NATSILS
National Aboriginal and
Torres Strait Islander Legal Services
TRUE JUSTICE FOR OUR PEOPLE

United Nations Special Rapporteur on the Rights of Indigenous Peoples - NATSILS submission

Introduction

National Aboriginal and Torres Strait Islander Legal Services (NATSILS), the peak for ATSILS across Australia, thanks the Special Rapporteur for the opportunity to provide this submission ahead of your visit to Australia in November 2026.

About NATSILS

NATSILS represents and is the national voice of community-controlled Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. We advocate at the national level for the rights of Aboriginal and Torres Strait Islander peoples within the justice system and work to ensure that our Peoples have equitable access to justice.

NATSILS' submission is endorsed by its members which include:

- Aboriginal Legal Service (NSW/ACT) Limited (ALS NSW/ACT)
- Aboriginal and Torres Strait Islander Legal Service Queensland (ATSILS QLD)
- Aboriginal Legal Rights Movement South Australia (ALRM SA)
- Aboriginal Legal Service Western Australia (ALSWA)
- North Australian Aboriginal Justice Agency (NAAJA)
- Tasmanian Aboriginal Legal Service (TALS)
- Victorian Aboriginal Legal Service (VALS)

ATSILS provide critical legal services to Aboriginal and Torres Strait Islander communities across Australia, including in relation to child protection, criminal/youth justice, family law, civil law (including tenancy, mental health and representing families whose loved ones have died in custody). ATSILS also provide a 24/7 custody notification service, providing legal advice and support for Aboriginal and Torres Strait Islander people in police custody.

Scope of NATSILS Submission

The Special Rapporteur on the Rights of Indigenous Peoples is seeking information in preparation of his upcoming country visit to Australia scheduled to take place from 2 to 13 November 2026.

In preparation for this visit, the UN Special Rapporteur is interested in hearing about:

1. Legal, Policy, and Institutional Frameworks
2. Main human rights issues
3. Good practices and lessons learned
4. Visit planning and engagement

Our submission focuses on critical issues impacting the fundamental human rights of Aboriginal and Torres Strait Islander peoples in Australia, including:

- Gaps in Australia's Overarching Human Rights Frameworks
- Closing the Gap and Self-Determination
- Racism, Discrimination and Vilification
- Deaths in Custody
- Punitive Law Reforms
- Minimum Age of Criminal Responsibility
- Youth Justice
- Policing
- Bail
- Family, Domestic and Sexual Violence
- Conditions in custodial facilities
- Implementation of OPCAT
- Parole Systems
- Removal of Children
- Reparations for Stolen Generations

Visit Planning and Engagement

ATSILS provide critical legal services across Australia and are deeply embedded and connected to their communities. Through our shared practice experience, we continue to see the impacts of racism in all its forms, and the way that racism continues to drive unfair outcomes for Aboriginal and Torres Strait Islander people across Australia. ATSILS are uniquely placed to provide insights to the Special Rapporteur on key human rights issues affecting our communities.

We understand the Special Rapporteur is still considering the logistics of their visit in November. We invite the Special Rapporteur to consider meeting with representatives from each of our member Aboriginal and Torres Strait Islander Legal Services (ATSILS). We would be happy to assist the Special Rapporteur coordinating a session with all ATSILS together.

We understand Special Rapporteur is also seeking suggestions on locations and contact details for the visit. We welcome further discussion with the Special Rapporteur on this.

1. Gaps in Australia's Overarching Human Rights Frameworks

The Australian Government describes its commitment to human rights as follows:

> "Australia's commitment to human rights is enduring: Australians helped draft the Universal Declaration of Human Rights and have been a leading proponent of its consistent and comprehensive implementation".[1]

Australia is party to most of the core international human rights treaties and has expressed its public support for the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). In the past several years, there have been several positive steps towards greater protection for the human rights of Aboriginal and Torres Strait Islander people in Australia, including through the introduction of the first National Commissioner for Aboriginal and Torres Strait Islander Children and Young People,[2] and the launch of the Our Ways-Strong Ways-Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036.[3] The Federal Government has also established several recent inquiries to examine issues impacting Aboriginal and Torres Strait Islander people, including a senate inquiry into Australia's youth justice and incarceration system,[4] and a parliamentary inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people.[5]

However, despite these steps and the Australian Government's publicly stated commitments to upholding human rights on the world stage, NATSILS continues to hold serious concerns that Australia is not meeting its human rights obligations.

Despite being a party to most core human rights treaties, Australia has not implemented most of its treaty obligations into domestic laws. For example, Australia is yet to incorporate the *Convention on the Rights of the Child* and other international human rights obligations into domestic legislation in a consistent way. Australia also maintains reservations to several key treaty obligations,[6] and has not signed up as a party to the Optional Protocol to the UN *International Covenant on Economic, Social and Cultural Rights* (ICESCR), or the *Third Optional Protocol to the Convention on the Rights of the Child,* which establish important individual complaints mechanisms.

Further, whilst several individual Australian States and Territories have enacted their own human rights legislation,[7] Australia remains the only Western democracy without a

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[1] Australia's commitment to human rights | Australian Government Department of Foreign Affairs and Trade
[2] New National Commissioner for First Nations children and young people | Department of Social Services
[3] See the plan here: Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026–2036 | Department of Social Services
[4] See Australia's youth justice and incarceration system – Parliament of Australia
[5] See Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people – Parliament of Australia
[6] For example, Australia has a reservation to Article 37(3) of the *Convention on the Rights of the Child,* which mandates the separation of detained children from adults in custody.
[7] The Australian Capital Territory, Victoria and Queensland all have human rights acts. It has been recommended that the government introduce a Federal Human Rights Act following two separate and comprehensive inquiries but

legislated Federal Human Rights Act.[8] Australia's federal discrimination law framework is outdated and fragmented and requires significant reform,[9] and discrimination laws across different Australian jurisdictions are inconsistent and inadequate, with many not providing protections in relation to significant areas of public life, such as interactions with police.[10] In addition, despite multiple previous attempts,[11] Australia has not made any significant progress towards implementing the *United Nations Declaration of the Rights of Indigenous Peoples* into our domestic laws and policies.[12] This means that there are significant gaps and inconsistencies in human rights protections for Aboriginal and Torres Strait Islander people across Australia.

Australia has also failed to make significant progress to respect the right of self-determination for Aboriginal people. In 2023, the referendum for the establishment of a Voice to Parliament failed. Since then, there has been no significant progress at the national level. Victoria has pursued their own treaty and truth telling processes, and in November 2025, the first treaty was signed between the Victorian Government and First Peoples in Victoria.[13] South Australia has enacted a First Nations Voice to Parliament. [14]

Recommendations

1.1 The Federal Government should take steps to ratify key human rights treaties and optional protocols to treaties and withdraw its current reservations, including in particular:

1.1.1 Fully adopt and implement the *Convention on the Rights of the Child*, including to withdraw Australia's reservation to Article 37(c) of the

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no Act has yet been legislated: see the reports of the 2009 inquiry here: National-Human-Rights-Consultation-Report-2009-copy.pdf and the 2024 Parliamentary Joint Committee on Human Rights inquiry here: Inquiry into Australia's Human Rights Framework

[8] This has been the subject of repeated criticism by United Nations human rights bodies, including the former Special Rapporteur on the Rights of Indigenous Peoples following their 2017 visit to Australia: see Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia [32].

