



Senate Legal and Constitutional Affairs References Committee – inquiry into Australia’s youth justice and incarceration system

Response to question taken on notice

31 March 2026

This document responds to the Committee’s request to provide further information about how enforceable national youth justice standards can be operationalised, including insights from other jurisdictions with specific reference to the Scottish model.

This question was taken on notice during the Committee’s 17 March 2026 hearing in Perth, by Amanda Hunt, WA Director, 54 reasons (part of Save the Children Australia).

National youth justice standards – content

National youth justice standards should reflect international best practice and Australia’s child rights obligations as reflected in the UN Convention on the Rights of the Child and other relevant human rights instruments.

Our initial submission to the Committee’s inquiry during the 47th Parliament summarised the standards that should be included in Australian national youth justice standards as ‘foundational system conditions’, ‘overarching principles’, and ‘specific standards and requirements’ and provided detail. See pages 6-8 of that submission.¹

National youth justice standards – operationalisation

During public hearings to date, Committee members have asked about how to operationalise national youth justice standards in Australia’s federal system.

The *Commonwealth has a well-established role in national standard-setting* across a wide range of portfolios and areas, including in contexts where States and Territories are primarily responsible for service delivery. This includes areas such as health, education, care and safety.

There is no constitutional or legal barrier to the Commonwealth legislating *directly enforceable national youth justice standards*. Recent expert legal advice has confirmed the Commonwealth’s power to legislate to give effect to its obligations under the CRC and specifically to enact

¹ Save the Children and 54 reasons, 2024, *Youth justice and incarceration in Australia: A national responsibility*, Submission to Senate Legal and Constitutional Affairs References Committee inquiry into Australia’s youth justice and incarceration system, 47th Parliament, submission no. 56, available at: <https://www.apf.gov.au/DocumentStore.ashx?id=86bfab6f-296e-4d91-becf-3fc408e425d0&subId=767896>.



national standards in the context of youth justice, as well as to raise the minimum age of criminal responsibility to 14 nationally.²

Recognising the practical considerations about the operation of the federation raised by Committee members in public hearings, we make the following observations:

- The standards should be comprehensive and clearly set out in a public source such as Commonwealth legislation (in the body or schedule to an Act), delegated legislation, formal policy or intergovernmental agreement.
- If full direct legal enforceability is not considered practically possible right now, the Federal Government should consider other available levers. For example, existing or new funding provided to States and Territories could be made conditional on demonstrated compliance with the standards. Importantly, this need not be limited to ‘youth justice’-specific funding but could also include funding and programs that address root causes or support services and systems that prevent and reduce contact with youth justice. For example, health, education, housing, family services, and programs with a focus on communities who are over-represented in youth justice.
- Strong accountability arrangements are essential, including monitoring, reporting and other mechanisms. These can play a powerful role in driving compliance with standards and improved systems and outcomes, regardless of what other enforcement arrangements exist and even if ‘direct’ legal enforceability is not present.
 - Appropriate national office-holders or bodies should be given a clear mandate and adequate resourcing to monitor and regularly report on State and Territory compliance with national youth justice standards, working with existing State and Territory office-holders or bodies where appropriate. This could include, for example, Children’s Commissioners, Guardians and Advocates.

This should be informed by the existing experience of detention setting monitoring. Existing experience highlights the need for both broader monitoring (beyond detention settings) and child-specific monitoring for child-specific issues and standards (within and beyond detention settings).
 - Entities performing these monitoring and accountability functions should be adequately resourced and have an appropriate level of independence from executive government.
 - Notably, this would include monitoring and reporting about government policy and system arrangements in each State and Territory, in addition to other types of data relating to the performance and operation of youth justice systems.
 - This should also include mechanisms for the views of children and young people with direct experience of youth justice and incarceration to be part of monitoring, reporting and accountability.

² ‘The external affairs power as a constitutional basis for Commonwealth intervention in national child rights reform’, Advice, Kate Eastman AM SC and Emma Dunlop, 23 June 2025, available at: https://jec.org.au/wp-content/uploads/2025/11/25.09_JEC_Legal-Advice-on-National-Child-Rights-Reform.pdf.



- While enforceable national standards would be highly valuable in their own right, they should also be accompanied by the development of a long term, 10-year strategy to guide national youth justice reform. The strategy should include accompanying policy and investment commitments and action plans.

Scotland

Our observations above are informed by experience in other jurisdictions that have adopted or embedded a commitment to children's rights in youth justice using a range of models.

