

Violence against children in conflict with the law in light of UN Model Strategies – notes from the Australian context

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**Western
Australia**

**Northern
Territory**

Queensland

**South
Australia**

**New
South
Wales**

ACT

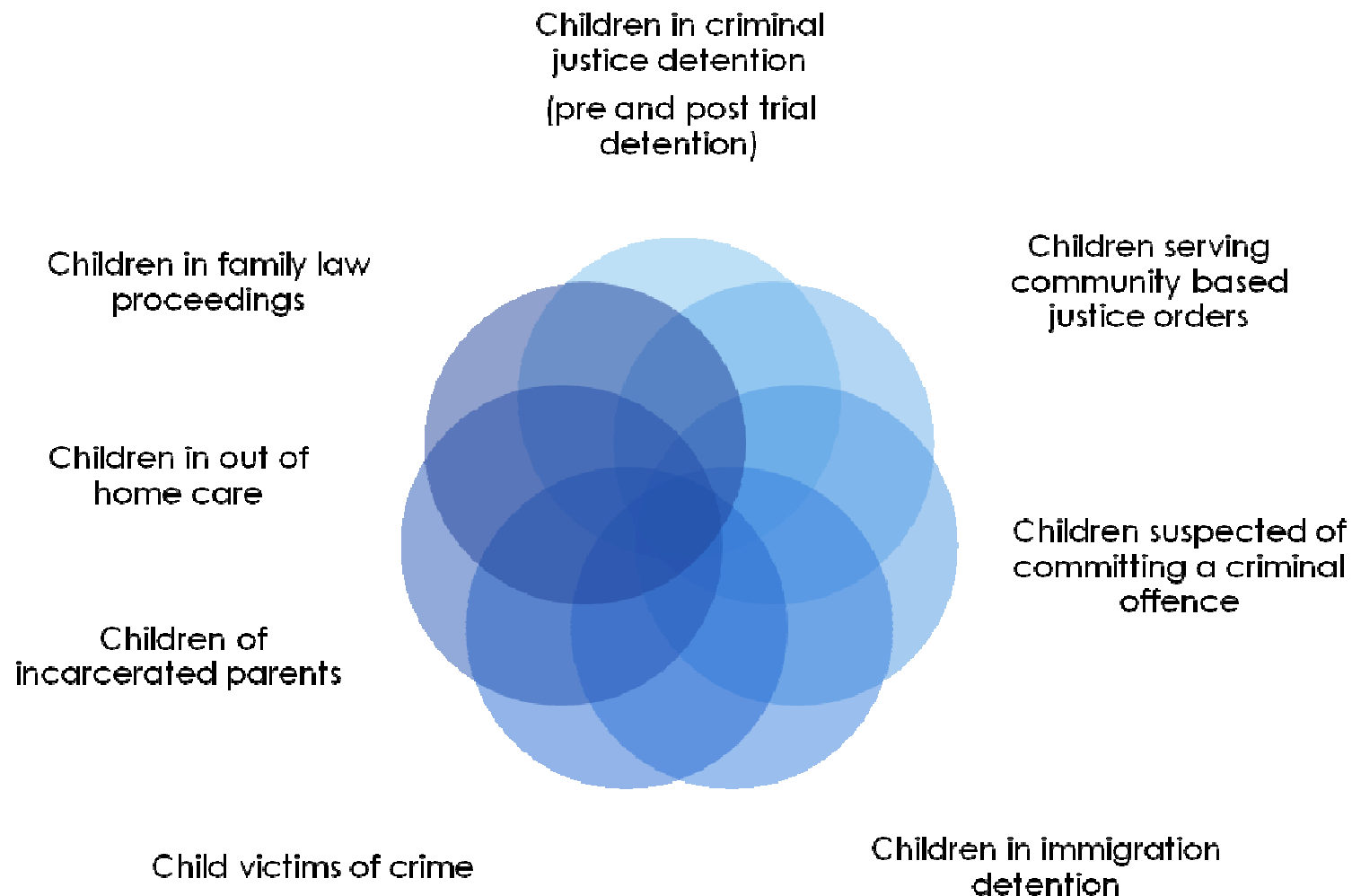
Victoria

Tasmania

Challenges

- The geographic vastness of the Australian continent compromises efforts to deliver diversionary services to children in all locations. The same challenges apply for prevention and early intervention services, including trauma counselling and supports for vulnerable families.
- Nationally, indigenous children are 26 times more likely to be detained than non indigenous children.
- In Australia an extremely high proportion of detained children are held on remand (50%) and sometimes for very lengthy periods (during this time children are denied specialised rehabilitative interventions that relate to the crime for which they have been charged).
- Mandatory sentencing and three strikes legislation (blunt imposition of the law which removes judicial safeguards).
- The erosion of legislative safeguards for children (the relevant legislation in Queensland has removed the safeguard that the detention of children be a measure of last resort).
- MACR of 10, which is below the UN recommendation of 12 years. Despite the rebuttable presumption of *doli incapax* children younger than 14 receive custodial sentences.
- In some circumstances, children are detained with adults

For children, *all* contact with the law risks conflict with the law



Addressing structural deprivation and trauma

Reducing the number of children in conflict with the law requires that we:

- Challenge models that attribute individual blame to children (pathologising and criminalising poverty, victimisation and delayed development).
- Provide evidence-based advocacy to acknowledge the structural and systemic problems that give rise to children breaching the law (intergenerational poverty, chronic violence, and the effects of childhood trauma and neglect).
- Be realistic about the extent to which systemic issues of this severity can be addressed by criminal justice standards alone.

