



AbSec

NSW Child, Family & Community
Peak Aboriginal Corporation

CHANGETHERECORD —

Submission to the NSW Select Committee on Youth Justice

27 March 2026

AbSec and Change the Record



About AbSec

AbSec is the peak Aboriginal organisation in NSW dedicated to empowering Aboriginal and Torres Strait Islander communities by advocating for the rights, safety, and wellbeing of our children, young people and families.

As an Aboriginal-led organisation, we champion self-determination and work towards a child and family system that is culturally safe, community-driven, and responsive to the needs of Aboriginal and Torres Strait Islander peoples.

AbSec leads policy reform, strengthens the capacity of Aboriginal Community-Controlled Organisations (ACCOs), and ensures that Aboriginal children and young people remain connected to family, community, and culture. We are a key member of the NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) and the primary organisation responsible for Target 12 under Closing the Gap.

Through advocacy, research, and sector leadership, AbSec works to address the disproportionate representation of Aboriginal children in out-of-home care and promote holistic, community-led approaches to child and family wellbeing. Our commitment is to ensure that Aboriginal children and young people grow up strong in culture, identity, and connection.

For more information, visit www.absec.org.au or contact media@absec.org.au.

About Change the Record

Change the Record is Australia's only First Nations-led coalition of Aboriginal Community Controlled Organisations, legal, health, and family prevention experts. Change the Record has two key objectives: to end the mass incarceration of First Nations Peoples, and to end the disproportionate rates of family violence experienced by Aboriginal and Torres Strait Islander women and children.

Acknowledgement

AbSec and Change the Record recognise and acknowledge Aboriginal and Torres Strait Islander Peoples as the custodians and First Peoples of Australia. With humility and gratitude, we acknowledge and pay our respects to the Traditional Owners of all lands and waters across New South Wales, honouring Elders past, present, and future. We recognise and respect their enduring connection to Country, their ongoing care for community, and the preservation and practice of their culture for generations uncounted.



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Executive Summary

AbSec, the peak organisation for Aboriginal and Torres Strait Islander children and families in NSW, and Change the Record, a national Aboriginal-led justice advocacy body, make this submission in response to the urgent need for systemic reform of the NSW youth justice system.

The over-representation of Aboriginal and Torres Strait Islander children in the NSW youth justice and child protection systems reflect longstanding structural inequities, and the impact of policies and practices that have not effectively supported community-led, culturally grounded solutions. Strengthening investment in Aboriginal community-controlled organisations (ACCOs) and approaches that centre culture, connection, and self-determination is critical to achieving better outcomes.

Current legislative and system responses, including restrictive bail settings, policing practices, and responses to children in out-of-home care, are contributing to increased contact with the justice system. There is an opportunity to shift toward approaches that prioritise early support, diversion, and community-led solutions in ways that align with NSW's commitments under the National Agreement on Closing the Gap, and Australia's international human rights obligations.

Diversions pathways that support children to avoid contact with the youth justice system are not yet consistently accessible to all Aboriginal and Torres Strait Islander children. This is despite overwhelming evidence that community-led, culturally responsive supports meet the needs of Aboriginal and Torres Strait Islander children and promote wellbeing and reduce ongoing contact with justice system responses. At the same time, the key factors shaping children's contact with systems, including poverty, housing stability, disability, school engagement, and experiences of child removal, require more coordinated, integrated and sustained responses.

This submission calls on the NSW Government to build on its commitments under the National Agreement on Closing the Gap. Specifically, to strengthen shared decision-making and increase investment in Aboriginal communities and programs that support young people. This includes sustained investment in ACCOs and Aboriginal-led youth services to deliver prevention, early intervention, and diversion programs and to embed genuine partnership and shared decision-making. This will involve meaningful participation of young people at every stage of system reform and prioritise approaches that keep Aboriginal and Torres Strait Islander children out of the criminal justice system. This includes through raising the age of criminal responsibility, reforming bail laws, and ensuring arrest and detention are measures of absolute last resort.



Strengthening outcomes and supporting long-term change also require stronger independent oversight and accountability mechanisms, investment in community-controlled non-police alternative first responder models and the expansion of culturally grounded and place-based initiatives.

With sustained system reform, NSW can better realise its Closing the Gap commitments and uphold the rights, wellbeing and futures of Aboriginal and Torres Strait Islander children and young people.

