

Impacts of Custody and Detention on Young People

The purpose of this document is to collate published research, the findings of government reports and inquiries, and academic commentary on the impacts of custody and detention on young people, and the effects this may have on a person's behaviour; development; physical, mental and social well-being; and links to contact with the criminal justice system.

Introduction

- 1 Australian and international research spanning decades,¹ such as the recent study by Cope et al (2025),² demonstrates that imprisonment has an adverse effect on individuals' health and wellbeing. These effects may persist well beyond release from custody and especially impact young people.³
- 2 A growing body of such research suggests that incarceration during adolescence can have profound immediate and ongoing adverse health effects throughout adulthood.⁴ This is particularly the case where young people are incarcerated in adult prisons and with adult offenders.⁵ Exposure to custody can increase the risk of stigmatisation,⁶ disrupt development⁷ and exacerbate mental and physical health conditions.⁸

¹ See Sarah A Pellicano et al '[Health and Incarceration Research in Australia: A Scoping Review](#)' (2025) 56 *The Lancet Regional Health – Western Pacific* 101500; Michael Massoglia and William A Pridemore, '[Incarceration and Health](#)' (2015) 41 *Annual Review of Sociology* 291.

² Elliott Cope et al, '[Physical Multimorbidity, Concurrent Psychiatric Morbidity, and Emergency Department Presentation Among Adults Released from Prison: A Prospective Cohort Study from Queensland, Australia](#)' (2025) 13(19) *Health & Justice*. See also Lindsay A Pearce et al, '[Prison Health Data Collection: Transforming Prisons from Public Health Risks to Opportunities for Global Health Equity](#)' (2026) 388 *Social Science & Medicine* 118793; Stuart Kinner and Jesse T Young, '[Understanding and Improving the Health of People Who Experience Incarceration: An Overview and Synthesis](#)' (2018) 40(1) *Epidemiologic Reviews* 4.

³ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, '[Value of a Justice Reinvestment Approach to Criminal Justice in Australia](#)' (Report, 20 June 2013) 22–5; Michael Hobbs et al, '[Mortality and Morbidity in Prisoners after Release from Prison in Western Australia 1995–2003](#)' (2006) 320 *Trends & Issues in Crime and Criminal Justice* (Australian Institute of Criminology) 2; Legislative Council Legal and Social Issues Committee, Parliament of Victoria, '[Inquiry into Victoria's Criminal Justice System](#)' (Report, March 2022) 585; Australian Institute of Health and Welfare ('AIHW'), '[Australia's Welfare Snapshots 2021](#)' (Web Report, 16 September 2021). See also Australian Government Productivity Commission, '[Australia's Prison Dilemma](#)' (Research Paper, October 2021) 65.

⁴ Elizabeth S Barnert et al, '[How Does Incarcerating Young People Affect Their Adult Health Outcomes?](#)' (2017) 139(2) *Paediatrics* 1, 7. See also Rohan Borschmann et al, '[The Health of Adolescents in Detention: A Global Scoping Review](#)' (2020) 5(2) *The Lancet Public Health* e114; Naomi F Sugie and Kristin Turney, '[Beyond Incarceration: Criminal Justice Contact and Mental Health](#)' (2017) 82(4) *American Sociological Review* 719; and Sarah A Pellicano et al (n 1).

⁵ Ian Lambie and Isabel Randell, '[The Impact of Incarceration on Juvenile Offenders](#)' (2013) 33 *Clinical Psychology Review* 448.

⁶ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, '[Inquiry into Australia's Youth Justice and Incarceration System](#)' ('*Inquiry into Youth Justice*') (Interim Report, February 2025) 30 [2.59]. Note that the brief Final Report (June 2025) largely relies upon the more substantial Interim Report.

⁷ *Ibid* 34–5 [2.77].

⁸ *Ibid* 18–23.

- 3 In Australia, the minimum age of criminal responsibility is 10 across all jurisdictions⁹ except the Australian Capital Territory, where it is 14 (with limited statutory exceptions for certain very serious violent offences by 12 and 13-year-old children),¹⁰ and in Victoria, where it is 12 years.¹¹ Despite this, the operation of *doli incapax* means there is a rebuttable presumption against criminal responsibility for all children under 14 years.¹²
- 4 It is well recognised that young people are ‘still undergoing neurological development’.^{13*} They are therefore ‘more prone to increased risk-taking, poor consequential thinking and a lack of impulse control’¹⁴ as well as, ‘difficulty regulating their moods’.¹⁵ This psychosocial immaturity makes young people more vulnerable to ‘peer influence, coercion, provocation and immature decision making’.¹⁶
- 5 According to data compiled by the Australian Institute of Health and Welfare (‘AIHW’), on an average night in 2024 (June quarter), 845 young people aged 10 and over were in detention across Australia.¹⁷ AIHW analysis of the data by legal status, gender and Indigenous status revealed that the majority of young people in detention were unsentenced (74%) and male (90%), while more than half were Aboriginal or Torres Strait Islander (60%).¹⁸

Terminology

- 6 In this chapter:
 - *Adverse childhood experiences* refer to the cumulative effects of childhood experiences of abuse (physical, emotional, sexual) or neglect (physical, emotional), household dysfunction (death of a close family member, substance abuse, mental illness, domestic violence, parental separation, incarceration), and racial discrimination.
 - *Diversion* refers to alternative responses to alleged offending by children and young people that avoid resorting to judicial proceedings, including referrals by police and other agencies to early intervention programs and services.¹⁹
 - *Incarceration* and *imprisonment* are used interchangeably to refer to detention in a youth justice facility, whether to serve a sentence imposed by a court or while held on remand.
 - *Remand* (also called unsentenced detention) refers to the detention of a person in a custodial setting after being refused bail (or being granted bail but unable to meet conditions) pending future court hearings for a determination of criminal liability or sentencing.

⁹ *Children (Criminal Proceedings) Act 1987* (NSW) s 5; *Criminal Code 1899* (QLD) s 29(1); *Criminal Code Act 1983* (NT) s 38; *Criminal Code Compilation Act 1913* (WA) s 29; *Youth Offenders Act 1993* (SA) s 5; *Children, Youth and Families Act 2005* (VIC) s 344; *Criminal Code 1924* (TAS) s 18(1).

¹⁰ *Criminal Code 2002* (ACT) s 25; *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* (ACT) s 94.

¹¹ *Youth Justice Act 2024* (Vic) s 10.

¹² *RP v The Queen* [2016] HCA 53 (21 December 2016).

¹³ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria’s Criminal Justice System* (Report, March 2022) (‘*Victoria’s Criminal Justice System Report*’) 685.

* Jody Kamminga et al, *Decision-Making, Emotion and Behaviour Regulation 18–25 Year-Olds A Neurodevelopmental Perspective* (Report, *Bugmy Bar Book*, 2025).

¹⁴ *Victoria’s Criminal Justice System Report* (n 13) 685.

¹⁵ Ian Lambie and Isabel Randell, ‘*The Impact of Incarceration on Juvenile Offenders*’ (2013) 33 *Clinical Psychology Review* 448, 448.

¹⁶ *Ibid* 450.

¹⁷ Australian Institute of Health and Welfare (‘AIHW’), *Youth Detention Population in Australia 2024* (Web Page, 13 December 2024).

¹⁸ *Ibid*.

¹⁹ Commission for Children and Young People, *Our Youth, Our Way: Inquiry into the Over-Representation of Aboriginal Children and Young People in the Victorian Youth Justice System* (Report, June 2021) 445.

- *Trauma-informed care* refers to care based on knowledge and understanding of how trauma affects people’s lives, their needs and engagement. Trauma-informed approaches aim to support in ways that avoid further traumatising.²⁰
- *Young person* (or people) refers to any person below the age of 18.
- *Youth Justice supervision* refers to the arrangement under which a young person is under supervision by Youth Justice because of their involvement or alleged involvement in crime, including in-community (*community-based*) supervision and supervision in a custodial setting (*in-detention*), sentenced or unsentenced:
 - *community-based supervision* refers to the supervision of a young person by a youth justice agency within the community and may be sentenced or unsentenced;
 - *supervision in detention* refers to the supervision of a young person in detention in a youth justice facility and includes both sentenced and unsentenced (remand) detention.

Prevalence of Youth Detention

Trends in overall rates of youth detention

- 7 The AIHW reported a slight increase in the number of young people in detention from 2020 to 2024 – from 791 on an average night to 845.²¹ This reflects an increase in the rate of young people aged 10–17 in detention on an average night from 2.6 per 10,000 in June 2020 to 2.7 per 10,000 in June 2024.²² This trend is consistent with rates of incarceration of young people aged 10–13 from June 2020 to June 2024, with an increase from 0.2 to 0.3 per 10,000.²³

Trends in sentenced and unsentenced detention

- 8 The AIHW reported that, on an average night in the June quarter 2024, ‘almost 3 in 4 (588 or 74%) young people in detention were unsentenced’ while 1 in 4 (212 or 26%) were sentenced. The AIHW further reported that the proportion of those in unsentenced detention increased from 64% to 74%, while the number of young people in sentenced detention decreased by 24%.²⁴

Trends in the incarceration of Aboriginal and Torres Strait Islander young people

- 9 In 2011, a Senate inquiry Report, *Doing Time*, said the ‘overrepresentation of Indigenous youth in the criminal justice system is a national crisis’.²⁵ More than a decade later, data published by the AIHW in 2024 revealed:
- approximately 2 in 3 (60%) young people in custody across Australia were First Nations, yet First Nations children comprise just 6.6% of the youth population;
 - First Nations young people were experiencing incarceration at a younger age than non-Indigenous young people;

²⁰ See, eg, Anagha Joshi and Mandy Truong, ‘[The Role of Adverse Childhood Experiences \(ACEs\) in Adolescent Use of Violence](#)’ (Policy and practice paper, Australian Institute of Family Studies, December 2024) 10.

²¹ Australian Institute of Health and Welfare (‘AIHW’), [Youth Detention Population in Australia 2024](#) (Web Page, 13 December 2024). See also Productivity Commission, [Report on Government Services](#) (Report, 26 January 2026) Part F, ‘Community Services’, Table 17A.1.

²² *Ibid* (Figure 1.1).

²³ *Ibid*.

²⁴ *Ibid*.

²⁵ Senate Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, [Doing Time — Time for Doing: Indigenous Youth in the Criminal Justice System](#) (Final Report, 2011) [2.2], 7.

- First Nations young people were 27 times as likely to be in youth detention as their non-Indigenous counterparts;
- the rate and number of First Nations young people in detention had increased over time.²⁶

10 Further, First Nations children with complex needs (experiencing multiple and overlapping diagnoses and forms of disadvantage) are twice as likely to be in youth detention compared with their non-Indigenous counterparts.²⁷

Determinants of Youth Detention

11 Young people involved in the criminal justice system are widely recognised as ‘among the most disadvantaged.’²⁸ These circumstances, which include health and social inequalities,²⁹ ‘pre-existing neurodevelopmental disabilities and mental ill-health’,³⁰ make young people more likely to become justice-involved.

