

Briefing Paper
to the
United Nations
Working Group on Arbitrary Detention

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AUSTRALIAN
CHILD RIGHTS
TASKFORCE

The Australian Child Rights Taskforce (the Taskforce) welcomes the opportunity to provide this background briefing to the United Nations Working Group on Arbitrary Detention in anticipation of its intended visit to Australia in December 2025.

This paper is substantially based on the Taskforce's recent contribution to the Australian Senate Legal and Constitutional Affairs References Committee Inquiry into Youth Justice. We also have drawn on contributions from Taskforce members and partners including Queensland Family & Child Commission (Aboriginal and Torres Strait Islander children), Associate Professor Hannah McGlade (CERD and discriminatory practices in detention), Dr Stuart Kinner (health data), Dr Fiona Robards (health measures), Jessica Valentine (a child's right to complain), People with Disability (children with disabilities), Justice Reform Initiative (amendments to bail laws), No Child in Solitary Confinement and the Justice & Equity Centre (arbitrary detention and solitary confinement).

The Australian Child Rights Taskforce and its work

The Australian Child Rights Taskforce¹ is a coalition of over 100 organisations, networks and individuals committed to the protection and development of the rights of children and young people in Australia. UNICEF Australia convenes the Taskforce, and its work is guided by a Steering Committee and Policy Working Groups.

One of the key roles of the Taskforce is to hold Australian Governments to account on the implementation of the *United Nations Convention on the Rights of the Child* (the Convention). When Australia ratified the Convention in 1990, this represented a commitment that every child in Australia should enjoy the rights set out in the Convention. The Taskforce has published a series of reports (most recently 'The Children's Report')², that have examined the implementation of the Convention to assist the United Nations Committee on the Rights of the Child³ (the UN Committee) in its review of Australia's performance.

Key Messages

The international child and human rights principles should provide guidance to Australian state and territory governments in the administration of youth justice. Whilst some of the legislative framework arrangements for youth justice refer to these principles, they are not consistently applied. There is considerable evidence of arbitrary detention⁴, abuse and failure to implement effective reforms over many years. National leadership is required to provide monitoring and accountability to drive improvements. Enforceable national standards would be a key monitoring tool that could be used. Then appropriate governance arrangements from a national perspective could ensure coordination, compliance and better address disadvantage.

Currently, existing reform initiatives are disconnected and lack appropriate independent monitoring and commitments to implementation of recommendations. Monitoring should use child specific measures and outcomes. Existing statutory authorities could be better supported and resourced to guide monitoring.

Whilst the key focus is on youth justice, there is ample evidence that there are similar deficits in other environments in which children and young people live, study and play. These settings include alternative care, education, health and mental health, disability services and the broader community.⁵ The Royal Commission into Institutional Responses to Child Sexual Abuse provided a broad framework for reform based around the introduction of National Child Safe Principles. Once again implementation of the Royal Commission's recommendations has been inconsistent and lacks monitoring and coordinated national leadership.

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

² <https://apo.org.au/node/200771>

³ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

⁴ Particularly categories 1, 3 and 5 as defined by the Working Group

⁵ For example, we note with support the briefing paper provided by People with Disability Australia and the concerns that it raises.

Context

Childhood and adolescence are ‘critical times for building capabilities for life’⁶. They are also times in which boundaries are tested, and decisions that are made by some children and young people are sometimes impulsive. These decisions will include mistakes and are often influenced by the less than perfect circumstances in which the child or young person 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 – one that is focused on rehabilitation and wellbeing. How to undertake such an approach is not a mystery. It is well documented and guided by the international principles of child rights and youth justice. There is a wealth of knowledge and experience in Australia and overseas that offers constructive solutions and appropriate policy responses to the ongoing circumstances and challenges of youth offending.

The challenge in Australia is the political commitment to consistently implement that approach. 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 profoundly marginalised group of children and the communities that they come from.

