NSW Parliament Select Committee on Youth Justice Inquiry
Response to supplementary questions from Dr Fiona Robards and Professor Elizabeth Elliott, The University of Sydney and FASD Research Australia

(1) If the age of criminal responsibility is raised, what risks arise if broader system reform does not occur alongside it?

If the age of criminal responsibility is raised, it will be imperative to have alternative pathways to support children who come into contact with the justice system in the community.

The lack of an alternative to incarceration is a breach of human rights and a failure to comply with international best practice. The lack of an alternative to incarceration would deny children the opportunity for access to early, developmentally appropriate supports that are critical to:

- address the underlying reasons for their offending, including trauma, disability, and social disadvantage
- improve health, wellbeing and education outcomes across the life course
- prevent further involvement in crime and further involvement with the justice system
- delivering long-term cost savings to the government and the community
- potentially put communities at risk of ongoing crime.

(2) Should raising the age be accompanied by a legislated requirement to invest in early intervention and diversion services?

Raising the age of criminal responsibility should be accompanied by a legislated requirement to invest in early intervention, diversion, and welfare-based support services. A legislated investment requirement could be built in to align responses with existing pathways such as the diversionary hierarchy in the Young Offenders Act 1997, alternative education options under the Education Act 1900 and referral pathways to other services and programs. A legislated investment requirement would support a transition from a justice-led model to a welfare-led approach, ensuring children are responded to through health, education, disability, family, and community systems.

Australia

Culturally responsive diversion programs for Aboriginal and Torres Strait Islander children can support governments with raising the age.(1) A scoping literature review of Australian programs identified 15 types of diversion programs, which varied widely in cultural responsiveness. Culturally responsive programs were Indigenous-led, place-based, holistic, life-course, and healing and family-centred. The reviewed Australian diversion programs included residential remand and bail services, homeless support, after-hours outreach, community reinvestment, equine-assisted learning, case management, holiday program, mental health and alcohol and other drugs, driver's licensing, motor vehicle offending diversion, on-country, school-based, vocational training and therapeutic services, Police cautioning, conferencing and diversion and Indigenous court.(1)

Western Australia

In Western Australia, intensive community-based support programs for people with FASD who are involved with youth justice can facilitate access to education, life skills training, therapeutic and diversionary activities, and address family relationships, all of which are likely to be crucial to community reintegration.(2) The Yiriman Project, a community-owned initiative in the Fitzroy Valley, provides on-Country immersion programs for young people at risk of offending and has been associated with positive outcomes for wellbeing, cultural connection, and reduced justice involvement.(3)

Victoria
An evaluation of the Victorian Children's Court Youth Diversion (CCYD) program conducted between 2020 and 2022 found that diversion reduced both the frequency and seriousness of reoffending. (4) Less than a quarter of participants had reoffended within six months of completion; over half had not reoffended after two years; and participants demonstrated more positive attitudes and behavioural change than comparable cohorts who received alternative court outcomes.

International approaches
International evidence further supports legislated investment in welfare-based systems alongside raising the age. Many jurisdictions have deliberately shifted from justice-centred responses to child welfare frameworks, particularly for children with neurodevelopmental disability such as FASD.

In Canada, a positively evaluated Youth Outreach Program for Aboriginal young people with FASD or suspected FASD provides one-to-one intensive support and advocacy.(5) Program activities include assisting with housing, education, healthcare, legal navigation, service access, transport, social connection, harm reduction, and family relationships. Outcomes included improved safety and stability, better health and wellbeing, reduced substance use, improved education and employment pathways, and stronger social supports.

In the United States, positively evaluated programs for young people with FASD include intensive case management delivered by workers trained in FASD-specific interventions, enabling access to healthcare, stable housing and a coordinated support network.(6)

Norway applies a welfare-based model to children in contact with the law, with a minimum age of criminal responsibility of 15 years. Its comparatively low youth crime rates are attributed to policies that prioritise child and family welfare, delivered through social service systems rather than criminal justice institutions.(7)

Ireland ended the imprisonment of children under 18 in 2017, shifting to child-centred detention campuses focused on education, rehabilitation, and emotional wellbeing rather than punishment.(8)

Scotland closed its youth prisons in 2024, placing all children in conflict with the law in secure care settings governed by child welfare legislation.(9)

Spain has long adopted an in-patient, therapeutic residential approach, where adolescents live in treatment-focused environments with trained staff, strong educational provision, and integrated mental health care. Detention is used sparingly and is explicitly focused on addressing the underlying causes of offending behaviour rather than punishment.(10)

(3) What does success look like five years after raising the age of criminal responsibility?

