

# LAWHACK 2023



## RIGHTS OF THE CHILD

### HACK PACK

*Topic 2: Youth Detention*

NATIONAL  
JUSTICE  
PROJECT



# Law Hack 2023 – Rights of the Child

## HACK PACK

## YOUTH DETENTION

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***CULTURAL SENSITIVITY WARNING: First Nations readers should note that this material the names of deceased persons.***

***CONTENT WARNING: This submission contains content that is confronting and distressing. Please take care when reading.***

### THE NATIONAL JUSTICE PROJECT

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The National Justice Project (**NJP**) is a proudly independent not-for-profit human rights legal and civil rights service. Our mission is to fight for justice, fairness and inclusivity by eradicating systemic discrimination. Together with our clients and partners we work to create systemic change and amplify the voices of communities harmed by government inaction, harm and discrimination.

Through legal action, advocacy, education, and collaborative projects, we challenge systemic discrimination by defending and promoting the rights of people who have experienced racism and discrimination in healthcare and legal systems, immigration detention, prisons and juvenile detention, and policing.

### ACKNOWLEDGEMENT OF FIRST NATIONS PEOPLES' CUSTODIANSHIP

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The National Justice Project pays its respects to First Nations Elders, past and present, and extends that respect to all First Nations peoples throughout this country. The NJP acknowledges the diversity of First Nations cultures and communities and recognises First Nations peoples as the traditional owners and ongoing custodians of the lands and waters on which we work and live.

We acknowledge and celebrate the unique lore, knowledges, cultures, histories, perspectives and languages that Australia's First Nations Peoples hold. The NJP recognises that throughout history the Australian health and legal systems have been used as an instrument of oppression against First Nations Peoples. The NJP seeks to strengthen and promote dialogue between the Australian legal system and First Nations laws, governance structures and protocols. We are committed to achieving social justice and to bring change to systemic problems of abuse and discrimination.

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## 2. INTRODUCTION

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### 2.1. ABOUT LAW HACK

Law Hack 2023 is co-hosted by the National Justice Project and the Jumbunna Institute for Indigenous Education and Research.

Law Hack 2023 reflects our strategy of securing systemic change through a combination of strategic legal action, social justice education, fearless advocacy and collaborative partnerships.

### 2.2. WHAT TO EXPECT

Law Hack 2023 brings together teams of legal professionals to develop strategies to protect the rights of First Nations children and young people impacted by the out-of-home care and youth detention systems.

During Law Hack 2023, your team will select an area to focus on within the Law Hack 2023 topic you have been allocated (out-of-home care or youth detention), develop a strategic legal strategy, and pitch your strategy to a panel of experts.

### 2.3. THE HACK PACK

The Hack Pack is a resource to help you navigate and prepare for Law Hack 2023. It contains essential information and resources to guide your participation and assist in developing novel legal solutions Here's how you should use it:

- **Orientation:** Start by familiarising yourself with the Hack Pack to understand its structure and contents.
- **Problem Exploration:** The Hack Pack contains crucial information about the challenges faced by First Nations children and young people in these systems. It provides insights into the legal, social, and historical context, enabling you to identify areas where strategic litigation can have a significant impact. The Hack Pack is not intended to be exhaustive, but provides plenty of stimulus to help motivate and inform you find what you need.
- **Self-Select your Focus:** Law Hack enables participants to focus on an area that you feel passionately about and that you feel confident will bring about real change. First, select an area that your team is inspired to create change in, then use the Hack Pack to inform your strategy.

### 2.4. HOW TO HACK

Welcome to the engine room of Law Hack 2023! You can choose how to spend your time most effectively. These four hacking sessions will guide your team through the process of developing effective legal strategies. Each session plays a unique role in building your solution.

Remember, these sessions are all about teamwork, collaboration, and innovation. Use the Hack Pack to access additional resources and information to support your journey. Your goal is to create robust legal strategies that protect the rights of First Nations children.

### **Identify the Problem (Hack Session 1):**

- Engage in open discussions to identify the core problem you aim to address.
- Understand the legal context and relevant regulations.
- Understand the stakeholders, including community advocates, potential respondents, and involved parties.
- Determine the most critical aspects of the issue.

### **Brainstorm Strategies (Hack Session 2):**

- Explore legal approaches and opportunities to tackle the problem.
- Identify individuals or entities who are best suited to champion your cause.
- Consider how various factors and issues intersect and affect in your strategy.
- Prioritise and select the most promising approach.

### **Develop a Comprehensive Strategy (Hack Session 3):**

- Hone and develop the selected strategy.
- Define your objectives, tactics, resources, timeline, risks, stakeholders, and ethical considerations.

### **Prepare for the Pitch (Hack Session 4):**

- Familiarise yourselves with the criteria upon which your solution will be evaluated.
- Assign responsibilities and spokespersons within your team.
- Structure your 4-minute pitch effectively for maximum impact.
- Polish your presentation through practice.

## **2.5. JUDGING CRITERIA**

**CHANGE:** Bold and strategic, showing potential to change the status quo (law, policy, culture and public perception).

**HUMILITY:** Respects people with lived experience as experts, drivers, and catalysts of change.

**ACHIEVABLE:** Clearly defined plan and strategy to make change.

**NOVEL:** Using legal action and advocacy in original, creative and innovative ways.

**GROUNDING:** Grounded in lived experience by addressing barriers of discrimination and injustice, in particular multi-layered disadvantage and discrimination.

**EVIDENCE:** Informed by research, data and evidence of need.

## **2.6. POTENTIAL FOCUS AREAS**

- How might we ensure holistic services for children in youth detention, including legal advocacy, health care and rehabilitation services?
- How might we enforce appropriate duty of care standards to ensure that children are not held in inhumane conditions including the prevention of the use of solitary confinement?
- How might we build an effective system of monitoring the rights of children in detention and care compliant with the Rights of the Child and Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment?

## **2.7. YOUR MENTORS**

Your mentors will be available throughout the day. You can consult a mentor at any time to get feedback, insight and reflections on your problem and solution.

### **Dr Paul Gray**

Paul Gray is a member of the Wiradjuri nation from Central New South Wales. Paul has considerable experience in advocacy, research and publishing extensively in the field of Indigenous child protection and wellbeing. Paul leads the Indigenous child protection hub at the UTS Jumbunna Institute of Indigenous Education and Research, working closely with First Nations families and advocates to critically examine and reimagine contemporary child protection systems and practice.

### **Dr Teresa (Terri) Libesman**

Terri Libesman is an associate professor in Law at UTS. She's a researcher and writer working in the fields of children and the law, and Indigenous peoples and the law. Her work engages with the meaning and implementation of human rights with respect to child welfare, focusing on national and comparative international models for Indigenous children's wellbeing.

### **Professor Craig Longman**

Craig Longman is a Barrister and the Head of Legal Strategies at the UTS Jumbunna Institute for Indigenous Education and Research at UTS. He has worked extensively with First Nations clients, including on high profile human rights matters such as the defence of Lex Wotton arising from the Palm Island unrest in 2004, the Bowraville murders, Black Lives Matter, First Nation deaths in custody inquiries, and the inquest into the death in custody of David Dungay in 2015.

### **James Beaufils**

James Beaufils is a member of the Gundungurra nation from the Pejar area of Eastern NSW, and Kanak from New Caledonia. James is a Research Fellow and PhD candidate at the UTS Jumbunna Institute of Indigenous Education and Research, and the Faculty of Law. He has examined the access and educational attainment of young people who are incarcerated and

supervised in Secure Children's Homes. James is now working closely with Aboriginal children's organisations on his doctoral thesis exploring the experiences of Aboriginal people in the NSW Out-of-Home Care system.

### **Professor Thalia Anthony**

Thalia Anthony is a Professor of Law at UTS. Her research looks at the legacy of colonisation and systemic racism in legal institutions, examining the role of criminal laws and procedures in reproducing social relations and enforcing dispossession. She also has expertise in relation to First Nations Stolen Wages claims, legal redress for the Stolen Generations, the harms of carceral systems, and coercive controls of First Nations homelands, housing and mobility.

### **George Newhouse**

George Newhouse is co-founder and principal solicitor of the National Justice Project, as well as an Adjunct Professor of Law at UTS and Macquarie University. George has worked extensively in strategic litigation for social justice, working tirelessly to support those who are least able to access justice to advance human rights.

For more than a decade, George has advocated for reform to the youth detention system. He has led a number of cases against abuses of children's human rights in youth detention, healthcare, prisons, policing and out-of-home care.

## **2.8. YOUR JUDGES**

### **Professor Robynne Quiggin**

Robynne Quiggin is a Wiradjuri lawyer and consultant. Robynne holds various roles including Pro Vice-Chancellor (Indigenous Leadership and Engagement) at UTS. Robynne served as Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner at the Australian Human Rights Commission from 2016-2017.

### **Tony McAvoy SC**

Tony McAvoy is a member of the Wirldi nation of the Clermont region in Central Queensland and became Australia's first Indigenous Senior Counsel in 2015.

Tony chairs various professional committees including the New South Wales Bar Association's First Nations Committee and the Law Council of Australia's Indigenous Legal Issues Committee. He has given evidence and contributed to numerous parliamentary inquiries and events, including in including First Nations over-incarceration, treaties and truth commissions, First Nations heritage protection, constitutional reform, human rights and climate change.

### **Latoya Rule**

Latoya Rule is a member of the Wiradjuri nation from Central New South Wales, and Te Ātiawa people from New Zealand. Latoya is a Takatāpui (Queer) Research Associate and PhD Candidate at UTS Jumbunna Institute for Indigenous Education and Research, as well as a writer and campaigner. Since the 2016 death in custody of her brother Wayne Fella Morrison, Latoya has led the National Ban Spit Hoods Coalition, campaigning to establish a legislated ban on spit hoods nationwide.

## 2.9. EVENT SCHEDULE

WELCOME & INTRODUCTION	
8:30am	Arrival, Coffee Cart, Registration
9:00am	Acknowledgement of Country: Aunty Glendra Stubbs
9:10am	Keynote Address: Tony McAvoy SC
9:30am	Housekeeping & Instructions
MORNING HACK	
9:45am	Hack Session 1 & 2: Teamwork
Ongoing	Mentor Consultations: Expert mentors are available throughout the day
LUNCH & PLENARY	
12:30pm	Lunch
1:15pm	Plenary: Prof. Craig Longman
AFTERNOON HACK	
13:30pm	Hack Session 3 & 4: Teamwork
Ongoing	Mentor Consultations: Expert mentors are available throughout the day
PITCHING & CELEBRATION	
4:00pm	Strategy Pitches: 4-minute pitch with 3-minutes Q&A
5:00pm	Judges confer
5:15pm	Outcome announced and prizes awarded
5:20pm	Closing remarks: George Newhouse – Director, National Justice Project
5:30pm	Networking and Celebration event
6:30pm	Event Close

## 3. GLOSSARY

**ACCos:** Aboriginal Community-Controlled Organisations

**AHRC:** Australian Human Rights Commission

**AIC:** Australian Institute of Criminology

**AIHW:** Australian Institute of Health and Welfare

**ALRC:** Australian Law Reform Commission

**ATSICPP:** Aboriginal and Torres Strait Islander Child Placement Principle



**Beijing Rules:** United Nations Standard Minimum Rules for the Administration of Juvenile Justice

**CHART:** Changing Habits and Reaching Targets

**CRC:** Convention on the Rights of the Child

**CRPD:** Convention on the rights of Persons with Disabilities

**Havana Rules:** United Nations Rules for the Protection of Juveniles Deprived of their Liberty

**HRLC:** Human Rights Law Centre

**ICCPR:** International Convention on Civil and Political Rights

**ICERD:** International Convention on the Elimination of All Forms of Racial Discrimination

**ICESCR:** International Covenant on Economic, Social and Cultural Rights

**Nelson Mandela Rules:** United Nations Standard Minimum Rules for the Treatment of Prisoners

**NT Royal Commission:** Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory.

**OOHC:** Out-of-home care

**OPCAT:** The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

**Riyadh Guidelines:** United Nations Guidelines for the Prevention of Juvenile Delinquency 1990.

**UN:** United Nations

**UNDRIP:** United Nations Declaration on the rights of Indigenous Peoples

## 4. RIGHTS OF THE CHILD

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### 4.1. LAW

#### 4.1.1. Key International Treaties and Instruments – An Overview

##### Convention on the Rights of the Child (CRC)<sup>1</sup>

The CRC is the main international human rights treaty that details the civil, political, economic, social and cultural rights of every child. The CRC is the most widely ratified human rights treaty in the world. The rights afforded within the CRC are monitored through the United Nations (UN) Committee on the Rights of the Child.

Countries that have ratified the CRC have an obligation to report to the Committee within two years of ratification and usually every five years thereafter. Within the reports, State parties are to comment on the steps they have taken to put the Convention into effect and on progress in the enjoyment of children's rights. Australia's most recent [submission](#) to the Committee was on 15 January 2018 (upcoming report is due to be submitted on 15 January 2024).

Domestically, the dominant way the report is prepared is through the co-ordination of the Commonwealth Attorney General's Department. The Attorney General's Department will consult states, territories and relevant government departments. Community members are usually consulted in the process as well. After consultations and the collating of information and evidence, the Attorney General will then report to the Committee.

Relevant articles within the CRC include:

- Article 3.1 – 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration';
- Article 19.1 – 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child';
- Article 37.1 – 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment';
- Article 37.2 – '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';
- Article 37.3 – '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';
- Article 44 – 'States must submit to the Committee reports on the measures they have adopted which give effect to the rights recognised herein and, on the progress, made on the enjoyment of those rights:
  - Within two years of the entry into force of the Convention for the State Party concerned;
  - Thereafter every five years'.

### **United Nations Declaration on the rights of Indigenous Peoples (UNDRIP)<sup>2</sup>**

Adopted in 2007, the UNDRIP is the most comprehensive international instrument on the rights of First Nations Peoples. The UNDRIP establishes a universal framework of minimum standards for the survival, dignity and well-being of First Nations Peoples globally and elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situations and circumstances of First Nations people.<sup>51</sup> The UNDRIP sets out fundamental principles for addressing historical injustices and fostering respect for unique cultures, traditions and lands, and specifically provides for the right to self-determination<sup>52</sup> and a life free of discrimination,<sup>53</sup> as well as the right to liberty and security of person,<sup>54</sup> the right to the highest attainable standard of health<sup>55</sup> and the right to effective remedy.<sup>56</sup>

Australia endorsed the UNDRIP in 2009, after originally voting against its adoption in 2007. While declarations are not legally binding, certain declarations, including the UNDRIP (and the

UDHR), are considered binding to the extent that they reflect and build on existing well-established human rights obligations in international treaty and customary law. Despite its obligations, Australia has yet to incorporate the UNDRIP principles into domestic legislation.

Relevant articles include:

- Article 7.2 – ‘Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to an-other group.’
- Article 14.2 – ‘Indigenous individuals, particularly children, have the right to all levels and forms of educa-tion of the State without discrimination.’
- Article 14.3 – ‘States shall, in conjunction with indigenous peo-ples, take effective measures, in order for indige-nous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.’
- Article 17.2 – ‘States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of ed-ucation for their empowerment.’
- Article 22.1 – ‘Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.’
- Article 22.2 – ‘States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.’

### [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#)<sup>3</sup>

The ICESCR was adopted by the UN General Assembly in 1966. Australia signed the ICESCR in 1972, and ratified in 1975.

The primary purpose of the ICESCR is to recognise and protect a range of essential economic, social and cultural rights for individuals and communities worldwide. These protected rights include the right to work, education, health and an adequate standard of living.

While some rights and protections contained in the ICESCR have been implemented domestically at Commonwealth and state and territory levels, overall implementation has been piecemeal and inconsistent across jurisdictions.

As a signatory, Australia has reporting obligations to the Secretary-General of the UN. Australia’s fifth report was submitted in 2016, with the sixth report due in [September 2023](#).

Articles relevant to the rights of the child include:

- Article 10 – ‘The States Parties to the present Covenant recognize that:
  - 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its

establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.'
- Article 14.4 – 'In the case of juvenile persons, the [criminal legal] procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.'
- Article 24.1 – 'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.'
- Article 24.2 – 'Every child shall be registered immediately after birth and shall have a name.'
- Article 24.3 – 'Every child has the right to acquire a nationality.'

### International Convention on Civil and Political Rights (ICCPR)<sup>4</sup>

The ICCPR, as adopted by the UN in 1966, sets out to establish and safeguard a wide range of fundamental civil and political rights for individuals. Some of the key protected rights include freedom of expression, religion and due process.

Despite signing the ICCPR in 1972 and ratifying it in 1980, Australia has not adopted the ICCPR into domestic law (although some rights and protections have been implemented domestically at Commonwealth and state and territory levels, albeit inconsistently).

Signatories have an obligation to report to the UN Human Rights Committee. An initial report became due one year after implementation, with reports thereafter required whenever requested by the Committee. The sixth Australian report under the ICCPR was submitted in 2016, with the seventh report due in [2026](#) (initially due in [2023](#)).

Relevant articles include:

- **Article 10.1** – 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'
- **Article 10.2** – '(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.'

- **Article 10.3** – ‘The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.’
- **Article 24** –
  - ‘1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
  - 2. Every child shall be registered immediately after birth and shall have a name.
  - 3. Every child has the right to acquire a nationality.’

### **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**<sup>5</sup>

ICERD is a crucial international human rights treaty with the primary purpose of combating and eliminating all forms of racial discrimination. Adopted by the UN in 1965, ICERD aims to promote equality among all individuals, regardless of race, ethnicity or nationality. Australia ratified ICERD in 1975, and implemented domestic racial discrimination legislation with the [Racial Discrimination Act 1975 \(Cth\)](#).

Parties to ICERD are required to submit a report to the UN Committee on the Elimination of Racial Discrimination within one year initially, and every two years thereafter. The 18<sup>th</sup>-20<sup>th</sup> Australian report under the ICERD was submitted in 2017, the 21<sup>st</sup>-22<sup>nd</sup> report was due in [October 2020](#).

