Senator Paul Scarr
Chair
References Committee
Senate Standing Committee on Legal and Constitutional Affairs
By email: legcon.sen@aph.gov.au

Submitted by:
Anita Mills
Chief Executive Officer
Alcohol Tobacco and Other Drug Association ACT (ATODA)
info@atoda.org.au / (02) 6249 6358 / PO Box 7009 Kaleen, ACT 2617

10 October 2024

Dear Senator Scarr,

Re. Submission to Inquiry into Australia's youth justice and incarceration system

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) represents the alcohol and other drug (AOD) sector in the ACT. Members include specialist alcohol and other drug treatment and harm reduction organisations, including the peer-based organisation for people with lived experience of drug use in the ACT; distinguished drug experts with knowledge of the criminal justice system and population health; and allied sectors.

Underpinning ATODA's work is a commitment to health equity, the social and cultural determinants of health, and the values of collaboration, participation, diversity, human rights, social justice and reconciliation between Aboriginal and Torres Strait Islander people and other Australians. ATODA's purpose is to lead and influence positive outcomes in policy, practice and research, as the peak body for the alcohol, tobacco and other drug sector in the ACT. These outcomes flow from initiatives in prevention, early intervention, harm reduction, treatment, peer services, and continuing care.

ATODA welcomes the *Inquiry into Australia's youth justice and incarceration system* inquiry and its Terms of Reference. The Inquiry presents an opportunity for ATODA to discuss how use of alcohol and other drugs (AOD) impacts on and interacts with youth custodial settings. Appropriate consideration of the prevention and treatment of young people using alcohol and drugs is important to mitigate potential contact with the legal system at a young age. The submission will further focus on how custodial settings comply with the human rights of children and young people, and the measures that the ACT has taken to improve human rights and health approaches to youth justice. The submission will address the following terms of reference:

a) The outcomes and impacts of young people in custodial settings who use AOD, and the importance of prioritising their health;
b) The over-representation of young Aboriginal and Torres Strait Islander people in prison, and how this intersects with AOD use and treatment;
c) and d) The degree of compliance and the international obligations of Australian custodial settings to provide health-based approaches, including to young people who use AOD; and

e) The need to raise the minimum age of criminal responsibility such that appropriate therapeutic approaches may be taken for young people with diverse and complex health issues, such as AOD use and diagnosis of FASD, when interacting with the legal system or youth justice system.

ATODA appreciates the opportunity to provide a submission into this Inquiry and we welcome the opportunity to provide any additional information that may be required.

Yours sincerely,

Anita Mills
Chief Executive Officer
Alcohol Tobacco and Other Drug Association ACT (ATODA)

a) the outcomes and impacts of youth incarceration in jurisdictions across Australia;

The incarceration of young people and children can have a profound and lifelong impact on individuals' lives.[1-3] Alcohol and other drug (AOD) use is common in young people interacting with the legal and justice systems, however, it presents a unique problem with its own social determinants and health approaches. For instance, 1 in 3 young people under youth justice supervision nationally received an AOD treatment service, and young people that received AOD treatment were 30 times as likely than their counterparts to be under youth justice supervision.[4] It is clear that AOD use can have a strong correlation with young peoples' interactions with the justice system and thus policy measures to improve youth incarceration outcomes should necessarily include improvements to AOD therapeutic responses.

Young people who use AOD and are in custody may not have access to the full range of AOD treatment services. As such, to prevent and treat AOD use and health harms, young people should be provided with equitable access to all AOD treatment services. Sentencing should also appropriately consider therapeutic approaches that can be taken for young people using AOD. It is important to consider AOD use as a health issue, rather than a criminal one, as it is well-established that punishment alone is not an effective deterrent of recidivism.[5] Moreover, young people are known for engaging in more experimental and risk-taking behaviours, so it is important to take an approach that teaches and guides young people, rather than pressing further charges or punishing them further.[2] ATODA emphasises that a health-based approach to AOD use is necessary to reduce high rates of recidivism and population-level AOD harms.[6]

b) the over-incarceration of Aboriginal and Torres Strait Islander children;

Aboriginal and Torres Strait Islander children are disproportionately over-represented in custodial settings (representing 63 percent of young people in national custodial settings).[7] In the ACT, 27 percent of children in the Bimberi Detention Centre are Aboriginal and Torres Strait Islander.[8] Nationally, young Aboriginal and Torres Strait Islander peoples are also 14 times more likely than non-Aboriginal and Torres Strait Islander people to receive both youth justice supervision and AOD treatment services.[4] ATODA recommends that any approaches or initiatives that are developed are led by Aboriginal and Torres Strait Islander communities and community-controlled organisations, to reduce over-incarceration and AOD related harms, to ensure young Aboriginal and Torres Strait Islander peoples have access to the most effective, culturally-appropriate, and place-based solutions.

c) and d) The degree of compliance in detention centres with the human rights of young people in detention; and **the Commonwealth's international obligations to youth justice**

As outlined by the Optional Protocol to the Convention against Torture and other cruel, inhuman, or degrading treatment or punishment (OPCAT), young people in custodial settings have human rights to fair treatment such that harm can be prevented.[9, 10] To prevent and reduce harm as much as possible, young people in custodial settings have a right to equitable access to healthcare and therapeutic responses to their AOD use.

