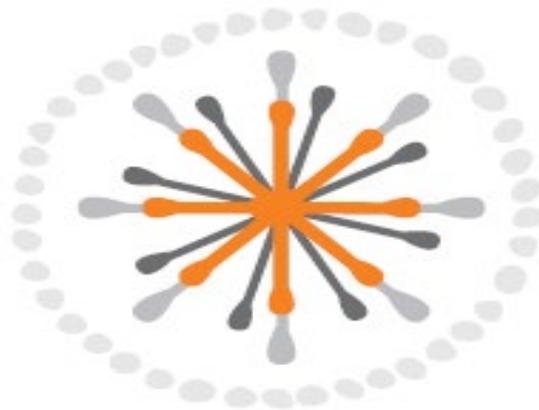


Submission  
to  
the Senate Legal and Constitutional Affairs Committee  
Inquiry  
into  
Australia's Youth Justice and Incarceration System

October 2024



AUSTRALIAN  
**CHILD RIGHTS**  
TASKFORCE

**The Australian Child Rights Taskforce (the Taskforce)** welcomes the opportunity to provide this contribution to the Australian **Senate Legal and Constitutional Affairs References Committee Inquiry into Youth Justice**.

Childhood and adolescence are 'critical times for building capabilities for life'<sup>1</sup>. They are also times in which boundaries are tested and decisions are sometimes impulsive. They will include mistakes and are often influenced by the less than perfect circumstances in which they may live. When children come into conflict with the criminal law, the traditional criminal justice system does not offer the guidance and support that is necessary to set them back on track. And too often surrounding service systems are inadequate, not child-centred and pay insufficient attention to what is required for their protection, their health and wellbeing and respect for their rights.

A different approach is required. The knowledge of how to undertake such an approach is not a mystery. It is well documented and guided by the international principles of child rights and youth justice. There is a wealth of knowledge and experience in Australia and overseas that offers constructive solutions and appropriate policy responses to the ongoing circumstances and challenges of youth offending.

The challenge in Australia is the political commitment to consistently implement that approach. This is the key message of our submission, and of our previous submissions to state and territory inquiries into youth justice. The available evidence demonstrates that governments have been unable to resist the lure of flawed political fixes. And there has been an absence of national leadership to encourage them to make the necessary sustainable investments in this relatively small but important group of children and the communities that they come from.

A framework of coordinated governance arrangements can guide and ensure that Australia's youth justice systems not only comply with international human rights obligations, but also allow these children the best opportunities to get back on track. With effective and consistent monitoring and guidance, these arrangements can also make strategic and meaningful contributions to address the often entrenched and intergenerational discrimination and disadvantage experienced by these children and their communities.

## Key Messages

- The international principles of child rights and youth justice provide effective guidance.
- National leadership in youth justice can provide monitoring and accountability to drive improvements.
- Enforceable national standards are required to frame consistent monitoring and drive accountability.
- Existing reform initiatives are disconnected and lack appropriate independent monitoring.
- Appropriate governance arrangements can ensure coordination, compliance and address disadvantage.
- Monitoring must use child specific measures and outcomes.
- Existing statutory authorities can be better supported and resourced to guide monitoring.

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<sup>1</sup> McLachlan, R., Gilfillan, G. and Gordon, J. 2013, *Deep and Persistent Disadvantage in Australia*, rev., Productivity Commission Staff Working Paper, Canberra at page 14.

## The Inquiry

On 11 September 2024, the Australian Parliament's **Senate** established an **Inquiry into Australia's youth justice and incarceration system**, with reference to:

- a) *the outcomes and impacts of youth incarceration in jurisdictions across Australia.*
- b) *the over-incarceration of First Nations children.*
- c) *the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention.*
- d) *the Commonwealth's international obligations regarding youth justice including the rights of the child, freedom from torture and civil rights.*
- e) *the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations; and f) any related matters.*

## The Australian Child Rights Taskforce and its work

The Australian Child Rights Taskforce<sup>2</sup> is a coalition of over 100 organisations, networks and individuals committed to the protection and development of the rights of children and young people in Australia. UNICEF Australia convenes the Taskforce, and its work is guided by a Steering Committee and Policy Working Groups.