No articles specifically refer to the rights of the child, however the instrument as a whole protects the rights of children, and their families and communities, who may be susceptible to discrimination or infringement of rights due to race, ethnicity or nationality.

### **Convention on the rights of Persons with Disabilities (CRPD)**<sup>6</sup>

The purpose of the CRPD treaty is to ensure the full and equal enjoyment of human rights and fundamental freedoms for people with disabilities. Some of the fundamental rights protected by the CRPD include non-discriminatory access to civil and political freedoms, accessibility and equal participation, and independent living and inclusion in the community.

The CRPD was adopted by the UN in 2006, and ratified by Australia in 2008. Parts of the CRPD are implemented domestically within the [Disability Discrimination Act 1992 \(Cth\)](#), however full implementation has not yet been accomplished. Similar to ICERD, state parties are expected to submit reports to the Committee on the Rights of Persons with Disabilities, initially two years after enactment, subsequently every four years. Australia’s [combined fourth and fifth reports](#) are due in 2026.

Articles relevant to the rights of the child include:

- **General Principles:**

- **Article 3.h.** – Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
- **Children with disabilities:**
  - **Article 7.1** – States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
  - **Article 7.2** – In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
  - **Article 7.7** – States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.
- **Respect for home and the family:**
  - **Article 23.3** – States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
  - **Article 23.4** – States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
  - **Article 23.5** – States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

### **United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

Also known as the ‘Beijing Rules’, relevant articles include:

- Rule 67 prohibits solitary confinement;
- Rule 72 provides inspectors should be empowered to conduct inspections (from an independent authority).

### **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**

While monitoring bodies have existed in the past, the OPCAT introduced a particular model of preventative monitoring. It combines monitoring at the international level (by the Subcommittee on Prevention of Torture (SPT)) and at national level (by National Preventive Mechanisms (NPMs)) through unannounced visits to places where individuals are deprived of liberty. Given



that visits by the SPT are likely to be infrequent, [NPMs play a crucial role](#) in ensuring state obligations under the OPCAT are met. As such, the OPCAT explicitly stipulates the legal obligations for state parties concerning the independence, mandate and budgetary resources of NPMs to give effect to their obligations under the OPCAT. Australia ratified the OPCAT on 21 December 2017.

Article 3 of the OPCAT requires states to establish one or more visiting bodies with a role in the implementation of the treaty. Given Australia's federal system of government, the Commonwealth and each state and territory government is required to nominate an NPM to monitor places of detention within their respective jurisdiction. In Australia, the NPM system is coordinated by the [Commonwealth Ombudsman](#). Currently, [New South Wales, Queensland and Victoria](#) are the only remaining jurisdictions without a nominated monitoring body.

Despite Australia ratifying the OPCAT more than half a decade ago, its implementation and compliance at the federal, state and territory levels has been [slow, piecemeal and overall grossly inadequate](#).

Relevant [OPCAT](#) articles include:

- **Article 3** – Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.
- **Article 4.1** – Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence
- **Article 4.2** – For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.
- **Article 17** – Each State Party shall maintain, designate or establish at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralised units may be designated as national preventive mechanisms for the purposes of the present Protocol, if they are in conformity with its provisions.
- **Article 22** – The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

### [OPCAT status by jurisdiction](#)

<b>Commonwealth</b>	
Designated NPM:	<a href="#">Office of the Commonwealth Ombudsman</a>
OPCAT Legislation:	<a href="#">Ombudsman Amendment (National Preventive Mechanism) Regulations 2019 (Cth)</a>

<b>Australian Capital Territory</b>	
Designated NPM(s):	<a href="#">Inspector of Correctional Services</a> <a href="#">ACT Human Rights Commission</a> <a href="#">ACT Ombudsman</a>
OPCAT Legislation:	<a href="#">The Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</a>
<b>New South Wales</b>	
Designated or Proposed NPM(s):	N/A
OPCAT Legislation:	N/A
<b>Northern Territory</b>	
Designated NPMs:	<a href="#">Ombudsman Northern Territory</a> <a href="#">Office of the Children's Commissioner</a> <a href="#">Community Visitor Program</a>
OPCAT Legislation:	<a href="#">Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)</a> <a href="#">Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022 (NT)</a> (Assent: 31 October 2022)
<b>Queensland</b>	
Designated or Proposed NPM(s):	N/A
OPCAT Legislation:	<a href="#">Inspector of Detention Services Act 2021 (Qld)</a> (Assent: 7 September 2022)
<b>South Australia</b>	
Proposed NPM(s):	Official Visitors of Correctional Institutions <a href="#">The Training Centre</a> <a href="#">Visitor Community Visitor Scheme</a>
OPCAT Legislation:	<a href="#">Correctional Services (Accountability and Other Measures) Amendment Act 2021 (SA)</a> <a href="#">OPCAT Implementation Bill 2021 (SA)</a> (did not pass)
<b>Tasmania</b>	
Designated NPM:	Mr Richard Connock ( <a href="#">Ombudsman Tasmania/Inspector of Custodial Services</a> )
OPCAT Legislation:	<a href="#">Custodial Inspector Amendment (OPCAT) Bill 2020 (Tas)</a> (did not proceed following stakeholder consultation phase) <a href="#">OPCAT Implementation Act 2021 (Tas)</a>



<b>Victoria</b>	
Designated or Proposed NPM(s):	N/A
OPCAT Legislation:	<a href="#"><i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i></a> (Assent: 27 September 2022)
<b>Western Australia</b>	
Designated NPM(s):	<a href="#">Office of the Inspector of Custodial Services</a> <a href="#">Ombudsman Western Australia</a>
OPCAT Legislation:	N/A

## **United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

In 2015, the UN expanded upon the 1955 [Standard Minimum Rules for the Treatment of Prisoners](#) and adopted the UN Standard Minimum Rules for the Treatment of Prisoners ('[Nelson Mandela Rules](#)').

These rules are based on the fundamental obligation on states to “treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment”.

The rules provide guidelines for states on how to “protect the rights of persons deprived of their liberty, from pre-trial detainees to sentenced prisoners”. The rules “set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management” (Preliminary Observation 1) and offer guidance on a broad range of areas including the provision of health-care services, education and recreation.

Specific to the rights of children and young people, the rules provide the following:

- “The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.” (Preliminary Observation 4.2)
- “The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus... young prisoners shall be kept separate from adults.” (Rule 11.d))

### **4.1.2. List of Key Legislation – Domestic and International**

#### **International Treaties**

[Convention on the Rights of the Child](#) (1989)

- Article 3
- Article 9

- Article 19
- Articles 20
- Article 37
- Article 40
- Articles 44 – 45 (reporting obligations)

[United Nations Declaration on the Rights of Indigenous Peoples](#) (2007)

- Article 7
- Article 14.2-14.3
- Article 17.2
- Article 18
- Article 19
- Article 22
- Article 24
- Article 34

[International Covenant on Economic, Social and Cultural Rights](#)

- Article 2.2
- Article 10
- Article 13
- Articles 16 – 25 (reporting obligations)

[International Convention on Civil and Political Rights](#)

- Article 10
- Article 9.5
- Article 24
- Articles 40 – 45 (reporting obligations)

[International Convention on the Elimination of All Forms of Racial Discrimination](#)

- Article 1.1
- Article 2.1
- Article 9 (reporting obligations)

[Convention on the rights of Persons with Disabilities](#)

- Article 3
- Article 7
- Article 23.3 – 23.5

- Article 23.2 – 23.5

#### Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

- Article 3
- Article 4.1-4.2
- Article 17
- Article 22

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**‘Beijing Rules’**) 1985. These rules have been adopted by the Committee on the Rights of the Child, and therefore Australia should observe these rules.

- Rule 14.2
- Rule 17.1
- Rule 18.1
- Rule 19

United Nations Standard Minimum Rules for the Treatment of Prisoners (**‘Nelson Mandela Rules’**) UN 2015. Australia has received criticism from the Committee Against Torture for its failure to observe in particular rules around solitary confinement and use of restraints.

- Rule 44

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (**‘Havana Rules’**) 1990. These rules have been adopted by the Committee on the Rights of the Child, and therefore Australia should observe these rules.

- Rule 67
- Rule 72

Guidelines for the Prevention of Juvenile Delinquency 1990 (**‘Riyadh Guidelines’**). These rules have been adopted by the Committee on the Rights of the Child, and therefore Australia should observe these rules.

### **Commonwealth Legislation**

- [Australian Human Rights Commission Act 1986 \(Cth\)](#)
  - This Act contains the functions of the Human Rights Commission relating to the CRC (Part III Schedule 3) and establishes and outlines the role of the National Children’s Commissioner in promoting awareness, respect and the exercise of children’s human rights in Australia (Part IIAA).
- Nationally, the minimum standards for youth justice facilities are set by the [Australasian Juvenile Justice Administrators \(AJJA Standards\)](#). These standards are established in accordance with the appropriate minimum requirements for youth justice facilities identified by the UN instruments.

## State and Territory Legislation

Legislation on youth justice guides criminal justice proceedings for children and young people. Most states and territories have dedicated youth justice Acts, except for the Australian Capital Territory, which has made provisions for youth justice matters in the *Children and Young People Act 2008* (ACT).

### Australian Capital Territory

- [Children and Young People Act 2008 \(ACT\)](#)
- [Crimes \(Sentence Administration\) Act 2005 \(ACT\)](#)
- [Ombudsman Act 1989 \(ACT\)](#): Outlines the responsibilities of the Ombudsman to monitor compliance with the [Crimes \(Child Sex Offenders\) Act 2005 \(ACT\)](#).
- [Human Rights Act 2004 \(ACT\)](#)
- [Human Rights Commission Act 2005 \(ACT\)](#)

### New South Wales

- [Young Offenders Act 1997 \(NSW\)](#)
- [Children \(Community Service Orders\) Act 1987 \(NSW\)](#)
- [Children \(Criminal Proceedings\) Act 1987 \(NSW\)](#)
- [Children \(Detention Centres\) Act 1987](#)
  - [Children \(Detention Centres\) Regulations 2015](#)
- [Law Enforcement \(Powers and Responsibilities\) Act 2002 \(NSW\)](#): Section 136 specifies identification particulars of children under 14 years of age who are in lawful custody for an offence.
  - [Law Enforcement \(Powers and Responsibilities\) Regulation 2016](#): Part 3 Division 3 outlines procedures to be followed when investigating and questioning 'vulnerable persons' (which includes children (s 28(1)(a))).
- [Anti-Discrimination Act 1977 \(NSW\)](#)

### Northern Territory

- [Youth Justice Act 2005 \(NT\)](#)
  - [Youth Justice Regulations 2006](#)
- [Criminal Code Act 1983 \(NT\)](#): Part IIAA, Division 3, Subdivision 1: Lack of capacity of children.
- [Anti-Discrimination Act 1992 \(NT\)](#)

### Queensland

- [Youth Justice Act 1992 \(Qld\)](#)
  - [Youth Justice Regulation 2016](#)

- [\*Human Rights Act 2019 \(Qld\)\*](#)

### South Australia

- [\*Young Offenders Act 1993 \(SA\)\*](#)
  - [\*Youth Offenders Regulations 2008\*](#) [ceased]
- [\*Youth Justice Administration Act 2016 \(SA\)\*](#)
  - [\*Youth Justice Administration Regulations 2016\*](#)
- [\*Equal Opportunity Act 1984 \(SA\)\*](#)
- [\*Disability Inclusion Act 2018 \(SA\)\*](#)

### Tasmania

- [\*Youth Justice Act 1997 \(Tas\)\*](#)
  - [\*Youth Justice Regulations 2019\*](#)
- [\*Anti-Discrimination Act 1998 \(Tas\)\*](#)

### Victoria

- [\*Corrections Act 1986 \(Vic\)\*](#)
- [\*Sentencing Act 1991 \(Vic\)\*](#)
- [\*Children, Youth and Families Act 2005 \(Vic\)\*](#): Chapter 5 Children and the criminal law.
- [\*Charter of Human Rights and Responsibilities Act 2006 \(Vic\)\*](#)
  - [\*Charter of Human Rights and Responsibilities \(Public Authorities\) Regulations 2013\*](#)
  - [\*Charter of Human Rights and Responsibilities \(General\) Regulations 2017\*](#)
- [\*Equal Opportunity Act 2010 \(Vic\)\*](#)

### Western Australia

- [\*Young Offenders Act 1994 \(WA\)\*](#)
  - [\*Young Offenders Regulations 1995 \(WA\)\*](#)
  - [\*Young Offenders \(Custodial Officers Drug and Alcohol Testing\) Regulations 2016\*](#)
- [\*Equal Opportunity Act 1984 \(WA\)\*](#)
  - [\*Equal Opportunity Regulations 1986 \(WA\)\*](#)

## **4.2. YOUTH DETENTION OVERVIEW**

The strong link between contact with child ‘protection’ services and experiences of long-term socio-economic disadvantage, adverse health outcomes and subsequent and repeat contact with the legal system is well established.<sup>7</sup> Despite this, Aboriginal and Torres Strait Islander children continue to be disproportionately over-represented in the out-of-home care (OOHC)

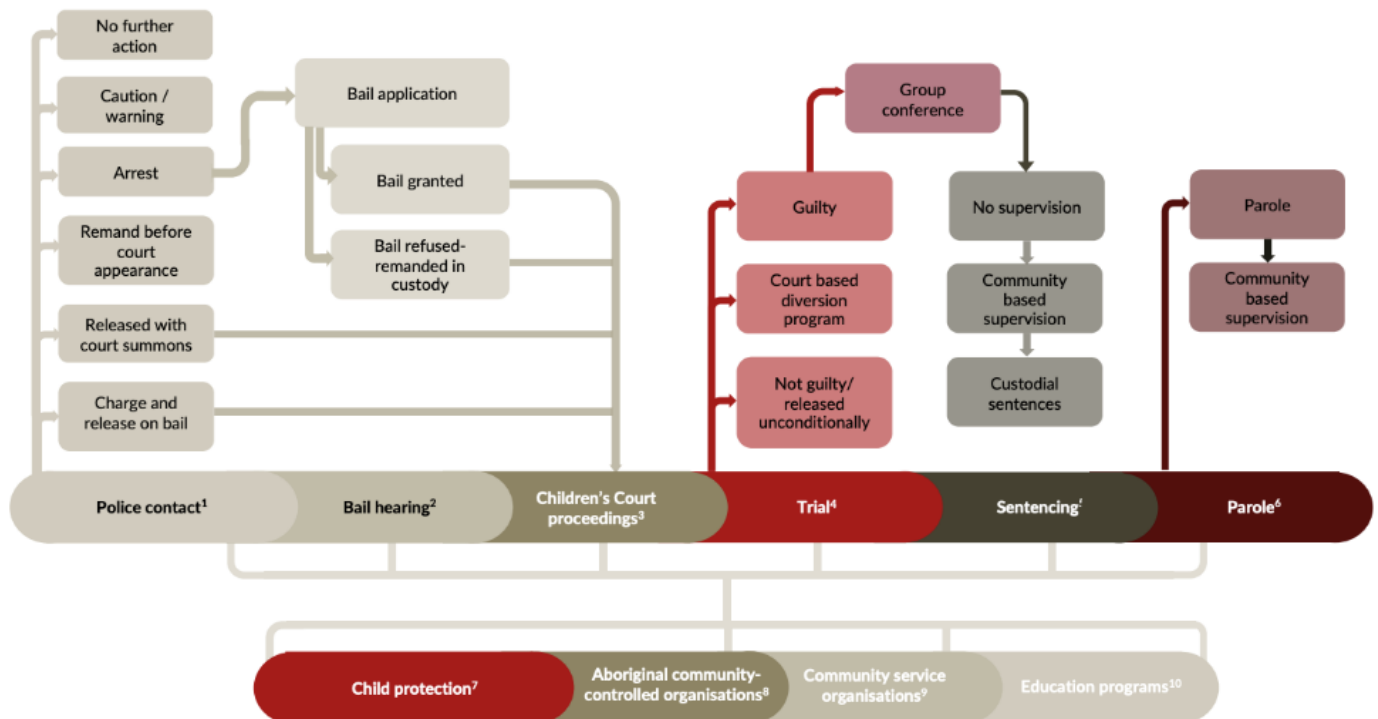
and legal systems in every jurisdiction in Australia. This over-representation is a direct result of the persistent systemic issues that plague the operation of Australia's public systems.

Ongoing connection to kin, community, culture and Country has been proven critical to the social and emotional wellbeing of Aboriginal and Torres Strait Islander children.<sup>8</sup> Despite this, Aboriginal and Torres Strait Islander children spend longer periods in OOHC<sup>9</sup> and are less likely to be reunified with their families when compared with their non-Indigenous counterparts.<sup>10</sup> The rate of permanent care and adoption orders for Aboriginal and Torres Strait Islander children is high and escalating, with a significant majority being placed with non-Indigenous adoptive parents.<sup>11</sup> The rate of Aboriginal and Torres Strait Islander children placed with kin rather than non-Indigenous family has also been steadily declining since 2006.<sup>12</sup>

The intersection of these and other factors, including inadequate, discriminatory and culturally unsafe health care, education and other services, puts Aboriginal and Torres Strait Islander children and young people at unacceptable risk of coming into contact with police and the criminal justice system at a young age.

## Overview of youth justice in Australia

Each state and territory in Australia has its own youth justice legislation, policies and practices. However, the general processes by which a child or young person is charged or sentenced and the types of orders available to the court are similar.