Evidence based advocacy for legislative and policy reform

We need to harness a multi-disciplinary evidence base to promote an understanding of:

- ▣ the importance of child attachment;
- ▣ the neuro-biological effects of childhood trauma;
- ▣ scientifically rigorous understandings of children's developmental capacity (to counter the risk that policing and judicial discretion relies on guesswork or populism);
- ▣ the traumatising and criminogenic effects of incarcerating children; and
- ▣ the importance of systemic change to provide children and families with the supports that they need.

Parental (and community) Capacity Building

- Para 13(c) of the UN Model Strategies identifies the importance of parental capacity building, and family support, as the primary prevention measures, while strengthening child protection in school and the community.
- Promising initiatives in Australia include:
 - Training for midwives in identifying signs of family violence in expectant or new mothers;
 - Justice reinvestment;
 - Parental supports for children eligible for bail (significantly reducing the number of children held on remand for their “welfare”);
 - Community capacity building to support children exhibiting sexualised behaviours; and
 - Therapeutic treatment orders and networked, specialised counselling services to provide supports to children and their families.

Legal safeguards, protocols and training

- Paragraph 9 of the UN Model Strategies recognises the importance of a **sound legal framework** which prohibits violence against children and empowers authorities to respond appropriately to incidents of violence against children.
- Even where such legislative safeguards exist it is necessary to ensure clear protocols, ongoing training, and clear mechanisms for accountability and oversight. Legislation is an insufficient safeguard for children.
- eg. The requirement that a child's "best interests" be prioritised may be tokenistic (unless child-sensitive guidelines are mandatory, and specialised training is delivered to those with significant administrative power in criminal and family court settings.)

Effective investigation and prosecution of violence against children (s. 6 Model UN Strategies)

Promising initiatives in Australia include:

- Specialised police teams, with intensive trauma informed training in child friendly interviewing.
- Multi-disciplinary policing centres – where appropriate social work and counselling supports are co-located with police and forensic services (minimises delay, minimises contact with unnecessary professionals; and ensures necessary supports without the need for travel).
- Aboriginal assessment tool (culturally sensitive wellbeing assessment for indigenous children).

Mandatory reporting

- ▣ Para 19(c) of the Model UN Strategies identifies the importance of legally requiring professionals in contact with children to formally report suspected abuse.
- ▣ This is crucial – but **resources and training** need to be provided to ensure that the increase in reports don't result in an overburdened system that cannot adequately assess and mitigate risk.
- ▣ This also requires extensive education and workforce capacity building for:
 - ▣ Frontline child protection officers (on assessments, thresholds, appropriate referrals, etc)
 - ▣ Teachers, health professionals, police, and community (to identify signs of risk, and to make appropriate reports *without stigmatising children*).
- ▣ Although children requiring a welfare response are often overlooked, law enforcement responses are usually decisive.
- ▣ Therefore - joined up services and effective referral mechanisms are crucial to prevent the criminalisation of children who require a child protection response.

Ensuring safety in the context of non-custodial sentences

- ▣ Para 27(e) of the UN Model Strategies refers to the importance of addressing safety risks in decisions about non-custodial sentences.
- ▣ It is important that this attends to the risks that children suspected or convicted of crimes face, when they are returned to community after police contact.
- ▣ Contexts of risk are created when children suspected of committing crimes are removed from community by police, questioned, and returned to community.
- ▣ Circle sentencing options may be leveraged more effectively.
- ▣ It is also important to be realistic about the extent to which community orders can be effectively monitored.
- ▣ Insufficient psychological services create risks for children, who are denied the rehabilitative supports they require for their safe reintegration into community.

Effective violence prevention programs

Paragraphs 12, 13(b), 14 of UN Model Strategies:

“to adopt measures to prevent violence within the family and the community, to address cultural acceptance or tolerance of violence against children.”

Supports for families and communities are important (and justice reinvestment provides a model for this).

It is nonetheless crucial to resist the trend towards the responsabilisation of children and vulnerable families (which is both stigmatising, and a form of victim blaming).

e.g. While protective behaviours and respectful relationship programs for children are important, these just one facet of the response required.

It is unrealistic to expect *children* to bear responsibility for stemming inter-personal violence in a world where violence is ubiquitous. It is important, therefore, to:

- also challenge private sector interests for their role in promoting violence and the sexualisation of children; and

- to develop, and advocate for, ethical standards for media (para 16(c) of the Model Strategies.



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