Recommendations

AbSec and Change the Record urge the NSW Government to implement the following recommendations as part of its National Agreement on Closing the Gap commitments:

1. Provide long-term, sustainable and adequate funding to Aboriginal Community-Controlled Organisations (ACCOs) and Aboriginal-led youth services to deliver primary prevention and early support services to children who are criminalised or at risk of being criminalised. This includes for:
 - intensive family support to prevent children from entering the out-of-home care system,
 - educational engagement programs,
 - after-school and after-hours youth services and activities,
 - therapeutic, on-Country cultural and language programs, and
 - access to Elders and mentors.
2. Work in genuine partnership with Aboriginal and Torres Strait Islander communities and peak organisations, through shared decision-making in the design, implementation, monitoring and evaluation of policies and programs impacting Aboriginal and Torres Strait Islander peoples.
3. Embed independent oversight and accountability through the establishment of a NSW Child Safety and Wellbeing Commission and a NSW Commissioner for Aboriginal and Torres Strait Islander Children and Young People.
4. Urgently invest in and prioritise diversion of all Aboriginal and Torres Strait Islander children and young people away from the criminal justice system, irrespective of offence, including by:
 - ensuring Aboriginal community-control through engaging and significantly investing in Aboriginal communities to lead the design and delivery of accessible, culturally



- responsive, and place-based diversionary programs for Aboriginal children and young people across NSW;¹
- raising the minimum age of criminal responsibility to 14, without exception;
 - raising the minimum age of detention to 16, without exception;
 - immediately repealing s 22C of the Bail Act 2013 to ensure fair and safe bail tests;
 - amending legislation, including the *Children (Criminal Proceedings) Act 1987* and the *Law Enforcement (Powers and Responsibilities) Act 2002*, to explicitly state that arrest should be a measure of absolute last resort;
 - reviewing NSW Police directions and operational guidance in relation to YOA diversion with a view to increasing the number of warnings, cautions and Youth Justice Conferences issued to Aboriginal and Torres Strait Islander young people, and remove the limit on cautions under the *Young Offenders Act 1997*;
 - ensuring more robust, effective and ongoing training for all police officers and Local Court magistrates to ensure that the diversionary pathways in the *Young Offenders Act 1997* are clearly understood and widely and consistently applied across NSW;²
 - funding ongoing workforce development measures to equip all residential out-of-home care staff and frontline NSW Police Force officers with know-how about the Joint Protocol to Reduce the Contact of Young People in Residential Out-of-Home Care with the criminal justice system; and
 - implementing in full the recommendations of the Law Enforcement Conduct Commission Operation Mantus.
5. Include and embed the expertise and meaningful participation of Aboriginal and Torres Strait Islander children and young people, particularly those with lived experience of justice systems, at every stage of youth justice reform. This includes in the design, development, implementation and evaluation of all policies and services that are relevant to young people who are currently or at risk of interaction with the criminal justice system.
6. Immediately invest in the expansion of existing community-controlled non-police Alternative First Responder (AFR) models and build capacity for the establishment of new localised community-controlled AFR models and services. This includes ACCOs, youth night patrols and other culturally appropriate services.

¹ This is consistent with Recommendation 10 of the NSW Legislative Assembly Committee on Law and Safety 2018 Inquiry into the Adequacy of Youth Diversionary programs in New South Wales.

² The final report from the recent NSW inquiry into Community safety in regional and rural communities clearly acknowledged that diversion is a more appropriate and effective response to youth offending than formal criminal justice system processes, and recommended that the NSW Government enhance training for all police officers and Local Court magistrates to ensure the objectives of the Young Offenders Act 1997 are clearly understood and appropriate diversions are applied. See [Community safety in regional and rural communities Final Report](#), Parliament of NSW (March 2026): 34. This was also a recommendation in the final report from the Inquiry into the adequacy of youth diversionary programs in NSW. See Committee on Law and Safety, [Inquiry into the adequacy of youth diversionary programs in NSW Final Report](#), Legislative Assembly of NSW, Report 2/56, Recommendations 18 and 20 (September 2018).



Introduction & Context

a. Opportunity for System Reform and Community-Led Change

As the peak organisation for Aboriginal and Torres Strait Islander children, families and communities in NSW, alongside Change the Record (CTR), AbSec recognises that current youth justice trends in NSW reflect a broader national pattern in law, policy and practice. These approaches are not delivering equitable outcomes for Aboriginal and Torres Strait Islander children and young people and highlight the need for stronger alignment with human rights doctrines and community-led solutions.

These concerns have been raised internationally. This includes through an Aboriginal and Torres Strait Islander-led complaint to the UN Committee on the Elimination of Racial Discrimination and through the UN Special Rapporteurs on Torture and on the Rights of Indigenous Peoples, who have expressed serious concern about the impacts of youth justice approaches on children in Australia and particularly Aboriginal and Torres Strait Islander children.

