

Submission Response

Inquiry into Australia's youth justice and incarceration system

The Aboriginal Health Council Western Australia (AHCWA) welcomes the Commonwealth Senate's Legal and Constitutional Affairs References Committee's inquiry into Australia's youth justice and incarceration system (Inquiry). Above all, AHCWA emphasises that youth justice needs to be addressed in partnership with the Traditional Owners, Aboriginal community controlled sector, and with joint efforts across all levels of government. Immediate action is necessary to modernise an outdated system and ensure that policies are designed and implemented with a focus on the rights of all children and young people. AHCWA remains committed to working collaboratively with the government to reform youth justice.

About the Aboriginal Health Council of Western Australia

AHCWA is the peak body for Aboriginal Community Controlled Health Services (ACCHS) in Western Australia (WA). AHCWA exists to support and act on behalf of its 23 Member Services across the State, actively responding to the collective needs of their communities for better and equitable outcomes of Aboriginal people.¹ Youth justice is a critical issue for AHCWA, its Member Services, and the AHCWA Youth Committee. AHCWA's Member Services span across the entirety of WA, each facing unique challenges and celebrating various successes, yet unanimously recognise the vital importance of transforming the youth justice system to meet the complex needs of young people and enable community safety.

AHCWA's Youth Committee, consisting of six members representing various regions across WA, aims to empower Aboriginal youth aged 18 to 29 years to develop solutions to issues affecting their communities. The AHCWA Youth Committee urges all governments to demonstrate meaningful commitment to youth justice reform. They emphasise that community and community-led services are best placed to work with children and young people, who often have already had a lifetime of government interference.

Further, senior clinicians from WA ACCHS also collectively hold serious concerns regarding the WA justice system's treatment of Aboriginal children and young people. The AHCWA Clinical Leadership Group (Clinical Leads) has called on the Department of Justice (DoJ) to urgently provide culturally safe and clinically appropriate care to the children in Banksia Hill Detention Centre (BHDC) and Unit 18 in Casuarina Prison (Unit 18). The Government must recognise the value of the ACCHS sector as an essential partner that brings knowledge and

¹ The word 'Aboriginal' has been used respectfully throughout this document to include all Aboriginal and Torres Strait Islander people.

expertise to developing service models and solutions² as outlined under the National Agreement on Closing the Gap (the National Agreement). Lastly, addressing the issues of poverty, unemployment, racism, overcrowding and inequality are foundational for preventing the involvement of Aboriginal children and young people in the criminal justice systems.

Introduction

WA has the highest rate of Aboriginal children and young people in detention of any State or Territory in Australia.³ In 2021, 77 per cent of all children and young people detained in BHDC were Aboriginal.⁴ AHCWA believes that the DoJ continues to endanger the wellbeing of Aboriginal children in detention by failing to address signs of distress,⁵ neglecting to provide culturally appropriate care,⁶ and imposing inappropriate staffing levels and rolling lockdowns.⁷ Additionally, the placement of children in an adult prison contravenes the United Nations (UN) Convention on the Rights of the Child, which requires that “every child deprived of liberty shall be separated from adults”.⁸

Aboriginal people are still disproportionately overrepresented in the youth justice system, and correlated systems such as child protection, which are failing to ensure the safety of communities and children. In 2021-22, Aboriginal and Torres Strait Islander young people represented 47 per cent of those under community based supervision, and 55 per cent of those in secure detention facilities.⁹ Staggeringly, the actual rate of Aboriginal young people in detention in WA in 2022-23 was over 38 times higher than non-Indigenous people.¹⁰ Although AHCWA recognises the downward trend of Aboriginal people in detention since the early 2000s, the strength of this trend is imbalanced with the complexity, severity, and changes in types of crimes, with inequity building for Aboriginal families, children and young people that come into contact with child justice.

