

# Inquiry into Australia's youth justice and incarceration system

Submission to the Legal and Constitutional Affairs  
References Committee

**19 December 2025**



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## Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.<sup>1</sup>

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Introduction

1. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Legal and Constitutional Affairs References Committee (the **Committee**), on the *Inquiry into Australia's youth justice and incarceration system (the Inquiry)*.
2. The ALA is an association of lawyers, legal professionals and academics who are dedicated to the aim of advancing and defending the rights of individuals in Australia. We act for, and advocate on behalf of, individuals whose rights have been infringed, including children and young people in contact with criminal justice, child protection and compensation schemes.
3. Our members see first-hand the profound and long-term physical, psychological, social and economic consequences to when children are criminalised and incarcerated, particularly First Nations children and those living with disability, trauma and entrenched poverty.
4. In our view, Australia's current approach to youth justice is failing children, families and communities. Youth incarceration is demonstrably harmful, criminogenic and discriminatory in practice. It entrenches generational disadvantage, creating persistent barriers to adequate health, education, jobs and housing, and ultimately undermines the long-term safety of the community.<sup>2</sup> Despite decades of inquiries and reports, children continue to be detained in conditions that breach Australia's obligations under International Human Rights Conventions.
5. First Nations children habitually bear the brunt of these failures. They are dramatically over-represented at every stage of the youth justice system, from first contact with law enforcement, through to remand, sentencing and detention. This over-incarceration is not the result of greater criminality but rather reflects the ongoing impacts of systemic racial discrimination, intergenerational trauma, child removal and persistent under-investment in community-controlled services.
6. It is no longer controversial to conclude that locking children up does not work. There is substantial evidence that the detention and institutionalisation of children in their formative years is a key determinative factor in future recidivism rates.<sup>3</sup> Detention disrupts family

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<sup>2</sup> Baldry E, Briggs DB, Goldson B & Russell S (2018). *'Cruel and unusual punishment': An inter-jurisdictional study of the criminalisation of young people with complex support needs*. *Journal of Youth Studies* 21(5): 636–652

<sup>3</sup> Law Council of Australia (2024), *Submission to Inquiry into Australia's Youth Justice & Incarceration System*: 7

relationships, education and employment; it exposes children to violence and trauma, increasing the likelihood of further offending. By contrast, community-based, therapeutic, culturally embedded programs are far more effective in promoting safety and accountability.

7. The Federal Government cannot discharge its international obligations simply by leaving youth justice to the purview of states and territories. The current patchwork of ages of criminal responsibility, bail and sentencing laws, conditions of detention and oversight regimes produces inconsistent, and often rights-incompatible, outcomes.
8. The ALA urges the Committee to recommend a fundamental shift away from punitive, carceral responses towards child-centric, community-led models of justice. Youth incarceration must become truly a last resort and for the shortest time appropriate to the circumstances. The routine over-reliance on remand and detention as default responses to the clear social, economic and health problems affecting children must be brought to a long overdue conclusion.

## **The outcomes and impacts of youth incarceration in jurisdictions across Australia**

9. The consequences of youth incarceration are devastating and enduring. On an average day in 2021-22, 780 young people were held in detention in Australia, with 61% on remand and yet to be sentenced. Most of these children were aged 14 – 17, however, children as young as 10 continued to be detained across all jurisdictions.<sup>4</sup>
10. Longstanding research has long established that children differ markedly from adults in psychosocial maturity, impulse control, and susceptibility to peer influence.<sup>5</sup> In particular, that *“changes in arousal and motivation brought on by pubertal maturation precede the development of regulatory competence in a manner that creates a disjunction between the adolescent’s affective experience and his or her ability to regulate arousal and motivation”*<sup>6</sup> and that adolescents not only consider risks cognitively, but socially/and or emotionally – *“not only does sensation seeking encourage attraction to exciting experiences, it also leads*

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<sup>4</sup> AIHW (2023). *Youth Justice in Australia 2021–22*, p.6. <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22>>

<sup>5</sup> Richards, K. (2011). *What makes juvenile offenders different from adult offenders?* AIC Trends & Issues No. 409, Australian Institute of Criminology.

<sup>6</sup> Steinberg, L. (2005). *Cognitive and affective development in adolescence*. Trends in Cognitive Sciences 9(2): 69–70

*adolescents to seek friends with similar interests. These peers further encourage risk taking behaviour.*<sup>7</sup> Such developmental factors mitigate culpability comparatively to adult offenders and renders incarceration a particularly inappropriate and counterproductive response.