*Across each stage there are diversionary processes available that can prevent a child from progressing further into the youth justice system, for example police and court-based diversion.*

25

Source: [Save the Children](#) (2023)

### 4.2.1. Contemporary Landscape and Critique

Systemic racism, including racial profiling and other discriminatory police and court practices directly contributes to the criminalisation and over-incarceration of Aboriginal and Torres Strait Islander children and young people.<sup>13</sup> Aboriginal and Torres Strait Islander children and young

people are more likely to be targeted and subject to racially biased and illegitimate police surveillance, monitoring<sup>14</sup> and strip searches.<sup>15</sup> Aboriginal and Torres Strait Islander children and young people are also more likely to be charged, refused bail, convicted and sentenced<sup>16</sup> and are 187% more likely to reappear in court.<sup>17</sup>

Aboriginal and Torres Strait Islander children and young people are imprisoned at [22 times](#) the rate of their non-Indigenous counterparts. Despite comprising 6% of the total population of children aged 10-17 years, Aboriginal and Torres Strait Islander children account for [54%](#) of all children in youth prisons.

Actual criminal offending by children is predominantly non-violent<sup>18</sup> with more than 50% of crimes relating to theft, burglary or property related offences.<sup>19</sup> A snapshot of children in youth prisons reveals that, at any one time, more than half are on remand without having been convicted or sentenced.<sup>20</sup>

## **Raising the age of criminal responsibility**

Children are entitled to special protection due to their age.<sup>21</sup> Despite this fact, across all Australian jurisdictions the minimum age of criminal responsibility is set at [10 years of age](#) – an age that disproportionately impacts Aboriginal and Torres Strait Islander children. In [2019-2020](#) alone, 499 children aged between 10 and 13 were imprisoned, and of these 65% are Aboriginal and Torres Strait Islander children.

In 2019, the UN Committee on the Rights of the Child specifically recommended that Australia raise the minimum age of criminal responsibility from 10 to 14 years,<sup>22</sup> a call reiterated by the Universal Periodic Review in 2021.<sup>23</sup>

As at September 2023, the [Australian Capital Territory](#)<sup>24</sup> and [Victoria](#) are the only jurisdictions to commit to raising the age of criminal responsibility to 14 years. [Tasmania](#) has committed to raising the age of detention (rather than criminal responsibility) to 14 years. However, all three commitments include exemptions for certain offences and delayed implementation of reforms (raising the age to 12 years initially, then 14 years).

It should be noted that while the ACT has committed to raising the age of criminal responsibility to 14 years, the age will only be raised to 12 years upon commencement of the [Justice \(Age of Criminal responsibility\) Legislation Amendment Bill 2023 \(ACT\)](#) and then subsequently raised to 14 by 1 July 2025. Additionally, the ACT legislation includes [exceptions](#) for children aged 12 and 13, who, if they commit “exceptionally serious and intentionally violent offences” can still be held criminally responsible.

The [Victorian government](#) has made a similar commitment to raise the age of criminal responsibility to 12 years by late 2024 and 14 years by 2027 – with exemptions for certain serious offences.

As for [Tasmania](#)’s commitment, the parameters around this commitment have not been adequately outlined and are not set to be legislated until the end of 2024. Similar exceptions for certain offenses outlined by the ACT legislation are also expected for Tasmania.

In the meantime, we have yet to see similar commitments from the remaining States and Territories as they continue to lag defiantly behind.<sup>25</sup>



## **The criminalisation and over-incarceration of children with disability and mental ill-health**

More than one in five children live with disability and it is accepted that these figures are under-representative.<sup>26</sup>

Incarceration also disproportionately impacts children and young people living with disability. When race and disability intersect, young people face a double disadvantage. Aboriginal and Torres Strait Islander children living with cognitive and/or psychosocial disability are more likely to be criminalised<sup>27</sup> and have substantially higher rates of contact with police than their non-indigenous counterparts. Aboriginal and Torres Strait Islander children who have been imprisoned also face higher rates of violence and abuse by prison staff and police.<sup>28</sup>

Nationally, over 75% of imprisoned children and young people are living with one or more mental illnesses.<sup>29</sup> The causal link between incarceration and poor mental health is well established, with some studies showing that one third of incarcerated youth diagnosed with depression experienced its onset following incarceration.<sup>30</sup> For Aboriginal and Torres Strait Islander children and young people in particular, the additional trauma from exposure to institutional violence, abuse and neglect coupled with removal from family, kin and Country has been found to further exacerbate these risks.<sup>31</sup>

People living with disability and experiencing mental ill-health, and children in particular, should be supported through culturally appropriate community-based responses, with a focus on prevention, diversion and support rather than punishment. Children and young people with disability and mental ill-health, and their families, are particularly vulnerable to inadequate, discriminatory and culturally unsafe health care, education and other services provided in custodial (and non-custodial) settings. The lack of adequate and culturally safe care and services, particularly in custodial settings, constitutes cruel, inhumane and degrading treatment, and violates Australia's domestic and international laws and obligations.<sup>32</sup>

### **4.2.2. Ensuring children have access to and receive holistic services in youth detention**

In Australia, States and Territories are responsible for the implementation and delivery of services in youth detention centres. For this reason, the States and Territories may differ on the specific programs and health practitioners available in their youth detention centres. Across jurisdictions youth detention centres each provide access to legal services, health services and rehabilitation programs which aim to rehabilitate the young offender and reduce the likelihood of reoffending.

Despite youth detention centres claiming to offer a myriad of support services, children and young people who have spent time in youth detention centres have described [poor living conditions](#), such as not being given fresh clothing, being locked in their rooms for up to [23 hours](#) a day, and restricted access to services. The isolation units at Don Dale Youth Detention Centre (NT) have been [described as filthy, dark, hot and lacking airflow and running water](#).

Youth detention centres have repeatedly failed to protect children and young people and provide children and their families the support they need. The Australian Human Rights Commission (**AHRC**) have recently highlighted that youth detention centres across Australia,



particularly in Western Australia, Tasmania and the Northern Territory, are [failing](#) to promote the safety and wellbeing of children in their care and criticised the repeated failure to implement key recommendations from various Royal Commissions, including the [Royal Commission into Aboriginal Deaths in Custody \(RCIADIC, 1991\)](#) [Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory \(NT Royal Commission, 2016-17\)](#).

A significant proportion of the children and young people in custody have often faced disadvantage including challenging home circumstances, histories of familial offending, exposure to family violence, unstable accommodation or homelessness and socio-economic disadvantage or poverty.<sup>33</sup> [Children in custody](#) are more likely to have poor physical and mental health, reduced cognitive ability and be parents themselves. Aboriginal and Torres Strait Islander children and young people are [over-represented](#) in custody, as are children and young people from culturally and linguistically diverse backgrounds.

The urgent need to overhaul youth detention systems across Australia is well documented. Despite this fact, key findings and recommendations for reform continue to be ignored and unimplemented, and children are continuing to be let down by federal, state and territory governments.

## **Services**

### Health services

As States and Territories are responsible for their own youth detention centres, the types of services and the process of accessing services will differ. However, across jurisdictions, when a child or young person enters a youth detention centre, they should be supported by a range of services. For example, in [NSW](#), health services available to children and young people in custody include:

- Specialised services offered by psychologists including assessments for mental health and disability and counselling.
- Health services including health assessments, dental care, mental health interventions and medication management.
- Access to nurses, visiting local doctors, hospitals, medical and dental services, alcohol, and other drugs counsellors.

### Legal services

Information on access to legal services is very limited. Children in detention are vulnerable and face distinct legal problems. The process for children and young people to access a lawyer is similar across jurisdictions, with most youth detention centres requiring 24-hour notice that the lawyer will be attending. Youth detention centres provide court services to ensure children and young people are aware of their next court date and assist in their attendance either in-person or via a video call.

### Rehabilitation services

Each youth detention centre uses a different approach to the rehabilitation of children in their care.

While social, health and education services and support programs are an important part rehabilitation, the quality of services and the environment in which they are being provided are not conducive to rehabilitation. According to the former Queensland Correctives Services director-general [Keith Hamburger](#):

*“The placing of children in youth detention centre is ineffective because it's not a holistic approach to their needs... the fact that there is recidivism and people graduating to adult jails means the system is ineffective and failing.”*

## **Intervention programs**

Changing Habits and Reaching Targets (**CHART**) is the primary intervention program used in Australian youth detention centres. CHART is a cognitive behavioural therapy program delivered by caseworkers to children and young people who require moderate to high intervention and is intended to reduce the risk of re-offending.<sup>34</sup>

However, the North Australian Aboriginal Justice Agency (**NAAJA**, 2017) reported that:<sup>35</sup>

*“The program has limited efficacy for the youth detainees in Darwin, most of whom are Aboriginal.*

*The program’s focus on self-reflection and revisiting the past is difficult for cultural reasons and its reliance on worksheets is also problematic as participants may not have the required literacy skills to complete the modules. These factors inhibit participation and increase feelings of shame and inadequacy.*

*Participation is low due to resourcing limitations and the small number of eligible participants, and the program has not been available to any detainees this year.”*

The breadth and quality of rehabilitation programs provided in youth detention centres across Australia can vary depending on the facility and/or jurisdiction. Types of [programs and services](#) may include:

- Case management services to assess individual risks and needs and assist with custodial release plans.
- Social, recreational, and sporting programs.
- Offence-specific and therapeutic programs, such as alcohol and drug use and/or dependence, anger management, stress management and trauma.
- Life skills programs, such as goal setting, budgeting, cooking and healthy eating.
- Mentoring programs, cultural support, spiritual and religious support and legal services.
- Cultural support programs for Aboriginal and Torres Strait Islander children and young people, including mentoring and maintaining connections with family, kin and community.

### *Programs in NSW:*

- X-Roads is designed for people experiencing dependence on or problematic use of alcohol and other drugs (delivered individually).
- Dthina Yuwali is an Aboriginal-specific alcohol and other drugs program (delivered in a group).

- My Journey My Life is designed for young Aboriginal males and addresses violence in relationships and [deconstructing and exploring masculinity](#) (delivered individually or in a small group)
  - My Journey, My Life (Yinnar) is specifically for young women.

*Programs in [Victoria](#):*<sup>36</sup>

- [Male Adolescent Program for Positive Sexuality](#) (MAPPS) is a mandatory intensive group treatment program for young males who have been convicted of a sexual offence.
- The Adolescent Violence Intervention Program (AVIP-2) is a cognitive behavioural therapy intervention program for program for young people who have been convicted of violence related offences.<sup>37</sup>
- On Track is a program for young people who have been convicted of motor vehicle related offences.<sup>38</sup>

*Programs in [Queensland](#):*

- [Transition to Success](#) is an education, training and employment program for children and young people over 15 years, who are in the system or at risk of coming into contact with the system.
- [Aggression Replacement Training](#) Program is mandatory for children and young people who have been convicted of a violent offence or referred by Youth Justice for showing violent behaviour.
- [Emotional Regulation and Impulse Control](#)<sup>39</sup> includes mindfulness, emotional literacy, flexible thinking, tolerating discomfort, decision making, and image and identity.
- Black Chicks Talking is a cultural program for Aboriginal and/or Torres Strait Islander young women.

*Programs in [Western Australia](#):*

- [Youth Justice Mentoring](#) is a post-release mentoring program for children aged 10-17 years (on referral from the Department of Youth Justice).
- [Youth Supervised Treatment Intervention Regime](#) is a treatment program for children aged 10-17 years experiencing dependence on or problematic use of drugs who plead guilty to an offence, and who would normally receive a fine or community based order (conditional on regular negative drug screens).

*Programs in [South Australia](#):*

- [Case management](#) (structured around sentencing conditions, restrictions and other requirements).
- [Adelaide Youth Training Centre - Kurlana Tapa](#) provides pre-release transition planning and goal setting case plans.
- [Youth Justice Psychology Services](#) limited to “criminogenic” assessment and intervention. By referral only and preference given to children and young people convicted of serious offences and/or at high-risk of reoffending.

*Programs in [Tasmania](#):*

- Provides some support from youth workers in community aimed at reducing reoffending (and limited support provided while in custody).
- No specific programs listed.
- External: 54 Reasons – Save the Children Supporting Young People on Bail is a voluntary program that works with young people 12-18 years who are on bail awaiting sentencing.<sup>40</sup>

*Programs in the [Australian Capital Territory](#).<sup>41</sup>*

- Provides general case management and offence specific intervention based on the CHART program delivered within the youth detention centre and in community.
- Employs a designated Family Engagement Officer, who supports engagement between young people and families, and works with case managers and community service providers. The Murrumbidgee School at Bimberi also has an Aboriginal and Torres Strait Islander Transition Officer, who facilitates the transition into appropriate training, education or employment options.
- [After hours bail support service](#) for young people not in Bimberi and instead on bail orders, CYPS provides a service to support them to comply with their bail conditions. This service also assists young people in police custody by arranging suitable community-based options as an alternative to custody and Bimberi.
- No specific programs listed that are currently operating.<sup>42</sup>

*Programs in the [Northern Territory](#).<sup>43</sup>*

- [Safe, Sober, Strong Program](#) (also provided to adults).
- Step Up Violence Program.
- Changing Habits and Reaching Targets (CHART).
- The Seek Education or Employment not Detention Program (SEED).
- Also provides general case management from Youth Outreach and Re-Engagement Officers, based on the [Model of Care](#) approach, and the [Youth bush camps](#) and [Community Work Order Program](#) (unpaid), both aimed at reducing offending.<sup>44</sup>

Recently, the [Commission for Children and Young People](#) (Victoria, 2021) reported that:<sup>45</sup>

- Aboriginal children and young people told the Commission about the absence of effective, early services and supports throughout their childhood. Some reported no early supports available at all, others reported services were available, but at capacity/inaccessible due to location or age restrictions. This meant younger age groups went without access to the interventions and services they needed.
- 90 children and young people talked to the Commission about their first contact with police and the youth justice system. 72% were under 14 at the time of first contact.

- In 2018, 43% of Aboriginal children and young people in Victoria who were processed by police for alleged offending were aged 10 to 14 years, compared to only 28% of non-Aboriginal children and young people in the same age group.
  - 42% of children and young people who spoke to the Commission about their first contact with police referred to negative experiences that made them feel upset, scared, angry and/or disrespected. Many reported mistrust or dislike of the police as a result. Some explicitly mentioned racism and many spoke about police violence or mistreatment in their first contact.
- They indicated their treatment by police worsened over time. Several said that once they had a 'reputation' or were known to police, their rate of contact increased. They also reported being harassed and targeted by police.
  - In 2019, 57% of Aboriginal children aged 10 to 13 years recorded by Victoria Police for an incident had also been recorded for an earlier incident within the previous 12 months, compared with 36% of non-Aboriginal children in the same age group.
- The cautioning rate for Aboriginal children and young people in Victoria declined from 14.6% of outcomes in 2008 to 3.9% of outcomes in 2015, while the proportion of arrests increased over the same period. Data from the Crimes Statistics Agency shows that between January 2018 and December 2019 Aboriginal children and young people aged 10 to 17 years were cautioned in 13% of incidents compared to 21% of incidents involving non-Aboriginal children and young people. This is important given that most children and young people who are effectively cautioned will not have further contact with the criminal justice system.
  - Aboriginal children and young people are substantially over-represented in arrests. In 2018 and 2019, 47% of incidents involving Aboriginal children and young people resulted in arrest, compared to 35% of incidents involving non-Aboriginal children and young people.
- Over 70% of the children and young people the Commission consulted spoke about racism, mistreatment or violence by police. These allegations raise significant human rights issues.<sup>58</sup> mentioned physical and emotional mistreatment by police, including violence and sexually abusive behaviour. This included tightening of handcuffs, unnecessary use of capsicum spray, verbal threats, yelling and swearing, and unsafe conditions in police vans.
- Between 2014–15 and 2018–19, the number of Aboriginal children and young people held on remand in Victoria on an average day almost doubled.
  - Thirty-five children and young people told the Commission about having a difficult time on bail, mainly in relation to complying with bail conditions such as curfews, not being allowed to associate with friends or family members, and having to report to police or Youth Justice. The overwhelming feedback from children and young people was that bail conditions set them up to fail, making it very difficult to conduct a normal life, including going to school and spending time with family.

- While some Aboriginal children and young people told the Commission that they felt respected in the mainstream Children's Court, others found court confusing, stressful, disempowering and difficult to understand.
  - The Children's Koori Court has the capacity to positively engage Aboriginal children and young people in the criminal legal process, and to support them to address offending behaviour in a culturally and age-appropriate manner. It also has the potential to improve connections and referrals to culturally strengthening services. Aboriginal children and young people told the Commission they were able to participate freely and meaningfully in Children's Koori Court proceedings and valued the strong guidance of Elders. However, there is limited availability in the Children's Koori Court across the state.
- Most Aboriginal children and young people access mainstream legal services, rather than specialist services that have been designed to be both culturally safe and child centred. Aboriginal children and young people reported to the Commission that they have mixed experiences with legal assistance services, and a large proportion did not have a good understanding of the legal process they were involved in.
  - Aboriginal-led services respond directly to local communities and have the capacity to link Aboriginal children and young people with critical supports and cultural resources that address their individual needs and aspirations. The Commission welcomes the Victorian Government's allocation of resources to re-establish Balit Ngulu, a specialist legal service for Aboriginal children and young people
- The Commission found that Aboriginal children and young people inside Victorian youth detention centres also experience violence and the use of force at unacceptably high rates. In 2018–19, Aboriginal children and young people were alarmingly overrepresented in relation to injury as a result of a serious assault in custody.
- In 2018 and 2019, force and restraints were used against Aboriginal children and young people in Victorian youth detention centres in 1,689 incidents; more than twice a day, each day
  - The use of handcuffs on Aboriginal girls and young women was disproportionately high, accounting for 48% of incidents involving girls and young women.

#### 4.2.3. Enforcing appropriate duty of care standards to ensure that children are not held in inhumane conditions

In Australia, youth justice is the responsibility of state and territory governments, and each jurisdiction has its own legislation, policies, and practices.

