



Australian   
Alcohol  
& Other  
Drugs Council

**Submission to Australian  
Human Rights Commission:  
Youth Justice and Child  
Wellbeing Reform across  
Australia**

**Submitted on 18 June 2023**

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National Children's Commissioner

Australian Human Rights Commission

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Dear Ms Hollonds

Thank for you for the opportunity to contribute to the Australian Human Rights Commission's investigation into opportunities for reform of youth justice and child wellbeing systems across Australia.

Our comments touch on all four questions identified as part of this investigation's outline, however primarily focus on the issues that contribute to children and young people's involvement in youth justice systems in Australia.

## About us

AADC is the national peak body representing Australia's alcohol and other drugs (AOD) sector. We work to advance health and public welfare through the lowest possible levels of AOD related harm by promoting effective, efficient and evidence-informed prevention, treatment and harm reduction policies, programs and research at the national level. AADC's founding members comprise each state and territory peak body for the AOD sector, other national peak bodies relating to the AOD sector, and professional bodies for those working in the AOD sector.

The current membership of AADC is:

Alcohol, Tobacco and Other Drug Association ACT (ATODA)	Alcohol, Tobacco and Other Drugs Council Tasmania (ATDC)	Association of Alcohol and Other Drug Agencies NT (AADANT)
Australasian Therapeutic Communities Association (ATCA)	Australian Injecting and Illicit Drug Users League (AIVL)	Drug and Alcohol Nurses of Australasia (DANA)
Family Drug Support (FDS)	National Indigenous Drug and Alcohol Committee (NIDAC)	Network of Alcohol and Other Drug Agencies (NADA)
Queensland Network of Alcohol and Other Drug Agencies (QNADA)	South Australian Network of Drug and Alcohol Services (SANDAS)	The Australasian Professional Society on Alcohol and other Drugs (APSAD)
Victorian Alcohol and Drug Association Inc (VAADA)	Western Australian Network of Alcohol and other Drug Agencies (WANADA)	Drug Policy Modelling Program*

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# 1. What factors contribute to children's and young people's involvement in youth justice systems in Australia?

## A snapshot of young people in Australia's youth justice systems

On an average day, more than 4,600 young people are engaged in Australia's youth justice systems with the majority (84%) being supervised within the community and 16% being detained. Annually, close to 9,000 young people are involved in youth justice systems in some way.<sup>1</sup> Concerningly, the majority of young people held in detention (78%) have not been sentenced and are awaiting an outcome of their case, causing significant disruption to their schooling, work, support programs and families.<sup>2</sup>

Involvement in youth justice systems across Australia exists along a social gradient, with young people in rural areas, those experiencing socio-economic disadvantage and young people experiencing/having a history of unstable housing significantly more likely to be involved in a youth justice system.<sup>3 4</sup> Additionally, Aboriginal and Torres Strait Islander young people were 19 times more likely to be under community supervision compared to non-Aboriginal and Torres Strait Islander young people and 24 times more likely to be in detention.<sup>5</sup>

Alongside these structural factors, there is significant intersection of youth justice system involvement with a range of environmental and health and wellbeing issues. A Victorian parliamentary inquiry into that state's youth justice system found that among young people sentenced or on remand:

- 66% had a history of AOD use
- 63% were victims of abuse, trauma or neglect
- 45% had been subject to a previous child protection order and 19% were subject to a current protection order
- 30% presented with mental health issues
- 24% presented with issues concerning their intellectual function
- 18% had a history of self-harm or suicidal ideation. It is also noteworthy in this context that in other jurisdictions, such as WA, up to 30% of young people detained were seen as at-risk of suicide or self-harm.<sup>6</sup>
- 11% were registered with Disability Services<sup>7</sup>

Similar connections were found by inquiries and investigations in other jurisdictions across Australia.<sup>8</sup>

In relation to impairments to intellectual functioning, there is a high prevalence of young people detained in youth justice systems with Fetal Alcohol Spectrum Disorder (FASD) in particular. Research within a youth justice facility in Western Australia indicates that a third of young people screened had a FASD diagnosis but this is likely to be an underestimate due to the lack of availability of comprehensive assessment. The actual number of young people living with FASD detained within

<sup>1</sup> AIHW. (2022). *Youth Justice in Australia 2020-21*. Canberra: Australian Government.

<sup>2</sup> *ibid*

<sup>3</sup> AIHW. (2022). *Youth Justice in Australia 2020-21*. Canberra: Australian Government.