Based on international evidence and evaluations of alternative and diversionary pathways to incarceration, success five years after raising the age of criminal responsibility would be reflected in measurable system transformation, improved life outcomes for children, enhanced community safety and cost savings.

A child rights approach (e.g. using diversionary programs to avoid incarceration) is important in the youth justice context because it recognises the specific needs of children and young people, is effective in reducing crime, provides a long-term solution to offending behaviour, is more cost-effective than taking a punitive approach, and is an effective way to increase public

confidence in the system.(11) Adopting a child rights approach to positive change in youth justice includes ensuring children and adolescents in youth justice settings have the right to express their views about decisions affecting them and that those views and opinions are respected, supported and taken seriously.

Evidence-based alternative pathways to incarceration
Introduction of evidence-based alternative pathways to incarceration, specifically community-based programs to promote health wellbeing will:

1. *Improve assessment and early identification of need*
   There is a need to strengthen timely multi-disciplinary assessment of health, mental health and well-being to understand children's strengths and needs.
2. *Enhance supports for children with complex needs*
   Support services for youth with complex needs should be strengthened, including services for disability, mental health, and community-based youth justice. The availability of one-on-one mentoring and co-ordination of support for individuals in the community, including intensive case managers must be increased.
3. *Expand therapeutic residential capacity outside the justice system*
   There is a need to increase capacity for intensive therapeutic residential support in the community.
4. *Result in strengthened, culturally safe and community-led responses*
   Increased community-based services to ensure cultural security for Indigenous and ethnically diverse communities both before and after contact with the justice system is needed.
5. *Increase public and community confidence*
   It is important to raise community awareness of the benefits to individuals, communities, and society of alternative pathways - there is no evidence of increased crime and substantial cost savings - through a communications strategy that is informed by research into the effective framing of youth justice issues (in progress).

Costs saving
Success would also be demonstrated through reduced reliance on detention and more efficient use of public funds. Diversion programs are significantly cheaper than placing youth in custody and also reduce reoffending.(12, 13)

In Australia, in 2022–2023, the total recurrent expenditure nationally on detention-based supervision, community-based supervision and group conferencing for children and adolescents aged 10–17 years was $1.3 billion. Detention-based supervision accounted for most of this expenditure (64.7% or $855.3 million).(14) In contrast, the average cost per day per child or adolescent subject to community-based supervision was $305, compared to $2,827 per day for detention-based supervision.(14)

Five years after reform, success would be reflected in lower detention numbers, reduced reoffending, improved child wellbeing, and the reinvestment of savings into prevention, early intervention and community services, reinforcing a sustainable, welfare-led system.

(4) What is the single most important reform that should accompany raising the age to ensure better outcomes for children and community safety?

Comprehensive screening and assessment for disability
Comprehensive screening and assessment for disability (including cognitive capacity, language, memory, adaptive functioning, and attention) will, in turn, guide culturally safe, community-based interventions. A better understanding of an individual’s developmental needs will inform

therapeutic justice, education and recreation programs and ensure better outcomes for youth in the justice system.

The National Aboriginal Community Controlled Health Organisation (NACCHO) and The Royal Australian College of General Practitioners (RACGP) recommend that all children and young people at high risk for FASD should be screened for FASD on initial contact with the child protection, police or justice systems.(15) At present, there is no recommended screening tool for use in the Australian context.(16, 17)

The development of such a screening tool could be led by our centre. FASD Australia, the NHMRC Centre of Research Excellence in Fetal Alcohol Spectrum Disorder, is an Australian-international collaboration in FASD research and translation, led by the University of Sydney (2026-30). It brings together experts in epidemiology, implementation science, health economics, Indigenous research, policy development and paediatrics. It will fill knowledge gaps in the epidemiology, diagnosis and management, and the burden and costs of FASD through high-impact studies that translate directly into better outcomes for individuals and families with FASD.

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