Commissioner Natalie Lewis
Office of the Aboriginal and Torres Strait Islander Children's Commissioner

Submission - Senate Inquiry into Australia's Youth Justice and Incarceration System

19 December 2025

QUEENSLAND Family & Child Commission

OFFICE OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S COMMISSIONER

Queensland Government

Acknowledgement of Country

The Office of the Aboriginal and Torres Strait Islander Children's Commissioner acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies and where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging. We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

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Introduction

I am the Aboriginal and Torres Strait Islander Children's Commissioner at the Queensland Family and Child Commission. I welcome the opportunity to provide a submission to the Inquiry into Australia's youth justice and incarceration system.

I made a submission to, and appeared as a witness during, the previous referral of the Senate inquiry into youth justice. That submission was numbered 160, and its content remains relevant to the new Terms of Reference. This new submission responds to each of the new Terms of Reference and offers recommendations for Committee consideration.

The UN Convention on the Rights of the Child (UNCRC), ratified by Australia in 1990, states that

> The arrest, detention or imprisonment of a child must only be used as a **measure of last resort and for the shortest possible time**…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…(Article 37).

Yet, Queensland's new Adult Crime, Adult Time (ACAT) law unequivocally contravenes this. Reference to detention as a last resort has not merely been removed from the *Youth Justice Act 1992*, courts are now explicitly directed to "not have regard to any principle that a detention order should only be imposed as a last resort; or any principle that a sentence that allows the child to stay in the community is preferable".[1]

Furthermore, for 33 offences, the incarceration of children may now continue for many years, with no acknowledgement of the disruption this may have on the natural neurodevelopmental and emotional progression towards adulthood undertaken by us all, nor of the fact that 71% of children in Queensland's youth justice system have a disability.

Despite the grossly disproportionate representation of First Nations children in Queensland jails, (70% on an average night) First Nations communities were never consulted about what effect these changes may have on their families and children. Again, this disregards Articles 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) endorsed by Australia in 2009:

> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
>
> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free, prior and informed consent** before adopting and implementing legislative or administrative measures that may affect them.

It also disregards the *Closing the Gap* priority reforms, particularly Priority reform 3, to which every jurisdiction is a signatory.

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[1] Queensland government, Youth Justice Act 1992, *Sentencing principles* s.150(1).

Every child who enters the youth justice system is evidence of the failure of our society and our systems to uphold children's rights, and the rights of their families, to primary health, an income above the poverty line, disability support, housing and education. If these systems were operating as they should be there would be far fewer children entering both the youth justice and child protection systems. These are all areas the Federal government has either historically controlled or in which it has become significantly involved over recent decades. While the Commonwealth has just introduced a social media ban for children under 16, those same children can be arrested, detained or sentenced to life imprisonment under Queensland youth justice laws, and the Federal government has refused to intervene. If governments continue to ignore and not address the driving factors for offending in children, they are not only doing Australian children a disservice, but they are also failing all Australians (including victims of crime). It is well past time for the Commonwealth to mandate a consistent, rights-based approach to youth justice across Australia.

Reform pathway for Commonwealth action

This submission identifies a range of reforms necessary to address serious and ongoing human rights concerns within Australia's youth justice system. To assist the Committee in its deliberations, and to support practical and timely implementation, the proposed reforms are prioritised in Table 1 below into a sequenced, risk-based pathway.

This pathway is grounded in:

- the severity and immediacy of harm currently being experienced by children deprived of liberty
- the Commonwealth's clear constitutional authority and legal responsibility for ensuring Australia's compliance with ratified human rights treaties, and
- the need to move from reactive, fragmented responses to a coherent, preventive and rights-based national framework.

The pathway is structured across three tiers of reform, reflecting escalating levels of structural change Each tier is aligned with Australia's binding obligations under the UNCRC, UNDRIP the Convention Against Torture (CAT) and its Optional Protocol (OPCAT), and the Convention on the Rights of Persons with Disabilities (CRPD).

Table 1: Tiered reform pathway: Commonwealth action on youth justice

Tier & timeframe	Objective	Priority actions	Legal basis
Tier 1: Immediate safeguards (0–12 months)	Prevent foreseeable human rights violations in child detention	• Prohibit solitary confinement, isolation, spit hoods, restraint chairs and degrading restraints • Commonwealth funding conditional on granting unannounced access to all places of detention and cooperation with UN and domestic oversight bodies • Introduce interim safeguards: legal representation, protection from reprisals, independent complaints, and access to health, disability and culturally safe supports.	UNCRC Art. 37; CAT; OPCAT; Vienna Convention on the Law of Treaties; s 51(xxix) Constitution.

Tier 2: Structural accountability (1–3 years)	Embed enforceable, preventive accountability mechanisms	• Legislate national minimum youth detention standards applicable to all places of deprivation of liberty • Establish an OPCAT-compliant independent inspection and oversight framework • Introduce enforceable remedies, including parliamentary reporting, court orders and suspension or redirection of tied funding.	UNCRC Arts. 3, 37, 40; CAT; OPCAT; Constitution ss 81 & 96
Tier 3: System transformation & prevention (3–5 years)	Reduce reliance on detention through prevention and rights-based governance	• Enact a National Children's Act incorporating the UNCRC • Establish a National Youth Justice Prevention Partnership addressing remand, diversion, poverty, disability and unmet health needs • Progress justice reinvestment into early childhood, disability, education and community-led supports.	UNCRC Arts. 3, 18, 27, 40; UNDRIP Arts. 3, 18, 19, 23; CRPD.
Child participation as cross-cutting obligation (**all tiers**)	Ensure reforms are accountable to children	• Give effect to children's right to participate in decisions affecting them. • Involve children with lived experience in design, monitoring and evaluation. • Ensure participation is safe, culturally appropriate, resourced and includes feedback loops.	UNCRC Art. 12; General Comments No. 12 and 24.

