



Age of Innocence: Children and Criminal Responsibility

A response to the:
Tasmanian
Commissioner for Children and Young
People survey

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yourtown, April 2021

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yourtown services

yourtown is a national organisation and registered charity that aims to tackle the issues affecting the lives of children and young people. Established in 1961, **yourtown's** mission is to enable young people, especially those who are marginalised and without voice, to improve their life outcomes.

yourtown provides a range of face-to-face and virtual services to children, young people and families seeking support. These services include:

- Kids Helpline, a national free 24/7 telephone and on-line counselling and support service for 5 to 25 year olds with special capacity for young people with mental health issues
- Employment and educational programs and social enterprises, which support young people to re-engage with education and/or employment, including programs specifically developed for those in long term unemployment
- Accommodation responses to young parents with children who are at risk and to women and children seeking refuge from domestic and family violence
- Young Parent Programs offering case work, individual and group work support and child development programs for young parents and their children
- Parentline, a telephone and online counselling and support service for parents and carers'
- Mental health service/s for children aged 0-11 years old, and their families, with moderate mental health needs
- Expressive Therapy interventions for young children and infants who have experienced trauma and abuse or been exposed to violence.

Kids Helpline

Kids Helpline is unique within Australia, as the only national 24/7, confidential support and counselling service specifically designed to meet the needs of children and young people aged 5 to 25 years. It offers counselling support via telephone, email and via real time webchat and is staffed by a paid professional workforce, with all counsellors holding a tertiary qualification. The website and social media channels provide a range of tailored self-help resources designed to meet the needs of young people, parents, carers and schools.

Since March 1991, children and young people have contacted Kids Helpline about a range of issues ranging from everyday topics such as family, friends and school to more serious issues of child abuse, bullying, mental health issues, drug and alcohol use, self-injury and suicide.

Demand for **Kids Helpline** services has increased significantly over the years. In 2020, there were 2,147,759 unique visitors to the Kids Helpline website alone, representing a 974% increase over 10 years from 199,975 visitors in 2010. Demand also spiked during the COVID-19 pandemic, with 96,129 responses provided to young people during April to September 2020 compared to the same period in 2019 (74,894), an increase of 28%.

Executive Summary

yourtown welcomes the important work that the Commissioner for Children and Young People (CCYP) Tasmania is doing to advocate for the raising of the age of criminal responsibility in Tasmania and Australia and exploring the practical implications of this change through the Age of Innocence: Children and Criminal Responsibility survey. The following information comprises **yourtown's** formal response to the questions raised in the survey.

Raising the minimum age of criminal responsibility requires a clear commitment by Government to ensure delivery of appropriate therapeutic services to ensure offending behaviour and underlying social and behavioural issues leading to such behaviour are identified early and addressed. Tasmania is in a unique position compared to other Australian states and territories, with relatively low numbers of young people offending and facing detention. By raising the minimum age of criminal responsibility to 14, and trialling individualised therapeutic services to address offending behaviour, Tasmania would be the first Australian state to align with the evidence base of what is now known about the developmental, social and therapeutic needs of young people who come into contact with the criminal justice system. It would become the vanguard for other Australian states and territories to meet their international human rights obligations under the Convention on the Rights of the Child so that reintegration and rehabilitation become the focus for addressing youth justice issues (Article 40) as opposed to retribution and punishment.

yourtown strongly advocates that any services developed to address the offending needs of children and young people, be developed in keeping with the principle of 'human-centred' design. **yourtown** considers it is only by empowering young people to articulate and co-design products and supports intended for their use, that services and systems will be truly effective in meeting their core needs and concerns.

yourtown would like to invite the Commissioner to undertake a 'human-centred' design approach and collaborate with **yourtown** in a joint **Your Voice** project held with Tasmanian young people in contact with the criminal justice system to better understand their ideas for improvement in services and supports, and inform the design of services that would best meet their needs. Collaborating on a **Your Voice** project in Tasmania would be tailored, unique and distinct from current and previous generalist surveys and engagements conducted with young people. It would provide a targeted and unique opportunity to listen to, and engage with, a select group of young people at risk of

offending or re-offending to better understand and help them articulate their circumstances, issues, and ideas in order to inform the design of programs and services. As a second stage of this engagement, key young people identified through these consultations could help co-design prototype services that young people from at risk backgrounds would want to engage with, and that work for them. The expectation would be that these co-designed services could then be trialled, tested and refined in Tasmania.

We welcome any further questions, or discussions with the Commission on how we might better hear from, and design support services with children and young people at risk of contact with the criminal justice system.

Question 1a.

If the minimum age of criminal responsibility is raised in Tasmania (e.g. to 14), what evidence-based alternative programs, interventions or supports would be required to effectively address the underlying needs of children aged below the minimum age who would otherwise be dealt with in the criminal justice system because of their behaviour?

Raising the minimum age of criminal responsibility provides the unique opportunity to boldly explore other opportunities for better responding to children who are at risk of contact with the criminal justice system. Children's brains are still developing well beyond the age of 18, making them both vulnerable to poor or risky choices, but also responsive to effective behavioural therapies to prevent future offending.

