

Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

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AUSTRALIAN
CHILD RIGHTS
TASKFORCE

The Australian Child Rights Taskforce (the Taskforce) welcomes the opportunity to provide this contribution to the Queensland Parliamentary Inquiry into Youth Justice Reform. This submission follows our previous submission to the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021. Since then, Youth Justice has continued to be a challenging space in Queensland and around Australia.

It is the Taskforce's intention to draw attention to the wealth of knowledge and experience in Australia and overseas that provides constructive solutions and appropriate policy responses to the ongoing challenges in youth justice. We endorse the contribution of our key partners both in Queensland and nationally that demonstrate this knowledge and experience. Our commentary will be framed to highlight key insights from these submissions.

These submissions include Save the Children / 54 Reasons "Don't Judge a Book by Its Cover: A Rights Respecting Approach to Youth Justice in Queensland" (21 December 2023), the QCOSS 2024-2025 Submission to the 2024-2025 Queensland Budget "Invest in Queensland's Youth Services and the Outcomes Document from the Queensland Community Sector Youth Justice Roundtable of 8 December 2023.

We reinforce some of the key points from our previous work including our submission to the Raising the Age Bill (Queensland) in 2021. The opening remarks from that submission remain apposite.

"Childhood and adolescence are 'critical times for building capabilities for life'¹. Learning experiences don't come in neat packages for all children and young people. Sometimes these experiences are guided by mistakes or misguided by the less than perfect circumstances around them. The [adult] criminal justice system offers a fundamentally flawed approach for supporting and learning for children. The surrounding service systems are not child-centred and respectful of children's rights and health and wellbeing."

A different approach is required but the knowledge of how to undertake such an approach is not a mystery. It is well documented and powerfully tested through the work of the application of the international principles of child rights and youth justice. The challenge is the political commitment to consistently implement that approach. This is the key message of our submission.

¹ McLachlan, R., Gilfillan, G. and Gordon, J. 2013, *Deep and Persistent Disadvantage in Australia*, rev., Productivity Commission Staff Working Paper, Canberra at page 14.

The Inquiry

On 12 October 2023 the Youth Justice Reform Select Committee was established by the Queensland Parliament to conduct an inquiry to examine the youth justice system. The terms of reference for the inquiry are to examine ongoing reforms to the youth justice system, and support for victims of crime, and to consider:

- *the prevention of entry and diversion of youth offenders from the justice system with specific consideration of risk and protective factors that reduce crime.*
- *effective ways to stop recidivism and protect the community from offending and the opportunity for community-controlled organisations with specific reference to the role of First Nations peoples to provide support solutions and services.*
- *the efficacy of justice programs including on-country programs, education, health and housing services; reducing people carrying weapons; evidence-based early intervention and prevention programs; reducing the numbers in custody on remand; alternatives to detention; detention and other consequences of offending; the most suitable infrastructure used for custody, detention or residential components necessary to reduce crime; and systems and processes to provide immediate and ongoing support for victims of crime.*

The Taskforce's view is that the international principles of youth justice based on child and human rights learnings and experience offer a substantive and proven framework to address the terms of reference of this Inquiry.

The Child Rights Framework

The United Nations Convention on the Rights of the Child reflects a fundamental shift that occurred during the 20th Century in the way that children were viewed. Previously, children were largely viewed as the property of adults. This shift to an understanding of children as rights holders is increasingly reflected in domestic legal and justice systems as well as international law.

The implementation of child rights in domestic legal systems and policy development has begun in jurisdictions around the world and has occurred alongside the development of a comprehensive set of principles that guide the establishment of youth justice systems. These systems offer an effective alternative to both out-dated welfare models of dealing with children in conflict with the law and the more punitive adult criminal justice system.

These principles have been clearly set out in the context of Australian legal and justice systems in the work of Save the Children / 54 Reasons "*Putting Children First: A rights respecting approach to youth justice in Australia*"². The principles include a range of instruments of international law that are built on an ongoing foundation of evidence-based and tested standards.³

² Save the Children and 54 reasons, 2023, *Putting children first: A rights respecting approach to youth justice in Australia*, 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

³ A good summary can be found in this recent article: "*Rights of the Child in the Child Justice System*" (Kilkelly & Pleyzier) Youth Justice (2023) Vol 23(2) 135-139.

