

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Submission

Australia's youth justice and incarceration system



Acknowledgement of Country

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 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 Southern Queensland (Anglicare) has responded to the needs of our community through more than 150 years of delivering innovative, quality care services. More than 3,000 Anglicare staff and volunteers operate across southern Queensland and in Townsville. Our comprehensive, integrated range of community services includes 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.

This submission may be quoted in public documents.

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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:

- mandate disability screening on entry to detention, followed by timely access to specialist assessment and supports, backed by independent monitoring.
- ensure education access equal to mainstream environments, backed by independent monitoring.
- 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.

Introduction

Youth justice systems in most states and territories across Australia are failing our children. Despite clear international and domestic legal frameworks, children continue to experience unsafe conditions, unmet disability support needs, exclusion from education, and the use of isolation and other harmful practices. These failures are repeated and systemic – well documented by oversight bodies, inquiries, and commissions over many years.

Australia has committed to the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). These treaties require that children in detention are treated with dignity, have access to disability supports, are protected from harm, and given access to education that meets their needs. While youth detention is administered by states and territories, the Commonwealth remains responsible for ensuring these obligations are upheld in practice. Ongoing breaches in state- and territory-run facilities represent national failures.

Anglicare Southern Queensland (Anglicare SQ) welcomes the invitation to make a second submission to the inquiry into the Australian Government Legal and Constitutional Affairs References Committee inquiry into Australia's youth justice and incarceration system. Our earlier submission focused on detention centres, especially the use of isolation, and the conditions in watch-houses.

This submission focuses on three connected areas of concern: early system failures that create a pipeline for children toward the youth justice system through undiagnosed disability and repeated school suspensions, persistent non-compliance with disability and education obligations inside detention, and the continued use of isolation and unsafe practices. Together, these issues show a clear gap between what Australia has promised under international law and what children are experiencing on the ground.

The evidence presented demonstrates the need for strong Commonwealth leadership to set enforceable standards, ensure accountability, and protect the rights and dignity of children in detention.

International obligations in regards to youth justice

The Australian Government has committed to several international treaties that set clear expectations for how children must be treated while in detention and the standards under which they are detained. As outlined in our earlier submission to this same Inquiry,² our obligations to care for children under the Convention on the Rights of the Child (CRC) go beyond the level of commitment extended to adults, given the relative physical and mental immaturity of children and young people.

This submission highlights the ongoing human rights breaches within the youth justice system across all jurisdictions. We wish to highlight specifically two areas of concern regarding our international human rights obligations to children in the justice system: Article 23 of the CRC requires that children with disabilities have their disability support needs met and Article 28 requires that they have access to stable education.³

The use of isolation, inconsistent or non-existent disability assessment, and limited access to schooling are in direct conflict with these obligations.

The Convention on the Rights of Persons with Disabilities (CRPD) adds additional requirements, with Articles 7, 13 and 24 stating that children with disability are given equal protection under the law, that their liberty and safety are upheld, that they are free from cruel or degrading treatment, and that they can access education that meets their needs.⁴

When detention centres do not conduct disability screening, fail to provide adjustments, or rely on punitive behaviour management rather than therapeutic support, children's rights are breached. If these gaps continue, Australia is breaching its own commitments, and the harm to children and young people compounds. The Commonwealth has both the authority and the duty to step in, set clear standards, and make sure every state and territory upholds them.

National legislative and policy framework

Australia has a clear set of laws meant to protect the rights and safety of children, including those in detention. The *Australian Human Rights Commission Act 1986* sets out national oversight, while the *Disability Discrimination Act 1992* and the *Racial Discrimination Act 1975* make it unlawful to treat a child unfairly because of disability or race. Each state and territory also has legislation applicable to children and young people that require safe conditions, support, and access to education. In Victoria, Queensland, and the ACT, human rights laws place extra duties on government agencies to act in ways that respect children's rights.

