



Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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10 October 2024

Dear Committee Secretary

**Submission to the Senate Legal and Constitutional Affairs Committee's inquiry into Australia's youth justice and incarceration system.**

We welcome the opportunity to provide feedback on the Senate Legal and Constitutional Affairs Committee's inquiry into Australia's youth justice and incarceration system.

Youthlaw is a community legal service which assists young people under the age of 25 with a range of legal issues. Youthlaw's target clients are vulnerable young people who experience issues such as homelessness, family violence, mental health issues and drug and alcohol abuse issues. As a supporter of the Raise the Age Campaign and a member of the Smart Justice for Young People Coalition, we are calling for the Australian Government to urgently implement national reforms to improve youth justice systems across the country. We support the submissions of Smart Justice for Young People and the Federation of Community Legal Centres' and want to add our experience with young people to the inquiry.

Positive changes in the last 12 months

We want to first acknowledge the positive work that has been done in Victoria in the last 12 months.

Bail amendments introduced in March 2024, that largely codified common law practices, now set out clear prescriptive steps for bail decision-makers. Decision-makers must now turn their mind to whether a child is from an overrepresented cohort or has experienced childhood trauma in assessing and granting bail. These changes have proven to be effective in reducing the overrepresentation of certain vulnerable groups. Victoria Legal Aid ('VLA') shared police & VLA data from May 2024, which showed a significant decrease in remand numbers for First Nations people, First Nations women, women and homeless/at risk of homelessness clients compared with the pre-reform monthly average. We attribute this success to the work of VLA in partnership with Victoria Police who took it upon themselves to train Victoria Police, prosecutors and lawyers about the changes to the Bail Act.

Nevertheless, we remain concerned that, whilst remand numbers have declined overall, the percentage of First Nation's children and children in Out of Home Care being remanded has risen significantly. According to recent data from VLA, 1 in 3 children remanded in the weekend remand court are First Nations children. Prior to bail amendments, this figure sat at approximately 1 in 5. Similarly, before the bail amendments approximately 54% of children on remand were OOHC kids, the weekend remand data indicates this has increased to approximately 75%. We consider this to be reflective of the ongoing systemic issues that lead these children to be over-policed and over-criminalised in our justice system. Please refer to Victoria Legal Aid's submission to this inquiry for more information.

We are also concerned in the bail space as this year the government initially committed to the resumption of a presumption of bail for under 18-year-olds, however ultimately, they decided not to go ahead with this change. Youthlaw and many other Community Legal Centres advocating for young people were very disappointed with this decision. We believe that the presumption of bail is a fundamental right for young people that should be maintained.

Many of the changes in the Youth Justice Act (Vic) 2024, that included raising the age of criminal responsibility to 12, present opportunities for positive outcomes. We welcome the changes which require Magistrates to take into account that a young person is from an overrepresented cohort including being First Nations. There are also additional requirements police must comply with at pre and post charge stages when dealing with this cohort.

There is also potential for positive change to flow from the new hierarchy of options, that has an emphasis on early intervention and diversion, with charging young people being a last resort. Police must consider the legislated hierarchy of options pre-charge and at all stages post-charge, including using cautions, early diversion group conferences and court ordered diversion. As always, the success of much of these diversionary options will depend on the adequate funding of programs. To date funding is quite limited and short-term.

We intend to build the knowledge of lawyers and other workers assisting young people, about the Youth Justice Act, with the aim of ensuring police and magistrates are complying with the Act, particularly regarding early diversion from the criminal justice system.

Leading up to the Youth Justice Bill entering parliament in August 2024 we, along with many others, in the community and legal sectors actively participated in consultations by a specialist panel appointed by the Victorian government to develop an alternative service response to young people engaging in offending behavior. This was established with a view to the government raising the age of criminal responsibility to 14 by 2027, however the government has since publicly stated they will not continue this commitment due to a rise in youth crime. We are hopeful this work will continue, and we will continue to be a part of this conversation. We welcome any recommendations at a federal level to develop national standards / models for an alternative service response for young people, at least under 14. Alternative service models have been

implemented successfully in pre-detention, and even detention, stages of youth justice in other comparative jurisdictions. We highlight some later in this submission.

