

Submission to the Senate Legal and Constitutional Affairs References Committee's Inquiry into Australia's Youth Justice and Incarceration System

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"Young people with a care experience often do drugs and crime because they are trying to find a sense of belonging, acceptance and identity, not because it's fun or because it's enjoyable, because it's not." (Young person, Victoria) (CREATE Foundation, 2024)

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About CREATE Foundation

The CREATE Foundation is the national consumer peak body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care, up to the age of 25. Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people with a statutory care experience and developing policy and research to advocate for a better care system.

Introduction

CREATE Foundation welcomes the opportunity to provide feedback to the Senate Legal and Constitutional Affairs References Committee's Inquiry into Australia's youth justice and incarceration system (the Inquiry). In light of the recent news stories in Queensland¹, Victoria², the Northern Territory³ and Western Australia⁴, CREATE views the Inquiry as an opportunity to protect and uphold children's rights across the country. The damaging rhetoric around 'youth crime waves', the stepping away from commitments to raise the age of criminal responsibility to 14 years made by the Victorian Government, the commitment to lower the age of criminal responsibility back down to 10 years made by the newly appointed Northern Territory Chief Minister and the maintenance by key decision makers across other States of the age of criminal responsibility as 10 years; points strongly in favour of a national approach led by the Commonwealth Government. It is time for a cross-jurisdictional approach that is **child-centred, guided by evidence and the voices of young people with lived experience, and that protects human rights.**

CREATE believes that if viewed through an intersectional lens i.e., considering the criminalisation of young people in care (especially residential care), the impact of racism and overrepresentation of Aboriginal and Torres Strait Islander young people in youth justice, poverty (including access to safe and stable housing), unsupported health needs (including mental health), and the impact of contact with the police; it is clear that youth justice systems across Australia are not child-focused.

The data paints a disturbing picture. Across all Australian jurisdictions young people who have had an interaction with the child protection system made up a significant proportion of the young people

¹ See https://www.theguardian.com/australia-news/article/2024/sep/11/queensland-children-police-watch-houses-watchdog-report?CMP=Share_iOSApp_Other

² See <https://www.crikey.com.au/2024/09/12/children-prison-solitary-confinement-victoria-youth-justice/>; <https://www.heraldsun.com.au/news/victoria/teen-told-nurse-he-was-homicidal-before-stabbing-adam-bockhodt-to-death-in-south-yarra-apartment/news-story/89ac8e35642dc82dab317eb520b97137>

³ See <https://www.sbs.com.au/news/article/youth-advocates-say-jail-terms-for-10-year-olds-would-be-a-disaster-for-northern-territory/t3ocjolmb>

⁴ See <https://www.abc.net.au/news/2024-08-31/concerns-for-was-youth-justice-system,-after-death/104295070>

under youth justice supervision in 2020-21 from 37.9% in South Australia to 68.6% in the Northern Territory (See Table A). Within this cohort of young people, Aboriginal and Torres Strait Islander young people are unacceptably overrepresented; making up between 45.3% (in South Australia) and 75.6% (in Victoria) of the cohort of young people who had been under youth justice supervision in 2020–21 and who had an interaction with the child protection system (See Table A).

Table A: Young people who had been under youth justice supervision in 2020–21 and who had an interaction with the child protection system in the 5 years from 1 July 2016 – 30 June 2021 (Table S2, AIHW, 2022)

| State/ Territory | Number of young people identified as Aboriginal or Torres Strait Islander who had an interaction with the child protection system | Percentage of young people identified as Aboriginal or Torres Strait Islander who had an interaction with the child protection system | Total number of young people who had an interaction with the child protection system | Percentage of young people who had an interaction with the child protection system |
|------------------|---|---|--|--|
| ACT | 20 | 69% | 80 | 60.6% |
| NT | 200 | 69.4% | 214 | 68.6% |
| NSW | 686 | 67.5% | 1,342 | 51.4% |
| QLD | 1,016 | 67.4% | 1,567 | 58.2% |
| SA | 90 | 42.1% | 197 | 37.9% |
| TAS | 34 | 45.3% | 95 | 42% |
| VIC | 161 | 75.6% | 850 | 55.5% |
| WA | 409 | 55.9% | 645 | 49.7% |


Multiple systems have failed the young people with a care experience who come into contact with the youth justice system; with detention exacerbating existing trauma responses. These failures have built a pipeline between the child protection system and youth justice that cycle young people through without addressing their needs for support in a meaningful way. Young people with a care experience in contact with the youth justice system deserve wrap around support that can hold them by addressing their needs and dismantling the pipeline. At the heart of the statistics are young people’s stories and as such we urge this Inquiry, government across Australia, sector, the media and community to see beyond the statistics and sensationalised news stories.