Recommendations

The following recommendations to the Inquiry align with my responses to the Terms of Reference in this submission.

General recommendation

The Committee should recommend that the Inquiry be extended until at least **30 June 2026** to enable full consideration of the Commonwealth's role in youth justice prevention, enforceable national standards and oversight of youth detention, and the domestic implementation of Australia's international human rights obligations, including through comprehensive evidence-gathering, participation by First Nations peoples and children with lived experience, and site visits across jurisdictions.

ToR 1A: Outcomes and impacts of youth incarceration in jurisdictions across Australia

1. The Committee consider recommending that the Commonwealth commission and publish a national analysis of the full financial cost of youth incarceration, supplementing existing Report on Government Services[2] data. The analysis should include:

    - court and tribunal costs,
    - legal aid and expert assessments,
    - Magistrate and higher court costs
    - health, disability and education services delivered in custody, and
    - transport between watch houses, courts and detention facilities.

This analysis should be used to inform Commonwealth policy and funding decisions, consistent with Australia's obligation under UNCRC Article 37 to ensure detention is used only as a measure of last resort and for the shortest appropriate period.

2. The Committee considers recommending that the Commonwealth support evidence-based public information initiatives that improve community understanding of:

    - the scale and nature of youth offending
    - the backgrounds and unmet needs of children in contact with youth justice, and
    - the comparative costs and outcomes of detention versus prevention and diversion.

Such initiatives should promote a child rights-based understanding of community safety, consistent with UNCRC Articles 3 and 40.

ToR 1B: the over-incarceration of First Nations children and young people

3. The Committee considers recommending that the Commonwealth demonstrate its support for self-determination by providing increased, long-term, place-based funding according to *Closing the Gap Priority Reform 2*,[3] to Aboriginal and Torres Strait Islander community-controlled organisations, particularly in regional and remote areas, to deliver culturally safe

[2] Australian Productivity Commission, Report on Government Services, 2025, *17 Youth justice services*. Available from https://www.pc.gov.au/ongoing/report-on-government-services/2025/community-services/youth-justice/
[3] Closing the Gap National Agreement, website, *Priority Reform two – building the community-controlled sector*, available from https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/two

- early childhood care and development
- housing
- health
- disability services

with a dedicated, reliable and consistent funding model and co-designed outcomes measures.

This action gives effect to UNDRIP Articles 3, 18, 19 and 23 and the *Closing the Gap* Priority Reforms and addresses the structural drivers of First Nations children's over-representation in youth justice.

4. The Committee consider recommending that all Government Parties implement their previously agreed commitments under *Closing the Gap Priority Reform Three – transforming government organisations*, to identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions (Clause 67 - intended to be in place in all jurisdictions by 2023). The mechanism, or mechanisms, will support mainstream agencies and institutions to embed transformation elements, as outlined in Clause 59, including:
   - engage with Aboriginal and Torres Strait Islander people to listen and to respond to concerns about mainstream institutions and agencies
   - Report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions.
   - Identify and eliminate racism
   - Embed and practice meaningful cultural safety
   - deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people through genuine relationships
   - Increase accountability through transparent funding allocations
   - identify agency history with Aboriginal and Torres Strait Islander people and facilitate truth-telling
   - Improve transparent engagement with Aboriginal and Torres Strait Islander peoples.[4]

ToR 1B and 2B: the over-incarceration of First Nations children and alternative approaches to incarceration

5. The Committee considers recommending that the Commonwealth undertake a focused review of legislated youth justice reforms in jurisdictions such as Aotearoa New Zealand, Canada and Hawai'i, with attention to:

   - population-reduction targets
   - diversion and community-based responses, and
   - reinvestment of detention funding.

Findings should inform Commonwealth policy and funding settings aimed at reducing detention, consistent with UNCRC Articles 37 and 40.

[4] Closing the Gap, website, *Priority Reform Three – Transforming Government Organisations*, available from https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three

ToR 1C: 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

6. Pending the introduction of national standards, the Committee considers recommending that the Commonwealth use available funding and intergovernmental mechanisms to require states and territories to:

    - prohibit solitary confinement and prolonged separation or isolation of children, and
    - prohibit the use of spit hoods in all places where children are deprived of liberty.

    These measures reflect minimum safeguards required under UNCRC Article 37 and CAT and are necessary to prevent ongoing harm.

ToR 1D: the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights

The Committee should consider recommending that the Commonwealth:

7. Develop a national children's policy framework, informed by the UNCRC, to improve coordination across income support, health, disability, housing and education portfolios, recognising these systems as core youth justice prevention mechanisms. (*Blueprint for a Children's Plan for Queensland* is attached for your reference).

8. For the purposes of youth justice reform and prevention, establish targeted recognition and national reporting on poverty reduction (UNCRC Art. 27), primary health care access (Art. 24), and disability support (Arts. 23 and 24), as upstream determinants of children's contact with youth justice systems.

