



Inquiry into Australia's youth justice and incarceration system

Supplementary Submission to the Senate Legal and Constitutional Affairs References Committee

National Legal Aid

19 December 2025

Acknowledgement of country

National Legal Aid acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures; and to Elders past and present.

We acknowledge the significant leadership and expertise of Aboriginal and Torres Strait Islander people, organisations and communities in advocating for systemic improvements to Australia's youth justice and incarceration systems across Australia.



About National legal Aid

Who are we?

National Legal Aid represents the eight state and territory Legal Aids (LAs). In 2022–23, the LAs provided more than 1.7 million legal services nationally. This submission draws on the experience of legal aid lawyers in their work within the youth justice system nationwide. Submissions made by individual Legal Aid Commissions further address the particular circumstances within their jurisdictions.

What do we do?

Legal Aid lawyers appear daily in Children's Courts, youth justice conferences and make bail applications; they visit youth detention centres, police cells and watch houses; and they work alongside Aboriginal and Torres Strait Islander Legal Services, community legal centres and other legal assistance providers. The evidence in this submission is grounded in that day-to-day experience, supported by publicly available data and the published submissions of our colleagues.

In 2022-23, children and young people between the ages of 10 and 19 accounted for 5.5% of the total number of clients of the eight LAs across Australia. This proportion increased to 8.3% of representations and 15.4% of legal tasks. 24% of all clients receiving legal representation are First Nations people, 25% are people living with disabilities, and 100% fall under the poverty line.

Why do we do it?

Goal 2 of National Legal Aid's Strategic Plan 2025-2030 includes advocating for the safety and wellbeing of children within the legal and justice systems. Our vision is that all people experiencing disadvantage have access to legal assistance and fair justice outcomes that contribute to safe, thriving families and communities.

© 2025 National Legal Aid. Reproduction without express written permission is prohibited.

Written requests should be directed to National Legal Aid, at NLA@nationallegalaid.org.au

www.nationallegalaid.org

Executive Summary

National Legal Aid (NLA) welcomes the opportunity to provide further evidence to the Committee on Australia's youth justice and incarceration system. This submission supplements National Legal Aid's previous submission and recommendations to this inquiry (October 2024) and evidence to the Committee at its public hearing (3 February 2025).

The purpose of this supplementary submission is to:

1. Outline major developments in youth justice since commencement of this inquiry across states and territories, and our significant concerns about the deteriorating situation for children and young people;
2. Emphasise the urgent need for national leadership and Commonwealth action, based on the overwhelming body of existing evidence; and
3. Emphasise the critical importance of access to legal assistance to reducing the number of children and young people in the youth justice system and in detention and to preventing and addressing the breaches of children and young people's human rights.

In October 2024, NLA and many other legal assistance providers including Legal Aid Commissions, Aboriginal and Torres Strait Islander Legal Services (ATSILS), community legal centres and peak bodies, lodged detailed submissions to this inquiry, and provided evidence at public hearings. Those submissions set out a consistent evidence base: that the current system is in crisis – it is harmful, ineffective, racially discriminatory, and inconsistent with Australia's human rights obligations.

Since that time, the Committee has received additional material and tabled an interim report. In parallel, there have been significant legal and policy developments across states and territories, particularly in relation to the age of criminal responsibility, bail and remand practices, and conditions of detention.

Australia's youth justice landscape is more unequal, more punitive and more harmful than when this inquiry commenced. State and territory reforms have further entrenched criminalisation and incarceration of children, with a disproportionate impact on First Nations children, children living with disability, and children from culturally and racially marginalised communities. Individual Legal Aid Commissions' submissions to this inquiry address the detail of these developments within their jurisdictions. These reforms have been implemented counter to the clear evidence and recommendations already before governments about effective, evidence-based responses to at-risk children and young people that reduce offending and increase community safety.

The submissions made to this inquiry add to the already very significant body of evidence that has been developed over many years that clearly demonstrates the critical need for urgent, comprehensive reform to Australia's youth justice and incarceration system.