[9] See, for example, the Australian Human Rights Commission's report, *Free and Equal: a reform agenda for federal discrimination laws* (December 2021).

[10] For example, Western Australia's *Equal Opportunity Act 1984* has not been substantively amended since it was enacted, and progress on broad reaching reforms recommended in 2022 has been very slow: see e.g. LRC-Project-111-Final-Report_0.pdf

[11] See e.g. the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia: Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia (November 2023).

[12] Note that The Queensland *Human Rights Act* 2019 implements Articles 8,25,29 and 31 of UNDRIP and Article 27 of the ICCPR in section 28 which is a standalone provision on cultural rights for Aboriginal peoples and Torres Strait Islander peoples, recognising the right to connection to kin, culture and country and the right not to be subjected to forced assimilation.

[13] In Victoria, the Yoorook Justice Commission undertook a truth telling process from 2021-2025. It has produced multiple reports, including: *Yoorrook for Justice* (2023) and *Yoorrook for Transformation* (2025), available at: https://www.yoorrook.org.au/reports-and-recommendations/reports For more information on Victoria's Treaty process, see https://firstpeoplesvic.org/treaty/ In addition, Queensland established a Truth Telling and Healing Inquiry and passed a Path to Treaty Act, but this was repealed when the State government changed in 2024.

[14] In South Australia, legislation establishing a First Nations Voice to Parliament was enacted, see: First Nations Voice Act 2023 A visit can be arranged by email to: voicesecretariat@sa.gov.au

Convention on the Rights of the Child and guarantee separation of children from adults in all places of detention.

1.1.2 Ratify the Optional Protocol to the *Convention on the Rights of the Child* on a Communications Procedure.

1.1.3 Ratify the Optional Protocol to the UN *International Covenant on Economic, Social and Cultural Rights* (ICESCR),

1.2 The Federal Government should enact a Federal Human Rights Act, and encourage the remaining states and territories without human rights legislation to enact their own legislation to ensure it is consistent and comprehensive.

1.3 The Federal Government should enact uniform anti-discrimination legislation which provides a clear, consistent and comprehensive pathway for redress, and effective remedies against intersectional discrimination.

1.4 The Federal Government take immediate steps to implement UNDRIP, including:

1.4.1 Passing Federal legislation that enshrines the right of Aboriginal and Torres Strait Islander Communities to self-determination;

1.4.2 Coordinating with Aboriginal and Torres Strait Islander Peoples to establish a national action plan and an Indigenous independent monitoring body to implement UNDRIP.

1.5 The Federal Government should establish a Makarrata Commission to supervise negotiations on a national treaty and truth-telling, to recognise the self-determination of Aboriginal and Torres Strait Islander Peoples.

2. Closing the Gap and Self-Determination

In June 2020, Australian Governments entered into a new Closing the Gap National Agreement (the Agreement) with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks).[15] For the first time, the Agreement includes outcomes and targets to reduce Aboriginal and/or Torres Strait Islander incarceration and overrepresentation in child protection and family violence.[16] It also introduces four national Priority Reforms[17] - including commitments to work in partnership, share power and decision-making, build the Aboriginal community-controlled sector, transform government and share access to data. The Priority Reforms were added as necessary

[15] The Coalition of Peaks is a representative body of more than 80 Aboriginal and Torres Strait Islander community-controlled peak organisations and members, representing some 800 organisations.
[16] *National Agreement on Closing the Gap.* Target 10 (reduce the rate of Aboriginal adults held in incarceration by at least 15% by 2031), Target 11 (reduce the rate of Aboriginal young people (10-17 years) in detention by at least 30% by 2031). Target 12 (reduce the rate of over-representation of Aboriginal children in out-of-home care by 45%), Target 13 (reduce the rate of all forms of family violence and abuse against Aboriginal women and children by at least 50%, as progress towards zero).
[17] National Agreement on Closing the Gap, *Priority Reform Areas for Joint National Action*.

ways of working with Aboriginal and Torres Strait Islander people and organisations, and recognise that radical, structural transformation is required to Close the Gap.

On paper, the Agreement signifies a fresh start to Closing the Gap, but in practice, not much has changed. Governments say they respect the right to self-determination and want to work in "genuine" partnership with Aboriginal and/or Torres Strait Islander communities; yet the Agreement has not delivered the change expected, and States and Territories continue to implement harmful laws and policies that have a direct and discriminatory impact on Aboriginal and/or Torres Strait Islander people.

Many of the outcomes and targets under the Agreement – including justice and child protection – are getting worse, not better. Punitive laws across multiple jurisdictions (see further below) have resulted in a significant increase in Aboriginal and/or Torres Strait Islander incarceration.[18] The gap is also widening in relation to Aboriginal and/or Torres Strait Islander children being removed from their families.[19]

Two reviews of the Agreement have found that Governments have failed to make significant changes, and progress is unlikely unless government organisations fundamentally rethink their systems, culture and ways of working.[20] An Independent Aboriginal Review of the Agreement highlighted the need for a significant shift on accountability, funding reform, self-determination and genuine partnership.[21]

Aboriginal and Torres Strait Islander organisations continue to vocalise our concerns, and Governments continue to ignore us. Rather than wasting our time with endless briefings, working groups and reports, we want Governments to genuinely listen, and become the partners that their Closing the Gap commitments require of them.

Recommendations

2.1 Governments must implement the recommendations from the Independent Aboriginal Review of the Closing the Gap Agreement, as well as the Productivity Commission's Review of the Agreement.

2.2 Governments must respect the right of Aboriginal and Torres Strait Islander communities to self-determination, including to make decisions about their own lives, communities and futures; and to have control over policies, services and systems that affect them.

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[18] Productivity Commission, *Closing the Gap Data Dashboard*, Target 10. In June 2024, the rate of adult Aboriginal incarceration was 2,304 per 100,000 compared to 1,906 per 100,000 in 2019.
[19] Productivity Commission, *Closing the Gap Data Dashboard*, Target 12. In 2024, the rate of Aboriginal and/or Torres Strait Islander children aged 0–17 years in out-of-home care was 50.3 per 1,000 children in the Aboriginal and Torres Strait Islander population, compared to 47.3 per 1,000 children in 2019.
[20] Australian Government Productivity Commission, *Review of the National Agreement on Closing the Gap, Study Report: Volume 1* (2024). Jumbunna Institute for Indigenous Education and Research, UTS, *Closing the Gap Independent Aboriginal and Torres Strait Islander led Review* (2025).
[21] Jumbunna Institute, *Closing the Gap Independent Aboriginal and Torres Strait Islander led Review* (2025), p. 6.

