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YOUTH VOICES

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Australia's youth justice and incarceration system

Submission to the Australian Government
Legal and Constitutional Affairs References Committee

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This submission may be quoted in public documents.

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Acknowledgement

Anglicare Southern Queensland acknowledges Aboriginal and Torres Strait Islander peoples as the first Australians and recognises their culture, history, diversity and deep connection to the land. We acknowledge the Traditional Owners and Custodians of the land on which our service was founded and on which our sites are operating today.

We pay our respects to the Aboriginal and Torres Strait Islander elders both past and present, who have influenced and supported Anglicare Southern Queensland on its journey thus far. We also extend that respect to our Aboriginal and Torres Strait Islander staff, clients and partners (past, present and future) and we hope we can work together to build a service that values and respects our First Nations people.

We acknowledge the past and present injustices that First Nations people have endured and seek to understand and reconcile these histories as foundational to moving forward together in unity.

Anglicare is committed to being more culturally responsive and inclusive of Aboriginal and Torres Strait Islander people and we are committed to embedding cultural capabilities across all facets of the organisation.

About Anglicare Southern Queensland

Anglicare SQ's experience in identifying and responding to the needs of vulnerable members of our many and varied communities is underpinned by 150 years of delivering innovative, quality care services.

More than 3,000 staff and volunteers operate across southern Queensland and in Longreach and Townsville.

We offer a comprehensive, integrated range of community services that comprises community aged care, residential aged care and community support programs, including youth justice, child safety, disability support, counselling and education, mental health, homelessness and chronic conditions. Our services are designed to 'wrap around' clients in a comprehensive way, recognising their health needs but also addressing the social needs which contribute to wellness.

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Recommendations

This submission supports all recommendations made in the Australian Human Rights Commission report, *'Help Way Earlier! How Australia Can Transform Child Justice to Improve Safety and Wellbeing'* (2024) and reproduced in Appendix A.

The recommendations are consistent not only with this submission, but to Anglicare's ongoing advocacy on youth justice issues over many years.¹

In particular, we highlight the following recommendations specific to this submission:

That the Australian Government:

- incorporate the Convention on the Rights of the Child into Australian law through a National Children's Act as well as a federal Human Rights Act.

That Australian Governments:

- establish a National Taskforce for reform of child justice systems. This Taskforce should report to Ministers responsible for child justice and child wellbeing across jurisdictions.
- legislate to prohibit solitary confinement practices in child detention facilities, and prohibit the use of isolation as punishment in any circumstance.
- develop nationally consistent minimum training requirements for workforces in the child justice and related systems, including child protection and police. Training should include child rights, child development, mental health, neurodevelopmental disabilities, cultural competence, and trauma-informed practice.
- raise the age of criminal responsibility in all jurisdictions to 14 years and undertake a review of the application of the presumption of *doli incapax*
- collect key data on children in the child justice system, disaggregated by age, sex, disability, geographic location, ethnic origin, and socioeconomic background, including data disaggregated at the local level to support service design and delivery. This data should be publicly available and accessible.
- agree to implement nationally consistent standards for monitoring detention facilities for children.

1.0 Introduction

Anglicare Southern Queensland (Anglicare SQ) welcomes the invitation to make a submission to the inquiry into the Australian Government Legal and Constitutional Affairs References Committee inquiry into Australia's youth justice and incarceration system.

Youth justice systems in most states and territories across Australia are failing our children.

In Queensland, the Government's own reports and strategies have pointed out on multiple occasions that the children involved in the youth justice system are also the most disadvantaged, with risk factors that include experiences of poverty, family violence, unstable accommodation or homelessness, disrupted education, exposure to alcohol and substance misuse and histories of familial offending and/or involvement with the child protection system.

Children as young as 10 years old continue to be criminalised in multiple states, despite a plethora of national and international evidence demonstrating that jailing children — particularly those with the life experiences outlined above — fails every test of good policy. It is ineffective, expensive² and creates incalculable, intergenerational individual, family, and community harm.

The human rights of a child should not depend on the state or territory in which they were born, nor the swings and roundabouts of State Government or Territory elections. This is a national issue that needs national leadership, with enforceable national minimum standards for youth justice.

We begin this submission by outlining the ways in which youth detention is a failing system and addressing the outcomes and impacts of youth incarceration, with evidence particularly from our jurisdiction, Queensland.

We then turn to other key issues outlined in the Terms of Reference. This includes highlighting our support for the Raise the Age campaign, both nationally and at state level, because of its critical role in prevention and early intervention in reducing youth offending and compatibility with all major human rights instruments.

Finally, we draw together the threads of the discussion to look toward a desired future in which youth justice reform is not a political football, but is human rights-aligned and evidence-based; and the well-being of all Australian children is a national priority.

The life experience of children in the justice system

- *31% have a parent who has been held in adult custody*
- *58% have a mental health or behavioural disorder diagnosed or suspected*
- *More than half have used two or more substances*
- *52% are totally disengaged from education, employment and training*
- *Almost 1 in 5 have been homeless or had unsuitable accommodation*
- *51% have also had involvement with Child Protection*

Queensland Government 2019. *Youth Justice Strategy 2019–2023*.