While much of the debate centres around raising the age of criminal responsibility and minimum age of detention, CREATE views this step as just one part of broader systemic change that must occur to move the youth justice system to become more child and needs focused. In order to achieve this first step, Governments across Australian must commit to implementing a broader package of diversionary support to interrupt contact with the youth justice system in the first instance and therapeutic support and care where young people are already in contact. For young people with a care experience greater *care* is needed to understand driving factors, including experiences within the child protection and out-of-home care systems that have led to engaging in offending behaviours.



Summary of CREATE's recommendations:

1. The Commonwealth Government support states and territories to expedite the updating of the [National Standards for Out-of-Home Care](#) to align with the new national framework, [Safe and Supported](#), and to reinstate annual public reporting on compliance with the Standards.
2. State and Territory Governments must enhance therapeutic supports for young people in care, particularly in residential care settings, to act as a preventative measure for youth justice contact.
3. The Commonwealth Government provide young people with a care experience (up the age of 25) with access to a bespoke, free, and specialised psychology service to address early experiences of trauma and build life-long coping mechanisms that help to keep them safe and well.
4. State and Territory Governments prioritise an injection of resources in the form of investment, workforce expansions, and skills and training; to enhance diversion, early intervention and family preservation rather than investing time and resources in criminalisation and detention.
5. For Governments across Australia to genuinely partner and resource self-determined approaches to youth justice by working with Aboriginal and Torres Strait Islander Elders, community and Aboriginal community-controlled organisations (ACCOs) to develop culturally safe and appropriate mechanisms to reduce the Aboriginal and Torres Strait Islander children in contact with the youth justice system (see QATSICPP, 2023).
6. All State and Territory Governments consult with Aboriginal communities and the Aboriginal community-controlled sector to determine the role that formalised truth telling processes can play to establish a robust foundation for genuine partnership (where this is not already in place and underway).
7. The Inquiry consider recommendations made by Yoorrook for Justice made in the Victorian context including the need to give full effect to the right of self-determination in the criminal justice system as it relates to First Peoples.
8. Accelerate implementation of priority reforms and actions under the [National Agreement on Closing the Gap](#) and the Aboriginal and Torres Strait Islander [First Action Plan](#) of [Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031](#), through increased resourcing for Aboriginal community controlled organisations to reduce the over-representation of Aboriginal and Torres Strait Islander children and young people in child protection systems and to ensure that appropriate and effective community-led solutions are put in place.
9. To dismantle the pipeline that has resulted in the over-representation of Aboriginal and Torres Strait Islander children and young people with a care experience in contact with the youth justice system, all State and Territory Governments transfer decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination in child protection systems (Yoorrook for Justice, 2023).
10. The Commonwealth Government use its National Cabinet functions to coordinate a comprehensive and cross-jurisdictional 10-year Youth Justice Early Intervention Strategy. The new strategy must consider the following supports, resourcing, accountability, genuine partnerships in the spirit of self-determination and valuing expertise by experience.
11. The Inquiry consider the recommendations from the final report of the National Children's Commissioner's review of opportunities for youth justice reform, ['Help way earlier!': How Australia can transform child justice to improve safety and wellbeing](#).
12. The National Office for Child Safety to add supplementary guidance documents to their existing suite of media reporting guidelines specifically focused on responsible reporting on children in out-of-home care, especially where they are in contact with the youth justice system. This should be co-designed with children and young people with a care experience.
13. The Commonwealth Government work with all State and Territory Governments to raise the age of criminal responsibility to 14 years without exceptions as a matter of urgency.

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14. The Commonwealth Government work with all State and Territory Governments to raise the age of minimum detention to 16 years.
 15. The Commonwealth Government to use its National Cabinet functions to bring together Premiers and Chief Ministers to develop a therapeutic model of youth justice detention. The plan should at a minimum: adopt principles-based approach, elevate priority cohorts, wrap in a robust evidence base, value expertise by experience and incorporate an evaluation framework to measure and report on change.
 16. The Commonwealth Government to use its National Cabinet functions to secure a national commitment to establishing a 'Joint agency agreement to reduce preventable police-call outs to residential care services across all jurisdictions where one is not currently in place.

