



CLOSE DON DALE NOW

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Submission to the Australian Human Rights Commission: Youth Justice and Child Wellbeing Reform across Australia

Close Don Dale Now advocates for the urgent closure of the infamous Don Dale Youth Detention Centre in Australia's Northern Territory and the abolition of children's prisons everywhere. On any given day, all of the children jailed in Don Dale are Aboriginal, and the vast majority are on remand. It is a condemned adult prison, surrounded by razor wire, where children are locked in blood-stained concrete cells for up to 23 hours per day. Behaviour is managed through the use of force and isolation.

Don Dale severely violates Australia's international obligations towards children and Indigenous peoples, including those outlined in the Declaration on the Rights of Indigenous Peoples, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Genocide, and the Convention Against Torture.

Since changes to bail laws in 2021, there has been a more than 200% increase in children caged, and a 400% increase in self-harm and suicide attempts in NT detention centres. This submission focuses on the incarceration of Aboriginal children in the Northern Territory.

What factors contribute to children's and young people's involvement in youth justice systems in Australia?

For Indigenous children, child-removal, policing, and youth-incarceration function as interlocked systems of genocide, which systematically remove them from their communities, culture, country, and language, and institutionalise them.

Don Dale was opened in 1991. The same year, the Royal Commission into Aboriginal Deaths in Custody observed that Aboriginal youth were disproportionately dealt with by arrest rather than summons, compared with non-Aboriginal offenders. (Police attitudes and discriminatory policing has long been recognised as a driving force in the over-representation of Aboriginal children in the justice system.) This disadvantage was compounded as Aboriginal children moved through the system, from the charging process, to pre-trial filtering and eventually, to court. Aboriginal juveniles were given the more serious outcomes of the options available to decision makers.

Once detained, the ripple effects continued. Recidivism was greater and offenders committed more car thefts, break-and-enters, assaults and malicious damage than comparable offenders who had been placed on probation. Remand in custody also increased the likelihood of recidivism. In the words of the report: "It is in everyone's interest to ensure that juvenile offenders remain outside of the justice system".

The need for self-determination and community-led solutions was fundamental to the main recommendation from the Royal Commission to prevent the removal of Indigenous youth through youth justice or welfare intervention.

The Royal Commission warned of "disastrous repercussions for the future" if the government did not urgently negotiate with Aboriginal organisations to reduce the rate at which Aboriginal juveniles were separated from their communities and detained: "...that level of over-representation will be even greater than it is now, with all its attendant consequences".

The NT intervention: During the intervention, Aboriginal rights were aggressively wound back on par with the Protection Era. Punitive bureaucracies were introduced to seize and micromanage the lives, land, and resources of Aboriginal communities, who were forced into inescapable poverty and stripped of the means to change their circumstances. The intervention's 15 years saw children being removed from their families at rates higher than at any time in the Stolen Generations era, declining school attendance, and an explosion in youth incarceration rates.

Service delivery: The Commonwealth and Northern Territory governments and non-Aboriginal organisations must be held accountable for decades of policies and programs that have failed to close the gap on every single indicator. No amount of money can change the outcomes of a racist system that is built on and centred around settler colonialism. Attempts to manage this issue on behalf of Aboriginal people will inevitably fail.

The transactional nature of service delivery in the NT significantly hinders communities' abilities to collaborate and coordinate services. Competitive tendering in thin markets leads to short-term contracts, fragmented service delivery with inefficient overlaps and decreased sustainability and capacity for forward planning. It also gives large, non-Aboriginal organisations an advantage and impairs cooperation between services. Neither non-Aboriginal service providers nor the police have the cultural competency to deliver these services. Aboriginal cultural competency must be at the forefront of these services.

Child removal: Disconnection from family, community, and cultural identity makes children more vulnerable to involvement in the justice system. The number of children in out-of-home care who end up in jail is often cited as evidence that children who have suffered parental abuse or neglect are more likely to commit crimes. This assumption dismisses the impact of child removal and the ways in which it feeds into children's prisons. These systems are interlocked and must be understood as complementary tools.

Care criminalisation: children in out-of-home care often receive disproportionate police attention for behaviour which would otherwise be dealt with by the family in a family home. Australian research has identified that carers and residential care workers are more likely to call police to manage behaviour in out-of-home care settings. The 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory received evidence of police being contacted for minor matters such as "damaging a waste paper bin to the value of \$5", breaking a mug, and throwing an item in the direction of a worker.

Kids with disabilities: A very high percentage of children in detention may have severe neurodevelopment impairment, a brain injury or Fetal Alcohol Spectrum Disorder (FASD). Disabilities associated with FASD include reduced impulse control and difficulty reasoning and recognising the consequences of actions. There is a significant under-identification of disability among Aboriginal children and many young people with disabilities are wrongly detained. Multidisciplinary assessments are essential for understanding the reasons for offending behaviour. Kids with disabilities should be appropriately supported to change their behaviour instead of simply thrown in prison.

Overcharged children: Overcharging is a long-recognised problem in the youth justice system. It refers to the police practice of charging children with numerous offences that are not supported by evidence. Police regularly advise the Court that evidence is forthcoming, so a bail decision must be made on the basis of the charges alone. This is an attempt to ensure that the child is locked up and not granted bail. The unsubstantiated charges are later withdrawn. For example, a child may face in excess of 70 charges, which are later reduced to fewer than 5. By that time, the child has already been detained. This contributes to the massive percentage of detainees in Don Dale on remand.

