

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

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS  
COMMITTEE

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## Acknowledgments

Anti-Slavery Australia acknowledges the traditional Owners of Country and the Holders of Knowledge for this place, the Gadigal people of the Eora Nation, upon whose lands and waters we work, and extend our respect to their Elders both past, present and emerging.

Anti-Slavery Australia expresses its sincere gratitude and respect for all survivors of modern slavery whose experiences have inspired and continue to drive our advocacy for survivors' rights to be protected and fulfilled.

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing legal advice and assistance to victims and survivors of modern slavery in Australia since 2003.

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## 1. Executive Summary

Anti-Slavery Australia, at the University of Technology Sydney, welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee in relation to its inquiry into Australia's youth justice and incarceration system.

This submission will address the following themes:

- Youth justice and incarceration in Australia including the hyperincarceration of First Nations children.
- Links between youth justice and modern slavery.
- International human rights framework.
- Current approaches to youth justice and incarceration across Australia.
- The need for a child-rights based approach to youth justice in Australia.

## 2. About Anti-Slavery Australia

Anti-Slavery Australia is the only specialist legal, research and policy university centre in Australia working to end modern slavery. For 20 years, our team has been providing access to pro bono legal and migration services to people who have experienced or are at-risk of modern slavery; engaging in research and advocacy grounded in the firsthand experience of survivors; and delivering training on modern slavery to frontline service providers, government, community, law enforcement, business, students and educators.

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### 3. Youth justice and incarceration in Australia

According to the Australian Institute of Health and Welfare (AIHW), 4,542 people aged 10-17 were under youth justice supervision in Australia on any average day in 2022-23, while a total of 9,157 young people were supervised by youth justice at some time during the year.<sup>1</sup> 82% of children were supervised in the community, with 18% in detention. Astoundingly, only 20% of children in detention were sentenced, the rest were being held on remand.<sup>2</sup>

Certain cohorts of children are over-represented in these figures.

#### Hyperincarceration of First Nations children

Aboriginal and Torres Strait Islander children are 23 times more likely than non-Indigenous Australian children to be under supervision and 28 times more likely to be in detention.<sup>3</sup> In 2022-23, 2,423 First Nations children were under youth justice supervision on an average day, with 483 in detention.<sup>4</sup> This equates to 57% of all children under supervision and 63% of all those in detention on an average day. The Australian Child Rights Taskforce has described the disproportionate incarceration of First Nations children as a 'national crisis'.<sup>5</sup>

While the term 'over-represented' suggests that the disproportionate incarceration rates of First Nations children is an anomaly, the term hyperincarceration more accurately describes the incarceration of First Nations children that 'results directly from colonisation and both historical and current discrimination in the criminal justice system'.<sup>6</sup> The incarceration rate of First Nations children therefore represents 'the logical extension of several centuries of

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<sup>1</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2022-23* (Web Report, 28 March 2024) available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/numbers-and-rates-of-young-people-under-supervision>.

<sup>2</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2022-23* (Web Report, 28 March 2024) available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/summary>.

<sup>3</sup> Australian Institute of Health and Welfare, 'Youth Justice', *Justice and Safety* (Web Page, 28 March 2024) available at: <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>.

<sup>4</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2022-23* (Web Report, 28 March 2024) available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/summary>.

<sup>5</sup> Australian Child Rights Taskforce and UNICEF, *The Children's Report: Australia's NGO Coalition Report to the United Nations Committee on the Rights of the Child* (Report, November 2018) 13.

<sup>6</sup> Chloe Boffa and Anita Mackay, 'Hyperincarceration and Human Rights Abuses of First Nations Children in Juvenile Detention in Queensland and the Northern Territory' (2024) *Current Issues in Criminal Justice* 1, 2, available at: <https://doi.org/10.1080/10345329.2023.2293317>.

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policies, laws, and practices designed to complete the dispossession of Indigenous peoples as bearers of Indigenous sovereignty.<sup>7</sup>

Evidence from NSW, Victoria, Queensland and Western Australia highlights the current discrimination experienced by First Nations children in the criminal justice context. Research shows that First Nations children are significantly less likely compared to non-First Nations children to receive a diversionary option such as warnings, cautions or referral to a youth justice conference after coming into contact with police. Conversely, they are more likely than non-Indigenous children to be arrested, refused bail and to have their cases referred directly to the court system.<sup>8</sup>

The hyperincarceration of First Nations children increases their risk of human rights abuses occurring in detention such as exposure to violence, abuse, and cruel, inhumane and degrading treatment.<sup>9</sup>

### **‘Cross-over’ children**

The link between child protection and youth justice involvement is well established. Research indicates that children who have experienced child maltreatment are at greater risk of engaging in criminal activity and of entering the youth justice system.<sup>10</sup> While most children involved with the child protection system do not criminally offend, a disproportionate number of children who do offend have interacted with child protection services.<sup>11</sup> Regrettably, child-

<sup>7</sup> Thalia Anthony and Harry Blagg, ‘Hyperincarceration and Indigeneity’ in *Oxford Research Encyclopedia of Criminology and Criminal Justice* 46-57 (Oxford University Press, 2020) quoted in Chloe Boffa and Anita Mackay, ‘Hyperincarceration and Human Rights Abuses of First Nations Children in Juvenile Detention in Queensland and the Northern Territory’ (2024) *Current Issues in Criminal Justice* 1, 1, available at: <https://doi.org/10.1080/10345329.2023.2293317>.

<sup>8</sup> Barry Goldson et al, ‘The Racialisation of Youth Justice and Penalty’ in *Youth Justice and Penalty in Comparative Context* (Routledge, 2020) 100, 108.

<sup>9</sup> Chloe Boffa and Anita Mackay, ‘Hyperincarceration and Human Rights Abuses of First Nations Children in Juvenile Detention in Queensland and the Northern Territory’ (2024) *Current Issues in Criminal Justice* 1, 2, available at: <https://doi.org/10.1080/10345329.2023.2293317>.

<sup>10</sup> See e.g. Ben Mathews et al, *Child Maltreatment and Criminal Justice System Involvement in Australia: Findings from a National Survey*, Australian Institute of Criminology (*Trends and Issues in Crime and Criminal Justice* No. 681, November 2023); Australian Institute of Health and Welfare, *Young People under Youth Justice Supervision and their Interaction with the Child Protection System: 2022-23* (Report, 25 October 2024); and Judy Cashmore, *The Link between Child Maltreatment and Adolescent Offending: Systems Neglect of Adolescents* (Family Matters No 89, 2011) 31-49;

<sup>11</sup> See e.g. Catia G Malvaso, Paul H Delfabbro and Andrew Day, ‘The Child Protection and Juvenile Justice Nexus in Australia: A Longitudinal Examination of the Relationship between Maltreatment and Offending’ (2017) 64 *Child Abuse and Neglect* 32; and Tamara Walsh, ‘From Child Protection to Youth Justice: Legal Responses to the Plight of “Crossover Kids”’ (2019) 46(1) *University of Western Australia Law Review* 90.

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protection involved youth are twelve times more likely than other young people to come under youth justice supervision.<sup>12</sup> According to AIHW, more than a quarter of children (29%) under youth justice supervision in 2022-2023 also had an interaction with child protection services that year. More broadly, almost two-thirds of children (65%) under youth justice supervision in 2022-2023 had an interaction with the child protection system in the previous 10 years. Children in detention were more likely to have had an interaction with the child protection system than children in community-based supervision.<sup>13</sup>

Likewise, a study of 180 young people under youth justice supervision in South Australia found that 94% were known to child protection, with 57% the subject of at least one investigation and 46% of at least one substantiation. Almost one-third had been in out-of-home care placements at some time.<sup>14</sup>

Research further suggests that the younger a person is when they enter youth justice supervision for the first time, the more likely they are to have had an interaction with the child protection system. For example, 50% of 10–13-year-old children in contact with police had a prior intervention order and 75% of children who underwent *doli incapax* assessments had child protection involvement.<sup>15</sup> This younger onset of offending is associated with a higher risk of progression to the adult criminal justice system.<sup>16</sup>

As the National Children's Commissioner, Anne Hollonds, remarked in a recent address, '[o]ften the next station on the train line for children in the child protection system is the criminal justice system... Both systems are separate and disconnected but equally broken, and this disconnection fails to recognise that they are all children in need of care.'<sup>17</sup>

<sup>12</sup> Australian Institute of Health and Welfare, *Young People in Child Protection and Under Youth Justice Supervision: 1 July 2013 to 30 June 2017* (Report, 16 October 2018) 13.