3. Racism, discrimination and vilification

Racism, discrimination and vilification against Aboriginal and Torres Strait Islander people remains a pervasive and urgent issue in Australia. Structural and systemic racism is widespread across all States and Territories, and hate crimes against Aboriginal and Torres Strait Islander people continue to be underreported and undercharged.[22]

In November 2024, the Australian Human Rights Commission ('AHRC') released a national anti-racism framework,[23] noting that 'systemic and structural racism is deeply embedded throughout Australia and requires an urgent, national response'.[24] The AHRC stressed that this response must be 'First Nations-centred'.[25] However, at the time of writing, the government has issued no formal response to the framework and its 63 recommendations.

Across all practice areas, ATSILS continue to see the way that racism drives unfair outcomes for Aboriginal and Torres Strait Islander people across Australia. We also see the way that Governments, courts and institutions are unwilling to talk about systemic racism, let alone address it.

Racism against Aboriginal people is increasing, primarily because of the rise of neo-Nazi extremism and white supremacist ideologies. This was a finding of the Commonwealth Senate Legal and Constitutional Affairs References Committee Inquiry into Right Wing Extremist Movements in Australia in 2024.[26] This Inquiry highlighted the rise of white supremacist extremism and made recommendations for early intervention and prevention measures. However, the Government has not taken meaningful steps to implement the recommendations.

The lack of meaningful action has led to direct attacks on the lives and culture of Aboriginal people, continuing patterns that have existed since colonisation. In 2025, a neo-Nazi group violently attacked people at Camp Sovereignty, an Aboriginal site of cultural significance and site of peaceful resistance against colonisation.[27] More recently, on 26 January 2026, there was an attempted bombing of a group of people, including

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[22] See, eg, 'National Hate Crimes Database', *Australian Institute of Criminology* (Statistics) <https://www.aic.gov.au/statistics/national-hate-crimes-database>; Hagar Cohen and Scott Mitchell, 'Hate Crime Laws Rarely Used by Australian Authorities, Police Figures Reveal', *ABC News* (online, 3 May 2019) <https://www.abc.net.au/news/2019-05-03/hate-crimes-rarely-prosecuted-in-australia/11055938>.
[23] See Australian Human Rights Commission ('AHRC'), *The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia* (Report, November 2024).
[24] Ibid 10; for an earlier response see also *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act* 2023 available at <https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2023-026>.
[24] AHRC (n 22) 9.
[25] Ibid.
[26] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/RWExtremists23/Report
[27] https://www.abc.net.au/news/2025-09-02/iat-camp-sovereignty-follow/105722830

Aboriginal people, at an Invasion/Survival Day rally that promotes recognition of Aboriginal people's sovereignty, genocide and culture.[28] Both of these events were met with a response from law enforcement that reflects a racist double standard in how extremism by white people against Aboriginal and Torres Strait Islander people is policed in comparison to how the State responds to other forms of extremism.[29]

While the recent announcement of a Senate Inquiry into racism against Aboriginal and Torres Strait Islander peoples is welcome,[30] we echo the sentiment expressed by the AHRC that 'decades of inquires… have already identified what needs to change' and, notably, that 'this new Inquiry must drive action – not replace it'.[31]

Recommendations

3.1 The Federal Government must implement the recommendations from the Australian Human Rights Commission regarding a national anti-racism framework, and all States and Territories should develop and implement anti-racism strategies.

3.2 Australian Courts, including Coroners Courts, should take in account the impact of racism – including systemic racism - on Aboriginal and Torres Strait Islander people.

3.3 The Federal Government must implement the recommendations from the Legal and Constitutional Affairs References Committee Inquiry into Right Wing Extremist Movements in Australia, as well as other early intervention and prevention measures to address the root-causes of terrorism and extremism against Aboriginal people.[32]

4. Deaths in Custody

Aboriginal and Torres Strait Islander people continue to die in custody at a disproportionate rate and in distressing circumstances and appalling conditions. In 2024-2025, 29% of people who died in custody in Australia were Aboriginal and Torres Strait

[28] VALS, Supplementary Submission to Review of the Definition of 'Terrorist Act' in the Criminal Code, March 2026, available at: https://www.vals.org.au/wp-content/uploads/2026/03/VALS_Letter_Supplementary-Submission-on-Inquiry-into-the-Definition-of-Terrorist-Act_26Mar_26.pdf
[29] VALS, Supplementary Submission to Review of the Definition of 'Terrorist Act' in the Criminal Code, March 2026, available at: https://www.vals.org.au/wp-content/uploads/2026/03/VALS_Letter_Supplementary-Submission-on-Inquiry-into-the-Definition-of-Terrorist-Act_26Mar_26.pdf
[30] Parliament of Australia, 'New Inquiry to Tackle Racism, Hate and Violence Toward First Nations People' (Media Release, Department of the House of Representatives, 4 March 2026).
[31] AHRC, 'Commissioners Welcome Senate Inquiry into Racism Against First Peoples' (Media Release, 5 March 2026).
[32] Further discussion of this in: Victorian Aboriginal Legal Service, Submission to the Review of the definition of a 'terrorist act' in section 100.1 of the Criminal Code Act 1995 (14 October 2025).

Islander people,[33] and 42% of Aboriginal and Torres Strait Islander people who died in prisons were unsentenced.[34] These are not just statistics; every one of these people left behind a grieving family and community. Their deaths continue to compound intergenerational trauma experienced by Aboriginal and Torres Strait Islander people and communities across Australia.

Thirty-five years ago, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) handed down 339 recommendations relating to self-determination, policing practices, criminal laws and conditions in detention, including access to culturally safe healthcare. Since then, over 625 Aboriginal and/or Torres Strait Islander people have died in custody,[35] and many of these deaths could have been prevented if the recommendations from RCIADIC had been implemented.

Since the Special Rapporteur's last visit to Australia in 2017, 285 Aboriginal and Torres Strait Islander people have died in custody.[36]

There is very little accountability for the individuals and organisations involved in these deaths. Only one person has been convicted in relation to an Aboriginal and Torres Strait Islander death in custody in the more than three decades since RCIADIC.[37] There is no obligation on Governments to implement the recommendations from coronial inquests, and many of them remain unimplemented.[38]

Recommendations

4.1 Governments must implement all recommendations from the RCIADIC and coronial inquests into Aboriginal and Torres Strait Islander Deaths in Custody, except where ATSILS' or Aboriginal and Torres Strait Islander communities recommend otherwise.

4.2 Governments must strengthen accountability and oversight, including through independent detention oversight, independent investigation of Aboriginal and Torres Strait Islander Deaths in Custody, criminal prosecution of individuals involved in Aboriginal and Torres Strait Islander Deaths in Custody where appropriate, and independent, robust and culturally appropriate complaints systems.

