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

About ASDP

The Australasian Society for Developmental Paediatrics (ASDP) is a not-for-profit professional society. Our members are specialist medical doctors with an interest in the assessment and care of children and young people who experience problems impacting their development (including behaviour, mental health and overall well-being). As such, many of our members care for patients who have contact with the youth justice and incarceration systems.

This submission, like all our advocacy, is independent, for the well-being of the children we treat and care for. Our Society is self-funded. We do not receive money from pharmaceutical companies or other external sources. Our members do not receive money from the NDIS or other government agencies or programs.

ASDP Recommendations

To reform Australia's youth justice system in line with its international obligations and to reduce recidivism rates, a greater focus on developmental needs is essential.

To achieve this, ASPD recommends the following:

- 1. Establish National Minimum Standards for developmental care in youth detention:** Implement reportable standards that prioritise the developmental needs of young people in detention.
- 2. Ensure early identification and developmental supports:** Develop systems for the early identification of developmental issues to support children to engage in positive developmental trajectories and avoid the onset of criminal behaviours.
- 3. Improve access to healthcare and therapeutic support:** Enhance healthcare services to address physical health, mental health and developmental needs, and provide specialised therapeutic support for young people within the justice system.
- 4. Implement culturally sensitive programs for First Nations children:** Develop and promote programs specifically tailored to address the over-representation of First Nations children in the youth justice system.

Response to the Inquiry Terms of Reference

a. Outcomes and impacts of youth incarceration

Youth incarceration exacerbates existing developmental problems. Young individuals often face increased barriers to accessing vital healthcare and developmentally appropriate support while in detention, leading to higher rates of recidivism—some jurisdictions report reoffending rates exceeding 50%¹. This cycle of unmet needs creates a detrimental impact on the overall well-being of these young people

b. Over-incarceration of First Nations children

First Nations children are disproportionately represented in the youth justice system², where their specific developmental needs are frequently neglected³. Factors such as social marginalisation⁴, intergenerational trauma, and systemic disadvantage significantly increase their risk of incarceration. Therefore, culturally sensitive and developmentally appropriate interventions are critical to breaking this cycle.

c. Compliance with human rights obligations

Australia's youth justice system must adhere to international obligations, particularly those outlined in the UN Convention on the Rights of the Child (UNCRC). Currently, many children, especially those with developmental problems, do not receive adequate care aligned with these principles. Conditions like brain injury, ADHD, and intellectual disabilities exacerbate their vulnerability, often leading to violations of their rights⁵.

d. International obligations and rights of children

The Commonwealth has clear obligations under international conventions to uphold the rights of children in detention. However, many young people, particularly those with complex developmental needs, do not receive the support necessary for their dignity and well-being. Aligning practices with international standards is essential for creating a just system⁶.

e. Need for reportable National Minimum Standards

Establishing reportable national minimum standards will ensure that developmental needs are consistently addressed across all jurisdictions. This includes mandatory developmental assessments and tailored therapeutic interventions focused on rehabilitation rather than punishment, facilitating reintegration into society.

¹ <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#:~:text=In%20Victoria%2C%2027%25%20of%20youth,times%20in%20the%20Northern%20Territory>

² Australian Institute of Health and Welfare, *Youth detention population in Australia 2022: Supplementary tables*, Catalogue number JUV 139, 2022, Tables S4, S14.

³ <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

⁴ Shepherd SM, Ogloff JR, Shea D, Pfeifer JE, Paradies Y. Aboriginal prisoners and cognitive impairment: the impact of dual disadvantage on social and emotional wellbeing. *Journal of Intellectual Disability Research* 2017; 61(4):385-97

⁵ Hughes N, Sheahan F, Williams WH, Chitsabesan P. Ensuring the rights of children with neurodevelopmental disabilities within child justice systems. *Lancet Child Adolesc Health* 2020; 4: 163–66

⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) UN Doc

f. Justice consistent with international obligations

To comply with international obligations, Australia must prioritise developmentally appropriate care for children in detention. Supporting their health, education, and emotional well-being is essential to mitigating the long-term impacts of incarceration.

Principles

This submission is founded on four underlying principles:

1. **Developmental issues linked to criminal justice involvement:** Children with developmental challenges are more likely to face adverse childhood experiences (ACEs), which further disrupt their development and increase maladaptive behaviours, making them more vulnerable to the justice system.
2. **Impact of social marginalisation:** Social disadvantages, including poverty and lack of access to services, exacerbate developmental challenges, increasing the risk of justice system involvement. Addressing these inequities is crucial in reducing youth incarceration rates.
3. **Barriers to healthcare:** Involvement in the justice system often leads to increased barriers to accessing necessary healthcare, further entrenching cycles of disadvantage and increasing health disparities.
4. **Importance of early intervention:** Early intervention for developmental needs can significantly reduce the likelihood of youth entering the justice system. Providing adequate support from the outset can lead to improved long-term outcomes for individuals and communities.