<sup>13</sup> Australian Institute of Health and Welfare, *Young People under Youth Justice Supervision and their Interaction with the Child Protection System: 2022-23* (Report, 25 October 2024) vi.

<sup>14</sup> Catia G Malvaso et al, *Adverse Childhood Experiences and Trauma among Young People in the Youth Justice System*, Australian Institute of Criminology (*Trends and Issues in Crime and Criminal Justice* No. 651, June 2022) 5.

<sup>15</sup> Susan Baidawi et al, *Children aged 10 to 13 in the Justice System: Characteristics, Alleged Offending and Legal Outcomes*, Australian Institute of Criminology (Report, January 2024) ix.

<sup>16</sup> Susan Baidawi and Rosemary Sheehan, "Crossover Kids": Offending by Child Protection-involved Youth', Australian Institute of Criminology (*Trends and Issues in Crime and Criminal Justice* No. 582, December 2019) 2.

<sup>17</sup> Anne Hollonds, National Children's Commissioner, *National Children's Commissioner Press Club Address* (Speech, 2 October 2024) available at: <https://defence.humanrights.gov.au/about/news/speeches/national-childrens-commissioner-anne-hollonds-press-club-address>.

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### Children with disabilities

The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* found people with disability, including children and young people, are significantly over-represented in the criminal justice system.<sup>18</sup> Various inquiries and studies across Australia have confirmed the same. For example, a 2015 NSW Health survey of young people in detention found that 83% had at least one psychological disorder and almost 17 percent showed indications of a potential intellectual disability.<sup>19</sup> Research conducted in Victoria found that 38% of young people in Victorian courts present with cognitive difficulties that impact daily functioning.<sup>20</sup>

More recently, a study exploring children charged with early offending found that 60% of children undergoing *doli incapax* assessments had at least one diagnosed psychiatric disorder, 11.3 percent had a diagnosed intellectual disability or acquired brain injury, and 28.7 percent had multiple psychiatric and disability-related diagnoses.<sup>21</sup> Despite considerable levels of need, the study found these children did not have access to appropriate clinical or therapeutic services.<sup>22</sup>

In light of the above, we agree with the statement made by the Australian Institute of Criminology (AIC) that, 'Australian jurisdictions appear to incarcerate young people with complex needs rather than reserving detention as a "last resort"'.<sup>23</sup> In other words, instead of providing children most in need with appropriate care and support, we are punishing and detaining them. As this submission emphasises, Australia's current approach does not align with its international obligations nor is it effective in rehabilitating children in conflict with the

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<sup>18</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 8 – Criminal Justice and People with Disability* (Report, September 2023) 31.

<sup>19</sup> Garner Clancey, Sindy Wang and Brenda Lin, 'Youth Justice in Australia: Themes from Recent Inquiries', Australian Institute of Criminology (*Trends and Issues in Crime and Criminal Justice* No. 605, October 2020) 6.

<sup>20</sup> Gaye Lansdell, Bernadette J Saunders and Anna Eriksson, 'Young People with Acquired Brain Injury: Preventing Entrenchment in the Criminal Justice System', Australian Institute of Criminology (*Trends and Issues in Crime and Criminal Justice* No. 650, June 2022) 2.

<sup>21</sup> Susan Baidawi et al, *Children aged 10 to 13 in the Justice System: Characteristics, Alleged Offending and Legal Outcomes*, Australian Institute of Criminology (Report, January 2024) x.

<sup>22</sup> Susan Baidawi et al, *Children aged 10 to 13 in the Justice System: Characteristics, Alleged Offending and Legal Outcomes*, Australian Institute of Criminology (Report, January 2024) x.

<sup>23</sup> Gaye Lansdell, Bernadette J Saunders and Anna Eriksson, 'Young People with Acquired Brain Injury: Preventing Entrenchment in the Criminal Justice System', Australian Institute of Criminology (*Trends and Issues in Crime and Criminal Justice* No. 650, June 2022) 2.

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law or keeping the community safe. A complete overhaul of the youth justice and incarceration system is urgently required.

#### 4. Link between youth justice involvement and modern slavery

In Australia, the term 'modern slavery' encompasses human trafficking; slavery; servitude; forced labour; debt bondage; deceptive recruitment for labour or services; forced marriage; and the worst forms of child labour.<sup>24</sup> Modern slavery offences are criminalised under Divisions 270<sup>25</sup> and 271<sup>26</sup> of the *Criminal Code Act 1995* (Cth), which include stand-alone offences for slavery, servitude, forced marriage and child trafficking amongst others.

Children in conflict with the law often have intersecting vulnerabilities that increase their risk of exploitation and abuse. Poverty, discrimination, social isolation, adverse childhood experiences and substance abuse are all factors that increase a child's risk of both offending and of experiencing modern slavery. As highlighted in the section above, First Nations children, children involved in the child protection system and children with disabilities are all over-represented in the youth justice system. Equally, these cohorts of children are at increased risk of experiencing modern slavery.

The intersection of modern slavery and youth justice is twofold. Children may be forced into committing criminal acts as a result of their exploitation. Children with intersectional needs such as the cohorts of children mentioned earlier, are at an even higher risk of forced criminality.<sup>27</sup> For example, in September 2023, it was reported that 12 people had been charged with 263 offences against 52 children, some as young as 11 years old. Police alleged that children were drugged, sexually abused and forced to commit further crimes by their abusers. A significant number of the alleged child survivors were the targets of the Queensland government's punitive crackdown on youth crime, and almost three quarters of the children

<sup>24</sup> *Modern Slavery Act 2018* (Cth) s 4.

<sup>25</sup> Division 270 contains offences for slavery and slavery-like practices including servitude, deceptive recruitment, debt bondage, forced labour and forced marriage. Pursuant to section 270.8 of the *Criminal Code*, a slavery-like offence committed against a child is considered an aggravated offence.

<sup>26</sup> Division 271 encompasses the offences of trafficking in persons, domestic trafficking and organ trafficking. Sections 271.4 and 271.7 explicitly provide for the offences of trafficking in children and domestic trafficking in children. Pursuant to s 271.7C, a person commits an aggravated offence of organ trafficking under s 271.7B if the victim of the offence is under 18. All of these offences against children under Division 271 attract a maximum penalty of imprisonment for 25 years.

<sup>27</sup> Susan Baidawi, Rosemary Sheehan and Catherine Flynn, 'Criminal Exploitation of Child Protection-involved Youth' (2020) 118 *Children and Youth Services Review* 10596, 2.

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were believed to be in state care.<sup>28</sup> Furthermore, an exploratory study into the forced criminality of 'crossover' children in Victoria found that children forced into criminal exploitation emerged as an issue in 50% of interview and focus group consultations. Participants spontaneously described criminally exploitative relationships between crossover children and adults, completely unprompted by any question on the topic. Children in residential care and those with neurodisability were identified as being particularly at-risk subgroups.<sup>29</sup>

As will be outlined in greater detail in section 7 of this submission, the right of victims to be protected by law requires that the principle of non-punishment is an essential element of any legislative modern slavery framework.

Furthermore, children who have experienced modern slavery might commit crimes after their exploitation due to desperation and destitution.<sup>30</sup> Factors influencing their offending may include poverty, homelessness, substance abuse and a lack of educational opportunities or social supports.

Strengthening resilience in at risk children is a crucial step in prevention. Children and young people have highlighted that a safe home or place to live is the most important protective factor in preventing contact with the justice system.<sup>31</sup> Indeed, the connection between insecure housing, poverty and offending has been well documented. So too, has the connection between insecure, unsafe housing and exploitation. Research confirms that homelessness can be both a driver and outcome of modern slavery. For example, in the United Kingdom (UK), research conducted by the not-for-profit organisation, The Passage, found that people experiencing homelessness are at greater risk of being exploited and survivors of human trafficking and other forms of modern slavery are at significant risk of becoming homeless

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<sup>28</sup> Nino Bucci and Ben Smee, 'Dozens of Vulnerable Children Allegedly Preyed Upon in Cairns, Upending Queensland's Youth Crime Debate', *The Guardian* (Online, 25 September 2023) available at: [https://www.theguardian.com/australia-news/2023/sep/25/police-operation-uniform-kalahari-cairns-youth-abuse-children-allegations-charges?CMP=oth\\_b-aplnws\\_d-3](https://www.theguardian.com/australia-news/2023/sep/25/police-operation-uniform-kalahari-cairns-youth-abuse-children-allegations-charges?CMP=oth_b-aplnws_d-3).

