

JUSTICE REFORM INITIATIVE

Submission to the South Australian Attorney General's Department on the Expiry of the Young Offenders Regulations 2008

General Submissions:

1. No child should be detained in a 'youth justice centre', 'training centre', police prison, police station, watch-house or lock-up.
2. Jailing children sets them up for a lifetime of contact with the criminal legal system.
3. The number of children detained at Kurlana Tapa Youth Justice Centre in 2021-22 was 292: 138 (47.3%) of those children are Aboriginal. Of concern is that in 2021-2022 as in the previous year, the number of Aboriginal children and young people who were successfully diverted away from the child justice system was at its lowest rate since reporting began. More needs to be done to divert all children away from the child justice system with a particular emphasis needed on diversion of Aboriginal children and young people¹.
4. There is an urgent need to raise the minimum age of criminal responsibility to 14 in South Australia. The evidence is clear that 14 is the minimum age developmentally and neurologically that children could or should be held criminally responsible². There are in fact compelling developmental arguments to suggest this age should be higher³

¹ 2022 Child Rights Progress Report on child Justice, Commissioner for Children & Young People, page 19.

² Farmer E (2011), The age of criminal responsibility: Developmental science and human rights perspectives, Journal of Children's Services, 6: 86-95; Cunneen C (2017). Arguments for Raising the Minimum Age of Criminal Responsibility, Comparative Youth Penalty Project. Sydney: University of New South Wales, <http://cyp.unsw.edu.au/node/146> ; Australian Medical Association (2019). AMA submission to the Council of Attorneys-General – Age of Criminal Responsibility Working Group Review.

³ United Nation Convention on the Rights of the Child (2019). General Comment No. 24 (2019) on Children's Rights in the Child Justice System.

Submissions on Regulation 8 of the Young Offenders Regulations 2008 (the Regulations)

5. Regulation 8 provides that children as young as 10 who are:
 - a. in lawful custody; and
 - b. were taken in to custody greater than a 40 kilometre radius of the General Post Office at Adelaidemay be detained in a police prison or approved police station, watch-house or lock-up.
6. South Australian cities that are greater than 40km from the General Post Office at Adelaide include Gawler, Mt Gambier, Whyalla, Murray Bridge, Victor Harbor, Port Lincoln, Port Pirie, Port Augusta. Or, put another way, eight of the most populous cities in the State.
7. In her 2022 Report on SA's progress on recommendations made by the UN Committee on the Rights of the Child, the Commissioner for Children and Young People noted that⁴:
 - a. children were arrested and detained in SA police cells or watch houses at least 2,030 times in 2020–21.
 - b. Of these 2,030 separate admissions, 890 (43.8%) were Aboriginal children or young people. In some regional/remote locations all, or almost all children arrested and detained were Aboriginal.
8. There should be no equivalent to Regulation 8 in the revised Young Offenders Regulations that allows children to be detained in a police prison or approved police station, watch-house or lock-up, where ever they are apprehended by Police.

⁴ 2022 Child Rights Progress Report on Child Justice, Commissioner for Children & Young People, page 15.