



Alternative Diversion Model for Children under the Raised Age of Criminal Responsibility

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Our Commitment to Inclusion

The Salvation Army Australia acknowledges the Traditional Owners of the land on which we meet and work and pay our respect to Elders, past, present and future.

We value and include people of all cultures, languages, abilities, sexual orientations, gender identities, gender expressions and intersex status. We are committed to providing programs that are fully inclusive. We are committed to the safety and wellbeing of people of all ages, particularly children.

Our values are:

- Integrity
- Compassion
- Respect
- Diversity
- Collaboration

Learn more about our commitment to inclusion: salvationarmy.org.au/about-us

The Salvation Army is an international movement and our mission is to preach the gospel of Jesus Christ and to meet human needs in his name without discrimination.

More information about The Salvation Army is at **Appendix A**.





Executive Summary

The Salvation Army welcomes the opportunity to provide this submission to the South Australian Government's Attorney General's Department in response to its' discussion paper on an alternative diversion model for children, under the raised age of criminal responsibility.

The Salvation Army provides a variety of youth services that support children and young people across Australia. These services include housing and homelessness, education, employment and training, social and community activities, drug and alcohol services, and youth justice programs.

Our experience tells us that youth justice systems must consider the holistic needs of children, be trauma informed and be culturally responsive. In this submission, The Salvation Army draws attention to opportunities for the South Australian Government to engage in meaningful youth justice reforms which are equitable, workable, and trauma informed.

We draw upon key themes contained within the discussion paper and consider the following to be of primary importance in the consideration of a diversion model under a raised minimum age of criminal responsibility:

- Children and young people experiencing disadvantage are disproportionately impacted by a low, minimum age of criminal responsibility (MACR),
- Aboriginal and Torres Strait Islander children are overrepresented in the criminal justice system,
- Early contact with the criminal justice system is a strong predictor of reoffending and future criminalisation, and
- Developmental evidence, rights respecting principles and acknowledgment of the unique experiences of children and young people who offend, are paramount in any youth justice reform.

The Salvation Army supports a model where the minimum age of criminal responsibility is increased in line with developmental research and internationally accepted standards, with the following considerations:

- MACR to be increased to 14 years without exception,
- An alternative diversionary model should be implemented such that safeguarding children is a central component. The model should incorporate appropriate training and education for first responders, increased cultural competency and capability building across the youth justice sector, and sufficient funding and resourcing for frontline child and youth community and justice responses.

The Salvation Army has made **14** recommendations for the South Australian Government's Attorney General's Department to consider. A summary of these recommendations follows on the next page.



Summary of Recommendations

Recommendation 1

1.3 The Salvation Army recommends that the South Australian Government commit to raising the age of criminal responsibility to a minimum of 14 years old, in line with developmental research and internationally accepted standards.

Recommendation 2

1.10 The Salvation Army recommends that the South Australian Government remove exceptions to the minimum age of criminal responsibility which permit criminal prosecution for circumstances of serious or repeated harmful behaviours.

Recommendation 3

1.11 The Salvation Army recommends that the South Australian Government expand the suggested alternative diversion model to include diversionary and therapeutic actions for children under the MACR who engage in serious or repeated harmful behaviours.

Recommendation 4

2.9 The Salvation Army recommends that the South Australian Government empower Aboriginal and Torres Strait Islander communities to develop and deliver diversionary interventions which are Aboriginal and Torres Strait Islander owned and controlled.

Recommendation 5

2.10 The Salvation Army recommends that the South Australian Government work to address systemic discrimination by actively increasing cultural competency and capability across the youth justice system. This should include implementing mandated, cultural, anti-racist and unconscious bias training for youth justice staff, first responders and community organisations.

Recommendation 6

2.16 The Salvation Army recommends that the South Australian Government increase funding to community organisations that support children and young people who are diverted away from the justice system under the proposed model. Such services might include youth homelessness, mental health, drug and alcohol and wellbeing services.

Recommendation 7

3.7 The Salvation Army recommends that the South Australian Government increase funding and investment in early intervention services, to address criminogenic risk factors amongst children and young people. This should include increasing funding to existing programs to enable expansion of service capacity.

Recommendation 8

3.10 The Salvation Army recommends that the South Australian Government work to ensure that places of safety are therapeutic and child-centred, with a strong focus on inclusivity and culturally sensitive practices.



Recommendation 9

3.14 The Salvation Army recommends that the South Australian Government develop safeguards to ensure children are well-informed about diversionary action plans, and that this engagement is voluntary. Any safeguards, such as information and resources, should be developmentally appropriate.

Recommendation 10

3.18 The Salvation Army recommends that the South Australian Government ensure all diversionary responses are situated in locations and overseen by bodies external to the criminal justice system.

Recommendation 11

3.21 The Salvation Army recommends that the South Australian Government draw upon the learnings from current successful programs in other Australian states and territories, to ensure effective methods are implemented in diversionary action planning interventions.

Recommendation 12

3.27 The Salvation Army recommends that the South Australian Government appropriately resource police and frontline justice systems, to ensure responses are trauma-informed, developmentally appropriate, and proportionate.

Recommendation 13

3.28 The Salvation Army recommends that the South Australian Government ensure developmentally appropriate information is provided to children during all interactions with the justice system. This should include access to independent, and robust complaints mechanisms.

Recommendation 14

3.33 The Salvation Army recommends that the South Australian Government implement specialist training for frontline workers across the youth justice sector. This training should be mandated, repeated regularly, and cover the impacts of trauma, child-centred practice, and de-escalation techniques.



1 Raising the Age

- 1.1 The Salvation Army welcomes raising the minimum age of criminal responsibility (MACR) in South Australia. We believe it to be a necessity that all children and young people are afforded the right to a childhood where they can thrive, be supported, and empowered.