The Australian Child Rights Taskforce and its work

The Australian Child Rights Taskforce⁴ is a coalition of over 100 organisations, networks and individuals committed to the protection and development of the rights of children and young people in Australia. UNICEF Australia convenes the Taskforce, and its work is guided by a Steering Committee and various Policy Working Groups.

One of the key roles of the Taskforce is to hold Australian Governments to account on the implementation of the *United Nations Convention on the Rights of the Child* (the Convention). When Australia ratified the Convention in 1990, this represented a commitment that every child in Australia should enjoy the rights set out in the Convention.

The Taskforce has published a series of reports (most recently 'The Children's Report')⁵, that have examined the implementation of the Convention to assist the United Nations Committee on the Rights of the Child⁶ (the UN Committee) in its review of Australia's performance. These reports acknowledge that while Australia is a wonderful place for most of its children, there remains significant structural and material disadvantage for many children.

These reports have informed the recommendations of the UN Committee⁷ which have covered a range of policy areas where improvements were considered necessary, including in youth justice reforms, monitoring conditions in detention and in raising the age of criminal responsibility. The UN Committee has also noted that despite Australia's ratification of the Convention in 1990, it has yet to incorporate rights effectively and consistently into monitoring, policy, and legislative frameworks to benefit children and that there are unacceptable gaps in the legal protection of children's rights.

It is the Taskforce's intention to draw attention to the wealth of knowledge and experience in Australia and overseas that provides constructive solutions and appropriate policy responses to the challenges in youth justice. Many of these are already presented in the submission to this Inquiry, including that of Save the Children / 54 Reasons⁸.

The ability to address the challenges reflected in the Terms of Reference to this Inquiry is not a mystery. It is well documented and powerfully tested through the work of the application of the international principles of child rights and youth justice in jurisdictions across the world.

The challenge in Australia today is the political commitment to consistently implement that approach.

⁴ <http://www.childrights.org.au/welcome>

⁵ <https://apo.org.au/node/200771>

⁶ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

⁷ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En

⁸ "Don't Judge a Book by Its Cover: A Rights Respecting Approach to Youth Justice in Queensland" (Dec 2023)

International Youth Justice Principles

As mentioned above, these principles have been clearly set out in the context of Australian legal and justice systems in *“Putting Children First: A rights respecting approach to youth justice in Australia”*⁹ and are built on a foundation of evidence-based and tested standards.¹⁰

If implemented well, the principles will have a systemic effect in interrupting intergenerational cycles of disadvantage, changing life trajectories for many children, and creating safer and fairer communities, including across Queensland. It will address the ineffectiveness of detention and other punitive responses in addressing the behaviours of children currently dealt with by the justice system. It will also address the breach of international human rights standards which has seen Australia receive sustained criticism from the United Nations and other nations globally.

The Queensland community expects that where appropriate, children are held responsible for their actions and given the opportunity to learn from their mistakes. It supports coordinated and strategic action to support community safety and prevent and address harmful behaviours, including by children. This is all consistent with a properly functioning youth justice system based on child rights principles.

There are gaps and weaknesses in the existing broader service system and structures. These can be addressed by implementing a consistent rights-respecting approach that follows international youth justice principles with the appropriate commitment of the required resources and fully developed mechanisms for management and monitoring.

Balancing Accountability with Rehabilitation

Youth Justice Reform provides the opportunity to review and redesign systems and services to understand and respond to harmful behaviours; shifting the focus to creating and maintaining safe, stable, and supportive environments; and to address the underlying causes of harmful behaviour more effectively. Adolescent violence is an example of an emerging issue that can be addressed within the context of youth justice reform.

Child rights principles support an approach that recognises that all children have a right to live in a safe, stable, and supportive environment. Shifting the focus away from a counter-productive punitive framework based on the adult criminal justice system to a framework that is committed to the rights of all children to have their needs met (including the prevention of harmful behaviours and their impacts) offers a more comprehensive, more constructive, and less stigmatising approach.

⁹ Save the Children / 54 reasons, 2023, *Putting children first: A rights respecting approach to youth justice in Australia*,

¹⁰ *“Rights of the Child in the Child Justice System”* (Kilkelly & Pleyzier) Youth Justice (2023) Vol 23(2) 135-139.