There is a wealth of evidence that crime can be addressed and prevented by tackling its underlying causes. Key elements of effective responses include:

- (a) 'human-centred' design and co-designed by young people at risk, or in contact with the criminal justice system
- (b) a comprehensive diagnostic assessment of the young person
- (c) a therapeutic model of intervention which aims to treat underlying issues identified in the assessment
- (d) trauma informed and trauma responsive practices by service delivery staff
- (e) cultural safety
- (f) support is community-based, age-appropriate, flexible, individually tailored, and truly diversionary in nature so that failed or partial participation does not lead to further criminalisation of the young person
- (g) criminal justice responses are integrated within affordable and equitable community based mainstream support systems to enable ongoing seamless and holistic support to both children and their families, and
- (h) services are staffed by a multi-disciplinary allied health team and governed by a child safe approach
- (i) the principles guiding service provision should include that the safety, wellbeing and best interests of the child are paramount and that they should be protected from harm or risk of harm.

- Human-Centred design and co-designed

To develop appropriate therapeutic services and supports to address the problem of youth offending, new approaches are needed to identify need; design and deliver services. For a program or support to be successful and effective, there needs to be a mindset of thinking differently about how to address the complex problems of youth crime and change the trajectory of young people engaging in offending or risky behaviour, by firstly

adopting a 'human-centred' design approach to identifying what services and supports should be provided.

Applying a holistic principle of 'human-centred' design means designing services and systems to address the young people's core needs. The foundational principle of human centred design is to obtain a true understanding of the people who experience the problem, before a solution is designed. The aim is to obtain a far clearer understanding of the wider context in which the problem lies. To effectively address the underlying needs of children below the minimum age of criminal responsibility, a problem-solving approach is needed that puts these at-risk young people at the heart of the process. Services and supports should be designed around what young people say they want and need, and would happily engage with.

To achieve a human centred design goes beyond understanding demographics, community need and drivers relating to offending behaviour, but places the stories and voices of children who offend at the centre of understanding what the problem is, and therefore what the solution should address. Once a fulsome understanding of their perspective is gained, it becomes easier to understand and see whether the services designed for them will meet their needs effectively or not. However, for human centred design to work in practice, service delivery also needs to be based on comprehensive assessments of the young person and their needs, so that service provision is mapped against the young person's life journey, aligned and adapted to the relevant behaviour and complexity of need (as is discussed below). Journey mapping of the young person's experience is critical to having a holistic understanding of the young person's experience, as well as to map the interactions with multiple services and agencies, and fully understand the complexity of the young person's need.

There is strong evidence to support human-centred design principles in developing appropriate services and systems. However, there are less evidence to demonstrate how such design principles are done well, or effectively, particularly with children and young people. **yourtown** is currently undertaking a series of consultations with young people regarding their views on government services, supports and policy through a project called **Your Voice**. This project has been funded by the Australian Government as part of its commitment to hear from young people aged 15-24 so that young people's views can inform policy directions and areas of focus for the government with regard to services and supports. The project has already gathered the views of over 2,000 young people from across Australia via a national survey, and will progress to a series of online forums, then a youth summit involving up to 50 young people. The project will culminate in three Youth Ambassadors who participated in the process, meeting Government representatives to provide them with an overview of the views and recommendations for improvement. This

project will result in essential feedback on current and future policy and services provided by the Federal Government.

The voices of young people at risk of engaging in offending behaviour is limited when it comes to informing the design of services to meet their needs. Young people at risk of offending are more likely to be the target of negative press and stigma, than have their voices and stories heard, or to be engaged in co-design processes. **yourtown** would welcome the opportunity to collaborate with the Commission in a targeted **Your Voice** project with young people who have recently been, or are still in contact with the criminal justice system in Tasmania. Young people could be engaged through surveys, forums and discussion groups to articulate their circumstances, issues, and ideas in order to inform service development. Several youth representatives could present overall findings to the Tasmanian Government. As a second stage of this engagement, key individuals from these consultations could help co-design prototype services that young people from at risk backgrounds would want to engage with, and that works for them, with the expectation that these co-designed services have the opportunity to be trialled, tested and refined in Tasmania.

Without undertaking this step of listening to, and working with at risk young people to co-design these services, we will continue to struggle to find effective services that truly support and divert children and young people from coming into contact with the criminal justice system.

- Comprehensive assessment of the needs of the young person

In order to appropriately identify the needs of the young person, it is critical that a comprehensive needs assessment is undertaken *prior* to engagement with a service or program. A comprehensive assessment should take into account multiple domains, for example: health (including mental health), disability, education, mental and social functioning, substance use, and contextual circumstances such family circumstances and violence, history of trauma, abuse, neglect and engagement with various service systems. Many young people in contact with the criminal justice system have complex presentations, such as FASD, autism spectrum disorder, acquired brain injury, mental health issues, including personality disorders, and cognitive disability.

While standard pathways can be aided by common assessment tools, complex needs require identification of which pathways are needed, whether for specialist clinical, behavioural, criminal justice and health assessment services, or access to appropriate cultural support and engagement, or supports to optimise communication. There is a plethora of evidence that supports early identification and comprehensive assessment of need as critical for an effective assessment of individuals with complex support needs. Following an early and comprehensive assessment of the young person's needs, supports

can be identified, and an individual intervention plan developed. Such multi-disciplinary, individually tailored interventions are key to placing young people at risk on a positive pathway for future success.

- Governed by a therapeutic model of support and care

Children in contact with the criminal justice system, or at risk of engaging in offending behaviour often have histories of trauma, abuse, neglect or have experienced severe adversity. What they need is not a criminogenic punitive response to their behaviour, but a well-being, safety and support approach that seeks the best interests of the child by addressing their needs and helping improve their long-term outcomes, particularly diversion from future offending and the adult criminal justice system. It is critical that these children and young people are provided with an approach that is governed by an intensive, holistic care approach, including guidance of therapeutic specialists.