One of the key roles of the Taskforce is to hold Australian Governments to account on the implementation of the *United Nations Convention on the Rights of the Child* (the Convention). When Australia ratified the Convention in 1990, this represented a commitment that every child in Australia should enjoy the rights set out in the Convention. The Taskforce has published a series of reports (most recently 'The Children's Report')<sup>3</sup>, that have examined the implementation of the Convention to assist the United Nations Committee on the Rights of the Child<sup>4</sup> (the UN Committee) in its review of Australia's performance.

## The Child Rights Framework

The United Nations Convention on the Rights of the Child reflects a fundamental shift that occurred during the 20<sup>th</sup> Century in the way that children were viewed. Previously, children were largely viewed as the property of adults. This shift to an understanding of children as rights holders is increasingly reflected in domestic legal and justice systems as well as international law. The implementation of child rights in domestic legal systems and policy development has begun in jurisdictions around the world. In dealing with children who come into conflict with the criminal law, this has included the development of a comprehensive set of principles that guide the establishment of youth justice systems. These systems offer an effective alternative to both out-dated welfare models of dealing with children in adverse social settings and the more punitive adult criminal justice system.

These principles have recently been set out in an Australian context in Save the Children / 54 Reasons "*Putting Children First: A rights respecting approach to youth justice in Australia*"<sup>5</sup>. The principles draw on an extensive range of instruments of international law that have been built in turn on a foundation of evidence-based and tested standards.<sup>6</sup>

<sup>2</sup> <https://childrightstaskforce.org.au/>

<sup>3</sup> <https://apo.org.au/node/200771>

<sup>4</sup> <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

<sup>5</sup> Save the Children and 54 reasons, 2023, *Putting children first: A rights respecting approach to youth justice in Australia*, [https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia\\_April-23.pdf.aspx](https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia_April-23.pdf.aspx)

<sup>6</sup> "*Rights of the Child in the Child Justice System*" (Kilkelly & Pleysier) Youth Justice (2023) Vol 23(2) 135-139.

## The UN Child Rights Committee and its recommendations

Our reports and the work of a range of Australian advocates and reports have informed the recommendations of the UN Committee<sup>7</sup> which have covered a range of policy areas where improvements were considered necessary, including in youth justice reforms, monitoring conditions in detention and in raising the age of criminal responsibility. The UN Committee has also noted that despite Australia's ratification of the Convention in 1990, it has yet to incorporate rights effectively and consistently into monitoring, policy, and legislative frameworks to benefit children and that there are unacceptable gaps in the legal protection of children's rights.

The UN Committee and other UN human rights bodies have already made observations and recommendations on the need for Australian governments to address the matters detailed in the terms of reference to this Inquiry. This includes noting the adverse *outcomes and impacts of youth incarceration in jurisdictions across Australia; the over-incarceration of First Nations children; the need for more effective compliance with the human rights of children and young people in places of detention and with Australia's international obligations in youth justice to fulfil the rights of the child, their civil rights and freedom from torture. The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations* have been noted over several reporting cycles and reinforced by a range of other UN human rights bodies.

## The UN Sub-Committee on the Prevention of Torture

We note the work of the United Nations Sub-Committee on the Prevention of Torture. The Taskforce has taken a keen interest in the progress of the Australian Government's commitment to establish a National Preventive Mechanism.<sup>8</sup> We believe that the Mechanism could provide a key opportunity to address the situation of children and young people who experience instances of torture, and other cruel, inhuman, or degrading treatment or punishment. We commend the Australian Government for committing to ratify OPCAT. We acknowledge the work that has begun to establish the required mechanism and its capacity to improve protections for people at risk of torture or degrading treatment. We support the ongoing advocacy of the Australia OPCAT Network including in relation to shortcomings in the implementation process.

However, the Taskforce is also of the view that a child-specific monitoring mechanism is required to ensure appropriate and consistent systemic responses are built across sectors and settings. In the current context, monitoring the treatment of children in youth justice detention settings requires a holistic and comprehensive and coordinated framework. Such a framework can draw on and intersect with a range of other current initiatives and developments.