These patterns sit within a broader historical and structural context, where systems have not consistently recognised and supported the strength of Aboriginal and Torres Strait Islander governance, knowledge systems, and community-led approaches.

In this context, the ongoing over-representation of Aboriginal and Torres Strait Islander children in both justice and child protection systems, points to the need for systemic reform. There is a clear opportunity to shift toward approaches that uphold the rights of children, strengthen families and communities, and centre self-determination.

b. Children's Rights

Under international law, there are clear frameworks about the human rights of children, including children deprived of their liberty. These include:

- the Convention on the Rights of the Child,
- the International Covenant on Civil and Political Rights,
- the UN Declaration on the Rights of Indigenous Peoples,
- the UN Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), and
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol (OPCAT).



Australia has signed and ratified these human rights treaties. When an international treaty is entered into by the Commonwealth Government, the treaty commitments binding all Australian governments.³ The NSW Government is obliged to uphold these commitments.

In practice, there is an opportunity for the NSW youth justice system to strengthen alignment with human rights standards in both substantive and procedural ways. Key areas where NSW can better align current systems to uphold and strengthen human rights standards include:

- the use of arbitrary and prolonged detention, including remanding children in custody after bail refusal and due to lack of suitable accommodation;⁴
- excessive use of force, including the use of restraint practices and devices;⁵
- repeated handcuffing and frequent strip searches;⁶
- lack of access to sunlight,
- use of isolation, confinement, separation, and segregation practices,⁷
- lack of or delayed access to adequate health care, and
- expanding culturally responsive post-release services.⁸

Addressing these areas presents an opportunity to improve outcomes for all children, particularly Aboriginal and Torres Strait Islander children and young people, as well as those living with mental health conditions and cognitive disabilities, who will benefit most from safer, more supportive, and culturally grounded approaches.⁹

³ This was confirmed by the Attorney-General's Department representative, Ms Anne Sheehan, First Assistant Secretary, International Law and Human Rights Division, in evidence given at the hearing for the Senate Inquiry into Australia's youth justice and incarceration system, as noted in the Interim report, Legal and Constitutional Affairs References Committee (February 2025): 104

⁴ For more detail on how restrictive bail tests under Section 22C of the Bail Act 2013 (NSW) and accommodation requirements under section 28 of the Bail Act 2013 (NSW) are leading to increases of Aboriginal children on remand, see Legal Aid NSW's submission to the NSW Legislative Council Select Committee on Youth Justice, '[Inquiry into evidence-based approaches to reducing the number of children in contact with the criminal justice system in NSW](#)' (March 2026): 30, 31.

⁵ Dr Lisa Ewenson, '[Contemporary Youth Detention Experiences in NSW](#)' in "Youth Crime, Youth Justice and Children's Courts in NSW" (LexisNexis, 2024).

⁶ These practices are often justified under the guise of 'protection' using NSW's Detainee Risk Management Plan (DRMP) system. '[Reiby Youth Justice Centre ordered to release CCTV footage of alleged assault on teen](#)', ABC News, 7 May 2025. See also, Dr Lisa Ewenson, '[Contemporary Youth Detention Experiences in NSW](#)' in "Youth Crime, Youth Justice and Children's Courts in NSW" (LexisNexis, 2024).

⁷ A report from the NSW Inspector of Custodial Services found that some children were being held alone in their cells for 22 hours a day without this being formally recorded as a segregation order, meaning their isolation is not subject to oversight or monitoring, nor review by senior management as required by legislation. For more, see Inspector of Custodial Services, '[Inspection of Six Youth Justice Centres in NSW](#)' (2020): 99.

⁸ A recent report from the NSW Auditor-General found that Corrective Services and Youth Justice NSW are not effectively and efficiently providing supports, programs and opportunities for the rehabilitation of First Nations peoples in custody, held on remand, or upon and post-release to reduce reoffending. For more, see NSW Auditor-General Report to Parliament | '[Support for First Nations peoples in custody and post-release to reduce reoffending](#)', Performance Audit (12 March 2026): 3.

⁹ Chris Cunneen, Barry Goldson and Sophie Russell, 'Juvenile Justice, Young People and Human Rights in Australia', *Current Issues in Criminal Justice*, Volume 28 Number 2 (2016): 173. See also, '[Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report](#)', Volume 8: Criminal justice and people with disability (September 2023): 51.