ToR 1D and 1E – the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights and the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

The Committee should consider recommending that the Commonwealth:

9. progress the development of national minimum standards for all places where children are deprived of liberty, aligned with the UNCRC, Child Safe Standards and OPCAT, and applicable to youth detention centres, watch houses and secure care facilities.

10. take primary responsibility for assuring Australia's compliance with its international monitoring and reporting obligations by legislating to guarantee full, unimpeded and unannounced access for United Nations treaty bodies and mechanisms to all places where children are deprived of liberty, and by requiring timely, transparent and good-faith responses to recommendations issued by those bodies.

This should include:

- a statutory obligation on Commonwealth, state and territory authorities to facilitate access for UN mechanisms, including the UN Subcommittee on Prevention of Torture and the UN Working Group on Arbitrary Detention;
- a requirement that governments formally respond to UN recommendations within a defined timeframe, outlining acceptance, implementation steps or reasons for non-acceptance; and
- public reporting to Parliament on compliance with UN inspection findings and Australia's preventive obligations under OPCAT and related treaties.

11. ensure that domestic independent inspection mechanisms have:

    - authority to conduct regular and unannounced visits,
    - capacity to speak privately with children without risk of reprisal, and
    - a mandate to report publicly on compliance.

12. link relevant funding to demonstrable compliance with minimum safeguards, and where necessary, redirect funding toward community-based prevention and diversion initiatives, including Aboriginal and Torres Strait Islander community-controlled services.

13. establish a National Youth Justice Prevention Partnership to coordinate action across jurisdictions, reduce reliance on detention, and address the disproportionate impact of youth justice systems on First Nations children, consistent with Australia's obligations under the UNCRC and UNDRIP.

Detailed response to the Terms of Reference

ToR 1A: the outcomes and impacts of youth incarceration in jurisdictions across Australia

Backgrounds of children in youth justice
Through the UNCRC, States Parties recognise:

- that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community
- the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child (Article 23, UNCRC).
- the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services (Article 24, UNCRC).
- the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development...[and] States Parties…shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (Article 27, UNCRC).

According to Queensland's 2024 Youth Justice Census, 71% of young people in youth justice custody had either been diagnosed with, or were suspected to have, a disability, with the most common disability recorded as ADHD (53%), followed by cognitive/intellectual disability (38%), and FASD (25%).[5] QFCC research into the backgrounds of 100 frequently arrested children additionally identified that

- 94 were disengaged from school
- 63 had at least one suicide alert on their file
- 58 had witnessed domestic or family violence
- 43 were, or had been, on a child protection order (with nearly every family interacting with the child protection system at some point).
    - Of the 43 children on a child protection order, 33, or 77%, were First Nations children.[6]

If health and disability are inadequately treated or supported and are then combined with other factors like family violence or trauma, poverty and educational disengagement, a child may be propelled towards the youth justice system. The extremely high rates of disability in youth justice point to a chronic lack of early diagnosis and/or treatment for this cohort of children. Mitigation of such disadvantage is a core role of the Commonwealth as a provider of income support, primary health and disability insurance safety nets. It is still too often the case that children receive their first health or disability diagnosis while inside a

[5] The Queensland Family and Child Commission (August 2025), Performance of the Queensland child protection system 2024–25 Annual Report. Available from https://www.qfcc.qld.gov.au/sites/default/files/2025-09/Performance_of_the_Queensland_child_protection_system_2024-25.pdf
[6] Queensland Family and Child Commission, *Looking beyond the crime: analysis of the backgrounds of frequently arrested children*, 2022, limited release.

youth detention centre. This is an indictment of our 'universal' health system and disability insurance safety net.

> …My grandson and my boy, they were sniffing a lot, and no-one would help me…but everyone liked to talk and say, 'Oh, that's a naughty kid'. People need to change their attitude and stop treating them like rubbish. They need some respect, and if they want respect off these kids they need to give them kids some respect, too. – Parent.[7]

Young people from lower socioeconomic areas are far more likely to be in detention. In 2023–24, the detention rate for those from the lowest socio-economic areas was 9.1 per 10,000, compared to 1.0 per 10,000 for the highest socioeconomic areas. Nearly half (141 of 292) of young people detained in Queensland on an average day came from the lowest socioeconomic quintile.

Table 2 Young people in detention on an average day by socioeconomic position of usual residence 2023–24 (Queensland)

Socioeconomic areas (SEIFA)	Number	Rate per 10,000	Australia (rate)
1 (lowest)	141.0	9.1	5.0
2	86.2	7.2	3.7
3	44.8	3.2	2.1
4	12.2	1.3	1.1
5 (highest)	6.2	1.0	0.9
Total in detention	**292.1**		

Source. Youth justice in Australia 2023–24, Australian Institute of Health and Welfare

If poverty is a key driver of justice contact, then the Commonwealth's income support and other primary service systems are core crime-prevention levers.

Financial Cost

The Federal government and the broader community should, through this inquiry, be made aware of not only the social cost to children, families and society of incarcerating children, but also the financial cost to the taxpayer of youth detention services. Nationally, the cost of holding one child in detention for a year is $1.2 million.[8] Court costs, including court sitting days, legal representation, preparation of paperwork, court-ordered health or disability assessments are further financial costs that are not currently public.

