

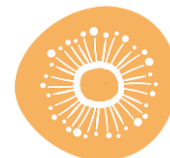


ChildProtectionPeak

**Queensland Aboriginal and Torres Strait Islander
Child Protection Peak Limited**

Youth Justice Evidence Review

January 2022



Purpose of this document

This review identifies key findings in relevant research as an evidence base for QATSICPP's position paper on Youth Justice, providing a critical platform for advocacy and reform into the future

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Aboriginal and Torres Strait Islander children and young people in the Youth Justice system

Aboriginal and Torres Strait Islander people have a long history of over-representation in the justice systems in Australia¹. With respect to children and young people in Queensland, this over-representation is on an upwards trajectory.

The most recent data available from the Australian Institute of Health and Welfare (AIHW) reveals that for the 2019/2020 financial year in Queensland:

- Aboriginal and Torres Strait Islander children and young people made up 8% of those aged 10–17 in the general population **but 56% of those of the same age under youth justice supervision during the year**. This rate is an increase on 2015–2016, where Aboriginal and Torres Strait Islander children made up 53 percent of those on some kind of supervision order.²
- **59 percent of all children and young people on community based youth justice orders during the year were Aboriginal and Torres Strait Islander**, this is an increase on 53 percent in 2015–2016.³
- Aboriginal and Torres Strait Islander over-representation was higher in detention (20 times the non-Indigenous rate)⁴. **Aboriginal and Torres Strait Islander children represented 63 percent of children living in detention across the year**, an increase on 60 percent in 2015–2016⁵.
- Aboriginal and Torres Strait Islander children aged 10 to 13 years old comprised 17 percent of the total of Aboriginal and Torres Strait Islander children and young people in youth detention centres in Queensland over the year⁶. This is a four percent decrease from 21 percent in 2015–2016.⁷ (This data is impacted by the 2018 transfer of 17 year-olds involved in the adult justice system to Youth Justice care.)
- Aboriginal and Torres Strait Islander children aged 10 to 13 years old comprised 11 % of Aboriginal and Torres Strait Islander children and young people on community-based supervision orders in Queensland⁸. This is a six percent decrease from 17 percent in 2015–2016⁹.

The Youth Justice Pocket Stats 19/20¹⁰ provide further detail on over-representation. Compared to non-Indigenous young people, on an average day during the year, Aboriginal and Torres Strait Islander young people were:

- 11 times as likely to have a proven offence
- 18 times as likely to receive a supervised order
- 27 times as likely to be held in custody
- 27 times as likely to be on remand

¹ Royal Commission into Aboriginal Deaths in Custody [RCIADIC], 1991; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011

² AIHW, 2021, Table S2b; AIHW, 2017, Table S2b

³ AIHW, 2021, Table S37b; AIHW, 2017, Table S37

⁴ AIHW, 2021, Table S85b

⁵ AIHW, 2021, Table S75b; AIHW, 2017, Table S75b

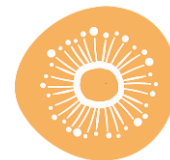
⁶ AIHW 2021, Table s80b

⁷ AIHW, 2017, Table s80b

⁸ AIHW, 2021, Table s41b

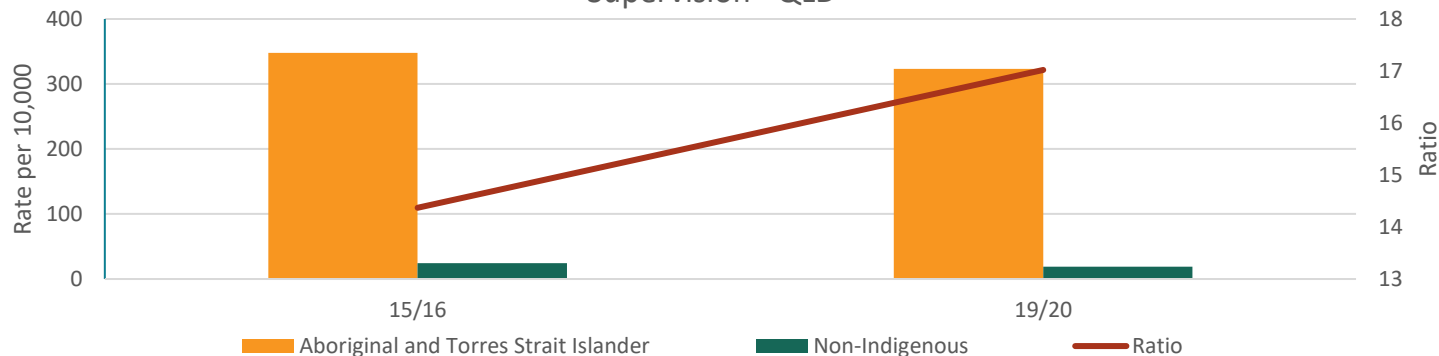
⁹ AIHW, 2017, Table s42b

¹⁰ Department of Children, Youth Justice and Multicultural Affairs, 2021



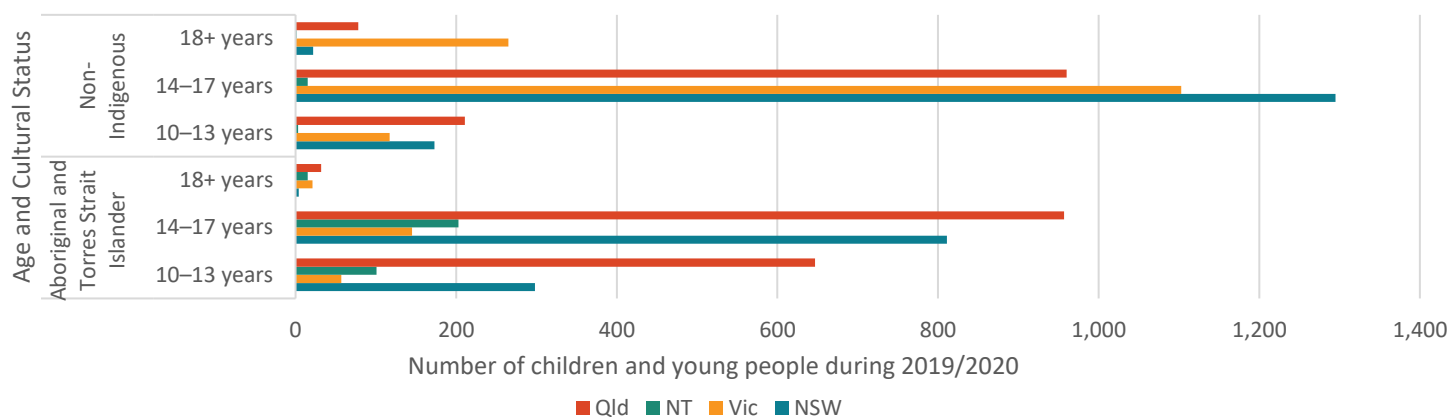
Please see below visualisations of relevant data published by the AIHW regarding Queensland's youth justice system, looking at three trends relating to Aboriginal and Torres Strait Islander under youth justice supervision.

Figure 1 - Rate of Aboriginal and Torres Strait Children and Young People under YJ Supervision - QLD



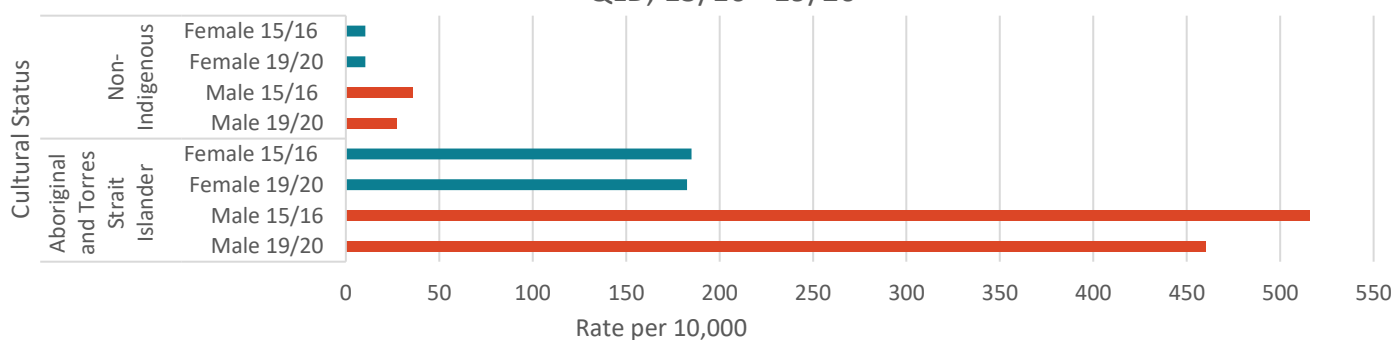
Source: AIHW, 2021, Table s12a

Figure 2 - Young people under supervision, by age of first supervision order

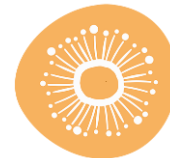


Source: AIHW, 2021, Table s19. Please note: the AIHW only published the full range of data for this measure from QLD, NT, VIC and NSW.

