



National Children's Commissioner
Australian Human Rights Commission
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Youth Justice and Child Wellbeing Reform across Australia

Sexual Assault Services Victoria (SASVic) welcomes the opportunity to provide a submission to the National Children's Commissioner's project to explore opportunities for youth justice and child wellbeing reform across Australia to reduce children's involvement in crime.

SASVic is the peak body for specialist sexual assault and harmful sexual behaviour services (SSAS) in Victoria. We work to promote the rights, recovery and respect for victim survivors and other people impacted by sexual violence and harm. We seek to achieve this by working collectively to address the attitudes, systems and structures that enable sexual violence to occur.

SASVic members bring over 30 years of feminist practice and specialist expertise to the task of reforming system responses to sexual violence and harmful sexual behaviours (HSBs). Many members support victim survivors of child sexual abuse (CSA), and children and young people (CYP) exhibiting HSBs.

1. What factors contribute to children's and young people's involvement in youth justice systems in Australia?

Relationship between child protection (CP) and youth justice systems

Many factors can contribute to CYP's involvement in the youth justice system, like adverse childhood experiences and systemic discrimination against CYP from diverse communities.¹ These factors need to be addressed. This submission focuses on the link between CP and youth justice systems. Children with involvement in both systems are referred to as 'crossover' or 'dual system' children.² More than half of children aged ten and over under youth justice supervision between 2020 and 2021 had

¹ Australian Human Rights Commission (AHRC), "Indigenous deaths in custody: Chapter 9 Juveniles", accessed June 5, 2023, <https://humanrights.gov.au/our-work/indigenous-deaths-custody-chapter-9-juveniles>, and Victorian Government, *Youth Parole Board: annual report 2021-22* (Melbourne: Victorian Government, 2022), <https://www.justice.vic.gov.au/youth-parole-board-annual-report-2021-22>.

² Sentencing Advisory Council, *'Crossover kids': Vulnerable children in the youth justice system report 3: sentencing children who have experienced trauma* (Melbourne: Victorian Government, 2020), <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system-report-3>, and Joseph McDowall, *Transitioning to adulthood from OOHC: independence or interdependence* (Parramatta: CREATE Foundation, 2020), <https://create.org.au/research-and-publications/>, p.27.

received a CP service in the previous five years.³ The age of first involvement with police is a key indicator of ongoing contact with the justice system and likelihood of reoffending.⁴ Importantly, the younger a child is when they are sentenced, the more likely they are to reoffend, reoffend violently, and to continue offending into the adult criminal justice system and be sentenced to an adult sentence of imprisonment before their 22nd birthday.⁵ Aboriginal and Torres Strait Islander CYP and CYP with disability are overrepresented in both systems.⁶

One setting we consider is out-of-home care (OOHC), where CYP are often placed because of CP involvement. Between 2018 and 2019, ten percent of children who received CP services experienced sexual abuse.⁷ CYP removed from home are vulnerable to sexual violence while in state care. The Commission for Children and Young People (CCYP) highlights the ‘alarming’ scale of CSA, including child sexual exploitation, in residential care.⁸ In Victoria, between July 2021 and end March 2023, 423 incidents of sexual exploitation in residential care were reported.⁹ Greater evidence on effective interventions, including to child sexual exploitation, is needed (see question three).

Relationship between offending behaviour and trauma

One factor that contributes to offending behaviour is childhood trauma.¹⁰ CYP in OOHC are mostly charged for matters involving criminal damage, which has links to childhood trauma.¹¹ CYP who have experienced trauma may have difficulty regulating their emotions. They may consider others’ actions as hostile and respond in ways seen as unacceptable, such as throwing objects. Systemic issues in OOHC can lead CYP feeling a lack of connection to carers and residents, contributing to them absconding or going missing.¹² Girls and Aboriginal and Torres Strait Islander CYP in OOHC are at highest risk of going missing, which is an indicator of child sexual exploitation.¹³ Perpetrators target

³ Australian Institute of Health and Welfare (AIHW), *Young people under youth justice supervision and their interaction with the CP system 2020-21* (Canberra: Australian Government, 2022), <https://www.aihw.gov.au/reports/youth-justice/young-people-under-youth-justice-supervision/summary>.

