



## First Peoples Disability Network

### Submission to the South Australian government's consultation on Youth Offenders

FPDN welcomes the opportunity to comment on the South Australian Government's Young Offender Plan and the Statutes Amendment (Recidivist Young Offenders) Bill 2025. We share government's goal of safer communities and fewer victims. However, proposals centred on presumption against bail, mandatory non-parole floors, and broad association restrictions risk entrenching First Nations children with disability in the justice system, contrary to evidence, children's rights, and Closing the Gap.

First Nations young people are starkly over-represented in youth justice, and disability (including cognitive disability, FASD, psychosocial disability) is a major, under-identified driver of police contact, remand, and re-offending. Recent national data show most children in detention are unsentenced; tightening bail and adding punitive levers will increase remand, amplify harm (including use of isolation), and increase recidivism. Therapeutic, culturally-led responses such as the Youth Aboriginal Community Court Adelaide (YACCA) and Tier-1 supports (screening, communication access, bail support, NDIS/NDIA interface fixes) reduce harm and re-offending.

**We recommend** withdrawing the presumption-against-bail and mandatory non-parole elements; tightly limit any recidivist declaration with clear, disability and culture safe safeguards; reject broad association controls on children; scale up YACCA-style responses statewide; mandate disability screening, data and evaluation; and fully align with the Disability Royal Commission (DRC) recommendations, including raising the age of criminal responsibility to 14. These changes will better target the small cohort of serious harm while keeping children connected to culture, school and supports (AIHW, 2025, [AIHW](#); DRC, 2023, [DRC Vol 8](#); Bower et al., 2018, [BMJ Open](#)).

### Key Messages

- **Centre disability and culture:** universal screening, communication access, and early diversion for First Nations children with disability.
- **Don't tighten youth bail or impose mandatory floors:** these levers raise remand with little safety gain; withdraw presumption-against-bail and non-parole floors. (BOCSAR 2025)
- **Raise safeguards, not bars:** keep detention a last resort; ban solitary confinement; commit to raising the age to 14; invest in prevention.
- **Scale culturally-led diversion:** expand YACCA statewide and fund ACCO leadership in casework, mentoring and court supports.
- **Fix the NDIS–justice interface:** guarantee early access, plan reviews and transition planning so supports follow the child and reduce re-offending.
- **Avoid broad “association” powers for children:** high risk of net-widening and profiling; use only narrow, time-limited orders where strictly necessary.
- **Measure what matters:** mandate disability-disaggregated youth justice data and independent, public evaluation.





## Introduction & Background

South Australia's Young Offender Plan proposes legislative and service changes in response to a small cohort responsible for a disproportionate share of matters before the Youth Court, alongside investment in services. The Plan highlights bail challenges, recidivism, and youth gang dynamics, and foreshadows strengthened laws (including a "recidivist young offender" regime) while investing in programs to break cycles of offending.

The accompanying Bill would, among other changes, facilitate declarations of "recidivist young offender," alter bail settings and police powers, and interact with separate street gang proposals.

### Why this matters for First Nations people with disability

First Nations children are vastly over-represented in youth justice. Many have disability, often unrecognised, shaped by the ongoing impacts of colonisation, poverty, trauma and disconnection from Country. National data show 60% of children in detention on an average night are First Nations; 80% of detained children are unsentenced (on remand), underscoring how bail and policing drive detention (AIHW, 2024–25, [AIHW](#)). A high prevalence of neurodisability is documented: a WA study identified FASD in 36% of sentenced youth in detention, with 89% meeting criteria for severe neurodevelopmental impairment (Bower et al., 2018, [BMJ Open](#)).

### Rights and evidence context

The DRC found people with disability are over-represented and poorly served across policing, courts and detention, recommending: raise the age of criminal responsibility to 14; ban solitary confinement in youth detention; mandate disability screening and data; fund diversion and court-based therapeutic programs; and fix the NDIS–justice interface (DRC, 2023, [disability.royalcommission.gov.au](https://disability.royalcommission.gov.au)). SA has already invested in a culturally-led therapeutic court: YACCA, with Elders involved and supports to address drivers of offending, an important platform to build on statewide ([courts.sa.gov.au](https://courts.sa.gov.au), [Premier of South Australia](#)).