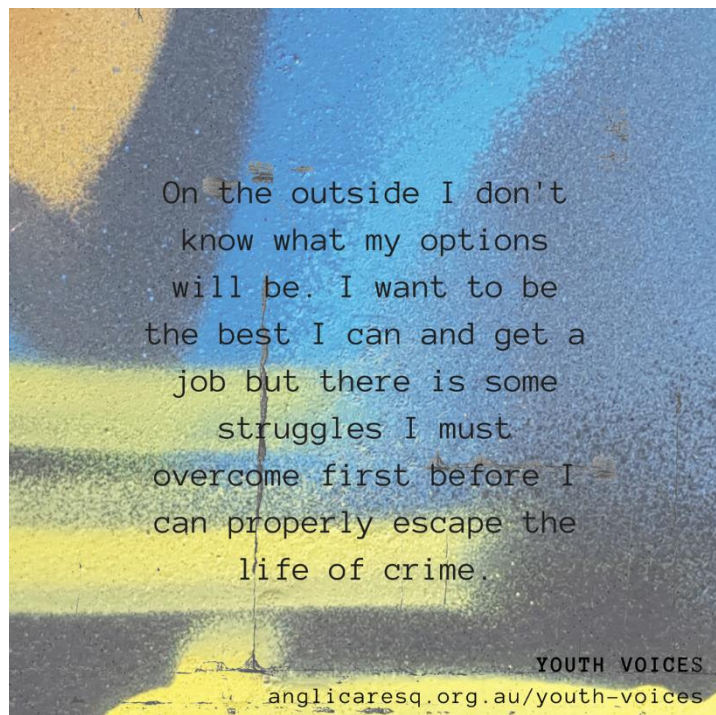
Anglicare's experience working with young people at risk

Our comments in this submission reflect the direct expertise and experience of Anglicare SQ over decades of service delivery, working directly with many thousands of children, young people, and their families.

In the financial year 2022–23, Anglicare supported 1,695 carers to provide 383,863 nights of foster and kinship care for children and young people, and 46,511 hours of support and accommodation for women and young people experiencing homelessness. We operated 29 residential homes for children and young people in need.

In addition to the Intensive Bail Initiative profiled in detail in this submission, we have experience of running Supervised Community Accommodation (SCA) Services in partnership with the then Queensland Department of Child Safety, Youth and Women for young people who had been granted bail by a court, and did not have a safe home to go to. Independent evaluation of the SCA program noted the high quality of our service delivery, including the effectiveness of the wrap-around framework, strong case management and positive feedback from young people in the program.

We also draw on experience that includes operating child and family programs and services across a geographic footprint double the size of the United Kingdom. This includes programs such as: foster and kinship care, residential care, Family Intervention Services (FIS), Intensive Family Support (IFS); Secondary Family Support (SFS), Supported Independent Living Services (SILS) and Assessment Support Connect (ASC). In Gympie, we also operate the Next Steps Plus and extended care program for young people transitioning out of care.



2.0 Outcomes and impacts of youth incarceration

*It is not acceptable for any system to fail in its intent so significantly.
It highlights that our current model of detention is not working as intended.*

Child Death Review Board Annual Report 2022-23³

A recent report by the Justice Reform Initiative, an Australian coalition of justice system experts, was straightforward about the efficacy of detention:

Prison does not work to reduce crime; it does not work to build safer communities; and it does not work to address the social drivers of contact with the criminal justice system.⁴

Despite the evidence behind this statement, Queensland has the second highest rate of children's incarceration (4.8 per 10,000 children) in Australia, and this number continues to rise. There has been a 41% increase in the children's prison population since 2019–2020, compared to a 34% decrease in Victoria and a 24% decrease in NSW.⁵ Queensland children and young people comprise 21.7% of the national population of people who are aged 10–17-years but represent 66.1% of the national population of 10–17 year olds under youth justice supervision.⁶ In raw numbers, more children are incarcerated in Queensland than anywhere else in Australia, significantly more than jurisdictions with larger populations, including New South Wales and Victoria.⁷

Despite a current review of the use of adult watch-houses to detain children in Queensland,⁸ and the associated undertaking to publish daily watch-house figures,⁹ the number of children held in watch-houses has not consistently declined, with more than 20 children regularly held in Queensland watch-houses on any one day, and at least one child detained for more than 15 days.¹⁰

The conditions in watch-houses used to detain children are non-compliant with human rights, and are addressed separately, in Section 4.2 of this submission.

In 2019, the Queensland Government introduced welcome youth justice reforms through the *Youth Justice and Other Legislation Amendment Bill 2019*. This approach to addressing youth offending in a more balanced, evidence-driven way has ceded in the past five years to an entrenched 'tough on youth crime' rhetoric that has gradually turned into a clamour, and is now shaping youth justice policy and legislation for the worse.

The evidence for this verdict is clear: on an individual, social and economic level, detention as anything but a last resort is a failing system:

- Making it easier to imprison children and young people does not make the community safer. Detention increases young people's vulnerability and disadvantage, and therefore the likelihood that they will return to the prison system over and over, both as youth and as adults.¹¹ Children and young people who have been imprisoned often experience disengagement from education and employment, disrupted positive relationships, social exclusion, and poorer health outcomes. The Queensland Government's own *Youth Justice Strategy 2019–2023* acknowledged as much, pointing out that children and young people

who have been through detention are at more risk of committing offences when they return to the community.¹²

The impact on girls of a system essentially designed for boys and young men is a further consideration, currently being addressed in the *Young Women's Voices* Australian Research Council Linkage project highlighted below.