Detailed recommendations

The outcomes and impacts of youth incarceration in jurisdictions across Australia

[National Standards for Out-of-Home Care](#) 1, 2, 5, 7, 8, 10, 12 and 13 relate to young people in contact with the youth justice system. Detention obscures young people's ability to access these standards (Commonwealth of Australia, 2011). Young people with a care experience across Australia have spoken to CREATE about the intersection between the care system and youth justice system. They highlighted the impact that early exposure to criminal behaviours engaged by the adults in the life have had on them:

"If you don't have parental figures who behave lawfully or have parents going in and out of jail you're growing up in a world where that's normal compared to growing up in an environment with two parents teaching you right from wrong." (Young person, NSW) (CREATE Foundation, 2023b)

"My dad was a heavy drug user... He used to extort my mum for money and we wouldn't have money for the lights or food. The only time I ever felt safe was... at school... I felt helpless and alone... I ended up getting introduced to drugs and followed in my dad's footsteps of drugs and crime. I used drugs to numb my emotions." (Young person, Victoria) (CREATE Foundation, 2024)


Young people placed in out-of-home care are more likely to have contact with the justice system due to the criminalisation of behaviours that may otherwise be considered acceptable or negligible in a home environment. Young people in a family home may damage property or threaten harm whilst in elevated states, but parents typically manage this behaviour. In the out-of-home environment, residential care staff or foster carers are more likely to prematurely engage the police to manage the young person's behaviour, particularly when incidents are frequent (though not necessarily serious) and the young person does not respond to other forms of managing this behaviour, such as threat of being 'grounded' (Shaw, 2017). Young people told CREATE about the impact that this escalated approach has had on them:

"No one will give me a job because I have history with the police. All these services want me to go out and find a job but how can I when they always say no and I don't know where to go to get that fixed." (Young person, QLD) (CREATE Foundation, 2023a)

"I feel like as soon as they found out I'm a resi [residential care] kid I'm seen as a danger or a threat." (Young person, QLD) (CREATE Foundation, 2023a)

Young people have also spoken about engaging in behaviours that are considered criminal, as a coping mechanism/trauma response:

"Young people with a care experience often do drugs and crime because they are trying to find a sense of belonging, acceptance and identity, not because it's fun or because it's enjoyable, because it's not." (Young person, Victoria) (CREATE Foundation, 2024)



“I was reunified with my mother at 12 years... I re-entered into foster care at 13 after my mother kidnapped me from my grandparents’ home. I was reunified again... I began using drugs to cope with being at home.” (Young person, Victoria) (CREATE Foundation, 2024)

Their comments shine a light on ways that care systems fail to address young people’s need for support. Young people are crying out for relational support to work through their early experiences of trauma through safe coping mechanisms that safeguard them from continued exposure to harm:

“Young people should get more support if they got in legal trouble, they are still kids and a lot don't know all the rights from wrongs. So, more support for them in these situations would be make a positive difference.” (Young person, Tasmania) (CREATE Foundation, 2023c)

“Someone can be a really good person who’s done a bad thing there’s ten-year olds who have been dealt a bad thing a lot of kids who get in trouble won’t reoffend as adults.” (Young person, NSW) (CREATE Foundation, 2023b)

Young people are calling for those in position of power to see beyond the behaviours that are considered criminal and understand these behavioural responses in the context of trauma and unmet needs. Their comments are a timely reminder that their placement within the care system is not a decision they had a hand in and that this same system can cause them significant harm by failing to meet their needs.

To better meet the need of children and young people with a care experience and interrupt cycles of contact between the care and youth justice systems, CREATE recommends:


- The Commonwealth Government to support states and territories to expedite the updating of the [National Standards for Out-of-Home Care](#) to align with the new national framework, [Safe and Supported](#), and to reinstate annual public reporting on compliance with the Standards. This work will help to address the lack of transparency around the extent to which children and young people’s needs and rights are being met in care, especially those who are in contact with the youth justice system.
- State and Territory Governments must enhance therapeutic supports for young people in care, particularly in residential care settings, to act as a preventative measure of youth justice contact. This should include:
 - equipping foster and kinship carers, through training and other resources, to manage challenging behaviour in the home through a trauma-informed framework.
 - applying minimum standards for recruitment of residential care workers to ensure they are highly trained and have acquired the varied skills required for managing challenging behaviours; including being trauma-informed, having a sound knowledge of conflict resolution, and the ability to apply diversionary strategies. Having staff who can confidently apply these approaches in a caring and supportive way, while respecting relationships, should assist in decriminalising the residential-care experience.
- The Commonwealth Government providing young people with a care experience (up the age of 25) with access to a bespoke, free, and specialised psychology service to address early experiences of trauma and build life-long coping mechanisms that help to keep them safe and well.
- State and Territory Governments prioritise an injection of resources in the form of investment, workforce expansions, and skills and training; to solidify early intervention and family preservation rather than focusing all efforts on criminalisation and detention. This will aid in diverting children, young people and vulnerable families from prolonged contact with the child protection and care systems and in turn help to reduce the number of young people in contact with the youth justice system who also have a care experience.

- The Commonwealth Government use its National Cabinet functions to coordinate a comprehensive and cross-jurisdictional 10-year Youth Justice Early Intervention Strategy. The new strategy must consider the following:
 - **Supports:** An assessment of the support gaps, drivers and protective factors for children and young people at risk of contact with the youth justice system. This should also be complemented by increased resourcing for existing services that seek to support children, young people and families to access family support, educational support, health (including mental health) and housing support.
 - **Resourcing:** Redirection of resourcing and investments to evidence-based diversion programs that intervene earlier with intensive supports to steer children and young people away from the youth justice system.
 - **Accountability:** A comprehensive review of instances where police cautions and/or referrals to support services were not used with children and young people with the view to increase transparency around the use of these diversionary measures. The review should also seek to better understand referral pathways to support services and any barriers to their use including lack of service capacity.
 - **Genuine partnerships in the spirit of self-determination:** To reduce the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice systems, CREATE calls on governments in Australia to demonstrate a genuine commitment to true partnership by transferring decision-making power, authority, control and resources to First Nations Peoples, to advance self-determination across child protection systems.
 - **Valuing expertise by experience:** Genuine and meaningful consultation with children and young people that upholds their right to participate in system and policy setting decisions that affect them. Consultation processes with children and young people should be inclusive of the voices of diverse groups, including children and young people with a care experience and Aboriginal and Torres Strait Islander children and young people given their overrepresentation in the youth justice system.
- The Inquiry consider the recommendations from the final report of the National Children’s Commissioner’s review of opportunities for youth justice reform, [‘Help way earlier!’: How Australia can transform child justice to improve safety and wellbeing.](#)
- The National Office for Child Safety to add supplementary guidance documents to their existing suite of media reporting guidelines specifically focused on responsible reporting on children in out-of-home care, especially where they are in contact with the youth justice system. This should be co-designed with children and young people with a care experience.

The over-incarceration of First Nations children

Governments across Australia must hasten efforts in Closing the Gap in outcomes for Aboriginal and Torres Strait Islander children and young people. Data from the dashboard and the fourth Annual Data Compilation Report (released on 31 July 2024) on progress under the National Agreement on Closing the Gap highlights:


- no change from the baseline to address Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system
- worsening outcomes related to the overrepresented of Aboriginal and Torres Strait Islander children in the child protection system – with the 2023 rate is below the rate in 2021 (57.6 per 1,000 children) but it is an increase from 54.2 per 1,000 children in 2019 (the baseline year), and
- worsening outcomes related to Australian Early Development Census – nationally in 2021, only 34.3% of Aboriginal and Torres Strait Islander children commencing school were assessed as being developmentally on track in all five AEDC domains (Productivity Commission, 2024a).



The data continues to point to the fact that more needs to be done to address the continued harms of colonisation, land dispossession, intergenerational trauma, systemic racism and child removal practices. As such, there must be a cross-jurisdictional approach to interrupting the over-representation of Aboriginal children in contact with youth justice, child protection and care systems.