Figure 3 - Gender of children and young people under Youth Justice supervision in QLD, 15/16 - 19/20



Source: AIHW, 2021, Table S4b & AIHW, 2017, Table S39b



Youth Justice data indicates that over the six years from 2011-2017, approximately 40% of offences for which children are detained are categorised as 'offences against the person'¹¹. This includes assaults, abduction murder and related offences

The other 60% of offences include property crime, fraud, drug, traffic, public order, procedural, and miscellaneous offences.¹²

In its *Annual Report for 2019-2020*, the Children's Court of Queensland found over-representation also extends to the courts, with 46% of all child defendants Aboriginal and Torres Strait Islander. Aboriginal and Torres Strait Islander children and young people were ten times as likely as other children and young people to have had a charge finalised in a Queensland Court in 2019-20, an increase on the 2018-19 rate (nine times as likely).¹³

Nationally, research suggests the rate over-representation in the youth justice system for Aboriginal and Torres Strait Islander children increases with the severity of the intervention.¹⁴

The escalating rates of Aboriginal and Torres Strait Islander children and young people's over-representation in Queensland's youth justice system is resulting in significant ongoing trauma for their families and communities around the state. The continued dislocation of their children from their culture and the increasing negative intervention of the state in their lives continues to perpetuate patterns of control that have been present in the daily lives of Aboriginal and Torres Strait Islander people since colonisation.

A review of Queensland's youth detention centers concluded that there are "a number of indicators that systemic mistreatment may exist in Queensland Youth Detention Centre," stating that:

*"Aboriginal and Torres Strait Islander young people represent some of the most vulnerable young people in Australia. That is prior to any exposure to the climate and institutions of youth detention. It is vital for any institution to take in to account the unique histories of such young people and effectively respond to them to ensure they are not exposed to further trauma."*¹⁵

National research suggests contact with, and particularly incarceration in the criminal justice system further contributes to a range of trauma-based challenges, such as mental health issues and social isolation which often lead people to have contact with the criminal justice system in the first place.¹⁶

The *Royal Commission into Institutional Responses to Child Sexual Abuse* found youth detention environments to be high-risk institutional settings for sexual abuse, due to a range of factors including the co-location of children and young people of different ages and a lack of access to trusted adults.¹⁷ International research suggests that correctional environments contain frequent unavoidable triggers for those who have experienced trauma, such as pat downs and restricted movement, and pose a risk of escalating trauma for detainees¹⁸.

Whilst there is limited discreet research on the impacts of detention on Aboriginal and Torres Strait Islander young people, research that is available indicates that young people with a trauma history could experience a cumulative impact on their trauma experiences which has the potential to increase their distress and in turn their complex behaviours¹⁹.

¹¹ Department of Youth Justice, 2019

¹² Department of Child Safety, Youth and Women, 2017

¹³ Children's Court of Queensland, 2020.

¹⁴ Cuneen et al, 2015, AIHW, 2021

¹⁵ McMillan & Davis, 2016

¹⁶ Healing Foundation, 2016; Parliament of Australia, 2016

¹⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017

¹⁸ Miller & Najavits, 2012

¹⁹ Australian Law Reform Commission [ALRC], 2018; Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017; Productivity Commission, 2020



Factors associated with over-representation

The *Royal Commission into Aboriginal in Custody* found that the fundamental causes for over-representation of Aboriginal people in custody were not located within the criminal justice system²⁰. Multiple reports and reviews suggest that there a range inter-related factors that create a pathway to involvement in the youth justice system for Aboriginal and Torres Strait Islander children and young people.

Intergenerational trauma

For generations, Aboriginal and Torres Strait Islander people have experienced immense trauma and distress as a result of dispossession, forcible family separation, racism and human rights abuses since colonisation. This trauma continues to have a wide range of deep reaching negative impacts and is experienced collectively and cumulatively.²¹

There are many ways in which Aboriginal and Torres Strait Islander children and young people are impacted by trauma, including the transmission of intergenerational trauma, directly experiencing trauma and witnessing trauma. There is a broad consensus that trauma can affect children's neurological, psychological and even physical development.²² Children and young people are particularly vulnerable to the effects of trauma as their brains are still developing, and trauma can interrupt or alter that process.²³

Most children who experience serious trauma will also experience at least some psychological and neurological effects. Common consequences of trauma include:

- increased challenges in emotional regulation
- increased threat response, such that a child regularly exposed to emotional or physical danger may be hypersensitive to risk
- altered reward sensitivity and attachment issues, which can affect a child's experience of social interactions and their expectation and experience of others' approval
- difficulties with executive functioning, which can reduce children's ability to consider the consequences of their actions, control their impulses and follow instructions²⁴

A variety of research suggests that with reduced skills caused by trauma, many children grow into young people who struggle with self-destructive, pain-based behaviours including aggression and violence, and a range of criminal behaviours.²⁵

The implications of adolescent brain development, and specifically, the incidence of neurobiological impairment in recidivist youth offenders has been consistently acknowledged in recent systemic inquiries, such as the *Royal Commission into the Protection and Detention of Children in the Northern Territory* and the *Parliamentary Inquiry into Youth Justice Centers* in Victoria.²⁶ The Royal Commission into Aboriginal Deaths in Custody also acknowledges the relationship between the trauma stemming from colonisation, incarceration and deaths in custody.²⁷

The *Atkinson Report* looked at a recent snapshot investigation of 25 children aged 10 to 13 years who were in a youth detention center in Queensland as of 13 September 2017, identifying that all had experienced chronic trauma including exposure to domestic violence, sexual abuse and neglect.²⁸ A large-scale study conducted in the USA found that 92.5% of a sample of children in a

²⁰ RCIADIC, 1991

²¹ Menzies, 2019

²² van der Kolk, 2007

²³ Cross et al, 2017

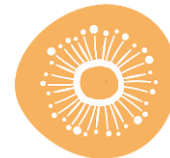
²⁴ van der Kolk, 2007; De Bellis & Zisk, 2011

²⁵ Atkinson et al, 2010; van der Kolk, 2007

²⁶ Royal Commission into the Protection and Detention of Children in the Northern Territory, 2018; Parliament of Victoria, 2017

²⁷ RCIADIC, 1991

²⁸ Atkinson, 2018



detention center had experienced at least one type of psychological trauma, and over 50% of the sample had been exposed to six or more potentially traumatic adversities by the time of detention.²⁹

Through its impacts on a range of factors, from brain development to social and emotional wellbeing, intergenerational trauma can cause or worsen a range of other issues which increase the likelihood of Aboriginal and Torres Strait Islander children and young people's contact with the youth justice system.³⁰ Once children and young people become involved in the youth justice system there is also a high risk of having their trauma compounded.³¹

Aboriginal and Torres Strait Islander young people have recognised these issues themselves. Participants at the Healing Foundation's Youth Forum viewed trauma as a contributing factor to high rates of violence, incarceration and recidivism within communities.³² The *Ngaga-dji (hear me)* report by Koori Youth Council captures the voices and experiences of Aboriginal children and young people in Victoria's youth justice system; their stories paint the picture of a system that can further entrench disadvantage and trauma, rather than facilitate rehabilitation or healing.³³

Disability

National data suggests Aboriginal and Torres Strait Islander Australians have higher rates of intellectual disability and cognitive impairment, with research suggesting they are more likely to have police contact, be charged, be imprisoned and receive longer sentences.³⁴

Indigenous children and young people are more likely to live with a disability. Nationally, Aboriginal and Torres Strait Islander children aged 0 to 14 had **double the rate of disability** than non-Indigenous children.³⁵

Research suggests that understanding the extent of disability experienced by Aboriginal and Torres Strait Islander young people in youth justice is extremely difficult to ascertain.³⁶ This is a result of limited, no diagnosis, or misdiagnosis of disability including a blurring of mental health, cognitive impairment and other disorders, sometimes due to cultural bias in testing practices.³⁷

There is considerable evidence to suggest that as a result of the systemic neglect in disability service provision and therapeutic treatment, Aboriginal and Torres Strait Islander children's behaviour is often seen as obstructive and difficult rather than as a result of cognitive or learning difficulties they may experience.³⁸ This brings them into greater contact with the police and is often an entry to juvenile detention. Children with mental illness and cognitive disability are often not supported by community services, and are "increasingly dealt with by systems of control rather than systems of care and support."³⁹

There has been much written about the links between juvenile justice and the criminalisation of children and young people with a disability.