A duty of care is the legal duty to take reasonable care to avoid harm. In each state the relevant department or agency is responsible for ensuring child wellbeing and safety. For example, in



NSW that is the Department of Communities and Justice (previously known as FACS or DOCS). The following table details for each state which body is responsible for providing services:

**Table 2.1: Governance of youth justice health services, 2017**

State/territory	Youth justice services	Youth justice health services
New South Wales	Department of Justice	Justice Health and Forensic Mental Health Network
Victoria	Department of Justice Health Services	Department of Justice Health Services
Queensland	Department of Justice and Attorney-General	Queensland Health
Western Australia	Department of Corrective Services	Department of Corrective Services
South Australia	Department for Communities and Social Inclusion	South Australia Health
Tasmania	Department of Health and Human Services	Tasmanian Health Service
Australian Capital Territory	Community Services Directorate	Health Directorate
Northern Territory	Territory Families	Department of Health

Table Source: [National data on the health of justice-involved young people: a feasibility study 2016–17](#)

It is the duty of these youth justice services to take reasonable care to avoid children in detention from being harmed and to ensure that the best interests of the child is a paramount consideration in situations involving children in custody. It is the duty of these services to provide support and care in the best interests of the children in their care.

Despite an understanding that children in detention are owed a duty of care and that decisions made in youth detention centres must consider the best interests of the child, it has been reported that children in Australian youth detention centres as young as 10 years old are experiencing treatment such as strip searches, solitary confinement, abuse, neglect and denial of their fundamental human rights.

## Best Interests of the Child

The CRC establishes the principle of 'the best interests of the child' and makes the best interests of the child at least 'a primary consideration' of all actions concerning children and a 'paramount consideration' in certain situations including in child protection and custody.

Notable articles from the CRC are provided below:

CRC Article	Text
<b>Article 9.1</b>	<i>States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision</i>

	<i>must be made as to the child's place of residence.</i>
<b>Article 9.3</b>	<i>States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.</i>
<b>Article 37(a)</b>	<i>No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.</i>
<b>Article 40.4</b>	<i>... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.</i>

The AHRC [Human Rights Brief No 1](#) - Best Interests of the Child notes that:

*“Where the CRC makes the child's best interests the paramount consideration it would be very rare that any other could justify setting aside those interests”.*

Relevant UN instruments following the CRC include:

- the Beijing Rules;
- the Riyadh Guidelines; and
- the Havana Rules.

The notable rules provided in the Beijing Rules are as follows:

<b>Beijing Rules</b>	<b>Text</b>
<b>Rule 14.2</b>	<i>The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.</i>
<b>Rule 17.1(c)</b>	<i>Strongly stipulates that detention is only to be imposed for very serious offending.</i>
<b>Rule 17.1 (b)</b>	<i>Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration.</i>
<b>Rule 17.1 (d)</b>	<i>The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.</i>
<b>Rule 18.1</b>	<i>A large variety of disposition measures allowing for flexibility so as to avoid institutionalisation to the greatest extent possible.</i>
<b>Rule 19</b>	<i>Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be</i>



	<i>outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.</i>
<b>Rule 19.1</b>	(Sentence must be) <i>the minimum necessary period.</i>

At a domestic level the best interests are recognised in federal legislation within the *Family Law Act* but is also included in a majority of the state/territory acts relating to youth incarceration.

However, there are still deficiencies in the enactment of the CRC in Australia. The AHRC notes the key deficiencies in the full implementation of the CRC sentencing principles in Australia as follows:

- 'insufficient and/or inappropriate programs for the rehabilitation of young people and, in particular, the limited availability of drug counselling and rehabilitation for young offenders;
- the limited range of sentencing options in particular jurisdictions;
- the discriminatory impact of sentencing policies on young people from rural and remote communities who have access to a limited number of rehabilitative options and who are detained far from their families and communities;
- legislation in Western Australia and the Northern Territory that sets mandatory minimum sentences for certain offences and consequently prevents all relevant factors affecting the particular child being taken into consideration when sentencing; and
- the shift to more punitive sentencing regimes for young offenders which governments seek to justify by reference to a juvenile crime wave, notwithstanding that there has been no significant increase in juvenile crime in Australia for the past decade.<sup>146</sup>

#### 4.2.4. Building an effective system of monitoring that is compliant with the CRC and OPCAT

Although Australia has ratified the International Convention of the Rights of the Child (**CRC**) and The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**), there are many concerns that Australia has failed to meet its international obligations. The cases of the Don Dale Youth Detention Facility and, more recently, the Banksia Hill Youth Detention Centre have highlighted that children have been and continue to be treated in a way that is contrary to international standards. Each jurisdiction across Australia varies in its laws, protocols and policies in monitoring the rights of children. This has led to questions as to how an effective system may be established to monitor and ensure the rights of children in detention facilities.

##### 6.1.1 Key Systems

Although the International provisions provide for a system that seeks to monitor the rights of children in detention, Australia has varied results. Each jurisdiction offers differing ways in how

they manage adherence to the international standard. This generates inconsistency and gaps in the efficacy of monitoring children's rights in places of detention. The consequence of this is the [improper and, in some cases, inhumane treatment of children](#).

Each jurisdiction has an applicable department that oversees youth detention. Relevantly:

- NSW – Youth Justice
- Vic – Department of Justice and Community Safety
- Qld – Department of Justice and Attorney General
- SA – Youth Justice Directorate, Department of Communities and Social Inclusion
- TAS – Children and Youth Services, Department of Health and Human Services
- WA – Department of Corrective Services, Youth Justice Services
- ACT – Office for Children, Youth and Family Support, Community Services Directorate
- NT – Department of Correctional Services.

The states and territories often have an Ombudsman or Commissioner equivalent that reports to the federal government and assists with NPM procedures. Though there is some consistency, each Department or governing body has a different system for youth detention.

The majority of Australian jurisdictions maintain [the minimum age of criminal responsibility at 10 years of age](#).<sup>47</sup> There has been growing pressure in recent years for jurisdictions to raise the minimum age of criminal responsibility. In recent times, some jurisdictions, such as Victoria, have taken steps to increase the [minimum age of criminal responsibility to 12](#). The perceived benefit of this is that an increase in the age of criminal responsibility will help deter and keep children out of detention which can protect and benefit a child's wellbeing.

Jurisdictions maintain different ways to train and supervise staff at detention facilities. Adequate training and supervision are a necessary way to create appropriate detention facility conditions. Some of the relevant systems for training include:

- There is an objective to recruit staff as a youth work role rather than a correctional role (ACT, Tas) and Many states and territories encourage the recruitment of those with an Aboriginal and Torres Strait Islander background.<sup>48</sup>
- [States and territories have varied staff training procedures](#). For example, the Northern Territory requires new Youth Justice Officers to complete a Certificate IV in Youth whilst other jurisdictions offer training programmes directly from their respective department (i.e. ACT and Qld). South Australia has a combination of both.

Contrastingly, in New South Wales, there have largely been no formal training requirements of staff in detention as there we no specific education, [training or skill requirements in becoming a Youth Officer](#).<sup>49</sup> This was of particular importance in the review into the Frank Baxter Juvenile Justice Centre riots in New South Wales where staff were tasked to perform duties or activities in which they did not have adequate training or experience. Staff were punishing children and young people for minor misbehaviour with confinement in cold and unclean holding rooms, in contravention of legislation and policy.<sup>50</sup>

Supervision and reviewing of youth detention facilities is important for monitoring the rights of children. Supervising detention facilities is one of the key elements in ensuring adherence to international law. Mechanisms for supervising and visiting detention facilities also vary by jurisdiction:

- Western Australia's Inspector of Custodial Services utilises a broad range of powers to inspect places of detention and focuses on system and institutional issues rather than individual success. The success of this system has been adopted by New South Wales.
- In other jurisdictions, inspections are usually made by official visitors of government departments or Ombudsman offices.
- States and territories generally have an 'Official Visitor' system in which an independent community member visits youth custodial centres. Some of the responsibilities of an Official Visitor includes taking enquiries and complaints from young inmates and adolescents and monitoring conditions and treatment. Roles and responsibilities of official visitors differ between state and territories along with the frequency of inspection. [In Qld, NSW and Vic, Official Visitors are required to visit monthly whilst in WA, Official Visitors visit every 3 months.](#)

Frequency of inspections occur on either a monthly or quarterly basis or in some instances at any reasonable time. The varied nature of inspections can create gaps in the system where children's rights have not been properly monitored. The NPM seeks to consolidate the inspection process.

#### **6.1.2 Compliance and Issues**

In recent history, Australia has struggled in completely implementing OPCAT. Recent developments include:

- The UN Subcommittee on the Prevention of Torture (SPT) suspended visits to Australia in October 2022, due to obstructions encountered in fulfilling OPCAT obligations. It is alleged that Australian authorities [refused to provide all relevant information and documentation requests](#); and [denied full access](#) to detention and mental health centres in New South Wales and Queensland.
- Australia misses [another deadline to implement anti-torture protocols](#). All states and territories were required by 20 January 2023 to have oversight regimes or NPMs in place to monitor human rights protections in police cells, jails, mental health facilities and other places of detention. New South Wales, Victoria and Queensland still do not have schemes in line with OPCAT's demands in place.

Youth detention practices have been noted as violating and eroding children's rights afforded to them under the CRC. A recent [Save the Children report](#) (2023) found that:

- Children's rights are undermined as adult facilities are continuously used to detain children. This results in an increase in child rights abuses. In South Australia, it was noted that children and young people were detained in adult police cells over 2,000 times in the 2020-21 financial year;

- Isolation and segregation are widely used and has long-term and irreversible effects of a child's wellbeing. There is evidence that indicates that children have been locked in isolation for up to 100 days at a time;
- Excessive force, restraints and degrading or humiliating acts continue to be made against children and few jurisdictions have measures in place to that address these acts.<sup>51</sup>

The Save the Children report mentions common reasons why child rights are limited across the youth justice system, including:

- A lack of focus on rehabilitation;
- Public sentiment and media reporting helps influence policy making as media reporting often reinforces perceptions of increased volume and severity of youth offending that does not accurately reflect reality. As a consequence, media coverage can lead to short term problems solving and reactionary policies;
- Institutional Racism - an example is the Paperless Arrest laws in the NT. Police can detain people for up to four hours if they are likely to commit minor offences.<sup>52</sup>

The Save the Children Report included a report-card rating the alignment of Australian jurisdictions with child rights, as follows:

## How well do Australian jurisdictions align with child rights?

Rights respecting approach	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Policing	●	●	●	●	●	●	●	●
Bail and remand	●	●	●	●	●	●	●	●
Diversion	●	●	●	●	●	●	●	●
Court processes	●	●	●	●	●	●	●	●
Sentencing practices	●	●	●	●	●	●	●	●
Minimum age of criminal responsibility	●	●	●	●	●	●	●	●
Detention	●	●	●	●	●	●	●	●
Youth justice workforce*	-	-	-	-	-	-	-	-
Oversight of youth detention facilities	●	●	●	●	●	●	●	●

Key ● High alignment ● Medium alignment ● Low alignment

\* We have not assessed youth justice workforce given the lack of publicly available information

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Source: [Save the Children](#) (2023)

The Key recommendations from the Report to improve child rights were:

- Raise the age of criminal responsibility.
- Increase access and availability of diversion programs.
- Investing in early intervention programs
- Review of bail laws
- Improve standards in detention.
- Reform the workforce, ensure it is delivering therapeutic and culturally responsive programs.

[Queensland recently passed controversial youth justice laws](#) that imposes harsher punishments for juvenile offenders. For children aged between 10 and 17, the laws generally provide that a breach of bail is now an offence and that a child's bail history can now be taken into account when arresting and/or sentencing. In the process of implementing these changes, the Queensland Government has overridden their *Human Rights Act*. Critics are concerned that children's human rights are being eroded and children are more likely to be institutionalised into youth detention.

There continue to be calls for urgent reforms across the country as children continue to be treated poorly in youth detention facilities. [Criticism towards youth detention centres in the NT, Tas and WA](#) have been made as awareness of the poor treatment of children grows. The condition of youth detention facilities has contributed to a decline in juvenile mental health which has led to a number of attempted suicides.

[Inspections of the Banksia Hill Intensive Support Unit](#) by the Custodial Inspector of Western Australia detailed gross breaches of human rights instruments that prohibit extensive confinement as there were instances of detainees being detained in their cell for 22 or 23 hours per day.

## 4.3. KEY STATISTICS

### 4.3.1. Overview of Youth Detention Centres in Australia

- **Australian Capital Territory (1):**
  - [Bimberi Youth Justice Centre](#): Capacity to hold 40 children (aged 10-17) and young people (aged 18-21).
- **New South Wales (6):<sup>53</sup>**
  - [Acmena Youth Justice Centre](#): Capacity to hold 45 children and young people aged 10-21 (males only).
  - [Cobham Youth Justice Centre](#): Capacity to hold 105 children and young people aged 15-21 (males only).
  - [Frank Baxter Youth Justice Centre](#): Capacity to hold 120 children and young people aged 16-21 (males only).

- [Orana Youth Justice Centre](#): Capacity to hold 30 children and young people aged 10-21 (males only).
- [Reiby Youth Justice Centre](#): Capacity to hold 55 children aged 10-21 (males aged 10-15; females aged 10-21).
- [Riverina Youth Justice Centre](#): Capacity to hold 55 children aged 10-21.
- **Northern Territory (2):**
  - [Alice Springs Youth Detention Centre](#): Capacity to hold [10](#) children.
  - [Don Dale Youth Detention Centre](#): Capacity to hold [50](#) children.
- **Queensland (3):**
  - [Brisbane Youth Detention Centre](#): Capacity to hold [162](#) children and young people aged 10-18.
  - [Cleveland Youth Detention Centre](#): Capacity to hold [112](#) children and young people aged 10-18.
  - [West Moreton Youth Detention Centre](#): Capacity to hold [32](#) children and young people aged 10-18.
  - In 2023, the [Queensland government](#) announced its commitment to building 2 new youth detention centres, while also looking at a range of interim options to increase capacity. The locations of the new centres will be in Woodford (Southeast Queensland) and the Cairns region.
- **South Australia (1):**
  - [Kurlana Tapa Youth Justice Centre](#) (Goldsborough Road): Capacity to hold [60](#) children and young people aged 10-18.
- **Tasmania (1):**
  - [Ashley Youth Detention Centre](#): Capacity to hold [51](#) children and young people aged 10-18.
    - The Tasmanian government has [announced](#) the future closure of the Centre and a plan to progress to a contemporary therapeutic facility by the end of 2024.
- **Victoria (3):**
  - [Parkville Youth Justice Precinct](#): Capacity to hold [123](#) children and young people aged 10-22.
  - [Cherry Creek Youth Justice Precinct](#): [New facility](#) (opened August 2023) with capacity to hold [140](#) children aged 15-18 (males only).
  - [Malmsbury Youth Justice Precinct](#): Capacity to hold up to 146<sup>54</sup> children and young people aged 15-20 (males only). In conjunction with the opening of Cherry Creek, the Victorian government has announced the [closure](#) of Malmsbury by the end of 2023.
- **Western Australia (1):**

- [Banksia Hill Detention Centre](#): Capacity to hold [250](#) children (males and females).

When these centres are full children can be held in police cells or in divisions of adult prisons. This issue will be discussed further in the Challenge 5 response.

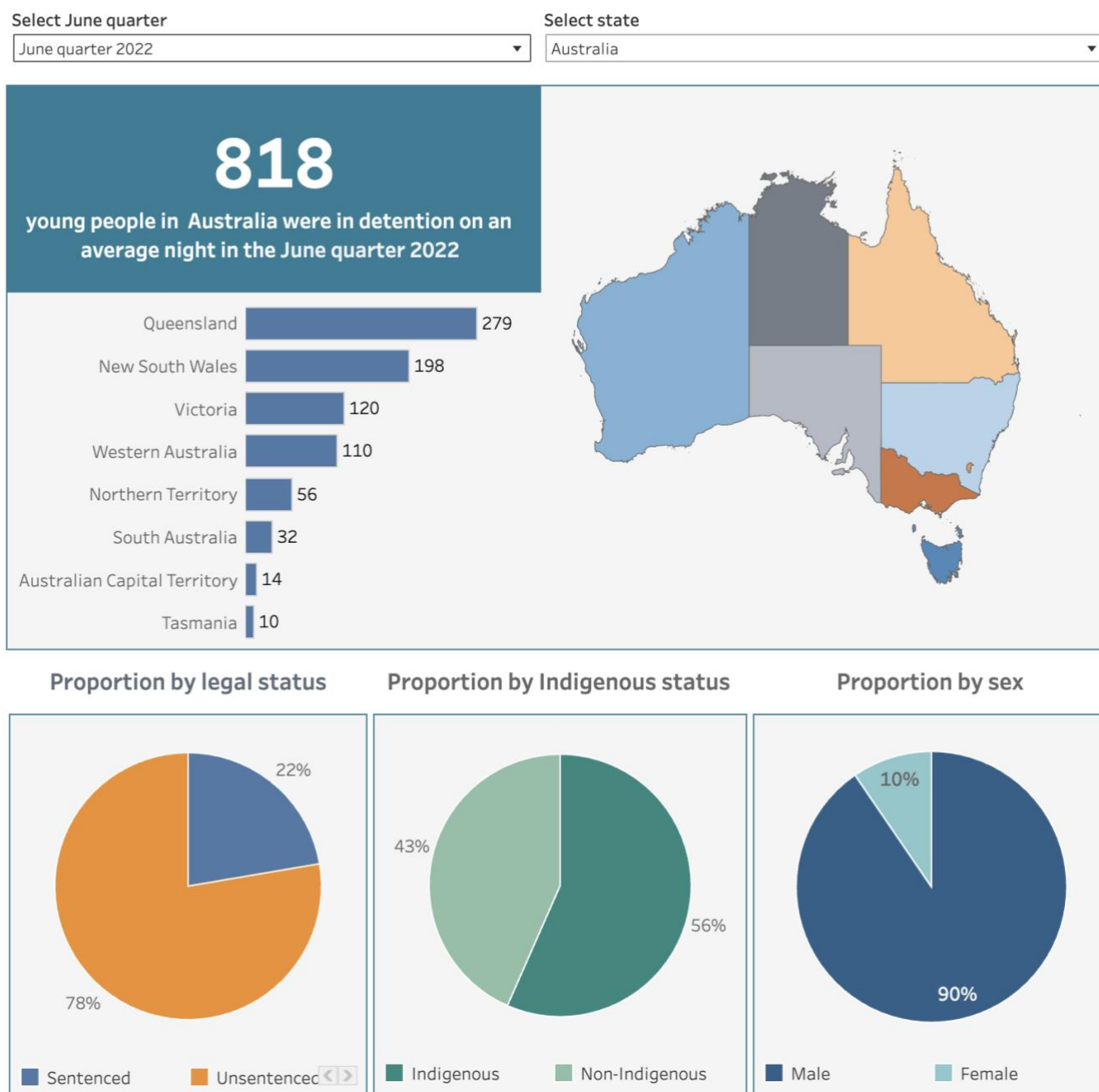
#### 4.3.2. Youth Detention Rates and Demographics

According to the Australian Institute of Health and Welfare's (AIHW) report on [Youth detention population in Australia 2022](#), between April-June 2022:

- An average of 818 children were held in juvenile detention facilities around the country each night.
- Total number of children in detention per state and territory (numbers rounded):<sup>55</sup>
  - Queensland – 279
  - New South Wales – 198
  - Victoria – 120
  - Western Australia – 110
  - Northern Territory – 55
  - South Australia – 32
  - Tasmania – 10
  - Australian Capital Territory – 14
- On any night, [78%](#) of children and young people in detention were unsentenced, awaiting the outcome of their court matter or sentencing.
- [90%](#) of the 818 children in detention were male and among children aged 10-14 boys were three times as likely to be under youth justice supervision than girls.
- [56%](#) of all children in detention were Aboriginal and Torres Strait Islander, despite comprising just 6% of the Australian population aged 10-17.
- Aboriginal and Torres Strait Islander children were [26 times](#) as likely as their non-Indigenous counterparts to be in detention on an average night.