In the spirit of self-determination and to accelerate progress towards achieving critical Close the Gap Targets, CREATE urges Governments across Australia:

- to genuinely partner and resource self-determined approaches to youth justice. CREATE sees this as a critical to dismantling practices that have resulted in the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice system across Australia. As such, we support the call to action made by our sector partners Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) for Government across Australia to support self-determined approaches to youth justice. To this end, Governments should work with Aboriginal and Torres Strait Islander Elders, communities and Aboriginal community-controlled organisations (ACCOs) to develop culturally safe and appropriate mechanisms to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in contact with the youth justice system (see QATSICPP, 2023).
- all State and Territory Governments consider consulting with Aboriginal community and the Aboriginal community-controlled sector to determine the role that formalised truth telling processes can play to establish a robust foundation for genuine partnership (where this is not already in place and underway). CREATE recognises the value and power that truth-telling processes led by Aboriginal communities have had in the Victorian context, via the Yoorrook Justice Commission (Yoorrook). Yoorrook is a time-limited truth-telling Commission tasked with establishing an official public record of past and current systemic injustices experienced by First Peoples in Victoria, as an important step towards Treaty. Its investigation into Victoria's criminal justice and child protection systems explored the unbroken line between the removal of Aboriginal children from their families and the criminalisation of resistance to dispossession as part of state-sanctioned colonial practices. The importance of this process lies in Yoorrook's role in establishing an official record of the impact of colonisation, as well as having the power to make recommendations for reforms needed in Victoria to acknowledge historical injustices and address ongoing injustices.
- the Inquiry consider recommendations made by Yoorrook for Justice made in the Victorian context including the need to give full effect to the right of self-determination in the criminal justice system as it relates to First Peoples – “this includes negotiating through the Treaty process, including through potential interim agreements, the transfer of decision-making power, authority, control and resources in that system to First Peoples. Transferring or creating decision-making power includes but is not limited to system design; obtaining and allocating resources; powers of, and appointments to bodies or institutions, and; accountability and oversight functions including new First Peoples led bodies, oversight processes or complaints pathways” (Yoorrook for Justice, 2023, Recommendation 2)
- accelerate implementation of priority reforms and actions under the [National Agreement on Closing the Gap](#) and the Aboriginal and Torres Strait Islander [First Action Plan](#) of [Safe and Supported](#), through increased resourcing for Aboriginal community controlled organisations to reduce the over-representation of Aboriginal and Torres Strait Islander children and young people in child protection systems and to ensure that appropriate and effective community-led solutions are put in place. It will also be important to consider any recommendations that flow from the upcoming scoping study into the interface between child protection and youth justice systems, as committed to under Safe and Supported.
- To dismantle the pipeline that has resulted in the over-representation of Aboriginal and Torres Strait Islander children and young people with a care experience in contact with the youth justice system, all State and Territory Governments consider transferring decision-



making power, authority, control and resources to First Peoples, giving full effect to self-determination in child protection systems (Yoorrook for Justice, 2023).

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; the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

CREATE regards the state of youth justice in Australia as a human rights issue. In 2019, in their concluding observations on the combined fifth and sixth periodic reports of Australia, the [Committee on the Rights of the Child](#) raised serious concerns in relation to the full realisation of the 54 interdependent and indivisible rights of the child specifically highlighting the lack of progress made to raise the age of criminal responsibility (United Nations Committee on the Rights of the Child, 2019). Comments were also made in relation to the appalling conditions that children are exposed to while in detention with urgent calls to bring practices in line with the [Convention on the Right of the Child, 1989](#).

CREATE has been deeply disturbed by reports across the country that shine a light on the use of adult prisons to detain children. In Tasmania there has been a practice of detaining children in adult reception prisons⁵; and in Queensland adult watch houses used to detain children⁶. Watch houses and adult prisons should never have been an accepted part of youth justice responses. We were also saddened to hear of the two recent deaths by self-harm in Western Australia's youth justice system.⁷ Detention has a devastating impact on children's health, development, mental health, and wellbeing (Human Rights Law Centre, 2023), and evidence shows that the earlier a child has contact with the criminal justice system, the more likely it is they will have long-term involvement in crime (AIHW, 2022).