<sup>29</sup> Susan Baidawi, Rosemary Sheehan and Catherine Flynn, 'Criminal Exploitation of Child Protection-involved Youth' (2020) 118 *Children and Youth Services Review* 105396, <https://doi.org/10.1016/j.childyouth.2020.105396>.

<sup>30</sup> See e.g. David Gadd and Rose Broad, 'When Victims of Modern Slavery Became Offenders: The Unravelling of the UK's Modern Slavery Agenda' (2024) 10(2) *Journal of Human Trafficking* 302, 305.

<sup>31</sup> Australian Human Rights Commission, '*Help Way Earlier!*': *How Australia can Transform Child Justice to Improve Safety and Wellbeing* (Report, August 2024) 32.

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following their exploitation, leaving them susceptible to revictimisation.<sup>32</sup> Data collected over five years showed that over 75% of survivors of modern slavery identified by The Passage had become homeless as a direct result of their exploitation.<sup>33</sup>

In addition, concerning reports have emerged in the UK of children being placed in and trafficked from hotels commissioned by the Home Office to house them. Between July 2021 and June 2023, 440 children seeking asylum were reported missing from seven Home Office hotels. Research funded by the Modern Slavery and Human Rights Policy and Evidence Centre found 'that the use of Home Office hotel accommodation for unaccompanied children seeking asylum increased the risks of both trafficking and exploitation as well as re-trafficking risk for those children having been trafficked into the country.'<sup>34</sup> The hotels were decommissioned in January 2024 following a High Court ruling that their regular operation (rather than acting as 'emergency accommodation') was unlawful.<sup>35</sup>

As the Independent Anti-Slavery Commissioner (UK) stated:

All children should be in safe and caring homes. Children in care should be in stable and loving environments with joined-up statutory services around them that are tailored to their needs to wrap care around them. Without this they are sitting ducks for those who would wish to exploit them.

Disturbingly, children in Australia are being exposed to similar precarious conditions. A 2024 snapshot of child homelessness in Australia found that Australia's critical lack of affordable housing had resulted in 76,000 children seeking help from homelessness services in the twelve months between July 2022 to June 2023. Of these, almost 16,000 approached homelessness services unaccompanied and 32% identified as First Nations.<sup>36</sup> Moreover,

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<sup>32</sup> The Passage, *An Overview of Homelessness and Human Trafficking in Dublin* (Report, April 2024) 4, available at: <https://passage.org.uk/wp-content/uploads/2024/04/DIGITAL-FINAL.-An-overview-of-homelessness-and-human-trafficking-in-Dublin.pdf>.

<sup>33</sup> The Passage, 'Addressing Homelessness and Human Trafficking on a Global Scale' (Web Page, April 2024), available at: <https://passage.org.uk/addressing-homelessness-and-human-trafficking-at-a-global-scale/>.

<sup>34</sup> Sonja Ayeb-Karlsson et al, *Behind Closed Doors: A Storytelling Legal and Empirical Analysis of Human Trafficking Risks in Home Office Hotels Compared to Other Accommodation for Unaccompanied Children and Young People Seeking Asylum in the UK* (Report, 17 July 2024) 7 and 34-39.

<sup>35</sup> Sonja Ayeb-Karlsson et al, *Behind Closed Doors: A Storytelling Legal and Empirical Analysis of Human Trafficking Risks in Home Office Hotels Compared to Other Accommodation for Unaccompanied Children and Young People Seeking Asylum in the UK* (Report, 17 July 2024) 7.

<sup>36</sup> Homelessness Australia, *2024 Child Homelessness Snapshot* (Report, August 2024) 3, available at: <https://homelessnessaustralia.org.au/wp-content/uploads/2024/08/HA-2024-Child-Homelessness-Snapshot-v02.pdf>.

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children in the child protection system are being accommodated in unsafe hotels across Australia. A recent Special Inquiry into children placed into alternative care arrangements (ACAs) undertaken by the NSW Advocate for Children and Young People (NSW Advocate) found that emergency accommodation in NSW for children in state care was not suitable nor appropriate and should cease immediately. According to the NSW Advocate's report:

ACAs are one of a number of emergency care arrangements currently utilised in NSW... ACAs involve arrangements where the child or young people is cared for in temporary accommodation, such as hotels, motels, caravan parks, serviced apartments or short-term rental accommodation. Whilst in ACAs children and young people are generally supervised by sub-contracted workers from non-accredited agencies or labour hire companies.<sup>37</sup>

However, as the NSW Advocate noted:

Whilst ACAs are intended to be utilised as a short-term emergency care placement for children and young people, recent data highlights that most are staying in ACAs for extended periods of time. For instance, over the course of the Special Inquiry, data provided by DCJ has indicated that the majority of children and young people placed in ACAs are there for more than three months and, in the most extreme cases, there have been instances where children and young people have been placed in ACAs for more than 600 days.<sup>38</sup>

Similarly, other protective factors against modern slavery, such as access to education and employment opportunities, positive self-image through connection to community, culture and religion as well as close, supportive family and peer relationships including a strong attachment to a parent or caregiver, have been identified as also reducing the risk of criminal offending. For example, a recent study conducted by the AIC exploring the correlates of First Nations contact with the criminal justice system found that the strongest protective factor against Indigenous arrest was completing school. It also found that the odds of arrest are substantially lower for those who have always had a home, those with a higher income and those that are socially embedded.<sup>39</sup>

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<sup>37</sup> Advocate for Children and Young People (NSW), *Moving Cage to Cage: Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements* (Report, August 2024) 14.

<sup>38</sup> Advocate for Children and Young People (NSW), *Moving Cage to Cage: Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements* (Report, August 2024) 14.

<sup>39</sup> Don Weatherburn et al, *Towards an Understanding of Indigenous Arrest*, Australian Institute of Criminology (*Trends and Issues in Crime and Criminal Justice* No. 694, May 2024).

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As will be outlined below, Australia's approach to youth justice ignores this evidence by removing children from their protective networks, excluding them from education and limiting their employment opportunities. This not only has negative outcomes for children in conflict with the law but also puts them at greater risk of exploitation, including modern slavery practices.

These examples accentuate the gaps in current responses, particularly the lack of prevention measures that address the root causes of both youth offending and modern slavery. Furthermore, they highlight the lack of coordination with respect to the array of child-related policies across various governments in Australia. In practice, this lack of coordination involves government departments and agencies working within silos, unaware of the work being undertaken by others on related and intersecting issues. This impedes efforts to prevent, identify and protect children from harm.

We submit that children should always be treated as children, first and foremost, regardless of the policy setting. This means, in the current context, developing appropriate responses that address the root causes of vulnerability to both modern slavery and involvement in youth justice by safeguarding the rights of children and meeting their specific needs.

## 5. International human rights framework

The relevant international human rights framework with respect to the administration of youth justice includes the *United Nations Convention on the Rights of the Child* (the *Convention*),<sup>40</sup> the *Standard Minimum Rules for the Administration of Juvenile Justice* (the *Beijing Rules*),<sup>41</sup> the *Guidelines for the Prevention of Juvenile Delinquency* (the *Riyadh Guidelines*),<sup>42</sup> the *Rules*

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<sup>40</sup> *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>41</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN Doc A/RES/40/33 (adopted 29 November 1985).

<sup>42</sup> *United Nations Guidelines for the Prevention of Juvenile Delinquency*, GA Res 45/112, UN Doc A/RES/45/112 (adopted 14 December 1990).