**Figure: Number of young people in detention on an average night in Australia, June quarter 2022**



Source: AIHW 2022, [Youth Detention Population in Australia](#)

The [AIHW Australia's Children Report 2022](#) reported that:

- Children from areas with the greatest socioeconomic disadvantage were 10 times more likely than those living in area of least disadvantage to be under youth justice supervision orders.

In [From Care to Custody: Young Women in Out-of-Home Care in the Criminal Justice System](#) (2010), Katherine McFarlane found that:

- Children in care are 68 times more likely than other children to appear before the Children's Court, with 56.5% of young people appearing before the Court identified as being in care or thought extremely likely to be in care.<sup>56</sup>



A [2015 NSW Justice Health survey](#) of children and young people in custody found that:

- 68.2% reported experiencing at least one form of childhood abuse or neglect<sup>57</sup>
- 83% met the threshold criteria for at least one psychological disorder (and 63% for two or more)
  - By comparison, the national average for children and young people aged 14–17 years is estimated to be 13.9%<sup>58</sup>
- 16.6% obtained an IQ score in the extremely low range (below 70), indicating a potential intellectual disability.<sup>59</sup>
- In 2020-21, the national average cost per day per young person subject to detention-based supervision was \$2,518, an increase of 34% from 2019-20 (\$1,883).<sup>60</sup>

#### 4.3.3. Enforcing appropriate duty of care standards and building effective monitoring systems

##### Age of Criminal Responsibility

Under the *Crimes Act 1914* (Cth) (**Crimes Act**), the minimum age of criminal responsibility for Commonwealth offences is 10 years of age. Most states and territories enforce the age of criminal responsibility as 10 years old. The UN Committee on the Rights of the Child in 2019 formally noted its serious concern about the ‘very low age of criminal responsibility’ in Australia and the treatment these children are exposed to in detention. The Committee called on Australia to raise the minimum age of criminal responsibility to an internationally accepted level of 14. Children between 10-14 years of age are in a critical phase of cognitive development with incarceration having [destructive impacts](#) on their growth and development and increasing their chances of incarceration as adults.

##### Disproportionate representation of children from child-protection backgrounds

Children who are involved with child protection services due to abuse, neglect or parental incapacity are at least [nine times more likely](#) than other children and young people to offend and come under the supervision of youth justice services. More than half (53%) of children and young people under youth justice supervision during 2020–21 had an interaction with the child protection system in the 5-year period. Almost one-third (30%) were the subject of a substantiated notification for [abuse or neglect](#).

Children in out-of-home care under the protection of the State are one of the most vulnerable and disadvantaged populations in Australian society. The over-representation of children from child protection backgrounds in the youth justice system is a significant and longstanding concern. Relevantly, 70% of 10-year-olds in youth incarceration have been involved with Child Protective Services. These statistics represent the States’ failure to provide the best care to children in the foster and out-of-home care system. This failure of protecting the most vulnerable children in our community is often described as the “care-to-custody pipeline”. This is further detailed in the report [‘Crossover kids’: Offending by child protection-involved youth](#) by Susan Baidawi and Rosemary Sheehan, Australian Institute of Criminology (AIC) 2019.

## Strip searching of children

In Tasmania, data review completed by the Human Rights Law Centre found in 2018 over a 6-month period, 203 strip searches were performed on children as young as 10 years old with no contraband found. In response to calls to end the strip searching of children the *Review of Youth Justice Amendment (Searches in Custody) Bill 2022* was introduced. The Bill provides that children in detention should only ever be searched when it's necessary for a designated purpose, and that the manner and type of the search [must be proportionate to that purpose](#).

## Solitary confinement of children

[Nelson Mandela Rules](#) – Rule 44 defines solitary confinement as the isolation of detainees for [22 hours or more a day](#) without any meaningful human contact. It involves the involuntary placement of a child in a room (often with limited ventilation and natural light) from which they are unable to leave, denying the child meaningful contact with peers, therapeutic professionals or family. The [UN Committee Against Torture](#) has called for Australia to raise the minimum age of criminal responsibility and immediately end the practice of solitary confinement for children. The Committee highlighted Don Dale youth detention centre in the Northern Territory, Ashley Youth Detention Centre in Tasmania and Banksia Hill Youth Detention Centre in Western Australia as being of serious concern for their practice of keeping children in solitary confinement. The findings come after the [UN torture prevention subcommittee suspended its tour of Australian detention facilities](#) after the New South Wales government refused inspectors entry into any facilities in the state and Queensland blocked access to mental health wards.

A study released by the Queensland Government showed that in 2021-22, Indigenous children accounted for 62% of Queensland's youth detention population, however made up [84% of children placed in solitary confinement](#).

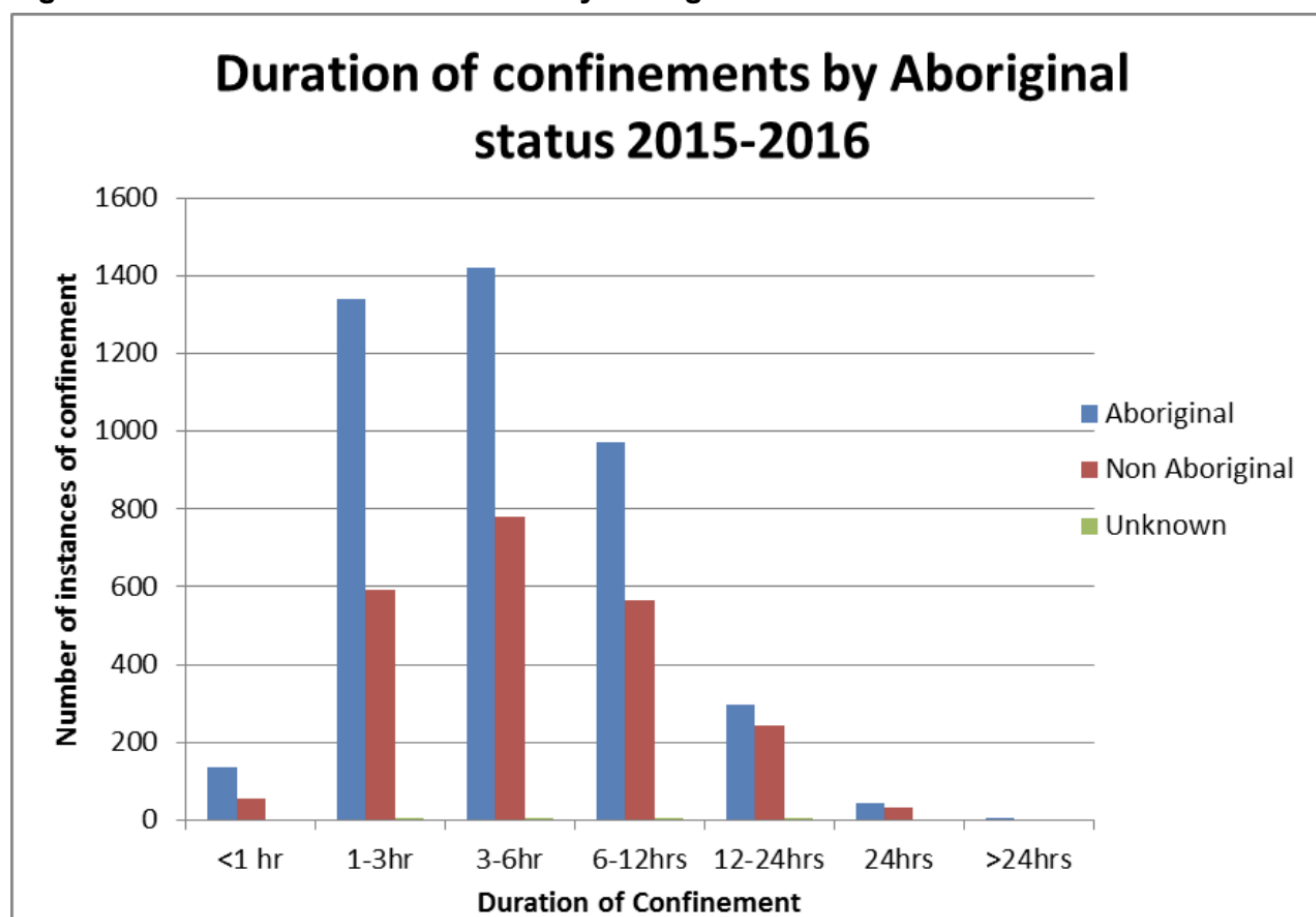
In [Queensland in 2021-22](#), there were 30,255 'separations' between 6 and 12 hours, 518 between 12 and 24 hours, and 83 lasting over 24 hours. 2,863 separations involving those under 14 years of age, and 25,801 separations involving Indigenous children and young people. Michael Drane, Executive Director of QLD Youth Detention Operations, [stated](#): "Lack of staff is an issue like all industries we are encountering staff shortages particularly in regional locations like in Townsville."

In [Victoria in 2018-19](#) at Malmsbury Youth Justice Precinct and Secure Welfare Services there were 13,653 lockdowns (when a child or young person is isolated) during a 12-month period. Median lockdown period of 40 minutes. 43 Lockdowns lasted for more than 6 hours, and 33 lockdowns were over 22 hours. Longest recorded lockdown was 171 hours. 90% of surveyed children had experienced a lockdown.

**Deborah Glass**, VIC Ombudsman [stated](#): "The inspection noted that approximately 40% of all recorded lockdowns at Malmsbury within the 12-month reporting period were attributed to staff shortages at the facility".

[In NSW from 2015-2018](#), confinement was the most common punishment administered for misbehaviour (~70%). However, 99% of confinement periods were less than 24 hours. In 2017-2018, no person was confined for more than 24 hours. It is noted 63% of children and young people placed in confinement were Aboriginal, despite being 47% of the prison population.

**Figure 23A: Duration of confinements by Aboriginal status 2015–16<sup>253</sup>**



2015–16	Aboriginal	Non Aboriginal	Unknown	Grand Total
<1 hr	137	55		192
1-3hr	1340	592	3	1935
3-6hr	1422	779	2	2203
6-12hrs	972	566	1	1539
12-24hrs	296	244	1	541
24hrs	42	32		74
>24hrs	1			1
<b>Grand Total</b>	<b>4210</b>	<b>2268</b>	<b>7</b>	<b>6485</b>

Source: NSW Inspector of Custodial Services 2018, [Use of force, separation, segregation and confinement in NSW juvenile justice centres](#)

First Nations people are doubly overrepresented: in both the youth and adult detention populations, as well as being more likely to be placed in solitary confinement when in detention. Western Australian Inspector for Custodial Services, Eamon Ryan, [stated](#): “Staff we spoke to lament the impact staffing shortages were having on detainees. They were highly conscious of the lack of out of cell time detainees were receiving, which often resulted in legislative requirements not being met.”

## **Exposure to higher risk of child sexual abuse**

- The Royal Commission into Institutional Responses to Child Sexual Abuse found in detention environments a higher level of risk of sexual abuse arises compared to other institutional contexts. This is likely because the characteristics of contemporary detention [enable opportunities for child sexual abuse to occur](#) such as:
  - Environmental - lack of privacy which can normalise behaviours that are potential abuse or are precursors to abuse;
  - Operational - when staff are regularly afforded opportunities to be alone with and have great authority over children; and
  - Cultural - including cultures within centres of employees disrespecting children (i.e. Don Dale) or culture within the inmates of tolerating humiliating and degrading treatment of children.
- The Commission Report notes children are safer in community centres rather than closed detention environments. The Commission Report states it is essential that “*where a government detains children, they should take all appropriate steps to ensure the care and protection of those children*” however there may be circumstances where “*the best interests of the child cannot be easily reconciled with other imperatives, such as maintaining safety and security.*” The Report finds institutions and governments should take all steps possible to [improve the safety of children and to ensure that detention is the last resort approach](#).

## **Bail legislation**

- [AIC](#) on the issue of bail:
  - Concern has been raised that many children and young people who spend time on custodial remand do not go on to serve a period of sentenced detention (eg NSW LRC 2012). This is seen as problematic because if the young person’s (alleged) offending is not serious enough to justify a sentence of detention, they should not be deemed risky enough to detain on custodial remand.

### Models of Bail Across States and Territories

- The report notes that 3 models of bail are currently in operation regarding children:
  - Model 1 – Bail legislation overrides common law. Children and young people subject to same bail law as adults. (NT, NSW & TAS)

- Model 2 – Youth justice does not override bail legislation, separate division in either the relevant bail legislation or youth justice legislation for children and young people. (ACT, WA & QLD)
- Model 3 – Bail legislation subject to youth justice legislation (eg children must be proceeded against via summons unless there are exceptional circumstances (s345 *Children, Youth and Families Act* (Vic))
- Note: SA has a hybrid model between 2&3

#### Reasons behind the increase in Children being held on remand:

- Report highlights some key influences
  - Higher proportion of children committing serious offences
  - Increasingly complex needs of young offenders, such as substance abuse, homelessness, etc.
  - Children and young people not applying for bail
  - Punitive community attitudes
  - Court delays
  - Decisions of police and prosecutions, such as the wording of a summary given to a magistrate
  - Influence of victims' rights
  - Inappropriate use of bail conditions
  - Breaches of bail
  - Police Practices
- This report points to strict bail laws being a contributing factor to the problem of solitary confinement. There is evidence that remand can lead to more offending in some cases. This increases the likelihood that a person will be held in solitary confinement.

## **4.4. KEY CASES**

### **4.4.1. Ensuring children have access to and receive holistic services in youth detention**

#### **R V JG [2023] QChC 7**

- Concerned a 16-year-old Aboriginal boy held in Cleveland Youth Detention Centre for 94 days.
- The judgement notes that the boy, while on bail, had access to programs including cultural mentoring, changing habits and reaching targets, and 10 sessions of life skill development and family-based support program. However, it is noted that in his time in youth detention he was unable to access any education or schooling.

**Inquest into the death of Madeline Jocelyn Rose Downman [2016] NTLC 007**

- Northern Territory case concerning a 17-year-old Aboriginal girl named Maddy who died by suicide in a residential facility operated by the Department of Children and Families. Maddy had shown signs of clinically significant depression for four years prior to her death.
- Maddy had been previously detained in Don Dale Juvenile Detention Centre where she had been reported smoking marijuana, drinking alcohol and sniffing deodorant cans. She also reported that she sometimes felt like hurting herself. On one occasion she cut herself with a knife and on another she considered hanging herself whilst detained.
- In the four years Maddy had been placed in the care of the State she had been put in 26 separate placements. It had been recorded that Maddy had self-harmed on a number of occasions before her death including 10 occasions where she was admitted to Royal Darwin Hospital for self-harm attempts.
- The judgment details multiple ways Maddy had been failed by the systems that should have been in place to support her. The Coroner noted that improvements need to be made to the systems and procedures relating to mental health services particularly 'in relation to young persons like Maddy who appear to be able to easily slip through the gaps in such services.'

**Inquest into the death of Dylan James Ahquee [2021] COR 2015/5131**

- Queensland case concerning 19-year-old Dylan who died by suicide on 26 December 2015. He had a substantial youth justice history and the term of imprisonment he was serving at the time of his death was his first significant period in adult custody. He was eligible for parole on 18 April 2016.
- Dylan was in the care of the Department of Communities, Child Safety and Disability Services from the age of 7 to 18. Dylan suffered from spina bifida which impacted his overall wellbeing, and came from a troubled background. He had complicated behavioural issues and was placed in settings that were not equipped to manage his complex needs. He rarely had access to the support and services required, one psychological report noting:
- 'Despite posing a clear risk to other children, he continued to be placed in high risk environments characterised by insufficiently trained staff, or supervision and monitoring, and access to vulnerable children and youth and he appeared to have capitalised on opportunities to persistently engage in multiple forms of abusive behaviour.'
- Whilst he was in youth detention, three attempts of self-harm were recorded. In the judgment it was noted that when a young person is transferred from a youth detention centre to an adult prison, it is the responsibility of the centre Deputy Director to transfer relevant information about that young person. It is common practice currently for information about a young person's self-harm or suicide history to be transferred with them.



- The inquest found that information had been shared appropriately in Dylan's transition from youth detention to adult incarceration but there was a delay in receiving services and services. Those services in their current state are not functioning effectively.