Young Women's Voices

The *Young Women's Voices* project emerged from the *Youth Voices* pilot project undertaken by Anglicare SQ and Anglicare NSW South, NSW West & ACT. *Youth Voices* was an innovative research project designed in response to the complex issues facing young people, particularly those involved with the justice system. Recognising that the perspectives of young people are frequently neglected, the project used an alternative approach to identify ways in which young people seek help and, from their viewpoint, what makes that help most valuable.

An important finding from *Youth Voices* was the need to hear specifically about young women's experiences of the community services and youth justice systems. These systems were mainly designed to address the needs of males, but we know that young women's pathways into these systems are different from young men's, and that young women have unique needs. Young First Nations women are overrepresented in youth justice, and the *Young Women's Voices* project is committed to documenting their unique perspectives and utilising this knowledge to drive change.

Young Women's Voices aims to document young women's experiences of human services and youth justice across Australia; and involve young women in co-designing the study and interpreting the results. Ultimately, the project aims to reduce young women's contact with youth justice, inform better service provision, and support young women of all backgrounds to live healthy and flourishing lives.

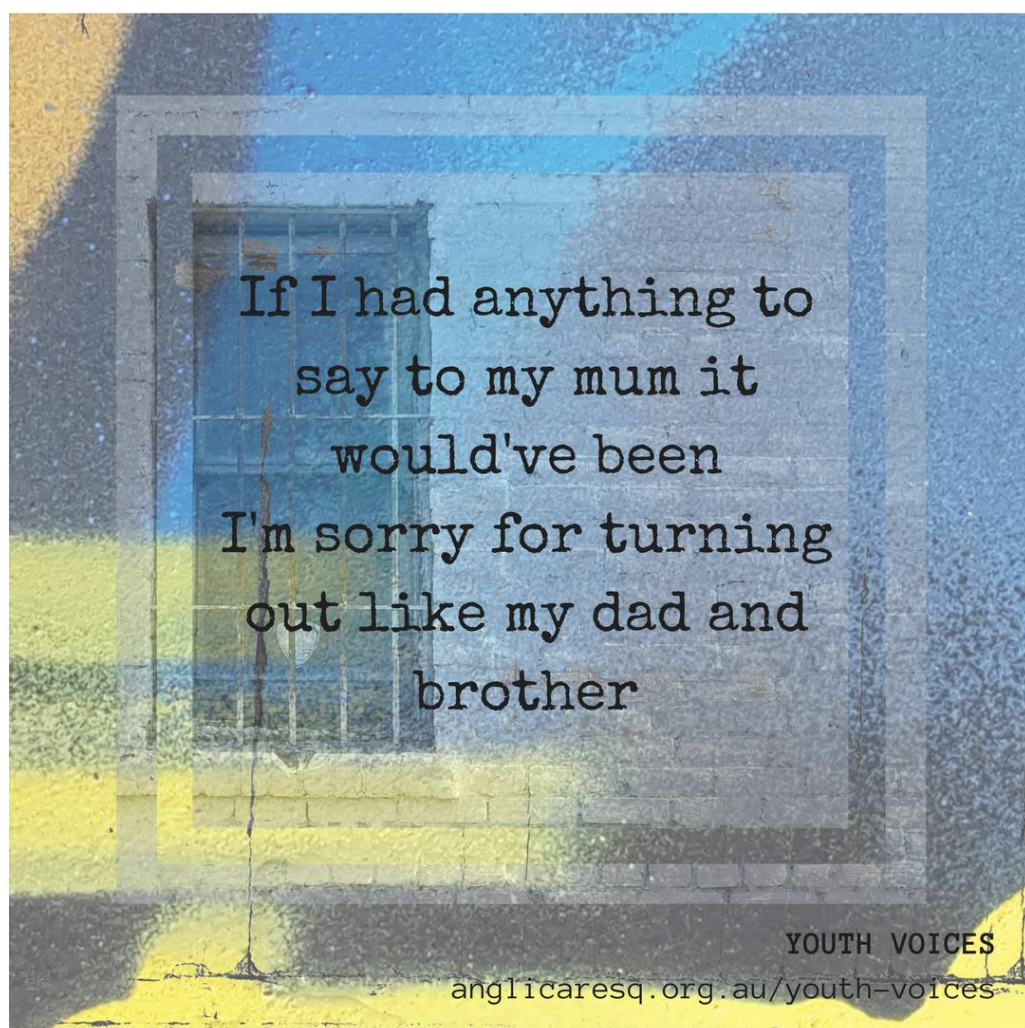
See anglicaresq.org.au/young-womens-voices for more information.

- The largest proportion of children and young people represented in the youth justice system are there because they have made poor or impulsive decisions or engaged in risk taking as a result of normal developmental processes.¹³ Exposing these children and young people to the trauma of time in detention is counter-productive: diversion is much more effective,¹⁴ and most will simply 'age out' of the justice system as they become more mature.¹⁵
- Detention is eye-wateringly expensive. Recent Productivity Commission data shows that the annual operating cost of imprisoning a child is \$2,068.32 a day and \$761,507 each year. This is in addition to the two planned new youth detention centres at Woodford and Cairns; a new youth remand centre at Wacol; and nearly \$200 million spent less than five years ago on expanding capacity at the West Moreton and Brisbane youth detention centres.¹⁶

- In terms of social costs, the Australian Government Senate Legal and Constitutional Affairs Committee report, *Value of a justice reinvestment approach to criminal justice in Australia*, cites evidence that the social costs of imprisonment are “almost impossible to calculate”, in that high rates of incarceration:

*break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up.*¹⁷

While the comment is not specific to youth detention, it is equally relevant given the impact of early imprisonment across the life trajectory of young people who engage in offending behaviours.