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*for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules)<sup>43</sup> and the *Guidelines for Action on Children in the Criminal Justice System* (the Guidelines for Action).<sup>44</sup>

The *Convention* is the primary treaty outlining the specific rights of all children. Articles 3, 37 and 40 are particularly relevant to the administration of youth justice. Article 3 provides that the 'best interests of the child' shall be a primary consideration in all actions concerning children.<sup>45</sup>

Article 37 reads:

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.<sup>46</sup>

<sup>43</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/113, UN Doc A/RES/45/113 (adopted 14 December 1990).

<sup>44</sup> *Guidelines for Action on Children in the Criminal Justice System*, ESC Res 1997/30, UN Doc ESC/RES/1997/30 (adopted 21 July 1997).

<sup>45</sup> *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1).

<sup>46</sup> *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37.

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Article 40 recognises the right of every child in conflict with the law to be 'treated in a manner consistent with the promotion of the child's sense of dignity and worth' and outlines specific rights and guarantees aimed at ensuring the fair and equal treatment of children in contact with the youth justice system. Article 40(3) calls on States to establish a minimum age of criminal responsibility as well as to promote the establishment of diversionary measures outside of judicial proceedings.<sup>47</sup>

With respect to the minimum age of criminal responsibility, the Committee on the Rights of the Child (CRC Committee) has recommended that all States increase their minimum age to at least 14 years in accordance with evidence in the fields of child development and neuroscience.<sup>48</sup> The CRC Committee recognises that in some States (such as Australia) two minimum ages apply, with a presumption that a child between the two minimum ages lacks criminal responsibility unless sufficient maturity is demonstrated. The CRC Committee however observes that while this was devised as a protective system, in practice it 'leaves much to the discretion of the court and results in discriminatory practices.'<sup>49</sup> As such, the CRC Committee urges States to 'set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility.'<sup>50</sup>

The Beijing Rules were purposely formulated so as to be applicable within different legal systems and, at the same time, to set minimum standards for the handling of children in conflict with the law.<sup>51</sup> The Beijing Rules safeguard the rights of children involved in youth justice and ensure the aims of the youth justice system emphasise the wellbeing of the child and react proportionately to both the gravity of the offence committed and his/her personal circumstances.<sup>52</sup> Imprisonment both pending trial and following a conviction should be used

<sup>47</sup> *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 40.

<sup>48</sup> Committee on the Rights of the Child, *General Comment No. 24 on Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) 6 [22].

<sup>49</sup> Committee on the Rights of the Child, *General Comment No. 24 on Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) 7 [26].

<sup>50</sup> Committee on the Rights of the Child, *General Comment No. 24 on Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) 7 [27].

<sup>51</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN Doc A/RES/40/33 (adopted 29 November 1985).

<sup>52</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN Doc A/RES/40/33 (adopted 29 November 1985) Rule 5.

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as a measure of last resort and for the shortest possible period of time.<sup>53</sup> Recognising the danger of 'criminal contamination' of children in detention pending trial, the Beijing Rules provide that wherever possible, incarceration should be replaced by alternative measures.<sup>54</sup>

The Havana Rules were devised 'to establish minimum standards for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.'<sup>55</sup> They endorse the principles and procedures set forth in the Beijing Rules and reiterate that the objective of the youth justice system should be to uphold the rights and safety and promote the physical and mental wellbeing of children in conflict with the law.<sup>56</sup> With respect to detention, the Havana Rules affirm that imprisonment should be used as a last resort, for the minimum necessary period and only in exceptional cases, that children should be separated from adults and that:

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.<sup>57</sup>

Detention of children before trial (e.g on remand) should be avoided to the extent possible and limited to exceptional circumstances. In all cases where detention is required, untried children should be separated from children convicted.<sup>58</sup>

<sup>53</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN Doc A/RES/40/33 (adopted 29 November 1985) Rules 13 and 19.

<sup>54</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN Doc A/RES/40/33 (adopted 29 November 1985) Rule 13.

<sup>55</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/113, UN Doc A/RES/45/113 (adopted 14 December 1990) para 3.

<sup>56</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/113, UN Doc A/RES/45/113 (adopted 14 December 1990) para 1.

<sup>57</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/113, UN Doc A/RES/45/113 (adopted 14 December 1990) para 28.

<sup>58</sup> *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/113, UN Doc A/RES/45/113 (adopted 14 December 1990) para 17.

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The Riyadh Guidelines focus on the need for effective implementation of prevention measures in addressing the issue of children in conflict with the law. The Guidelines encourage States to institute prevention measures at all levels of government including through legislation, social policy, socialisation processes and research, policy development and coordination. In relation to legislative frameworks, the Riyadh Guidelines call on States to enact and enforce legislation preventing the victimisation, abuse, exploitation and the use for criminal activities of children.<sup>59</sup> Similarly, States are called upon to enact and enforce legislation that protects the rights of children, including protection from harsh or degrading correction or punishment.<sup>60</sup>

The Guidelines for Action promote a holistic, child rights-based approach to the administration of youth justice – one which is grounded in evidence, informed by the views of children and transparent and accountable through the implementation of appropriate oversight mechanisms.<sup>61</sup> The Guidelines for Action emphasise '[t]he importance of a comprehensive and consistent national approach in the area of juvenile justice ..., with respect for the interdependence and indivisibility of all rights of the child.'<sup>62</sup>

In summary:

Children who come into contact with the criminal justice system have the same rights as other children—including the right to be kept safe, be heard, and be treated in a way that promotes their dignity and worth. They also have special rights specific to their experiences. Reintegration and rehabilitation should be a key aim of how children are treated in youth justice. Wherever possible, measures should not resort to judicial proceedings. Detention should only be used as a measure of last resort, and for the shortest appropriate period of time. The law must also set a minimum age below which a child should not be considered to have the capacity to commit an offence.<sup>63</sup>

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<sup>59</sup> *United Nations Guidelines for the Prevention of Juvenile Delinquency*, GA Res 45/112, UN Doc A/RES/45/112 (adopted 14 December 1990) para 53.

<sup>60</sup> *United Nations Guidelines for the Prevention of Juvenile Delinquency*, GA Res 45/112, UN Doc A/RES/45/112 (adopted 14 December 1990) paras 52 and 54.

<sup>61</sup> *Guidelines for Action on Children in the Criminal Justice System*, ESC Res 1997/30, UN Doc ESC/RES/1997/30 (adopted 21 July 1997) para 8.

<sup>62</sup> *Guidelines for Action on Children in the Criminal Justice System*, ESC Res 1997/30, UN Doc ESC/RES/1997/30 (adopted 21 July 1997) para 10.

<sup>63</sup> Australian Human Rights Commission, *Children's Rights Report 2019 - In Their Own Right: Children's Rights in Australia* (Report, October 2019) 235.

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## 6. Current approaches to youth justice and incarceration across Australia

Australia ratified the *Convention* in December 1990, committing to protect, respect and fulfil the rights of children within its jurisdiction. However, despite this commitment and in spite of consistent recommendations by the CRC Committee to do so,<sup>64</sup> the Australian Government is yet to enact comprehensive child rights legislation or implement a whole-of-government strategy to ensure the realisation of children's rights at the national level.

Youth justice in Australia falls within the remit of state and territory governments. This is problematic given that each state and territory has distinct legislation, policies and practices, which has resulted in a fragmented and substantially flawed system. In addition:

The politicisation and distorted media reporting of youth offending, including misrepresentation about the nature and extent of youth crime, have heightened the public's concern for personal and community safety, and have contributed to 'tough on crime' and harmful law and order policies. These punitive policies prioritise punishment over rehabilitation, and deterrence over the best interests of the child.<sup>65</sup>

Ultimately however, the Australian Government retains the primary responsibility to ensure compliance with its international obligations. As the former National Children's Commissioner stated, '[c]ountries that are federated cannot avoid responsibility for human rights by stating that responsibility for violations sits with a sub-national government rather than the national government.'<sup>66</sup>

Flagrant breaches of Australia's international human rights obligations in the context of the administration of youth justice have been identified and spotlighted in recent years, with human rights advocates calling for a complete overhaul of the system. Below, we briefly outline some of the key deficiencies in the approaches currently adopted across Australia.

<sup>64</sup> See e.g. Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) 2, para 7(a).

<sup>65</sup> Australian Child Rights Taskforce and UNICEF, *The Children's Report: Australia's NGO Coalition Report to the United Nations Committee on the Rights of the Child* (Report, November 2018) 68.

