The Senate

Legal and Constitutional Affairs References Committee

Australia's youth justice and incarceration system

February 2025

ISBN 978-1-76093-791-1 (Printed version)

ISBN 978-1-76093-791-1 (HTML version)

Printed by the Senate Printing Unit, Parliament House, Canberra

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Abbreviations and acronyms

ACCHO	Aboriginal Community Controlled Health Organisation
ACCO	Aboriginal Community Controlled Organisation
Action Plan	Aboriginal and Torres Strait Islander First Action Plan 2023-2026
ALSWA	Aboriginal Legal Service of Western Australia
ANPM	Australian National Preventive Mechanism
ATSILS	Aboriginal and Torres Strait Islander Legal Services
AYJA	Australasian Youth Justice Administrators
Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
CAT	Committee against Torture
CRC	*United Nations Convention on the Rights of the Child*
Disability Royal Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
FNAAFV	First Nations Advocates Against Family Violence
Help way earlier report	Australian Human Rights Commission, *Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*, 2024
ICCPR	International Covenant on Civil and Political Rights
Law Council	Law Council of Australia
NLAP	National Legal Assistance Partnership
OPCAT	Optional Protocol to the Convention Against Torture
Our Youth, Our Way inquiry	Victorian 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*, 2021

NAJP	National Access to Justice Partnership 2025–30
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NLAP	National Legal Assistance Partnership 2020–25
NPM	National Preventive Mechanism
Optional Protocol on a Communications Procedure	Third Optional Protocol to the Convention on the Rights of the Child
Principles	Australasian Youth Justice Administrators, *Principles of Youth Justice in Australia*, 2014
RCIADIC	Royal Commission into Aboriginal Deaths in Custody (1987–1991)
Review of the National Agreement	Productivity Commission, *Review of the National Agreement on Closing the Gap*, 2024
Safe and Supported framework	*Safe and Supported, National Framework for Protecting Australia's Children 2021–2031*
SCAG	Standing Council of Attorneys-General
SPT	United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
Standards	Australasian Youth Justice Administrators, *National Standards for Youth Justice in Australia*, 2023
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

List of recommendations

Recommendation 1

6.11 The committee strongly recommends that the Senate continues to pursue an inquiry into the incarceration of children in Australia given the significant and disturbing evidence received by the committee as detailed in this interim report and the issues raised in the report of the National Children's Commissioner entitled 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing.

Recommendation 2

6.12 The committee recommends that the Senate in the 48th Parliament considers whether to refer to the Senate Legal and Constitutional Affairs References Committee an inquiry into Australia's child justice and detention system, with particular reference to the Commonwealth's responsibilities as they relate to:

a) the incarceration of children, including the disproportionate incarceration of First Nations children;

b) compliance with international obligations relating to the detention of children;

c) responding to the recommendations of the National Children's Commissioner's report entitled 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing; and

(d) any other related matter.

Chapter 1
Introduction and context

Content Warning

This report contains information that some readers may find distressing as it refers to the experiences of young people (aged 10 to 17 years) in the youth justice and incarceration system. This report also contains information about Aboriginal and Torres Strait Islander (First Nations) young people who are over-represented in this system.

If you need to speak to someone, you can contact these free support services:

- Lifeline: 13 11 14
- 13YARN: 13 92 76
- Kids Helpline: 1800 55 1800

1.1 This is an interim report of the Senate Legal and Constitutional Affairs References Committee (the committee). The purpose of this report is to provide an update with respect to the evidence received by the committee, including the testimony received at the public hearing held on 3 February 2025. The committee considered this to be important given that an election will be held between the tabling of this interim report and the reporting date for the inquiry. The committee hopes that this interim report provides a basis for the Senate to consider the future conduct of its inquiries into the important matters considered in this inquiry to date.

1.2 Given that only one public hearing has been held into the matters the subject of this inquiry, the focus of this interim report is the evidence received from those who participated in the hearing. A total of 223 submissions were received from stakeholders. The committee was approached by several stakeholders seeking the opportunity to appear at the public hearing but given time constraints this was not possible.

1.3 During the course of the inquiry to date, the committee received strong evidence from a range of key stakeholders that Australia's youth (or child) justice system is in crisis. Disturbing evidence was received that disadvantaged and vulnerable children and young people entering the system are being held in detention (sentenced/unsentenced) without adequate and appropriate supports. Serious concerns have been raised that the human rights of children, including rights arising under international human rights treaties to which Australia is a signatory, are being breached.

1.4 The initial timeframe for the inquiry was 10 weeks, with the committee asked to report to the Senate on 26 November 2024. The committee therefore set a four-week deadline for the making of submissions and, despite the short timeframe, received a considerable volume of thoughtful and detailed submissions, demonstrating a high level of engagement with the terms of reference. Many of these submissions called for child justice reform.

1.5 The committee resolved to hold a public hearing to identify key issues for the inquiry and to consider how the inquiry should proceed going forward. The committee thanks those organisations and individuals who made submissions and who gave evidence at the hearing.

1.6 The committee notes that, in Australia, under the federal system of government, each jurisdiction is responsible for its own child justice policies, legislation, services, et cetera. While there are jurisdictional similarities, there are also differences and, in this context, reform is a highly complex matter, requiring significant attention, collaboration and agreement among many stakeholders (government and non-government).

1.7 In this interim report, the committee identifies some of the key issues presented in submissions and in evidence, to enable the Senate to consider how to progress this matter in the 48th Parliament.

Referral and terms of reference

1.8 On 11 September 2024, the Senate referred the following matter to the committee for inquiry and report by 26 November 2024:

> Australia's youth justice and incarceration system, with particular reference to:
>
> (a) the outcomes and impacts of youth incarceration in jurisdictions across Australia;
> (b) the over-incarceration of First Nations children;
> (c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention;
> (d) the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights;
> (e) the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations; and
> (f) any related matters.[1]

[1] *Journals of the Senate*, No. 130–11 September 2024, pp. 3976–3977. On 11 September 2024 and on 4 November 2024 Senator Lidia Thorpe proposed amendments to the inquiry terms of reference (see for example *Senate Hansard*, 11 September 2024, p. 3841).

1.9 Australia's National Children's Commissioner, Ms Anne Hollonds, welcomed the inquiry, saying that it is a critical step towards evidence and human rights-based reform:

> [A] national inquiry will help shine a light on the failures in our child justice systems – failures which continue to destroy and devastate the lives of young people, their families, and communities. We are seeing these failures daily, particularly against First Nations and other children living with poverty and disadvantage, and complex needs such as disabilities, mental ill-health and trauma. The Inquiry will also gather evidence about the ways forward for solutions and systems reform.[2]

1.10 The Senate has twice extended the reporting date for the inquiry, with a final report due on 1 July 2025.[3]

Conduct of the inquiry

1.11 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to individuals and organisations, inviting submissions by 10 October 2024. The committee continued to accept submissions received after this date. In total, the committee received 223 submissions, which are listed at Appendix 1, and held a public hearing in Canberra on 3 February 2025. A list of witnesses who appeared at the hearing is at Appendix 2.

Note on terminology

1.12 This interim report preferences use of the term 'child justice system', rather than 'youth justice system', to better reflect a child rights approach, and also uses the term 'youth' to refer to children and young people aged 10–17 years. The committee recognises that the Convention on the Rights of the Child defines every human being below the age of 18 years as a 'child'.[4] The terms 'child' and 'youth' are used throughout this report.

Context of Australia's youth justice and incarceration system

1.13 On 28 March 2024, the Australian Institute of Health and Welfare (AIHW) released its annual report on young people under youth justice supervision in Australia (*Youth justice in Australia 2022–23*). The key findings included that, on an average day, most of the youth under supervision were male and

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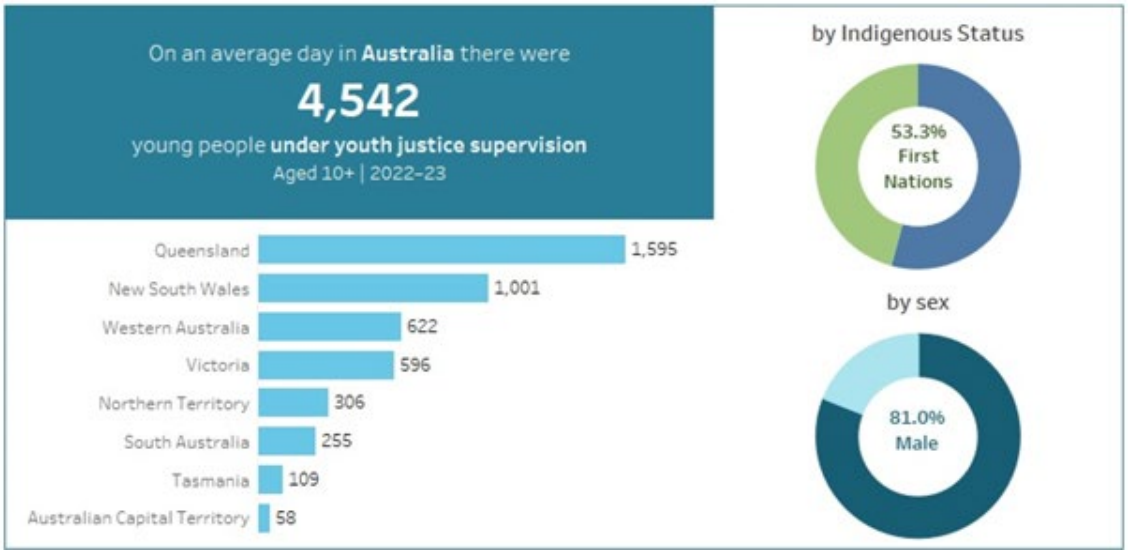
2 Australian Human Rights Commission (AHRC), 'Children's Commissioner welcomes Senate Inquiry into child justice', *Media Release*, 12 September 2024, https://humanrights.gov.au/about/news/childrens-commissioner-welcomes-senate-inquiry-child-justice (accessed 30 September 2024).

3 *Journals of the Senate*, No. 138–10 October 2024, p. 4169; *Journals of the Senate*, No. 146–28 November 2024, p. 4495.

4 Convention on the Rights of the Child, article 1. Also see: Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 79, who commented on the importance of language and terminology.

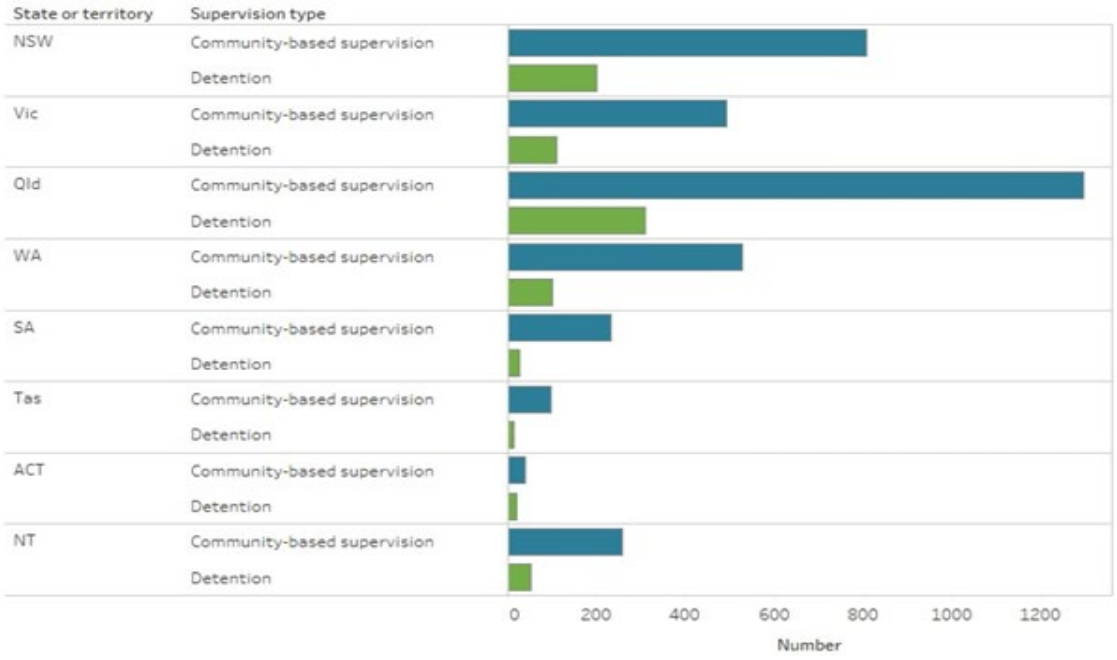
supervised in the community, with jurisdictional variations for community-based supervision and detention (Figures 1.1 and 1.2).[5]

Figure 1.1 Young people under youth justice supervision, 2022–23



Source: AIHW, Youth justice in Australia 2022–23, 28 March 2024, [p. 5].

Figure 1.2 Young people under youth justice supervision, 2022–23, by jurisdiction and type of supervision



Source: AIHW, Youth justice in Australia 2022–23, 28 March 2024, [p. 12].

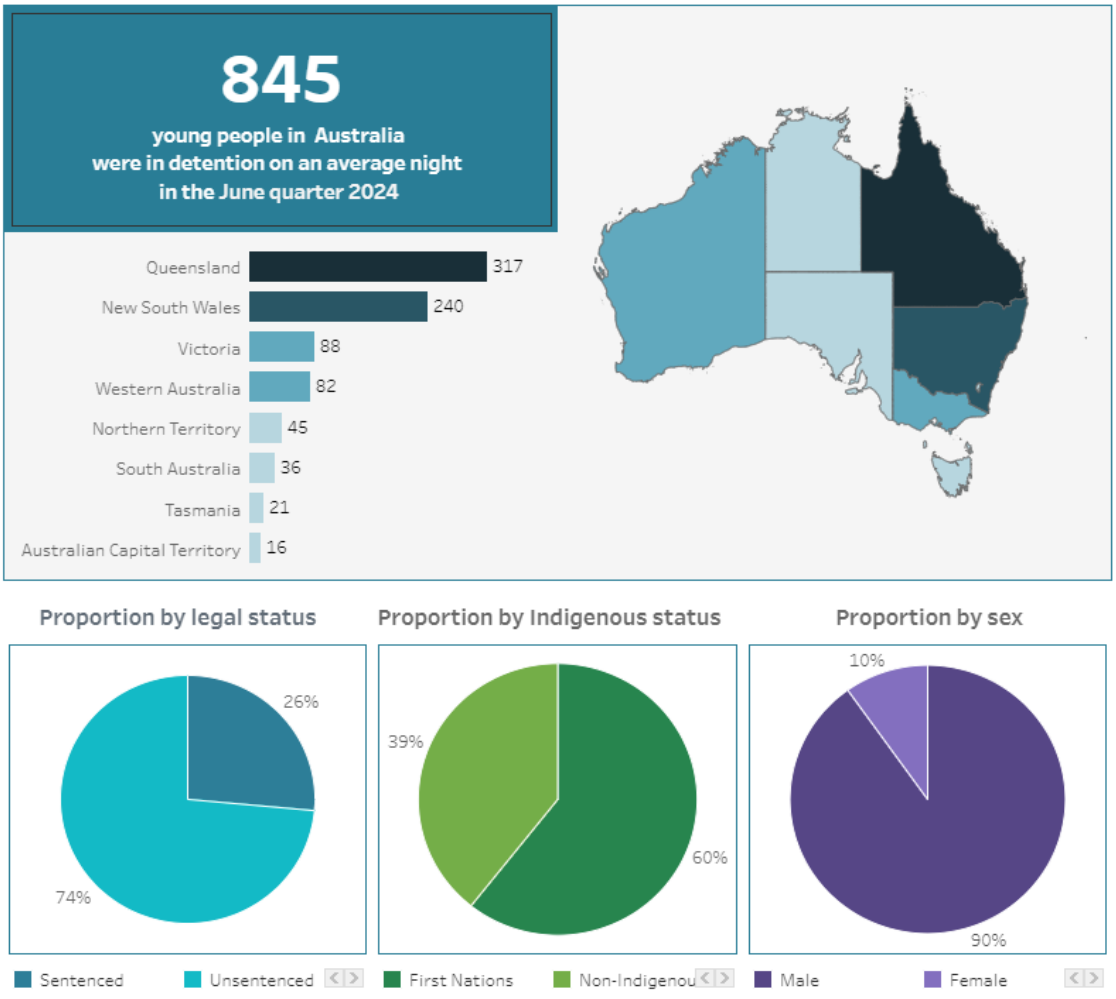
[5] Australian Institute of Health and Welfare (AIHW), *Youth justice in Australia 2022–23*, 28 March 2024, www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/numbers-and-rates-of-young-people-under-supervisio (accessed 1 October 2024). Also see: Dr James Beaufils, Senior Research Fellow, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 3 February 2025, p. 55, who noted the emergence of concerning trends for young Aboriginal and Torres Strait Islander girls.

1.14 In 2022–23, Queensland and New South Wales had the highest number of young people under youth justice supervision. However, the Northern Territory had the highest rate of supervision (79.5 per 10 000), compared to the lowest rate in Victoria (4.7 per 10 000).[6]

Specific data on the youth detention population

1.15 On 13 December 2024, the AIHW released its most recent web report on quarterly trends in the youth detention population in Australia, from June 2020 to June 2024 (*Youth detention population in Australia 2024*). This included information on the number, gender and Indigenous status of young people in detention on an average night in the June quarter 2024 (Figure 1.3).[7]

Figure 1.3 Number of young people in detention on an average night in Australia, June quarter 2024



Source: AIHW, 'Youth detention population in Australia 2024, Summary', 13 December 2024.

6 AIHW, *Youth justice in Australia 2022–23*, 28 March 2024, [p. 12].

7 AIHW, 'Youth detention population in Australia 2024', 13 December 2024, www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/about (accessed 31 January 2025).

1.16 Figure 1.3 shows that 845 young people were in detention on an average night in the June quarter 2024, the majority of whom were male and/or Indigenous. The AIHW provided further information on the age and legal status of these young people.

1.17 The AIHW reported that a 'very' small number of the young people in detention were aged 10–13 (38 of the 845 detainees), an increase of seven children from the June quarter 2020. This was a rate of 0.3 per 10 000: for First Nations youth, the rate was 3.7 per 10 000; for non-Indigenous youth, the rate was 0.1 per 10 000. Of the non-Indigenous youth in detention, 2.0 per cent were aged 10–13; for First Nations youth in detention, 6.2 per cent were aged 10–13.[8]

1.18 The AIHW also reported that about three in four (588 or 74 per cent) of young people in detention were unsentenced (awaiting their initial court appearance or sentencing). This was a rate of 2.0 per 10 000, compared to 0.6 per 10 000 for sentenced detention, representing an increase of 10 per cent in the four-year period.[9]

Further data and statistics

1.19 Other organisations and individuals (government and non-government) have compiled additional datasets and statistical publications. For example, the Productivity Commission annually reports on the equity, effectiveness and efficiency of government services in relation to youth justice (*Report on Government Services*).[10]

1.20 Submissions and evidence referred to these datasets and publications, as well as to the AIHW's periodic reports. For clarity and consistency, this interim report refers primarily to the work of the AIHW, including in Chapters 2–5.

Reviews and inquiries

1.21 On 20 August 2024, the National Children's Commissioner tabled a report in the Parliament entitled '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*' (the *Help way earlier!* report).[11]

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8 AIHW, 'Youth detention population in Australia 2024, young people aged 10–13 in detention', 13 December 2024, www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/summary/young-people-aged-10-13-in-detention (accessed 31 January 2025).

9 AIHW, 'Youth detention population in Australia 2024, Trends in sentenced and unsentenced detention', www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/trends-in-sentenced-and-unsentenced-detention (accessed 31 January 2025).

10 Productivity Commission, 'Report on Government Services', www.pc.gov.au/ongoing/report-on-government-services (accessed 1 January 2025).

11 *Journals of the Senate*, No. 125—20 August 2024, p. 3803.

1.22 The *Help way earlier!* report described the findings of a 12-month long inquiry into opportunities for the reform of child justice and related systems across Australia, during which the National Children's Commissioner saw and heard evidence of 'the most egregious breaches of human rights in this country'.[12]

1.23 Ms Hollonds concluded that Australia needs a transformative, national, child rights-based approach, to reform and replace the current child justice system:

> …we have approached offending by children the wrong way. We cannot 'police' our way out of this problem, and the evidence shows that locking up children does not make the community safer. We need to turn our attention and our resources to the underlying causes, and to the barriers that stop us taking national action on evidence-based systems reform.[13]

1.24 As discussed throughout this interim report, multiple submitters and witnesses agreed that 'tough on crime' policies are based upon community safety arguments that do not address the underlying factors for children and young people coming into contact with the child justice system (see Chapters 2 and 3).[14]

1.25 Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA) urged the Australian government to adopt a different approach to better assist youth and to enhance community safety:

> …we call upon the Australian Government to bring the issue of youth justice and incarceration to the attention of National Cabinet in a manner that focuses attention on upstream preventative and diversionary responses centred first and foremost on enhanced support that improves outcomes for children and young people (hereafter referred to as children) within the context of their families and communities.
>
> The state of youth justice in Australia is at a crisis level and requires immediate and substantive reform if we are to increase public safety and change the life trajectories of those children who come to the attention of our justice systems. Continuing to tackle this through tougher justice approaches fails to recognise the complex and compounding interplay of intersectional disadvantages that impact those children most at risk.[15]

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[12] AHRC, '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report), 2024, p. 5.

[13] AHRC, *Help way earlier!* report, 2024, p. 5. Also see: Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 78, who stated that 'crime by children is a symptom of underlying needs that we are failing to address'.

[14] See, for example: UNICEF Australia, *Submission 83*, p. 3; Sisters Inside and National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, p. 4; SNAICC—National Voice for our Children, *Submission 173*, [p. 4]; Law Council of Australia (Law Council), *Submission 195*, p. 6; Ms Shahleena Musk, Children's Commissioner (NT), *Committee Hansard*, 3 February 2025, p. 3.

[15] Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA), *Submission 74*, p. 1.

1.26 ANZCCGA specifically noted that, according to all evidence, the younger a child is when they first encounter the justice system, the more likely they are to reoffend (see Chapter 2), with a progression in the seriousness of the offending behaviour and engagement with the adult justice system.[16]

Previous findings and recommendations

1.27 Most submitters and witnesses considered that specific, if not all, recommendations made in the *Help way earlier!* report should be agreed and implemented.[17] However, many commented on previous reviews and inquiries, including Royal Commissions and Commissions of Inquiry, whose findings and recommendations aimed at achieving youth justice reform remain largely unaddressed.[18]

1.28 The AHRC described responses to these recommendations as 'piecemeal, uncoordinated and inadequate'.[19] Other submitters attributed the stalemate to a lack of political commitment by all Australian governments. The Australian Child Rights Taskforce submitted, for example:

> The available evidence demonstrates that governments have been unable to resist the lure of flawed political fixes. And there has been an absence of national leadership to encourage them to make the necessary sustainable investments in this relatively small but important group of children and the communities that they come from.[20]

1.29 The National Aboriginal and Torres Strait Islander Legal Services stated that governments have known but failed to address serious and ongoing concerns with youth justice systems due to political manoeuvring and opportunism:

> The systemic failures of Australia's youth justice systems are not new and are well known to Governments. The thousands of pages and hundreds of recommendations in the over 21 key inquiries and reviews conducted into this issue since 2016 alone makes this clear...Australia's youth justice system

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16 ANZCCGA, *Submission 74*, p. 1.

17 See, for example: Australian Medical Association (AMA), *Submission 55*, p. 2; Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 2; Law Council, *Submission 195*, p. 10; National Aboriginal and Torres Strait Islander Legal Services (NATSILS), *Submission 202*, p. 9; Ms Annmarie Lumsden, Director, National Legal Aid (NLA), *Committee Hansard*, 3 February 2025, p. 73.

18 See, for example: AMA, *Submission 55*, pp. 2–4; Australian Child Rights Taskforce (ACRT), *Submission 63*, p. 5; Australian National Preventive Mechanism, *Submission 109*, p. 9; National Legal Aid, *Submission 172*, Attachment 1.

19 AHRC, *Submission 65*, p. 3.

20 ACRT, *Submission 63*, [p. 2]. Also see, for example: Aboriginal and Torres Strait Islander Children and Young People Commissioner (ACT), *Submission 90*, p. 7.

continues to be plagued by political manoeuvring and opportunism while children continue to suffer.[21]

Structure of the report

1.30 This report comprises six chapters, as follows:

- Chapter 1 provides an introduction and context to the inquiry;
- Chapter 2 discusses the outcomes and impacts of youth detention;
- Chapter 3 specifically examines First Nations youth in detention;
- Chapter 4 discusses human rights compliance in the youth justice and detention system;
- Chapter 5 examines the role of the Australian government; and
- Chapter 6 sets out the committee's interim conclusions and recommendations.

Note on references

1.31 In this report, references to the *Committee Hansard* transcript are to proof (uncorrected) transcripts. Page numbers may vary between the proof and official (corrected) transcripts.

[21] NATSILS, *Submission 202*, p. 4. Also see: Institute for Collaborative Race Research, *Submission 185*, pp. 4–5, which argued that the persistent refusal to act suggests that these monitoring and oversight mechanisms are performative only.

Chapter 2
Outcomes and impacts of youth detention

2.1 The National Children's Commissioner, Ms Anne Hollonds, has highlighted that 'most children who become involved with the child justice system are among the most disadvantaged and vulnerable, with complex social issues influencing their involvement with the system'.[1]

2.2 Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA) agreed with this assessment and outlined the types of disadvantage experienced by children and young people interacting with the child justice system:

> Children in the justice system have fragmented education experiences, marked by periods of exclusion and expulsion, resulting in poor educational outcomes. They have precarious living arrangements including homelessness and/or placements in out-of-home care. They have often experienced drug and alcohol related addiction, struggle with complex, unresolved trauma, and live with mental illness and/or disabilities. Children in the justice system have higher rates of speech, language and communication disorders, [attention deficit hyperactivity disorder], autism spectrum disorders, [fetal alcohol spectrum disorder, FASD], and acquired/traumatic brain injury.[2]

2.3 This chapter discusses the outcomes and impacts of youth detention, including:

- the social determinants of justice;
- outcomes of youth detention; and
- alternatives to detention.

Social determinants of justice

2.4 Professor Ruth McCausland and Professor Eileen Baldry, both based at UNSW Sydney, described the background and structural factors affecting young people as the 'social determinants of justice' (Figure 2.1).[3]

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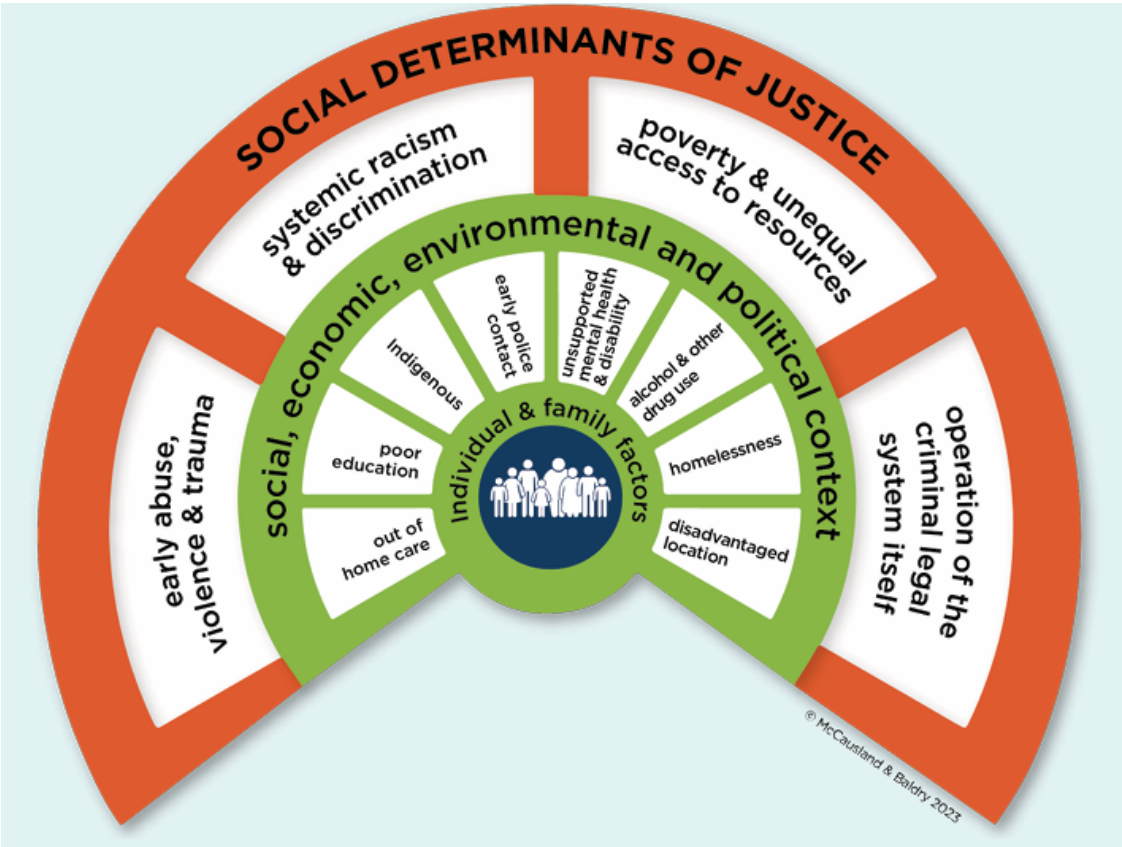
1 Australian Human Rights Commission (AHRC), '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report), 2024, p. 16.

2 Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA), *Submission 74*, p. 1. Also see: SHINE for Kids, *Submission 84*, pp. 4–5, which noted parental incarceration as a significant risk factor.

3 Professor Ruth McCausland and Professor Eileen Baldry, UNSW Sydney, *Submission 108*, p. 1.

Figure 2.1 Social determinants of justice



Source: R. McCausland and E. Baldry (2023), 'Who does Australia Lock Up? The Social Determinants of Justice', International Journal for Crime, Justice and Social Democracy, 12(3), p. 45.

2.5 The Law Council of Australia (Law Council) explained:

> These social determinants, which put children at greater risk of contact with the criminal justice system, spiral out from individual and family factors; to social, economic, environmental and political contexts; into the broader social determinants of justice including early abuse, systemic racism and discrimination, poverty and unequal access to resources, and ultimately into the operation of the criminal legal system itself. The broader social determinants of justice need to be addressed in order to reduce crimes by children and limit if not abolish child incarceration.[4]

2.6 Similarly, the Australian Human Rights Commission (AHRC) submitted:

> Despite evidence of the social determinants that are the root causes of offending behaviour, policy responses to these children are often only tinkering with the symptoms, with tougher policing, stricter bail laws, and more incarceration. This is done under the guise of keeping the community safe but are often counterproductive…The solutions lie in transformational thinking and action to address systemic disadvantage.[5]

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[4] Law Council of Australia (Law Council), *Submission 195*, p. 10. Also see, for example: AMA, *Submission 55*, p. 2; UNICEF Australia, *Submission 83*, p. 3; SNAICC—National Voice for our Children (SNAICC), *Submission 173*, [p. 4].

[5] AHRC, *Submission 65*, pp. 3–4.

2.7 Ms Leesa Waters, Chief Executive Officer of the National Association for Prevention of Child Abuse and Neglect (NAPCAN), shared the view that youth offending and detention cannot be addressed simply by focussing on the youth justice system:

> Focusing solely on youth justice systems is such a small piece of the puzzle. …[W]e will not progress the entire puzzle, and we will continue to fail marginalised young people and their families through enabling the ongoing system failures. Instead, we need a holistic approach that tackles the root causes of youth involvement in the justice system, from social inequalities to system failures. I've seen firsthand when young people come into contact with the justice system. It's often because we as a society fail to support them and their families early enough. It's like putting a bandaid on a severed artery. If we do not invest in all of these systems before all of these children hit the youth justice system, we'll see it bleed out entirely—an overwhelmed system, worsening reoffending and a generation of young people failed by the very structures that are meant to protect them...The reality is that most children do not need to be removed from their families. They need their families to be supported. Yet our current approach too often blames parents rather than providing the tools they need to keep their children safe and well.[6]

2.8 Ms Jodie Griffiths-Cook, ACT Public Advocate and Children and Young People Commissioner, agreed that support for families is crucial to early recognition and intervention:

> If we don't put up the scaffolding around families to enable them to build that parenting capacity and to build their ability to respond to their children's needs…then it's impossible for many families if they haven't grown up with those examples themselves. It makes it extraordinarily challenging for them to know what that standard is that we are asking of them. I talk about circumstances of inadvertent neglect. Time and again we see families coming into the care and protection system who don't know what they don't know or what they need to know to be an effective parent. If we don't teach them, if we don't give them those skills, how can we expect them to reach the bar that we hold over their heads?[7]

2.9 SNAICC—National Voice for our Children (SNAICC) Chief Executive Officer Ms Catherine Liddle advised that, at present, families do not receive support until children and young people have come to the attention of the child protection system:

> The way the child protection system works is that you cannot get support until you are in trouble, which is ridiculous. We should be intervening way earlier…So what would that be? We've picked up a child. We not only find a responsible adult but we also triage, and it should be an Aboriginal person

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6 Ms Leesa Waters, Chief Executive Officer, National Association for Prevention of Child Abuse and Neglect (NAPCAN), *Committee Hansard*, 3 February 2025, p. 14.

7 Ms Jodie Griffiths-Cook, ACT Public Advocate and Children and Young People Commissioner, *Committee Hansard*, 3 February 2025, p. 6.

> triaging because, again, that's a job, and it's likely someone who knows the child. We ask, 'What else do you need right now?' They say, 'Oh, actually I've been having trouble with this; I've been having trouble with that,' so that, when they wake up the next morning, those supports are immediately kicking in. But that level of wraparound support, that nuance, is missing. And there is nowhere you can walk into—pretty much anywhere—where you can say: 'Right now, I'm a little bit worried about my kid. He's jumping out of windows at night, and he's hanging out with these kids. I'm at a loss. I've got trouble. I know I might be drinking a little bit too much. Where do I go?' Where are the rehabilitation services?[8]

The child protection system

2.10 Several stakeholders especially commented on out-of-home care (an individual and family factor) as a key issue or risk factor, with children and young people in the child protection system at higher risk of entering the child justice system ('crossover children' or 'crossover kids').

2.11 In its report, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1995–1997, see Chapter 3) especially traced the history of forcible removal of Indigenous children from their families and communities.

2.12 On 25 October 2024, the Australian Institute of Health and Welfare (AIHW) released its report presenting information on young people under supervision during 2022–23 who interacted with the child protection system in the 10 years prior to 30 June 2023 (*Young people under youth justice supervision and their interaction with the child protection system 2022–23*) (Figure 2.2).[9]

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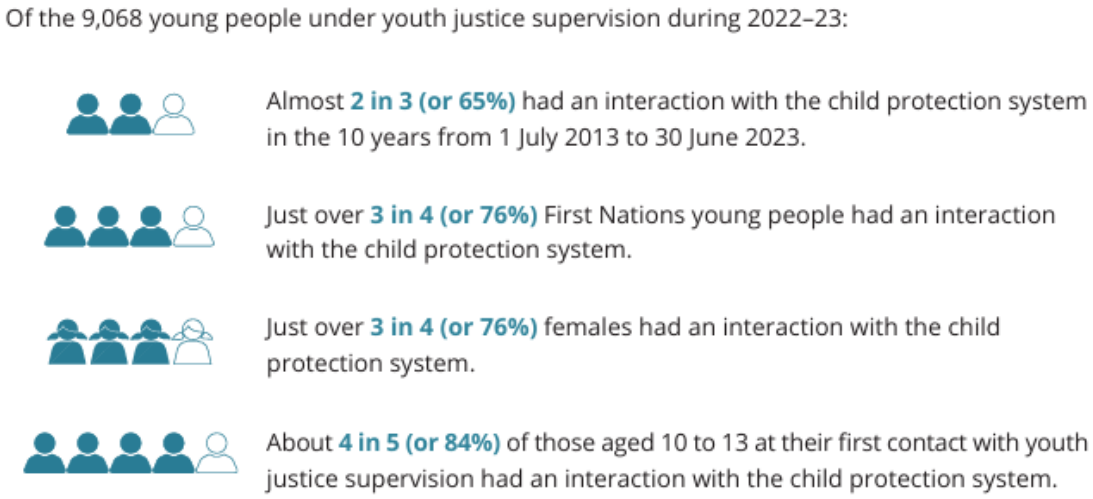
[8] Ms Catherine Liddle, Chief Executive Officer, SNAICC—National Voice for our Children (SNAICC), *Committee Hansard*, 3 February 2025, p. 35.

[9] Australian Institute of Health and Welfare (AIHW), *Young people under youth justice supervision and their interaction with the child protection system, 2022–23*, 25 October 2024, www.aihw.gov.au/getmedia/b4ae2d71-e7a8-4618-9f8a-777d153efbf8/aihw-csi-030.pdf?v=20241003164817&inline=true (accessed 31 January 2025).

Figure 2.2 Young people under youth justice supervision with an interaction with the child protection system



Source: AIHW, Young people under youth justice supervision and their interaction with the child protection system, 2022–23, 2024, p. 7.

2.13 Figure 2.2 shows that nearly two-thirds of children and young people under youth justice supervision had an interaction with the child protection system in the relevant 10-year period. For First Nations youth, the percentage was even higher (76 per cent), as was the percentage for children aged 10–13 experiencing supervision for the first time (84 per cent).

Attitudes to youth

2.14 Several submitters and witnesses especially commented on how children and young people are portrayed in the media, and how this affects attitudes and responses to youth offending.[10] The Australian Youth Affairs Coalition (AYAC), for example, submitted:

> Young people are frequently and indiscriminately portrayed as politically apathetic and disengaged…as 'gang members'…as criminals and substance abusers…and as threats to society. Young people of colour are most often targeted by these portrayals, and often with racialised terms attached. This type of reporting is harmful, and often inaccurate, and therefore problematic in and of itself. However, such relentless and sensationalised reporting can also lead to policy-making that is reactive and that appeals to populist 'tough on crime' ideals, rather than being evidence-based and targeted at effectively addressing the social determinants of justice.[11]

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[10] See, for example: headspace, *Submission 157*, p. 5.

[11] Australian Youth Affairs Coalition (AYAC), *Submission 156*, p. 9. Also see: Sisters Inside and National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, p. 2; Law Council, *Submission 195*, p. 7.

2.15 Ms Sarah Nelson, a woman with lived experience, stated that children and young people are highly aware and sensitive to how they are being portrayed:

> These young people are watching and hearing what we are saying about them and they are internalising it. Most, if not all, of these young people have a core belief about themselves that they have nothing of value to offer this world…We are reinforcing this belief through the language we use when it comes to them and through the way that we treat them. We are reinforcing it through our bias against them...The devaluation of them as human beings…is adding to their self-hatred, which then creates more self-destruction. We speak about them and how they are self-destructing more as problems that need to be solved rather than patterns of self-destruction that need to be changed.[12]

2.16 Ms Zoë Robinson, Advocate for Children and Young People (NSW), highlighted similar views from her consultations with young people in youth detention centres:

> The children and young people interviewed told us: it was inevitable they would end up in adult custody; being in custody was better than being in out-of-home care; and they felt very few people listened or cared, they were also the most insecure children and young people interviewed about their immediate future.[13]

2.17 The Guardian for Children and Young People (SA), Ms Shona Reid, said that children and young people have a lot to say about the world and how they are treated:

> Last year, I spoke to children and young people in the Adelaide Youth Training Centre. The underlining sentiment was twofold. Firstly, they were being let down. They were let down from the moment they were born by their families that were supposed to grow them up, love them, care for them and provide them safety. They were let down by statutory bodies that were supposed to protect them when they were hurt. They were let down by schools that were supposed to teach and nurture them. They were let down by their peers who they were trying to make connections with but ended up entwining them in troubling and offending behaviours. They were let down by support systems that promised to be there when the times were tough, but workers changed so often that they were hardly able to remember their names or services were only funded for 12 months and they disappeared as quickly as they appeared. They were let down by their legal representation, who did not explain the wholeness of their situation, the court processes, their rights and their responsibilities, and they ended up getting into more trouble. They were let down by the promise of a new start and that rehabilitation or diversion programs would be offered to them in youth detention settings, and that just didn't happen.
>
> Secondly, children and young people expressed the desire to be part of something. They expressed the desire to be more than just a passenger in

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12 Ms Sarah Nelson, *Submission 167*, p. 14.

