



Children and Young People
with Disability Australia

Response to Disability Royal Commission *Criminal justice system* issues paper

**Children and Young People with Disability Australia
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Introduction

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability aged 0-25 years. CYDA has an extensive national membership of over 5,000 young people with disability, families and caregivers of children with disability, with the majority of our members being families.

CYDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia. To do this, we focus on the following:

- Listening and responding to the voices and experiences of children and young people with disability
- Advocating for children and young people with disability for equal opportunities, participation and inclusion in the Australian community
- Educating national public policy-makers and the broader community about the experiences of children and young people with disability
- Informing children and young people with disability, their families and caregivers about their citizenship rights and entitlements
- Celebrating the successes and achievements of children and young people with disability.

CYDA appreciates the opportunity to respond to the Disability Royal Commission's *Criminal Justice System Issues Paper*, highlighting the over-representation of children and young people with disability in Australia's criminal justice systems and the significant barriers facing children and young people with disability in their interactions with these systems.

We welcome the Commission's interest in, and understanding of, the significant barriers facing people with disability in contact with criminal justice systems, and their contact with these systems "at disproportionately high rates." We note the Commission's recognition of the rights of people with disability to have equal access to justice and equal recognition before the law.

In our response to the Issues Paper, we would like to draw the Commission's attention to the particular challenges facing children and young people with disability in their contact with criminal justice systems, and the structural elements that contribute to their entry into these systems and lack of appropriate support once within. CYDA's view is that these issues warrant specific examination by the Commission, including proactive outreach with detained children and young people.

Our recommendations

That the Royal Commission:

- specifically examines
 - the issues faced by children and young people with disability in youth justice systems, including coordination with other government systems
 - the structural issues that contribute to the over-representation of children and young people with disability in these systems
 - the impact of the current 'age of criminal responsibility' legislation on children and young people with disability
- conducts an analysis of the relevant data currently collected by state and territory governments and makes recommendations to strengthen data collection and transparency
- considers a recommendation that all children and young people entering criminal justice systems have a full health and disability assessment, and can access NDIS supports on leaving systems where eligible
- undertakes proactive national outreach with children and young people with disability in youth detention
- works with Children's Commissioners, Guardians, Advocates, and other relevant parties to ensure outreach is undertaken independently of service providers
- considers previous reports and recommendations into improving outcomes for children and young people with disability in contact with criminal justice systems.

Improving outcomes: better data, appropriate support, and early intervention

Significant work has been undertaken to examine conditions and improve outcomes for children and young people in contact with criminal justice systems across Australia, including a recent Royal Commission¹ and numerous reviews and inquiries, as well as strong civil society campaigns.² However, conditions remain incredibly poor in many cases, and First Nations children and young people, and children and young people with disability, continue to be over-represented in these systems.

The Committee on the Rights of Persons with Disabilities, in its concluding observations on the combined second and third periodic reports of Australia, noted its concern about “overrepresentation of convicted young persons with disabilities in the youth justice system, especially male youth from Aboriginal and Torres Strait Islander communities.”³

Data about the number of children and young people with disability within youth justice systems, the support they receive, and their outcomes, are limited, but what is available indicates that a significant majority of detainees have one or more disability. A recent report by the South Australian Training Centre Visitor found that, in a sample of detainees in a youth training centre, nine of 10 young people had disability-related needs. This is the clearest data we have on disability prevalence as the relevant government department “has advised [the Training Centre Visitor] that it is unable to collect data about disability.”⁴ Similarly, 89 per cent of young people detained in Western Australia’s youth detention facility were found to have at least one “severe neurodevelopmental impairment.”⁵

In many cases, broader data examining youth justice and youth detention populations also omits disability indicators. A word search of the most recent youth justice publications from the Australian Institute for Health and Welfare, *Youth Justice in Australia 2018–19*⁶ and *Youth detention population in Australia 2019*⁷ finds zero mention of either ‘disability’ or ‘disabilities.’

¹ Royal Commission into the Protection and Detention of Children in the Northern Territory; final report provided in 2017.

² Several relevant reviews and inquiries are referenced throughout this paper. Relevant public campaigns include [#RaiseTheAge](#), [Smart Justice for Young People](#), and [Change the Record](#).

³ United Nations Committee on the Rights of Persons with Disabilities. (2019) Concluding Observations on the Combined Second and Third Reports of Australia, UN Doc CRPD/C/AUS/CO/2-3 (15 October) para 25(d).

⁴ Training Centre Visitor. (2020) *Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)*, Government of South Australia, p.99.

⁵ Sample of 99 children. Bower, C., Watkins, R.E., Mutch R.C., et al. (2018) Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia, *BMJ Open*,8:e019605. doi: 10.1136/bmjopen-2017-019605

⁶ Australian Institute of Health and Welfare. (2020) *Youth Justice in Australia 2018–19*. Cat. no. JUV 132. Canberra: AIHW.