Yet despite this wide legal framework, oversight bodies continue to report unsafe conditions, poor health and education access, and repeated failures to make reasonable adjustments for children with disability in youth justice systems.^{5 6} These gaps show that rights on paper are not being upheld in practice. Ultimately, the Commonwealth is the body that must answer for Australia's performance under the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and other treaties. Ongoing breaches in state- and territory-managed facilities are representative of national failures. The Commonwealth cannot step back from this responsibility. It has a duty to make sure that every level of government meets the standards Australia has agreed to, and that children in detention are treated with basic fairness, safety, and dignity.

Early drivers of youth justice: undiagnosed disability and school suspensions

Early contact with the youth justice system often starts well before a child reaches adolescence. As noted above, two early drivers stand out across inquiries and research: undiagnosed disability and access to education, particularly repeated school suspensions. Many children who later enter detention had unmet support needs throughout primary and early secondary years. When disability is missed or support is not provided, children are more likely to be removed from class or sent home for behaviour that should have prompted assessment and reasonable adjustments.

This sits at odds with the *Disability Discrimination Act*⁷, which requires schools to make reasonable adjustments, and with the *Convention on the Rights of the Child*, which protects a child's right to education and inclusive participation. Despite this, students with disability are suspended at much higher rates than their peers, and the *Disability Royal Commission* highlighted how these suspensions often mask unmet communication, sensory, or cognitive needs.⁸

Once a child is isolated from learning environments, the gap grows. The *Disability Royal Commission* recommends that suspension be a last resort, however rates across Australia show a different story. Disabled students in Queensland comprise roughly 25% of the student cohort, yet in term 2, 2025, made up 64% of suspended students.⁹ These early breaches of rights and support obligations set the conditions for later involvement in youth justice, forming a pathway that should have been interrupted through assessment, inclusion, and timely support. A recent Queensland Advocacy for Inclusion media release addressed disabled students right to learn, stating, "When schools create inclusive environments designed by and with disabled

students, all students benefit from stronger learning communities, and we stop this pipeline from classroom to courtroom".¹⁰

The evidence is clear. The Australian Institute of Criminology demonstrates positive associations between repeat school suspensions and the problem behaviour of teenagers: for example, violent and nonviolent antisocial behaviour, violence, and tobacco use.¹¹ School suspension and other forms of school exclusion rely on a “zero-tolerance approach” to students exhibiting challenging behaviours, but this rarely accounts for other significant precipitating factors such as trauma.¹²

Suspension disrupts routines, weakens study habits, and breaks a child's sense of belonging to their school community. For children with disability, the impact is even greater, as the removal often comes at the exact moment support should be strengthened.

There is a significant body of evidence that suggests that the younger a student is when they are first suspended, the more likely it is they will end up involved in the juvenile justice system.¹³ Data obtained by the ABC revealed that in 2023 Prep students received more than 700 suspensions, Year 1 students about 2,000, Year 2 students approximately 2,500, and Year 3 students about 3,500.¹⁴

Of particular significance is the fact that Aboriginal and Torres Strait Islander children (particularly boys) are suspended or excluded from schooling at much higher rates than non-First Nations children.¹⁵ This is consistent with Queensland data, where Aboriginal and Torres Strait Islander children are overrepresented in school suspensions.¹⁶

These patterns reflect repeated breaches of children's rights to education, inclusion, and support at the point where intervention would have the greatest impact. The evidence shows that undiagnosed disability and repeated school suspension are early system failures that funnel children toward youth justice. Addressing these failures through early intervention, inclusive education, and strict limits on school suspension is essential to interrupting this pipeline.

Compliance and non-compliance in youth detention

Disability not identified or supported

Breaches: CRC Articles 23, 24, 28 and CRPD Articles 7, 13, 24.

Recommendation: Mandatory disability screening on entry to detention, followed by timely access to specialist assessment and supports, backed by independent monitoring.

