

Submission to the re-opened Inquiry into Australia's youth justice and incarceration system 2025

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Executive Summary

UNICEF Australia welcomes the reopening of the Senate Inquiry into Australia's youth justice and incarceration system (**the Inquiry**) as a critical opportunity to galvanise national leadership and drive coordinated, rights-based reform in youth justice. Our work across 190 countries is grounded in the UN Convention on the Rights of the Child (UNCRC) to protect children's rights, amplify their voices, and promote evidence-based, child-centred policies.

UNICEF Australia remains concerned about the current trajectory seen in many of Australia's youth justice systems. Since the Inquiry first opened in 2024, punitive 'tough on crime' responses to youth offending have increased in many jurisdictions despite overwhelming evidence from child rights experts, medical professionals, and legal practitioners, that such measures are ineffective, costly, and harmful to children and their communities.¹

Children are different from adults in both their physical and psychological development. They are generally more vulnerable to harm and less capable of understanding the consequences of their actions. Their unique developmental stage also offers a greater opportunity to intervene, rehabilitate, and place them on a positive pathway. These profound differences require a distinct justice system for children built on individualised approaches, tailored to their unique needs, with detention used as a last resort, and a preference for supporting children through community-based interventions.²

UNICEF Australia continues to call for a rights-based approach to youth justice focused on prevention, early intervention, and diversion. When detention is required, it should be safe, humane, and culturally appropriate including for Aboriginal and Torres Strait Islander children. When a child comes into conflict with the law, it signals a failure of the systems that should protect them and enable them to thrive. That's why greater investment is needed to tackle the root causes of youth offending, such as poverty, disengagement from education, and mental health issues.

The Inquiry's interim and final reports recognised the need for national youth justice reform.³ They confirmed that it is the responsibility of the Commonwealth Government to ensure compliance with Australia's international obligations and intervene where states and territories fall short. The Inquiry's expanded focus on the Commonwealth's responsibilities and its commitment to engaging directly with children and young people is very welcome.

UNICEF Australia would like to bring to the attention of the Inquiry the position set out in our 2024 submission and oral evidence provided at the February 2025 hearing.⁴ Those recommendations remain highly relevant to this consultation. They underscore the need for national reform centred on children and young people's voices and early support, alongside stronger national coordination, accountability, and enforceable standards. In the following submission, we highlight the urgency of national reform and provide additional recommendations regarding national minimum standards, prevention, and strengthening child rights governance.

Summary of recommendations

Improve state and territory compliance with international human rights standards and minimise harm of children in detention by:

1. *Raising the age of criminal responsibility to at least 14 years across all jurisdictions.*
2. *Moving away from mandatory sentencing legislation for offences committed by children.*
3. *Increasing child-sensitivity in the justice system and the adoption of the best interests of the child as a guiding principle to all investigations and court procedures.*
4. *Mandating that the detention of children is used only as a last resort and for the shortest possible time.*

Better protect children and young people's rights and improve nationwide outcomes for children and young people by:

5. *Legislating nationally enforceable minimum youth justice standards anchored in the UNCRC, ensuring consistent protections across jurisdictions.*
6. *Prohibiting harmful practices such as solitary confinement, spit hoods, and mandating the separation of children from adults in all justice settings.*
7. *Guaranteeing access to essential services including education, healthcare (with mental health and disability support), and culturally safe programs led by Aboriginal and Torres Strait Islander organisations.*
8. *Strengthening oversight and accountability by fully implementing the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, with properly resourced National Preventive Mechanisms, and require transparent, disaggregated data collection and public reporting.*
9. *Linking Commonwealth funding to compliance with national standards and continuous improvement.*

Better supporting families to reduce youth offending by:

10. *Increasing investment in community-led prevention and early intervention programs, that provide culturally-sensitive support for children and their families.*

Enhance national coordination and child rights governance by:

11. *Establishing a National Youth Justice Taskforce to coordinate reform and monitor progress across all jurisdictions.*
12. *Developing a 10-year cross-portfolio roadmap for youth justice, embedded in a National Children's Plan, with clear policy and investment commitments.*
13. *Ensuring reforms are informed by international best practice and the voices of children and young people.*

Detailed recommendations

A concerning national trend and the urgency of reform

Despite compelling evidence to the contrary in *'Help Way Earlier!'* and the Inquiry's interim reports,⁵ we have seen some youth justice systems trend towards increasingly punitive measures in 2025, eroding the distinction between youth and adult justice, and prioritising detention over diversion. Preferences for restrictive bail laws, mandatory sentencing, and harsh detention practices have expanded.⁶ Most jurisdictions still set the minimum age of criminal responsibility at 10, contrary to international standards and expert advice.

