

RACGP submission

Inquiry into Australia's Youth Justice and Incarceration System

October 2024



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About the RACGP

The Royal Australian College of General Practitioners (RACGP) is the voice of general practitioners (GPs) in our growing cities and throughout rural and remote Australia. For more than 60 years, we have supported the backbone of Australia's health system by setting the standards for education and practice and advocating for better health and wellbeing for all Australians.

As a national peak body representing over 50,000 members working in or towards a career in general practice, our core commitment is to support GPs from across the entirety of general practice to address the primary healthcare needs of the Australian population. With the return of college-led training in 2023, the RACGP now trains more than 90% of Australia's GPs including those in rural and remote areas.

Patient-centred care is at the heart of every Australian general practice, and at the heart of everything we do.

The need to support vulnerable children and young people

The RACGP welcomes the *Senate Legal And Constitutional Affairs References Committee Inquiry into Australia's Youth Justice and Incarceration System*. The RACGP strongly supports decarcerating young people and taking a health first approach to supporting young people who are at risk of incarceration.

Significant health and justice reform is needed to support these children and young people, and the 2024 ['Help Way Earlier'](#) report has found that Australia is failing to implement evidence-based reforms to protect child rights and reduce offending. In fact, Australia's National Children's Commissioner has recognised that one of the most urgent human rights issues facing Australia today is the treatment of children, some as young as ten, in the youth justice and incarceration system.¹

Responding to each specific question in this inquiry is out of scope for the RACGP. Our submission will present a health first approach which provides clear evidence for preventing incarceration of young people wherever possible.

Key RACGP recommendations

1. The RACGP urges state and federal governments to implement the 24 recommendations provided in the *Help Way Earlier* report as a matter of priority. This report provides key evidence-based actions for reform of child justice systems. See Appendix A for detailed recommendations.²
2. Raise the age of criminal responsibility to 14 years old across all jurisdictions
3. State and territory health and human services ministers pilot alternative, therapeutic models of custody for young people.
4. Health Ministries provide and be accountable for health care services in youth justice and advocate health youth justice conditions (rather than Ministries of Justice or Human Services) as per World Health Organization recommendations.
 - Ensure that health facilities where children and adolescents are imprisoned are accredited against the RACGP's [Standards for health services in Australian prisons \(2nd edition\)](#)
5. The federal health minister set reform principles to drive action.
 - The federal health minister to facilitate the leadership of the Aboriginal Community-Controlled Health sector in the policy, design, and delivery of health services for Aboriginal and Torres Strait Islander peoples in partnership.
 - The federal health minister to establish a national partnership agreement on strategy, collective actions, performance requirements and shared data.
6. Improve specialist child development services in the community to identify and support children with neurodevelopmental disorders before they become involved in the justice system.
 - Establish and resource Attention Deficit Hyperactivity Disorder (ADHD) and Fetal Alcohol Spectrum Disorder (FASD) services linked to primary care to ensure early diagnosis and management of ADHD and FASD symptoms, in connection with co-existing medical conditions, potentially preventing criminal behaviour associated with poor impulse control.

7. Holistic assessments of all children in custody, including comprehensive neurodevelopmental and mental health evaluations.
8. Training for youth justice staff on recognising and appropriately responding to behaviours associated with ADHD and other neurodevelopmental disorders.
9. Enforceable national minimum standards should include mandatory screening for neurodevelopmental disorders like ADHD upon entry into the youth justice system, as well as ongoing access to specialist care and support services.
10. Implementation of evidence-based interventions for managing ADHD within youth detention facilities, including both pharmacological and non-pharmacological approaches.