There is extensive research of the role of therapeutic care embedded with the learnings from trauma theory, child brain development and attachment theory, and their connection to service delivery. Therapeutic supports for a child or young person should provide holistic, individualised, team-based approaches to the complex impacts of trauma, abuse, neglect, separation from family, culture and significant others, and other forms of severe adversity. This needs to occur in a relational therapeutic setting that is culturally responsive, and provides positive, safe, reparative and healing relationships and experiences to address their complex and developmental needs.

Therapeutic services should be designed to be scalable and flexible. Scalable – in order to meet fluctuating periods of demand (such as during holiday season); and flexible – in order to adapt and change the level of therapeutic care and support being provided by initiating lesser, alternative, or additional intensive forms of therapeutic care and support when required, and as determined by the individual needs of the child or young person.

Much can be gleaned from programs such as Evolve Therapeutic Services (ETS) model¹ operated by the Department of Children, Youth Justice and Multicultural Affairs in Queensland. Through ETS, children and young people under the age of 18 are provided with intensive, trauma-informed mental health services. The children who are involved with the service are involved with child safety services, or are on child protection orders and in out-of-home care and experiencing severe and/or complex psychological and behavioural support needs. ETS provides therapeutic mental health support to help improve the social and emotional wellbeing of the young people, and support their participation at school and in the community. They also support the knowledge and skill

¹ [Evolve Interagency Services - Department of Children, Youth Justice and Multicultural Affairs \(cyjma.qld.gov.au\)](http://Evolve%20Interagency%20Services%20-%20Department%20of%20Children,%20Youth%20Justice%20and%20Multicultural%20Affairs%20(cyjma.qld.gov.au))

development of foster/kinship carers, residential care providers, government, non-government and private sector service providers in supporting children and young people in care. Support is provided by a multidisciplinary team which can include allied health professionals (psychologists, social workers, occupational therapists and speech pathologists), nursing, medical, Aboriginal and Torres Strait Islander health workers and administrative staff, with each team having a team leader and psychiatrist overseeing the young person's care.

- Trauma informed and responsive

Trauma-informed practice should be core to any service dealing with at risk children and young people. Evidence supports that (a) youth involved in the justice system have high rates of exposure to trauma, often from early in life, and often across multiple different contexts,² and (b) trauma and chronic stress can have long lasting effects on brain development, which can contribute to antisocial behaviour and offending in later life.

There is also abundant evidence to support that trauma informed approaches that build on young people's strengths and attachments will assist that young person to understand and recover from the impact of their traumatic experiences, and reduce the likelihood that they will continue to engage in high-risk and anti-social behaviour.

In relation to appropriate programs that demonstrate this in practice, there is much to be learned from the experience of Australia's Indigenous community in understanding and addressing trauma. While inter-generational trauma from historical events associated with the colonisation of Indigenous land is specific to our Aboriginal and Torres Strait Islander communities, Indigenous expert involvement in the co-design of trauma informed models and programs could provide beneficial insights into what could work for both Indigenous and non-Indigenous young people alike. Given the significant over-representation of Indigenous young people in the youth justice system Australia wide, Indigenous expertise should be engaged in the development of trauma-informed approaches for all mainstream services and supports seeking to divert or support young people at risk of entering the criminal justice system, or in contact with it. These services and supports should then be adaptable to meet the individual child's traumatic experiences.

One such example of this expertise can be found in the Healing Foundation.³ The Healing Foundation is a national Aboriginal and Torres Strait Islander organisation that partners with communities to address the ongoing trauma caused by actions like the forced removal of children from their families. They support evidence-based healing programs and aim to create an understanding of the historical legacy of trauma and its

² E.g. Dierkhising, C. B., Ko, S. J., Woods-Jaeger, B., Briggs, E. C., Lee, R., & Pynoos, R. S. (2013). Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network. *European Journal of Psychotraumatology*, 4, 0.3402/ejpt.v4i0.20274

³ www.healingfoundation.org.au

manifestation in communities today. Their experience and knowledge are valuable resources that could assist in developing mainstream services that incorporate trauma informed and responsive practices, that are sensitive to the needs of Indigenous and non-Indigenous young people alike. According to the Healing Foundation, unaddressed intergenerational trauma is a driver of some of the most serious social and wellbeing issues facing Aboriginal and Torres Strait Islander communities today, including drug and alcohol addiction, criminal behaviour, violence and suicide.⁴ The Healing Foundation's workforce capability model is designed around ensuring that their teams can work effectively with people and communities impacted by trauma. Common elements of a healing informed and trauma aware service model include understanding trauma and its impacts, creating safe places, employing culturally competent staff, sharing power and governance through community co-design, and supporting safe relationship building to promote healing.

An example of their methodology can be seen at the Murri School in Queensland where the Healing Foundation has combined therapeutic intervention, service coordination, family case work, family camps, and cultural activities to create a holistic healing environment for students. The program brings together family support workers, psychologists, health professionals and healing aware trauma informed teachers to create a culturally appropriate, supportive environment for students and their families.

There is much to be learned from Indigenous specific trauma informed approaches to service delivery and care that could inform mainstream services and supports. In light of the increasing numbers of Indigenous children and young people coming into contact with Tasmania's youth justice system, it is therefore strongly recommended that programs and supports be co-designed by, and incorporate the experience and knowledge of the Indigenous community.