As far back as 2005 the Human Rights Commission (HRC) began investigating this issue. In their paper *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems* the HRC identified that submissions made to the Senate Community Affairs References Committee Inquiry into children in institutional care had noted that a large percentage of juvenile detainees have a disability:

²⁹ Ford & Blaustein, 2013

³⁰ Sentencing Advisory Council, 2020; Healing Foundation, 2013

³¹ Royal Commission into the Protection and Detention of Children in the Northern Territory, 2018; Baldry et al, 2015

³² Healing Foundation, 2017

³³ Koori Youth Council, 2017

³⁴ Victorian Legal Aid 2011 in Baldry et al 2015.

³⁵ Australian Bureau of Statistics [ABS], 2012

³⁶ Baldry, 2015; QATSICPP, 2020

³⁷ Baldry et al, 2015

³⁸ Baldry et al, 2015, QATSICPP, 2020

³⁹ Baldry et al 2015:19



*'a lack of assessment, treatment and services for children with a mental illness means that many of these children fall through a range of service systems and end up in the juvenile justice system, 'consigned to incarceration rather than treatment.'*⁴⁰

The Human Rights Commission drew evidence from the *Young People In Custody Health Survey* conducted by the NSW Department of Juvenile Justice which revealed the following:

- 88% of young people in custody reported symptoms consistent with a mild moderate or severe psychiatric disorder;
- 30% reported symptoms consistent with Attention Deficit Hyperactivity Disorder;
- 21% reported symptoms consistent with schizophrenia;
- 10-13% were assessed as having an intellectual disability;
- 8% of young men and 12% of young women reported having attempted suicide in the previous 12 months;
- 21% of young men and 56% of young women reported drinking in the hazardous/harmful range; and,
- 51% reported that drug use had caused them problems.⁴¹

Recently in Queensland, the *Atkinson Report* noted that many stakeholders expressed concern that children who are repeatedly coming into contact with the youth justice system, had significant health and wellbeing issues, but often didn't receive health, mental health or disability assessments that could help inform suitable interventions.⁴²

Research also details that many Indigenous young people with an intellectual disability or fetal alcohol spectrum disorder (FASD) have rarely received an early diagnosis or positive intervention, resulting in their disengagement or expulsion from school at a relatively young age⁴³. This then often results in drug and alcohol misuse, emerging mental health issues and entries into care as a result of behavioural responses amongst this cohort of children and young people. Many of these young people experience frequent out-of-home care placements as the out-of-home care system is not tailored for young people with cognitive disability and this often results in placement breakdown and sometimes homelessness.⁴⁴ The consistent bouncing between placements also ensures that young people are not provided any treatment or disability support and their behaviour continues to escalate resulting in periods in youth detention.⁴⁵

The *Doing Time - Time for Doing* report recommended developing and implementing FASD diagnostic tools and therapies, with a focus on working in partnership with Indigenous health organisations in remote and regional Australia.⁴⁶

Child protection involvement

Research by the AIHW shows that children and young people who have been abused or neglected are at greater risk of engaging in criminal activity and of entering the youth justice system.

In Queensland, 56 percent of Aboriginal and Torres Strait Islander children and young people under youth justice supervision in Queensland received a child protection service in the four years prior.⁴⁷

The Queensland Youth Justice census found that 21 percent of children and young people in detention had a child protection order.⁴⁸ Nationally, 25.2 percent of Aboriginal and Torres Strait Islander children in youth justice detention had been in out-of-home care in the four years prior. Of those, more than four in five (84%) had been in residential care, 66% had been in foster or relative/kinship care and 14% had been in only foster or relative/kinship care placements.⁴⁹

⁴⁰ Human Rights and Equal Opportunity Commission [HREOC], 2005

⁴¹ NSW Department of Juvenile Justice, 2003

⁴² Atkinson, 2018

⁴³ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011; Baldry et al, 2015

⁴⁴ Baldry et al, 2015

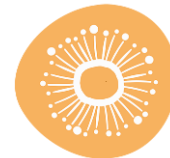
⁴⁵ QATSICPP, 2020: House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011

⁴⁶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011

⁴⁷ AIHW, 2019a

⁴⁸ Department of Youth Justice, 2019

⁴⁹ AIHW, 2019b



Evidence on how child protection involvement contributes to a pathway for a child or young person to the youth justice suggests a diverse range of factors, with it challenging to pull apart causation from correlation.⁵⁰ While the Productivity Commission's *Inquiry into Mental Health* found very little research on the health and wellbeing impacts of removal for Aboriginal children, it noted anecdotal evidence on long-term life outcomes suggesting that Aboriginal children and young people who come into care are at a significantly higher risk of poor mental health outcomes than their peers.⁵¹

Research on these 'cross over kids' has identified the following key drivers for a child involved with the child protection system to become involved with the youth justice system:

- **Aboriginal and Torres Strait Islander status;** Aboriginal and Torres Strait Islander children are more likely to experience higher levels of child protection intervention, to be younger at first sentence and to have more carers.⁵²
- **the increased rates of trauma, mental health issues and neurobiological affects of the abuse and neglect that led the child or young person coming into care.**⁵³
- **family violence.** Family violence is a significant driver for Aboriginal and Torres Strait Islander entering the child protection system⁵⁴ and can be a key context in which offending occurs for those in care.⁵⁵
- **residential care-based offending.** Where police involvement may be used as response to behaviours, and children may sometimes be prosecuted for conduct that might not result in police involvement if the child was living in the family home.⁵⁶
- **the flawed interface between child safety, juvenile justice and disability services.**⁵⁷

The dearth of evidence on effective collaborations and programs addressing the intersection of child protection and youth justice is notable; further research in this area would be extremely valuable in guiding current responses in this space.

Homelessness

In his report on the Queensland Youth Justice system Bob Atkinson AO found that stable accommodation is a crucial factor for both the prevention of children and young people entering the youth justice system and the likelihood of their involvement with the system over time decreasing.⁵⁸

Using linked data sets, the AIHW has conducted research into the intersection between youth justice, child protection and homelessness. This research revealed that young people who were involved with one of the three sectors were more likely to be involved with another of the sectors than the general population.⁵⁹ Aboriginal and Torres Strait Islander children and young people represented 25 percent of those under youth justice supervision who also received both child protection services and specialist homelessness services.⁶⁰ Thirty-eight per cent of the homeless/child protection/ youth justice cohort reported experiencing domestic and family violence.⁶¹

An analysis in February 2017 by the Queensland Department of Youth Justice found seven percent of the most frequent reasons for bail refusal were associated with an absence of suitable accommodation. In 17% of cases, no bail application had been made by the child.⁶² This suggests that a lack of safe accommodation is a critical factor contributing to incarceration. The *Doing time: Time for Doing* report made similar findings, concluding the lack of appropriate accommodation available to young offenders whilst they are awaiting sentencing was the single biggest factor in non-compliance with bail conditions.⁶³ *Doing time: Time for Doing*

⁵⁰ AIHW, 2029b; Sentencing Advisory Council, 2020

⁵¹ Productivity Commission, 2020

⁵² Sentencing Advisory Council, 2020

⁵³ AIHW, 2019b

⁵⁴ Cripps 2012 in Blagg et al 2015:5

⁵⁵ Badawi & Sheehan, 2020

⁵⁶ Badawi & Sheehan, 2020; Atkinson, 2018

⁵⁷ Green, 2007; Malvaso et al, 2017

⁵⁸ Atkinson, 2018

⁵⁹ AIHW, 2016

⁶⁰ Ibid

⁶¹ Ibid

⁶² Atkinson, 2018

⁶³ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011



recommended that the Commonwealth Government commit to expanding the range of accommodation options for Aboriginal and Torres Strait Islander children and youth, and that housing plans should be created for every young person leaving detention.⁶⁴

More recently the *Atkinson Report* in Queensland identified a lack of appropriate housing as a significant factor leading to youth justice involvement and recommended the Supervised Bail Accommodation Service operating at the time be made available to a wider cohort of young people, including those leaving detention and those on supervision orders without appropriate accommodation options.⁶⁵

Subsequent evaluations of the Supervised Bail Accommodation Service concluded that while the services provided safe and stable housing for young people which included wrap around services, the service did not represent a cost-effective way of reducing re-offending⁶⁶ - the program has since been discontinued.