Young people across Australia have spoken about the need to raise the age of criminal responsibility and their genuine belief that governments across Australia must do more to protect children's human rights:

"I believe the age [of criminal responsibility] should be raised according to what the UN [United Nations] says... it's a gross violation of children's rights" (Young person, NSW) (CREATE Foundation, 2023b)

"It makes sense, the age should be a bit higher. Kids in care have been through a lot and stopping the support at 10 is a bit [wrong]. Kids in care are more likely to act out, so it should be advocated for." (Young person, Tasmania) (CREATE Foundation, 2023c)


"Australia is the only developed country internationally with criminal responsibility this young." (Young person, NSW) (CREATE Foundation, 2023b)

"Well, I think it [the age of detention] should be like around the age of 19. Because these little children pick up bad habits because they see it from their parents, they think that what their parents are doing is the right choice, which it is not. So, for them, those little children, they should just be given a warning by the police instead of actually getting arrested and going to the detention centre." (Young person, Tas) (CREATE Foundation, 2023c)

⁵ See <https://childcomm.tas.gov.au/opinion-piece-adult-prison-is-no-place-for-children/>

⁶ See <https://create.org.au/create-foundation-calls-on-qld-to-cease-locking-up-children-in-adult-watch-houses/>

⁷ See <https://www.hrw.org/news/2024/09/04/another-child-dies-western-australian-youth-detention#:~:text=Last%20week%2C%20a%2017%2Dyear,in%20less%20than%20a%20year.>



CREATE cannot support the child rights abuses perpetuated across Australia everyday including the reality that children as young as ten years old face the possibility of growing up behind bars. New data also highlights the skyrocketing costs of this approach, at \$2827.47 per incarcerated young person per day (Productivity Commission, 2024b). Raising the age of criminal responsibility and detention is a critical first step in safeguarding the rights, wellbeing, and development of young children and avoiding the stigma of criminalisation. Critically, this reform must be implemented in conjunction with increased investment in programs focused on prevention, diversion, therapeutic intervention, and rehabilitation. Young people have reflected on their hopes for change and in recognition that children and young people (especially those with a care experience) need support and care to understand why the behaviours they have engaged in are criminal:

“I think that a lot of detention centres are focused more on punishment rather than like therapy and bettering the young person or helping them understand how to better themselves.” (Young person, Tasmania) (CREATE Foundation, 2023c)

“No matter what age there should be a teaching opportunity that what they have done wrong is wrong and that everything has an effect.” (Young person, NSW) (CREATE Foundation, 2023)

“... organisations need to go out to the young people and find out what it is that would actually keep them out of trouble.” (Young person, QLD) (CREATE Foundation, 2022)

“Not all people have capacity to understand or they don’t think that much about what they’re doing because they’re a kid.” (Young person, ACT) (CREATE Foundation, 2023b)


“Your brain isn’t fully constructed when you’re young and that doesn’t happen till you’re 26.” (Young person, ACT) (CREATE Foundation, 2023b)

“Some people don’t get to learn... I think we should have something instead of prison somewhere they can learn instead of being punished... where they get taught an understanding of what is right and wrong.” (Young person, ACT) (CREATE Foundation, 2023b)

Young people’s comments speak to the need for greater efforts at the national level to address the major risk factors for children entering the justice system. Critically, this must include better meeting the needs of children and young people in care. There are substantial benefits to taking a national approach to these critical reforms, as outlined earlier in our submission this includes improved quality and consistency in service provision for vulnerable young people, and increased accountability and transparency in relation to Government compliance with existing Standards and implementation of commitments. To support this, the Commonwealth Government must play a stronger role in leading and coordinating national reform efforts.

CREATE recommends:

- The Commonwealth Government work with all State and Territory Governments to raise the age of criminal responsibility to 14 years **without exceptions as a matter of urgency.**
- The Commonwealth Government work with all State and Territory Governments to raise the age of minimum detention to 16 years.
- The Commonwealth Government to use its National Cabinet functions to bring together Premiers and Chief Ministers to develop a therapeutic model of youth justice detention. The plan should at a minimum adopt:
 - ***Principles-based approach:*** That takes accountability for using detention as a ‘last resort’ as part of a broader rehabilitative, trauma-informed and culturally appropriate response to children and young people who engage in offending behaviours, and engage other state and territory governments in a knowledge