12 Researchers McCausland and Baldry (2023) undertook a meta-analysis of linked data in an administrative databank of a cohort of people who had been incarcerated in New South Wales³¹ and identified a range of social, economic and geographic factors that influence a person’s involvement in the criminal justice system.³² These include:³³

- poor schooling experiences and rates of educational attainment;
- early contact with police;
- unsupported mental health and cognitive disabilities;
- problematic use of alcohol and other drugs;
- experiencing homelessness and unstable housing.

13 Further, as a result systemic racism and discrimination, harm by the state, over-surveillance, lack of access to culturally safe services (or any services at all), people from certain communities and groups are proportionally more likely to end up in the criminal justice system. These include Indigenous people, people experiencing poverty and/or OOHC.³⁴

²⁶ Australian Institute of Health and Welfare (‘AIHW’), [Youth Detention Population in Australia 2024](#) (Web Page, 13 December 2024).

²⁷ Eileen Baldry, Ruth McCausland, Leanne Dowse and Elizabeth McEntyre, [A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System](#) (Report, October 2015).

²⁸ Australian Human Rights Commission (‘AHRC’), Youth Justice and Child Wellbeing Reform Across Australia Project, [‘Help Way Earlier!’: How Australia Can Transform Child Justice to Improve Safety and Wellbeing](#) (National Children’s Commissioner Report, 2024) (‘Help Way Earlier!’ Report) 16. See also Geoffrey Bellew and Jeffrey Loy, [Review of the Operation of Doli Incapax in NSW for Children under 14](#) (Report of Independent Review, August 2025) 17, citing The Law Society of NSW (Submission No 9) and Youth Justice NSW (Submission No 12); Ruth McCausland and Eileen Baldry, [‘Who Does Australia Lock Up? The Social Determinants of Justice’](#) (2023) 12(3) *International Journal for Crime, Justice and Social Democracy* 37, 38; Sharynne Hamilton et al, [‘Putting “Justice” in Recovery Capital: Yarning About Hopes and Futures with Young People in Detention’](#) (2020) 9(2) *International Journal for Crime, Justice and Social Democracy* 20, 21 (citations omitted).

²⁹ Melissa Willoughby et al, [‘Violence-Related Death in Young Australians After Contact With the Youth Justice System: A Data Linkage Study’](#) (2023) 38(17–18) *Journal of Interpersonal Violence* 9923, 9936.

³⁰ *Help Way Earlier!* Report (n 28) 76. See also *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report)*, 2 November 2023) Vol 8.

³¹ McCausland and Baldry (n 28) 39.

³² *Ibid* 39.

³³ *Ibid* 44.

³⁴ *Ibid*.

14 McCausland and Baldry explore the justice trajectories and outcomes for this cohort and locate the ‘social determinants of justice’³⁵ – the systemic and structural factors which, much like determinants of health,³⁶ shape outcomes. These include:

- early abuse, violence and trauma;
- systemic racism and discrimination;
- poverty and unequal access to resources; and
- operation of the criminal legal system itself.³⁷

15 Although these determinants were identified in an adult cohort of people who had been incarcerated, the vast majority of those people had first contact with the criminal justice system as a child or young person. McCausland and Baldry note that the trajectory into criminal legal systems is set early in life by systemic failure or inability of services such as education, health, disability, housing and community services to effectively support children and their families.³⁸

16 The *Royal Commission into the Protection and Detention of Children in the Northern Territory* acknowledged the scarcity of local data, but some generalisations are possible as the same pattern occurs across the country:

[t]here is no comprehensive data on the health of children and young people in detention in the Northern Territory. However, other sources of evidence suggest that many of these children and young people, like their counterparts in other jurisdictions, have complex physical and mental health, social and emotional wellbeing needs, some of which are unidentified or untreated.³⁹

Young people with exposure to adverse childhood experiences*

17 In a systematic review of the literature on ‘adverse childhood experiences’ (‘ACEs’) to locate quantitative evidence of associations between ACEs, trauma symptoms, and offending behavior, Malvaso et al (2021) find ACEs prevalent in youth justice populations under the age of 18.⁴⁰ The term is used to describe both maltreatment and household dysfunction, which have cumulative effects. *Maltreatment* comprises physical, sexual and emotional abuse, and physical and emotional neglect; and *household dysfunction* comprises parental separation, domestic violence, mental illness, substance abuse and incarceration.⁴¹

³⁵ Ruth McCausland and Eileen Baldry, ‘Who Does Australia Lock Up? The Social Determinants of Justice’ (2023) 12(3) *International Journal for Crime, Justice and Social Democracy* 37, 38; see also Office of the Children’s Commissioner Northern Territory (‘OCCNT’), [Our Most Vulnerable Children Bearing the Consequences of a Failed System: A Thematic Analysis of the Needs of Children Aged 10 to 13 Years Held in Northern Territory Youth Detention in 2022/23](#) (Report, 10 October 2024) 17.

³⁶ McCausland and Baldry (n 35), citing Michael Marmot, ‘Social Determinants of Health Inequalities’ (2005) 365(9464) *Lancet* 1099.

³⁷ Ibid 45, Figure 2.

³⁸ Ibid 48.

³⁹ *Royal Commission into the Protection and Detention of Children in the Northern Territory* ([Final Report](#), 2017) Vol. 2A 350, citing [Submission](#) by the Royal Australasian College of Physicians (28 October 2016) 3–4.

* Jody Kamminga et al, [Decision-Making, Emotion and Behaviour Regulation 18–25 Year-Olds A Neurodevelopmental Perspective](#) (Report, *Bugmy Bar* Book, 2025).

⁴⁰ Catia Malvaso et al, ‘Associations between Adverse Childhood Experiences and Trauma among Young People Who Offend: A Systematic Literature Review’ (2021) 23(5) *Trauma, Violence, & Abuse* 1677. See also Geoffrey Bellew and Jeffrey Loy, [Review of the Operation of Doli Incapax in NSW for Children under 14](#) (Report of Independent Review, August 2025) 17–18 [2.2.2].

⁴¹ Catia Malvaso et al, ‘Adverse Childhood Experiences and Trauma among Young People in the Youth Justice System’ (2022) 651 *Trends & Issues in Crime and Criminal Justice* (Australian Institute of Criminology) 1.

- 18 Some researchers, such as Helton et al (2022), have argued for an expansion of childhood adversity measures to include important structural and social disadvantages such as racial discrimination.⁴² In their study examining the role of ACEs and trauma symptomology in young men under Youth Justice supervision in South Australia, Hamilton et al (2024) added the death of a close relative or friend, peer violence and bullying, and witnessing neighbourhood violence to the list of ACEs.⁴³
- 19 In 2024, The National Children’s Commissioner report *Help Way Earlier!*⁴⁴ examined the common characteristics of children who come into contact with the criminal justice system and the failure of current systems to address these root causes. It found that
- the connection between family harm and youth crime is of utmost importance, understanding that youth crime often manifests as a result of intergenerational trauma, the enduring impact of poverty, and various social and cultural determinants of health and wellbeing.⁴⁵
- 20 An AIHW report (2024) found that in 2022–23, almost 2 in 3 (65%) of young people under youth justice supervision had had an experience with the children protection system in the last 10 years.⁴⁶
- 21 According to recently published results of the *2022 Young People in Custody Health Survey* (reporting on a cross-sectional survey of the New South Wales youth justice custodial population) ‘17% of young people in custody had been placed in out-of-home care before the age of 16, with 25.0% of those being placed in care 3 or more times’.⁴⁷ This link, between child protection involvement and a young person’s likelihood of contact with the youth justice system, is supported by multiple other studies.⁴⁸
- 22 Further, researchers have been increasingly interested in the mechanisms by which children with disability involved in the child protection system are criminalised.⁴⁹ A 2021 study by Baiwadi and Piquero examined data from a sample of 300 children with dual involvement in child protection and youth justice and found that 48% had a neurodisability, which highlights the high likelihood of young people with cognitive disability crossing over into the youth justice system.⁵⁰

⁴² Jesse J Helton et al, ‘[Expanding Adverse Child Experiences to Inequality and Racial Discrimination](#)’ (2022) 157 *Preventative Medicine* 107016.

⁴³ Hannah N Hamilton et al, ‘[Understanding Trauma Symptoms Experienced by Young Men under Youth Justice Supervision in an Australian Jurisdiction](#)’ (2024) 23(4) *International Journal of Forensic Mental Health* 333.

⁴⁴ Australian Human Rights Commission (‘AHRC’), Youth Justice and Child Wellbeing Reform Across Australia Project, ‘[Help Way Earlier! : How Australia Can Transform Child Justice to Improve Safety and Wellbeing](#)’ (National Children’s Commissioner Report, 2024) (‘*Help Way Earlier!*’ Report).

⁴⁵ Ibid 16, citing Kotahi to Whakaaro, [Learnings Report](#) (October 2023) 24. See also Geoffrey Bellew and Jeffrey Loy, [Review of the Operation of Doli Incapax in NSW for Children under 14](#) (Report of Independent Review, August 2025) 17–18 [2.2.2].

⁴⁶ Australian Institute of Health and Welfare (‘AIHW’), [Young People under Youth Justice Supervision and their Interaction with the Child Protection System 2022–23](#) (Report, 2024) 5.

⁴⁷ Youth Justice New South Wales, [2022 Young People in Custody Health Survey \(YPICHS\) Report](#) (Report, February 2026) xxviii.

⁴⁸ See, eg, Susan Baidawi and Rosemary Sheehan, Australian Institute of Criminology, ‘“[Crossover kids](#)”: [Offending by Child Protection-Involved Youth](#)’ (2019) 1(582) *Trends & Issues in Crime and Criminal Justice* (Australian Institute of Criminology) 1, 6; Catia G Malvaso, Paul Delfabbro and Andrew Day, ‘[Adverse Childhood Experiences in a South Australian Sample of Young People in Detention](#)’ (2018) 52(3) *Australian & New Zealand Journal of Criminology* 411; Catia G Malvaso et al, ‘[The Maltreatment–Violence Link: Exploring the Role of Maltreatment Experiences and Other Individual and Social Risk Factors among Young People Who Offend](#)’ (2018) 55 *Journal of Criminal Justice* 35; Kath McFarlane, ‘[Care-Criminalisation: The Involvement of Children in Out-of-Home Care in the New South Wales Criminal Justice System](#)’ (2017) 51(3) *Australian & New Zealand Journal of Criminology* 412.

⁴⁹ Susan Baidawi et al, [Care Criminalisation of Children with Disability in Child Protection Systems](#) (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023).

⁵⁰ Susan Baidawi and Alex R. Piquero, ‘[Neurodisability among Children at the Nexus of the Child Welfare and Youth Justice System](#)’ (2021) 59 *Journal of Youth and Adolescence* 803. See also, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* ([Final Report](#), 2 November 2023) Executive Summary, 127.