#### 4.4.2. Enforcing appropriate duty of care standards and building effective monitoring systems

##### ***R v Nathan (a pseudonym) [2023] QChC 4***

- Case concerned a 13-year-old boy from South East Queensland transported to Cleveland Youth Detention Centre outside of Townsville to be remanded in custody where a sentence of last resort is most unlikely. On 11 of the 32 days, he was in detention he was kept in solitary confinement.
- At the facility there was also a 'separation regime' invoked for the 'protection' of young persons. On 11 occasions Nathan was separated for a period of 11 hours and 59 minutes. The Judge noted that if a young person in detention is separated for 12 hours, the Chief Executive must be informed and their approval for further separation must be obtained. The Judge found that this 'separation regime' partnered with 12 hour overnight lockdown was effectively 24 hour solitary confinement.
- It was further noted that the Chief Executive informed the Court that interventions and processes of assistance have been identified but rightfully the Judge stated, "none of those interventions or processes of assistance can be facilitated while he is locked up for up to 23 hours and 59 minutes a day."
- Bail was granted.

##### ***Re Richard Jones (a pseudonym) [2023] QChCM 1***

- Case concerned a 15-year-old aboriginal boy with foetal alcohol spectrum disorder and an acquired brain injury who was imprisoned in the Mount Isa Watchhouse for 15 nights after having his application for bail refused. Mount Isa Watchhouse holds adults and children.
- The Magistrate noted that the QPS' Operational Procedural Manual (OPM) is clear that children should not be held overnight in a watchhouse and that the detention of a child beyond 1 night in a Watchhouse should only ever occur in "extraordinary circumstances."
- The Magistrate described the experience in a watchhouse at [11] as follows:
- It suffices to say that conditions in watchhouses are harsh and that adult detainees are often drunk, abusive, psychotic or suicidal. Although children may be kept in separate cells, those cells are usually open to the sights and sounds of the watchhouse. Equally, there is no facility to deliver education or the therapeutic interventions that are sometimes available in detention centres.
- Youth Justice advised that Court that all three youth detention centres in Queensland are at capacity and that there is no prospect that Richard will be transferred to a detention centre in the near term.



- The Magistrate released Richard on bail with a number of conditions.

### [Commissioner of Police v David Taylor \(a pseudonym\) \[2023\] QChCM 2<sup>61</sup>](#)

- This judgement concerned David, a 17-year-old Aboriginal boy. In his time in detention he spent 10 days in Mount Isa Watchhouse, then spent 21 days in ‘separation’. As explained in *Re Richard Jones* the detention of children for more than one night in a watchhouse should only occur in extraordinary circumstances.
- The Magistrate provided a clear description of how ‘separation’ is being used in youth detention as follows:
- “Separation” is a euphemism used in the youth detention system for time a child must stay in his or her cell over and above the 12 hours the child spends in their cell at night.
- The term “separation” connotes the idea of detainees being kept separate from one another because of fighting or other misbehaviour. If “separation” ever had that meaning at CYDC it no longer does. At this point in time, “separation” mostly means locking children in their cells because the ratio of staff to children is below the level set in the Certified Industrial Agreement between the Department and the unions representing the staff at the centre.
- The separation report confirms that when staff numbers at CYDC falls below a certain point, children are locked in their cells. Such staff numbers ought to be entirely predictable.
- Importantly the Magistrate described how David’s separation report discloses that it is likely that he only left his unit block on one day of the twenty-one days meaning that he was only able to access facilities and assistance from CYDC on that one day.
- There was also no evidence of a teacher visiting the unit (other than a music teacher visiting on 1 day). CYDC stated that children were provided with “educational packs” and are expected to engage in self-directed learning with those packs however the Magistrate was provided no evidence on the effectiveness of the program and was sceptical of its effectiveness.
- David was also only able to make phone calls when he was out of his cell meaning his contact with family was limited.
- It is also important to note that the detention staff reported that David’s behaviour was “very good with no concerns”.

### [R v TA \[2023\] QChC 2](#)

- In this judgment the Judge contextualised the background of the accused noting that:
  - The parents of the accused were unable to look after him because they were drug users, because of their drug use the accused has Foetal Alcohol Syndrome and Attention Deficit Hyperactivity Disorder.
  - The accused was removed from his parents care when he was a baby and has been placed in foster care.

- The judge describes that, “none of that is any of your fault. Those adults have let you down and, in some ways, the State, which was meant to be caring for you in New South Wales and Queensland, has also let you down.”<sup>62</sup>
- The judgment detailed how that during a period of being detained for 87 days, the Accused was confined to his cell for more than 20 hours on 78 of those days and that for 10 days he was confined to his cell for the entire 24 hours. The Judge states this containment is essentially solitary confinement.
- The judgment then describes that during these extended periods of confinement behavioural problems were developed such as intentionally damaging a smoke detector, damaging or threatening to damage property, threatening and becoming abusive towards staff, graffiti and being disruptive generally. The Judge found this behaviour to be unsurprising considering the lengthy periods of isolation without stimulation other than a television and stated, “if you treat a child like an animal, it is unsurprising that they may behave like an animal.”
- Ultimately District Court Judge Fantin found that the detainment was cruel, inappropriate, served no rehabilitative effect and “may well have increased the risk of further offending by you, and the State of Queensland must bear responsibility for that.”

### **Thompson v Minogue [2021] VSCA 358**

- Random urine testing and strip searches were incompatible with human rights.
- “However, the highly intrusive nature of the strip searches coupled with the requirement that they always be conducted prior to a random urine test in circumstances where that test is conducted without warning and with at least one officer watching the sample being delivered meant that they were excessive. That is particularly so having regard to the possibility that was left open on the evidence that there were less restrictive means reasonably available to achieve the purpose sought, namely, the security of the prison and the safe custody and welfare of prisoners. The excessive nature of the requirement meant that the interference with the privacy of prisoners extended beyond what was reasonably necessary to achieve the abovementioned purpose that was being pursued by the applicants. Accordingly, the regime of mandatory strip searches prior to each random urine test was unreasonable in the sense of not being proportionate to the legitimate aim sought to be achieved.” [318]
- [HRLC](#) provides a good summary of proceedings, findings and commentary.

### **Owen-D'Arcy v Chief Executive, Queensland Corrective Services [2021] QSC 273**

- The Supreme Court of Queensland found that solitary confinement orders were in breach of human rights. This case found that there had been a failure to balance the importance of the purpose of the confinement against the importance of upholding human rights.
- “By not taking the factors referred to above into account, Ms Newman failed to balance the importance of the purpose of the limitation and the importance of preserving the human right”. [260]

- “The No Association Decision is as much a part of solitary confinement or segregation as the MSO. It is not a physical isolation, but it works to prevent the applicant from engaging in any meaningful conversations or exchanges. It places him in a cocoon of isolation from all but the slightest interaction with other human beings”. [264]

***Binsaris v Northern Territory; Webster v Northern Territory; O'Shea v Northern Territory; Austral v Northern Territory [2020] HCA 22***

- The High Court, in consideration of the abuses at the Done Dale Youth Detention Centre, ordered that the four Appellants be awarded compensation from battery.
- On 21 August 2014, four Aboriginal boys aged between 15 and 17 years old detained at Don Dale Youth Detention Centre in the Northern Territory were intentionally and deliberately tear gassed by a prison officer while the prison officer was trying to incapacitate a fifth young person.
- The majority of the High Court found that prison officers' use of tear gas on was unlawful. The High Court unanimously held that each of the four children and young people were entitled to damages for the harm they suffered.
- The Court also considered that children and young people detained in a youth detention centre are not 'prisoners' and thus, prison officer functions that may ordinarily be allowed in a prison might not be allowed in a youth detention facility.
- See also: [HRLC Case Summary](#)

***Certain Children by their litigation guardian Sister Marie Brigid Arthur v Minister for Families and Children & Ors [2017] VSC 251***

- This case concerned the lawfulness of the Victorian Government's decision to establish a youth justice centre in a part of the Barwon maximum security adult prison. The Victorian Supreme Court ruled it to be unlawful.
- In the evidence may of the plaintiffs described their experiences at Barwon prison as traumatising and frightening and discouraged family members from visiting there. Further, an expert child psychiatrist described the environment as demoralising and dehumanising and said it would have a serious and negative impact on children and young people. The facility also did not have suitable space for schooling and no accreditation opportunities such as the VCAL or VCE.
- Justice Dixon found the decision to be in breach of section 38(1) of the Victorian Charter of Human Rights and Responsibilities Act 2006, which requires public authorities to properly consider and comply with the human rights enshrined in the Charter.
- Particular aspects of the youth justice centre that were found to have adversely impact the plaintiff's human rights were:
  - The built environment at Barwon prison: the Grevillea unit previously housed maximum security adult prisoners, and despite changes the environment continues to be that of a maximum security adult prison.

- Isolation by lockdown: the plaintiffs were frequently isolated for up to 23 hours a day in cells that were designed for adult men. These conditions were regular at the time of the relevant decisions in December 2016 and continued into February 2017.
- Handcuffing: children were regularly handcuffed for routine activities, such as being moved from a wing of the unit to the outdoor exercise area.
- Risk of mental health problems: the Court found that the Minister had failed to consider the heightened risk of mental health problems posed by the environment at the Grevillea unit, including depression, anxiety, cognitive problems, hypersensitivity and paranoia, or exacerbation of existing mental health problems.
- Limits of the children's development: the Grevillea unit "significantly limited" the children's emotional, intellectual and spiritual needs, exposed them to further mental harm and reduced their chances of rehabilitation.

### [New South Wales v Bujdosó \[2005\] HCA 76](#)

- At [46] the duty of care owed to prisoners generally is described as follows:
  - "The duty on those responsible for one of Her Majesty's prisons is to take reasonable care for the safety of those who are within, including the prisoners. Actions will lie, for example, where a prisoner sustains injury as a result of the negligence of prison staff; or at the hands of another prisoner in consequence of the negligent supervision of the prison authorities, with greater care and supervision, to the extent that is reasonable and practicable, being required of a prisoner known to be potentially at greater risk than other prisoners; or if negligently put to work in conditions damaging to health; or if inadequately instructed in the use of machinery; or if injured as a result of defective premises."

### [Trenerry v Bradley \[1997\] NTLR 175](#)

- In this judgment, Justice Mildren described the Northern Territory's mandatory detention regime for property offenders as *'the very antithesis of just sentences'*. This regime has since been repealed.

### [Walters v State of Western Australia \(Ongoing\)](#)

- This ongoing Federal Court of Australia case concerns a class action lawsuit of over 500 current and former detainees of a variety of detention centres in Western Australia. Substantial allegations have been made that allege that abuses and human rights violations were occurring and continue to occur. These allegations detail: excessive restrictions and seclusion, inhospitable living conditions, inappropriate use of force, false imprisonment, and discrimination.

## 4.5. KEY RESOURCES

### 4.5.1. Journal Articles

- Faith Gordon et al.: [Youth \(In\)justice and the COVID-19 pandemic: rethinking incarceration through a public health lens](#) (2021)
  - “While international children’s rights legal frameworks refer to all children and young people as a ‘vulnerable’ group who are entitled to special measures and protections, this is not being recognised in Australia’s domestic legislative framework nationally.”
  - “.. it is crucial that Victoria’s youth justice system prioritises the health, safety and well-being of children and young people... A public health approach applied to a public health issue should not be difficult to conceive.”
  - “Moving forward, the public health approach must include emotional health, but also physical health across the life course, as this seems to be missing from a public health approach at a time when and where we need it most.”
  - “While we advocate for a public health approach which can holistically support children and young people, by acknowledging the impact of trauma they have experienced and finding a way to support them, we would also like to see a consistent approach applied throughout communities. This would include youth organisations, education, Police and health care professionals working together and supporting each other.”<sup>63</sup>
- David Best et al.: [Putting “justice” in recovery capital: yarning about hopes and futures with young people in detention](#) (2020)
  - Resources include specific recovery rehabilitation centres, playgroups, schools, healing initiatives, parenting centres, peer-led self-help groups and sporting clubs.
  - The process of destabilising a problem and initiating recovery possibilities can occur within institutions (eg. hospitals, rehabilitation centres, psychiatric facilities or prisons).
  - For children, schools are the best place to build peer relationships and access opportunities and resources to pursue their goals. Findings show that services that help cultivate a strong culture and identity and regular opportunities to participate in prosocial and cultural activities are needed in detention.<sup>64</sup>
- Thalia Anthony: [“They were treating me like a dog”: The Colonial Continuum of State Harms Against Indigenous Children in Detention in the Northern Territory, Australia](#) (2018)
  - The racial dynamics in youth detention in the NT between non-Indigenous officers and Indigenous incarcerated children requires discrete attention. This article looks at these dynamics as well as the broader discriminatory policies in the NT.

- The authors distinguish the treatment of children in detention from isolated/individually attributable act/s and articulate this treatment as “emblematic of systemic, widespread violations of the human rights of children in contact with the juvenile justice system”.
- Children were shackled by their wrists and ankles while in their cells, throughout transportation and during medical examinations.
- Children who were gassed with toxic chemical agent CS Gas, like many other detainees, had been contained in segregation cells for 23 hours per day for indefinite periods.
- The isolation unit at Don Dale detention centre, often referred to as the behavioural management unit (BMU), was rancid and filthy, dark, hot and lacking airflow and running water.
- These units enforced a sense of total control over the children: guards fed children through a chute and refused food as punishment; they ignored children’s cries for help and restricted their outside access as well as limiting their light or access to hygiene, which is contrary to Rule 67 of the Havana Rules.<sup>65</sup>
- Kate Fitz-Gibbon: [The treatment of Australian Children in Detention: A Human Rights Law Analysis of Media Coverage in the Wake of Abuses at the Don Dale Detention Centre](#) (2018)
  - Examines Australian media coverage of the Don Dale incidents to question whether an international human rights law perspective was embraced and the degree to which such a perspective offers a useful vantage point for understanding and responding to the abuses at Don Dale.
  - Concludes that the international human rights framework provides a valuable perspective for communicating the gravity of the treatment of young people in detention and from which the Federal Government can draw to ensure an effective response to the violations committed.<sup>66</sup>

#### 4.5.2. Reports

#### **Ensuring children have access to and receive holistic services in youth detention**

- Yoorrook Justice Commission: [Yoorrook for Justice Report](#) (Victoria, 2023)
  - The [Yoorrook Justice Commission](#) (**Yoorrook**) is the first formal truth-telling process into historical and ongoing injustices experienced by Aboriginal and Torres Strait Islander people in Victoria. Yoorrook investigates past and ongoing injustices experienced by Aboriginal and Torres Strait Islander people in Victoria since colonisation.
  - The [Yoorrook for Justice Report](#) (2023) made 46 recommendations for reform across the five key categories:<sup>67</sup>
    - Transformative change through the Treaty process



- Urgent reforms: accountability, cultural competence and compliance with human and cultural rights
- Urgent reforms: child protection system
- Urgent reforms: criminal justice system
- Law reform to enable truth telling
- Save the Children and 54 Reasons: [Putting Children First: a rights respecting approach to youth justice in Australia, Save the Children](#) (2023)
  - Child-rights and outcomes-focused approach and provides a comprehensive framework for supporting children's development and access to opportunity and outcomes. Stresses importance of meaningful engagement with children's voices, perspectives and experiences.
  - Urges meaningful participation of children and young people in decisions affecting them, leading to better policy, implementation and systems.
  - Wrap around supports and planning should be provided when children and young people leave custody to support their reintegration back into the community.
  - Need for effective and transparent oversight of youth justice – more effective accountability mechanisms uphold the rights of children and young people and proactively address discrimination.
  - Diversion needed at an early stage to help identify and respond to the causal factors of offending and reduce recidivism.
  - Rehabilitative detention practices – detention and community order practices should be therapeutic, non-punitive and trauma-informed. Isolation should never be used.
  - “Given the egregious child rights breaches occurring in detention facilities, there is opportunity to implement the [OPCAT] and improve oversight of youth detention facilities”.<sup>68</sup>
  - ACCOs are found to generally adopt a more holistic approach and assist with a wide variety of services, including child, youth and family services and care services such as residential care.
- AIHW: [Interactive map](#) (2022)
  - Shows the number of children and young people in detention on an average night in Australia – allows filtering by jurisdiction, legal status, Indigenous status, gender (June Quarter 2018, 2021 and 2022 only).
- Smart Justice for Young People: [Inquiry into Victoria's Criminal Justice System, Smart Justice for Young People](#) (2021)
  - ‘A child should not be held solely accountable for their behaviour as their behaviour is often a symptom of the failings of these institutions’.<sup>69</sup>
  - Submits that holistic and integrated systems are required to address the various social, health, wellbeing and personal issues that contribute to the risks



associated with a young person. Suggests the need to take early intervention to a multitude of individual and systemic factors that lead to detachment including identity issues, learning difficulties, lack of financial resources, family dysfunction, mental illness, relationships with peers and teachers, bullying and systemic discrimination. It takes serious coordinated action to prevent most vulnerable children and young people from falling through the cracks to rehabilitate the detached and increase investment in psychology, mental health and allied support services.

- Koori Youth Justice Taskforce and the Commission for Children and Young People: [Our Youth, Our Way](#) (Victoria, 2021)
  - Koori Youth Justice Taskforce and the Commission for Children and Young People (Commission) inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system and child protection systems.<sup>70</sup>
  - The Commission heard that:
    - There's an absence of effective, early services and supports throughout childhood – no early supports available at all, or services at capacity or inaccessible due to geographic distance. Some services, particularly substance use/dependence support services, were restricted to older young people, leaving kids without access to the interventions and services needed.
    - Over 70% reported experiences of racism, mistreatment or violence by police (eg physical, verbal and sexually violence).
    - Experiences of violence and the use of force at unacceptably high rates.
    - Bail conditions set them up to fail and made it very difficult to conduct a normal life, including going to school and spending time with family.
    - Children's Court and legal processes can be confusing, stressful, disempowering and difficult to understand and navigate.
    - Limited access to the Children's Koori Court across the state.
    - The Commission made 75 recommendations, including:
      - **Recommendation 62:**
        - Resource the expansion of the fully specialised Children's Court, commencing with rural and regional headquarter courts, and
        - Specialisation for all Children's Court magistrates should include training in child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits, and Aboriginal cultural safety.