<sup>66</sup> Australian Human Rights Commission, *Children's Rights Report 2019 - In Their Own Right: Children's Rights in Australia* (Report, October 2019) 41.

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### Age of criminal responsibility

Until 2023, the law in every jurisdiction in Australia set a minimum age of criminal responsibility at 10 years. In addition, the principle of *doli incapax* operates throughout Australia, whereby a child between the age of criminal responsibility to 14 years is assumed to be criminally incapable unless proven otherwise.

Since April 2023, a number of states and territories have made commitments to raise the minimum age, including Victoria, Tasmania, the Northern Territory and the Australian Capital Territory. While this appeared to be progress in the right direction, both the governments of Victoria and the Northern Territory have since backflipped on these commitments and the NSW Premier has said that raising the age of criminal responsibility is not on the government's agenda.<sup>67</sup>

**We submit that convicting and detaining children as young as 10 years is not only inconsistent with current medical and child development literature but also violates Australia's international obligations. Discriminatory responses that negatively impact already disadvantaged children are unacceptable and must be urgently addressed. Therefore the minimum age of criminal responsibility should be raised to 14 years without exception across all jurisdictions in Australia.**

### Detention as a last resort

Despite it being a fundamental obligation under international human rights law, various jurisdictions across Australia have undermined and violated the principle of detention as a measure of last resort and for the shortest appropriate period of time.

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<sup>67</sup> See e.g. Benita Kolovos, "'Betrayal': Indigenous and Legal Groups Condemn Victoria's Backflip on Raising the Age", *The Guardian* (Online, 13 August 2024) available at: <https://www.theguardian.com/australia-news/article/2024/aug/13/victoria-shelves-plan-to-raise-the-age-of-criminal-responsibility-to-14>; Stephanie Boltje and Tahnee Jash, 'Northern Territory Accused of Walking Away from its Commitment to Reduce Indigenous Incarceration', *ABC News* (Online, 29 August 2024) available at: <https://www.abc.net.au/news/2024-08-29/spithoods-and-lower-age-of-criminal-responsibility-nt-chief/104279814>; and Catie McLeod and Tamsin Rose, 'Youth Offenders Will Find it Harder to Get Bail Under Sweeping New NSW Laws', *The Guardian* (Online, 12 March 2024) available at: <https://www.theguardian.com/australia-news/2024/mar/12/nsw-premier-chris-minns-youth-crime-law-changes-bail-act>.

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Mandatory sentencing legislation, which prescribes mandatory minimum sentences upon conviction of certain criminal offences, has been enacted in Western Australia and the Northern Territory. Mandatory sentencing laws impose unacceptable restrictions on judicial discretion and independence, undermine fundamental rule of law principles and disproportionately impact First Nations children.<sup>68</sup> They also contravene article 40 of the *Convention*, which requires criminal justice responses be appropriate for the child's wellbeing and proportionate to both their circumstances and the offence. While many of the mandatory sentencing provisions have been repealed in the Northern Territory, minimum mandatory sentences are still applicable in Western Australia for children convicted of residential burglary, grievous bodily harm and serious assault on a public officer.

In addition, onerous bail laws have contributed to the disproportionately high, and increasing, numbers of children held on remand. On an average day in 2017-18, 60% of children in detention nationally were unsentenced.<sup>69</sup> In 2022-23, this figure had risen to 80%.<sup>70</sup> In the past seven years, amendments to youth bail laws have been introduced in NSW, Victoria, the Northern Territory and Queensland. In the Northern Territory, the number of children held in detention more than doubled in the twelve months following the enactment of tougher bail laws.<sup>71</sup>

Moreover, there is evidence to suggest that the length of time that children are detained is rising. For example, research conducted by the Queensland Family and Child Commission found that children held in watch houses are staying for longer, children convicted of crimes are being held in custody more frequently, youth detention centres are routinely operating above 'safe capacity' and detention centres have been holding an increasing number of

<sup>68</sup> Law Society of Western Australia, *Mandatory Sentencing* (Briefing Paper, July 2020) 2.

<sup>69</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2017–2018* (Report, 2019) 16.

<sup>70</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2022-23* (Web Report, 28 March 2024) available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/summary>.

<sup>71</sup> See e.g. Samantha Dick, 'NT Government Ends Use of Spit Hoods on Children in Police Custody, Years after Youth Detention Royal Commission Ban', *ABC News* (Online, 7 October 2022) available at: <https://www.abc.net.au/news/2022-10-07/nt-bans-spit-hoods-on-children-police-custody/101511140>; and Jacqueline Breen, 'Boy, 10, Held on Remand in Don Dale as Detainee Numbers Almost Double Following Tougher Bail Laws in NT', *ABC News* (Online, 30 November 2021) available at: <https://www.abc.net.au/news/2021-11-30/nt-don-dale-youth-detention-detainees-surge-10-year-old/100659292>.

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unsentenced young people. The report reiterated that detention is ineffective in responding to a cycle of reoffending and rearrest.<sup>72</sup>

The growing number of unsentenced children in detention and the increasing length of time children are being detained clearly highlights Australia's failure to effectively implement article 37(b) of the *Convention*. However, despite these inconsistencies, politicians continue to promote 'tough on youth crime' policies.

In July, Queensland's then opposition leader David Crisafulli, announced that should he be elected as Premier, he would implement an 'Adult Crime, Adult Time' policy as part of the Queensland Liberal National Party's (LNP) 'Making Our Community Safer Plan'. Under this policy, young people convicted of serious crimes including murder, manslaughter, serious harm, burglary, dangerous operation and unlawful use of a motor vehicle would be sentenced as adults under the *Criminal Code Act 1899* (Qld). Mr Crisafulli suggested that the implementation of this policy would deter youth offenders from committing serious crimes by subjecting them to the same sentences as adults for the same crimes.<sup>73</sup> The policy adds to previously announced commitments by the LNP to remove the principle of detention as a last resort from the *Youth Justice Act 1992* (Qld).<sup>74</sup>

In response to the announcement, Queensland Law Society's President, Rebecca Fogerty, aptly stated:

Increased penalties do not deter criminal behaviour. Research shows that punishment and imprisonment fails to deter and, in fact, increases crime. It is evident [that] tough-on-crime policies have created a growing cohort of serious repeat youth offenders, who are getting more disengaged with the community. Rehabilitation in and outside of detention is the only way to get their lives back on track.<sup>75</sup>

<sup>72</sup> Queensland Family and Child Commission, *Who's Responsible: Understanding Why Young People are Being Held Longer in Queensland Watch Houses* (Report, November 2023) 27.

<sup>73</sup> Queensland Liberal National Party, 'Making Our Community Safer Plan' (Media Release, 7 July 2024) available at: <https://online.lnp.org.au/news/making-our-community-safer-plan>.

<sup>74</sup> Queensland Liberal National Party, 'Making Our Community Safer Plan' (Media Release, 7 July 2024) available at: <https://online.lnp.org.au/news/making-our-community-safer-plan>.

<sup>75</sup> Grace Robbie, 'Adult Crime, Adult Time Policy Will Not Fix the Problem, Lawyers Argue', *Lawyers Weekly* (Online, 19 July 2024) available at: [https://www.lawyersweekly.com.au/newLaw/40176-adult-crime-adult-time-policy-will-not-fix-the-problem-lawyers-argue](https://www.lawyersweekly.com.au/newlaw/40176-adult-crime-adult-time-policy-will-not-fix-the-problem-lawyers-argue).

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In the week following his successful election bid, Mr Crisafulli announced that the government will introduce new youth justice laws before the end of 2024.<sup>76</sup>

The youth justice reforms proposed by the LNP represent violations of the *Convention* and again put Australia at odds with international standards. **We submit that it is thus more important than ever that the Australian Government leads to protect children and ensure that the rights of children who are in conflict with the law are safeguarded through the implementation of national minimum standards for youth justice consistent with Australia's international obligations.**

### Detention of children separate from adults

Upon ratification of the *Convention*, Australia made the following reservation with respect to the separation of adults and children in detention.

Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the *Convention* to the extent that it is unable to comply with the obligation imposed by article 37(c).

