



Fams submission into
Australia's youth
justice and
incarceration system
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Acknowledgment of Country

The Gadigal are the Traditional Custodians of the land on which our offices stand, and we pay our respects to Elders past, present and emerging.

We also acknowledge the Traditional Custodians of the land on which our member organisations operate and the lands on which we travel across for our work.



About Fams

Fams is the peak body in New South Wales that supports the early intervention and prevention sector. This sector provides critical services for children, young people, families, and communities.

Fams works collaboratively with Government, Policy and decision-makers, non-government organisations, academic organisations, peak bodies, family and community services sector, Aboriginal Community Controlled Organisations and organisations working with diverse communities. We advocate for improved policies and resources for children, young people, families, communities and services.

Children and family's safety, health and wellbeing are at the heart of all our work. Fams is committed to children and families receiving the support they need, evidence-informed and outcomes-based service delivery, government and sector accountability and influencing policy outcomes.

Introduction

Fams welcomes the opportunity to present this submission to the Senate Legal and Constitutional Affairs Committee to inform youth justice reform across Australia.

Fams endorses the proposed recommendations in the Human Rights Commission Report 'Help way earlier' (Gibbs, 2024) as critical to improving child and community outcomes in relation to Australia's youth justice and incarceration system. Evidence shows that criminalising children fails to promote effective rehabilitation and community safety; instead, it exacerbates their engagement with the criminal justice system, continuing cycles of disadvantage (McAra, 2007).

Children entering the criminal justice system are overwhelmingly those who most need care and support. Eighty to ninety three percent of children who are incarcerated have experienced childhood maltreatment (Honorato, 2016).

Australia's current approach to youth justice is harming children. It harms their development and exacerbates existing inequities that only serve to perpetuate adversity and trauma across generations. And perversely, it fails to fulfill its primary function of reducing youth crime.

Essential reform that prioritises prevention, early intervention, and support for vulnerablised families is critical to break the cycle of youth incarceration. Fams supports the age of criminal responsibility to be raised to 14 years across Australia, to bring us into line with the recommendations of the UN Committee on Children's Rights.

Part 1: Core considerations

As the NSW peak body for the NGO early intervention and prevention sector who support children, young people and families, Fams advocates for the following key considerations and recommendations:

1. Early Support for Families Experiencing Complex Challenges

Prioritise system reform to ensure early support for families facing significant and often co-occurring experiences of harm such as domestic and family violence, homelessness, poverty, child maltreatment, mental ill health, and disabilities to reduce the likelihood of these challenges escalating into justice issues.

2. Diverse Early Intervention and Prevention Support

Ensure a spectrum of support options are available for children, families, and young people. From population-level community supports to more intensive interventions, a continuum of care can address diverse needs and prevent early disengagement or criminalisation.

3. Addressing Systemic Drivers of Child Contact with the Justice System

Address the systemic drivers of child contact with the justice system early in life and early in need. These issues such as poverty, domestic and family violence and homelessness must be addressed early through appropriate and holistic support services, rather than inadequately responded and turned into justice issues.

4. Coordinated and Accountable Responses

Increase coordination and accountability between government and non-government organisations in health, education, child protection and youth justice systems. A unified approach will ensure children and young people are responded to with greater impact.

5. Developmentally Appropriate Responses to Children

Prioritising child wellbeing can help mitigate the systemic causes of criminalised behaviour, making any involvement short-lived and transitional for children. When we understand the needs of a child from a social health perspective, rather from a criminal justice perspective, we can ensure responses and support fit the needs and capacities of a child's stage of cognitive, emotional and social developmental stage.

6. Recognition of the Role of the Non-Government Sector

Acknowledge and enhance the role of the non-government sector in preventing children and young people from entering the justice system. These organisations provide support that addresses systemic disadvantage, driven by best practice evidence and informed by local community knowledge, to facilitate positive child, youth and family outcomes.

7. School Retention

Implement holistic and targeted strategies to increase school retention, focusing on early identification and support for children and young people experiencing difficulties. Education is a core protective factor in preventing justice system involvement.