- **Recommendation 64:** Resource [Balit Ngulu](#) to provide specialist legal services statewide for Aboriginal children and young people on an ongoing basis.
- **Recommendation 74:** Work towards having no Aboriginal child or young person in custody.
- AHRC: [‘Wiyi Yani U Thangani’ Women’s Voices: Securing our Rights, Securing our Future Report](#) (2020)
  - Sets out a range of pathways forward to reduce the high rates of Aboriginal and Torres Strait Islander children entering the child protection system and youth detention. These include investing in diversionary pathways away from the criminal justice system and child protection.
  - Recommends implementing mechanisms to keep women and children safe, and families together.<sup>71</sup>
- AIC: [What are the characteristics of effective youth offender programs?](#) (2020)
  - This report reviewed many studies and articles on the subject across the world. Additionally, Australian Studies (5 out of 9 studies) identified the importance of cultural sensitivity in youth offender programs for Indigenous Australians. These studies found that programs specifically aimed at Indigenous children and young people were more effective than mainstream programs.
- AIC: [Youth Justice in Australia: Themes from recent inquiries](#) (2020)
  - “... extensive research has found that detention is damaging and criminogenic, serving to entrench young people further in disadvantage (Baldry et al. 2018; Cunneen, Goldson & Russell 2016). Recent reviews and inquiries reaffirm the importance of detention being used only as a last resort ...”<sup>72</sup>
  - Diversion is an effective strategy. In the NT, 85% of those diverted did not reoffend.<sup>73</sup>
  - Many children and young people end up in detention for breaching their bail conditions, rather than committing a new offence.<sup>74</sup> Remand is typically of little rehabilitative value.
- Advocate for Children and Young People: [What Children and Young People in Juvenile Justice Centres Have to Say](#) (2019)
  - This report publishes the findings from consultations with people in youth detention centres between 2015-2019. The report aims to provide a voice to the children in youth detention centres and provide recommendations for what can be improved.
- Australian Law Reform Commission (ALRC): [Pathways to Justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander People](#) (2018)
  - Access to justice fundamentally requires adequate and ongoing resources and funding for both custodial and transitional programs that are:

- Designed, delivered and managed by Aboriginal and Torres Strait Islander people
  - Supported by case management by ACCOs, both in prison and in transition, and
  - Supported by prison staff who are trauma-informed and culturally safe.<sup>75</sup>
- AIHW: [National data on the health of justice-involved young people: a feasibility study 2016–17](#) (2018)
  - The Australian Children's Commissioners and Guardians (ACCG) comprises national, state and territory children and young people commissioners, guardians and advocates. The ACCG aims to promote and protect the safety, wellbeing and rights of children and young people in Australia. The ACCG strives to ensure that the best interests of children and young people are considered in public policy and program development across Australia.
  - This report details how health and wellbeing outcomes for children in detention are significantly impacted. The States and Territories have a duty to ensure the basic health and wellbeing needs of children are being met this report evidence that those standards are currently not being met.
- HRLC: [Explainer: children should not be held in adult prisons](#) (2017)
  - On 17 November 2016, the Victorian Government decided to use the Grevillea Unit in the Barwon maximum security adult prison as a youth jail and started sending children as young as 15 there. The government had flagged the possibility of locking up children in adult jails in October. After the damage done to the Youth Justice Centre at Parkville in the 13-14 November riots, the government applied to the Youth Parole Board to send 7 children to adult prison. The Youth Parole Board refused the transfer and the government moved to set up the unit at Barwon as a youth jail.
  - Supreme Court and Court of Appeal both rule that the government acted unlawfully.
- ACT Children & Young People Commissioner: [Children and young people with complex needs in the ACT Youth Justice System](#) (2016)
  - This report considers children and young people with complex needs in the youth justice system. The report provides detail on what the situation is like for children and young people in the youth justice system in the ACT. The report makes multiple suggestions for ways to improve the justice system.
- The Royal Australasian College of Physicians: [The Health and Well-being of Incarcerated Adolescents](#) (2011)
  - The challenge is to provide accessible, innovative and effective treatment to adolescents in custody, a population that is often beyond the reach of traditional health services.
  - Objectives are to: promote the physical, mental and social aspects of the health of children and young people in custody, help prevent deterioration of children and

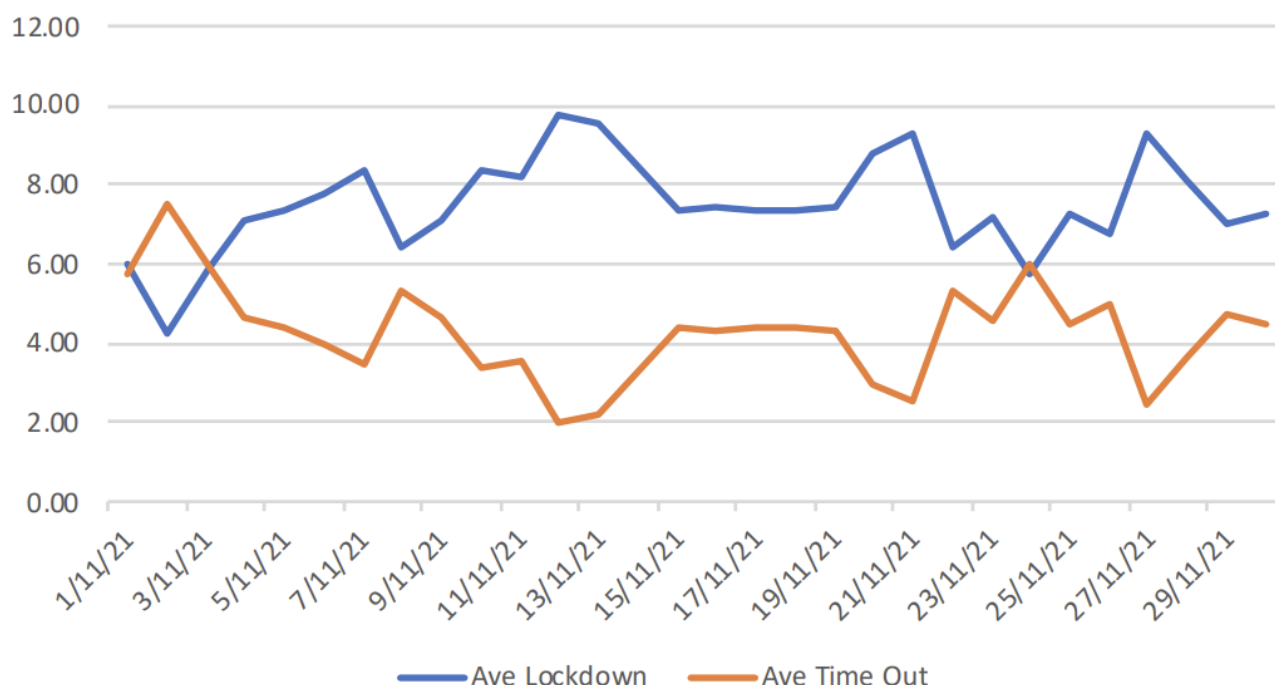
young people's health during or because of custody; and, help children and young people in custody develop the knowledge, skills and confidence they need to enable them to adopt healthier behaviours that they can take back to the community with them.

- ALRC: [Seen and Heard: Priority for Children in the Legal Process](#) (2010)
  - Generally young offenders under 18 are detained in a juvenile detention centre. However, provisions governing this issue vary across jurisdictions. In some jurisdictions, detainees may remain in these centres past age 18 and, in some, to age 21. In other jurisdictions, children and young people in detention can be transferred to an adult prison before they reach 18 years.
  - The Design Guidelines provide that detainees should be categorised for accommodation and programs according to their age. However, they do not specifically provide for the separation of juveniles from adults. The QOC Standards also do not deal with this issue. National standards governing these areas are therefore required.
  - Reservation to CRC Article 37(c): 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).
  - Separating juveniles from adult offenders is important in preventing criminalisation of children through contact with adult offenders. It recognises that children have developmental needs that require different programs and services than those for adults. It protects the well-being and safety of children. In recognition of this, separate units in juvenile detention centres should be established for young adults assessed as suitable for the programs.
  - Recommendation 262: The detainees should be permitted to participate in decision making about the most appropriate arrangements for family and community contact.
  - Recommendation 263: The national standards for juvenile justice should provide that relationships between detainees and their families and communities should be supported through the appointment of family and community liaison officers in detention centres.
  - Recommendation 272: The national standards for juvenile justice should provide that each State and Territory establish separate sub-units within some centres for detainees aged 18 years and over. These units should be managed using rules and routines more appropriate to young adults.

## Enforcing appropriate duty of care standards and building effective monitoring systems

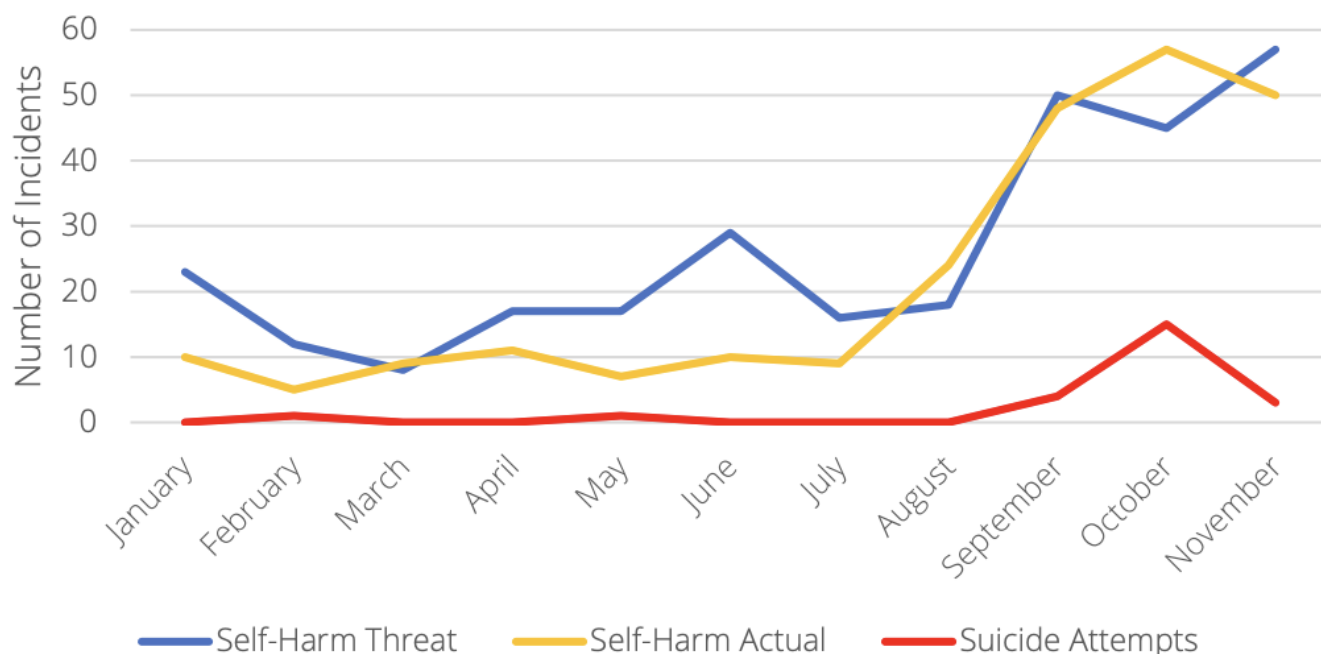
- Office of the Inspector of Custodial Services: [Inspection of the Intensive Support Unit at Banksia Hill Detention Centre](#) (2022)
  - The Report details the highly inadequate conditions that youth detainees were kept in. Detainees were often only let out for a couple hours per day. High Levels of self-harm and suicide were present. Report noted that:
    - *“Under the relevant Western Australian legislation, policies and guidelines, on a normal day detainees would be entitled to a minimum one hour out of cell per day. This is less than the two-hour minimum time out of cell set out in the relevant international human rights instruments. At the risk of stating the obvious, it is important to bear in mind that even when the minimum limits are met, detainees would still be held in their cell for 22 or 23 hours per day. There can be no doubt that such conditions, especially if prolonged, would be damaging to the health and wellbeing of young people.”*
  - Detainees were often only let out for a couple hours per day and spent a large portion of time in lockdown, as shown in Figure 1 below:

**Figure 1: The average hours locked in cell and time out of cell for detainees in the ISU during November 2021.**



- High Levels of self-harm and suicide were present, as reflected in Figure 3 below:

**Figure 3: Incidents of self-harm and attempted suicides have increased significantly since September 2021.**



- Key factors for inadequate conditions included:
  - Staff shortages;
  - Complex and challenging needs of offenders due to the unit being designated as intensive;
  - Segregation of detainees was not considered a breach of legislation; and
  - New policies removed minimum out of cell times.
- Key Recommendations included the reintroduction of explicit minimums for out of cell time and the introduction of welfare focused, non-custodial workers.
- Victorian Ombudsman: [OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people](#) (2019)
  - Ombudsman found that children were not being rehabilitated in prisons, but rather 'damaged'. As an example:
    - At Malmsbury, there were 13,653 lockdowns during a 12-month period, with about 40% attributed to staff shortages.
    - Children, Youth, and Families Act does not adequately safeguard detainees interests. For Example, it does not guarantee minimum periods of fresh air each day.

- Key Recommendations
  - Separation should not be solitary confinement; some meaningful human contact should be provided. Solitary confinement should be prohibited.
  - Separation should be used in for its original purpose of maintain security in an emergency, rather than used in response to staff shortages.
  - System-wide review of how young people are managed; review should be focused on how to remove them from prisons into a dedicated facility.
  - Culturally supportive spaces as an alternative to separation, isolation, or seclusion.
  - Fix identified shortcomings of relevant legislation.
- [Royal Commission into The Protection and Detention of Children in the Northern Territory \(2017\).](#)
  - Revealed systemic and shocking failures. Children and young people have been subjected to regular, repeated and distressing mistreatment and the community has also failed to be protected. The report described the incidents as, '[systemic failures occurred over many years and were 'ignored at the highest levels'](#)'.
  - Key findings (see [Report Overview](#)):
    - Youth detention centres were not fit for accommodating, let alone rehabilitating, children and young people.
    - Children were subject to verbal abuse, physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets.
    - Children were dared or bribed to carry out degrading and humiliating acts, or to commit acts of violence on each other.
    - Youth justice officers restrained children using force to their head and neck areas, ground stabilised children by throwing them forcefully onto the ground, and applied pressure or body weight to their 'window of safety', being their torso area.
    - Isolation has continued to be used inappropriately, punitively and inconsistently with the Youth Justice Act (NT) which has caused suffering to many children and young people and, very likely in some cases, lasting psychological damage.
  - Key recommendations:
    - Close the current Don Dale Youth Detention Centre and High Security Unit.
    - Raise the age of criminal responsibility to 12 and only allowing children under 14 years to be detained for serious crimes.
    - Develop a 10-year Generational Strategy for Families and Children to address child protection and prevention of harm to children.



- Establish a network of Family Support Centres to provide place-based services to families across the Northern Territory.
- A paradigm shift in youth justice to increase diversion and therapeutic approaches.
- Developing a new model of bail and secure detention accommodation.
- Increasing engagement with and involvement of Aboriginal Organisations in child protection, youth justice and detention.
- Amnesty International: [Victorian children report facing Don Dale-style abuse in adult prison](#) (2017)
  - Children as young as 15 are being sent to Barwon adult prison in Victoria – a maximum-security prison for Victoria’s most notorious adult offenders – and allegedly facing abuse, Victoria is failing some of its most vulnerable children.
  - According to the children’s lawyers, some kids have been locked down in their cells for up to 23 hours a day. When some kids are let out of their cells, they are handcuffed. We heard that in the one short hour a child was released from his cell he was forced to butter his toast in handcuffs.
  - Some children reported that officers deliberately pepper sprayed boys who weren’t involved in any disturbance – just eating dinner.
  - Others allege guards knelt on children’s backs while others held their face to the floor and incapacitated their arms and legs. The boys have reportedly been left with visible injuries, including bruising after this alleged use of excessive force.
  - In another alleged incident, guards brought German shepherd dogs into the unit and reportedly into a child’s cell as a form of intimidation.
  - Police are now investigating allegations that corrections staff assaulted nine children. A human rights lawyer representing the boys said, “At Barwon, children have been isolated for days and even weeks at a time. They are going mad in their cells.”
  - A Victorian court confirmed three months ago that it was against the law for children to be sent to Barwon prison, because the Minister for Youth Affairs, Jenny Mikakos did not consider their developmental needs when she sent them there.
  - The Victorian Government tried to get around this by renaming the Grevillia Unit of the Barwon facility a youth detention centre. However, a name change doesn’t make this an appropriate facility.
- RMIT University, Centre for Innovative Justice: [Open Circle](#) (Website)
  - Provides insight into framework for justice systems that move beyond punishment and towards healing. This framework is known as ‘Restorative Justice’. Restorative justice provides flexible and responsive solutions to individual and community needs. The approach usually focuses on use of conferencing as a pre-court diversion. This system is particularly adaptable to the issue of youth

incarceration due to its focus not on **what** happened by **why** it happened. Media Reports on the Issue

#### 4.5.3. Media Reports

#### Ensuring children have access to and receive holistic services in youth detention

- **Nino Bucci, “Dying is normal in this jail”: teenager held in Port Phillip prison for four months’** ([The Guardian, 2022](#))
  - Victorian teenager has been held in a maximum-security adult prison for almost four months despite a supreme court judge warning authorities that if the boy were not put in youth detention and given a chance at rehabilitation it could likely mean his “life would become a disaster”.
  - DJ, and Aboriginal boy who turned 17 late last month while being held in Port Phillip prison, said that he has been routinely held in isolation and confined to his cell for 23 hours a day.
  - DJ said he had been forced to wait three months before being granted a visit with his mum, which occurred on his 17th birthday. The visit lasted 30 minutes and he was handcuffed and separated from her in a box. Every phone call to his mother costs \$7, he said.
  - DJ said his age meant he was unable to participate in rehabilitation programs, prison activities, or prison work:
    - “Port Phillip [prison] isn’t set up to give proper support to kids,” he said.
    - “I want to be somewhere that I can do my school work and go to therapy with other kids my age.”
  - Judge Lasry (now former Justice of the Supreme Court of Victoria) –
    - “It would be desirable if sentencing judges had the authority to give some form of direction as to how young offenders like you are to be treated in custody, with a view to improving their chances of rehabilitation.
    - “However, I have no such authority ... you may be an appropriate candidate for transfer to a youth justice centre until you reach the age of 21 years. As I understand it, that is a matter for the Adult Parole Board to determine, but I would strongly recommend that that occur.”
  - Victoria’s commissioner for children and young people, Liana Buchanan: “Sending children to adult prison is inconsistent with the Convention on the Rights of the Child and is only ever going to entrench criminal behaviour and cause more harm – both to the children themselves and to community safety,”
- **Lucy MacDonald, ‘Prison for kids’** ([ABC News, 2022](#))
  - Recreates the experiences of people who were detainees in the Ashley Youth Detention Centre in Tasmania. The article highlights the challenges in accessing

services within the centre. The article touches on lack of staff contributing to lack of access of services for children.