Mental health and illness

The Queensland *Youth Justice Census* identified that 42 percent of children and young people on a youth justice order were reported to be experiencing a mental health issue, with 38 percent reported to have a behavioural disorder.⁶⁷ Similarly, the Productivity Commission's *Inquiry into Mental Health* found that "Aboriginal and Torres Strait Islander people have a high risk of being exposed to trauma, including intergenerational trauma, which contributes to high rates of mental illness".⁶⁸ At the same time, a variety of research has identified a high prevalence of diagnosable trauma related mental illnesses and mental health amongst children and young people incarcerated or with high levels of contact with the youth justice system.⁶⁹

Unfortunately there appears to be very little research on effective mental health interventions for Aboriginal and Torres Strait Islander children and young people.⁷⁰

The *National Review of Mental Health Programs and Services* conducted in 2014 found that access to services was based on where someone lived, how much money they had, who they knew and the degree to which they were able to self advocate.⁷¹ The report identified specific gaps in service provision for Aboriginal and Torres Strait Islander Australians around cultural competence, social and emotional wellbeing frameworks and problematic referral pathways.⁷²

The *Inquiry into Mental Health* similarly found that health care is designed primarily for people from non-Indigenous communities and that despite significant effort, the mental health system has not been able to improve outcomes for Aboriginal and Torres Strait Islander people.⁷³ The inquiry found that supporting the social and emotional development of Aboriginal and Torres Strait Islander children can contribute to better mental health outcomes into adulthood, and highlighted the need for;

- the further development of culturally capable mental health services
- research to identify best practices for partnerships between traditional healers and mainstream mental health services
- Aboriginal Community-Controlled Health Services to be positioned as the preferred providers of mental health services to Aboriginal and Torres Strait Islander people
- an early intervention approach to identify people with mental illness at high risk of contact with the justice system and provide them supports
- state and territory governments to ensure that people with mental illness in custody are provided with timely and culturally capable mental healthcare.⁷⁴

⁶⁴ Ibid

⁶⁵ Atkinson, 2018

⁶⁶ Department of Youth Justice, 2020

⁶⁷ Department of Youth Justice, 2019

⁶⁸ Productivity Commission, 2020:119

⁶⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017

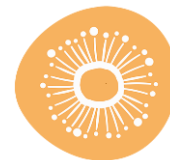
⁷⁰ Healing Foundation, 2016; Productivity Commission, 2020

⁷¹ National Mental Health Commission, 2014

⁷² Ibid

⁷³ Productivity Commission, 2020

⁷⁴ Productivity Commission, 2020



Alcohol and other drugs

Data from the AIHW shows one in three young people aged 10–17 under youth justice supervision during the four years to June 2016 also received alcohol and other drug treatment services at some point during the same period.⁷⁵ The *Atkinson Report* in Queensland found that 76% of children subject to youth justice supervised orders are suffering from entrenched alcohol or drug misuse issues.⁷⁶

The impact of substance misuse on offending behaviour is further demonstrated in the primary offences committed by children and the prevalence of such offences. Illicit drug offences comprised 11% of all offences committed by children, the third largest offending type after theft and acts intended to cause injury.⁷⁷

Nationally, the number of child offenders has been declining across most categories of offences with the exception of illicit drug offences, and sexual assault and related offences. Between 2008–09 and 2016–17, the number of children committing illicit drug offences increased by 47 percent.⁷⁸

In Queensland, survey respondents in the Aboriginal community of Cherbourg identified drugs and alcohol as a leading driver for offending and incarceration, along with family issues and “feeling lost or not feeling good inside.”⁷⁹ More broadly, research suggests that while substance abuse is a key cause of crime, drug use and crime can both develop in response to a range of other factors such as poverty, trauma, mental health issues and a lack of engagement with education and employment.⁸⁰

A range of stakeholders have argued that substance abuse programs for children and young people in Queensland need a significant increase in resourcing.⁸¹ Federally, the *Doing Time – Time for Doing* report recommended that governments increase funding for locally based alcohol, anti-smoking and substance abuse programs.⁸²

Lack of access to culturally relevant services

A past history of abuse, intervention and control by government and non-government services in Aboriginal and Torres Strait people's lives has led to a general lack of trust in service systems.⁸³

In addition, the Australian House of Representatives Select Committee on Intergenerational Welfare Dependence found that institutional discrimination was identified as a significant factor in reducing the “likelihood of Aboriginal people accessing essential services in areas such as the health system as well as the media, education, welfare and criminal justice systems and in the provision of public housing.”⁸⁴

These barriers, among others, have led to the general conclusion that current responses to ensuring the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people, are not working, are responding to symptoms instead of underlying problems, or at best have negligible impact.⁸⁵

Research indicates that current programs that prove to be generally **ineffective** are:

- interventions that fail to engage and partner with Aboriginal and/or Torres Strait Islander people at all stages
- interventions that fail to take into account and target the multiple and complex issues that lead to offending (for example, alcohol and substance misuse, unemployment, lack of education)
- insufficiently resourced⁸⁶

⁷⁵ AIHW, 2018

⁷⁶ Atkinson, 2018

⁷⁷ ABS, 2018

⁷⁸ AIHW, 2018

⁷⁹ Allison, 2018:5

⁸⁰ Goldstein 1985 in Forsythe & Adams, 2009

⁸¹ Atkinson, 2018; ATSILS, 2021

⁸² House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011

⁸³ ALRC, 2017: House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011; Parliament of Australia, 2016

⁸⁴ House of Representatives Select Committee on Intergenerational Welfare Dependence, 2019:34

⁸⁵ Healing Foundation, 2013; Menzies, 2019; ALRC, 2017; AHRC, 2020

⁸⁶ Higgins & Davis, 2014; Healing Foundation, 2014



It is clear from the evidence outlined earlier in this review that the unmet social and emotional wellbeing needs of Aboriginal and Torres Strait Islander children are a key driver for their contact with the criminal justice system.

Once an Aboriginal or Torres Strait Islander child or young person comes into contact with the system, there is little empirical information or evaluative data about the effectiveness of either targeted or general prevention and early intervention programs that address their criminal justice system involvement.⁸⁷ In her 2020 report *Wiyi Yani U Thangani* Social Justice Commissioner June Oscar AO found that the Aboriginal and Torres Strait Islander women and girls in 50 communities across Australia reported limited diversionary options prior to detention, a lack of culturally appropriate rehabilitation programs in detention and a scarcity of supports to assist those detained to reintegrate into society post release.⁸⁸

There are a range of systemic factors at the point of contact between Aboriginal and Torres Strait Islander children and young people and the justice system that have the potential to cause further involvement: discrimination and prejudice by police, increased police presence, a lack of appropriate support programs and being a young offender in a regional or remote area.⁸⁹ In its 2016 report, *Keeping Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*, Amnesty International found that despite a legislative requirement for police to notify the Aboriginal and Torres Strait Islander Legal Service (ATSILS) before interviewing an Aboriginal and Torres Strait Islander person, ATSILS staff across a number of locations reported that they are rarely notified in such circumstances, significantly impacting on their ability to provide culturally sensitive and timely legal advice.⁹⁰

Moving further along the youth justice continuum a lack of access to diversionary programs contributes to the over-representation of Indigenous young people in detention.⁹¹ Nationally, the Healing Foundation found little evidence diversionary programs seek to address trauma associated behaviours in their mandate, which results in increased incarceration and continued reliance on incarceration as a response to trauma.⁹² There is evidence to suggest inconsistent youth justice system responses to diversion; a report based on extensive consultation with community members and workers in Dubbo found that children who plead guilty in court are afforded wraparound support services while the only support for children who plead not guilty was crisis accommodation (where necessary).⁹³ Recent inquiries in Queensland and Victoria found a significant lack of effective prevention, intervention and individualised support to meet the specific needs of Aboriginal children and young people.⁹⁴

Nationally, a 2016 Australian Senate Inquiry on the Aboriginal and Torres Strait Islander experience of law enforcement and justice services found that a lack of culturally appropriate services may be barrier accessing legal services.⁹⁵ Queensland research conducted by Griffith University also found that that few Indigenous youth received legal advice in their experiences with the justice system.⁹⁶ On a federal level, the National Aboriginal and Torres Strait Islander Legal Services has reported an increasingly rigid approach to bail across Australian jurisdictions, which has had a particularly discriminatory effect on Aboriginal and Torres Strait Islander young people, causing an increase in the number of Aboriginal and Torres Strait Islander young people in custody on remand.