Scotland provides a highly relevant model with significant lessons for Australia. Over many years, Scotland has succeeded in enacting far-reaching positive youth justice reform and achieving significantly improved outcomes, including reduced rates of offending and imprisonment. The two key elements enabling Scotland's success are:

- An explicit and long-term focus on embedding children's rights across government policy, institutions, systems and law.³
- The Whole System Approach to youth justice, which provides a coordinated multi-agency approach that prioritises early intervention.⁴

Importantly, the Whole System Approach has been underpinned and enabled by the strong pre-existing focus on embedding children's rights across Scotland.

The key insight from Scotland's success is that **a deliberate and direct focus on children's rights can deliver significant youth justice reform**.

- In the Scottish context, this has been achieved through a sustained series of whole-of-government policy reforms to embed children's rights, in parallel with the building of a culture of support and respect for children's rights across government institutions and the general public. It has also included the relatively recent enactment of legislation to incorporate the UN Convention on the Rights of the Child directly into Scots law.
- In the Australian context, the best levers available for national reform that is focused on children's rights are national standards underpinned by a long-term (10-year) national strategy on youth justice. These would individually and together provide the vehicle to ensure a child rights-based approach is central in all reform, and set out the parameters and system settings to reflect a rights-respecting approach that is similar to Scotland's Whole System Approach.

³ For a short overview of Scotland's approach to embedding children's rights across systems, see Together (Scottish Alliance for Children's Rights), 2025, *Embedding children's rights across Scotland: A system-wide journey*, available at <https://bit.ly/489COYk?r=lp&m=Mpbl26A3xD1>.

⁴ The Australian Human Rights Commission has produced a valuable overview of the Whole System Approach: *Evidence-based approaches to child justice*, Supplementary paper to 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing, October 2025, pp 13-18.



Tasmania

We also draw the Committee’s attention to the significant reform program currently underway in Tasmania relating to children and young people, including in youth justice. If implemented in full, we believe it will prove transformative in reforming systems and improving children’s, young people’s and communities’ outcomes. It is an example of how a focus on embedding children’s rights can be operationalised through policy at a jurisdictional level, although we note that many of these policy commitments are not yet implemented.

Notably, key policy frameworks, strategies and reforms explicitly highlight children’s rights as a core principle that should underpin all work and recognise the benefits of implementing a child rights-based approach. For example:

Youth Justice Blueprint 2024-2034

- The Tasmanian *Youth Justice Blueprint* “includes the Government’s commitment, through a child-centred and rights based approach, to build a nation-leading, best-practice approach to children and young people in conflict with the law”.⁵
- Principle 1 guiding development and implementation of the policies, programs and initiatives in the Blueprint is “Children and young people have their rights upheld”.⁶
- The Blueprint recognises that “it has been demonstrated that the implementation of a child-centred and rights based approach can create positive change for children and young people in the youth justice system”.⁷

Change for Children

- *Change for Children* is “Tasmania’s 10-year strategy for upholding the rights of children by preventing, identifying and responding to child sexual abuse”.⁸ The strategy is systemic and encompasses multiple systems and institutions, including youth justice.
- Principle 2 guiding the 10-year *Change for Children* strategy is “The inherent rights of children must be recognised and upheld in all settings” and Principle 8 is “Government is transparent and accountable in upholding children’s rights, centring victim-survivor experiences and actively engaging with victim-survivors about their experiences”.⁹
- The meaning and basis for “Upholding children’s rights” is outlined prominently and upfront in the strategy.¹⁰

Commission for Children and Young People

- The recently enacted Commission for Children and Young People Act 2025 (Tas) establishes a Commission for Children and Young People that builds on the functions of the existing Commissioner. This strengthened legislation establishes the wellbeing and

⁵ Tasmanian Government, 2023, *Youth Justice Blueprint 2024-2034*, Department for Education, Children and Young People, p 2.

⁶ *Youth Justice Blueprint*, p 9.

⁷ *Youth Justice Blueprint*, p 27.

⁸ Tasmanian Government, 2025, *Change for Children: Tasmania’s 10-year strategy*, Department of Premier and Cabinet, [front page].

⁹ *Change for Children*, p 22.

¹⁰ *Change for Children*, pp 24-8.



best interests of children and young people as the “paramount consideration” under the new Act, including specific reference to the CRC.¹¹

- The Act confers a number of specific functions and powers that are explicitly directed towards upholding children’s rights, including in relation to youth justice.

Other key elements of the reform program in Tasmania are:

- Across the multiple components of the reform program, there is a strong emphasis on integration across policy reform agendas and across systems, to avoid silos and ensure services and systems are centred around children.
- Youth justice reform is located in a broader context of child-related reform.
- Children and young people have been consulted and engaged at multiple stages, and their participation and views are included in, and have informed, government policy.

Further information

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¹¹ Section 5.