13 Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 4.

> their life, to contribute meaningfully to their own world and to ours. I saw and heard children and young people who want to be part of this community; they truly do. They want to be part of our society; they truly do. They want to be meaningful to themselves and to the community around them. When I hear from kids—I want to do the quotes, because I'm quoting them—and they say, 'I know the statistics for kids like me,' I worry that even children know the trajectory of their life at the age of 10 and that our society's response to them is so predictable that they simply give up because they believe we simply don't care enough.[14]

2.18 Ms Al Hilaly, Campaign and Policy Strategist at NAPCAN, said:

> Too many young people are slipping through the cracks—not because they lack potential but because the systems designed to help them were never built with them in mind. We see this every day: young people forced to navigate institutions that don't understand their realities; families struggling to even access the most basic supports; and a justice system that punishes rather than prevents.[15]

2.19 SNAICC's Ms Liddle, argued that, in all the circumstances, Aboriginal and Torres Strait Islander youth are being held to an unreasonably high standard:

> Accountability of offenders is important, but asking Aboriginal and Torres Strait Islander children to be accountable for their disadvantage and their poverty, for their near-everyday experiences of systemic racism [see Chapter 3], for the absence of anyone supporting them and for the overstressed service system that can't go to those children, we are asking for a greater level of accountability than what we ask of our governments or our justice systems, or anything we assume of ourselves. And what we know is that by the time a child hits a justice system, they have been failed by so many, and yet, when they hit that justice system, the only person that is ever held to account is the child.[16]

2.20 The National Children's Commissioner emphasised that children and young people in detention want to have what is considered a normal childhood:

> They're really asking for the sorts of things that all kids—your kids, my kids—need; that is, the basics of a good childhood, like food, somewhere safe to live, a good sense of connection with family, school and peers, and stuff to do, like sport. A lot of these kids talked about the fact that in their communities either there aren't sport or cultural activities that they can do, or the parents can't afford them…There are some simple fixes here where we could address these things.[17]

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[14] Ms Shona Reid, Guardian for Children and Young People (SA), *Committee Hansard*, 3 February 2025, pp. 2–3.

[15] Ms Al Hilaly, Campaign and Policy Strategist, NAPCAN, *Committee Hansard*, 3 February 2025, p. 14.

[16] Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 32.

[17] Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 81. Also see: p. 82

2.21 Ms Nerita Waight, Deputy Chair of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS), expressed the view that 'until we tackle the way that media reports crime, particularly youth crime, I just think we will not break the cycle of the way that politicians approach it'.[18]

Outcomes of youth detention

2.22 Submitters and witnesses stated that there are short and long-term outcomes of detention, which can have significant and detrimental impacts on the lives of young people and society more broadly. This section of the interim report outlines the following key outcomes: physical health, mental health and wellbeing; abuse and mistreatment; and recidivism.

Physical health, mental health and wellbeing

2.23 On 14 June 2018, the AIHW released its report entitled *National data on the health of justice-involved young people: a feasibility study, 2016–17*. This feasibility report highlighted that 'little information exists at the national level about the health of young people under youth justice supervision in Australia', and outlined how this 'critical data gap might be addressed into the future'.[19] In particular:

> It is recommended that a national data collection on the health of young people under youth justice supervision be developed, using a combination of data linkage with the [Youth Justice National Minimum Data Set], and administrative data available from youth detention centres.[20]

2.24 headspace acknowledged that there is limited national data but reiterated the obvious: the young people involved in the youth justice system are among the most disadvantaged and vulnerable members of Australian communities, with multiple intersectional and adverse healthcare needs.[21]

Access to healthcare

2.25 Many stakeholders argued that there is inadequate access to healthcare in youth detention centres. As an example, National Legal Aid (NLA) highlighted the case of individuals with disability whose pre-existing needs are not being met:

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18 Ms Nerita Waight, Deputy Chair, NATSILS, *Committee Hansard*, 3 February 2025, p. 75.

19 AIHW, 'National data on the health of justice-involved young people: a feasibility study, 2016–17', 14 June 2018, www.aihw.gov.au/reports/youth-justice/health-justice-involved-young-people-2016-17/summary (accessed 10 October 2024). Note: the only national data for this population is the National Deaths in Custody Monitoring Program provided by the Australian Institute of Criminology.

20 AIHW, *National data on the health of justice-involved young people: A feasibility study*, p. vii, www.aihw.gov.au/getmedia/4d24014b-dc78-4948-a9c4-6a80a91a3134/aihw-juv-125.pdf?v=20230605182427&inline=true (accessed 10 October 2024).

21 headspace, *Submission 157*, p. 3.

> Children and young people with disability, including those with neurodevelopmental disorders such as [FASD], are often detained without receiving the support they need, further compounding their vulnerability.[22]

2.26 The Australian Medical Association (AMA) indirectly referenced Article 24 of the Convention on the Rights of the Child (CRC), which protects the right of the child to enjoy the highest attainable standard of health and access to healthcare services, as well as Rule 24 of the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), which provides, among other things:

> **Rule 24**
>
> 1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community [the equivalence of care principle], and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.[23]

2.27 The AMA affirmed its position that the 'fundamental human rights of people in custodial settings must be upheld…including through…equity of access to safe and appropriate healthcare [and health service delivery models]'. However, it contended that these human rights are unmet:

> Incarceration and poor health are strongly associated, suggesting non-compliance by jurisdictions in relation to the rights of those in custody. In comparison to the general population, those in custodial settings experience higher rates of chronic physical disease, mental ill-health, communicable disease, and addiction. Current service delivery settings across Australian custodial settings do not always enable access to the same standard of healthcare most Australians would expect.[24]

2.28 The AMA stated that 'jurisdictional issues regarding a lack-of-compliance often occur due to contradictory legislation, and government changes'. It explicitly supported the *Guiding principles for Corrections in Australia*, which reflects a national intent for jurisdictions to achieve best practice across five outcomes, including health and wellbeing (Outcome 4).[25]

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[22] National Legal Aid (NLA), *Submission 172*, p. 7. Also see, for example: AHRC, *Submission 65*, p. 10.

[23] United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, 17 December 2015, Rule 24, p. 8, www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (accessed 31 October 2024). Also see: Australian Medical Association (AMA), *Submission 55*, pp. 9 and 10.

[24] AMA, *Submission 55*, p. 7.

[25] Government of Australia, Corrective Services Administrators' Council, Guiding Principles for Corrections in Australia, 2018, pp. 4 and 20–22, https://files.corrections.vic.gov.au/2021-06/guiding_principles_correctionsaustrevised2018.pdf (accessed 31 January 2025). Also see: AMA, *Submission 55*, p. 7.

2.29 At the Commonwealth level, the AMA specifically noted that children and young people in detention are excluded from Medicare Benefits Scheme (MBS) and Pharmaceutical Benefits Scheme (PBS) subsidies (subsection 19(2) of the *Health Insurance Act 1973*):

> …the intent of this clause is to avoid duplication of services and expenditure between the Commonwealth and states and territories. However, this is premised on the assumption that an equivalence of health service is being provided by jurisdictions in custodial settings...By not allowing those in custodial settings to access MBS and PBS items, Australia is negating the Mandela Rules as they relate to the same standard of healthcare across the broader community.[26]

2.30 The AMA emphasised that healthcare should be provided in a comprehensive, age and culturally appropriate manner, a view shared by the Australian National Preventive Mechanism (ANPM), which endorsed health service delivery by Aboriginal Community Controlled Health Organisations (ACCHOs):

> Healthcare for Aboriginal and/or Torres Strait Islander people in all forms of detention, including youth detention, must be culturally safe, and designed and led by Aboriginal and/or Torres Strait Islander people themselves. This should involve adequately resourced and empowered [ACCHOs]. However, access to ACCHOs is limited, and the lack of access to Medicare in youth detention (as in adult prisons) can lead to an inability to access some services, including culturally safe healthcare.[27]

Mental healthcare

2.31 Submitters and witnesses expressed particular concern with the lack of access to mental healthcare in youth detention centres, an environment that, they argued, can exacerbate and/or foster mental health issues (for example, anxiety, depression, and post-traumatic stress disorder).

2.32 The ANPM submitted, for example:

> Children entering detention regularly have complex combinations of pre-existing mental health conditions, cognitive impairment, and histories of trauma. They may also have mental health conditions which present in a manner involving alleged offending behaviour. Not only does detention compound mental health circumstances, members have noted that access to mental health services in detention is also flawed, as well as impacted consequentially by other facility concerns such as staffing shortages.[28]

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[26] AMA, *Submission 55*, pp. 9–10.

[27] Australian National Preventive Mechanism (ANPM), *Submission 109*, p. 8. Also see: AMA, *Submission 55*, p. 8.

[28] ANPM, *Submission 109*, pp. 7–8. Also see, for example: ANZCCGA, *Submission 74*, p. 2.

2.33 The National Justice Project (NJP) and the Jumbunna Institute for Indigenous Education and Research (Jumbunna) highlighted one study which found that young people involved in the criminal justice system have a higher prevalence of psychiatric disorders than the general youth population, with 45 per cent to 73 per cent diagnosed with at least one psychiatric disorder.[29]

2.34 The AMA advised that the factors that would be checked by medical professionals are not being considered at the point of entry, including the possibility of a child or young person having developmental disorders, such as FASD, or severe and complex mental health conditions:

> The AMA advocates on the importance of developmental health and wellbeing, and checks should be undertaken on all children in contact with custodial settings, to ensure health conditions are known and considered when decisions are being made about the young person.[30]

2.35 NLA submitted that staff at youth detention centres are often ill-equipped to respond to the complex needs and challenging behaviours of children and young people in detention, including, for example, the provision of mental health screenings and psychiatric supports.[31]

2.36 Ms Hollonds and Ms Rosemary Kayess, Disability Discrimination Commissioner at the AHRC, agreed that staff are not trained and youth detention facilities are not resourced to manage children and young people's complex needs, which can exacerbate the young people's conditions and lead to harmful isolation and restraint practices (also see Chapter 4):

> Solitary confinement and seclusion are used a lot for kids with disability when they're in the criminal justice system. A lot of it is used to respond to behaviour. Behaviour is a direct response or an exacerbation of their disability in engagement with their environment, and it becomes a bit of a catch-22 situation. They endure restrictive practices as a way to try to get them to submit in terms of their behaviour, but those restrictive practices

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29 National Justice Project (NJP) and Jumbunna Institute for Indigenous Education and Research (Jumbunna), *Submission 51*, p. 6. Also see: G. Beaudry, R. Yu, N. Långström and S. Fazel (2021), 'An Updated Systematic Review and Meta-regression Analysis: Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities', Journal of the American Academy of Child and Adolescent Psychiatry, Jan: 60(1):46–60, https://pmc.ncbi.nlm.nih.gov/articles/PMC8222965/ (accessed 20 December 2024).

30 AMA, *Submission 55*, p. 11. Also see: NLA, *Submission 172*, pp. 7–8; Mr Greg McIntyre SC, Member, National Human Rights and Indigenous Legal Issues Committees, Law Council, *Committee Hansard*, 3 February 2025, p. 65; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report, Volume 8, Criminal justice and people with disability*, September 2023, pp. 19 and 24, which recommended timely screening and expert assessment for children with cognitive disability in the criminal justice system (Recommendation 8.4), and national practice guidelines and policies relating to screening for disability and identification of support needs in custody (Recommendation 8.14).

31 NLA, *Submission 172*, p. 12.

> exacerbate that particular behaviour. It becomes a situation where restrictive practices are increased in use, but it's not going to change the behaviour because it's contributing to the traumatic response.[32]

2.37 In response to the provision of disability supports and services for young people, Ms Tarja Saastamoinen, Group Manager, Children and Families at the Department of Social Services, advised that, on 28 January 2025, the Safety, Rights and Justice Targeted Action Plan 2025–2027 was launched as part of Australia's Disability Strategy 2021–2031. This plan commits Australian governments to specific actions for children and young people involved in youth justice. In addition, Ms Saastamoinen advised that the Australian government is progressing its response to the 2023 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability:

> As part of the Australian government's response, disability liaison officers are increasingly being introduced into police settings to improve the police responses to people with disability and to strengthen the disability community confidence side. Justice liaison officers have been introduced in justice settings to increase awareness of the needs of people with disability and clarify roles and responsibilities at the interface between social service systems and justice services…[W]e are working across the department to ensure that there are those connections between the disability space and areas such as mine which look after children and families.[33]

Mental health and wellbeing impacts

2.38 Several submitters pointed out that childhood and adolescence are critical times for emotional, social and cognitive growth, which, they argued, can be significantly disrupted by detention.[34] For example, the Australian Child Rights Taskforce submitted:

> Childhood and adolescence are 'critical times for building capabilities for life'. They are also times in which boundaries are tested and decisions are sometimes impulsive. They will include mistakes and are often influenced by the less than perfect circumstances in which they may live. When children come into conflict with the criminal law, the traditional criminal justice system does not offer the guidance and support that is necessary to set them back on track. And too often surrounding service systems are inadequate, not child-centred and pay insufficient attention to what is required for their protection, their health and wellbeing and respect for their rights. A different approach is required. The knowledge of how to undertake

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[32] Ms Rosemary Kayess, Disability Discrimination Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 80. Also see: Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 80.

[33] Ms Tarja Saastamoinen, Group Manager, Children and Families, Department of Social Services, *Committee Hansard*, 3 February 2025, pp. 85–86

[34] See, for example: ANZCCGA, *Submission 74*, p. 2.

> such an approach is not a mystery. It is well documented and guided by the international principles of child rights and youth justice.[35]

2.39 The NJP and Jumbunna drew attention to the personal mental health and wellbeing impacts on children and young people in youth justice detention. They stated that the young people are often trapped in 'a cycle of despair where systemic neglect, poor conditions, and a lack of support can lead to frustration, unrest, and riots'. Its submission illustrated this point:

> …Banksia Hill recorded over 400 critical incidents by the end of 2022 (plus another 132 critical incidents at Unit 18 alone), with many young people repeatedly involved in violent outbursts. This pattern is not unique to one facility—it reflects a broader failure across the youth justice system to provide environments that nurture young people's wellbeing and development. The isolation, punitive measures, and lack of support push these young people further into crisis, potentially fuelling further incidents of unrest. Breaking this cycle requires addressing the root causes of despair, such as trauma, mental health issues, and a lack of community connection, rather than resorting to punitive measures.[36]

2.40 The NJP and Jumbunna focussed particularly upon isolation practices as having profound psychological impacts:

> The use of isolation and high-security units, such as Unit 18 at Banksia Hill, subject young people to prolonged isolation in conditions that violate international human rights standards, such as the Mandela Rules. In some cases, young people have been unlawfully confined for up to 24 hours a day, over a span of multiple weeks. The psychological impact of such isolation is profound, leading to deteriorating mental health, increased feelings of hopelessness, and heightened risks of self-harm or suicide.
>
> Unit 18 is not an isolated case; many Australian detention centres rely on similar high-security units for managing so-called 'high-risk' detainees. Reform must focus on eliminating the use of isolation and developing therapeutic, community-based responses that address the underlying needs of these young people.[37]

2.41 In another example, Ms Griffiths-Cook acknowledged that the Bimberi Youth Justice Centre (Australian Capital Territory) had a no-physical contact policy, which has now been reversed:

> We know how important family connection is. We know how important it is to get a hug from our parent, our brother or our sister. When you are incarcerated, as my colleagues said, often for up to 23-hours a day. So we need to be looking at ways that that connection with family is as wholesome as it can be, despite the constraints of being in a detention facility. We need

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35 Australian Child Rights Taskforce (ACRT), *Submission 63*, [p. 2].

36 NJP and Jumbunna, *Submission 51*, p. 4. Also see: Ms Shahleena Musk, Children's Commissioner (NT), *Committee Hansard*, 3 February 2025, p. 3; Professor George Newhouse, Principal Solicitor and Chief Executive Officer, NJP, *Committee Hansard*, 3 February 2025, p. 55.

37 NJP and Jumbunna, *Submission 51*, p. 5.

> to recognise the strength that comes from that connection and we need to do what we can to embrace that and to make that work for our children and young people.[38]

2.42 Sisters Inside and the National Network of Incarcerated and Formerly Incarcerated Women & Girls (National Network) submitted that 'children's prisons…lack social and therapeutic care and support' and 'serve as sites of ongoing trauma and violence'.[39] Dr James Beaufils, Senior Research Fellow at Jumbunna, agreed: 'these are colonial institutions where community, young people and families continue to feel unsafe'.[40]

Disproportionate impacts on vulnerable youth

2.43 The committee received evidence that the health and wellbeing of some children and young people are disproportionately impacted in detention.[41] This includes Aboriginal and Torres Strait Islander youth, who experience negative outcomes resulting from the absence of cultural safety and cultural connection.[42]

2.44 Maranguka, a place-based Indigenous-led initiative operating regionally in Bourke (NSW), submitted that detention has 'devastating impacts' on First Nations children, including because it severs ties with family and culture. It noted that this disconnection occurs at a critical time in a young person's development and is particularly impactful in regional and remote areas:

> The youth justice and incarceration systems in Australia often strip away the individuality of a person, prioritising uniformity as a method of control…
>
> Detention centres are often a space of enforcement, not rehabilitation, at a stage when young people's brains and decision-making capacities are not even fully developed yet.
>
> During the remand or incarceration period, family access in regional and rural areas like Bourke are heavily impacted. The closest detention centres are hundreds of kilometres away. The young people in detention are often already in a deeply vulnerable state - to be further disconnected physically from country, community, and family can be a detriment to their

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38 Ms Jodie Griffiths-Cook, ACT Public Advocate and Children and Young People Commissioner, *Committee Hansard*, 3 February 2025, p. 7.

39 Sisters Inside and National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, p. 3. Also see: Professor George Newhouse, Principal Solicitor and Chief Executive Officer, NJP, *Committee Hansard*, 3 February 2025, p. 54.

40 Dr James Beaufils, Senior Research Fellow, Jumbunna, *Committee Hansard*, 3 February 2025, p. 55.

41 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *A brief guide to the Final report*, 29 September 2023, [p. 4], which reported that people with disability are significantly over-represented at all stages of the criminal justice system, especially those with cognitive disability and Aboriginal and Torres Strait Islander children and young people with cognitive disability.

42 NJP and Jumbunna, *Submission 51*, p. 3.

> rehabilitation process. As an example, the closest detention centre to Bourke is Dubbo, which is 370 kms and effectively a 4-hour car journey away, with limited public transport services that only run 3-4 days a week at specific times. For families who are already under significant financial pressure in this economy, the burden of having to bear the cost of arranging a car and/or accommodation close to the detention centres simply to visit their children, ends up preventing families from maintaining frequent contact and providing adequate support to their child in detention, with some families also experiencing a lack of access to AVL (audio-visual link) facilities for communication.[43]

2.45 The NJP and Jumbunna agreed that cultural connection is a fundamental part of identity and wellbeing for Aboriginal and Torres Strait Islander children and young people. They contended that, nationally, youth detention centres fail to consistently provide opportunities for these youth to engage with culture:

> Although some centres have introduced First Nations content into the curriculum and facilitated visits from First Nations service providers, these efforts are often under-resourced and inconsistent. Given the overrepresentation of First Nations youth in detention—who make up around 63% of the detained population nationwide—the lack of regular cultural programming is a serious issue. True reform must ensure that cultural connection is embedded in the daily lives of young people in detention, providing them with a sense of belonging and community that can aid in their personal growth.[44]

2.46 The AHRC pointed out that the detention of children carries additional historical weight for First Nations people:

> …from colonial policies of control through to the Stolen Generations to the over-surveillance of children and young people…This [incarceration] is regarded as further punishment of Aboriginal and Torres Strait Islander families and their experiences of disadvantage, vulnerability and trauma.[45]

Abuse and mistreatment

2.47 Several submitters and witnesses raised concerns about the abuse and mistreatment of children and young people in detention, from the use of watchhouses, and harmful isolation and restraint practices, to the deliberate infliction of harm, including assault.

2.48 According to Professor George Newhouse, Principal Solicitor and Chief Executive Officer of the NJP:

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[43] Maranguka, *Submission 106*, p. 7. Also see: NAPCAN, *Submission 66*, [p. 3], which argued that it is essential to foster a strong sense of identity and belonging among Indigenous youth to reduce disengagement and mitigate pathways to detention.

[44] NJP and Jumbunna, *Submission 51*, p. 4, which noted that 'strong family and community ties are also essential in preventing youth offending': p. 6.

[45] AHRC, *Submission 65*, p. 11. Also see: Chapter 3.

> The youth justice system is a total institution. It's just as controlling and just as abusive as religious orders once were. The rates of abuse and violence in youth detention and in child protection are frightening, but the total institutions deny the existence of abuse and violence and simply blame the children: the victims of the abuse. These organisations rally around their staff and their structures, using the law and spin to protect themselves and not the children, just as the church once did.[46]

2.49 The Justice Reform Initiative submitted:

> Practices of abuse, neglect and mismanagement have occurred (and continue to occur) in children's prisons in every state and territory in Australia. For example, in all jurisdictions, solitary confinement is used unlawfully, inappropriately and punitively on children who are held in conditions that fall well short of minimum standards...
>
> In addition to the Don Dale Youth Detention Centre in the NT, particular concerns have been raised in relation to the Ashley Youth Detention Centre in Tasmania, the Banksia Hill Detention Centre in Western Australia and the Cleveland Youth Detention Centre in Queensland. In Victoria concerns have been raised about the overuse of lockdowns and isolation for young people in Parkville Youth Detention Centre and the Malmsbury Youth Detention Centre. Similar concerns have been raised regarding the Kurlana Tapa Youth Detention Centre in South Australia. In NSW's Baxter Youth Detention Centre, Correctional Service Officers have undertaken full strip searches of young people circumventing laws that only permitted partial strip searches.
>
> The cruel and degrading treatment of children in prison is in violation of Australia's international obligations under the CRC and the [UN Rules for the Protection of Juveniles Deprived of their Liberty, the Havana Rules].[47]

2.50 Mr Nick Feik, journalist and former editor of *The Monthly* magazine, commented on Tasmania's Ashley Youth Detention Centre (AYDC), as follows:

> Children in detention in Tasmania are currently unsafe, despite decades of promises, reviews and inquiries into how to improve relevant laws and systems – and extensive evidence suggests the state is either incapable or unwilling to do what is required to protect them…
>
> The [AYDC] in northern Tasmania is that state's only youth detention centre, and for years – decades, in fact – it has been unsafe for children. The Tasmanian government, faced with its manifest failures, has promised since 2021 to close it down, but its actions speak for themselves: AYDC remains open for the foreseeable future, and conditions are as dangerous as ever.
>
> The recent Commission of Inquiry…into the Tasmanian government's responses to child sexual abuse in institutional settings spent three years investigating and documenting such abuses. It exposed literally thousands

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[46] Professor George Newhouse, Principal Solicitor and Chief Executive Officer, NJP, *Committee Hansard*, 3 February 2025, p. 54.

[47] Justice Reform Initiative, *Submission 20*, pp. 15–16.

> of cases of physical and sexual abuse, and the worst institution by far was the Ashley Youth Detention Centre.[48]

2.51 The First Peoples Disability Network (FPDN) submitted that the Banksia Hill Detention Centre (Banksia Hill) and Unit 18 at the Casuarina Prison (Unit 18) in Western Australia are a 'national disgrace', with the youth detained there—more than 70 per cent of whom are Aboriginal and Torres Strait Islander children and young people—'forgotten, abused and ignored':

> Banksia Hill has long been in a state of crisis, unfit for any child...FPDN considers that the words of the Office of the Inspector speak for themselves:
>
> *This [2023] inspection was part of our routine three-yearly schedule set to look at all facets of life in Banksia Hill and the gazetted Unit 18 at Casuarina Prison (Unit 18). Our inspection team included specialist advisers covering education, young people, health and mental health, and cultural safety.*
>
> *Given what we know about the needs of the young people in custody in Western Australia, our intention was to use our experts' knowledge and advice to examine whether the care being provided to the young people was trauma informed and contemporary. We had intended to overlay various perspectives to the inspection report…*
>
> *Despite this objective, we have been unable to apply such focus to this report. The situation we observed was so far from a normal routine that anything above getting many of the young people out of cell for a few hours each day seemed unattainable.*
>
> Instead of having their basic needs met, these children are being subjected to treatment that is so reprehensible as to bring into application the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*.[49]

2.52 Sisters Inside and the National Network of Incarcerated and Formerly Incarcerated Women & Girls (the National Network) highlighted a gender issue that, they argued, can especially impact girls in youth detention centres:

> While all guards—irrespective of gender—can inflict harm, the presence of male guards overseeing vulnerable children creates an amplified oppressive dynamic. Children, especially young girls, are placed in positions of heightened vulnerability, making them more susceptible to abuse. It must

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[48] Nick Feik, *Submission 220*, [p. 1]. Also see: Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, www.commissionofinquiry.tas.gov.au/home (accessed 31 January 2025); Department of Premier and Cabinet (Tasmania), response to Nick Feik's submission; Commissioner for Children and Young People (Tasmania), *Submission 90*, which provided a summary of findings, the Tasmanian Government's response and remedial actions.

[49] First Peoples Disability Network, *Submission 99*, pp. 19–20. Also see: Eamon Ryon, Inspector of Custodial Services (WA), *Submission 15*, p. 3, which noted that there have been improvements subsequent to the 2023 inspection, including an increased number of custodial staff and therefore time out of cell.

> also be noted that many criminalised children and especially girls, have experienced or witnessed gendered violence and abuse.[50]

2.53 Anglicare Southern Queensland noted that the impacts on girls of 'a system designed for boys and young men' is currently being investigated by its Young Women's Voices Australian Research Council Linkage project.[51]

2.54 The NSW Advocate for Children and Young People noted that children and young people in detention do not complain about poor treatment by staff within centres for fear of retribution. Or when they do try and complain, they could not. One young person told Ms Robinson: 'in terms of the complaints or if there's any issues, then the staff just shut it down'.[52]

Recidivism

2.55 On 25 August 2023, the AIHW released its report entitled *Young people returning to sentenced youth justice supervision 2021–22*. This report presented data on the number of young people released from a supervised sentence who then returned under another supervised sentence (Figure 2.3).[53]

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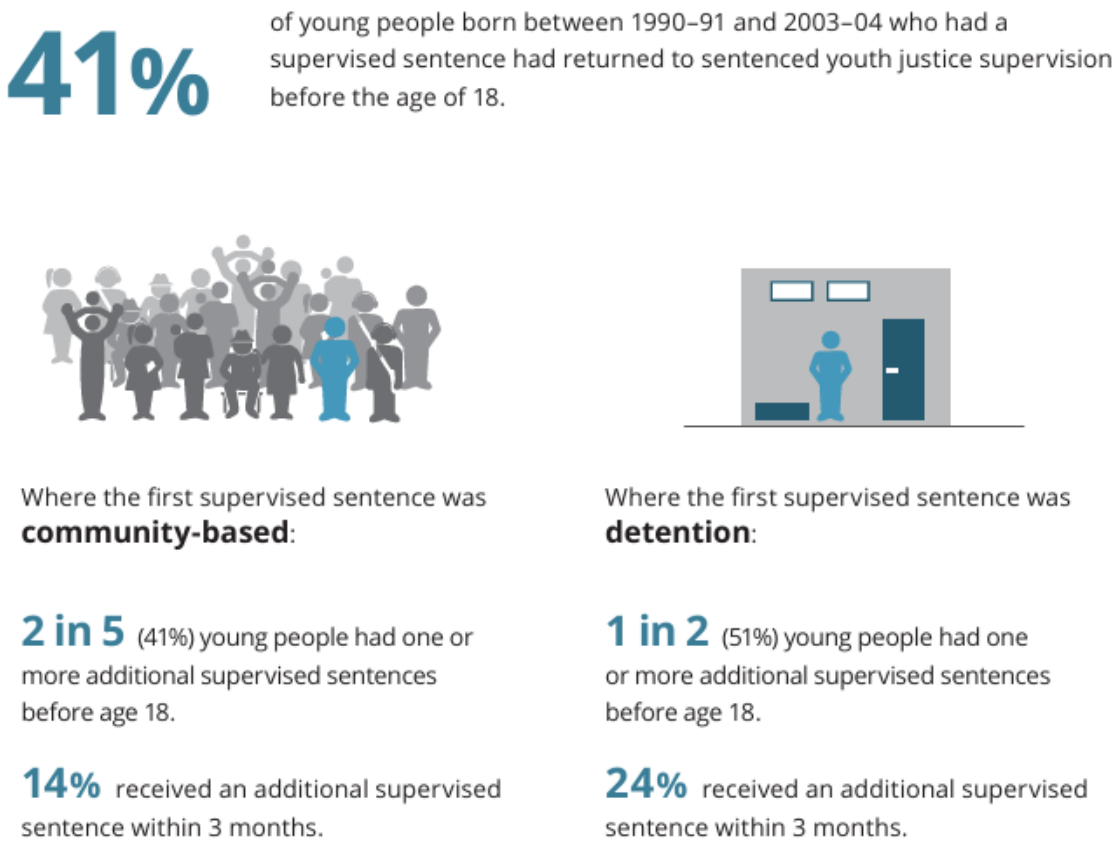
50 Sisters Inside and National Network, *Submission 128*, p. 3.

51 Anglicare Southern Queensland, *Submission 112*, p. 5. Also see: Anglicare Southern Queensland, 'Young Women's Voices', https://anglicaresq.org.au/about-us/advocacy/young-womens-voices/ (accessed 31 January 2025).

52 Young person in detention cited by Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 4.

53 AIHW, 'Young people returning to sentenced youth justice supervision 2021–22', 25 August 2023, www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/summary (accessed 1 October 2024).

Figure 2.3 Returns to sentenced supervision while aged 10-17



Source: AIHW, Young people returning to sentenced youth justice supervision, 2021–22, 2023, p. 5.

2.56 Figure 2.3 shows that one in two (51 per cent) of children and young people whose first supervised sentence was detention returned to sentenced supervision before turning 18, compared to 41 per cent of young people whose first supervised sentenced was community-based.

2.57 The AIHW noted that 'the younger a person was at the start of their first supervised sentence, the more likely they were to return to sentenced supervision at some time before the age of 18'.[54]

2.58 Many submitters referenced the AIHW and other data, as well as relevant research, demonstrating that detention can reinforce criminal behaviours and perpetuate cycles of reoffending. The Law Council summarised that 'the detention and institutionalisation of children in their formative years is a proven key factor in recidivism rates'.[55]

2.59 Similarly, the Western Australian Inspector of Custodial Services, Mr Eamon Ryan, submitted that 'the outcomes and impacts of youth incarceration are well researched, with evidenced influence throughout the developmental lifespan'.

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54 AIHW, *Young people returning to sentenced youth justice supervision, 2021–22*, 2023, p. 6.

55 Law Council, *Submission 195*, p. 7.

Mr Ryan identified three key outcomes and impacts of youth incarceration—systemic re-traumatisation, labelling and stigma, 'cross-over kids'—leading to a fourth key outcome:

> **Increased risk of recidivism**. All above identified outcomes and impacts increase both criminogenic and non-criminogenic needs; empirical risk factors directly relevant to an increased likelihood of reoffending (Andrews & Bonta, 2007). Conversely, research consistently finds youth detention has little influence in reducing recidivism and should be used only as a last resort (Clancey, Wang, & Lin, 2020).[56]

2.60 Levitt Robinson submitted that children are meant to be sent to youth detention centres 'to be rehabilitated to the extent that they can be reintegrated into the community'. However:

> Rates of recidivism indicate the extent to which the goals of rehabilitation and reintegration of young offenders, and as a corollary, community safety, have not been realised. The rate of recidivism in Western Australia is 52.59% and indicates that a culture in which punishment is the predominant objective fails on all fronts.[57]

2.61 The AIHW submitted that 'a current data gap is a national measure of recidivism', as the main dataset contains data on supervised sentences, not offences, and does not track young people into the adult criminal justice system.[58]

2.62 The AIHW and the Australian Bureau of Statistics (ABS) are currently progressing the National Crime and Justice Data Linkage Project, to nationally link the Youth Justice National Minimum Data Set data with police, courts and adult corrections data in the ABS' Criminal Justice Data Asset (in development): 'this linkage aims to provide a better understanding of the flows of young people from the youth to adult justice system'.[59]

First Nations youth

2.63 The AIHW's *Young people returning to sentenced youth justice supervision 2021–22* also reported that, of all young people who received a supervised sentence, about one-third (38 per cent or 17 254) were First Nations people. A minority (4 per cent or 684) received a first supervised sentence of detention, with about three-fifths (62 per cent or 425) returned to sentenced supervision before the age of 18 (Figure 2.4).[60]

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56 Mr Eamon Ryan, Inspector of Custodial Services (WA), *Submission 15*, p. 1.

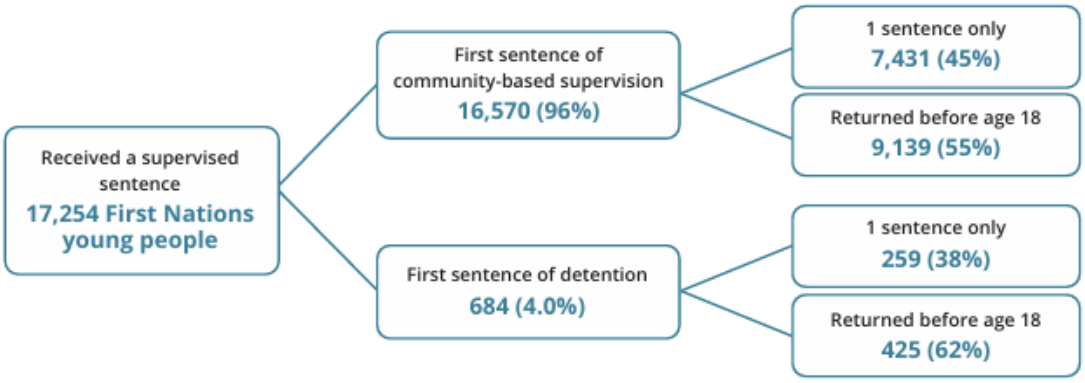
57 Levitt Robinson, *Submission 191*, p. 2.

58 AIHW, *Submission 58*, [p. 4].

59 AIHW, *Submission 58*, [p. 4]. Note: there is also a data gap in the outcomes that youth face after exiting the youth justice system.

60 AIHW, *Young people returning to sentenced youth justice supervision, 2021–22*, 2023, p. 9.

Figure 2.4 First Nations youth with a supervised sentence, from 2000–01 to 2021–22, by type of first supervised sentence



Source: AIHW, Young people returning to sentenced youth justice supervision, 2021–22, 2023, p. 9.

2.64 The AIHW added that First Nations youth who had a first supervised sentence of detention were 1.4 times more likely than non-Indigenous youth to receive another supervised sentence before the age of 18 (62 per cent, compared to 45 per cent).[61]

2.65 The AIHW observed that 'First Nations young people typically enter youth justice at younger ages than non-Indigenous young people'. In view of its findings at paragraph 2.56: 'it would be expected that First Nations young people are more likely to return to youth justice supervision than non-Indigenous young people'.[62]

2.66 In relation to this data, Sisters Inside and the National Network described the carceral cycle as both violent and predictable:

> Once a child is criminalised, the chances of repeated re-criminalisation are alarmingly high. The majority of children who receive community-based sentences are likely to re-enter the criminal punishment system and, tragically, many children who are sentenced to imprisonment end up incarcerated again within a year...This feedback loop between youth and adult incarceration ensures that children are ensnared in the carceral state from a young age, perpetuating a lifelong cycle of imprisonment and trauma that is almost impossible to escape.[63]

2.67 Sisters Inside and the National Network considered that this cycle is not accidental:

> It is a deliberate product of state systems that heavily police First Nations families, pathologise First Nations children as inherently criminal, and subject them to heightened levels of surveillance and control. Aboriginal children and their families are disproportionately monitored by police and

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61 AIHW, *Young people returning to sentenced youth justice supervision, 2021–22*, 2023, p. 5.

62 AIHW, *Young people returning to sentenced youth justice supervision, 2021–22*, 2023, p. 9.

63 Sisters Inside and National Network, *Submission 128*, p. 3.

> so called "child protection services", making them far more vulnerable to criminalisation than their non-Indigenous peers...
>
> The over-policing of First Nations children and their communities is a direct result of systemic racism embedded in Australian institutions. The criminal[,] legal and family policing systems pathologise Indigenous communities, viewing them through a lens of dysfunction rather than recognising the impacts of colonisation, dispossession, and historical trauma. Instead of providing culturally appropriate support and opportunities, the state responds with heavy surveillance, punitive measures, and incarceration. This relentless cycle reinforces structural inequality, where First Nations children are denied access to education, employment, and social services that could offer pathways out of poverty and criminalisation. The design is clear—by keeping First Nations children and their families under constant scrutiny and control, the state ensures their continued marginalisation and oppression, locking them in a cycle of criminalisation that is almost impossible to break.[64]

Alternatives to detention

2.68 In 2019, the United Nations Committee on the Rights of the Child, referencing Article 37(b) of the CRC (see Chapter 4), urged States parties to 'immediately embark on a process to reduce reliance on detention to [keep it to] a minimum'.[65]

2.69 Submitters and witnesses agreed that involvement with the child justice system, and especially detention, must be a measure of last resort. The NJP and Jumbunna voiced concerns, however, that 'prisons [are] becoming the ad hoc response to youth in desperate need of more appropriate care and support'.[66]

2.70 Rather than a carceral response, submitters called for a child justice system that prioritises the safety, wellbeing and human rights of children and young people. In their view, Australia must have alternatives to detention that are evidence-based and focussed on intervention, prevention, rehabilitation and support.[67] UNICEF Australia, for example, argued:

> Investment in prevention and diversion allows us to better identify the needs of children early, re-directing them away from the criminal justice system to programs and supports that are better placed to respond to their needs. Diversion programs and community-led rehabilitative approaches can be used to address the underlying causes of offending, thereby

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64 Sisters Inside and National Network, *Submission 128*, pp. 4–5. Also see: Institute for Collaborative Race Research, *Submission 185*, p. 1, which described the child justice system as a tool of colonialism.

65 United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, (CRC/C/GC/24), 18 September 2019, paragraph 83, www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child (accessed 31 October 2024).

66 NJP and Jumbunna, *Submission 51*, p. 2. Also see, for example: NLA, *Submission 172*, p. 6.

67 See, for example: NJP and Jumbunna, *Submission 51*, p. 2; Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 2; AYAC, *Submission 156*, p. 4.

> increasing the likelihood of success, helping young people to avoid the negative consequences of detention and lead productive lives. There is also strong domestic and international evidence that suggest these approaches have far more positive outcomes for children, young people and the community.[68]

2.71 Similarly, NLA highlighted the multiple benefits of diversion:

> Diversion provides a "swift and economically efficient response to offending, which is often non-serious and transient in nature". It can also minimise the "criminogenic effects of formal justice system contact as a result of negative labelling and stigmatisation". Diversion can also provide an opportunity to address underlying risk factors that may cause or contribute to offending behaviour in children and young people.[69]

Investment in supervised detention

2.72 The National Children's Commissioner shared these views in her report entitled '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report):

> Taking a public health approach to children's involvement with the criminal justice system means focusing on prevention and early intervention, addressing the social determinants of crime, and meeting the basic needs of children, their families and communities, including in health, education, and social services such as housing and income security.[70]

2.73 Ms Hollonds noted that the criminal justice system is neither equipped nor designed to provide a holistic approach to youth offending, with investment focused primarily on supervised detention:

> In 2022–2023, total recurrent expenditure on detention-based supervision, community-based supervision and group conferencing was $1.3 billion nationally, with detention-based supervision accounting for the majority of this expenditure (64.7%, or $855.3 million). It costs taxpayers $2,827.47 per day, which equates to approximately $1.03 million per annum to lock up a child. In contrast, nationally in 2022–23, the average cost per day per young person subject to community-based supervision was $305.8.[71]

2.74 Submitters and witnesses acknowledged the daily/yearly costs of detaining children and young people, with some referencing the above calculations that were produced by the Productivity Commission. SHINE for Kids remarked on these costs and their value for money, as follows:

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[68] UNICEF Australia, *Submission 83*, p. 6. Also see: ANPM, *Submission 109*, pp. 8–9.

