

Inquiry into youth justice in New South Wales

Submission to the Select Committee on Youth
Justice

13 March 2026

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Overview

1. The Australian Human Rights Commission (the Commission) welcomes this Select Committee inquiry into Youth Justice in New South Wales (NSW).

Introduction

2. The treatment of children in the criminal justice system, some as young as 10 years old, is one of the most urgent human rights issues facing Australia today. Numerous inquiries and reviews, including Royal Commissions, as well as United Nations treaty bodies, have highlighted serious breaches of rights and systemic problems with our child justice and related systems over many years. However, governments across Australia are continually failing to implement holistic, evidence-based reforms to our child justice systems which would protect their rights, reduce offending behaviour, and therefore, make our communities safer.
3. Many children who come into contact with the criminal justice system are dealing with multiple and complex issues in their lives that contribute significantly to their chances of offending and reoffending.
4. First Peoples children and children with a disability are overrepresented in the justice system, particularly in detention.¹
5. This Inquiry provides an opportunity for NSW to shift from reactive, punitive responses to offending by children, to evidence-based approaches that address the underlying causes of offending and improve outcomes for children and communities.
6. In 2024, the Commission released the report [*'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing \(Help way earlier!\)*](#). *Help way earlier!* investigated opportunities for reform of child justice and related systems across Australia, based on evidence and Australia's obligation to protect and uphold human rights. It was the result of a project undertaken by the National Children's Commissioner in 2023–24, that included submissions, consultations with children and young people, families and community members, and interviews and roundtables with government and non-government stakeholders across Australia.
7. This submission highlights the *Help way earlier!* findings and draws the Committee's attention to the Commission's recent, additional work relevant to the Inquiry's Terms of Reference.
8. This submission addresses the following Terms of Reference:
 - 1(a) underlying drivers of justice involvement
 - 1(b) availability and effectiveness of evidence-based and community-led responses that prevent offending

- 1(c) disproportionate impact on Aboriginal children
- 1(d) domestic and international alternative models
- 1(f) the experience of children with disability
- 2(a) engagement with children and young people with lived experience.

Recommendations

9. The Commission recommends the Committee endorses the 24 recommendations from the *Help way earlier!* report (full list in **Appendix A**).

Primary recommendation

1. The Committee endorses the 24 recommendations made in the *Help way earlier!* report which provide an evidence-base for how Australia can transform child justice to improve the safety and wellbeing of Australia's children.

1 Inquiry into Youth Justice

The *Help way earlier!* report highlights the urgent need for reform of Australia's child justice systems, towards an approach that addresses the root causes of offending, and that is based on evidence and human rights. The *Help way earlier!* supplementary paper highlights some international and Australian initiatives and models that reflect this approach.

This section discusses the following:

- the need for prevention and early intervention
- contact with the justice system compounds harm of children
- First Peoples children and children with disability are significantly over-represented in the child justice system
- evidence-based approaches exist internationally and in Australia that point the way forward
- children and young people have a right to be heard and have their views taken into account in decisions that affect them.

The need for prevention and early intervention

10. The *Help way earlier!* report highlights the urgent need to focus on prevention and early intervention. Many children at risk of, or in contact with, the criminal justice system are dealing with multiple and complex issues in their lives which contribute significantly to their chances of offending and reoffending. These include poverty, intergenerational trauma, violence and abuse, racism, homelessness, mental health issues, unsupported disability, drug and alcohol use, and inadequate healthcare.²
11. These social determinants of justice involvement show that children's rights to health, safety, culture, participation, non-discrimination, adequate standard of living and education are currently not being realised. Under the *United Nations Convention on the Rights of the Child (CRC)*³, which Australia has ratified, governments must take action to protect the rights of children at risk of, or in contact with the justice system. Especially relevant provisions of the CRC include Articles 2 (non-discrimination), 3 (best interests), 12 (participation), 19 (protection from violence), 24 (healthcare), 27 (adequate standard of living), 28 & 29 (education), 30 (enjoyment of culture), 37 (deprivation of liberty) and 40 (children in the criminal justice system).⁴
12. The needs of children who come into contact with the justice system have not been addressed by the systems that are meant to help them, including health,

education, social services and child protection systems. For example, there is a large cross-over between children involved in the child protection system and the child justice system. Nationally, 65% of children and young people under youth justice supervision in 2022–23 interacted with the child protection system in the previous 10 years.⁵

