



2011 Child Rights NGO Report Australia

Youth Justice

I have been coming here since I was 10 years old. This place has become a regular part of my life. If I had more positive support I would not do so much crime - 13 YEAR OLD BOY, SPEAKING FROM A JUVENILE DETENTION CENTRE IN ADELAIDE, SOUTH AUSTRALIA

All Australian jurisdictions legislatively provide that detention be a last resort for juveniles. According to the NSW report *Juveniles in Detention in Australia*, the most cost-effective way to reduce juvenile offending is through prevention and early intervention. However, despite legislative and policy efforts to implement principles of diversion and restorative justice strategies, in recent years there has been an increase in the number of young people detained.

The Australian Government needs to demonstrate a more convincing commitment to improve the rate at which young people are diverted from the justice system by taking all necessary actions to ensure detention is used as a measure of last resort.

AGE OF CRIMINAL RESPONSIBILITY

Australian law ascribes criminal responsibility to young people from 10 years of age. The age of criminal responsibility is a significant factor in differentiating between a progressive or repressive juvenile justice system. Australia has been urged to raise the minimum age of criminal responsibility to an internationally acceptable level.

The age of juvenile offenders in Queensland raises further concerns, with it being the only Australian state that treats 17 years olds as adults in the criminal justice system. This contrasts with the dual-track system in Victoria; a unique youth sentencing option that provides for a young person aged 18 to 20 years to serve their custodial sentence in a youth justice centre.

DIVERSIONARY STRATEGIES

In the area of juvenile justice it is well known that where young people experience early interaction with the justice

system, they are more likely to be further drawn into the system at a later time. It is generally desirable then to minimise the amount of juvenile incarceration so the risk of later adult offending is minimised. Approximately half of young offenders will be imprisoned as adults.

The principles to support diversion by police have been enshrined in legislation in every state except Victoria. In spite of this, application and monitoring of these principles appear to be ineffective and haphazard. For example, although programs such as youth rehabilitation and re-integration into the community are available in the Northern Territory, these programs are rarely utilized by the police.

All Australian jurisdictions have legislated for a range of non-custodial sentencing options including police cautioning, home detention and Community Service Orders. Unfortunately, many non-custodial sentencing options are often ineffectively integrated into the juvenile justice system. In some regional and remote areas, they are simply not available at all due to resource constraints. The continual failure to appropriately apply such non-custodial orders has resulted in a 45 per cent increase in the number of juveniles being placed in detention between 2004 and 2007. Mandatory sentencing laws in Western Australia and soon to be introduced minimum sentencing laws in Victoria, only serve to exacerbate these rates.

Recommendation: Australia should introduce and enforce national standards that ensure the effective application of the principles of diversion and of the use of detention as a measure of last resort.

Recommendation: Australian governments should abolish mandatory sentencing where it exists, and ensure the provision of a range of non-detention sentencing options in regional and remote areas.

EFFECT ON JUVENILE DETENTION

The increasing number of children being held in custodial remand and the nature of bail conditions imposed on children is of concern. In June 2008, 60 per cent of young people held in juvenile detention centres across the nation were remanded in custody awaiting trial or sentencing. Clearly, while the principle of detention as a measure of last resort exists in theory, in practice it is largely being ignored.

Complex bail eligibility requirements and lack of accommodation options for homeless children are contributing factors to the increasing number of children in custodial remand. In some jurisdictions, programs have been introduced to provide accommodation for juveniles. However, more resources need to be provided to facilitate the accessibility and growth of such programs across Australia.

Recommendation: Australia should take all necessary measures to ensure that the number of children on custodial remand is reduced by the application of the principles of diversion and detention as a last resort, and that there is adequate funding for required accommodation options and better coordination between justice, community service and public housing authorities.

JUVENILE JUSTICE AND OVERREPRESENTATION BY CERTAIN GROUPS

Aboriginal childrenⁱ

- Aboriginal children remain substantially overrepresented in detention compared with their non-Aboriginal counterparts, accounting for 59 per cent of the total juvenile detention population.
- Aboriginal children are 28 times more likely to be in detention than non-Aboriginal children.

The over-representation has been attributed to several factors, including high levels of socio-economic disadvantage, the use of more punitive measures rather than diversionary measures, lack of culturally appropriate rehabilitation and other justice related programs, inadequately resourced legal services and systemic discrimination.

Aboriginal children sentencing courts have been introduced in Victoria, South Australia and Queensland to provide an opportunity for members of the child's community to participate in the sentencing decision, echoing principles of diversion. Nonetheless, closing the gap of overrepresentation still requires considerable work.

Recommendation: Australia should consult with Aboriginal people and communities, to build an evidence base of measures that are effective in reducing the rate of detention of Aboriginal children.

Children with cognitive impairments

- Children with disabilities, particularly mental illness and intellectual disabilities are overrepresented in the juvenile justice system, with up to 40 per cent of young people exhibiting symptoms consistent with clinical psychological disorders.
- Problematic and deficient practices within the child protection system have been attributed as one of the causes of children with disability coming into contact with the juvenile justice system.

Recommendation: the Australian Federal Government should encourage initiatives such as state-based action plans and work with State and Territory governments to establish mechanisms for early assessment of young people entering the juvenile justice system and an increase in services and programs responsive to the needs of young offenders with disabilities.

CONDITIONS IN JUVENILE DETENTION

Conditions in juvenile detention facilities such as the use of force, strip searches and discrimination exhibit a lack of practical compliance with human rights principles.

In violation of the Convention on the Rights of the Child (CRC), juveniles are still not separated from adults in some police lock up and detention facilities and thus continue to be placed at risk of abuse.

Best practice

A recent review of the Quamby Youth Detention Centre exemplifies compliance with international standards pertaining to detention of children. Similar measures are required at other juvenile detention facilities in Australia.

Recommendation: Australia should withdraw its reservation to Article 37(c) of the CRC and ensure that juvenile detainees and offenders are always separated from adult detainees and offenders.

Recommendation: Australia should take all necessary measures to ensure that all detention facilities for children are audited and comply with the principles in the CRC. States and Territories should upgrade or replace facilities and provide qualified staff and training as necessary.

For more information see the full *Listen to Children Report* at www.childrights.org.au

ⁱ Throughout the NGO Report, Aboriginal and Torres Strait Islander children are referred to as 'Aboriginal children.' The authors acknowledge the diversity in culture, language, kinship structures and ways of life within Aboriginal and Torres Strait Islander, and recognise that Aboriginal peoples and Torres Strait Islander peoples retain their distinct culture, irrespective of whether they live in urban, rural, regional or remote areas of the country.