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19 December 2024

Dr James Popple
Chief Executive Officer
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Braddon ACT 2612

By email: adam.fletcher@lawcouncil.au

Dear Dr Popple,

Draft Policy Statement on Child Justice Reform

Thank you for the opportunity to contribute to the Law Council's draft Policy Statement on Child Justice Reform (**Policy Statement**). It is understood that the Policy Statement will provide a framework for the Law Council's ongoing work in relation to child justice system reform. The Law Society's Children's Legal Issues, Criminal Law and Indigenous Issues Committees contributed to this submission.

Child justice, not youth justice

We agree that the use of the term 'child justice' in the Policy Statement, rather than the more common 'youth justice' which may refer to older teenagers or young adults, better centres children as the focal point of law and policy reform. The National Children's Commissioner recently noted that the term 'youth justice' is potentially misleading when children, as young as 10 years old, are dealt with by criminal justice systems in Australia.¹ We are of the view that using the language of 'child justice' properly reorients policy makers to centre children in policy responses.

Evidence-based approach to child justice reform

We agree with the Policy Statement's position that to effectively respond to youth offending approaches to child justice reform must be informed by the best available evidence and data. Research has consistently shown that 'tough on crime' approaches, such as stricter bail laws and increased detention of children, do not reduce childhood offending nor make communities safer. Rather, the detention of children in their formative years is a proven key factor in recidivism rates.²

We suggest the Policy Statement acknowledge that to most effectively reduce childhood offending and increase community safety, child justice reform should prioritise early

¹ Australian Human Rights Commission, *'Help way earlier!' How Australia can transform child justice to improve safety and wellbeing* (Report, September 2024) 4 (*'Help way earlier! Report'*).

² See Australian Institute of Health & Welfare, *Young people returning to sentenced youth justice supervision 2021-22* (August 2023).

intervention and the diversion of children from the criminal justice system. To best address antisocial or offending behaviour by children, early intervention and diversionary programs should provide children, and their families, with access to community-based, culturally appropriate services to support their social, health, education, housing and welfare needs.³

Child justice measures should be consistent with Australia's international obligations

We agree that the Policy Statement should acknowledge that laws and policies enacted to facilitate child justice system reform must be compliant with Australia's international obligations. In particular, child justice reform should be consistent with the Convention on the Rights of the Child (**CRC**) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We suggest that the Policy Statement may be enhanced by specifically identifying the Articles from international instruments that are most relevant to child justice reform, such as Articles 1 and 37(b) of the CRC.

Nationally coordinated approach to child justice reform

It may be that a nationally coordinated approach to child justice reform may be considered contentious, and in this regard we suggest that the Policy Statement set out in greater detail the rationale for a nationally coordinated response, including the need for consistency between jurisdictions. We note the view of the Australian Human Rights Commission (**AHRC**) that a national approach to child justice is also consistent with other social problems benefiting from a national approach, such as *The National Plan for Ending Violence Against Women and Children 2022-2031*.⁴ We further note the view of the AHRC that a nationally coordinated response is likely to better recognise that children engaging in antisocial behaviours is not only a 'criminal justice' issue for the states to solve, but one where better outcomes will be achieved through coordinated reform of health, education, housing, social services, child protection and criminal justice systems.⁵

We agree that there is a leadership role that the Commonwealth can play in respect of child justice reform. This is particularly true for child justice responses that affect Aboriginal and Torres Strait Islander children, where the Commonwealth has a role to play in supporting and facilitating the commitments already made by Commonwealth, State and Territory governments under the National Agreement on Closing the Gap. Given the disproportionate impact child justice issues have on Aboriginal and Torres Strait Islander children, we suggest that the Policy Statement identify the work to be done under the National Agreement on Closing the Gap as a key reason for which the Policy Statement seeks a nationally coordinated response.

We note however that the Policy Statement should expressly acknowledge that a nationally co-ordinated response to child justice reform must not be at the expense of community-led and culturally appropriate child justice responses. This is particularly important for Aboriginal and Torres Strait Islander children, where research has shown that the most effective early intervention, diversion and rehabilitation programs for Aboriginal and Torres Strait Islander children are designed and led by their own communities.⁶

Key principles list could be expanded

As discussed above, we suggest that the Policy Statement's key principles list be expanded to include:

³ *Help way earlier! Report*, 72.

⁴ *Ibid*, 26.

⁵ *Ibid*.

⁶ Law Council of Australia, *Australia's youth justice and incarceration system* (Report, 22 October 2024) 22.

1. An acknowledgement that Aboriginal and Torres Strait Islander children are overrepresented in the child justice system due to systemic and intergenerational disadvantage, and therefore any child justice system reform will most heavily impact Aboriginal and Torres Strait Islander children and communities; and
2. The need for consultation with Aboriginal and Torres Strait Islander communities and leaders on child justice system reform, and support be given to Aboriginal and Torres Strait Islander community-led child justice responses.

Thank you for the opportunity to contribute to the Law Council's Policy Statement. If you have any questions, please contact Jade Fodera, Policy Lawyer, on jade.fodera@lawsociety.com.au or (02) 9926 0218.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a stylized flourish extending to the right.

Brett McGrath
President