There is also evidence to suggest a lack of fit for purpose service delivery for to Aboriginal and Torres Strait Islander children while they incarcerated. A review of Queensland's Youth Detention Centers expressed concern about the lack of ongoing cultural programs provided to Aboriginal and Torres Strait Islander children and young people in detention and recommend that;

- for young people brought into detention from regional or remote parts of the state, appropriate cultural visits from the young person's community should be arranged in person or with the use of video conferencing.
- consultation with Aboriginal and Torres Strait Islanders stakeholders external to Youth Justice to develop, design an implement cultural specific programs as a matter of priority.⁹⁷

⁸⁷ Ibid

⁸⁸ AHRC, 2020;

⁸⁹ Higgins and Davis, 2014

⁹⁰ Amnesty International, 2016

⁹¹ Allard et al. 2010; Cunneen, 2008; Kenny & Lennings, 2007

⁹² Healing Foundation, 2016

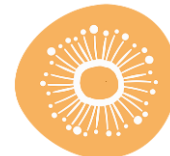
⁹³ Shepherdson & Fuller, 2015

⁹⁴ Commission for Children and Young People, 2021; Queensland Family and Child Commission, 2021

⁹⁵ Parliament of Australia, 2016

⁹⁶ Allard et al, 2010

⁹⁷ McMillan & Davis, 2016



In his report on the Queensland youth justice system, Bob Atkinson AO found no mandatory, across the board, training for the youth detention center workforce on cultural competency or trauma informed approaches.⁹⁸ More recently, the Queensland Family and Child Commission's (QFCC) review of Youth Justice initiatives found, with the exception of On Country programs, limited evidence of the involvement of Aboriginal and Torres Strait Islander communities in the ideas and priorities featured in the Youth Justice Strategy Action Plan 2019-21.⁹⁹

In the broader society in which these issues play out, there appears to be a significant lack of correlation between the growing number of Aboriginal and Torres Strait Islander children and young people in Queensland, and investment in services particularly targeted at addressing the needs of this cohort. 2016 Census data reveals that;

- from 2006 to 2016 the population of Aboriginal and Torres Strait Islander peoples grew from 3.3 percent of the state's population to 4 percent, and that First Nations children and young people made up 7.7 percent of the state's total population children and young people.
- In 2016 children and young people made up 46 of every 100 Aboriginal and Torres Strait Islander peoples in Queensland.¹⁰⁰

Despite their relatively high proportion of Queensland's child and young people, intergenerational trauma impacts and disadvantage faced by many of this cohort, Aboriginal and Torres Strait Islander children and young people are provided youth services primarily by non-Indigenous organisations, with a very small number of community run Aboriginal and Torres Strait Islander services providing support in the youth services sector.

Evidence on youth service funding more generally in Queensland points to a lack of resourcing, with the results of the 2017 YANQ Sector survey identifying a sector under strain by lack of resourcing and funding constraints. According to the Youth Affairs Network of Queensland (YANQ) 2018/2019 budget submission:

*"There will need to be substantial reinvestment in young Queenslanders to offset cuts made in the past 6 years if we are to halt, let alone reverse concerning trends such as the increase in young people (especially young Aboriginal and Torres Strait Islanders) being kept in care or detention, and the number of young people who have disengaged from education and training and who are unemployed. The youth portfolio is the only portfolio that not only has had no increase in funding but actually has sustained significant cuts in recent years."*¹⁰¹

Without sufficient investment in culturally sound, community-based responses, Aboriginal and Torres Strait Islander children and young people are failing into having their multiple social and emotional wellbeing needs addressed through the youth justice system.

What works in addressing over-representation

The complex range of factors highlighted in the previous section point to a range of unmet needs for Aboriginal and Torres Strait Islander children and young people subject to youth justice system interventions.

To date, most programs for Aboriginal and Torres Strait families or communities have little or inconclusive evidence regarding their effectiveness.¹⁰² There are a range of factors which impact the evidence for programs aimed at Aboriginal and Torres Strait Islander peoples, these include:

- the limitations in applying non-Indigenous evaluation methodologies to Aboriginal and Torres Strait Islander community programs
-

⁹⁸ Atkinson, 2018

⁹⁹ QFCC, 2021

¹⁰⁰ ABS, 2016

¹⁰¹ YANQ, 2018: 2

¹⁰² Atkinson, 2013, National Audit Office, 2017



- a lack of in-depth data on medium to long term outcomes and a lack of resourcing for program evaluations to be carried out
- short term nature of programs and heavy reliance on trials
- a focus on featuring promising practice rather than investing in the long term ¹⁰³

Due the lack of a comprehensive evidence base on the effectiveness of specific youth justice programs, the following section will take a broader view of 'what works', focusing on the key elements of effective systemic or individual responses found in child protection, trauma and rights-based evidence.

Self-determination: Aboriginal and Torres Strait Islander led and owned solutions

A number of government inquiries at a state and national level over the past decade have concluded that effective solutions to preventing or reducing the recidivism of First Nations children and young people in the youth justice system need to be developed and delivered locally, preferably by, or at least in conjunction with, the local Aboriginal and Torres Strait Islander community.¹⁰⁴ On a broader level, evidence suggests that youth justice services better suited to the needs of Aboriginal and Torres Strait Islander people can be shaped through ensuring Indigenous communities, leaders and young people are given sufficient decision-making input on the development of legislation, policies and services for this cohort.¹⁰⁵

Drawing upon a range of national and international evidence, the Australian Institute of Criminology's *National Crime Prevention Framework* states that effective interventions should be specifically tailored to the needs of Aboriginal and Torres Strait Islander people, enable community participation in their design and delivery and be culturally appropriate.¹⁰⁶

In their review of four programs from around Australia that aimed to divert Aboriginal and Torres Strait Islander children and young people from the youth justice system, Stewart et al found programs that are driven by local Aboriginal and Torres Strait Islander people and use methods that align with cultural communication and knowledge sharing preferences more effectively address children and young people's needs.¹⁰⁷ These findings echo other research suggesting that community driven programs are more likely to engage children and young people to participate and garner crucial wider community support for the goals of the intended intervention.¹⁰⁸ For example, a review of different Indigenous youth night patrols across Australia, found that programs where community leaders were given direct power and resourcing were more effective in reducing youth crime.¹⁰⁹ Similarly, a recent collaborative research project highlighting the reflections of Aboriginal and Torres Strait Islander youth workers at the *Lighthouse* after hours diversionary program in Townsville found critical to the program's ability to success in engaging young people was the cultural and community knowledge of the workers themselves.¹¹⁰

Looking at how community led approaches can be facilitated at a systemic level, the *Atkinson Report* recommended a framework for community engagement that includes flexibility for local area decision-making, funding models, and service delivery.¹¹¹ The *Crossover Kids* reports by Victoria's Sentencing Advisory Council concluded that fundamental to any efforts in addressing the over-representation of Aboriginal and Torres Strait Islander children is ensuring any such efforts are designed, developed and led by Aboriginal people, in keeping with the principle of self-determination.¹¹²

A 2010 evaluation of the Murri Court found it had considerable success in improving how courts work with Aboriginal and Torres Strait Islanders communities to deal with justice issues.¹¹³ While some researchers have found Indigenous court models provide a culturally appropriate approach to sentencing because they involve the family and the community, other evidence suggests that

¹⁰³ Higgins and Davis, 2014; Allard et al, 2010

¹⁰⁴ ALRC, 2017; Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017; Atkinson, 2019

¹⁰⁵ Atkinson 2019; ALRC, 2017; Higgins & Davis, 2014

¹⁰⁶ Australian Institute of Criminology [AIC], 2012

¹⁰⁷ Stewart et al, 2014

¹⁰⁸ ATSIJC, 2008.