- Culturally safe and appropriate

In keeping with the comments above, alternative programs or interventions should incorporate co-design and leadership by Indigenous communities, and draw on their expertise. This is essential if Tasmania is to successfully address the overrepresentation of Indigenous people in contact with the criminal justice system. Cultural safety and appropriateness should be embedded within the programs, and not as an add-on or after thought.

An example of an Aboriginal and Torres Strait Islander designed and community led culturally safe program includes the recently implemented On Country programs being

⁴ Submission by the Aboriginal and Torres Strait Islander Healing Foundation 22 June 2020 to the Parliament of Australia, Joint Select Committee on Implementation of the National Redress Scheme
<https://healingfoundation.org.au/app/uploads/2020/09/The-Healing-Foundation-Redress-submission-1.pdf>

trialled in Queensland in Cairns, Mount Isa and Townsville. These programs are designed to address re-offending behaviour of Aboriginal and Torres Strait Islander young people aged 10 to 17 years who have high and complex needs. The program offers an immersive 'On Country' experience and intensive case work support for Aboriginal and Torres Strait Islander young people by seeking to strengthen the young person's cultural and spiritual connections to land, sea and sky through engaging in a 6-8 week program with local community leaders, Elders and Traditional Owners. Other aims of the program include: strengthening family relationships and connections with the community while promoting positive self-identity; re-engage young people with education, training and employment; and refer young people and their families to support services in the local community.

These trial programs are yet to be evaluated; however, the On Country program will be formally evaluated in 2022-23. The evaluation will consider (amongst other things), whether strong cultural connections have helped to reduce re-offending behaviour.

- Age-appropriate, flexible, individually tailored, diversionary and community-based support

Every therapeutic service should be age and developmentally appropriate to the young person being supported. This is in line with the overwhelming research on child development that shows the brains of children are still developing and maturing throughout childhood and adolescence, so that programs should be designed to reflect and adapt with developmental change.

Just as supports and programs provided to the child should be based upon a comprehensive assessment of the individual child's needs, services should be tailor-made to meet their needs as is appropriate to their developmental age. Services should be appropriately funded in order to be able to have a workforce that is equipped to deliver flexible, person-centred and services in the community that can be adapted to meet a diverse range and complexity of need, as distinct from a one-size-fits-all service delivery model.

The most appropriate response for any young person is diversion away from the criminal justice system to community support services. Diversionary schemes and programs should be administered by bodies that are independent of law enforcement bodies, with diversion to such programs not dependent upon participation or overshadowed by the threat of a penalty for failure to finish the program.

The point of diversion is often the first moment the young person might have their complex needs assessed and identified, and have the opportunity for a specialised and early intervention response. Therefore, it is key that the response is timely, driven by a well-being, safety and support rather than a punitive, police or court response, and good

connections and rapport are established with the young person and their community. to understand that they are not going to be punished for their behaviour but supported to get the help they need.

- Affordable, Equitable, Integrated and Holistic support to young people and their families

Optimal programs should be designed around supporting not only the young people, but also their families in recognition that where issues in the home environment remain static and unaddressed, successful outcomes in altering the trajectory of offending behaviour in the young person can be limited or ineffectual. Many risk factors for offending are associated with familial socio-economic disadvantage. This can include parental or sibling offending history; child abuse; family violence; low parental educational attainment or employment; parental use of drugs and/or alcohol; poor child-rearing practices; neglect or abuse; and poverty. In the 2017 survey of young people by the Victorian Department of Health and Human Services under their youth justice review and strategy, one-third of respondents identified “the family” as the main driver for young people engaging in serious and violent offending.⁵ Strong families act as protective factors, with children living in stable environments with supportive caring parents being less likely to find themselves on a trajectory towards later involvement in crime.⁶

One example of an evidence-based early intervention family-based program in Tasmania is the **yourtown** Early Childhood Development Program in Old Beach, Southern Tasmania.⁷ While not targeted to the 10-14 year age group, this program would be relevant for those families with children in that age group with siblings aged 3-5 years. The aim of the program is to give preschool-aged children the best start in life by using prevention and early intervention approaches that work towards improved health and wellbeing of families, and to create strong, child-friendly communities.

Any effective child interventions need to be integrated within broader family and community context, working with the child’s family, school and wider community. They should be based on a comprehensive assessment of familial issues to be addressed such as poverty, family dysfunction, parental mental health, unstable accommodation, and alcohol and drug use. Critically, these services and supports should be affordable, and freely available on an equitable basis to vulnerable and disadvantaged families who would otherwise be unable to afford the cost of private or co-payment services.

⁵ Armytage, P. and Ogloff, J. (2017) *Youth Justice Review and Strategy*. Victorian Government: <https://qpo.org.au/node/101051>

⁶ Homel R, Cashmore J, Gilmore L, Goodnow J, Hayes A, Lawrence J, Leech M, O’Connor I, Vinson T, Najman J & Western J. (1999). *Pathways to prevention: developmental and early intervention approaches to crime in Australia*. Canberra: Commonwealth Attorney-General’s Department

⁷ <https://www.yourtown.com.au/our-services/early-childhood-development-program>

- Multi-disciplinary workforce

For any programs and services to be successful there needs to be early and corresponding investment in building and maintaining the workforce capacity to meet these anticipated needs. For example, young people with mental health needs are over-represented in the youth justice system, while the use of alcohol and drugs (particularly ICE), is an increasingly serious issue linked to offending behaviour.⁸ Despite Australian Government funding for headspace and the Tasmanian Government funding for Child and Adolescent Mental Health Services, there remain significant gaps in services particularly for children under the age of 12. Those under the age of 12 are too young for headspace's services, and increasing demand on government mental health services means that they are often only able to support children with the most complex mental health problems. In addition to this, long waiting lists in the public system can often mean no support is available for the young person, particularly where costly private specialist support services is financially out of reach.