Increasing the Minimum Age of Criminal Responsibility to 14 years

- 1.2 Whilst we acknowledge the South Australian Government's consideration of raising the MACR 12 years, The Salvation Army strongly urge in line with Raise the Age campaign, that the minimum age of criminal responsibility is raised further, to 14 years.¹ We recognise that the incarceration or removal of children from support networks is damaging, and that holding children under the age of 14 criminally accountable is untenable for the following reasons:

- **Childhood Development and Criminal Culpability.** The Salvation Army holds the view in line with medical experts, academics, advocates, and other non-government organisations, that the MACR should be raised to at least 14 years. Developmental evidence demonstrates that children under 14 cannot have developed sufficient cognitive capacity to assume criminal culpability.² This developmental immaturity affects several skills including impulsivity, cognitive reasoning, and consequential thinking, all of which can be linked with offending behaviour.³ Criminalisation will instead be detrimental to the child's development and long-term health and wellbeing outcomes.⁴
- **Reducing Recidivism.** The Salvation Army strongly believes that raising the MACR to at least 14 years would reduce the risk of children becoming entrenched in the criminal justice system and in turn, increase community safety. In our experience, children face increasing periods of time connected the justice system due to extended processing, delays in court hearings, and limited housing options upon release. This engagement with the justice system is inherently criminogenic.⁵ The NSW Bureau of Crime Statistics and Research (BOCSAR) report that contact with the justice system before the age of 15 is a strong predictor of later offending.⁶ This effect is particularly notable amongst younger children, who are more susceptible to peer influence and pressure due to developmental immaturity.⁷

¹ Raise the Age. (Undated). *About the Campaign*. <https://raisetheage.org.au/campaign>.

² Cunneen, C. (2017). Arguments for Raising the Minimum Age of Criminal Responsibility. *The University of New South Wales, Research Report*.

<https://www.cypp.unsw.edu.au/sites/ypp.unsw.edu.au/files/Cunneen%20%282017%29%20Arguments%20for%20raising%20the%20minimum%20age%20of%20criminal%20responsibility.pdf>.

³ Ibid.

⁴ Richards, K. (2011). What Makes Juvenile Offenders Different from Adult Offenders? *Trends & Issues in Crime and Criminal Justice*. No. 409. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/ti274705>.

⁵ Shirley, K. (2017). The Cautious Approach: Police Cautions and the Impact on Youth Reoffending. *Crime Statistics Agency*. <https://apo.org.au/sites/default/files/resource-files/2017-09/apo-nid108381.pdf>.

⁶ Weatherburn, D. & Ramsey, S. (2018). Offending over the Life Course: Contact with the NSW Criminal Justice System Between Age 10 and Age 33. *Crime and Justice Statistics*. No. 132. NSW: Bureau of Crime Statistics and Research.

<https://www.bocsar.nsw.gov.au/Publications/BB/2018-Report-Offending-over-the-life-course-BB132.pdf>.

⁷ Ibid (n 4).





- **Protecting the Rights of Children and Young People.** The Salvation Army supports a rights respecting approach when considering youth justice responses. All levels of Australian government are responsible for ensuring legislative and administrative processes be implemented such that they respect and uphold the rights of children and young people, based on international guidelines.⁸ Australia is party to the Convention on the Rights of the Child (CRC) which creates broad international obligations surrounding the treatment of children. It directs that special consideration be taken to ensure adequate safeguards, care, and legal protections are afforded to children to account for “*physical and mental ‘immaturity.*”⁹ The United Nations Committee on the Rights of the Child (CRC Committee) who monitor the CRC’s practical implementation,¹⁰ recommend that States avoid fixing the MACR too low, and encourage it to be increased to at least 14 years in *General Comment 24*.¹¹ Finding the previously recommended MACR of 12 years being too low, the Committee rationalise that children under 14 years do not have the capacity to commit a ‘criminal’ offence.¹² In their *2019 Concluding Observations*, the CRC Committee recommends the Australian Government commit to raising the MACR to 14 years to bring youth justice systems in line with CRC obligations.¹³

Recommendation 1

- 1.3 The Salvation Army recommends that the South Australian Government commit to raising the age of criminal responsibility to a minimum of 14 years old, in line with developmental research and internationally accepted standards.**

⁸ Fernando, M. (2013). Express Recognition of the UN Convention on the Rights of the Child in the Family Law Act: What Impact for Children’s Rights to be Heard? *UNSW Law Journal*, 36(1), 88-106. <https://classic.austlii.edu.au/au/journals/UNSWLawJI/2013/4.html>.

⁹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

¹⁰ Australian Human Rights Commission. (Undated). *The UN Committee on the Rights of the Child and reporting on children’s rights*. <https://humanrights.gov.au/our-work/childrens-rights/un-committee-rights-child-and-reporting-childrens-rights#:~:text=Australia%20ratified%20the%20CRC%20in,set%20out%20in%20the%20treaty>.

¹¹ UN Committee on the Rights of the Child (CRC). (2007). *General Comment No. 24, replacing General Comment No. 10: Children’s Rights in Juvenile Justice*, CRC/C/GC/24.

<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

¹² *Ibid.*

¹³ UN Committee on the Rights of the Child (CRC). (2019). *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, CRC/C/AUS/CO/5-6.

<https://documents.un.org/doc/undoc/gen/q19/316/49/pdf/q1931649.pdf?token=ouoce0lwtfYQL9ok2K&fe=true>.