8. Access to Specialist Mental Health Support

Increase access to child and youth specialist mental health services across the spectrum, from early intervention and prevention to crisis support and clinical treatment.

9. Improved Housing for Young People

Expand the availability of safe and secure housing options tailored to the needs of young people. Ranging from crisis accommodation to independent living, these housing solutions address one of the key factors driving youth justice involvement and reduce the number of young people held in custody due to a lack of suitable housing for bail release.

Part 2: Responding to the inquiry key topic areas

Part 2.1: The outcomes and impacts of youth incarceration in jurisdictions across Australia

The following sections responds to the inquiries 3 key topic areas *the outcomes and impacts of youth incarceration in jurisdictions across Australia; the over-incarceration of First Nations children; the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations.*

- *Early Adversity and Youth Justice System Contact*

Children involved with the youth justice system often experience significant and ongoing adversity early in life , including child protection contact, mental health challenges, and social and economic disadvantage. Early contact with the youth justice system, particularly for children aged 10–13, is associated with more serious outcomes such as higher rates of custody (91% vs. 59% for those with later contact), increased disadvantage, and more significant child protection involvement (e.g., 26% vs. 12% in out-of-home care)(Malvaso, 2024).

- *The Role of Child Maltreatment*

Research indicates a strong link between child maltreatment and criminal justice system contact, with young people in the child protection system twelve times more likely to come under youth justice supervision (Malvaso, 2024). Complex needs, including child maltreatment,

intellectual disability, and mental health difficulties are highly prevalent among young people involved in both the child protection and youth justice systems.

- *Impact of Systems Failures*

The Australian child welfare system operates with a forensic, statutory focus, inadvertently becoming a pipeline to the justice system for vulnerabilised children (Malvaso, 2024). This systemic failure neglects the social and economic determinants of child maltreatment, such as poverty, family violence, and inadequate support systems, and for First Nations children this operates within the context of colonisation and racism.

Placement instability, residential care, and the transition from out-of-home care to independence are factors increasing the risk of offending for young people. There is a distinct need for a more robust, supportive and child centred approach.

- *Need for Early Prevention*

Investment in early prevention is crucial. This includes providing support for families to overcome the drivers of early justice contact including social and economic disadvantage, preventing childhood maltreatment and addressing the consequences when it occurs, educational exclusion, youth community exclusion, and inadequate family focused disability support and adolescent mental health services.

For children with early offending behaviour, findings suggest justice reinvestment towards approaches centering children's wellbeing and experiences with systemic disadvantage and oppression, would be a more effective and outcomes focused response. Diverting children from the criminal justice system at an early stage, particularly before they have their first contact, is essential to reducing long-term negative outcomes and preventing further justice system involvement (Motz, 2020).

Part 2.2: The over-incarceration of First Nations children

The over-incarceration of First Nations children in Australia's youth justice system is a critical issue deeply rooted in systemic disadvantage and the pervasive and ongoing effects of colonisation on individuals, families, and communities. The following points highlight the connections between this over-representation and broader systemic issues:

- *Systemic Disadvantage and Impacts of Systemic Violence and Oppression*

First Nations children and young people are disproportionately represented in the youth justice system due to entrenched systemic disadvantage. This disadvantage is often compounded by current and intergenerational violence and oppression experienced by First Nations families through the ongoing impacts of colonisation.

This disadvantage is often compounded by current and intergenerational systemic violence and oppression experienced by First Nations families through the ongoing impacts of colonisation.

Colonial practices, which marginalise and disenfranchise First Nations communities continue to impact interactions with Australia's legal, child protection, and justice systems.

- *Overrepresentation in Child Protection and Justice Systems*

First Nations children and young people are overrepresented in both the child protection and justice systems. This overrepresentation is strongly correlated with the persistence of structural racism and colonial practices within these systems.

The Independent Review of Aboriginal (Davis, 2019) children and young people in out-of-home care in New South Wales (NSW) found policies, systems, and practices of child protection and out-of-home care disproportionately affect Aboriginal children, often resulting in further involvement in the youth justice system.