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[33] Australian Institute of Criminology (AIC), *Deaths in Custody in Australia 2024-2025*, p. 9.
[34] AIC, *Deaths in Custody in Australia 2024-2025*, p. 11.
[35] AIC, *Deaths in Custody in Australia: Real Time Dashboard*.
[36] The 2017 report of the Special Rapporteur noted that there had been over 340 deaths in custody since the RCIADIC. As at March 2026, 625 Aboriginal people have died in custody.
[37] K. Wellauer and J. McCarthy, "Australia records highest number of Indigenous deaths in custody since 1979," 10 December 2025. Aboriginal Legal Service NSW/ACT, Media Release, <https://www.alsnswact.org.au/benedict-bryant-guilty> 28 November 2025.
[38] See report: *Unfinished Business Aboriginal Deaths in Custody*, Aboriginal Legal Rights Movement 2025, accessible: ALRM-Unfinished-Business-RCIADIC-FINAL-17.7.25V4.pdf

4.3 The Federal Government should introduce an independent, national oversight body to monitor Aboriginal and Torres Strait Islander deaths in custody.

5. Punitive Law Changes

Australian State and Territory governments continue to compete in their efforts to appear 'tough on crime', adopting highly politicised policies and introducing increasingly punitive legislative reforms.[39] These are often hastily conceived in response to high profile incidents and sensationalised media coverage, and frequently implemented without any evidentiary basis.[40]

Recent amendments to State and Territory legislation have expanded police powers,[41] created new criminal offences which predominantly criminalise Aboriginal and Torres Strait Islander children,[42] restricted the circumstances in which accused persons can be granted bail,[43] and introduced 'adult crime, adult time' penalties for children as young as 10 years old.[44]

Punitive policies inevitably increase police interactions with Aboriginal and Torres Strait Islander people, broaden the circumstances in which harsh penalties may be imposed upon conviction for offending, and increase the likelihood that Aboriginal and Torres Strait Islander people who enter the criminal legal system will reoffend or remain in the system for longer periods. This is because they do not address the drivers of the behaviours they seek to discourage and instead actively undermine the ability of evidence-based, culturally safe, and trauma-informed diversionary programs to meet their objectives.[45]

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[39] See, eg, Amnesty International Australia, 'Billions Spent, Rights Ignored: Why Australia's "Tough On Crime" Approach is Failing Us All' (Media Release, 3 February 2026) <https://www.amnesty.org.au/billions-spent-rights-ignored-australias-crime-approach-is-failing/>.

[40] See, eg, Law Institute of Victoria ('LIV'), 'LIV Believes New "Post and Boast" Laws Unnecessary': Locking Up Kids for Longer Won't Make the Community Safer' (Media Release, 19 June 2025); Justice Reform Initiative, 'A Political Misfire – NSW Government's Move to Tighten Bail Laws Misses Opportunity to Keep Children and Communities Safe' (Media Release, 12 March 2024); Jacqueline Wilson, 'How Useful are the Concepts of "Moral Panic" and "Populist Politicisation" in Understanding Shifts in Juvenile/Youth Justice Law and Policy in Australia and/or Elsewhere?' (Research Paper No 24-27, University of New South Wales Law Journal Student Series, 2024) <https://www.austlii.edu.au/cgibin/viewdoc/au/journals/UNSWLawJlStuS/2024/26.html>

[41] See below n 78.

[42] See, eg, Nino Bucci, ''Post and Boast" Laws Aim to Stop Young Australians Glorifying Crimes: Will They Drive Them Deeper Into "a Failing Justice System"?', *Guardian Australia* (online, 16 August 2025) <https://www.theguardian.com/australia-news/2025/aug/16/post-and-boast-laws-australia-youth-young-people-crime-social-media>.

[43] See Amy McDonald, Merran McAlister and Samantha Bricknell, Australian Institute of Criminology, *Bail and Remand Across Australia* (Report, 2026) <https://doi.org/10.52922/ijc78069>.

[44] Queensland Government, 'Adult Crime, Adult Time Expands to 45 Offences' (Media Statement, 1 March 2026) <https://statements.qld.gov.au/statements/104614>; Premier of Victoria, 'Adult Time for Violent Crime is Now Law' (Media Release, 4 December 2025) <https://www.premier.vic.gov.au/adult-time-violent-crime-now-law>.

[45] See, eg, Reece Hinchcliff, Luke Butcher and Andrew Day, 'Australia Doesn't Have a Youth Crime Problem—It Has a Youth Justice Problem', *Pursuit* (online, 17 March 2026) <https://pursuit.unimelb.edu.au/articles/australia-doesnt-have-a-youth-crime-problem.-it-has-a-youth-justice-problem>; Giovanni Torre, 'WA Police Target Indigenous Youth Rehabilitation Event, Arresting Three Boys in Front of Other Children', *National Indigenous Times* (online, 14 November 2024) <https://nit.com.au/14-11-2024/14868/wa-police-target-indigenous-youth-rehabilitation-event-arresting-three-boys-in-front-of-other-children>.

Recommendations

5.1 Federal, State and Territory governments should provide sustainable needs-based funding to ATSILS for the provision of legal services and supports to Aboriginal and Torres Strait Islander people and their families. Funding should allow for the provision of therapeutic and culturally safe support services to individuals at risk of entering, as well as those already involved in, the formal criminal legal system.

6. Minimum Age of Criminal Responsibility

In Australia, children as young as 10 can be "arrested, charged with an offence, hauled before a court, locked away in detention and deprived of their liberty and ultimately wellbeing."[46] All but two jurisdictions in Australia have a minimum age of criminal responsibility (MACR) of 10 years old.[47] Given the disproportionate representation of Aboriginal and Torres Strait Islander children in the criminal legal system, most children impacted by this low age of criminal responsibility are Aboriginal and Torres Strait Islander.[48]

The Committee on the Rights of the Child has recommended countries set the MACR to at least 14, preferably 15 or 16 years old.[49] Despite this, in almost all jurisdictions across Australia, the MACR is just 10 years old.

In Western Australia, Queensland, Northern Territory, Tasmania, South Australia and New South Wales the MACR is 10 years old and in all of these jurisdictions (except for Tasmania[50]) no public commitment to raise the minimum age has been made.[51] Alarmingly, in recent years, there has been backtracking on raising the age in the Northern Territory and Victoria.[52] Three of the four jurisdictions that have committed to,

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[46] Hannah McGlade and Megan Davis, 'International Convention on the Elimination of All Forms of Racial Discrimination: Early Warning and Urgent Action', Complaint submitted to the United Nations Committee on the Elimination of Racial Discrimination, 2025, 19 [80] <https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf> .

[47] The ACT passed legislation in 2023 that raised the MACR to 12. In 2024, the Victoria Government passed legislation to raise the MACR to 12 years, which came into effect in September 2025: see Section 10, *Youth Justice Act 2024* (Vic). See also: Hannah McGlade and Megan Davis (n 46) 10.