Children who are granted bail are shackled in ankle monitors. The psychological effect of branding children as criminals in the hostile public eye cannot be underestimated.

Punitive bail laws: In May 2021, the NT government introduced legislation to make it harder for young people to get bail and access diversion. In 2023, legislation was again amended to make it even harder.

Underuse of diversion: Diversion programs provide enormous cost savings, compared to detaining children. They also reduce recidivism, which keeps the community safer and prevents children from becoming entrenched in the criminal justice system. Police officers use their discretion to determine whether an offender is eligible for diversion—the same police that regularly overcharge kids to ensure that they are locked up. Police admit that their decision making can be influenced by the media and its portrayal of community expectations, and that those influences can outweigh a proper application of diversion principles.

Police referral policies and practices also lead to the underutilisation of diversion. For example, when several kids are arrested at the same time, it can be difficult to assess them all for diversion eligibility on the spot. In the past, police have opted to arrest and charge offenders, with the assumption that prosecutors will later catch any mistakes and redirect children to diversion, where appropriate. However, the government's 2021 amendments to the Youth Justice Act served to prevent the courts from fixing these mistakes—ensuring that more children needlessly go through the courts.

What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

Empower communities: The very same colonial system that created and perpetuates the atrocities in Don Dale is woven throughout every piece of legislation, institution, policy and practice in the Northern Territory. No amount of funding thrown at this problem will ever make a difference, because it never reaches the communities on the ground. The organisations that are supposed to deliver services have failed Aboriginal people. Non-Aboriginal NGOs receive the lionshare of funding that communities desperately need to rise out of the ruins. They are beneficiaries of our disempowerment. Their business models depend on maintaining the status quo.

Children must have the right to be rehabilitated on their own country, with access to their own culture, community and language. Aboriginal communities must be empowered to implement youth justice solutions according to their local circumstances and needs.

Abolish children's prisons: The atrocious conditions in Don Dale are not an accident. This is not incompetence or apathy. It is the inevitable consequence of settler-colonialism and the ongoing elimination of First Nations peoples. We cannot trust the government to reform this system. We want to be very clear that the so-called 'justice system' is not broken. It never has been. It has been operating by design as a punishment system and a key tool of the ongoing colonial project—committed to the genocide of First Nations Peoples.

Now, the NT government is building an even larger prison to round up and incarcerate kids from all over the NT. A new prison will not change racist policing and systemic oppression. Institutionalising children will not reduce crime. They are in fact creating the criminals they seek to imprison.

Incorporate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into domestic law: The UNDRIP affirms the right of Indigenous families and communities to retain responsibility for the upbringing, training, education and well-being of our children, consistent with the rights of the child. The incarceration of Indigenous children violates several key provisions of the Declaration, including Articles 7, 8, 9, and 34, which affirm the rights of Indigenous peoples to not be subject to forcible removal of children, to belong to our own communities, and to develop and maintain our own institutions and juridical systems.

Incorporate the Convention on the Rights of the Child (CRC) into domestic law: Children have the right to be supported on their own country, with access to their culture, community and kin—the things that have been sustaining our peoples since the first human sunrise. Article 30 of the Convention on the Rights of the Child guarantees the rights of indigenous children to enjoy their own culture, profess and practise their own religion and use their language. Self-governing structures and practices must be restored, so that communities are in control of their own destinies and empowered to implement culturally safe solutions in their local settings. This must include control over what happens to First Nations children, funding and policy decisions, and accountability mechanisms.

Australia's continued disregard for the Conventions on the Rights of the Child, in particular Article 37 relating to torture and inhumane treatment, must also be recognised as a key indicator of the colony's attitude towards Aboriginal children.

The Global study on children deprived of liberty found that detention is directly harmful to the mental and physical health of children, emphasising the additional negative impacts on Indigenous children due to detachment from their communities. The Study concluded that "States are required to apply non-custodial solutions when dealing with children." We argue that, given the overwhelming evidence that children's prisons are harmful to children, violate their human rights under international law, worsen recidivism, and fail to keep communities safe, there is no possible justification for their continued use, and they should be prohibited.

Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?

Successful reforms have been highlighted in reports such as the Royal Commission into Aboriginal Deaths in Custody, the Royal Commission into the Protection and Detention of Children in the Northern Territory, and in countless submissions made to such investigations.

In particular, all evidence consistently points to the fact that local, community-led solutions are the most successful, and that reforms must seek to empower communities to exercise self-determination. Aboriginal organisations in the NT have offered programs for rehabilitating high risk, juvenile repeat offenders. BushMob's Apmere Mwerre program at Loves Creek Station was an alternative sentencing option that was forced to shut down when the government refused to meet basic infrastructure requirements. The Mount Theo Outstation is an internationally recognised rehabilitation program for Walpiri youth, which has also failed to receive adequate funding. There are many examples of community-led programs for at risk youth in the NT which have long been chronically underfunded.

From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

In April 2023, Close Don Dale Now! presented an intervention at the Twenty Second Session of the United Nations Permanent Forum on Indigenous Issues. A key component of our recommendations was that States must be urged to develop national action plans to urgently end the imprisonment of children and comprehensively incorporate international human rights obligations into domestic law. Our intervention was mentioned in the Permanent Forum's final report with the assertion that "no child should be in prison".

It is vital that the UNDRIP and the CRC form the basis of any reform. The assumptions and values on which we build our justice systems shape the entire system. Reforms to improve youth justice and child wellbeing in Australia will inevitably fail if they are not based on the key principles of children's human rights.