13. As highlighted in *Help way earlier!*, reform of Australia’s child justice system requires a focus on prevention and early intervention within and across all government systems, including the child protection system. A whole-of-government and integrated approach to meeting children’s needs is essential to prevent children falling through the gaps created by siloed systems and services and becoming involved in the justice system.⁶ Victoria’s 2026 amendments to the *Children, Youth and Families Act 2005* (Vic)⁷ provides a recent example of legislation designed to strengthen early intervention and coordinate a multi-agency approach to support children involved in the child protection system.
14. School attendance is understood to be a protective factor against offending. Children in contact with child justice systems, many of them facing multiple disadvantage, told the Commission that they would like to go to school but feel disengaged and as if they do not belong.⁸ Children at risk of child justice involvement said their reasons for disengaging include not understanding the schoolwork, not being able to relate to the content of the schoolwork, being ‘picked on by teachers’, ‘bullied’ by peers, not being able to ‘sit in class for a long time’ and not able to concentrate for extended periods of time. They suggested that mainstream schools increase the availability of mental health support, especially culturally appropriate mental health support, and that teachers could take the time to understand the individual circumstances of children.⁹
15. Over the last 9 years, student attendance rates across all year levels have fallen. In 2024, student attendance rates for Years 1-10 were 88% for all schools, down from 93% in 2015.¹⁰ Attendance rates are lower for First Peoples children and children in remote areas.¹¹ Another reason why children are not attending school is because they have been suspended or expelled. Data from the NSW Department of Education indicates that 4.5% of students were suspended at least once in 2024.¹² First Peoples students, and students who receive supplementary, substantial or extensive adjustments due to disability were significantly overrepresented in suspensions.¹³
16. Children and young people told the Commission what they need to stay out of trouble, including that they want to be safe and to have a place to live. They want to participate in positive activities, and they want friends, connection to culture and supportive family relationships. They want to be able to go to a school where they feel they belong, and one day get a job. Children want to get extra help for themselves and their family members when it is needed.¹⁴

17. The *Help way earlier!* report makes clear that a national, child rights-based approach to child justice reform is required, with a key focus on prevention and early intervention in both child justice and child protection systems.
18. It also highlights other evidence-based actions that would be facilitated by a coordinated national approach, and that can also be independently pursued by jurisdictions. These include:
 - placing children and their wellbeing at the centre of policymaking and service delivery
 - empowering Aboriginal and Torres Strait Islander children, families and communities
 - optimising community-based action; building a capable and child specialised workforce
 - basing systems on data and evidence
 - embedding accountability for the rights of children.

Contact with the justice system compounds harm

19. Despite substantial evidence on the drivers of offending by children, government responses typically focus on punishment rather than prevention and early intervention. Policy responses predominantly take place at the criminal justice end, such as tougher policing, stricter bail laws, longer sentences and incarceration. Yet research shows that punitive responses are ineffective at reducing offending by children because they do not address the underlying causes. Data on the reoffending of children who have been detained shows that incarceration is not working and is not making the community safer.¹⁵ Punitive approaches, including detention, do further harm to already traumatised children. When children enter the justice system, they may face additional breaches of their rights, which compounds their existing vulnerability.¹⁶
20. The age of criminal responsibility in most jurisdictions, including NSW, is 10 years old. This means that children as young as 10 years old can be apprehended, prosecuted and detained. This does not align with how the stages of child development impact on children's conception of responsibility and accountability, or international human rights standards.¹⁷ Recommendation 20 of *Help way earlier!* calls on governments across Australia to raise the minimum age of criminal responsibility to 14, in line with international standards. The Australian Capital Territory raised the age to 14 years, with exceptions for serious offences, in 2025.¹⁸ Victoria raised the age to 12 years in 2024.¹⁹
21. National data indicates that the younger a child is when under justice supervision, the more likely they are to return to supervision within 12 months. For example, in 2022-23, 7 in 10 (70%) young people aged 10–13 years released from sentenced community-based supervision were returned to sentenced supervision within 12 months.²⁰ This demonstrates that early justice

involvement strongly predicts ongoing contact. Further, First Peoples children are disproportionately affected, as they typically enter youth justice supervision at a younger age.²¹