## Addressing Culture for Indigenous Children

The UN Expert Mechanism on the Rights of Indigenous People under the *United Nations Declaration on the Rights of Indigenous Peoples* connects the capacity of Indigenous peoples to meet their children's needs with their ability to exercise self-determination.<sup>9</sup> Australian governments has taken steps towards recognising this through the *Safe and Supported, National Framework for Protecting Australia's Children 2021-2031*. The Framework commits to progressive systems transformation.<sup>10</sup> However, there is currently a disconnect between this framework and the youth justice system. Self-determination is critical to achieving better outcomes for Aboriginal and Torres Strait Islander children.

<sup>7</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En)

<sup>8</sup> As a result of Australia's ratification of the Optional Protocol Against Torture in 2017

<sup>9</sup> United Nations Human Rights Council, *Rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples* (2021)

<sup>10</sup> Department of Social Services, *Safe and Supported: National Framework for Protecting Australia's Children* (2021) p51

## Historical Context

The current situation in Australia is the result of many years in which youth justice has been the subject of political expediency and evidence-based policy development has been neglected for short term political gain. This can be observed in every state and territory in Australia. The underlying issues at the heart of this Inquiry have been recognised for some time. In 1997 the Australian Law Reform Commission & Australian Human Rights Commission handed down a report called "Seen and Heard: priority for children in the legal process". This report remains the most comprehensive examination of children and the legal system in Australia.

Many of the failures of legal processes for children identified in this report remain today:

- discrimination against children and young people.
- a failure to consult with and listen to children and young people in matters affecting them.
- a lack of co-ordination in the delivery of services to children and young people.
- an overly punitive approach to children and young people in criminal justice systems.
- court processes which are bewildering and intimidating for children and young people.
- the over-representation of Aboriginal and Torres Strait Islander children and young people in the justice and protection systems.

## Better Coordination of Existing Reform Initiatives

There are a range of current system reform initiatives which seek to address many of these failings. What is missing, is the national leadership that will provide monitoring and accountability to drive these intended improvements. Appropriate national governance arrangements should be in place to support and guide the efforts of national policy frameworks and the efforts of state and territory governments. Monitoring and leadership are required to make the necessary sustainable investments in coordinated systems reform.

With an integrated framework of governance arrangements, Australia's various policy and practice frameworks and service systems (including the youth justice systems and those that should work alongside them) can comply with international human rights obligations and ensure sustained systems reform and improved outcomes for children and communities.

Some of the existing systems reform initiatives that would be supported by an integrated framework include:

- The National Framework for Protecting Australia's Children: Safe and Supported (2021-2031)
- Integration with the National Plan (to End Violence against Women and Children (2022-2032)
- The National Strategy to Prevent and Respond to Child Sexual Abuse (2021-2030)
- Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse including the implementation of Child Safe standards
- Closing the Gap targets that directly relate to First Nations children and their communities
- Recommendations from the "Bringing Them Home" report (1997)
- UN Child Rights Committee's recommendations on Australia's child rights performance (2019)

The next Action Plan under the National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030 could commit to the development of an independent and appropriately resourced mechanism for monitoring progress in child safety at a national level.

The Taskforce is soon to release its Blueprint for a National Children's Plan which will provide further information on how an independent and appropriately resourced mechanism for monitoring progress in child safety at a national level can contribute to better outcomes for children.

## Building Better Responses to Mistreatment of Children in Detention

The Royal Commission into Institutional Responses to Child Sexual Abuse<sup>11</sup> detailed widespread mistreatment of children in a range of settings including in places of detention. A cycle of additional official inquiries and reports has found that youth justice systems and detention institutions across Australia are failing to protect the rights of children. We have provided a summary of some of this material in a **Table** annexed to this submission.

The recurring nature of these inquiries demonstrate that efforts at systemic reform are either unsuccessful; lose momentum or fail to adequately address future needs and development. Stronger and more consistent monitoring and follow up is required. Issues that require greater scrutiny include data collection, public reporting, accessible complaints mechanisms, staffing management and training, and follow up on reforms.