[7] Queensland Family and Child Commission, *Yarning for change, listen to my voice: conversations with Aboriginal and Torres Strait Islander Peoples*, 2022, p.21, available from https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/yarning-for-change.
[8] Australian Productivity Commission, Report on Government Services, 2025, *17 Youth justice services*. Available from https://www.pc.gov.au/ongoing/report-on-government-services/2025/community-services/youth-justice/

In Queensland, stage one of a fourth youth detention centre, consisting of 2 x 40 bed 'campuses', is under construction in south-east Queensland at a cost of $983 million for the buildings alone.[9] Even though it will not open till late 2027, the new facility will not align with recommendations recently made by Queensland's Ombudsman, acting as the Inspector of Detention Services, to upgrade isolation rooms to improve the safety and dignity of children because the required "retrofit" was deemed too costly. Nor will there be any retrofitting of the current three detention centres. This fourth detention centre will require another 350 staff to be brought online into a working environment where recruitment and retention are major challenges. Consultation is under way to locate a fifth youth detention centre in Far North Queensland.

A new 76-bed police watch house for adults, has been temporarily gazetted as a youth detention centre and was brought online in April 2025. While located in south-east Queensland, children from far North Queensland are being regularly flown to Brisbane, mainly when there are insufficient beds at the Cleveland Youth Detention Centre in Townsville. The cost of this would be considerable but is not public.

Community safety

The moral panic engendered by thoughts of children committing crime, is historical, and remains disproportionate to the number of young people involved. A mere 1,600 Queensland children were on a supervised order in 2023-24 and just under 300 in detention on an average night. In other words, 99.4% of young Queenslanders have never had a proven criminal offence.

Table 3 Average daily number of Queensland young people in youth detention

Year	Total	Unsentenced
2023–24	292 (71.9% First Nations)	246
2022–23	286 (70.6% First Nations)	249
2021–22	269 (66.5% First Nations)	238

Source. Children's Court of Queensland Annual Report 2023–24

In Queensland, youth crime offences have been trending down over the last 15-20 years. Instead of ensuring struggling families are receiving adequate income, health and disability support through early intervention and prevention, the Queensland government has chosen to adopt punitive changes that disproportionately affect First Nations families and serve to elevate community belief in detention as an appropriate response, even though In 2024, 69 percent of young offenders in Queensland reoffended within a 12-month period.[10]

The rights of children, the celebration of children, the care and love for children, are ignored in favour of scapegoating children. In Queensland, youth justice law is becoming harsher than adult corrections law.

Table 4 Examples of incarceration law in Queensland:

Adults	Children

[9] Australia New Zealand Infrastructure Pipeline, *Woodford Youth Detention Centre*, Project web page, https://infrastructurepipeline.org/project/woodford-youth-detention-centre

[10] Department of Youth Justice and Victim Support (September 2025), *Annual Report 2024-25*. Available from https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/f090b1f0-bbbb-4e31-ba8f-c0c607c2aea0/dyjvs-annual-report-2024-2025.pdf?ETag=d998c9951b496a6d24cd3cdfa3df72c2

Detention is a last resort	a court must **not** have regard to any principle that a detention order should only be imposed as a last resort (s.150(1))
Hold in a watch house for no more than 72 hours	No formal limit on number of days children can be held
Presumption in favour of bail except for the most serious offences.	Remand in custody if a risk assessment suggests an unacceptable risk of reoffending (s48AAA)
Consistent definitions and reporting about separation are in place.	No nationally agreed definition of 'separation'.

At its worst, concern about youth crime is simply veiled racism towards First Nations children and some migrant cohorts who find themselves disproportionately represented in detention. Rather than educating the community about the issues and the real solutions that will make the community and our young people safer, governments remain silent and complicit in othering and isolating children and families who they are meant to represent.

ToR 1B: Over-incarceration of First Nations children and young people

The following response reflects Australia's commitments to Aboriginal and Torres Strait Islander Peoples as a signatory to the UNDRIP:

- Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law" (Article 1, UNDRIP).
- Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (Article 2, UNDRIP).
- States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities (Article 21, UNDRIP).
- Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. (Article 23, UNDRIP)

The Commonwealth has played a lead role in First Nations matters since the Constitutional change in 1967 and currently runs programs for First Nations communities through the National Indigenous Australians Agency. Yet, a clear marker of the failure of these programs is that most of the children in detention are First Nations. They often enter detention with existing health conditions and disabilities, some of which may be exacerbated by detention, and with no off-ramp out of the criminal system.

The Federal government co-leads *Closing the Gap* implementation. *Closing the Gap* targets have a deadline of 2031. However, inconsistent approaches by states and territories, along with unwillingness by the Commonwealth to hold governments and agencies to account, means that progress against goals and targets are not on track. There has been no improvement to the rate of incarcerated First Nations children across Australia, and the rate in Queensland is worsening.

Table 5: Closing the Gap Target 11 indicator 2023-24

Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10–17 years) in detention by at least 30%	**Indigeneity**	**Indicator**	**Assessment**
Australia	**First Nations**	26.1 per 10,000 children	No change
	non-First Nations	1.0 per 10,000 children	
Queensland	**First Nations**	41.1 per 10,000 children	Worsening
	non-First Nations	1.6 per 10,000 children	

Governments have yet to undertake any meaningful work to relinquish power and knowledge to communities to support self-determination in accordance with Priority 3:

Element f. of *Priority Reform Three – Transforming Government Organisations:*

> *Ensure when governments are undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people, they engage fully and transparently. Engagements should be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open. The engagements on the National Agreement, led by the Coalition of Peaks in partnership with Government parties, demonstrated the benefit of this approach.*[11]

The Productivity Commission's 2024 review of Closing the Gap demonstrated that Australia and Queensland are not on track to meet several Closing the Gap targets, including Target 11.[12] The amendments to the *Youth Justice Act* introduced in Queensland in 2024 and 2025 already see First

[11] Closing the Gap website, *6. Priority Reform Three – transforming government organisations*, available from https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three
[12] Productivity Commission, 2024. *Review of the National Agreement on Closing the Gap*, study report. https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report

Nations children spending longer in watchhouses and prisons on unsentenced detention, making the *Closing the Gap* targets harder to achieve.