A multi-disciplinary workforce should be designed on a relational model, rather than a professional medical model. Relationships are essential for working with vulnerable groups, and programs need to be designed in a way that fosters mutual respect and trust. This is particularly important with respect to young people with complex needs exhibiting offending behaviour, as they may have often been let down by, and lost faith in, the relationships they have with adults. By developing and nurturing respectful relationships with adults at home, school, in the wider community, or with service providers should be a central aim of early intervention initiatives.

Given the difficulties that **yourtown** has experienced in appointing staff with the relevant qualification and experience in Tasmania for our early intervention and family programs, increased service provision should also involve government investment in increased training opportunities or incentives for those entering the industry, or wishing to move to Tasmania to engage in this work.

It is only through the provision of significant and ongoing core funding for the delivery, support, integration and equitable access to such services, will we start to see a reduction in offending behaviour in this age group. Key elements include: an existing stable and skilled workforce; high quality practice models; and quality assurance/supervisory structures for a therapeutic model which can be replicated, adapted and expanded upon. Investment of money and building workforce capacity to meet the specialised needs of this age group and their families should be reflective of areas of need (both pre-existing and emerging) and recognise high demand areas will require more intensive support.

⁸ Armytage, P. and Ogloff, J. (2017) *Youth Justice Review and Strategy*. Victorian Government: <https://apo.org.au/node/101051>

- Rooted in child safe principles

Every service or support should comply with the National Principles for Child Safe Organisations in policy and practice. It can be easy to give lip service to the principles, without ensuring they are embedded in practice. Therefore, any services designed to meet the needs of at risk young people should have transparent and demonstrable practices that support and uphold these principles, and embed child safety, wellbeing and cultural safety in all attitudes, behaviour and practice and the very fabric of the program design.

It is also key that young people have clear mechanisms to provide feedback or complaints regarding the service delivery, and that the feedback is taken seriously, valued and informs service improvements.

Question 1b.

Should there be a separate minimum age of detention? If the minimum age of criminal responsibility is raised (e.g. to 14), should a higher minimum age of detention be introduced (e.g. 16)? If this was to occur, what evidence-based alternative programs, interventions or supports would be required for those children aged below the minimum age of detention?

In keeping with Article 37 of the Convention on the Rights of a Child (CRC), detention or imprisonment should be a measure of last resort only, and for the shortest appropriate period of time. **yourtown** supports - as do many of Australia's international counterparts and as international research demonstrates - that Tasmania should raise the age of criminal responsibility to at least 14 years old, while also raising the minimum age of detention to 18 years of age. **yourtown** strongly supports the Change the Record Blueprint for Change⁹ (the Blueprint) principle 10 that *'punitive 'tough on crime' approaches to youth offending and misbehaviour fail to recognise that young people are still developing and that far more appropriate opportunities for support and positive reinforcement exist than putting children behind bars. Exposure to youth detention also substantially increases the likelihood of involvement in crime as an adult. Young people at risk must be supported to maximise their chances of achieving their full potential'*. While the Blueprint is focused on changing the record on the disproportionate imprisonment rates, and rates of violence experienced by Aboriginal and Torres Strait Islander people, the Blueprint should be seen as a significant and influential guide to address the significant and increasing overrepresentation of Indigenous young people in the youth justice system both in Tasmania, and the rest of Australia.

There is substantial evidence to support a link between detention and mental health issues. It is well known that young people within the youth justice system have higher rates of

⁹ https://www.reconciliation.org.au/wp-content/uploads/2017/11/Change-the-Record-Blueprint_web.pdf

mental health disorders and cognitive disabilities when compared with the general population. Further, these conditions are worsened when exposed to youth detention, with demonstrable increased risk of suicidality, depression, substance abuse and other behavioural disorders.

Further, detention has the potential to reinforce trauma. It fosters an environment where young people (who are often already victims themselves) can experience stronger hypervigilance and struggle to minimise reminders of trauma. These factors can 'create an agitated atmosphere for a young person, which may result in him/her feeling there is danger in the environment, and respond with either physical aggression, or conversely with physical and emotional distance from others, in an attempt to feel safe'.¹⁰ The reality of finding that the place *is* unsafe, only validates those behaviours of acting out.

However, **yourtown** also recognises that communities need to be safe and feel safe. Further, some children and young people may be at risk of harm to themselves or others, and may need specialised support for short periods of time within secure therapeutic settings. Therefore, while **yourtown** supports the raising of the minimum age of detention to 18, there may be circumstances where the principle of acting in a child's best interests overrides, and a young person found guilty of an offence may require placement in a secure therapeutic care facility. Therefore, **yourtown** considers that principle 10.3 of the Blueprint should be a guiding principle for all young people that *'whilst observing the principle that detention must only be used as a measure of last resort, ensure that any person up to and including the age of 17, is detained in appropriate facilities. Youth detention facilities should be built for purpose and provide the supports that vulnerable children need in an appropriate and therapeutic environment'*. **yourtown** considers that such secure services supporting children under the age of 18 should be governed by the same principles set out in the response to question 1a, and:

- strictly time limited in accordance with an agreed therapeutic and behaviour change plan
- with sentences presumed to be served in the community, unless the court determines that there is a substantial and immediate risk to community safety and the young person needs to be placed in a secure facility for a time limited period to receive therapeutic care and support