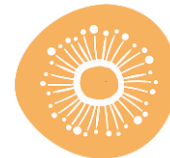
¹⁰⁹ Cooper et al, 2016

¹¹⁰ O'Reilly, 2019

¹¹¹ Atkinson, 2018

¹¹² Sentencing Advisory Council, 2020

¹¹³ Morgan et al, 2010



such models appear to have little impact on recidivism, potentially because they are an adaption of Western justice models and do not address the underlying trauma associated with offending.¹¹⁴ Despite its limitations in its current form and limited impact on recidivism, there is some research to suggest that the Murri Courts model's success rests in involving the Aboriginal and Torres Strait Islander elders and community organisations in the justice process across a range of other stages in the system, such as diversion, restorative justice, bail programs and pre and post sentence support.¹¹⁵

A relatively new initiative in Queensland is the Aboriginal and Torres Strait Islander Youth Justice Family Led Decision Making Trial - My Family, Our Decisions, Our Way. The trial is based on the Family Led Decision Making (FLDM) and Family Group Conferencing (FGC) models of engaging with child welfare clients, aiming to reduce over-representation by empowering Aboriginal and Torres Strait Islander families to make informed decisions to achieve change in their children's behaviour, safety and ongoing cultural and practical support needs. The program is delivered by four Aboriginal and Torres Strait Islander run community organisations at a variety of locations across Queensland. An evaluation My Family, Our Decisions, Our Way found that:

- access to cultural advisors, engagement with cultural programs and empowerment in decision making were all enabling factors for cultural safety and healing¹¹⁶
- services delivered by local Aboriginal and Torres Strait Islander organisations were well attended, successful in getting young people off the street and successful diverting them from risky behaviour¹¹⁷

Another approach for establishing a significant role for Aboriginal and Torres Strait Islander peoples in the operation of justice systems is the use of Aboriginal Justice Agreements, which seek to address the over-representation of First Nations peoples in the criminal justice system. An evaluation of the Victorian Aboriginal Justice Agreement found that the agreement was effective in improving the whole of government approach to Aboriginal criminal justice contact, increasing cultural awareness and ensuring Aboriginal perspectives shape the development of new strategies, policies and initiatives.¹¹⁸

In his fourth report as Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson concluded that more than just a partnership approach was needed to address the high rates of Indigenous incarceration and called for Aboriginal and Torres Strait Islander communities to be given the opportunity to control the resources and services aimed at improving their health and wellbeing:

*"The cycle must be broken. To break it does involve more participation by Aboriginal and Torres Strait Islander parents, extended families and communities. But it is a matter of autonomous participation at a much earlier stage of the cycle of conviction, detention, release, recidivism, reconviction and ever-lengthening periods of detention."*¹¹⁹

The findings of two recent systemic inquiries support this call. In its report *Our Youth, Our Way*, the Victorian Commission for Children and Young People found that services designed, controlled and delivered by the Aboriginal community have the greatest potential to produce the best outcomes; recommending that the Victorian Government legislate to authorise Aboriginal communities to design, administer and supervise key elements of the youth justice system in accordance with their own readiness. The report also pointed out that self-determination in the youth justice system,

*"cannot be achieved without strengthening the role of Aboriginal organisations. This must include sustainable resourcing and improved support to build the sector's organisational and workforce capacity."*¹²⁰

This call is echoed by the QFCC in their review of Youth Justice reform initiatives in Queensland. In its *Changing the Sentence* report, the QFCC recommended that programs and projects should be community-led where the primary target group is Aboriginal children and/or Torres Strait Islander children and families. The report found community-controlled organisations spoken with were trusted by their community and by government, and concluded that:

To see change in the over-representation of Aboriginal and Torres Strait Islander children in youth justice, we believe the role of community controlled organisations in the youth justice system can be expanded...transition of funding to

¹¹⁴ Healing Foundation, 2016

¹¹⁵ Atkinson, 2019; Morgan et al, 2010

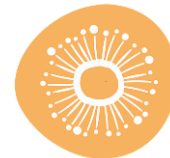
¹¹⁶ Inside Policy, 2020

¹¹⁷ O'Reilly et al, 2019mo

¹¹⁸ Allison and Cuneen, 2010

¹¹⁹ Dodson, 1996: 17

¹²⁰ Commission for Children and Young People, 2021: 11



*community controlled organisations should continue, to better match the proportion of Aboriginal children and Torres Strait Islander children in the statutory youth justice system.*¹²¹

Healing as a response to intergenerational trauma

A meta-analysis of more than 500 controlled studies conducted by Lipsey et al identified the key characteristics associated with positive effects on recidivism present in programs widely used across juvenile justice systems.¹²² The analysis found that to optimise positive outcomes for youth and the community in a cost-effective way, effective programs must be matched to offenders' criminogenic needs and risks.¹²³ As noted earlier in this document there is a wide range of research to suggest that many of the responses to trauma experienced Aboriginal and Torres Strait Islander children and young people are not meeting their needs and hence for many a youth justice response eventuates.

Trauma informed practice is now widely understood as a necessary precursor to creating the right environments in which healing can thrive. Trauma informed services for Aboriginal and Torres Strait Islander children must:

- understand trauma and its impact on individuals (such as children), families and communal groups
- create environments in which children feel physically and emotionally safe
- employ culturally competent staff and adopt practices that acknowledge and demonstrate respect for specific cultural backgrounds
- support survivors of trauma to regain a sense of control over their daily lives and actively involve them in the healing journey
- share power and governance, including involving community members in the design and evaluation of programs
- integrate and coordinate care to meet children's needs holistically
- support safe relationship building as a means of promoting healing and recovery.¹²⁴

More recently the *Crossover Kids* report series highlighted the relevance of trauma to sentencing in the youth justice system, particularly to the sentencing of Aboriginal and Torres Strait Islander crossover children. These reports argue that the creation of a new Youth Justice Act in Victoria provides an opportunity to reflect on how the principles, purposes and factors that guide the sentencing of children can better reflect and address the unique circumstances of Aboriginal trauma.¹²⁵

In his review of the Queensland juvenile justice system, Bob Atkinson AO found evidence to support cultural healing approaches from both Australia and Canada¹²⁶. The *Atkinson Report* recommended cultural healing approaches be explored in conjunction with On Country programs as an alternative response for Aboriginal and Torres Strait Islander children at a variety of points in the system, including for children sentenced to detention, those transitioning out of detention and those on community supervision orders.¹²⁷

The Healing Foundation has been working over the past 10 years to build evidence on how a healing approach can be utilised to address intergenerational trauma. Their evidence outlines how healing programs can involve a range of practices, both traditional and western, cover a range of problems experienced by individuals or groups, and have a core focus on spirituality and culture.¹²⁸

Healing activities can include yarning circles, healing camps, counselling, art, dance, song, cultural ceremony and culturally safe referral pathways. Family and community healing is recognised as integral to Aboriginal and Torres Strait Islander peoples wellbeing.¹²⁹ This notion is supported by trauma research suggesting that as well as strengthening a sense of identity and

¹²¹ QFCC, 2021:56-57

¹²² Lipsey et al, 2010

¹²³ Ibid

¹²⁴ Atkinson, 2013

¹²⁵ Victorian Sentencing Advisory Council, 2020

¹²⁶ Atkinson, 2018

¹²⁷ Ibid

¹²⁸ Healing Foundation, 2019

¹²⁹ Muru Marri, 2014



connectedness, neuroscience demonstrates that cultural practices such as dance, art, song and storytelling stimulate the part of the brain that helps to regulate behaviour.¹³⁰

With respect to children and young people living in detention, there also exists some research, primarily from the US, on how such environments can be trauma informed through an emphasis on structure, safety, consistency, and fair treatment.¹³¹ A key focus for those operating detention environments needs to be on providing the stability that trauma survivors require to facilitate trauma recovery.¹³²

The link between culture, healing and offending behaviour is also a key message from young people who had experienced the Victorian youth justice system. The *Ngaga-dji (hear me)* report by the Koori Youth Council summarises key messages from young people about 'what works' in juvenile justice:

- Give children services that work – services that are accessible, trauma informed and culturally safe
- Keep children safe and strong in their families, culture and communities
- Community designed and led community support systems.

In its *Changing the Sentence* Report, the QFCC spoke with six young people with experience of Queensland's youth justice system, who provided a range of advice on how they would like to be treated, with key messages including::

- Focus on the whole person, not just the offending behaviours
- Don't target children based on their race, looks or history
- Seek to understand why children and young people might be experiencing difficulties and respond to these drivers
- The earlier intervention the better, provide informal, accessible supports
- Make sure children, young people and families are informed and involved¹³³

Critical to the implementation of these solutions for Aboriginal and Torres Strait Islander children and young people are the guiding principles of self-determination, youth participation and culture, family, elders and community.¹³⁴

Culture as a protective factor

A key message in the literature from Aboriginal and Torres Strait Islander academics, community members and young people is that culture is a protective factor and must be at the center of any responses designed to prevent or reduce contact with the youth justice system for this cohort. This involves responses that are culturally sound and create cultural safety for Aboriginal and Torres Strait Islander children and young people.¹³⁵

Extensive research has found cultural concepts such as connection to land, spirituality, ancestry, family and community can serve as sources of resilience and moderate the impact of stressful circumstances on social and emotional wellbeing.¹³⁶ This point is echoed by the *Royal Commission into Institutional Responses to Child Sexual Abuse* final report, which found that culture is an important protective factor for Aboriginal and Torres Strait Islander children.¹³⁷

Worryingly, studies have identified that periods of detention for young men are considered a cultural 'rite of passage' in some Indigenous communities. Cull concluded that, "*Indigenous men's over-representation is symptomatic of the breakdown in Indigenous lifeways and community structures under colonisation and underneath this, the rejection of Aboriginality,*"¹³⁸ and suggested that healing work focused on creating cultural strength is key to addressing over-representation.¹³⁹