22. The CRC requires Australia to ensure that the 'arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time' (Article 37(b)).²² Yet across Australia this is not being implemented adequately, and is being undermined by punitive laws, including restrictive bail laws. This is evident in the fact that most children in detention are unsentenced, with some detained because there is no safe place for them to live while on bail.²³
23. In March 2024, the NSW Government passed legislation to tighten bail laws for children in that state²⁴, which some stakeholders consider is 'going to make it more difficult for children to get bail than for adults' and will lead to more children in custody.²⁵

Overrepresentation of Aboriginal children in the child justice system

24. First Peoples children remain grossly overrepresented in the justice system, particularly in detention. In NSW in 2023-24, the rate of First Peoples young people aged 10–17 years in detention on an average day was 18.6 per 10,000 young people, compared with 0.8 per 10,000 for non-Indigenous young people.²⁶ First Peoples children are impacted by intergenerational trauma and disadvantage, with its roots in colonisation and dispossession from their lands.²⁷
25. All Australian Governments have committed to the *National Agreement to Close the Gap* (the Agreement) to reduce inequality for Australia's First Peoples. Target 11 of the Agreement to reduce the rate of First Peoples young people in detention shows no improvement from the baseline in 2018-19, both nationally and in NSW.²⁸ Target 12 to reduce the rate of overrepresentation of First Peoples children in out-of-home care has worsened nationally but improved in NSW.²⁹ Progress between these targets is inextricably related, as measures needed to address child protection involvement will also address contact with the justice system.
26. First Peoples self-determination is an essential part of changing outcomes in the child justice system, noting the relationship between child justice contact and disempowerment of communities because of colonisation.
27. The Productivity Commission's review of the Agreement noted that although self-determination is reflected in principle, it is not being put into practice adequately by governments.³⁰ Independent accountability mechanisms to monitor progress of the Agreement are not operating in most jurisdictions,

including NSW. Stronger accountability mechanisms are required to meet the targets.³¹

28. The *Help way earlier!* recommendations align with Closing the Gap commitments, emphasising that meaningful progress requires governments to embed First Peoples self-determination. This includes investing in Aboriginal Community-Controlled Organisations to lead prevention and early intervention services, and prioritising and promoting the protective factor of First Peoples connection to culture.

Overrepresentation of children with disability in the child justice system

29. There is no comprehensive national data about the number of children with disability in the child justice system. The Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability (Disability Royal Commission) found that a significant majority of children in detention have one or more disability, based on available data.³² First Peoples children with a cognitive disability are particularly overrepresented in detention.³³
30. In NSW, a 2022 survey into the health of children in detention found that 1 in 5 (20.2%) of participants presented with indicators of an intellectual disability. For First Peoples participants, 1 in 3 presented with indicators of an intellectual disability.³⁴
31. The Disability Royal Commission found that youth detention settings lack access to therapeutic support, trauma-informed care, and consistent and adequate screening and assessment for disability.³⁵ This means children's disability and trauma often go unidentified and untreated; compounding harm and increasing their vulnerability in detention. This breaches Article 23 of the CRC, which requires States to ensure children with disability have effective access to the healthcare, rehabilitation services and other supports necessary to ensure dignity, development and participation.³⁶
32. Submissions to *Help way earlier!* raised the issue of inadequate health and disability services in youth detention and recommended expanding access to the National Disability Insurance Scheme (NDIS) in detention.³⁷ The Disability Royal Commission recommended that governments clarify and fix the interface between the NDIS and the criminal justice system so that disability-related supports are properly funded for children in custody, including making sure those supports can be arranged before they leave custody.³⁸
33. Official inquiries continue to find that children have been impacted by mistreatment in detention, including being subjected to prolonged isolation amounting to solitary confinement.³⁹ Solitary confinement of children is cruel, harmful and unnecessary, with particularly severe impacts on children—