¹⁰ Pickens, I. (2016). Laying the Groundwork: Conceptualizing a Trauma-Informed System of Care in Juvenile Detention. *Journal of Infant, Child, and Adolescent Psychotherapy*, 15(3), 220-230; Barron, I., & Tracey, J.K. (2018). Quasi-Qualitative Evaluation of Progressive Counting in Secure Accommodation in Scotland: an Exploratory Cluster Case Study. *Journal of Child Adolescent Trauma*, 11(3), 305-315; Fasulo, S.J., Ball, J., Jurkovic, G., & Miller, A.L. (2015). Towards the Development of an Effective Working Alliance: The Application of DBT Validation and Stylistic Strategies in the Adaptation of a Manualized Complex Trauma Group Treatment Program for Adolescents in Long-Term Detention. *American Journal of Psychotherapy*, 69(2), 219-239.

- placement in a secure therapeutic facility should be an option of last resort, and based on a comprehensive risk assessment identifying alternatives to manage the needs and risks associated with the young person
- a secure services therapeutic model should incorporate step up/step down services governed by the principle of prioritising the least restrictive setting to receive therapeutic support and care.
- Lack of access to therapeutic, supervisory or support services in the community should be legislatively mandated as never being a sufficient reason for placing a young person in a secure facility.

As noted in response to question 1a, there are currently no optimal services that embrace all these characteristics. However, a possible example to be drawn upon is the Victorian Secure Welfare Services¹¹ (VSWs) program which could be adapted to meet the needs of serious and/or high-risk young offenders. In the VSWs program, children can receive trauma-informed, therapeutic interventions delivered in a safe environment.

Placement at a VSWs is one of several response options available within the Victorian child protection system, and was established for children who require highly structured settings during a significant crisis. This service is considered an option of last resort, where containment is deemed necessary and the child protection networks are unable to manage or reduce the risks to the child. The VSWs acknowledges that as a secure facility, placement is 'the most extreme form of protective intervention and all other options must be explored first and relevant human rights considered'. A young person can be placed in the service for a period not exceeding 21 days if the Secretary or Court is satisfied there is a substantial or immediate risk of harm, with an extension of that time available for a further 21 days only in exceptional circumstances. The intent is for the facility only to be used when a child or young person is at extreme risk and the existing community services are unable to manage that risk. Generally, admission is precipitated by a significant crisis in the young person's life, with the aim of the service keeping the young person safe while a suitable case plan is established to reduce the risk of harm and return the child or young person to the community as soon as possible in a safe and planned way.

While initial investment to establish these services would be costly, it would pay off in the long term. Tasmania's only youth detention centre, Ashley Youth Detention centre currently only has capacity for 50 young people. Investing in diversion programs, and short-term secure care facilities as alternatives to detention would directly impact any need for costly infrastructure builds for larger and more detention centres to meet population growth and demand. Further, early intervention programs provided in the community could be designed to address recidivist behaviour and underlying drivers, and would ultimately reduce the social costs of supporting life-long offenders and their

¹¹ [Secure welfare service | Child Protection Manual \(cpmanual.vic.gov.au\)](https://cpmanual.vic.gov.au/Secure-welfare-service)

families.¹² Detention centres would also no longer be the place of last resort for a young person to receive, education and support that they have been unable to access in the community, as more equitable and accessible services become available in the community.

Question 2

How should the overrepresentation of Aboriginal and Torres Strait Islander children in our criminal justice system inform options for the reform of Tasmania's laws on the minimum age of criminal responsibility?

The over-representation of Aboriginal and Torres Strait Islander in the youth justice system is a national crisis, and shame. The fact that the numbers of Indigenous youth in the youth justice system in most states or territories has not decreased, and in some states has increased is cause for concern. For example, in Queensland the rate of Indigenous young people on supervision orders in the community or in detention has remained relatively static at roughly 60% of all orders over the last five years, despite significant investment in youth justice reforms. Tasmania's trend demonstrates an increase of detention rates for Aboriginal and Torres Strait Islander young people: from 29.37 in 2017–18 to 34.58 in 2018–19, an increase of 17.7%.

yourtown strongly supports the recommendations made in the Blueprint. In particular investing in culturally safe and targeted early intervention and prevention strategies aimed at increasing safety and reducing the experience of violence (Principle 4.2) and Principle 10 that *'young people don't belong in prison' with 'all appropriate supports are provided to enable Aboriginal and Torres Strait Islander children and young people to succeed at school. This should include the provision of restorative justice initiatives and healing programs within school to enable the early resolution of issues'* (Principle 10.6).¹³

This crisis should drive the imperative to raise the minimum age of criminal responsibility, and the minimum age of detention. It is unacceptable that First Nations people are consistently and disproportionately represented in the criminal justice system.

Another option (as discussed in response to question 1a), is enabling Indigenous-led solutions to inform and underpin mainstream problems. Namely, moving away from cultural responses or programs being an 'addition' or 'after-thought', but rather enmeshing and embedding Indigenous leadership, responses, learning, experiences, skills and views as central to the strategic planning, policy and delivery of youth justice services to the

¹² E.g. Welsh, B.C., Farrington, D.P., Gowar, B.R. (2015). Benefit-cost analysis of crime prevention programs. *Crime and justice*, 44(1): 447-516, *Cost effectiveness of early intervention*. (2007). *AI Crime reduction matters* No. 54. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/crm/crm054> and Homel, R. (2005). Developmental crime prevention. In Tilley, N. (ed), *Handbook of crime prevention and community safety*. Devon: Willan. 71-106

¹³ https://www.reconciliation.org.au/wp-content/uploads/2017/11/Change-the-Record-Blueprint_web.pdf

benefit of Indigenous and non-Indigenous youth alike. Further, greater emphasis should be given to funding and supporting innovative Indigenous community-led and community-owned interventions, such as demonstrated by the pilot On Country initiatives in Queensland.