In 2023, approximately \$75 million was spend on juvenile detention in WA.¹¹ However, disaggregated data on the cost per child and young person in youth detention and across different stages of the justice system remains difficult to obtain. The issue with reforming the youth justice and incarceration system across Australia is not one of cost; rather, evidence suggests that a well-serviced and resourced detention and remand system costs significantly

² Australian Government Productivity Commission. Review of the National Agreement on Closing the Gap. 2024. Available from: <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-factsheets.pdf>

³ Australian Institute of Health and Welfare. Youth justice in Australia 2021-22, Data. Table S78c. Data tables: Youth justice in Australia 2021-22 supplementary tables - Detention: S72 to S126 Cat. No. JUV 140. Canberra; 2023 Mar. Available from: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/data>.

⁴ Pettit C. Consultation with children and young people in Banksia Hill Detention Centre. Perth: Commissioner for Children and Young People WA. 2021 Dec. Available from: <https://www.cyp.wa.gov.au/media/5022/speaking-out-about-banksia-hill-report-for-the-new-commissioner-december-2021.pdf>.

⁵ Torre G. National Indigenous Times. 2023. Leaked emails expose mental health crisis in youth prison, WA Law Society slams “unlawful” treatment of detainees. Available from: <https://nit.com.au/02-05-2023/5796/leaked-emails-expose-mental-health-crisis-WA>.

⁶ Torre G. National Indigenous Times. 2023. WA Coroner finds culturally safe care in prison “may well have” saved young Indigenous man’s life. Available from: <https://nit.com.au/02-08-2023/7038/culturally-safe-care-could-have-saved-young-indigenous-mans-life-wa-coroner-agrees>.

⁷ Zadvirna D. Guards at notorious WA youth detention centres accused of not having valid child safety checks. ABC News. 2023 Jun 4. Available from: <https://www.abc.net.au/news/2023-06-04/banksia-hill-guards-lack-working-with-children-check/102415646>.

⁸ United Nations. Office of the High Commissioner Human Rights. 2019. Convention on the Rights of the Child. Available from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

⁹ Australian Government Institute of Health and Welfare, National Indigenous Australian Agency. Aboriginal and Torres Strait Islander Health Performance Framework August 2024. 2024. Available from: <https://www.indigenoushpf.gov.au/>.

¹⁰ Australian Government Institute of Health and Welfare. Youth detention population in Australia 2023. 2023. Available from: <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/first-nations-young-people>.

¹¹ Bourke K. The price of juvenile detention in WA is more expensive than ever. But how much longer can we afford to get it wrong? Australian Broadcasting Network. Available from: <https://www.abc.net.au/news/2023-10-25/unit-18-banksia-hill-cost-of-juvenile-justice/103013696>.

more than a youth justice system focused on a rehabilitative, trauma-informed setting with a specialised and culturally appropriate workforce.

Public perception also plays a key role in shaping justice policies. A WA based study¹² found that when the public were presented with detailed information about sentencing options, severity of crime, background and contextual information of young offenders, participants were more likely to choose a less harsh sentencing option from the vignettes. This suggests that when the public are informed about different sentencing options and a young person's brief history, that less strictly punitive options are typically preferred. Although only citing one study in WA, there is an argument to be had on reflecting legislative sentencing policies in concordance with public attitude, and all aspects of the justice system for that matter.¹³

Furthermore, the National Agreement provides a blueprint to all government signatories to close the gap. It also includes a target to reduce the rate of Aboriginal and Torres Strait Islander young people (and adults) in detention by at least 30 per cent. Unfortunately, this target is not on track, demonstrating the need for greater transparency of data across the whole spectrum of the youth justice system. For instance, the Australian Bureau of Statistics report on offenders¹⁴ proceeded against by police for youth and adults were not available for WA, with disaggregation by Aboriginal status further unknown due to quality concerns. Further, a breakdown of youth convictions by fines, good behaviour bonds, community work orders, and dispositions are largely unknown. Cultural safety, the principle of beneficence, and transparency across the data cycle from collection to use for evidentiary support would lead to advancements in how youth justice is monitored and evaluated, keeping young people's rights and sovereignty at the heart of any process.