Key evidence for RACGP recommendations

- Children's brains are still developing through their adolescent years.³
- Many young people at risk of incarceration experience significant health issues, including in physical, psychological and behavioural health, and so need holistic healthcare and wrap around support.⁴
- Adversities such as social disadvantage, traumatic experiences, substance use, and mental illness are common precursors to incarceration of young people.⁵
- When children enter the justice system, they are highly likely to return as adults and contact with the criminal justice system aggravates existing health issues and increases the chances of incarceration over the life course.^{6,7,8,9}
- Imprisoned children are less likely to complete school, to complete further education and training, or to gain employment.¹⁰
- Youth specific programs that involve rehabilitation rather than incarceration and punishment work. They have been shown to lower rates of recidivism.^{11,12,13,14}
- A disproportionate level of punishment has been demonstrated against Aboriginal and Torres Strait Islander young people due to the impacts of racism in health and justice systems and there has been a failure to recognise or support the complex health and social needs of Aboriginal and Torres Strait Islander young people.¹⁵

Where youth incarceration occurs, reforms are needed to ensure that young people receive healthcare commensurate with that provided in the community and the opportunity for rehabilitation.

Discussion

Preventing young people's contact with the youth justice system

Prevention strategies provided early in a child's life are important to promote health and address underlying developmental and social needs associated with criminogenic risks.¹⁶ Youth specific programs that involve rehabilitation rather than incarceration and punishment have been shown to lower rates of recidivism.^{17,18}

Such programs require long term funding and commitment. RACGP members and their patients are experiencing the impacts of health and justice systems that are not set up to support vulnerable young people. As just one example from September 2024, an RACGP member shared their challenges trying to support a young person at risk of incarceration:

"I have recently seen a young person for whom part of the court recommendation of their diversion away from incarceration was an assessment by a paediatrician. The child's family could not afford a private paediatrician, and the current wait time for public paediatric clinic in my area is two years. A further request was that I was to create a treatment plan for specific developmental/behavioural conditions identified and was required to notify the court if the child and family did not comply. The result of this would be that if I notified the court of noncompliance the child would be incarcerated. This arrangement put me in an extremely difficult position... I am happy to support diversion strategies - but I cannot make the public referral system work faster, and I am not a probation officer."

The health impacts of a 'tough on crime' approach

The RACGP accepts that incarceration may sometimes be necessary for people who commit serious crimes to support broader community safety. However, approaches that are purely punitive result in increased contact with the justice

system over the long term and fail to protect the health and wellbeing of the young person, or enable them to develop and contribute to their communities, and are also likely to fail to meet the needs of the broader community either.¹⁹

Supporting young people with neurodevelopmental disorders

The overrepresentation of young people with neurodevelopmental disorders, particularly Attention Deficit Hyperactivity Disorder (ADHD) and Fetal Alcohol Spectrum Disorder (FASD), in the youth justice system is of significant concern. Often incarceration can delay the opportunities for effective diagnosis and management of ADHD or FASD. Many incarcerated youth struggle with impulse control issues related to neurodevelopmental disorders, which can contribute to their involvement in criminal behaviour and subsequent incarceration. This highlights a crucial gap in early intervention and support services. A report from Deloitte estimates that the total cost of crime due to ADHD, including the cost to the justice system, was \$307 million in 2019.²⁰

From a healthcare perspective, there is often inadequate access to specialist mental health services, including assessment and treatment, within youth justice facilities. This lack of appropriate care could be viewed as non-compliance with the right to health for incarcerated young people.

Australia has an obligation to provide appropriate healthcare, including mental health services, to all children. For those with ADHD and FASD, this should include access to comprehensive assessment, treatment, and support services, both in the community and within justice facilities. The Deloitte report estimates that ADHD affects approximately 281,200 children and adolescents (aged 0-19) in Australia, underscoring the scale of this obligation.

Australia has human rights obligations to incarcerated youth and to First Nations peoples, and meeting these obligations will also have the effect of contributing to Australia's economy.

The Deloitte report highlights that the total health system cost of ADHD was estimated to be \$814.5 million in Australia in 2019, which is \$1,000 per Australian with ADHD. While we should concentrate on keeping young people out of justice facilities, ensuring adequate healthcare for those who are in custody is crucial to addressing this broader health system cost.²¹

Enforceable national minimum standards should include mandatory screening for neurodevelopmental disorders like ADHD upon entry into the youth justice system, as well as ongoing access to specialist care and support services. The Deloitte report found that the total cost associated with ADHD in Australia in 2019 was \$20.42 billion, comprising financial costs of \$12.83 billion and wellbeing losses of \$7.59 billion. Implementing national standards could help reduce these substantial costs by ensuring early intervention and appropriate support.