⁴ Kath McFarlane, “Care-criminalisation: The involvement of children in OOHC in the New South Wales criminal justice system”, *Australian and New Zealand Journal of Criminology* 51, no.3 (August 2017): 412-433, <https://journals.sagepub.com/doi/abs/10.1177/0004865817723954>, p.423.

⁵ Sentencing Advisory Council, *Reoffending by CYP in Victoria* (Melbourne: Victorian Government, 2016), <https://www.sentencingcouncil.vic.gov.au/publications/reoffending-children-and-young-people-victoria>.

⁶ Dr Susan Baudawi et al., *Care criminalisation of children with disability in CP systems* (Melbourne: Monash University, Western Sydney University, and Centre for Evidence and Implementation, 2022), <https://disability.royalcommission.gov.au/publications/care-criminalisation-children-disability-child-protection-systems>, p.12.

⁷ AIHW, “CP Australia 2020-21”, accessed June 5, 2023, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/summary>.

⁸ CCYP, “...as a good parent would...”: *Inquiry into the adequacy of the provision of residential care services to Victorian CYP who have been subject to sexual abuse or sexual exploitation whilst residing in residential care* (Melbourne: CCYP, 2015), <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/as-a-good-parent-would/>, p.62, and Dr Gemma McKibbin et al., “We must act now to stop child sexual exploitation in residential care”, accessed June 5, 2023, <https://pursuit.unimelb.edu.au/articles/we-must-act-now-to-stop-child-sexual-exploitation-in-residential-care>.

⁹ CCYP, “Statewide action overdue amid new data showing continuing sexual exploitation of children in residential care”, accessed June 5, 2023, <https://ccyp.vic.gov.au/news/statewide-action-overdue-amid-new-data-showing-continuing-sexual-exploitation-of-children-in-residential-care/>.

¹⁰ Sentencing Advisory Council, ‘Crossover kids’, p.12 – 24.

¹¹ Sentencing Advisory Council, ‘Crossover kids’, p.14 and Kath McFarlane, “Care-criminalisation”, p.422.

¹² CCYP, *Out of sight: Systemic inquiry into CYP who are absent or missing from residential care* (Melbourne: CCYP, 2021), <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/out-of-sight-systemic-inquiry-into-children-and-young-people-who-are-absent-or-missing-from-residential-care/>.

¹³ Dr McKibbin et al., “We must act now to stop child sexual exploitation in residential care”.

CYP's vulnerability by offering alcohol and substances for sexual and criminal exploitation.¹⁴ CYP behaviours are then often treated with criminalisation.¹⁵ We do not suggest that CYP who experience trauma engage in criminal activity, but that a large proportion of CYP who become involved in youth justice have experienced and are experiencing trauma, which perpetrators exploit.¹⁶

Studies of crossover children highlight care criminalisation contributing to involvement in the youth justice system. Due to systemic issues in OOHC, care criminalisation is the process whereby staff, particularly in residential care facilities, are poorly remunerated and trained to support CYP and resolve conflict, relying on police to manage challenging behaviours.¹⁷ Compared to children in other residential settings, CYP in OOHC tend to be remanded in custody and for longer periods of time, and for offences that emerge from and are particular to the care setting. Their bail conditions are more heavily policed, and they are more likely to be remanded for bail breaches.¹⁸

CYP are at high risk of experiencing sexual violence in youth detention, contributing to further trauma and criminalisation. An example of CSA unique to youth detention include sexual abuse occurring during operational procedures like strip searches.¹⁹ The current Commission of inquiry into Tasmanian Government's responses to CSA in institutional settings heard victim survivor experiences of sexual abuse, including reproductive coercion, by youth detention staff and detainees.²⁰ Our response to question three notes current projects in OOHC, one of which is the Respecting Sexual Safety program, which uses prevention strategies for sexual exploitation and HSBs. We are not aware of similar prevention strategies in youth detention.

Recommendation:

- 1) Consider implementing learnings from current prevention programs in OOHC to the youth justice system.
- 2. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of CCYP? What are the barriers to change, and how can these be overcome?**

The Royal Commission into Institutional Child Sexual Abuse (Royal Commission)

¹⁴ CCYP, *Out of sight*.

¹⁵ Australian Federal Police, "New research shows youth in OOHC highest risk of going missing", accessed 5 June, 2023, <https://www.afp.gov.au/news-media/media-releases/new-research-shows-youth-out-home-care-highest-risk-going-missing>.

