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**Submission to the Senate Standing
Committees on Legal and Constitutional
Affairs – Inquiry into Australia’s youth justice
and incarceration system**

October 2024

About The Royal Australasian College of Physicians (RACP)

The RACP trains, educates and advocates on behalf of over 22,000 physicians and 9,000 trainee physicians, across Australia and Aotearoa New Zealand. The RACP represents a broad range of medical specialties including general medicine, paediatrics and child health, cardiology, respiratory medicine, neurology, oncology, public health medicine, infectious diseases medicine, occupational and environmental medicine, palliative medicine, sexual health medicine, rehabilitation medicine, geriatric medicine, and addiction medicine. Beyond the drive for medical excellence, the RACP is committed to developing health and social policies which bring vital improvements to the wellbeing of patients, the medical profession, and the community.



We acknowledge and pay respect to the Traditional Custodians and Elders – past, present and emerging – of the lands and waters on which RACP members and staff live, learn and work. The RACP acknowledges Māori as tangata whenua and Te Tiriti o Waitangi partners in Aotearoa New Zealand.

Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to provide a submission to the Senate Standing Committees on Legal and Constitutional Affairs in relation to its Inquiry into Australia's youth justice and incarceration system.

Youth justice reform must prioritise the health and wellbeing needs of children and young people. As the organisation representing over 4,700 specialist paediatricians and over 2,200 paediatric trainees in Australia and Aotearoa New Zealand, the RACP is well placed to provide expert advice to the Australian and state and territory governments on the health and wellbeing needs of children and young people.

This submission from the RACP focuses on:

- Prioritising First Nations leadership, both at the system reform and the healthcare service delivery levels, for children and young people in the youth justice system.
- Taking a health first approach to youth justice reform
- Involving our expert paediatricians and Adolescent and Young Adult Medicine physicians at service reform and service delivery levels
- Raising the age of criminal responsibility to at least 14 years, with no exceptions
- Housing children and young people in purpose-designed facilities with suitable supports, that are culturally safe and with trauma-informed care
- Support RACP recommendations on the health care of children in care and protection services
- Introduce MBS funding for timely health assessments of all children entering Out of Home Care systems
- Health checks for all children and young people on entering the youth justice system
- Comprehensive paediatric assessment when clinically indicated
- A comprehensive health assessment and health management plan for all children and young people in the youth justice system
- Commitment to the full implementation of the Safe and Supported National Framework for Protecting Australia's Children 2021-31.¹

The RACP would appreciate the opportunity to provide an expert voice at any forthcoming hearing of the Inquiry. Please contact Samuel Dettman, Senior Policy and Advocacy Officer, via policy@racp.edu.au.

The RACP approach

The RACP urges a **focus on health and wellbeing issues** when considering approaches to youth justice.

In 2020-21, just over half (53%) of young people under youth justice supervision had an interaction with the child protection system in the preceding 5 years. For the same time period, almost two thirds (64%) of First Nations young people under youth justice supervision had an interaction with the child protection system.²

Children who interact with the youth justice system and the child protection system usually have complex health, mental, developmental and social needs.³ Many inequities start at, or before, conception, continue in early childhood, and increase along a clear social gradient.⁴ The greater a child's disadvantage, the worse their health, development and wellbeing tends to be. They experience poorer health outcomes than their peers in large part due to the adverse effect of neglect, alcohol and substance abuse, family violence and other forms of abuse on neurodevelopment,⁵ but also from the effects of disruption to family attachment and structures.⁶ These gaps widen as children grow older, resulting in adverse adult health, educational and vocational outcomes, with increased premature mortality and morbidity. This can have an intergenerational effect with inequity passed on to the next generation.⁷

Evidence shows the life-long impact of Adverse Childhood Experiences on chronic disease, health, development, and wellbeing. Adverse Childhood Experiences are traumatic/stressful experiences that occur during childhood that can have negative and long-lasting impacts.⁸ Children and young people in the youth justice system can experience profound trauma and distress. This can lead to distrust of government and societal institutions, a fear of forming secure healthy relationships, increased behavioural problems, poor academic achievement, ongoing encounters with the justice system, chronic physical and mental health problems, and poorer health and wellbeing outcomes as adults, including higher mortality.^{9 10}

A child's health and wellbeing can also be affected by historical trauma from earlier generations. Poor access to appropriate health and wellbeing services compounds inequities. Intensive early support and interventions are needed to prevent inequities, rather than responding to crises as they happen.¹¹

RACP policy contribution to the Inquiry

Some of the Inquiry's Terms of Reference go beyond the expertise of the RACP. The RACP and its physician members have knowledge, expertise and experience in health and wellbeing, including the social determinants of health, and related matters. A focus on health and wellbeing and the social determinants of health is critical to any successful reform of the youth justice system as it applies to children and young people.