It is also important to note that FASD, ADHD and other neurodevelopmental disorders may be underdiagnosed in Aboriginal and Torres Strait Islander communities due to cultural and systemic barriers in accessing appropriate healthcare services. This underdiagnosis could contribute to the over-incarceration of Aboriginal and Torres Strait Islander children who may be struggling with unmanaged symptoms.

Arguably, in this context imprisonment frequently becomes the default option for managing problems that should be managed by skilled and adequately resourced health and social care agencies.

The over-incarceration of Aboriginal and Torres Strait Islander children

The RACGP recognises that 63% of young people aged 10-17 in custody are Aboriginal and/or Torres Strait Islander people and that they experience incarceration at relatively younger ages than non-Indigenous young people.²² The overrepresentation of Aboriginal and Torres Strait Islander young people in custody is of such magnitude, and resistance to changing this sufficiently high, it seems almost reasonable to assume that this policy outcome is intended to specifically apply to Aboriginal and Torres Strait Islander youth. Aboriginal and Torres Strait Islander young people have been subjected to a disproportionate level of punishment due to the impacts of colonisation and racism in health and justice systems, as well as a failure to recognise or support the complex health and social needs of Aboriginal and Torres Strait Islander young people.²³

Lifelong health and wellbeing begins before childhood. Ensuring healthy pregnancies and early childhood will limit the effects of poor hearing, ADHD, FASD and other health problems that can result in interactions with the justice system. There are also social drivers of youth crime, including poverty, housing instability and lack of culturally safe education opportunities. Over-representation and recidivism statistics suggest that efforts to reduce Aboriginal and Torres Strait Islander peoples' experiences in the criminal justice system requires recognition of health and social and emotional wellbeing issues.²⁴

As just one example from Victoria outlined in the Victorian Aboriginal Affairs Framework²⁵:

- Forty percent of all young people in custody presented with mental health issues.
- Eleven percent of Aboriginal young people in custody were registered with disability services.
- Children who have been involved in the Child Protection and/or out-of-home care systems are at greater risk of future justice system involvement. In June 2017 there were 2,091 Aboriginal children in out-of-home care in Victoria – the highest number in the past decade. Rates of out-of-home care are over 15 times higher for Aboriginal children than non-Aboriginal children and they have complex health needs.²⁶
- Seventy one percent of young people in custody experienced abuse, trauma and neglect.
- Substandard and inadequate housing can contribute to poor health, which is associated with incarceration.
- Seventy two percent of Aboriginal men and ninety two percent of Aboriginal women in prison had received a lifetime diagnosis of mental illness.
- Eighty seven percent of Aboriginal women in custody have experienced sexual, physical or emotional abuse in multiple forms.

It is crucial, given the complex mix of health and social circumstances experienced by Aboriginal and Torres Strait Islander youth in the justice system, that Aboriginal and Torres Strait Islander people and communities are involved in programs to prevent both incarceration and recidivism. Connection to culture is highly protective for wellbeing, and programs imposed from outside Aboriginal and Torres Strait Islander communities are highly likely to fail, and result in a sense of hopelessness for all concerned.

The importance of raising the age of criminal responsibility

Currently youth justice is the exclusive domain of each state and territory and is governed differently in each jurisdiction.

This senate enquiry is happening in the context of various state governments backtracking on their commitments to raise the age of criminal responsibility.

Politically motivated decisions to lower the age of criminal responsibility harm young people. Any arguments that lowering the age of criminal responsibility offers a diversion for the young person have been debunked by enquiries such as the [Royal Commission into the Protection and Detention of Children in the Northern Territory](#) which clearly shows the ineffectiveness of incarceration as a means of rehabilitation for young offenders.

Governments have a commitment to Closing the Gap target #11 – to reduce the rate of Aboriginal and Torres Strait Islander young people (aged 10-17) in detention by at least 30% by 2031. If this is to occur, then the age of criminal responsibility must be increased to 14 years old.