¹⁶ Joseph McDowall et al, *Youth Justice report* (Queensland: CREATE Foundation, 2018), <https://create.org.au/research-and-publications/>, p.12, Victoria Legal Aid (VLA), *Care not custody: a new approach to keep kids in residential care out of the criminal justice system* (Melbourne: VLA, 2016).

¹⁷ McFarlane, "Care-criminalisation", p.416, Joseph McDowall et al, *Youth Justice report*, p.32-33.

¹⁸ McFarlane, "Care-criminalisation", p.421-424

¹⁹ Royal Commission, "Final report", accessed June 5, 2023, <https://www.childabuseroyalcommission.gov.au/final-report>.

²⁰ Lucy MacDonald, "Former Ashley youth detention centre detainees lodge class action over alleged abuse", ABC News, August 12, 2022, <https://www.abc.net.au/news/2022-08-12/former-ashley-detention-centre-detainees-lodge-class-action/101323414>, Lucy MacDonald, "Female detainee tells of abuse, torment, while at Tasmania's Ashley youth prison", ABC News, August 22, 2022, <https://www.abc.net.au/news/2022-08-22/female-detainee-tells-of-abuse-while-at-ashley-detention/101356144>, Loretta Lohberger, "Tasmanian government pushes back on claims of abuse by former Ashley youth detainees", ABC News, December 21, 2022, <https://www.abc.net.au/news/2022-12-21/ashley-youth-detention-centre-abuse-lawsuit-govt-responds/101799336>.

The Royal Commission made recommendations specific to OOHC, youth and criminal justice systems.²¹ We refer you to recommendations in relevant volumes 12 and 15, and the criminal justice report. Recommendations include adopting a model of care tailored for kinship or relative care, building staff capacity in trauma-informed care, and reviewing complaints handling systems.

Recommendation:

- 2) Continue implementing Royal Commission into Institutional Child Sexual Abuse recommendations specific to OOHC, youth and criminal justice systems in close partnership with specialist sexual assault services and CYP in those systems, including victim survivors.

Resourcing specialist sexual assault services (SSAS)

As OOHC and youth detention present unique opportunities for CSA to occur, SSAS play an important role in supporting victim survivors and CYP exhibiting HSBs.²² For example, when CSA is disclosed in the Victorian youth justice system, referrals to SSAS are made.²³

Reforms arising from the Royal Commission, Royal Commission into Family Violence, and Victorian Law Reform Commission (VLRC) report *Improving the justice system response to sexual offences* (VLRC report), and COVID19 greatly impact SSAS service delivery. Service capacity is significantly outstripped by demand. At present, there are waitlists of up to six months, sometimes longer, for member services. In 2019 to 2020, 11 member services responded to twice as many CYP with HSBs as they were funded for. Between 2018 and 2019, members delivered 794 training sessions to thousands of professionals. In addition, victim survivors or CYP exhibiting HSBs who experience multiple forms of discrimination and trauma require intensive, specialised, and targeted supports. Some member services are reporting an increase in case complexity, which the current funding model does not address. Adequate and sustainable investment in SSAS is needed to ensure that victim survivors and CYP exhibiting HSBs in youth justice and related systems can access services when required.

Recommendation:

- 3) Adequately and sustainably invest in SSAS to prevent and respond to sexual violence.

Integrated service response

As mentioned, referrals to SSAS are made when CSA is disclosed in the Victorian youth justice system. SSAS provide therapeutic and evidence-based support for victim survivors and CYP exhibiting HSBs. Ensuring that SSAS are integrated as part of youth justice and related systems response to sexual violence is crucial.

Recommendation:

²¹ Royal Commission, “Final report” and “Criminal justice”, accessed June 5, 2023, <https://www.childabuseroyalcommission.gov.au/criminal-justice>.

²² HSBs are ‘sexual behaviours expressed by CYP under the age of 18 years old that are developmentally inappropriate, may be harmful towards self or others, or be abusive towards another child, young person or adult’. There is a continuum of sexual behaviours that range from normal to violent, as well as a continuum of responses to HSBs. National Society for the Prevention of Cruelty to Children, “HSB framework: an evidence-informed operational framework for CYP displaying HSBs”, accessed March 15, 2023, <https://www.icmec.org/wp-content/uploads/2019/04/harmful-sexual-behaviour-framework.pdf>.