[48] See, eg, Australian Productivity Commission. (2025). Report on Government Services 2025, Part F, Section 17 (Youth justice services), Table 17A.5.

[49] United Nations Committee on the Rights of the Child (UNCRC). (2019). *General Comment No 24 on children's rights in the child justice system*. UN Doc CRC/C/GC/24 para 22.

[50] The Tasmanian Government has committed to raising the MACR to 14 years by 2029. See Hannah McGlade and Megan Davis (n 46) 23.

[51] Senate of Australia Standing Committee on Legal and Constitutional Affairs. (2025). Australia's youth justice and incarceration system, 103 [Table 4.1] In the federal jurisdiction, the minimum age of criminal responsibility is 10 years old. The Commonwealth government has made no public commitment to raise the age. See: Complaint submitted to the United Nations Committee on the Elimination of Racial Discrimination, 20.

[52] In October 2024, the newly elected Northern Territory government lowered the age of criminal responsibility from 12 to 10, reversing the previous government's move to raise the age to 12 less than two years prior and ignoring warnings from experts, Indigenous communities and children's commissioners Criminal Code Amendment Act 2024 (NT), s 4; ABC News, 'Northern Territory accused of walking away from its commitment to reduce Indigenous

or are consulting on, raising the age have either created, or propose, exceptions for particular offences or new powers for the State to police children.[53]

The Australian Capital Territory is the only jurisdiction where MACR is 14 years (although with exception for certain types of offending). However, and concerningly, in the ACT, alternative, therapeutic pathways for under 14-year-olds permits the use of confinement.

Ongoing failure and inaction in relation to raising the minimum age of criminal responsibility to at least 14 across all Australian jurisdictions forms part of a broader pattern of racial discrimination against Aboriginal and Torres Strait Islander children, as well as the criminalisation of unmet health, disability and trauma needs.[54]

NATSILS and others have consistently called on the Commonwealth of Australia to exercise its constitutional powers to eliminate the harms driven by State and Territory actions, and set minimum legislated standards for the treatment of children and young people in State and Territory criminal legal systems and raise the minimum age of criminal responsibility.[55]

Australian family and community members have pointed out that there should not only be a focus on chronological age but also on developmental age, taking into account neurological conditions and individual circumstances.[56] These views are consistent with advice from the Committee on the Rights of the Child which suggests that, if not automatically excluded, children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders should be individually assessed.[57]

Recommendations

6.1 State and Territory Governments should immediately raise the MACR to 14 years, without exception, and without introducing new police powers for children under the MACR.

6.2 The Australian Government must urgently exercise its constitutional powers to reduce the harms driven by State and Territory actions, and set minimum

incarceration' (29 August 2024). In 2023, the Victorian Government appeared before the Yoorrook Justice Commission and committed to raise the MACR to 14 years in two tranches (first to 12 years, then to 14 years). In 2024, the MACR was raised to 12 years, and this reform came into effect in 2025. However, the Government also introduced new police powers to over children aged 10 and 11. The Government then backflipped on its commitment and has failed to raise the age further to 14 years. See: Complaint submitted to the United Nations Committee on the Elimination of Racial Discrimination, 22.

[53] See Hannah McGlade and Megan Davis (n 46) 19.

[54] Ibid, p 20 para 82.

[55] See Constitutional Law Expert Advice at https://www.natsils.org.au/wp-content/uploads/2026/01/Legal-Advice-on-National-Child-Rights-Reform-23-June-2025.pdf

[56] Australian Human Rights Commission. (2024). "Help way earlier!" How Australia can transform child justice to improve safety and wellbeing, at https://humanrights.gov.au/resource-hub/by-resource-type/reports/children-and-youth-rights/help-way-earlier!-transforming-child-justice-for-safety-and-wellbeing

[57] United Nations Committee on the Rights of the Child, General Comment 24 on children's rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019) para 28.

legislated standards for the conditions and treatment of children and young people detained by State and Territory criminal legal systems.

6.3 Individualised approaches that factor in neurological conditions and individual circumstances must be prioritised for children both above and below the age of criminal responsibility.

7. Youth Justice

"Across Australia, there is a crisis of mass incarceration of Aboriginal and Torres Strait Islander children, who are put behind bars at rates that are grossly disproportionate to non-Indigenous children".[58] Aboriginal and Torres Strait Islander children are drastically overrepresented at every stage of a criminal legal system that continues to prioritise punitive and carceral responses over prevention and rehabilitative solutions. Although only around 6.5% of young people aged 10-17 in Australia are Aboriginal or Torres Strait Islander, 62% of young people aged 10-17 in detention on an average day in 2024-2025 were Indigenous.[59] The punitive laws and practices outlined below suggest a number of children's human rights in UNDRIP and the UN Convention on the Rights of the Child (CRC), amongst other international treaties, are being violated.[60] The below outlines some of the key issues in Australia's youth criminal justice system. For a comprehensive overview, see the 2025 complaint to the UN Committee on the Convention of the Elimination of Racial Discrimination by Hannah McGlade and Megan Davis, much of which has informed the below.[61]

Several Australian jurisdictions maintain mandatory detention laws for children, which are incompatible with international human rights obligations.[62] "Both Western Australia and the Northern Territory have refused to heed UN advice to repeal mandatory detention laws,[63] which deny judicial discretion in relation to sentencing and resulting in high

[58] Hannah McGlade and Megan Davis (n 46) 1 [5]. For recent reports of the youth justice crisis, see for example, Brennan, D. (2026, March 17), *Experts condemn 'reactionary' WA youth justice policies as calls for federal intervention grow*, National Indigenous Times. Available at: https://nit.com.au/17-03-2026/23227/experts-condemn-reactionary-wa-youth-justice-policies-as-calls-for-federal-intervention-in-the-system-grow; Hinchcliff, R., Butcher, L., & Day, A. (2026, March 17). *Australia doesn't have a youth crime problem. It has a youth justice problem*. *Pursuit*. https://pursuit.unimelb.edu.au/articles/australia-doesnt-have-a-youth-crime-problem.-it-has-a-youth-justice-problem

[59] Australian Productivity Commission, Report on Government Services 2026, Part F, Section 17: Youth justice services, Table 17A.5

[60] For example, UNDRIP articles impacted include: art 2 (freedom from discrimination), art 7(1) (right to life, integrity, liberty and security of person), and art 24(2) enjoyment of the highest attainable standard of physical and mental health. CRC art 3 (best interests of the child), art 6 (right to development), art 19 (protection from violence and abuse), art 37 (freedom from torture, cruel and inhuman punishment and deprivation of liberty), art 40 (children in criminal justice system to be treated in a manner consistent with child's sense of dignity and self-worth).

[61] Hannah McGlade and Megan Davis (n 46).

[62] Including art 40 CRC, requiring criminal justice responses for children to be age-appropriate, proportionate and rehabilitative.