There is an urgent need to address structural racism at the core of the *Closing the Gap* commitments. Previous research has found that the experience of racism is a unique determinant of health outcomes for Aboriginal people and cannot be attributed to any other specific risk factor such as socio-economic status.[13] Yet there continues to be a lack of evidence that any Australian governments are progressing strategies to eliminate structural racism and unconscious bias in their agencies.

> 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.[14]

Indeed, none of the four over-arching Priority Reforms of *Closing the Gap* are being measured, let alone progressed. Evidence of progress against the four *Closing the Gap* priority reforms in education, health, housing, youth justice and child protection should be a focus.

Recommendations from Jumbunna's Institute's review of *Closing the Gap* referenced the lack of a shared vision across all Parties and the lack of an **independent mechanism** to monitor progress.[15]

ToR 1C: Degree of compliance and non-compliance by detention centres with the human rights of children and young people in detention

Queensland has a Human Rights Act that includes provision for it to be overridden in exceptional circumstances such as war, a state of emergency, or an exceptional crisis constituting a threat to public safety, health or order. The Act, in place since July 2020, has been overridden four times since 2023 and in all cases it was to make youth justice laws more punitive. The latest two overrides came with the introduction of the two pieces of ACAT legislation. In its own statement of compatibility with the Human Rights Act the Government conceded the changes will limit "the rights of a child to protection in their best interests" and will be "in conflict with international standards regarding the best interests of the child", resulting in the suspension of human rights protections for an already vulnerable cohort of children.[16] Despite this, there has been no move taken by the Commonwealth to hold the Queensland government to account for its human rights breaches.

In summary, the ACAT changes:

- abolished the principle that detention must be a last resort
- imposed adult penalties on children for 33 offences, including non-violent ones, and extended probation periods for these offences

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[13] Markwick, A., Ansari, Z., Clinch, D., & McNeil, J. (2019). Experiences of racism among Aboriginal and Torres Strait Islander adults living in the Australian state of Victoria: a cross-sectional population-based study. *BMC Public Health*, *19*, 1-14.
[14] Australian Government, Productivity Commission, 2024, *Review of the National Agreement on Closing the Gap*, p.5, available from https://www.pc.gov.au/inquiries-and-research/closing-the-gap-review/
[15] University of Technology, Sydney, Jumbunna institute for Indigenous Education and Research, 2025, *Closing the Gap Independent Aboriginal and Torres Strait Islander led Review*, pp170-178, available from https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/685b4f091f5af860bd9f1b48/1750814543128/Closing+The+Gap+Review.pdf
[16] Queensland government, *Queensland Community Safety Bill 2024, Statement of compatibility*, available from https://documents.parliament.qld.gov.au/bills/2024/3202/5724T724-dfd9.pdf

- excluded restorative justice, a community-based approach, as an available sentencing option for certain offences
- expanded public access to Children's Court proceedings
- allowed children's criminal records to be considered in adulthood
- removed protections so that children can be transferred from youth detention to adult prisons immediately they turn 18
- mandated that courts prioritise the impact of an offence on the victim when sentencing children.

OPCAT

Despite Australia's ratification of OPCAT in December 2017, the required National Preventive Mechanism (NPM), an independent monitor for detention centres, remains unimplemented by three states, including Queensland. In Queensland, legislation was passed in 2023 to facilitate visits to places of detention by the UN Subcommittee on the Prevention of Torture[17], but a decision about what local organisation should undertake the NPM function has not been taken. NPMs must be able to regularly inspect all places of detention (prisons, youth detention, immigration facilities, psychiatric hospitals, etc.) and:

- be functionally independent
- have adequate resources and trained staff.
- operate with confidentiality and unrestricted access.
- conduct regular, unannounced visits to detention facilities.
- identify risks of torture or ill-treatment and recommend improvements.

The Queensland Inspector of Detention Services undertakes periodic inspections of places of detention; however, its recommendations are not binding and there is no statutory requirement for responsible authorities to formally respond or demonstrate implementation. Further, the Inspectorate has not been conferred with the full suite of powers necessary to meet the requirements of a National Preventive Mechanism under OPCAT.

OPCAT Article 19 requires not only the ability to make recommendations, but an ongoing dialogue with authorities regarding their implementation. Unlike an OPCAT-compliant National Preventive Mechanism, the Queensland Inspector of Detention Services has no statutory power to require a formal response, implementation plan, or justification for non-implementation of its recommendations. In its 2025 inspection report of Queensland's three youth detention centres (attached), the Inspector identified the following matters of concern:

- Evidence of extensive use of separation at the Cleveland youth detention centre in Townsville
- Insufficient and inconsistent record keeping by detention centre staff meaning the Inspector could not confirm the safety and wellbeing of children
- Insufficient observations made by staff of a child in isolation
- The separation rooms across Queensland's three youth detention centres are small and empty, with bare floors and walls, no toilet, no basin with running water and no furniture. They are devoid of basic amenities.
    - New South Wales and Western Australia provide children with access to toilets and running water.