Removing Exceptions to the Minimum Age of Criminal Responsibility

- 1.4 The Salvation Army alongside legal, human rights and social service advocates in Australia, echo the position of the CRC Committee in expressing concerns about State practice which permits the use of exceptions to the MACR.¹⁴ The Salvation Army acknowledges the impacts of serious or repeated harmful conduct on victims, survivors, families, and communities. We also recognise, however, the hardships faced by many children causing them to fall into the youth justice system.
- 1.5 Under the proposed model, criminal prosecution is available in circumstances where a child under the age of criminal responsibility commits a 'serious offence,' or demonstrates extreme or repeated harmful behaviour.
- 1.6 Broadly, Australian youth justice systems aim to provide a framework to provide specialised responses for children and young people, based on notions of "vulnerability, immaturity and inexperience."¹⁵ However, components of the youth justice system mirrors that of the adult justice system, with many penalties analogous to that administered to adults.¹⁶ This is directly opposed to the notion of safeguarding children.
- 1.7 Most children and young people who offend, engage in relatively low-level conduct. Often behaviours are impulsive, opportunistic, and driven by peer pressure with most children and young people desisting over time.¹⁷ In our experience, children who engage in more serious or persistent harmful conduct form a minority and have generally been exposed to many more risk factors. These include amongst others, family violence and conflict, abuse, neglect, intellectual impairments, mental ill-health, poverty, and homelessness.¹⁸
- 1.8 Holding children criminally accountable under MACR exceptions, will disproportionately impact those already experiencing significant risk. We believe it will perpetuate the cycle of disadvantage.
- 1.9 Acknowledging very rare cases where a child engages in extreme violence, and where no other response is suitable, we support Law Council of Australia advice.¹⁹ These children face serious neuropsychological disturbances and abnormalities.²⁰ Highly specialised psychiatric care, treatment and rehabilitation is beneficial for these children to prevent reoffending.²¹

¹⁴ UN Committee on the Rights of the Child (CRC). (2007). *General Comment No. 24, replacing General Comment No. 10: Children's Rights in Juvenile Justice*, CRC/C/GC/24.

¹⁵ Walsh, T., Fitzgerald, R., Cornwell, L., & Scarpatto, C. (2021). Raise the Age – And Then What? Exploring the Alternatives of Criminalising Children Under 14 years of Age. *James Cook University Law Review* 27, 37-56. <https://classic.austlii.edu.au/au/journals/JCULawRw/2021/3.html#Heading53>.

¹⁶ Ibid.

¹⁷ Australian Bureau of Statistics (2022-23). *Recorded Crime – Offenders*. <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>.

¹⁸ Ibid (n 15).

¹⁹ Law Council of Australia. (2022). *Responses to Children under the Minimum Age of Criminal Responsibility: Position Paper*. <https://lawcouncil.au/publicassets/6fdc725a-60f7-ec11-945c-005056be13b5/Position%20Paper%20-%20Responses%20to%20children%20under%20the%20MACR.pdf>.

²⁰ Wolff, S. & McCall Smith, A. (2001). Children Who Kill: They Can and Should be Reclaimed. *British Medical Journal*, 332(7278), 61-62. <https://doi.org/10.1136/bmj.322.7278.61>.

²¹ Ibid.





Recommendation 2

- 1.10 The Salvation Army recommends that the South Australian Government remove exceptions to the minimum age of criminal responsibility which permit criminal prosecution for circumstances of serious or repeated harmful behaviours.**

Recommendation 3

- 1.11 The Salvation Army recommends that the South Australian Government expand the suggested alternative diversion model to include diversionary and therapeutic actions for children under the MACR who engage in serious or repeated harmful behaviours.**

2 Supporting Children at Risk of Offending

- 2.1 In our experience, children and young people who become engaged with the justice system often present with a range of complex issues. This suggests and evidence tells us, that children experiencing the greatest disadvantage, are disproportionately impacted by a low MACR and face further disadvantage following interactions with the justice system.²² Raising the age would improve personal and social outcomes for children who are amongst the most disadvantaged in our communities.

Empowering Aboriginal and Torres Strait Islander Children

- 2.2 The Salvation Army draws particular attention to the ongoing impacts of systemic discrimination, intergenerational trauma and disadvantage experienced by Aboriginal and Torres Strait Islander communities. Our experience in supporting Aboriginal and Torres Strait Islander children and young people is that many of them continue to be impacted by amongst others, child protection and youth justice systems. These systems primarily adopt punitive approaches, operate in conflict with Aboriginal and Torres Strait Islander culture, and exacerbate experiences of disadvantage and marginalisation amongst children, families, and communities.
- 2.3 The consequences of colonisation for Aboriginal and Torres Strait Islander people are vast, intergenerational, and ongoing. Forced displacement and assimilation, removal of children, cultural dispossession, social exclusion, and racism continue to impact Aboriginal and Torres Strait Islander communities and creates an environment which perpetuates socio-economic disadvantage and marginalisation.²³
- 2.4 Aboriginal and Torres Strait Islander children and young people are overrepresented in child protection and youth justice systems with the level of this overrepresentation steadily increasing in South Australia and nationally. In 2022, Aboriginal and Torres Strait Islander children were 19 times more likely than their non-Indigenous counterparts to be under youth justice supervision (including both community based and detention),²⁴ and made up 42.8 per cent of children aged 0-17 years in out-of-home care.²⁵

²² Malvaso, C., Day, A., Cale, J., Hackett, L., Delfabbro, P., & Ross, S. (2022). Adverse Childhood Experiences and Trauma Among Young People in the Youth Justice System. *Trends & issues in crime and criminal justice*. No. 651. Canberra: Australian Institute of Criminology. https://www.aic.gov.au/sites/default/files/2022-06/ti651_adverse_childhood_experiences_and_trauma_among_young_people.pdf#:~:text=In%20fact%2C%20a%20recent%20systematic%20review%20by%20Malvaso,short%20of%20the%20diagnosti%20c%20ut%E2%80%91off%20for%20mild%20PTSD.