The WA context from AHCWA's position

Key points regarding WA's youth justice system include:

- In WA, the main piece of legislation that governs the youth justice system is the *Young Offenders Act 1995 (Act)*.
- Throughout the years, there have been calls for immediate reforms to WA's youth justice laws. Although a review of the Act was announced by the WA Government in October 2022, this work has not yet commenced.
- The *Act* came into effect two years before the pivotal Bringing Them Home report.¹⁵ The report discussed issues with the *Act* such as allowing an environment where police lock-ups occurred for Aboriginal youth experiencing intoxication, because the *Act* does not mandate police officers to find more suitable and proportionate accommodations for youth in this scenario.
- There is a single Corrections portfolio under the DoJ, for both youth and adult justice and incarceration, which also monitors and evaluates the system.

¹² Mackenzie G, Spiranovic C, Warner K, Stobbs N, Gelb K, Lynne R, Broadhurst R, Bouhours T. Sentencing and public confidence: Results from a national Australian survey on public opinions towards sentencing. 2012 March. *Journal of Criminology*, 45(1). <https://doi.org/10.1177/0004865811431328>.

¹³ Lynne R, Spiranovic C, Indermaur D. A country not divided: A comparison of public punitiveness and confidence in sentencing across Australia. *Australian & New Zealand Journal of Criminology* 44(3). <https://doi.org/10.1177/0004865811419059>.

¹⁴ Australian Government Bureau of Statistics. Recorded Crime – Offenders [online]. 2024. Available from: <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>.

¹⁵ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia). *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. [Sydney]: [Human Rights and Equal Opportunity Commission], 1997.

- The Children’s Court in WA works with children and young people charged with a criminal offence under the *Act*. There are ten options for the Court to consider.
- The *Act* also sets out diversionary options for police officers. Police can formally refer the matter, instead of an arrest, to the Juvenile Justice Team in the DoJ.
- BHDC is WA’s only custodial facility for children and young people who have been sentenced or are on remand in WA, with health services delivered by the DoJ, not WA Health.
- In 2022, the WA Government annexed Unit 18 of Casuarina Prison, a maximum security adult prison, to accommodate youth detainees with complex needs and challenging behaviours that could not be managed at BHDC.
- In October 2023, a young Aboriginal man died by suicide in Unit 18.
- In August 2024, a second young man, accepted in his community as Aboriginal, died by suicide at BHDC.
- In late September 2024, the WA Government’s Minister Paul Papalia announced a new youth detention facility to adjoin BHDC, and *in time* replace Unit 18.¹⁶
- There are currently very few opportunities for ACCOs to provide services into BHDC. Since the Holman Review in 2014,¹⁷ ACCHS programs in custodial settings have been defunded, with some Member Services continuing to develop business cases to deliver culturally and clinically safe health services. Only a few ACCHS have been afforded the opportunity to develop a relationship with local prisons with the vision to provide a level of cultural governance oversight, with some Member Services beginning to get involved in post-release supports. Nevertheless, there has been no opportunity to develop consistent relationships, and ACCHS have not been treated as essential partners in program and service design, as well as delivery to succeed in meeting the very real and enduring need.

From AHCWA’s perspective, the current youth justice system is neither fit for purpose, nor is it inherently rehabilitative, does not reduce recidivism, and in many instances increases the likelihood for children and young people to experience higher rates of lifetime disadvantage.

For instance, DoJ observed a 52.6 percent rate of return to youth justice,¹⁸ a statistic which does not give insight into the trajectory of youth to adult detention patterns over the life course, which Member Services raised as a key observation on the importance of supporting young offenders early to avoid ongoing adult criminalisation.

Australian practices remain far behind other high ranking countries on the International Human Rights Index, with significant concerns about the age of criminal responsibility, overrepresentation of Aboriginal and Torres Strait Islander people in custody and as victims of violent crime and assault, children in adult prisons, disproportionate use of electrical discharge weapons, and legislative change to repeal law that commits people with intellectual and psychosocial disability considered unfit for trial into custody.¹⁹

¹⁶ Government of Western Australia. New youth detention facility to adjoin Banksia Hill. 2024 September. Available from: <https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/New-youth-detention-facility-to-adjoin-Banksia-Hill-20240926>.

