

Submission
to
the Senate Legal and Constitutional Affairs Committee
Inquiry
into
Australia's Youth Justice and Incarceration System

December 2025



AUSTRALIAN
CHILD RIGHTS
TASKFORCE

The **Australian Child Rights Taskforce**¹ (the Taskforce) is a coalition of over 100 organisations, networks and individuals committed to the protection and development of the rights of children in Australia.

On 28 October 2025, the **Australian Parliament Senate** requested its **Legal and Constitutional Affairs References Committee** to inquire and report on Australia's youth justice and incarceration system, including:

- the outcomes and impacts of youth incarceration in jurisdictions across Australia,
- the over-incarceration of First Nations children,
- 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 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; and any related matters.

The Committee is invited to engage with and seek input from young people with lived experience in the youth justice system and seek evidence of effective alternative approaches to incarceration for young people, including diversionary programs. **The Committee** has the power to consider and use the records of **the Legal and Constitutional Affairs References Committee appointed in the previous parliament**.

The Taskforce welcomes this further opportunity to contribute. We refer to our contributions to the previous Inquiry. These contributions included:

- A written submission from October 2024.
- Evidence to the Inquiry hearing in February 2025; and
- Response to Questions on Notice provided in February 2025.

Our key messages remain the same. Middle childhood and adolescence are 'critical times for building capabilities for life'². They are also times in which children test boundaries and make mistakes. The adult criminal justice system does not offer the guidance and support necessary to set these children back on track. And our service systems pay insufficient attention to what is required for the protection, health and wellbeing and respect for the rights of these children. The international principles of child rights and youth justice, supported by a wealth of knowledge and experience in Australia offer constructive solutions and appropriate policy responses to the challenges of youth offending.

The current challenge in Australia is the political commitment to consistently implement that approach. State and territory governments have been unable to resist the lure of flawed political fixes. And an absence of national leadership has failed to encourage the necessary investments to guide governments to support this relatively small group of children and the communities that they come from. A framework of coordinated governance arrangements could ensure that Australia's youth justice systems not only comply with international human rights obligations but also allow these children the best opportunities to get back on track. With effective and consistent monitoring and guidance, these arrangements can also make strategic and meaningful contributions to address the often entrenched and intergenerational discrimination and disadvantage experienced by many of these children and their communities.

In this submission, we refer to the material from our previous submissions and examine the opportunities to develop these more coordinated governance arrangements with leadership and support from the Australian Government.

¹ <https://childrightstaskforce.org.au/>

² McLachlan, R., Gilfillan, G. and Gordon, J. 2013, *Deep and Persistent Disadvantage in Australia*, rev., Productivity Commission Staff Working Paper, Canberra at page 14.

Our Key Messages

- The international principles of child rights and youth justice provide effective guidance.
- National leadership can provide monitoring and accountability to drive improvements.
- Enforceable national standards are required to frame consistent monitoring and drive accountability.
- Existing reform initiatives are disconnected and lack appropriate independent monitoring.
- Appropriate governance arrangements can support coordination, compliance and address disadvantage.
- Monitoring must use child specific measures and outcomes.
- Existing statutory authorities can be better supported and resourced to guide monitoring.

The Child Rights Framework

The **United Nations Convention on the Rights of the Child** reflects a fundamental shift during the 20th Century in the way that children were viewed. Previously, children were largely viewed as the property of adults. This shift to an understanding of children as rights holders is increasingly reflected in domestic legal and justice systems as well as international law. The implementation of child rights in domestic legal systems and policy development has begun in jurisdictions around the world. In dealing with children who come into conflict with the criminal law, this has included the development of a comprehensive set of principles that guide youth justice systems. These systems offer an effective alternative to both out-dated welfare models of dealing with children in adverse social settings and the more punitive adult criminal justice system.

These principles have been set out in an Australian context in Save the Children / 54 Reasons *“Putting Children First: A rights respecting approach to youth justice in Australia”*³. The principles draw on international law built in turn on a foundation of evidence-based and tested standards.⁴

Recommendations from the United Nations

Recommendations of the **UN Child Rights Committee**⁵ cover youth justice including monitoring conditions in detention and in raising the age of criminal responsibility. The **UN Committee** has noted that despite Australia’s ratification of the Convention in 1990, it has yet to incorporate rights effectively and consistently into monitoring, policy, and legislative frameworks and that there are unacceptable gaps in the protection of children’s rights.

We note the work of the **UN Sub-Committee on the Prevention of Torture** and the Australian Government’s commitment to establish a National Preventive Mechanism.⁶ We believe that the Mechanism could provide a key opportunity to address the situation of children and young people who experience instances of torture, and other cruel, inhuman, or degrading treatment or punishment. However, the Taskforce is also of the view that 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 comprehensive and coordinated framework. Such a framework can draw on and intersect with a range of other current initiatives and developments.