23 A 2022 South Australian study collected data from self-reported assessments from 180 young people under youth justice supervision in the community and in custody in South Australia and found a high prevalence of the following:

- four or more adverse childhood experiences (88%);
- clinically significant trauma symptoms (88%);
- problematic substance use (86%); and
- social and emotional behavioural problems (83%).⁵¹

24 The same study explained how symptoms of trauma arising from ACEs may be linked with offending behaviour: the ‘critical causal pathway ... is thought to involve the experience (and expression) of trauma symptomatology.’⁵² Further, 88% of young people with valid Trauma Symptom Checklist for Children assessments (a tool used to measure posttraumatic stress and related psychological symptoms such as anger, anxiety, depression, dissociation and fantasy) ‘scored in the symptomatic range for at least one [of these]’.⁵³ The responses they gave ‘were indicative of clinically significant problems across a broad range of trauma symptom domains’⁵⁴ including dissociation, post-traumatic stress, anger, depression and anxiety.⁵⁵

25 Such findings are echoed throughout Australia, including the Northern Territory, Queensland and New South Wales.⁵⁶ Reil et al (2022) conclude:

Overall, the evidence from those at the front line could not be clearer: child offending does not occur in a vacuum; it is the product of significant child welfare concerns in the vast majority of cases.⁵⁷

26 Adverse early childhood experiences can also lead to significant neurobiological changes, since exposure to adverse experiences impacts the brain during critical periods of development. Teicher and Samson (2016) note that witnessing domestic violence or being exposed to parental abuse can result in structural changes in certain parts of the brain.⁵⁸ Outcomes include reduced memory and learning, heightened emotional reactivity and stress sensitivity, as well as lower inhibitory control and cognitive flexibility (which has flow-on effects for learning, school engagement and attendance).*

⁵¹ Catia Malvaso et al, ‘[Adverse Childhood Experiences and Trauma among Young People in the Youth Justice System](#)’ (2022) 651 *Trends & Issues in Crime and Criminal Justice* (Australian Institute of Criminology) 5–8.

⁵² Ibid 2. See also Office of the Children’s Commissioner Northern Territory (‘OCCNT’), [Our Most Vulnerable Children Bearing the Consequences of a Failed System: A Thematic Analysis of the Needs of Children Aged 10 to 13 Years Held in Northern Territory Youth Detention in 2022/23](#) (Report, 10 October 2024) 38.

⁵³ Catia Malvaso et al (n 51) 7.

⁵⁴ Ibid.

⁵⁵ Ibid 12–13.

⁵⁶ See OCCNT (2024) (n 52) 4; Department of Youth Justice and Victim Support (Qld), [Youth Justice Pocket Stats 2023–24](#) (Data Sheet, 2024); Youth Justice New South Wales, [2022 Young People in Custody Health Survey Report](#) (Report, February 2026) 239–54.

⁵⁷ Jerome Reil, Ian Lambie and Ruth Allen, ‘“[Offending Doesn’t Happen In a Vacuum: The Backgrounds and Experiences of Children under the Age of 14 Years Who Offend](#)’ (2022) 55(2) *Journal of Criminology* 215, 214–15 (citations omitted).

⁵⁸ Martin Teicher and Jacqueline Samson, ‘[Annual Research Review: Enduring Neurobiological Effects of Childhood Abuse and Neglect](#)’ (2016) 57(3) *Journal of Psychology and Psychiatry* 241.

* Jody Kamminga et al, [Decision-Making, Emotion and Behaviour Regulation 18–25 Year-Olds A Neurodevelopmental Perspective](#) (Report, *Bugmy Bar Book*, 2025).

- 27 Finally, in a longitudinal study, Alam et al (2026) examined the prevalence, patterns and protective factors of ACEs among Aboriginal and Torres Strait Islander children in Australia and found bullying at school (67.4%) and family experiences of racism, discrimination, or prejudice (48.8%) to be the most prevalent.⁵⁹
- 28 Conversely, researchers found that protective factors were associated with reduced ACEs. These include financial stability and strong family bonds.⁶⁰

Young people with cognitive disabilities

- 29 An AIHW report on the feasibility of establishing a national data collection on the health of justice-involved youth (2018) discussed the prevalence of cognitive disabilities amongst incarcerated young people:

A New South Wales study found that almost half (46%) of young people in detention had ‘borderline’ or lower intellectual functioning, indicating significant impairment, and one quarter (25%) had left school before the age of 14. The cognitive functioning of young people in detention is worse than for those in the general community, particularly for receptive verbal skills (the ability to understand what someone is saying). Speech, language and communication problems are significantly higher among those involved in the youth justice system than in the general population.⁶¹

- 30 More recent data from the *2022 Young People in Custody Health Survey* indicates that, of the young people surveyed, ‘[o]ne in 5 (20.2%) ... obtained a Full-Scale Intelligence Quotient (FSIQ) score in the “extremely low” range (below 70), indicating potential intellectual disability. This was an increase from 16.6% in 2015 and 13.6% in 2009’.⁶² The majority of participants (4 in 5) also scored below average on verbal comprehension.⁶³
- 31 Research suggests that young people in the juvenile justice system often have other impairments associated with a cognitive disability, including communication disorders, attention deficit hyperactivity disorder (‘ADHD’), autism spectrum disorder, foetal alcohol spectrum disorder (‘FASD’) and acquired or traumatic brain injuries.⁶⁴ Bower et al (2018) found that 90% of young people in sentenced detention in Western Australia had severe neurodevelopmental impairment in at least one domain.⁶⁵
- 32 Undiagnosed hearing and language impairments can lead to behaviour being ‘misinterpreted as non-compliance, rudeness, defiance or indifference’.⁶⁶

⁵⁹ Ashraful Alam et al, ‘[Adverse Childhood Experiences among Aboriginal and Torres Strait Islander Children and Adolescents in Australia: Role of a Family with Strong Kinship and Economic Well-Being](#)’ (2026) 250 *Public Health* 106061, 4.

⁶⁰ Ashraful Alam et al, ‘[Adverse Childhood Experiences among Aboriginal and Torres Strait Islander Children and Adolescents in Australia: Role of a Family with Strong Kinship and Economic Well-Being](#)’ (2026) 250 *Public Health* 106061, 4.

⁶¹ Australian Institute of Health and Welfare (‘AIHW’), [National Data on the Health of Justice-Involved Young People: A Feasibility Study 2016/17](#) (Report, 2018) 5 (citations omitted). See also Department of Youth Justice and Victim Support (Qld), [Youth Justice: Pocket Stats September 2024](#) (Data Sheet, 2024).

⁶² Youth Justice NSW, [2022 Young People in Custody Health Survey Report](#) (Report, February 2026) 260.

⁶³ Ibid 261.

⁶⁴ Chris Cunneen, [Arguments for Raising the Minimum Age of Criminal Responsibility](#) (Report, Comparative Youth Penalty Project, Jumbunna Institute for Indigenous Education and Research, 2020) 15. See also Office of the Children’s Commissioner Northern Territory (‘OCCNT’), [Our Most Vulnerable Children Bearing the Consequences of a Failed System: A Thematic Analysis of the Needs of Children Aged 10 to 13 Years Held in Northern Territory Youth Detention in 2022/23](#) (Report, 10 October 2024) 38.

⁶⁵ Carol Bower et al, ‘[Fetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study Among Young People Sentenced to Detention in Western Australia](#)’ (2018) 8(2) *BMJ Open* 1, cited in Office of the Inspector of Custodial Services (WA), [Directed Review of Allegations made by Amnesty International about Ill-treatment at Banksia Hill Detention Centre](#) (Report, June 2018) 12.

⁶⁶ Cunneen (n 64) 15, citing, inter alia, Tory Vanderpoll and Damien Howard, ‘[Massive Prevalence of Hearing Loss among Aboriginal Inmates in the Northern Territory](#)’ (2012) 7(28) *Indigenous Law Bulletin* 3.

- 33 Research has highlighted a need for ‘earlier diagnosis and intervention’⁶⁷ to assist in preventing and mitigating the involvement of these young people in the criminal justice system.

*Young people with FASD**

- 34 Acquired brain injuries, and particularly FASD, remain largely undiagnosed, contributing to further entrenchment in the criminal justice system.⁶⁸ For example, Bower et al (2018) documented a high prevalence of FASD and severe neurodevelopmental impairment in incarcerated young people, based on a representative study of young people in youth detention in Western Australia. The widely cited study found that 36% of participants qualified for a diagnosis of FASD, 94% of whom were Aboriginal.⁶⁹ The AIHW observed that this is ‘the highest reported prevalence of FASD in a youth justice setting anywhere in the world’.⁷⁰

- 35 FASD can result in a wide range of cognitive impairments which increase the likelihood of contact with the criminal justice system.⁷¹ For instance,

[i]mpulsive behaviour may lead to stealing things for immediate consumption or use, unplanned offending and offending behaviour precipitated by fright or noise. As a result of their suggestibility, FASD sufferers may engage in secondary participation with more sophisticated offenders. Lack of memory or understanding of cause and effect may lead to breach of court orders; further enmeshing FASD sufferers in the justice.⁷²

- 36 Further, FASD sufferers may have difficulty understanding social cues and tolerating frustration. They are also more likely to be victimised,⁷³ and, due to cognitive, social and functional challenges, inappropriate sexual behaviour may appear in up to half of FASD sufferers.⁷⁴

- 37 Passmore et al (2021) explained that young people with FASD and other neurodevelopmental impairments are at increased risk of punishment while incarcerated:

Once in detention, additional difficulties can arise if young people cannot effectively communicate their needs, follow instructions, understand social expectations or appreciate consequences of behaviours. These young people are more likely to be involved in incidents

⁶⁷ Carol Bower et al, ‘[Fetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study Among Young People Sentenced to Detention in Western Australia](#)’ (2018) 8(2) *BMJ Open* 1 (n 65) 8.

* See generally *Bugmy Bar Book* chapter ‘[Fetal Alcohol Spectrum Disorders \(FASD\)](#)’.

⁶⁸ Gaye Lansdell, Bernadette Saunders and Anna Eriksson, ‘[Young People with Acquired Brain Injury: Preventing Entrenchment in the Criminal Justice System](#)’, (2022) 650 (1) *Trends & Issues in Crime and Criminal Justice* (Australian Institute of Criminology) 1, 5.

⁶⁹ Carol Bower et al, ‘[Fetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study Among Young People Sentenced to Detention in Western Australia](#)’ (2018) 8(2) *BMJ Open* 1. See also Jed Kerry et al, ‘[Neuropsychological Profiles of Adolescents Sentenced to Detention in Western Australia With and Without Prenatal Alcohol Exposure](#)’ (2024) 34(2) *Criminal Behaviour and Mental Health* 163.

⁷⁰ Australian Institute of Health and Welfare (‘AIHW’), [Closing the Gap Targets: Key Findings and Implication](#) (Catalogue No IHW 294, AIHW, Australian Government, 2025) 461.

⁷¹ Australian Law Reform Commission (‘ALRC’), [Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#) (ALRC Report 133, 2018) (‘*Pathways to Justice Report*’) 66–7 [2.44]. See also Carol Bower et al (n 67) 8.