11. Research by the Australian Institute of Health and Welfare (AIHW) shows that 57% of young people in detention are also known to child protection systems, indicating a pipeline from neglect and disadvantage into the custodial system.<sup>8</sup> Many young people in the civil and criminal justice systems have acquired or exacerbated mental illness, post-traumatic stress disorders, self-harm behaviours or other injuries during their periods in detention.
12. Incarceration is often a catalyst for deeper justice system entrenchment, especially where trauma remains unaddressed. Detention often entrenches a child's identity as an 'offender' and severs or damages relationships with family and community supports. The risk is especially acute for children with neurodevelopmental conditions, cognitive disability, and histories of abuse and neglect.
13. Studies have consistently shown that contact with the justice system at a young age increases the likelihood of future offending, disconnection from education and employment, and worsened mental health outcomes. Children first sentenced or diverted at ages 10–13 are particularly vulnerable, with poorer trajectories once they enter the youth justice system. These children are more likely to reoffend, continue offending into adulthood, and face adult imprisonment before their 22nd birthday.<sup>9</sup> Early justice involvement can exacerbate existing vulnerabilities, such as trauma, mental health issues, and developmental challenges, leading to a cycle of reoffending and further disconnection from positive life opportunities. Over 80% of young people under supervision experience repeat contact with the youth justice system within 12 months.<sup>10</sup> This clearly reflects the criminogenic effects inherent in detention: rather than serving as a rehabilitative mechanism, detention often reinforces cycles of trauma, exclusion, and criminalisation.

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<sup>7</sup> Romer D & Hennessy M (2007), *A biosocial-affect model of adolescent sensation seeking: The role of affect evaluation and peer-group influence in adolescent drug use*. *Prevention Science* 8: 98 - 99

<sup>8</sup> AIHW (2023). *Youth Justice in Australia* <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2023-24/contents/about>>

<sup>9</sup> Sentencing Advisory Council (2020). *Crossover Kids: Vulnerable Children in the Youth Justice System, Report 3*: 16

<sup>10</sup> AIHW (2023), p 9

14. In contrast, jurisdictions such as Victoria rely more heavily on diversionary and therapeutic responses and have significantly lower rates of youth detention to show for it.<sup>11</sup>
15. **The ALA recommends repealing mandatory and presumptive sentencing regimes affecting children and the reforming of bail legislation to reduce unnecessary instances of detention and remand.**

## The over-incarceration of First Nations children

16. Aboriginal and Torres Strait Islander children experience profound and disproportionate over-representation at every stage of the youth justice process. According to AIHW data, in 2021–22, First Nations children were 28 times as likely to be under youth justice supervision as non-Indigenous children, and represented 50% of all youth detainees, despite making up less than 6% of the population aged 10–17.<sup>12</sup> This over-incarceration is a central crisis in Australia's youth justice system.
17. This disparity is not explained by higher levels of criminal offending. Rather, it reflects structural disadvantage, intergenerational trauma, systemic racism, and discriminatory justice practices. Policing patterns, bail and remand decisions, and access to legal representation all contribute to this inequality. Blagg et al identifies "*systemic racism*" as embedded in justice processes from initial contact to sentencing.<sup>13</sup>
18. Trend data indicates that over-representation is increasing year upon year, rather than declining, in direct contradiction of Closing the Gap Target 11 (to reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30 per cent by 2031).<sup>14</sup>

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<sup>11</sup> Victorian Parliament, Legal and Social Issues Committee, *Inquiry into Youth Justice Centres in Victoria: Final Report*, March 2018, pp. 33–49; Penny Armytage and Professor James Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending - Part 2*, Victorian Government, Melbourne, 2017, pp. 90–92; <<https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/young-people-in-detention>>

<sup>12</sup> AIHW (2023), p.7

<sup>13</sup> Blagg, H, Morgan, N, Cunneen, C & Ferrante, A (2005) '*Systemic Racism as a Factor in the Over-Representation of Aboriginal People in the Criminal Justice System*', Report to the Equal Opportunity Commission and Aboriginal Justice Forum, Melbourne.

<sup>14</sup> National Aboriginal and Torres Strait Islander Legal Services (NATSIS) (2024), *Submission to Inquiry into Australia's Youth Justice & Incarceration System*; 10 - 11

19. The Law Council of Australia has noted that many incarcerated First Nations children are detained for minor or technical breaches rather than serious offences.<sup>15</sup> Research also shows that First Nations children are more likely to be denied diversion and placed on remand, even for minor or non-violent offences.<sup>16</sup> The frequent use of remand as a default response to poverty, family breakdown or homelessness compounds the harm.
20. **The ALA recommends that Aboriginal and Torres Strait Islander communities, ACCOs and peak bodies must be central partners in the future design, implementation and monitoring of youth justice policy, including any national standards and funding frameworks.**