²³ Victorian Government, *Victorian Government annual report 2022: Royal Commission into Institutional Responses to Child Sexual Abuse* (Melbourne: Victorian Government, 2023), <https://www.vic.gov.au/victorian-government-annual-report-2022-royal-commission-institutional-responses-child-sexual-abuse>, p.25. Male Adolescent Program for Positive Sexuality (MAPPS) is a program for young people who have engaged in sexual offending aimed at addressing their offending behaviour. Youth offending programs do not target experiences of CSA so referrals to SASS are made.

- 4) Integrate SSAS as part of youth justice and related systems response to sexual violence.

Royal Commission into Violence, Abuse, Neglect and Exploitation of people with disability (Disability Royal Commission)

Given the overrepresentation of children with disability in the CP system, the Disability Royal Commission commissioned research specifically about care criminalisation of children with disability. The report makes recommendations to prevent criminalisation of children with disability. Recommendations include implementing policy between CP and education departments to maximise school engagement, and ensuring residential care funded by CP is therapeutic and able to meet the needs of children with complex disability-related needs.²⁴

Recommendation:

- 5) Address and implement the Disability Royal Commission recommendations regarding care criminalisation of children with disability.

CYP exhibiting HSBs

There are complex issues to consider regarding CYP exhibiting HSBs.²⁵ Prior experiences of harm perpetrated by adults, like CSA and family violence, was the most common and presenting need for children exhibiting HSBs.²⁶ One study found that male CYP who experienced sexual violence were three times more likely to show HSBs than those without such experiences.²⁷ Labelling and responding to CYP with HSBs as ‘sex offenders’ or ‘perpetrators’ does not take into account their age and developmental stage.²⁸

Victoria’s approach to responding to HSBs, which uses Therapeutic Treatment Orders (TTOs), provides a positive model. The *Children, Youth and Families Act 2005* makes provisions for reports about children aged 10 to 17 years of age who exhibit sexually abusive behaviours (referred to here as HSBs) and are believed to need therapeutic treatment.²⁹ A TTO is a therapeutic and diversionary pathway to prevent future offending. TTOs recognise that given CYP’s developmental stages, responses to CYP must be different from that required to address adult offending. CP applies for a TTO to the Children’s Court and if the court makes a TTO, there is a direction for the child to engage in HSB treatment for up to a year, with a possible extension, which CP oversees. A therapeutic treatment placement order (TTPO) can also be made, which requires a child be removed from home where it is necessary to ensure the child’s participation in treatment and/or other children’s safety. SSAS provide specialist responses to CYP who exhibit problematic or HSBs through HSB treatment programs.³⁰ In many cases, HSB treatment programs, rather than youth custody, are a more

²⁴ Dr Baudawi et al., *Care criminalisation of children with disability in CP systems*.

²⁵ Royal Commission volume ten.

²⁶ Antonia Quadara et al., *Good practice in responding to young people with HSBs* (Sydney: ANROWS, 2020), <https://www.anrows.org.au/publication/good-practice-in-responding-to-young-people-with-harmful-sexual-behaviours-key-findings-and-future-directions/>. Elena Campbell, *Adolescents using family violence: MARAM practice guidance project 2022: review of the evidence base* (Melbourne: Centre for Innovative Justice RMIT University, 2022), <https://cij.org.au/research-projects/download-publications-here/>.

²⁷ Michael Seto et al., “Sexual coercion experience and sexually coercive behaviour: a population study of Swedish and Norwegian male youth”, *Child Maltreatment* 15, no.3 (August 2010): 219-28, <https://pubmed.ncbi.nlm.nih.gov/20460305/>.

²⁸ Quadara et al., *Good practice in responding to young people with HSBs*, and Campbell, *Adolescents using family violence*.

²⁹ Victorian Government, “Therapeutic treatment reports and orders – advice”, accessed June 5, 2023, <https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/children-specific-circumstances/therapeutic-treatment-reports-and->.

³⁰ NASASV, *Standards of practice manual for services against sexual violence* (3rd edition) (Mildura: NASASV, 2021), <https://www.nasasv.org.au/resources>, p.91.

appropriate method of early intervention and prevention of HSBs.³¹ Other referral pathways into HSB treatment programs include families, schools, and self-referrals for voluntary engagement without the need for a TTO.³²

Ensuring that lawyers, police, judges, and magistrates are aware of HSB treatment programs is fundamental, which aligns with VLRC report recommendation 69. The recommendation is to fund the development and delivery of an education and training program, including topics such as the TTO system.