[69] NLA, *Submission 172*, p. 10.

[70] AHRC, *Help way earlier!* report, 2024, p. 54.

[71] AHRC, *Help way earlier!* report, 2024, p. 14. Also see: Productivity Commission, *Report on Government Services 2024*, 22 January 2024, www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice (accessed 31 October 2024).

> It currently costs $1 million per year in NSW to keep a single young person incarcerated. Despite this enormous investment, 81.37% of young people released from sentenced detention in NSW (85% nationally) returned to sentenced supervision within 12 months of release. This revolving door costs taxpayers enormously, while doing little to address the root causes of offending (and reoffending) among a highly vulnerable cohort with complex needs.[72]

2.75 Ms Nerita Waight, Deputy Chair of the National Aboriginal and Torres Strait Islander Legal Services, commented similarly, saying:

> [Youth justice systems] would rather spend $3,320.46 a day to lock up a young person than to do the work to implement innovative solutions that provide a pathway to long-term change and keep everyone safe.[73]

Justice reinvestment

2.76 Justice reinvestment is an approach to criminal justice reform that involves redirecting money from prisons to fund and rebuild human resources and physical infrastructure in the areas most affected by high levels of incarceration.[74] The Australian Law Reform Commission explained:

> Justice reinvestment suggests that prisons are an investment failure, 'destabilising communities along with the individuals whom they fail to train, treat, or rehabilitate (and whose mental health and substance abuse are often exacerbated by the experience of imprisonment)'. Instead, to address the causes of offending, money is better spent—and indeed savings can be made—by reinvesting in places where there are a high concentration of offenders. Justice reinvestment, its proponents contend, can serve both the ends of economic efficiency and social justice: 'the most efficient way to a just society is to reduce criminality at source through investment in social justice'.[75]

2.77 The AYAC agreed with this assessment:

> Australia's current approach to youth justice is failing on multiple fronts. It criminalises specific groups of young people, including First Nations children and young people, children and young people from multicultural backgrounds, children and young people who live in out-of-home care, 18 to 25-year-olds, and girls and young women with complex

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72 SHINE for Kids, *Submission 84*, [p. 4].

73 Ms Nerita Waight, Deputy Chair, National Aboriginal and Torres Strait Islander Legal Services, *Committee Hansard*, 3 February 2025, p. 71.

74 Australian Law Reform Commission (ALRC), *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, December 2017, p. 127, www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/ (accessed 20 December 2024). Also see: Attorney-General's Department (AGD), 'Justice Reinvestment', www.ag.gov.au/legal-system/justice-reinvestment (accessed 31 October 2024).

75 ALRC, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, December 2017, p. 127.

> needs…Imprisonment, in particular, causes multiple harms – it impairs healthy development, exacerbates pre-existing trauma, harms mental health and wellbeing, compounds the impacts of colonisation and dispossession, results in poor educational outcomes, damages family relationships, and perpetuates and reinforces economic, social, and health inequity…It actively violates human rights, and poses a risk to life, especially for First Nations children and young people…And – to add insult to injury – it does not reduce rates of offending and reoffending…It's time we did things differently.[76]

2.78 Similarly, Justice Action submitted:

> Youth incarceration is destructive, removing young people from the environment they should be in, alienating them from their community and the sociocultural influences that should be preparing them for life in adulthood. The Australian youth justice system is set up to isolate incarcerated youth, creating more negative outcomes in the process. Youth misbehaviour is a symptom of a wider social problem, and should be regarded as an opportunity to institute structural change through restorative justice programs.[77]

2.79 The NJP and Jumbunna supported a justice reinvestment approach:

> Investments in education, housing, and employment opportunities are proven to reduce offending. Research from the Telethon Kids Institute found that young people who receive support with education and housing post-release are over 60% less likely to reoffend. Youth diversion programs, such as Bail Support Programs, provide young people with an alternative to detention, offering access to stable accommodation, educational opportunities, and mentorship. These programs reduce recidivism and provide young people with the tools needed to succeed in the long term. This is a national crisis that demands a comprehensive response, grounded in community-led solutions, mental health care, and early intervention programs.[78]

2.80 The AGD outlined funding commitments made by the Australian government, to establish the National Justice Reinvestment Program and the Justice Reinvestment in Central Australia Program:

> Both programs are designed to support place-based and community-led initiatives that meet the individual needs of each community…To date, a total of 26 initiatives nationally, comprised from New South Wales (2), the Northern Territory (6), South Australia (2), Victoria (1), Queensland (9) and Western Australia (6) have been successful in securing funding under

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[76] AYAC, *Submission 156*, pp. 3–4.

[77] Justice Action, *Submission 148*, p. 6. Also see: AMA, *Submission 55*, p. 4, which argued that there are many effective community services available that require government support and investment.

[78] NJP and Jumbunna, *Submission 51*, p. 7.

> the National Justice Reinvestment Program, of which 11 have a focus on youth.[79]

2.81 Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division at the Attorney-General's Department (AGD), added that the National Justice Reinvestment Program has been designed to meet the needs of different communities:

> The program has been designed in a way that it is community led, and communities are asked to identify, in applying for grants under the program, what needs to be done within that local community, that local context, to reduce contact with the criminal justice systems.[80]

2.82 The AGD submitted that the states and territories also have a role to play in supporting justice reinvestment to address the drivers of incarceration, and emphasised the Commonwealth's leadership on these issues:

> Engagement with state and territory governments on justice reinvestment continues bilaterally and through appropriate ministerial forums, including [the Standing Council of Attorneys-General, SCAG]. At the December 2023 SCAG meeting, Attorneys-General endorsed the Commonwealth State & Territory Justice Reinvestment Collaboration Principles to support national consistency and cooperation on justice reinvestment. The collaboration principles, along with the Priority Reforms, are guiding the development of Memoranda of Understanding (MoUs) on justice reinvestment. These MoUs will inform how the Australian, state and territory governments will work together to support communities funded to implement justice reinvestment initiatives, including co-contributions and data sharing arrangements.[81]

Availability of diversionary alternatives

2.83 Some submitters suggested that one reason for the carceral response to youth offending might be that there is a lack of diversionary alternatives to detention. The AHRC submitted that, to comply with Article 37(b) of the CRC (detention as a last resort), effective and responsive alternatives would need to be developed:

> A genuinely therapeutic and rehabilitative model should promote positive social connection with a child's family, community and culture, and be focused on building connections and relationships. Many submissions suggested that detention centres should be small scale, locally sited and integrated within the surrounding community. They should promote 'relational and differentiated security' with a focus on therapeutic and

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79 AGD, *Submission 204*, [pp. 5–6]. Note: the Australian government has also committed to establishing an independent National Justice Reinvestment Unit to coordinate and support justice reinvestment initiatives at a national level.

80 Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, AGD, *Committee Hansard*, 3 February 2025, p. 92, who noted that national collaboration principles for justice reinvestment have been agreed by the Standing Council of Attorneys-General.

81 AGD, *Submission 204*, [p. 6].

> individually tailored responses. These should include opportunities for education and life skills and address offending behaviour alongside mental health, substance misuse and other health and wellbeing needs. There should be a strong focus on resocialisation and reintegration.[82]

2.84 The AHRC identified three international examples of alternative detention models—the Diagrama model (Spain), the Missouri model and the Close to Home Program (New York City), and the justice approach (Hawaii)—that were commonly referred to in other submissions.[83]

2.85 In addition to the availability of diversionary alternatives, the Advocate for Children and Young People (NSW) highlighted that there would also need to be improvements to referral pathways, to connect First Nations children and young people in conflict with the law with community-based cultural programs before, during and after their engagement with the youth justice system.[84]

2.86 The Law Council advised that there is ample research into alternative pathways for vulnerable offenders, however, there has been no coordinated national effort to promote these pathways:

> The constitutional division of responsibilities between the Commonwealth and the states and territories in this area cannot justify further inaction in this regard. We are all responsible for ensuring the safety and dignity of children in our society, and a national approach is needed in which the Commonwealth Government works with the states and territories to achieve the necessary reforms in concert, in line with their respective roles and responsibilities. The emphasis must be on ensuring that children are connected with their families, education and culture. They must be safe, fed, housed, healthy, active and their wellbeing prioritised.[85]

Rehabilitation and reintegration

2.87 As indicated throughout this chapter, submitters and witnesses argued that children and young people in youth detention centres must have access to comprehensive therapeutic services and supports (for example: mental health care, substance abuse treatment, education programs and behaviour change programs).[86]

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82 AHRC, *Submission 65*, p. 11.

83 AHRC, *Submission 65*, pp. 11–12, which outlined the key features of these models.

84 Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 2. Also see: Ms Jodie Griffiths-Cook, ACT Public Advocate and Children and Young People Commissioner, *Committee Hansard*, 3 February 2025, p. 8, who noted first contact referral pathways in New Zealand; Mr James McDougall, Co-Chair, ACRT, *Committee Hansard*, 3 February 2025, p. 17, who noted that referrals are not always integrated into a statutory framework.

85 Law Council, *Submission 195*, pp. 7–8. Also see: AMA, *Submission 55*, p. 4, which submitted that existing community-based models 'simply need government support and investment'.

86 See, for example: NLA, *Submission 172*, p. 12; AGD, *Submission 204*, [p. 6], which highlighted the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* and the need for therapeutic

2.88 Mr Brett Collins, Coordinator at Justice Action, supported the provision of computers in cells at youth detention centres throughout Australia. He argued that this is one way in which to access supports and services in a cost-effective manner, as well as enable young people to maintain connection to family:

> It makes an enormous difference for a person to be not isolated from family. Everyone's talked about how important it is to have a family. Everyone's talked about how important it is to have restorative justice and access to lawyers and counselling. All of those things are achievable, very simply and very easily, with a computer in cells. But the kids have been deprived of that.[87]

2.89 The Guardian for Children and Young People (SA) said, however, that children and young people are not getting rehabilitation in youth detention facilities:

> …rehabilitation is an aspiration rather than a reality, with containment of children being the dominating functional goal of these facilities…[K]ids say to me, 'Instead of helping us to reconnect to society, it's mainly alienating us and making us think that because we've done crime we are always outcasted and always segregated'.[88]

2.90 Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), agreed that detention is not facilitating rehabilitation:

> We don't rehabilitate. We don't support them to have rehabilitation for drug and alcohol problems. We don't support them with the needs they have for their disabilities, cognitive impairments and other things. We are condemning these children to a life of institutionalisation.[89]

2.91 Professor Newhouse said:

> If a child has the misfortune to be incarcerated, they have no effective protections, no effective advocates and they receive virtually no care. It's my observation that, in most states, there is no therapeutic treatment provided to children, no disability support and virtually no education, just brutality and punishment. Children in detention are treated as outcasts from society. They are systematically disbelieved, just as children in the care of religious orders and orphanages were in the past.[90]

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interventions for harmful sexual behaviours; Ms Priya Devendran, Senior Policy Officer, First Nations Advocates Against Family Violence, *Committee Hansard*, 3 February 2025, p. 46.

87 Mr Brett Collins, Coordinator, Justice Action, *Committee Hansard*, 3 February 2025, p. 21, who called also for children and young people in detention to have access to an iExpress email address. Also see: p. 25, where Mr Collins queried the value of therapeutic services provided within youth detention centres: 'the clinicians do not solve the problem'.

88 Ms Shona Reid, Guardian for Children and Young People (SA), *Committee Hansard*, 3 February 2025, p. 3.

89 Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 3 February 2025, p. 7.

90 Professor George Newhouse, Principal Solicitor and Chief Executive Officer, NJP, *Committee Hansard*, 3 February 2025, p. 54.

2.92 Stakeholders noted the importance of therapeutic services and supports with a focus on rehabilitation and reintegration.[91] NLA, for example, submitted:

> Detained children and young people must have access to comprehensive rehabilitation services…Many of the recent reviews, inquiries and reports highlight the lack of appropriate programs and services for children [and] young people in detention and the subsequent implications for rehabilitation and reducing reoffending. This is particularly true for First Nations children and young people, given the importance of cultural support and cultural connection in addressing the overrepresentation of Aboriginal children and young people in detention.[92]

2.93 The AMA agreed that 'reintegration into the community is pivotal to preventing reoffence' and argued that there must be a greater commitment to assisting children and young people exiting detention:

> A commitment to assisting people to be reintegrated into the community by targeting areas such as comprehensive release plans, social service integration through primary healthcare providers, housing and homelessness, and links with family and community is essential. All levels of government need to actively work towards decreasing criminalisation and recidivism rates.[93]

2.94 Ms Robinson, Advocate for Children and Young People (NSW), specifically noted that the institutionalisation of young people creates dependency on the system, and agreed that provision must be made for a variety of post detention supports:

> Young people are provided with many services and opportunities in NSW youth justice centres (such as access to school that supports their needs and healthcare). Upon their release back into the community they no longer have access to these important supports. Having these basic needs provided for are the types of support that children and young people are looking for prior to their interactions with the youth justice system and following their exit from the system.[94]

2.95 SHINE for Kids noted one particular support—youth mentoring programs—which it argued produce positive outcomes for at-risk youth across multiple domains:

> In mentoring programs for young offenders or young people leaving custody, the first days and months post-release are critical for re-engaging the young person in pro-social activities that connect the young person to

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91 See, for example: NT Government, *Submission 193*, p. 1.

92 NLA, *Submission 172*, p. 12.

93 AMA *Submission 55*, p. 4

94 Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 3. Also see: AHRC, *Submission 65*, p. 12, which commented that these supports could be withdrawn over time; Mr Brett Collins, Coordinator, Justice Action, *Committee Hansard*, 3 February 2025, p.22, who highlighted the use of computer in cells to establish these relationships of trust.

> the community, such as education, employment, and leisure. However, such re-engagement cannot occur in a vacuum. Mentoring programs are valuable in that they can help address the necessary **precursors** for a young person's engagement with services (such as self-awareness, confidence, resilience, help-seeking behaviours and knowledge of services) as well as providing a trusted neutral person for the young person who can advocate for them, transport them to services and speak on their behalf when needed. Given the low levels of trust in others consistently reported among young people in custody, the importance of relationship building and rapport, from a high quality, non-judgemental and reliable mentor for achieving positive outcomes cannot be understated.[95]

2.96 Similarly, Justice Action supported peer mentoring programs to improve outcomes and reduce recidivism for children and young people involved in the criminal justice system:

> …peer mentoring programs should be introduced to the juvenile justice system of each Australian State and Territory. Peer mentoring programs would allow youth offenders to develop meaningful relationships with people from similar backgrounds and shared experiences. Role models, especially of young people who have managed to overcome their problems, is vital.
>
> The premise of peer mentoring is building a relationship of mutual trust, friendship and support within which help, advice and assistance can be offered as part of the process of re-building a life after being labelled a criminal and where many barriers actively prevent return to normal life…
>
> Mentoring has been found to achieve profoundly positive outcomes for young offenders. All the young people in well performing mentoree relationships of six months or more reported reduced offending, increased community involvement, improved self-esteem, communication skills, and greater motivation.[96]

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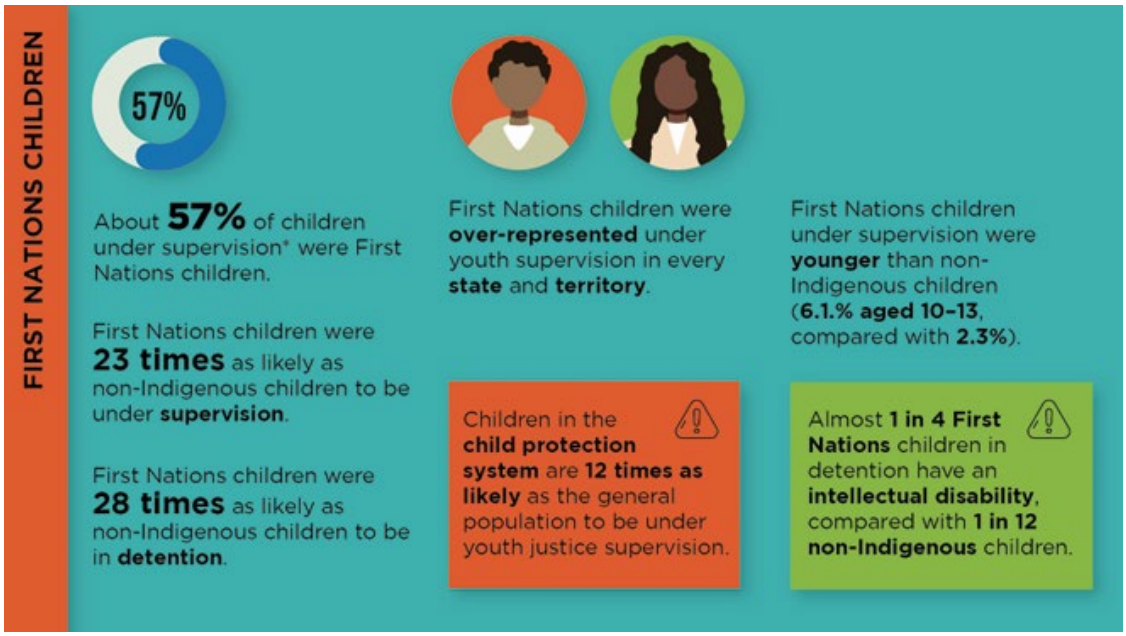
[95] SHINE for Kids, *Submission 84*, [p. 7] (emphasis in the original). Also see: [pp. 5–6]; Ms Tanya Macfie, Mentor Manager, SHINE for Kids, *Committee Hansard*, 3 February 2025, p. 23, who added that peer mentoring programs require further development, including with a proper job description.

[96] Justice Action, *Submission 148*, pp. 7–8.

Chapter 3
First Nations youth in detention

3.1 In 2024 the Australian Institute of Health and Welfare (AIHW) reported on First Nations young people under youth justice supervision in Australia on an average day in 2022–23 (*Youth justice in Australia 2022–23*, Figure 3.1).[1]

Figure 3.1 First Nations young people under youth justice supervision, 2022–23



Source: Australian Human Rights Commission, 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing, 2024, p. 20.

3.2 Figure 3.1 shows that Aboriginal and Torres Strait Islander children and young people comprised more than half (57 per cent) of the young people under youth justice supervision. Further, and as noted in Chapter 1, First Nations youth were more likely to be under supervision (23 times) or in detention (28 times), compared to their non-Indigenous counterparts.

3.3 This chapter focuses on Aboriginal and Torres Strait Islander children and young people in detention, including:

- historical and ongoing over-representation;
- the National Agreement on Closing the Gap (National Agreement);
- previous inquiries and reviews; and

[1] Australian Institute of Health and Welfare (AIHW), *Youth justice in Australia 2022–23*, 28 March 2024, www.aihw.gov.au/getmedia/b1d09f98-08b5-438b-ab8c-a9148de606ef/youth-justice-in-australia-2022-23.pdf?v=20240531130652&inline=true (accessed 1 October 2024). Also see: AIHW, *Submission 58*, pp. 3–4.

- an alternative non-punitive approach.

Historical and ongoing over-representation

3.4 The National Children's Commissioner, Ms Anne Hollonds, has commented that 'First Nations children and young people continue to be overrepresented in the criminal justice system, and particularly in detention'.[2]

3.5 Most stakeholders agreed and attributed the over-representation to historical and ongoing factors. The Coalition of Peaks, a representative body of more than 80 Aboriginal and Torres Strait Islander community-controlled peak organisations and members, submitted that the over-representation is due to 'deliberate and neglectful' policy and practice, as well as the continuing effects of colonisation:

> The alarmingly high rates of overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice and incarceration system is a direct result of deliberate and neglectful Commonwealth, state and territory policy and practice over many decades, and the ongoing effects of colonisation, including systemic racism, intergenerational trauma and entrenched disadvantage.[3]

3.6 SNAICC—National Voice for our Children (SNAICC) agreed that Aboriginal and Torres Strait Islander children and young people who become involved in the child justice system often experience the risk factors that drive over-representation in the system:

> Aboriginal and Torres Strait Islander children that come into contact with the justice system often experience a number of risk factors, including the ongoing impacts of colonisation, racism, overt and systemic discrimination, intergenerational trauma experienced by Stolen Generations survivors and descendants, socio-economic inequities and the experience of poverty and socioeconomic disadvantage [see 'Social determinants of justice', Chapter 2]. It is these risk factors which drive over-representation in the justice system.[4]

3.7 SNAICC added that the over-representation represents an 'acute and pressing challenge', with the number of First Nations youth involved with the child justice system exceeding that of their non-Indigenous counterparts. However:

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2 Australian Human Rights Commission (AHRC), '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report), 2024, p. 8. Also see: p. 22, where Ms Hollonds noted that 'First Nations children are particularly overrepresented at younger ages'.

3 Coalition of Peaks, *Submission 158*, [p. 4]. Also see: National Legal Aid (NLA), *Submission 172*, p. 8; Institute for Collaborative Race Research, *Submission 185*, p. 1, which argued that 'incarceration is political'; Law Council of Australia (Law Council), *Submission 195*, p. 19.

4 SNAICC—National Voice for our Children (SNAICC), *Submission 173*, [p. 15]. Also see: Figure 2.1; National Association for Prevention of Child Abuse and Neglect (NAPCAN), *Submission 66*, pp. 2–3; UNICEF Australia, *Submission 83*, p. 7; SHINE for Kids, *Submission 84*, pp. 1–4, which argued that parental incarceration is another key risk factor; Coalition of Peaks, *Submission 158*, [pp. 4–5].

> This trend is not new. Aboriginal and Torres Strait Islander children have been disproportionately represented at all stages in child justice systems for many decades now.[5]

Social determinants of justice

3.8 Submitters and witnesses commented upon particular risk factors. For example, Maurice Blackburn noted 'early abuse, violence and trauma':

> Research has found that exposure to maltreatment in childhood increases the likelihood of future criminal activity by 50 percent. Studies have also found that more than half of incarcerated young people have experienced domestic violence.[6]

3.9 This section of the report focuses upon two risk factors: systemic racism and discrimination in the broader social determinants of justice, and out-of-home care in the social, economic, environmental and political context (see Figure 2.1).

Systemic racism and discrimination

3.10 Several stakeholders argued that there is a racial bias in the child justice system, which significantly contributes to the over-representation of Aboriginal and Torres Strait Islander children and young people in youth detention.[7] The Australian Youth Affairs Coalition (AYAC) stated that this bias exists at almost every point of contact:

> Compared with their non-Indigenous counterparts, First Nations young people are more likely to be arrested and charged (rather than receive a caution or other diversion), to have bail refused, and to be sentenced to imprisonment (even when controlling for offence type and prior offending)…[O]nly so much can be achieved in reducing rates of First Nations young people in detention "without a change in the attitude and practices of law enforcement".[8]

3.11 The Aboriginal Legal Service of Western Australia (ALSWA) illustrated this argument with reference to police practices in Western Australia, as follows:

> WA Police are the primary gate keepers to the criminal justice system, and hold the primary discretion with respect to who enters the formal justice system. In every Australian jurisdiction, the proportion of Aboriginal young

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5 SNAICC, *Submission 173*, [p. 12].

6 Maurice Blackburn, *Submission 146*, p. 5. Also see: Ms Jennifer Bowles, *Submission 153*, p. 3, who noted that, in Victoria, an 'overwhelming majority of the children and young people in detention [69 per cent] have engaged in substance abuse and have been exposed to trauma, neglect and abuse'.

7 See, for example: Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 29.

8 Australian Youth Affairs Coalition (AYAC), *Submission 156*, p. 6. Also see: Koorie Youth Council, *Submission 142*, p. 2; Attorney-General's Department (AGD), *Submission 204*, pp. 2–3, which noted that the states and territories are responsible for criminal law policy and enforcement (such as policing and prosecutorial decisions).

> people who are diverted away from formal court proceedings by police is less than the proportion of non-Aboriginal young people. In 2017, a report by the Western Australian Auditor General found that 35% of Aboriginal young people were diverted compared to 58% of non-Aboriginal young people…
>
> In Western Australia, the *Young Offenders Act 1994* (WA) provides police with discretionary powers to divert alleged young offenders from court proceedings by way of a caution or referral to a Juvenile Justice Team… Police are to prefer the use of a caution over charging a young person unless the number of previous charges or cautions the young person has received would make doing so inappropriate. When determining the appropriateness of a caution, the seriousness of the alleged offence and of any previous offences is to be considered...
>
> Despite these provisions, the general principles underpinning the *Young Offenders Act 1994* (WA), and years of highlighting the unequal treatment of Aboriginal young people, ALSWA continues to represent young people in court facing charges of a very minor nature. In many instances such charges bring young people before the court for the first time; in others, they bring young people back before the courts on a more frequent basis.[9]

3.12 The ALSWA provided 10 case examples to illustrate its arguments, including the following two examples:

> In 2006, a 16-year-old Aboriginal boy from an outer regional area attempted to commit suicide by throwing himself in front of a moving vehicle. The attempt was unsuccessful. The police were called and arrested the boy. The boy was charged with damaging the vehicle. At the time of the attempt the boy had a visible scar on his neck from a previous attempted suicide when he tried to slash his throat with a knife. The charge was later withdrawn, but only after ALSWA made numerous representations to police.
>
> In 2024, a 13-year-old Aboriginal girl was arrested and charged with stealing a 'paddle pop' ice cream valued at $4.50 from a convenience store. The girl was in the care of the Department of Communities – Child Protection and had diagnoses of [fetal alcohol spectrum disorder, FASD] and [attention deficit hyperactivity disorder]. Although the charge has now been discontinued, this girl spent over six weeks on bail before the charge was discontinued by the prosecution.[10]

3.13 The Australian Capital Territory (ACT) Aboriginal and Torres Strait Islander Children and Young People Commissioner, Ms Vanessa Turnbull-Roberts, confirmed that she had heard similar reports in her jurisdiction:

> I hear alarming reports from First Nations young people, including those in residential care, that they are targeted by ACT Policing and are often not given the benefits of restorative justice approaches that are made available to non-Indigenous young people. First Nations young people report high

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9 Aboriginal Legal Service of Western Australia (ALSWA), *Submission 179*, p. 7.

10 ALSWA, *Submission 179*, pp. 8–10.

> levels of racism and negative interactions in their dealings with our police force which is provided in the ACT by the Australian Federal Police.[11]

3.14 The Northern Territory (NT) Anti-Discrimination Commission submitted that 'systemic racism needs to be acknowledged as a primary cause of the overrepresentation of Aboriginal children in the youth justice system'.[12] It referenced a recent consultation report by the NT Children's Commissioner, Ms Shahleena Musk, entitled *"It's up to EVERYONE to call it out"*, in which children and young people described racism as pervasive and affecting many aspects of their lives:

> Children and young people are acutely aware of how they are perceived by members of the public and what is being said about them. They told us that what they see, hear and witness in the news, in public spaces and on social media, makes them feel unwanted and unwelcome...We all have a duty to prevent racism. We must listen, we must act and we must work together to call racism out and stamp it out. Racism is harmful and it must be taken seriously.[13]

3.15 The Coalition of Peaks noted the 2024 Productivity Commission (PC) study report entitled *Review of the National Agreement on Closing the Gap* (Review of the National Agreement), which found that racism remains deeply entrenched throughout government organisations. It submitted:

> Governments have not fully grasped the scale and change required to their systems, culture, operations and ways of working, and a fundamental rethink is needed to drive deep and enduring system-level and whole-of-government change. The Productivity Commission Review also noted that both interpersonal and institutional racism remains a serious and widespread problem, particularly in the criminal justice, child protection and health systems.[14]

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11 ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner, *Submission 90*, p. 11.

12 Northern Territory Anti-Discrimination Commissioner, *Submission 176*, pp. 4–5.

13 Office of the Children's Commissioner (NT), *"It's up to EVERYONE to call it out", Children and young people's experiences of racism in the Northern Territory: Consultation summary report*, September 2024, https://occ.nt.gov.au/resources/occ-publications/other-reports (accessed 31 January 2025). Also see: Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, pp. 3 and 5, who suggested that there is a broad need to address racism in the community.

14 Coalition of Peaks, *Submission 158*, [p. 9]. Also see: Productivity Commission (PC), *Review of the National Agreement on Closing the Gap, Study report, Volume 1* (Review of the National Agreement), January 2024, pp. 55–61, www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf (accessed 31 January 2025).

3.16 Commissioner Natalie Lewis from the Queensland Family and Child Commission shared the view of the PC that government organisations have given comparatively little, or no, attention to their commitment to identify and call out institutional racism and unconscious bias:

> There has been an inability or unwillingness to name and address the structural and systemic racism and take direct action to acknowledge and end discrimination experienced by Aboriginal and Torres Strait Islander people in contact with the criminal justice system (police, courts and institutions) that has endured since colonisation.[15]

Out-of-home care

3.17 The AIHW reported that, of the 4575 Aboriginal and Torres Strait Islander children and young people in detention in 2022–23, three in four (76 per cent) had interacted with the child protection system, compared to 55 per cent for their non-Indigenous counterparts (also see Figure 2.2).[16]

3.18 SNAICC submitted that 'there is a clear association between the over-representation of Aboriginal and Torres Strait Islander children in child justice systems, and over-representation in child protection'. It concluded that 'this association indicates that reform to child justice cannot be undertaken in isolation to reform to child protection systems'.[17]

3.19 SNAICC especially highlighted that residential care settings—where children and young people live in a house with onsite staff—are particularly notable for the criminalisation of First Nations youth:

> In residential care settings, it is common for police to be involved in disciplinary responses that otherwise would have been handled in the family. This pattern has become so recognisable and consistent that it has its own term: 'care criminalisation.' This is the criminalisation and incarceration at disproportionate rates of children in out-of-home care, particularly Aboriginal and Torres Strait Islander children.[18]

3.20 The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) suggested that the issue of 'care criminalisation' and the over-representation of

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15 Queensland Family and Child Commission, *Submission 160*, p. 4. Also see: PC, *Review of the National Agreement on Closing the Gap, Study report, Volume 1*, January 2024, p. 59; National Aboriginal and Torres Strait Islander Legal Services (NATSILS), *Submission 202*, p. 13, which suggested resourcing legal assistance services to address entrenched systemic racism within justice systems, in line with Priority Reform 3 of the National Agreement.

16 AIHW, *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, 2024, p. 8.

17 SNAICC, *Submission 173*, [p. 15]. Also see: Coalition of Peaks, *Submission 158*, [p. 4], which remarked upon the 'significant correlation' between the child justice and child protection systems.

18 SNAICC, *Submission 173*, [p. 16].

First Nations children and young people in out-of-home care should be thoroughly investigated, as a pipeline to the criminal justice system:

> NATSILS considers that addressing the overrepresentation of Aboriginal and Torres Strait Islander children in [out-of-home care] will address the overrepresentation of Aboriginal and Torres Strait Islander children in our prisons.[19]

3.21 Ms Nerita Waight, Deputy Chair of NATSILS, added:

> A pressing issue for us is that solutions for this have been posited time and time again. They don't just include raising the age. They obviously include funding appropriate, therapeutic, community-determined solutions. But we just can't seem to get over that barrier. We also know that there are very successful approaches of partnering Aboriginal led legal services for children with holistic supports, which have been successful in breaking that link between care and incarceration.[20]

National Agreement on Closing the Gap

3.22 The National Agreement aims to 'overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians'.[21] This agreement—signed by all Australian governments and the Coalition of Peaks in July 2020—commits the parties to four Priority Reforms that change the way governments work to accelerate improvements in the lives of First Nations peoples.[22]

3.23 Under the National Agreement, five policy partnerships were established to drive key actions for priority outcome areas, the most relevant of the partnerships being the Justice Policy Partnership (JPP).[23] The first objective of the JPP is to:

> Establish a joined-up approach between all governments and Aboriginal and Torres Strait Islander representatives to address the overrepresentation of Aboriginal and Torres Strait Islander adults and youth in incarceration.[24]

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19 NATSILS, *Submission 202*, p. 11.

20 Ms Nerita Waight, Deputy Chair, NATSILS, *Committee Hansard*, 3 February 2025, p. 75.

21 National Agreement on Closing the Gap (National Agreement), July 2020, paragraph 15, https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/64467ee62c9e8f38067d2352/1682341610670/National-Agreement-on-Closing-the-Gap-July-2020.pdf (accessed 31 October 2024).

22 National Agreement, July 2020, paragraph 25. Note: the Priority Reforms are: Formal Partnerships and Shared Decision Making; Building the Community-Controlled Sector; Transforming Government Organisation; and Shared Access to Data and Information at a Regional Level.

23 Note: the other policy partnerships are the Early Childhood Care and Development Policy Partnership, Housing Policy Partnership, Languages Policy Partnership, and Social and Emotional Wellbeing Policy Partnership.

24 Justice Policy Partnership, 'Terms of Reference', paragraph 3.a, www.ag.gov.au/legal-system/publications/justice-policy-partnership-terms-reference (accessed 1 December 2024).

3.24 The Attorney-General's Department (AGD) advised that, in June 2023, the JPP's Strategic Framework was agreed and has now progressed:

> The JPP is now finalising its Implementation Roadmap to implement the Strategic Framework, which sets out four priority initiatives of high impact and time criticality, including the development of anti-racism strategies, cross sector partnerships, a national sector-strengthening plan and justice partnerships. Co-Leads have been nominated to progress each of these initiatives and tasked with drafting Delivery Plans which outline the work to be completed over the course of the next 12 months. In February 2024, the government committed further funding of $10.7 million over four years from 2024-25 for the JPP. This will ensure the Partnership can continue and can commence implementation of its Strategic Framework.[25]

3.25 By way of update, Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division at the AGD, advised that there is now an implementation roadmap and work is progressing on a range of projects:

> We are, as a group, developing a national anti-racism strategy to address racism experienced by Aboriginal and Torres Strait Islander peoples within the justice system. We're developing a national sector-strengthening plan to strengthen the Aboriginal and Torres Strait Islander community-controlled justice sector. We're developing justice partnerships between the national JPP and jurisdictional partnerships. We're also establishing new cross-sector partnerships between the JPP and other sectors.[26]

3.26 Aside from progress made by the JPP, the Coalition of Peaks informed the inquiry that there is still 'widespread government decision making in youth justice that falls well short of Priority Reform One [Formal Partnerships and Shared Decision-making] and the ambition of the JPP'.[27]

3.27 The Law Council of Australia (Law Council) echoed this concern:

> Since its establishment in 2021, the Law Council has received disappointing feedback from First Nations legal and justice experts who participate in the JPP who say that it is not being effectively used by state and territory government participants and that there has been a real lack of broader commitment to changing how government operates in this area…The JPP is the major federalised mechanism for tackling Closing the Gap justice targets for First Nations communities between the federal government, state and territory governments, and First Nations communities. Feedback provided to us, however, is that the JPP is not operating in the way envisaged when it first came to fruition as a lever for open dialogue and evidence-based change.
>
> Broader discussions nationally about youth justice appear to be occurring in parallel with and separate from JPP discussions, notwithstanding the

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25 AGD, *Submission 204*, [p. 5].

26 Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, AGD, *Committee Hansard*, 3 February 2025, p. 91.

27 Coalition of Peaks, *Submission 158*, [p. 7].

> overwhelming evidence of the hyper-incarceration of Indigenous children and young people…
>
> Now, nearing the end of 2024, the gulf between some state and territory 'tough on crime' policies and the commitment to change outlined in the Closing the Gap Agreement is widening.
>
> The disproportionate overrepresentation of Indigenous children in custodial settings is one of the primary focal points of the JPP, and yet the Productivity Commission has not only found that some governments are 'ignoring' their commitments under the Closing the Gap Agreement but are 'actively putting the truck in reverse'.[28]

3.28 Ms Priya Devendran, Senior Policy Officer for First Nations Advocates Against Family Violence, said:

> …what we see in terms of this lack of implementation or lack of commitment to the JPP is an example of the continued politicisation of the lived experiences and the plight of our Aboriginal and Torres Strait Islander communities…Can more be done? More can always be done to ensure that there is an adherence to the commitments made via mechanisms like the JPP…To see it sometimes fall flat or not be committed to at a state level is quite disappointing. The question remains: 'How can the federal government, regardless of who is in power, ensure stronger alignment and a commitment by the states to do this?' If we can ensure that commitment, we will see less of that politicisation at the state level.[29]

3.29 SNAICC's Ms Liddle described the theory behind the JPP as 'sound' but stated that 'implementation is a whole other story'. She contrasted the JPP with another of the policy partnerships:

> …we had significant structural supports underneath [the Early Childhood Care and Development Policy Partnership]…It had a national plan—that national plan being [the Safe and Supported framework, see 'Target 12' below] , which extends over 10 years and effectively is responsible for where the Commonwealth invests its dollars when working with states and territories on the ground. So it has a national plan that can drive and help implement that, whereas the Justice Policy Partnership does not have access to a framework that brings everybody together...[U]ntil you can come up with a national plan…you're going to be struggling.[30]

3.30 NATSILS recognised that the JPP has 'done some incredible work' but Ms Waight noted that the JPP does not operate in a vacuum:

> …it's important to remember that the JPP doesn't operate in a vacuum. Political leaders continue to ignore expert advice and prioritise populist tough-on-crime narratives over evidence-based justice reform. With the

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[28] Law Council, *Submission 195*, pp. 25–26. Also see: PC, *Review of the National Agreement on Closing the Gap, Study report, Volume 1*, January 2024, p. 44.

[29] Ms Priya Devendran, Senior Policy Officer, First Nations Advocates Against Family Violence, *Committee Hansard*, 3 February 2025, p. 43.

[30] Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 33.

> absence of political will and genuine partnership, and with the disregard for Aboriginal and Torres Strait Islander expertise in favour of short-term electoral gains and problematic policy platforms, we continue to face hurdle after hurdle. And continuing on that path really only encourages regression against the purposes of the National Agreement on Closing the Gap and the JPP.[31]

3.31 The Hon John Dowd, Spokesperson for Justice Action and the Community Justice Coalition, as well as a former NSW Attorney-General, stated that 'you can't force governments to do anything'. Instead, 'it's a matter of having at least one Attorney-General or minister concerned be educated and lead the others'.[32]

Target 11

3.32 The National Agreement has 19 national socio-economic targets across areas that impact life outcomes for Aboriginal and Torres Strait Islander peoples, including:

> **Outcome 11**
>
> Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system.
>
> **Target 11**: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent.[33]

3.33 UNICEF Australia referenced the PC's *Closing the Gap, Annual Data Compilation Report*,[34] which, on 31 July 2024, reported that 'Aboriginal and Torres Strait Islander young people continue to be overrepresented in the criminal justice system – there has been no progress made'.[35]

3.34 The Australian Medical Association (AMA) noted this lack of progress and stated that the disproportionately high rates of incarceration must be 'redressed through fundamental policy and legislative reform, and investment into community-driven diversionary and rehabilitation programs'.[36]

3.35 Similarly, NLA stated:

> …achieving [Target 11] requires comprehensive reforms that address the root causes of overincarceration, such as poverty, inadequate access to education and healthcare, and the breakdown of cultural and family

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31 Ms Nerita Waight, Deputy Chair, NATSILS, *Committee Hansard*, 3 February 2025, p. 75.

32 The Hon John Dowd, Spokesperson, Justice Action and Community Justice Coalition, *Committee Hansard*, 3 February 2025, p. 27.

33 National Agreement, July 2020, p. 33.

34 PC, 'Closing the Gap, Information Repository', www.pc.gov.au/closing-the-gap-data/annual-data-report (accessed 31 October 2024).

35 PC, *Closing the Gap, Annual Data Compilation Report*, July 2024, p. 70, www.pc.gov.au/closing-the-gap-data/annual-data-report (accessed 31 October 2024).