<sup>4</sup> Legal and Social Issues Committee. (2018). *Inquiry into youth justice centres in Victoria: Final Report*. Melbourne: Parliament of Victoria.

<sup>5</sup> AIHW. (2022). *Youth Justice in Australia 2020-21*. Canberra: Australian Government.

<sup>6</sup> Office of the Inspector of Custodial Services. (2023). *2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One)*. Perth: Office of the Inspector of Custodial Services.

<sup>7</sup> Legal and Social Issues Committee. (2018). *Inquiry into youth justice centres in Victoria: Final Report*. Melbourne: Parliament of Victoria.

<sup>8</sup> See Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017). *Final Report*. Darwin: Northern Territory Royal Commission and Law and Safety Committee. (2018). *The Adequacy of Youth Diversion Programs in NSW*. Sydney: Legislative Assembly of NSW

this youth justice facility was estimated to be closer to 50% and up to 89% were estimated to have had at least one severe neurodevelopmental impairment.<sup>9 10</sup>

In the context of AOD use, there is similarly significant overlap between young people who have accessed an AOD treatment service and those involved with youth justice systems. A four-year study of the connection between AOD treatment and youth justice systems finds that 21% of young people who access AOD treatment have also had youth justice supervision.

Similarly, 33% of young people on youth justice supervision have accessed AOD treatment in their recent past.<sup>11</sup>

## **Lack of community service system capacity leading to missed opportunities for early intervention**

The convergence of AOD use, mental health, impairments to intellectual function, child protection system involvement and trauma among young people in youth justice systems highlights the missed opportunities for early intervention on childhood wellbeing in the community. In effect, young people are at risk of becoming criminalised as an outcome of these missed opportunities and systemic failures.

These missed early intervention opportunities are driven by lack of capacity within community-based support systems. AADC represents the AOD sector, which is experiencing chronic under-investment. While not every person who uses AOD will ever require a harm reduction or treatment service, each year up to 200,000 Australians access treatment for an AOD concern. However, modelling suggests that a further 500,000 people would access treatment if system capacity was available.<sup>12</sup> This lack of capacity within the AOD service system is exemplified by the fact that Commonwealth funded AOD services have not consistently received indexation on funding contracts for the better part of a decade, leading to real cuts to services and capacity.

Each year around 20,000 episodes of care are provided to young people aged 10-19 years within the AOD system.<sup>13</sup> This represents around 12% of all episodes of AOD care provided across Australia. As with the AOD system more broadly, there is a general lack of services appropriate for younger people and fewer still for young people aged 16 years or less. Geographic access issues are also present alongside broader issues of service capacity and availability.<sup>14</sup> While some young people within youth justice systems may be required to attend AOD treatment, this may in fact discourage disclosure of AOD concerns and there is limited evidence of long term effectiveness of mandatory treatment.<sup>15</sup> To support effective relationships and engagement, AOD treatment and harm reduction services need to be voluntary, confidential and delivered in a way that ensures that young people and the people who support them feel safe. **Given the high rates of Aboriginal and**

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<sup>9</sup> Foundation for Alcohol Research and Education (FARE). (2022). *Fetal Alcohol Spectrum Disorder (FASD), criminal justice and government responses: An evidence brief*. FARE: Canberra.

<sup>10</sup> Bower, C., Watkins, R. E., Mutch, R. C., Marriott, R., Freeman, J., Kippin, N. R., ... & Giglia, R. (2018). Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ open*, 8(2).

<sup>11</sup> AIHW. (2018). *Overlap between youth justice supervision and alcohol and other drug treatment services - 1 July 2012 to 30 June 2016*. Canberra: Australian Government.

<sup>12</sup> <sup>12</sup> Ritter, A., Berends, L., Chalmers, J., Hull, P., Lancaster, K. & Gomez, M. (2014). *New Horizons: The review of alcohol and other drug treatment services in Australia*. Sydney, NSW: Drug Modelling Program, National Drug and Alcohol Research Centre, UNSW.

<sup>13</sup> AIHW. (2023). *Alcohol and other drug treatment services in Australia: early insights*. Canberra: Australian Government.

<sup>14</sup> <sup>14</sup> Ritter, A., Berends, L., Chalmers, J., Hull, P., Lancaster, K. & Gomez, M. (2014). *New Horizons: The review of alcohol and other drug treatment services in Australia*. Sydney, NSW: Drug Modelling Program, National Drug and Alcohol Research Centre, UNSW.