Recommendation:

- 6) Consider implementing Victoria's Therapeutic Treatment Orders approach for CYP who exhibit HSBs in other jurisdictions.
- 7) Fund the development and delivery of an education and training program for lawyers, police, judges, and magistrates, about responding to CYP who exhibit HSBs. This recommendation is contingent on the implementation of recommendation six.

Programs that support CYP in the justice system

The VLRC report identifies a range of relevant potential reforms. We refer you to chapters 12 and 15 in particular, as they discuss specific programs or models.³³ Programs include Making Rights Reality, which supports adult and children victim survivors with a cognitive impairment and/or communication difficulties to access counselling, advocacy, and legal representation. Another program is the Intermediary Scheme, which supports witnesses or complainants who are under 18 or have a cognitive impairment.

Recommendation:

- 8) Implement programs that have been evaluated as effective to support child victim survivors and children accused of sexual offences in the justice system.

Data to support members of diverse communities

Data on CYP in CP and youth detention systems shows that people with disability and Aboriginal and Torres Strait Islander communities are overrepresented in both systems. There is limited data about other groups, such as culturally and linguistically diverse and LGBTIQ+ CYP. Such data is crucial to providing appropriate responses. For example, inappropriate placement of transgender CYP in the youth justice system can place them at a higher risk of abuse, including sexual violence, by staff or detainees.³⁴

Recommendation:

- 9) Collect data about members of diverse communities in youth justice and related systems to inform appropriate targeted responses.

³¹ Quadara et al., *Good practice in responding to young people with HSBs*, Gemma McKibbin et al., *Power to kids: respecting sexual safety evaluation report* (Melbourne: Mackillop Family Services, 2020), https://www.mackillop.org.au/uploads/Service-documents/Institute/Power-to-Kids_Respecting-Sexual-Safety_Evaluation-Report.pdf.

³² In this instance, there is no oversight by CP.

³³ VLRC, *Improving the justice response system to sexual offences: report* (Melbourne: VLRC, 2021), <https://www.lawreform.vic.gov.au/publication/improving-the-justice-system-response-to-sexual-offences-report/>.

³⁴ Jennifer Watson et al., "Transgender youth, challenges, responses, and the juvenile justice system: a systematic review of an emerging literature", *Sage Journals* (April 2023), <https://journals.sagepub.com/doi/full/10.1177/14732254231167344>.

3. Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and CP systems, either in Australia or internationally?

Evaluations

We note positive evaluations of models, like justice reinvestment, which redirects funding from the criminal justice system towards preventative, diversionary and community development initiatives.³⁵ The Royal Commission states that evaluations of programs for victim survivors and CYP showing HSBs should address all aspects of wellbeing.³⁶ Addressing all aspects of wellbeing, including access to safe housing, connection to school and community, can contribute to reducing CYP's involvement in youth justice and CP systems.

There is limited evidence on the effectiveness of programs for victims of CSA and CYP showing HSBs.³⁷ In Victoria, evaluations include that of:

- *Treatment and care for kids program* (TrACK), a therapeutic foster care program for very traumatised CYP. Evaluation showed positive outcomes, such as achieving stability for children who experienced sexual exploitation³⁸
- Respecting Sexual Safety, an early intervention program response to HSBs and child sexual exploitation for CYP in residential care,³⁹ which the DICE: Disrupting child sexual exploitation project emerged from.⁴⁰

We note that the National Centre for Action on Child Sexual Abuse will evaluate interventions and therapeutic programs, and the National Office for Child Safety will deliver the Strategic Child Safety Research Agenda.

4. From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

There are potential benefits in taking a national approach to youth justice and child wellbeing reform. We would appreciate details on what a national approach would look like to ensure it is meaningful. Resourcing any national approach would be imperative.

³⁵ KPMG, *Maranguka Justice Reinvestment project* (KPMG, 2018), <https://www.indigenousjustice.gov.au/resources/maranguka-justice-reinvestment-project-impact-assessment/>, Just Reinvest NSW, "Redefining reinvestment", accessed June 5, 2023, <https://www.justreinvest.org.au/>.

³⁶ Royal Commission Volume 9, p.53.