36 Australian Medical Association (AMA), *Submission 55*, p. 5.

> structures. Culturally specific, community-led diversion programs and initiatives…should be prioritised as alternatives to detention.[37]

3.36 The National Association for Prevention of Child Abuse and Neglect (NAPCAN) Youth Speak Out Council agreed that targeted policy interventions are essential:

> These strategies should not only confront the ongoing impacts of colonialism but also celebrate and elevate the strengths and richness of Indigenous cultures. For instance, practices such as restorative justice, which involves the participation of Elders, serve as effective diversion and intervention measures. By integrating these culturally informed approaches, we can foster a justice system that values healing and rehabilitation while simultaneously acknowledging the resilience and wisdom inherent in Indigenous traditions.[38]

3.37 In evidence, NLA Director Ms Annmarie Lumsden suggested that one way in which to help achieve Target 11 would be to 'tie this to jurisdictional resourcing so there are consequences for states and territories where targets are not met'. In particular, Ms Lumsden identified intergovernmental agreements as a vehicle in which to embed obligations: 'related obligations of state governments and Closing the Gap targets should be embedded in intergovernmental agreements, including those related to funding'.[39]

3.38 Ms Patricia Turner, Lead Convenor of the Coalition of Peaks, advised that the Joint Council on Closing the Gap—which has an ongoing role in monitoring performance and implementation of all parties' actions under the National Agreement—sought to escalate Target 11 as an urgent priority. Ms Turner conceded that it is very disappointing when state or territory governments (such as Queensland) do not recognise 'the importance and the centrality of the National Agreement'.[40]

3.39 The AGD submitted that the Australian government is working with states and territories to address the overincarceration of Aboriginal and Torres Strait Islander children and young people, including by working in partnership with First Nations peoples through the JPP to address Target 11 of the National Agreement.[41]

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37 NLA, *Submission 172*, p. 8. Also see: Maranguka, *Submission 106*, p. 8.

38 NAPCAN, *Submission 66*, [p. 3].

39 Ms Annmarie Lumsden, Director, NLA, *Committee Hansard*, 3 February 2025, p. 69.

40 Ms Patricia Turner, Lead Convenor, Coalition of Peaks, *Committee Hansard*, 3 February 2025, p. 42. Also see: Letter from Joint Council on Closing the Gap to the NT Attorney-General, dated January 2025, tabled at a public hearing on 3 February 2025.

41 AGD, *Submission 204*, [pp. 4–5]. Also see: Law Council, *Submission 195*, p. 25, which urged the Australian government to take a stronger lead on reform through existing mechanisms with state and territory governments, such as through the Justice Policy Partnership (JPP).

Target 12

3.40 The *Safe and Supported, National Framework for Protecting Australia's Children 2021–2031* (the Safe and Supported framework) aims to reduce child abuse and neglect, and their intergenerational impacts,[42] with the following shared vision of Australian governments, First Nations leaders and the non-government sector:

> Children and young people in Australia have the right to grow up safe, connected and supported in their family, community and culture. They have the right to grow up in an environment that enables them to reach their full potential.[43]

3.41 The Safe and Supported framework is the key strategy to support progress under Target 12 of the National Agreement: 'by 2031, reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children (0–17 years old) in out-of-home care by 45%'.[44]

3.42 Similar to Target 11, the PC reported that Target 12 is not being met and nationally, based on progress from the baseline, 'the target is worsening':

> Nationally in 2023, the rate of Aboriginal and Torres Strait Islander children aged 0–17 years in out-of-home care was 57.2 per 1,000 children in the Aboriginal and Torres Strait Islander population.
>
> The 2023 rate is below the rate in 2021 (57.6 per 1,000 children) but it is an increase from 54.2 per 1,000 children in 2019 (the baseline year).[45]

3.43 SNAICC submitted that 'progress towards this target is off-track and unlikely to be met without significant transformational change by all governments of child protection systems, policy and practice'.[46]

Priority Reform 2 – Building the community-controlled sector

3.44 In addition to Targets 11 and 12 of the National Agreement, stakeholders commented on Priority Reforms 2–4. In relation to Priority Reform 2, clause 44 recognises that 'Aboriginal and Torres Strait Islander community control is an act of self-determination', which was also reflected in the Safe and Supported framework: 'enacting self-determination is critical to designing and

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42 Commonwealth of Australia, *Safe & Supported, The National Framework for Protecting Australia's Children, 2021–2031*, 2021, p. 6, www.dss.gov.au/the-national-framework-for-protecting-australias-children-2021-2031 (accessed 1 November 2024).

43 Commonwealth of Australia, *The National Framework for Protecting Australia's Children, 2021–2031*, 2021, p. 2.

44 National Agreement, July 2020, p. 35.

45 PC, 'Closing the Gap, Information Repository', www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area12 (accessed 31 January 2025).

46 SNAICC, *Submission 173*, [p. 16].

implementing effective child justice policies that achieve better outcomes for Aboriginal and Torres Strait Islander children'.[47]

3.45 SNAICC supported the full enactment of self-determination in all legislation, policies, and strategies. It welcomed the announcement of an independent National Commissioner for Aboriginal and Torres Strait Islander Children and Young People:

> [This] is an exciting and historic step to realising self-determined approaches to tackle the over-representation of Aboriginal and Torres Strait Islander young people in out-of-home care, and youth detention. It will be critical to progress legislation to further strengthen the powers and independence of the National Commissioner.[48]

3.46 While Priority Reform 2 recognises that 'Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people',[49] the Coalition of Peaks argued that governments have not delivered on their commitment to build this sector:

> …the [Aboriginal Community Controlled Organisations, ACCO] sector remains chronically underfunded by governments, often in favour of funding announcements that are short-sighted and serve to entrench disadvantage and poor outcomes. All governments must urgently and significantly increase funding to ACCOs.[50]

3.47 Ms Devendran from First Nations Advocates Against Family Violence, concurred:

> We need governments at all levels to commit to long-term investment in Aboriginal Community Controlled Organisations and youth justice responses, including early intervention and family violence prevention, and to ensure First Nations voices are at the centre of youth justice reform. We cannot afford tokenistic consultation practices that ignore the expectations of communities. We have to end the reliance on incarceration as the default and replace it with community-led, trauma-informed and

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47 Commonwealth of Australia, *Safe & Supported, The National Framework for Protecting Australia's Children, 2021–2031*, 2021, p. 3.

48 SNAICC, *Submission 173*, [p. 7]. Also see: NAPCAN, *Submission 66*, [pp. 2 and 5], which called for the creation of a youth advisory body to assist the new commissioner; Ms Lillian Gordon, Acting National Commissioner, National Commission for Aboriginal and Torres Strait Islander Children and Young People, *Committee Hansard*, 3 February 2025, p. 47, who also noted that the role will work closely with the National Children's Commissioner.

49 National Agreement, July 2020, paragraph 43.

50 Coalition of Peaks, *Submission 158*, [p. 9]. Also see: Commonwealth of Australia, *Safe & Supported, The National Framework for Protecting Australia's Children, 2021–2031, Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, 2022, p. 7, www.dss.gov.au/system/files/resources/final_aboriginal_and_torres_strait_islander_first_action_plan.pdf (accessed 31 January 2025), which has a focus on investing in the community controlled sector (Action 2).

> culturally safe alternatives that give our children the support they need. The reality is this: we cannot imprison our way out of this crisis.[51]

3.48 NATSILS argued that one example of this underfunding is in the provision of legal assistance to Aboriginal and Torres Strait Islander Legal Services (ATSILS). It called for these ACCOs to be provided with immediate, needs-based, and sustained funding:

> ATSILS are well placed to know what our children and young people need. ATSILS provide culturally safe legal services across Australia and wraparound supports to our children. A popular misconception is the ATSILS just deliver legal services. ATSILS have expertise in delivering evidence-based wraparound supports to our people encountering the criminal justice system…Without urgent and significant investment, ATSILS will be unable to meet the rising demand for legal assistance in light of the worsening youth justice policies across all states and territories, putting more children at risk of incarceration and long-term disadvantage.[52]

Priority Reform 3 – Transforming government organisations

3.49 Priority Reform 3 of the National Agreement commits governments to systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people.[53]

3.50 As noted earlier (paragraphs 3.15–3.16), the PC recently reported that the transformation of government organisations has 'barely begun':

> The Agreement requires systemic and structural transformation of mainstream government agencies and institutions…There is a stark absence of whole-of-government or whole-of-organisation strategies for driving and delivering transformation in line with Priority Reform 3. We are yet to identify a government organisation that has articulated a clear vision for what transformation looks like, adopted a strategy to achieve that vision, and tracked the impact of actions within the organisation (and in the services that it funds) toward that vision…Governments' efforts to date have largely focused on small-scale, individual actions (such as cultural capability training and workforce strategies to increase employment of Aboriginal and Torres Strait Islander people in the public sector), rather than system-level changes to policies and practices.[54]

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51 Ms Priya Devendran, Senior Policy Officer, First Nations Advocates Against Family Violence, *Committee Hansard*, 3 February 2025, pp. 41–42.

52 NATSILS, *Submission 202*, p. 5, which also noted that such funding is an unmet recommendation from the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.

53 National Agreement, July 2020, paragraph 58.

54 PC, *Review of the National Agreement on Closing the Gap, Study report, Volume 1*, January 2024, pp. 5–6.

3.51 The Coalition of Peaks considered that Australian governments still do not understand what is required of them under Priority Reform 3. In addition, nearly five years after the National Agreement was signed, the commitment to establish an independent mechanism(s) to support, monitor, and report on the transformation of mainstream agencies and institutions has still not been implemented.[55]

Priority Reform 4 – Shared access to data and information at a regional level

3.52 Priority Reform 4 of the National Agreement aims to provide First Nations people with access to, and the capability to use, locally relevant data and information, to set and monitor the implementation of efforts to close the gap, priorities and to drive their own development.[56]

3.53 According to the PC, as at January 2024, Australian governments are not enabling Aboriginal and Torres Strait Islander-led data:

> Priority Reform 4 requires governments to implement large-scale changes to data systems and practices to enable Aboriginal and Torres Strait Islander people to participate in decision-making about data and to use data for their own purposes. Governments have made little progress on enacting these changes – Aboriginal and Torres Strait Islander organisations are continuing to report difficulties accessing government-held data, and often the data that is collected by government agencies does not reflect the realities of, or hold meaning for, Aboriginal and Torres Strait Islander people.[57]

3.54 The PC suggested that one fundamental complication might be that there is no common understanding of what Priority Reform 4 is trying to achieve:

> One of the reasons why there has been limited progress in implementing large-scale changes to data systems and practices in line with Priority Reform 4 could be that there is not a shared understanding of what Priority Reform 4 is trying to achieve. The Commission heard that Aboriginal and Torres Strait Islander people view Indigenous Data Sovereignty as the purpose of Priority Reform 4, but this is not clearly reflected in the text of the Agreement, nor in many governments' statements of what they are doing (in implementation plans, for example). Without clarity on this, there is unlikely to be meaningful and sustained progress on Priority Reform 4.[58]

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55 Coalition of Peaks, *Submission 158*, [pp. 9–10]. Also see: National Agreement, July 2020, paragraph 67; PC, *Review of the National Agreement on Closing the Gap, Study report, Volume 1*, January 2024, p. 6; JPP Strategic Framework Priority Initiative 2.2 (Establishing Accountability); NATSILS, *Submission 202*, p. 13, which described current accountability for the agreed transformation elements as 'weak'.

56 National Agreement, July 2020, paragraph 17(d).

57 PC, *Review of the National Agreement on Closing the Gap, Study report, Volume 1*, January 2024, p. 6. Note: the PC stated that data that cannot be disaggregated at the community level, capture mob affiliation or the values/cultural diversity/social and structural contexts of communities will often be ill-suited to support decision-making at the local level.

58 PC, *Review of the National Agreement on Closing the Gap, Study report, Volume 1*, January 2024, p. 6. For an explanation of the Indigenous Data Sovereignty principles, see: Maiam nayri Wingara,

3.55 The NATSILS submitted that improved data collection is crucial to understanding and addressing the over-incarceration of First Nations youth, However, there is no national entity to oversee the collection, coordination, and quality of data in Australia's child justice system:

> NATSILS recommends that the Australian Government take a leadership role in establishing a nationally consistent data collection mechanism. This could be facilitated through the Australian Institute of Criminology or a similar body, ensuring that the mechanism is developed in genuine partnership with Aboriginal and Torres Strait Islander organisations. Governance must embed Indigenous Data Sovereignty principles to ensure that Aboriginal and Torres Strait Islander people have control over the data, its collection, and its use, in a way that reflects their rights and interests.[59]

3.56 The Coalition of Peaks emphasised that disaggregated data and information is the most useful to communities and ACCOs, as it provides a more comprehensive picture of what is happening in communities and supports better decision-making: 'it remains particularly challenging to obtain relevant, disaggregated data relating to children from police and justice services'.[60]

3.57 The Coalition of Peaks considered that Priority Reforms 1–4 must be truly embedded in governments' decision-making processes, to close the gap and 'begin to turn the tide on the national youth justice and incarceration crisis'.[61] It quoted the PC's overarching finding from the Review of the National Agreement:

> Despite some pockets of good practice, progress in implementing the Agreement's Priority Reforms has, for the most part, been weak and reflects tweaks to, or actions overlayed onto, business-as-usual approaches. The disparate actions and ad hoc changes have not led to improvements that are noticeable and meaningful for Aboriginal and Torres Strait Islander people. This raises questions about whether governments have fully grasped the scale of change required to their systems, operations and ways of working to deliver the unprecedented shift they have committed to.[62]

United Nations Declaration on the Rights of Indigenous Peoples

3.58 The Australian Human Rights Commission submitted that the United Nations Declaration on the Rights of Indigenous People (UNDRIP) establishes a universal framework of minimum standards for the survival, dignity and well-

'Maiam nayri Wingara Principles', www.maiamnayriwingara.org/mnw-principles (accessed 31 January 2025).

59 NATSILS, *Submission 202*, p. 12. Also see: Coalition of Peaks, *Submission 158*, [p. 11].

60 Coalition of Peaks, *Submission 158*, [p. 11]. Also see: [p. 10].

61 Coalition of Peaks, *Submission 158*, [p. 6].

62 PC, *Review of the National Agreement on Closing the Gap, Study report, Volume 1*, January 2024, p. 3.

being of Indigenous peoples, and it elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous peoples.[63]

3.59 Many submitters and witnesses argued that the detention of Aboriginal and Torres Strait Islander children and young people violates international human rights standards (see Chapter 4), including under the UNDRIP, for example, Article 7 which provides:

> Article 7
>
> 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
>
> 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

3.60 SNAICC noted that, while Australia has signed the UNDRIP, the Australian government has referred to the declaration as 'non-legally binding' and has 'done little to incorporate the rights recognised within it [into] Australian [law]'. It argued:

> Aboriginal and Torres Strait Islander children's rights include those owed to all children as well as their unique rights as Indigenous Peoples…[F]or those rights to be practically realised and protected in Australia, SNAICC believes that the Commonwealth Government should legislate a federal Human Rights Act which incorporates and gives full effect to the distinctive rights of Aboriginal and Torres Strait Islander children.[64]

3.61 Similarly, UNICEF Australia submitted:

> The incarceration of Aboriginal and Torres Strait Islander children often violates international human rights standards, including the UN Convention on the Rights of the Child and the [UNDRIP]. These children deserve the opportunity to thrive within their communities, not to be further marginalised through incarceration.[65]

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63 AHRC, 'UN Declaration on the Rights of Indigenous Peoples', https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-people (accessed 31 October 2024). Also see: United Nations, Declaration on the Rights of Indigenous Peoples, www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (accessed 31 October 2024).

64 SNAICC, *Submission 173*, [p. 9]. Also see: [p. 8].

65 UNICEF Australia, *Submission 83*, p. 10.

Previous inquiries and reviews

3.62 Stakeholders noted that previous inquiries and reviews have specifically examined Aboriginal and Torres Strait Islander people's over-representation in the criminal justice, child justice and child protection systems.[66]

3.63 The Royal Commission into Aboriginal Deaths in Custody (RCIADIC, 1987–1991), the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1995–1997), the Royal Commission into the Protection and Detention of Children in the Northern Territory (2016–2017) and the Yoorrook Justice Commission (2023) were particularly noted.

3.64 The second of these—the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families—produced the *Bringing them home* report, whose findings and recommendations aimed to address systemic issues faced by First Nations children and families.

3.65 Professor George Newhouse, Principal Solicitor and Chief Executive Officer of the National Justice Project (NJP) emphasised that the RCIADIC set out a road map 35 years ago without any action having been taken to implement important recommendations:

> …the royal commission made a recommendation, recommendation 62, regarding young Aboriginal people in the juvenile justice system. It's worth reading. The royal commission recommended consultation with appropriate Aboriginal organisations, to make use of the services of Aboriginal organisations and consultation with local Aboriginal organisations about implementation of policies. They also recommended establishing an Aboriginal justice advisory committee in each state to provide the state with information on the views of Aboriginal people. It recommended imprisonment as a last resort. That's recommendation 92, which states that governments legislate to enforce the principle that imprisonment should only be used as a sanction of last resort. Our governments have done exactly the opposite.[67]

3.66 NATSILS highlighted a selection of inquiries and reviews, noting that many of their recommendations have not been implemented:

> In **1991**, the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations, many of which relate to the child justice system, most of which have still not been implemented. Recommendation 239, for example, calls for legislation and police standing orders to be amended to ensure police officers do not exercise their powers of arrest in relation to Aboriginal children beyond a minimal requirement.
>
> In **1997**, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their families made 54 recommendations,

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66 See, for example: Law Council, *Submission 195*, p. 19; NATSILS, *Submission 202*, pp. 7–8.

67 Professor George Newhouse, Principal Solicitor and Chief Executive Officer, National Justice Project (NJP), *Committee Hansard*, 3 February 2025, p. 54.

> including National Standards Legislation for Juvenile Justice, this has still not been implemented.
>
> …
>
> In **2018**, the Australian Law Reform Commission '*Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*' includes 32 recommendations designed to reduce the disproportionate rate of incarceration of Aboriginal and Torres Strait Islander peoples and improve community safety. Governments are yet to implement these recommendations.
>
> In **2019**, UN [Office of the United Nations High Commissioner for Human Rights'] Committee on the Rights of the Child highlighted significant concerns with Australia's implementation of the UNCRC, particularly in the administration of child justice and related domains. Governments are yet to formally implement or respond to its recommendations.
>
> In **2024**, the Children's Commissioner handed down the ''*Help way earlier!' How Australia can transform child justice to improve safety and wellbeing*' report which includes 24 recommendations to specifically improve the youth justice systems. Government has not announced any plans to formally respond to or implement those recommendations.
>
> Criminal justice outcomes continue to worsen for our people and Governments continue to ignore reports and inquiries, treating youth justice as a political point scoring football – while lives hang in the balance.[68]

3.67 The Coalition of Peaks stated that the child justice system continues to focus on 'late, punitive and crisis-driven responses, often based on ill-informed and reactionary 'tough on crime' politics'. It advised that this approach is not evidence-based and there should instead be holistic, child-focused, trauma-informed and dignity-affirming preventative practice and early intervention responses:

> Governments must work in partnership with Aboriginal and Torres Strait Islander people and communities to ensure that Aboriginal and Torres Strait Islander children, their families and communities are receiving holistic, wraparound and culturally safe supports and services.[69]

Alternative non-punitive approach

3.68 Many submitters and witnesses argued that Australia must adopt a non-punitive approach that addresses the wellbeing and human rights of Aboriginal and Torres Strait Islander children and young people (also see Chapter 2). The Institute for Collaborative Race Research submitted:

> Children themselves consistently tell us that their criminalisation is linked with a lack of support for their basic needs: before being locked up, many needed a safe place to call home, enough food, inclusive education, health supports and access to family and community. Their statistical story tells us

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68 NATSILS, *Submission 202*, pp. 7–8 (bold emphasis in the original).

69 Coalition of Peaks, *Submission 158*, [p. 5].

> they are among the most marginalised people on this continent, many of whom have faced state violence at every stage of their lives. Youth justice involvement and incarceration is the result of a chain of violence that includes: school and [National Disability Insurance Scheme] exclusion, child protection involvement and criminalisation through police surveillance and public nuisance laws. Instead of providing the supports that children are asking for, the carceral system further intensifies the violence against them through policing, courts and incarceration—finally removing them from their existing support networks in community…The removal and incarceration of children does nothing to address criminalisation and marginalisation.[70]

3.69 SNAICC argued that there has been significant and long-term investment in the child justice system in response to concerns about community safety and harm accountability. However, the punitive and carceral approach addresses neither safety nor criminalisation:

> …the evidence demonstrates that incarceration has the opposite effect to creating safe communities, and leads to a large majority – around 3 out of 4 children who come into contact with child justice systems – reoffending within 12 months.[71]

3.70 Instead:

> …community-led and place-based early intervention and prevention services are [an] evidence-based means of bringing down offending rates, including violent offending rates, and making Australian communities stronger and safer…[A] complex and persistent set of socioeconomic drivers cause Aboriginal and Torres Strait Islander children to come into contact with justice systems. Communities will not be made safer without sufficiently addressing and mitigating these drivers. Early intervention and prevention are more likely to contribute to community safety by ensuring that these causes of offending are addressed and that cycles of offending are broken. They therefore hold substantially more promise for safer communities than punitive justice responses.[72]

Early intervention and prevention

3.71 As discussed in Chapter 2, many submitters and witnesses supported alternatives to detention that focus on early intervention, prevention, rehabilitation and support. They argued that services and programs for Aboriginal and Torres Strait Islander children and young people must be designed and delivered by ACCOs, as recognised by Priority Reform 2 in the National Agreement.

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70 Institute for Collaborative Race Research, *Submission 185*, pp. 2–3.

71 SNAICC, *Submission 173*, [pp. 14–15].

72 SNAICC, *Submission 173*, [p. 15].

Aboriginal Community Controlled Organisations

3.72 The Coalition of Peaks summarised many stakeholders' view on the critical role of ACCOs in addressing the over-incarceration of Aboriginal and Torres Strait Islander children and young people:

> Priority Reform Two acknowledges that ACCO services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services.
>
> From this, governments have committed to building formal ACCO sectors to deliver services to support Closing the Gap and must implement measures to increase the proportion of services delivered by ACCOs. This includes by transitioning services previously delivered by government or non-Indigenous organisations to ACCOs.
>
> ACCOs have the knowledge and expertise to design and deliver effective, evidence-based, holistic and wraparound strategies and programs to nurture children, intervene early, and support young people who may come into contact with the youth justice system.[73]

3.73 SNAICC considered that, nationally, child justice systems and government investment must be reoriented towards community-based early intervention, preventative, and diversionary options. It emphasised the crucial role of family, community and culture in reform:

> Connection to family, community and culture are robust protective factors for Aboriginal and Torres Strait Islander children. Culture is critical to their development, identity and self-esteem, and strengthens their overall health, wellbeing and lifelong capacity to manage intergenerational trauma. Nurturing a child's culture and connections to family and community supports their social and emotional wellbeing, which is an integral protective factor in child justice prevention.[74]

3.74 NAPCAN's Youth Speak Out Council agreed that a key benefit of community-led programs is the engagement of children and young people with traditional practices, Elders and community mentors:

> Evidence suggests that culturally relevant interventions significantly improve health and wellbeing outcomes for First Nations youth. For instance, programs that incorporate cultural practices, such as language, art, and storytelling, foster a sense of identity and belonging, which are critical components of healing and rehabilitation. Cultural approaches to connection can lower recidivism rates by fostering self-esteem and resilience among participants, especially for children and young people who have

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[73] Coalition of Peaks, *Submission 158*, pp. 8–9. Also see: SNAICC, *Submission 173*, [p. 19], which stated that mainstream services lack cultural competence, which alienates Aboriginal and Torres Strait Islander children and young people, leading to ineffective attempts to address criminogenic factors.

[74] SNAICC, *Submission 173*, [p. 17]. Also see: [p. 14]; Maranguka, *Submission 106*, p. 8; Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, pp. 29–30 and 37, where Ms Liddle especially noted the importance of food security as a protective factor.

> been disconnected from their communities…Engaging Elders and community mentors can create a bridge between traditional knowledge and contemporary challenges, offering young people guidance and support that is deeply connected to cultural heritage. By prioritising relationships and community involvement, these programs can help young people reconnect with their identity, reducing [the] feelings of isolation often experienced in the justice system.[75]

3.75 Ms Zoë Robinson, Advocate for Children and Young People (NSW), agreed that connection to culture is essential:

> The First Nations children and young people who I have heard from have emphasised that connection to culture is something that makes them feel happy and welcome…Those in youth justice centres spoke highly of cultural programs through which they learned dance, music and language, and stressed that they would like more opportunities to connect with community and culture on the outside.[76]

Programs and services

3.76 Submitters and witnesses provided multiple examples of effective First Nations-led programs and services.[77] One commonly cited example was the Maranguka Justice Reinvestment Project (Maranguka), which aims to address the root causes of crime through its *Growing our Kids Up Safe, Smart and Strong* strategy.

3.77 Maranguka advised that it has achieved significant milestones in reducing youth crime and improving community well-being in Bourke:

> The KPMG Impact Assessment of the Maranguka Justice Reinvestment Project in 2018 highlighted several key outcomes between the years 2016 and 2017:
>
> - A 38% reduction in charges across the top five juvenile offence categories.
> - A 23% reduction in reported incidents of domestic violence.
> - A 31% increase in retention rate for Year 12 students.
>
> These outcomes demonstrate the potential and effectiveness of the Maranguka approach and the capacity for similar initiatives to achieve positive results in other communities.
>
> KPMG estimated that the gross impact of the changes in Bourke in 2017 was worth $3.1 million, with approximately two-thirds of this impact associated with the justice system. The impact estimate achieved was 5 times greater than the operational costs of Maranguka that year.[78]

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75 NAPCAN, *Submission 66*, [p. 4].

76 Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 5.

77 See, for example: AMA, *Submission 55*, p. 6. Also see: #Raise The Age, 'Alternatives to prison', https://raisetheage.org.au/alternatives (accessed 1 November 2024).

78 Maranguka, *Submission 106*, pp. 5–6.

3.78 The NJP and the Jumbunna Institute for Indigenous Education and Research (Jumbunna) supported programs like Maranguka: 'investing in similar initiatives can disrupt the cycle of offending before it leads to incarceration'.[79]

Comparable and sustainable funding

3.79 As indicated earlier (paragraphs 3.46–3.47), submitters and witnesses expressed concern about government investment in ACCOs. The Coalition of Peaks stated that this investment is critical to 'the delivery of services to Aboriginal and Torres Strait Islander children, including those that are at risk of entering into, or are in, the youth justice and incarceration system'.[80]

3.80 However, SNAICC submitted that there is a noticeable funding disparity between ACCOs and mainstream organisations:

> For decades, ACCOs have been delivering holistic, integrated and culturally safe child and family early intervention services proven to improve children's developmental trajectories and strengthen Aboriginal and Torres Strait Islander families. The culturally appropriate and holistic way that ACCOs provide services make them best placed to meet the needs of children and families and provide early support that prevent contact with tertiary systems [such as the child justice system]. Despite this, ACCOs continue to receive far less funding for these services nationally than non-Indigenous organisations.[81]

3.81 Some submitters especially noted specific and much-needed services provided by ACCOs to Aboriginal and Torres Strait Islander children and young people. For example, the NJP and Jumbunna highlighted the provision of post-detention mental healthcare services, which is a particular concern for youth in detention (see Chapter 2):

> Culturally appropriate, trauma-informed mental health services delivered within communities rather than through the justice system are essential to preventing further harm. First Nations community-led organisations are best placed to deliver these services, as they understand the unique social, cultural, and emotional needs of First Nations young people.[82]

3.82 SNAICC similarly remarked upon the provision by ACCOs of post-release services that help young people to reintegrate with their communities (such as the Victorian Aboriginal Community Services Association Limited's Bert

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79 NJP and Jumbunna Institute for Indigenous Education and Research (Jumbunna), *Submission 51*, p. 5.

80 Coalition of Peaks, *Submission 158*, p. 8.

81 SNAICC, *Submission 173*, [p. 17], which noted that Aboriginal Community Controlled Organisations provide general early intervention services, as well as more targeted and intensive, culturally safe supports. Also see: NLA, *Submission 172*, p. 8.

82 NJP and Jumbunna, *Submission 51*, p. 6.

Williams Aboriginal Youth Services).[83] It argued that these services are vital, as child justice system and youth detention facilities are not designed to be therapeutic, healing and rehabilitative:

> Aboriginal and Torres Strait Islander children must be appropriately supported while they are in incarceration, and as they are leaving it. This support will enable them to exit the cycle of incarceration, return to their families and communities, and reduce the incidence of crime in Australian communities. Supporting a child's safe and effective transition out of child justice systems must begin early, and comprise both pre- and post-release supports. Children transitioning out of incarceration face a range of challenges including insecure housing, interrupted education, limited employment opportunities. For many Aboriginal and Torres Strait Islander children, these are exacerbated by experiences of discrimination, social exclusion and adverse mental health and social and emotional wellbeing. Available pre-release therapeutic and healing services do not address the complex and cultural needs of many Aboriginal and Torres Strait Islander children.[84]

3.83 SNAICC identified a range of post-release supports—living arrangements, schooling, vocational training, mental health, and social and emotional wellbeing supports—that, it argued, would assist Aboriginal and Torres Strait Islander children and young people to reintegrate into their communities:

> Culturally responsive and considered release and transition planning and supports to help young people back into their community will promote healing and decrease the likelihood of future contact with child justice systems. These services should begin immediately during the child's incarceration, and should be available to children and young people detained on remand regardless of whether they receive a sentence. These services should involve long-term post-release case management for the child and family.[85]

3.84 SNAICC stated that ACCO-led therapeutic and healing models would reduce the over-representation of Aboriginal and Torres Strait Islander children in the child justice system, and divert them from reoffending and/or the types of antisocial behaviour that result in contact with the system. This in turn would contribute to safer communities:

> …those [objectives] need to be predicated on services provided by ACCOs, which know best how to build the trust and relationships necessary for children and families to feel and know they are supported. They must centre

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[83] See: VACSAL, 'Bert Williams Centre', www.vacsal.org.au/bert-williams-centre/ (accessed 31 January 2025). Also see: SNAICC, *Submission 173*, [pp. 20–21].

[84] SNAICC, *Submission 173*, [p. 20].

[85] SNAICC, *Submission 173*, [p. 20].

> culturally-responsive education, resocialisation and reintegration, and mental health and social and emotional wellbeing supports.[86]

Diversionary services

3.85 As discussed in Chapter 2, submitters and witnesses argued that, rather than continue with a carceral child justice system, Australian governments must prioritise diversion. The Law Council submitted that this is particularly relevant to Aboriginal and Torres Strait Islander children and young people:

> The Law Council has been a long-standing and vocal advocate for child justice reform, based on evidence-based policy making, and preventative, diversionary, multi-portfolio responses that address the underlying needs of Australia's children. This is of paramount importance for First Nations children, where it has been statistically proven that these children bear the brunt of a failure in Australia's policies to support their diversion and rehabilitation away from the criminal justice system [also see 'Systemic Racism' above].[87]

3.86 The AMA recognised the importance of diversionary and justice reinvestment programs that are developed and led at local levels by Aboriginal and Torres Strait Islander communities: 'these programs support young people to thrive and avoid the cycle of reoffence and incarceration'.[88]

3.87 SNAICC stated, however, that 'community-based diversion is underutilised for Aboriginal and Torres Strait Islander Children across Australia'.[89] It referenced the Victorian Commission for Children and Young People's 2021 *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system* (Our Youth, Our Way inquiry).

3.88 In its submission, the Victorian Commission for Children and Young People summarised a key finding from its report, that is, there must be legislative change to require decision-makers in the child justice system to prioritise early intervention and diversionary processes:

> Throughout the *Our youth, our way* inquiry, Aboriginal children and young people, communities and workers consistently referred to the absence of effective early intervention and support across a range of needs. These supports could have addressed causal factors driving offending behaviour and prevented young people's entry into the youth justice system. In some cases, there were no early supports available at all, while in others, services

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86 SNAICC, *Submission 173*, [p. 20].

87 Law Council, *Submission 195*, p. 20. Also see: AMA, *Submission 55*, p. 6.

88 AMA, *Submission 55*, p. 6.

89 SNAICC, *Submission 173*, [p. 18]. Note: the submission identified four key barriers to the use of diversion services for First Nations children and young people: a perception that diversion is exclusively for 'low-level offences' or children with no or little history of previous offending; inconsistent decision-making across jurisdictions; inconsistent levels of police discretion; and preferencing of remand.

> were at capacity or inaccessible due to geographical distance. Some services, particularly substance misuse support services, were restricted to older children and young people, meaning that younger age groups could not access the interventions and supports they needed. *Our youth, our way* found that the youth justice system disproportionately focuses on late, punitive responses to offending behaviour and recommends legislative change to require youth justice system decision-makers to prioritise early intervention and diversionary processes at all points of the young person's progression through the youth justice system.[90]

3.89 Similar to early intervention and prevention (see 'Comparable and sustainable funding'), SNAICC voiced a common view that Australian governments must increase funding for diversion services for Aboriginal and Torres Strait Islander children and young people at risk of contact with the criminal justice system. It argued that the lack of systemic funding for ACCO-led diversion services is leading to service gaps in many communities, with children having no recourse to a culturally safe service to divert them back into their communities:

> ACCOs are best placed to deliver culturally appropriate diversionary programs and require appropriate funding to provide robust, therapeutic and holistic diversionary support. Funding is also required for ACCOs to connect children effectively with ATSILS and relevant legal supports services that can argue for diversionary alternatives after apprehension. ACCO child and family services are also critical in bridging gaps between Aboriginal and Torres Strait Islander families and the legal system, and ACCOs can play a crucial role implementing diversionary programs and supporting children's and families' engagement with judicial systems.[91]

3.90 The AGD reiterated that the Australian government is working to address the over-incarceration of Aboriginal and Torres Strait Islander children and young people, by establishing a National Justice Reinvestment Unit to empower First Nations communities to identify local initiatives to improve justice outcome and address the drivers of contact with the child justice system (also see paragraphs 2.80–2.81).[92]

Diversion within law enforcement and the courts

3.91 SNAICC advised that, where utilised, diversion has proven successful in decreasing recidivism:

> Systematic reviews show that pre-court diversions (through bail) or in-court diversion (as an alternative to criminal sentencing) are associated with a 9-36% decrease in the likelihood of reoffending for children. In the Northern Territory in 2015-16, 35% of children were diverted at the point of coming into contact with police. According to the Royal Commission into the

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90 Victorian Commissioner for Children and Young People, *Submission 164*, p. 8.

91 SNAICC, *Submission 173*, [p. 19].

92 AGD, *Submission 204*, [pp. 4–5].

> Protection and Detention of Children in the Northern Territory, around 80% of diverted children did not reoffend.[93]

3.92 SNAICC stated, however, that 'Western justice and legal systems are inherently culturally unsafe for Aboriginal and Torres Strait Islander people'. Its submission noted Priority Reform 3 of the National Agreement and the results of a Legal Supports Scoping Study, conducted in collaboration with the NATSILS, which highlighted ongoing and broad concerns with cultural competence in many processes and organisations:

> [The findings of the Legal Supports Scoping Study] are indicative of the broader challenges faced by Aboriginal and Torres Strait Islander children, young people and families in accessing legal supports. The [study] highlighted the lack of culturally appropriate processes and decision-making in court proceedings, within non-ACCO legal services, and across the broader legal and child protection systems. Specialist courts are one way that integrated, culturally informed support can significantly improve Aboriginal and Torres Strait Islander families' experiences of court and the resulting outcomes for children and families.[94]

3.93 Some submitters identified specialist courts that, they argued, provide a more culturally responsive approach to legal proceedings that involve Aboriginal and Torres Strait Islander children, young people and their families. For example: Marram-Ngala Ganbu (Koori Family Hearing Day in the Children's Court of Victoria), Winha-nga-nha (Aboriginal and Torres Strait Islander Care List in the NSW Children's Court at Dubbo) and Dandjoo Bidi-Ak (a specific Court List and courtroom of the Children's Court of Western Australia).

3.94 The AMA submitted:

> …systemic reforms like The Koori Court build on the strengths of community and culture, to help divert young people from the path of contact with the legal system, and recidivism. This leads to better outcomes for young people, with support networks in place to assist with diversion away from custodial settings.[95]

3.95 Mr James McDougall, Co-Chair of the Australian Child Rights Taskforce, argued that it would be better to completely divert young offenders away from court interactions:

> The systems that work most effectively are those that are integrated within a statutory youth justice framework so that a clear priority is given to diversion away from the court system into community-based initiatives. Youth justice conferencing exists in a number of states. It draws on the resources of the community. It provides a better opportunity for victims to be heard within offender mediation systems, and there's no reason why that can't also happen in the circumstances of children and young people

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93 SNAICC, *Submission 173*, [p. 18].

94 SNAICC, *Submission 173*, [p. 23].

95 AMA, *Submission 55*, p. 6.

> offending. It also provides them with opportunities for clear guidance about the impact of their offending behaviour and allows them to see that in a way that the experience of detention does not address. We would argue that there are a number of existing measures which could be implemented, better funded and integrated within statutory youth justice systems to good effect.[96]

3.96 SNAICC submitted that the evidence-based specialist courts achieve better outcomes than their mainstream counterparts. Its submission particularly identified interactions between the child justice and child protection systems as an issue that must be and is better addressed in specialist courts:

> Current approaches rarely accommodate these needs or demonstrate an understanding of the unique challenges and circumstances of dual order arrangements. As such, there is a need for specialised courts or dedicated court lists, underpinned by specialist knowledge and trauma informed approaches, that will allow for the fulsome consideration of issues impacting these children at all stages of interaction with the court system.[97]

3.97 Churchill Fellow, Ms Jennifer Bowles, reflected on how the specialist Children's Court of Victoria, for example, cannot make orders for Youth Therapeutic Orders, to mandate substance abuse treatment:

> …there is an inextricable link between the number of children and young people who offended whilst under the influence of substances eg alcohol, illicit substances. The [Youth Parole Board] Annual Report indicates that for 2022/2023 84% offended whilst under the influence of substances…The current service model in Victoria requires the children and young people to voluntarily engage in substance abuse treatment…It is unsurprising given the nature of dependency, the lack of maturity of the young people and their personal circumstances, that the vast majority of children and young people, particularly those with the most significant, entrenched dependency issues, do not engage voluntarily in treatment…When a young person's substance abuse is raised in Court, the responses of the young people frequently include *'I'm not going to counselling'; 'I enjoy using'; 'I don't have a problem. I could stop whenever I want to'; 'I'll cut down when I turn 18'*. Sadly, rather than stopping or reducing their dependency at 18, they are often on the trajectory for adult imprisonment and the cycle continues.[98]

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96 Mr James McDougall, Co-Chair, Australian Child Rights Taskforce, *Committee Hansard*, 3 Februay 2025, p. 15.

97 SNAICC, *Submission 173*, [p. 24].

98 Ms Jennifer Bowles, *Submission 153*, pp. 3 and 5. Note: Ms Bowles is a former Magistrate of the Children's Court of Victoria and Supervising Magistrate for the Children's Koori Court. Also see: Winston Churchill Trust, 'What can be done?, Residential therapeutic treatment options for young people suffering substance abuse/mental illness', 2014.

Access to legal supports and representation

3.98 Some stakeholders highlighted that, in addition to specialist courts, Aboriginal and Torres Strait Islander children, young people and their families need accessible legal support and representation to engage effectively with the legal system.

3.99 SNAICC argued that legal services are vital for First Nations families to advocate for their rights and to navigate complex statutory systems (such as the child justice and child protection systems):

> However, a range of factors prevent Aboriginal and Torres Strait Islander children and families from accessing legal representation and support. These include systemic racism in mainstream legal systems and courts, and mainstream legal services which lack cultural capabilities to provide culturally informed or accessible services for Aboriginal and Torres Strait Islander people.[99]

3.100 NLA expressed the view that 'legal assistance is critical to reducing the number of children and young people in the juvenile justice system and in detention, particularly First Nations children and young people'. It added that 'the significant overrepresentation of First Nations children and young people in the justice system requires a focus on culturally safe and specialised legal assistance'.[100]

3.101 SNAICC submitted that current funding arrangements—under the National Legal Assistance Partnership 2020–25 (expiring on 30 June 2025)—restrict the accessibility of legal supports for Aboriginal and Torres Strait Islander children, young people and their families, including for the delivery of child and youth-focused services that are aligned with community need. It argued that 'children require consistent, high quality and culturally responsive legal representation at all stages of proceedings. Facilitating this requires investment in legal representation'.[101]

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99 SNAICC, *Submission 173*, p. 24.