3.0 Over-incarceration of First Nations children

While the Productivity Commission in its annual Closing the Gap data compilation report points out that most Aboriginal and Torres Strait Islander young people grow up in loving and supportive homes, developing and maintaining strong connections to their family, community and culture,¹⁸ a range of systemic barriers and biases cause First Nations young people to be significantly overrepresented in the criminal justice system.

In Queensland, the imprisonment rate for Aboriginal and Torres Strait Islander children aged 10–17 years old is 40.9 per 10,000, compared to 1.8 per 10,000 for non-Indigenous children. They are therefore 23 times more likely to be incarcerated.¹⁹

The impact of detention on Aboriginal and Torres Strait Islander children, and the effect of disconnection from kin and culture, is described in uncompromising terms in a 2024 report from the Justice Reform Initiative, *Children, Youth Justice and Alternatives to Incarceration in Australia*:

*Incarceration for all children, including First Nations children, is trauma reinforcing. Children are removed from their carers, kin and communities, and often unable to participate in meaningful activities, or further education, employment, or vocational training. For First Nations children who are disproportionately represented in prison, trauma is amplified by the removal from Country and community, and disconnection from culture.*²⁰

The figures above, and those in the most recent Closing the Gap report, leave little doubt that the target to reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30% by 2031 is not on track to be met.²¹ This is not a new story: the United Nations Committee for the Rights of the Child, in its 2019 review of Australia's human rights record in this area, noted that:

The Committee again regrets that its previous recommendations have not been implemented and remains seriously concerned about:

- (a) The very low age of criminal responsibility;*
- (b) The enduring overrepresentation of Aboriginal and Torres Strait Islander children and their parents and carers in the justice system.*²²

Among other points, the Committee recommended that Australia:

- strengthen its support to Aboriginal and Torres Strait Islander organisations, including through capacity-building initiatives and increased resource allocation, and that it prioritises such organisations as service providers
- strongly invests in measures developed and implemented by Aboriginal and Torres Strait Islander children and communities to prevent their placement in out-of-home care, provide them with adequate support while in alternative care and facilitate their reintegration into their families and communities
- immediately implements the 2018 recommendations of the Australian Law Reform Commission²³ to reduce the high rate of incarceration of Aboriginal and Torres Strait Islander children and adults

- actively promotes non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service.²⁴

4.0 Compliance and non-compliance of prisons and detention centres with the human rights of children and young people in detention

The Justice Reform Initiative report mentioned above is equally forthright in its description of conditions in youth detention across the country:

*Practices of abuse, neglect and mismanagement have occurred (and continue to occur) in children's prisons in every state and territory in Australia.*²⁵

In particular, the Justice Reform Initiative notes the use of 'separation' — effectively, solitary confinement — in all jurisdictions, applied "unlawfully, inappropriately and punitively on children who are held in conditions that fall well short of minimum standards".²⁶

In Queensland, human rights compliance issues have been identified in recent reports prepared by the Queensland Ombudsman – Inspector of Detention Centres, focusing particularly on the separation of children held in the Cleveland Detention Centre (Townsville), and the detention of children in Cairns and Murgon watch-houses.

All three of the reports identify issues not restricted to these specific sites or time snapshots; and further human rights breakdowns in the Queensland youth justice system have been the focus of much censure in the community and legal sectors:

*In March 2023, the Queensland Government made the decision to override the Queensland Human Rights Act for the first time since it has been in effect, to implement a raft of punitive changes including bringing in breach of bail as an offence for children. In August 2023, the Queensland Government introduced and passed further amendments in an unrelated bill that gave the government the power to hold children indefinitely in adult watch-houses and adult prisons. This decision saw the state override its Human Rights Act for the second time within the space of six months.*²⁷

Despite the Government's acknowledgement that the relevant amendments are incompatible with Queensland's own *Human Rights Act*, both bills were passed by the Queensland Parliament on the basis that we are in the midst of an "exceptional crisis situation constituting a threat to public safety" (seemingly and inexplicably on a par with war, or a state of emergency).²⁸

4.1 Detention centres

4.1.1 'Separation'

Chronic staff shortages in Queensland youth detention centres have been at the core of operational and human rights issues for many years.²⁹ Recent figures and events reveal that this is a continuing problem.

- The response to a Queensland Parliament Question on Notice revealed that in the 2021–22 financial year, children were locked alone in their rooms:
 - 30,255 times, for between 6 and 12 hours;

- 519 times, for between 12 and 24 hours;
- 83 times for more than 24 hours.³⁰

Nearly 10 per cent (2,863) of separations involved young people under 14 years of age; and 84% (25,801) involved Aboriginal and Torres Strait Islander young people.³¹ The above figures equate to approximately one separation episode for every three young person bed nights.³²

- In July 2023, workers at the Brisbane and West Moreton youth detention centres walked off the job after serious incidents attributed to an ‘unsafe’ workplace, where “routine confinement of children due to staff shortages ultimately put workers at greater risk of violence when young people were allowed out”.³³
- Staff shortages at Cleveland Youth Detention Centre in Townsville have also led to a situation in which children are regularly locked alone in their rooms, when minimum safe supervision ratio are unable to be met.³⁴ Recent Queensland Audit Office figures reveal that Cleveland has the highest rates of lockdown, increasing from 12 per cent of the year in 2018–19, to 81 per cent in 2022–23 — equivalent to 294 days in lockdown.³⁵