Question 3a.

What might be the best approach for protecting the community from the rare cases of serious anti-social or harmful behaviours committed by children aged below the minimum age of criminal responsibility?

Where a young person, who is aged below the minimum age of criminal responsibility demonstrates serious anti-social or harmful behaviours, it may be appropriate to temporarily place the young person in a secure therapeutic facility. This should be for as short a time as possible, while working towards rehabilitation and transitioning the young person to a less restrictive step-down facility, and ultimately, the community.

Given the significant restrictions on a young person's rights (with no responsibility able to be attributed to an alleged criminal offence), and the potential impact on the child's safety, health and wellbeing, any approach should be clearly rooted in a rights-based therapeutic model governed by the principle of seeking diversionary supports and programs that are in the 'best interests' of the child. To enable such significant overriding of the child's rights, the model should be governed by legislation, and overseen by a legislatively mandated and specially established, accessible quasi-judicial body such as a Tribunal that is appropriately empowered to ensure natural justice, procedural fairness, appeal, and review mechanisms are available to the child. Tribunal members should represent the community and professional expertise required to match the best interests, wellbeing and needs of the child involved. Any such Tribunal should be required to recognise the formal networks of support (kin, family, friends, peers) and be governed by the concept of therapeutic jurisprudence and non-adversarial approaches to the law, rather than an adversarial model of legal process. Community and cultural participation should be incorporated into the quasi legal model, with diversionary services to address the serious behaviour of the child meeting the therapeutic requirements set out in response to Question 1a.

Any approach should work closely with child's family, school and wider community stakeholders to ensure that issues such as poverty, family dysfunction, parental mental health, unstable accommodation and alcohol and drug use are being supported and worked on to help reduce the likelihood of repeat child offending. Further, given the significant risk of attracting stigma, approaches should also give consideration as to community, familial and peer perceptions and support for the young person.

Question 3b.

If the minimum age of criminal responsibility is raised (e.g. to 14 years), what alternative legal frameworks may be required to ensure children aged below the minimum age who exhibit serious anti-social or harmful behaviour receive appropriate reparative interventions and supports directed at addressing the risk factors for their behaviour? (What sort of competent legal authority should make the decision about the appropriate pathway for the child to take? What criteria or factors should inform that decision?)

yourtown supports the Blueprints recommendation for the development of specialist youth courts (Principle 10.4) to navigate the human and legal rights involved in these issues.

A possible mechanism to oversee these issues as noted in Question 3a, could be a quasi-judicial body such as a Tribunal; governed by a human rights framework; supported by specialist youth expertise and knowledge, and Aboriginal community leaders; and underpinned by a model of therapeutic jurisprudence would be able to act as a competent legal authority to make decisions regarding the appropriate pathways for a child to take.

The Tribunal should be regulated and governed by strict legislative criteria, with Tribunal members required to prioritise interventions and supports within the community, and only able to order secure placements as a last resort for the shortest period of time, after all other avenues are reasonably exhausted. The Tribunal could also be responsible for overseeing the facilitation of the young person's re-integration into the community following secure care; and oversee progress updates on services and supports received.

Such a tribunal could also have oversight of community-led and restorative justice approaches, including healing circles and youth conferencing for children and young people 14 years and above.

However, it should be very clear that the governing principle for the Tribunal is to ensure young people have access to and are provided with services that align with a comprehensive needs' assessment, and meet their needs. Any placement in a secure service should not be a substitute for detention, and should be strictly time limited. Given that the criminal justice system has repeatedly demonstrated its ineffectiveness and inappropriateness in responding to young people who have a disability, or are experiencing disadvantage such as poverty, mental illness, drug or alcohol addiction, homelessness or unemployment, it is also important that any competent legal authority established under legislation needs to be clearly governed by a social policy model and support response, and not a criminal justice response.

Question 3c.

If the minimum age of criminal responsibility is raised (e.g. to 14 years), but not for all offences, in what contexts or for what offences should it not be raised — should there be ‘carve outs’ for serious offences like murder or sexual assault?

yourtown is strongly opposed to some offences being carved out and excluded from the minimum age of criminal responsibility. The unforeseen practical consequence would be to exacerbate disadvantage and create a separate class of young people to whom certain human rights did not apply. Further, given the prevalence of young people with disabilities (cognitive and/or psychosocial) who are overrepresented in the justice system and particularly the prison population, they would likely fall within this category, amplifying and entrenching disadvantage and discriminating against a discrete and already highly vulnerable group of young people.

Serious crimes such as sexual assault by another child under the age of 14 are rare; it is even rarer for murder. There is much to be learned from the difference between the responses to the murder of two-year old James Bulger by two 10 year olds in England in 1993; and the murder of five year old Silje Redergard twenty months later by two 6 year old boys in Norway in 1994. Both cases are rare examples of murder of a child by other young children. However, the difference in legal and societal responses speaks volumes. In England where the age of criminal responsibility is 10, both boys were convicted of their crimes and incarcerated with substantial custodial sentences to reflect the community outrage. One of the offenders, Venebles has continued to offend in adult life, and upon release subsequently received a 40 month sentence for possession of indecent images of children. In contrast, in Norway where the age of criminal responsibility is 15, the community (while shocked and horrified by the crime) did not engage in sensational reporting, and neither child was branded as a criminal. The two boys were protected rather than punished. They were dealt with primarily as welfare concerns with the focus on reintegrating the boys as much as possible. Neither of them have been involved in further violence or offending, even though one of them has been reported to have ongoing psychological struggles with the consequences of his actions undertaken as a 6 year old.