²³ Victoria State Government. (2022). *Underlying Causes of Aboriginal Over-representation*. <https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-over-representation-in-the-justice-system/underlying-causes-of-aboriginal>.

²⁴ Australian Institute of Health and Welfare (AIHW). (2023). *Youth Justice in Australia*. <https://www.aihw.gov.au/getmedia/3fe01ba6-3917-41fc-a908-39290f9f4b55/aihw-juv-140.pdf?v=20230605182448&inline=true>.

²⁵ Australian Government Productivity Commission. (2023). *Closing the Gap: Annual Data Compilation Report*. <https://www.pc.gov.au/closing-the-gap-data/annual-data-report/report/snapshot-socioeconomic#seo11>





- 2.5 Aboriginal and Torres Strait Islander children are also disproportionately impacted by a low MACR with those under youth justice supervision being on average, younger than their non-Indigenous counterparts. In 2022, six per cent of Indigenous children under supervision were aged 10-13 years, compared to 1.9 per cent of non-Indigenous children.²⁶

Enhancing Cultural Competency and Capability

- 2.6 The Salvation Army urges the need for specific emphasis to be placed on ensuring the alternative diversion model is non-discriminatory and promotes the wellbeing and safety of Aboriginal and Torres Strait Islander children, families, and communities.
- 2.7 There is a need to ensure the strengths of Aboriginal and Torres Strait Islander culture, including kinship systems, cultural values and law are considered and included in the model. In line with views of the national Aboriginal community controlled peak body, Secretariat of National Aboriginal and Islander Child Care (SNAICC) and in respect of Indigenous self-determination, we urge for consultation with Aboriginal and Torres Strait Islander communities to take place directly. This will encourage holistic diversion responses be designed, implemented, and delivered in a manner which is culturally informed and safe.²⁷
- 2.8 We urge that cultural competency and capability training be provided to all frontline justice and community organisation staff, to ensure the delivery of diversionary responses across all systems, is culturally safe and responsive.

Recommendation 4

- 2.9 The Salvation Army recommends that the South Australian Government empower Aboriginal and Torres Strait Islander communities to develop and deliver diversionary interventions which are Aboriginal and Torres Strait Islander owned and controlled.**

Recommendation 5

- 2.10 The Salvation Army recommends that the South Australian Government work to address systemic discrimination by actively increasing cultural competency and capability across the youth justice system. This should include implementing mandated, cultural, anti-racist and unconscious bias training for youth justice staff, first responders and community organisations.**

²⁶ Australian Institute of Health and Welfare (AIHW). (2023). *Youth Justice in Australia*. <https://www.aihw.gov.au/getmedia/3fe01ba6-3917-41fc-a908-39290f9f4b55/aihw-juv-140.pdf?v=20230605182448&inline=true>.

²⁷ Secretariat of National Aboriginal and Islander Child Care (SNAICC). (2021). *National Framework for Protecting Australia's Children 2021-2031*. <https://www.snaicc.org.au/wp-content/uploads/2021/11/SNAICC-ConsultationReport-successor-plan-Nov2021.pdf>.





Diverting Children Who Are At-Risk

2.11 Adverse childhood experiences (ACEs) encompass cumulative experiences during childhood, such as maltreatment and disadvantage, which are stressful and potentially traumatic.²⁸ ACEs are closely linked risk factors which contribute to children and young people's offending and result in contact with the youth justice system.²⁹ Medical evidence suggest that ACEs disrupts brain development in critical early childhood years, affecting self-regulation, reward-seeking, executive function, and threat perception.³⁰

2.12 Our experience is that the following ACEs are key criminogenic risk factors, which commonly foreshadow young people becoming caught up in the youth justice system:

- **Homelessness and non-family-based care.** In our experience issues of homelessness are a risk factor for initial offending. We also observe homelessness being perpetuated where children and young people face extended involvement in the justice system or exit from institutional care and have no suitable housing available to return to. According to the South Australian Office of the Guardian for Children and Young People, in 2021 92.1 per cent of children who were detained in Kurlana Tapa Youth Detention Centre across a period of six months, lived in residential or other non-family-based care.³¹ Children within these care systems experience many risks which impact childhood,³² and we see these children facing disproportionately higher levels of contact with the youth justice system.³³

“

“Young people are remaining incarcerated for longer periods than necessary because of limited suitable placement opportunities. The justice system often doesn't understand the complexities attached to access suitable housing options for young people exiting institutional care. This often creates tensions between/within sectors and results in young people not being at the centre of decision making and being held in care post sentence due to no suitable exits.”

”

- A Salvation Army Youth Services Manager

²⁸ Malvaso, C., Day, A., Cale, J., Hackett, L., Delfabbro, P., & Ross, S. (2022). Adverse Childhood Experiences and Trauma Among Young People in the Youth Justice System. *Trends & issues in crime and criminal justice*. No. 651. Canberra: Australian Institute of Criminology. https://www.aic.gov.au/sites/default/files/2022-06/ti651_adverse_childhood_experiences_and_trauma_among_young-people.pdf#:~:text=In%20fact%2C%20a%20recent%20systematic%20review%20by%20Malvaso,short%20of%20the%20diagnostic%20cut%E2%80%91off%20for%20mild%20PTSD.

²⁹ Ibid.

³⁰ Emerging Minds. (2020). *Adverse Childhood Experiences (ACEs): Summary of Evidence and Impacts*.

<https://d2p3kdr0nr4o3z.cloudfront.net/content/uploads/2020/02/19102540/ACES-Summary-of-Evidence-and-Impacts-V2.pdf>.

³¹ Office of the Guardian for Children and Young People. (2021). *Residential Care Contributing to 'Criminalisation' of Young People*.

<https://gcyp.sa.gov.au/2021/10/14/residential-care-contributing-to-criminalisation-of-young-people/>.