Underlying drivers of children’s contact with the criminal justice system

Recent research in NSW affirms what Aboriginal and Torres Strait Islander peoples have long articulated: that children’s pathways into the criminal justice system are shaped by broader social and structural factors, often referred to as the ‘social determinants of justice’. These determinants are overwhelmingly structural and are underpinned by racialised forms of social disadvantage.¹⁰ These include poverty, homelessness or housing instability, disability and/or mental health challenges, forced removal into out-of-home care, substance misuse, and poor educational experiences, including school exclusion.¹¹

Legislative and system responses, including bail settings and discriminatory policing practices, also play a role in shaping these pathways. There is an opportunity to ensure these responses better support equitable outcomes and reduce unnecessary contact with the justice system, particularly for Aboriginal and Torres Strait Islander children and young people.¹²

The following section highlights four key areas where more coordinated, strengths-based and community-led responses will make a meaningful difference to improving outcomes for Aboriginal and Torres Strait Islander children and young people in NSW.

a. Non-Evidence-based law-making

Recent increases in the criminalisation and incarceration of Aboriginal and Torres Strait Islander children highlight the significant influence of law, policy and practice settings on children’s pathways through the justice system. There is a strong opportunity to ensure these settings are more closely aligned with evidence and support responses that address underlying social and structural factors, including disadvantage, disability, and experiences within education and care systems.

In 2024–2025, the NSW Government introduced several legislative changes that have implications for its commitments under the National Agreement on Closing the Gap, and for how children and young people interact with the justice system:

1. On 27 November 2025, the NSW Parliament passed the Children (Criminal Proceedings) and Young Offenders Legislation Amendment Bill 2025. Alongside codifying *doli incapax* into legislation, the Bill also reduces the evidence that is

¹⁰ Ruth McCausland and Eileen Baldry, ‘Who does Australia Lock Up? The Social Determinants of Justice’, *International Journal for Crime, Justice and Social Democracy*, 12(3), (2023): 37-53. doi: 10.5204/ijcjsd.2504.

¹¹ For more on the ‘school to prison’ pipeline and the criminalisation of First Nations children experiencing school exclusion, see Dr Archie Thomas and Dr Samara Hand, ‘Disrupting the school-prison nexus in NSW: Inclusive and evidence-based alternatives’, Australian Public Policy Institute (October 2025)

¹² NSW Auditor-General’s Report to Parliament | [Support for First Nations peoples in custody and post-release to reduce reoffending](#), Performance Audit (12 March 2026): 2.



- needed for prosecutors to rebut *doli incapax*. This makes it easier for children aged 10 to 13 to be convicted and detained. This disproportionately affects Aboriginal and Torres Strait Islander children.
2. In March 2024, the NSW Government introduced the Bail and Crimes Amendment Bill 2024, including a new 'performance crime' offence in the Crimes Act 1900 (NSW) to impose an additional penalty of two years' imprisonment for people sharing material about their involvement in certain behaviour. The creation of new offences leading to incarceration will only deepen children's involvement in cycles of disadvantage and criminal justice system involvement. This Bill also makes changes to Section 22C of the Bail Act, requiring bail authorities to have a 'high degree of confidence' that a child will not commit a serious indictable offence in order to grant bail. An open letter from the Law Council of Australia revealed that the amended bail test is in fact even stricter than the current 'show cause' test that applies for adults, making it more difficult for impacted children and young people to access bail than for an adult who commits a similar offence.¹³
 3. On 19 March 2025, the NSW Parliament passed the Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Bill 2025, extending its harsh bail laws amendment 'trial' until 2028. Data shows 80 per cent of young people were refused bail using the new law between April and September 2025.¹⁴ Bail refusal leads directly to more children locked up in remand, and the majority of children (90%) refused bail under these reforms are Aboriginal and Torres Strait Islander.¹⁵
 4. In June 2024, the NSW Parliament passed the Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024, which expanded NSW Police powers to stop and search people, without warrant, using hand-held scanners. These expanded powers will increase surveillance and targeting of Aboriginal and Torres Strait Islander children and young people in public places, forcing them into contact with police, and directly increasing their disproportionate representation in the criminal justice system.

b. Care Criminalisation

In NSW, the removal of Aboriginal and Torres Strait Islander children from their families and communities operates largely through two interconnected mechanisms: criminalisation of children into the criminal justice system, and the removal of children into out-of-home care (OOHC). The removal of Aboriginal and Torres Strait Islander children is a known driver of their contact with the criminal justice system.

¹³ [Open letter to Members of the Legislative Council](#) regarding Bail and Crimes Amendment Bill 2024, Law Council of Australia, 20 March 2024.