A framework of coordinated governance arrangements can guide and 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 these children and their communities.

We note and endorse the recent report of the National Children’s Commissioner at the Australian Human Rights Commission ‘*Help Way Earlier!*’ which recommends that the Australian Government should incorporate the UN Convention on the Rights of the Child into Australian law and imbed the child rights framework.

The Child Rights Framework

The UN Convention on the Rights of the Child reflects a fundamental shift that occurred 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 the establishment of 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 recently 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*”⁷. The principles draw on an extensive range of instruments of international law that have been built in turn on a foundation of evidence-based and tested standards.⁸

⁶ McLachlan, R., Gilfillan, G. and Gordon, J. 2013, *Deep and Persistent Disadvantage in Australia*, rev., Productivity Commission Paper, at page 14.

⁷ 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>

⁸ “Rights of the Child in the Child Justice System” (Kilkelly & Pleysier) Youth Justice (2023) Vol 23(2) 135-139.

The UN Child Rights Committee and its recommendations

Our reports and the work of a range of Australian advocates and reports have informed the recommendations of the UN Committee⁹ which have covered a range of policy areas where improvements were considered necessary, including in youth justice reforms, monitoring conditions in detention and in raising the age of criminal responsibility. The UN Committee has also 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 to benefit children and that there are unacceptable gaps in the legal protection of children's rights.

The UN Committee and other UN human rights bodies have made observations and recommendations noting the adverse *outcomes and impacts of youth incarceration in jurisdictions across Australia; the over-incarceration of First Nations children; the need for more effective compliance with the human rights of children and young people in places of detention and with Australia's international obligations in youth justice to fulfil the rights of the child, their civil rights and freedom from torture. The need for enforceable national minimum standards for youth justice consistent with our international obligations* have been noted over several reporting cycles and reinforced by a range of other UN human rights bodies.

The UN Sub-Committee on the Prevention of Torture

We note the work of the United Nations Sub-Committee on the Prevention of Torture. The Taskforce has taken a keen interest in the progress of the Australian Government's commitment to establish a National Preventive Mechanism.¹⁰ 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. We commend the Australian Government for committing to ratify OPCAT. We acknowledge the work that has begun to establish the required mechanism and its capacity to improve protections for people at risk of torture or degrading treatment. We support the ongoing advocacy of the Australia OPCAT Network including in relation to ongoing shortcomings in the implementation process.

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 for children and young people. 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.

Indigenous Children and the UN Committee on the Elimination of Racial Discrimination

Professor Hannah McGlade and the Human Rights Law Centre¹¹ have lodged an urgent complaint to the UN Committee on the Elimination of Racial Discrimination on the disproportionate rates of detention and unfair treatment of Indigenous children, the failure of governments to implement reforms, and the enactment of even harsher laws that will increase the trauma and negative impacts. The Committee has called on the Australian Government to respond within the next few months.

Action is also required under the *United Nations Declaration on the Rights of Indigenous Peoples* to support Indigenous peoples to meet their children's needs through self-determination.¹² Australian governments have acknowledged this through the *Safe and Supported, National Framework for Protecting Australia's Children 2021-2031*.¹³ However, the framework lacks monitoring.

⁹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En

¹⁰ As a result of Australia's ratification of the Optional Protocol Against Torture in 2017

¹¹ <https://www.hrlc.org.au/reports/urgent-un-complaint/>

¹² United Nations Human Rights Council, *Rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples* (2021)

¹³ Department of Social Services, *Safe and Supported: National Framework for Protecting Australia's Children* (2021) p51

Historical Context

The current situation in Australia is the result of many years in which youth justice has been the subject of political expediency and where evidence-based policy development has been neglected for short term political gain. This can be observed in every state and territory in Australia. The underlying issues have been recognised for some time. In 1997 the Australian Law Reform Commission & Australian Human Rights Commission handed down a report called "Seen and Heard: priority for children in the legal process".