## **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**

21. Australia is a signatory to multiple international human rights instruments, including the *Convention on the Rights of the Child (CRC)*, the *International Covenant on Civil and Political Rights (ICCPR)*, and the *Convention Against Torture (CAT)*. Each of these requires that children be deprived of liberty only as a last resort, for the shortest appropriate time, and in conditions that uphold both their dignity and developmental needs.
22. Despite these obligations, over the years numerous inquiries and independent oversight bodies have documented serious and systemic breaches in Australian youth detention facilities. These include the use of solitary confinement, strip searching, mechanical restraints, prolonged lockdowns, and denial of education services — practices that clearly violate Articles 37 and 40 of the CRC and the *Optional Protocol to the Convention Against Torture (OPCAT)*.
23. Multiple oversight and inquiry bodies have raised alarm about these practices. The 2017 report of the National Children's Commissioner to the UN highlighted extensive breaches of the CRC, particularly in the Northern Territory, Queensland and Western Australia.<sup>17</sup> Children were reported to be held in adult correctional settings, subjected to degrading treatment, and denial of basic rights and services. The Office of the Guardian for Children

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<sup>15</sup> Law Council of Australia (2024), p.19

<sup>16</sup> Cunneen, C., & Russell, S. (2018). *Reducing the Criminalisation of Indigenous Children*. *Indigenous Law Bulletin*, 8(29).

<sup>17</sup> Australian Human Rights Commission (2017). *Children's Rights Report to the UN Committee on the Rights of the Child*.

(SA) has similarly reported children being locked down for over 20 hours per day, constituting de facto solitary confinement.<sup>18</sup> In 2022, oversight bodies in NSW and the NT found persistent problems in Don Dale and Banksia Hill, including use of force, unsafe environmental conditions, and failures in mental health care. The lack of implementation of recommendations from past inquiries, including the Royal Commission into the Detention and Protection of Children in the NT, remains a matter of grave concern.<sup>19</sup>

24. Most recently, on 28 November 2025 the Coroner's Court of Western Australia delivered its findings into the death of 16-year-old Cleveland Dodd. The inquest revealed that prolonged isolation, inadequate mental health care, and his placement in an adult maximum-security unit were key contributing factors to his death. Cleveland had been routinely confined to his cell in Unit 18 for up to 23 hours per day. The coroner concluded that these conditions were *"not only entirely inappropriate, but inhumane"* and fundamentally incompatible with basic human rights.<sup>20</sup>
25. The Commonwealth, as the party to the relevant treaties, bears ultimate responsibility for ensuring compliance. **The ALA therefore supports recommendations by the Law Council, AHRC and others for the Commonwealth to:**
  - a. **fully implement OPCAT National Preventive Mechanisms (NPMs) with jurisdiction over youth detention and other child-relevant places of deprivation of liberty; and**
  - b. **establish stronger federal accountability mechanisms (including potentially a federal Human Rights Act or equivalent) to provide children with enforceable rights and remedies.**

## **The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations**

26. Australia's current approach to youth justice is fragmented and inconsistent. Each state and territory has its own laws, policies, and practices relating to the age of criminal responsibility, sentencing, diversion, and detention conditions. This results in drastically

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<sup>18</sup> Office of the Guardian for Children (SA) (2023). *Annual Report*

<sup>19</sup> Office of the Children's Commissioner NT (2022); NSW Inspector of Custodial Services (2022).

<sup>20</sup> Coroner's Court of Western Australia (2025). *Inquest into the Death of Cleveland Keith Dodd – Findings delivered 28 November 2025*

different outcomes for children dependent upon where they live, and clearly incompatible with Australia's obligations under the CRC and ICCPR as mentioned in the previous section.

27. For example, some jurisdictions permit detention for children as young as 10, while others are progressing toward raising the minimum age to 12 or 14. Practices such as solitary confinement, routine strip searches, and lockdowns continue in some states while being explicitly prohibited in others.
28. The Australian Institute of Family Studies (AIFS) and Australian Human Rights Commission (AHRC) have both noted limitations in the comparability and consistency of youth justice data across jurisdictions, in particular highlighting the lack of standardised definitions, reporting practices, and oversight frameworks.<sup>21</sup> These gaps frustrate national accountability and hinder effective responses to the clear systemic failures of our youth justice apparatus.
29. In order address these inconsistencies, the ALA endorses calls from the Law Council of Australia, the National Children's Commissioner, and numerous civil society organisations for a national youth justice framework underpinned by legislatively enforceable national minimum standards that are both binding and justiciable.
30. **The ALA recommends that such standards must cover the following substantive protections:**
  - a. **A uniform minimum age of criminal responsibility of at least 14 years;**
  - b. **Absolute prohibitions on solitary confinement and prolonged isolation for children;**
  - c. **strict limits and safeguards on strip-searching, spit hoods, restraint chairs and other intrusive practices; and**
  - d. **guaranteed access to education, health and therapeutic services equivalent to community standards.**
31. **Further, the standards must also cover the following procedural and oversight protections:**

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<sup>21</sup> Stevens, E., & Gahan, L. (2024). *Improving the safety and wellbeing of vulnerable children: A consolidation of systemic recommendations and evidence*. Australian Institute of Family Studies and the Australian Human Rights Commission.