Integrating Child Development and Coordinating Service System Responses

"Evidence demonstrates that early support, family-led decision making, and robust, consistent, and reliable service systems are critical for preventing children from entering a cycle of harmful behaviour"¹¹

The integration of child development and coordinating service system responses does not involve shifting of responsibility away from governments as the key coordinating agency for service systems. It calls for a focus that supports the development of children both before and through engagement with the justice system. Given the causes of serious and ongoing harmful behaviours in children are often found in broader social conditions, addressing expectations of accountability should not replace a focus on strong and coordinated service system responses.

Using a child rights framework will offer the opportunity to build in the necessary safeguards and mechanisms to address issues of personal and community safety and accountability. It should encourage and support strong and resilient families and communities to provide safe, stable, and supportive environments.

The Historical Australian Context

The current situation in Australia is the result of many years in which youth justice has been the subject of political expediency and evidence-based policy development has been neglected for short term political gain. This experience is not unique to Queensland and can be observed in every state and territory in Australia.

The underlying issues at the heart of this submission have been recognised for some time. In 1997 the Australian Law Reform Commission & Australian Human Rights Commission handed down a joint report called "Seen and Heard: priority for children in the legal process". This landmark report remains the most comprehensive examination of children and the legal system in Australia.

Many of the failures of legal processes for children identified in this report remain today:

- discrimination against children and young people.
- a failure to consult with and listen to children and young people in matters affecting them.
- a lack of co-ordination in the delivery of services to children and young people.
- an overly punitive approach to children and young people in criminal justice systems.
- court processes which are bewildering and intimidating for children and young people.
- the over-representation of Aboriginal and Torres Strait Islander children and young people in the justice and protection systems.

This Inquiry provides an opportunity to revisit and finally address the findings of that report.

¹¹ ACT Government Discussion Paper on Raising the Age of Criminal Responsibility

The Current Queensland Experience (and Resources)

The Taskforce endorses the existing knowledge and guidance available in the Queensland community and the sectors that work with and support children and young people in contact with the justice system. We note the Outcomes of the Youth Justice Roundtable held in Brisbane on 8 December 2023 hosted by QATSICPP, QCOSS and the Youth Advocacy Centre.

We support the call for the development of a new Youth Justice Strategy that is built on the principles of early intervention support, diversion from the criminal justice system, the use of detention as a last resort and a focus on rehabilitation.

There should be appropriate investment in the early years for child development and family wellbeing. Solutions should be developed in partnership with children and young people, First Nations Peoples, and the community sector.

Developments should comply with Queensland's *Human Rights Act 2019* and include sustained investment in First Nations-led evidence-based services and supports that will work towards the achievement of Closing the Gap targets.

The Taskforce supports and endorses the work of one of its key members Save the Children / 54 Reasons which have presented to this Inquiry. We quote from its submission¹².

"The punitive strain that runs through Queensland's youth justice system is ineffective in preventing offending and reoffending and undermines the system's ability to achieve its goals. The current system does not address root causes, is not consistently evidence-based and is discriminatory. It reinforces intergenerational disadvantage and perpetuates a shameful over-representation of Aboriginal and Torres Strait Islander children and young people. It harms children and young people, while systemically violating their rights....

... It is unfortunate that 'tough' government responses are often framed as reflecting concerns about community safety. The punitive responses that public alarm encourages in fact make the community less safe, by causing increased offending and recidivism. The result is a vicious cycle, with extreme policy responses fuelling community concern rather than ameliorating it."¹³

The Taskforce endorses and supports the Save the Children / 54 Reasons submission's key recommendations to the Queensland Government that it:

1. **Adopt a rights-respecting approach** to youth justice reform that complies with child rights principles and standards.
2. **Establish a 10-year youth justice strategy**, underpinned by a **Children's Plan for Queensland** to drive a long-term, coordinated focus on children's outcomes.

¹² "Don't Judge a Book by Its Cover: A Rights Respecting Approach to Youth Justice in Queensland" (December 2023)

¹³ "Don't Judge a Book by Its Cover" (Save the Children / 54 Reasons) Executive Summary

Returning to the Australian Context Today

Drawing on the Taskforce's membership, our knowledge of national and international initiatives and our previous work¹⁴, we provide additional context for the consideration of the Inquiry.