- *Failures in Culturally Appropriate Child and Family Service Responses*

Despite directives emphasising the importance of consulting Aboriginal families at all stages of child protection processes, the NSW Review highlighted widespread failures (Davis, 2019). Failures to provide culturally informed consultation reflect deeper systemic issues in which the voices and cultural needs of Aboriginal children and families are ignored (Davis, 2019).

The over-incarceration of First Nations children is linked to broader systemic issues within Australia's child protection and justice systems. Youth justice and child protection systems must work collaboratively with First Nations communities to design interventions preventing further harm, promote healing, recognise the importance of cultural identity and connections to family, kin and Country.

Urgent reform priorities must be addressed to prevent the perpetuation of harm to First Nations children through ineffective and harmful youth justice responses.

Part 2.3: The benefits and need for enforceable national minimum standards for youth

Most children in contact with the youth justice system have a history of complex trauma, systemic disadvantage, intellectual disability, and/or mental health difficulties (Malvaso, 2024). Focus must be placed on addressing the support needs of these children rather than focusing on punitive responses.

The need and benefits of implementing enforceable national minimum standards in Australia's youth justice system can be understood within these key points:

- *Justice responses as a consequence of inadequate child protection and family support and interventions*
 - Children entering the justice system are often the result of systemic failures in child protection and family support mechanisms. National enforceable minimum standards could mitigate the trajectory from maltreatment to offending by promoting early, consistent, and robust interventions.

- *Prioritise child wellbeing approach that prioritises addressing needs*
 - Responses to children involved in the justice system should prioritise a child wellbeing framework, addressing the root causes of their contact with the law.
 - A comprehensive approach including mental health support, disability support, access to education, and family support services is crucial to diverting children away from custodial sentences.

- *Crossover between child protection and justice systems*
 - There is significant overlap between children involved in both child protection and criminal justice systems, with research showing over 53% of children under youth justice supervision have also been involved in child protection services (Gibbs, 2024). South Australian research demonstrated that of 3,058 children who experienced youth justice contact, 84% had been notified to child protection, and a third had experienced out-of-home care (Gibbs, 2024).

- *Ethical obligation and community benefits*

- There is a moral and ethical responsibility to protect the rights and wellbeing of Australian children, and the implementation of national standards ensures consistent, equitable treatment across all states and territories.
- Enforceable minimum standards would not only improve outcomes for children experiencing complex and intersecting disadvantages, but also enhance community safety and optimise the use of public resources by focusing on preventive measures rather than ineffective and harmful responses including incarceration.

- *Reducing future criminal justice involvement for young children*

- Children aged 10–13 who come into contact with the justice system are more likely to reoffend and remain entrenched in the criminal justice cycle, making early intervention pivotal (Gibbs, 2024).

- *Focus on early intervention and culturally meaningful support*

- Early engagement with wraparound support that is culturally appropriate and community-centred can make a substantial difference in the lives of children and families experiencing complex disadvantages, preventing further criminal justice involvement. Early engagement with wraparound support that is culturally appropriate and community-centred can make a substantial difference in the lives of children and families experiencing complex disadvantages, preventing further criminal justice involvement.
- Providing a sense of connection, safety, and belonging reduces the likelihood of reoffending and improves outcomes for both the individual child and the community (Gibbs, 2024).
- Enforceable minimum standards should prioritise the child’s best interests, ensuring responses are in line with their social, emotional, moral, and cognitive development.
- This approach would prevent the continuation of ineffective punitive responses, which often exacerbate disadvantage and do little to improve long-term community safety.

- *Prioritising the best interests of the child*

- Enforceable minimum standards should prioritise the child's best interests, ensuring responses are in line with their social, emotional, moral, and cognitive development.
- This approach would prevent the continuation of ineffective punitive responses, which often exacerbate disadvantage and do little to improve long-term community safety.

Implementing national minimum standards are crucial in shifting the focus from punitive responses to preventive and healing approaches that prioritise the needs and development of the child while enhancing community wellbeing.

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