100 See, for example: NLA, *Submission 172*, p. 9.

101 SNAICC, *Submission 173*, p. 25. Also see: AGD, 'National Legal Assistance Partnership 2020-25', www.ag.gov.au/legal-system/legal-assistance-services/national-legal-assistance-partnership-2020-25 (accessed 31 January 2025). Note: the successor to this partnership—the National Access to Justice Partnership 2025–30—commences on 1 July 2025: AGD, 'National Access to Justice Partnership 2025-30', www.ag.gov.au/legal-system/legal-assistance-services/national-access-justice-partnership-2025-30 (accessed 31 January 2025).

Chapter 4
Human rights compliance in the youth justice and detention system

4.1 Australia is a party to seven core United Nations (UN) treaties that protect human rights.[1] For children and young people involved in the child justice system, the primary treaty is the CRC, however, other international treaties and instruments also set out relevant rights.[2]

4.2 This chapter discusses some of the key human rights in the child justice system:

- articles 37, 39 and 40 of the CRC, as well as its Third Optional Protocol;
- article 2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and its Optional Protocol (OPCAT); and
- national compliance with human rights.

Convention on the Rights of the Child

4.3 The CRC is the most widely ratified human rights treaty in the world. It encompasses the full spectrum of human rights—civil, political, economic, social and cultural—as well as additional rights for children and young people, in recognition of their unique vulnerabilities and developing maturity and capabilities.[3]

4.4 In its recent report entitled *Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report), the Australian Human Rights Commission (AHRC) found:

> As a federation we have repeatedly ignored our national obligations under the *UN Convention on the Rights of the Child* [CRC]. We need to recognise the principles in the CRC as a compass to guide our policy decisions, for the wellbeing of Australia's children and the whole community.[4]

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1 Attorney-General's Department (AGD), *Submission 204*, [p. 3].

2 For a list of the key rights set out in the Convention on the Rights of the Child (CRC), and other relevant international human rights treaties and instruments, see: AHRC, '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report), Appendixes 1 and 2, pp. 160–162.

3 Australian Human Rights Commission (AHRC), *Submission 65*, p. 7. Note: Australia ratified the CRC on 17 December 1990.

4 AHRC, *Help way earlier!* report, 2024, p. 5.

4.5 The treaty has four core principles, including the 'best interests of the child' (article 3), and the right to survival and development (article 6).[5] It also sets out specific rights that submitters and witnesses identified as particularly relevant to the inquiry, including:

> Article 37
>
> States Parties shall ensure that:
>
> a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
>
> (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
>
> …
>
> Article 39
>
> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.
>
> Article 40
>
> 1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
>
> …
>
> 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as,

[5] AHRC, *Submission 65*, p. 7; UNICEF Australia, 'Convention on the Rights of the Child Simplified', www.unicef.org.au/convention-rights-child-summary (accessed 31 October 2024). Note: the other core principles are non-discrimination (article 2) and the views of the child (article 12).

> accused of, or recognized as having infringed the penal law, and, in particular:
>
> (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
>
> (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
>
> 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.[6]

No torture or other cruel, inhuman or degrading treatment or punishment

4.6 In 2019 the UN Committee on the Rights of the Child expressed its view on article 37(a) of the CRC, emphasising a number of principles and rules that must be observed in all cases of deprivation of liberty, including:

> (f) Restraint or force can be used only when the child poses an imminent threat of injury to himself or herself or others, and only when all other means of control have been exhausted.
>
> …
>
> (h) Solitary confinement should not be used for a child.[7]

4.7 Many submitters and witnesses asserted that harmful isolation and restraint practices are occurring throughout Australia's youth detention facilities (also see 'Abuse and mistreatment' in Chapter 2). Professor George Newhouse, Principal Solicitor and Chief Executive Officer of the National Justice Project (NJP), provided a current example:

> I'm fighting for two children that were locked up for 365 days in solitary confinement. The government of Western Australia has been fighting us for five years. They're using every tactic in the book to delay. This is part of the total institution: they don't want the public to know what happened to these children, and they will fight tooth and nail to defend themselves. But a Supreme Court judge…has already found that method of holding children in solitary to be unlawful [see paragraph 4.10]. They will lose in the end, but

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6 United Nations (UN), CRC, www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (accessed 31 October 2024).

7 UN Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, (CRC/C/GC/24), 18 September 2019, paragraph 95, www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child (accessed 31 October 2024). Also see: UN Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, 17 December 2015, Rule 44, p. 14, www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (accessed 31 October 2024), which defines 'solitary confinement' as 'confinement of prisoners for 22 hours or more a day without meaningful human contact'.

> they will fight for years to hide the horrors of what's going on in that institution.[8]

4.8 The Justice Reform Initiative supplied illustrations from around the country, including, for example, in Queensland:

> Queensland currently has three prisons for children, with Cleveland Youth Detention Centre in Townsville operating as the only centre located outside of Brisbane. Cleveland Youth Detention Centre in particular has received extensive public scrutiny regarding inhumane treatment of children (who are mostly First Nations children), with some describing the conditions 'like Guantánamo'. There have been widespread reports of children being locked in solitary confinement for extended and repeated periods, primarily as a result of staff shortages. This has resulted in reports of children being denied access to education, rehabilitation programs, and visits (including from service providers).
>
> In June 2023, it was reported that an Aboriginal child with an intellectual disability spent more than 744 days locked in solitary confinement for over 20 hours a day across the two years that they were remanded in the centre. This is just one of many reports of this kind – and these reports are not isolated to Cleveland. Queensland prisons separated [detained] children over 30,000 times in 2021-2022, and over 84% of children who staff separated were First Nations children.
>
> The human rights failures within the Queensland youth justice system extend well beyond the walls of Cleveland Youth Detention Centre. In March 2023, the Queensland Government made the decision to override the [*Human Rights Act 2019* (Qld)] for the first time since it has been in effect, to implement a raft of punitive changes including bringing in breach of bail as an offence for children.[9]

4.9 The Justice Reform Initiative also provided the following example of degrading treatment from the Baxter Youth Detention Centre (New South Wales):

> In 2021 the NSW Ombudsman expressed concern to the NSW Government that it was lawful in NSW youth prisons for prison staff to undertake fully naked strip searches of children and young people in prison. The Ombudsman furnished a special report to parliament detailing a 2019 case involving three children in a youth prison who were subjected to a full strip search in which they were made to completely undress and spread apart their buttocks. The strip searches occurred after Correctional Services NSW (CSNSW) took control of the Baxter Youth Detention Centre following a violent incident at the centre.
>
> The Ombudsman's report noted that a memorandum of understanding signed between Youth Justice and [CSNSW] allowed for those laws that only permitted partial strip searches to be circumvented. This had the effect of a youth prison becoming legally 'cloaked' as an adult prison when [CSNSW] officers have control of it. The Ombudsman recommended legislation to

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8 Professor George Newhouse, Principal Solicitor and Chief Executive Officer, National Justice Project (NJP), *Committee Hansard*, 3 February 2025, p. 57.

9 Justice Reform Initiative, *Submission 20*, p. 19.

> close this loophole to ensure that searches involve the least intrusive search method and involve the removal of no more clothing than is necessary. The NSW Government has refused to follow this recommendation.[10]

4.10 The Australian Human Rights Commission (AHRC) submitted that no jurisdiction prohibits solitary confinement. Further, although there are statutory limitations on the power to isolate a child in a detention facility, these protections vary by jurisdiction. Consequently:

> Official inquiries continue to find that children have been impacted by mistreatment in detention, including being subjected to prolonged isolation, across the nation. For example, in June 2022, the Western Australian Inspector of Custodial Services found that children detained in the Intensive Support Unit of Banksia Hill Detention Centre [BHDC] were often being held in conditions akin to solitary confinement and in breach of international human rights agreements. Due to staffing shortages, children were often locked into their cells for most of the day, preventing meaningful social interaction with peers and staff. They faced long periods of alone time in cells that are often in a poor state and are small. This typically led some children to act out and increasingly there were more incidents of children self-harming.
>
> On 11 July 2023, the Supreme Court of Western Australia ruled that three young people were unlawfully locked in their cells at Banksia Hill Detention Centre and Unit 18 at Casuarina Prison for prolonged periods, amounting to solitary confinement. The three children were held in these conditions for a combined total of 167 days in 2022. Justice Tottle found that subjecting children to solitary confinement frequently was not only inconsistent with the Western Australian child justice law, but also with basic notions of the humane treatment of young people, with the capacity to cause immeasurable and lasting damage to an already psychologically vulnerable group. It amounted to a systemic failure caused by a shortage of qualified staff, inadequate infrastructure and a consequent inability to manage detainees with difficult behavioural problems.[11]

4.11 Ms Shona Reid, Guardian for Children and Young People (SA), advised that, as an official Training Centre Visitor (TCV), she has witnessed the impacts of the custodial environment on children and young people at South Australia's Adelaide Youth Training Centre (also known as the Kurlana Tapa Youth Justice Centre), including a high incidence of self-harm:

> When a young person is heightened and distressed, it is not uncommon for those behaviours to spiral and be turned inward. In fact, 43% of incidents in 2022-23 involved a young person who either engaged in self-harm behaviour, or where the TCV identified a risk of self-harm through expressing ideation and/or other factors. This figure does not account for the self-harm behaviours and ideation in the lead up to incidents, nor self-harm

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[10] Justice Reform Initiative, *Submission 20*, p. 20.

[11] AHRC, *Submission 65*, p. 16. Also see: Chapter 2; Aboriginal Legal Service of Western Australia (ALSWA), *Submission 179*, pp. 19–21, which outlines the legislative requirements in Western Australia and supplies examples of custodial breaches.

> which staff have not formally recorded as an incident. It is clear that there is something wrong.[12]

4.12 The Australian Medical Association (AMA) stated that subjecting children and young people to extended periods of isolation in inadequate conditions is 'simply unacceptable':

> The solitary confinement of children has well-documented negative impacts on health, including psychological effects (anxiety, depression, hallucination, paranoia and suicidal tendencies), cognitive decline (memory problems, difficulty concentrating, confusion) and physical health issues (sleep disturbances, headaches, heart palpitations and the worsening of pre-existing health conditions). The AMA was horrified to hear of cases of children as young as 13 being held in solitary confinement for weeks in Cleveland [Youth] Detention Centre in Queensland, purely due to workforce shortages.[13]

4.13 Similarly, the Australian National Preventive Mechanism (ANPM) expressed concerns in relation to isolation practices that lead to severe limitations on meaningful human contact, quality time outside of cells, and access to education, healthcare and legal support:

> Compounding our concerns are the links between many uses of isolation and staffing shortages across facilities and jurisdictions. Insufficient staffing has led to increased time children are isolated in their cells – along with various other consequences such as impacting access to healthcare and other support services. Further exacerbating our concerns about the use of isolation is a lack of robust data – or other recordkeeping shortcomings – about the time children spend out of their cells, in lockdown, or experiencing other isolation practices. This impacts external oversight of these practices.[14]

4.14 The National Children's Commissioner, Ms Anne Hollonds, recommended that 'Australian governments legislate to prohibit solitary confinement practices in child detention facilities, and prohibit the use of isolation as punishment in any circumstance'.[15] National Legal Aid (NLA), among many others, endorsed this recommendation:

> To improve the outcomes and ensure the safety of children and young people who are given custodial sentences, governments should commit to:
>
> a. Prevention of harmful isolation and restraint practices, including prohibition of solitary confinement and the use of spit hoods.[16]

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12 Ms Shona Reid, Guardian for Children and Young People (SA), *Submission 207*, p. 25.

13 Australian Medical Association (AMA), *Submission 55*, p. 5.

14 Australian National Preventive Mechanism (ANPM), *Submission 109*, pp. 6–7.

15 AHRC, *Help way earlier!* report, 2024, Recommendation 19, p. 13.

16 National Legal Aid (NLA), *Submission 172*, p. 11.

Use of restraints or force

4.15 Stakeholders commented on the use of 'restraint or force' in youth detention facilities. The Aboriginal Legal Service of Western Australia (ALSWA) submitted that children and young people are often subject to the unreasonable use of force. Since 2021, ALSWA has made 35 such complaints about custodial officers in the BHDC and Unit 18: 'these complaints have related to the use of excessive physical force, chemical agents and restraint techniques such as a three-point restraint and the 'folding up' or figure-four hold'.[17]

4.16 The ALSWA provided illustrative examples of the use of unreasonable force, noting that Division 4 of Part 8 of the Young Offenders Regulations 1995 (WA) prescribes the use of force: it must be the minimum required to control a detainee's behaviour in the circumstances; and the circumstances must be that the detainee is presenting a risk of imminent physical injury to themselves or another person.[18] However:

> ALSWA has been instructed that [the] use of force occurs in other circumstances, for example if a young person has been disobedient or simply misbehaving. For example, when a young person refused to enter a cell in Unit 18 because the bedding was wet, the following occurred:
>
> > [He] instructs that the officers then pushed him to the ground. [He] was unable to prevent his head from hitting the floor because he was handcuffed. One officer…was on top of [him] and held his face against the floor…[His] arms had been pulled behind his back and other officers were holding him down by his legs. [He] was extremely worried that the officers might break his arm and he was screaming and crying in pain.[19]

4.17 ALSWA submitted that, in addition, custodial staff often use force against children and young people in degrading and inhuman ways:

> An example of this was outlined in a complaint in 2022 regarding a young person's treatment after a fire had started in one of the wings in Unit 18. The young person had subsequently been escorted outside into a concrete exercise yard, and the complaint read as follows:
>
> > The boys were all chained to each other in groups. [The young person] was chained to two other boys, at their ankles. [He] did not have a t-shirt on and so was bare-chested. One of the boys started walking away from the group, and an officer pushed him back. [The young person] was chained to this boy, and this push caused the boy to fall into [the young

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17 ALSWA, *Submission 179*, p. 21. Note: 'folding up', also known as a hogtie or 'figure four', is a form of restraint that involves a handcuffed person being forced onto their stomach, having their legs crossed behind them and then being sat upon.

18 Young Offenders Regulations 1995 (WA), regs 71 and 72.

19 ALSWA, *Submission 179*, p. 22 Also see: p. 23, where ALSWA noted that the use of force against children and young people, particularly the use of physical restraints, causes them significant distress, and sometimes leads them to self-harm.

> person] and then they all fell to the ground. An officer…took hold of [the young person's] handcuffs and dragged him across the concrete floor of the exercise yard. This caused [his] bare chest and back to be scraped and grazed on the concrete floor.[20]

4.18 The ALSWA summarised that 'the extent to which force is used against young people at BHDC and Unit 18 breaches their human rights', specifically in relation to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules).[21]

4.19 The Jumbunna Institute for Indigenous Education and Research (Jumbunna), a member of the National Ban Spit Hoods Coalition, expressed concern about the use of spit hoods in several jurisdictions, with a specific focus on the Don Dale Youth Detention Centre (Don Dale) in the Northern Territory:

> The Royal Commission into the Protection and Detention of Children in the Northern Territory…was sparked by damning visuals exposed in a Four Corners report in 2016. They showed a 13-year-old Aboriginal boy in [Don Dale] strapped to a chair and wearing a spit hood allegedly for almost two hours. Several other young people in Don Dale were similarly hooded, with brute force.
>
> The Royal Commission made 147 findings and 227 recommendations, including banning the use of spit hoods and outlawing their practice, which the Labor NT Government agreed to do following the inquiry. However, they failed to do so, with the newly-elected [County Liberal Party] NT Government overturning a policy ban this year.[22]

4.20 Similarly, the NT Council of Social Service submitted:

> The degree of non-compliance in NT prison and detention centres with the human rights of children and young people in detention is well documented. This month, regressive changes are due to be made in NT law that will increase non-compliance with human rights. The recently elected NT government has indicated an intention to lower the age of criminal

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20 ALSWA, *Submission 179*, p. 23.

21 ALSWA, *Submission 179*, p. 23. Also see: UN Office on Drugs and Crime, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 14 December 1990, www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf (accessed 31 January 2025), which sets out minimum standards accepted by the UN for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, to counteract the detrimental effects of all types of detention and to foster integration in society (paragraph 3).

22 Jumbunna Institute for Indigenous Education and Research (Jumbunna), *Submission 181*, p. 15, which noted that the UN Special Rapporteur on Torture, Dr Alice Edwards, has described the use of these hoods as 'inherently cruel, inhumane or degrading': p. 14. Also see: Ban Spit Hoods Coalition, 'A future without spit hoods. Everywhere, for everyone', https://banspithoods.com (accessed 31 January 2025).

> responsibility back to 10 years of age and re-introduce spit hoods in NT youth detention centres.[23]

4.21 NLA highlighted that 'the use of spit hoods creates a significant risk of injury or death to the wearer, with spit hoods implicated in numerous deaths in custody'. It added that the AHRC has successfully campaigned for a prohibition on the use of spit hoods in some jurisdictions (New South Wales and South Australia).[24]

Detention only as a measure of last resort and for the shortest appropriate time

4.22 In 2019 the UN Committee on the Rights of the Child reiterated:

> The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and for the shortest appropriate period of time[.][25]

4.23 Several submitters and witnesses commented upon article 37(b) of the CRC, the principle of which is also reflected in the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).[26] They noted the number of children and young people in detention, which, they argued, is not in the child's best interest (article 3 of the CRC). NLA reiterated that 'detention is damaging and criminogenic, serving to entrench young people further in disadvantage'.[27]

4.24 Stakeholders also remarked upon the number of children and young people awaiting trial or sentencing (unsentenced detention, also called remand) (see Figures 1.3 and 4.1).[28]

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23 Northern Territory Council of Social Service, *Submission 126*, pp. 5–6.

24 NLA, *Submission 172*, p. 11.

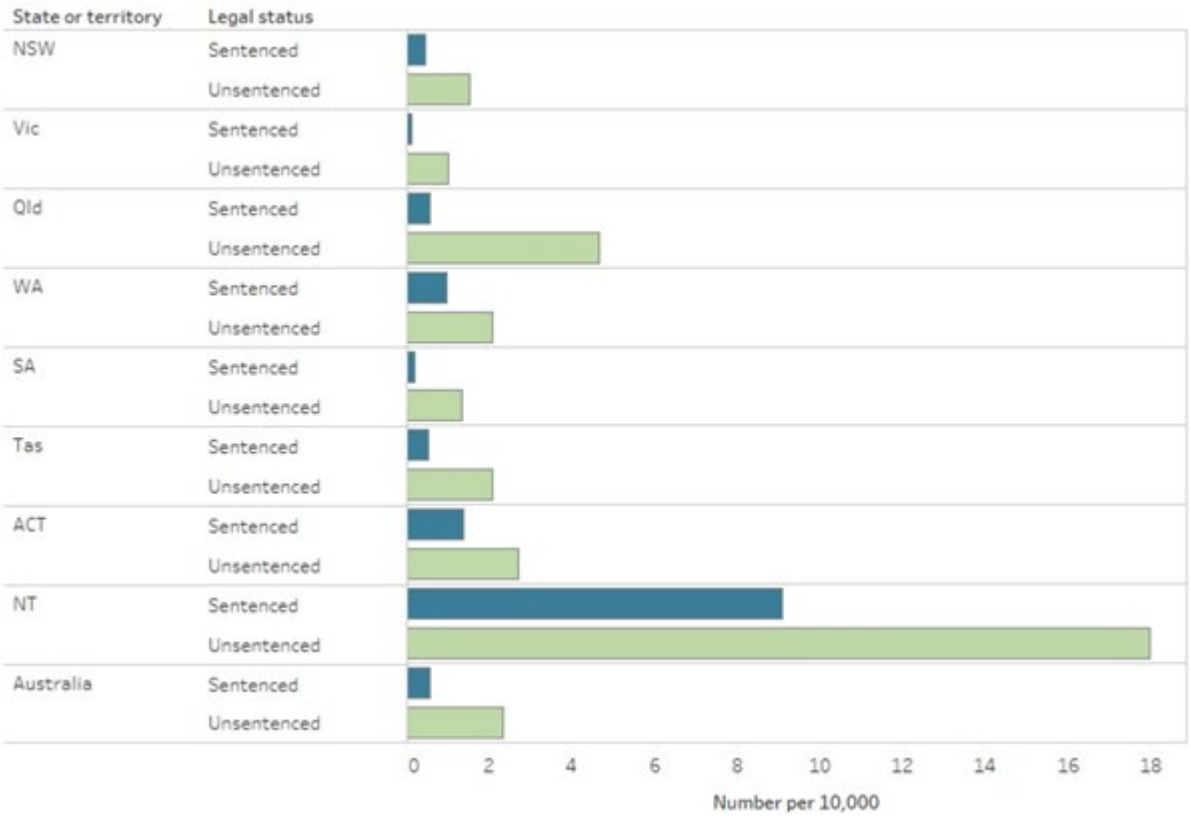
25 UN Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, (CRC/C/GC/24), 18 September 2019, paragraph 85.

26 Office of the High Commissioner for Human Rights, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf (accessed 31 January 2025), which sets out for Member States minimum standards for the handling of juvenile offenders under any definition of a 'juvenile' and under any system of dealing with juvenile offenders (Commentary, Rule 2).

27 NLA, *Submission 172*, p. 8.

28 See, for example: AHRC, *Submission 65*, p. 13; Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 8.

Figure 4.1 Young people in detention on an average day, by legal status and jurisdiction, 2022–23 (rate)



Source: Australian Institute of Health and Welfare, Youth justice in Australia 2022–23, Web report, 28 March 2024, p. 27.

4.25 In relation to the young people awaiting trial, the Justice Reform Initiative emphasised:

> These are children who have not yet been found guilty of the criminal offence with which they have been charged. Remanding a young person in custody is a serious decision that interferes with that young person's right to liberty, the right to the presumption of innocence and the right not to be punished prior to a finding of guilt.[29]

4.26 SNAICC—National Voice for our Children (SNAICC) noted the disproportionate number of Aboriginal and Torres Strait Islander children and young people in unsentenced detention:

> …nearly three out of five are Aboriginal or Torres Strait Islander. Of these children, around 60% are released on bail back into their communities. On 2021-22 data, 38% of children complete their remand period, of which only 20% are ultimately sentenced by a court to a period of imprisonment.[30]

4.27 For further context, Ms Catherine Liddle, Chief Executive Officer of SNAICC, referenced client information received from the North Australian Aboriginal

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29 Justice Reform Initiative, *Submission 20*, p. 55.

30 SNAICC—National Voice for our Children (SNAICC), *Submission 173*, pp. 21–22.

Justice Agency (NAAJA): 'unpublished data from the [NAAJA] shows that the average child on their case load spends 197 days on remand before they reach their 14th birthday'.[31]

4.28 SNAICC contended that the child justice system excessively uses remand for First Nations children and young people:

> This is both a violation of their right not to be punished prior to a finding of guilt and risks entrenching children in child justice systems. The overuse of remand is sometimes predicated on unrealistic expectations that remanding child offenders will mitigate risks to the safety of the community, or in some cases the victims of offenses. Actually, there is little evidence that the systematic denial of bail leads to improved community safety or protection.[32]

4.29 The Law Council of Australia (Law Council) commented that one fundamental reason for children and young people being remanded into detention is that 'they have no safe place to live while on bail and there is no appropriate alternative bail accommodation at which to stay'.[33]

4.30 NLA and Legal Aid NT representative Mr Nick Espie considered whether an Aboriginal community-controlled detention home would be a suitable alternative to youth detention facilities where there a responsible adult or carer could not be found:

> …there's a lot to be said for resourcing programs in various community settings in relation to responsible parenting. It's a reminder that, for a huge number of children in the criminal justice system, their responsible parent is the state or territory government, because they're often children in care, and it's quite often those children who are falling through the gaps even further, and those programs and support services are simply inadequate…[T]he answer to building those supports and those programs, certainly in the Territory and, I'd say, in most other jurisdictions, is resourcing and funding the Aboriginal community controlled sector…[W]e see funding shifting and changing…[W]hat generally happens is courts and other services look around for adequate supports. The cost then gets shifted to the Aboriginal community-controlled sector, which retrofits their programs to support the significant gaps that exist. Those costs often shift not only to community-controlled organisations but to Aboriginal communities themselves. Community members, distant relatives, et cetera will often utilise their own resources and supports…not because it's their parental responsibility but

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31 Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 31.

32 SNAICC, *Submission 173*, [p. 21]. Also see: 'Systemic racism' in Chapter 3.

33 Law Council of Australia (Law Council), *Submission 195*, p. 11. Also see: North Australian Aboriginal Justice Agency (NAAJA), *Submission 149*, p. 6.

> because it's a community member…That's where we need family support programs with additional funding.[34]

4.31 As noted earlier in this report (paragraph 2.79), some submitters supported well-resourced Bail Support Programs as a diversionary alternative to (unsentenced) detention. NLA, for example, suggested:

> Holistic, legislated bail support programs that provide intensive case management for children and young people at risk of being remanded in custody should be implemented, with supports including crisis and supported accommodation, disability and mental health services, and drug and alcohol treatment. Services and programs should be delivered in a culturally safe manner, and where possible First Nations children and young people should be supported by [Aboriginal Community Controlled Organisations, ACCOs].[35]

4.32 However, as noted by the NLA and Legal Aid NT representative, Ms Jane Irwin, bail accommodation is far from properly resourced, especially in the Northern Territory:

> We have a facility called First Step in Darwin; there are only 10 beds at First Step. It's the only supported bail accommodation in Darwin, and there's no access for girls. For young women or girls who have allegedly offended, there's Saltbush in Alice Springs, but, again, it has only 10 beds and it's currently full. There's BushMob in Alice Springs with 10 beds as well. There's nothing in Katherine. There's a new facility that has just started in Tennant Creek, with six beds. So there are not many beds at all.
>
> We have, in Darwin, the Holtze detention centre, the new facility; that has 52 beds and is at capacity...Partly, that has come out of them closing the Alice Springs Youth Detention Centre because of the surge in custody numbers in terms of adults. So they're closing that detention centre for children and opening it for women in Alice Springs and moving all the children from Alice Springs and the Barkly 1,500 kilometres away—away from traditional lands, community and family—to Darwin, to the Holtze Youth Detention Centre.[36]

Bail and minimum sentencing laws

4.33 Figure 4.1 shows that, in 2022–23, the rate of children and young people in unsentenced detention was higher than the rate for those in sentenced detention in all jurisdictions. The Northern Territory had, on an average day, the highest rates of youth in sentenced and unsentenced detention (9.1 and 18 per 10 000,

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[34] Mr Nick Espie, First Nations Advisory Group and Criminal Law Network Representative, NLA and Associate Director, Client Services, Legal Aid NT, *Committee Hansard*, 3 February 2025, pp. 73–74.

[35] NLA, *Submission 172*, p. 11.

[36] Ms Jane Irwin, Criminal Law Network representative, NLA and Associate Director, Criminal Law, Legal Aid NT, *Committee Hansard*, 3 February 2025, pp. 74–75.

respectively), followed by Queensland (0.6 and 4.6 per 10 000 respectively). Victoria had the lowest rates (0.1 and 1.0 per 10 000, respectively).[37]

4.34 Speaking to the rates in the Northern Territory, the Children's Commissioner (NT), Ms Shahleena Musk commented:

> It's clear the Northern Territory youth justice system is geared more towards incarcerating children than investing in earlier supports and interventions, diversionary and restorative justice programs, and accommodation and rehabilitative alternatives. What is happening here in the Northern Territory reflects the politicisation of youth crime and anti-social behaviour by children on the back of hypervigilant and sensationalist media and social media reporting that is too often framed in stereotypical and derogatory narratives about Aboriginal children.[38]

4.35 Ms Musk added:

> It seems to me that there's a perception that Aboriginal people, particularly Aboriginal children, do not have human rights. It's up to the Commonwealth, which is a signatory to these United Nations conventions, to honour those and to take action in both laws and policies and in holding state and territory governments to account to ensure that we can all realise our human rights and that they are all protected and respected within our jurisdictions.[39]

4.36 The AHRC submitted that article 37(b) of the CRC and ongoing efforts to reduce youth incarceration are undermined by restrictive bail laws directed at children and young people who offend. It particularly noted:

> In Queensland, the government passed laws in 2023 to make breach of bail a criminal offence and other changes aimed at reducing serious offending. This move was criticised by youth advocates, the Queensland Human Rights Commissioner and others for posing a risk of greater numbers of young people in detention, with little improvement of community safety. Further, on 1 May 2024, the Queensland Government introduced amendments to its Charter of Youth Justice Principles that would replace the words 'detention as a last resort' with alternative wording. These proposed amendments have been criticised.[40]

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37 Australian Institute of Health and Welfare, *Youth justice in Australia 2022–*23, Web report, 28 March 2024, p. 26.

38 Ms Shahleena Musk, Children's Commissioner (NT), *Committee Hansard*, 3 February 2025, p. 3. Also see: Professor George Newhouse, Principal Solicitor and Chief Executive Officer, NJP, *Committee Hansard*, 3 February 2025, pp. 56–57, who commented similarly in relation to Western Australia.

39 Ms Shahleena Musk, Children's Commissioner (NT), *Committee Hansard*, 3 February 2025, p. 9.

40 See, for example: AHRC, *Submission 65*, p. 14; Sisters Inside and National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, p. 5.

4.37 In another example, NAAJA stated that punitive bail laws in the *Bail Act 1982* (NT) and the *Youth Justice Act 2005* (NT) have led to the overincarceration of children and young people:

> The *Youth Justice Legislation Amendment Act 2021* (NT):
>
> - removed the presumption of bail for certain prescribed serious offences (including unlawful entry and unlawful use of a motor vehicle)
> - prescribed breaches of bail conditions relating to curfews and electronic monitoring devices as 'serious breaches of bail'
> - required the revocation of bail with limited judicial discretion following serious bail breaches
> - required breaches of bail to be considered during sentencing (collectively, Bail Reforms).
>
> These amendments had an immediate impact on youth incarceration numbers in the Northern Territory, causing a 56% increase in the average daily number of young people in detention in their first year of operation. Overall, the Bail Reforms have led to a 30% rise in the number of young people in detention over the last five years, with Aboriginal children faring the worst.[41]

4.38 SNAICC argued that bail and remand laws, as well as sentencing practices and policies, must be reformed to give effect to the principle of detention as a last resort:

> SNAICC calls for a concerted, national approach to reforming all bail and remand laws and practices to unequivocally privilege the presumption of bail in all cases, and the use of remand only in exceptional circumstances. Self-determination and considerations of the health and wellbeing needs of the child, the family and the community should sit at the centre of bail, remand and sentencing decisions, allowing communities to decide how best to support their children.[42]

4.39 Similarly, the National Aboriginal and Torres Strait Islander Legal Service (NATSILS) called on Australian governments to urgently reform their bail and remand frameworks to ensure that they are evidence-based and address the holistic needs of children and young people. It added that these reforms must be designed in consultation with First Nations people and give effect to targets within the National Agreement on Closing the Gap (the National Agreement):

> Governments must collaborate with Aboriginal and Torres Strait Islander communities and [Aboriginal and Torres Strait Islander Legal Services] to design these reforms, ensuring that they are aligned with Closing the Gap

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41 NAAJA, *Submission 149*, p. 4.

42 SNAICC, *Submission 173*, [p. 22]. Note: the submission suggested five specific sentencing principles. Also see: Justice Reform Initiative, *Submission 20*, Position Paper, pp. 5–6.

> targets and the broader aim of reducing youth incarceration. These will need to be place-based and ensure self-determination.[43]

4.40 The AHRC warned that mandatory minimum sentencing laws can also undermine the principle of detention as a last resort:

> The UN Committee on the Rights of the Child has repeatedly raised concerns about their application to children in the Northern Territory and Western Australia. The Northern Territory has since repealed many of its provisions, but in Western Australia, minimum mandatory sentences for certain offences still apply to children.[44]

4.41 The Attorney-General's Department (AGD) submitted that the Australian government has provided national leadership and coordination through the Standing Council of Attorneys-General (SCAG). Specifically in relation to bail and remand reform, AGD stated:

> On 23 February 2024, SCAG asked the [Joint Policy Partnership, JPP] to consider and provide advice on bail and remand reform, recognising the significant impact that remand has on the overrepresentation of Aboriginal and Torres Strait Islander adults and children in the criminal justice system. A bail and remand report was provided by the JPP to SCAG in June 2024, and SCAG agreed to establish a Bail and Remand Working Group to consider the JPP's recommendations. The Commonwealth will lead the Working Group, which will include representatives of the JPP and will report-back to SCAG within 12 months.[45]

4.42 At its 22 November 2024 meeting, SCAG agreed to discuss bail and remand at its next meeting.[46] As at the time of writing, this meeting has not occurred. However, Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division at the AGD, provided the inquiry with the following update:

> The working group has met twice now, and it is working through a range of issues around bail and remand, recognising that bail and remand and the laws, policies and practices in place within all jurisdictions do have an impact on incarceration rates, particularly of Aboriginal and Torres Strait Islander people and children—it's not just specific to children. The working group will report back to SCAG in mid-2025. I'm co-chairing that working group, along with NATSILS. We're in the early stages, but there are a lot of considerations that we're taking into account to report back to SCAG. Each jurisdiction is represented on that working group and will contribute to the

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43 National Aboriginal and Torres Strait Islander Legal Service (NATSILS), *Submission 202*, p. 9.

44 AHRC, *Submission 65*, p. 14, which argued that mandatory minimum sentencing also contravenes the principle of proportionality in article 40 of the Convention on the Rights of the Child. Also see: ALSWA, *Submission 179*, p. 44.

45 AGD, *Submission 204*, [p. 4].

46 Standing Council of Attorneys-General (SCAG), *Communiqué*, 22 November 2024, p. 2.

> recommendations in that report…But, as with minimum age, it is a matter for each jurisdiction how they ultimately legislate.[47]

Right to have age taken into account

4.43 The UN Committee on the Rights of the Child expressed its view on the treatment and conditions for children and young people deprived of their liberty under article 37(c) of the CRC, including:

> Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – "unless it is considered in the child's best interests not to do so" – should be interpreted narrowly and the convenience of the States parties should not override best interests. States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.[48]

Queensland watchhouses

4.44 Submitters and witnesses argued that children and young people have been detained in adult facilities, which are fundamentally unsuitable for youth detention. Three particular institutional settings were commonly cited: Unit 18 at the Casuarina Prison (Western Australia), and the Cairns and Murgon watchhouses (Queensland).[49] This section of the chapter focuses on the watchhouses.

4.45 The National Children's Commissioner advised that, during her recent inquiry (see Chapter 1), she visited youth detention facilities across the country, including Queensland watchhouses:

> …I was assisted by the Queensland Human Rights Commission to make contacts in Queensland. I found that the [Queensland Police Service was] very co-operative. The police are running [the watch houses]. I was able to visit several of them, and I cannot stress more strongly how appalling they were. I had seen a lot of children's prisons by that point. I felt warm towards them after I had seen the watch houses. No child, I don't think, should be in those at all. We shouldn't have them in there at all. Yet, I was told [children]

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47 Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, AGD, *Committee Hansard*, 3 February 2025, p. 90.

48 UN Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, (CRC/C/GC/24), 18 September 2019, paragraph 92.

49 See, for example: SNAICC, *Submission 173*, [p. 27].

> were often there for six weeks at a time. It's not acceptable in a country as rich as Australia.[50]

4.46 In 2024, the Inspector of Detention Services (Queensland), Mr Anthony Reilly, inspected the Cairns and Murgon watchhouses, with his report tabled in the Queensland Parliament on 11 September 2024. He briefly explained:

> Watch-houses, which are operated by the Queensland Police Service, are intended to be used for the short-term detention of a person prior to them being granted bail or being transferred to a youth detention centre or prison. However, watch-houses in Queensland are now used to detain children for lengthy periods of time.[51]

4.47 Ms Natalie Lewis, Commissioner for the Queensland Family and Child Commission, acknowledged the increasing number of children and young people being held in watchhouses for more than 24 hours:

> We are seeing children and young people being placed in watch houses, when it is their first interaction with the system, because of the presumption against bail. So it is not that the laws are playing out and focusing on serious repeat offenders, which is how a lot of those things are marketed. Many of the children that are sitting in watch houses have never been there before. So the disincentive that that provides in terms of helping kids to reintegrate—because they're kind of feeling, 'I've seen the worst of the worst of it now'—is incredibly harmful. It is an absolute impediment to the reintegration of children and young people…[T]o think that we have 10-year-olds in [watchhouses] in Queensland—where it is now lawful to place a child in a watch house for an indefinite period of time, at the sole discretion of the director-general for that department—should alarm the Commonwealth.[52]

4.48 Mr Reilly made numerous findings in relation to whether watchhouses were keeping children safe and unharmed, and treating them humanely. His report expressed multiple concerns, including, for example, the suitability of the infrastructure (Figures 4.2 and 4.3), the approach for managing at-risk children

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50 Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 79.

51 Inspector of Detention Services, Office of the Queensland Ombudsman, *Cairns and Murgon watch-houses inspection report: Focus on detention of children*, 11 September 2024, www.ombudsman.qld.gov.au/ArticleDocuments/591/Cairns%20and%20Murgon%20watch-houses%20inspection%20report%20-%20PUBLIC.PDF.aspx?embed=Y (accessed 31 January 2025). Also see: State of Queensland, Queensland Family and Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*, November 2023, www.qfcc.qld.gov.au/sites/default/files/2023-12/FINAL%20-%20Watchhouse%20Review%20-%20Who%27s%20Responsible%20-%20November%202023.pdf (accessed 31 January 2025).

52 Ms Natalie Lewis, Commissioner, Queensland Family and Child Commission, *Committee Hansard*,3 February 2025, p. 9.

and young people, and staff guidance and training for managing behavioural issues.[53]

Figure 4.2 Cairns Watchhouse, Boys' Unit, Accommodation Cells

Source: Inspector of Custodial Detention, Office of the Queensland Ombudsman, Cairns and Murgon watch-houses inspection report: Focus on detention of children, 11 September 2024, p. 24.

Figure 4.3 Cairns Watchhouse, Outdoor Exercise Yard

Source: Inspector of Custodial Detention, Inspector of Custodial Detention, Office of the Queensland Ombudsman, Cairns and Murgon watch-houses inspection report: Focus on detention of children, 11 September 2024, p. 29.

4.49 Sisters Inside and the National Network of Incarcerated and Formerly Incarcerated Women & Girls commented upon the effects of 'imprisoning' children and young people in watchhouses:

> Watchhouses are not designed to cage children, and the impacts of these containments are devastating. In watchhouses, children are denied privacy, subjected to strip searches, and often placed in isolation for extended periods under the guise of 'safety.' These conditions lead to significant psychological and physical harm, with numerous reports of suicidal ideation and attempts by children incarcerated in such facilities. Moreover, watchhouses are not meant for extended stays, yet children can be contained

[53] Inspector of Detention Services, Office of the Queensland Ombudsman, *Cairns and Murgon watch-houses inspection report: Focus on detention of children*, 11 September 2024.

> in them for weeks, sometimes months, [causing] and exacerbating their mental health issues. Reports of neglect and violence, including the excessive use of force by police officers, are widespread. These conditions reflect a fundamental neglect of the state's duty to care for the children in their care, placing the children at immense risk of lifelong trauma.[54]

4.50 Anglicare Southern Queensland, which supports children and young people in watchhouses, submitted that its experience supports the findings of the Inspector of Detention Centres (Queensland):

> Staff acknowledge that many watch-house police officers are doing 'the best they can' in a very difficult environment designed for adults, with little or no specialist training. They have no capacity to simultaneously address complex behaviours in adults as well as children, who are often held within sight and/or sound of each other; nor the trauma that exposure to long hours of adult trauma (eg screaming), inactivity, rigid routines, and confinement in a 'scary' space separated from families or friends can have on a child, particularly those children with intellectual or other disabilities.[55]

4.51 As noted by the Justice Reform Initiative (paragraph 4.8), the Queensland Government has passed legislation 'to further legitimise and expand this practice'.[56] The Queensland Family and Child Commission considered that a spike in youth crime could not possibly justify suspension of the *Human Rights Act 2019* (Qld):

> Suspending state based human rights legislation and limiting the rights of children is a serious decision that must also pass the test of being reasonable, necessary and proportionate...[The suspensions] stand as examples of the most senior governance body in Queensland introducing ever more punitive approaches to dealing with a cohort of children that is known to have high levels of poor health and disability, poor schooling and contact with the child protection system. The roughly 50% of children in youth justice with a diagnosed health issue or disability (the true number may be higher) is an ongoing human rights violation that is further compounded by keeping these young people in custody where they may be harmed further.[57]

4.52 The AHRC highlighted that, on ratification of the CRC, Australia lodged a reservation to article 37(c), stating that it could not comply 'having regard to the geography and demography of Australia'. SNAICC, the Law Council and the AHRC all rejected this rationale, with the latter highlighting:

> …the UN Committee has pointed out that the Australian Government's concerns are already taken into account by the article, which states that

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54 Sisters Inside and the National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, p. 2. Also see: Justice Reform Initiative, *Submission 20*, p. 22.