There should be a role for civil society in monitoring and key governance must be grounded in independence.<sup>12</sup>

## Aligning with Child Safe Standards

Keeping children and young people safe is a broader challenge than youth justice. Further work is required to address the under-development in many sectors of child-centred practices and the lack of commitment to the creation of child safe environments. This was addressed by the Royal Commission in its recommendation for the implementation and monitoring of Child Safe Standards in all organisations that work with and deal with children and young people (including governments). The standards are based on the National Principles for Child Safe Organisations, endorsed by all Australian governments. This work must include ensuring that youth detention meets Child Safe Standards and are child safe environments.

## Listening to Children and Young People

One of the key reforms that Child Safe Standards are intended to drive is to address the ongoing failure to provide effective opportunities for children's views to be heard and to inform decision making. A key element of a child rights approach is the participation of children involved and affected. Youth justice is no exception. Children have the right to participate in all decisions that affect them based on the right to be heard (Article 12 of the Convention). This includes the decisions that directly affect a child (such as court orders and conditions in programs and detention) to policy decisions where children's lived experience should be considered in design, implementation, and monitoring.

Provision for children's participation must recognise their circumstances. Power imbalances and a lack of confidence in adult authority structures limit the ability and the trust required for children to speak up about their situations. Children are often disadvantaged by the reliance on adult-designed and adult-centric mechanisms. Children are particularly vulnerable to mistreatment. Access to child-friendly and child-safe approaches<sup>13</sup> that support them to express their concerns, to be heard and taken seriously, are a critical protective factor for children in settings and systems where mistreatment may occur.

Current youth justice systems rarely provide genuine settings that will enable children and young people to complain about their treatment. Additional barriers exist for children and young people with disabilities, from different cultural backgrounds, those who are gender diverse and those with limited literacy and experience navigating complaint systems. A rigorous independent process is required so that children and young people can safely and confidently access opportunities to be heard and to complain, including access to appropriate timely, proportionate, and effective remedies.

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<sup>11</sup> Australian Government, Royal Commission into Institutional Responses to Child Sexual Abuse (2017)

<sup>12</sup> In accordance with the Paris Principles for National Human Rights Institutions - <https://ganhri.org/paris-principles/>

<sup>13</sup> Commissioner for Children and Young People WA "Child Friendly Complaints Guidelines" (2021); UNICEF "Tools to Support Child Friendly Practices: Child Friendly Complaint Mechanisms" (2019)

## Closing the Gap

In July 2020, Australian governments and the Coalition of Peaks signed the National Agreement on Closing the Gap.<sup>14</sup> This Agreement seeks to overcome the entrenched inequalities faced by Aboriginal and Torres Strait Islander people with 19 targets. Target 11 seeks to address over-representation in the criminal justice system, with a target to reduce the rate of Aboriginal and Torres Strait Islander young people aged 10-17 years in detention by at least 30 per cent by 2031.<sup>15</sup> Ongoing monitoring by the Productivity Commission shows mixed results.<sup>16</sup> Australia has an intergenerational legacy of colonial dispossession and child removal, ongoing institutional racism, and the overrepresentation of First Nations peoples in measures of disadvantage and incarceration (including unsentenced detention, watch-houses, and police transport). There should be greater emphasis on the need for cultural knowledge and culturally safe practices in monitoring. Monitoring policies and practices should align with the Safe and Supported Framework and the National Agreement targets.

## Rehabilitation as a Guiding Principle

A stronger commitment to rehabilitation is required as a guiding principle of the policy framework in the youth justice system. This would require developmentally appropriate behaviour management techniques such as de-escalation and safeguards (including prohibitions where necessary) regarding the use of force, restraints, seclusion, and isolation. Attention should be given to the recurring practice of transferring young people to adult facilities despite this practice breaching international child rights standards.<sup>17</sup>

## Sharing the Responsibility

Addressing reforms for children including in youth justice systems should be a national priority. There are responsibilities that currently rest with State and Territory Governments. But the Australian Government also has a key role to play, especially in establishing enforceable national standards, monitoring, coordination and reporting to inform and support reform. For example, a properly resourced and coordinated National Preventive Mechanism under the Optional Protocol to the Convention Against Torture could provide a supportive foundation to monitor the experience of children in youth justice facilities throughout Australia. Monitoring must be comprehensive, include reference to child-centred knowledge and standards and lead to the development of child-sensitive preventative practice.