⁷² Senate Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, [Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System](#) (Final Report, 2011) 97–98 [4.38], quoting Associate Professor Heather Douglas, [Submission No 112 to Senate Select Committee on Regional and Remote Indigenous Communities](#) (2010) 4–5.

⁷³ Sara McLean and Stewart McDougall, ‘[Fetal Alcohol Spectrum Disorders: Current Issues in Awareness, Prevention and Intervention](#)’ (CFCA Paper No. 29, Australian Institute of Family Studies, Child Family Community Australia, 2014) 11.

⁷⁴ Tara Anderson et al, ‘[FASD and Inappropriate Sexual Behaviour](#)’ (Issues Paper, Canada FASD Research Network, 2018) 1, citing Katherine Flannigan et al, ‘[Fetal Alcohol Spectrum Disorder and The Criminal Justice System: A Systematic Literature Review](#)’ (2018) 54 *International Journal of Law and Psychiatry* 42.

within the detention centre, potentially leading to further punishment or repeated contact with the justice system.⁷⁵

Young people with mental health and substance use disorders

38 Mental health disorders are more prevalent among incarcerated young people, compared with the general youth population.⁷⁶ In New South Wales, a 2022 survey of the health of young people in custody⁷⁷ found that, of the 147 young people surveyed,

- 82.1% met the threshold for at least one psychological disorder⁷⁸
- 27.5% had ever self-harmed⁷⁹
- 92.1% had ever used illicit drugs⁸⁰
- 65.1% were under the influence of alcohol, drugs, or both at the time of their current offence.⁸¹

39 In a study that aimed to ascertain the prevalence and correlates of self-harming behaviours in a sample of young people in custody in two youth justice centres in Victoria, Shepherd et al (2018) found that

[a]pproximately one-third (33%) of the sample had engaged in previous self-harm. Where it could be verified, at least 11% of the participants had engaged in nonsuicidal self-injury and a further 12% had attempted suicide.⁸²

40 Successive research has found that young people in detention have high rates of substance misuse.⁸³ Annual reports from the Victorian Youth Parole Board review the characteristics of young people in custody; on 2 June 2023, of 540 young people in custody (488 males and 52 females), 82% had a history of use or misuse of *drugs* (illicit or prescription); 67% had a history of use or misuse of *alcohol and drugs* (illicit or prescription); and 61% had *offended* while under the influence of alcohol and drugs (illicit or prescription).⁸⁴ The corresponding figures for a smaller cohort of 85 (82 males, 3 females) on 3 June 2024 were 80% (history of drugs); 62% (history of alcohol and drugs); and 52% (offending while on drugs and alcohol).⁸⁵ Slightly higher rates of substances misuse were reported in 2024 for young people in Queensland, with 87% of young people having used at least one substance.⁸⁶

⁷⁵ Hayley Passmore et al, ‘[Reframe the Behaviour: Evaluation of a Training Intervention to Increase Capacity in Managing Detained Youth with Foetal Alcohol Spectrum Disorder and Neurodevelopmental Impairments](#)’ (2021) 28(3) *Psychiatry, Psychology and Law* 382, 383 (citations omitted).

⁷⁶ *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Final Report, 2017) Vol 2A 349.

⁷⁷ Youth Justice NSW, [2022 Young People in Custody Health Survey \(YPICHS\) Report](#) (Report, February 2026).

⁷⁸ Ibid 179.

⁷⁹ Ibid 210.

⁸⁰ Ibid 103.

⁸¹ Youth Justice NSW, [2022 Young People in Custody Health Survey \(YPICHS\) Report](#) (Report, February 2026) 108.

⁸² Stephane Shepard et al, ‘[Correlates of Self-Harm and Suicide Attempts in Justice-Involved Young People](#)’ (2018) 13(2) *PLoS ONE*, e0193172, 7.

⁸³ See, eg, Megan L. Steele et al, ‘[Substance Use and Help-Seeking Among Justice-Involved Young People in Queensland and Western Australia: A Cross-Sectional Survey of 14–17-year-olds](#)’ (2021) 40(4) *Drug and Alcohol Review* 617; C J Lenings, J Copeland and J Howard, ‘[Substance Use Patterns of Young Offenders and Violent Crime](#)’ (2003) 29 *Aggressive Behaviour* 414, cited in Jeremy Prichard and Jason Payne, ‘[Alcohol, Drugs and Crime: A Study of Juveniles in Detention](#)’ (Research and Public Policy Series No 67, Australian Institute of Criminology, 2005) 8.

⁸⁴ Youth Parole Board, [Annual Report 2022-23](#) (Report, 19 October 2023) 26 (Table 8).

⁸⁵ Youth Parole Board, [Annual Report 2023-24](#) (Report, October 2024) 30 (Table 7). In addition, young people in custody reported a history of self-harm, suicidal ideation or suicide attempts 12% higher in 2024 than in the previous year: 4.

⁸⁶ Department of Youth Justice and Victim Support (Qld), [Youth Justice Census Summary – Youth Justice Custody](#) (Data Sheet, 2024).

Young people in rural, regional and remote areas

- 41 On an average day in 2023–24, young people from *very remote* areas aged 10–17 ‘were about 11 times as likely as those from *major cities* to be under Youth Justice supervision (community-based or in detention)’.⁸⁷ Similarly, those aged 10–17 from ‘the lowest *socioeconomic* areas were about 6 times as likely as those from the highest socioeconomic areas to be under supervision’⁸⁸ (community-based or in detention). Children in Australia are most commonly charged with theft, followed by common assault, illicit drug possession and/or public order offences.⁸⁹ These offences are known to be linked to experiences of low socioeconomic status and poverty.^{90*}
- 42 The incarceration of young people in rural and regional areas appears to be related to the fact that they are more likely to be held on remand, according to the Youth Affairs Council Victoria, ultimately because ‘housing services are more sparse and there are fewer options in terms of diversionary programs’ in regional areas.⁹¹ Since 2024, remand figures are likely to have increased, due to more punitive bail laws in some states and the Northern Territory.
- 43 Another issue identified by Pearce (2025) is that the ‘rural–urban divide’⁹² created a lack of specialist courts in rural New South Wales for young people, who ‘may be disadvantaged due to the judiciary’s lack of familiarity with available diversionary options’⁹³ under the *Young Offenders Act 1997* (NSW).

Experiences in Youth Detention

- 44 A number of inquiries have considered the experiences of young people in Australian detention centres. They include a Royal Commission in the Northern Territory (2017)⁹⁴ and, most recently, an Australia-wide Senate inquiry (2025).⁹⁵ The reports from these inquiries have found that experiences of incarceration are often characterised by restricted access to food, restricted access to fresh air and exercise, prolonged periods of isolation, placement in adult custodial settings, and physical and/or sexual assault.⁹⁶

⁸⁷ Australian Institute of Health and Welfare (‘AIHW’), [Youth Justice](#) (Web Page, 16 October 2025).

⁸⁸ *Ibid.*

⁸⁹ AIHW, [Youth Detention Population in Australia 2022](#) (Web Report, 13 December 2022).

⁹⁰ See, eg, Senate Community Affairs Reference Committee, [Inquiry into the Extent and Nature of Poverty in Australia](#) (Final Report, 3 February 2024) 72 [4.15] (citing Australian Institute of Family Studies (‘AIFS’) [Submission 14](#), 3 February 2023) 8; Office of the Children’s Commissioner Northern Territory (‘OCCNT’), [Our Most Vulnerable Children Bearing the Consequences of a Failed System: A Thematic Analysis of the Needs of Children Aged 10 to 13 Years Held in Northern Territory Youth Detention in 2022/23](#) (Report, 10 October 2024) 25.

* See also *Bugmy* Bar Book chapter ‘[Low Socio-Economic Status](#)’.

⁹¹ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, [Inquiry into Victoria’s Criminal Justice System](#) (Report, Vol 1, March 2022) 446.

⁹² Estrella Pearce, [Youth Diversion: Exploring Criminal Justice Perspectives through An Australian Case Study](#) (Routledge, 2025) 137.

⁹³ *Ibid.* 140.

⁹⁴ [Royal Commission into the Protection and Detention of Children in the Northern Territory](#) (‘Northern Territory Royal Commission’) (Final Report, 2017).

⁹⁵ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, [Australia’s Youth Justice and Incarceration System](#) (Report, February 2025) (‘Australia’s Youth Report’). The Inquiry is scheduled to publish a final report in June 2026. An interim report was published in February 2025.

⁹⁶ See, e.g., Northern Territory Royal Commission (n 94) Vol 2A, Ch 12; *Australia’s Youth Report* (n 95) 25–8, 135. See also Inspector of Custodial Services (NSW), [Use of Force, Separation and Confinement in NSW Juvenile Justice Centres](#) (Report, November 2018); Inspector of Detention Services, Office of the Queensland Ombudsman, [Cairns and Murgon Watch-Houses Inspection Report: Focus on Detention of Children](#) (Report, September 2024) 61–3; Inspector of Detention Services and Office of the Queensland Ombudsman, [Combined Inspection Report for Youth Detention Centres: A Report on Our Inspections of 3 Queensland Youth Detention Centres](#) (Report, November 2025).

- 45 Cunneen, Goldson and Russell (2016) recounted concerning practices in juvenile detention centres across all Australian jurisdictions:

[E]vidence shows that children in detention in all states and territories in Australia have been subject to: solitary confinement; segregation; excessive force; the use of mechanical restraints; and, in the most extreme cases, physical abuse... Other examples of concern include: high levels of self-harm and severely stretched mental health facilities; strip-searches; poor visiting facilities; inadequate quantities of food; and under-resourced education facilities and programs as reported of the Banksia Hill Detention Centre.⁹⁷

- 46 The Law Council of Australia expressed its concern to the 2024 Senate *Inquiry into Youth Justice* that a ‘consistent theme emerging from reports published by independent oversight bodies’ is the failure of youth justice centres to ‘comply with the human rights of children and young people in detention’ in contravention of Australia’s obligations under article 37 of the Convention on the Rights of the Child (‘CRC’).⁹⁸

- 47 Further, it is not uncommon for young people in Australia to be detained in adult prisons, due to mistake or emergency transfer, or because youth detention centres were at capacity.⁹⁹

- 48 As the Senate *Inquiry into Youth Justice*¹⁰⁰ heard, this can be particularly harmful when custodial staff are not trained to deal with young people. With respect to the disproportionate use of solitary confinement and other restrictive practices on children with a disability, this exacerbates existing trauma:

A lot of it is used to respond to behaviour. Behaviour is a direct response or an exacerbation of their disability in engagement with their environment ... but those restrictive practices exacerbate that particular behaviour. It becomes a situation where restrictive practices are increased in use, but it’s not going to change the behaviour because it’s contributing to the traumatic response.¹⁰¹

- 49 The same Inquiry heard that ‘children’s prisons ... lack social and therapeutic care and support’ and ‘serve as sites of ongoing trauma and violence’.¹⁰² Dr James Beaufile, Senior Research Fellow at Jumbunna, agreed: ‘these are colonial institutions where community, young people and families continue to feel unsafe’.¹⁰³

Adverse Impacts

- 50 There is an established link, across a wide body of research, between a young person’s incarceration and poor health and other adverse outcomes over their life-course. In a systematic review that synthesised the findings of existing studies on the impact of youth incarceration across a variety of domains, Ackerman et al (2024) concluded that ‘early life experiences, like juvenile

⁹⁷ Chris Cunneen, Barry Goldson and Sophie Russell, ‘[Juvenile Justice, Young People and Human Rights in Australia](#)’ (2016) 28(2) *Current Issues in Criminal Justice* 173, 181.