As well as monitoring the implementation of the **United Nations Convention on the Rights of the Child**, the Taskforce is also concerned with Australia's obligations to its children and young people under other relevant human rights treaties. Over the years, our work has identified instances of significant individual and systemic abuses that also constitute breaches of the Convention Against Torture, and the Declaration on the Rights of Indigenous Peoples.

A cycle of official inquiries and reports over recent years has found that youth justice systems and detention institutions across Australia are failing to protect the rights of children. The recurring nature of these inquiries suggests that systemic reform is either unsuccessful; loses momentum or fails to adequately address future needs and development.

There is a case for stronger and more consistent monitoring and follow up. Systems that require greater concerted attention include inadequate staffing levels and training, performance management for staff, informed and targeted behaviour management responses, data collection, public reporting, accessible complaints mechanisms and evaluation and follow-up on reforms.

There is also a need for greater specificity in law and policy promoting rehabilitation as the overarching policy objective in the youth justice system and the need for more developmentally appropriate behaviour management techniques including: de-escalation and safeguards (including prohibitions where necessary) on the use of force, the use of restraints, seclusion, and isolation.

It is also clear that attention must be given to the recurring practice of transferring young people to adult facilities across jurisdictions despite this practice breaching accepted international child rights standards.¹⁵ The Taskforce would welcome coordinated national attention to the minimum age of criminal responsibility, noting that currently, without this reform, children from the age of 10 are detained in youth justice and adult detention facilities, including watch-houses.

¹⁴ Including our recent submission to the UN Committee on Torture on Australia's child rights obligations

¹⁵ Australia has maintained a reservation to article 37(c) of the Convention on the Rights of the Child.

Sharing the Responsibility

It is our view that Youth Justice Reform is a national issue, and whilst there are key responsibilities that rest with State and Territory Governments, the Australian Government also has a key role to play, especially in establishing enforceable national standards, monitoring, coordination and reporting to inform and support reform.

For example, the National Preventive Mechanism under the Optional Protocol to the Convention Against Torture should be able to effectively monitor the lived experience of children and young people in youth justice facilities throughout Australia. Monitoring must be comprehensive, include reference to child-centred knowledge and standards and lead to the development of child-sensitive preventative practice.

The Australian Government and State and Territory Governments should work collaboratively to improve protections for children and young people, including those deprived of their liberty and at risk of torture or degrading treatment.

The Lack of Legislated Child Rights Protections

There is a lack of comprehensive legislated protections for child rights (and indeed human rights) in Australia. The Convention on the Rights of the Child has not been incorporated into domestic law to create legally enforceable rights for children in Australia. The legislated protections that would build a broad culture of respect for human rights are deficient. The legislated requirements that would reinforce the need for capacity and competence in preventative practice across government and in the community are piecemeal and easily overridden with no review mechanisms. Effective commitment to the National Preventive Mechanism would again be an important step in improving protections.

The Absence of Enforceable National Standards in Youth Justice

The challenge of ensuring consistent practice and responses across Australia in youth justice is compounded by the lack of enforceable national standards. There are currently no legally enforceable standards that are consistent across all jurisdictions. There is available guidance, including *Juvenile Justice Standards*,¹⁶ *Principles of Youth Justice in Australia*¹⁷ and *Human Rights Standards in Youth Detention Facilities in Australia*.¹⁸

There is ample evidence that unenforceable guidance has been insufficient to ensure appropriate practices and protections for children and young people in youth justice detention.

The establishment of National Standards in Youth Justice is a key role which the Australian Government could play that would be consistent with shared responsibilities and provide invaluable guidance and support to State and Territory Governments.