¹⁴ 'The number of kids refused bail in NSW has spiked. The premier sees it as a win, but critics say it's a fail', [NITV](#), 21 February 2025.

¹⁵ [Minns' plan will increase crime](#), Aboriginal Legal Service (NSW/ACT) Media Release, 10 February 2025.



The nexus between these mechanisms is well established and led to the development of a joint protocol to reduce the contact of young people in residential care with the criminal justice system.¹⁶ It has been the subject of state and federal parliamentary inquiries, Royal Commissions, Special Inquiries, and reports by NSW Legal Aid, the Australian Human Rights Commission and others.¹⁷

In 2020–2021, 60% of young people in detention had contact with child protection services in the previous five years, and 25% had been placed in OOHC.¹⁸ In large part, this overrepresentation in child protection and criminal justice systems – often referred to as ‘care criminalisation’ – is taking place due to the unnecessary stigmatisation of children, labelling their behaviours as criminal, and exposing them to police responses for behaviour that would not be treated as criminal in a family or community setting.¹⁹

Despite the recognition of this care to criminalisation pathway, and the commitment of the NSW Government to reduce the numbers and proportion of Aboriginal and Torres Strait Islander children and young people in NSW in youth justice and OOHC systems through Targets 11 and 12 of the National Agreement on Closing the Gap, the number of Aboriginal and Torres Strait Islander children entering these systems is at a record high.

This ‘crossover’ of children between OOHC and the criminal justice system has intergenerational impacts. These impacts highlight the need for stronger, more connected supports to promote stability and wellbeing.²⁰ The youth justice and child protection systems present a significant opportunity for transformational reform to better support Aboriginal and Torres Strait Islander children and young people.²¹

c. Equitable and Accountable Policing Approaches

Police officers play a key role in children’s entry into the criminal justice system, with the *Young Offenders Act 1997* (NSW) granting police the discretionary power to decide who enters the system. The Act also grants discretionary powers to police about who is diverted through cautions, warnings and youth justice conferencing.²² Ensuring this discretion is

¹⁶ Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system, NSW Government (July 2019)

¹⁷ See, for example, Legal Aid NSW, ‘The Drift from Care to Crime: A Legal Aid NSW Issues Paper’ (October 2011); K McFarlane, ‘From Care to Custody: Young Women in Out-of-Home Care in the Criminal Justice System’ *Current Issues in Criminal Justice* 22(2) (2010): 345-353; Australian Law Reform Commission, [Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#), ALRC Report 133 (2018); Australian Human Rights Commission, ‘[Help way earlier! How Australia can transform child justice to improve safety and wellbeing](#)’ (2024); NSW Advocate for Children and Young People, [Moving cage to cage: An interim report of the Special Inquiry into children and young people in alternative care arrangements](#) (May 2024)

¹⁸ Australian Institute of Health and Welfare, [Young people under youth justice supervision and their interaction with the child protection system 2020-21](#). Australian Government, 2022.

¹⁹ [The criminalisation of children living in out-of-home care in Queensland](#), Queensland Family & Child Commission (2022):

²⁰ Megan Davis, *Family is Culture: Independent Review of Aboriginal Children in OOHC*. Sydney, NSW (2019)

²¹ [NSW CAPO Closing the Gap Community Engagement Report](#), NSW Coalition of Aboriginal Peak Organisations (CAPO) (2022): 46.

²² Chris Cunneen, Barry Goldson and Sophie Russell, ‘Juvenile Justice, Young People and Human Rights in Australia’, *Current Issues in Criminal Justice*, Volume 28 Number 2 (2016): 175.



applied in fair, consistent and culturally responsive ways is critical to supporting better outcomes for Aboriginal and Torres Strait Islander children and young people. Contemporary policing and surveillance practices, including experiences of racial bias and discrimination, continue to influence Aboriginal and Torres Strait Islander children's contact with the criminal justice system in NSW and across the country. This led to the Royal Commission into Aboriginal Deaths in Custody recommending independent police oversight more than 30 years ago. Current oversight mechanisms in NSW present opportunities for strengthening, with a report revealing that NSW's current independent police oversight body directly investigated only seven out of 245 complaints made by Aboriginal and Torres Strait Islander people in ²³2022.²⁴