Children's lives and futures depend on coordinated national action. National Legal Aid strongly supports Commonwealth leadership and the use of all levers and tools available to it- including legislative and financial- to drive a coherent national approach that addresses this crisis, including raising the age of criminal responsibility, ensuring detention is used only as a last resort, ending harmful detention practices, and centring the rights, voices and self-determination of children and young people, especially First Nations children, in line with Australia's human rights obligations.



1. The national picture has worsened since February 2025

We hold significant concerns that recent policy and legislative developments across the country demonstrate a continued, and in many jurisdictions escalating, reliance on criminalisation and detention of children. As noted by the Australian National Preventive Mechanism, whose purpose includes the advancement of Australia's implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (September 2025),

Various recent developments in Australia are impacting, or are likely to impact and increase, the number of children and young people being detained in Australia. This puts upward pressure on custodial detention populations, which heightens risks of mistreatment, undermining governments' preventive obligations towards torture and other ill treatment.¹

The evidence is clear that the vast majority of children and young people being remanded in custody in Australia present with complex and intersecting needs, and significant adverse childhood experiences and trauma.² The evidence is clear these are children who need early intervention and therapeutic and community-based support, but instead are met with punitive, inappropriate and ineffective responses within the criminal justice system that run contrary to Australia's human rights obligations. We reiterate our call for governments to commit to greater focus and systemic reform to achieve Closing the Gap Target 11 and address the significant overrepresentation of First Nations children and young people in the youth justice system and in detention.

National Legal Aid supports the Commonwealth using all levers available to it, including using its power to legislate in line with its international obligations on children's rights to:

- set 14 as a national minimum age of criminal responsibility, and
- set minimum standards for the treatment of children by state and territory criminal legal systems,³

as has been called for by the National Aboriginal and Torres Strait Islander Legal Services and Justice and Equity Centre.

1.1 Rising use of remand, watch houses and high-risk settings

The available data confirm what legal aid lawyers see daily: children, including very young children, are being incarcerated primarily on remand, often for short periods related to bail, supervision or placement

¹ Australian National Preventive Mechanism, 'Written contribution to List of Issues Prior to Reporting Seventh periodic report of Australia under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment', September 2025. p 6.

² See, for example K Richards and L Renshaw, 'Bail and remand for young people in Australia: A National Research Project', AIC Reports – Research and Public Policy Series 125 (2013), p. 13.

³ National Aboriginal and Torres Strait Islander Legal Services and Justice and Equity Centre, 'Prime Minister has the power to ensure children are safe and protected. It's time for action', Media Release, 16 September 2025.

failures rather than serious offending. Legal Aids are deeply concerned about the rising use of remand, watch houses and the placement of children in high-risk settings. In Queensland, for example, the number of children under 14 detained overnight in adult watch houses increased by 50% in 12 months (2023-24), despite the Supreme Court finding the practice unlawful in 2023 and extensive evidence about the harms caused.⁴ For example, children from regional or remote areas, primarily Aboriginal and Torres Strait Islander children, are detained many hundreds (and in some parts of Australia thousands) of kilometres from their families and communities, who are unable to visit. The intensifying use of police cells and watch houses for children runs directly counter to the recommendations of this inquiry and of previous royal commissions and inquiries.

Australian Institute of Health and Welfare (AIHW) data for 2023–24 shows that:

- Around 4,227 young people aged 10 and over were under youth justice supervision on an average day.
- 1 in 5 (20%) of those under supervision were in detention.
- 4 in 5 (80%) of young people in detention were unsentenced (99% in the NT).
- Young people aged 10-17 who were from very remote areas were 11 times as likely to be under supervision as those from major cities.
- Almost 2 in 5 young people (39%) under supervision on an average day in 2023-24 were from the lowest socioeconomic areas, compared with about 1 in 17 young people (6%) from the highest socioeconomic areas.⁵

Productivity Commission data further shows that more than 11% of all supervised children were aged 10-13, and that of these children 74% were Aboriginal and Torres Strait Islander children. The data clearly shows that Aboriginal or Torres Strait Islander young people are very significantly overrepresented in the youth justice system, at 27 times the rate for non-Indigenous young people nationally in 2023-24.⁶

Extensive research has found that detention is damaging and criminogenic, serving to entrench young people further in disadvantage.⁷ The evidence shows that placing children on remand is disruptive and traumatic, and has little rehabilitative value.⁸ Commonwealth leadership is needed to address these alarming and worsening statistics, in the context of regressive and reactionary policy agendas of state

⁴ Andrew Messenger, '[Number of children under 14 in adult watch houses in Queensland rises 50% in 12 months](#)', The Guardian, 8 January 2025.

