

# Position statement

## Health and human rights of young people in youth justice

January 2024

### Key messages

- Children and young people in youth justice settings are one of the most disadvantaged groups in Australia.
- They face disproportionately high rates of physical and mental health issues.
- Children and young people in youth justice settings require equitable access to high-quality, trauma-informed and engaged services that are provided in community. Ensuring seamless continuity of care in transition back into community is critical for sustained health improvements.
- Healthcare providers in youth justice settings must provide sensitive, developmentally appropriate, integrated, culturally appropriate, multi-disciplinary physical and mental health care. This care must recognise an individual's unique experiences and vulnerabilities.
- Healthcare providers must have the autonomy to advocate for improvements that positively impact the health and wellbeing of children and young people, including addressing systemic factors that influence their health outcomes.
- Prevention should be prioritised, and detention used only as a last resort. Early intervention and diversion programs with a key focus on improved health outcomes can effectively reduce reliance on youth justice systems and promote healthier life trajectories.

### Introduction

cohealth's strategic plan prioritises services to people engaged in the justice system. cohealth recognises the particular vulnerability of children and young people in youth justice settings who have poorer physical and mental health, high rates of trauma, abuse and neglect. We recognise these children and young people are more likely to have a history of alcohol and illicit drug use and dependence than young people in the community.<sup>1</sup>

This statement focuses on key areas that can be enhanced to improve the quality of healthcare for children and young people in custodial settings, emphasising the universal right to safe and responsive healthcare, whether in youth justice settings, or in the community.

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<sup>1</sup> <https://www.dcj.nsw.gov.au/about-us/research-strategy/our-research-projects-and-partners/young-people-in-custody-health-survey.html#:~:text=In%20comparison%20to%20those%20in,illicit%20drug%20use%20and%20dependence>

cohealth believes that healthcare providers can build positive health experiences and outcomes for young people both within and beyond youth justice settings. By taking on this role, healthcare providers can position themselves closer to influencing service and policy reforms to directly address and support the health challenges faced by children and young people.

We acknowledge that addressing the deep-seated influence of social and cultural determinants is critical to break the cycle of children and young people's involvement with the legal system and incarceration.

### cohealth believes:

- The fundamental human rights of children and young people in justice settings must be upheld. This includes equity of access to safe and appropriate healthcare.
- Health and social support services provided to children and young people in custodial settings be trauma informed, culturally safe, developmentally appropriate, non-judgemental, collaborative and comprehensive.
- Integrated care should be central to the design and delivery of health services in youth justice settings. It should be responsive and needs-based and include access to health screening.
- Children and young people have access to health care from multi-disciplinary teams and be supported with continuity of care in their reintegration back into community.
- Understanding and commitment to diversity, inclusion, and cultural safety be prioritised through staff training and appropriate health programs.
- Healthcare providers play an active role in early detection and support for individuals with complex health issues that can put them at greater risk of reincarceration.
- Children and young people in youth justice settings must have access to health advocates who can support their individual health needs and address systemic issues that could impact their long-term health outcomes.

### Priority actions for State and Federal Governments

- Commit to raising the age of criminal responsibility to a minimum of 14 years.
- Increase resourcing of health services to ensure they can meet the complex and extensive physical and mental health needs of children and young people in youth justice settings. This includes diverse groups, such as First Nations, culturally and linguistically diverse and LGBTIQ+ young people, and young people with disabilities.
- Ensure health services have separated control and authority from custodial operations in line with World Health Organisation recommendations.
- Facilitate continuity of care for young people transitioning between youth justice settings and community.
- Increase the Aboriginal and Torres Strait Islander workforce in health service delivery in recognition of the overrepresentation in youth justice settings of

children and young people from culturally and linguistically diverse backgrounds.

- Ensure young people transitioning from custodial to community-based settings have flexible access to MBS and PBS services, with a particular emphasis on enabling completion of individual health plans, mental health plans, and specialist referral items from general practitioners, to strengthen continuity of care.
- Implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- Greater investment in the social and cultural determinants of health to increase equity of access to educational opportunities, secure housing, safety and security and good health, especially for the most disadvantaged groups in Australia.

## Background

In Victoria, Youth Justice is responsible for the statutory supervision of young people in the criminal justice system. This includes children as young as 10 years old, through to young adults up to 24 years.

Some groups of children and young people are disproportionately imprisoned. In Victoria on an average day in the June quarter 2023, 11% were of an Indigenous background<sup>2</sup>, and 39% of those in youth justice in general were from a culturally and linguistically diverse (CALD) background.<sup>3</sup> Nationally, Indigenous children are 29 times more likely than non-Indigenous children to be in youth justice settings.<sup>4</sup>

These young people are not inherently more predisposed to offending, but are more likely to experience fundamental inequalities and face a range of complex needs that go unmet, placing them at greater risk of involvement with the justice system. This adversely impacts equity, health and wellbeing.<sup>5</sup>

In 1991 the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations focused on both improving the interaction of Aboriginal and Torres Strait Islander peoples at first contact with police and the justice system; and addressing policies such as health, education and self-determination in recognition of the broader social issues leading to higher rates of interaction with the youth justice system.<sup>6</sup>

More than 30 years later these recommendations have not been fully implemented, with Aboriginal and Torres Strait Islander people overrepresented in the system.