³² Ibid.

³³ Baidawi, S., & Sheehan, R. (2019). Maltreatment and Delinquency: Examining the Contexts of Offending Amongst Child Protection-Involved Children. *British Journal of Social Work*, 50(7), 2191-2211. <https://doi.org/10.1093/bjsw/bcz113>.





- **Exposure to abuse, neglect, and trauma.** Parenting plays a significant part in childhood development. In circumstances where children are exposed to child abuse and neglect, wellbeing outcomes are impacted and offending becomes more common.³⁴ This phenomenon is stable regardless of whether treatment was intentional or not. Consequently, children may develop dysregulated behaviours in response to difficult life experiences, which amount to offending.³⁵
- **Family breakdown and instability.** Family dynamics, structure and stability play a key role in feelings of safety and security throughout childhood. Children and young people who experience turbulent family relationships and family breakdown face increased risk of contact with the justice system. The Salvation Army observe that these children commonly experience an accumulation of disadvantage across childhood and adolescence where formative early life experiences are disrupted, and therefore offending behaviours become more prevalent.³⁶
- **Socioeconomic disadvantage and poverty.** The Salvation Army draw attention to the interface between socioeconomic disadvantage, poverty, financial hardship, and criminality. Evidence shows that young people who experience these inequalities are at increased risk of offending.³⁷ In 2024, Australian Institute of Health and Welfare (AIHW) found children that who experienced socioeconomic disadvantage were ten times more likely to be under youth justice supervision.³⁸
- **Exposure to or lived experience with drug and alcohol use.** The use of alcohol or drugs by parents, caregivers, or children themselves increases the risk of childhood offending through exposure to substance related risks.³⁹ The Australian Institute of Criminology reported in 2021 that incarcerated children and young people were found to use a wider range of drugs, use more frequently and start using at a younger age, than those not in custody.⁴⁰

³⁴ Australian Institute of Health and Welfare (AIHW). (2020). *Australia's Children*. https://www.aihw.gov.au/getmedia/6af928d6-692e-4449-b915-cf2ca946982f/aihw-cws-69_australias_children_print-report.pdf?v=20230921161957&inline=true; Cashmore, J. (2011). The Link Between Child Maltreatment and Adolescent Offending: Systems Neglect of Adolescents. *Family Matters*, 89, 31-41. https://aifs.gov.au/sites/default/files/fm89d_0.pdf.

³⁵ White, R., & Cunneen, C. (2015). Social Class, Youth Crime and Justice. In Goldson, B., & Muncie, J. (Eds) *Youth, Crime and Justice* (pp. 17-30), (2nd ed), Sage, London. <https://classic.austlii.edu.au/au/journals/UNSWLRS/2015/59.pdf>.

³⁶ Bosick, S., & Fomby, P. (2018). Family Instability in Childhood and Criminal Offending during the Transition into Adulthood. *American Behavioural Scientist*, 62(11), 1483-1504. <https://doi.org/10.1177/0002764218787000>.

³⁷ Ibid (n 32).

³⁸ Ibid (n 31), AIHW.

³⁹ Dodd, J., & Saggars, S. (2006). The Impact of Drug and Alcohol Misuse on Children and Families. *Australian Research Alliance for Children and Youth*. https://www.aracy.org.au/publications-resources/command/download_file/id/143/filename/The_impact_of_drug_and_alcohol_misuse_on_children_and_families.pdf.

⁴⁰ Payne, J., & Prichard, J. (2005). Key Findings from the Drug Use Careers of Juvenile Offenders Study. *Trends and Issues in Crime and Criminal Justice*. No. 304. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi304>.





- **Mental ill-health or living with a cognitive disability.** The Salvation Army note the prevalence of mental ill-health and cognitive disability amongst children and young people in the youth justice system is significantly increased. 60 per cent of children who interact with youth justice present with two or more mental health disorders, and 33 per cent of incarcerated young people report high levels of psychological distress.⁴¹ Mental ill health has been linked with increased likelihood of engaging in harmful behaviours resulting in police engagement,⁴² as has cognitive disability.⁴³
- **School disengagement.** Our experience with children and young people is that a lack of school engagement coupled with antisocial peer and friendship groups, places them at increased risk of offending. Disengagement from school, characterised by low academic achievement, truancy and exclusion⁴⁴ are risk factors for involvement in the youth justice system, and are predictive of antisocial cognition and youth re-offending.⁴⁵

Improving the Capacity of the Youth Services Sector

2.13 The Salvation Army identifies a significant need to increase funding and investment in local community organisations which support children and young people who are diverted away from the justice system and supported within the community. In providing increased investment, organisations will be better resourced to engage in planned, coordinated responses which support the unique and complex experiences of children such that their physical, mental, emotional, and social health needs can be met.⁴⁶

2.14 With any diversionary justice reform, there becomes inevitably an increase in demand for specialist child and youth support services. The complexities experienced by children who offend, mean that it is likely these children will require several support services and community programs under a diversionary model to meet their needs. These may include youth homelessness services, alcohol and other drug programs, mental health supports, community centres and youth wellbeing programs.

⁴¹ National Mental Health Commission. (2023). *Justice and Child Wellbeing Reform across Australia*. <https://www.mentalhealthcommission.gov.au/getmedia/28c7008e-2b2f-43e1-b558-2cd3d96c277d/Submission-for-the-Youth-Justice-and-Child-Wellbeing-Reform-across-Australia.-Human-Rights-Commission.pdf>.

⁴² Morgan, M., & Higginson, A. (2023). Police and Procedural Justice: Perceptions of Young People with Mental Illness. *Policing and Society*, 33(7), 841-860. <https://doi.org/10.1080/10439463.2023.2207714>.

