

Australia's youth justice and incarceration system

Submission to the Senate Legal and
Constitutional Affairs References Committee

19 December 2025

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Australian
Human Rights
Commission

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Our vision is an Australian society where human rights are respected, promoted and protected and where every person is equal in dignity and rights.

The Commission's key functions include:

- Access to justice: We help people to resolve complaints of discrimination and human rights breaches through our investigation and conciliation services.
- Fairer laws, policies and practices: We review existing and proposed laws, policies and practices and provide expert advice on how they can better protect people's human rights. We help organisations to protect human rights in their work. We publish reports on human rights problems and how to fix them.
- Education and understanding: We promote understanding, acceptance and public discussion of human rights. We deliver workplace and community human rights education and training.
- Compliance: We are the regulator for positive duty laws requiring employers and others to address sexual harassment, sex discrimination and other unlawful conduct.

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1. The Australian Human Rights Commission (the Commission) welcomes this Senate Legal and Constitutional Affairs References Committee inquiry into Australia's youth justice and incarceration system.
2. The Commission made a [submission](#) to the Committee's earlier inquiry, in October 2024, that addressed the following specific areas:
 - Australia's international human rights obligations
 - outcomes and impacts of youth incarceration in jurisdictions across Australia
 - the over-incarceration of Aboriginal and Torres Strait Islander children
 - the human rights of children in detention
 - national minimum standards for youth justice.
3. The Commission appeared before the Committee at the earlier inquiry on 3 February 2025. The [transcript](#) of this appearance by Ms Anne Hollonds, former National Children's Commissioner and Ms Rosemary Kayess, Disability Discrimination Commissioner can be located on Hansard.
4. The Commission understands that all submissions made to the earlier inquiry in 2024-25 will be considered by the Committee.
5. This current submission highlights the *Help way earlier!* report findings and draws the Committee's attention to the Commission's recent, additional work relevant to the Inquiry's Terms of Reference.

Help way earlier!

6. The Commission's previous submission drew primarily on its 2024 report, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing (Help way earlier!)*. For ease of reference, we include here a [link to the report](#) on our new website.
7. *Help way earlier!* investigated opportunities for reform of child justice and related systems across Australia, based on evidence and the protection of human rights. It was the result of a project undertaken by the National Children's Commissioner in 2023-24, that included submissions, consultations with children and young people, families and community members, and interviews and roundtables with government and non-government stakeholders across Australia.
8. The report highlights the urgent need to focus on prevention and early intervention. Many children at risk of or in contact with the criminal justice

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system are dealing with multiple and complex issues in their lives which contribute significantly to their chances of offending and reoffending. These include poverty, intergenerational trauma, violence and abuse, racism, homelessness, and inadequate healthcare. These social determinants of justice show that children's rights to health, safety, culture, participation, non-discrimination, adequate standards of living, and education are not being realised.

9. When children enter the justice system, they may face additional breaches of their rights. For example, despite what we know about the harmful effects of detention on children, children as young as 10 can be detained in most parts of Australia. The overwhelming majority of these children are unsentenced. Many have mental health issues, cognitive impairment and neurodevelopmental disability which are exacerbated by detention and harmful conditions, including extended periods of time in isolation in their cells, as noted in numerous official reports.¹
10. Aboriginal and Torres Strait Islander children and young people continue to be overrepresented in the criminal justice system, and particularly in detention, with many having disability.² The Disability Royal Commission found that detention settings lack access to therapeutic support, trauma-informed care, and timely screening and assessment.³
11. Data on the reoffending of children who have been detained shows that incarceration is not working and is not making the community safer.⁴ Yet, in Australia we continue to invest in building conventional 'prison-like' institutions to lock up children and permit the use of spit hoods, force and restraint devices. Since the tabling of *Help way earlier!* in August 2024 there have been minimal improvements in the approach to child justice across states and territories, and unfortunately regressive measures taken in the Northern Territory, Queensland, Victoria and New South Wales that run contrary to children's rights. These measures can damage children, are unnecessary and counterproductive, and are not based on evidence of what works to reduce child offending. They contribute to the over-incarceration of Aboriginal and Torres Strait Islander children, which undermines not only Australia's international commitments, but those commitments made by all jurisdictions under the National Agreement on Closing the Gap.
12. The *Help way earlier!* report made 24 recommendations which provide an evidence base for how Australia can reform child justice to improve the rights, safety and wellbeing of children.
13. The report makes clear that a national, child rights-based approach to child justice reform is required, with a key focus on prevention and early intervention in both child justice and child protection systems. Reform should be driven by a