The CRC Committee has consistently urged Australia to withdraw its reservation, stating '[the] reservation to article 37 (c) is unnecessary' since:

the concerns expressed by [Australia] in its reservation are well addressed by article 37 (c), which provides that every child deprived of liberty shall be separated from adults "unless it is considered in the best interests of the child not to do so" and that the child "shall have the right to maintain contact with his or her family".<sup>77</sup>

<sup>76</sup> Andrew Messenger, 'New Queensland Premier David Crisafulli Vows to Legislate "Adult Time for Adult Crime" Policy by Christmas', *The Guardian* (Online, 27 October 2024) available at: <https://www.theguardian.com/australia-news/2024/oct/27/new-queensland-premier-david-crisafulli-vows-to-legislate-adult-time-for-adult-policy-by-christmas>.

<sup>77</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding observations – Australia*, UN Doc CRC/C/AUS/CO/4 (28 August 2012) 3 [9]. See also Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) 2 [6]; and Committee on the Rights of the

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In reality, Australia has detained children in adult prisons regardless of the relevant geographical considerations. Numerous reports of children being unsafely housed in adult prisons have appeared in the media as recently as this year. In Queensland, the state government overrode its own *Human Rights Act 2019* (Qld) to allow for children to be detained for extended periods in police cells, alongside adults. In July 2024, disturbing footage was released through the media showing the abusive treatment of children held in police watch houses, sparking outrage amongst human rights advocacy groups. The Queensland Youth Justice Minister was reported to have said in response to criticism:

I make no apology for keeping the community safe... So if a young person is a risk to themselves or to the community, then they will be detained and if they're in detention or in a watch house [it is] because a court has judged that they be placed there.<sup>78</sup>

Earlier, in July 2022, the West Australian Government was subjected to intense criticism after it made the decision to transfer twenty children from Banksia Hill Detention Centre to the maximum security adult Casuarina Prison. Australian Lawyers for Human Rights President, Kerry Weste, stated at the time:

Moving children into an adult prison facility is not only inconsistent with the *Convention on the Rights of the Child* and other international human rights standards, it is also contrary to clear medical and psychological evidence that tells us how to reduce recidivism and facilitate rehabilitation of children without incarceration. This is both a dangerous and self-defeating decision.<sup>79</sup>

Tragically, a 16-year-old First Nations child died whilst being held on remand at the Casuarina prison in October 2023.

**We submit that detaining children in the same facilities as adults both exacerbates their risk of being exposed to violence, abuse and exploitation as well as their risk of being further indoctrinated into the criminal justice system through their interaction with**

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Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding observations – Australia*, UN Doc CRC/C/15/Add.268 (20 October 2005) 2 [7].

<sup>78</sup> Ben Smee, "Harrowing" Footage Sparks Calls for Queensland Government to Remove Children from Police Watch Houses', *The Guardian* (Online, 19 July 2024) available at: <https://www.theguardian.com/australia-news/article/2024/jul/19/queensland-children-police-watch-houses-investigation-ntwnfb>.

<sup>79</sup> Australian Lawyers for Human Rights, 'Decision to Send WA Children to Maximum Security Adult Prison Slammed as Flagrant Breach of international Standards' (Media Release, 15 July 2022) available at: <https://alhr.org.au/childrenadultprisonwa/>.

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**other, more experienced offenders. This ultimately jeopardises community safety and undermines efforts to rehabilitate and reintegrate children in conflict with the law.**

**Freedom from cruel, inhumane and degrading treatment**

The image of a child in the Don Dale Youth Detention Centre restrained to a chair with a spithood over his head sent shockwaves through Australia in 2016. However, despite the public outrage and numerous inquiries established to consider the treatment of children under youth justice supervision, reports of children being mistreated in detention continue to routinely emerge.<sup>80</sup>

Children have been subjected to violence, abuse, racism and discrimination as well as excessively subjected to solitary confinement and isolation practices in violation of article 37 of the *Convention*.

**It is unacceptable that children are subjected to serious human rights abuses while under State care. It is crucial that national minimum standards explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion or discipline for children under supervision. Additionally, all instances of abuse and maltreatment of children in detention must be promptly investigated, and appropriate sanctions against perpetrators should be enforced, in accordance with the recommendations of the CRC Committee.**

Australia's approach to youth justice and incarceration has received extensive criticism both nationally and internationally. In 2017, following her country visit to Australia, the Special Rapporteur on the Rights of Indigenous Peoples expressed serious concern over the detention of First Nations children, remarking that 'the routine detention of young indigenous children

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<sup>80</sup> See e.g. Four Corners, 'Locking Up Kids: Australia's Failure to Protect Children in Detention', *ABC News* (14 November 2022) available at: <https://www.abc.net.au/news/2022-11-14/locking-up-kids:-australias-failure-to-protect/101652954>; Tom Housden, 'Australian Boy, 13, Spent Six Weeks in Solitary Confinement', *BBC News* (Online, 15 March 2023) available at: <https://www.bbc.com/news/world-australia-64960479>; Giovanni Torre, 'Shocking Details of Alleged Abuse in WA Youth Detention Revealed in 57 Letters from Aboriginal Legal Service', *National Indigenous Times* (Online, 18 May 2023) available at: <https://nit.com.au/18-05-2023/6024/shocking-details-of-alleged-abuse-in-wa-youth-detention-facilities-revealed-in-almost-60-letters-from-aboriginal-legal-service>; and Ben Smee, 'Screaming, Freezing, Struggling to Breathe: Confronting Queensland Watch House Footage Exposes Anguish of Children Locked in Isolation Cells', *The Guardian* (Online, 17 July 2024) available at: <https://www.theguardian.com/australia-news/article/2024/jul/17/queensland-youth-crime-watch-house-footage-police-treatment-ntwnfb>.

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[was] the most distressing aspect of her visit.<sup>81</sup> The Special Rapporteur found that 'Aboriginal and Torres Strait Islander children are essentially being punished for being poor and, in most cases, prison will only perpetuate the cycle of violence, intergenerational trauma, poverty and crime.'<sup>82</sup> Drawing attention to Australia's deviation from its international obligation to detain children only as a last resort, she stated:

Children should be detained only as a last resort, which certainly is not the case today for Aboriginal and Torres Strait Islander children. Detention of those children has become so prevalent in certain communities that some parents referred to it as an achievement that none of their children has been taken into custody so far. Much more should be done to ensure that the detention of children remains the exception, rather than the norm.

More recently in 2019, the Committee on the Rights of Persons with Disabilities (CRPD) expressed concern about the overrepresentation of convicted young people with disabilities in the youth justice system, especially male First Nations children.<sup>83</sup> The CRPD recommended Australia, '[a]ddress the overrepresentation of young Aboriginal and Torres Strait Islander persons in the juvenile justice system and implement the recommendations contained in *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*.'<sup>84</sup>

The CRC Committee, in its most recent *Concluding Observations*, identified the administration of child justice as a key area of concern.<sup>85</sup> The CRC Committee expressed disappointment that its previous recommendations for substantial reform of the youth justice system had not been implemented.<sup>86</sup> Referring to its general comment on children's rights in the child justice system, the CRC Committee urged the Australian government to conform with international

<sup>81</sup> *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 13 [74].

<sup>82</sup> *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 13 [76].

<sup>83</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the Combined Second and Third Periodic Reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) 6 [25(d)].

<sup>84</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the Combined Second and Third Periodic Reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) 7 [26(d)].

<sup>85</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) 1 [4].

<sup>86</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) 14 [47].

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standards by bringing its child justice system fully into line with the *Convention on the Rights of the Child* and:

- (a) To raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 years, at which *doli incapax* applies;
- (b) To immediately implement the 2018 recommendations of the Australian Law Reform Commission to reduce the high rate of incarceration among indigenous persons;
- (c) To explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion or to discipline children under supervision, promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators;
- (d) To actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service;
- (e) In cases where detention is unavoidable, to ensure that children are detained in separate facilities and, for pretrial detention, to ensure that detention is regularly and judicially reviewed;
- (f) To review its legislation to repeal mandatory minimum sentences for children in the Northern Territory and Western Australia;
- (g) To ensure that children with disabilities are not detained indefinitely without conviction and that their detention undergoes regular judicial review;
- (h) To provide children in conflict with the law with information about their rights and how to report abuses.<sup>87</sup>

Similar concerns and recommendations to those of the CRC Committee were expressed by the Committee against Torture in its *Concluding Observations* published in 2022.<sup>88</sup>

In addition, the issue of youth justice and the hyperincarceration of First Nations children was a key concern expressed by States during Australia's most recent Universal Periodic Review.