[63] The UN has requested in Concluding Observations: See Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia (UN Doc CRC/C/AUS/CO/5-6) (1 November 2019), 14 [47(f), 48(f)]; Committee on the Elimination of All Forms of Racial Discrimination, Concluding observations on the eighteenth to twentieth periodic reports of Australia (UN Doc CERD/C/AUS/CO/18-20) (26 December 2017) 6 [26(b)]. In Western Australia, mandatory sentencing has been applied to children committing property offences since

incarceration rates." This violates the principle of detention as a measure of last resort (see article 37 of the CRC).

Most incarcerated children are unsentenced, with some detained because there is no safe place for them to live while on bail.[64] Aboriginal and Torres Strait Islander children are more likely to be remanded in custody than granted bail,[65] so strict bail laws have a discriminatory and harmful impact on Indigenous children and violate article 37(b) CRC. Restrictive bail laws in Queensland have driven rising numbers of children held on remand. Many of these children are held in police watch houses for extended periods in poor and unsuitable conditions. Similarly, Victoria passed what it labelled as 'the toughest bail laws in Australia,' which remove the principle of remand as a last resort for children.[66] According to Human Rights Watch, in Western Australia in February 2025, more than half of the children detained were unsentenced.[67]

Children also face inhumane treatment within youth detention centers. The use of isolation and solitary confinement, strip-searching, and mechanical restraints remains widespread,[68] and no jurisdiction comprehensively prohibits practices that may amount to cruel, inhuman or degrading treatment (in contravention of Articles 37(c) and 40 of the CRC). The Nelson Mandela Rules and the Havana Rules strictly prohibit the use of solitary confinement on children,[69] and all disciplinary measures constituting cruel, inhuman or degrading punishment.[70] In many States and Territories, overly broad laws permit strip searching of children and young people, including as a matter of prison routine, without consideration of less intrusive technologies (e.g. scanning technologies).[71] Contrary to the Nelson Mandela Rules, which prohibit the use of restraints which are inherently degrading, spit hoods and other restraints are used in a manner that amounts to ill-treatment across Australia. The Northern Territory

1996 and in the Northern Territory children are subject to mandatory sentencing if their matter is dealt with under the Sentencing Act 1995 rather than the Youth Justice Act 2005: see Hannah McGlade and Megan Davis (n 46) 24.

[64] Australian Human Rights Commission. (2024). *"Help way earlier!" How Australia can transform child justice to improve safety and wellbeing*, 8.

[65] Australian Institute of Health and Welfare, 'First Nations young people in detention by legal status' in Youth detention population in Australia 2024 (December 2024) in McGlade and Davis, 2025.

[66] *Making Queensland Safer Act 2024* (Qld) in Hannah McGlade and Megan Davis (n 46) 10. In 2024, Queensland also removed the Youth Justice Principle that stated 'A child should be detained in custody only as a last resort and for the shortest appropriate period.' and replaced it with 'A child should be detained in custody, where necessary, including to ensure community safety, where other non-custodial measures are insufficient, and for no longer than necessary.' from the Charter of Youth Justice Principles in the Youth Justice Act (QLD) (this was effected by the *Making Queensland Safer Act 2024*).

[67] Hennessy, A., Human Rights Watch, 'Western Australia's Indefensible Record on Children's Rights' (11 February 2025) in Hannah McGlade and Megan Davis (n 46) 26.

[68] For examples in states and territories, see Hannah McGlade and Megan Davis (n 46) 30-32.

[69] United Nations Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules"), UN Doc A/RES/70/175, [44-45]. United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") Un Doc A/RES/45/113 [67].

[70] Ibid, Havana Rules.

[71] For more see Hannah McGlade and Megan Davis (n 46) 32-35.

reintroduced the use of spit hoods, against the Royal Commission in the Protection and Detention of Children in the NT's recommendations in 2017.[72]

Children also continue to be detained in adult facilities in Western Australia, Queensland and Victoria as well as in police cells with adults in most states including South Australia.[73] Australia has maintained its reservation to article 37(c) of the CRC, which provides that 'every child deprived of liberty must be separated from adults unless it is considered in the child's best interests not to do so'. In Western Australia, the death of Aboriginal child Cleveland Dodd in 2023, while held in Unit 18 of Casuarina Prison (an adult men's maximum-security prison), highlights the severe risks associated with these practices. Evidence presented to the coronial inquest described conditions as "cruel, degrading and inhuman," prompting the Coroner's call for urgent closure of the unit.[74] WA continues to detain Aboriginal children in Unit 18.[75] In Queensland, children as young as 10 are detained in police adult watch houses for weeks (and even months). These watch houses have 'lack of trained staff, and lack of youth-focused policies, services and programs designed to uphold the rights of children while detained.'[76]

Children with disabilities are particularly vulnerable, with detention environments often failing to provide appropriate support, exacerbating trauma and increasing contact with the justice system. A survey of 14 – 17-year-olds in contact with the justice system between 2016 and 2018 in Queensland and Western Australia, found that about two thirds had at least one mental health disorder. As many as 23% had attempted suicide, nearly six times as high compared with their peers in the general population, and 14% reported that they had made a suicide attempt in the past 12 months.[77]

These issues are compounded by systemic discrimination (including punitive laws noted above) and a lack of effective oversight and enforcement mechanisms. Existing complaint avenues lack the power to ensure accountability. Mandatory and punitive detention practices further entrench harm faced by Indigenous children who are disproportionately impacted by school exclusion, homelessness and disability.

Recommendations

7.1 The Federal Government should establish enforceable legislated national minimum standards for youth justice, including a prohibition on solitary confinement, strip-searching, spit hoods, and regulating the use of restraints.

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[72] For other examples in Western Australia, Queensland, South Australia see Hannah McGlade and Megan Davis (n 46) 34-37.
[73] For specific examples in states and territories see Hannah McGlade and Megan Davis (n 46) 37-39.
[74] Recommendation 17, *Inquest into the Death of* Cleveland Dodd (Findings of Coroner Urquhart, WA Coroner's Court, 2025).
[75] Office of the Inspector of Custodial Services, *2024 Inspection of Hakea Prison*, (Report, February 2025)
[76] Hannah McGlade and Megan Davis (n 46) 37, 39.
[77] Carla Meurk et al, Changing Direction: mental health needs of justice-involved young people in Australia (Report, 2020) 4.

7.2 Bail laws should be reformed to reduce the detention of children on remand.

7.3 All Governments must end the detention of children in police watch houses.

7.4 Children with disabilities should be diverted away from youth justice systems to a therapeutic, health and welfare response. Where they are detained, youth justice systems must be equipped to appropriately support children with disabilities, including access to therapeutic, culturally safe services.

7.5 Independent oversight bodies, such as Children's Commissions, should be strengthened by providing binding enforcement powers, ensuring accountability for human rights violations and ensuring there is an Aboriginal Children's Commissioner in every State and Territory.