55 Anglicare Southern Queensland, *Submission 112*, p. 13. Also see: AHRC, *Submission 65*, p. 15.

56 Justice Reform Initiative, *Submission 20*, pp. 19 and 23. Also see: Anglicare Southern Queensland, *Submission 112*, p. 8.

57 Queensland Family and Child Commission, *Submission 160*, pp. 6–7.

> incarceration with adults is prohibited unless it is considered in the child's best interests not to do so and also that a child shall have the right to maintain contact with his or her family.
>
> By removing the reservation to Article 37(c), the Australian Government would signal to the states and territories that it is serious about meeting its obligations under the CRC, and that detaining children in facilities designed for adults is unacceptable.[58]

Minimum age of criminal responsibility

4.53 The UN Committee on the Rights of the Child has encouraged States parties, in compliance with article 40(3)(a) of the CRC, to increase their minimum age of criminal responsibility to at least 14 years without exception. It noted that, while many States have raised the age and mostly commonly to 14 years, there are some States with 'an unacceptably low minimum age of criminal responsibility':

> Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. As the Committee notes in its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.[59]

4.54 In Australia, the age of criminal responsibility in all jurisdictions is 10 to 12 years, with three states and territories having committed to raising the age within the next five years (see Table 4.1).

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[58] AHRC, *Submission 65*, p. 15. Also see: SNAICC, *Submission 173*, [pp. 27–28]; Law Council, *Submission 195*, p. 38; AHRC, *Help way earlier!* report, 2024, Recommendation 18.

[59] UN Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, (CRC/C/GC/24), 18 September 2019, paragraphs 21–22.

Table 4.1 Status of the age of criminal responsibility in Australia, as at 21 October 2024

Jurisdiction	Minimum age of criminal responsibility	Further details
Commonwealth	10 years	No public commitments.
Australian Capital Territory	12 years	After 1 July 2025 this will rise to 14 years with exceptions for listed 'serious offences' including murder.
New South Wales	10 years	No public commitments.
Northern Territory	10 years	New government lowered from 12 years.
Queensland	10 years	No public commitments.
South Australia	10 years	Proposal to raise the age to 12 has undergone public consultation, outcome not yet announced.
Tasmania	10 years	Committed to raise age to 14 by 2029.
Victoria	10 years	By 30 September 2025 this will rise to 12 years. Previous commitment to raise age to 14 years has been dropped.
Western Australia	10 years	No public commitments.

Source: The Australia Institute, Submission 2, p. 2 [updated by the secretariat].

4.55 Table 4.1 shows a degree of national consistency, with most jurisdictions having legislated 10 years as the minimum age of criminal responsibility. Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA) voiced strong concerns that children as young as 10 years old are being incarcerated, contrary to human rights standards and the determination made by the UN Committee on the Rights of the Child.[60]

4.56 In this respect, Mr Greg McIntyre SC, Member of the National Human Rights and Indigenous Legal Issues Committees of the Law Council, observed that, at

[60] Australian and New Zealand Children's Commissioners, Guardians and Advocates, *Submission 74*, p. 2.

present, all states and territories have adopted a measure that is inconsistent with Australia's international law obligation.[61]

4.57 Ms Julie Hourigan, Chief Executive Officer of SHINE of Kids, stated:

> …we're fundamentally misunderstanding that these are children…Yes, sometimes kids do bad things and make bad decisions, but these are kids. We have to make sure that our system responds to them as children and has age-appropriate responses in place that are responsible and able to support a kid to make better decisions, move forward in their life and not be branded forever as 'the bad kid'.[62]

4.58 The ANPM succinctly encapsulated the common view throughout submissions and evidence:

> The minimum age of criminal responsibility should be set at 14 years, across the country, and without exceptions. Consideration should also be given to ceasing the detention of children and young people aged under 16.[63]

Earlier investigations and efforts

4.59 In 2020 the #Raise The Age campaign was created by a coalition of Aboriginal and Torres Strait Islander organisations and legal, medical and human rights groups, to advocate for legislative reform aimed at ensuring that children under 14 years cannot be incarcerated.[64]

4.60 Many of these organisations submitted to the inquiry. In particular, the AMA noted that the #Raise The Age campaign had provided expert advice and recommendations to the Age of Criminal Responsibility Working Group (the Working Group) for the Council of Attorneys-General (CAG, the predecessor to the SCAG).[65]

4.61 The Working Group supported raising the minimum age of criminal responsibility to 14 years of age without exception.[66] However, its draft report was never agreed by all jurisdictions at officer level and the draft report was not

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61 Mr Greg McIntyre SC, Member, National Human Rights and Indigenous Legal Issues Committees, Law Council, *Committee Hansard*, 3 February 2025, p. 63.

62 Ms Julie Hourigan, Chief Executive Officer, SHINE for Kids, *Committee Hansard*, 3 February 2025, p. 26.

63 ANPM, *Submission 109*, p. 8. Also see, for example: NATSILS, *Submission 202*, p. 12.

64 #Raise The Age, 'About The Campaign', https://raisetheage.org.au/campaign (accessed 31 October 2024). Note: these organisations include NATSILS, Change the Record, the Human Rights Law Centre, Law Council, Amnesty International Australia, AMA, the Public Health Association of Australia and the Royal Australasian College of Physicians.

65 See, for example: AMA, *Submission 55*, p. 2.

66 Council of Attorneys-General, Age of Criminal Responsibility Working Group, *Draft Final Report 2020*, Recommendation 1, p. 5.

provided to the CAG for consideration. According to the Commonwealth Attorney-General, the Hon Mark Dreyfus KC MP:

> The 2020 Draft Report gave detailed consideration to the existing legal and policy framework and the reforms that could be considered to raise the age of criminal responsibility. However, the Working Group identified the need for further work to occur regarding the need for adequate supports and services for children who exhibit offending behaviour.[67]

4.62 At its 22 September 2023 meeting, the SCAG Working Group reported to the Attorneys-General, outlining a principles-based framework for jurisdictions to consider for raising the minimum age of criminal responsibility:

> [Participants] agreed to consider the report and return to the December meeting of the [SCAG] with a position or update on minimum age of criminal responsibility reform in their jurisdiction. Participants agreed-in-principle that the Working Group's report would be released publicly after Attorneys-General have given it further consideration at the December meeting.[68]

4.63 At the 1 December 2023 meeting, SCAG participants noted the positions and updates on reform in each jurisdiction, and agreed to share future updates. In addition, as noted by the AGD in its submission:

> …an Age of Criminal Responsibility Community of Practice has been established with all jurisdictions to share lessons and cross-jurisdictional matters related to Minimum Age of Criminal Responsibility reform.[69]

4.64 Apart from receiving updates from jurisdictions, the SCAG did not discuss minimum age of criminal responsibility reform throughout 2024.[70] The AMA reflected that, to date, 'no collective action has been taken' and 'sadly, the issues surrounding youth justice are influenced by a lack of government leadership at a federal level and jurisdictional party politics'.[71]

4.65 Ms Annmarie Lumsden, Director at NLA, was one of several stakeholders to note that Australian governments have failed to progress and even reversed reform in this area: 'several jurisdictions have made policy changes that undermine this priority and have moved further away from a national agreement to raise the age'.[72]

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67 Hon Mark Dreyfus KC MP, Attorney-General, 'Standing Council of Attorneys-General communiqué', *Media Release*, 9 December 2022.

68 SCAG, *Communiqué*, 22 September 2023, p. 2.

69 AGD, *Submission 204*, [p. 4]. Also see: SCAG, *Communiqué*, 1 December 2023, p. 2.

70 See: SCAG, *Communiqué*, 23 February 2024, 5 July 2024 and 22 November 2024.

71 AMA, *Submission 55*, p. 2.

72 Ms Annmarie Lumsden, Director, NLA, *Committee Hansard*, 3 February 2025, p. 69.

4.66 Ms Bogaart from the AGD, clarified, however, that the SCAG did not commit to raising the minimum age of criminal responsibility:

> The report was to provide a framework for jurisdictions for their decision-making around raising the minimum age of criminal responsibility and the principles and factors they needed to take into account when and if their governments made decisions about raising the age. It doesn't recommend that the age be raised; it recommends how governments may go about raising the age—if they make that decision—within each jurisdiction, which is a matter for each jurisdiction.[73]

Ongoing support based on age appropriateness and vulnerability

4.67 In the *Help way earlier!* report, the National Children's Commissioner recommended, among other things, that Australian governments raise the minimum age of criminal responsibility in all jurisdictions to 14 years.[74]

4.68 Many stakeholders endorsed this recommendation.[75] ANZCCGA stated that raising the minimum age of criminal responsibility should not be regarded as reducing accountability for children who engage in criminal offending or other anti-social behaviours: 'instead, socio-educational pathways to accountability and rehabilitation within a family setting exist and have been shown to have positive outcomes'.[76]

4.69 SNAICC emphasised the view of Aboriginal and Torres Strait Islander peoples, who, rather than introducing children and young people into the child justice system, preference family and community support for developing and vulnerable young people:

> Criminal incarceration should not be a feature of any childhood. Children under the age of 14 are still undergoing formative phases of growth and development. Medical scientific evidence shows that a child's cognitive development is still ongoing at the age of 14. As their brains are still developing, a child's cognitive immaturity before the age of 14 can lead them to act impulsively and affect their reasoning about and reckoning with potential consequences. A number of children below the age of 14 in child justice systems have complex needs, including mental health concerns, cognitive or intellectual disabilities and/or developmental delay, behavioural difficulties, histories of trauma and/or mistreatment, lack of secure housing and drug and alcohol use. These children require access to holistic supports that address their needs. These supports are not adequately provided through the child justice system, with evidence highlighting that

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73 Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, AGD, *Committee Hansard*, 3 February 2025, p. 89.

74 AHRC, *Help way earlier!* report, 2024, Recommendation 20, p. 13.

75 See, for example: National Association for Prevention of Child Abuse and Neglect, *Submission 66*, [p. 2]; Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 8; Australian Youth Affairs Coalition, *Submission 156*, pp. 5–6; NLA, *Submission 172*, pp. 9–10.

76 ANZCCGA, *Submission 74*, p. 2.

> contact with the child justice system, particularly youth detention, exacerbates these challenges rather than providing a response.[77]

4.70 SNAICC suggested that raising the minimum age of criminal responsibility would likely reduce the over-representation of Aboriginal and Torres Strait Islander children in detention. It reiterated that First Nations children (aged 10–13) are disproportionately affected by the low age of criminal responsibility (see Chapter 2), and their incarceration is counterproductive to community safety:

> …there is no evidence to suggest that a minimum age of criminal responsibility as young as 10 years of age will lead to safer communities. In fact, this is likely to have the opposite effect. Incarceration is 'criminogenic'; imprisonment at any point in a child's life increases their chances of future contact with the justice system. The younger a child is incarcerated, the more likely they are to have contact with the justice system again.[78]

4.71 SNAICC urged the Australian government to develop and lead a national plan of action to raise the minimum age of criminal responsibility to 14 years across all jurisdictions.[79]

4.72 The Australia Institute advised that, in 2020, it collaborated with Change the Record to survey a nationally representative sample of 1012 Australians about their views on the incarceration of children. The findings showed, among other things, that 51 per cent of respondents supported or strongly supported raising the minimum age of criminal responsibility to 14 years.[80]

Third Optional Protocol on the CRC

4.73 The Third Optional Protocol on the CRC (the Optional Protocol on a Communications Procedure) provides a mechanism for children to submit complaints to the UN Committee on the Rights of the Child in relation to a violation of their rights under the CRC or any of its Optional Protocols.[81]

4.74 Australia has not ratified the Optional Protocol on a Communications Procedure. The Law Council advised that, as Australian children cannot make

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77 SNAICC, *Submission 173*, [pp. 12–13]. Also see: Sisters Inside and National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, pp. 7–8, which argued that the child justice system should be completely abolished.

78 SNAICC, *Submission 173*, [pp. 13–14].

79 SNAICC, *Submission 173*, [pp. 13–14].

80 The Australia Institute, *Submission 2*; The Australia Institute and Change the Record, *Raising the age of criminal responsibility*, Discussion paper, July 2020, p. 13.

81 UN, 'Optional Protocol to the Convention on the Rights of the Child on a communications procedure', www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications (accessed 31 October 2024).

complaints under the protocol, they are denied 'a child-friendly UN complaints procedure appropriate to their needs'.[82]

4.75 SNAICC supported ratification of the Optional Protocol on a Communications Procedure, which, it argued, would provide new protections for Aboriginal and Torres Strait Islander children and young people:

> Ratification of the Optional Protocol would add an additional layer of complaint and redress for Aboriginal and Torres Strait Islander children, providing new protections for children, giving them ability to make complaints about breaches across the whole spectrum of rights under the [CRC].[83]

4.76 As noted by the NSW Advocate for Children and Young People (see paragraph 2.54), children and young people in detention do not generally complain about poor treatment. Maranguka concurred and added that, at present, there is no independent, effective or trusted complaints mechanism:

> …non-compliances at detention centres across Australia often go unreported, due to the inherent power dynamics of the system. A young person has little control over their circumstances in detention, and trust in government systems are lacking in these populations - this leads to a sense of disenfranchisement and a belief that complaints will either not be taken seriously, not result in any meaningful action being taken, and perhaps exacerbate their remaining time and interactions in current or future detention.[84]

4.77 Similarly, the Australian Child Rights Taskforce submitted:

> Current youth justice systems rarely provide genuine settings that will enable children and young people to complain about their treatment. Additional barriers exist for children and young people with disabilities, from different cultural backgrounds, those who are gender diverse and those with limited literacy and experience navigating complaint systems. A rigorous independent process is required so that children and young people can safely and confidently access opportunities to be heard and to complain, including access to appropriate timely, proportionate, and effective remedies.[85]

4.78 The Human Rights Law Centre and Change the Record agreed that the Australian government should ratify the Optional Protocol on a Communications Procedure: 'this is substantially pressing given the current absence of adequate domestic remedies'.[86]

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82 Law Council, *Submission 195*, pp. 9–10.

83 SNAICC, *Submission 173*, p. 30.

84 Maranguka, *Submission 106*, p. 9, which supported an independent, culturally informed body to oversight reported instances on non-compliance with human rights obligations: p. 10.

85 Australian Child Rights Taskforce, *Submission 63*, p. 6.

86 Human Rights Law Centre and Change the Record, *Submission 82*, p. 22.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

4.79 Article 2 of the UNCAT prohibits absolutely acts of 'torture'.[87] In November 2022, the relevant treaty body—the Committee against Torture (CAT)—adopted its *Concluding Observations on the Sixth Periodic Report of Australia*. Its report expressed serious concerns about aspects of 'juvenile justice' in Australia, as follows:

4.80 The CAT also commented generally on the conditions of detention in Australia, commentary which is reflected throughout Chapters 1 to 4:

> …the Committee remains concerned about reports that, despite remedial measures taken by authorities, the number of detainees remains high while the number of personnel remains relatively low in many places of deprivation of liberty. It is also concerned at reports that, in a number of places of deprivation of liberty, health-care services, in particular mental health services, remain inadequate, and that recreational and educational activities to foster rehabilitation of detainees remain extremely limited. It is further concerned at reported arbitrary practices, in particular the continued use of prolonged and indefinite solitary confinement, which disproportionately affects indigenous peoples and inmates with intellectual or psychosocial disabilities, abusive strip-searches, as well as excessive use of various means of physical or chemical restraint. Finally, it remains concerned at reports indicating a high rate of incarceration of inmates with disabilities, in particular intellectual or psychosocial disabilities, and that correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions.[88]

Optional Protocol to the Convention Against Torture

4.81 The OPCAT establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty to prevent torture and other cruel, inhuman or degrading treatment or punishment.[89]

4.82 OPCAT was ratified by Australia on 21 December 2017 and its national body—the multi-body ANPM—explained its role as follows:

> …we support the prevention of torture and other ill treatment of people deprived of their liberty, by examining treatment and conditions in places of detention, and making recommendations for improvement…

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87 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading (accessed 31 October 2024). Note: the term 'torture' is defined in Article 1; Australia ratified this treaty on 8 August 1989.

88 UN, Digital Library, 'Concluding observations on the 6th periodic report of Australia: Committee against Torture', 5 December 2022, paragraph 31.

89 Optional Protocol to the Convention Against Torture (OPCAT), article 1.

> [National Preventive Mechanisms, NPMs] must have unrestricted access to all places where people may be deprived of their liberty and all people held in such places, as well as all information relevant to such places and people. NPMs must also have the power to make recommendations to relevant authorities towards improving treatment and conditions, and to make proposals and other observations on current or draft legislation.[90]

4.83 The AHRC observed that it has taken some time for the ANPM to commence (20 January 2023), with only six jurisdictions having implemented the NPM obligations (the Commonwealth, Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia).[91]

4.84 The Human Rights Law Centre and Change the Record stated that the OPCAT provides 'a framework for stamping out cruel and degrading treatment' but 'Australia's compliance with OPCAT is dismal'. They commented that the incomplete status of the ANPM is due to a funding disagreement between governments:

> …the Victorian, NSW and Queensland Governments [have] failed to implement this bare minimum safeguard to protect against mistreatment in prisons. We understand it is the position of these governments that the federal government should provide funding for independent detention oversight. So long as this funding standoff persists, people in all places of detention – including children and young people in prison and police watch-houses – will remain at risk of mistreatment.[92]

4.85 The ANPM also commented on the absence of 'full coverage to oversee all places of detention across Australia' and highlighted other challenges for its existing members:

> …some of our existing members are of unclear status as NPMs, and many have no OPCAT-specific legislation providing for all the necessary powers and protections of an NPM. Critically, not one of our 12 members is adequately resourced to effectively fulfil their NPM mandate on an enduring basis, and many have received no OPCAT funding whatsoever.[93]

4.86 The Australian Child Rights Taskforce supported the concept of a NPM, which, it considered, could provide a key opportunity to assist children and young people who experience torture, and other cruel, inhuman, or degrading treatment or punishment. However, its submission called for broader monitoring:

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90 ANPM, *Submission 109*, pp. 3 and 5.

91 AHRC, *Submission 65*, p. 18.

92 Human Rights Law Centre and Change the Record, *Submission 82*, p. 20. Also see: Office of the Aboriginal and Torres Strait Islander Children and Young People (ACT), *Submission 80*, p. 9.

93 ANPM, *Submission 109*, p. 10. Note: the submission identified ongoing disputes between Australian governments as a barrier to Australia meeting its OPCAT obligations.

> …a child-specific monitoring mechanism is required to ensure appropriate and consistent systemic responses are built across sectors and settings. In the current context, monitoring the treatment of children in youth justice detention settings requires a holistic and comprehensive and coordinated framework.[94]

Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

4.87 In 2022, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the SPT)—the international monitoring body established by the OPCAT—suspended then terminated its visit to Australia, when the Queensland and New South Wales governments declined access to youth detention facilities within their jurisdictions.

4.88 The Law Council described the termination of the SPT's country visit as 'an internationally embarrassing incident, which highlighted the failure of governments at all levels in Australia to cooperate to implement the treaty properly'.[95]

4.89 Similarly, Ms Zoë Robinson, Advocate for Children and Young People (NSW), noted the reputational damage to the federal and state governments concerned, but also the unintentional damage to children and young people in detention:

> …the ultimate decision of the subcommittee to suspend [its] trip prevented youth justice staff and centres…from developing a partnership with this entity and increasing their capacity to protect individuals within their centres from harm. Failure to uphold this obligation, despite repeated extensions to the deadline and calls from the international community, risks significant reputational damage to the NSW Government and reduces the ability of children and young people to make a complaint about their treatment within these premises beyond the mechanisms already in place.[96]

4.90 The AHRC submitted that, by ratifying the OPCAT, Australia is required to accept visits from the SPT. Further, 'Australia needs to urgently set standards of care for children held in detention [see Chapter 5] and to have comprehensive independent monitoring with transparency and accountability'.[97]

National compliance with human rights

4.91 As discussed throughout this interim report, submitters and witnesses considered that, notwithstanding Australia's international human rights

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94 Australian Child Rights Taskforce, *Submission 63*, p. 4.

95 Law Council, *Submission 195*, p. 37.

96 Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, pp. 7–8. Also see: Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 77.

97 AHRC, *Submission 65*, p. 18.

obligations, the human rights and well-being of children and young people in youth detention centres, watchhouses and sometimes adult prisons are not being upheld and protected.

4.92 NATSILS submitted, for example:

> Despite the Australian Government's publicly stated commitments to upholding and reinforcing human rights on the world stage, NATSILS continues to hold serious concerns that Australia is not compliant domestically with several international obligations in relation to young people exposed to the criminal justice system. A strong, legislated human rights framework will enable the Commonwealth to drive leadership and practical change across child justice systems.[98]

4.93 UNICEF Australia emphasised that there are varying degrees of compliance across jurisdictions, however, there are significant policy and practice concerns in all jurisdictions in relation to child rights:

> We have seen varying degrees of compliance with human rights standards across state, territory and federal detention centres in the absence of uniform standards and oversight. While improvements have been made in some states, such as the introduction of education and mental health support programs in NSW and an increased focus on rehabilitation and education in Victoria, there are still significant concerns regarding policy and practice across all states and jurisdictions when it comes to child rights.[99]

4.94 NLA concurred that, nationally, youth detention centres have a 'mixed record' of compliance with human rights standards:

> Numerous reports have revealed non-compliance with the United Nations Convention on the Rights of the Child, including instances of children being subjected to inhumane treatment. The 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory exposed systemic abuse, leading to calls for reforms across all states and territories. Despite these findings, many detention centres continue to operate in ways that contravene international human rights obligations. For example, the use of solitary confinement, which has been deemed a form of torture under international law, persists in some jurisdictions.[100]

4.95 Similarly, SNAICC submitted:

> The conditions of Australia's child justice systems are unacceptable, and systematically breach the rights of Aboriginal and Torres Strait Islander children's rights. For many decades, Aboriginal and Torres Strait Islander

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98 NATSILS, *Submission 202*, p. 12. Also see, for example: Ms Priya Devendran, Senior Policy Officer, First Nations Advocates Against Family Violence, *Committee Hansard*, 3 February 2025, p. 41.

99 UNICEF Australia, *Submission 83*, p. 8. Also see: Law Council, *Submission 195*, p. 6, which identified national criminal justice policies that lead, or might lead, to outcomes that are inconsistent with Australia's international human rights obligations (such as: presumptions against bail for young offenders, minimum ages of criminal responsibility, detention in adult facilities).

100 NLA, *Submission 172*, p. 10.

> people and organisations have been on record about the human rights violations which have taken place in child justice systems and facilities. In 1991 the Royal Commission into Aboriginal Deaths in Custody received overwhelming evidence of the harmful conditions and racial discrimination which Aboriginal and Torres Strait Islander children experience in child justice settings.[101]

4.96 The Law Council stated that most jurisdictions are not respecting three important principles in the CRC:

- policies affecting children should be formulated with 'special safeguards and care' due to children's physical and mental immaturity (Preamble);
- the best interests of the child is a primary consideration (article 3(1)); and
- detention should only ever be a last resort as a punishment for children (article 37(b)).[102]

Government responsibilities

4.97 The AHRC stated that the Australian government has a moral and legal obligation to uphold children and young people's human rights, by virtue of its international commitments: 'the Australian Government, by agreeing to international human rights treaties, is both empowered and obliged to play a key role in ensuring child rights are protected'.[103]

4.98 The Law Council's Mr McIntyre SC advised that 'jurisdictions need to work together to implement Australia's international law obligations'. He noted that, when these obligations are not recognised, the Commonwealth must do more to ensure national compliance:

> [The states and territories] don't seem to understand their obligations, and the Commonwealth has an obligation to deal with that. Ultimately, the Commonwealth has constitutional power, effectively under its external affairs power, to override the way in which the states and territories are dealing with these matters. Having signed up to the Convention on the Rights of the Child and the other international conventions on civil and political rights, the Commonwealth has an obligation to ensure that those conventions are complied with. It's not popular for the Commonwealth to intervene in the states and territories. So, obviously, in a diplomatic way, in a federal structure, you would start, I suppose, by attempting to encourage and educate the states and territories about the obligations which the

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101 SNAICC, *Submission 173*, [p. 26].

102 Law Council, *Submission 195*, p. 6. Also see: Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 7, who submitted that the 'best interests' principle is inconsistently applied across youth detention centres, and staff are not sure how to apply it when contradicted by internal policies.

103 AHRC, *Submission 65*, p. 7.

> Commonwealth has and which they, as part of the Commonwealth, have. If education fails, then you do have legislative options.[104]

4.99 Jumbunna representative, Dr James Beaufils, agreed that 'if the states aren't complying then, yes, the federal government should exert any influence it can to ensure the states and territories are complying with their human rights responsibilities'.[105]

4.100 As noted earlier in this interim report—and as advocated by the National Children's Commissioner (paragraph 1.23)—stakeholders supported Australian governments transforming their child justice system to adopt a human rights or child rights-based approach.[106]

4.101 The Human Rights Law Centre and Change the Record submitted, for example:

> Governments across the country have consistently invested in police and prisons over public housing, support services and community-based, self-determined alternatives to criminalisation and incarceration. Successive failures by governments to pursue evidence-based reform in favour of 'tough on crime' politics has caused immense harm to First Nations children and communities in particular. Rather than punishing and caging children, Australia must comply with its international obligations by ensuring that all children and their families have the care and support needed to heal and eventually thrive.[107]

4.102 In the context of multiple reviews and inquiries over several decades, stakeholders questioned Australian governments' lack of remedial action, defensive responses, and, in some instances, regressive policies and legislation (such as in Western Australia, the Northern Territory, New South Wales and Queensland).

4.103 Submitters particularly referenced a response from the UN Committee on the Rights of the Child to Australia's most recent implementation report (CRC/C/AUS/5-6), which articulated multiple concerns with Australia's child justice system.[108]

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[104] Mr Greg McIntyre SC, Member, National Human Rights and Indigenous Legal Issues Committees, Law Council, *Committee Hansard*, 3 February 2025, p. 61. Also see: Dr Adam Fletcher, Senior Policy Lawyer, Law Council, *Committee Hansard*, 3 February 2025, p. 62, who noted that the members of the Law Council also have an educative role in their respective jurisdictions.

[105] Dr James Beaufils, Senior Research Fellow, Jumbunna, *Committee Hansard*, 3 February 2025, p. 58.

[106] See, for example: AMA, *Submission 55*, p. 8; Coalition of Peaks, *Submission 158*, [p. 4]; NLA, *Submission 172*, p. 7.

[107] Human Rights Law Centre & Change the Record, *Submission 82*, p. 9.

[108] See, for example: Australian Child Rights Taskforce, *Submission 63*, [p. 4]. Also see: UN, Convention on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, 1 November 2019,

4.104 SNAICC stated that, like Australian reviews and inquiries, the UN Committee on the Rights of the Child has presented a considered and targeted set of reforms that have not gained any traction in the past five years:

> The Committee's recommendations respond directly to breaches of Australian children's rights in child justice systems. They therefore represent a considered and targeted set of reforms which all Australian governments can and should undertake.[109]

Responsibilities within the federal system

4.105 The AGD submitted that Australia's international treaty obligations are implemented by Australian governments through a range of laws, policies and programs.[110] The department summarised its view on the compliance aspect, as follows:

> Australia considers recommendations made by the UN committees and responds to those recommendations in good faith through treaty reporting processes. Recommendations are disseminated to jurisdictions for consideration and implementation as appropriate.[111]

4.106 The Law Council submitted that, from a human rights perspective, the constitutional division of responsibilities enables 'blame-shifting and disclaiming of obligation at both the state/territory and federal (Commonwealth) levels of government'. It continued:

> The issue of state and territory responsibility for the fulfilment of international obligations incurred by federal Government treaty action is a vexed one. Under international law, the international responsibility for giving effect to the provisions of a treaty lies with the Commonwealth. At the same time, the acts or omissions of the states and territories in areas where they exercise legislative or executive power as a result of the constitutional allocation of power or as a result of political agreement and practice, are attributable to the Commonwealth (Australia) on the international level. Thus, the Commonwealth government may be found to have violated its international obligations as a result of state or territory actions that the Commonwealth is effectively unable to override for constitutional reasons or because of the agreed allocation of roles under the federal system. Thus, the Commonwealth may be hamstrung in ensuring obligations are implemented.[112]

4.107 Nevertheless, Ms Nerita Waight, Deputy Chair of NATSILS, said 'we should see the Commonwealth compel states and territories to act in accordance with

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https://documents.un.org/doc/undoc/gen/g19/316/49/pdf/g1931649.pdf (accessed 1 December 2024).

109 SNAICC, *Submission 173*, [pp. 9–10].

110 AGD, *Submission 204*, [p. 3].

111 AGD, *Submission 204*, [p. 4].

112 Law Council, *Submission 195*, p. 35.

Australia's international obligations and introduce consequences for states who actively breach international obligations'.[113]

4.108 The Disability Discrimination Commissioner, Ms Rosemary Kayess, agreed, noting that all Australian governments have agreed to the ratification and implementation of international instruments through the Council of Treaties:

> There is a mechanism that is established through Prime Minister and Cabinet that brings together each of the states. Each of the states contribute to the briefs that go to the negotiations that the United Nations…The council of treaties is held up as the mechanism that ensures federalism works in Australia for our international obligations. When I'm sitting in Geneva and I have a federal state—say Germany—in front of me, Germany [is] as federated as we are and yet I can have a far less frustrating conversation with them because they have human rights protections within their domestic laws. We don't have that element, and that is the missing element to hold states accountable to domestic standards and international leadership in human rights. It begs the question: why does the council of treaties exist if it isn't a place where the states agree and are held to those agreements for the international standards that we hold?[114]

4.109 AGD's Ms Anne Sheehan, First Assistant Secretary, International Law and Human Rights Division, confirmed that, while the Commonwealth enters into treaties, that commitment is binding on all Australian governments:

> It's the Commonwealth that enters into treaties as the level of government that has responsibility for our foreign relations, but those commitments bind all levels of government, so it's not just the Commonwealth that's taking those obligations on. The Commonwealth, states and territories all have those obligations. Those states and territories have a responsibility to comply with international law in the passage of their legislation and in respect of their policies.[115]

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[113] Ms Nerita Waight, Deputy Chair, NATSILS, *Committee Hansard*, 3 February 2025, p. 72.

[114] Ms Rosemary Kayess, Disability Discrimination Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 82.

[115] Ms Anne Sheehan, First Assistant Secretary, International Law and Human Rights Division, AGD, *Committee Hansard*, 3 February 2025, p. 91.

Chapter 5
Role of the Australian government

5.1 In '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report), the National Children's Commissioner, Ms Anne Hollonds, argued that the Australian government must provide national leadership to state and territory governments, to ensure the protection of children and young people's human rights:

> Australia's federal system of government is not an excuse for lack of national action on child rights...Under our federal structure, the Australian Government must provide national leadership to state and territory governments to ensure legislative and policy measures that are fully compliant with our human rights obligations.[1]

5.2 As Ms Hollonds noted in evidence to the inquiry:

> [Child justice] is a national crisis requiring governments to pull together across the federation to work on a reform road map based on the evidence of what will work…[C]urrently there is no national meeting of youth justice ministers; they do not meet. Currently, the word 'children' does not appear anywhere on the list of key priorities for national cabinet. That means there are no eyes on children from the top, there is no accountability, and the wellbeing of children is not a national priority in this country.[2]

5.3 Ms Nicole Breeze, Chief Advocate for Children at UNICEF Australia, concurred that children and young people must be a national priority for Australian governments:

> We need to elevate children more systematically as a national priority. We're seeing this happen increasingly with respect to gender equality and women's safety, and we're seeing commitments to work as a long-term process of reform. We need to set minimum standards, we need to engage in long-term planning and we need the Commonwealth to enhance its role and accountability.[3]

5.4 The National Children's Commissioner made four key recommendations that she described as 'priorities to enable national reform' of Australia's child justice system (Figure 5.1).

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1 Australian Human Rights Commission (AHRC), '*Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the *Help way earlier!* report), 2024, p. 15. Also see: SNAICC—National Voice for our Children (SNAICC), *Submission 173*, [p. 4]; paragraph 4.97.

2 Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 78.

3 Ms Nicole Breeze, Chief Advocate for Children, UNICEF Australia, *Committee Hansard*, 3 February 2025, p. 11.

Figure 5.1 Priorities to enable national reform, Recommendations 1–4

Source: Australian Human Rights Commission (AHRC), Help way earlier! report, 2024, p. 12.

5.5 Most submitters and witnesses supported the recommendations from the National Children's Commissioner (paragraph 1.27), including specifically Recommendations 1–4 from the *Help way earlier!* report. This chapter discusses the role of the Australian government, with a focus on specific actions.

Role of the Australian government

5.6 As discussed in Chapter 4, stakeholders commented on the role of the Australian government in effecting reform of the child justice system, in accordance with international law obligations—particularly the Convention on the Rights of the Child (CRC)—and in the context of Australia's federal system of government.

5.7 While acknowledging that the states and territories have primary responsibility for their own child justice systems, submitters and witnesses stated that the Australian government must acknowledge the need and provide for stronger national leadership.

5.8 National Legal Aid (NLA) Director Ms Annmarie Lumsden said 'the Commonwealth needs to take a leadership role to address the current human rights abuses in the youth justice system in a way that ensures change and better outcomes for children and young people'.[4]

5.9 Ms Catherine Liddle, Chief Executive Officer of SNAICC—National Voice for our Children (SNAICC), agreed that the 'violations' of young people's rights 'belong to all governments and can't be dismissed at a state and territory level'.[5]

5.10 Youth Law Australia and the Centre for Criminology, Law and Justice at UNSW Sydney, remarked that 'the issue of children's involvement with the criminal

[4] Ms Annmarie Lumsden, Director, National Legal Aid (NLA), *Committee Hansard*, 3 February 2025, p. 69.

[5] Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 32.

law system cannot be left to the responsibility of State and Territory Governments', as their human rights are not being respected.[6]

5.11 The Aboriginal Legal Service of WA voiced a common view that, nationally, child justice systems are in crisis, evidencing the need for Commonwealth intervention:

> …the youth justice system in Western Australia (and across Australia more broadly) is in crisis and requires Federal intervention. For years, the Western Australian State Government has been denying young people in detention basic human rights, which has not only had serious and long-lasting consequences for the young people, but for Australia's reputation on the international stage…
>
> The criticisms that continue to be levelled at Australia by the United Nations [UN] Committee on the Rights of the Child, such as the inhumane conditions in youth detention, the high rates of incarceration of Aboriginal youth and the lack of comprehensive national child rights legislation, demonstrate that Australia is failing to act as a global leader in relation to youth justice and is fundamentally failing to protect the rights of children and young people. The crisis that many states and territories currently face in relation to youth justice highlights the need for the Federal Government to take urgent action to ensure that children's rights are respected all across the country.[7]

5.12 As noted throughout this report, some stakeholders condemned the 'tough on crime' approach, which, they argued, is a populist approach frequently used by Australian governments but which does not address the drivers of youth offending, and frequently leads to breaches of human rights.

5.13 In this context, the Office of the Children's Commissioner (NT) argued that disadvantaged and vulnerable children and young people are being used for political gain:

> Populist politics and tough on crime debates see children routinely used as footballs in political campaigns for advantage and point scoring, their rights impinged as part of the political discourse. Youth justice, and policies that affect our most vulnerable children, must be separated from politics. Irrespective of which political party holds office, we must hold firm the expectation that the Government of the day makes sound legal and policy decisions based on evidence, consistent with human rights and minimum standards and in compliance with international law. We must never lower our expectations for children – we must want them to thrive in life, be safe in their communities and be seen in the capacity of their full potential. At present in the Territory, the public narrative lies in the sentiment that

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6 Youth Law Australia and Centre for Criminology, Law and Justice, UNSW, Sydney, *Submission 206*, p. 5.

7 Aboriginal Legal Service of Western Australia, *Submission 179*, pp. 3 and 42. Also see: Mrs Joanna Rostami, Chief Executive Officer, Australian Youth Affairs Coalition (AYAC), *Committee Hansard*, 3 February 2025, p. 28; Ms Nerita Waight, Deputy Chair, National Aboriginal and Torres Strait Islander Legal Services (NATSILS), *Committee Hansard*, 3 February 2025, p. 71.

> some children are deserving of protection, care and support but not those who are most at risk of contact with the youth justice system.[8]

5.14 Noting the Law Council of Australia (Law Council) comments on the 'responsibility dilemma' (paragraph 4.106), Mr Greg McIntyre SC, Member of the National Human Rights and Indigenous Legal Issues Committees, observed that the Commonwealth has previously found ways to act in areas that are state and territory responsibilities:

> …the Attorney-General's Department [AGD] are suggesting that it's a state and territory matter. The Commonwealth has had no hesitation in appropriately dealing with domestic violence, health, education, medical assistance and all of those things at a national level. You don't see a specific paragraph in section 51 which gives the Commonwealth that power, but it has found ways of acting as a national power, a national legislature and a national government in taking responsibility for those matters which are of national significance. It can do it, and it needs to do it, with both the appropriate declarations and the resources.[9]

5.15 Ms Hollonds similarly observed that the Commonwealth has worked with Australian governments to develop reform road maps (such as in the areas of domestic and family violence and housing). In addition:

> It's notable that when it comes to youth radicalisation, another form of youth crime, we already have a national architecture in place to work together on evidence-based prevention and responses. I have met with [the Australian Security Intelligence Organisation], [the Australian Federal Police] and Home Affairs and they all agree the underlying risk factors for youth radicalisation are the same—things like neurodiversity, mental health issues, disengagement from school, et cetera. The fact that the federal government is already working together with the states and territories to prevent that form of crime is in stark contrast to the fragmented approaches and lack of collaboration for the much larger group of children that we've been hearing about today. In fact, there's a growing divide in Australia in the approaches taken by different states and territories, and, overall, we're going backwards because we are not working together.[10]

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8 Office of the Children's Commissioner (NT), *Submission 194*, pp. 2–3. Also see: Gilbert + Tobin, *Submission 177*, p. 56; Ms Natalie Lewis, Commissioner, Queensland Family and Child Commission, *Committee Hansard*, 3 February 2025, p. 4. Also see: Professor George Newhouse, Principal Solicitor and Chief Executive Officer, National Justice Project, *Committee Hansard*, 3 February 2025, p. 59.

9 Mr Greg McIntyre SC, Member National Human Rights and Indigenous Legal Issues Committees, Law Council, *Committee Hansard*, 3 February 2025, p. 64.

10 Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 78.

5.16 Law Council representative, Mr Anthony McAvoy SC, Chair of the Indigenous Legal Issues Committee, said that 'the Commonwealth is now in a position where states appear to be openly abandoning our country's international human rights obligations'. Mc McAvoy said:

> …unless there is some Commonwealth action, that will continue to be the case. So it's not a question of whether the Commonwealth should act; it's what it should do.[11]

Commonwealth levers

5.17 Submitters and witnesses stated that the Australian government has political, legislative and fiscal levers that it could and should use to guide and/or influence state and territory governments. These levers should aim to address the 'social determinants of justice' (see Chapters 2 and 3), to ensure compliance with international law obligations (see Chapter 4), and to lead national reform, for example, by setting national minimum standards for child justice (see 'National standards').