### Some issues we see on the ground

- Our practice assists many children who are currently in residential care and who are transitioning out of residential care. This cohort has been identified as one of the most over-represented groups in the youth justice system. In our experience, these young people are stopped by police and receive fines from police regularly for matters which have been decriminalised, or for trivial matters for which other children would not be stopped by police, such as playing a musical instrument at a bus stop.
- We also assist many young people who are excellent candidates for diversion, and whose offences are eligible for diversion, but who are refused diversion by police, who withhold prosecutorial consent, on 'policy' grounds. These policies are often not publicly available and change depending on the station and the police officer. This results in inconsistent policing and outcomes for young people.
- Young people who are committing crime often have overlapping vulnerabilities, including homelessness or mental health and substance abuse issues. Young people who are dealt with in a punitive manner do not have these underlying issues resolved within the criminal justice system. The punitive measures impact their well-being further by limiting their employment opportunities, housing safety, and loss of connection to community.
- We also share the Child Commissioner's concerns that the media coverage on youth crime is spreading fear about a youth crime crisis, without asking further questions about why children are offending and what can be done to prevent it, rather than jumping to punitive measures.

### Our asks of this inquiry

Every child should be free to go to school, have a safe home to live in and be supported to learn from their mistakes. Children belong in classrooms and playgrounds, not police stations and prisons. Punishing children and locking them away in prison cells can cause lifelong harm, disrupt children's education and create additional barriers to children getting the health and wellbeing support they need to turn their lives around.

The Victorian Government recently passed the Youth Justice Act, which raised the age of criminal responsibility to 12 years of age and implemented special measures to address the over-representation of Aboriginal children in the criminal legal system. However, the Act also implemented negative bail changes, created new police powers for dealing with 10 and 11-year-olds (despite them no longer being able to be charged) and introduced electronic monitoring of

children aged 14 to 17 years, retained prosecutorial consent for court ordered diversion, and failed to raise the age of criminal responsibility to 14 years.

We support national reforms to improve early intervention, prevention and diversion away from harmful and ineffective punitive responses and towards supportive and evidence-based community support programs that work.

We ask that the Senate Committee recommends that the Australian Parliament:

- Raise the age of criminal responsibility to 14 with no exceptions in line with the Raise the Age coalition and Change the Record's recommendations.
- Ensure no children are detained in adult prisons and raise the age of detention to 16.
- Embed addressing over-representation of over-policed groups of children in criminal legal system. In Victoria we draw your attention to the Smart Justice for Young People's Working Together Action Plan.
- Reform youth bail laws by implementing Poccum's Law.
- Ban the use of spit hoods, strip searches and isolation for all children in detention.
- Appoint a National Taskforce responsible for rolling out systemic improvements across all states and territories in line with Australia's international obligations consistent with the Australian Human Rights Commission's Help Way Earlier report.
- National investment in therapeutic, child-centred and culturally appropriate responses to youth crime.
- Introduce legislative presumptions in favour of diversion and alternative pre-charge measures, as well as removing barriers to diversion such as exclusions for certain conduct and the requirement for prosecution consent for court-ordered diversion.

### Other jurisdictions

There are other jurisdictions which use alternative models to address youth crime which have had positive outcomes and resulted in reduction of youth crime.

In Spain, Youth Justice facilities are staffed by qualified educators who support young people throughout the day. They are accompanied by psychologists, social workers and reintegration workers who focus on preparing young people to reintegrate into society. As a last resort, there are security staff whose role is to protect the young people and staff who are in the background as much as possible and do not form part of the day-to-day of the young people. Reports indicate very low incidences of violence in these centres (unlike here in Australia). This model has been developed over 30 years, sees low rates of recidivism and earned the not-for-profit who runs the facilities commendation at the UN.

In Scotland, they have endorsed alternative models to criminal justice responses and after years of work, there are no children under 18 in jail in Scotland. The number of prisoners aged under 25 has also declined by 75% from 2010-2023. Scotland achieved these results by taking a whole of government approach, by addressing systemic barriers and by diverting teenagers away from

crime by finding drivers to help them change. There were measures taken across different disciplines, including providing police with a nasal spray to give to people suffering overdose, giving teachers tactics to deal with disruptive students rather than expel them and getting former gang members to speak with young gang members instead of reporting incidents to police.

The National Youth Justice Inquiry is a critical opportunity to lift baseline standards for the policing and detention of children and young people across all states and territories. We thank you for taking the time to consider our submission and would welcome the opportunity to give evidence at an upcoming Senate inquiry.

Please feel free to contact our CEO, Ariel Couchman at [ariel@youthlaw.asn.au](mailto:ariel@youthlaw.asn.au) or our Senior Policy Officer, Tammy Kamil at [tammy@youthlaw.asn.au](mailto:tammy@youthlaw.asn.au) if you have any questions.

Yours faithfully,

A handwritten signature in cursive script that reads "Ariel Couchman". The signature is written in black ink and is positioned above the typed name and contact information.

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