



Ms Anne Hollands  
National Childrens Commissioner  
Australian Human Rights Commissioner  
Via [youthjusticereform@humanrights.gov.au](mailto:youthjusticereform@humanrights.gov.au)

15 June 2023

Dear Commissioner Hollands

### **Youth Justice and Child Wellbeing Reform across Australia**

Thank you for inviting the ACT Human Rights Commission ('the ACTHRC') to make a submission about this new project looking at Youth Justice and Child Wellbeing Reform across Australia.

The ACTHRC welcomes work being led by the Australian Human Rights Commission to explore ways to reduce children's involvement in crime, based on evidence and the protection of human rights, including through prevention and early intervention.

The ACTHRC notes that this is a significant, complex and important topic, that has been much in focus over recent years following the crises in state youth justice centres, the national campaign to raise the minimum age of criminal responsibility, and the commencement of the Optional Protocol to the Convention Against Torture preventative monitoring obligations.

We note that some of the significant cases driving focus on this issue have been human rights litigation which has considered policy responses to children and young people protesting the conditions under which they are detained.

For example, the *Certain Children* cases in Victoria analysed the deficiencies in respect of consideration of human rights in decision making that led to the emergency declaration of adult maximum-security prisons as youth detention centres to house particularly troubled and vulnerable young children.<sup>1</sup> The ability to raise human rights in legal proceedings, either directly, via 'piggy-backing' on other causes of action or through a complaints conciliation pathway forms a vital means to hold accountable those institutions and individuals charged with the responsibility to care for children and young people in detention.

The *Royal Commission into the Protection and Detention of Children in the Northern Territory* found conduct had occurred that was in breach of international minimum standards for the treatment of children and young people in detention.<sup>2</sup> Similar issues infect justice responses to

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<sup>1</sup> *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796; *Minister for Families and Children v Certain Children by their Litigation Guardian Sister Marie Brigid Arthur* [2016] VSCA 343; *Certain Children v Minister for Families and Children (No 2)* [2017] VSC 251.

<sup>2</sup> *Royal Commission into the Protection and Detention of Children in the Northern Territory, Findings and Recommendations*, 17 November 2017 available at [Findings and Recommendations \(royalcommission.gov.au\)](https://www.royalcommission.gov.au/Findings-and-Recommendations).

children and young people in Queensland, Tasmania and Western Australia where legislative human rights protections are only recently implemented in Queensland, or not recognised at all in other jurisdictions.

We consider that a national human rights act, as proposed by the Australian Human Rights Commission in its *Free and Equal Report*, would act as a significant catalyst for a shift in culture among departments charged with developing policies and implementing programs that affect children and young people, particularly those detained in youth justice or other centres.

Core rights would include the right to protection of children and specific entitlements for children in the criminal process, and would require parliaments to pass legislation that is consistent with these rights, as well as requiring public authority decision makers to give proper consideration to these rights in making decisions affecting children and young people.

The following summaries of relevant work indicate why Australia needs a national human rights act to underpin youth justice reform work.

### **Reviews of ACT Youth Justice facilities**

Consideration of the rights of children and young people in detention has been a core part of the oversight work of the ACT Human Rights Commission for many years. In 2019 the Commission undertook a [statutory review \(a commission initiated consideration\) of the Bimberi Youth Justice Centre](#)<sup>3</sup>, which followed on from a broader [review of the ACT Youth Justice System in 2011](#) that included a Human Rights Audit of Bimberi.<sup>4</sup> This report found (despite challenges and incidents) “[t]here have been many improvements since the Commission’s broader review of the ACT Youth Justice System in 2011, particularly in the recruitment, training and development of skilled staff at Bimberi, and there is now a clear focus on case management and building supportive relationships with young people”.<sup>5</sup> This speaks to the value of a robust human rights framework and oversights by independent statutory offices to encourage cultural change in management. Contrasted with the [Human Rights Audit of Quamby Youth Detention Centre](#) in 2005,<sup>6</sup> this report demonstrates that human rights frameworks can change culture and result in real improvements in the treatment of children and young people in detention.

Other challenges, however, derive from fundamental issues with managing young children in an institutional setting. The Bimberi review concluded that “Bimberi is not an appropriate facility for primary-school aged children with trauma and other complex needs. The current age of criminal responsibility in the ACT, which is set at ten years, does not accord with international human rights standards and should be re-examined. In the meantime, more must be done to provide alternative community-based placements and therapeutic supports for children 14 and under to prevent their entrenchment in the youth justice system”.<sup>7</sup>

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<sup>3</sup> ACT Human Rights Commission, *Commission Initiated Review of Allegations Regarding Bimberi Youth Justice Centre*, (March 2019) (Bimberi Review).

<sup>4</sup> ACT Human Rights Commission, *The ACT Youth Justice System 2011* (28 July 2011).

<sup>5</sup> *Ibid*, p 1.

<sup>6</sup> ACT Human Rights Office, *Human Rights Audit of Quamby Youth Detention Centre* (30 June 2005).

<sup>7</sup> Bimberi Review, p 2.