¹⁶ Australasian Juvenile Justice Administrators, *Juvenile Justice Standards* (2009)

¹⁷ Australasian Juvenile Justice Administrators, *Principles of Youth Justice in Australia* (2014)

¹⁸ Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes, and other specified practices* (2016)

Addressing Culture and History for Children

The United Nations Expert Mechanism on the Rights of Indigenous People links the capacity of Indigenous peoples to meet their children's needs with their ability to exercise self-determination.¹⁹ The Australian Government has taken steps towards recognising the rights of Aboriginal and Torres Strait Islander peoples to self-determination in matters relating to children including through the *Safe and Supported, National Framework for Protecting Australia's Children 2021-2031* (the Framework). The Framework commits to progressive systems transformation, including Aboriginal and Torres Strait Islander self-determination.²⁰ However, there is currently a disconnect between this child protection framework and the youth justice system. Enacting self-determination is critical to achieving better outcomes for Aboriginal and Torres Strait Islander children.

In July 2020, the Australian Government and all state and territory governments signed the National Agreement on Closing the Gap (the National Agreement). The National Agreement seeks to overcome the entrenched inequalities faced by Aboriginal and Torres Strait Islander people with 19 national socio-economic targets. Target 11 sets an outcome that Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system, with a target to reduce the rate of Aboriginal and Torres Strait Islander young people aged 10-17 years in detention by at least 30 per cent by 2031.²¹ Queensland is not meeting this key youth justice target.²²

There should be greater emphasis on the need for cultural knowledge and culturally safe practices in youth justice. Policies and practices should more closely align with the work of the Safe and Supported Framework and the National Agreement targets.

An Appropriately Skilled Workforce to Support Children

"For children in detention, the aim should be to create a rehabilitative environment that reflects a specialized approach to the needs of a young person. What is needed is a model that encapsulates the essentials required for healthy adolescent development – engaged adults focused on their development, a peer group that models positive behaviour, opportunities for academic success, activities that contribute to developing decision-making and critical thinking skills, and pathways to success ...".

"The mission and overarching philosophy of youth justice facilities should move from a correctional approach to one based on the tenets of positive youth development, building on each young person's strengths. The focus must always be on helping children get back on track through treatment and developmental programming that is trauma-informed; delivered by qualified and supported staff; and focused on prosocial skill development, academic or vocational instruction, work readiness, and work experience."²³

¹⁹ UN Human Rights Council, *Rights of the Indigenous child under the UN Declaration on the Rights of Indigenous Peoples'* (2021)

²⁰ Department of Social Services, *Safe and Supported: the National Framework for Protecting Australia's Children* (2021) p51

²¹ Closing the Gap, *Closing the Gap Targets and Outcomes* <https://www.closingthegap.gov.au/national-agreement/targets>

²² Australian Government Productivity Commission, *Closing the Gap Annual Data Compilation Report July 2023* p31

²³ Human Rights Law Centre, "Reforming the Northern Territory's Youth Justice system" Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017).

It is essential that all those engaged in youth justice services and support should have the specialist skills and knowledge necessary to understand child and adolescent development (including the impact of trauma), identify inappropriate practices and settings for children, support appropriate services (including complaints mechanisms),²⁴ and recognise and respond to children.

Those providing services to children and young people should have the skills to communicate safely and effectively with children (including those affected by trauma and disadvantage). These skills should be taught and tested using appropriate intersectional approaches informed by expertise in mental health, disability and child safety, domestic children's law and international child and human rights knowledge.

Broader Institutional Context and Connection to Child Safety

In recent years, **the Royal Commission into Institutional Responses to Child Sexual Abuse**²⁵ and numerous other official inquiries and reports have detailed widespread mistreatment of children in a range of settings. Governments and institutions are failing to act in the best interests of children in the provision of care, support, and services. These failings reflect a lack of understanding of the unique needs of children as well as a lack of structural and systemic protections to ensure that their rights are respected and upheld in practice.

Children in the youth justice system are clearly no exception to this experience. But attention should also be given to other settings, where children are at risk of abuse including in care, immigration, social and disability support services, and education.

Aligning with Child Safe Standards

The Taskforce is concerned that existing service systems are ineffective to keep children and young people safe. This is a broader challenge than youth justice. It reflects the under-development in many sectors of child-centred practices and the lack of coordinated commitment to the creation of child safe environments.

This was addressed by the **Royal Commission into Institutional Responses to Child Sexual Abuse** in its recommendation for the implementation and monitoring of **Child Safe Standards** in all organisations that work with and deal with children and young people (including governments).