¹³⁰ Perry, 2009 in Blagg & Tulich, 2018

¹³¹ Council of State Governments 2010 in Miller and Najavits 2012:3

¹³² Miller and Najavits 2012 in Healing Foundation, 2016

¹³³ QFCC, 2021

¹³⁴ Koori Youth Council, 2018

¹³⁵ Atkinson, 2018; Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017

¹³⁶ Healing Foundation, 2013; Zubrick et al, 2010

¹³⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017

¹³⁸ Cull, 2009:34

¹³⁹ Cull, 2009



The *Atkinson Report* outlines some practical ways in which culture could be better incorporated into youth justice system decision making, including more recognition of Aboriginal and Torres Strait Islander family structures and child rearing practices in bail decision making, and cultural programs in detention that focus on strengthening cultural connections.¹⁴⁰

There is also some evidence to suggest that On Country programs can play a positive role in building respect for elders, identity, and self-esteem amongst Aboriginal and Torres Strait Islander young people in contact with the justice system. On country programs vary in their approach, but commonly deliver healing-focused rehabilitation and education or learning programs that can also serve as pathways to further training and employment.¹⁴¹ A three-year evaluation of an on-country program in Western Australia, the Yiriman Diversionary Project, found the program improved the health of participants and minimised a significant number of young people's further involvement in the justice system.¹⁴²

Other approaches that have shown some promising signs of effectiveness are youth leadership and mentoring programs. In its *Doing time: Time for Doing Report*, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs recommended a national program to develop and provide local mentors for Indigenous youth at risk before, during and after custody.¹⁴³ Evaluations of more universally targeted programs for Aboriginal and Torres Strait Islander young people, such as the AIME program, have found these programs have positive impacts for participant's sense identity, cultural connection and school performance.¹⁴⁴

In terms of mentor programs specifically targeted at young people in a crime prevention context, while the evidence is limited, some positive short-term outcomes have been identified, including a reduction in offending behavior and increased participation in education and employment.¹⁴⁵ Research suggests that for such programs to be effective and meaningful for Aboriginal and Torres Strait Islander children and young people, they need to have a comprehensive understanding of relevant historical, cultural and community factors that they operate within, and pay particular attention to culturally appropriate matching of mentors and mentorees.¹⁴⁶

In addition to programs focused on cultural identity as a healing factor, there is also the issue of cultural safety within the youth justice system itself. Reports in the area of youth justice have routinely outlined the need for more Aboriginal and Torres Strait Islander staff, particularly in senior positions, as well as more culturally competent staff, to increase the cultural efficacy of work in this area.¹⁴⁷ Numerous national inquiries have found that cultural competence is critical to service delivery at all levels of the justice system, and that culturally appropriate services and programs are also integral to the success of any intervention to reduce over-representation.¹⁴⁸

Justice reinvestment approach

The Australian Institute of Criminology describes Justice Reinvestment as:

*"A data-driven approach to reducing criminal justice system expenditure and improving criminal justice system outcomes through reductions in imprisonment and offending."*¹⁴⁹

Key features of the Justice Reinvestment model include its focus on early intervention and community-led, place-based approaches, which has been identified as particularly relevant in terms of reducing the over-imprisonment of Aboriginal and Torres Strait Islander peoples.¹⁵⁰ The Australian Law Reform Commission's 2017 *Pathways to Justice: Inquiry into the Incarceration Rate*

¹⁴⁰ Atkinson, 2018

¹⁴¹ Ibid

¹⁴² Palmer, 2013.

¹⁴³ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011

¹⁴⁴ Harwood et al, 2013

¹⁴⁵ AIC, 2012

¹⁴⁶ Hartley, 2004

¹⁴⁷ Atkinson, 2019; Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017; ALRC, 2017

¹⁴⁸ Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017; ALRC, 2017, RCIADIC, 1991

¹⁴⁹ Willis & Kaprai, 2018.

¹⁵⁰ ALRC, 2018; ATSIJSJ, 2008)



of *Aboriginal and Torres Strait Islander Peoples* report concluded that the Justice Reinvestment model holds promise, particularly in terms of local communities that have high rates of incarceration and contact with the criminal justice system.¹⁵¹

The Maranguka Justice Reinvestment project in Bourke is the longest running and most comprehensively evaluated justice reinvestment program in Australia. The program was initiated by the community in 2013 in response to the high levels of incarceration of their young people and related issues. A KPMG impact assessment on the project published in 2018 found that the project had resulted in significant improvements in community safety, including a 38 percent reduction across the top five juvenile offence categories.¹⁵² KPMG estimated that the Maranguka Justice Reinvestment project's operation in 2017 had provided savings of around \$3.1 million to the justice system and benefits to the broader local economy; this amount was five times the amount of money invested in the program in the same year.¹⁵³

A project initiated in Cherbourg in April 2017 by the Department of Justice and Attorney General (Youth Justice) represents the first time there has been an attempt to implement all stages of a Justice Reinvestment model in Queensland. A community consultation report found that nearly three quarters of community members indicated support for introduction of justice reinvestment in Cherbourg; key to the model's appeal was its focus on improving the lives of younger community members and the benefit it would bring to the community as a whole.¹⁵⁴ The average cost per annum to incarcerate 10-17 year olds from Cherbourg is calculated at \$1.5 million.¹⁵⁵ More broadly, an analysis of a justice reinvestment approach to Queensland's youth justice services found that, even if only 5-10% effective, redirecting funds from detention centers and other costly responses to criminal offending towards early intervention services could save the Queensland budget up to \$263m by 2030.¹⁵⁶

Other critical factors for success

In June 2021, the Victorian Commissioner for Aboriginal Children and Young People released its report: *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, which concluded that in addition to approaches that are community led and focus on culture as a protective factor, there needed to be a **whole of government commitment** to improving the youth justice system:

Transforming the youth justice system is key, but this alone will not be enough. All parts of government, including education, health and child protection, contribute to Aboriginal over-representation in the youth justice system, and all must play their part in addressing it.

The report concluded government agencies often failed to act in a collaborative, coordinated and integrated way to provide support to Aboriginal children and young people in the youth justice system. Meanwhile in Queensland, the QFCC's review of youth justice initiatives, *Changing the Sentence*, found that while there were good examples of government agencies working in collaboration, such partnerships

*"... may be further strengthened by Aboriginal or Torres Strait Islander community-controlled organisations and non-government agencies having opportunities to increase their leadership and participation in these collaborations."*¹⁵⁷

Changing the Sentence recommended that departments responsible for youth justice, health and education, as well as the Queensland Police Service, consider developing policies dedicated to addressing the range of barriers that may be contributing to the disproportionate representation of Aboriginal children and Torres Strait Islander children in the youth justice system.¹⁵⁸

Another issue highlighted in the *Our Youth, Our Way* report and nationally by the *Raise the Age* campaign, is the minimum age of criminal responsibility, which currently sits at 10 years old across Australia. *Our Youth, Our Way* found that this comparatively low age of criminal responsibility disproportionately impacts on Aboriginal children and is a key driver of their contact with the justice

¹⁵¹ ALRC, 2018

¹⁵² KPMG, 2018

¹⁵³ KPMG, 2018

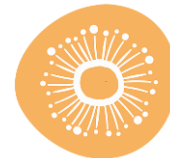
¹⁵⁴ Allison, 2018

¹⁵⁵ Ibid

¹⁵⁶ Bratanova and Robinson, 2014

¹⁵⁷ QFCC, 2021:6

¹⁵⁸ Ibid



system¹⁵⁹. The report recommends that the minimum age of criminal responsibility is increased to 14, to better address the underlying cause of youth offending and to reduce the harm and criminalisation arising from youth justice system involvement for children and young people aged 10 to 13¹⁶⁰. The report also recommended the minimum age for incarceration be lifted to 16 years, on the basis that incarceration did not prevent re-offending but instead dislocated Aboriginal children from protective factors such as their families, communities, country and culture.