Healthcare in custodial settings – a focus on supporting young Aboriginal and Torres Strait Islander people

The health of people in the justice system is much poorer than the general population. People who are incarcerated have complex healthcare needs which require continuous and comprehensive healthcare to address.²⁷

Given Aboriginal and Torres Strait Islander people are 29 times more likely as non-Indigenous young people to be in custody, a focus must be placed on reducing rates of incarceration and harm, and on improving healthcare for incarcerated young Aboriginal and Torres Strait Islander people. Such changes to health in custodial settings will also have benefits for all young people.

Aboriginal and Torres Strait Islander people in custodial settings have the right to access culturally safe healthcare, which is equivalent to the healthcare available in the community, promotes continuity of care between the prison and community and is patient centred.

People in custody are excluded from access to the Medicare Benefits Schedule (MBS) under section 19(2) of the *Health Insurance Act 1973 (Cwlth)*. However, prison health services are expected to provide equivalent health services to those available to the general population. Research suggests this standard is not always met, which is discriminatory:

- there is a lack of consistency in quality and type of services across jurisdictions, lack of access to discharge planning
- no guarantee of access to culturally effective care and inability to access equivalent, culturally acceptable health assessments provided through Medicare, e.g. item 715 – Medicare Health Assessment for Aboriginal and Torres Strait Islander People.

Under the current model, there is also a lack of funding for Aboriginal Community Controlled Health Organisations (ACCHOs), or other community health service providers and GPs to work in custodial settings. Though well placed to provide effective healthcare to Aboriginal and Torres Strait Islander people in custody, adequate and sustainable resourcing and support is needed.

Supporting Aboriginal medical service in-reach into prisons

The ACCHO model of care is well suited to address complex conditions that are over-represented in the custodial environment, for example mental health, substance use problems and cognitive impairment.²⁸ It also counters the lack of Aboriginal and Torres Strait Islander staff in custodial settings and contributes to improving the overall cultural competence of the custodial health setting. To date, ACCHOs have not been able to afford or prioritise care for Aboriginal and Torres Strait Islander people in prison. The RACGP recommends liaison with the National Aboriginal Community Controlled Health Organisation (NACCHO) to understand needs and opportunities for ACCHOs to provide healthcare in custodial settings.

Entry into custodial settings

There is a need for access to health checks on entry to custodial settings.

For Aboriginal and Torres Strait Islander people, guidance from NACCHO on models of care and funding needs that could support health checks in the context of comprehensive healthcare for Aboriginal and Torres Strait Islander people in custodial settings is paramount, including being supported by the local ACCHO, where possible.

Supporting people leaving custody

Transition/release from custodial settings is a particularly vulnerable period, when people can experience a decline in their health and are at greater risk of hospitalisation and recidivism.²⁹ Isolated initiatives will not adequately support their transition, with additional need for mental health, alcohol and drug, and disability services.

Support services are often under-resourced, fragmented and do not meet the needs of Aboriginal and Torres Strait Islander people in custody.³⁰

The Council of Australian Governments' (COAG) *Prison to work* report found that greater coordination and information sharing is required at the prison-community interface.³¹ Programs that are flexible, accessible to those on short sentences, and take a holistic and long-term view of health and wellbeing are best placed to help address the overrepresentation of Aboriginal and Torres Strait Islander people in prison.³²

Release planning which includes communication between custodial and community healthcare providers during incarceration, as well as prior to release, is likely to improve outcomes³³ and is more successful where prisoners have culturally appropriate psychosocial support.³⁴ Yet, currently, support services are often under-resourced, fragmented and do not meet the particular needs of Aboriginal and Torres Strait Islander prisoners.³⁵

There is a critical role for ACCHOs, GPs and community health providers in the transitional period to ensure successful community reintegration, however they must be appropriately resourced and supported to understand the particular challenges faced by this cohort of patients.

The RACGP's [Standards for health services in Australian prisons \(2nd edition\)](#) recommend that release planning be undertaken for those leaving prison, and health assessments could help to bridge this gap.³⁶

Conclusion

The *Help Way Earlier* report takes an approach based on evidence and the protection of human rights and the RACGP recommends that the senate legal and constitutional affairs references committee carefully consider all 24 evidence based recommendations provided by the National Children's Commissioner as they offer a positive way forward.