¹⁷ Holman D. A Promising Future: WA Aboriginal Health Programs. 2014. Government of Western Australia Department of Health. Available from: <https://www.health.wa.gov.au/Reports-and-publications/A-Promising-Future-WA-Aboriginal-Health-Programs>.

¹⁸ Government of Western Australia Department of Justice. Annual Report 2022/23. 2023. Available from: <https://www.wa.gov.au/system/files/2023-10/department-of-justice-annual-report-2022-2023.pdf>.

¹⁹ United Nations Human Rights Office of the High Commissioner. Universal Human Rights Index. Available from: <https://uhri.ohchr.org/en/search-human-rights-recommendations?countries=8bfeaba4-7a4c-45e9-951f->

Healthcare in youth detention

Access to culturally safe, holistic healthcare for Aboriginal children and young people in detention is a key priority for AHCWA. With more than 70 per cent of youth in custody at BHDC and Unit 18 on any given day of Aboriginal descent²⁰ it is crucial to acknowledge the holistic and culturally safe healthcare required for these children and young people. It is well understood that Aboriginal children and young people in custody in WA have high rates of neurodevelopmental impairment, with another study²¹ finding that 89 per cent of those in BHDC having at least one domain of severe neurodevelopmental impairment and the highest reported prevalence of Fetal Alcohol Spectrum Disorder in a youth justice setting in the world (36 per cent).

Additionally, as social drivers of poor health overlap with factors associated with exposure to the criminal justice system, children and young people in detention are known to be disproportionately affected by complex physical and mental health issues, which require comprehensive healthcare approaches. Many Aboriginal children and young people are separated from their families and country, contributing to further distress. Providing culturally safe and comprehensive healthcare, including diagnosis and treatment (inclusive of developmental impairment) for Aboriginal children and young people is an urgent requirement within youth detention settings in WA.

Furthermore, discharge planning should include comprehensive clinical handover to an appropriate health service to ensure continuity of care. The youth detention system does not adequately consider how crucial it is for transitional services to be fit for purpose and culturally safe. Many WA ACCHS reflect on the poor health referral and handover from custodial settings back to community health services.

WA ACCHS urge the WA Government to urgently deliver on its promise to appoint an Aboriginal health service to provide culturally appropriate care for young people at BHDC²² to tackle the issue of fragmented and inconsistent healthcare delivery.

To conclude, AHCWA advocates for transferring the responsibility for health services in detention from the DoJ to WA Health, aligning with best practices in other States and Territories. This would create an operating environment that allows a more skilful health program commissioning agency to lead healthcare in prisons.

Raising the age of criminal responsibility

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²⁰ Office of the Inspector of Custodial Services. 2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One) [Internet]. Perth (Whadjuk Noongar Boodja): Government of Western Australia; 2023 May [cited 2024 Apr 18]. Available from: <https://www.oics.wa.gov.au/wp-content/uploads/2023/05/00.2-Clean-Copy-Inspection-Report-148-Banksia-Hill-Detention-Centre-and-Unit-18-at-Casuarina-Prison.pdf>.

²¹ Bower C, Watkins RE, Mutch RC, Marriott R, Freeman J, Kippin NR, et al. Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ Open*. 2018 Feb;8(2):e019605.

²² Western Australian Government. Plan in place to improve safety and welfare at Banksia Hill. 2023. Available from: <https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/Plan-in-place-to-improve-safety-and-welfare-at-Banksia-Hill-20230622>.