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National Taskforce for Reform of Child Justice Systems, a Cabinet Minister for Children, a Ministerial Council for Child Wellbeing, and the incorporation of the *UN Convention on the Rights of the Child* in a National Children's Act as well as a Human Rights Act.

14. It also highlights other evidence-based actions that would be facilitated by a coordinated national approach, and that can also be independently pursued by jurisdictions. These include placing children and their wellbeing at the centre of policymaking and service delivery; empowering Aboriginal and Torres Strait Islander children, families and communities; optimising community-based action; building a capable and child specialised workforce; basing systems on data and evidence; and embedding accountability for the rights of children.
15. Section 3 of *Help way earlier!* reports on what 150 children and young people and 49 family and community members said about their lives and experiences of the child justice system. 67% of consultations were with Aboriginal and Torres Strait Islander children. This section is particularly relevant to the Inquiry's Terms of Reference 2(a) which outlines the need for the Committee to 'engage with and seek input from young people with lived experience in the youth justice system'.⁵ The Commission offers its assistance to the Committee as it develops its methodology for its engagement with children and young people.
16. The Commission has not received a formal, written response from the Australian Government to the recommendations made in the *Help way earlier!* report.

Solitary confinement

17. Recommendation 19 in the *Help way earlier!* report recommended that Australian Governments legislate to prohibit solitary confinement practices in child detention facilities and prohibit the use of isolation as punishment in any circumstance. This was also a recommendation of the Disability Royal Commission.⁶ Recommendation 181 of the Royal Commission into Aboriginal Deaths in Custody stated that 'it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention'.⁷
18. The Commission [calls for urgent action](#) on solitary confinement practices following the coronial findings into the tragic death of Cleveland Dodd in Western Australia.
19. Cleveland Dodd, 16, died in October 2023, one week after self-harming in his cell at Unit 18 – a youth wing of the Casuarina high-security adult prison south of Perth. Cleveland Dodd spent 85% of his last 87 days in conditions amounting to solitary confinement – a practice the coroner rightly described as 'not only entirely inappropriate but inhumane'.

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20. The agreed international definition of solitary confinement is confinement for 22 hours or more a day without meaningful human contact.⁸ Solitary confinement is cruel, inhuman, harmful and completely unnecessary. It is particularly harmful for children and more so for children with psychosocial disability. The solitary confinement of children is prohibited under international human rights law. Australian governments must act to pass laws to prohibit the solitary confinement of children. Only Victoria has done this so far.
21. The Commission has recently published a paper on solitary confinement *[‘Left Alone’: A Review of Solitary Confinement and Similar Practices in Australia’s Youth Justice Systems](#)*. The report makes 24 recommendations calling on governments to prohibit solitary confinement, strengthen safeguards, and ensure child justice systems adopt trauma-informed, rights-based approaches.