⁹⁸ Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Inquiry into Australia’s Youth Justice and Incarceration System* ([Submission No 195](#), 22 October 2024) 32 [98].

⁹⁹ Cunneen et al (n 97) 183.

¹⁰⁰ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into Australia’s Youth Justice and Incarceration System](#) (Interim Report, February 2025).

¹⁰¹ Ibid 21–2 [2.36], citing evidence from Ms Rosemary Kayess, Disability Discrimination Commissioner, AHRC and Ms Anne Hollonds, National Children’s Commissioner, AHRC (Committee Hansard, 3 February 2025) 80.

¹⁰² Ibid 24 [2.42] citing Sisters Inside and National Network of Incarcerated and Formerly Incarcerated Women & Girls ([Submission No 128](#)) 3.

¹⁰³ Ibid citing evidence from Dr James Beaufile, Senior Research Fellow, Jumbunna (Committee Hansard, 3 February 2025) 55.

incarceration ... create a cascading effect that shape[s] long-term trajectories marked by diminished opportunities for positive development and adverse outcomes'.¹⁰⁴

- 51 In their submission to the *Help Way Earlier!* project,¹⁰⁵ Dr Sharynne Hamilton and Dr Raewyn Mutch similarly described negative outcomes arising from time spent in youth detention and persisting across the life span, and down the generations, resulting in worse health and social outcomes. This embodied harm and its behavioural consequences are not addressed or remediated by incarceration.¹⁰⁶
- 52 Young people exposed to youth detention are also at greater risk of being institutionalised than adults, because they are still developing their biological, psychological and social trajectories – particularly their self-identity and the way they relate to others – and are more deeply affected by highly constrained environments.*

Criminogenic effects

- 53 Spending time in custody and detention is criminogenic for young people¹⁰⁷ and increases their likelihood of becoming entrenched in the criminal justice system. Those between the ages of 10 and 14 are at greatest risk of youth justice system involvement and progression into adult offending.¹⁰⁸
- 54 Studies have suggested that detention is of limited value for rehabilitation of young people and reduction in reoffending, given the limited range of programs available and their inadequacy to address what are complex needs.¹⁰⁹ The [Queensland Child Rights Report 2025](#) published by the Office of the Aboriginal and Torres Strait Islander Children's Commissioner noted that Queensland has one of the highest rates of reoffending. According to data in the report, n 2021-22 65.8% of children and young people 'released from sentenced supervision returning within 12 months',¹¹⁰ a sign largely indicative of systemic failure and an indication that current 'service delivery in detention facilities and transitions processes are having little impact'.¹¹¹
- 55 Research demonstrates a link between periods spent in custody as a child and reoffending throughout adulthood. For instance, a New South Wales study published in 2015 tracked a cohort of 8,797 juvenile offenders over ten years and found that just over half were charged and convicted of further offences during that period. Reconviction rates were higher for young males than for females, and for Indigenous than non-Indigenous offenders.¹¹² Stuart A Kinner et al

¹⁰⁴ Erica Ackerman et al, 'Systematic Review: Impact of Juvenile Incarceration' (2024) 3 *Child Protection Practice* 1, 10.

¹⁰⁵ Australian Human Rights Commission ('AHRC'), Youth Justice and Child Wellbeing Reform Across Australia Project, ['Help Way Earlier!' How Australia Can Transform Child Justice to Improve Safety and Wellbeing](#) (National Children's Commissioner Report, 2024) ('*Help Way Earlier!*' Report).

¹⁰⁶ Sharynne Hamilton and Raewyn Mutch, Submission to *Help Way Earlier!* (n 105) ([Submission No 131](#), 30 June 2023) 3.

* Robyn Shields and Andrew Ellis, [Impacts of Institutionalisation](#) (Report, *Bugmy Bar Book*, 2025) [8]–[9].

¹⁰⁷ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, [Inquiry into Victoria's Criminal Justice System](#) (Report, March 2022) 444, citing Centre for Multicultural Youth ([Submission No 95](#), 1 September 2021) 5.

¹⁰⁸ Ibid 96, citing evidence from Fiona Dowsley, Chief Statistician, Crime Statistic Agency Melbourne (21 September 2021) [Transcript](#) 3–4.

¹⁰⁹ See generally Garner Clancey, Sindy Wang and Brenda Lin, 'Youth Justice in Australia: Themes from Recent Inquiries' (2020) 605 *Trends & Issues in Criminal Justice* (Australian Institute of Criminology) 11; Victorian Auditor-General's Office, [Managing Rehabilitation Services in Youth Detention](#) (Web Report, August 2018; [PDF version](#)) 8; Ian Lambie and Isabel Randell, 'The Impact of Incarceration on Juvenile Offenders' (2013) 33 *Clinical Psychology Review* 448, 452.

¹¹⁰ Office of the Aboriginal and Torres Strait Islander Children's Commissioner, [Queensland Child Rights Report 2025](#) (The State of Queensland, 2026) 70.

¹¹¹ Ibid.

¹¹² Jason Payne and Don Weatherburn, 'Juvenile Reoffending: A Ten-Year Retrospective Cohort Analysis' (2015) 50(4) *Australian Journal of Social Issues*, 349. See also Shuling Chen et al, 'The Transition from Juvenile to Adult Criminal Careers' (2005) 86 (Crime and Justice Bulletin, Contemporary Issues in Crime and Justice No 86, NSW Bureau of Crime Statistics and Research).

(2025) found that ‘[m]ore than one in four young people in our study was later incarcerated as an adult during the study period. This was most common among those who had experienced youth detention’.¹¹³

- 56 The Senate *Inquiry into Youth Justice* noted that ‘detention can reinforce criminal behaviours and perpetuate cycles of reoffending’.¹¹⁴ According to the most recent AIHW data on young people returning to sentenced youth supervision,

Of young people aged 10–16 in 2022–23 and released from sentenced community-based supervision, 39% returned to sentenced supervision within 6 months, and 56% within 12 months. Of those released from sentenced detention, 70% returned within 6 months, and 84% within 12 months.¹¹⁵

- 57 In New South Wales, BOCSAR reported that over the two years to June 2024, the rates of young people in contact with the criminal justice system who received a diversion by way of warning, caution, or youth justice conference dropped from 51.3% in 2022–23 to 46.8% in 2023–24.¹¹⁶

- 58 Drawing conclusions based on similar data trends, Cunneen, Goldson and Russell (2016) identified that raising the age of criminal responsibility may reduce reoffending and life course interaction with the criminal justice system:

Studies have found that children first supervised between the ages of 10–14 are significantly more likely to experience all types of supervision – and particularly sentenced supervision – in their later teens when compared with children first supervised at 15–17 years (AIHW 2013). There is therefore evidence to suggest that raising the age of criminal responsibility (particularly to 14 years) has the potential to reduce the likelihood of life-course interaction with the criminal justice system.¹¹⁷

- 59 With respect to the impact on Indigenous children, the authors noted that although 10–11 year-olds comprise only 0.6% of children under supervision (custodial or in the community), Indigenous children account for 87% of that group.¹¹⁸

- 60 In New South Wales, addressing issues arising from the current application of the common law presumption of *doli incapax* (e.g. by providing adequate training for police and prosecutors and legislating on the presumption)¹¹⁹ has been recommended to assist in avoiding the ‘significant, harmful and long-term consequences of exposing children aged 10–13 years to justice system responses, particularly in cases where they are unlikely to be found criminally responsible’.¹²⁰

¹¹³ Stuart A Kinner et al, ‘[Rates, Causes, and Risk Factors for Death Among Justice-Involved Young People in Australia: A Retrospective, Population-Based Data Linkage Study](#)’ (2025) 10(4) *The Lancet Public Health* e274, e281.

¹¹⁴ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into Australia’s Youth Justice and Incarceration System](#) (Interim Report, February 2025) 29 [2.58].

¹¹⁵ Australian Institute of Health and Welfare (‘AIHW’), [Young People Returning to Sentenced Youth Justice Supervision 2023–24](#) (Web Page, 4 September 2025). See also Bureau of Crime Statistics and Research (NSW), [Reoffending](#) (Web Page, February 2025).

¹¹⁶ NSW Bureau of Crime Statistics and Research (‘BOCSAR’) [NSW Recorded Crime Statistics Quarterly Update June 2024](#) (Media Release, 19 September 2024).

¹¹⁷ Chris Cunneen, Barry Goldson and Sophie Russell, ‘[Juvenile Justice, Young People and Human Rights in Australia](#)’ (2016) 28(2) *Current Issues in Criminal Justice* 173, 176–7 (citations omitted).

¹¹⁸ *Ibid* 176.

¹¹⁹ Geoffrey Bellew and Jeffrey Loy, [Review of the Operation of Doli Incapax in NSW for Children under 14](#) (Report of Independent Review, August 2025).

¹²⁰ *Ibid* 43.

Increased risk of death

61 One widely recognised social cost of incarceration is the relatively high risk of death following release.¹²¹ Stuart A Kinner et al (2025) examined mortality outcomes in a large, state-wide cohort of 48,670 young people in Queensland who had contact with the youth justice system over more than two decades, and observed

a clear dose–response relationship between the level of exposure to the youth justice system and rate of death. Compared with those who had only ever been charged with an offence, the unadjusted rate of death was 30% higher among those who had experienced community supervision, and 90% higher among those who had experienced detention. This dose–response relationship was also evident with respect to the number and total duration of exposures to the criminal justice system.¹²²

62 The authors note that their results were consistent with a recent US study and conclude that although ‘a causal relationship between criminal justice system exposure and risk of death’ cannot be excluded, it seemed ‘likely that contact with these systems serves primarily as a marker of pre-existing risk, with more frequent and more serious contact signifying greater pre-existing risk.’¹²³

63 They explain this by pointing to abundant evidence that

justice-involved young people have a high prevalence of important risk factors for premature death including poverty, homelessness, mental illness, substance use disorder, risk-taking behaviour, and inadequate access to quality and age-appropriate health care ... [Thus] [m]eaningful efforts to address the health, psychosocial, and disability needs of these children and young people are essential, irrespective of their involvement in the criminal justice system.¹²⁴

Physical health

64 Broadly, there are established links between incarceration and poorer physical health outcomes than the general population, ‘such that people in prison are often considered to be elderly at ages 45–55 (compared with [those] at age 65 and over in the general community)’.¹²⁵

65 A review of the Queensland government’s use of watch houses for detaining young people found:

- Two-thirds of the 30 children received a physical and mental health assessment
- 29 out of 30 had their dietary needs met
- 28 out of 30 had their sanitary needs met
- 28 out of 30 participated in physical activity.¹²⁶

66 A 2024 Queensland Ombudsman report on the detention of children in watch houses in Cairns and Murgon outlined concerning behavioural management strategies utilised by watch house staff

¹²¹ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (Report, 20 June 2013) 24 [3.24].