In WA, the age of criminal responsibility is 10 years, well below the UN Convention on the Rights of the Child recommended minimum of *at least* 14 years.²³ The WA Labor Party passed a motion to raise the age of criminal responsibility to 14 years in 2021, however this has not yet been actioned.²⁴ The incarceration of children under 14 years not only falls short of international standards, but also harms the health and wellbeing of children with punitive measures which fail to provide for the physical, social, emotional and cultural needs that children require and deserve. Early incarceration of children also leads to high rates of recidivism.²⁵ Almost two thirds of detained children under the age of 14 years in Australia are Aboriginal – a distressing over-representation.²⁶ Furthermore, many children involved in the criminal justice system come from disadvantaged backgrounds and have complex needs, including high rates of neurological disabilities, cognitive impairments and pre-existing psychosocial trauma that would be better addressed outside of this system. By raising the age of criminal responsibility to 14 years, vulnerable Aboriginal children can be managed outside of the criminal justice system, rather than in harmful and punitive incarceration.²⁷

Youth detention and human rights

The overrepresentation of Aboriginal children and young people in detention reflects the ongoing impacts of colonisation, intergenerational trauma, discrimination and systemic racism, and the ongoing struggle for self-determination and high quality rehabilitation, reintegration and welfare. Further, many academics and public figures argue that the overrepresentation of Aboriginal youth justice is a modern legacy of colonial practices.²⁸ The hallmark Bringing Them Home report articulated that, “The juvenile justice system is mimicking the separation policies of the past”.²⁹

According to the Convention on the Rights of the Child,³⁰ as well as other Indigenous youth justice policy materials, such as Oranga Tamariki Ministry for Children in New Zealand,³¹ detention should be seen as the *last* resort.

The AHCWA Youth Committee reflects on the need for rehabilitative programs to be tailored to the individuals offending behaviour and circumstances, where a one size detention with characteristic solitary refinement protocols does not logically equate to a reasonable or

²³ United Nations. Office of the High Commissioner Human Rights. 2019. Convention on the Rights of the Child. Available from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

²⁴ Canberra Commonwealth Parliament. The minimum age of criminal responsibility in Australia: a quick guide. 2024 May 29. Available from: https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/Quick_Guides/MinimumAgeCriminalResponsibility.

²⁵ Social Reinvestment WA. Raising the Minimum Age of Criminal Responsibility - a pathway to a brighter future for Western Australia's most at risk children [Internet]. Social Reinvestment WA. 2021. Available from: <https://static1.squarespace.com/static/59c61e6dbefab0293c04a54/t/608f571338080d36721f3ab4/1620006729025/Raising+the+Minimum+Age+of+Criminal+Responsibility%3A+A+Pathway+to+a+Brighter+Future+for+Western+Australia%E2%80%99s+most+at+risk+children.pdf>.

²⁶ Haysom L. Raising the minimum age of criminal responsibility to 14 years. *J Paediatric Child Health*. 58:1504–7.

²⁷ Brinkley-Rubinstein L, Allen SA, Rich JD. Incarceration and the health of detained children. *Lancet Public Health*. 2020 Feb 1;5(2):e76–7.

²⁸ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia). *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. [Sydney] : [Human Rights and Equal Opportunity Commission], 1997.

²⁹ *Ibid*.

³⁰ United Nations. Office of the High Commissioner Human Rights. 2019. Convention on the Rights of the Child. Available from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

³¹ Oranga Tamariki Evidence Centre. *Youth Justice Pathways: an examination of wellbeing indicators and outcomes for young people involved with youth justice*. 2021. Wellington, New Zealand: Oranga Tamariki Ministry for Children. Available from: <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Latest-research/Youth-justice-pathways-wellbeing-indicators-and-outcomes-for-young-people-involved-with-youth-justice/Part-1-Youth-justice-pathways-wellbeing-indicators-and-outcomes-for-young-people-with-youth-justice.pdf>.

ethical solution to achieve the outcomes of community safety and reintegration of the child or young person.