Across several jurisdictions, oversight bodies and inquiries continue to show that many children enter detention without any formal assessment for disability.^{17 18} This includes cognitive disability, psychosocial disability, communication disorders and Foetal Alcohol Spectrum Disorder.¹⁹ The Disability Royal Commission highlighted that while there is no consistent national record of the number of young people in detention with a disability, the limited data available shows that an overwhelming majority of young people in detention have one or more disabilities.²⁰

With many children entering detention without having received a formal diagnosis in the community, and with no screening completed upon arrival, detention centres are failing to provide the necessary adjustments required to meet support needs. This is a direct breach of the rights to support, health and education set out in CRC Articles 23, 24 and 28, and the non-discrimination and participation rights in CRPD Articles 7, 13 and 24.^{21 22}

Support available inside detention is inconsistent and varies greatly across Australia. There is limited access to allied health support such as speech therapy and mental health supports including behaviour support and psychology. Detention centres often fail to provide access to communication aids, which affects a child's ability to understand rules, follow routines and engage with programs. This also undermines their right to participate in decisions that affect them, including interviews, behaviour plans and disciplinary processes.²³ These gaps increase the risk of punishment for behaviour linked to disability, reinforce cycles of disengagement, and contribute to rising use of isolation or restrictive practices.

Thrusting a young person into a system that is not equipped to meet their support needs places an enormous amount of pressure on the staff within the system, who are rarely trained or prepared with the skills to meet young people's disability support needs. 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 Hollands spoke of the trigger for 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.²⁴

Children and young people living with a disability, either diagnosed or undiagnosed, are some of the community's most vulnerable, likely to have already experienced multiple traumas in their life. When a young

person enters the youth justice system, they are entering a system often focused on punitive responses rather than therapeutic. Both the CRC and the CRPD enshrine global minimum standards in relation to children's and disability rights, including the rights of children and young people in detention, and Australia is legally obliged to meet and enforce these standards.

Lack of stable education access

Breaches: CRC Article 28 and CRPD Article 24.

Recommendation: Ensure education access equal to mainstream environments, backed by independent monitoring.

Lack of disability support weakens access to education and the ongoing failure across jurisdictions to provide stable, quality education in youth detention is a serious breach of children's rights with long term impacts for young people. Article 28 of the CRC establishes the right of every child to education on the basis of equal opportunity, while Article 24 of the CRPD requires inclusive education systems that provide reasonable adjustments and individualised support for children with disability.^{25 26}

Across Australia, education in youth detention is repeatedly fragmented and inconsistent, falling well short of mainstream standards. Reports from the Royal Commission into the Protection and Detention of Children in the Northern Territory and the Australian Human Rights Commission have documented limited curriculum offerings, short school days, frequent class cancellations due to lockdowns or staffing shortages, and inadequate access to qualified teachers.^{27 28} The Commission also identified that many detained children had disability or learning needs that were unsupported and oftentimes exacerbated by the detention environment.²⁹

Ongoing disengagement from schooling, reduced employment prospects, and increased risk of re contact with the justice system can be attributed back to poor educational access, reinforcing cycles of exclusion rather than supporting rehabilitation.³⁰

United Nations treaty bodies have made clear that individual state and territory systems of government do not diminish national responsibility for implementation and oversight.³¹ Failure to ensure education in detention is equivalent to mainstream environments places Australia in breach of its obligations under the CRC and CRPD. Commonwealth leadership is therefore required to set national standards, support reform, and ensure independent monitoring and accountability across jurisdictions.

Isolation and unsafe practices

Breaches:

CRC Article 27 and OPCAT safeguards

Recommendation:

Legislate to prohibit solitary confinement practices in child detention facilities, and prohibit the use of isolation as punishment in any circumstance.