Many of the failures of legal processes for children identified in this report remain today:

- a failure to consult with and listen to children and young people in matters affecting them.
- a lack of co-ordination in the delivery of services to children and young people.
- an overly punitive approach to children and young people in criminal justice systems.
- court processes which are bewildering and intimidating for children and young people.
- over-representation of Aboriginal and Torres Strait Islander children in justice and protection systems.

Current Context in Youth Justice

The Working Group uses Article 14 of the International Covenant on Civil and Political Rights¹⁴ to guide its work on arbitrary detention. Article 14.4 provides that "[in] the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation". By locking up children as young as 10 years old, Australian governments are impeding their rehabilitation and making reoffending much more likely.¹⁵ Governments must avoid a "narrative of accountability that emphasises reactive measures and the imposition of penalties and recognise the hard work involved in engagement and diversion and restorative justice processes that address the underlying causes of offending, and ultimately, improve community safety."¹⁶ The UN Committee on the Rights of the Child has consistently said countries should be working toward a minimum age of 14 years or older.²⁰ The age of criminal responsibility should be raised to at least 14 years nationwide.¹⁷

Another key development inconsistent with a rehabilitative focus in youth justice has been the narrowing of eligibility for bail through legislative amendments.¹⁸ These changes undermine the use of detention as a measure of last resort and give a greater priority to 'community safety' over the best interests of the child.

Police, and how they exercise their discretion, determine who encounters the criminal legal system, and who is detained within it as a result. Pre-emptive policing practices¹⁹, which rely heavily on police officer discretion, disproportionately impact people with disability and racial and ethnic minorities, particularly Aboriginal and Torres Strait Islander young people, leading to discriminatory outcomes inconsistent with Australia's obligations under international law.²⁰

Legislation regulating the use of isolation in youth justice centres across Australia permits practices that have the potential to, and often do, amount to the solitary confinement of young people.²¹ In addition, decisions leading to the isolation of children are often not made lawfully. Supreme Court proceedings are currently on foot in New South Wales alleging there is no legal basis to confine a young person for a 25-day period in that state.²²

¹⁴ Office of the United Nations High Commissioner for Human Rights *International Covenant on Civil and Political Rights*, (adopted 16 December 1996).

¹⁵ Justice Reform Initiative, *Alternatives to Incarceration in NSW* (Report: March 2024) 7; Don Weatherburn, *Imprisonment, reoffending and Australia's crime decline* (Judicial Officers Bulletin: 2021) 33:8.

¹⁶ Public Interest Advocacy Centre, *Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group review* (28 February 2020) 11.

¹⁷ For further detailed analysis, see a case study of the age of criminal responsibility in NSW at Annexure A.

¹⁸ These laws have been enacted in the States of Queensland, New South Wales and Victoria and the Northern Territory.

¹⁹ For further detailed analysis, see a case study of pre-emptive policing in NSW at Annexure B.

²⁰ UDHR Article 7, ICCPR Article 26, CRC Article 2.1

²¹ For further detailed analysis, see a case study on page 10

²² Georgina Mitchell "It broke my mind": Former youth detainee sues after being held in solitary confinement' *Sydney Morning Herald* (online, 15 August 2022) <<https://www.smh.com.au/national/nsw/it-broke-my-mind-former-youth-detainee-sues-after-being-held-in-solitary-confinement-20220812-p5b9dk.html>>.

Better Coordination of Existing Reform Initiatives

There are a range of 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 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.

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

- The National Framework for Protecting Australia's Children: Safe and Supported (2021-2031)
- Integration with the National Plan (to End Violence against Women and Children (2022-2032)
- The National Strategy to Prevent and Respond to Child Sexual Abuse (2021-2030)
- Recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2024) and the Royal Commission into Institutional Responses to Child Sexual Abuse (2017) including the implementation of Child Safe standards
- Closing the Gap targets that relate to First Nations children and their communities
- Recommendations from the Independent Aboriginal and Torres Strait Islander Review of Closing the Gap (2025)
- Recommendations from the "Bringing Them Home" report (1997)
- Recommendations of the National Children's Commissioner's report "Help way earlier! How Australia can transform child justice to improve safety and wellbeing" (2024)
- The National Review of First Nations Health Care in Prisons (2023-24)
- UN Child Rights Committee's recommendations on Australia's child rights performance (2019)

The Taskforce has produced a Blueprint for a National Children's Plan which includes information 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.