To assist the Committee, we provide the following information and policy recommendations:

1. Prioritise First Nations Leadership

The RACP has long been concerned by the over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system, including in incarceration. As a founding member of the Close the Gap Campaign we see youth justice reform as a critical part of efforts to ensure better health outcomes for Aboriginal and Torres Strait Islander peoples.¹² Our commitment to respecting and promoting Indigenous guidance,¹³ is the basis of our recommendation to prioritise Indigenous leadership, both at the system

reform and the healthcare service delivery levels for children and young people in the youth justice system

2. Take a health first approach to youth justice reform

Contact with the youth justice system is often one of many consequences of poor health earlier in life, especially a child's health, wellbeing and development needs not being met.

As such, contact with the youth justice system (and/or entry into other parts of the child care and protection system) should be an opportunity to have health assessments completed and therapeutic supports/services delivered in order to improve their trajectory. This does not mean that incarceration of children and young people is justified because they receive health care in custody, but it does mean that world class healthcare must be foundational to the overall package of health and social services provided to a young person in custody, and to a young person in contact with the youth justice system but not in custody.

This also points to the desirability of youth justice reform resting on the foundation of good health and healthcare, rather than trying to avoid the antisocial or criminal effects of disadvantage and deprivation by taking an increasingly punitive approach.

The RACP strongly supports the recommendations of The Royal Commission into the Protection and Detention of Children in the Northern Territory on health grounds, and is greatly concerned by any proposal to reverse gains made by implementing those recommendations, such as:

- lowering the minimum age of criminal responsibility¹⁴
- reintroducing spit hoods and similar restraints.¹⁵

Such restraints inherently dehumanise children and young people, and in some circumstances described to the Royal Commission their use can place children at risk of serious harm or death (e.g. use on unconscious children).

The RACP is a founding member of the Close the Gap Campaign¹⁶, which aims to close the health and life expectancy gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians within a generation. Australia's governments' current response to the Campaign is the National Agreement of Closing the Gap, under which governments have committed to reducing the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30 per cent by 2031.¹⁷

We are concerned that this promised reduction is not possible without taking a nationally coordinated health first approach – not just for children in custody, but for children in the broader community including children at risk of contact with the youth justice system.

3. Involve expert paediatricians and Adolescent and Young Adult Medicine physicians at service reform and service delivery levels

The RACP is of the view that youth justice reform should occur with appropriate input and advice from experts in [Paediatric and Child Health](#), and [Adolescent and Young Adult Medicine](#), both at the system design and reform levels, and at the ongoing healthcare service delivery level.

Article 24 of the United Nations Convention on the Rights of the Child calls for the right “to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.”¹⁸ This right belongs to all children, including those in and at risk of contact with the youth justice system. The same article requires parties to “strive to ensure that no child is deprived of his or her right of access to such health care services.”

4. Raise the Age of Criminal Responsibility

The RACP strongly supports **raising the age of criminal responsibility to at least 14 years, with no exceptions**. We are joined in this position by (among others) the Australian Medical Association¹⁹ and the Australian Indigenous Doctors’ Association.²⁰ It is inappropriate for children aged 10 to 13 years to be in the youth justice system.²¹ This applies to the Commonwealth, as well as all states and territories, noting that:

- While the Commonwealth prosecutes few young children there are nevertheless Commonwealth offences that apply to children below the RACP’s recommended minimum age of criminal responsibility.
- The example and leadership set by the Commonwealth, were it to raise the minimum age of criminal responsibility in its sphere of legislative responsibility, would send a powerful signal to all states and territories regardless of whether there exists agreement via the Standing Council of Attorneys-General (or other comparable process).

For these reasons we urge the Committee to recommend that the Commonwealth raise the minimum age of criminal responsibility for all Commonwealth purposes to at least 14 years, with no exceptions.