‘Separation’ has impacts on the psychological wellbeing of children, their access to services, and the rights of children under multiple human rights standards.³⁶ The *Child Death Review Board Annual Report 2022–23* (Queensland Family and Child Commission) notes that:

*Periods of separation, isolation, or solitary confinement can impact a child’s health and wellbeing in severe, long-term and irreversible ways. Many of the children and young people in detention have experienced a life of significant disadvantage and marginalisation, with many being the victims of abuse and neglect. Being confined in a cell for extended periods of time, without interaction with peers, family, culture, and support networks creates an environment of re-traumatisation. Research has shown pre-existing mental health problems are likely exacerbated by experiences during incarceration, such as isolation, boredom and victimisation.*³⁷

The 2019 Committee on the Rights of the Child periodic report on Australia specifically called out the practice of isolation in youth justice facilities, urging the Australian Government:

*To explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion or to discipline children under supervision, promptly investigate all cases of abuse and maltreatment of children in detention and adequately sanction the perpetrators.*³⁸

Other human rights standards applicable to solitary confinement are summarised in Section 5.0 of this submission, but various government documents also highlight this issue, including:

- The Queensland Department of Youth Justice’s own operational policy on separation recognises the potential for harm in terms of the following sections of the Queensland Human Rights Act:
 - Protection from torture and cruel, inhuman or degrading treatment (s 17 of the Human Rights Act 2019)
 - Humane treatment when deprived of liberty (s 30 of the Human Rights Act).³⁹

- The above-mentioned *Child Death Review Board Annual Report 2022–23* addresses in detail the cases of two young boys known to both the child protection and youth justice systems. Among the issues identified in the report was the extent to which both boys were isolated in their rooms:

*Both boys experienced periods of separation during the day in addition to and often adjoining the 12-hour overnight lockdown. Boy 2 was confined to his cell for more than 22 hours of the day ... on 55 of the days he was in detention. On 22 days, he was in his cell for more than 23 hours... Critically, extended separations significantly impacted Boy 2's access to education, therapeutic and cultural programs, social and leisure activities, exercise, fresh air, and sunlight.*⁴⁰

To this point, the report highlights statements from a long list of medical and human rights organisations⁴¹ that:

*condemned the practice [of solitary confinement] for its serious risks of causing long-term psychiatric and developmental harm and exposed the practice as counter-productive, as it fails to address underlying causes [of youth crime] and creates problems with reintegration.*⁴²

- ‘*Help Way Earlier!: How Australia can transform child justice to improve safety and wellbeing*, the recent report of the Australian Human Rights Commission, addresses the issue of isolation under the heading of ‘Right to be treated with humanity and respect’. It details reports on the practice of solitary confinement across several states, and notes the call from Australian and New Zealand Children’s Commissioners, Guardians and Advocates for the cessation of the harmful practice of isolating children and young people in detention, and the development of *nationally consistent* definitions and minimum standards for isolation practices in child justice detention, in accordance with international human rights standards.⁴³

There are two further important points, about the nature of and terminology used across Australia to describe solitary confinement or isolation of children in youth detention, and the reporting of such periods, raised in the *Child Death Review Board Annual Report 2022–23*.

The report makes the point that jurisdictions across Australia use various terms to describe the period when children are confined to their cells, including ‘separation’, ‘lockdown’, ‘confinement’ and ‘segregation’. No jurisdiction, the report notes, “acknowledges it uses ‘solitary confinement’”.

While the Board acknowledges that there are times when safety considerations require short periods of ‘isolation’, it notes that:

*These ... instances are distinct from the use of ‘isolation’ to manage the overall safety of a centre because there is insufficient staffing – including using ‘lockdowns’ when staff are having lunch, or when insufficient recruitment has occurred. Labelling each of these situations with the same word, and then failing to properly record and report on the instances and solutions should not be acceptable.*⁴⁴

The report goes on to expand on the issue of transparent reporting, calling for jurisdictional data about “time out-of-cells (average hours per day)” to made publicly available as is currently done for adult corrections. It notes that this level of transparency does not appear to be an issue in the adult justice system:

Youth Justice centres across Australia, including Queensland, claim that there are system limitations impacting the accurate and more nuanced reporting of lockdown periods. This limitation does not apply to adult corrections – which transparently report into a national data base on detained adults “time out of cell”.⁴⁵

Consistent, agreed national terminology that identifies the confinement of young people alone in their rooms as what it is, rather than the obfuscation of ‘separation’ or ‘segregation’, as well as transparent reporting about the extent of such a practice, would increase the visibility and accountability of youth detention centres in their use of a strategy that is widely acknowledged to be both harmful to children and in almost every case, in breach of their human rights.

4.1.2 Conditions in detention

The conditions in which young people can be held during a period of ‘separation’ were also highlighted by the Queensland Ombudsman – Inspector of Detention Centres report, focusing on the Cleveland Detention Centre (Townsville).