⁴³ Boiteux, S., & Poynton, S. (2023). Offending by Young People with Disability: A NSW Linkage Study. *Crime and Justice Bulletin*. No. 254. NSW: Bureau of Crime Statistics and Research. <https://www.bocsar.nsw.gov.au/Publication%20Supporting%20Documents/CJB/CJB254-Page%20Summary-Offending-by-young-people-with-disability.pdf>.

⁴⁴ Hancock, K., & Zubrick, S. (2015). *Children and Young People at Risk of Disengagement from School*. Western Australia: Commissioner for Children and Young People. <https://ccyp.wa.gov.au/media/1422/report-education-children-at-risk-of-disengaging-from-school-literature-review.pdf>.

⁴⁵ Victoria State Government Sentencing Advisory Council. (2016). *Reoffending by Children and Young People in Victoria*. https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending_by_Children_and_Young_People_in_Victoria.pdf.

⁴⁶ Fox, S., Southwell, A., Stafford, N., Goodhue, R., Jackson, D. and Smith, C. (2015). *Better Systems, Better Chances: A Review of Research and Practice for Prevention and Early Intervention*. Canberra: Australian Research Alliance for Children and Youth (ARACY). https://www.aracy.org.au/publications-resources/command/download_file/id/274/filename/Better-systems-better-chances.pdf.



2.15 Improving the efficacy of non-criminalising responses necessitates a holistic, multi-agency approach. Community support services are often under-resourced and work in silos due to limited capacity. Effective collaboration between service practitioners and wraparound support for children and young people is restricted when resources are limited.⁴⁷

Recommendation 6

2.16 The Salvation Army recommends that the South Australian Government increase funding to community organisations that support children and young people who are diverted away from the justice system under the proposed model. Such services might include youth homelessness, mental health, drug and alcohol and wellbeing services.

⁴⁷ UNSW Centre for Crime, Law and Justice (CCLJ). (2021). *Replacing the Youth Justice System for Children Aged 10-13 Years in NSW: A 'Best Interests' Response*. <https://www.unsw.edu.au/content/dam/pdfs/research/2023-10-coop/CCLJ%20Best%20Interests%20Response%20Report%20September%202021.pdf>.



3 Implementing the Alternative Diversion Model

- 3.1 The Salvation Army supports the implementation of an alternative diversion model. We urge that it must at its core, consider the wellbeing and unique experiences of children and young people, and work to uphold their rights and wellbeing.

First Response: Early Intervention

- 3.2 The Salvation Army affirm our support for the first response in South Australia's proposed alternative diversion model; immediate engagement with first responders and targeted referral pathways for children engaging in harmful behaviour.
- 3.3 The Salvation Army highlights the need for increased investment such that existing early intervention programs which address criminogenic risk factors have the resources to expand support capability. See The Salvation Army's example below. Increased investment will also allow for the development of new programs in line with the proposed diversion model.

The Salvation Army's Tools for the Trade Plus

The Tools for the Trade Plus program is a Salvation Army initiative in Victoria which targets people experiencing disadvantage.

The education and work readiness program is designed to address criminogenic risk factors for young people disconnected from education and work, and at risk of offending

The program works alongside local police who are involved in positive and meaningful ways throughout the 10-week course, developing positive healthy relationships with young people, family and communities.

- 3.4 In our experience, a key challenge in accessing early intervention programs and supports services via referral, is that there are a limited number which specifically target criminogenic risk factors to reduce the likelihood of children and young people reoffending.
- 3.5 Well timed and high value early intervention programs and community supports for children who offend are crucial to address their needs and reduce recidivism. Early intervention approaches are preferable also, to ensure a reduction of the costs that more intensive and invasive approaches (including youth justice supervision and incarceration) have on children and the community.⁴⁸

⁴⁸ Australian Institute of Criminology (AIC). (2007). Cost Effectiveness of Early Intervention. *AICrime Reduction Matters*. No. 54. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/sites/default/files/2020-05/crm054.pdf>.



- 3.6 We caution that it is necessary for first responders to be fully equipped with the knowledge and tools to allow for the child's best interests' to be central in early intervention decision making.⁴⁹ The Salvation Army urges the critical need for initial responses to be developmentally appropriate and proportionate, and that support services a child is referred to be appropriate to their unique needs. We also emphasise that first responders must be proficient in interacting with children who exhibit challenging behaviours.⁵⁰

Recommendation 7

- 3.7 The Salvation Army recommends that the South Australian Government increase funding and investment in early intervention services, to address criminogenic risk factors amongst children and young people. This should include increasing funding to existing programs to enable expansion of service capacity.**

Places of Safety

- 3.8 The Salvation Army support the implementation of the 'places of safety' initiative whereby a child younger than the MACR can be taken to a safe location by first responders in cases where they are at, or present risk to others and cannot be returned home. In implementing this, we caution that environments must be therapeutic and child-centred and that children be fully informed when they are transported to a place of safety. There should also be a strong focus on the child's best interests and in ensuring practices are inclusive and culturally sensitive.
- 3.9 The Salvation Army underline that places of safety should not be used as a means of extrajudicial punishment to restrict the child's freedom. In line with the purpose of diversion, they should be used only in circumstances where there is risk of harm, and the child cannot be returned safely to their family.

Recommendation 8

- 3.10 The Salvation Army recommends that the South Australian Government work to ensure that places of safety are therapeutic and child-centred, with a strong focus on inclusivity and culturally sensitive practices.**

⁴⁹ UNSW Centre for Crime, Law and Justice (CCLJ). (2021). *Replacing the Youth Justice System for Children Aged 10-13 Years in NSW: A 'Best Interests' Response*. <https://www.unsw.edu.au/content/dam/pdfs/research/2023-10-coop/CCLJ%20Best%20Interests%20Response%20Report%20September%202021.pdf>.