<sup>15</sup> Vuong, T., Ritter, A., Hughes, C., Shanahan, M. & Barrett, L. (2019). *Mandatory alcohol and drug treatment: What is it and does it work?*, *Bulletin No.27*. Sydney, NSW: Drug Modelling Program, National Drug and Alcohol Research Centre, UNSW.

Torres Strait Islander young people within youth justice systems, it is also critical that these treatment and harm reduction services are culturally appropriate, holistic and targeted to First Nations young people. More broadly, there is also a need for young people-specific harm reduction services that engage youth advocates with specialist harm reduction knowledge and are easily accessible in metropolitan, regional and rural areas.

This lack of capacity within the AOD system is exacerbated through the absence of a national, sector-inclusive governance framework/structure which has the ability to identify priorities and direct funding towards identified need. As such, AADC recommends that a national, sector-inclusive governance framework/structure be established and, in the short term, indexation on all Commonwealth-funded AOD contracts be applied. In the long term, AADC also recommends that AOD prevention, treatment and harm reduction services be funded and available to meet the commensurate need among young people and utilise a service model that is voluntary, confidential and prioritises feelings of safety for them and the people who support them.

## Gaps within youth justice systems

Inquiries and reports into youth justice systems across Australia consistently find significant gaps in support for the needs of young people and that the overall model of youth justice is not appropriate for addressing the complex needs that many enter the system with. Multiple factors create this environment, such as lack of funding, the absence of comprehensive staff training and prioritisation of security over rehabilitation. The inquiry into youth detention in the Northern Territory, for example, found that poor conditions within youth justice facilities put young people's health, safety and wellbeing at serious risk and that the culture focused on 'breaking' young people rather than rehabilitating.<sup>16</sup>

In the context of AOD, reports across multiple jurisdictions note that routine screening for AOD issues is inconsistent and that in the event where screening is undertaken, there is often inadequate treatment support within youth justice systems. This is exemplified in Tasmania's youth justice facility, where initial health assessments are undertaken to identify AOD support needs but the facility does not employ any AOD counsellors. Instead, young people are referred to local services in the community.<sup>17</sup> This adds additional pressure to an already stretched system, leaving community-based AOD providers to support young people with more complex needs while having progressively fewer resources to do so. Yet even where internal supports are available, the use of rolling lockdowns compromise and prevent professional and non-custodial service staff from working with young people in the youth justice facilities, as well as preventing friends and families from visiting, further exacerbating health and wellbeing issues. This is also exemplified in a recent investigation into Western Australia's Banksia Hill facility.<sup>18</sup>

Similarly, in relation to impairments to intellectual functioning and FASD, people within youth and adult justice systems face barriers to accessing the National Disability Insurance Scheme (NDIS) and are likewise generally not assisted to apply for the Disability Support Pension (DSP) as part of throughcare/reintegration processes.<sup>19</sup> The absence of essential publicly-funded health and

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<sup>16</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017). *Final Report*. Darwin: Northern Territory Royal Commission

<sup>17</sup> Tasmanian Custodial Inspector. (2018). *Inspection of Ashley Youth Detention Centre in Tasmania, 2017 Health and Wellbeing Inspection Report*. Hobart: Tasmanian Custodial Inspector

<sup>18</sup> Office of the Inspector of Custodial Services. (2023). *2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One)*. Perth: Office of the Inspector of Custodial Services.

<sup>19</sup> Foundation for Alcohol Research and Education (FARE). (2022). *Fetal Alcohol Spectrum Disorder (FASD), criminal justice and government responses: An evidence brief*. FARE: Canberra.

wellbeing supports means young people with these conditions must rely on costly private providers for screening, assessment and support. This is in addition to applicable challenges in accessing appropriate supports within the community, particularly for those living in rural and regional areas.

Previous jurisdictional inquiries and reports provide recommendations around broad changes required to the structure and culture of youth justice systems to improve rehabilitation outcomes for young people. However in relation to AOD, AADC recommends that for young people entering the youth justice system, comprehensive health assessments be undertaken that include AOD needs and screening for FASD and other cognitive/intellectual function impairments. Additionally, AADC recommends that care coordination and case management be prioritised and funded within the youth justice system and, as above, that AOD and harm reduction services within the community be funded at a level to meet community need, are specifically designed for young people and available in both metropolitan and regional areas.