- a. **Un-restricted access to legal assistance and independent advocacy associations;**
  - b. **Child-supportive complaints mechanisms;**
  - c. **Regular and independent OPCAT-compliant inspections; and**
  - d. **Transparent, disaggregated data collection and public reporting.**
32. **In establishing these standards, the ALA cautions the Government to be mindful not to entrench low baselines that weaken the stronger protections offered in particular jurisdictions.**
33. **Additionally, the ALA recommends that any national standard setting process should include explicit non-regression clauses that ensure jurisdictions remain free to adopt higher protections.**

## **Effective alternative approaches to incarceration, including diversionary programs**

34. A wealth of evidence supports shift from punitive to community-based, therapeutic and culturally embedded alternatives to youth justice. As previously established, incarceration not only frequently fails to rehabilitate young offenders, but actively compounds trauma, disconnection and further offending behaviour, particularly amongst those of specific vulnerability living with disability, poverty, or domestic violence.
35. The most effective alternatives focus on early intervention, are culturally safe and trauma informed, and involve genuine community engagement. Programs such as community-led justice reinvestment, community-led diversion, and therapeutic youth-courts have demonstrated in certain communities' measurable reductions in recidivism and improved engagement with education.
36. One of the most promising alternatives to incarceration has been the community-led justice reinvestment model. The Maranguka Justice Reinvestment initiative in Bourke NSW is widely recognised for its success in reducing youth offending through a community-centric data-

informed model. Independent evaluations have subsequently shown a 38% reduction in major offences and a 43% reduction in days in custody for those under the scheme.<sup>22</sup>

37. Similarly, the Youth Koori Court in NSW and Victoria provides an alternative to traditional correction models, enabling Aboriginal young people to develop case plans in partnership with Elders, families, and support services. Evaluations show increased compliance and reduced reoffending rates.<sup>23</sup>
38. From a funding standpoint, the institute of criminology noted that “*community-led justice reinvestment offers a more cost-effective and socially just alternative to custody,*” especially in First Nations contexts.
39. Research from the Australian Institute of Criminology explored diversionary programs for Indigenous children with Foetal Alcohol Spectrum Disorder (FASD). These models resulted in better engagement, reduced reoffending and improved health outcomes.<sup>24</sup>
40. Evidence also supports the development of therapeutic, integrated services that respond to the social drivers of offending, such as housing instability, lack of access to mental health and disability services, and school exclusion. Programs like Project Booyah, Balund-a, and ACT’s Throughcare model have routinely demonstrated positive outcomes.<sup>25</sup>
41. The Commonwealth has a clear role to play in incentivising and resourcing these alternatives. The ALA urges the Committee to recommend a clear national strategy for alternatives to incarceration that centres on children’s rights, is informed by lived experience, and is embedded in enforceable standards and long-term structural reform.
42. **The ALA supports the core reform architecture proposed by the National Children’s Commissioner<sup>26</sup>:**

- a. Shift investment way earlier into prevention and early intervention;**

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<sup>22</sup> KPMG (2020). *Maranguka Justice Reinvestment Project: Impact Assessment*. Just Reinvest NSW.

<sup>23</sup> CIRCA (2020). *Evaluation of the Youth Koori Court*: <<https://www.judcom.nsw.gov.au/publications/youth-koori-court-evaluation>>

<sup>24</sup> Blagg, H. & Tulich, T. (2018). *Diversionary Pathways for Indigenous Youth with FASD*. AIC.

<sup>25</sup> McCausland R, Reeve R, Sotiri M, Phelan L, Belackova V, Russell S. Outcomes of a community sector model of reintegration for people with complex needs: a mixed-methods study. *Health Justice*. 2025 Aug 4;13(1):49.

<sup>26</sup> Australian Human Rights Commission (2022). *Help Way Earlier! Listening to Children’s Voices About Justice Reform*.

- b. Provide integrated, wrap-around services that address children's and families' baseline needs (including housing, healthcare, disability, education and income security);**
- c. Devolve decision-making and service delivery to local communities, particularly Aboriginal Community Controlled Organisations (ACCOs); and**
- d. Build a national reform agenda around culturally responsive, trauma-informed, evidence-based models such as the examples outlined, that have demonstrated effectiveness both in Australia and internationally.**

## **Conclusion**

43. The ALA welcomes the opportunity to have input to the Committee on this Inquiry.

44. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



**Ian Murray**

**President**

**Australian Lawyers Alliance**