³⁷ There is an evaluative inquiry which examines what constitutes and enables good practice in delivering and evaluating interventions for young people with HSBs. Antonia Quadara et al, *Good practice in delivering and evaluating interventions for young people with HSBs* (Sydney: ANROWS, 2020).

³⁸ Dr Lynne McPherson et al., *Evaluation of the treatment and care for kids program (TrACK)* (Melbourne: Southern Cross University and Australian Childhood Foundation, 2018), <https://professionals.childhood.org.au/resources/>

³⁹ Gemma McKibbin et al, "Respecting sexual safety: a program to prevent sexual exploitation and HSB in OOHC", *Australian Social Work* 75, no.1 (June 2019): 111-121. <https://www.tandfonline.com/doi/full/10.1080/0312407X.2019.1597910>.

⁴⁰ VAWC, "DICE: Disrupting child sexual exploitation", accessed June 15, 2023, <https://vawc.com.au/dice/>, Australian Centre to Counter Child Exploitation, "Newsletter December 2022", accessed June 15, 2023, accce.gov.au/news-and-media/newsletter/newsletter-december-2022.

A national approach to preventing and responding to sexual violence

A national approach would support existing national strategies to prevent and respond to sexual violence, including:

- *National Plan to End Violence Against Women and Children 2022-2032: Ending gender-based violence in one generation*
- *National Strategy to prevent and respond to Child Sexual Abuse 2021-2030*
- *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031*
- *Work plan to Strengthen Criminal Justice Responses to Sexual Assault 2020-2027*
- *National Agreement on Closing the Gap.*

A national approach must include a gendered intersectional lens and draw on existing complementary frameworks.

The established evidence base articulates how gender inequality and intersecting forms of inequality and discrimination create a context for violence against women (VaW), including Aboriginal and Torres Strait Islander women and their children, and women and girls with disabilities.⁴¹ The national framework to prevent VaW articulates four gendered drivers: condoning of VaW, men's control of decision-making and limits to women's independence in public and private life, rigid gender stereotyping and dominant forms of masculinity, and male peer relations and cultures of masculinity that emphasise aggression, dominance and control. Multiple forms of inequality, including colonisation and ableism, intersect to shape and negatively compound peoples' experiences of trauma, violence, and criminalisation. We reiterate that Aboriginal and Torres Strait Islander CYP and CYP with disability are overrepresented in OOHC and youth justice systems. Addressing gendered drivers and intersecting forms of inequality can address systemic barriers that victim survivors and CYP with HSBs, particularly those from diverse communities, face.

Recommendation:

- 10) Ensure any national approach to youth justice and child wellbeing reform is informed by a gendered intersectional lens in preventing and responding to sexual violence.

A national approach should include a focus on prevention. SSAS expertise has typically been under-recognised and under-resourced in prevention work.⁴² SSAS have a long history of delivering primary prevention education focused on consent. Further, their deep understanding of the context and types of sexual violence commonly used by and against young people, and ability to recognise trends in sexual violence, places SSAS as unique experts in prevention efforts. We note consent education is mandatory in all schools. Given that CYP in youth justice and related systems may have interrupted access to education, ensuring that CYP in those systems understand consent and respectful relationships is crucial. We reiterate our recommendation above to adequately and sustainably invest in SSAS to prevent sexual violence.

An evidence-based approach

⁴¹ Kimberlé Crenshaw, "Mapping the margins: Intersectionality, identity politics, and violence against women of color", *Stanford Law Review* 43, no.6 (July 1991): 1241-1299, <https://blogs.law.columbia.edu/critique1313/files/2020/02/1229039.pdf>, and OurWatch, "Change the Story", accessed June 5, 2023, <https://www.ourwatch.org.au/change-the-story/>.

⁴² Family Violence Reform Implementation Monitor (FVRIM), *Monitoring Victoria's family violence reforms: primary prevention system architecture* (Melbourne: Office of the FVRIM, 2022), <https://www.fvrim.vic.gov.au/monitoring-victorias-family-violence-reforms-primary-prevention-system-architecture>.

Alongside addressing drivers of VaW and members of diverse communities, it is critical to target myths about sexual violence. Concerning findings from National Community Attitudes towards VaW Survey include:

- 34 percent of respondents agree it is common for sexual assault allegations to be made as a way of “getting back at men”
- 24 percent of respondents agree that a lot of times, women who say they were raped led the man on and had regrets
- 10 percent believe that women often say ‘no’ when they mean ‘yes’.