### **Action on the social factors that elevate risk**

As noted above, the populations of young people within youth justice systems across Australia are characterised by an intersection of issues, such as AOD, mental health, disability, child protection and welfare system engagement, trauma, low socio-economic status and rurality. AADC supports action on the upstream social determinants that elevate the risk of young people being engaged by police or entering the youth justice system. These actions include:

- Raising the age of criminal responsibility to 14 years in all jurisdictions, without exception and in line with international standards. In addition, given the high proportion of young people on remand, bail support programs need to be expanded and accessible to keep children and young people out of watchhouses and off remand. Alongside this, action on racism and lack of cultural awareness within Australian police forces is required to address the over policing of First Nations communities and over-representation of Aboriginal and Torres Strait Islander young people in youth justice systems.
- Decriminalisation of drug possession and more consistent, uniform application of drug diversion provisions with expanded criteria, as well as other offence diversion provisions. In the case of illicit drug diversion provisions, these have often narrowly defined eligibility criteria and are typically based on police discretion, leading to inconsistent application and young people becoming ineligible for diversion where illicit drug possession is connected with other minor offences. The outcome of this is that people in lower socioeconomic areas and Aboriginal and Torres Strait Islander people are less likely to receive a diversion and more likely to be arrested.<sup>20</sup>
- The use of drug testing be removed as a justification for child removal, especially in the case of cannabis use. AOD use in and of itself is not necessarily a risk factor; rather broader parenting capacity and competence are far more important factors. One of the key challenges is how to shift the orientation of the child-focused workforce towards recognising the importance of the parent–child relationship as an important focus of attention in its own right, rather than emphasising removal as necessarily a first recourse. This is especially critical in relation to the removal of Aboriginal children, which runs at a significantly higher rate than for the wider population.<sup>21</sup>

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<sup>20</sup> For more details on the use of illicit drug diversion provisions, see AADC's submission to the [Joint Committee on Law Enforcement's inquiry into Australia's illicit drug problem](#)

<sup>21</sup> Scott, D. (2009). "Think child, think family": How adult specialist services can support children at risk of abuse and neglect", in *Family Matters* 81:37-41, Australian Institute of Family Studies.

- Prioritisation of the early stages of life and providing enhanced support to families to avoid engagement in child protection systems. Young people involved with child protection systems make up an increasing proportion of the population within youth justice detention facilities.<sup>22</sup> Findings from a report into this population of young people in South Australia (referred to as ‘dual involved young people’) highlight that failures of both the residential care and youth justice systems result in the criminalisation of young people.<sup>23</sup> Recent data from the Productivity Commission shows the annual operating cost of imprisoning a child was \$2,068.32 a day and \$761,507 each year.<sup>24</sup> The annual cost per child in care (child protection) at 30 June 2022 varied across jurisdictions, ranging from \$61,731 to \$150,783. In jurisdictions with available data, annual costs were considerably higher for residential care (between \$487,185 and \$955,880) compared to non-residential care (between \$44,139 and \$58,942).<sup>25</sup> **There is substantial capacity to divert some of this funding into early intervention, prevention and justice reinvestment initiatives.** This would also reduce the significant trauma young people experience in both the carceral and child protection systems which is strongly associated with ongoing further engagement in these systems.

## Conclusion

Failures to fund community-based support services and take action on social factors that shape the lives of young people create a series of missed early intervention opportunities that, in many cases, lead young people with complex needs into a system neither designed nor appropriate to provide care that meets their needs.

AADC supports legislative and policy change to enhance early intervention opportunities and divert young people and their families away from child protection and youth justice systems. In relation to the AOD sector, this involves funding to meet community need and national, sector inclusive coordination to identify gaps and prioritise funding where it is needed most.

Thank you for the opportunity to provide input to this investigation. If you require any further information, please do not hesitate to contact me directly on 0438 430 963 or via email at [melanie.walker@aadc.org.au](mailto:melanie.walker@aadc.org.au).

Yours sincerely



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**CEO, Australian Alcohol and other Drugs Council**

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<sup>22</sup> Office of the Guardian for Children and Young People. (2022). *Final Report of the South Australian Dual Involved Project: Children and young people in South Australia's child protection and youth justice systems*. Adelaide: Office of the Guardian for Children and Young People

<sup>23</sup> *ibid*

<sup>24</sup> Productivity Commission (2023). *Report on government services 2023: 17 -Youth justice services*. Melbourne: Australian Government.

<sup>25</sup> Productivity Commission. (2023). *Report on Government Services 2023: 16 Child Protection Services*. Melbourne: Productivity Commission