The RACP has called for national agreement on this vital reform.²² We called for the establishment of the Age of Criminal Responsibility Working Group Review conducted by and for the Council of Attorneys-General and called for the finalisation and publication of its report.

We have commended jurisdictions that have committed to raising the age of criminal responsibility.²³ The RACP has advocated for a higher minimum age of criminal responsibility in every Australian jurisdiction and has recently called on

the Northern Territory Government not to lower the age of criminal responsibility.²⁴

5. House children and young people in purpose-designed facilities with suitable supports

The RACP opposes the incarceration of children of any age in adult facilities.²⁵ Incarceration should only ever be in purpose-designed and purpose-built environments where proper health care (including specialist medical care) and suitable social and wellbeing supports are provided.²⁶

6. Support RACP recommendations on the health care of children in care and protection services

The RACP urges the Committee to support the recommendations made in the RACP's position statement on the Health Care of Children in Care and Protection Services.²⁷ The recommendations outlined in this statement complement the RACP position statement on the Health and Wellbeing of Incarcerated Adolescents.²⁸

Recommendations to health services (p. 10), to state and territory governments (p. 11), and to the Australian Government (p. 12) are particularly relevant to the health and wellbeing needs of children and young people in youth justice settings. These include:

- Healthcare navigators / co-ordinators, comprehensive assessments and management plans and access to local health professionals
- Adequate training of health professionals working in these contexts
- Commitments to working with First Nations communities, particularly community-led healthcare providers
- Investment in specialised, multidisciplinary services
- Supports for children when leaving youth justice settings
- Implementation of the Safe and Supported National Framework for Protecting Australia's Children 2021-31.

7. Introduce MBS funding for timely health assessments of all children entering Out of Home Care systems

Consistent with our recommendations in (6) above, we urge the Committee to recommend the Commonwealth provide MBS funding for timely health assessments of all children entering Out of Home Care systems around Australia (whether or not they are in contact with the youth justice system). This would be a substantive way of initiating a health-first approach to reforming Australia's youth justice and incarceration systems by improving the health of the cohort of children and young people most at risk of contact with those systems.

8. Conduct routine Health Assessments and facilitate referral to specialists as clinically indicated

The RACP recommends all Australian jurisdictions implement effective and timely health assessments of all children and young people entering custodial

settings, and referral to specialists (especially paediatric medicine and adolescent medicine) as clinically indicated, with special attention to workable referral pathways for developmental disability/delay assessments by paediatricians when clinically warranted.²⁹

Children and young people should have routine and timely assessment of their health and wellbeing needs upon entry to the youth justice system, with regular review thereafter, to ensure that outcomes are tracked throughout the child's journey in the system and their needs are met.^{30 31}

9. Implement the Safe and Supported National Framework for Protecting Australia's Children 2021-31

Ensure that children and young people in Australia reach their full potential by growing up safe and supported through collaboration with government and non-government organisations.

Key RACP publications

We bring to the Committee's attention the following RACP publications which address the health needs of children and young people in contact with, or who are at risk of contact with, the youth justice system:

- [Health Care of Children in Care and Protection Services Position Statement 2023](#)
- [Submission to the Community Support and Services Committee's Inquiry into the Criminal Law \(Raising the Age of Responsibility\) Amendment Bill 2021](#)
- [Prioritising Health - RACP 2020 Queensland election statement](#)
- [Inequities in Child Health Position Statement 2018](#)
- [Submission to the Council of Attorneys General Working Group reviewing the Age of Criminal Responsibility July 2019](#)
- [Submission to The Royal Commission into the Protection and Detention of Children in the Northern Territory 2016.](#)
- [The Health and Well-being of Incarcerated Adolescents 2011](#)

Thank you for considering our submission. Please contact Samuel Dettman, Senior Policy and Advocacy Officer via policy@racp.edu.au for any additional information or to invite an RACP Fellow to provide expert evidence to the Committee.