⁵ Australian Institute of Health and Welfare, '[Youth justice in Australia 2023-24](#)' last updated 28 March 2025.

⁶ Productivity Commission on behalf of the Steering Committee for the Review of Government Service Provision, '[Report on Government Services 2025: Community services \(Part F\)](#)', 2025.

⁷ Clancey, G., Wang, S. and Lin, B., 2020, 'Youth justice in Australia: Themes from recent inquiries', Australian Institute of Criminology, Canberra, p. 8.

⁸ See, for example: Armytage, P. & Ogloff, J., 2017, 'Youth justice review and strategy: Meeting needs and reducing offending', Melbourne.

and territory governments that are leading to breaches of Australia's international human rights obligations and undermining Commonwealth reform priorities such as Closing the Gap targets.

1.2 “Tough on crime” bail and sentencing reforms

We hold serious concerns that in 2024 and 2025 a number of jurisdictions have introduced or proposed further punitive bail and sentencing laws affecting children and young people, including removing the principle that detention should only be imposed as a last resort (QLD, VIC, NT).⁹ These developments collectively increase the likelihood that children, particularly First Nations children and children with disability and complex trauma, will be refused bail, returned to custody for technical breaches, and held in detention for longer periods. The ‘Adult time for Adult Crime’ changes to sentencing in some jurisdictions (QLD, VIC) are fundamentally incompatible with Australia's human rights obligations and this is a disturbing trend that requires the Commonwealth's urgent intervention.

1.3 Mixed progress and regression on the age of criminal responsibility

National Legal Aid supports the Raise the Age Campaign¹⁰ calling for governments to raise the minimum age of criminal responsibility to at least 14 years, in line with what has been recommended by the United Nations Committee on the Rights of the Child (UNCRC) based on clear evidence and expert advice.

The Standing Council of Attorneys-General ‘Age of Criminal Responsibility Working Group Report’ (2023) has acknowledged that raising the minimum age of criminal responsibility is considered ‘in the interests of medium and longer term community safety’ and that ‘therapeutic approaches that aim to address the underlying drivers of negative behaviour displayed by children are more cost-effective in the long-term’.¹¹ The report also notes that:

Early contact with the criminal justice system is correlated with ongoing justice system contact as an adult, with evidence demonstrating that the younger the child at the time of their first sentence, the more likely they are to reoffend (with any offence) and to reoffend violently. It is generally accepted by academics that the criminal justice system can itself be criminogenic, meaning involvement with the system can heighten the chance of a person continuing to engage with the criminal justice system in future.¹²

⁹ Australian National Preventive Mechanism, ‘Written contribution to List of Issues Prior to Reporting Seventh periodic report of Australia under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment’, September 2025.

¹⁰ See Raise the Age Campaign, available at: <https://raisetheage.org.au>.

¹¹ Standing Council of Attorneys-General, ‘[Age of Criminal Responsibility Working Group Report](#)’, September 2023, p. 24.

¹² Standing Council of Attorneys-General, ‘[Age of Criminal Responsibility Working Group Report](#)’, September 2023, p. 23.

There have been some positive steps to raise the age of criminal responsibility, but the national picture since February 2025 is one of fragmented, inconsistent and, in some jurisdictions, regressive change, despite the evidence before Attorneys-General and the work of the Standing Council of Attorneys-General Age of Criminal Responsibility Working Group. Children's treatment under criminal law is unfairly dependent on where they live. A child aged 13 years in Canberra is shielded from criminal responsibility, but a 10 year old child in Darwin, Perth, Adelaide or Sydney can be arrested, remanded and incarcerated. The regressive approaches of some jurisdictions are undermining the Commonwealth's justice policy objectives including under Closing the Gap. We urge the Commonwealth to use the levers available to it, including legislative and financial levers, to ensure Closing the Gap targets are met.

