



# Executive summary

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 UN Committees, have highlighted serious breaches of rights and systemic problems with our child justice and related systems over many years. However, Australia continually fails to implement evidence-based reforms to our child justice systems which would reduce offending behaviour and make our communities safer.

This report investigates opportunities for reform of child justice and related systems across Australia, based on evidence and the protection of human rights. It is the result of a project undertaken by the National Children's Commissioner (NCC) in 2023–24. The project included a submissions process, consultations with children and young people, families, community members, and interviews and roundtables with government and non-government stakeholders across Australia.

## **Australia is not protecting the rights of children**

Children's rights are set out in the *United Nations Convention on the Rights of the Child* (CRC), and other international instruments that Australia has ratified. Australia's lawmakers and decision-makers have obligations to take all possible measures to help all children in Australia realise their rights. However, reports and inquiries continue to highlight how our systems fail to protect their human rights.

Many children at risk of or in contact with the criminal justice system are dealing with multiple and complex issues in their lives which often contribute significantly to their chances of offending and reoffending. Their lack of basic

rights often manifest as the drivers of their contact with the justice system in the first place, including poverty, intergenerational trauma, violence and abuse, racism, homelessness, and inadequate healthcare. These social determinants of justice show that children's rights to health, safety, culture, participation, non-discrimination, adequate standards of living, and education are not being realised.

When children enter the justice system, they may face additional breaches of their rights. For example, despite what we know about the harmful effects of detention on children, children as young as 10 can be detained in most parts of Australia. The overwhelming majority of these children are unsentenced, on remand, with some detained because there is no safe place for them to live while on bail. When they enter detention, many have disabilities and mental health issues, and are harmed by the conditions in detention, including extended periods of time in isolation in their cells, as noted in numerous official reports. First Nations children and young people continue to be overrepresented in the criminal justice system, and particularly in detention.

## **Children and young people told us what children need in order to stay out of trouble**

The voices of 150 children and young people are at the centre of this report. Children and young people said that children want to be safe and to have a place to live. They want to participate in positive activities, and they want friends and supportive family relationships. Children want to be heard and have their views taken seriously. They want to be able to go to school and one day get a job. Children want to get extra help for themselves and their family members when it's needed.



Children and young people said these things would help children to stay out of trouble with the police and reduce their contact with the child justice system.

### **A national, child rights-based approach to reform is required**

Recommendations from many inquiries, including Royal Commissions, have attempted to guide reform, in particular by focusing on prevention and early intervention in both child justice and child protection systems. However, responses have been piecemeal, uncoordinated and inadequate.

Despite evidence of the social determinants that are the root causes of offending behaviour, policy responses to these children are often only tinkering with the symptoms, with tougher policing, stricter bail laws, and incarceration. This is done under the guise of keeping the community safe. However, human rights and community safety are not opposing goals. The solutions lie in transformational thinking and action to address systemic disadvantage.

Many stakeholders, in submissions, interviews and roundtables, argued that the scale of the child rights crisis in Australia requires a nationally coordinated approach to reform. This type of reform should be driven by:

- Australian Governments establishing a National Taskforce for Reform of Child Justice Systems, that develops a 10-year cross-portfolio National Roadmap to reform
- the Australian Government appointing a Cabinet Minister for Children
- the Australian Government establishing a Ministerial Council for Child Wellbeing, chaired by the Minister for Children, and reporting to National Cabinet

- the Australian Government legislating a National Children's Act as well as a Human Rights Act, incorporating the *Convention on the Rights of the Child*.

Reform also requires positioning children at the centre of policy-making and service delivery; empowering First Nations children, families and communities; optimising community-based action; building a capable and child specialised workforce; basing systems on data and evidence; and embedding accountability for the rights of children.

### **Multiple barriers have stood in the way of child rights and evidence-based reform**

Stakeholders, in interviews, roundtables and submissions to this project, identified barriers to achieving critical reform. They argued that unless these barriers are addressed, transforming the child justice and wellbeing landscape in Australia will not be possible. Barriers include systemic racism; the fragmented way our governments operate; limited workforce capacity; lack of political commitment to evidence-based reform; pervasive 'tough on crime' rhetoric; and our persistent failure to make child wellbeing a national priority.

These barriers to reform will not be addressed by a 'business as usual' approach. Transformational reform requires political will at all levels, including states and territories, and strong leadership, collaboration and coordination at the national level.

Australian governments should coordinate across the federation to protect the rights of children in their laws, policies and service systems, and in doing so create a safer community for all.