Data analysed from NSW police searches between 2020 and 2023 found that Aboriginal and Torres Strait Islander peoples were 5.6 times more likely to be searched than people identified as Caucasian.²⁵ In certain areas of Sydney, Aboriginal and Torres Strait Islander²⁶ peoples were 10 times more likely to be searched than the general population. Data shows that Aboriginal and Torres Strait Islander peoples aged 11–17 are disproportionately subjected to strip searches, making up 45 percent of all NSW Police strip searches between 2017 and 2023²⁷. Aboriginal and Torres Strait Islander children on bail in NSW were subject to home visits by police more often than non-Aboriginal children and are 11.7% more likely to be checked by police. They are subjected to 42% more checks on average.²⁸

d. Future Investment in Accessible, Culturally Responsive Diversion

Diversion is a more appropriate and effective response to reducing young people's contact with criminal justice systems than formal criminal justice system responses which entrench cycles of offending, incarceration, and disengagement from school and community.²⁹ The *Young Offenders Act 1997* (NSW) clearly sets out diversionary pathways for children, including warnings, cautions, and youth justice conferences. Section (7)(c) of the Act

²⁴ [Analysis of complaints made by or on behalf of Aboriginal and Torres Strait Islander people: An Observations Paper](#), Law Enforcement Conduct Commission (June 2024). See also, '[Law Enforcement Conduct Commission investigated just seven out of 245 complaints made by Aboriginal people against NSW Police, report reveals](#)', National Indigenous Times, 26 June 2024.

²⁵ Racial Profiling Data Monitoring Project analysis, as reported in '[First Nations and diverse communities disproportionately stopped and searched in NSW](#)', ABC News, 14 February 2025.

²⁶ [NSW Police Person Searches - A Disproportionate Impact](#), Redfern Legal Centre (February 2023): 3.

²⁷ [First Nations children - some as young as 11 - strip-searched by NSW police at higher rate, new data reveals](#), National Indigenous Times, 25 September 2024.

²⁸ This research, commissioned by the Justice and Equity Centre, covers police data in the five years to March 2024. [Data reveals police bail checks are targeting Aboriginal children, racial discrimination complaints filed](#), Justice and Equity Centre [media release], 1 July 2025.

²⁹ Legislative Assembly Committee on Law and Safety, Community safety in regional and rural communities, Interim report: Addressing the drivers of youth crime through early intervention, report 2/58, Parliament of New South Wales (May 2025): 33.



establishes that criminal proceedings should not be commenced against a young person if there is an alternative and appropriate way to deal with a matter.³⁰

Research confirms that diversionary options are under-utilised for Aboriginal and Torres Strait Islander young people in NSW,³¹ who are consistently less likely to receive police cautions or conferences compared to non-Indigenous peers, even when controlling for factors like offence severity or prior history. They are also more frequently referred directly to court.³² This is the case even where it is a young person's first finalised court appearance, and for charges that are low level, non-violent offences.³³

It is critical that all Aboriginal and Torres Strait Islander children and young people in NSW have access to diversionary programs that are holistic, culturally responsive, and strengths-based, irrespective of offence or their geographic location. To be effective, diversionary programs must be able to holistically address diverse needs. This includes social determinants of health, social and emotional wellbeing, education, housing, disability and environmental factors.³⁴ The NSW Parliament's previous inquiry into the adequacy of youth diversionary programs found that even where diversionary programs do exist, many remain culturally inappropriate for Aboriginal and Torres Strait Islander children and young people³⁵

Community-led responses

Across generations, Aboriginal and Torres Strait Islander communities have been doing the work of prevention and diversion, including by providing early and holistic wraparound support for children and young people, often in informal ways and without adequate resourcing. These community-led responses consistently show high levels of culturally sensitive support and decreased contact of young people with criminal justice systems.³⁶

Two models for community-led and controlled alternative responses to the criminal justice system are discussed below.

³⁰ [Young Offenders Act 1997](#) No 54, NSW Legislation, NSW Government.

³¹ Cunneen, 2015; Snowball, 2008 as cited in Rebecca Reeve, Ruth McCausland, Peta MacGillivray (Kalkutungu), Virginia Robinson (Gamilaraay), '[Community-led diversion of Indigenous young people from the justice system: The role of government administrative data](#)', *International Journal of Law, Crime and Justice*, Volume 76 (2024) <https://doi.org/10.1016/j.ijlcrj.2024.100650>

³² A 2017 report found that Aboriginal children were twice as likely to be charged (rather than cautioned) compared to non-Indigenous children. For more, see Professor Chris Cunneen, Dr Amanda Porter, Professor Larissa Behrendt, '[Aboriginal Youth Cautioning](#)', Jumbunna Institute for Indigenous Education and Research, University of Technology, Sydney (2018): 26.