Under the Commonwealth obligations to the OPCAT, Australian custodial settings are required to protect young peoples' human right to have access to appropriate healthcare. To ensure compliance of custodial settings across Australia, it is necessary to ensure that young people in custodial settings have equitable access to AOD treatment services as they would in the community, including rehabilitation programs, AOD assessments and brief interventions, and AOD counselling. It is imperative that custodial settings adopt a health-focused approach to AOD

use by facilitating access to AOD treatment options[6]—for instance, as provided at the ACT Bimberi Youth Justice Centre.[11, 12] Improving publicly available reporting will assist with monitoring the degree of compliance in the ACT and nationally. Adopting a health based approach and providing equitable access to treatment of AOD use has the potential to prevent future interactions with the justice and legal systems.[5] ATODA recommends that there is equitable access to the full range of AOD treatment services, and that a health-based approach is adopted to ensure compliance with human rights for young people who are in custodial settings.

Furthermore, young people are often exposed to complex and co-occurring life events, which is perpetuated for young people who use AOD. Due to the complex and co-occurring life events that are experienced by young people who use AOD,[13] there needs to be equitable access to mental health services and referrals into health and community services following release from custodial settings, such as legal, financial, housing, and family support services. Additionally, evidence indicates that social networks and support are key factors to preventing harm and increasing wellbeing in young people who have used drugs, particularly in adolescence.[14] Rights to education, family visits and support networks should be adequately ensured due to the frequent co-occurrence of AOD use and mental health concerns and because connection to social networks lead to more positive treatment outcomes.[14, 15] ATODA recommends that to ensure compliance with human rights in custodial settings and to meet the obligations under the OPCAT, the Commonwealth should ensure adequate and equitable access to all support services, including allied health services, for young people who have used AOD.[16]

ATODA supports the recommendations outlined in the Australian Human Rights Commission's report on '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* to prioritise national reform and to implement evidence-based actions for reform of child justice systems.[17]

e) the benefits and need for enforceable national minimum standards for youth;

Enforceable national minimum standards for youth incarcerations and the justice system would ensure the safety and wellbeing of young people in custodial centres across Australia. Ensuring access to services that optimise health and wellbeing should certainly be a priority for national minimum standards to address various existing health issues of young people in custodial settings.[18] National standards as per the Australasian Youth Justice Administrators (AYJA) outline aspirational standards of practice for youth justice services in Australia,[18] where the purpose is to cease or reduce interactions with the legal system and custodial settings. In consideration of this, ATODA recommends that young people and their families have access to appropriate services and supports tailored to individual needs.

Many young people in custodial settings experience diverse health issues. For instance, an assessment completed in Western Australia found that 89 percent of children surveyed in a youth custodial setting had a severe neurodevelopmental impairment, including Foetal Alcohol Spectrum Disorder (FASD), ADHD, anxiety, depression, trauma, and learning difficulties.[1, 19] Systemic factors associated with criminalisation in Australia include an absence of therapeutic supports, unstable and unsafe residential care placements, lack of trauma-informed responses from police, and inappropriate use of custodial settings as an alternate placement.[20] The factors listed above can have impacts on young people on bail, such that they are not able to fully understand and adhere to bail conditions, and thus must return to custodial settings. This highlights a need for improved education, screening and access to healthcare for young people entering custodial settings and flexibility in bail conditions, rather than rigid and punitive approaches to behaviour. [1]

The ACT's approach to raise the minimum age of criminal responsibility has set the standard for other jurisdictions around Australia. Its implementation from 1 July 2025 is a welcome and necessary change as justice approaches, interactions with the justice system, and rehabilitation should suit the specific needs of children. The evidence-base to date demonstrates that the age of 14 is the minimum age at which children can reasonably be held criminally responsible due to their developmental and neurological age.[3] As AOD use is common in young people entering custodial settings, it is worth acknowledging the many risk factors specific to drug use and offending, which include common experiences of violent and emotional abuse, being left alone by guardians, not living with parents, family members using substances as they grew up, and early exit from education.[2] Any enforceable national minimum standards should seek to address these social determinants of health and justice. ATODA supports raising the minimum age of criminal responsibility in all states and territories to accompany any enforceable minimum standards for youth justice. This benchmark should be accompanied by the provision of programs that divert young people to developmentally appropriate services that take a therapeutic approach to their wellbeing.

The ACT example

National requirements for diversion of young people from the legal system could be modelled on measures such as the ACT Therapeutic Support Panel for Children and Young People.[21] Due to the complex needs of young people interacting with legal system, this panel has been established with expertise in social work, psychology, education, disability and criminology, and includes three Aboriginal and Torres Strait Islander members. The support panel is an innovative multi-disciplinary approach,[21] where the long-term rehabilitation of a young person's wellbeing and health is prioritised above an ineffective, punitive approach.