[17] Queensland government, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023*, available from https://www.legislation.qld.gov.au/view/whole/html/inforce/2023-06-02/act-2023-013.

  - During onsite inspections, it was noted that some separation rooms were left dirty. Cleaning schedules are not routinely followed, and centres are not clear about who is responsible for cleaning.
  - There is no two-way intercom in the separation rooms. Children can only talk to staff if staff come past the door.
- The utilisation rate of Queensland youth detention centres is the highest in the country at 99.6% (well above standard safe capacity of 85%).
- Youth detention centres use handcuffs to restrain children.
- Body worn cameras are not turned on routinely when using force.
- The Youth Justice Regulation section 19 empowers the chief executive to approve permissible restraints for children held in youth detention. The regulations do not approve or prohibit specific restraints, including restraint chairs and spit hoods. In contrast, legislation in South Australia and New South Wales specifically prohibit the use of spit hoods.

The current legal framework in Queensland also allows the Attorney-General to order that a child be kept in secure accommodation indefinitely. There is no independent arbiter, apart from the courts, with the power to challenge this.

As noted in my previous submission, the UN Subcommittee on the Prevention of Torture suspended, then abandoned, its 2022 visit when refused access to places of detention in New South Wales and Queensland. The subcommittee observed there was a fundamental lack of understanding, among both federal and state authorities, of the Optional Protocol and the State Parties' obligations. In early December 2025, the UN Working Group on Arbitrary Detention was barred from facilities in the Northern Territory and Western Australia, indicating the poor understanding of Australia's obligations to international law and governance has not improved. The refusal of access also sends a message that those being held in detention are unworthy of having their fundamental human rights upheld.

ToR 1D: The Commonwealth's international obligations in regard to youth justice including the rights of the child, freedom from torture and civil rights.

As outlined in my submission to the inquiry of the previous parliament, the Australian Government is a party to the **Vienna Convention on the Law of Treaties**. This treaty establishes that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (article 27) and "a treaty is binding upon each party in respect of its **entire territory**" (article 29). Therefore, the Australian Government can and should pass legislation implementing its international human rights obligations, including the CRC, into domestic law. Australia has also ratified:

- the UN Convention on the Rights of the Child (UNCRC)
- the Convention Against Torture (CAT)
- the Optional Protocol to CAT (OPCAT)
- the Convention on the Rights of Persons with Disabilities (CRPD)
- the International Covenant on Civil and Political Rights (ICCPR), and
- endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Each of these instruments imposes binding obligations on Australia as a State Party, and on individual states and territories. They give the Commonwealth clear authority to legislate national minimum standards for youth justice, including:

- standards governing detention conditions
- limits on the use of force, isolation and restraints

- independent oversight and inspection
- remedies for rights breaches.

Legal advice obtained by the Justice and Equity Centre in September 2025 confirmed the Commonwealth has the power to legislate its international obligations on children's rights in line with its external affairs power (section 51(xxix) of the Constitution). The Federal Government could, for instance, set enforceable minimum standards for the treatment of children by state and territory criminal legal systems.[18] [19] The UNCRC could be brought into domestic law through a National Children's Act.

The Commonwealth can modify its policy relationship with the states in accordance with sections 81 and 96 of the Constitution and plays a key role in supporting Australian children and families, both through funding to the states and direct funding to service providers. As already noted, the Commonwealth provides income support, pharmaceutical, medical and dental services, and disability support via the NDIS.

Conditional grants to states and territories are routinely used to shape state service delivery in matters like education, families, housing and homelessness and domestic violence reduction. A National Youth Justice Prevention Partnership could be established with objectives to reduce remand and detention, and disproportionate representation of First Nations children, increase diversion and community-based options, and focus on poverty reduction as a youth justice prevention strategy with multiple other benefits too. if a state introduces laws or policies that will predictably increase sentenced or unsentenced detention, funding could be paused or redirected to community-controlled organisations delivering alternative programs.

By adopting a rights-based approach, the Federal government could embed the core principles of the UNCRC into domestic policy. This would lay the foundation for transformational reform, tethered to our enduring commitments as signatories to the UNCRC, to promote and protect the rights of children and young people now and into the future. Furthermore, it would enable, in fact require, equity-focussed action that ensures no Australian child is left behind or left out. Adopting the UNCRC as the core architecture for reform enables us to work from a point of agreement and clarity about obligations, anchored in international law.

ToR 1E: the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations.

In Queensland, there is no independent monitoring presence within centres to detect or prevent abuses in real time. The Queensland Ombudsman can receive complaints about the administrative actions of government agencies, including Youth Justice, after the fact. The Queensland Human Rights Commission can also receive complaints after the fact and the *Human Rights Act 2019* (Qld) provides a legal framework to challenge unlawful treatment or breaches of children's rights while in detention, including in court cells. Enforceable standards would provide a baseline for proactive protection for

[18] National Aboriginal and Torres Strait Islander Legal Services and Justice and Equity Centre, *Prime Minister has the power to ensure children are safe and protected. It's time for action*. Media release 16 Septemb]
]er 2025, available from https://www.natsils.org.au/wp-content/uploads/2025/09/250916-MR-Prime-Minister-has-the-power-to-ensure-children-are-safe-and-protected-its-time-for-action.pdf
[19] D. Brennan, *Experts: Albanese has power – and duty – to life age of criminal responsibility*, National Indigenous Times, September 16, 2025, https://nit.com.au/16-09-2025/20269/experts-albanese-has-power-and-duty-to-lift-age-of-criminal-responsibility

children, would apply regardless of national or state emergencies or political context and would reflect our minimum obligations as voluntarily agreed by Australia under international law.