The continued use of isolation and unsafe practices such as mechanical restraints and prolonged lockdowns in detention are causing psychological harm and undermine young people's chance at rehabilitation.³² These practices breach CRC Article 37 and fail to meet the Optional Protocol to the Convention against Torture (OPCAT).³³

Chronic staff shortages in detention centres across Australia have been at the core of operational and human rights issues for many years.³⁴

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 hours³⁵

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.³⁶ The above figures equate to approximately one separation episode for every three young person bed nights.³⁷

Separation' has impacts on the wellbeing of children, their access to services, and the rights of children under multiple human rights standards.³⁸ 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.³⁹

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.⁴⁰

These findings make clear that isolation and other unsafe practices are being used as routine management tools rather than measures of last resort. The Commonwealth has a responsibility to intervene, prohibit prolonged isolation, and ensure independent oversight so that young people in detention are protected from harm and have their human rights upheld.

Gap analysis: obligation vs practice

The Commonwealth's obligations under the CRC, CRPD and OPCAT are clear, yet the same failures continue to appear across state and territory youth detention centres. These repeated failures are representative of the structural gaps between what the Commonwealth has committed to uphold, and what young people actually experience in practice.

The treatment of young people in detention falls below CRC minimum standards in almost every instance. Continuous use of isolation and physical restraint for behaviour management rather than as a genuine last resort undermines the right of children to be treated with dignity.

There is ongoing risk of punishment in detention linked to unmet support needs and the persistent gap in disability-inclusive practices within detention centres, failing to meet the requirements of the CRPD.

Even though Australia has ratified the OPCAT, implementation remains inconsistent across states and territories. As a result, unsafe practices, including prolonged isolation and excessive use of force persist, directly breaching the OPCAT's intention of prevention of cruel and degrading treatment.

Across all areas, weak and inconsistent national data on disability, school suspension rates and detention pathways limits transparency and accountability, allowing these gaps to not only persist, but to widen.

Conclusion

The evidence set out in this submission shows a consistent pattern of non-compliance with Australia's human rights obligations to children in the youth justice system. From early exclusion through undiagnosed disability and school suspension, to unsafe practices, unstable access to education, and unmet support needs in detention, the same failures appear across all jurisdictions. These are not gaps in knowledge or law, but gaps in action and accountability.

Fragmented state and territory approaches have allowed harmful practices to continue unchecked. Without clear national standards, consistent oversight, and enforceable accountability, children's rights will continue to be breached.

The Commonwealth must act to set minimum standards, mandate disability screening and provide reasonable adjustments, prohibit harmful practices such as prolonged isolation, and ensure access to stable, quality education for every child in detention. Failing to do so not only breaches international law, it compounds harm to children who are already among the most disadvantaged. Meaningful reform is both a legal obligation and a moral responsibility.

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.

References

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³³ United Nations Convention on the Rights of the Child. Adopted 20 Nov. 1989 by General Assembly resolution 44/25. www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

³⁴ These shortages have been amplified by the COVID-19 pandemic, mandatory vaccination directives, and general workforce shortages in human services. <https://www.qao.qld.gov.au/reports-resources/reports-parliament/reducing-serious-youth-crime>

³⁵ Queensland Parliament. 2022. Question on Notice No. 774, asked on 16 August. <https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/774-2022.pdf>

³⁶ Queensland Parliament. 2022. Question on Notice No. 774, asked on 16 August. <https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/774-2022.pdf>

³⁷ Based on the youth detention population and total bed nights occupied. Queensland Parliament. 2022. Question on Notice No. 774, asked on 16 August. <https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/774-2022.pdf>

³⁸ Inspector of Detention Services, Office of the Queensland Ombudsman. 2024. Cleveland Youth Detention Centre Inspection Report: Focus on Separation due to Staff Shortages. 27 August. [Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages - Queensland Ombudsman](#)

³⁹ The State of Queensland, Queensland Child Death Review Board. 2023. Child Death Review Board Annual Report 2022–23. <https://www.qfcc.qld.gov.au/sites/default/files/2024-08/Child%20Death%20Review%20Board%20Annual%20Report%202022-2023.pdf> p.38.

⁴⁰ United Nations Committee on the Rights of the Child. 2019. Concluding observations on the combined fifth and sixth periodic reports of Australia. 1 November, CRC/C/AUS/CO/5-6.