5.18 SNAICC representative Ms Liddle suggested that the Australian government should begin by implementing the recommendations from the Royal Commission into Aboriginal Deaths in Custody (1987–1991):

> As a starting point, the Australian government should action the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The majority of those recommendations have sat unimplemented for more than 30 years. It is well within the responsibility and the jurisdiction of the Commonwealth government to reorientate funding and policy towards eliminating the underlying structural factors that drive our children's overrepresentation in the justice system. It is also within the commitments the Commonwealth has made to invest in [Aboriginal Community Controlled Health Organisation] led prevention and diversionary supports, as well as increasing the role of our legal and social services that respond to the needs of children who are in contact with youth justice systems.[12]

5.19 Ms Breeze from UNICEF Australia, expressed the view that the Australian government should focus on three types of levers:

> The first is legislative reform. We need to establish enforceable national youth justice standards, we need to increase oversight of detention facilities and we need to legislate human rights protections to build a culture of respect for the human rights of children. The second is systems reform. We must increase investment in early intervention and prevention of youth

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[11] Mr Anthony McAvoy SC, Chair, Indigenous Legal Issues Committee, Law Council, *Committee Hansard*, 3 February 2025, p. 63. Also see: Ms Nerita Waight, Deputy Chair, NATSILS, *Committee Hansard*, 3 February 2025, p. 73, who said states and territories acting with impunity is 'an everyday occurrence in the justice space', illustrating the need for more accountability and oversight at the national level.

[12] Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 32.

> offending. Finally, there's a field of reform focused on child-friendly justice. Those children encountering the youth justice system are finding environments that are not friendly or appropriate for them.[13]

5.20 In relation to systems reform (such in the area of education), National Association for Prevention of Child Abuse and Neglect (NAPCAN) Chief Executive Officer, Ms Leesa Waters, suggested that 'we will have the answers' if 'we fund initiatives on a place-based basis that are tailored for individual communities, especially regional and remote communities, and we spend time listening to those communities'.[14]

5.21 Ms Breeze stated, however, that reform must commence with the development of 'a deeper culture of respect for children in Australia', which would begin with legislative reform to prioritise child rights (also see paragraphs 5.65–5.66):

> We've seen other countries legislate their international commitments to the Convention on the Rights of the Child into domestic law. Australia hasn't done this. Most recently, Scotland just last year put in place a federal act which places the obligation on governments to ensure that legislation does not contravene its commitments under the convention and sets up legal remedy in situations where it does.
>
> I go to the National Children's Commissioner's critical recommendations for a 10-year process of reform, and that's where it begins, with the incorporation of our commitments to the convention into our domestic law [Recommendation 4 of the *Help way earlier!* report].[15]

5.22 The Coalition of Peaks broadly identified legislative, political and fiscal powers as critical levers for child justice reform:

> The Commonwealth has its own criminal laws and powers that affect children. It can drive meaningful change by reforming its own minimum age of criminal responsibility, and police, bail and sentencing laws.
>
> The Commonwealth also holds great political – and fiscal – power, and has the tools to influence significant reform across sectors and jurisdictions.
>
> The National Agreement [on Closing the Gap, the National Agreement] is the headline First Nations policy of the Commonwealth Government, and the Commonwealth is jointly responsible with states and territories for meeting Closing the Gap targets and outcomes, including Outcome 11 – that

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[13] Ms Nicole Breeze, Chief Advocate for Children, UNICEF Australia, *Committee Hansard*, 3 February 2025, pp. 11–12. Also see: Mr Anthony McAvoy SC, Chair, Indigenous Legal Issues Committee, Law Council, *Committee Hansard*, 3 February 2025, p. 63, who noted that the Commonwealth has a range of portfolio responsibilities, such as with respect to remote housing, health, education, training and employment.

[14] Ms Leesa Waters, Chief Executive Officer, National Association for Prevention of Child Abuse and Neglect (NAPCAN), *Committee Hansard*, 3 February 2025, p. 16.

[15] Ms Nicole Breeze, Chief Advocate for Children, UNICEF Australia, *Committee Hansard*, 3 February 2025, p. 13.

> Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system.
>
> In addition, the Australian Government is responsible for the country's compliance with international human rights standards and has the power to legislate stronger protections of human rights, including the provisions of international instruments as they apply to children.[16]

5.23 Mrs Joanna Rostami, Chief Executive Officer of the Australian Youth Affairs Coalition (AYAC), shared a common view among stakeholders that the Australian government should 'tie' its state and territory funding to the delivery of outcomes:

> It has worked well in education…If we look at the [National Disability Insurance Scheme] as well, for example, where there are state and territory agreements, it does work effectively and it would be a really useful way to lead and expect change.[17]

5.24 Ms Patricia Turner, Lead Convenor of the Coalition of Peaks, concurred with NLA's Ms Lumsden (paragraph 3.37) that there is scope for the Australian government to better leverage intergovernmental agreements:

> …money speaks all languages and fiscal control is very important. For example, there are significant intergovernmental agreements…We've been very keen to ask for money to be quarantined within them to fulfil the commitments that are made under the national agreement or towards that. …While the intergovernmental agreements reflect the priority reforms in the national agreement, they don't reflect the fiscal power where money can be agreed to and quarantined for Aboriginal programs. It's very important that that happens across the board.[18]

5.25 Turning to the issue of compliance with international law obligations, submitters and witnesses noted that the Australian government could utilise the external affairs power (section 51(xxix) of the Constitution) to give greater effect to child rights in Australia, including, if necessary, section 109 of the Constitution.

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[16] Coalition of Peaks, *Submission 158*, [pp. 11–12]. Also see: Ms Julie Hourigan, Chief Executive Officer, SHINE for Kids, *Committee Hansard*, 3 February 2025, p. 27, who agreed that the Australian government should lead by example and be held accountable to the delivery of funded services and programs.

[17] Mrs Joanna Rostami, Chief Executive Officer, AYAC, *Committee Hansard*, 3 February 2025, p. 27. Also see: Maurice Blackburn, *Submission 146*, p. 9, who stated, similarly, that federal funding should be tied directly to the satisfaction of international obligations; Mr Nick Espie, First Nations Advisory Group and Criminal Law Network Representative, NLA and Associate Director, Client Services, Legal Aid NT, *Committee Hansard*, 3 February 2025, p. 72, who argued that federal funding should be tied to enforceable national minimum standards.

[18] Ms Patricia Turner, Lead Convenor, Coalition of Peaks, *Committee Hansard*, 3 February 2025, p. 44.

5.26 Gilbert + Tobin argued, for example, that the Commonwealth could legislate enforceable national minimum standards for youth justice consistent with Australia's international obligations:

> It is well-established that the Commonwealth can rely on the External Affairs Power to introduce law implementing international agreements to which Australia is a party. The assumption of a treaty obligation is sufficient to establish the power of the Commonwealth to make a law to fulfil the obligation.
>
> The ability to legislate to discharge an international obligation is not limited to matters otherwise within the Commonwealth's legislative competence. As held by Brennan CJ, Toohey J, Gaudron J, McHugh J And Gummow J in *Victoria v Commonwealth* (1996) 187 CLR 416 at [30]:
>
> > According to basic constitutional principle…the intrusion of Commonwealth law into a field that has hitherto been the preserve of State law is not a reason to deny validity to the Commonwealth law provided it is, in truth, a law with respect to external affairs.
>
> The Commonwealth, therefore, has power to legislate with respect to the youth justice system despite that being a matter for the states and territories.[19]

5.27 Gilbert + Tobin further noted that, under the territories power (section 122 of the Constitution), the Commonwealth has a general power to legislate for the territories:

> The Territories Power is a plenary power that enables the Commonwealth to make laws for the territories which would normally be within the power of State legislatures. As noted by the Australian Law Reform Commission, the Commonwealth's powers to pass laws under s 122 is very broad.
>
> The Commonwealth could enact legislation setting minimum standards for youth justice to apply to the Australian Capital Territory and Northern Territory in reliance on the Territories Power alone. While the jurisdictional reach of this power is limited, the Territories Power gives the Commonwealth broad scope to address human rights breaches in the territories.[20]

5.28 Ms Natalie Lewis, Commissioner for the Queensland Family and Child Commission, also endorsed enforceable national minimum standards as a key action that could be undertaken by the Australian government:

> There should be clear, consistent expectations of all Australian jurisdictions such as legal recognition of the status of children as distinct from adults and ensuring those differences are not readily disregarded or ignored based on what is convenient or in the limited capacity of the system or its actors. There

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[19] Gilbert + Tobin, *Submission 177*, pp. 57–58, which noted two limits to the use of the external affairs powers: 'treaties must sufficiently define the regime to be implemented' and 'there must be a sufficient connection with and conformity to the treaty'. Also see: Australian Child Rights Taskforce (ACRT), answers to questions on notice, 3 February 2025 (received 14 February 2025), p. 2.

[20] Gilbert + Tobin, *Submission 177*, pp. 57–58,

> should simply be rights-affirming minimum standards about the use of custody and the treatment of children in custody, including, for example, establishing a national policy position regarding the definition and impacts of isolation upon children and perhaps a prohibition of the use of solitary confinement of children and all disciplinary measures that constitute cruel and degrading treatment. This too would make an amazing difference. The Commonwealth can and should demonstrate leadership requiring states and territories, at a minimum, to provide access to requisite supports to make successful reintegration actually viable and to safeguard the standards of care and the continuity of care such as health, mental health and disability supports, regardless of whether a child is in custody or in their community.[21]

National standards

5.29 The *National Standards for Youth Justice in Australia* (the Standards) is a set of aspirational standards of practice for child-centred youth justice services. Its author—the Australasian Youth Justice Administrators (AYJA)—intends that the Standards will 'promote better outcomes for young people, their families and communities who come into contact with the youth justice system'.[22]

5.30 The Standards are complemented by the AYJA's *Principles of Youth Justice in Australia* (the Principles), which have been endorsed by the states and territories. The Principles comprise a foundation document for child justice in Australia, and encompass the various themes examined in Chapters 1 to 4, for example:

- offending behaviour is prevented and young people are diverted from the justice system
- effective support to victims of youth offending
- effective policy and service responses to address the over-representation of Aboriginal and Torres Strait Islander young people in the justice system
- service responses are evidenced-based
- developmental needs of young people are addressed
- interventions are informed by the drivers of offending and the assessed risk of future offending
- health and mental health needs of young people are addressed.[23]

5.31 Australian Children's Commissioners and Guardians (now Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA)) has previously noted that the Standards are based upon several international instruments (such as the Standard Minimum Rules for the Administration of

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21 Ms Natalie Lewis, Commissioner, Queensland Family and Crime Commission, *Committee Hansard*, 3 February 2025, p. 5.

22 Australasian Youth Justice Administrators (AYJA), 'About the Australasian Youth Justice Administrators', www.ayja.org.au/about-us/ (accessed 31 October 2024).

23 AYJA, 'About the Australasian Youth Justice Administrators'.

Juvenile Justice 1986 (Beijing Rules) and the Rules for the Protection of Juveniles Deprived of their Liberty 1990 (Havana Rules)).[24]

5.32 In addition, Mr James McDougall, Co-Chair of the Australian Child Rights Taskforce (ACRT), drew attention to the Child Safe Standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (2012–2017):

> Think of what could happen if the child safe standards were applied, as they should be, to youth justice and to youth justice detention. If there were a full national enforceable system that sought to apply child safe standards, that would go a long way to ensuring that many of the crises that we see occurring at a state and territory level are less likely to occur.[25]

Need for enforceable national minimum standards

5.33 Submitters and witnesses supported enforceable national minimum standards to ensure that children and young people's human rights are upheld and protected in the child justice system. They argued that there are currently no such standards, with the Standards being purely aspirational.[26]

5.34 The Law Council submitted that cases of human rights breaches in Australian youth detention and watchhouse facilities—some of which have been highly publicised—illustrate a clear need for enforceable national minimum standards.[27]

5.35 Similarly, SNAICC submitted:

> Australia has existing frameworks for national standards in child justice systems, including the standards developed by the Australasian Youth Justice Administrators and the position statements on treatment and conditions by Australian Children's Commissioners and Guardians.
>
> While these frameworks are a good starting point, they operate primarily as guidance material and are non-binding and unenforceable. A number of highly-publicised cases of egregious mistreatment and human rights breaches in Australian youth detention facilities illustrate they are not sufficient to ensure just, equitable and humane treatment in child justice systems.
>
> These rights breaches are characterised by racial discrimination against Aboriginal and Torres Strait Islander children, harsh prison-like conditions, the use of solitary confinement as punishment, insufficient rehabilitative

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24 Australian Children's Commissioners and Guardians, *Statement on Conditions and Treatment in Youth Justice Detention*, November 2017, pp. 11–12, https://humanrights.gov.au/sites/default/files/document/publication/ACCG_YouthJusticePositionStatement_24Nov2017.pdf (accessed 1 December 2024).

25 Mr James McDougall, Co-Chair, ACRT, *Committee Hansard*, 3 February 2025, p. 15.

26 See, for example: ACRT, *Submission 63*, p. 7; AHRC, *Submission 65*, pp. 17–18.

27 Law Council, *Submission 195*, p. 32.

> and education programs, the inappropriate use of force, restraints and strip searches, inadequate supports for Aboriginal and Torres Strait Islander children with a disability, staff shortages and staff's lack of cultural competency and skill.[28]

5.36 The ACRT concurred that there is 'ample evidence that [the] unenforceable guidance has been insufficient to ensure appropriate practices and protections for children and young people in youth justice detention'.[29]

5.37 To illustrate its point, and emphasise the importance of appropriate practices and protections, the ACRT referenced the Banksia Hill Detention Centre in Western Australia as a youth detention centre where concerns about the treatment of children and young people have been raised for over 10 years:

> [Following investigations by the Inspector of Custodial Services (WA)] the Department [of Justice] committed to a reform program and yet in July 2022, deemed it necessary to transfer a group of child detainees to an adult prison. Reform efforts have apparently been ongoing. Yet since then, tragically one child died after self-harming himself while detained in the youth detention unit of the adult prison in October 2023.
>
> In August 2024 the Commissioner for Children and Young People (WA) released her own report into the implementation of the reforms. She noted that efforts to date continued to focus on the behaviours of young people in detention rather than the underlying issues and needs. She called for greater respect for rights of children [detained], and renewed effort to provide the care and support that they need. Later that same month, another child died in Banksia Hill, the second death in youth detention within a year.[30]

5.38 The Inspector of Custodial Services (WA), Mr Eamon Ryan, advised that his office conducts cyclical inspections and liaison visits that are underpinned by human rights-based standards. Mr Ryan identified four key benefits of having an agreed set of minimum standards at a national level:

- Uniform national standards would provide clarity and consistency to guide both a state-wide and nation-wide approach to oversight, that is aligned in understanding, focus and benchmarks.
- Transparent, accessible, consistent, and agreed national standards would provide guidance for practice and policy, for staff both working within and managing facilities across each state.
- Agreed national minimum standards would provide a consistent best practice mechanism for evaluations, recommendations and follow up actions for all state-wide oversight bodies.

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[28] SNAICC, *Submission 173*, [pp. 26–27].

[29] ACRT, *Submission 63*, p. 7.

[30] ACRT, *Submission 63*, p. 8, which noted that it is not uncommon for there to be a problem translating statements of principle into action.

- A shared set of minimum standards across Australia would allow for directly translatable and cross-applicable methodologies, findings, and recommendations across state-wide oversight bodies.[31]

5.39 The AHRC considered that, in addition to the non-binding Standards, 'there is no mechanism for public accountability on how these Standards are being implemented'. It argued that the Standards should be strengthened to have greater force and accountability, as consistent standards for monitoring the provision of child justice services nationally are central to protecting children and young people's rights.[32]

5.40 In support of its argument, the AHRC highlighted that some states and territories have developed their own standards to guide the inspection and monitoring of youth detention facilities. However, 'these standards are not consistent between jurisdictions, with variability in data collection, public reporting, accessible complaints mechanisms and consequences for improper conduct'.[33]

5.41 Further, the AHRC argued that the independent bodies established under the Optional Protocol to the Convention Against Torture (OPCAT)—the National Preventive Mechanism and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment—have also failed to provide the necessary level of oversight (see Chapter 4).[34]

5.42 The ACRT submitted 'monitoring against National Standards would, at a practical level, drive a greater level of policy coherence across key strategies and programs'.[35]

The challenge for Australian governments

5.43 Stakeholders acknowledged that there would be challenges in the development of enforceable national minimum standards, ranging from commitment to their development and the extent to which they might be enforceable.

5.44 The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) queried whether there is sufficient political will to agree to enact minimum standards consistent with Australia's international obligations. It noted that, in 1997, the National Inquiry into the Separation of Aboriginal and Torres Strait

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31 Mr Eamon Ryan, Inspector of Custodial Services (WA), *Submission 15*, p. 5.

32 AHRC, *Submission 65*, p. 17, which also suggested that this be an area of action for the National Taskforce recommended by the National Children's Commissioner. Also see: ACRT, *Submission 63*, pp. 2 and 7.

33 AHRC, *Submission 65*, p. 18.

34 AHRC, *Submission 65*, p. 18.

35 ACRT, *Submission 63*, p. 9. Also see: Mr James McDougall, Co-Chair, ACRT, *Committee Hansard*, 3 February 2025, p. 12.

Islander Children from their Families (1995–1997) recommended 'National Standards Legislation for Juvenile Justice', a recommendation that has not been implemented nearly 30 years later.[36]

5.45 The WA Inspector of Custodial Services acknowledged that all states and territories would need to agree on the form and content of national standards, including some measure of codification to ensure enforceability in each jurisdiction. Mr Ryan noted that the issue of enforceability is far more complex than that of form/content, as each state and territory has responsibility for its own youth justice system. Further, 'such reforms and agreements have proved to be difficult in the past'.[37]

5.46 Several submitters offered views on the potential content of national standards, which they considered should centre on children and young people's human rights, as set out in international law.[38] The AYAC submitted, for example, that Australia's approach must be rights-based and consistent with evidence-based best practice and international obligations:

> National minimum standards for youth justice should include, at a minimum:
>
> - prioritising prevention and early intervention
> - implementing good practice principles in diversion of First Nations young people from the youth justice system
> - making a genuine commitment to First Nations self-determination
> - raising the minimum age of criminal responsibility to at least 14 years in all jurisdictions
> - reserving detention as a true measure of last resort
> - ensuring that children and young people are not detained in the same settings as adults
> - ensuring that Child Safe Standards are implemented and adhered to in youth justice settings
> - banning the use of detention practices that violate the rights of children and young people, including the use of spit hoods, isolation, strip searches, and unnecessary restraint.[39]

5.47 As noted throughout this interim report, submitters and witnesses strongly supported specific child rights enshrined in the CRC: setting the minimum age of criminal responsibility at 14 years without exception (Article 40(3)(a)), using

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36 NATSILS, *Submission 202*, pp. 7–8. Also see: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing them home*, 1997, Standard 8 (Juvenile justice), Recommendations 53a and 53b.

37 Mr Eamon Ryan, Inspector of Custodial Services (WA), *Submission 15*, p. 5. Also see: Australian and New Zealand Children's Commissioners, Guardians and Advocates, *Submission 74*, p. 2.

38 See, for example: UNICEF Australia, *Submission 83*, p. 10; NATSILS, *Submission 202*, p. 10.

39 Australian Youth Affairs Coalition, *Submission 156*, p-p. 7–8.

detention only as a measure of last resort (Article 37(b)), and restricting harmful isolation and restraint practices (Article 37(a)). They therefore argued that these rights should be explicitly covered by national standards.[40]

5.48 Consistent with national frameworks and the principle of self-determination (see Chapter 3), the NATSILS reiterated that 'nationally aligned minimum standards' must be developed in partnership with First Nations people.[41] SNAICC agreed and suggested that 'as an established shared decision-making forum, the [Justice Policy Partnership, JPP] is the most appropriate mechanism for this work to progress'.[42]

5.49 The Law Council endorsed many of the AYJA Standards, which, it noted, are the product of extensive jurisdictional consultations, as well as comprehensive review exercises by key advisory groups. However, it considered that the Australian government must take action and lead the development of national minimum standards:

> …the Commonwealth Government is well placed to take a leadership role and meaningful action to ensure compliance with international obligations related to youth justice and incarceration arising from human rights convention.[43]

A National Taskforce

5.50 The National Children's Commissioner has stated that 'increasingly, there is support for a nationally coordinated approach to child justice reform'. Further, there is broad agreement that this reform must take place in a wider context:

> Decades of evidence show that criminal justice systems alone cannot fix offending by children, and that prevention and early intervention requires coordinated action from systems across health, education and social services. This systems reform crosses portfolios and appropriately requires the attention of National Cabinet [Recommendation 2 of the *Help way earlier!* report].[44]

5.51 As foreshadowed in paragraph 4.98, the Law Council agreed:

> We are all responsible for ensuring the safety and dignity of children in our society, and a national approach is needed in which the Commonwealth Government works with the states and territories to achieve the necessary reforms in concert, in line with their respective roles and responsibilities. The emphasis must be on ensuring that children are connected with their

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40 See, for example: Law Council, *Submission 195*, p. 39.

41 NATSILS, *Submission 202*, p. 10.

42 SNAICC, *Submission 173*, [p. 27]. Also see: Maranguka, *Submission 106*, p. 10.

43 Law Council, *Submission 195*, p. 39.

44 AHRC, *Help way earlier!* report, 2024, p. 26. Also see: Ms Leesa Waters, Chief Executive Officer, NAPCAN, *Committee Hansard*, 3 February 2025, p. 12, who agreed on the need for a cross-portfolio approach.

> families, education and culture. They must be safe, fed, housed, healthy, active and their wellbeing prioritised. This in turn, will contribute to community safety.[45]

5.52 Law Council representative Mr McAvoy SC supported the establishment of a National Taskforce, saying that it would be 'appropriate in that [reform] needs a collective cross-portfolio multidisciplinary approach if people are serious about this'.[46]

5.53 The *Help way earlier!* report noted that other social problems have benefited from a national approach, for example, the *National Plan for Ending Violence Against Women and Children 2022–2031*.[47]

5.54 Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), similarly recognised that there are a range of multinational strategies and approaches in which 'the Commonwealth has a stake', however:

> It is absolutely unfathomable to us that the Commonwealth—when it is responsible for the human rights of children and has signed up to the UN Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous Peoples and the UN Convention on the Rights of Persons with Disabilities and many other similar ones—is standing aside. The Constitution enables it, under [the] external affairs powers, to be involved. They use carrots and sticks for education: 'We'll give you this much money, but only if you do X, Y and Z.' Well, it's time for the Commonwealth to step in.[48]

A coordinated national approach

5.55 Stakeholders identified coordination among jurisdictions, systems and services as a particular problem that must be addressed by all governments in any reform of the child justice system. SNAICC's Ms Liddle stated that there is nothing bringing everything together, an understanding or component that she described as 'glue'.[49]

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45 Law Council, *Submission 195*, pp. 7–8. Also see: Youth Law Australia and Centre for Criminology, Law and Justice, UNSW, Sydney, *Submission 206*, p. 6, which identified multiple benefits of a national approach to child justice reform, for example, the policy issues, challenges and solutions are broadly similar across Australia.

46 Mr Anthony McAvoy SC, Chair, Indigenous Legal Issues Committee, Law Council, *Committee Hansard*, 3 February 2025, p. 63.

47 AHRC, *Help way earlier!* report, 2024, p. 26.

48 Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 3 February 2025, pp. 8–9.

49 Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 34.

5.56 Ms Liddle provided the following example of how 'glue' could help to address multiple risk factors and lead to practical outcomes, for example, improved school attendance:

> We talked to families, and families and the Aboriginal liaison officers all said the same thing: 'Kids aren't well enough. They're sick. They've got lice. They've got scabies. They can't hear.' It wasn't until we found a way—we'd go out and we'd go, 'Who's going to do this?' There was no glue in the middle. Health services deliver health. The family services deliver family services. This one delivers that. But, in the middle, there was no glue pulling these things together. This particular example found that in Sadadeen [a suburb in Alice Springs], which was having the most difficulty in attendance, once they brought in a health program that brought together all of those bits and pieces and found the dollars—which were miniscule; they were $100,000—just to link these together with a worker, then children, who had been attending school at about 10 per cent, were attending school at 90 per cent because they were actually well enough and comfortable enough to attend school. They were addressing those underlying things that make it almost impossible for that child to engage.[50]

5.57 Ms Lillian Gordon, Acting National Commissioner, National Commission for Aboriginal and Torres Strait Islander Children and Young People, said:

> The glue for me is exactly that coordinated approach and understanding each of those things that are happening. What's working? What's not? But, also, how does the glue remain the glue? One of the points made was that the glue seemed to be able to be undone fairly quickly, even when that glue had been in place for a long period of time or the evidence had pointed to it having worked for so long. For me, part of this role is thinking about how we keep that glue intact long enough to make sure that our children and young people are safe and protected and that their rights are at the very core of these things.[51]

5.58 Dr James Beaufils, Senior Research Fellow at the Jumbunna Institute for Indigenous Education and Research, emphasised that, for him, the 'glue' is the community involvement:

> There have been a lot of analogies used about glue, and what the glue is that holds X and Y together, or that improves child protection or youth justice. What is that glue? It really does come down to accessibility and assistance in accessing funding for community organisations and assessment groups... [I]f we look critically at it, that evidence and research, or blueprint

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[50] Ms Catherine Liddle, Chief Executive Officer, SNAICC, *Committee Hansard*, 3 February 2025, p. 34. Also see: Mr John Burton, Executive Director Policy and Research, SNAICC, *Committee Hansard*, 3 February 2025, pp. 35–36; Ms Anne Hollonds, National Children's Commissioner, AHRC, *Committee Hansard*, 3 February 2025, p. 81, who said 'there's a lot we could do with the school to connect it with the other government funded services that are in that area that are not working together'.

[51] Ms Lillian Gordon, Acting National Commissioner, National Commission for Aboriginal and Torres Strait Islander Children and Young People, *Committee Hansard*, 3 February 2025, p. 51.

> construction or glue manufacturing, is not coming from our communities[.][52]

5.59 UNICEF Australia representative Ms Breeze expressed concern that 'policy and service delivery with respect to Australia's children is fragmented and siloed', meaning that it is difficult to obtain a 'sufficient view across [the] critical domains of child wellbeing'.[53]

5.60 UNICEF Australia submitted that Australia needs a 'coordinated, nation-wide reform of the child and youth justice system', such as would be provided by a National Taskforce and a 10-year cross portfolio roadmap supported by a national plan:

> …initiatives should sit within a broader national plan that prioritises child safety and well-being and encourages nationally coordinated responses to issues affecting children and young people.
>
> A National Children's Plan (The Plan) could provide this structure, establishing a clear vision for children and young people in Australia and providing a long-term, comprehensive and overarching framework for all policy and decision-making that affects children and young people. The Plan would include clear policy and investment commitments, and implementation plans to ensure they are translated into effective action.
>
> The Plan would include a number of policy focus areas identified as indicative priorities to address the most significant underlying drivers of children's rights violations and impediments to better outcomes for children and young people in Australia. One of these twelve policy focus areas would include *Rights in youth justice*.[54]

5.61 Similarly, AYAC argued that the Australian government should introduce a 'National Strategy for Children and Young People' that enables the coordination of actions across different jurisdictions/portfolios. It supported a social determinants approach to child justice reform, arguing:

> …strong collaboration across different portfolios beyond the justice sector is required – including education and early childhood, disability, health and mental health, drug and alcohol, domestic violence, child protection, housing, and employment sectors – as well as cooperation between jurisdictions. A National Strategy for Children and Young People, with associated implementation and support mechanisms, would play a vital role in guiding and coordinating this work.[55]

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52 Dr James Beaufils, Senior Research Fellow, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 3 February 2025, pp. 57 and 58.

53 Ms Nicole Breeze, Chief Advocate for Children, UNICEF Australia, *Committee Hansard*, 3 February 2025, p. 16.

54 UNICEF Australia, *Submission 83*, p. 12 (emphasis in the original).

55 AYAC, *Submission 156*, p. 4.

5.62 The ACRT submitted that national leadership is required to drive reform initiatives, with an integrated framework of governance arrangements that enables monitoring and accountability:

> Appropriate national governance arrangements should be in place to support and guide the efforts of national policy frameworks and the efforts of state and territory governments. Monitoring and leadership are required to make the necessary sustainable investments in coordinated systems reform. With an integrated framework of governance arrangements, Australia's various policy and practice frameworks and service systems (including the youth justice systems and those that should work alongside them) can comply with international human rights obligations and ensure sustained systems reform and improved outcomes for children and communities.[56]

5.63 Ms Julie-Ann Guivarra from the National Indigenous Australians Agency advised that the Australian government is trying to address practical issues—such as fragmented or uncoordinated responses—through the National Agreement's five policy partnerships [see Chapter 3]. Ms Guivarra advised that 'a lot' of these partnerships have been through mapping exercises to identify what services are being provided by each level of government:

> [W]hether the footprint is similar and whether we could be doing this better, those are the sorts of questions that people are trying to work through in those policy partnerships…[T]hey're by no means perfect, but they are at least an opportunity for people at the federal level to have discussions with their state and territory counterparts and of course the Aboriginal community controlled organisations at various levels.[57]

5.64 Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division at the AGD, confirmed that work has progressed on cross-sector partnerships:

> The first priorities for cross-sector partnerships with the justice system that we've commenced work on are the disability and health sectors. At the last JPP meeting on 19 and 20 November it was agreed that we would start scoping work on a cross-sector partnership in youth justice. There is significant work under way on that strategic framework. We have working groups or subgroups set up for each of those, co-chaired by both a state-or-

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[56] ACRT, *Submission 63*, p. 5. Also see: Dr Adam Fletcher, Senior Policy Lawyer, Law Council, *Committee Hansard*, 3 February 2025, pp. 66–67, who noted that there would also need to be leadership and coordination across Commonwealth government departments and agencies.

[57] Ms Julie-Ann Guivarra, Deputy Chief Executive Officer, Policy and Programs, National Indigenous Australians Agency, *Committee Hansard*, 3 February 2025, p. 87. Also see: p. 88 where Ms Guivarra noted additional engagement mechanisms, such as the policy partnership working groups and the Joint Council on Closing the Gap.

territory representative and a non-government representative. That work is being progressed and reported back to the JPP.[58]

The voice of children and young people

5.65 AYAC cautioned that young people, including those with lived experience and Aboriginal and Torres Strait Islander children and young people, must be meaningfully engaged in youth justice policy development:

> Young people have the right to have a say on issues that impact them. This right is enshrined in the *United Nations Convention on the Rights of the Child* (UN General Assembly, 1989). Decision-making bodies dealing with youth justice policy development and review should therefore include youth representation, with places designated specifically for First Nations young people, and young people with lived experience of the youth justice system (Commission for Children and Young People, 2021).
>
> However, representation and participation is only the first step. To avoid tokenism, government and other youth justice system entities must commit to acting on the advice and recommendations they receive from young people. They must also commit to 'closing the loop' – that is, informing young people of how their input has been used.
>
> AYAC also notes that short submission timeframes, commonly employed in parliamentary inquiries, do not enable meaningful engagement with young people. This contravenes the above right.[59]

5.66 Several witnesses endorsed AYAC's remarks about the need for policy and decision-makers to more meaningfully engage with and incorporate the views of children and young people, for example:

- Ms Zoë Robinson, Advocate for Children and Young People (NSW), said that 'policymakers and legislators need to consistently sit with children and young people'.[60]
- NAPCAN's Ms Waters stated that 'young people are not passive recipients. We want to hear their lived experiences in the decisions that impact them'.[61]
- Justice Action's Mr Brett Collins remonstrated that 'we are all talking about the kids when, in fact, they should be encouraged to speak for themselves'.[62]

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58 Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, AGD, *Committee Hansard*, 3 February 2025, p. 91.

59 AYAC, *Submission 156*, p. 10, which also called for the mandatory use of comprehensive, intersectional youth impact assessments in the development of any policy that directly affects young people: p. 2.

60 Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Committee Hansard*, 3 February 2025, p. 6.

61 Ms Leesa Waters, Chief Executive Officer, NAPCAN, *Committee Hansard*, 3 February 2025, p. 14.

62 Mr Brett Collins, Coordinator, Justice Action, *Committee Hansard*, 3 February 2025, pp. 20–21.

Human rights law reform

5.67 As indicated earlier in this chapter, stakeholders argued that the Australian government must lead by example, including through the exercise of its legislative function.[63] In particular, several submitters and witnesses explicitly called for human rights law reform.

5.68 The AHRC submitted that Australia needs national human rights legislation, which incorporates the full spectrum of child rights and effectively holds the Australian government to account for protecting child rights across the nation. It noted that the UN Committee on the Rights of the Child and the Parliamentary Joint Committee on Humans Rights support the introduction of a national Human Rights Act.[64]

5.69 In the *Help way earlier!* report, the National Children's Commissioner recommended that the Australian government also legislate a complementary National Children's Act. Ms Hollonds explained that this legislation would provide more detailed and specific protections, by providing an architecture for the implementation of child rights across different levels of government:

> …there is also value in considering a National Children's Act to complement a Human Rights Act, such as by establishing minimum standards of treatment for children that would apply at the state and territory level. This might include a legislative basis for national out-of-home care standards and new child justice standards; and minimum standards on places of detention of children (consistent with Australia's obligations under the [OPCAT]. It could also provide a place for the legislative enshrinement of commitments in various national frameworks – such as the Closing the Gap framework – where stronger protection may be warranted.[65]

5.70 The Law Council agreed that the Australian government should implement its international human rights law obligations, including through the enactment of a standalone federal Human Rights Act: 'at present, many of the CRC

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63 See, for example: Coalition of Peaks, *Submission 158*, [pp. 11–12]; Ms Jane Irwin, Criminal Law Network representative, NLA and Associate Director, Criminal Law, Legal Aid NT, *Committee Hansard*, 3 February 2025, p. 72; Law Council, answers to questions on notice, 3 February 2025 (received 14 February 2025), p. 2.

64 AHRC, *Submission 65*, pp. 8 and 9. Also see: United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd sess, UN Doc CRC/C/AUS/CO/5-6 (30 September 2019), paragraph 7(a); Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, May 2024, Recommendation 2, paragraph 9.42.

65 AHRC, *Help way earlier!* report, p. 31. Also see: AHRC, *Submission 65*, p. 9.

obligations…are not adequately reflected in domestic legislation (with notable exceptions such as the recently-revised *Youth Justice Act 2024* (Vic))'.[66]

5.71 The Law Council added that, if the Commonwealth were to meaningfully commit to Australia's obligations under the CRC, this would signal to state and territory governments that the obligations must be taken seriously:

> Despite failures across most Australian jurisdictions—most notably the Commonwealth—to implement international human rights legal obligations fully into domestic legislation, meaningful commitment to Australia's obligations under the CRC must nevertheless be a priority for leadership by the Australian Government. Failures by states and territories to take these obligations seriously must be addressed directly. A significant step forward in this regard would be the establishment of a National Taskforce and supporting overarching recommendations, such as for a National Cabinet-led response.[67]

5.72 SNAICC argued that a federal Human Rights Act is a vital part of all governments' coordinated action towards a safer child justice system, and it articulated the benefits of such an Act, as follows:

> A strong, legislated human rights framework will enable the Commonwealth Government to drive practical change across child justice systems. A federal Act would ensure there is no gap in human rights protections in such instances where Commonwealth and state and territory governments have an agreement to work together, such as through the National Agreement and the JPP. This would ensure that even under the National Agreement, where policy is to be made through shared-decision making, all government involvement and reform to child justice systems is guided by the human rights of Aboriginal and Torres Strait Islander children.
>
> A federal Human Rights Act accompanied with sufficiently empowered oversight, accountability and complaints functions…would also strengthen domestic complaints pathways for child rights breaches in justice systems, and enhance jurisprudence on the implementation of human rights in Australia. It would provide a consistent and relevant framework for each state and territory to enact comprehensive human rights legislation of their own, or update extant jurisdictional human rights legislation.[68]

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66 Law Council, *Submission 195*, p. 35, which also argued that Australia should withdraw its reservation to article 37(c) of the Convention on the Rights of the Child (CRC) and ratify the Optional Protocol to the CRC (in relation to a communications procedure).

67 Law Council, *Submission 195*, p. 10.

68 SNAICC, *Submission 173*, p. 11. Also see: NATSILS, *Submission 202*, p. 12.

Chapter 6
Conclusions and recommendations

6.1 In 2024, the National Children's Commissioner, Ms Anne Hollonds, reported that Australia's child justice system is failing children and young people, causing significant and irreparable harm to young people in detention (sentenced and unsentenced).

6.2 The committee notes the high regard with which Ms Hollonds' *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* report was received, including its 24 recommendations for reform.

6.3 The committee commends the National Children's Commissioner for a comprehensive and thoughtful examination of Australia's child justice system, and its impacts on children and young people.

6.4 At the public hearing held on 3 February 2025, the committee received strong evidence from a powerful panel of Australian Children's Commissioners, Guardians and Advocates, including the National Children's Commissioner and commissioners from New South Wales, Tasmania, South Australia, Queensland, Western Australia, Northern Territory and the Australian Capital Territory. The power of this testimony left a lasting impression on the committee. It reinforced the importance of the Senate pursuing these issues as a matter of priority.

Role of the Commonwealth

6.5 This interim report sets out many of the key arguments in submissions and in evidence on the role of the Commonwealth in Australia's child justice system.

6.6 The committee clearly heard that, while each jurisdiction is responsible for its own criminal justice system, there is an urgent need across Australia to prioritise the safety and wellbeing of children in detention.

6.7 Many stakeholders argued that the Commonwealth must assume a national leadership role and use whatever levers it has at its disposal to protect the disadvantaged and vulnerable young people in detention.

6.8 The committee notes that over 220 submitters and more than 40 witnesses passionately argued that Australia must transform its child justice and other related systems (such as the child protection system), to address offending and to ensure a future for children and young people independent of these systems.

6.9 Again, the committee acknowledges the assistance provided to the inquiry by those who made submissions. As indicated earlier, in the time available for preparation of this interim report, the committee has only been able to canvas in detail a limited number of submissions. This in no way diminishes the value

and strength of the submissions made by other individuals and organisations, which again reinforce the need for the Senate to continue to pursue these issues as a matter of priority in the next Parliament.

6.10 The committee notes that it only received submissions from two states and territories (Tasmania and the Northern Territory). While each jurisdiction is responsible for its own criminal justice system, it is necessary to consider prevailing circumstances at the state and territory level to consider and formulate appropriate Commonwealth responses, including to progress existing initiatives. Hence, the committee is of the view that it will be necessary to continue to engage with state and territory governments as the inquiry progresses.

Recommendation 1

6.11 The committee strongly recommends that the Senate continues to pursue an inquiry into the incarceration of children in Australia given the significant and disturbing evidence received by the committee as detailed in this interim report and the issues raised in the report of the National Children's Commissioner entitled *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*.

Recommendation 2

6.12 The committee recommends that the Senate in the 48th Parliament considers whether to refer to the Senate Legal and Constitutional Affairs References Committee an inquiry into Australia's child justice and detention system, with particular reference to the Commonwealth's responsibilities as they relate to:

a) the incarceration of children, including the disproportionate incarceration of First Nations children;
b) compliance with international obligations relating to the detention of children;
c) responding to the recommendations of the National Children's Commissioner's report entitled *'Help way earlier!': How Australia can transform child justice to improve safety and* wellbeing; and
(d) any other related matter.

6.13 The committee commends this interim report to the Senate.

Senator Paul Scarr
Chair

Additional Comments by Senator David Shoebridge

1.1 As this report so clearly shows, it is essential for the Federal Parliament to:

- first, understand the damage being caused by the youth justice system across Australia, and in particular the harm caused to First Nations children and communities;
- second, take the actions needed to enforce our international undertakings, and even more importantly, keep children and communities safe.

1.2 Young people should be with their families and friends, in school and learning about the world.

1.3 The rhetoric in documents like the National Justice Partnership and Youth Justice policies across the country is that we must 'close the gap' and use prison as a last resort for young people. However, the almost unanimous evidence we heard was that this does not come close to reflecting the reality.

1.4 The submissions to this inquiry canvassed in great detail the many concerns at all stages of the youth justice system. The submissions also covered the evidence-based alternatives to incarceration and the benefits of increasing access to these.

1.5 There was near universal agreement that the current system, where states and territories enact approaches to their justice and prisons systems, is damaging children, endangering communities and must not continue. From across the country, we heard the desperate calls of children's advocates, young people, academics and NGO's for the Commonwealth to step in.