UNICEF Australia is concerned by this national trend, including:

- **Queensland:** Continues to pursue its 'Adult Crime, Adult Time' laws despite acknowledging that they breach their own *Human Rights Act 2019*.⁷
- **Victoria:** Passed similar legislation to Queensland, exposing children to adult courts and potential life sentences for serious crimes.⁸
- **Northern Territory:** Reinstated spit hoods and removed the requirement to consider detention of children as a last resort.⁹

These decisions can carry the most serious of consequences. In Western Australia, following the death of 16-year-old Cleveland Keith Dodd who was detained in an adult prison, the Coroner described prison conditions as 'inhumane' and called for urgent closure of the unit.¹⁰

Locking up children is also the most expensive intervention we can pursue, costing Australia \$1 billion annually, equating to \$3,320 per child daily or \$1.12 million annually.¹¹ Despite the economic cost, 84.5% of children return to sentenced supervision within 12 months.¹² This cycle not only fails children and communities but also drains public resources. Replacing punitive approaches with prevention, diversion, and rehabilitation, is essential to breaking cycles of offending and building safer communities.

Strong monitoring and accountability for youth justice is also essential but gaps across Australia can hinder transparency and compound harm. In December 2025, the UN Working Group on Arbitrary Detention (UNWGAD) was denied access to detention centres in the Northern Territory and youth detention centres in Western Australia.¹³ Based on the jurisdictions they inspected, UNWGAD warned that Australia's child detention practices breach international law and harm children, calling for immediate action to raise the age of criminal responsibility, end solitary confinement, reduce First Nations' over-incarceration, and prioritise rehabilitation and community-based alternatives.¹⁴

The UNWGAD reaffirmed that the Commonwealth has responsibility for ensuring compliance with human rights international obligations.¹⁵ This finding is consistent with the Inquiry's interim report and is supported by leading legal experts in Australia, who have advised that the Commonwealth Government has the power to make laws that give effect to the UNCRC.¹⁶ This includes the power to raise the age of criminal responsibility to 14 years, mandate that a child can only be detained as a last resort, and prohibit solitary confinement.¹⁷

In 2027, the Australian Government will be expected to deliver its report to the UN Committee on the Rights of the Child (**the Committee**) regarding compliance with the UNCRC. Throughout the reporting cycle, there will be heightened scrutiny of Australia's compliance with the UNCRC, including youth justice systems. There is a narrow window for meaningful progress to implement the Committee's outstanding recommendations, including to raise the minimum age of criminal responsibility, prohibit the use of isolation and force, and promote non-judicial measures and non-custodial sentences.¹⁸ Recent trends across Australia demonstrate the urgent need for national leadership and reform to protect children's rights and align Australia with international standards.

Recommendation

Improve state and territory compliance with international human rights standards and minimise harm of children in detention by:

1. *Raising the age of criminal responsibility to at least 14 years across all jurisdictions.*
2. *Moving away from mandatory sentencing legislation for offences committed by children.*
3. *Increasing child-sensitivity in the justice system and the adoption of the best interests of the child as a guiding principle to all investigations and court procedures.*
4. *Mandating that the detention of children is used only as a last resort and for the shortest possible time.*

National minimum standards

There is strong support from across civil society for nationally enforceable minimum standards to guarantee that all children and young people in contact with the justice system are treated with dignity, regardless of where they live.¹⁹ These standards should prohibit solitary confinement and other harmful practices, require separation of children from adults in all settings, and ensure access to education, healthcare (including mental health), disability support, and culturally safe programs led by Aboriginal and Torres Strait Islander organisations.

Independent monitoring and transparent data collection and reporting are essential to uphold these standards. Fully implementing the *Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) and ensuring effective, properly resourced National Preventative Mechanisms in each state and territory would also allow regular, unannounced inspections of facilities and support early identification and remediation of harm. International experience shows that systematic, disaggregated data collection strengthens accountability, informs reform, and tracks the impact of interventions.²⁰

Minimum standards should be anchored in the UNCRC, particularly:

- **Article 2:** non-discrimination for children regardless of their background;
- **Article 3:** consideration of the best interests of the child in all decisions that affect them;
- **Article 12:** the right for children to be heard and participate in decisions that affect them; and
- **Article 37:** protection from torture or cruel, inhuman or degrading treatment, and limits on deprivation of liberty.

Existing international guidance – such as the *UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*,²¹ the *UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*,²² and the *UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*²³ – could inform the design of Australian standards. These rules and guidelines emphasise that deprivation of liberty must be a last resort, for the shortest possible time, and under conditions that protect children’s safety, dignity and development.

Australia’s standards should include provisions on mandatory, culturally-sensitive and trauma-informed training to staff of detention centres, and the allocation of staff qualified to assist children with cognitive disabilities, who are overrepresented in the criminal justice system.²⁴ In addition, the standard would hold that it is vital that appropriate staff ratios are maintained at all times to prevent isolation and uphold the rights and wellbeing of every child.