³³ Ibid

³⁴ Rebecca Reeve, Ruth McCausland, Peta MacGillivray (Kalkutungu), Virginia Robinson (Gamilaraay), '[Community-led diversion of Indigenous young people from the justice system: The role of government administrative data](#)', *International Journal of Law, Crime and Justice*, Volume 76 (2024)

³⁵ [The adequacy of youth diversionary programs in New South Wales report](#), Legislative Assembly, Committee on Law and Safety, NSW Parliament (September 2018): 163.

³⁶ For more on particular community-led alternatives and programs, see Professor Chris Cunneen, '[Self-Determination and the Aboriginal Youth Justice Strategy](#)', Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney (2019) as well as the jurisdictional reports on Alternatives to Incarceration by the Justice Reform Initiative, including '[Alternatives to Incarceration in New South Wales](#)' (March 2024).



Therapeutic Pathways Model

The therapeutic pathways model provides a path for the government to fulfill its commitments under Closing the Gap. 'Therapeutic pathways' can be understood as trauma-informed and culturally safe responses which direct children and young people away from the criminal justice system and back into the community.

Therapeutic Pathways for Children is a key initiative under the NSW Implementation Plan for Closing the Gap 2022–2024 and was funded by NSW Treasury as part of the 2022–2023 State Budget. Prevention and early supports are the most efficient way to reduce the number of Aboriginal children and young people in the justice system, through focusing on the causes of contact with the criminal justice system. Early supports have shown to reduce young people's contact with the criminal justice system by as much as 31% and reduce children and young people's criminalisation by 50%.³⁷

Therapeutic Pathways answers community priorities, identifying the key factors required to create and deliver therapeutic responses that children and young people need, including:

- enhancing integration of responses and services, including health, mental health, disability supports, education and housing,
- increasing opportunities for service delivery by the ACCOs,
- ensuring services are culturally appropriate and trauma-informed, and
- proposing staged responses depending on the seriousness of offending behaviour.

Models identified from the therapeutic pathways work include:

- prevention and community-based pathways: An ACCO led model whereby family supports and interventions are led by culturally safe, community-controlled services. Any needs identified through schools or early contact with the police are met with a response that connects a child with an ACCO led support.
- alternative responder model: An alternative responder model involves commissioning place-based ACCOs that work together as alternative responders or co-responders to incidents involving children where there is no imminent safety risk, or a co-responder model with ACCOs working with a government agency or agencies.
- ACCO Sector Strengthening: a team is resourced to specifically work with ACCOs that are ready to stand-up youth wellbeing services in their communities and to build the evidence and practice base for sharing and embedding more broadly.
- Multidisciplinary Panel: Consider establishing a multidisciplinary panel for children and young people who need intensive support.

³⁷ Justice Reform Initiative, *Alternatives to Incarceration in NSW* (Report, March 2024), 8.



The Youth Koori Court Model

A key initiative demonstrating success in diverting Aboriginal and Torres Strait Islander young people from incarceration is the Youth Koori Court (YKC). AbSec and CTR support its expansion across NSW. While holistic support, prevention and early intervention must remain the priority, there is also a clear need for alternative, court-based responses for young people already in the criminal justice system. These responses must be culturally responsive, trauma-informed, and tailored to individual needs.

The YKC model supports children and young people to actively participate in identifying their needs and goals and has been shown to reduce incarceration and reoffending. It offers economic benefit, delivering an estimated \$2 return for every \$1 invested.³⁸ However, the YKC currently operates in only three locations across NSW and access is restricted to those pleading guilty.

All Aboriginal children appearing before the Children’s Court in NSW should have access to the Youth Koori Court, particularly in regional and remote areas where access to intensive casework and support services is most limited.

Adequacy of current strategies to Close the Gap

NSW Closing the Gap Implementation Plans recognise that early contact with the criminal justice system increases the likelihood of reoffending and poorer life outcomes, while compounding intergenerational disadvantage. As part of the NSW Government’s commitment to address this, the NSW Government must increase investment in Aboriginal ACCOs and Aboriginal-led youth services, and work in genuine partnership with Aboriginal communities and their young people, including by sharing decision-making power.

Socioeconomic target 11 of the NSW Closing the Gap Agreement sets a clear goal: by 2031, to reduce the incarceration rate of Aboriginal and Torres Strait Islander children and young people by at least 30%. However, despite commitments under Targets 11 and 12 of the National Agreement on Closing the Gap, both of these targets under the NSW Closing the Gap agreement are significantly off track and are unlikely to be met by the 2031 deadline³⁹. This failure to act on the evidence base about what works is directly contributing to increased contact between Aboriginal young people and the criminal justice system.