The raising of the minimum age of criminal responsibility is to ensure that young people are not criminalised for behaviours and actions they do not understand. It would be a legal absurdity and make a mockery of justice if some ‘serious’ crimes were ‘carved out’ and others were not. It would mean that a 13 year old would not have the capacity to be found guilty of stealing, yet a 10 year old could have capacity and be found guilty for the far more heinous and serious crime of murder.

The appropriate response for any child under the age of 14 is a well-being, safety and support response. A child who takes the life of another child or commits a serious offence should be provided with the supports that align with their comprehensive assessment, and

diagnoses and be provided with age and developmentally appropriate supports in the community.

It is a lynch mob mentality that seeks punitive responses to serious crimes by young children. Such a mentality is not conducive to justice, nor a properly functioning democracy, nor a fair and equitable justice system. England's example also shows that punishment does not prevent re-offending, and can in fact, be counterproductive in preventing future societal harm. There is much to be learned from the Norwegian response and attitude, where children who commit serious offences do not go through the justice system, but are directed to welfare services where they are protected and supported up to the age of 18.

Question 4.

What legal, federal, or other implications might arise from Tasmania raising the minimum age of criminal responsibility if other Australian jurisdictions do not?

There are positive implications for raising the minimum age of criminal responsibility. It would give Tasmania the opportunity to become the leader of reform in this area in Australia. Tasmania would have the opportunity to set legal precedents, guide service delivery to meet the needs of children exhibiting offending behaviour, and report and inform future Australian reforms.

Tasmania would also be demonstrably achieving their commitments under the Tasmanian Department of Police and Emergency Management Aboriginal Strategic Plan 2014-22, and the commitment to reduce the level of crime committed by and against Aboriginal people. By engaging in alternative strategies to address potentially offending behaviour in Indigenous young people, it would provide an effective way of reducing that young person's likelihood of ongoing contact with the criminal justice system.

There are also financial benefits for Tasmania. On a simple cost benefit analysis, it makes sense to provide diversionary and alternative interventions for young people given the high life time costs associated with interactions with the criminal justice system. There is also a high cost associated with detaining young people, with children roughly 10 times more expensive per person, as compared with an adult in detention. This is particularly important given the ample evidence that children who offend at a younger age, and are detained in a detention centre, are more likely to re-offend as a youth and be further involved in the criminal justice system as an adult. By investing in early intervention, it reduces both the immediate and future costs associated with the criminogenic effect of detention. It could provide Tasmania with a further opportunity to be the lead in Australian devised alternatives to detention, and cost effective strategies to address offending behaviour.

By raising the minimum age of criminal responsibility, Tasmania would also be creating a 'fairer' legal system than other states and territories. The experience of a trial, including the impact of a criminal conviction of a child under the age of 14 is 'not fair' for a young person, with unfairness compounded in the young person's life once detained and further traumatised.

There are also long-term employment benefits. There is ample evidence to corroborate that a criminal conviction (even in some cases a caution) can seriously impact a young person's chances of becoming gainfully employed later on. Some offences such as arson or robbery, or offences resulting in custodial sentences are never necessarily 'spent', but can haunt and hinder the careers of young people for the rest of their lives, leading to barriers to employment, and a cyclical life of crime. This dilemma can leave a young person with a criminal record in a catch 22. It is widely recognised that meaningful employment can support a person from further offending; yet, the presence of a criminal record can often act as a barrier to attaining a meaningful job.

Arguments against raising the age of criminal responsibility on the basis that it might lead younger people to commit offences and evade justice are more fictional than fact. If someone were tempted to use young children to evade crime, or incite others to commit crimes on their behalf they would already be targeting young people under the age of 10. To punish young people for their participation in a crime such as this would be to effectively criminalise victims of crime.

Question 5.

Are there any unforeseen consequences of raising the minimum age?

Raising the minimum age will likely bring consequences that no one has thought of. However, this of itself is insufficient reason to not raise the age, but is justification for ensuring that consequences of such legislative change are reviewed openly and honestly and addressed through considered and evidence-based responses.

Cost should not be underestimated. To deliver the services that are needed, there will be increased costs, particularly for those requiring more intensive supervision. Funding will need to be available, accessible and scalable to meet fluctuating and seasonal demand.

It is also critical to build the capacity of the Tasmanian workforce (across justice, health, allied health, education and training systems) to respond to this need. In the experience of **yourtown**, programs such as restorative justice programs when not properly staffed, resourced and well implemented can be ineffective, and in a worst-case scenario, cause additional trauma to the young person. In such circumstances, interventions and

associated hearings often have extensive wait times, with significant disconnect between the action and the support that is available.

Young people when identified as displaying problematic behaviour, need to be assessed in a timely manner, and swiftly connected to appropriate services that are staffed by a skilled and professional workforce. This takes time to prepare and engage such as workforce, with immediate investment prioritised for training and preparing for the implementation of such a workforce.

We thank you for the opportunity to provide input into your survey, and welcome any additional questions or requests for further information. Should you require further information, please do not hesitate to contact our Advocacy and Research team via email at research@yourtown.com.au.