## National Standards in Youth Justice

The challenge of ensuring consistent monitoring and responses across Australia is compounded by the lack of enforceable national standards. In youth justice, there are currently no legally enforceable standards that are consistent across all jurisdictions. There is available guidance. The Australasian Juvenile Justice Administrators Standards for Custodial Facilities were originally developed in 1999. Following several reviews, a new set was developed and in 2023 the revised National Standards for Youth Justice were presented and endorsed by the administrators of youth justice services from the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria, Western Australia and Aotearoa New Zealand.

There is ample evidence that unenforceable guidance has been insufficient to ensure appropriate practices and protections for children and young people in youth justice detention.

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<sup>14</sup> <https://www.coalitionofpeaks.org.au/national-agreement-on-closing-the-gap>

<sup>15</sup> Closing the Gap, *Closing the Gap Targets and Outcomes* <https://www.closingthegap.gov.au/national-agreement/targets>

<sup>16</sup> Australian Government Productivity Commission, *Closing the Gap Annual Data Complication Report July 2023* p31

<sup>17</sup> Australia has maintained a reservation to article 37(c) of the Convention on the Rights of the Child.

## A Case Study: Banksia Hill Detention Centre (Western Australia)

For over 10 years, the treatment of children in detention in Banksia Hill Detention Centre has been a concern. In 2012, the Inspector of Custodial Services reported the use of management regimes where child detainees were placed in solitary confinement for 22-23 hours per day and isolated from the general population for extended periods. In one instance, a child was isolated under various regimes for 95 consecutive days.

In 2017 the Inspector published a further report<sup>18</sup> calling for greater independent oversight. The report noted that behaviour management in juvenile detention 'is a longstanding concern', incidents of serious damage and self-harm had 'reached unprecedented levels', and responses to 'critical incidents' which included 'restraint use and high-level tactical response' have conflicted with 'a rehabilitative, trauma-informed model'. The report recommended that the use of lockdowns for staff training and staff shortages should be 'minimised'.

In December 2021, the Inspector began a further review of the facility and issued a Show Cause Notice to the Department considering the ongoing failures to improve conditions. The Department committed to a reform program and yet in July 2022, deemed it necessary to transfer a group of child detainees to an adult prison.<sup>19</sup> Reform efforts have apparently been ongoing. Yet since then, tragically one child died after self-harming himself while detained in the youth detention unit of the adult prison in October 2023.

In August 2024 the Commissioner for Children and Young People (WA) released her own report into the implementation of the reforms. She noted that efforts to date continued to focus on the behaviours of young people in detention rather than the underlying issues and needs.<sup>20</sup> She called for greater respect for rights of children detailed, and renewed effort to provide the care and support that they need.<sup>21</sup> Later that same month, another child died in Banksia Hill, the second death in youth detention within a year.

## Policy into Practise

It is not uncommon for government youth justice strategies, policy frameworks and even legislative statements of principle to include aspirations and objectives that align with rehabilitative, child and youth development, and child rights goals. Despite this, these statements are not consistently translated into action. There is limited evidence of better treatment of, or improved outcomes for children and young people. Skilled monitoring by appropriately qualified bodies will help to establish baseline standards for treatment and support and help to shift the detention environments towards the goal of rehabilitation.

## Next Steps

There are opportunities to build on existing monitoring and guidance. The Taskforce has noted the importance of an independent and appropriately resourced mechanism for monitoring progress in child safety at a national level. There could be a comprehensive mechanism addressing all dimensions of children's safety and protection, including in youth justice settings.

Notwithstanding the work of the Royal Commission, further determined steps are required to improve coordination and cooperation across strategies, governments and departments to address ongoing gaps in the provision of safety and protection for children. The efforts of civil society and governments remain piecemeal and disconnected. Sustained progress requires independent and publicly accountable monitoring.