³ Save the Children and 54 reasons, 2023, *Putting children first: A rights respecting approach to youth justice in Australia*, https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia_April-23.pdf.aspx

⁴ *“Rights of the Child in the Child Justice System”* (Kilkelly & Pleysier) Youth Justice (2023) Vol 23(2) 135-139.

⁵ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En

⁶ As a result of Australia’s ratification of the Optional Protocol Against Torture in 2017

Issues covered in our previous submissions highlight the importance of:

Addressing culture and disadvantage for Indigenous Children
Addressing ongoing failures of legal processes for children
The need for better coordination of existing reform initiatives
Building better responses to mistreatment of children in detention
Aligning the youth justice systems with Child Safe Standards
Listening to Children and Young People in decision making
Imbedding rehabilitation as a guiding principle for youth justice systems
Sharing responsibility across Governments and systems

National Standards in Youth Justice

The Taskforce believes that enforceable national standards represent the most strategic next step to address the current challenge. We note that existing voluntary standards have been developed and endorsed by the administrators of youth justice services from the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria, Western Australia and Aotearoa New Zealand. This demonstrates a desire for collaboration across jurisdictions that we endorse.

Appropriate national standards should be child-centred and based on international child rights and youth justice principles to drive consistency and best practice. The views and experiences of children and young people who come into contact with the youth justice systems will build the effectiveness of the standards. Addressing the issues identified by existing monitoring (such as the misuse of solitary confinement, instances of mistreatment and inappropriate practices and lack of attention to health, wellbeing, education and development) will be required with guidance from Australian and international best practice.

The case for enforceable standards was set out in our previous Inquiry submission with a case study of the work over the last decade of the **Inspector of Custodial Services in Western Australia** in examining the treatment of children in detention in Banksia Hill Detention Centre and the failure to implement the Inspector's recommendations. The case is reinforced by the practice of governments to develop strategies, policy frameworks and even legislative statements of principle aligning with rehabilitative principles that are not translated into action. Recently even attention to fundamental principles of youth justice have been sacrificed for short term political objectives.

Skilled monitoring by qualified bodies establishes baseline standards for treatment. There must be ongoing monitoring, measures to ensure effective implementation and penalties for inaction.

Suggested Next Key Steps

There are opportunities to build on existing monitoring and guidance. An independent and appropriately resourced mechanism for **monitoring progress in child safety at a national level** is required. There could be a comprehensive set of measures to address all dimensions of children's safety and protection, that extends to youth justice settings.

As we have seen over the last year, there has been a lack of momentum for the reforms of the **Child Abuse Royal Commission**. So now is the right time for the Federal Government to take further determined steps to improve coordination and cooperation across strategies, governments and departments to address ongoing gaps in the provision of safety and protection for children.

Better Support for Existing Data Collection and Monitoring Roles at a National level

There are institutions that already contribute to reporting and analysis to build appropriate monitoring and accountability for children's services. The Productivity Commission's Closing the Gap reporting and Annual Reports on Government Services offer data and insights. The Australian Institute of Health & Welfare provides annual reports on youth justice. The Australian Institute of Criminology undertakes research. The Australian Child Maltreatment Study has added new data and knowledge.

There would be significant value in a dedicated and committed independent and public monitoring mechanism that coordinates and aligns the data with measurement of progress towards objectives and outcomes across sectors and jurisdictions.

Monitoring that Coordinates State, Territory and National Data

Some of the existing systems reform initiatives that would be supported by an integrated framework include:

- **National Framework for Protecting Australia's Children: Safe and Supported (2021-2031)**
- **National Plan (to End Violence against Women and Children (2022-2032)**
- **National Strategy to Prevent and Respond to Child Sexual Abuse (2021-2030)**
- Recommendations of the **Royal Commission into Institutional Responses to Child Sexual Abuse** including the implementation of Child Safe standards
- **Closing the Gap** targets that directly relate to First Nations children and their communities
- Recommendations from the "**Bringing Them Home**" report (1997)
- **UN Child Rights Committee's** recommendations to Australia (2019)

Existing strategies and reviews at both a national and state and territory level lack sustained and coordinated monitoring. Repeatedly, measures to effectively monitor and evaluate progress and impact are found to be missing or not acted upon. Resourced and enforced monitoring against National Standards would drive a greater level of policy coherence across key strategies and programs.

Gaps in implementation should be addressed across governments, departments, programs and services, and communities. The Taskforce has released its **Blueprint for a National Children's Plan**⁷ which provides guidance on how an independent and appropriately resourced mechanism for monitoring progress in child safety at a national level can contribute to better outcomes for children.

Role for Children's Commissioners

A fully legislated, empowered and funded **National Aboriginal and Torres Strait Islander Children's Commissioner** could work alongside a similarly resourced **National Children's Commissioner** to guide coordination with other statutory agencies including State and Territory **Children's Commissioners** and **Guardians** with the necessary skills to support independent monitoring of outcomes for children and young people. This could occur alongside the work of a properly resourced and coordinated **National Preventive Mechanism** under the **Optional Protocol to the Convention Against Torture**.