As detailed in the Commissioner for Children and Young People's Profile of Children and Young People in WA 2024,³² the DoJ reports that in 2021-22 the rate of Aboriginal children and young people in community supervision was 129 per 10,000 compared to 5.9 per 10,000. Further, nationally about 57 per cent of children and young people under supervision in a given day were Aboriginal and Torres Strait Islander.³³ Aboriginal children and young people have consistently been detained at a higher rate. To illustrate this point in a different way, approximately 80 Aboriginal children and young people were detained of the approximately 17,980 Aboriginal youth sampled in WA.³⁴ In contrast, in 2021-22 there were 24 non-Indigenous children detained of the approximately 274,400. Albeit taking liberties with rounding, this shows that there are more Aboriginal youth detained for a lower total population in the youth age group compared to much less non-Indigenous people detained for a much larger total children and youth population sampled.³⁵

The World Health Organization discussed the lasting effects of isolation on prisoners,³⁶ a sentiment that is also backed by the 2023 Office of the Inspector of Custodial Service inspection report of BHDC and Unit 18.³⁷ It is reported that these children and young people in BHDC and Unit 18 are allowed on average only 2-3 hours a day out of cell time, resulting in at least 21-22 hours a day in isolation, which increases psychological distress leading to increased risk of self-harm.³⁸ Extended lockdowns due to staffing shortages mean increased time in isolation of children and young people. Isolation in turn leads to "anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis".³⁹ This results in children and young people being at risk of self-harm behaviours and suicide attempts, and increased incidents of infrastructure and property damage⁴⁰ in the already failing builds of these facilities. Similar lockdowns due to staff shortages have occurred at the Don Dale Youth Detention Centre in the Northern Territory and have also reported to have led to incidents of suicidal ideation secondary to isolation.⁴¹

Early intervention

Early intervention is key to preventing youth involvement in the criminal justice system. Addressing social determinants such as poverty, unemployment, racism, overcrowding and

³² Commissioner for Children and Young People Western Australia. Profile of Children and Young People in WA. 2024. Available from: <https://www.cyp.wa.gov.au/media/5179/ccyp9274-profile-report-24-web.pdf>.

³³ Australian Institute of Health and Welfare. Youth justice in Australia 2022-23, Data. 2023 Mar. Available from: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/characteristics-of-young-people-under-supervision>.

³⁴ Government of Western Australia Department of Justice Corrective Services. Quarterly Statistics – Custodial (Youth Detainee) 2020 – Quarter 4. Available from: <https://www.wa.gov.au/system/files/2021-12/2020-quarter4-youth-custodial.pdf>.

³⁵ Commissioner for Children and Young People Western Australia. Profile of Children and Young People in WA. 2024. Available from: <https://www.cyp.wa.gov.au/media/5179/ccyp9274-profile-report-24-web.pdf>.

³⁶ World Health Organization. Prisons and Health. Copenhagen: World Health Organization Regional Office for Europe. 2014. Available from: <https://iris.who.int/bitstream/handle/10665/128603/9789289050593-eng.pdf?sequence=3>.

³⁷ Office of the Inspector of Custodial Services. 2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One) [Internet]. Perth (Whadjuk Noongar Boodja): Government of Western Australia; 2023 May [cited 2024 Apr 18]. Available from: <https://www.oics.wa.gov.au/wp-content/uploads/2023/05/00.2-Clean-Copy-Inspection-Report-148-Banksia-Hill-Detention-Centre-and-Unit-18-at-Casuarina-Prison.pdf>.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Office of the Children's Commissioner Northern Territory. Don Dale Youth Detention Centre Monitoring Report 2021. Darwin: NT Government; 2021 Oct. Available from: https://occ.nt.gov.au/__data/assets/pdf_file/0013/1230142/ddydc-monitoring-report.pdf.

inequality are foundational for creating positive outcomes for Aboriginal children and young people.

AHCWA Member Services spoke of youth centres that take many different forms as a “one stop shop” for youth looking for support and belonging with school, health, family and sports. Member Services also reflected on the importance of Aboriginal school students to have access to family support services and mental health and social and emotional wellbeing services.