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<sup>18</sup> Inspector of Custodial Services, Western Australia, Behaviour Management Practices at Banksia Hill (2017)

<sup>19</sup> <https://alhr.org.au/childrenadultprisonwa/>

<sup>20</sup> *Fetal alcohol spectrum disorder and youth justice: a prevalence study of young people sentenced to detention in WA.* (2018) Bower et al BMJ 2018;8(2).

<sup>21</sup> <https://www.cyp.wa.gov.au/our-work/hear-me-out-report/>

## **Better Support for Existing Data Collection and Monitoring Roles**

There are existing institutions that already contribute to providing the reporting and analysis to build appropriate monitoring and accountability for children's services. The Productivity Commission's Closing the Gap reporting and Annual Reports on Government Services offer data and insights. The Australian Institute of Health & Welfare provides annual reports on youth justice. The Australian Institute of Criminology can and has undertaken research projects in the youth justice space. The Australian Child Maltreatment Study has added new population data sets and knowledge.

There would be significant value in a dedicated and committed independent and public monitoring mechanism that coordinates and aligns the data with measurement of progress towards objectives and outcomes across sectors and jurisdictions.

Existing strategies and reviews at both a national and state and territory level lack sustained and coordinated monitoring. Repeatedly, measures to effectively monitor and evaluate progress and impact that are highlighted as critical to achieving objectives, are found to be missing or not acted upon. Monitoring against National Standards would, at a practical level, drive a greater level of policy coherence across key strategies and programs.

Gaps in implementation would still need to be addressed across governments, departments, programs and services, and communities. The current National Standards in Youth Justice could be a starting point. The Taskforce is soon to release its Blueprint for a National Children's Plan which will provide further information on how an independent and appropriately resourced mechanism for monitoring progress in child safety at a national level can contribute to better outcomes for children.

## **Role for Children's Commissioners**

Given that Aboriginal and Torres Strait Islander children continue to be overrepresented in the youth justice and other statutory systems in Australia, this highlights the need for a fully legislated, empowered and funded National Aboriginal and Torres Strait Islander Children's Commissioner. The Aboriginal and Torres Strait Islander Children's Commissioner and the National Children's Commissioner could work in coordination with other statutory agencies including State and Territory Children's Commissioners and Guardians to provide the necessary skills to support independent monitoring of outcomes for children and young people. This could occur alongside the work of a properly resourced and coordinated National Preventive Mechanism under the Optional Protocol to the Convention Against Torture.

## **Review of National Standards**

A review of the existing National Standards in Youth Justice could seek to better align and support with some of the other existing mechanisms and system reform initiatives. We offer some suggestions (below) for aligning the Standards more closely with child rights principles and international youth justice principles.

There is the opportunity to review and redesign systems and services using the Standards. They can help guide efforts to understand and respond to behaviours; shifting the focus to creating and maintaining safe, stable, and supportive environments; and to address the underlying causes of behaviour more effectively. Adolescent violence is an example of an emerging issue that can be addressed within the context of appropriate youth justice reform. Shifting the focus away from a counter-productive punitive framework based on the adult criminal justice system to a framework that is committed to ensuring all children to have their needs met and rights respected offers a more comprehensive, more constructive, and less stigmatising approach.

## Integrating Child Development and Coordinating Service System Responses

*"Evidence demonstrates that early support, family-led decision making, and robust, consistent, and reliable service systems are critical for preventing children from entering a cycle of harmful behaviour"<sup>22</sup>*

The integration of child development and coordinating service system responses is a responsibility of governments as the key coordinating agencies for service systems. It calls for a focus that supports the development of children both before and through engagement with the justice system, noting that many children in detention have some form of disability or health issue<sup>23</sup>. Using a child rights framework will offer the opportunity to build in the necessary safeguards and mechanisms to address issues of personal and community safety and accountability. It should encourage and support strong and resilient families and communities to provide safe, stable, and supportive environments.

### Supporting the Role of Family and Community

One of the key features in child rights frameworks is an explicit recognition of the critical role of family and community in caring for and supporting the development of children and children's emerging capacity to claim and enjoy their rights. Governments have an equally fundamental role to step in and support when the family is unable to provide the required support and environment.