## Raising the minimum age of criminal responsibility

These observations informed our position on the raise the age national campaign. The ACTHRC subsequently provided a substantial [Submission to ACT Government Consultation on Raising the Minimum Age of Criminal Responsibility](#) in 2021 setting out the relevant human rights principles and evidence about the harms caused by a purely criminal justice response to challenging behaviours.<sup>8</sup> This built on our earlier submission in 2020 to the national consultation through the [Council of Attorneys-General review of age of criminal responsibility](#).<sup>9</sup>

Our [June 2023 submission to the Legislative Assembly Standing Committee on Justice and Community Safety's Inquiry into the Justice \(Age of Criminal Responsibility\) Legislation Amendment Bill 2023](#) restates our consistent position that any exceptions to a minimum age of 14 years is not human rights compatible.<sup>10</sup> It also calls for an objects clause to set out the intent and purposes of therapeutic interventions under the *Children and Young People Act 2008*, and for the application of minimum standards of conditions in places of confinement.

## Child protection system

Children and young people are unfortunately often placed on a trajectory that ends in involvement with the youth justice system, because of a lack of family and community supports that keep families and kinship networks connected and involved in care of the child. The care and protection system can therefore play a determinative role in the exacerbation or alleviation of at-risk children and young people.

Unfortunately, there is still limited transparency and accountability of decision making within the care and protection system. This limits the extent to which rights are adequately safeguarded, and does not promote community confidence and trust in a system that has historically acted to dispossess and disrupt the family and cultural connections of Indigenous peoples. Indeed, in the ACT, Aboriginal and Torres Strait Islander children comprised 24.6% of children receiving child protection services, and 29% of children in out of home care as of 30 June 2021.<sup>11</sup>

The ACTHRC has been vocal in calling for comprehensive review of the care and protection decision making system, with a view to embedding rights of parents, carers, family members and children and young people to seek external merits review of care and protection decisions in the ACT Civil and Administrative Tribunal. The Commission led and co-signed a [joint communique of ACT legal and community sector organisations calling for an external merits review system in 2020](#).<sup>12</sup>

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<sup>8</sup> ACT Human Rights Commission, *Submission to ACT Government consultation on raising the minimum age of criminal responsibility*, (5 August 2021).

<sup>9</sup> ACT Human Rights Commission, *Submission to Council of Attorneys-General review of age of criminal responsibility*, 28 February 2020.

<sup>10</sup> ACT Human Rights Commission, *Submission to Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023* (9 June 2023).

<sup>11</sup> Australian Institute of Health and Welfare, *Child protection Australia 2020-21*, Table T2: Children in the child protection system, by Indigenous status, 2017 to 2021, available at:

<https://www.aihw.gov.au/reports/childprotection/child-protection-australia-2020-21/data>

<sup>12</sup> Joint Communiqué, *Reforming Child Protection Decision-Making In The ACT*, (March 2020) available at [Joint-open-letter-to-Minister-External-review-of-child-protection-decisions-for-website.pdf \(act.gov.au\)](#).

This followed earlier submissions in 2019 to the [‘Review of child protection decisions in the ACT’ Discussion paper](#),<sup>13</sup> and the [Legislative Assembly Standing Committee on Health, Ageing and Community Services’ inquiry into Child and Youth Protection Services](#).<sup>14</sup>

The ACTHRC also made a submission in 2017 to the then Law Reform Advisory Council on its [Restorative Cities project recommending that child protection should be a case study for restorative reform, including the need to provide external review of decision-making](#).<sup>15</sup> We noted that the *Report of the Inquiry: Review into the System Level Responses to Family Violence in the ACT* by Laurie Glanfield AM, highlighted that important child protection decisions which are externally merits reviewable in other Australian jurisdictions, are not currently externally merits reviewable in the ACT, which in our view is not compatible with human rights.<sup>16</sup>

The HRC is hopeful that the development of a Charter of Rights for Parents and Families in the ACT child protection system will promote a cultural shift that flows into better practices that respect rights of people throughout the care and protection system. Our 2022 [submission to the consultation on this Charter](#) outlines relevant considerations in the design, framing and implementation of the proposed Charter and areas for improvement.<sup>17</sup>

Should you wish to discuss this matter further or provide feedback regarding our advice, the contacts in my office are [REDACTED] and [REDACTED], who may be reached on [REDACTED].

Yours sincerely



Dr Helen Watchirs OAM  
President and Human Rights Commissioner



Jodie Griffiths-Cook  
Public Advocate and Children and Young People Commissioner



Karen Toohey  
Discrimination, Health Services, and Disability and Community Services Commissioner

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<sup>13</sup> ACT Human Rights Commission, *Response to the Discussion Paper - ‘Review of child protection decisions in the ACT’* (208 June 2019).

<sup>14</sup> ACT Human Rights Commission, *Inquiry into Child and Youth Protection Services: Part Two – Information Sharing under the Care and Protection System*, (30 August 2019).

<sup>15</sup> ACT Human Rights Commission, Submission in response to the ACT Law Reform Advisory Council’s June 2017 Issues Paper: ‘Canberra – becoming a restorative city’ (29 September 2017) p 5.

<sup>16</sup> Laurie Glanfield AM – Board of Inquiry into System Level Responses to Family Violence in the ACT, *Report of the Inquiry: Review into the system level responses to family violence in the ACT* (2016) p 74.

<sup>17</sup> ACT Human Rights Commission, Submission about a Charter of Rights for Parents and Families (28 October 2022).