1.6 The Commonwealth, as a party to international instruments including the Treaty on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous People, has an obligation to ensure these rights are respected and complied with.

1.7 Importantly, we heard that, while these international obligations rest squarely on the Commonwealth, each state and territory is consulted before they are entered into and provide their consent. This leads to a compelling conclusion that, where states and territories flout these international obligations, there is a clear case for direct Commonwealth action.

1.8 I welcome the recognition by this committee of the need for further consideration in the Federal Parliament. I thank the Chair and the secretariat for their work and diligence in producing this report in the time available. I look forward to the recommendations being accepted by all parties and the prompt consideration of what the appropriate steps are, including possible legislative

action and binding funding and partnership agreements, to deliver much needed change.

1.9 Every Australian child deserves this.

Senator David Shoebridge
Member

Additional Comments by Senator Lidia Thorpe

No More Delays: Urgent Action Needed to End the Criminalisation and Detention of Children

1.1 This inquiry has only reaffirmed what Elders, communities, advocates, and international bodies have been saying for decades.

(a) **The criminalisation and detention of children in Australia is a crime scene** and a human rights catastrophe that disproportionately impacts First Nations children. Detention centres are sites of systemic child abuse, operating in direct violation of this country's domestic and international human rights obligations and all morality, with evidence of neglect, excessive force, trauma, sexual, psychological and physical abuse inflicted on children as young as 10.

(b) **Tough-on-crime policies do not function to keep communities safe.** The overwhelming evidence confirms that locking children up does not make our community safer and seriously harms the children concerned, particularly First Nations children. These policies do not reduce crime, but instead entrench cycles of trauma, poverty, and incarceration—fuelling over-policing and mass incarceration.

(c) **The lack of compliance with human rights obligations means that vulnerable children are criminalised by the conditions created by colonial violence, poverty, and state neglect.** In breach of human rights obligations children are denied access to housing, education, healthcare, and family support.

(d) **First Nations child removals, policing, and incarceration are the continuation of colonialism.** From the early missions and reserves government institutions have always been about controlling, punishing, and removing First Nations children from their families and Country funnelling them from child protection into prisons.

(e) **The federal government is complicit in the state-sanctioned torture and abuse of children in detention, permitting ongoing violations nationally with zero accountability despite having the legislative power to enforce national human rights compliance.** It hides behind performative agreements, inquiries and empty reports, while refusing to take meaningful action to stop the systemic criminalisation, brutalisation, and deaths of First Nations children.

1.2 **We must actually address the conditions and causes of criminalisation, move away from carceral responses, and adopt a non-violent approach to keeping communities safe.**[1] Practically every submission has emphasised the need to

[1] Institute for Collaborative Race Research (ICRR), *Submission 185*, p. 2.

invest in programs and solutions that are First Nations controlled and operated, culturally safe, therapeutic, trauma informed and targeted to address root causes.

1.3 **Immediate and urgent action is required.** Right now, children as young as 10 are suffering needlessly—caught in a system that prioritises politics and punishment against all best evidence, in direct contravention of children's best interests, human rights, and lives. Immediate and urgent action is needed to protect those at risk of criminalisation and those already in detention. Their lives must come before political agendas. Decades ago, the *Bringing Them Home* Report and the Royal Commission into Aboriginal Deaths in Custody made it clear—federal intervention and leadership were urgent then, the *Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (the Help way earlier! report) report shows they are non-negotiable now.

A. The criminalisation and detention of children in Australia is a crime scene

1.4 Children's detention centres are not sites of rehabilitation: they are sites of systemic child abuse, operating in breach of all morality and internationally protected human rights obligations.[2] This is outlined in Chapter 4 of the Interim Report.

1.5 As such, nationally, children's detention centres operate as sites of state-sanctioned institutional child abuse, with federal, state, and territory governments—along with their agencies and institutions—its perpetrators.

1.6 The state often inflicts its most severe violence in residential care settings and prisons, where it is, in fact, the child's guardian.[3] Children are not safe in these places.[4] No child should be in prison, and governments are not responsible legal guardians and are not fit to care for or discipline children.

1.7 While the conditions of children in detention are partially laid out in Chapter 2 of the Interim Report, the true horrors and severity of neglect, abuse, excessive force, and harm experienced by children as young as 10 are sanitised, disappeared, and hidden. This report does not even touch on the two First

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2 Sisters Inside & National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, pp. 3 and 22. Also see: Professor George Newhouse, Principal Solicitor and Chief Executive Officer, National Justice Project (NJP), *Committee Hansard*, 3 February 2025, p. 54; UN, Digital Library, 'Concluding observations on the 6th periodic report of Australia: Committee against Torture', 5 December 2022, paragraph 31.

3 ICRR, *Submission 185*, p. 2.

4 Dr James Beaufils, Senior Research Fellow, Jumbunna Institute for Indigenous Education and Research (Jumbunna), *Committee Hansard*, 3 February 2025, p. 55.

Nations children who committed suicide in detention in 2024, one of whom was 14 years old.

1.8 As pointed out by the Australian Institute of Health and Welfare, much of the data around conditions and harm are not even recorded,[5] and the independent bodies mandated under the Optional Protocol to the Convention Against Torture to prevent torture and inhumane treatment are being denied access to places of detention, blocking them from even witnessing the abuses they are meant to prevent.[6]

B. 'Tough-on-crime' policies do not function to keep communities safe.

1.9 Overwhelmingly, submissions stated that the best evidence shows that removing kids from communities, locking them up, and punishing and abusing them does not lead to positive outcomes. It does not make communities safer; it only creates more harm.[7] 'Tough-on-crime' is not a solution—it is populist, racist, political rhetoric that locks communities and children into an endless cycle of trauma, harm, offending, conflict and incarceration.[8]

1.10 Children's detention centres are not sites of rehabilitation. Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), stated:

> We don't rehabilitate. We don't support them to have rehabilitation for drug and alcohol problems. We don't support them with the needs they have for their disabilities, cognitive impairments and other things. We are condemning these children to a life of institutionalisation.[9]

The outcomes and impacts of youth incarceration are well researched and it is clear that institutionalising children during their formative years is a key driver of lifelong criminalisation.[10]

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5 Australian Institute of Health and Welfare (AIHW), National data on the health of justice-involved young people: A feasibility study, p. vii, www.aihw.gov.au/getmedia/4d24014b-dc78-4948-a9c4-6a80a91a3134/aihw-juv-125.pdf?v=20230605182427&inline=true (accessed 10 October 2024).

6 Optional Protocol to the Convention Against Torture, article 1; Australian Human Rights Commission (AHRC), *Submission 65*, p. 18.

7 Justice Action, *Submission 148*, p. 6. Also see: Australian Medical Association, *Submission 55*, p. 4; Australian Youth Affairs Coalition, *Submission 156*, pp. 3–4.

8 Sisters Inside & National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*.

9 Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 3 February 2025, p. 7.

10 Law Council of Australia (Law Council)

, *Submission 195*, p. 7; AIHW, Young people returning to sentenced youth justice supervision, 2021–22, 2023, p. 6.

1.11 Upon release, children are not provided access to the basic needs that they were seeking before their criminalisation.[11] The state does not protect vulnerable children before, during, or after incarceration: it only polices and punishes them. Indeed, the very systems that claim to offer care and solutions—child protection, the legal system, law enforcement—are the very mechanisms that perpetuate their ongoing suffering and oppression.

1.12 Incarceration only perpetuates harm—we must dismantle the systems that police, remove, and imprison children and replace them with community-led models of care, support, and accountability. Justice Reinvestment must be implemented in its true form, redirecting funding from prisons and policing into community-based prevention, diversion, and long-term solutions, including housing, education, healthcare, and wraparound support services.[12]

1.13 When a child is hurting or acting out, our Lore teaches us collective care and guidance. It teaches us to treat the wound, to wrap the community around those who are struggling. We as communities and as a nation should be able to teach our children about care, kinship and accountability without resorting to institutions which literally facilitate child abuse and create lifelong trauma.[13]

1.14 As pointed out by the Institute for Collaborative Race Research (ICRR):

> Justice for Black communities cannot be found in the very system that commits violence against them every day. The same reformist recommendations that train and fund police, or create 'more appropriate' prisons for children do nothing to change the fundamental violence of the system. We must actually address the conditions of criminalisation and adopt a non-violent approach to keeping communities safe.[14]

C. Abuse of Human Rights Obligations, Criminalisation of Dispossession, and Poverty

1.15 International legal frameworks obligate Australia to ensure that children are provided with essential services, this includes ensuring every child has access to healthcare, education, and an adequate standard of living, including food and housing.[15] Australia systematically violates these obligations by criminalising

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[11] Ms Zoë Robinson, Advocate for Children and Young People (NSW), *Submission 139*, p. 3; AHRC, *Submission 65*, p. 12.

[12] ICRR, *Submission 185*, p. 6.

[13] Sisters Inside & National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, p. 2. Also see: Justice Reform Initiative, *Submission 20*, p. 22; NAPCAN, *Submission 66*, [p. 3].

[14] ICRR, *Submission 185*, p. 2.

[15] International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); International Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965,

children instead of fulfilling these obligations. First Nations children and families are the primary victims of this state neglect, and of criminalisation, and are massively overrepresented in every single metric in every single jurisdiction.[16]

1.16 First Nations children themselves consistently say that their criminalisation is linked with a lack of support for their basic needs: before being locked up, many needed a safe place to call home, enough food, inclusive education, health supports and access to family and community.[17]

1.17 In her 2017 visit to Australia, UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, observed that First Nations children are 'essentially being punished for being poor', with incarceration exacerbating cycles of violence, poverty, and crime. She highlighted that the significant factors leading to the criminalisation and incarceration of First Nations people can be traced to land dispossession, genocide, disruption of kinship systems, and other impacts of colonisation.[18]

1.18 This isn't about a lack of funds—it's a political choice where governments would rather spend $3,320.46 a day—locking up one child than ensuring they have access to safe, ongoing food and housing.[19] In Queensland, the state government deployed police helicopters and police street checks during the school holidays specifically in low socioeconomic, First Nations and migrant communities.[20]

1.19 The *Help Way Earlier!* report from the Australian Human Rights Commission highlights that children need support long before they come into contact with the justice system, emphasizing early intervention, access to basic needs, and

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660 UNTS 195 (entered into force 4 January 1969); Convention on the Rights of the Child, adopted 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 24.

16 AHRC, *Help way earlier!* report, 2024, p. 8. Also see: NJP and Jumbunna, *Submission 51*, p. 3; Sisters Inside & National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, pp. 4–5.

17 ICRR, *Submission 185*, p. 2; Koorie Youth Council, *Ngaga-dji*, 2018, www.koorieyouthcouncil.org.au/wp-content/uploads/2023/09/Ngaga-djireportAugust2018.pdf (accessed 28 February 2025); Commission for Children and Young People, *Our Youth, Our Way*, 2021, https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/ (accessed 28 February 2025); Queensland Family and Child Commission, *Yarning for Change: Listen to My Voice*, 2022, www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/yarning-for-change (accessed 28 February 2025).

18 United Nations Special Rapporteur on the Rights of Indigenous Peoples, End of Mission Statement, OHCHR (3 April 2017).

19 Ms Nerita Waight, Deputy Chair, National Aboriginal and Torres Strait Islander Legal Services, *Committee Hansard*, 3 February 2025, p. 71.

20 Sisters Inside & National Network of Incarcerated and Formerly Incarcerated Women & Girls, *Submission 128*, p. 2.

community-led solutions to break cycles of harm and criminalisation. The report emphasises that children need access to safe housing, education, healthcare, culturally appropriate support, and strong connections to family and community long before they come into contact with the justice system. It calls for early intervention and investment in community-led solutions to prevent criminalisation and break cycles of harm.

1.20 Of the 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody, nearly 40 per cent addressed the root causes of criminalisation—land rights, housing, education, health, children's programs, employment, and self-determination. These were not symbolic gestures; they were a roadmap for justice. The only reason they haven't been implemented is political choice.

D. First Nations child removals, policing, and incarceration are the continuation of colonialism

1.21 Aboriginal and Torres Strait Islander children's rights have been in crisis since colonisation, when we were dispossessed of our land and our cultural ways of growing up and nurturing our children, which we had done successfully for more than 65 000 years.[21]

1.22 As laid out in Chapters 1 and 3, First Nations children are over-criminalised and overrepresented in every jurisdiction, making up 57 per cent of all children in detention and up to 91 per cent in the Northern Territory. Despite being only a small fraction of the population, they are 28 times more likely to be imprisoned. For First Nations children aged 10-13, the overrepresentation is even more extreme.[22]

1.23 As pointed out by the ICRR, incarceration is political—it is about race, ongoing colonisation and state violence in all its forms. Carceral systems have always been used to impose and maintain colonial control over Indigenous people on this continent. From missions, reserves and Chief Protectors, child removal systems, prisons and police, 'there is no justice in the violence of policing, courts and prisons that have seen no convictions for 516 deaths in custody, that blame Black women for their own disappearances and lock up children away from their communities and Country'.[23]

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[21] Parliamentary Joint Committee on Human Rights, Review into Australian Human Rights Framework, Ms Rachel Atkinson, Board Member, SNAICC—National Voice for Our Children, *Committee Hansard*, 25 August 2023, p. 33.

[22] AIHW, Youth Justice in Australia 2024: Key Statistics on Children in Detention, June Quarter, 2024.

[23] ICRR, *Submission 185*, p. 1.

1.24 This isn't a broken system—it's a system doing exactly what it was originally built to do. From invasion to now, colonial governments have brutalised, criminalized and controlled First Nations communities in order to get access to their land.[24] Child removals, policing, and mass incarceration were never failures—they were the plan. The *Bringing Them Home* report identified child removals as genocide, yet there has been no reckoning, no truth telling, no change.

1.25 First Nations children are still being forcibly removed from their families at escalating rates, and as of 2023, nearly 22,330 Aboriginal and Torres Strait Islander children were in out-of-home care across Australia. The Yoorrook Justice Commission, Australia's first formal truth-telling body, established in May 2021 to investigate historical and ongoing injustices experienced by First Peoples since colonization. It heard of the established process of identifying expectant mothers for the potential removal of their child once born. In effect, this means the First Nations children community can be in a pipeline to the justice system before being born.[25]

1.26 The state's refusal to confront its own racism ensures the cycle continues: First Nations children are scapegoated—used by politicians to consolidate power and by the media to generate profit. They are vilified, dehumanised, and weaponised to justify more police, more prisons, and more violence and more dispossession.

1.27 If the government cannot reckon with its own role as the abuser, and address its paternalistic, white supremacist attitudes, then it will continue to be complicit in these crimes.

E. The federal government is complicit in the state-sanctioned torture and abuse of children in detention, permitting ongoing violations nationally with zero accountability despite having the legislative power to enforce human rights compliance.

1.28 The federal government's continued inaction in the face of well documented and indisputable evidence of human rights breaches of vulnerable children across the nation makes it complicit in the abuse. The ongoing delays, inquiries, and political deflections do nothing but uphold the very conditions of harm that First Nations communities have resisted for generations. Consecutive Australian governments have not just failed to act, but are actively making the situation worse.

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[24] ICRR, *Submission 185*, p. 1.

[25] Yoorrook Justice Commission, *Yoorrook for Justice,* 2023, p. 4, https://yoorrookforjustice.org.au/wp-content/uploads/2023/08/Yoorrook-for-justice-report.pdf (accessed 28 February 2025).

1.29 The federal government—responsible for national human rights compliance — is overseeing a legal system that permits the ongoing, nationwide physical and sexual abuse with zero accountability.[26] More so, the federal government has the power to act—it can legislate national minimum standards under the external affairs power (section 51(xxix) of the Australian Constitution), enforce human rights compliance, and intervene to stop these abuses.[27] State violence against Indigenous children is also defined by what the state fails to do when children themselves are victims of crime.[28]

1.30 The government's consistent refusal to implement the recommendations of inquiries, commissioners, international committees, allows the government to feign due diligence while evading real accountability. All the while perpetuating systemic abuse against children with impunity, compounding their trauma, institutionalization, and, in many cases, leading to their deaths.[29]

1.31 Countless inquiries and monitoring functions of the youth justice system consistently outline the trauma the system inflicts on children, compounding the harm many have already endured.[30] Reports also demonstrate regular breaches of facilities' own guidelines as well as state standards, human rights, cultural rights and other obligations.[31] As stated by the National Aboriginal and Torres Strait Islander Legal Services:

> The thousands of pages and hundreds of recommendations in the over 21 key inquiries and reviews conducted into this issue since 2016 alone makes this clear...Australia's youth justice system continues to be plagued by political manoeuvring and opportunism while children continue to suffer.[32]

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26 National Agreement on Closing the Gap, July 2020, paragraph 58.

27 Mr Greg McIntyre SC, Member, National Human Rights and Indigenous Legal Issues Committees, Law Council, *Committee Hansard*, 3 February 2025, p. 61; Dr Adam Fletcher, Senior Policy Lawyer, Law Council, *Committee Hansard*, 3 February 2025, p. 62.

28 Koorie Youth Council, *Ngaga-dji*, 2018, p. 46; Commission for Children and Young People (CCYP), *Our Youth, Our Way*, 2021, pp. 190–191.

29 ICRR, *Submission 185*, p. 5.

30 See for example: Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report, 2017; Amnesty International, "*Heads held high", Keeping Queensland kids out of detention, strong in culture and community*, 2016, www.amnesty.org.au/wp-content/uploads/2016/12/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf (accessed 28 February 2025); CCYP, *The same four walls*, 2017, https://ccyp.vic.gov.au/inquiries/systemic-inquiries/the-same-four-walls/ (accessed 28 February 2025); Koorie Youth Council, *Ngaga-dji*, 2018, p. 46; CCYP, *Our Youth, Our Way*, 2021.

31 ICRR, *Submission 185*, p. 4.

32 National Aboriginal and Torres Strait Islander Legal Services (NATSILS), *Submission 202*, p. 4. Also see: ICRR, *Submission 185*, pp. 4–5, which argued that the persistent refusal to act suggests that these monitoring and oversight mechanisms are performative only.

1.32 Citing failed frameworks isn't accountability: it's a smokescreen for inaction.[33] On the topic of Justice Reinvestment discussed from page 34 of the Interim Report, despite all the rhetoric, not a single cent has actually been redirected from police, prisons, or surveillance into communities—justice reinvestment initiatives as they stand, are just another hollow promise, crippled by the same racism, paternalism, and bureaucratic inertia as every other so-called reform.

1.33 Additionally, the federal government has also done nothing to ensure the public is informed of the best evidence when it comes to children's incarceration, and has not challenged the racist dog-whistling that fuels public hysteria.[34] I see direct links to the white vigilante gangs in North Queensland who have been emboldened by the racist touch on crime rhetoric, and have stalked, intimidated, and even restrained Aboriginal children with dog collars—acts met with silence from police, government, and media. This indifference reflects what Dr. Amy McQuire identifies as the systemic erasure of Black children, whose disappearances and incarceration are normalized, unremarkable, and deemed 'not newsworthy.[35]

1.34 Decades ago, the *Bringing Them Home* report and the Royal Commission into Aboriginal Deaths in Custody and now the *Help Way Earlier!* report have made it clear—federal intervention and leadership were urgent then, and they are non-negotiable now.

1.35 We must act urgently to address the conditions of criminalisation and adopt a non-violent approach to keeping communities safe.[36] We must urgently abolish the detention of children nationwide and redirect the funds spent on their incarceration to meet their immediate needs in community, including community-led housing, education, healthcare, and culturally safe support services that address the root causes of criminalisation.

1.36 To refuse to act so is to admit that the government's relationship with human rights obligations is purely performative, and that First Nations children, and indeed all vulnerable children targeted by these systems, are being sacrificed for political convenience.[37]

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33 Attorney-General's Department, *Submission 204*, [p. 5].

34 Ms Nerita Waight, Deputy Chair, NATSILS, *Committee Hansard*, 3 February 2025, p. 75.

35 ICRR, *Submission 185*, pp. 4–5.

36 ICRR, *Submission 185*, p. 2.

37 ICRR, *Submission 185*, pp. 4–5.

Recommendations

1.37 The federal government must take immediate and decisive action to end the systemic harm inflicted on First Nations children by state violence, incarceration, and forced removals. These recommendations are immediate starting points, and I will provide further recommendations in the Final Report.

Recommendation 1

1.38 The federal government must urgently use all available legislative and policy levers to implement the following immediate measures:

- **A national ban on all forms of torture and mistreatment: Immediately prohibit solitary confinement, strip searches, spit hoods, restraint chairs, chemical restraints, and excessive force against children in all jurisdictions.**
- **Ending the detention of children in adult facilities: Immediately remove all children from watchhouses, police custody and adult prisons and ensure they are never held in adult detention under any circumstances.**
- **Reforming Bail and Remand Laws: Establish national, evidence-based, child-centred frameworks that prioritise rehabilitation, diversion, and early intervention over detention to break the cycle of criminalisation.**
- **Ensure ongoing access to safe, adequate and culturally appropriate healthcare and education to all children in contact with the criminal legal system.**

Recommendation 2

1.39 The federal government must immediately allocate emergency funding to frontline services in communities, prioritising First Nations Community-Controlled Organisations, to support at risk children by:

- **providing safe housing and crisis accommodation.**
- **ensuring access to food, clothing, healthcare, and culturally appropriate support.**
- **supporting family reunification and trauma-informed care to break the cycle of criminalisation.**
- **diverting resources away from policing and detention and instead investing in First Nations-led solutions, including housing, healthcare, education, family reunification, and culturally safe support services and programs.**

Recommendation 3

1.40 Provide urgently requested needs-based and sustained funding increases for Aboriginal and Torres Strait Islander Legal Services to deliver culturally safe, holistic legal services and wraparound supports for First Nations children and young people, and to partner with governments to transform youth justice in

line with the Closing the Gap priority reforms and to meet Socio-Economic Target 11.

Recommendation 4

1.41 Immediately halt all plans for the construction or expansion of children's prisons across Australia and work in genuine partnership with communities to develop non-carceral, community-led solutions that provide culturally safe, trauma-informed support for children and families.

Recommendation 5

1.42 The federal government must publicly reject racist and punitive 'tough on crime' narratives that drive harmful policies targeting children and hold state and territory governments accountable for enacting policies that go against best evidence, disproportionately criminalise First Nations children and escalate their incarceration.

Recommendation 6

1.43 Immediately commence a process for the full implementation of:

- **the *Bringing Them Home* report;**
- **recommendations from the Royal Commission into Aboriginal Deaths in Custody; and**
- **the *Help Way Earlier!* report.**

Recommendation 7

1.44 Establish a mechanism to provide national oversight and monitoring of the implementation of the reports referred to in Recommendation 6 in all jurisdictions.

This includes ending the harmful practices in children's detention by implementing enforceable national minimum standards and supporting trauma-informed, culturally safe, community-based alternatives to detention, with a focus on early intervention and diversion strategies, and justice reinvestment approaches that are self-determined and address the root causes of criminalisation.

Minimum standards must be developed in partnership with Aboriginal and Torres Strait Islander people, and in line with this country's international human rights obligations under the Convention on the Rights of the Child; the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of Persons with Disabilities, and other international treaties Australia has ratified that have bearing on the treatment of children in the criminal legal system.

Recommendation 8

1.45 The federal government must take immediate steps to enact a national Human Rights Act that includes nationally enforceable protections for children's human rights with national oversight and enforcement mechanisms.

Recommendation 9

1.46 Should this inquiry continue in the 48th Parliament, the committee must focus on non-violent community-led solutions and move beyond carceral frameworks and focus on how the Australian government can fulfil its obligations to self-determination and sovereignty for First Nations peoples.

Recommendation 10

1.47 Should this inquiry continue in the 48th Parliament, the committee should use the expanded terms of references proposed by my amended motion to the original establishment of this inquiry, with particular reference to the Commonwealth's responsibilities as they relate to:

- **the outcomes and impacts of youth incarceration in jurisdictions across Australia;**
- **the evidence for current youth justice approaches;**
- **the driving factors of the over-incarceration of First Nations children;**
- **the links between child protection and youth incarceration;**
- **the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention;**
- **the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights;**
- **the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations;**
- **the extent to which the Commonwealth and state and territory governments have given effect to the recommendations of the Royal Commission into Aboriginal Deaths in Custody;**
- **access to healthcare and disability support, including proper screening and assessments by relevant professionals;**
- **alternatives to incarceration, the evidence base on the efficacy and cost-effectiveness of diversionary programs and existing public sector support for these programs, including self-determined, culturally appropriate programs for First Nations young people; and**
- **any related matters including those laid out in the above recommendations.**

Senator Lidia Thorpe
Participating Member

Appendix 1
Submissions and additional information

1 KidsXpress

2 The Australia Institute
- Attachment 1

3 Professor Tamara Walsh, University of Queensland
- Attachment 1

4 Sentencing Advisory Council (Victoria)

5 Victorian Aboriginal Child and Community Agency

6 Professor Barry Goldson, University of Liverpool

7 Care and Kindness: Wings of Inclusion

8 Law and Advocacy Centre for Women

9 SA Commission for Children and Young People

10 Helen Manos

11 Damien Linnane

12 Royal Australasian College of General Practitioners

13 Dr Michael Levy AM

14 Keith Hamburger AM

15 Eamon Ryan, Inspector of Custodial Services (WA)

16 Djirra

17 Australian Centre for Health Law Research

18 Greg Peak

19 Richard Brooking

20 Justice Reform Initiative

21 Hello Initiative

22 Eric Hayward

23 Professor Andrew Day, University of Melbourne

24 CREATE Foundation

25 Association of Alcohol and Other Drug Agencies NT

26 African Communities Council of South Australia

27 NOFASD Australia

28 Raise the Age NSW

29 yourtown

30 Australian Association for Restorative Justice

31 Youth Off The Streets

32 Australian Alcohol and Other Drugs Council

33 Anglicare Victoria

34 Common Grace

35 Centre for Multicultural Youth

36 Tiraapendi Wodli Justice Reinvestment

37 Professor Fiona Stanley, Professor Carol Bower, Professor Patricia Dudgeon, Dr Jocelyn Jones, Dr Hannah McGlade, Dr Sharynne Hamilton & Dr Hayley Passmore
- Attachment 1
- Attachment 2
- Attachment 3

38 Queensland African Communities Council
39 Metropolitan Youth Health
40 Associate Professor Tamara Blakemore, Associate Professor Shaun McCarthy & Dr Louise Rak, University of Newcastle
41 Bob Beadman
42 Dr Meg Perkins
43 Joe Horner
44 Stephen Encisco
45 Multicultural Youth Advocacy Network
46 Olivia Conan-Davies
47 Junction Australia
48 Institute of Public Affairs
49 Redfern Legal Centre
50 Royal Australasian College of Physicians
51 National Justice Project & Jumbunna Institute for Indigenous Education and Research
52 Dr Fiona Robards & Professor Elizabeth Elliott, University of Sydney
53 PeakCare Queensland Inc.
54 Uniting Church in Australia, Queensland Synod
55 Australian Medical Association
56 Save the Children & 54 reasons
57 Queensland Network of Alcohol and Other Drug Agencies
58 Australian Institute of Health and Welfare
59 Centre for Excellence in Therapeutic Care, Australian Childhood Foundation
60 Australians for Native Title and Reconciliation (ANTAR)
61 Associate Professor Catia Malvaso, University of Adelaide
62 Queensland Aboriginal and Torres Strait Islander Child Protection Peak
63 Australian Child Rights Taskforce
64 Australian Research Alliance for Children and Youth (ARACY)
65 Australian Human Rights Commission
- 65.1 Supplementary to submission 65

66 NAPCAN
67 Dr Lisa Ewenson, UNSW Sydney
68 Faircloth McNair & Associates
69 Australian Psychological Society
70 Alcohol Tobacco and Other Drug Association ACT
71 Jesuit Social Services

72 Royal Australian and New Zealand College of Psychiatrists
73 Queensland Indigenous Family Violence Legal Service
74 Australian and New Zealand Children's Commissioners, Guardians and Advocates
75 Multicultural Australia
76 Life Without Barriers
77 Federation of Community Legal Centres
78 Youth Affairs Council Victoria
79 Justice Collaboration, University of Sydney
80 Network of Councils of Social Service
81 Youthlaw
82 Human Rights Law Centre & Change the Record
83 UNICEF Australia
84 SHINE for Kids
85 ACT Public Advocate and Children and Young People Commissioner
86 NSW Council for Civil Liberties
87 Professor John Tobin, University of Melbourne
88 Dr Terry Hutchinson, Southern Cross University
89 Amnesty International Australia
90 ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner
- 90.1 Supplementary to submission 90

91 Justice and Equity Centre
92 Luke Twyford, Queensland Family and Child Commission
93 Tasmanian Council of Social Service
94 Women's Legal Service Victoria
95 Youth Support and Advocacy Service
96 Fams
97 Catholic Religious Australia
98 WA Commissioner for Children and Young People
99 First Peoples Disability Network
100 Emeritus Distinguished Professor Rob White, University of Tasmania
- Attachment 1
- Attachment 2
- Attachment 3
- Attachment 4

101 St Vincent de Paul Society National Council
102 No to Violence
103 Centre for Excellence in Child & Family Welfare
104 South Australian Council of Social Service
105 Northern Territory Paediatricians
106 Maranguka Limited
- Attachment 1

107 Council of Aboriginal Services Western Australia
108 Professor Ruth McCausland and Professor Eileen Baldry, UNSW Sydney
109 Australian National Preventive Mechanism
110 Dr Molly McCarthy, Deakin University, and Professor Keith McVilly, University of Melbourne
- Attachment 1

111 Just Reinvest NSW
112 Anglicare Southern Queensland
113 ADHD X
- Attachment 1

114 Justice Health Group
115 Youth Advocacy Centre
116 The Kids Research Institute Australia
117 Maggie Blanden
118 Commissioner for Children and Young People (Tas)
119 Hope Community Services
120 Queensland Advocacy for Inclusion
121 The Salvation Army
122 Australasian Society for Developmental Paediatricians
123 Queensland Council of Social Service
124 Clinical Associate Professor Raewyn Mutch
125 NSW Ombudsman
126 NT Council of Social Service
127 Intellectual Disability Rights Service
128 Sisters Inside Inc. & National Network of Incarcerated and Formerly Incarcerated Women and Girls
129 Youth Affairs Council of SA
130 Community Restorative Centre
131 Katherine Women's Legal Service
132 Indigenous Allied Health Australia and Indigenous Allied Health Australia, NT Workforce Development
133 Smart Justice for Young People
134 Parents under Pressure Program (Griffith University) and Beyond the Pale Indigenous Corporation
135 ANU Law Reform and Social Justice Research Hub
136 Australian Youth Justice Action Circle
137 Voices of Influence Australia
138 Social Reinvestment WA
- Attachment 1
- Attachment 2
- Attachment 3

139 Zoë Robinson, Advocate for Children and Young People (NSW)

140 Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara Women's Council
141 Parliamentary Commissioner for Administrative Investigations (WA)
142 Koorie Youth Council
143 The Shopfront Youth Legal Centre
144 Uniting Church in Australia, Synod of Victoria and Tasmania
145 James Burford, Yvette Holt & Dr Georgina Dimopoulos, Southern Cross University
146 Maurice Blackburn
147 Community Justice Coalition
148 Justice Action
- 148.1 Supplementary to submission 148

149 North Australian Aboriginal Justice Agency
150 Darwin Amnesty Action Group
151 Commissioner for Aboriginal Children and Young People (SA)
152 Aboriginal and Torres Strait Islander Legal Service (Qld)
153 Reserve Magistrate Jennifer Bowles, Churchill Fellow
154 Australian Education Union
155 Yuwaya Ngarra-li Partnership
156 Australian Youth Affairs Coalition
157 headspace
158 Coalition of Peaks
159 Vacro
160 Commissioner Natalie Lewis, Queensland Family and Child Commission
161 Nic Carson
162 Tasmanian Aboriginal Centre
163 Professor John Mendoza
164 Victorian Commission for Children and Young People
165 Associate Professor Jocelyn Jones & Juliet Brook, Edith Cowan University
166 Big hART
167 Sarah Nelson
168 knowmore
169 Public Health Association of Australia
170 Partnership for Justice in Health
171 Aboriginal Health Council of Western Australia
172 National Legal Aid
- Attachment 1
- Attachment 2

173 SNAICC – National Voice for our Children
174 Dr Anita Mackay, La Trobe University
175 Westjustice
176 Northern Territory Anti-Discrimination Commissioner
- Attachment 1
- Attachment 2

- Attachment 3
- Attachment 4
- Attachment 5

177 Gilbert + Tobin
178 South-East Monash Legal Service
179 Aboriginal Legal Service of Western Australia Limited
180 Australian Indigenous Doctors' Association
181 Jumbunna Institute for Indigenous Education and Research
- Attachment 1

182 Shane Northcott
183 Victoria Legal Aid
184 Children's Court of New South Wales
185 Institute for Collaborative Race Research
186 Justice Reinvestment Network Australia
187 Australian Centre for Child Protection, University of South Australia
188 Aboriginal Health and Medical Research Council of NSW
189 Community and Public Sector Union / Civil Service Association of WA
190 Professor Leah Bromfield & Robert Benjamin
191 Levitt Robinson
- Attachment 1
- Attachment 2
- Attachment 3

192 Central Australian Aboriginal Congress
193 Northern Territory Government
194 Office of the Children's Commissioner NT
195 Law Council of Australia
196 Victorian Aboriginal Legal Service (VALS)
197 Aia Newport
198 Roxanne Moore
199 Legal Aid NT
- Attachment 1

200 Tasmanian Government
201 Aboriginal Legal Service (NSW/ACT)
202 National Aboriginal and Torres Strait Islander Legal Services
203 Queensland Human Rights Commission
204 Attorney-General's Department
205 Tasmanian Aboriginal Legal Service
206 Youth Law Australia and Centre for Criminology, Law and Justice, UNSW
207 Shona Reid, Guardian for Children and Young People (SA)
- Attachment 1

208 Angela Sdrinis Legal

209 Aboriginal Legal Rights Movement (SA)
210 Name Withheld
211 Name Withheld
212 Confidential
213 Confidential
214 Margaret Walker
215 Confidential
216 Confidential
217 Confidential
218 Confidential
219 Confidential
220 Nick Feik
221 Anti-Slavery Australia
222 ACT Inspector of Custodial Services
223 Jack Davenport

Additional Information

1 Commissioner for Children & Young People, Commissioner's Policy Position, The need for rights-based reform of South Australia's child justice system, January 2025, provided by Commissioner Helen Connolly (received 24 January 2025)

Answers to Questions on Notice

1 First Nations Advocates Against Family Violence, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 11 February 2025)
2 Australian Child Rights Taskforce, answers to questions on notice, 3 February 2025 (received 14 February 2025)
3 Coalition of Peaks, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 14 February 2025)
4 Law Council of Australia, answers to written and spoken questions on notice, 3 February & 11 February 2025 (received 14 February 2025)
5 UNICEF Australia, answers to questions on notice, 3 February 2025 (received 14 February 2025)
6 Australian and New Zealand Children's Commissioners, Guardians and Advocates, answers to questions on notice, 3 February 2025 (received 14 February 2025)
7 Attorney-General's Department, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 14 February 2025)
8 SNAICC—National Voice for our Children, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 18 February 2025)
9 Australian Human Rights Commission, answers to questions on notice, 3 February 2025 (received 18 February 2025)

10 Justice Action, response to questions on notice, 3 February 2025 (received 18 February 2025)

11 National Aboriginal and Torres Strait Islander Legal Service, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 18 February 2025)

12 National Commission for Aboriginal and Torres Strait Islander Children and Young People, answers to written and spoken questions on notice, 3 February & 11 February 2025 (received 20 February 2025)

13 Department of Social Services, answers to written and spoken questions on notice, 3 February & 11 February 2025 (received 20 February 2025)

14 Office of the Commissioner for Aboriginal and Torres Strait Islander Children and Young People, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 27 February 2025)

15 National Indigenous Australians Agency, answers to questions on notice, 3 February 2025 (received 27 February 2025)

16 Australian Federal Police, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 28 February 2025)

Correspondence

1 Letter from the Queensland Sentencing Advisory Council dated 2 October 2024

2 Letter from the Department of the Premier and Cabinet (Queensland) dated 3 October 2024

Tabled Documents

1 Letter from Joint Council on Closing the Gap to the NT Attorney-General, dated January 2025, tabled at a public hearing on 3 February 2025

Appendix 2
Public hearing and witnesses

Monday, 3 February 2025
Committee Room 2S3, Parliament House, Canberra

Australian and New Zealand Children's Commissioners, Guardians and Advocates

- Ms Jodie Griffiths-Cook, Public Advocate and Children and Young People Commissioner (ACT)
- Ms Anne Hollonds, National Children's Commissioner
- Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA)
- Ms Natalie Lewis, Commissioner (QLD)
- Ms Vanessa Turnbull-Roberts, Aboriginal and Torres Strait Islander Children and Young People Commissioner (ACT) (via videoconference)
- Ms Shahleena Musk, Children's Commissioner (NT) (via videoconference)
- Ms Isabelle Crompton, Interim Commissioner for Children and Young People (TAS) (via videoconference)
- Ms Shona Reid, Guardian for Children and Young People (SA) (via videoconference)

Advocate for Children and Young People

- Ms Zoë Robinson, Advocate for Children and Young People (NSW)

Australian Child Rights Taskforce

- Mr James McDougall, Co-Chair

National Association for Prevention of Child Abuse and Neglect

- Ms Leesa Waters, Chief Executive Officer
- Ms Zahra Al Hilaly, Campaign and Policy Strategist

UNICEF Australia (via videoconference)

- Ms Nicole Breeze, Chief Advocate for Children

SHINE for Kids

- Ms Julie Hourigan, Chief Executive Officer
- Ms Tanya Macfie, Mentor Manager (via videoconference)

Australian Youth Affairs Coalition (via videoconference)

- Mrs Joanna Rostami, Chief Executive Officer

Justice Action

- Mr Brett Collins, Coordinator

- The Hon John Dowd AO KC, Spokesperson

SNAICC – National Voice for our Children

- Ms Catherine Liddle, Chief Executive Officer
- Mr John Burton, Executive Director, Policy & Research

Coalition of Peaks (via videoconference)

- Ms Pat Turner, Lead Convenor

First Nations Advocates Against Family Violence (via videoconference)

- Ms Priya Devendran, Senior Policy Officer

National Commission for Aboriginal and Torres Strait Islander Children and Young People

- Ms Lillian Gordon, Acting National Commissioner
- Mrs Stella Renagi, Director

National Justice Project & Jumbunna Institute for Indigenous Education and Research

- Professor George Newhouse, Chief Executive Officer
- Dr James Beaufils, Senior Research Fellow

Law Council of Australia (via videoconference)

- Mr Anthony McAvoy SC, Chair, Indigenous Legal Issues Committee
- Mr Greg McIntyre SC, Member, National Human Rights Committee and Indigenous Legal Issues Committee
- Dr Adam Fletcher, Senior Policy Lawyer

National Legal Aid (via videoconference)

- Ms Annmarie Lumsden, Director
- Mr Nick Espie, First Nations Advisory Group and Criminal Law Network representative / Associate Director, Client Services
- Ms Jane Irwin, Criminal Law Network representative / Associate Director, Criminal Law

National Aboriginal and Torres Strait Islander Legal Services

- Ms Nerita Waight, Deputy Chair

Australian Human Rights Commission

- Ms Anne Hollonds, National Children's Commissioner
- Ms Rosemary Kayess, Disability Discrimination Commissioner

Attorney-General's Department

- Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division
- Ms Anne Sheehan, First Assistant Secretary, International Law and Human Rights Division

- Ms Ayesha Nawaz, Assistant Secretary, Human Rights Branch, International Law & Human Rights Division
- Ms Amy Dyde, Acting Assistant Secretary, Criminal Law Policy Branch, Criminal Justice Division

Department of Social Services

- Ms Letitia Hope, Deputy Secretary, Families and Communities
- Ms Tarja Saastamoinen, Group Manager, Children and Families

National Indigenous Australians Agency

- Ms Julie-Ann Guivarra, Deputy CEO – Policy and Programs
- Ms Ali Jenkins, Group Manager – Social Policy