¹ Commonwealth of Australia. Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031 [Internet]. 2021 [cited 2024 Sep 20]. Available from: https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf

² The Australian Institute of Health and Welfare. Young people under youth justice supervision and their interaction with the child protection system [Internet]. 2022 [cited 2024 Sep 20] p. 17. Available from:

<https://www.aihw.gov.au/getmedia/e4f440c3-abb0-4547-a12b-081a5a77908b/aihw-csi-29-young-people-under-youth-justice-supervision2020-21.pdf?v=20230605170043&inline=true>

³ The Royal Australasian College of Physicians. Health Care of Children in Care and Protection Services Position Statement [Internet]. 2023 Jun . Available from: https://www.racp.edu.au/docs/default-source/advocacy-library/health-care-of-children-in-care-and-protection-services-australia-position-statement.pdf?sfvrsn=6325d21a_4

⁴ Hertzman C. The Biological Embedding of Early Experience and Its Effects on Health in Adulthood. *Annals of the New York Academy of Sciences* [Internet]. 1999 Dec;896(1):85–95. Available from: <https://pubmed.ncbi.nlm.nih.gov/10681890/>

⁵ Teicher MH, Samson JA, Anderson CM, Ohashi K. The effects of childhood maltreatment on brain structure, function and connectivity. *Nature Reviews Neuroscience*. 2016; 17:652- 666

⁶ Choi KR, Stewart T, Fein E, McCreary M, Kenan K, Davies JD, Naureckas S, Zima BT. The Impact of Attachment-Disrupting Adverse Childhood Experiences on Child Behavioral Health. *The Journal of Pediatrics*. 2020; 221:224-229

⁷ Nicholson J, And Berthelsen N, Wake D. Socioeconomic inequality profiles in physical and developmental health from 0-7 years: Australian National Study. *Journal of Epidemiology and Community Health* [Internet]. 2010 Oct 19; Available from: <http://eprints.qut.edu.au/38393/1/c38393.pdf>

⁸ Felitti VJ, Anda RF, Nordenberg D, Edwards V, Koss MO, Marks JS. Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults. *American Journal of Preventive Medicine*. 1998 May;14(4):245- 258.

⁹ Australian Institute of Health and Wellbeing. Child Protection Australia 2018–19 [Internet]. 2020 [cited 2024 Sep 20], p. 65. Available from: <https://www.aihw.gov.au/getmedia/3a25c195-e30a-4f10-a052-adbfd56d6d45/aihw-cws-74.pdf>

¹⁰ Batty GD, Kivimäki M and Frank P. State care in childhood and adult mortality: a systematic review and meta-analysis of prospective cohort studies. *The Lancet Public Health* 2022;7(6):e504-e514.. DOI: 10.1016/s2468-2667(22)00081-0.

¹¹ This paragraph is a brief summary of an overview in the RACP's position statement on childhood inequities, see The Royal Australasian College of Physicians. Inequities in Child Health Position Statement [Internet]. 2018. Available from: https://www.racp.edu.au/docs/default-source/advocacy-library/racp-inequities-in-child-health-position-statement.pdf?sfvrsn=6ceb0b1a_6

¹² The Royal Australasian College of Physicians. Media Release: Efforts to Close the Gap must include raising the age of criminal responsibility to 14 [Internet]. 2022 . Available from: <https://www.racp.edu.au/news-and-events/media-releases/efforts-to-close-the-gap-must-include-raising-the-age-of-criminal-responsibility-to-14>

¹³ See The Royal Australasian College of Physicians. Indigenous Strategic Framework 2018-2028 [Internet]. 2018 . Available from: <https://www.racp.edu.au/docs/default-source/default-document-library/indigenous-strategic-framework.pdf>, and The Royal Australasian College of Physicians. Medical Specialist Access Framework: A Guide to Equitable Access to Specialist Care for Aboriginal and Torres Strait Islander people [Internet]. 2018. Available from: https://www.racp.edu.au/docs/default-source/policy-and-adv/medical-specialist-access-framework/medical-specialist-access-framework.pdf?sfvrsn=25e00b1a_0

¹⁴ The Royal Australasian College of Physicians. Media release: 10 year old children shouldn't be put in jail - Paediatricians write to new NT Government [Internet]. 2024 [cited 2024 Oct 2]. Available from: <https://www.racp.edu.au/news-and-events/media-releases/10-year-old-children-shouldn-t-be-put-in-jail-paediatricians-write-to-new-nt-government>

¹⁵ Boltje S, Jash T. Northern Territory accused of walking away from its commitment to reduce Indigenous incarceration - ABC News. ABC News [Internet]. 2024 Aug 29 [cited 2024 Oct 2]; Available from: <https://www.abc.net.au/news/2024-08-29/spithoods-and-lower-age-of-criminal-responsibility-nt-chief/104279814>