Recommendation

Better protect child and young people’s rights and improve nationwide outcomes for children and young people by:

5. *Legislating nationally enforceable minimum youth justice standards anchored in the UNCRC, ensuring consistent protections across jurisdictions.*
6. *Prohibiting harmful practices such as solitary confinement, spit hoods, and mandating separation of children from adults in all justice settings.*

7. *Guaranteeing access to essential services including education, healthcare (with mental health and disability support), and culturally safe programs led by Aboriginal and Torres Strait Islander organisations.*
8. *Strengthening oversight and accountability by fully implementing OPCAT with properly resourced National Preventive Mechanisms, and require transparent, disaggregated data collection and public reporting.*
9. *Linking Commonwealth funding to compliance with national standards and continuous improvement.*

Supporting families to reduce youth offending

Youth justice policy often focuses narrowly on children in conflict with the law as ‘offenders’, rather than recognising the broader social and structural factors that shape their lives. Children and young people do not exist in isolation of families or adults in their lives, upon whom they are often reliant to fulfil their basic needs and support their development.

The *2025 State of Australia’s Children Report* reinforces the notion that children need stable relationships, safe environments, community support, and access to quality early learning, education and healthcare, to flourish.²⁵ When families and communities are well supported, children are more likely to thrive and the benefits ripple throughout society.

The *Help Way Earlier!* report cites poverty, intergenerational trauma, violence and abuse, racism, homelessness, and inadequate healthcare, as drivers of child contact with the youth justice system.²⁶ As an example, half of children in youth justice supervision in 2022-23 had been the subject of a substantiated abuse notification, and children in out of home care experience elevated rates of detention.²⁷ Children who informed the findings of *Help Way Earlier!* identified safety, housing, supportive relationships, education, employment, as well as additional support services for themselves and family members, among the things they desire and value for their lives.

To reduce the number of children in contact with the justice system, it is essential to also strengthen supports for families. As an example, the Community Protecting Boorais program (run by the Victorian Aboriginal Child and Community Agency) has been shown to be effective in supporting families and reducing the removal of children after a report for investigation by child protection services. By ensuring that families and communities are more involved in decision-making and providing referrals to culturally safe supports, the program has been able to keep families together and provide a safe environment for children.²⁸ Greater investment in services like this can help families support the young people in their lives, giving them the best chance to thrive.

Recommendation

Better support families to help reduce youth offending by:

10. *Increasing investment in community-led prevention and early intervention programs, that provide culturally-sensitive support for children and their families.*

National leadership and reform

Australia’s complex youth justice landscape demands national coordination to deliver consistent, rights-respecting reform. The *Help Way Earlier!* report lays out a 10-year roadmap to address the root causes of offending and establish a unified plan for reform.²⁹ UNICEF Australia supports these calls for a 10-year cross portfolio roadmap for reform, led by a National Taskforce.

Best practice from other jurisdictions could guide the development of Australia’s national roadmap. *A Rights-Respecting Approach to Justice for Children and Young People: Scotland’s Vision and Priorities 2024-26*,³⁰ aims to strengthen coordination across services for children and families to prevent and minimise children’s contact with the criminal justice system, as part of the Scottish Government’s Whole System Approach. The priorities and actions it identifies could provide a useful starting point for Australia. Similarly, Tasmania’s Youth Justice Reform Taskforce

drives cross-agency collaboration under the *Youth Justice Blueprint 2024–2034*, focusing on prevention, diversion, and therapeutic models to keep children out of detention.³¹

These initiatives should form part of a broader National Children’s Plan that prioritises child safety and well-being and coordinates responses across portfolios for issues affecting children and young people.³² The Plan would provide a long-term, rights-based framework for all policy and decision-making, with clear commitments and implementation strategies, including a specific focus area on youth justice. Grounded in the principles of the UNCRC, it would promote a rights-respecting approach and ensure Australia meets its international obligations.

Several recommendations from the 2017 *Northern Territory Royal Commission into the Protection and Detention of Children*³³ and the 2023 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*³⁴ have not been implemented yet. The reports of sexual abuse in early childhood education and care that have emerged in 2025 highlight the risks of fragmented governance across different jurisdictions, and the consequences of delayed implementation of key recommendations from the *Royal Commission into Institutional Responses to Child Sexual Abuse*. This reinforces the need for national and coordinated leadership to ensure every child’s right to safety and protection is upheld in all settings as a matter of urgency, including when they come into conflict with the law.

Recommendations

Enhance national coordination and governance by:

- 11. Establishing a National Youth Justice Taskforce to coordinate reform and monitor progress across all jurisdictions.*
- 12. Developing a 10-year cross-portfolio roadmap for youth justice, embedded in a National Children’s Plan, with clear policy and investment commitments.*
- 13. Ensuring reforms are informed by international best practice and the voices of children and young people.*

- ¹ See e.g. The Senate Legal and Constitutional Affairs References Committee (February 2025). *Australia's youth justice and incarceration System (Interim Report)*. Available at: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000499/toc_pdf/Australia%e2%80%99youthjusticeandincarcerationsystem.pdf; 54 Reasons (3 December 2025). *Youth Justice Scorecard*. Available at: <https://www.54reasons.org.au/post/yj-scorecard-launch>
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