Aboriginal and Torres Strait Islander children in Queensland are disproportionately affected by the current minimum age of criminal responsibility as they are detained at a higher rate than non-Indigenous children¹⁶¹. The QFCC reviewed a range of relevant research and found that while there is no definitive recommendation from neuroscience or behavioural science regarding what a minimum age of responsibility should be, there is broad agreement that 10 years is too low, concluding that:

“Given the profound impact contact with the youth justice system has on a child’s long-term prospects, it makes sense to keep children under 13 years out of the youth justice system.”¹⁶²

The *Atkinson Report* appears to support this conclusion, making a qualified recommendation that the minimum age of criminal responsibility (MACR) be raised to 12.¹⁶³ Prior to this, the *Independent Review of Youth Detention* also recommended Queensland’s MACR be raised to 12 years, to help alleviate demand for detention centre beds and to allow centres to develop better targeted programs for detainees.¹⁶⁴ In 2019 the United Nations Committee on the Rights of the Child, after reviewing evidence from around the world changed previous advice to recommend 14 years as the minimum age of criminal responsibility.¹⁶⁵

The broad message from the evidence is that the current criminal age of responsibility is too low, as it frequently serves to criminalise young people’s difficult behaviour at a young age rather than supporting them to address issues in a trauma informed way, resulting in an escalation rather than prevention of youth justice responses in their lives.

Finally, there is emerging evidence in the Queensland context about gaps in the range of services being delivered to prevent entry or re-entry into the Youth Justice system. The QFCC’s *Changing the Sentence* report notes that within Queensland’s group of young offenders, there is an even smaller group of chronic, repeat or serious offenders who need more intensive and much earlier help than that being provided by many programs currently.¹⁶⁶ The report identified a lack of dedicated case management or specialised therapy responses designed for children and young people with highly complex behaviours and highlighted an opportunity for the development of specialised, intensive intervention and support for this cohort, to be available when children are in primary school.¹⁶⁷ Aligned with such an approach, the *Our Youth, Our Way* report on over-representation in Victoria calls for a move away from children aged 10 to 13 receiving a response from within the youth justice system to a focus on other parts of the social service system, including education and health, collaborating to provide coordinated early intervention and prevention responses to this age group.¹⁶⁸

Conclusion

This evidence review has identified a range of pertinent information for policy makers and practitioners whose work impacts on the lives of Aboriginal and Torres Strait Islander children, young people, families and communities. The evidence is telling us that:

- Aboriginal and Torres Strait Islander children and young people are significantly over-represented in Queensland’s youth justice system
-

¹⁵⁹ Commission for Children and Young People, 2021

¹⁶⁰ Atkinson, 2019:

¹⁶¹ AIHW, 2021; Amnesty International, 2016

¹⁶² QFCC, 2017: 41

¹⁶³ Atkinson, 2019

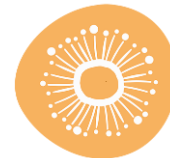
¹⁶⁴ McMillan and Davis, 2016

¹⁶⁵ United Nations Committee on the Rights of the Child, 2019

¹⁶⁶ QFCC, 2021

¹⁶⁷ Ibid

¹⁶⁸ Commission for Children and Young People, 2021



- Trauma related issues, such as family dislocation, disability, homelessness and mental health issues, are the primary drivers for Aboriginal and Torres Strait Islander children and young people's over-representation in the youth justice system.
- Aboriginal and Torres Strait Islander children are currently involved with the youth justice system as a result of other services having not been able to engage them or meet their multiple needs, due a to lack of resourcing for culturally relevant services – resulting in limited early prevention work being enabled.
- There is little to no trauma informed practice having been systemically implemented within youth justice services
- Multiple government inquiries and systemic reviews at a state and federal level have recommended a more culturally aware and holistic response to youth offending but many of these recommendations have not been implemented.
- Queensland's low minimum age of criminal responsibility disproportionately impacts on Aboriginal and Torres Strait Islander children and young people and contributes to their over-representation in the youth justice system.
- A range of promising initiatives for Aboriginal and Torres Strait Islander children and young people continue to be trialed but rarely invested or scaled up in an ongoing way, resulting in limited to no systemic evaluation occurring over time.
- Multiple reform agendas have highlighted the need for:
 - greater investment in placed based, community led responses
 - any efforts to address over-representation to be designed, developed and led by Aboriginal and Torres Strait Islander people, in keeping with the principle of self-determination
 - a focus on healing rather than punitive responses to children and young people's trauma-based behaviors
 - a focusing on cultural connection as a strong protective factor that can assist with children and young people's healing and help them to avoid youth offending trajectories.

Recommendations

The National Agreement on Closing the Gap outlines a target to reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years old) in detention by 30 percent by 2031.¹⁶⁹

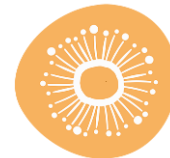
To reach this target will require a range of multi-systemic reforms. Based on the evidence covered in this review, the following approaches are recommended for the Queensland context:

1. A significant long-term increase in investment in Aboriginal and Torres Strait Islander Community-Controlled (ABTSICC) youth services to ensure the needs of young people are met prior to them entering the youth justice system, and where young people may have experienced detention, to ensure they able to transition out of detention back into the community successfully.

We fear that without a scale up of resourcing for ABTSICC to respond to youth justice issues, the partnership commitment to redressing structures, relationships and outcomes identified in the *Atkinson Report* to address over-representation is challenged and the shared accountability between the Queensland Government and the state's Aboriginal and Torres Strait Islander community would diminish significantly.

2. The Queensland government should work with Aboriginal and Torres Strait Islander community-controlled organisations to develop an intensive case management approach to addressing recidivist children and young people, and include within this approaches for primary school aged children. Aboriginal and Torres Strait Islander community-controlled organisations should then be resourced to deliver this program.

¹⁶⁹ Australian Government, 2020



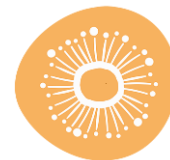
3. The current Youth Justice Family Led Decision Making program continue to be developed and resourced as an initiative which is supported by considerable evidence in terms of its example as a community led initiatives which support self-determination.
4. The Aboriginal and Torres Strait Islander Child Placement Principle be enshrined in Youth Justice legislation and policies, recognising the importance of partnership, participation and connections to family, community, and culture in upholding and asserting the principle of self-determination that is a central to fulfilling the commitment of the *Our Way* strategy.
5. Following the lead of recent reforms in child protection, the Queensland Government should undertake a process to delegate to Aboriginal and Torres Strait Islander community-controlled organisations relevant and appropriate functions currently carried out by the Department of Children, Youth Justice and Multicultural Affairs under the Youth Justice Act.
6. A review be conducted of current youth justice diversionary and early intervention programs currently being offered to identify gaps terms of culturally appropriate, trauma informed and healing aware programs across Queensland.

The voices of Aboriginal children and young people, community members and elders should be included in this review. This review should also address the disparity between the resourcing for Aboriginal and Torres Strait Islander community led initiatives and the level of funding provided for non-Indigenous programs, given the high proportion of First Nations children and young people in contact with the youth justice system.

7. Change the minimum age of criminal responsibility (MACR) in Queensland to 14 years of age, recognising evidence about child brain development, the tremendously damaging impacts of having contact with the youth justice system, the ineffectiveness of detention on reducing recidivism and the disproportionate impact a low MACR has on Aboriginal and Torres Strait Islander children and young people.
8. A focus on the improvements that need to be made to service systems in the areas of disability, child protection, mental health and youth housing to ensure they better meet the needs of Aboriginal and Torres Strait Islander children and young people including support to create trauma and healing informed service models. Further joint departmental taskforces and community coalitions may be needed to ensure better collaboration on this issue.
9. A commitment from the Queensland government that no child or young person shall be exited from any kind of youth justice order without resourced short and long term plans for how their needs will be met to assist with further justice system involvement, this includes intensive and culturally appropriate support around such areas as housing, disability, mental health and substance abuse.
10. A focus on upgrading the care that is provided to Aboriginal and Torres Strait Islander children and young people who are incarcerated including a strong focus on trauma, comprehensive assessments of health and education needs, and a plan for their future.
11. A greater emphasis on the cultural relevance of strategic drivers in the youth justice system, including programmatic frameworks and workforce development strategies. Within this, the establishment of a new Aboriginal and Torres Strait Islander justice agreement for Queensland should be considered.
12. Implementation of community led justice reinvestment approaches across Queensland enabling place-based responses to the multiple factors that have led to youth contact with police and enable early intervention response to intergenerational trauma to break this cycle. These need to be long term commitments and recognise change occurs over time.
13. A culturally appropriate evaluation framework, shaped by input from Aboriginal and Torres Strait Islander people and including baseline data be applied to existing programs and the introduction of any new program or intervention in the youth justice space. The evaluation framework should allow for continual quality improvement, be focused on ongoing

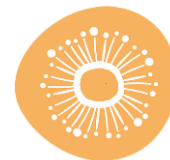


measurement of long-term program outcomes and recognise the central role culture and healing play in reducing the over-representation of Aboriginal and Torres Strait Islander children in the youth and adult justice systems.



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