Building Better Responses to Mistreatment of Children in Detention

The Royal Commission into Institutional Responses to Child Sexual Abuse²³ detailed widespread mistreatment of children in a range of settings including in places of detention. A cycle of additional official inquiries and reports has found that youth justice systems and detention institutions across Australia are failing to protect the rights of children. We have provided a summary of recent material in a **Table** at the end of this paper.

The recurring nature of these inquiries demonstrates that efforts at systemic reform are either unsuccessful; lose momentum or fail to adequately address future needs and development. Stronger and more consistent monitoring and follow up is required. Issues that require greater scrutiny include data collection, public reporting, accessible complaints mechanisms, staffing management and training, and follow up on reforms.

There should be a role for civil society in monitoring and key governance must be grounded in independence.²⁴

²³ Australian Government, Royal Commission into Institutional Responses to Child Sexual Abuse (2017)

²⁴ In accordance with the Paris Principles for National Human Rights Institutions - <https://ganhri.org/paris-principles/>

Aligning with Child Safe Standards

Keeping children and young people safe is a broader challenge than youth justice. Further work is required to address the under-development in many sectors of child-centred practices and the lack of commitment to the creation of child safe environments. This was addressed by the Royal Commission in its recommendation for the implementation and monitoring of Child Safe Standards in all organisations that work with and deal with children and young people (including governments). The standards are based on the National Principles for Child Safe Organisations, endorsed by all Australian governments. This work must include ensuring that youth detention meets Child Safe Standards and are child safe environments.

Listening to Children and Young People

One of the key reforms that Child Safe Standards are intended to drive is to address the ongoing failure to provide effective opportunities for children's views to be heard and to inform decision making. A key element of a child rights approach is the participation of children involved and affected. Youth justice is no exception. Children have the right to participate in all decisions that affect them based on the right to be heard (Article 12 of the Convention). This includes the decisions that directly affect a child (such as court orders and conditions in programs and detention) to policy decisions where the 'lived experience' of children should be considered in design, implementation, and monitoring.

Provision for children's participation must recognise their circumstances. Power imbalances and a lack of confidence in adult authority structures limit the ability and the trust required for children to speak up about their situations. Children are often disadvantaged by the reliance on adult-designed and adult-centric mechanisms. Children are particularly vulnerable to mistreatment. Access to child-friendly and child-safe complaint mechanisms²⁵ are required. These are a critical protective factor for children in settings and systems where mistreatment may occur.

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.

Closing the Gap

In July 2020, Australian governments and the Coalition of Peaks signed the National Agreement on Closing the Gap.²⁶ This Agreement seeks to overcome the entrenched inequalities faced by Aboriginal and Torres Strait Islander people with 19 targets. Target 11 seeks to address over-representation in the criminal justice system, with a target to reduce the rate of Aboriginal and Torres Strait Islander young people aged 10-17 years in detention by at least 30 per cent by 2031. Ongoing monitoring by the Productivity Commission shows mixed results.²⁷ Australia has an intergenerational legacy of colonial dispossession and child removal, ongoing institutional racism, and the overrepresentation of First Nations peoples in measures of disadvantage and incarceration (including unsentenced detention, watch-houses, and police transport). There should be greater emphasis on the need for culturally safe practices and real steps by governments to supporting the self-determination of First Nations peoples.²⁸ Monitoring policies and practices should align with the Safe and Supported Framework and the National Agreement targets.