8. Policing

Over-policing continues to inordinately increase the likelihood that Aboriginal and Torres Strait Islander people in all States and Territories will come into contact with the formal criminal legal system, be it more frequently or for the first time.[78]

Practices such as maintaining a high police presence and increasing surveillance in particular areas inevitably target specific communities, broaden the circumstances in which police may exercise their powers, and increase the likelihood of negative interactions between police and community members.[79] Together with reforms that continue to expand police powers across Australia,[80] these practices have particularly deleterious impacts on Aboriginal and Torres Strait Islander children;[81] people

[78] See, eg, Kay Harrison, 'Excessive Police Power Causes Egregious Harm for First Nations and Other Young People', *UNSW Sydney* (online, 23 May 2023) <https://www.unsw.edu.au/law-justice/our-research/impact/excessive-police-power-causes-egregious-harm-first-nations-other-young-people>.

[79] See, eg, Tamar Hopkins and Gordana Popovic, 'Do Australian Police Engage in Racial Profiling? A Method for Identifying Racial Profiling in the Absence of Police Data' (2025) 37(1) *Current Issues in Criminal Justice* 19 <https://doi.org/10.1080/10345329.2024.2326709>.

[80] See, eg, David Weber, 'How WA Police's New Search Powers Aim to Disrupt Organised Criminals' Ability to Distribute Drugs', *ABC News* (online, 28 March 2023) < https://www.abc.net.au/news/2023-03-28/wa-government-border-crossings-search-powers/102154988>; 'Melbourne's Mayor Welcomes Greater Police Search Powers but Some MPs Say It's Overreach', *ABC News* (online, 26 November 2025) <https://www.abc.net.au/news/2025-11-26/police-extend-search-powers-melbourne/106053990>; Keziah Sullivan, 'Police Look to Extend Use of SA's New 'Stop and Search' Knife Laws', *9 News* (online, 30 September 2025) <https://www.9news.com.au/national/police-look-to-extend-use-of-sas-new-stop-and-search-knife-laws/b5b0887d-1123-441d-a224-90795a6d0af2>; Claudia Williams, 'Queensland Makes Jack's Law Permanent, Expanding Police Powers to Search People for Knives', *ABC News* (online, 11 June 2025) <https://www.abc.net.au/news/2025-06-11/queensland-jacks-law-made-permanant-passes-parliament/105402610>.

[81] See, eg, Australian Human Rights Commission, *'Help Way Earlier!': How Australia Can Transform Child Justice to Improve Safety and Wellbeing* (Report, 2024); Andreea Lachsz, 'Over-policing of Aboriginal Children in Australia: A System that Criminalises Aboriginal Children', *Penal Reform International* (online, 22 November 2021).

experiencing homelessness;[82] people with disability;[83] and people experiencing mental health crises,[84] who are highly vulnerable and, frequently, highly visible in public spaces.[85]

Police across Australia have broad discretionary powers, but research suggests that vulnerabilities are unlikely to be factored into police decision-making in the absence of procedural requirements to do so.[86] Police procedures vary significantly across Australia's States and Territories, as do legislative protections for vulnerable people who come into contact with police,[87] yet complaints related to police behaviour are frequently subject to internal investigations which lack transparency and 'do not meet international human rights standards'.[88] There remains a lack of adequate, independent oversight and accountability mechanisms for police in all states and territories.[89]

Aboriginal and Torres Strait Islander people are also subjected to inhumane treatment and conditions in police custody, including overcrowding, lack of access to appropriate healthcare, and denying people basic hygiene and clean clothes. In multiple jurisdictions, people are being held in police cells for extended periods of time, in part because prisons are overflowing.[90] In some jurisdictions, police are shuffling people between police stations to circumnavigate legislative protections, thereby extending the period of time that the person can be detained.[91]

Recommendations

8.1 All States and Territories should introduce independent oversight and accountability mechanisms for police. These mechanisms should be responsible for receiving, and conducting initial investigations into, all complaints made against police, and should be separate to existing anti-corruption bodies.

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[82] See, eg, Tamara Walsh et al, '"Back Off! Stop Making *Us* Illegal!": The Criminalisation of Homelessness in Australia' (2025) 34(1) *Social and Legal Studies* 67.
[83] See, eg, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8.
[84] See, eg, Rory Randall et al, '"I Was Having an Anxiety Attack and They Pepper Sprayed Me": Police Apprehension in Mental Health Contexts in Australia' (2024) 35(1) *Policing and Society* 85 <https://doi.org/10.1080/10439463.2024.2372354>.
[85] Tamara Walsh et al (n 82).
[86] See, eg, Danielle Hughes, Emma Colvin and Isabelle Bartkowiak-Théron, 'Police and Vulnerability in Bail Decisions' (2022) 11(3) *International Journal for Crime, Justice and Social Democracy* 122 <https://doi.org/10.5204/ijcjsd.1905>.
[87] Ibid.
[88] Policy Accountability Project, 'Why We Need Independent Investigation of Complaints Regarding Police Conduct' (Web Page) <https://policeaccountability.org.au/issues-and-cases/independent-investigations/>. See also Police Accountability Project, *Independent Investigation of Complaints Against the Police* (Policy Briefing Paper, 2017); Nick Boag, Jeremy King and Merys Williams, 'Police Accountability in Australia: Complaint Mechanisms and Civil Litigation' [2017] (143) *Precedent* 14.
[89] As discussed below, Australia has not implemented its obligations under OPCAT, to establish a National Preventive Mechanism to carry out independent detention monitoring, including in police detention facilities in each State and Territory.
[90] See for example, Queensland Police Service, *Watch-house Review* (2025). In some cases, adults have spent more than 20 days in a police watch house.
[91] See for example, in Victoria, where police are inappropriately referring to this practice as "decanting." See E. Pearson, "The 'decanting' game: Inside Victoria's 'cruel' prisoner shuffle," 23 February 2026.

9. Bail

Related to the policing issues set out above, most States and Territories are increasingly introducing bail reforms which disproportionately impact on Aboriginal and Torres Strait Islander people.

It is now well-accepted that the failures to make progress on Closing the Gap targets 10 and 11 to lower the incarceration of Aboriginal and Torres Strait Islander adults and children is largely driven by lack of access to bail, and the unacceptable increases in Aboriginal people on remand.

In 2022, the UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) raised concerns about the extraordinary number of persons held on remand in Australia and noted the disproportionate effect of the reversal of the presumption of bail for certain offences on some groups such as indigenous people. It recommended all Australian governments make remand a measure of last resort.[92]

In 2025, at the request of the Standing Council of Attorneys-General (SCAG), NATSILS and ATSILS, along with the Commonwealth, States and Territories, through the Justice Policy Partnership, prepared a report on Bail and Remand Reform ('Bail and Remand Reform Report") setting out legislative reforms that would immediately lower remand rates.[93] This included, amongst other things, reinstating the principle that imprisonment should be a measure of last resort, ensuring Aboriginal and Torres Strait Islander people are not remanded for offences unlikely to result in imprisonment, tailoring bail conditions to individual circumstances in proportion to the alleged offence; removing standalone bail offences and bars on second applications for bail and introducing specific protections for Aboriginal and Torres Strait Islander people. It also recommended resourcing for culturally appropriate bail support services that would keep people safe and supported on bail, and that SCAG should explore the use of alternative responder models whereby health and disability factors are met with non-policing responses that address underlying issues and lower police interactions with community members in the first place.

