

Youth Diversion



Youth Diversion and therapeutic programs support an efficient and effective justice system by helping to achieve better outcomes for individuals and communities.

Children should be treated differently to adults

Children are different from adults especially in terms of their emotional and mental capacity. Their brains are still undergoing significant changes throughout these formative years and specific regions of the brain responsible for higher functions such as planning, reasoning, judgement, and impulse control are not yet developed.ⁱ

Children are more likely to act impulsively, are less risk adverse, have poorer problem solving skills, engage in less consequential thinking, and are more easily influenced by their peers. Ultimately, our Youth Justice System recognises that young people are vulnerable and most will grow out of offending behaviour.

Why youth diversion?

Locking children up does not make our community safer. Instead, it negatively impacts the health, wellbeing and future of disadvantaged children and increases their likelihood of further offending.

Once a child enters the formal justice system, they are more likely to return, particularly if they are detained.ⁱⁱ In contrast, youth diversion programs, which operate outside the formal court system, are effective in helping children get back on track and reduce risk factors in their lives.

Diverting children from courts and detention facilities can create better opportunities to identify and respond to family, behavioural and health problems and foster positive lifelong change. In addition, diversion programs aim to avoid exposing young people to the stigma associated with formal convictions and potential adverse impacts on future prospects.ⁱⁱⁱ

Diversion provides 'good results for children and is in the interests of public safety, and has proven to be more cost-effective... [and] should be the preferred manner of dealing with child offenders in the majority of cases'.^{iv}

What is diversion?

Youth diversion refers to alternative responses to alleged offending by children that avoid court proceedings, including referrals by police and other agencies to early intervention programs and services.

Diversion programs recognise that children who have engaged in offending behaviour require support to change that behaviour, by working with them to accept and take responsibility for that behaviour, address issues impacting their decision-making and build their capacity to make better decisions in the future.

In many cases diversion provides for youth justice conferencing which enable the victim/s of offending to be heard, impress the impact and harm caused by offending on the young person

and enable opportunities for the young person to make amends including through apology, reparations and activities and programs to effect change.

What does the law say about diversion?

The primary legislation for responding to and dealing with child offending is the *Youth Justice Act 2005 (NT)*^v. It sets out a number of fundamental principles, including that youth be dealt with in a way that acknowledges their needs and provided opportunities to develop in socially responsible ways. It recognises that children are less emotionally and psychologically developed than adults, and are less culpable for their actions.

The Act creates an explicit presumption in favour of diversion as the primary means for dealing with child offending, subject to a number of exceptions.^{vi} Instead of charging a child believed to have committed an offence, police officers must consider diversionary options, including:

- Verbal warnings
- Written warnings
- Youth Justice Conferencing
- Referrals to diversion programs

A core feature of a good youth justice system.

The Royal Commission into the Detention and Protection of Children in the Northern Territory recognised the importance of successful diversion programs as a fundamental aspect of a good youth justice system.^{vii} Given the risk of harm children can experience through incarceration, there should be multiple opportunities to divert children and young people at all stages of the youth justice system.^{viii}

The NT Royal Commission highlighted key features of a successful diversion program:^{ix}

- Timely referral, assessment and participation;
- Availability without formal admission of guilt;
- Availability for repeated referrals;
- Inclusion of a conference with the victim or family;
- A diversion plan and a specialist case manager;
- 'Wrap-around' services for the young person;
- Engagement with the young person's family;
- Built-in education, rehabilitative programs, cultural activities, employment pathways, mentoring and community service (with services such as mental health services and substance abuse services available through the diversion program);
- Culturally appropriate plans and programs;
- Community input and control of diversion programs; and
- Measureable and evaluated outcomes.

Diversion programs provide an opportunity to link young people with tailored community based interventions, services and supports to create lasting and meaningful behavioural change while also reducing rates of reoffending. The response must be tailored to the individual needs of each young person.

Whilst diversion programs are a core aspect of the NT youth justice system, NT Police Data shows there has been a decline in the referral to and uptake of diversion in recent years^x. There

are significant gaps in the availability and accessibility of diversion across the NT, particularly in regional and remote areas.

Addressing health and wellbeing needs of Aboriginal children

The rate of over-representation of Aboriginal young people and adults in detention in Australia is widely acknowledged.

The NT Royal Commission impressed that diversion programs ‘must be culturally appropriate, promote health and self-respect, foster a sense of responsibility and encourage attitudes and the development of skills that will help young people develop their potential as productive members of society’.^{xi}

Governments should be increasing the capacity of Aboriginal health and mental health services and Aboriginal Community Controlled Organisations to provide referrals and linkages to health and welfare services including alcohol and other drug rehabilitation. These culturally strengthening alternatives should be funded and made available at all points of interaction with the criminal legal system to effectively divert children and young people with mental health conditions.

“depriving a child or young person of their liberty is detrimental to adolescent development, dislocates young people from any protective factors they may have, and must only be an option of last resort.”^{xii}

To find out more about the Northern Territory Governments approach to Diversion you can visit:

- [Youth diversion program | NT.GOV.AU](#)
- [Youth camp programs | NT.GOV.AU](#)

ⁱ Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Melbourne, 2021, 24.

ⁱⁱ Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016), 4, 52; Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Melbourne, 2021, 445.

ⁱⁱⁱ Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Melbourne, 2021, 445.

^{iv} Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system, 5.

^v Northern Territory Youth Justice Regulations 2006

^{vi} *Youth Justice Act* (NT) s 39(3).

^{vii} Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 2B, Chapter 25, 250.

^{viii} Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Melbourne, 2021, 445.

^{ix} *Ibid*, 250-251.

^x Based on Northern Territory Police Data provided to the Office of the Children’s Commission in 2024

^{xi} Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 2B, Chapter 25, 250.

^{xii} Victorian Department of Justice, Penny Armytage and John Ogloff, Meeting needs and reducing offending, executive summary (2017), 15.