The Commonwealth already leads national quality standards in areas such as early childhood education and care, health services and disability services. Given detention centres are such high-risk environments, standards must also be introduced to regulate the treatment of children in state and territory detention centres, forensic mental health centres and secure care facilities. Alongside standards there must be a designated oversight body to make proactive unheralded visits, in keeping with OPCAT goals. Commonwealth accountability for enforcement would ensure consistency and independence and the opportunity for learnings and good practices to be shared. Standards in keeping with UNCRC and OPCAT, would involve children and young people in their development, would be focussed on a child's best interests, and include not only minimum requirements but also positive duties of the accountable duty-holders.

The standards and reforms proposed in this submission are consistent with established international frameworks, including UNICEF's Child Justice Framework[20]. UNICEF identifies the best interests of the child, diversion from formal justice processes, proportionality, preservation of family and community connections, and the minimum use of deprivation of liberty as foundational principles of child justice systems. These principles reflect the practical application of the UNCRC and are widely accepted as best practice for preventing harm, reducing reoffending and promoting long-term community safety.

Enforceable standards could include:

- that detention is age-appropriate, therapeutic and rehabilitative
- a requirement for daily access to meaningful education, aligned with the national curriculum and tailored to disability and learning needs.
- regular, meaningful access to family, caregivers and significant others, including in-person, phone and digital contact
- no restriction on family contact unless strictly necessary, proportionate, time-limited and reviewable
- for First Nations children, culturally safe access to kin, Elders, community and Country
- detention as close as possible to home, with state-funded support for family contact where distance is unavoidable
- guaranteed daily access to outdoor exercise, recreation and culturally appropriate activities.
- access to nutritious food, clean clothing, bedding, sanitation, toilets and running water at all times.
- a child or young person can only be arrested or held in custody as a last resort and for as short a time as possible
- prohibition of solitary confinement and spit hoods
- an agreed nationally consistent minimum age of criminal responsibility (if deemed necessary the Commonwealth could raise the age to 12 in the short term and then to 14 after a legislated period of 3-5 years).

[20] UNICEF, 2017, *Child Justice: A Guide for Practitioners* ; UNICEF, *Global Programme on Child Justice: Strategic Framework 2019–2021*; see also UN Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, which reflects and reinforces UNICEF's child justice principles including the primacy of the best interests of the child, diversion, proportionality, minimum use of deprivation of liberty, and the preservation of family and community connections.

- detention centres, watch houses and other places where children are confined cooperate and grant full access to both UN oversight bodies, as provided for in Australia's treaty obligations, and domestic oversight bodies, regardless of whether the visit is planned or unplanned
- children and young people can speak directly to Inspection visitors about their detention experience without retribution
- an independently operated child-sensitive complaints process that includes ability to highlight breaches of the standards without retribution
- prompt access for children to legal and other assistance
- access to an independent advocate for each child going through a court process
- staff at all levels understand their accountability for upholding child rights and safety in accordance with UNCRC and OPCAT
- all children are released from detention with adequate community-based supports in place
- Youth justice laws for children should not be harsher than for adults.

Enforceable remedies, in response to breaches, could include temporary court injunctions, compensation, and mandatory systemic reform orders.

In Scotland, three sets of standards have been introduced, for children at risk of entering secure care, while in secure care, and when they are leaving secure care.[21] Standards were developed with guidance from children and young people and are written from the perspective of the child. Standards are monitored by the Care Inspectorate which can, if necessary, carry out enforcement action. The Inspectorate is required to follow a regulator's code.[22]

The non-enforceable standards developed by the Queensland Ombudsman, which reference international treaties and rules, are attached for information.

ToR 2A: Engage with and seek input from young people with lived experience in the youth justice system

A briefing note has been separately supplied to the Committee chair outlining an ethical approach, supported by my Office, to obtaining input from children and young people with current or recent lived experience. Attached to the briefing note was an embargoed copy of the youth justice chapter of our forthcoming Queensland Child Rights report, which includes the voices of youth justice-involved young people.

ToR 2B: Seek evidence of effective alternative approaches to incarceration for young people, including diversionary programs.

Progress towards non-punitive solutions is being made in Scotland, Scandinavian countries, some Canadian states and some US states like Hawai'i. Further examples can be found in a recent paper from the Australian Human Rights Commission.[23]

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[21] Secure Care Pathway and Standards Scotland, https://www.securecarestandards.com/
[22] Care Inspectorate, Scotland, https://www.careinspectorate.com/index.php/about-us
[23] Australian Human Rights Commission, 2025, *Evidence-based approaches to child justice*, available from https://humanrights.gov.au/?a=71852

In Scotland, the UNCRC was explicitly legislated into domestic law through the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.[24] This greatly assisted in making the need to uphold child rights real and explicit. A child rights impact assessment is required by the Scottish parliament when introducing a new Bill.

Common features of these international solutions include:

- changes are legislated
- focus on healing and relationship-building, not exclusion or punishment
- children and young people with lived experience are engaged in designing services and facilities
- children are made aware of their rights and can verbally express what their rights are
- willingness by leaders to educate community on cost-effectiveness of alternatives
- public and consistent statements that most of these children have already experienced trauma and that further punishment is not appropriate
- service coordination across education, housing, health and out-of-home care to address the needs of children and families early
- redirection of resources (justice reinvestment) to mental health support, substance use treatment and other services
- maximised diversion from the criminal justice system
- family involvement in rehabilitation, including assistance to build a more stable home life for the child
- support for child's reintegration into community.