¹²² Stuart A Kinner et al, ‘Rates, Causes, and Risk Factors for Death among Justice-Involved Young People in Australia: A Retrospective, Population-Based Data Linkage Study’ (2025) 10(4) *The Lancet Public Health* e274, e280–e281.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Australian Institute of Health and Welfare (‘AIHW’), *The Health of People in Australia’s Prisons 2022* (Report, 15 November 2023) 1 (citations omitted).

¹²⁶ Queensland Family and Child Commission, *Who’s Responsible: Understanding Why Young People Are Being Held for Longer in Queensland Watch Houses* (Report, November 2023) 46.

that ‘may exacerbate’ issues the young people are facing,¹²⁷ including: denying children telephone contact or visits with family; group punishment; use of a padded cell; denying children access to the exercise yard or common area; and refusing children access to snacks.¹²⁸

- 67 Hamilton and Mutch noted the inadequacy of processes and programs at the Banksia Hill Detention Centre:

[Staff] described children who were unable to access hearing and eye testing or be provided with glasses, and they overwhelmingly raised concerns about their ability to provide any quality education for the young people in their care. They described poor information sharing and a lack of access to comprehensive information about social, educational and medical histories. In addition, despite 75% of the population of Banksia being Aboriginal, there were few Aboriginal staff and no Aboriginal staff in senior leadership roles.¹²⁹

- 68 The Australian Medical Association noted the well-documented health issues caused by solitary confinement, which had negative impacts including ‘sleep disturbances, headaches, heart palpitations and the worsening of preexisting health conditions’.¹³⁰

- 69 A New South Wales evidence brief published by Family and Community Services Insights Analysis and Research (2023) showed that young people who had ended a spell in custody in the previous 12 months were ‘between 14 and 60 times more likely (‘risk uplift’) to access homelessness services in the next year’.¹³¹ Such an increased risk of homelessness exposes young people to increased risks to their physical health. According to the AIHW:

Health problems can arise as a consequence of experiencing homelessness, including malnutrition and dental problems. Homelessness can expose people to violence and victimisation, result in long-term unemployment and lead to the development of chronic ill health. People experiencing homelessness have significantly higher rates of death and chronic illness when compared with the general population.¹³²

Mental health

- 70 There are established links between the incarceration of young people and the development of mental health disorders, including specific risks of depression and self-harm, particularly suicidal ideation.¹³³ Detention also has the potential to compound existing trauma due to the absence of trauma-informed practices.¹³⁴

- 71 Time spent in youth detention is associated with worsening mental health:

¹²⁷ Inspector of Detention Services, Office of the Queensland Ombudsman, [Cairns and Murgon Watch-Houses Inspection Report: Focus on Detention of Children](#) (Report, September 2024) 60.

¹²⁸ Ibid 59–60.

¹²⁹ Sharynne Hamilton and Raewyn Mutch, [Submission to the Australian Human Rights Commission](#), Youth Justice and Child Wellbeing Reform across Australia Project (*Help Way Earlier!*) (Submission No 131, 30 June 2023) 3–4.

¹³⁰ Australian Medical Association (‘AMA’), Submission to the Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into Australia’s Youth Justice and incarceration System](#) (Submission No 55, 10 October 2024).

¹³¹ Katie Page and Christie Robertson, ‘[Pathways to Homelessness for People Exiting Custody in NSW](#)’ (Evidence Brief, Department of Communities and Justice (NSW), 15 January 2023) 8.

¹³² Australian Institute of Health and Welfare, Australian Government, [Health of People Experiencing Homelessness](#) (Web report, 13 February 2025) 1 (citations omitted).

¹³³ See, eg, H Hales et al, ‘[Young Male Prisoners in a Young Offenders’ Institution: Their Contact with Suicidal Behaviour by Others](#)’ (2003) 26(6) *Journal of Adolescence* 667.

¹³⁴ Isaiah Pickens, ‘[Laying the Groundwork: Conceptualizing a Trauma-Informed System of Care in Juvenile Detention](#)’ (2016) 15(3) *Journal of Infant, Child, and Adolescent Psychotherapy* 220.

- 1 in 6 young people under youth justice supervision reported having deliberately harmed themselves in the previous 6 months,¹³⁵ and
- 1 in 4 of those in detention who had ever had thoughts of suicide or self-harm reported an increase in those thoughts after entering custody.¹³⁶

72 As the AIHW (2018) noted, the harm increases with the degree of severity of intervention:

rates of mental health diagnoses and suicidal behaviour increase with an increase in youth justice supervision, with higher rates for those in detention than those in the general population and for those in solitary confinement compared with those in mainstream detention.¹³⁷

73 The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*¹³⁸ heard from the Aboriginal Legal Service of Western Australia ('ALSWA') about the contribution of custodial settings to the dysregulation of young people with a disability:

The ALSWA witnesses said the physical conditions in cells also has a detrimental impact on children with sensory sensitivities and cognitive impairments. Children become 'dysregulated' in their cells. We were told the cells can be dirty and damaged, lack fresh air and expose children to harsh light. We were also told that the cells are sometimes very cold or very hot and lack soft sensory furnishings to help children calm down.¹³⁹

74 Practices such as isolation and segregation that have been used in youth detention centres – for example in the Northern Territory – are also detrimental to the mental health of young people subjected to them. As the Australian Children's Commissioners and Guardians (2017) explained:

[i]solation practices have no recognised therapeutic value and often retraumatise children and young people in youth justice detention and exacerbate medical, psychological and social problems. Children are particularly vulnerable because they are still in crucial stages of development – socially, psychologically, and neurologically ... For children and young people with mental health problems or past experiences of trauma, isolation practices can have severely damaging psychological effects. Where children and young people are at risk of suicide or self-harm, isolation is likely to increase their distress and suicidal ideation and rumination. Isolation also negatively impacts on the child's education, rehabilitation, physical health, and family involvement.¹⁴⁰

75 The architectural anthropologist Elizabeth Grant has listed a broad range of symptoms experienced by segregated juveniles, as noted by researchers:

segregation undermines personal coping mechanisms. Studies from sensory deprivation and social isolation, suggest extreme anxiety and heightened suggestibility occurs in individuals, even after short periods in isolation. Further symptoms include hypersensitivity to external stimuli, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, and a litany of other physical and psychological problems. Psychological assessments of prisoners

¹³⁵ Australian Institute of Health and Welfare ('AIHW'), *National Data on the Health of Justice-Involved Young People: A Feasibility Study 2016/17* (Report, 2018) 5, citing Rohan Borschmann et al, 'Self-Harm in Young Offenders' (2014) 44(6) *Suicide and Life-Threatening Behaviour* 591.

¹³⁶ *Ibid* 5, citing Elizabeth Moore et al, 'Attempted Suicide, Self-Harm and Psychological Disorder among Young Offenders in Custody' (2015) 21(3) *Journal of Correctional Health Care* 243.

¹³⁷ *Ibid*. For statistics on incidences of self-harm and attempted suicide in custody for each state and territory see Productivity Commission, *Report on Government Services* (Report, 26 January 2026) Part F, 'Community Services', Table 17A.19.

¹³⁸ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* ('Disability Royal Commission') (Final Report, 2 November 2023).

¹³⁹ *Ibid* Vol 8, 89.

¹⁴⁰ Australian Children's Commissioners and Guardians, *Statement on Conditions and Treatment in Youth Justice Detention* (Report, November 2017) 20–1.

in solitary confinement have indicated high rates of anxiety, nervousness, obsessive rumination, anger, violent fantasies, nightmares, trouble sleeping, as well as dizziness, unduly perspiring hands and heart palpitations attributable to being placed in segregation.¹⁴¹

- 76 A recent study by Akpanekpo et al (2025)¹⁴² considered whether justice-involved young people (10–17 years) in New South Wales with unaddressed mental health needs were at an increased risk for reoffending. The researchers found that mental health treatment reduced reoffending for boys in both community-based and custody settings, while girls faced both higher rates of mental health issues and delays in accessing mental health services compared with boys, especially in the community setting. This study ‘aligns with previous research demonstrating lower recidivism among justice-involved individuals who receive mental health treatment’¹⁴³ and also highlights the need for improved coordination between justice and mental health services to facilitate timely access and sustained engagement.¹⁴⁴

Developmental

- 77 The *Youth Justice Inquiry*¹⁴⁵ heard, in relation to its Term of Reference A (Outcomes and Impacts of Youth Incarceration), about the isolating impact of incarceration:

Youth incarceration is destructive, removing young people from the environment they should be in, alienating them from their community and the sociocultural influences that should be preparing them for life in adulthood. The Australian youth justice system is set up to isolate incarcerated youth, creating more negative outcomes in the process.¹⁴⁶

- 78 International research suggests that ‘[i]t is difficult to practice prosocial forms of behaviour while incarcerated’¹⁴⁷ and

[s]everely limits reinforcement of societal norms and expectations, as well as opportunities for youth to model adaptive interpersonal interactions, such as conflict resolution, or practice of interpersonal skills and relationship management.¹⁴⁸

- 79 The *Inquiry into Youth Justice* heard how incarceration impacts development:

When children come into conflict with the criminal law, the traditional criminal justice system does not offer the guidance and support that is necessary to set them back on track. And too often surrounding service systems are inadequate, not child-centred and pay insufficient attention to what is required for their protection, their health and wellbeing and respect for their rights.¹⁴⁹

¹⁴¹ Elizabeth Grant, Submission to the *Royal Commission into the Protection and Detention of Children in the Northern Territory* (2016) (University of Adelaide: available at [Academia.edu](https://www.academia.edu)) 9–10 (citations omitted).

¹⁴² Emaediong I Akpanekpo et al, ‘[Association Between Mental Health Treatment and Reoffending Among Justice-Involved Youths](#)’ (2025) 76(8) *Psychiatric Services* 706.

¹⁴³ *Ibid* 710, citing Claire Gaskin et al, ‘Youth Mental Health Diversion at Court: Barriers to Diversion and Impact on Reoffending’ (2022) 70(6–7) *Crime & Delinquency* 1726.

¹⁴⁴ *Ibid* 712.

¹⁴⁵ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into Australia’s Youth Justice and Incarceration System](#) (‘*Inquiry into Youth Justice*’) (Interim Report, February 2025; see n 6 above on Final Report).

¹⁴⁶ Justice Action, Submission to the *Inquiry into Youth Justice* (n 145) ([Submission No 148](#)) 3–4.

¹⁴⁷ Ian Lambie and Isabel Randell, ‘[The Impact of Incarceration on Juvenile Offenders](#)’ (2013) 33 *Clinical Psychology Review* 448, 451, citing Jodi Lane et al ‘[Adult Versus Juvenile Sanctions: Voices of Incarcerated Youths](#)’ (2002) 48(3) *Crime & Delinquency* 431.