In particular, the report called out the lack of basic facilities that allow children to meet their physical needs in a manner described by the *United National Rules for the Protection of Juveniles Deprived of their Liberty* as in privacy, and in a ‘clean and decent manner’. The UN standards state that “Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity” and that “Clean drinking water should be available to every juvenile at any time”.⁴⁶

The Inspector of Detention Centres report noted that while children are locked in their accommodation rooms during staff shortage and other types of separations, there are also other purpose-built ‘separation’ rooms and holding cells at Cleveland that enable children to be separated for short periods. At the time of the report, however, it was observed that children had been held overnight for various reasons in both kinds of rooms.

The holding cells have a bench, but no other facilities. The separation rooms are described as:

small rooms with bare cement floors and walls covered in graffiti. They are empty, with no toilet, running water, bed or seat.⁴⁷

Such conditions intensify the effect of isolation, and the human rights implications of this practice.

The report also questioned whether new youth detention facilities planned for Queensland at Woodford and Cairns will include such basic facilities in its separation rooms, and pointed out that these amenities exist in separation rooms in several other Australian states.⁴⁸ A February 2024 joint media release from the Queensland Premier and Minister for Youth Justice described the new facility at Woodford in the following terms:

As a therapeutic centre it includes more home-like accommodation units; consultation and treatment rooms; multi-purpose spaces for education, skills development, and training; areas for physical activity, green spaces, and spaces for cultural connection.⁴⁹

The report however highlighted some ‘mixed signals’ from the Department, in the Director-General’s response to the report’s recommendations:

*The Department commits to **considering the inclusion of these facilities** in the design of the two new youth detention centres at Woodford and Cairns.*

It is noted that these modifications will have significant cost implications that will need to be considered relevant to other build priorities (our emphasis)...⁵⁰

As the Inspector of Detention Centres report points out, a lack of sanitary facilities and running water is particularly difficult to reconcile since “adult prisons in Queensland also provide the basic facilities of a toilet, basin with running water and a bed in their detention units”.⁵¹

As a human rights issue, children deserve no less satisfactory treatment than adults. Many human rights standards, including the United Nations Declaration on the Rights of the Child⁵² and the Convention on the Rights of the Child⁵³ (to which Australia is a signatory⁵⁴) in fact highlight that children, by virtue of their physical and mental immaturity, actually need “special safeguards and care” rather than exposure to non-therapeutic, punitive environments.

4.2 Watch-houses

4.2.1 Watch-house conditions

Youth Justice Principle 19 in schedule 1 of the Queensland *Youth Justice Act 1992* states explicitly that “A child detained in custody should only be held in a facility suitable for children”.⁵⁵

The conditions in watch-houses were addressed in the September 2024 Queensland Ombudsman Inspector of Detention Centres report focusing on the detention of children in Cairns and Murgon watch-houses. The report detailed conditions incompatible with human rights in both locations:

Key observations

The infrastructure at the watch-houses in Cairns and Murgon is not suitable for detaining children, especially for longer periods of time. Prolonged detention of children in this type of environment can significantly affect their wellbeing.

At the Cairns watch-house there is:

- a lack of any natural light in accommodation areas
- a lack of a consistently available area for boys to interact, leading to them being locked in their cells for substantial periods of time
- significant overcrowding of cells at times
- a lack of privacy regarding access to toilets and showers.

At the Murgon watch-house there is:

- absolutely no access to fresh air during the period of detention, as there is no usable outdoor exercise yard
- a lack of privacy regarding access to toilets.⁵⁶



Figures 1 and 2: Accommodation cells in the Boys' unit at the Cairns watch-house (Sept 2024)⁵⁷

4.2.2 Training of staff

At a recent Queensland Council of Social Services (QCOSS) Human Rights Network webinar, 'Ending the Use of Watch-Houses for Children in Qld - A Practical Path Forward', National Commissioner for Children Anne Hollonds spoke of what triggered the Australian Human Rights Commission report, *'Help Way Earlier!: How Australia can transform child justice to improve safety and wellbeing'*.

The Commissioner's visit to a Western Australian youth detention centre, she said, shocked her "to the core" — not only the conditions, but the lack of training for staff to deal with "acute psychiatric disorders or the complex needs of these children" who were attempting to die by suicide and then being returned from hospital to detention.⁵⁸

The issue of lack of appropriate staff training is not an isolated one. The Queensland Inspector of Detention Centres report referenced above noted that while children admitted to a youth detention facility are assessed by a multi-disciplinary team, including health professionals —

*No specialist health staff (for example, registered nurses, psychologists, or other allied health professionals) are involved in the initial assessment of children when they are admitted to a watchhouse. Instead, a police officer is responsible for identifying who may be at risk of self-harm or suicide, or who may have physical or mental health concerns that need immediate attention or adjustments put in place. In most cases, the officer will not have undergone any specialist training.*⁵⁹

Anglicare's own experience supporting children in watch-houses is consistent with the above. Staff acknowledge that many watch-house police officers are doing 'the best they can' in a very difficult environment designed for adults, with little or no specialist training. They have no capacity to simultaneously address complex behaviours in adults as well as children, who are often held within sight and/or sound of each other; nor the trauma that exposure to long hours of adult trauma (eg screaming), inactivity, rigid routines, and confinement in a 'scary' space separated from families or friends can have on a child, particularly those children with intellectual or other disabilities. As the report goes on to point out:

It is unrealistic to expect all police officers to be able, without appropriate guidance and training, to adequately phrase questions in a trauma-informed

*and culturally appropriate manner, or in a way that can be understood by a child with a cognitive impairment.*⁶⁰

Among other human rights standards, this situation is incompatible with Article 3 of the Convention of the Rights of the Child, which states that:

*the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*⁶¹

5.0 Commonwealth's international obligations in regards to youth justice

The Australian Government Attorney-General's Department website provides a comprehensive overview of Australia's international obligations in terms of the right to humane treatment in detention.⁶²

These rights include the humane treatment of children and young people in detention. As pointed out earlier in this submission, our obligations to care for children under the Convention on the Rights of the Child in fact require a further level of commitment to that extended to adults, given the relative physical and mental immaturity of children and young people.