²⁵ Commissioner for Children and Young People WA "Child Friendly Complaints Guidelines" (2021); UNICEF "Tools to Support Child Friendly Practices: Child Friendly Complaint Mechanisms" (2019)

²⁶ <https://www.coalitionofpeaks.org.au/national-agreement-on-closing-the-gap>

²⁷ Australian Government Productivity Commission, <https://www.pc.gov.au/closing-the-gap-data/dashboard> and <https://www.pc.gov.au/closing-the-gap-data/annual-data-report>

²⁸ <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>

Disability in Youth Detention

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability included in its wide-ranging examination, scrutiny of the criminal justice system including youth detention.²⁹ It drew on research including health assessments which identified significant levels of disability, including foetal alcohol spectrum disorder (36%) and neurological impairment (89%), among children at Banksia Hill Detention Centre in Western Australia.³⁰ Its findings included that:

- children with disability are over-represented in youth detention and are exposed to substantial risks of violence, abuse and neglect,
- detention settings are characterised by strict discipline and rules which exacerbates the vulnerabilities of children with disability who often lack access to therapeutic support and trauma-informed care,
- isolation amounting to solitary confinement is over-used in youth detention centres, and not as a last resort, and
- youth justice agencies and staff require training on the needs of children with disabilities and the impacts of detention and isolation on them.

Rehabilitation as a Guiding Principle

A stronger commitment to rehabilitation is required as a guiding principle of the policy framework in the youth justice system. This would require developmentally appropriate behaviour management techniques such as de-escalation and safeguards (including prohibitions where necessary) regarding the use of force, restraints, seclusion, and isolation. Attention should be given to the recurring practice of transferring young people to adult facilities despite this practice breaching international child rights standards.³¹

Sharing the Responsibility

Addressing reforms for children including in youth justice systems should be a national priority. The Australian Government has a key role to play, in establishing enforceable national standards, monitoring, coordination and reporting to inform and support reform. A properly resourced and coordinated National Preventive Mechanism under the Optional Protocol to the Convention Against Torture could provide a supportive foundation to monitor the experience of children in youth justice facilities throughout Australia. Monitoring must be comprehensive and continue to develop. Even international standards do not yet guarantee an adequate level of health care in youth detention.³²

National Standards in Youth Justice

The challenge of ensuring consistent monitoring and responses across Australia is compounded by the lack of enforceable national standards. In youth justice, there are currently no legally enforceable standards that are consistent across all jurisdictions. There is available guidance. The Australasian Juvenile Justice Administrators Standards for Custodial Facilities were originally developed in 1999. Following several reviews, a new set was developed and in 2023 the revised Australian Youth Justice Administrators Principles were presented and endorsed by the 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.

²⁹ Final Report, Chapter 8, Criminal Justice and people with disability <https://disability.royalcommission.gov.au/publications/final-report-volume-8-criminal-justice-and-people-disability>

³⁰ Bower C, Watkins RE, Mutch RC, Marriott R, Freeman J, Kippin NR, et al. Foetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ open*. 2018;8(2):e019605-e.

³¹ Australia has maintained a reservation to article 37(c) of the Convention on the Rights of the Child.

³² <https://fxb.harvard.edu/2024/02/12/press-release-research-report-analyzes-healthcare-standards-for-children-deprived-of-their-liberty-in-effort-to-support-the-implementation-of-the-un-convention-on-the-rights-of-the-child/>

Whilst these revised standards provide some guidance, they are not yet sufficient or sufficiently measurable. There is ample evidence that unenforceable guidance has been insufficient to ensure appropriate practices and protections for children and young people in youth justice detention. This case study is one example.

A Case Study on Monitoring: Banksia Hill Detention Centre (Western Australia)

For over 10 years, the treatment of children in detention in Banksia Hill Detention Centre has been a concern. In 2012, the Inspector of Custodial Services reported the use of management regimes where child detainees were placed in solitary confinement for 22-23 hours per day and isolated from the general population for extended periods. In one instance, a child was isolated under various regimes for 95 consecutive days.