1.4 Conditions of detention

Legal Aids are very concerned that Australia is not meeting international human rights obligations in relation to children held in detention and that serious breaches of children's human rights are taking place. Recent findings about conditions in youth detention reflect what legal aid lawyers see daily in their work with children and young people, for example:

- Children being detained in adult watch houses for prolonged periods in circumstances where there is significant overcrowding, understaffing and unsafe conditions;
- Children being detained in police cells for extended periods, including after being granted bail, and alongside adult defendants also in police custody;
- Inappropriate, unsafe and inhumane use of isolation and restraints;
- Inadequately trained staff working in detention facilities, including a lack of cultural competency;
- Ongoing use of spit hoods, including their reintroduction in the NT.¹³

It is particularly concerning that the Northern Territory Government has prevented the UN Working Group on Arbitrary Detention from visiting Northern Territory prisons and watchhouses (December 2025), and by the Northern Territory Ombudsman's report (November 2025) outlining extremely poor, unreasonable and oppressive conditions in NT facilities.¹⁴

The conditions of detention for children and young people in Australia are causing irreparable harm to physical and mental health, have serious implications for safety, and are continuing to have serious

¹³ Andrew Messenger, '[Number of children under 14 in adult watch houses in Queensland rises 50% in 12 months](#)', The Guardian, 8 January 2025; Department of Health, 'Disability and Ageing, Disability Royal Commission Progress Report 2025, [Recommendation 8.3 – Prohibiting solitary confinement in youth detention](#), 2025; Bec Pridham, '[Review into incident at Tasmania's Ashley Youth Detention Centre of makeshift spit hood on detainee's head tabled in parliament](#)', ABC News, 2 December 2025; Australian National Preventive Mechanism, 'Written contribution to List of Issues Prior to Reporting Seventh periodic report of Australia under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment', September 2025.

¹⁴ Ombudsman NT, 'Watch House Investigation [Report](#): Own motion investigation into conditions for Territory prisoners in Northern Territory Police Force watch houses', November 2025, p. 4.

consequences for childhood development, education, and links to family - significantly undermining opportunities for rehabilitation.¹⁵

1.5 Recidivism and systemic failure

AIHW data indicates that around 85% of children sentenced to detention return to custody within 12 months, and more than half of all children under supervision in 2023–24 had been in detention at some point.

The data clearly demonstrates that the current system is not improving safety or wellbeing and reflects the on the ground experience of legal aid lawyers; it is cycling the same children, disproportionately First Nations children, children with disability, and children from marginalised communities through increasingly punitive systems at great public cost.

2. Overwhelming volume of evidence about what works

Over decades, there have been many reviews, inquiries, Royal Commissions and research reports that have clearly demonstrated that the criminal justice system is failing children, young people, and the broader community. These reviews have made a large number of evidence-based recommendations for systemic reform. These include (along with many others):

- the Royal Commission into Aboriginal Deaths in Custody (1991)
- the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997)
- the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (2011)
- the Senate Legal and Constitutional Affairs References Committee – *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013)
- the Royal Commission into the Protection and Detention of Children in the Northern Territory (2016)
- the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023)
- the Standing Council of Attorneys-General Age of Criminal Responsibility Working Group Report (2023)
- the Yoorook Justice Commission and Yoorook for Justice Report (2023)
- the National Children's Commissioner's report *Help Way Earlier! How Australia can transform child justice to improve safety and wellbeing* (2024)
- the Australian National Preventative Mechanism *Written contribution to List of Issues Prior to Reporting: Seventh Periodic report of Australia under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (2025), and

¹⁵ Australian National Preventive Mechanism, 'Written contribution to List of Issues Prior to Reporting Seventh periodic report of Australia under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment', September 2025.

- the Coroner's Court of Western Australia's Inquest into the Death of Cleveland Keith Dodd (2025).