⁷ Australian Institute of Health and Welfare. (2020) *Youth detention population in Australia 2019*. Bulletin no. 148. Cat. no. JUV 131. Canberra: AIHW.

Once children and young people with disability have entered the criminal justice system, the support they can access is generally limited and the approach to support provision is inconsistent. As the South Australian report noted, “this inability [to collect data about detainees’ disability] suggests a limited systemic capacity to understand and diagnose, let alone provide for, the range of needs of children and young people in detention who have a diagnosed or undiagnosed disability. It also limits understanding of factors applicable to specific populations and the ability to respond appropriately to those needs (e.g., by providing specialist disability training to staff).”⁸

A 2017 review of Victoria’s youth justice system found that, unlike for adults, detained children and young people with psychosocial disability do not have access to designated mental health supports, and staff have “few skills and limited training in this area” despite the high prevalence of mental ill-health.⁹

As well as a lack of appropriate disability-support, evidence shows significant and ongoing maltreatment of young people in detention centres. This includes the use of restraints and other restrictive practices to control young people, as well as the deliberate use of violence, abuse and neglect.¹⁰

The Royal Commission into the Protection and Detention of Children in the Northern Territory found that “youth detention centres were not fit for accommodating, let alone rehabilitating, children and young people” and that “children were subject to verbal abuse, physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets.”¹¹

Assessment for disability-related or other needs is also inconsistent, with a legislated assessment approach recommended by the Victorian review. The review also recommended changes to ensure detention is used only as a last resort, and to improve the system’s ability to meet the needs of children and young people with disability, including greater coordination with disability services and the NDIS, and the introduction of specific disability support worker positions with a support and advocacy function.

“The youth justice system should address a young person’s reasons for offending (i.e. criminogenic needs), it should link with disability, health, education, vocational and other supports that young people need, and it should address the community’s concerns about youth offending...”

Interventions will need to be delivered appropriately, reflecting the cognitive abilities and communication skills of young people, and provided in a culturally

⁸ Training Centre Visitor. (2020) *Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)*, Government of South Australia, p.99.

⁹ Armytage, P. & Ogloff, J. (2017) *Youth Justice Review and Strategy: Meeting needs and reducing offending*, Executive summary, p.14.

¹⁰ Australian Children’s Commissioners and Guardians. (2017) *Statement on conditions and treatment in youth justice detention*.

¹¹ Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017) *Report Overview*, p.4.

safe environment (especially for Koori young people). Interventions will need to be gender-appropriate and respect how young people interact and communicate.”¹²

In addition to examining the significant violence, abuse and neglect experienced by children and young people with disability within criminal justice systems, CYDA also considers it relevant and important for the Commission to examine the broader issues of structural neglect that lead to the over-representation of children and young people with disability in these systems.

From birth, most children in Australia encounter a wide range of government and non-government services, including maternal and child health, preschool, school, health systems, and often other organisations and activities; despite this, for many young people in the youth justice system, this is the first time they have been assessed and their disability-related needs have been identified. The links between the youth justice system and the child protection/out-of-home care systems are well-documented,¹³ with disability over-represented in this system as well.

Given the many systems these young people have been in contact with to this point, this raises serious concerns about the gaps in assessment and diagnosis for children and young people. It therefore also highlights significant lost opportunities for support and early intervention, both in terms of the young person’s disability-related needs, but also for broader needs, including any family-related supports that may be required.

The age of criminal responsibility continues to be a challenge in Australia. Along with many community and rights-based organisations,¹⁴ CYDA is concerned that the recent decision by Commonwealth and state/territory ministers to maintain the age of criminal responsibility at 10 years reflects a lack of willingness by governments to engage with, and act on, these issues to the degree required. The medical evidence clearly indicates holding 10 year old children criminally responsible for their actions is entirely inappropriate based on their neurodevelopment level, including impulse control and decision-making.¹⁵

With its focus on human rights and promoting a more inclusive society for all people with disability, the Royal Commission provides a unique opportunity to examine these issues for children and young people with disability and provide strong recommendations to governments.

¹² Armytage, P. & Ogloff, J. (2017) *Youth Justice Review and Strategy: Meeting needs and reducing offending*, Executive summary, p.11.

¹³ Sentencing Advisory Council. (2019) *‘Crossover Kids’: Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children’s Court*, State of Victoria.

¹⁴ Joint Statement. (2020) *Australian governments continue to fail kids by refusing to raise the age at which children can be locked in prison*, 27 July. Key contacts are Amnesty International Australia, Human Rights Law Centre and Change the Record. Available: <https://www.hrlc.org.au/news/2020/7/27/australian-governments-continue-to-fail-kids-by-refusing-to-raise-the-age-at-which-children-can-be-locked-in-prison>.

¹⁵ Royal Australian College of Physicians. (2019), *Physicians say age of criminal responsibility must be raised to help end abuse in custody*, Media statement, 14 May. Available: <https://www.racp.edu.au/news-and-events/media-releases/physicians-say-age-of-criminal-responsibility-must-be-raised-to-help-end-abuse-in-custody>