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- sharing exchange to better understand models trialled and any evaluation of community-led alternative youth justice interventions.
- **Elevate priority cohorts:** Including children and young people with a care experience (including sub-groups of young people in residential care and young people who identify as female in recognition of their unique needs). This should be done in an effort to interrupt cycles of contact with the youth justice system for this cohort and to ensure that if/where contact occurs the youth justice system addresses their need for support in a meaningful way.
 - **Evidence based:** Consider the evidence-base developed by the [National Children's Commissioner](#) on prevention and early intervention through investigation into opportunities for reform of youth justice and related systems across Australia.
 - **Valuing expertise by experience:** Involve the voices of children and young people through active and meaningful engagement/consultation with young people in contact with the youth justice system, especially those with a care experience.
 - **An evaluation framework to measure and report on change:** A robust and publicly available evaluation matrix must be in place to ensure Governments across Australia are held accountable for taking a child rights approach to youth justice.
- The Commonwealth Government to use its National Cabinet functions to secure a national commitment to establishing a 'Joint agency protocol to reduce preventable police-call outs to residential care services' across all jurisdictions where one is not currently in place. Where this or an equivalent is in place state and territory government should consider evaluation and publicly available outcome reporting to determine the extent to which practices have been understood, embedded and their effectiveness in dismantling cycles of criminalisation for young people in residential care.

Conclusion

Thank-you again for the opportunity to provide feedback to the Senate Legal and Constitutional Affairs References Committee's Inquiry into Australia's youth justice and incarceration system. CREATE reiterates our call for child-centred and trauma-informed diversion and therapeutic responses for children who come into contact with the criminal justice system. It is time for the Commonwealth Government to take the lead and hold State and Territory Government to account for transformational change. We need a cross-jurisdictional approach to youth justice that is **guided by the voices of young people with lived experience, child-centred, evidence-based and protects human rights**. Should you have any questions or require additional information, please contact Imogen Edeson, CEO, CREATE Foundation.

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References

- Australian Institute of Health and Welfare. (2022). *Young people under youth justice supervision and their interaction with the child protection system 2020–21*. Canberra: AIHW.
<https://www.aihw.gov.au/reports/youth-justice/young-people-under-youth-justice-supervision/summary>
- Commonwealth of Australia (2011). *An outline of National Standards for Out-of-home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009 – 2020*. Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group.
https://www.dss.gov.au/sites/default/files/documents/pac_national_standard.pdf
- CREATE Foundation. (2022). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in Cairns (Queensland) on youth justice*. Unpublished.
- CREATE Foundation. (2023a). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in Brisbane (Queensland) on key issues young people want to explore in YAGs over the next 12 months*. Unpublished.
- CREATE Foundation. (2023b). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in New South Wales and the Australian Capital Territory on raising the age of criminal responsibility*. Unpublished.
- CREATE Foundation. (2023c). *CREATE Youth Advisory Group: The views and experiences of young people with an out-of-home care experience in Tasmania on CREATE's Advocacy Priorities in Tasmania*. Unpublished.
- CREATE Foundation. (2024). *Exploring Connections: How can you shape my tomorrow: CREATE Foundation's Youth Expert Advisory Group (YEAG) 2024 youth-led forum*.
<https://create.org.au/young-people-are-the-future-but-youre-the-ones-shaping-us-and-the-future-insights-from-the-vic-youth-forum/>
- Human Rights Law Centre. (2023). *126 organisations call on Attorneys-General to #RaiseTheAge to 14*. <https://www.hrlc.org.au/news/2024/04/24/raise-the-age-scag>
- Productivity Commission. (2024a). *Closing the Gap Information Repository: Dashboard*. Australian Government. <https://www.pc.gov.au/closing-the-gap-data/dashboard>
- Productivity Commission. (2024b). *Report on Government Services 2024: 17 Youth justice services*. Australian Government. <https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice>
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP). (2023). *QATSICPP Statement – Recent legislation introduced to Queensland Parliament re: detaining children in adult watch houses and correctional facilities*.
<https://www.qatsicpp.com.au/blog/2023/08/25/qatsicpp-statement-recent-legislation-introduced-to-queensland-parliament-re-detaining-children-in-adult-watch-houses-and-correctional-facilities/>
- Shaw, J. (2017). Residential care and criminalisation: The impact of system abuse. *Safer Communities*, 16(3), 112–121. <https://doi.org/10.1108/SC-02-2017-0008>
- United Nations Committee on the Rights of the Child. (2019). *Concluding observations on the combined fifth and sixth periodic reports of Australia*. The Office of the High Commissioner for Human Rights.



https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%20%2FC%2FAUS%2FCO%2F5-6&Lang=en

Yoorrook for Justice. (2023). *Yoorrook for Justice Report: Recommendations*.

<https://yoorrookforjustice.org.au/wp-content/uploads/2023/08/Yoorrook-for-Justice-Report-Recommendations.pdf>