Australian National Research Organisation for Women’s Safety Limited (ANROWS) also discusses implications of findings on young Australians’ attitudes to VaW and gender equality for policy that are valuable in shaping a national approach.⁴³

Recommendation:

- 11) Use an evidence-based approach, including targeting myths about sexual violence, in adopting a national approach.

Minimum age of criminal responsibility

A consistent cross-jurisdiction age of criminal responsibility that is based on a firm understanding both of children's developmental stages and children's rights is needed. SASVic notes that states and territories have made or are making decisions to raise the age of criminal responsibility. We support raising the minimum age of criminal responsibility to at least 14.⁴⁴

Recommendation:

- 12) Raise the minimum age of criminal responsibility to at least 14 years.

Bail reforms

The bailing system disproportionately affects CYP.⁴⁵ We are concerned that the rising number of CYP in youth detention is driven by an increase in the proportion of CYP on remand, not a rise in crime. On an average night in 2022, 709 CYP were in detention across Australia.⁴⁶ While there is a decline in the number of CYP in detention, the proportion of those in unsentenced detention has increased.⁴⁷ On an average night in 2022, almost four in five young people in detention were unsentenced.⁴⁸ About two-thirds of CYP held on remand in Victoria between 2017 and 2018 did not receive a custodial sentence and many of the remaining one-third were sentenced to less than time served.⁴⁹ There is no strong evidence to suggest that those who are released on bail commit further

⁴³ ANROWS, “NCAS 21 Quick Guide Findings use”, accessed June 15, 2023, <https://ncas.au/>.

Violeta Marticorena Politoff et al, *Young Australians’ attitudes to VaW and gender equality: Findings from the 2017 National Community Attitudes towards VaW Survey (NCAS)* (Sydney: ANROWS, 2019), <https://www.anrows.org.au/talking-about-dv/>, p.28-29.

⁴⁴ Parliament of Victoria’s Inquiry into Victoria’s criminal justice system recommendation 10 is to raise the minimum age of criminal responsibility to at least 14. Parliament of Victoria, *Inquiry into Victoria’s criminal justice system: Volume 1* (Melbourne: Victorian Government, 2022), <https://parliament.vic.gov.au/lsc-lc/article/4534>.

⁴⁵ Parliament of Victoria, *Inquiry into Victoria’s criminal justice system*.

⁴⁶ This figure is on an average night in the 2022 June quarter. AIHW, “Youth detention population in Australia 2022”, accessed June 5, 2023, <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2022/contents/trends-in-detention/numbers>.

⁴⁷ 636 CYP in the 2022 June quarter compared with 566 CYP in the 2021 June quarter. AIHW, “Youth detention population in Australia”.

⁴⁸ This figure is on an average night in the 2022 June quarter. AIHW, “Youth detention population in Australia”.

⁴⁹ Sentencing Advisory Council, *Children Held on Remand in Victoria* (Melbourne: Victorian Government, 2020), <https://www.sentencingcouncil.vic.gov.au/publications/children-held-on-remand-in-victoria>.

offending.⁵⁰ Australia has ratified a number of United Nations instruments that relate to the custodial remand of young people, which emphasise that incarceration should be used only as a last resort and for the minimum necessary period.⁵¹

Recommendation:

- 13) Review existing bail legislation in each state or territory with a view of providing presumption in favour of bail unless there is an immediate and specific risk to a person's safety or the community.

SASVic thanks you for the work you do to promote and protect children's rights. We look forward to working with you in future tranches of reform to promote the rights, recovery and respect for victim survivors and other people impacted by sexual violence and harm.

Yours Sincerely,



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⁵⁰ Lachlan Auld and Julia Quilter, "Changing the rules on bail: an analysis of recent legislative reforms in three Australian jurisdictions", *UNSW Law Journal* 43, no.2 (June 2020) 642-673, <https://www.unswlawjournal.unsw.edu.au/article/changing-the-rules-on-bail-an-analysis-of-recent-legislative-reforms-in-three-australian-jurisdictions>.

⁵¹ Kelly Richards and Lauren Renshaw, *Bail and remand for young people in Australia: A national research project* (Canberra: Australian Government Australian Institute of Criminology, 2013).