especially those with psychosocial disability—and is prohibited under international human rights law. NSW does not prohibit solitary confinement.⁴⁰ Victoria has recently passed legislation prohibiting solitary confinement of children.⁴¹

34. Recommendation 19 of the *Help way earlier!* report calls on Australian Governments to legislate to prohibit solitary confinement practices in child detention facilities and prohibit the use of isolation as punishment in any circumstance.
35. The Commission has recently published a paper on solitary confinement *'Left Alone': A Review of Solitary Confinement and Similar Practices in Australia's Youth Justice Systems*. The report makes 24 recommendations calling on all governments to prohibit solitary confinement, strengthen safeguards, and ensure child justice systems adopt trauma-informed, rights-based approaches.

Evidence-based approaches to child justice

36. Terms of Reference 1(b) and 1(d) asks the Committee to seek evidence of evidence-based, alternative approaches to reduce the number of children coming into contact with the justice system in NSW.
37. In October 2025, the Commission published *Evidence-based approaches to child justice* – a supplementary paper to *Help way earlier!*. This supplementary paper seeks to fill some gaps in knowledge and public understanding by providing examples of approaches to child justice from Australia and overseas that are based on evidence.
38. It highlights 6 initiatives that demonstrate holistic and evidence-based approaches to child justice reform as follows:
 - **Scotland's Whole System Approach**, aiming to divert children away from the justice system through multi-agency coordinated work to address children's needs early. Since June 2018, Scotland has appointed a Minister responsible for children and young people and has fully incorporated the Convention on the Rights of the Child into its legislation (finalised in August 2024), as well as having a Children's Act.
 - **Pathways to Prevention Project**, a pilot project conducted in Queensland, Australia, based on primary prevention of child offending by supporting children's positive development in early childhood.
 - **Baulaarr Bagay Warruwi Burranba-li-gu (Two River Pathway to Change)**, an Aboriginal led, community and place-based initiative in Walgett, NSW, Australia.
 - Small-scale, community based and therapeutic alternatives to detention, as modelled in three initiatives in the **Netherlands, Missouri (USA) and Spain** (Diagrama model).

39. Please see the supplementary paper for detailed information on each initiative.
40. The initiatives in the supplementary paper were chosen because they reflect the key principles for evidence-based action identified in the *Help way earlier!* report.
41. Evidence-based practices highlighted in these 6 initiatives include:
- positioning children and families at the centre of decision-making in policy and service design and delivery
 - investing in reform of upstream service systems for primary prevention and early intervention
 - using community-led and place-based knowledge to empower local communities, especially Aboriginal and Torres Strait Islander communities, to lead initiatives tailored to local needs
 - embedding culturally safe practices for Aboriginal and Torres Strait Islander children and families
 - integrating multi-agency collaboration across health, education, justice, and social services to meet the needs of children and their families
 - using holistic and therapeutic responses to address underlying causes of offending through integrated services
 - identifying the competencies and skills of individuals and organisations involved to ensure their readiness and willingness for implementing reform
 - building capability and a skilled, child specialised workforce with training in trauma-informed and relational practices
 - prioritising alternatives to detention by using small-scale facilities, locally sited, and integrated with communities, designed to promote relational and differentiated security and encompassing therapeutic design characteristics
 - ensuring robust data collection and evaluation frameworks to generate quantitative and qualitative insights into ‘what works, when and for whom’ and using this information to engage in continuous quality improvement
 - aligning legislation and government policies with a human rights framework, with the best interests of children the primary consideration
 - commitment to longer-term reform, recognising that systems reform takes place in stages and over time.⁴²
42. While the supplementary paper encourages governments to examine and implement a range of evidence-based initiatives, such initiatives will only be effective when they are implemented as part of a whole-of-government, systemic and holistic approach to child justice reform. As made clear in *Help way earlier!*, despite decades of recommendations from inquiries, our child justice systems remain inadequate. Efforts to reform these systems have been piecemeal and uncoordinated. Holistic, cross-portfolio, systemic reform of Australia’s child justice systems is required to address the root causes of offending by children and reduce crime.