We call for greater effort in the implementation of Child Safe Standards in each state and territory jurisdiction. The standards should be based on the **National Principles for Child Safe Organisations**, developed by the Australian Human Rights Commission, and endorsed by all Australian governments.

²⁴ See section "Understanding How Children (Don't) Complain" on page 6

²⁵ Australian Government, Royal Commission into Institutional Responses to Child Sexual Abuse (2017)

National Principles for Child Safe Organisations

1. *Child safety and wellbeing is embedded in organisational leadership, governance, and culture.*
2. *Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.*
3. *Families and communities are informed and involved in promoting child safety and wellbeing.*
4. *Equity is upheld and diverse needs respected in policy and practice.*
5. *People working with children and young people to reflect child safety and wellbeing values in practice.*
6. *Processes to respond to complaints and concerns are child focused.*
7. *Staff and volunteers are equipped with the knowledge, skills, and awareness to keep children and young people safe through ongoing education and training.*
8. *Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.*
9. *Implementing of the national child safe principles is regularly reviewed and improved.*
10. *Policies and procedures document how the organisation is safe for children and young people.*

Understanding How Children (Don't) Complain

Children are particularly vulnerable to mistreatment. Power imbalances and a lack of confidence in engaging with adult authority figures limit the ability and the trust required for children to speak up about their situations. Children are often unable to use adult-designed and adult-centric mechanisms. This is particularly the case for those within the existing system that experience neurodevelopmental and other impairments. Access to child-friendly and child-safe approaches²⁶ that support them to express their concerns, to be heard and taken seriously, are a critical protective factor for children in settings and systems where mistreatment may occur.

The youth justice system in every state and territory lacks effective settings and systems that will enable children and young people to complain about their treatment. Additional barriers may exist for children and young people with disabilities, from different cultural backgrounds, those who are gender diverse and those with limited literacy and experience navigating complaint systems.

A rigorous independent and flexible process is required so that children and young people can safely and confidently access opportunities to be heard and to complain, including access to appropriate timely, proportionate, and effective remedies.

Data Collection

The National Children's Commissioner has highlighted the need for improved and nationally consistent data collection. It is essential to know the numbers of children detained in youth justice facilities, their sex, age, Indigenous status, why they are detained, for how long and whether they were detained in solitary confinement.²⁷

²⁶ Commissioner for Children and Young People WA "Child Friendly Complaints Guidelines" (2021); UNICEF "Tools to Support Child Friendly Practices: Child Friendly Complaint Mechanisms" (2019)

²⁷ <https://humanrights.gov.au/our-work/childrens-rights/projects/national-childrens-commissioners-work-opcat>

Current Initiatives in Queensland Supported

The Taskforce acknowledges and supports key initiatives and investments by the Queensland Government that are consistent with and can be used to build improved youth justice outcomes if fully implemented. These include:

- Early intervention and diversionary programs
- Educational engagement as a protective factor
- Restorative justice approaches that address the needs of victims and communities.
- Bail support services, including the Intensive Bail Initiative and Intensive Family Partnership
- Path to Treaty, to support self-determination and healing.

The Key Work of the Queensland Family and Children’s Commission

The Queensland Family and Child Commission’s (QFCC) *Child Rights Report 2023*²⁸ provides invaluable data about children’s rights and experiences in Queensland. This is a critically important baseline for planning for services and systems for children and families. QFCC has included a key focus in this first report on youth justice. So, the work to establish a child rights framework for youth justice in Queensland (with effective monitoring) has an excellent foundation.

Building on this foundation and ensuring it can guide reform across sectors and systems, QFCC has recommended the development of an integrated Children’s Plan for Queensland. This works aligns strongly with the Taskforce’s own advocacy on the need for a National Children’s Plan²⁹. The Taskforce endorses this recommendation and the pioneering child rights work of the QFCC. Such Plans address the need for improved coordination between services and systems and promote planning and monitoring that measures outcomes for children that address long term objectives and align across services and systems.

Children’s Participation in Decision Making

A critical element of child rights planning is the participation of the children involved and affected. Youth justice is no exception. Children have the right to participate in all decisions that affect them. This is based on the right to be heard (Article 12 of the Convention). This includes the decisions within the youth justice system that directly affect a child (such as court orders and conditions in programs and detention) to policy decisions where children’s lived experience should be considered in design, implementation, and monitoring.