¹⁴⁸ *Ibid* 450, citing Laurence Steinberg et al, ‘[Reentry of Young Offenders from the Justice System: A Developmental Perspective](#)’ (2004) 2(1) *Youth Violence and Justice* 21.

¹⁴⁹ *Inquiry into Youth Justice* (n 145) Interim Report 22, quoting Australian Child Rights Taskforce, Submission 63, 2.

Education

- 80 Young people in custody are more likely to have ‘fragmented experiences of education which are marked by periods of exclusion and expulsion, and result in poor educational’.¹⁵⁰ Their access to education is also likely to be impeded while in detention due to inadequate access to and delivery of education.¹⁵¹
- 81 Thoars and Moltow (2024)¹⁵² review research on recidivism from an educational perspective and conclude that an engagement framework of affective, cognitive and behavioural engagement is required. On the need for educational support staff in detention, they point to the gaps needing to be filled:

Reports suggest that young people who encounter the youth justice system in Australia typically not completing their secondary education (Strnadová et al, 2017). Moreover, incarceration has been identified as significantly reducing a youth’s odds of completing high school or even enrolling in college; this is often coined the ‘school-to-[prison] pipeline in reverse’ (Bernburg & Krohn, 2003; Hjalmarsson, 2008; Kirk & Sampson, 2013).

Australian-based studies have identified several challenges to providing education to youth incarcerated as a result of the structure and cultural diversity of the population of incarcerated youths within a youth detention facility; infrequent school attendance by incarcerated youths for a variety of reasons; short sentences; and the high number of young people in custody on remand (Cunneen et al, 2018). Educators within youth detention school systems acknowledge the value of education, yet young people incarcerated need support of educational staff to effectively access education and to see the value of education (Strnadová et al, 2017). Education within youth detention needs to include appropriate resources to meet the offenders’ individual needs.¹⁵³

- 82 Staff training, support and resourcing are needed, as Dr Sharynne Hamilton and Dr Raewyn Mutch (2023) attest:

In our research at Banksia Hill, non-custodial staff ... had minimal knowledge of the effects of neurodevelopmental impairments, little to no previous professional development opportunities and no access to clinical or support information. They were understaffed and working with minimal resources, including a lack of teaching aids that are usually available for teaching children and young people with learning difficulties ... [T]here were high numbers of youth in classrooms and more of a focus on security than on rehabilitation and teaching. As a result, the education staff spoke of the difficulty in justifying resources specifically related to managing neurodevelopmental disability.¹⁵⁴

- 83 The Senate *Inquiry into Youth Justice* heard evidence of a system-wide lack of affective engagement:

If a child has the misfortune to be incarcerated, they have no effective protections, no effective advocates and they receive virtually no care. It’s my observation that, in most states, there is no therapeutic treatment provided to children, no disability support and virtually no education, just brutality and punishment. Children in detention are treated as outcasts from society. They

¹⁵⁰ Chris Cunneen, *Arguments for Raising the Minimum Age of Criminal Responsibility* (Report, Comparative Youth Penalty Project, Jumbunna Institute for Indigenous Education and Research, 2020) 5.

¹⁵¹ See, eg, *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Final Report, 2017) Vol. 1, 18.

¹⁵² Cassandra Thoars and David Moltow, *Education, Engagement, and Youth Crime: Case Studies in the Lived Experience of Education and Recidivism* (Springer, 2024).

¹⁵³ Ibid 49.

¹⁵⁴ Sharynne Hamilton and Raewyn Mutch, *Submission to the Australian Human Rights Commission* (‘AHCRC’), Youth Justice and Child Wellbeing Reform across Australia Project (*Help Way Earlier!*) (Submission No 131, 30 June 2023) 3.

are systematically disbelieved, just as children in the care of religious orders and orphanages were in the past.¹⁵⁵

Remand

- 84 Given the numbers involved, the impacts of remand need to be better understood by those working within the system. AIHW data from 2024 revealed that about 3 in 4 (74%) of young people in detention across Australia were on remand.¹⁵⁶ This represents an increase from 64% in 2020. Substantially more than half of the young people on remand in 2024 were Aboriginal or Torres Strait Islander (61%).¹⁵⁷
- 85 In Victoria, the 2022 *Inquiry into Victoria's Criminal Justice System* noted the problem that while 'remand periods are often relatively short ... [they] can be disruptive and of little rehabilitative value'.¹⁵⁸ Yet 66% of cases for which children were held in custody on remand resulted in non-custodial sentences.¹⁵⁹ Further, there is 'a strong correlation between the amount of time children spent on remand and the likelihood of receiving a custodial sentence'.¹⁶⁰
- 86 The Youth Affairs Council Victoria told the Inquiry that young people 'are less likely to understand and be able to comply with the conditions for bail'¹⁶¹ when it is granted: the conditions 'were arbitrary and poorly explained' – a situation exacerbated by 'the lack of a state-wide bail support program for children and young people which assists them to comply with bail'.¹⁶² Thus, without appropriate supervisory and support schemes in place, young people may be at higher risk of breaching bail conditions and being committed to custody while awaiting sentence.
- 87 For the ACT, the Jumbunna Institute for Indigenous Education and Research is completing an independent review into the Over-Representation of First Nations People in the ACT Criminal Justice System.¹⁶³ Its *First Report*¹⁶⁴ drew attention to two unjust asymmetries: higher rates of remand for Aboriginal and Torres Strait Islander people and time spent on remand, which can sometimes exceed a young person's custodial sentence:

Especially with our kids on remand, in the youth detention centre ... They've been on remand for nine to ten months, and finally get their court case heard, and then, I've seen this, the judge questions, well, do you have evidence about this person doing this? And then she just dismissed all those charges. The charges that he got charged with, he already did the time spent in Bimberi three times over ... So, the remand system needs to be looked at.¹⁶⁵

¹⁵⁵ Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, [Inquiry into Australia's Youth Justice and Incarceration System](#) (Interim Report, February 2025) 38 [2.91], quoting Professor George Newhouse, Principal Solicitor and Chief Executive Officer, NJP (*Committee Hansard*, 3 February 2025) 54.

¹⁵⁶ Australian Institute of Health and Welfare ('AIHW'), [Youth Detention Population in Australia 2024](#) (Web Report, 13 December 2024).

¹⁵⁷ *Ibid.*

¹⁵⁸ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, [Inquiry into Victoria's Criminal Justice System](#) (Report, March 2022) ('*Victoria's Criminal Justice System Report*') 444, quoting Centre for Multicultural Youth (Submission 95) 5.

¹⁵⁹ Sentencing Advisory Council (Victoria), [Children Held on Remand in Victoria: A Report on Sentencing Outcomes](#) (Report, 29 September 2020) ('*Children Held on Remand in Victoria Report*') 42.

¹⁶⁰ *Victoria's Criminal Justice System Report* (n 158) 444–5, citing *Children Held on Remand in Victoria Report* (n 159).

¹⁶¹ *Ibid* 446, quoting Youth Affairs Council Victoria ([Submission No 118](#), 17 September 2021) 16.

¹⁶² *Ibid.*

¹⁶³ Chris Cunneen et al, [Review Into Over-Representation of First Nations People in the ACT Justice System](#) (Final Report, Jumbunna Institute for Indigenous Education and Research, July 2025).

¹⁶⁴ Chris Cunneen et al, [ACT Government Responses to the Australian Law Reform Commission's Pathways to Justice Report Recommendations](#) (First Report, Jumbunna Institute for Indigenous Education and Research, 14 August 2024) 46.

¹⁶⁵ *Ibid*, quoting an unnamed Aboriginal and Torres Strait Islander or other non-government service provider.

88 In Queensland, data published in the *Childrens Court Annual Report 2024-2025* reveals that the average daily number of young people in Queensland youth detention on remand is increasing (at 252 young people per day compared to 246 the previous year), as is the average number of days spent in remand (54 days compared to 48 days in 2023-24).¹⁶⁶

89 In its submission to the Senate's *Inquiry into Youth Justice*, the Law Council of Australia referred to the social determinants of involvement with the system, and noted:

One fundamental reason why many children are remanded in detention rather than in the community is because they have no safe place to live while on bail and there is no appropriate alternative bail accommodation at which to stay. In the National Children's Commissioner's report, some children and young people raised the impact of long remand periods either in custody or in the community, including not being able to access any therapeutic programs whilst on bail or on remand because the length of their remand was longer than their final sentence.¹⁶⁷

Diversionsary Programs

90 While neurological underdevelopment may cause a young person to engage in criminal activity, that immaturity may also improve the prospect of rehabilitation.¹⁶⁸ For example, the *Inquiry into Victoria's Criminal Justice System* heard evidence that 'most young people who come into contact with the criminal justice system today commit one or two offences and then grow out of their criminal behaviour'.¹⁶⁹

By far the most voluminous group ... is the young people who have one or two contacts with police and then that is it—they never come back. They move on their life, they go in a different direction and they are not seen again by the system. That is the majority of young people.¹⁷⁰

91 Police play an important role in diverting young people from the criminal justice system; the number of young people aged between 10 and 17 years who committed recorded offences had 'declined by approximately a third from 2011 to 2020'.¹⁷¹ This decline has been attributed to 'improvements in the public education and health systems, as well as Victoria Police's proactive approach to diverting children and young people away from the criminal justice system'.¹⁷²

92 The Commission for Children and Young People has found that diversion from the criminal justice system can successfully mitigate the negative impacts of custody and detention:

Diversionsary mechanisms create opportunities to identify and respond to causal factors contributing to offending behaviour. They also allow children and young people to avoid the stigmatisation associated with more formal involvement in the youth justice system.¹⁷³

¹⁶⁶ Childrens Court of Queensland, *Childrens Court Annual Report 2024-2025* (Annual Report, 2025) 50.

¹⁶⁷ Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Inquiry into Australia's Youth Justice and Incarceration System* (Submission No 195, 22 October 2024) 11 [11]. In Queensland, while children on remand can access the same programs as those who are sentences, apart from transition to release opportunities, bail programs are very limited.

¹⁶⁸ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) ('*Victoria's Criminal Justice System Report*') 96 [3.13].

¹⁶⁹ *Ibid*, quoting Fiona Dowsley, Chief Statistician at the Crime Statistic Agency (*Transcript of evidence*) 3–4.

¹⁷⁰ *Ibid* 96.

¹⁷¹ *Ibid*.

¹⁷² *Ibid*.

¹⁷³ Commission for Children and Young People, *Our Youth, Our Way: Inquiry into the Over-Representation of Aboriginal Children and Young People in the Victorian Youth Justice System* (Report, June 2021) 445.

