



Save the Children

54 reasons

Putting children first: A rights respecting approach to youth justice in Australia

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A better and more effective youth justice system is both necessary and possible, through a concerted focus on upholding the rights of children and young people.

Criminalising and jailing children and young people is harmful and ineffective. It makes reoffending more likely. The younger a child is when first criminalised, the more likely they are to reoffend and experience worse outcomes over their lifetime.

Children and young people deserve every opportunity to develop to their full potential – this is their right.

- When a child or young person comes into contact with youth justice, it means that the system has let them down, and they should be supported to get back on track.
- Children and young people at risk of, or in contact with youth justice, have nearly always experienced a combination of poverty, intergenerational disadvantage, trauma, neurodevelopmental disorders and institutional racism.

The current approach to youth justice is not working. Youth justice systems across Australia are overly focused on punishment and incarceration, and persistently breach children's rights, causing:

- Harm to children and young people
- Perpetuation of disadvantage, including over-representation of Aboriginal and Torres Strait Islander children and young people
- Ineffectiveness in preventing offending and recidivism.

A child rights-based (or rights respecting) approach is about focusing on children and young people and putting them first. It can enable a fundamental shift in how youth justice systems operate and their ability to achieve their goals, by focusing effort on:

- Addressing root causes of the harm that results when children and young people come into contact with the criminal justice system
- Preventing contact with youth justice or intervening early when it happens
- Providing effective therapeutic and trauma-informed support to change trajectories

A rights respecting approach to youth justice in Australia would be align with evidence and result in:

- Better outcomes for children and young people, including improved lifelong education, employment, health, wellbeing and social outcomes
- Reduced offending and incarceration
- More effective youth justice systems and improved community safety in the long run



Child rights and youth justice

Child rights approach to youth justice

- Aligns with evidence base about what works to prevent offending and reoffending
- Reflects contemporary understanding of child development, trauma and effective responses
- Meets international best practice standards for youth justice

Rights respecting youth justice systems

In rights respecting systems, all children and young people have their rights respected and are supported to develop in a healthy way, including in overcoming challenges.

WHAT THIS LOOKS LIKE

- Effective early intervention and prevention across the system, including a focus on home environments and education as protective factors
- Diversion used at an early stage
- Trauma-informed care
- A skilled and adequately supported workforce
- Detention used only as a true last resort
- Rehabilitative detention practices
- Children and young people supported to transition back into the community
- More effective and transparent oversight of youth justice
- Minimum age of criminal responsibility raised to at least 14

KEY GOALS TO IMPROVE OUTCOMES

- Greater respect for children and young people's right to be heard and taken seriously, by promoting their participation and elevating their voices on decisions affecting them – this will improve outcomes at the individual and system level
- Address over-representation of Aboriginal and Torres Strait Islander children and young people, by recognising and responding to structural racism and promoting self-determination – this is necessary to overcome structural inequities and uphold rights



Where child rights come from

Children's rights are enshrined in the United Nations Convention on the Rights of the Child (CRC).¹ The CRC establishes global minimum standards for all children to have the chance to develop to their fullest potential. Governments are responsible for ensuring these rights are upheld for all.

A child rights-based approach starts with children themselves, rather than existing government portfolio, policy or service settings. It is about centring children and young people, taking them seriously in their own right, and focusing on individual developmental needs and circumstances.



¹ Other key human rights treaties and declarations also affect children's rights, such as the UN Declaration on the Rights of Indigenous Peoples.



Priorities for reform in youth justice systems

Child rights-based approaches

Australian Governments should adopt a child rights-based approach to youth justice reform

- Grounded in comprehensive national, state and territory plans to uphold children's rights
- Including a coordinated approach across all policy, services and systems affecting children and child wellbeing

Priority youth justice reforms for states and territories

- Raise the minimum age of criminal responsibility to at least 14
 - The age should be raised with no exceptions, and accompanied by investment in effective alternatives to criminalising children aged 10-13
- Increase access to, and availability of, diversion programs
- Invest in and evaluate early intervention programs
- Review restrictive bail and remand laws and invest in bail supports
- Improve detention practices
 - Never detain children in adult facilities or with adults
 - End solitary confinement of children
 - End restrictive practices and others such as the use of force, restraint and strip-searching, particularly ensuring these are never used punitively or without stringent safeguards
- Implement workforce reform
 - All parts of the system should deliver therapeutic, culturally responsive support
 - Youth practitioners and detention staff should be adequately trained to use trauma-informed practice

Priorities for national reform

The opportunity for national reform

- A national approach to youth justice reform could make a real difference, with a stronger role for the Australian Government
- Australia consistently fails to meet its human rights obligations in relation to youth justice; the Australian Government is responsible for addressing these rights violations
- Many policy levers needed to shift system orientation 'upstream' towards prevention and early intervention and a coordinated service response and focus on underlying causes are Commonwealth, not State responsibilities
- Cross-jurisdictional learning and collaboration is under-utilised, including co-investment to improve outcomes for specific geographic areas and communities
- Rights respecting approaches align with place-based and justice reinvestment approaches



Priority national reforms

- Develop national youth justice standards that reflect child rights principles and best practice
- Establish national approach to raising the minimum age of criminal responsibility to at least 14
- Ensure adequate oversight of youth detention facilities, including through full implementation of the United Nations Optional Protocol to the Convention against Torture
- Enact human rights protections in every jurisdiction, including federally
- Ratify the 3rd Optional Protocol to the Convention on the Rights of the Child, which enables individual children to raise concerns about their rights directly with the United Nations
- Withdraw Australia's reservation to Article 37(c) of the Convention on the Rights of the Child, which prohibits children being held in the same facilities as adults

MORE INFORMATION AND GETTING INVOLVED

Our report, *Putting children first: A rights respecting approach to youth justice in Australia*,² contains more information and detail about child rights, the current operation of youth justice systems in Australia, and opportunities for change.

To discuss what a rights respecting approach could mean for you or your organisation, whether as a policy-maker, advocate, service provider or anyone else with an interest in a better and more effective youth justice system, please contact Howard Choo, Australian Policy and Advocacy Lead, at howard.choo@savethechildren.org.au.

For more information about Save the Children Australia and 54 reasons, please visit: savethechildren.org.au | 54reasons.org.au

54 reasons – Australia's first and leading child rights organisation

We're here to make sure that everyone understands their rights, so that children and young people have their rights met and thrive, in all their diversity. We champion the children, young people and families we work with.

54 reasons is inspired by the curiosity and creativity of children and motivated by the love of those who care for them. With the child's voice at the centre, we provide quality services to children and their caregivers, advocating with them so that children develop, learn, and are connected, safe and confident.

² <https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia-April-23.pdf.aspx>