It is clear from the discussion above that Australia is in breach of many of these human rights standards because of the conditions and practices in our youth justice systems. We wish however to raise two particular issues of concern with regard to our international human rights obligations to children in the youth justice system.

5.1 Children with disabilities

The statistics for children with disability in the youth justice system are variable, with figures including up to 47 per cent of young people;⁶³ 37 per cent, with at least one cognitive, intellectual, physical or sensory disability (diagnosed or suspected);⁶⁴ and 33 per cent with at least one mental health &/or behavioural disorder.⁶⁵

What is certain is that children and young people with disability are overrepresented in the youth justice system.⁶⁶ The Queensland Advocacy for Inclusion, an organisation that provides individual and systems advocacy for people with disability, notes the following examples of ways in which the potential for extreme harm exists through the youth justice system:

- The use of strict rules and regiment makes detention completely unsuitable for many children with disability, such as those with autism spectrum disorder or cognitive disability who require a more individualised approach.
- Children with disability have considerably less access to, and control over, disability-related support services, particularly in watch-houses.
- Disability-related behaviours can be misidentified by youth detention staff as non-compliant behaviour and met with responses aimed to 'maintain order' or as punishment.
- In addition to factors discussed above regarding 'separation', isolating a child with disability in solitary confinement can lead to high levels of dysregulation and distress.⁶⁷

The Disability Royal Commission also points out that many First Nations people may have an undiagnosed or unidentified disability, yet no corrective services or youth justice agency uses a culturally-validated screening tool to identify disability in First Nations people.⁶⁸ University of New South Wales research indicated that First Nations young people with cognitive disability are more likely to be charged with a first offence at a younger age than young people without cognitive disability.⁶⁹

As the Disability Royal Commission discusses in detail in Volume 8 of the *Final Report*, in a chapter titled 'The right to humane treatment in criminal justice settings',⁷⁰ Australia has obligations to protect people with disability in the criminal justice system under international human rights treaties and instruments including:

- the International Covenant on Civil and Political Rights;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Convention on the Rights of Persons with Disabilities;
- the Convention on the Rights of the Child; and
- the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, which establish minimum standards of conditions and treatment of all prisoners, including those with disability.

5.2 *Minimum Age of Criminal Responsibility: Raise the Age*

Both the Commonwealth and State governments are well informed regarding the human rights implications of, and evidence for, raising the minimum age of criminal responsibility from 10 years to at least 14 years. Inquiries at both levels of government have repeatedly demonstrated that:

- The current age of criminal responsibility at 10 years of age is totally inconsistent not only with extensive medical evidence, but also with social norms and expectations about protecting children.
- Instead of helping children, detention increases their vulnerability and disadvantage, and therefore the likelihood that they will return to the prison system over and over, both as youth and as adults. As a report from the Sentencing Council of Victoria points out:

*The younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to an adult sentence of imprisonment before their 22nd birthday.*⁷¹

- Raising the age of criminal responsibility would also have an immediate and generational impact on the over-incarceration of Aboriginal and Torres Strait Islander people in Australia. The low age of criminal responsibility disproportionately impacts these children and is a key driver of their contact with police and the justice system. Aboriginal and Torres Strait Islander children have a right to grow up connected to culture and in a safe and healthy environment, supported to remain with their families and communities.
- International comparisons emphatically demonstrate that raising the age is feasible without increasing youth crime rates.⁷²

- Any public pushback to raising the age from a minority of Australians is not reflected in the majority view. Two thirds of Australians already think that 14 is the minimum age of responsibility.⁷³ In Queensland, 2020 polling by The Australia Institute showed that twice as many Queenslanders support raising the age to 14 (51%) as those who oppose it (24%); and nearly 6 in 10 Queenslanders agreed that public money currently spent on locking up children would be better spent instead on social services like family support, trauma and mental health support and public housing.⁷⁴

Involvement in the criminal justice system for children under 14 years therefore fails every test of good policy. It cannot be said to be the most ‘appropriate means’ given the probability of harm to the young people involved and the cost involved, and it rarely meets the ‘desired ends’ of reducing crime. It is incompatible with Australia’s human rights obligations on multiple fronts, but particularly in terms of our commitments under the Convention on the Rights of the Child. As discussed above, the 2019 Committee on the Rights of the Child periodic report on Australia drew attention to the fact that its previous recommendations had not been implemented and remained “seriously concerned” about the very low age of criminal responsibility, urging the Australian Government to raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 years.⁷⁵

6.0 Benefits and need for enforceable national minimum standards for youth justice consistent with international obligations

The drivers for youth offending across Australia are well-known and clearly identified by research: clusters of risk factors that include experience of poverty, family violence, cultural disconnection, unstable accommodation or homelessness, disengagement from education, exposure to alcohol and substance misuse and histories of familial offending and/or involvement with the child protection system; as well as early contact with the justice system, which is one of the key predictors of future re-offending.