²⁸ Available at <https://www.qfcc.qld.gov.au/child-rights/report>.

²⁹ Australian Child Rights Taskforce, Save the Children & 54 reasons and UNICEF Australia, 2023, *Blueprint for a National Children’s Plan* (forthcoming).

The Role of Family and Community

One of the key features in the UN Convention on the Rights of the Child and in child rights frameworks is an explicit recognition of the critical role of family and community in caring for and supporting the development of children and children's emerging capacity to claim and enjoy their rights.

What sits alongside this underpinning social framework is a clear recognition that Governments have an equally fundamental role to step in and support when the family is unable to provide the required support and environment. This role is framed as alternative care and is intended in as many cases as possible to be temporary. It is subject to periodic review and with the goal that a child is returned to family and community as soon as practicable. The responsibility on the part of Governments to provide support continues.

This approach remains appropriate in circumstances where children come into conflict with the law i.e. in the youth justice system. Using this lens can offer a more comprehensive framing for youth justice reform and guide the more effective application of the international youth justice principles.

The Government's responsibility to provide temporary alternative care and family and community support remains in circumstances where a child enters or is at risk of entering the youth justice system. Alongside this sits the clear principles that detention is to be used as a measure of last resort and for the shortest period possible. The preferred outcome is the return of the child to a supportive family environment. In the case of Aboriginal and Torres Strait Islander children and other children in settings where family structures are broader and inclusive, this can be community or kinship care.

There is no doubt that sometimes this can be complex and challenging in difficult social conditions and where social service systems are not properly resourced or under stress. But the fundamental approach remains. It can also be challenging in circumstances where a child is not conforming or responding to acceptable standards of behaviour. Most offending by children is transitory and addressed by efficient adjudication and return to family and community with targeted and often short-term support.

There is undoubtedly a more difficult challenge faced in providing guidance and support to those children who have been included on the Serious Repeat Offender Index in Queensland. Arguably the labelling itself may contribute to the challenge. But the fundamental goal of return to supported family and community should remain.

A Child's Right to (Alternative) Care including Adequate Housing and Family Support

This challenge becomes most obvious and often most critical in the context of accommodation. Or in the language of child rights, a child's right to safe, secure, and adequate housing as part of a right to an adequate standard of living. This is a right of all children including those who require government support in the provision of alternative family care.

Currently the service systems that work in the youth justice environment provide a variety of options that are often inadequate or lack a clear context and purpose such as the one set out in the child rights framework. They include bail support and youth offender support and sometimes accommodation options. Notably, 54 Reasons provides a rights-based service approach including intensive bail support and 'back to community' programs in several communities.

The child rights framework offers a more comprehensive lens to these challenges as the child's rights to care and family support including adequate housing should underpin the work of the youth justice system and related service and support systems, rather than the other way around. The challenge is then seen once again as one of political commitment and the provision of the necessary resources.

This framework then offers the opportunity to explore and support individual needs and identify and address broader system failures such as lack of appropriate education and training, family support delivered through community-based services including violence prevention and therapeutic support. This framework also challenges the skills and training program for youth justice staff and with careful planning over time can shift detention settings to integrate community connections and build rehabilitative focus.

Victim Engagement and Restorative Justice

The child rights framework offers clear principled opportunities to support improved victim engagement. There are excellent examples of restorative justice programs built in youth justice settings (including youth justice conferencing in New South Wales and New Zealand) where victims play a key (and sometimes leadership) role.

The focus on family and community and where necessary the supports and programs that guide children back to community and responsible behaviour are consistent with the principles of greater respect for the rights of children, victims, and community.

Often the process of setting penalties and corrections to guide a child benefit from the views and interests of victims being heard and addressed. The skills and experience in mediation and managing these processes are available especially in the jurisdictions where conferencing has been established for some time.

A restorative approach shifts the focus away from inappropriate or ineffective punitive responses. It also offers the opportunity to identify where family supports, and role models will be most effective especially if they can be personally and culturally appropriate. Attuned community care will also avoid stigmatisation and offer new pathways for both children and victims.

On behalf of the Australian Child Rights Taskforce

The Australian Child Rights Taskforce Policy Working Group

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