FPDN supports investment in community- and culture-based solutions and cautions against measures that expand child imprisonment, remand, and control orders. The evidence is clearest that culturally safe diversion and disability-informed practice reduce re-offending; punitive levers for children often increase harm and net-widening. ([thehub.sia.govt.nz](https://thehub.sia.govt.nz), [Indigenous Justice](#))

## Evidence & Statistics

- **60% of young people in detention are First Nations; 80% are unsentenced (remand).**
  - *Significance: bail/policing settings, not sentencing, drive most detention; punitive bail changes will swell remand.* (AIHW, 2024–25, [AIHW](#))





- **845** children were in detention on an average night in the June quarter 2024; most were **male (90%)** and **aged 14–17 (81%)**.
  - *Significance: proposals must focus on adolescent development, disability, and proven diversion* (AIHW, 2024, [AIHW](#))
- **NSW youth detention rose 32%** in 2024, driven by **increased bail refusal**, with **Aboriginal youth detention up 21.7%**, a cautionary tale for bail tightening.
  - *Significance: harsher bail drives remand and over-representation* (BOCSAR, Feb 2025, [BOCSAR](#))
- **FASD prevalence 36%** among sentenced WA detainees; **89%** with severe neurodevelopmental impairment.
  - *Significance: without screening and adjustments, children breach orders they don't understand* (Bower et al., 2018, [BMJ Open](#))
- DRC recommendations: **raise age to 14, ban solitary confinement, mandate disability screening/data, fund diversion, fix NDIS interface**.
  - *Significance: the reform baseline for disability- and child-safe systems* (DRC, 2023, [disability.royalcommission.gov.au](#))
- **YACCA**: SA's therapeutic, culturally-responsive Youth Aboriginal Community Court (two-year trial, Elders involved).
  - *Significance: proof of concept for statewide expansion* (CAA Practice Direction 5 of 2023; SA Govt, [courts.sa.gov.au](#), [Premier of South Australia](#))
- SA Government identifies **bail compliance** as the most common youth charge and seeks to address a **small cohort** responsible for 11% of matters.
  - *Significance: target supports at cohort; avoid broad punitive levers that sweep in vulnerable kids* (AGD SA Young Offenders webpage; Plan, [Attorney-General's Department](#))

## Responses to Specific Topics

### 1. “Recidivist young offender” definition and declaration

**Position:** Oppose creating a broad, durable “recidivist” label for children; if pursued, strictly limit scope and duration, with mandatory disability and cultural assessments before any declaration.

**Rationale:** Labels drive biased decision-making and can trigger harsher bail/sentencing, escalating system contact for neurodivergent kids who cycle through low-level breaches. Many children meet criteria for cognitive disability/FASD; without screening and adjustments, they breach orders they cannot comprehend. Require independent disability and cultural assessments, a child-rights impact test, and automatic review/expiry (e.g., ≤3 months), with ACCO-led wraparound supports.

### 2. Presumption against bail for declared recidivist children





**Position:** Do not introduce a presumption against bail for children.

**Rationale:** Nationally, 4 in 5 detained children are unsentenced; tightening bail swells remand and over-representation, especially for First Nations kids NSW's recent experience shows higher bail refusal correlating with steep youth remand growth. For children with disability, remand exacerbates trauma and increases re-offending risk; community bail support with communication access, interpreters, and practical reminders is more effective. Replace presumptions with presumptions for supported bail, child-friendly conditions, and ACCO-run bail support.

### 3. Sentencing: non-parole floors & use of criminal history

**Position:** Do not apply mandatory non-parole floors (e.g., 80%) to children; require courts to consider disability, developmental age, and the cultural context of offending.

**Rationale:** Mandatory floors undermine judicial discretion to weigh disability, trauma and rehabilitation prospects and are inconsistent with the DRC's rights-affirming approach (ban solitary confinement; therapeutic responses). Youth sentencing should prefer non-custodial outcomes with cultural scaffolding and clear, accessible conditions tailored for cognitive disability. Where custody is unavoidable, embed disability adjustments and transition planning with NDIA from day one.

### 4. Youth "gangs": association/non-association orders and policing powers

**Position:** Reject broad association controls for children; evidence of effectiveness is mixed and such tools risk net-widening, profiling and rights breaches (freedom of association), especially for neurodivergent kids who rely on peer networks.