Please contact Samantha Smorgon, National Manager – Funding and Health System Reform, on (03) 8699 0566 or via samantha.smorgon@racgp.org.au if you have any questions or comments regarding this submission.

Appendix A: Recommendations from Help Way Earlier! report

Reproduced from pages 12-13 of [‘Help way earlier!’ How Australia can transform child justice to improve safety and wellbeing humanrights.gov.au 2024](https://www.humanrights.gov.au/2024/04/help-way-earlier-how-australia-can-transform-child-justice-to-improve-safety-and-wellbeing)

Priorities to enable national reform

Recommendation 1: Australian Governments establish a National Taskforce for reform of child justice systems. This Taskforce should report to Ministers responsible for child justice and child wellbeing across jurisdictions.

Recommendation 2: The Australian Government appoints a Cabinet Minister for Children, with responsibility for the human rights and wellbeing of children in Australia.

Recommendation 3: The Australian Government establishes a Ministerial Council for Child Wellbeing, chaired by the Minister for Children, and reporting to National Cabinet.

Recommendation 4: The Australian Government incorporates the Convention on the Rights of the Child into Australian law through a National Children’s Act as well as a federal Human Rights Act.

Key evidence-based actions for reform of child justice systems

Recommendation 5: Australian Governments provide integrated, place based health, education and social services for both children and their families.

Recommendation 6: The Australian Government increases the level of income support payments for children, young people and families.

Recommendation 7: Australian Governments urgently prioritise access to safe and affordable housing for children and families, including those in the child protection and justice systems.

Recommendation 8: Australian Governments prioritise access to comprehensive and culturally safe healthcare, including for children with multiple and intersecting needs.

Recommendation 9: Australian Governments resource schools to be community hubs integrated with health services and providing flexible learning options.

Recommendation 10: Australian Governments prioritise investments in prevention and early intervention through Aboriginal Community Controlled Organisations.

Recommendation 11: Australian Governments improve availability of free and accessible community sport, music, other social activities, and cultural programs, addressing barriers such as lack of public transport.

Recommendation 12: Australian Governments resource and expand the availability of evidence-based diversionary programs for children, including those by Aboriginal and Torres Strait Islander Community-Controlled Organisations, and other culturally safe programs

Recommendation 13: Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.

Recommendation 14: Australian Governments resource the redesign of services to be place-based and informed by evidence and local community priorities, in line with Priority Reform 1 of the National Agreement on Closing the Gap.

Recommendation 15: Australian Governments develop nationally consistent minimum training requirements for workforces in the child justice and related systems, including child protection and police. Training should include child rights, child development, mental health, neurodevelopmental disabilities, cultural competence, and trauma-informed practice.

Recommendation 16: Australian Governments ensure that all child justice matters are heard in specialised Children's Courts or by child-specialist magistrates.

Recommendation 17: Australian Governments collect key data on children in the child justice system, disaggregated by age, sex, disability, geographic location, ethnic origin, and socioeconomic background, including data disaggregated at the local level to support service design and delivery. This data should be publicly available and accessible.

Recommendation 18: The Australian Government withdraws its reservation to Article 37(c) of the Convention on the Rights of the Child.

Recommendation 19: Australian Governments legislate to prohibit solitary confinement practices in child detention facilities, and prohibit the use of isolation as punishment in any circumstance.

Recommendation 20: Australian Governments raise the age of criminal responsibility in all jurisdictions to 14 years and undertake a review of the application of the presumption of *doli incapax*.

Recommendation 21: Australian Governments agree to implement nationally consistent standards for monitoring detention facilities for children.

Recommendation 22: Australian Governments fully implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by designating National Preventive Mechanisms that have child rights expertise in all jurisdictions.

Recommendation 23: Australian Governments conduct Child Rights Impact Assessments on laws and policies that affect children.

Recommendation 24: The Australian Government ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, that will allow children to make complaints to the United Nations Committee on the Rights of the Child about breaches of their rights.

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