In 2017 the Inspector published a further report³³ calling for greater independent oversight. The report noted that behaviour management in juvenile detention 'is a longstanding concern', incidents of serious damage and self-harm had 'reached unprecedented levels', and responses to 'critical incidents' which included 'restraint use and high-level tactical response' have conflicted with 'a rehabilitative, trauma-informed model'. The report recommended that the use of lockdowns for staff training and staff shortages should be 'minimised'.

In December 2021, the Inspector began a further review of the facility and issued a Show Cause Notice to the Department considering the ongoing failures to improve conditions. The Department committed to a reform program and yet in July 2022, deemed it necessary to transfer a group of child detainees to an adult prison.³⁴ 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.³⁵ She called for greater respect for rights of children detailed, and renewed effort to provide the care and support that they need.³⁶ Later that same month, another child died in Banksia Hill, the second death in youth detention within a year.

The coronial inquest into the first death has heard evidence of violations of his human rights, including use of solitary confinement, as well as other acts of cruel and inhumane treatment contributing to his death. The incarceration of predominantly Aboriginal children at the youth detention unit of the adult prison and Banksia Hill Detention Centre have been condemned by Aboriginal justice leaders and is regarded as a continuation of colonial practices that deny Aboriginal children their human rights.³⁷

³³ Inspector of Custodial Services, Western Australia, Behaviour Management Practices at Banksia Hill (2017)

³⁴ <https://alhr.org.au/childrenadultprisonwa/>

³⁵ *Fetal alcohol spectrum disorder and youth justice: a prevalence study of young people sentenced to detention in WA.* (2018) Bower et al BMJ 2018;8(2).

³⁶ <https://www.cryp.wa.gov.au/our-work/hear-me-out-report/>

³⁷ McGlade, H, 2019. *Australia's treatment of Indigenous prisoners: The continuing nature of human rights violations in West Australian jail cells.* Chapter 20 Routledge Handbook of Disability Activism (pp.274 – 288)

A Case Study on Practices in Detention: Solitary Confinement

The use of solitary confinement and other isolation-based practices involving children continues in most jurisdictions across Australia, notwithstanding established international standards that prohibit their use, on children, in all circumstances. These practices are frequently applied in response to behavioural incidents, institutional lockdowns, staffing shortages or other administrative issues. In many instances, their use is not explicitly prohibited nor clearly defined in domestic legislation or policy. Oversight mechanisms vary across jurisdictions and record keeping remains inconsistent, resulting in a lack of transparency and accountability in the application of these practices.³⁸

Children subjected to these measures are often already vulnerable to systemic disadvantage, including children with disability, children with histories of trauma and First Nations children who remain significantly overrepresented in detention. The continued use of isolation-based practices, in these contexts, is inconsistent with Australia's obligations under the UN Convention on the Rights of the Child, the UN Convention Against Torture and the Mandela Rules.

There is a need for Australian governments to move towards an explicit national prohibition on the use of solitary confinement and all forms of isolation-based treatment for children, accompanied by clear legislative definitions, comprehensive safeguards, and mechanisms for independent monitoring.

Policy into Practise

It is not uncommon for government youth justice strategies, policy frameworks and even legislative statements of principle to include aspirations and objectives that align with rehabilitative, child and youth development, and child rights goals. Despite this, these statements are not consistently translated into action. There is limited evidence of better treatment of, or improved outcomes for children and young people. Skilled monitoring by appropriately qualified bodies will help to establish baseline standards for treatment and support and help to shift the detention environments towards the goal of rehabilitation.

There are opportunities to build on existing monitoring and guidance. The Taskforce has noted the importance of an independent and appropriately resourced mechanism for monitoring progress in child safety at a national level. There could be a comprehensive mechanism addressing all dimensions of children's safety and protection, including in youth justice settings.

