite of changes across various domains. It involves empowering ACCOs and First Nations communities wherever appropriate to drive the changes and make decisions for their communities. Some of these changes are set out in the Victorian Smart Justice for Young People coalition’s Action Plan, *Working Together: Action Plan End the Over-Representation of Particular Groups of Young People in the Criminal Justice System*.³⁹

Recommendation 14: End the overrepresentation of First Nations children in the child criminal justice system.

³⁶ Australian Institute of Health and Welfare, *Youth Justice in Australia 2022–23*. [Link](#). Cited in *Help Way Earlier!*, p. 22.

³⁷ UN General Assembly, *Convention on the Rights of the Child*. [Link](#).

³⁸ *Help Way Earlier!*, p. 23.

³⁹ Smart Justice for Young People, *Working Together: Action Plan to End the Over-Representation of Particular Groups of Young People in the Criminal Justice System*, 2023. [Link](#).

A number of other groups are also overrepresented in the child criminal justice system: children who live in out-of-home residential care; children from culturally and linguistically diverse families; and children with disabilities and complex needs.

While our submission does not seek to do justice to the intersecting and compounding causes of the over-representation of these groups in the child justice system, we call on governments to examine its underpinnings. We recommend governments take a holistic policy approach to addressing overrepresentation of specific groups which prioritises investment in prevention, diversion, and the role played by a variety of systems and services. The Victorian Smart Justice for Young People coalition of social service and community legal organisations, of which Jesuit Social Services is a member, has produced an Action Plan detailing 49 asks that will go towards ending the overrepresentation of these cohorts in the child and youth justice system.⁴⁰

Recommendation 15: End the overrepresentation of groups disproportionately represented in the child justice system.

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⁴⁰ *Ibid.*