⁵⁰ Ibid.





Secondary Response: Three-Level Scalable Action Plans

- 3.11 The Salvation Army believes there can be no 'one-size-fits-all' solution to addressing childhood offending. We believe that if implemented from a child-centred standpoint, scalable action plans offer a unique opportunity for children to have their behaviour addressed outside of the justice system. Flexible implementation will allow responses to be altered such that the unique needs of each child, can be met.
- 3.12 In our experience, the focus of a diversion model must shift from compliance-based, to restorative justice and rehabilitation based. We encourage the emphasis of diversion be on encouraging the child or young person to engage with the community in a positive and prosocial way.

Voluntary Engagement

- 3.13 The Salvation Army support diversion responses being voluntary and therefore informed consent is paramount. First responders and staff working within the diversion model should ensure age-appropriate information describing the diversionary process is provided, alongside any consequences of choosing not to provide consent.⁵¹ Care should also be taken to reduce any form of coercion of children to engage with this process.

Recommendation 9

- 3.14 The Salvation Army recommends that the South Australian Government develop safeguards to ensure children are well-informed about diversionary action plans, and that this engagement is voluntary. Any safeguards, such as information and resources, should be developmentally appropriate.**

Reducing Stigma

- 3.15 The Salvation Army urge that all action planning responses be situated outside of existing justice infrastructure (including the Youth Court), to reduce potential stigma. Stigma is commonly associated with those who are engaged with the criminal justice system and the effect is particularly pronounced in punitive environments.⁵²
- 3.16 Our preference for oversight of action planning is that it occurs through an external mediation body which also sits outside of the criminal justice system. This will ensure clear messaging for children that engaging in action planning is not punitive.

⁵¹ Australian Human Rights Commission. (2001). Human Rights Brief No. 5 – Best Practice Principles for the Diversion of Juvenile Offenders. <https://humanrights.gov.au/our-work/publications/human-rights-brief-no5-best-practice-principles-diversion-juvenile-offenders>.

⁵² Ibid.





3.17 We extend this view also to the development of secure therapeutic facilities, such as treatment centres. Should these be needed in extreme cases, The Salvation Army hold the view that diversion facilities should exist outside of justice infrastructure. Co-locating diversionary treatment services within punitive criminal justice facilities will blur the separation between the two, thereby perpetuating unintended stigma and resulting in detrimental consequences for affected children.⁵³

Recommendation 10

3.18 The Salvation Army recommends that the South Australian Government ensure all diversionary responses are situated in locations and overseen by bodies external to the criminal justice system.

Children's Court Youth Diversion Circle

3.19 In considering how suggested diversionary action plans may practically be delivered, The Salvation Army highlights the success of the internally developed children's court youth diversion circle program, currently operating in Victoria. See below example.

3.20 Geared for a younger cohort, the program has yielded positive outcomes in reducing recidivism and supporting the needs of children who have engaged in harmful behaviour. The Salvation Army affirms its support for diversionary responses such as this, which are voluntary and engage in collaborative and child-focused decision making.

Children's Court Youth Diversion Circle, Victoria

The Children's Court Youth Diversion Circle (CCYD) initiative is an educational opportunity which assists young people to develop insight and emotional understanding into their behaviour and its consequences. Borne out of our success in delivering restorative group conferencing,⁵⁴ this Salvation Army program provides space for children to identify the impacts of offending and take responsibility for this behaviour.

Informed consent must be provided by the child or young person to engage, and they must be afforded appropriate legal representation. The process is overseen and delivered via an independent Salvation Army convenor and during the conference, a collaborative diversion plan is discussed amongst the parties and collectively agreed upon. Reoffending is less frequent and less serious amongst children who have participated in the program.

⁵³ Australian Human Rights Commission. (2001). Human Rights Brief No. 5 – Best Practice Principles for the Diversion of Juvenile Offenders. <https://humanrights.gov.au/our-work/publications/human-rights-brief-no5-best-practice-principles-diversion-juvenile-offenders>.

⁵⁴ Victoria State Government. (2022). *Diversion: Keeping Young People Out of Youth Justice to Lead Successful Lives*. <https://files.justice.vic.gov.au/2022-03/Youth-diversion-statement.pdf>.





Recommendation 11

3.21 The Salvation Army recommends that the South Australian Government draw upon the learnings from current successful programs in other Australian states and territories, to ensure effective methods are implemented in diversionary action planning interventions.

Considerations for Implementing the Alternative Diversion Model

3.22 The Salvation Army observes the benefit of diversion and draws attention to the following considerations for the model's equitable implementation.

Resourcing Frontline Justice Responses

3.23 The Salvation Army support police and justice responses occurring in the most effective and least damaging manner. We urge the critical need for the entire frontline youth justice system to be appropriately resourced. Responses must be equitable, developmentally appropriate and must ensure the physical, cultural, and emotional safety of children is upheld.⁵⁵

3.24 The police make up a critical part of our frontline system and due to the nature of harmful behaviours, police are likely to be first responders. It is crucial that police have a thorough understanding of trauma-informed practice to ensure that children who have experienced disadvantage are met with proportionate and supportive responses.⁵⁶

3.25 The Salvation Army acknowledge police powers as outlined in the discussion paper. We caution that inappropriate use of force or powers could be counterproductive or traumatic.⁵⁷ Evidence shows that the use of physical force rarely results in behaviour change and causes psychological and physical harm to children.⁵⁸ We urge the South Australian Government to implement appropriate oversight and accountability mechanisms to reduce the risk of oppressive or coercive over policing and surveillance of children and young people. This includes for Aboriginal and Torres Strait Islander children who are disproportionately impacted.⁵⁹ Accountability mechanisms should include independent complaints mechanisms that are accessible to children and consider their development.⁶⁰

⁵⁵ Standing Council of Attorneys-General. (2023). *Age of Criminal Responsibility Working Group Report*. <https://www.ag.gov.au/sites/default/files/2023-12/age-of-criminal-responsibility-working-group-report-2023-scag.pdf>.