<sup>87</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) 14 [48].

<sup>88</sup> Committee against Torture, *Concluding Observations on the Sixth Periodic Report of Australia*, UN Doc CAT/C/AUS/CO/6 (5 December 2022) 11 [37] – 12 [38].

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During the interactive dialogue, 122 delegations made statements, many of which referred to the state of Australia's youth justice system and made recommendations for reform.<sup>89</sup>

The deficiencies in Australia's current youth justice approaches highlight the need for a national response to children in conflict with the law. Such a response should incorporate national minimum standards for youth justice that bring Australia in line with its various international human rights obligations. We submit that the adoption of a child rights-based approach is the most appropriate way for Australia to effectively safeguard the rights of children in contact with the youth justice system.

## 7. The need for a child rights-based approach to youth justice in Australia

To reiterate our earlier statement, Australia's current approach to youth justice is far-removed from its international obligations and is ineffective in achieving its claimed objectives of rehabilitating children in conflict with the law and keeping the community safe. Anti-Slavery Australia echoes the calls of other stakeholders that the system is unjust and unfit for purpose. In addition, we submit that instead of protecting children with intersecting and complex needs, the current system in fact puts them at greater risk of exploitation and abuse, including modern slavery.

We draw the Senate Committee's attention to the observation of the Special Rapporteur on the Rights of Indigenous Peoples in her report on her mission to Australia that:

[t]he focus [of Australia's youth justice system] urgently needs to move away from detention and punishment towards rehabilitation and reintegration. Locking up people costs tax payers vast amounts of money... Such funds should be allocated to prevention and reintegration.<sup>90</sup>

In her recent report titled, *Help Way Earlier*, the National Children's Commissioner has clearly and thoughtfully set out the key evidence-based measures needed to improve the child justice and incarceration system in Australia. Anti-Slavery Australia agrees with the key findings of

<sup>89</sup> See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/47/8 (24 March 2021).

<sup>90</sup> *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 14 [82].

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the *Help Way Earlier Report* that Australia is failing to protect the rights of children in the youth justice system and that urgent reform is necessary.<sup>91</sup> **We endorse the view of the National Children's Commissioner that 'a national, child rights-based approach to reform is required' and strongly urge the Australian Government to implement all 24 of the recommendations made in the *Help Way Earlier Report* as a matter of priority.**

In addition to the recommendations outlined in the *Help Way Earlier Report*, we make the following additional recommendations in order to safeguard the rights of children at risk of or experiencing modern slavery.

### Prevention and identification frameworks

Prevention is an essential aspect of a child-rights based approach to protect children from abuse and exploitation. It centres around mitigating potential harm, for example, by promoting systemic change that addresses the root causes of the issue. This takes time and requires commitment to the issue in the form of political will, program implementation and the sufficient allocation of resources.<sup>92</sup> Too often however, prevention is neglected.<sup>93</sup>

In the youth justice context, numerous inquiries into reform have been commissioned yet the countless recommendations made have repeatedly been ignored. Evidence-based recommendations concerning community-led and First Nations-led programs that address the root causes of offending have been completely disregarded and instead, 'tough on crime' narratives have dominated the political agenda. This is damaging our children.

In the context of modern slavery, Australia has traditionally focussed on arrests and prosecutions and to a lesser extent, on assisting victim-survivors and implementing prevention initiatives due to the emphasis on criminal justice measures to address and respond to situations of modern slavery. Prevention measures have been piecemeal and sporadic in their implementation and often, inadequately funded. **Anti-Slavery Australia advocates for the**

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<sup>91</sup> Australian Human Rights Commission, *'Help Way Earlier!': How Australia can Transform Child Justice to Improve Safety and Wellbeing* (Report, August 2024).

<sup>92</sup> Najat Maalla M'jid, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Effective Prevention Strategies in Combating the Sale and Sexual Exploitation of Children*, 68th sess, UN Doc A/68/275 (6 August 2013) 24 [118].

<sup>93</sup> Najat Maalla M'jid, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Effective Prevention Strategies in Combating the Sale and Sexual Exploitation of Children*, 68th sess, UN Doc A/68/275 (6 August 2013) 24 [118].

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**development of robust, evidence-based prevention frameworks that specifically address the intersectional needs of children at risk of offending and of experiencing modern slavery. This requires greater investment in data collection systems and research capabilities to build knowledge on the specific risks and protective factors for children in the Australian context. The link between youth justice involvement and modern slavery in Australia is a potential area for future research.**

Similarly, effective identification strategies are critical to any response addressing modern slavery, as a failure to identify a child as a victim-survivor effectively deprives them of their rights, particularly their right to special protection and assistance.<sup>94</sup> Considering the long-term impact that harm suffered can have on a child's overall wellbeing and development, it is crucial that specific processes and procedures are in place for their rapid identification.<sup>95</sup> Such procedures must take into account the special circumstances and needs of child victim-survivors, ensure the paramountcy of the best interests principle and adopt a multi-disciplinary, multi-agency approach that involves child specialists.<sup>96</sup> They should also clearly delineate roles and responsibilities between government and non-government actors, establish an appropriate framework for information sharing as well as provide clear referral pathways to foster effective collaboration and coordination.<sup>97</sup>

**Anti-Slavery Australia observes that Australia does not have a child-specific framework in place to identify children at risk of or experiencing modern slavery, and as such children may be unidentified. We are particularly concerned that children under youth justice supervision are not appropriately screened for modern slavery risks and that 'tough on youth crime' policies may disproportionately impact on children with intersectional needs. Anti-Slavery Australia strongly advocates for the development of**

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<sup>94</sup> Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add. 1, Guideline 2.

<sup>95</sup> Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add. 1, Guideline 8.2; UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (September 2006) Guideline 3; Maud de Boer-Buquicchio, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, 70th sess, UN Doc A/70/222 (31 July 2015) 19 [71].

<sup>96</sup> Group of Experts on Action Against Trafficking in Human Beings, *Thematic Chapter of the 6th General Report on GRETA's Activities: Trafficking in Children* (May 2018) 22, available at: <https://rm.coe.int/6gr-extract-web-en/16808b6552>.

<sup>97</sup> UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (September 2006) Guideline 3.1.

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a procedure that specifically focuses on children at the intersection of youth justice and modern slavery.

Furthermore, alongside Recommendation 15 from the *Help Way Earlier Report*, Anti-Slavery Australia calls for enhanced training on the risks and indicators of modern slavery for frontline workers. This includes, but is not limited to, professionals in law enforcement, youth justice, health, education and child protection, who are likely to encounter children at increased risk of modern slavery. Based on our experience, enhancing the capacity of frontline workers can significantly boost their confidence in identifying victim-survivors. Therefore this should be a key component of any identification strategy.

### Access to justice

#### Access to information and free, high quality legal advice and representation

Children who are unaware of their rights are unable to take steps to exercise those rights.<sup>98</sup> Children require reliable and accurate information regarding both the scope of their entitlement as well as the mechanisms through which their rights can be enforced. It has thus been contended that the critical starting point in any child-rights approach to dispensing justice is the provision of information.<sup>99</sup>

The Council of Europe Guidelines on Child-friendly Justice state that:

From their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed of... their rights... and the instruments available to remedy possible violations of their rights...<sup>100</sup>

<sup>98</sup> Rhonda Smith, 'The Third Optional Protocol to the UN Convention on the Rights of the Child? – Challenges Arising Transforming the Rhetoric into Reality' (2013) 21 *International Journal of Children's Rights* 305, 309.

<sup>99</sup> Helen Stalford, Liam Cairns and Jeremy Marshall, 'Achieving Child Friendly Justice through Child Friendly Methods: Let's Start with the Right to Information' (2017) 5(3) *Social Inclusion* 207, 208.