All of these factors have human rights implications related to our care for children, and their right to “reach their full potential when nurtured by empowered and connected families who are supported by strong communities” — the vision outlined in the Australian Government *Early Years Strategy 2024–2034*. This right does not cease at five years old, nor should it depend on the state or territory in which a child is born, nor the swings and roundabouts of State Government or Territory elections.

As Natalie Lewis, a proud Gamilaraay woman and the Commissioner of the Queensland Family and Child Commission, recently pointed out, we need to avoid the politicisation of the issue that happens at state level.⁷⁶ We need courageous leadership from the Commonwealth that recognises that harm is occurring to our young people in every single jurisdiction.

We all know what works: the evidence is overwhelming. Not coincidentally, all of those examples of what works are consistent with the guidance provided by the Convention on the Rights of the Child. This is a national issue that needs national leadership, with enforceable national minimum standards for youth justice based on a human rights framework that cannot be over-ridden.

Youth justice systems in Australia overall are a long way from providing young people with the opportunity to divert from offending, reshape their futures, and reach their potential in a way that benefits the child and Australian society as a whole. We need the same kind of focus on children

and young people from five years-plus as a national priority as we have on the early years. The whole community suffers, now and in the future, when any of our children are harmed.

7.0 A final word

Every jurisdiction in Australia is responsible for our obligations under the Convention on the Rights of the Child. As National Children's Commissioner Anne Hollonds points out, every state and territory was consulted in 1990 when we as a nation ratified the Convention, so this makes the responsibility a mutual one.

We need to turn our attention and our resources to addressing the underlying causes, and to the barriers that stop us taking national action on evidence-based systemic reform.⁷⁷

"Our state and territory justice systems alone", she says, "cannot fix these problems."

We need to work together on a 10-year road map for reform, because if we don't, we will still be having this conversation in 10 years' time.⁷⁸

Appendix A

Recommendations of the Australian Human Rights Commission report, *'Help Way Earlier! How Australia Can Transform Child Justice to Improve Safety and Wellbeing (2024)*

Recommendation 1: Australian Governments establish a National Taskforce for reform of child justice systems. This Taskforce should report to Ministers responsible for child justice and child wellbeing across jurisdictions.

Recommendation 2: The Australian Government appoints a Cabinet Minister for Children, with responsibility for the human rights and wellbeing of children in Australia.

Recommendation 3: The Australian Government establishes a Ministerial Council for Child Wellbeing, chaired by the Minister for Children, and reporting to National Cabinet.

Recommendation 4: The Australian Government incorporates the Convention on the Rights of the Child into Australian law through a National Children's Act as well as a federal Human Rights Act.

Recommendation 5: Australian Governments provide integrated, place-based health, education and social services for both children and their families.

Recommendation 6: The Australian Government increases the level of income support payments for children, young people and families.

Recommendation 7: Australian Governments urgently prioritise access to safe and affordable housing for children and families, including those in the child protection and justice systems.

Recommendation 8: Australian Governments prioritise access to comprehensive and culturally safe healthcare, including for children with multiple and intersecting needs.

Recommendation 9: Australian Governments resource schools to be community hubs integrated with health services and providing flexible learning options.

Recommendation 10: Australian Governments prioritise investments in prevention and early intervention through Aboriginal Community Controlled Organisations.

Recommendation 11: Australian Governments improve availability of free and accessible community sport, music, other social activities, and cultural programs, addressing barriers such as lack of public transport.

Recommendation 12: Australian Governments resource and expand the availability of evidence-based diversionary programs for children, including those by Aboriginal and Torres Strait Islander Community-Controlled Organisations, and other culturally safe programs.

Recommendation 13: Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.

Recommendation 14: Australian Governments resource the redesign of services to be place-based and informed by evidence and local community priorities, in line with Priority Reform 1 of the National Agreement on Closing the Gap.

Recommendation 15: Australian Governments develop nationally consistent minimum training requirements for workforces in the child justice and related systems, including child protection and police. Training should include child rights, child development, mental health, neurodevelopmental disabilities, cultural competence, and trauma-informed practice.

Recommendation 16: Australian Governments ensure that all child justice matters are heard in specialised Children's Courts or by child-specialist magistrates.

Recommendation 17: Australian Governments collect key data on children in the child justice system, disaggregated by age, sex, disability, geographic location, ethnic origin, and socioeconomic background, including data disaggregated at the local level to support service design and delivery. This data should be publicly available and accessible.

Recommendation 18: The Australian Government withdraws its reservation to Article 37(c) of the Convention on the Rights of the Child.

Recommendation 19: Australian Governments legislate to prohibit solitary confinement practices in child detention facilities, and prohibit the use of isolation as punishment in any circumstance.

Recommendation 20: Australian Governments raise the age of criminal responsibility in all jurisdictions to 14 years and undertake a review of the application of the presumption of *doli incapax*.

Recommendation 21: Australian Governments agree to implement nationally consistent standards for monitoring detention facilities for children.

Recommendation 22: Australian Governments fully implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by designating National Preventive Mechanisms that have child rights expertise in all jurisdictions.

Recommendation 23: Australian Governments conduct Child Rights Impact Assessments on laws and policies that affect children.

Recommendation 24: The Australian Government ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, that will allow children to make complaints to the United Nations Committee on the Rights of the Child about breaches of their rights.

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