¹⁶ See the Close the Gap Indigenous Health Equality Summit Statement of Intent, signed by the RACP on March 20, 2008: https://humanrights.gov.au/sites/default/files/content/social_justice/health/statement_intent.pdf

¹⁷ See Target 11, “by 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10–17 years) in detention by at least 30%” available at the Productivity Commission’s Closing the Gap Information Repository: <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area11>

¹⁸ United Nations, Australian Treaty Series 1991 No 4. Convention on the Rights of the Child [Internet]. 1989. Available from: <https://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html>

¹⁹ Australian Medical Association. Media Release: AMA Calls for Age of Criminal Responsibility to be raised to 14 years of age [Internet]. 2019 . Available from: <https://www.ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age>

²⁰ Australian Indigenous Doctors' Association. Media Release: Indigenous Doctors deeply concerned about raising the age of criminal responsibility to 12, urge AGs to follow medical advice [Internet]. 2021. Available from: <https://aida.org.au/app/uploads/2021/11/20211117-AIDA-Raise-the-Age-media-release.pdf>

²¹ RACP submission to the Council of Attorneys General Working Group reviewing the Age of Criminal Responsibility July 2019. Available from https://www.racp.edu.au/docs/default-source/advocacy-library/b-20190729racp-submission-cag-review_final-gm-approved.pdf

²² The Royal Australasian College of Physicians. Media Release: Governments must listen to child health experts - Physicians call for national agreement to raise the age of criminal responsibility [Internet]. 2023. Available from: <https://www.racp.edu.au/news-and-events/media-releases/governments-must-listen-to-child-health-experts---physicians-call-for-national-agreement-to-raise-the-age-of-criminal-responsibility>

²³ The Royal Australasian College of Physicians. Media Release: Physicians commend Tasmanian Government for announcing it will raise the minimum age of criminal responsibility [Internet]. 2023. Available from: <https://www.racp.edu.au/news-and-events/media-releases/physicians-commend-tasmanian-government-for-announcing-it-will-raise-the-minimum-age-of-criminal-responsibility>

²⁴ See The Royal Australasian College of Physicians. Media release: 10-year-old children shouldn't be put in jail - Paediatricians write to new NT Government [Internet]. 2024. Available from: <https://www.racp.edu.au/news-and-events/media-releases/10-year-old-children-shouldn-t-be-put-in-jail-paediatricians-write-to-new-nt-government>

²⁵ See page 5, The Royal Australasian College of Physicians. The Health and Well-being of Incarcerated Adolescents [Internet]. 2011. Available from: <https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf>

²⁶ The Royal Australasian College of Physicians. Media release: Child and adolescent physicians express grave concerns about Queensland children being detained in adult watchhouses [Internet]. 2024 . Available from: <https://www.racp.edu.au/news-and-events/media-releases/child-and-adolescent-physicians-express-grave-concerns-about-queensland-children-being-detained-in-adult-watchhouses>

²⁷ The Royal Australasian College of Physicians. Health Care of Children in Care and Protection Services Position Statement [Internet]. 2023 Jun . Available from: https://www.racp.edu.au/docs/default-source/advocacy-library/health-care-of-children-in-care-and-protection-services-australia-position-statement.pdf?sfvrsn=6325d21a_4

²⁸ The Royal Australasian College of Physicians. The Health and Well-being of Incarcerated Adolescents [Internet]. 2011. Available from: <https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf>

²⁹ For detail see pages 5 and 7 of our submission to the Don Dale Royal Commission, The Royal Australasian College of Physicians. Submission to The Royal Commission into the Protection and Detention of Children in the Northern Territory [Internet]. 2016 Oct . Available from: https://www.racp.edu.au/docs/default-source/advocacy-library/a-20161028_the-royal-australasian-college-of-physicians---submission_nt-royal-commission.pdf?sfvrsn=86f41a1a_6

³⁰ Good practice service delivery standards for the management of children referred for child protection medical assessments. England: RCPCH; 2020. 33p. Report No.:1.

³¹ Keeshin B, Forkey HC, Fouras G, MacMillan HL. Children exposed to Maltreatment: Assessment and the Role of Psychotropic Medication. AAP, 2020:145(2).