Genuine Partnership & Shared Decision Making

The NSW Government is required to implement “formal partnerships and shared decision making” under Priority Reform 1 of the National Agreement. They must work in genuine partnership with Aboriginal and Torres Strait Islander people and organisations, represented

³⁸ Inside Policy, An Evaluation of the Youth Koori Court Process (Final Report, 6 June 2022).

³⁹ Commonwealth Productivity Commission, [Closing the Gap data dashboard](#)



by their peak organisations, through shared decision-making in the design, implementation, monitoring and evaluation of policies and programs impacting Aboriginal and Torres Strait Islander people. This is crucial to reducing the number of Aboriginal and Torres Strait Islander children in the criminal justice system.

Despite strong commitments to genuine partnership and shared decision-making in NSW, a 2024 review of Closing the Gap by the Productivity Commission determined that governments across Australia are not effectively implementing this Priority Reform.⁴⁰ Governmental barriers are the fundamental cause of delays, rather than a lack of plans, in transforming systems.⁴¹

Invest in ACCOs and Aboriginal-Led Youth Services

ACCOs and Aboriginal youth-led services are best placed to work with Aboriginal children, young people, and their families. However, funding is still disproportionately directed to mainstream services over ACCOs, with more than 85% of OOHC funding provided to non-ACCOs. In 2025, the NSW Department of Communities and Justice (DCJ) provided funding of \$1.4 billion to mainstream NGOs receive while providing funding of \$220 million to ACCO⁴².

As set out through this submission, the NSW Government must provide long-term, sustainable and adequate funding to ACCOs and Aboriginal-led youth services to deliver primary prevention and early support services to children who are criminalised or at risk of being criminalised.

Role and Effectiveness of NSW Government Agencies and Oversight Bodies

Experience shows that implementation falters when governments self-monitor and there are no independent and trusted systems for measuring and reporting on progress and for holding governments accountable.

The NSW Child Safety and Wellbeing Commission

AbSec recommends the establishment of an independent, statutory, statewide oversight body: the *NSW Child Safety and Wellbeing Commission*, led by an empowered Commissioner. The Commission will have at least one Aboriginal or Torres Strait Islander Commissioner in recognition of the significant over-representation of Aboriginal and Torres

⁴⁰ Australian Government Productivity Commission, Review of the National Agreement on Closing the Gap: Study Report Volume 1 (January 2024), 4 <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closingthe-gap-review-report.pdf>.

⁴¹ The University of Technology Sydney Jumbunna Institute of Indigenous Education and Research (Jumbunna Review) (2025)

⁴² DCJ Aboriginal-led Data Sharing Dashboard.



Strait Islander children across the child protection, OOHC and justice systems. The Commissioner will have a broader mandate to look at all government systems and services on behalf of Aboriginal and Torres Strait Islander children and young people.

Key functions of this Commission include:

- accreditation and monitoring of OOHC providers,
- reviewing the circumstances of children in OOHC, including the power to apply to the NSW Children’s Court to vary or revoke care orders,
- monitoring the implementation of the Aboriginal Case Management Policy and providing quality assurance through case file reviews,
- conducting inquiries into systemic issues, and
- making recommendations to improve child protection policy and practice.

The establishment of such a Commission and a Commissioner for Aboriginal and Torres Strait Islander Children and Young People is consistent with the expert advice of decades of reviews, reports and calls from across NSW and the child protection sector. This includes giving life to recommendations set out in the Family is Culture review led by Professor Megan Davis.⁴³⁴⁴It would have the ability to disrupt the care criminalisation pathway.

Conclusion

The evidence is clear that current youth justice and child protection systems in NSW are not meeting the needs of Aboriginal and Torres Strait Islander children and young people. What is required is a fundamental shift toward approaches that address the underlying drivers of system contact and support children, families and communities to thrive.

This submission has outlined practical, evidence-based reforms grounded in the knowledge, leadership and expertise of Aboriginal communities. Central to this is the need to invest in and empower ACCOs and solutions, embed genuine partnership and shared decision-making, and prioritise diversion and early support.

The NSW Government has both the responsibility and the opportunity to change the futures of Aboriginal and Torres Strait Islander young people. By implementing these recommendations, the NSW Government will also better meet its commitments under the National Agreement on Closing the Gap and to upholding the rights of Aboriginal and Torres Strait Islander children and young people.

⁴³ Family is Culture: Independent Review of Aboriginal Children and Young People in OOHC in NSW (2019)