### **Health of young people in custody**

Children and young people in youth justice settings are among the most vulnerable people in our community and there is increasing evidence that their health needs are greater than adolescents in non-custodial settings.<sup>7</sup> Young people in youth justice settings have poorer physical and mental health, high rates of trauma, abuse and neglect, and are more likely to have a history of alcohol and illicit drug use and dependence than their counterparts in the community.<sup>8</sup>

### **Role of health services in youth custodial settings**

Providing primary healthcare in youth justice settings is essential to ensure young people receive appropriate care, and to improve their health and wellbeing. cohealth emphasises the significance of timely, culturally safe, and accessible primary care and the importance of collaboration with others in the young person's care team to enhance outcomes.

cohealth supports team-based models for treating chronic and complex health conditions throughout the custodial journey as well as providing on-site medical specialist and allied health services whenever possible to improve care coordination.

cohealth recognises the need for culturally and age-appropriate primary healthcare in youth justice settings and supports employing Aboriginal and Torres Strait Islander people and people from CALD backgrounds within the workforce to help create culturally safe environments.

Equitable access to comprehensive primary healthcare at all stages of the justice journey, including release, ensures continuity of care through the sharing of patient health records, summaries, and consultation notes between custodial and community health providers.

Health services have an active role to play in ensuring the health and wellbeing of young people in custody and are well positioned to ensure that the human rights of children and young people upheld.

## **Social and environmental impacts on youth offending**

The backgrounds of children and young people in youth justice points to the underlying systemic issues that need to be reformed. These children and young people often come from, and return to, socially disadvantaged communities. In 2022, a survey of Youth Justice records of 108 males and 11 females in custody in Victoria<sup>9</sup>, found that:

- 72% were victims of abuse, trauma or neglect as a child
- 87% had a history of misuse of drugs (illicit or prescription)
- 55% had been subject to a child protection order
- 50% had experienced family violence
- 62% accessed mental health support in relation to their diagnosed mental illness.

Addressing the social determinants of health must be a priority. This means ensuring children and families have secure and stable housing, employment opportunities, access to education, adequate income, and the supports they need for safety, security and good health.

## **Age of criminal responsibility**

Early intervention and diversion programs must be the focus of responses to young people who commit crimes and imprisoning young people should be only used as a last resort.<sup>10</sup> Keeping children and young people out of custodial settings benefits the individuals, families and society as a whole.

In Victoria, and most of Australia, the age of criminal responsibility is currently 10 years. This is one of the lowest ages of criminal responsibility in the world and

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<sup>2</sup> <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/summary>

<sup>3</sup> [https://files.justice.vic.gov.au/2021-06/Youth%20Justice%20Strategic%20Plan\\_0.pdf](https://files.justice.vic.gov.au/2021-06/Youth%20Justice%20Strategic%20Plan_0.pdf)

<sup>4</sup> <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/about>

<sup>5</sup> <https://www.ama.com.au/articles/ama-2023-position-statement-custodial-health>

<sup>6</sup> <https://antar.org.au/issues/justice/deaths-custody/>

<sup>7</sup> <https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf>

<sup>8</sup> <https://www.dcj.nsw.gov.au/about-us/research-strategy/our-research-projects-and-partners/young-people-in-custody-health-survey.html#:~:text=In%20comparison%20to%20those%20in,illicit%20drug%20use%20and%20dependence>

<sup>9</sup> <https://files.justice.vic.gov.au/2023-01/Youth%20Parole%20Board%20Annual%20Report%202021-22.pdf>

<sup>10</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

disproportionately impacts on Aboriginal and Torres Strait Islander children, families, and communities.<sup>11</sup>

cohealth welcomes the Victorian government's commitment to raise the minimum age of criminal responsibility to 12 years old by late 2024 and 14 by 2027<sup>12</sup>, and urges the government to bring forward the date by which the age of criminal responsibility is raised to 14. cohealth also supports other states and territories to raise the age of criminal responsibility.

cohealth is a member of the Raise the Age Campaign.<sup>13</sup>

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<sup>11</sup> [https://www.euro.who.int/\\_data/assets/pdf\\_file/0005/249188/Prisons-and-Health.pdf](https://www.euro.who.int/_data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf)

<sup>12</sup> <https://www.premier.vic.gov.au/keeping-young-people-out-criminal-justice-system>

<sup>13</sup> <https://raisetheage.org.au/>