- **Antonia O'Flaherty, 'What is it like in QLD youth detention centres?' ([ABC News, 2023](#))**
  - Reports on the daily life of a detainee in a Queensland youth detention centre and the conflicting information between what services are available and the reality of how those services are facilitated day to day. For example, despite youth detention centres claiming they offer specific services, the services may not be available to all people at the facility consistently.
- **Aleisha Orr, 'Youth detention in Australia: What are the rules around imprisoning juveniles?' ([SBS, 2022](#))**
  - This media article provides a simple overview of the current living situation for children in youth detention centres across Australia. The media reports on past detainees experiences and considers States and Territories response to the urgent need for reform in the system.
- **'Ongoing juvenile detention crisis a failure of basic support for kids and families' ([AHRC, 2022](#))**
  - AHRC article calling for urgent reform across government departments and agencies to address youth detention crisis. National Children's Commissioner, Anne Hollonds noted concerns that the current approach is clearly failing, as more and more children enter the child protection and youth justice systems. She stated:
    - "Our health, education and social service systems are fragmented and not fit for purpose for disadvantaged children and their families. Many of these families have told me directly about their frustrations at being unable to access basic support services...

A country that values children would be trying hard to shift investment upstream and earlier and to redesign the basic systems of support so that kids don't fall in the gaps. More children in Australia are experiencing poverty and homelessness. We need a co-ordinated national approach to address the underlying causes of harms to children, and we need a much greater sense of urgency."
- **Bianca Hall, 'Teenagers sent to adult prisons, as judge cautions on youth justice' ([The Age, 2019](#))**
  - Internal Children's Court figures show more than a dozen young people aged 16 and older fronted adult courts, and faced adult sentences, for serious offences in the 12 months to June (2019).
  - The Andrews government last year introduced tough changes to the youth justice system after a series of riots at youth detention centres and a spate of home invasions and carjackings.

- Under those reforms, teenagers aged 16 and older can be diverted from the Children's Court system – which focuses on rehabilitation and tries to keep children out of detention – if they are accused of particularly serious crimes. 47 children and young people were charged with crimes that could be heard in the adult justice system in 2018-19.
- Of those, 21 had their charges partly or wholly withdrawn but 14 children and young people had their cases transferred to adult courts – mostly the Victorian County Court.
- Victorian Children's Court president Amanda Chambers – "Children and young people have always been treated differently, and separately, within the Victorian criminal justice system, for good reason," she said.
- **'Kids in watch houses: Exposing the truth'** ([Amnesty International, 2019](#))
  - This article reports on children being held in the Brisbane City Watch House. The article exposes that the children were not provided adequate care with failure to provide clean clothing, underwear, shampoo. Placing children in facilities that are not equipped to care for them is a breach of human rights.
- **Melissa Davey, 'Children held in Barwon Prison were deprived of their human rights, court finds'** ([The Guardian, 2017](#))
  - Children detained in an adult prison in Victoria were deprived of their human rights and faced risks to their mental health', a supreme court judge has found.
  - The HRLC argued that Grevillea was contained in an adult environment and that this environment breached the human rights of children.
  - Justice John Dixon found that children were handcuffed during limited periods of release from their cells for exercise and were placed in continuous isolation and restrained. Due to the nature of the environment of an adult prison, the children risked developing depression, anxiety, cognitive issues and paranoia, and existing mental health issues risked being exacerbated, Dixon found.
  - This was not justifiable or reasonable "in a free and democratic society valuing equality, human dignity and freedom", Dixon said.
  - Greens youth justice spokesperson Nina Springle – "The only way to rehabilitate these detainees is with proven therapeutic youth justice programs. Locking kids up in an adult prison to appear tough on crime isn't helping anybody."
- **Emma Younger, 'Barwon Prison: Teens moved after court rules children should not be held in adult jail'** ([ABC News, 2017](#))
  - The detention of teenagers at Victoria's maximum security adult prison was ruled unlawful for a second time by the Supreme Court, forcing the State Government to find another place to house the juvenile detainees.
  - Justice John Dixon found transferring and holding teenagers at an adult prison was infringing on their human rights.

- He said the children were often held in lock-down for up to 23 hours a day, and had been handcuffed when released from their cells.
- The Victorian Government lost an initial Supreme Court case against detaining teenagers at the adult prison last December but [re-classified the unit so it could remain open](#).<sup>76</sup>
- It prompted a second legal challenge by the HRLC, which argued the Grevillea unit was fundamentally unfit to accommodate teenagers and could not meet their human rights under law.
- "The developmental needs of detainees — specifically their physical, social, emotional, intellectual and spiritual needs — were significantly limited when Grevillea was re-gazetted as a youth justice centre and youth remand centre to which children were then transferred," Justice Dixon said.
- **AAP, 'The size and strength of men': Victoria defends moving kids to adult prison ([SBS, 2016](#))**
  - The Victorian government has defended its decision to transfer juvenile offenders to an adult prison, which is being challenged in the state's Supreme Court.
  - Senior DHHS managers have admitted the adult facility was not completely ready when the first youths arrived there on November 21. Renovations to remove items of risk were still under way when one boy used an item to self-harm after he was transferred there.
  - The teens also did not have access to the educational or rehabilitation programs usually provided in youth detention, and were effectively held in isolation for security and safety reasons.
  - Counsel for the government Melinda Richards SC – "While they are still legally children, while they are not cognitively and psychologically mature, these young people have the size and strength of men... We're talking about 16- and 17-year-old boys, we're not talking about young children."
  - Related articles:
    - 'Vic removes some youths from adult jail' ([SBS, 29 November 2016](#))
    - 'Victorian government loses appeal to keep juveniles in adult prison' ([SBS, 28 December 2016](#)).

## **Enforcing appropriate duty of care standards and building effective monitoring systems**

- **Kenith Png and Keane Bourke, 'Dozens of complaints against Banksia Hill Detention Centre staff tabled in WA parliament' ([ABC News, 2023](#))**
  - Article details 57 complaint letters to WA Parliament tabled by MP Brad Pettitt. The letters were sent on behalf of 51 children and young people regarding the conditions at Banksia Hill Detention Centre and unit 18 at the adult Casuarina Prison, where some juvenile detainees have been transferred. The letters include

claims of sexually inappropriate behaviour, excessive use of force and extensive lockdowns of children by custodial officers.

- **Sarah Collard, ‘Man sues Northern Territory alleging “sustained” sexual abuse at Don Dale youth detention centre’** ([The Guardian, 2023](#))
  - Indigenous man sues the Territory claiming he suffered sustained sexual abuse from three members of staff at the Don Dale youth detention centre during his incarceration between 2004 and 2007. The claim alleges that the NT government had a clear duty of care to the man and they failed to protect him from the alleged abuse while in their care. The alleged abuse has severely affected the man’s life and wellbeing throughout his adolescence and adulthood and contributed to him ending up in the adult justice system.
- **Ellen Fanning and Kristy Sexton, ‘Queensland youth justice minister says evidence provided to court by her department about 13yo boy's detention was not ‘fulsome’** ([ABC News, 2023](#))
  - News report of the case of *R v TA* [2023] QChC2 above, includes the parent’s perspective, additional context and further allegations of the standard of care provided in the Cleveland Youth Detention Centre.
  - A 13-year-old Indigenous boy, Jack (not his real name) was kept in solitary confinement for 45 days, including one stretch in isolation for 22 days and another for 14 days, at the Cleveland Youth Detention Centre in Queensland.
  - Jack’s mother said he told her the staff refused to provide him with fresh drinking water after complaining the water coming out of the tap in his room was dirty and undrinkable. In response, she said her son became angry and flushed the toilet repeatedly and turned on the shower to flood his cell. He was placed in isolation.
  - Related article: Ben Smee, ‘Queensland boy, 13, spends at least 45 days in solitary confinement despite not being sentenced to detention’ ([The Guardian, 2023](#)).
- **Ellen Fanning, ‘Homeless and disabled, Jordan was kept in Queensland youth detention for more than three months’** ([ABC News, 2023](#))
  - Reports on how Jordan, an Indigenous girl aged 15 years experiencing homelessness and living with disability, spent 94 days in detention over the course of three months while awaiting sentencing and not having been convicted of any crime.
  - For 30 days, she was locked up in her cell for 21 to 24 hours per day. On three of those days, she was locked in her cell for 24 hours a day.
  - Judge Tracy Fantin in the Cairns Children's Court described Jordan's time in Townsville's youth detention centre, as an experience that subjected her to "trauma":
    - *"To detain a child in a cell for such lengthy periods of time is likely to contribute to a deterioration of a child's mental health, to poor behaviour by a child and subjects the child to trauma."*



- *“The Queensland government has overridden the state's human rights act to make breach of bail an offence for children”.*
- **Kate McKenna, ‘Queensland parliament has passed tough new laws targeting young offenders. This is what's changing’** ([ABC News, 2023](#))
  - QLD has recently introduced tougher bail laws for young offenders. Breach of bail will be an offence for children and young people. Police also do not need to consider alternative options when arresting a young person who is reasonably suspected of contravening their bail conditions OR if an officer reasonably suspects a child is likely to contravene bail conditions.
  - Courts must also now take into account a child's bail history when sentencing them.
  - Bail will now be presumed to be denied for more offences, such as unlawful use of a motor vehicle where a child is a passenger.
- **Ruby Jones and Scott McDougall: ‘The State locking up more children than any other’** ([7am Podcast - The Saturday Paper, 2023](#))
  - Queensland locks up more children than any other state or territory. Now, the state government has put in place new laws, which make that situation worse. To enact those laws, the Queensland government has overridden its own *Human Rights Act* - in response to growing media pressure about youth crime.
  - Queensland Human Rights Commissioner Scott McDougall speaks in this podcast on the rights of children and how his office has been sidelined.
- **Jano Gibson, ‘Northern Territory government sued over claims of sexual and physical abuse at Don Dale Youth Detention Centre’** ([ABC News, 2023](#))
  - NT government is being sued by former detainees of Don Dale.
  - Matters include claims of sexual and/or physical abuse by both male and female staff, as well as by other detainees.
- **‘Australia to miss deadline to implement anti-torture protocols’** ([HRLC, 2023](#))
  - Australia faces a looming international deadline to fully implement the UN's anti-torture protocol - by 20 January 2023 - but Australian governments are not on track to meet this deadline.
- **Matthew Doran, Australia misses another deadline to implement international anti-torture treaty** ([ABC News, 2023](#))
  - Australia has missed another deadline to implement an international anti-torture agreement, with the country's three largest states accused of dragging their feet and bickering with the Commonwealth over funding.
- **Natasha May, ‘Australia must end solitary confinement of children, UN committee against torture says’** ([The Guardian, 2022](#))
  - UN Committee against torture calls on Australia to end solitary confinement and raise the age of criminal responsibility.



- **Briana Shepherd and Keane Bourke, ‘Calls for royal commission into WA youth justice, as judge again condemns Banksia Hill’** ([ABC News, 2022](#))
  - Former head of WA Children’s Court Denis Reynolds called for a Royal Commission into the WA youth justice system in the wake of the Four Corner’s investigation of Banksia Hill.
  - ‘It should be banned, and secondly by recognising the needs of the children we wouldn’t be needing to do it in the first place.’ - Denis Reynolds
- **Grace Tobin, Patrick Begley, Meghna Bali and Mary Fallon, ‘Boys handcuffed, held down by guards and sat on in dangerous youth detention “folding” restraint’** ([Four Corners, 2022](#))
  - The program reveals serious allegations of excessive force in Western Australia's only youth detention centre, Banksia Hill. Footage shows five Officers using a ‘folding up’ or ‘hogtie’ restraint on a young male inmate whilst he screams that he cannot breathe. This practice was banned in Queensland following a review that found it posed serious risk of suffocation and death. The practice was also examined in the Northern Territory Royal Commission into the Don Dale Detention Centre and found it posed, "significant risks of injury or death".
  - The boy in the footage is wearing no clothing only a rip-proof gown. He claims that the day the footage was taken he had been in the cell all day, unable to shower and that when the Officer arrived with the evening meal, he tossed a piece of bread on the ground.
- **Erin Handley, ‘UN torture prevention body suspends Australia trip citing 'clear breach' of OPCAT obligations’** ([ABC News, 2022](#))
  - UN Reports that Australia was in clear breach of its obligations under OPCAT, suspending its visit. NSW Corrective services said the inspectors did not have prior approval to visit some prisons, however such visits are supposed to be unannounced.
- **Joanna Menagh, ‘Judge issues WA government contempt of court warning over children detained in adult prison’** ([ABC News, 2022](#))
  - The WA government has been warned it risks being found in contempt of court for continuing to house juvenile detainees in an adult prison, with a senior Perth judge describing what was happening as "barbaric", "cruel" and "a form of child abuse".
  - The teenagers, aged 16 and 17, were being held in Unit 18 of Casuarina adult prison, which in July was set up as "a short term facility" to house a small cohort of teenagers because of what authorities called their extreme behaviour inside the Banksia Hill juvenile detention centre.
  - The court heard that while in Banksia Hill, the two boys had been subjected to repeated lockdowns, which Judge Quail noted earlier this year had been found by a Supreme Court judge to be [unlawful, because it left young people locked in their cells on their own for long periods.](#)

- **Jano Gibson, ‘FOI documents show the NT is breaching its own independent monitoring policy at Don Dale Youth Detention Centre’** ([ABC News, 2022](#))
  - Aug 2022 - NT Government required to monitor prisoners through ‘Official Visitors’. Under the NT Youth Justice Act, this visitor must monitor each prison once a month. However, documents showed they only attended the facility once or less per year. Visit was also cut short, as the person was based in Alice Springs, and had to catch a flight home.
  - Understaffing was an issue.
  - Australia’s Human Rights Commissioner advocated for an independent national monitoring program to prevent such abuses.
- **Grace Burmas, ‘Seventeen Banksia Hill juvenile inmates moved to Casuarina Prison’** ([ABC News, 2022](#))
  - 17 Teenagers were relocated from Banksia Hill to a unit at a maximum-security prison for adults (Casuarina Prison).
- **Sabra Lane, ‘Nine ministers had oversight of the Ashley Youth Detention Centre, but all of them were absent from the abuse inquiry’** ([ABC News, 2022](#))
  - Commission into Tasmanian Government’s responses to Child Sexual Abuse looked at the Ashley Youth Detention Centre. Youth justice ministers did not give evidence.
- **Lucy MacDonald, ‘Former Ashley Youth Detention Centre detainees lodge class action over alleged abuse’** ([ABC News, 2022](#))
  - Tasmanian class action over alleged abuse. 101 former detainees of the Ashley Youth Detention Centre in Tasmania lodged a class action in Tasmania’s Supreme Court, alleging they were whipped, kicked, bullied, encouraged to join gangs, sexually abused and stripped naked whilst they were in the centre.
- **‘Leroy was incarcerated when he was just 10 years old: this is what his life is like now’** ([SBS News, 2021](#))
  - Leroy (not his real name) was first incarcerated for burglary at 10 years of age and sent to Banksia Hill Detention Centre in Perth’s south.
  - Leroy reports his experience at Banksia Hill as confronting and violent stating he has been strip-searched multiple times, assaulted by other detainees, experienced prolonged lockdowns for sometimes over 5 hours a day and placed in isolation.
    - “[It was] a bit scary. I didn’t like it because there’s too much bigger boys there. And I was probably the littlest one there... I was getting picked on every single day. It wouldn’t stop, the guards weren’t doing nothing ... It was frustrating. I didn’t have family in there. No one to talk to. I was alone.”
  - Children aged 10 to 17 are sent to Banksia Hill, WA’s only custodial facility for children, from all over the state. In many cases, it means being thousands of kilometres away from family and community.

- Data from 2020 shows Aboriginal children accounted for 74% of those incarcerated.
- **‘Australia’s Shame’ ([ABC Four Corners, 2016](#))**
  - On 25 July 2016, the Four Corners program aired footage of a child being thrown across a room, pinned to the ground, stripped naked, and strapped to a chair with a hood over his head.
  - Related Editorial: ‘Abuse of juveniles in detention is a shameful breach of our duty of care’ ([SMH, 2016](#))

## ENDNOTES

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- 6 *Convention on the Rights of Persons with Disabilities*, opened for signature 12 December 2006, A/RES/61/106 (entered into force 3 May 2008).
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