Notwithstanding the work of several Royal Commissions, further determined steps are required to improve coordination and cooperation across strategies, governments and departments to address ongoing gaps in the provision of safety and protection for children. The efforts of civil society and governments remain piecemeal and disconnected. Sustained progress requires independent and publicly accountable monitoring.

³⁸ *Public Reporting on Solitary Confinement in Australian and New Zealand Prisons and Youth Detention Facilities (2025) Health and Human Rights*
<https://pmc.ncbi.nlm.nih.gov/articles/PMC12282874/>

Better Support for Existing Data Collection and Monitoring Roles

Existing institutions already contribute to providing the 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 (ROGS) offer data and insights.³⁹ The Australian Institute of Health & Welfare (AIHW) provides annual reports on youth justice.⁴⁰ The Australian Institute of Criminology can and has undertaken research projects in the youth justice space. The Australian Child Maltreatment Study has added new population data sets and knowledge.

The Justice Health Group has identified an unacceptably high rate of premature death among children after contact with youth justice systems in Australia⁴¹ and highlighted important gaps in the evidence base regarding the health of justice-involved children and adolescents in Australia.⁴²

A dedicated and committed independent and public monitoring mechanism could coordinate and align data with measurement of progress across sectors and jurisdictions. 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 that are highlighted as critical to achieving objectives, are found to be missing or not acted upon. Monitoring against National Standards would, at a practical level, drive a greater level of consistency across systems and programs.

Gaps in implementation would still need to be addressed across governments, departments, programs and services, and communities. The current Australian Youth Justice Administrators Principles could be a starting point. The Taskforce's Blueprint for a National Children's Plan⁴³ sets out how monitoring progress in child safety at a national level can contribute to better outcomes for children.

Development of National Standards

National Standards in Youth Justice (developed from the current Australian Youth Justice Administrators Principles) could be built to align and support with some of the other existing mechanisms and system reform initiatives. We offer some suggestions (below) for aligning the Standards more closely with child rights principles and international youth justice principles.

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

³⁹ The current youth justice indicators in ROGS remain inadequate, and several (e.g., self-harm in detention) still 'in development'.

⁴⁰ The AIHW does not currently report information about health status or health services in youth detention.

⁴¹ Kinner SA, Calais-Ferreira L, Young J, Borschmann R, Clough A, Heffernan E, et al (2025). *Rates, causes, and risk factors for death among justice-involved young people: A retrospective, population-based data linkage study*. The Lancet Public Health, 10(4), 274-84.

Calais-Ferreira L, Young JT, Francis K, Willoughby M, Pearce L, Clough A, Spittal MJ, Brown A, Borschmann R, Sawyer S, Patton GC & Kinner SA (2023). *Non-communicable disease mortality in young people with a history of contact with the youth justice system in Queensland, Australia: a retrospective, population-based cohort study*. Lancet Public Health, 8(8), 600-609.

⁴² Pellicano SA, Pearce LA, Campbell AC, Shuttleworth R, Kinner SA. Health and Incarceration in Australia: A Scoping Review. Lancet Regional Health - Western Pacific. 2025;18(56):101500.

⁴³ <https://www.centreforchildrights.org.au/resources>

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"⁴⁴

The integration of child development and coordinating service system responses is a responsibility of governments as the key coordinating agencies for service systems. It calls for a focus that supports the development of children both before and through engagement with the justice system, noting that many children in detention have some form of disability or health issue⁴⁵. 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.

Supporting the Role of Family and Community

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 role is framed as alternative care and 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 alternative 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.

The Right to Health

The United Nations Convention on the Rights of the Child provides for all children – including those involved in the youth justice system – to enjoy the highest attainable standard of health. However, the UN Child Rights Committee's General Comment 24 on Children's rights in the Child Justice System⁴⁶ allows avoidable ambiguity on this point, holding that children in detention should only receive "adequate medical care".⁴⁷ The development of National Standards for Youth Justice must be inclusive of health and health services in youth detention. At present in Australia, health care in youth detention is something of a 'black box'. The AIHW has identified a mechanism for routinely monitoring health and healthcare in youth detention.⁴⁸ Government should invest in the development of this mechanism and provide stable funding to ensure that it is implemented nationally, and routinely.