I suggest investigating youth justice systems in places like New Zealand, Canada and Hawai'i because of the historical similarities of Indigenous populations dispossessed of land, food, shelter, education and culture by colonisation leading, in all cases, to disproportionate representation in the criminal system.

Hawai'i
In Hawai'i a legislated, systematic and consistent approach over 10 years has reduced its youth incarceration rate by 82 percent.

- Native Hawaiians and Pacific Islanders were previously over-represented at every stage in the youth justice system. This was accepted as being due to **poverty and a history of inequality**, including loss of land, culture and language and poor education.

- Native Hawaiians comprised one-third of the state's total youth population but over half of the prison population. This forced the Hawaiian legislature to act. (In Queensland the disproportionality is far worse, that is, Indigenous children make up 9% of the population of 10-17 year olds but 70% of the children in detention).

- **In 2014 A new state Act** called for a reduction in youth jail population of 60% in 5 years and redirected resources to mental health, substance use treatment, and other interventions. The Bill reduced court referrals, improved probation for justice-involved youth, and engaged with community-based programs for youth support.

- *Kawailoa: A Transformative Indigenous Model to End Youth Incarceration* has replaced youth incarceration with culturally rooted programs aimed at healing.

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[24] Scottish parliament, 2024, *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*. Available from https://www.legislation.gov.uk/asp/2024/1/contents/enacted

- **In June 2022**, Hawai'i announced no girls were incarcerated for the first time since 1961.[25] On the same day as the announcement, there were about 15 children incarcerated, down from over 100 in 2014.

- **Also in 2022,** the Hawai'i Youth Correctional Facility was rebranded as the Kawailoa Youth and Family Wellness Centre to reclaim ancestral land ties and reflect the state's shift from punitive models to more holistic therapeutic diversion and treatment programs. Community-based nonprofit organizations began establishing themselves **on the facility campus**.

- Alongside service collaboration and the support of the state legislature, the three levers of change, all based on Indigenous cultural practices were
    - Healing sanctuary of people and programs
    - Healing practices and policies
    - Healing partnerships and networks of care.

Hawai'i achieved an **80% reduction in imprisoned children in 8 years**. The Australian government has set a far more modest Closing the Gap target reduction, for First Nations children only, of 30% over 10 years (now with 6 years remaining) which we are unlikely to reach. Indeed, as noted under ToR B, the disproportionate representation is worsening in Queensland.

Conclusion

Australia has historically positioned itself as an advocate for the promotion and protection of human rights in international forums. However, its domestic implementation of international human rights obligations, particularly in relation to the treatment of Aboriginal and Torres Strait Islander peoples, has been uneven and, at times, inconsistent with those commitments. The incorporation of ratified international human rights treaties into domestic legislation would promote coherence between Australia's international obligations and domestic practice, provide clearer normative guidance to duty-bearers, and strengthen legal certainty and accountability for communities whose rights are engaged.

The current debate in Canberra[26] about improving the pace and implementation of housing, infrastructure, and technology projects could be usefully applied to social services delivery. There are multiple strategies in the child protection, disability and Indigenous affairs spaces, to name just a few, that are being poorly or slowly implemented due to lack of funding, leadership, persistence and consistency, or poor methodology. Yet, governments remain reluctant to delegate power to communities who know best what their families and children need. The consequence of this implementation failure means the poorest and least powerful in our society continue to wait months and years for the services they have a right to or receive them only when a crisis has been reached, while governments are not held accountable when they fail to meet their side of the social contract.

Introducing enforceable standards for youth detention will be an important first step to protecting children at high risk of harm, but our aspiration as a society should be to not need a youth justice system, because our children have been supported to fulfil their right to lead a decent life.

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[25] S. Solina, Hawaii News Now, June 21, 2022, "For the first time, there are no girls incarcerated at Hawaii Youth Correctional Facility, available from https://www.hawaiinewsnow.com/2022/06/21/first-time-there-are-no-girls-incarcerated-hawaii-youth-correctional-facility/
[26] E.Klein and D. Thompson, 2025, *Abundance*, Profile books.

[redacted]

About the Office of the Aboriginal and Torres Strait Islander Children's Commissioner

Under the *Queensland Family and Child Commission Act 2014* the Aboriginal and Torres Strait Islander Children's Commissioner is granted functional and operational independence in the exercise of their powers and functions. Our vision is that Aboriginal and Torres Strait Islander children grow up strong in their identity, culture, and community, free from systemic racism and discrimination. They are safe, nurtured, and thriving in their families, with systems designed to support, not separate. They exercise their rights, participate in decision making, and contribute to solutions that are aligned to their identities and aspirations. The child protection and youth justice systems are defined by early intervention, Aboriginal and Torres Strait Islander family-led solutions, and culturally safe care. The Queensland Government strengthens accountability by integrating child rights into policy, legislation and service delivery.

Attachments

1. Aboriginal and Torres Strait Islander Children's Commissioner - Blueprint: A Children's Plan for Queensland
2. Queensland Ombudsman - Combined Inspection report for youth detention centres
3. Inspector of Detention Services – Inspection standards for Queensland youth detention centres