Conclusion

The Australasian Society for Developmental Paediatrics (ASDP) urges the Commonwealth Legal and Constitutional Affairs References Committee to recognise the critical role that developmental care plays in reforming Australia's youth justice and incarceration system. The current system not only fails to meet the developmental needs of young people but also perpetuates cycles of disadvantage, particularly for those with complex conditions such as intellectual disabilities, brain injury, ADHD, and/or a history of trauma. This reality is especially concerning for First Nations children, who face systemic discrimination and a lack of culturally sensitive support within the justice system.

To break the cycle of recidivism and ensure an equitable, fair and effective approach to youth justice, it is imperative to align with international human rights standards, including those outlined in the UN Convention on the Rights of the Child (UNCRC). Establishing national minimum standards for developmental care, ensuring early identification and intervention, and improving access to healthcare and therapeutic support are essential steps. These measures not only meet international obligations but also provide a foundation for a system focused on rehabilitation, and all the long-term benefits that offers, rather than punishment.

Ultimately, prioritising developmentally appropriate care is both a moral imperative and a practical one. By addressing the root causes of youth offending—such as social marginalisation, trauma and unmet developmental needs—we can create a more just and effective system and break the cycle. This approach will reduce recidivism, improve the overall wellbeing of young people, and ensure that every child, regardless of their background or challenges, is treated with dignity and provided with the opportunity to thrive.

The ASDP hopes that this inquiry will lead to meaningful reforms that place the short- and long-term wellbeing of all young people at the heart of Australia’s youth justice system, with enduring benefits for the whole community.

Kind regards,



Dr Katie Heathershaw
President



Dr Sam Kaiser
Chair – Advocacy Committee and
Children in Detention Working Group

Supporting information

- The introduction of the UN CRC General comment No. 24 (2019) on Children’s Rights In The Child Justice System section states “Children and adolescents differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults” (United Nations Convention and Committee on the Rights of the Child, 2019).
- Section C (22) of the same UN CRC General comment No. 24 (2019) on Children’s Rights In The Child Justice System states “Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence.” (United Nations Convention and Committee on the Rights of the Child, 2019).
- Young people with developmental problems are disproportionately represented in Australia’s youth justice system due to a combination of unmitigated harms seeded at colonisation, biological vulnerabilities and social marginalisation (Blankenship et al., 2023)⁷.
- In a world first study within an Australian youth detention setting (Passmore et al., 2016), 89% of young people were found to have at least one severe developmental problem and 65% had three or more domains of impairment. The same representational cohort found 24% met cognition criteria for intellectual disability. Only two children within this representational sample had received prior developmental problem assessment through serendipitous participation in research finding they were living with a developmental disability, rather than such assessment received through routine and equitable access and delivery of health and education services.⁸
- Young people continue to be detained and sentenced across Australia without consistent and reliable assessment of their holistic wellbeing and developmental needs. Recognising and addressing aetiologies and constellations of a child and adolescent’s health and development needs are essential for understanding a child’s behaviour and for providing trauma-informed and culturally safe therapeutic approaches for rehabilitation and positive future possibilities. The standard of care offered to children in detention falls short of what is possible and required under The UN CRC Statement 24 on Juvenile Justice (United Nations Convention and Committee on the Rights of the Child, 2019) and The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (Commission, 2024). The Australian Government’s response to the recent report completed by the Disability Royal Commission including specific acceptance of recommendations regarding children and adolescent living with developmental disabilities in justice- and out of home care-settings as framed by OPCAT (Australia., 2024, Commission, 2024).
- Failure to recognise developmental and holistic wellbeing needs for children and adolescents involved in juvenile justice and detention continues to misidentify displays of high risk and difficult behaviours as wilful choices with resulting punitive consequences. Failure to

⁷ Hughes N, Ungar M, Fagan A, Murray J, Atilola O, Nichols K, et al. Health determinants of adolescent criminalisation. *Lancet Child Adolesc Health* 2020; 4: 151–62

⁸ Bower C, Watkins RE, Mutch RC, Marriott R, Freeman J, Kippin NR et al. Fetal Alcohol Spectrum Disorder and Youth Justice: a prevalence

recognise developmental difficulties contravenes the UN CRC Statement 24, section Section c: age and child justice systems (iv) children lacking criminal responsibility. Section C (iv) states “*Children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders or disabilities. Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.*” (United Nations Convention and Committee on the Rights of the Child, 2019).

- Evidence-based developmentally appropriate, trauma- and culturally- informed comprehensive assessments with capacities for therapeutic individualised responses can provide non punitive ways of working with children and adolescents involved in justice setting and detention. Funding capacities to deliver developmentally appropriate, trauma- and culturally- informed responses to meet the specific developmentally differences of children and adolescents is possible immediately across existing justice facilities through adaptation of routines and service delivery and education.⁹

Additional resources

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⁹ The Royal Australasian College of Physicians, “The health and well-being of incarcerated adolescents”. 2011 Sydney

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