- 93 Use of diversion for young people corresponds with reducing rates of recidivism,¹⁷⁴ and it is more likely to be successful if the intervention is made at the earliest opportunity.¹⁷⁵ However, some programs that are described as diversionary can have an adverse, net-widening and criminogenic effect – for example, for young people with cognitive disability, if the programs are not systematically focused and appropriately designed.¹⁷⁶
- 94 Usher, Douglas and Jackson (2019) argued that, given the well-established relationship between adverse childhood experiences, incarceration, and post-traumatic stress disorder, youth custodial services must adopt trauma-informed approaches. The authors further identified a systemic gap in early intervention infrastructure: while New South Wales courts provide diversion pathways for adult offenders with mental health or substance use disorders (through the Statewide Community and Court Liaison Service and the Magistrates Early Referral Into Treatment (MERIT)), no equivalent programmes exist for those under eighteen, and access to adolescent diversion remains particularly limited for young people outside metropolitan Sydney.¹⁷⁷
- 95 In a submission to the Australian Human Rights Commission, Orygen argued that ‘[p]ersisting with the youth detention model is not going to solve the systemic issues’ and that ‘the rhetoric of providing trauma-informed care is empty as long as the environments themselves are trauma-inducing’.¹⁷⁸

Disparities in use of diversion for First Nations young people

- 96 The Jumbunna Institute’s *First Report* noted disparities, with respect to First Nations peoples, that highlight issues of systemic discrimination in the use of pathways and diversions:

In 2023, the ACT had the lowest proportional use of youth diversion for all young people in Australia. For Aboriginal and Torres Strait Islander young people in the ACT the situation was particularly worrisome. Only 10% of First Nations youth were diverted compared to 30% for non-Indigenous youth. The proportion of Aboriginal and Torres Strait Islander young people diverted by police declined dramatically after 2016. The ACT currently has the lowest use of diversion for Aboriginal and Torres Strait Islander young people in Australia – it is three times lower than, for example, in NSW, Victoria, WA and the NT.¹⁷⁹

- 97 The same report noted long-term flow-on effects for individual young people who have not been granted diversion: ‘accumulation of a criminal record which then impacts on sentencing, including later in an adult court ... early disparities in treatment [are compounded] through the criminal justice system.’¹⁸⁰

¹⁷⁴ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria’s Criminal Justice System* (Report, March 2022) (*Victoria’s Criminal Justice System Report*) 96. In contrast, recidivism rates for young people released from sentenced supervision have remained above 50% (national). See Productivity Commission, *Report on Government Services* (Report, 26 January 2026) Part F, ‘Community Services’, Table 17A.26.

¹⁷⁵ Ibid 100; Office of the Children’s Commissioner Northern Territory, ‘[Youth Diversion](#)’ (Fact Sheet).

¹⁷⁶ Ruth McCausland and Eileen Baldry, ‘“[I Feel Like I Failed Him by Ringing the Police](#)”: Criminalising Disability in Australia’ (2017) 19(3) *Punishment & Society* 290, 296.

¹⁷⁷ Kim Usher, Lesley Douglas and Debra Jackson, ‘[Mental Health and Substance Use Disorders: The Reality of Youth in Custody](#)’ (2019) 28(3) *International Journal of Mental Health Nursing* 633, 633.

¹⁷⁸ Orygen, Submission No 30 to the Australian Human Rights Commission, Youth Justice and Child Wellbeing Reform Project (16 June 2023) 6, quoted by Australian Human Rights Commission, ‘[Help Way Earlier!](#)’: *How Australia Can Transform Child Justice to Improve Safety and Wellbeing* (Report, 2024) 113.

¹⁷⁹ Chris Cunneen et al, *ACT Government Responses to the Australian Law Reform Commission’s Pathways to Justice Report Recommendations* (First Report, Jumbunna Institute for Indigenous Education and Research, 14 August 2024) 24. See also Chris Cunneen et al, *Review Into Over-Representation of First Nations People in the ACT Justice System* (Final Report, Jumbunna Institute for Indigenous Education and Research, July 2025) 33–4.

¹⁸⁰ Cunneen et al First Report (n 179) 25.

- 98 With respect to court-ordered diversion, Gaskin et al (2022) highlight the significant role of courts in enabling improved outcomes. They found disparities in mental health diversions for Aboriginal and Torres Strait Islander young people in New South Wales between 2008 and 2015:

young people not identifying as being from an Aboriginal and/or Torres Strait Islander background were significantly more likely to be granted formal diversion than individuals who identified as being Aboriginal and/or Torres Strait Islander ... [a finding that] persisted even after other significant covariates were included in the model.¹⁸¹

- 99 A report by Klauzner et al (2022) on Youth on Track, an early intervention program for young people at risk of becoming entrenched in the criminal justice system, recommended

[c]ulturally appropriate youth interventions ... given that Aboriginal young people continue to be grossly overrepresented in the youth justice system, with nearly half of all young people in custody identifying as Aboriginal.¹⁸²

- 100 First Nations and other stakeholders have also called for more Aboriginal and Torres Strait Islander specific community-based and led programs for youth diversion and supervision.¹⁸³

- 101 Barreng Moorop, a holistic and community-based diversionary program run in partnership between Victorian Aboriginal Legal Service, the Victorian Aboriginal Child Care Agency and Jesuit Social Services, reported impressive outcomes for 2016/17 participants: 82% had an improved view of self; 76% had improved health and wellbeing; 76% had improved connection with family; 76% had an improved capacity to set goals; and 65% had improved participation in education or employment.¹⁸⁴

- 102 There is some evidence that Aboriginal community-led and place-based justice reinvestment programs have likewise delivered positive results in terms of reducing justice system involvement for First Nations people and youth. Maranguka is a place-based and Aboriginal-led justice reinvestment project that aims to empower the First Nations community in Bourke to improve social, economic and criminal justice outcomes. In 2017, according to an impact assessment undertaken in 2018 by KPMG, Maranguka recorded a 23% reduction in police recorded incidence of domestic violence and comparable drops in rates of re-offending; a 31% increase in year 12 student retention rates; and a 38% reduction in charges in the top five juvenile offence categories.¹⁸⁵

- 103 These outcomes reflect what the ALRC (2018) noted in its *Pathways to Justice* report:

Justice reinvestment holds particular promise in addressing Aboriginal and Torres Strait Islander incarceration ... [because it] involves a commitment to invest in ‘front-end’ strategies to prevent criminalisation. [Further] as a place-based approach, [it] emphasises working in partnership with communities to develop and implement reforms, and thus accords with

¹⁸¹ Claire Gaskin et al, ‘[Youth Mental Health Diversion at Court: Barriers to Diversion and Impact on Reoffending](#)’ (2022) 70(6–7) *Crime & Delinquency* 1726, 1750.

¹⁸² Ilya Klauzner et al ‘Evaluating Youth On Track: A Randomised Controlled Trial of an Early Intervention Program for Young People Who Offend’ (Crime and Justice Bulletin No 249, NSW Bureau of Crime Statistics and Research, July 2022) 2 (citation omitted).

¹⁸³ See, eg, Chris Cunneen et al, [ACT Government Responses to the Australian Law Reform Commission’s Pathways to Justice Report Recommendations](#) (First Report, Jumbunna Institute for Indigenous Education and Research, 14 August 2024) 49.

¹⁸⁴ Jesuit Social Service, Submission to Legislative Assembly Committee on Law and Safety (NSW), [Inquiry into the Adequacy of Youth Diversionary Programs in NSW](#) (Report 2/56, September 2018, [Submission No 3](#), 25 January 2018) 9.

¹⁸⁵ KPMG, [Maranguka Justice Reinvestment Project](#) (Impact Assessment, 27 November 2018) 6. Similar place-based justice reinvestment initiatives are operating across NSW and in other states. Examples include [Learning the Macleay](#) (Kempsey NSW) and [Tiraapendi Wodli](#) (Port Adelaide, SA).

evidence that effective policy change to address Aboriginal and Torres Strait Islander disadvantage requires partnership with Aboriginal and Torres Strait Islander peoples.¹⁸⁶

Holistic, coordinated and rights-based supports for young people

104 The National Children’s Commissioner, in the *Help Way Earlier!* report,¹⁸⁷ reasons that child justice requires a shift from punishment to early, evidence-based intervention that address unmet needs, protects children’s human rights and addresses offending behaviour in holistic, therapeutic and trauma-informed ways.¹⁸⁸

105 The report identified that siloing, fragmentation and lack of coordination in service delivery for child wellbeing are key barriers because they result in ‘children with multiple and intersecting needs falling through the gaps, which in turn can lead to child justice involvement and other forms of harms to children and the community’.¹⁸⁹

106 Similarly, Baidawi et al examined ‘pathways that lead children with disability from their contact with child protection system to entering the criminal justice system’¹⁹⁰ and noted a range of ‘shortcomings [that] point to systemic neglect of children with disability in child protection systems that too often results in devastating outcomes, including criminalisation of this group of children’.¹⁹¹ Their report also called for further research into the design and evaluation of intensive family-centre support approaches, including culturally appropriate models; early disability assessment and intervention; culturally, disability and trauma-sensitive and informed responses across all sectors; and other specific programs.¹⁹²

107 In October 2025 a supplementary paper to the Royal Commission’s ‘*Help Way Earlier!*’ report was released, in which the National Children’s Commissioner detailed six initiatives, from Australia and internationally, that showcased ‘child-centred focuses on prevention’ that ‘reflect long-term commitments, collaboration and coordination with partners, and a systemic approach to effecting change’.¹⁹³ One of these is the *Baulaarr Bagay Warruwi Barranba-li-gu* (Two River Pathway to Change) model in Walgett, New South Wales, which draws on a unique partnership between an Aboriginal Community-Controlled Organisation (ACCO), the Dharriwaa Elders Group, and a university (UNSW), and is place-based and Aboriginal-led.¹⁹⁴

¹⁸⁶ Australian Law Reform Commission (‘ALRC’), *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, 2018) (‘*Pathways to Justice Report*’) 126 [4.3].

¹⁸⁷ Australian Human Rights Commission (‘AHRC’), Youth Justice and Child Wellbeing Reform Across Australia Project, ‘*Help Way Earlier!': How Australia Can Transform Child Justice to Improve Safety and Wellbeing*’ (National Children’s Commissioner Final Report, 2025) (‘*Help Way Earlier!*’ Report).

¹⁸⁸ Ibid. Similar calls have been made by state counterparts, see Office of the Aboriginal and Torres Strait Islander Children’s Commissioner (‘OATSICC’), *Queensland Child Rights Report 2025* (The State of Queensland, 2026) (‘*Child Rights Report*’) 47–75. See also *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (‘*Disability Royal Commission*’) (Final Report, 2 November 2023) Vol 8 and the comprehensive research report it commissioned: Susan Baidawi et al, *Care Criminalisation of Children with Disability in Child Protection Systems* (Research Report, May 2023)

¹⁸⁹ *Help Way Earlier Report* (n 187) 27.

¹⁹⁰ Baidawi et al (n 188) 15.

¹⁹¹ Ibid 195.

¹⁹² Ibid 191. See also OATSICC *Child Rights Report* (n 188) 47–75.

¹⁹³ Australian Human Rights Commission (‘AHRC’), *Evidence-Based Approaches to Child Justice* (Supplementary paper to ‘*Help Way Earlier!*’ Report, 2024) 8.

¹⁹⁴ Ibid 24–30.