<sup>100</sup> Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice' (adopted 17 November 2010) 20, Guideline 1, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9>

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Both children involved in the youth justice system and children with experience of modern slavery often have complex and intersecting legal needs.<sup>101</sup> However, they encounter a number of barriers to accessing justice, which includes challenges of accessing reliable information and high-quality legal advice and representation. Independent, expert legal advice and representation is often a crucial step in empowering and equipping a person experiencing modern slavery to leave a situation of exploitation. Children who receive legal advice and assistance report having more positive experiences of the justice process,<sup>102</sup> which in turn, may assist in their recovery.

**We submit that information and advice provided to children should be adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.<sup>103</sup> In addition, child-friendly materials containing relevant legal information should be made available and widely distributed, outlining the relevant rights of the child, the existing complaint mechanisms and opportunities to obtain reparation as well as available child-specific support services.<sup>104</sup>**

**Further, Anti-Slavery Australia strongly advocates that children should have access to free, accessible, multidisciplinary, high quality legal advice and representation, undertaken by legal practitioners with specialist knowledge on children's rights and related issues.<sup>105</sup> Legal practitioners should receive ongoing and in-depth training and**

<sup>101</sup> See Jean-Pierre Gauci et al, *Impacts of a Lack of Legal Advice on Adults with Lived Experience of Modern Slavery* (Research Report, January 2023), available at: <https://www.modernslaverypec.org/resources/lack-access-legal-advice>.

<sup>102</sup> ECPAT International, *Access to Justice and Legal Remedies for Children Subjected to Online Child Sexual Exploitation and Abuse* (Disrupting Harm Data Insight 3, 2022) 5, available at: [https://www.end-violence.org/sites/default/files/2022-05/DH-data-insight-3\\_Final.pdf](https://www.end-violence.org/sites/default/files/2022-05/DH-data-insight-3_Final.pdf).

<sup>103</sup> Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice' (adopted 17 November 2010) 21, Guideline 2, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9>

<sup>104</sup> *United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ESC Res 2005/20 (adopted 22 July 2005) [19-20], available at: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>; and Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice' (adopted 17 November 2010) 21, Guideline 4, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9>  
<sup>105</sup> *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, GA Res 67/187 (adopted 20 December 2012) Guideline 11 [58(d)]; Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice' (adopted 17 November 2010) 27, Guideline 39, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9>

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be capable of communicating with children at their level of understanding and development.<sup>106</sup>

### Compensation

Survivors of modern slavery in Australia have no proper form of redress at a national level for violations of their rights. Current victim compensation schemes are state-based, inconsistent and inadequate in allowing victim-survivors of modern slavery access to compensation.<sup>107</sup>

Anti-Slavery Australia has been advocating for over a decade and is committed to the establishment of a national compensation scheme for all survivors of modern slavery, including children. Evidently, a national compensation scheme in Australia is well overdue. The key elements of the proposed scheme are set out in an Anti-Slavery Australia advocacy initiative, [Justice for All: Establishing a National Compensation Scheme for Survivors of Modern Slavery](#).<sup>108</sup> A national compensation scheme would provide an effective remedy to survivors of modern slavery, recognise harm suffered and contribute to the financial security of survivors and their families, enabling them to better reintegrate into communities. **Anti-Slavery Australia submits that Australia should establish a national compensation scheme.**<sup>109</sup>

<sup>106</sup> Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice' (adopted 17 November 2010) 27, Guideline 39, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9>

<sup>107</sup> For example, the criteria for the award of compensation, assessing harm, the time frame for reporting and the amount of compensation awarded differ between jurisdictions.

<sup>108</sup> *Justice for All: Establishing a National Compensation Scheme for Survivors of Modern Slavery* is an initiative of Anti-Slavery Australia that advocates for a targeted national compensation scheme to properly remedy the effects of modern slavery in Australia and assist victim-survivors to move forward and rebuild their lives. Through this initiative, we have developed a model for how to best structure federal compensation for victim-survivors. For more information, please see: <https://antislavery.org.au/justice-for-all/>. See also, Anti-Slavery Australia and the Law Council of Australia, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime* (Report, 2016) available at: <https://antislavery.org.au/report-on-establishing-a-national-compensation-scheme-for-victims-of-commonwealth-crime/>.

<sup>109</sup> *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UN Doc A/RES/40/34 (adopted 29 November 1985) arts 12 and 13; *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res 60/147, UN Doc A/RES/60/147 (21 March 2006) [16]; and *United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ESC Res 2005/20 (adopted 22 July 2005) [37], available at: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

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### Protection and support for child survivors of forced criminality

Child survivors of forced criminality, and survivors of other forms of modern slavery that may be forced or compelled to commit criminal offences as part of their experience of exploitation, should be protected against revictimisation in the criminal justice system by enshrining the principle of non-punishment into domestic law. The non-punishment principle is a general principle of law, as defined by article 38(1)(c) of the *Statute of the International Court of Justice*.<sup>110</sup> At its core, the non-punishment principle is aimed at ensuring that a person with experience of modern slavery is not punished for unlawful acts committed as a consequence of their exploitation.<sup>111</sup> The principle is set out in full in the Office of the High Commissioner for Human Rights' *Recommended Principles and Guidelines for Human Rights and Human Trafficking*:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.<sup>112</sup>

Building resilience against organised crime involves more than just a strong criminal justice system; it also necessitates comprehensive support for victims and witnesses.<sup>113</sup> As outlined in international instruments and literature, the non-punishment principle is a central component of a human rights-based, modern slavery response as it recognises the serious human rights abuses committed against survivors and prioritises their rights to assistance, protection and effective remedies.<sup>114</sup> In 2019, the CRC Committee urged Australia to 'ensure

<sup>110</sup> *Statute of the International Court of Justice*, art 38(1)(c).

<sup>111</sup> See Siobhán Mullally, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of the Non-punishment Principle*, UN Doc A/HRC/47/34 (17 May 2021).

<sup>112</sup> Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines for Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), principle 7.

<sup>113</sup> Marika McAdam, 'The Blurred Line between Villains and Victims: States Must Build Resilience to Organized Crime by Protecting Victims who are Offenders', *Global Organized Crime Index* (Analysis, 21 August 2024) available at: <https://globalinitiative.net/analysis/victim-witness-support-crime-resilience-ocindex/>.

<sup>114</sup> See e.g. *Council of Europe Convention on Action against Trafficking in Human Beings*, adopted 3 May 2005, CETS 197 (entered into force 1 February 2008) art 26; *Association of Southeast Asian Nations Convention against Trafficking in Person, Especially Women and Children*, adopted 21 November 2015, (entered into force 8 March 2017) art 14(7); Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines for Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), principles 2.5 and 7; UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (September 2006) guideline 5.3; Maria Grazia Giammarinaro, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *The Importance of Implementing the Non-punishment Provision: The Obligation to Protect Victims*, (Position Paper,

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that all children subject to any form of sexual exploitation, sale or trafficking are treated as victims and not subject to criminal sanctions.’<sup>115</sup> **Anti-Slavery Australia recommends the enactment of uniform legislation across the States and Territories that recognises children as survivors of forced criminality and protects their rights and interests through the implementation of the non-punishment principle.**

Furthermore, it is our experience that children and young people often face difficulties in accessing free, ongoing support services, including counselling and psychological services and safe and appropriate accommodation. **We submit that child-specific specialist services, tailored to the type of exploitation experienced and the individual needs of victim-survivors are essential for their recovery and reintegration,**<sup>116</sup> and, as discussed earlier in this submission, these services would help reduce the risk of re-exploitation. Such services should be trauma-informed and well-funded.

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30 July 2020); Siobhán Mullally, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of the Non-punishment Principle*, UN Doc A/HRC/47/34 (17 May 2021); Committee on the Elimination of Discrimination against Women, *General Recommendation No 38 on Trafficking in Women and Girls in the Context of Global Migration*, UN Doc CEDAW/C/GC/38 (20 November 2020) 20 [98]; and Marika McAdam, *Implementation of the Non-Punishment Principle for Victims of Human Trafficking in ASEAN Member States* (Report, March 2022).

<sup>115</sup> Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) 15 [50(c)].

<sup>116</sup> Gabriela Martinho, Mariana Gonçalves and Marlene Matos, 'Child Trafficking, Comprehensive Needs and Professional Practices: A Systematic Review' (2020) 119 *Children and Youth Services Review* 105674, 7.

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