The ACT Government recognises that early childhood offers a crucial 'window of opportunity' for investment and intervention to prevent or reduce adverse outcomes, and where adolescence presents a vital period for biological and psychosocial changes and development. Notably, FASD is of particular concern due to its difficult diagnosis and limited treatment services in Australia. Children with this condition are therefore less likely to receive recognition or support, and thus more likely to experience challenges such as learning difficulties, mental health conditions, and AOD use.[22] Furthermore, to improve outcomes for young people who use AOD, providing rehabilitative and therapeutic incarceration models that focus on AOD treatment have found to result in recidivism rates to as low as 2 percent.[5] Further development towards the diversion of young people from the criminal justice system should consider how other health conditions such as FASD, intersectional life experiences, AOD use, and offending can better be addressed through this support panel. Future national minimum standards should ensure the provision of a therapeutic support panel such that young people with diverse and complex health needs can be diverted away from custodial settings as much as possible.

ATODA recommends that national minimum standards for the youth justice system should consider the intersectional and social determinants that have led a child to offending and towards AOD use, and utilise holistic, person-centred, and health-based approaches as much as possible.

References:

1. Royal Australian College of Physicians (RACP). *RACP submission to the Council of Attorneys General Working Group reviewing the Age of Criminal Responsibility*. RACP, 2019.
2. Prichard J and Payne J. *Alcohol, drugs and crime: a study of juveniles in detention*. Canberra: Australian Institute of Criminology, 2005.
3. Sotiri M, Schetzer L and Kerr A. *Children, Youth Justice and Alternatives to Incarceration in Australia*. Justice Reform Initiative, 2024. .
4. Australian Institute of Health & Welfare (AIHW). *Youth detention population in Australia 2023*. 13 October 2023. Canberra: AIHW, 2023.
5. Justice Reform Initiative (JRI). *Alternatives to Incarceration in the Australian Capital Territory*. JRI, 2024.
6. Schetzer L and Sotiri M. *Drug Use and the Criminal Justice System - Taking Steps Towards a Health Focused Response*. Justice Reform Initiative, 2024.
7. Australian Institute of Health & Welfare (AIHW). *Overlap between youth justice supervision and alcohol and other drug treatment services: 1 July 2012 to 30 June 2016.* Canberra: AIHW, 2018.
8. Justice Reform Initiative (JRI). *Submission on the Inquiry into Raising Children in the ACT*. 2024. JRI.
9. United Nations. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. New York: United Nations, 2002.
10. Office of the ACT Inspector of Correctional Services (OICS). *Thematic Review of a Correctional Service and National Preventive Mechanism (NPM) Pilot Visit: Isolation of children and young people at Bimberi Youth Justice Centre*. Canberra: OICS, 2023.
11. Office of the ACT Inspector of Correctional Services (OICS). *Thematic Review of Bimberi Youth Justice Centre - Government Response*. Canberra: The Legislative Assembly for the Australian Capital Territory, 2024.
12. ACT Government. Information on the Optional Protocol to the Convention against Torture (OPCAT) in the context of Youth Justice Detention Centres. In: ACT Community Services Directorate. Australian Human Rights Commission, 2016.
13. Alcohol Tobacco and Other Drug Association ACT (ATODA). *Service Users' Satisfaction and Outcomes Survey 2018: a census of people accessing specialist alcohol and other drug services in the ACT*. 2020. Canberra: ATODA; http://www.atoda.org.au/wp-content/uploads/2020/07/Monograph-Series-Nine-SUSOS-2018-v1.0.pdf.
14. Best DW and Lubman DI. Friends matter but so does their substance use: The impact of social networks on substance use, offending and wellbeing among young people attending specialist alcohol and drug treatment services. *Drugs: Education, Prevention and Policy* 2016; 24. DOI: 10.3109/09687637.2016.1149148.
15. Zywiak WH, Longabaugh R and Wirtz PW. Decomposing the relationships between pretreatment social network characteristics and alcohol treatment outcomes. *Journal of Studies on Alcohol* 2002; 63: 114-121. DOI: 10.15288/jsa.2002.63.114.
16. Australian Medical Association (AMA). *Health Care in Custodial Settings*. AMA, 2023.
17. Australian Human Rights Commission.*'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*. Sydney: Australian Human Rights Comission, 2024.
18. Australasian Youth Justice Administrators (AYJA). *National Standards for Youth Justice in Australian 2023*. 2023. Brisbane: AYJA.
19. Bower C, Watkins RE, Mutch RC, et al. Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ Open* 2018: 8. DOI: 10.1136/bmjopen-2017-019605.
20. Paterson-Young C, Corrales T Warren I and McNamara P. Impact of trauma and placement in residential or congregate care on the criminalisation of children in England/Wales and Australia. *Children and Youth Services Review* 2024; 166. DOI: https://doi.org/10.1016/j.childyouth.2024.107947.
21. Stephen-Smith R. Nation-leading support system for children and young people commences. Canberra: ACT Government, 2024.
22. Legislative Assembly for the Australian Capital Territory, Standing Committee on Justice and Community Safety. Review of ACT Health Programs - Children and young people and responses to Fetal Alcohol Spectrum Disorder (FASD). Report 5. Canberra: Legislative Assembly for the ACT, 2022.