This role is framed as alternative care and is intended in as many cases as possible to be temporary. It is subject to periodic review and with the goal that a child is returned to family and community as soon as practicable. The Government's responsibility to provide alternative care and family and community support remains when a child enters the youth justice system. Alongside this sits the principles that detention is to be used as a measure of last resort and for the shortest period possible. The preferred outcome is the return of the child to a supportive family environment. In the case of Aboriginal and Torres Strait Islander children and other children in settings where family structures are broader and inclusive, this can be community or kinship care.

### Victim Engagement and Restorative Justice

The child rights framework offers clear principled opportunities to support improved victim engagement. There are excellent examples of restorative justice programs built in youth justice settings (including youth justice conferencing in New South Wales and New Zealand) where victims play a key (and sometimes leadership) role.

Often the process of setting penalties and corrections to guide a child benefit from the views and interests of victims being heard and addressed. The skills and experience in mediation and managing these processes are available especially in the jurisdictions where conferencing has been established for some time.

A restorative approach shifts the focus away from inappropriate or ineffective punitive responses. It also offers the opportunity to identify where family supports, and role models will be most effective especially if they can be personally and culturally appropriate. Attuned community care will also avoid stigmatisation and offer new pathways for both children and victims.

### On behalf of the Australian Child Rights Taskforce

#### The Australian Child Rights Taskforce Policy Working Group

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<sup>22</sup> ACT Government Discussion Paper on Raising the Age of Criminal Responsibility

<sup>23</sup> Robards et al, *Addressing the challenges of FASD for adolescents in the justice system* Judicial Quarterly Review, 2024, 2(1), 11-26

## Recent Examples of Youth Justice Monitoring in Australia

State or Territory	Recent Issues	Recent Reports
ACT	Media reports of Bimberi 'riots' in 2019	<a href="#">"Review of Bimberi Youth Justice Centre"</a> (2021) <sup>24</sup>
New South Wales	Review recommends mandate for monitoring for children in detention	"The Inspection of Six Youth Justice Centres in NSW report" (2020) <sup>25</sup>
Northern Territory	System with evidence of torture, mismanagement	NT Royal Commission (2017) <sup>26</sup>
Queensland	Bail restricted, trauma + cultural training required, reform failure, children in police watchhouses	Youth Justice Review (2017) <sup>27</sup> ; QFCC Reports (2023-2024) <sup>28</sup> ; Ombudsman Review (2024) <sup>29</sup>
South Australia	Staffing and access issues	Visitor's Annual Reports <sup>30</sup>
Tasmania	Investigation of Government Responses to Child Sexual Abuse in Institutional Settings	Inquiry Report (2023) <sup>31</sup>
Victoria	Inappropriate use of seclusion; review of reforms required, and monitoring established	"Same Four Walls" (2017) <sup>32</sup> "OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people" (2019) <sup>33</sup>
Western Australia	System and Reform Failure; Deaths in Detention	Series of Reports (2012-2022) <sup>34</sup>
Commonwealth	Coordination and consistency	Ongoing scrutiny by Australian Human Rights Commission and civil society

<sup>24</sup> [Healthy Centre Review of Bimberi Youth Justice Centre - ACT Inspector of Correctional Services](#)

<sup>25</sup> [inspectorcustodial.nsw.gov.au/documents/inspection-reports/inspection-of-six-youth-justice-centres-in-NSW.pdf](https://inspectorcustodial.nsw.gov.au/documents/inspection-reports/inspection-of-six-youth-justice-centres-in-NSW.pdf)

<sup>26</sup> <https://www.royalcommission.gov.au/child-detention/final-report>

<sup>27</sup> <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf>

<sup>28</sup> <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice>

<sup>29</sup> <https://www.ombudsman.qld.gov.au/publications/detention-inspection-reports/cairns-and-murgon-watch-houses-inspection-report-2024>

<sup>30</sup> <https://gcyp.sa.gov.au/what-we-do/training-centre-visitor/>

<sup>31</sup> <https://www.commissionofinquiry.tas.gov.au/>

<sup>32</sup> <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/the-same-four-walls/>

<sup>33</sup> [OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people | Victorian Ombudsman](#)

<sup>34</sup> <https://www.oics.wa.gov.au/>