**Rationale:** UK reviews highlight limited evaluation and mixed outcomes for gang injunctions, with concerns about proportionality and equity. Focus instead on ACCO-led mentoring, safe recreation, school re-engagement, and family-centred supports that address drivers of harm. If any order exists, impose tight tests (serious and immediate risk), short duration, cultural/NDIS safeguards, and judicial oversight with child legal representation.

### 5. Service investment & "break the cycle" programs

**Position:** Strongly support shifting effort and funding to early, intensive, culturally-led supports; design and deliver through Aboriginal Community Controlled Organisations (ACCOS) with disability expertise.

**Rationale:** The Plan signals additional investment to break cycles of offending. Direct funds to: (1) universal disability screening and communication access in police/courts/detention; (2) ACCO-led bail support and family casework; (3) YACCA expansion beyond Adelaide; and (4) school re-engagement, neurodevelopmental assessment, and FASD-informed practice. Build in robust evaluation and public reporting, including disability data.





## 6. NDIS–justice interface

**Position:** Mandate protocols so NDIS supports follow the child into watch-houses, courts and detention, and transition with them back to community.

**Rationale:** The DRC identified persistent interface failures and recommended national practice guidelines and data/reporting. SA should require justice-NDIA liaison officers, fast-track plan reviews for justice-involved children, and fund interim supports that don't depend on release dates.

## 7. Data, disability screening & evaluation

**Position:** Legislate routine screening for cognitive and communication needs at police contact and first court appearance; publish annual, disaggregated data (disability type, First Nations status, bail outcomes, remand days, use of separation/lockdowns).

**Rationale:** DRC found serious data gaps (except NSW). Without data, reforms drift. Use validated tools and ensure results trigger reasonable adjustments and referral to ACCO services, not net-widening. Independent evaluation should be designed up-front with public dashboards.

## 8. Culturally-led therapeutic justice (YACCA) & statewide scale-up

**Position:** Expand YACCA principles statewide and embed Elders and YAJOs in every Youth Court circuit.

**Rationale:** YACCA (two-year trial) brings Elders/Respected Persons into a therapeutic process with delayed sentencing and supports. Similar models (NZ Rangatahi Courts) show improved engagement, whānau participation and cultural reconnection, key precursors to reduced re-offending. Fund statewide roll-out with sustained ACCO partnerships and independent evaluation.

## 9. Age of criminal responsibility (context)

**Position:** Commit to raising the age to **14**, consistent with DRC recommendations and international child development evidence.

**Rationale & evidence:** The DRC is unequivocal that raising the age to 14 will prevent avoidable harm to children with disability. SA currently defines youth from age 10; reform should align with national movement and evidence. Pair this with strengthened child-safety, family support and school inclusion.

## Recommendations

1. **Withdraw the presumption-against-bail for children.** Youth remand is already high and driven by bail refusal; presumptions will swell remand and over-representation of First Nations children.





2. **Remove mandatory non-parole floors for children and preserve judicial discretion.** Mandatory floors prevent consideration of disability, development and rehabilitation prospects, as urged by the DRC.
3. **If a “recidivist” regime proceeds, confine it with strict safeguards.** Require independent disability and cultural assessments, child-rights impact tests, ACCO-led supports, maximum 3-month duration and automatic review.
4. **Reject broad child association/non-association controls.** Evidence of benefit is mixed; risks include profiling and net-widening. Use tightly targeted, time-limited orders only for immediate serious risk, with judicial oversight and supports.
5. **Scale up YACCA statewide and embed Elders/YAJO roles.** Build on SA’s therapeutic court with ACCO partnerships and independent evaluation; mirror strengths of NZ Rangatahi Courts.
6. **Mandate universal disability screening and communication access at first contact.** Use validated tools; results must trigger adjustments (Easy Read, interpreters, support persons) and ACCO referrals, not punitive escalation.
7. **Fix the NDIS–justice interface.** Establish NDIA–justice protocols so supports travel with the child into custody/court and back to community; fund interim supports irrespective of release date.
8. **Invest in ACCO-led cohort programs rather than new punitive levers.** Direct Young Offender Plan funding to bail support, family casework, school re-engagement and FASD-informed practice, with robust public evaluation.
9. **Legislate transparent disability data and public dashboards.** Publish annual, disaggregated youth justice data (incl. disability type, remand, use of isolation/lockdowns) to drive accountability.
10. **Commit to raising the age of criminal responsibility to 14 and banning solitary confinement.** Align SA with contemporary standards and child development evidence.

#### Accessibility Statement

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