There is a collective of legal, health, community controlled and justice advocacy bodies and service providers that are able and willing to work with the government to reform the youth justice system. Downscaling more punitive measures and transitioning and upscaling to reinvestment that prioritises cultural safety and the determinants of wellbeing can be achieved with genuine partnerships with Elders, mentors, and Aboriginal organisations. The whole system in its governance, evaluation, and accountability needs to work in tandem, where ad hoc funding and “pilot” programs cannot change the system as a whole. Nevertheless, even with limited sustainability and security in resourcing, community-led solutions and early intervention programs do achieve positive engagement, experiences, and outcomes.⁴²

Member Services note the need for resourcing to implement community-led services with all parties involved with the aim to target Aboriginal children and young people at the first point of contact with police and the criminal justice system. As discussed by Milroy & colleagues,⁴³ careful and accurate consideration of the contextual and historical contributing factors to youth over incarceration is required as part of a truth-telling process, to enact positive changes, and improve community safety and the quality of life of Aboriginal children and young people that may come into contact with the justice system. As detailed by the Social and Emotional Wellbeing framework,⁴⁴ trauma, genocide, removal of children, racism, and denial of rights are relevant to this discussion. Thereby, there would be no logical impetus to rectify the issues of youth crime with community-led program and reimagining the balanced concept of punishment.

Recommendations

AHCWA hopes the Inquiry will result in actionable changes to Australia’s youth justice and incarceration system for all governments to adhere to swiftly. AHCWA recognises the Inquiry has been instigated nationally, but in line with the focus on the whole operating environment with States and Territories in the Inquiry’s Terms of Reference, AHCWA provides the following holistic **recommendations** for all parties to work collaboratively:

⁴² Stringfellow R, Tauri J, Richards K. Prevention and early intervention programs for Indigenous young people in Australia and Aotearoa New Zealand. 2022 May. Indigenous Justice Clearinghouse Publications. Available at: <https://www.indigenousjustice.gov.au/publications/prevention-and-early-intervention-programs-for-indigenous-young-people-in-australia-and-aotearoa-new-zealand/>.

⁴³ Milroy H et al. Fact Sheet: First Nations Youth and the Justice System. 2021. Available from: https://timhwb.org.au/wp-content/uploads/2022/02/Stream-3_First-Nations-Youth-and-the-Justice-System-Fact-Sheet-_UWA.pdf.

⁴⁴ Gee G, Dudgeon P, Schultz C, Hart, A, Kelly K. Aboriginal and Torres Strait Islander social and emotional wellbeing. In P. Dudgeon, H. Milroy, & R. Walker (Eds), Working together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice (2nd ed.).



- 1. Establish robust measures and an action plan for the sustainable monitoring of recommendations of the Inquiry. Given the overwhelming over-representation of Aboriginal people in the justice systems, all monitoring process must involve Aboriginal communities and organisations from the beginning.**
- 2. Revisit recommendations made by the 1991 Royal Commission Into Aboriginal Deaths In Custody report (including *Too Much Sorry Business*) and assess components regarding youth justice that remain relevant to implement in the contemporary environment.**
- 3. Establish a cross-portfolio taskforce to drive action towards structural change on intercepting matters and systems that make up the youth justice system.**
- 4. Raise the age of criminal responsibility to 14 years nationally.**
- 5. Resource ACCHS to provide culturally-appropriate community child development services. ACCHS be funded to provide culturally responsive developmental assessments and treatment services.**
- 6. Partner with ACCHS to provide comprehensive primary health care, including culturally appropriate child development assessment and treatment, directly to children in Banksia Hill Detention Centre.**
- 7. Partner with ACCHS to improve continuity of care and clinical handover process between custodial settings and community primary health service providers.**
- 8. Partner with communities and Aboriginal community controlled organisations to develop and design on-country alternatives to detention that are place-based, trauma-informed, and rehabilitative.**
- 9. Conduct a holistic review of the *Act* in partnership with Aboriginal people and organisations as soon as possible.**
- 10. Abolish responsibility for youth detention in an adult setting and ensure it remains permanently within a youth detention facility.**