⁵⁶ Harris, A. (Undated). Trauma, Young People and Juvenile Justice. *Australian Child & Adolescent Trauma, Loss & Grief Network*. <http://earlytraumagriev.anu.edu.au/files/Trauma%20and%20juvenile%20justice%20in%20Australia.pdf>.

⁵⁷ Australian Children's Commissioners and Guardians. (2017). *Statement on Conditions and Treatment in Youth Justice Detention*. https://humanrights.gov.au/sites/default/files/document/publication/ACCG_YouthJusticePositionStatement_24Nov2017.pdf.

⁵⁸ Ibid.

⁵⁹ Harrison, K., & Sentas, V. (2023). Excessive Police Power Causes Egregious Harm for First Nations and Other Young People. *UNSW Law & Justice*. <https://www.unsw.edu.au/law-justice/our-research/impact/excessive-police-power-causes-egregious-harm-first-nations-other-young-people>.

⁶⁰ Sentas, V. (Undated). *Redfern Legal Centre: Challenging Everyday Police Powers*. <https://classic.austlii.edu.au/au/journals/UNSWLawSocCConsc/2018/8.pdf>.





3.26 The Salvation Army supports the implementation of suggested safeguards including the right to have a parent or legal guardian present during all police-child interactions, the right to legal representation, the use of specialist interviews to minimise trauma, and restrictions on the use and retention of forensic samples. We urge that these safeguards be extended to mandate that children be age-appropriately informed of their rights.

Recommendation 12

3.27 The Salvation Army recommends that the South Australian Government appropriately resource police and frontline justice systems, to ensure responses are trauma-informed, developmentally appropriate, and proportionate.

Recommendation 13

3.28 The Salvation Army recommends that the South Australian Government ensure developmentally appropriate information is provided to children during all interactions with the justice system. This should include access to independent, and robust complaints mechanisms.

Prioritising Education and Training

3.29 The Salvation Army observe the need for increased levels of effective, tailored education, training and workforce capacity building across the youth justice and broader community services workforce. This should include police and other emergency service workers, frontline services (housing, family and domestic violence, education), judicial system staff (judges, prosecutors), medical professionals, security guards, youth workers, cultural leaders, and parents/caregivers.

3.30 Achieving a trauma-informed and rehabilitative approach under the diversion model is dependent on staff and responders having a common understanding of the causes and impacts of trauma and how this affects children's behaviour.⁶¹ Quality leadership and staff recruitment is crucial, as is ongoing workforce training and education to increase the capacity of workers engaging compassionately with children and young people.⁶²

⁶¹ Children and Family Intensive Support. (2017). Child-Centred, Family-Focused Support.

https://www.dss.gov.au/sites/default/files/documents/04_2022/cafis_1b_-_child_centred_family_focused_support.pdf.

⁶² Australian Children's Commissioners and Guardians. (2017). *Statement on Conditions and Treatment in Youth Justice Detention*.

https://humanrights.gov.au/sites/default/files/document/publication/ACCG_YouthJusticePositionStatement_2-Nov2017.pdf.





- 3.31 In our experience, greater work is required to ensure staff member's interactions with children are developmentally appropriate, culturally-led, and trauma-informed. We further urge that all training advocates for the rights, voices, and unique experiences of children to be central in all decision-making processes.
- 3.32 Conflict and challenging behaviours are well-known concerns amongst children who offend. It is important that first responders and service providers are trained in quality de-escalation techniques for children to ensure sufficient capability in dealing with challenging behaviours.⁶³

Recommendation 14

- 3.33 The Salvation Army recommends that the South Australian Government implement specialist training for frontline workers across the youth justice sector. This training should be mandated, repeated regularly, and cover the impacts of trauma, child-centred practice, and de-escalation techniques.**

⁶³ Australian Children's Commissioners and Guardians. (2017). *Statement on Conditions and Treatment in Youth Justice Detention*. https://humanrights.gov.au/sites/default/files/document/publication/ACCG_YouthJusticePositionStatement_24Nov2017.pdf.

4 Conclusion

- 4.1 The Salvation Army thanks the South Australian Government's Attorney-General's Department for the opportunity to provide a written submission.
- 4.2 The Salvation Army would welcome the opportunity to discuss the content of this submission should any further information be of assistance. Further information can be sought from government.relations@salvationarmy.org.au.

The Salvation Army Australia Territory

March 2024





Appendix A About The Salvation Army

The Salvation Army is an international Christian movement with a presence in more than 130 countries. Operating in Australia since 1880, The Salvation Army is one of the largest providers of social services and programs for people experiencing hardship, injustice and social exclusion.

The Salvation Army Australia provides more than 1,000 social programs and activities through networks of social support services, community centres and churches across the country.

Programs include:

- Financial counselling, financial literacy and microfinance
- Emergency relief and related services
- Homelessness services
- Youth services
- Family and domestic violence services
- Alcohol, drugs and other addictions
- Chaplaincy
- Emergency and disaster response
- Aged care
- Employment services

As a mission-driven organisation, The Salvation Army seeks to reduce social disadvantage and create a fair and harmonious society through holistic and person-centred approaches that reflect our mission to share the love of Jesus by:

- Caring for people
- Creating faith pathways
- Building healthy communities
- Working for justice

We commit ourselves in prayer and practice to this land of Australia and its people, seeking reconciliation, unity and equity.

Further information about The Salvation Army can be accessed at:

<<https://www.salvationarmy.org.au/>>