43. In its submission to *Help way earlier!* in 2024, the Justice Reform Initiative provided a list of other evidence-based initiatives that reduce children's contact with the justice system⁴³ which the Committee may wish to review.

Engagement with children and young people

44. Section 3 of *Help way earlier!* is particularly relevant to the Inquiry's Terms of Reference 2(a) which outlines the need for the Committee to engage with children and young people with lived experience, and Aboriginal communities.
45. Section 3 of *Help way earlier!* reports on what 150 children and young people and 49 family and community members said about their lives and experiences of the child justice system. 67% of consultations were with First Peoples children. This aligns with Article 12 of the CRC, which outlines children's rights to participate meaningfully in matters impacting them. Several case studies throughout the report illustrate the experiences of children and young people who participated in consultations.
46. In addition to Article 12 of the CRC, Article 4(3) of the *Convention on the Rights of Persons with a Disability* requires governments to actively involve children with disability in decision-making processes that affect them.⁴⁴ The *United Nations Declaration on the Rights of Indigenous Peoples* affirms the right of First Peoples to self-determination in matters that affect them.⁴⁵ These obligations further reinforce the need for meaningful, rights-based consultation with children and young people in child justice reform.

Recommendation: The Committee endorses the 24 recommendations made in the '*Help way earlier!*' report which provide an evidence base for how Australia can transform child justice to improve the safety and wellbeing.

Appendix A: Help way earlier! recommendations

Help way earlier! recommendations

1. 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
2. Recommendation 2: The Australian Government appoints a Cabinet Minister for Children, with responsibility for the human rights and wellbeing of children in Australia.
3. Recommendation 3: The Australian Government establishes a Ministerial Council for Child Wellbeing, chaired by the Minister for Children, and reporting to National Cabinet.
4. 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.
5. Recommendation 5: Australian Governments provide integrated, place-based health, education and social services for both children and their families.
6. Recommendation 6: The Australian Government increases the level of income support payments for children, young people and families.
7. 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.
8. Recommendation 8: Australian Governments prioritise access to comprehensive and culturally safe healthcare, including for children with multiple and intersecting needs.
9. Recommendation 9: Australian Governments resource schools to be community hubs integrated with health services and providing flexible learning options.
10. Recommendation 10: Australian Governments prioritise investments in prevention and early intervention through Aboriginal Community-Controlled Organisations.
11. 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.
12. 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.

13. Recommendation 13: Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.
14. 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.
15. 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.
16. Recommendation 16: Australian Governments ensure that all child justice matters are heard in specialised Children's Courts or by child-specialist magistrates.
17. 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.
18. Recommendation 18: The Australian Government withdraws its reservation to Article 37(c) of the Convention on the Rights of the Child.
19. 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.
20. 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.
21. Recommendation 21: Australian Governments agree to implement nationally consistent standards for monitoring detention facilities for children.
22. 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.
23. Recommendation 23: Australian Governments conduct Child Rights Impact Assessments on laws and policies that affect children.
24. 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.

Endnotes

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- ¹² NSW Department of Education, *Full Year 2024 Suspensions and Expulsions* (Factsheet, 2024) 2 <<https://data.nsw.gov.au/data/dataset/nsw-education-suspensions-and-expulsions-in-nsw-government-schools>>.
- ¹³ NSW Department of Education, *Full Year 2024 Suspensions and Expulsions* (Factsheet, 2024) 3 <<https://data.nsw.gov.au/data/dataset/nsw-education-suspensions-and-expulsions-in-nsw-government-schools>>.
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