Evidence-based approaches to child justice

22. Terms of Reference 2(b) asks the Committee to seek evidence of effective alternative approaches to incarceration for young people, including diversionary programs.
23. In October 2025, the Commission published *[Evidence-based approaches to child justice. Supplementary paper to ‘Help way earlier!’: How Australia can transform child justice to improve safety and wellbeing](#)*. This supplementary paper seeks to fill some gaps in knowledge and public understanding by providing examples of approaches to child justice from Australia and overseas that are based on evidence.
24. It highlights 6 initiatives that demonstrate holistic and evidence-based approaches to child justice reform as follows:
 - **Scotland’s Whole System Approach**, aiming to divert children away from the justice system through multi-agency coordinated work to address children’s needs early. Since June 2018, Scotland has appointed a Minister responsible for children and young people and has fully incorporated the *Convention on the Rights of the Child* into its legislation (finalised in August 2024), as well as having a Children’s Act.
 - **Pathways to Prevention Project**, a pilot project conducted in Queensland, Australia, based on primary prevention of child offending by supporting children’s positive development in early childhood.
 - **Baulaarr Bagay Warruwi Burranba-li-gu** (Two River Pathway to Change), an Aboriginal led, community and place-based initiative in Walgett, NSW, Australia.
 - Small-scale, community based and therapeutic alternatives to detention, as modelled in three initiatives in the **Netherlands, Missouri (USA) and Spain** (Diagrama model).

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25. Evidence-based practices highlighted in these 6 initiatives include:
- positioning children and families at the centre of decision-making in policy and service design and delivery
 - investing in reform of upstream service systems for primary prevention and early intervention
 - using community-led and place-based knowledge to empower local communities, especially Aboriginal and Torres Strait Islander communities, to lead initiatives tailored to local needs
 - embedding culturally safe practices for Aboriginal and Torres Strait Islander children and families
 - integrating multi-agency collaboration across health, education, justice, and social services to meet the needs of children and their families
 - using holistic and therapeutic responses to address underlying causes of offending through integrated services
 - identifying the competencies and skills of individuals and organisations involved to ensure their readiness and willingness for implementing reform
 - building capability and a skilled, child specialised workforce with training in trauma-informed and relational practices
 - prioritising alternatives to detention by using small-scale facilities, locally sited, and integrated with communities, designed to promote relational and differentiated security and encompassing therapeutic design characteristics
 - ensuring robust data collection and evaluation frameworks to generate quantitative and qualitative insights into 'what works, when and for whom' and using this information to engage in continuous quality improvement
 - aligning legislation and government policies with a human rights framework, with the best interests of children the primary consideration
 - commitment to longer-term reform, recognising that systems reform takes place in stages and over time.
26. Please see the supplementary paper for more detailed information on each initiative.
27. Terms of Reference 2(b) offers the opportunity for the Australian Government and state and territory governments to outline their prevention and early intervention initiatives as well as any alternative approaches to incarceration, including how they are evaluating them.

Upcoming scrutiny of Australia by the UN Committee on the Rights of the Child

28. Under the UN *Convention on the Rights of the Child* (CRC) the Australian Government is required to report to the UN Committee on the Rights of the Child (UN Committee) every five years on its progress on implementing the CRC.
29. The Australian Government last reported in September 2019. Due to COVID, the regular reporting process was delayed. However, it has now re-commenced.
30. As part of the process, the UN Committee asks children's advocates and stakeholders in Australia to provide it with information on key issues affecting children in Australia. This information was due by 1 December 2025. The UN Committee uses this information to compile a List of Issues which it sends to the Australian Government, requesting information on selected issues, updates on new laws and policies, and specific data. The Australian Government must respond to this List of Issues with a written report by February 2027. It will subsequently appear before the UN Committee in Geneva in September 2027. At the end of this process, the UN Committee adopts *Concluding Observations* on how Australia is implementing the CRC, including recommendations for action.
31. The Commission participates in the reporting process in its capacity as a National Human Rights Institution. It made a [submission](#) on the proposed List of Issues to the UN Committee. This included our serious concerns in relation to the child justice system in Australia and the need for national leadership on children's rights.

Endnotes

- ¹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 87–89.
- ² *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 38.
- ³ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 87–89.
- ⁴ Australian Institute of Health and Welfare, *Young People Returning to Sentenced Youth Justice Supervision 2023-24* (Web Report, 2 October 2025).
- ⁵ Senate Legal and Constitutional Affairs References Committee, *Australia's youth justice and incarceration system*, 28 October 2025
<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/YouthJustice2025>.
- ⁶ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 87–89.
- ⁷ *Royal Commission Into Aboriginal Deaths In Custody*, National Report: Volume 3, 1991
<https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading5>
- ⁸ *The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), Rule 44.