Systems Review

There is the opportunity to review and redesign systems and services using the Standards. They can help guide efforts to understand and respond to behaviours; shifting the focus to creating and maintaining safe, stable, and supportive environments; and to address the underlying causes of behaviour more effectively. We can shift the focus away from a counter-productive punitive framework based on the adult criminal justice system to one that ensures children have their needs met and rights respected with a more comprehensive, more constructive, and less stigmatising approach.

⁷ <https://www.54reasons.org.au/childrens-plan-blueprint>

Integrating Child Development and Coordinating Service System Responses

*"Evidence demonstrates that early support, family-led decision making, and robust, consistent, and reliable service systems are critical for preventing children from entering a cycle of harmful behaviour"*⁸

The integration of child development and coordinating service system responses is a key responsibility of governments. A focus on the development of children before⁹ and through engagement with the justice system will enable attention on the many of the underlying issues experienced by children in detention. These include the significant numbers who have some form of disability or health issue¹⁰.

Community Safety and Supporting the Role of Family and Community

Using a child rights framework will offer the opportunity to build in the necessary safeguards and mechanisms to address issues of personal and community safety and accountability. It should encourage and support strong and resilient families and communities to provide safe, stable, and supportive environments.

One of the key features in child rights frameworks is an explicit recognition of the critical role of family and community in caring for and supporting the development of children and children's emerging capacity to claim and enjoy their rights.

Governments have an equally fundamental role to step in and support when the family is unable to provide the required support and environment. This is framed as alternative or substitute care, or in the case of state and territory governments in Australia as 'child protection'. It is intended in as many cases as possible to be temporary. It is subject to periodic review and with the goal that a child is returned to family and community as soon as practicable. The Government's responsibility to provide care and family and community support remains when a child enters the youth justice system. Alongside this sits the principles that detention is to be used as a measure of last resort and for the shortest period possible. The preferred outcome is the return of the child to a supportive family environment. In the case of Aboriginal and Torres Strait Islander children and other children in settings where family structures are broader and inclusive, this can be community or kinship care.

Victim Engagement and Restorative Justice

The child rights framework offers opportunities to support victim engagement. There are excellent examples of restorative justice programs built in youth justice settings (including youth justice conferencing) where victims play a key (and sometimes leadership) role. Often the process of setting penalties and corrections to guide a child benefit from the views and interests of victims being heard and addressed.

A restorative approach shifts the focus away from inappropriate or ineffective punitive responses. It also offers the opportunity to identify where family supports, and role models will be most effective especially if they can be personally and culturally appropriate. Attuned community care will also avoid stigmatisation and offer new pathways for both children and victims.

There are current system reform initiatives which seek to address many of these failings. What is missing, is the national leadership that will provide monitoring and accountability to drive these intended improvements. Appropriate national governance arrangements should be in place to support and guide the efforts of both national and state and territory policy frameworks and the efforts of state and territory governments. Monitoring and leadership are required to make the necessary investments in coordinated systems reform.

⁸ ACT Government Discussion Paper on Raising the Age of Criminal Responsibility

⁹ Through appropriate testing and screening

¹⁰ Robards et al, *Addressing the challenges of FASD for adolescents in the justice system* Judicial Quarterly Review, 2024, 2(1), 11-26

The role of the Australian Government

The **Attorney General's Department** has described the **Australian Government** initiatives for youth justice under the heading "*National leadership and coordination through the Standing Council of Attorneys General*" as:

- **Closing the Gap** Justice Targets and Outcomes (10 and 11)
- Minimum age of criminal responsibility reform
- Bail and remand reform
- **Justice Policy Partnership** and Collaboration Principles
- Justice Reinvestment

The Government may play some sort of coordinating role but to date (and under previous Governments) there has been little evidence of national leadership.

For example, the **Productivity Commission** noted in its **Closing the Gap Review Report**:

'It is too easy to find examples of government decisions that contract commitments in the [**National Agreement on Closing the Gap**], that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives that exacerbate rather than remedy, disadvantage and discrimination. This is particularly obvious in the youth justice system'.

There has been reference to the **National Justice Reinvestment Program**. We note the recently announced **Community Safety Program** and a **Youth Empowerment Program** to support diversion.

The commitment of these Federal Budget resources indicate that the **Australian Government** can find the funding to invest in youth justice when it wants to. These programs could represent part of a coordinated strategy with measurable outcomes that impact on the broader operation of the youth justice systems. But there is no evidence of monitoring or linking these programs with the reduction of detention rates and measures to limit the human rights abuses that continue within those systems.

At the same time, Australian Governments including state and territory governments are spending \$1.2 billion on youth justice supervision (including detention). In our view, the Federal Government should be investing appropriate (and at least the equivalent of the funding committed to the three programs mentioned above) to **establishing and monitoring national youth justice and child safety standards**.

Monitoring should be linked to the implementation of these standards with measurable outcomes from state and territory governments in achieving community safety and compliance with international human rights principles.

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