Experts, including legal assistance providers, Aboriginal Community Controlled Organisations, other professionals who work with children and young people in the justice system, and those with lived experience of the system and its harms, have contributed their knowledge, expertise and time to these inquiries, and to support the development of evidence-based recommendations for reform. There are significant levels of frustration and despair in our sector that despite this clear evidence, governments are continuing to implement regressive political agendas that are causing irreparable harm to children and young people, and that are not and will not effectively address youth crime over the short, medium or long term.

National Legal Aid strongly supports Commonwealth leadership to undertake coordinated national action on this issue. Any further delays in taking coordinated national action will lead to further harm to children, young people and communities, including in contravention of Australia's human rights obligations and at great public cost.

3. Chronic underfunding of legal assistance exacerbating harm to children and young people

Access to culturally safe and specialised legal assistance is crucial to reducing the number of children and young people in the youth justice system and in detention and to preventing and addressing the breaches of children and young people's human rights. The harms to children and young people through their exposure to the criminal justice system is seriously exacerbated when they cannot access critical legal assistance.

National Legal Aid is deeply concerned that Legal Aid NT has recently had to make the difficult decision to cut services due to inadequate funding. These cuts come at a time when demand for legal help for children and young people is rising across the Northern Territory as a result of the Northern Territory Government's criminal law reforms.

From 17 November 2025 Legal Aid NT has been unable to provide new grants of legal aid in criminal matters for people who are not in custody. Legal Aid NT is continuing to provide grants of legal aid to young people who are not in custody, but only where in-house staff have capacity to provide that service. That capacity is extremely limited.

Legal assistance is an essential public service and is fundamental to the right to a fair trial in the criminal justice system. The reforms introduced by the Northern Territory Government – including changes to bail laws and lowering the age of criminal responsibility - have increased the volume, complexity and urgency of criminal law matters, placing significant additional pressure on legal assistance providers who do not have sufficient funding to accommodate the rising need in the community.

Reductions in Legal Aid NT's criminal law capacity will have immediate and serious consequences for the most marginalised people in the Northern Territory, including children as young as 10 years old. Children facing charges will be left to navigate complex legal processes alone. We are extremely concerned about the risk of profoundly unjust outcomes for Aboriginal and Torres Strait Islander children in particular, who are already disproportionately represented in the justice system.

Access to independent legal representation is also critical for the efficient and effective operation of the criminal justice system more broadly. Without this, courts will experience further delays and the pressures on police, corrections and social services will continue to rise.

National Legal Aid urges the Commonwealth and Northern Territory governments to work together to ensure sustainable, adequate and predictable funding for the Northern Territory's legal assistance providers. More broadly, governments must recognise the critical role of legal assistance as an essential public service through adequate and sustainable funding models across all jurisdictions. Timely, high-quality legal help is essential to maintaining community safety, upholding the integrity of the justice system, and protecting the rights of those most at risk – in particular children and young people.

Recommendations

Recommendation 1

That the Commonwealth Government take coordinated national action to respond to Australia's youth justice crisis and prevent further harm to children and young people based on the overwhelming body of evidence before it.

The Commonwealth must take national leadership and use all levers and tools available to it - including legislative and financial- to drive a coherent national approach that implements evidence-based recommendations for systemic reform including:

- **Addressing the driving factors for children and young people's engagement with the criminal justice system;**
- **Refocusing systemic responses towards early intervention, therapeutic and community based supports and diversion;**
- **Raising the age of criminal responsibility to 14 years;**
- **Ensuring detention is used as a last resort;**
- **Ending harmful detention practices;**
- **Establishing enforceable national standards and adequate oversight and scrutiny of youth justice systems and improving data and reporting; and**
- **Centring the rights, voices and self-determination of children and young people, especially First Nations children**



in line with Australia's human rights obligations.

Recommendation 2

Governments must recognise the critical role of legal assistance in addressing Australia's youth justice crisis through adequate and sustainable funding models across all jurisdictions.

In particular, the Commonwealth Government must take urgent action to ensure sustainable, adequate and predictable funding for the Northern Territory's legal assistance providers.

Across all jurisdictions, governments must increase funding for legal assistance to ensure that all children and young people who come into contact with criminal justice systems can access the legal help they need, and that their human rights are upheld.