On behalf of the Australian Child Rights Taskforce and its Partners

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⁴⁴ ACT Government Discussion Paper on Raising the Age of Criminal Responsibility

⁴⁵ Robards et al, *Addressing the challenges of FASD for adolescents in the justice system* Judicial Quarterly Review, 2024, 2(1), 11-26

⁴⁶ <https://digitallibrary.un.org/record/3899429?ln=en&v=pdf>

⁴⁷ <https://sites.harvard.edu/sph-fxb/files/2024/02/Ensuring-The-Highest-Attainable-Standard-Of-Health-For-Children-Deprived-Of-Their-Liberty.pdf>

⁴⁸ AIHW. National data on the health of justice-involved young people: a feasibility study 2016-17. Canberra: Australian Institute of Health and Welfare, 2018. Contract No.: JUV 125.

Recent Examples of Youth Justice Monitoring in Australia

State or Territory	Recent Issues	Recent Reports
ACT	Review of Bimberi Youth Justice Centre (2021) ⁴⁹	Review published
New South Wales	Review recommends mandate for monitoring for children in detention	"The Inspection of Six Youth Justice Centres in NSW report" (2020) ⁵⁰
Northern Territory	System with evidence of torture, mismanagement	NT Royal Commission (2017) ⁵¹
Queensland	Overriding Human Rights protections ⁵² , bail restrictions, trauma + cultural training required, reform failure, children in police watchhouses ⁵³	Youth Justice Review (2017) ⁵⁴ ; QFCC Reports (2023-2024) ⁵⁵ ; Ombudsman Review (2024) ⁵⁶
South Australia	Staffing and access issues	Visitor's Annual Reports ⁵⁷
Tasmania	Investigation of Government Responses to Child Sexual Abuse in Institutional Settings	Inquiry Report (2023) ⁵⁸
Victoria	Inappropriate use of seclusion; review of reforms required, and monitoring established	"Same Four Walls" (2017) ⁵⁹ ; "OPCAT in Victoria: ... solitary confinement of children and young people" (2019) ⁶⁰
Western Australia	System and Reform Failure; Deaths in Detention	Series of Reports (2012-2022) ⁶¹
Commonwealth	Lack of leadership, coordination and consistency	"Help Way Earlier" (2024) ⁶²

⁴⁹ [Healthy Centre Review of Bimberi Youth Justice Centre - ACT Inspector of Correctional Services](#)

⁵⁰ <https://www.royalcommission.nsw.gov.au/documents/inspection-reports/inspection-of-six-youth-justice-centres-in-NSW.pdf>

⁵¹ <https://www.royalcommission.gov.au/child-detention/final-report>

⁵² <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824to205/5824t205.pdf>

⁵³ <https://mypolice.qld.gov.au/news/2025/07/10/qps-accepts-watch-house-review-recommendations-as-work-begins-to-drive-meaningful-change/>

⁵⁴ <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf>

⁵⁵ <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice>

⁵⁶ <https://www.ombudsman.qld.gov.au/publications/detention-inspection-reports/cairns-and-murgon-watch-houses-inspection-report-2024>

⁵⁷ <https://gcyp.sa.gov.au/what-we-do/training-centre-visitor/>

⁵⁸ <https://www.commissionofinquiry.tas.gov.au/>

⁵⁹ <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/the-same-four-walls/>

⁶⁰ [OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people | Victorian Ombudsman](#)

⁶¹ <https://www.oics.wa.gov.au/>

⁶² <https://humanrights.gov.au/about/news/media-releases/new-report-proposes-transforming-australias-approach-child-justice-and>