SCAG declined to endorse the Bail and Remand Reform Report, noting that the

[92] SPT *Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party* (2022) available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2FAUS%2FROSP%2F1&Lang=en

[93] See Bail and Remand Report (2025) at https://www.ag.gov.au/sites/default/files/2025-11/scag_bail-and-remand-reform-working-group-final-report.PDF

implementation of recommendations is a matter for each individual jurisdiction.[94] This disappointing result is illustrative of the Commonwealth's repeated refusal to exercise the powers available to it. Notably, the United Nations Working Group on Arbitrary Detention recommended Australia align bail laws with the recommendations in the Bail and Remand Reform Report in their Statement released after their December 2025 visit to Australia. [95]

Recommendations

9.1 The Commonwealth should work with States and Territories to implement the recommendations in the Bail and Remand Reform Report, including legislative reform to:

9.1.1 ensure bail laws explicitly provide that imprisonment be a last resort

9.1.2 explicitly require that a person must not be remanded for an offence that is unlikely to result in a sentence of imprisonment

9.1.3 remove bars on second (and subsequent) bail applications

9.1.4 remove standalone bail offences

9.1.5 remove presumptions against bail and provisions which reverse the onus of proof

9.1.6 mandate bail authorities to consider any matters that arise in relation to a person's status as an Aboriginal or Torres Strait Islander person

9.1.7 include a presumption in favour of bail for children and young people

9.1.8 include a presumption in favour of bail for people with cognitive, psycho-social, mental health or other disability-related issues

9.1.9 remove bail tests that establish very high thresholds for bail being granted and curtail bail decision-makers'-discretion

9.1.10 ensure bail is not refused where electronic monitoring is not practical or available

9.1.11 ensure bail conditions are:

(i) targeted at an identified risk

(ii) able to be complied with by the individual (taking into account the individual's capacity to understand/comply), and

(iii) not overly onerous

so as to prevent irrelevant, unsuitable or onerous bail conditions that may result in breaches of bail and over-incarceration, such as conditions that require onerous daily reporting, impractical non-association conditions

[94] See SCAG Communique, 14 November 2025 at https://www.ag.gov.au/sites/default/files/2026-03/scag-communique_14-november-2025.pdf

[95] See United Nations Working Group on Arbitrary Detention Statement December 2025, at https://www.ohchr.org/en/press-releases/2025/12/australia-un-working-group-raises-major-concerns-about-detention-indigenous at para 2.1.2.

and inappropriate curfew conditions that are not relevant to bail concerns or risk.[96]

10 Family, Domestic and Sexual Violence

Aboriginal and Torres Strait Islander people in Australia remain over-represented as people experiencing family, domestic and sexual violence ('FDSV'), with Aboriginal and Torres Strait Islander women experiencing FDSV at disproportionately high rates compared to non-Indigenous women.[97] Aboriginal and Torres Strait Islander people are also frequently over-represented as people using FSDV, which is linked to the impacts of colonisation.

Key reports indicate that, since the Special Rapporteur's last visit to Australia,[98] systemic issues continue to inhibit progress towards eliminating FDSV in Aboriginal communities.[99] Aboriginal and Torres Strait Islander women experiencing FDSV are frequently misidentified by police as people using violence, bound by restraining orders instead of protected by them, and at increased risk of criminalisation and its associated harms.[100] Further, while Australia's States and Territories have introduced restrictions on bail and provisions for increased monitoring of alleged and convicted FDSV offenders,[101] there remains a shortage of culturally safe, trauma-informed rehabilitation programs for both people experiencing and people using FDSV, both in the community and within Australia's custodial facilities.[102]

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[96] See Bail and Remand Reform Report to the Standing Council of Attorneys-General at https://www.ag.gov.au/sites/default/files/2026-03/scag_bail-and-remand-reform-working-group-final-report.pdf

[97] Australian Institute of Health and Welfare, 'Aboriginal and Torres Strait Islander people', *Family, Domestic and Sexual Violence* (Online Report, 24 February 2026) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>.

[98] As well as that of the Special Rapporteur on violence against women, its causes and consequences: see <https://digitallibrary.un.org/record/1627464?v=pdf>.

[99] See, eg, Our Watch, *Changing the Picture: A National Resource to Support the Prevention of Violence Against Aboriginal and Torres Strait Islander Women and Their Children* (Report, 2018); Australian Human Rights Commission ('AHRC'), *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020); Australia's National Research Organisation for Women's Safety ('ANROWS'), *Accurately Identifying the "Person Most in Need of Protection" in Domestic and Family Violence Law* (Research Report No 23, November 2020).

[100] Ibid.

[101] See, eg, Government of Western Australia, Department of Justice, 'New Electronic Monitoring Laws for FDV Offenders in Effect' (Media Release, 23 December 2024) <https://www.wa.gov.au/government/announcements/new-electronic-monitoring-laws-fdv-offenders-effect>; Lucy Slade, '"Stuck at Home": SA Introduces Tough New Laws for Repeat Domestic Violence Offenders', 9 News (online, 1 May 2024) <https://www.9news.com.au/national/domestic-violence-south-australia-tough-new-laws-repeat-offenders/5f55c15f-b4c0-4b3f-925b-50a47f3cdf0f>; Edwina Seselja, 'Queensland Police Commissioner Says Domestic Violence Offenders "Being Watched" Closely', ABC News (online, 10 September 2020) <https://www.abc.net.au/news/2020-09-10/queensland-domestic-violence-offenders-being-watched-closely/12648418>.

[102] See, eg, ANROWS, *Improving Family Violence Legal and Support Services for Aboriginal and Torres Strait Islander Women* (Research Report No 25, December 2020); ANROWS, *Family Violence Policies, Legislation and Services: Improving Access and Suitability for Aboriginal and Torres Strait Islander Men* (Research Report No 26, December 2020).

The predominant response to family violence in Australia is police intervention. This can result in civil and/or criminal legal system involvement, often undermines the agency of people experiencing violence and can lead to child removal from family and culture. A more rights protective approach would be to invest in early intervention and prevention responses. The prevention of child removal helps to protect that child's cultural rights under UNDRIP. Investment in Aboriginal community-led solutions would support the right to self-determination.[103]

Recommendations

10.1 Australian States and Territories must increase oversight and monitoring of the efficacy of police responses to FDSV within Aboriginal communities.

10.2 Australian States and Territories must invest in culturally safe early intervention and prevention responses.

10.3 Australian States and Territories must introduce effective rectification processes for people experiencing FDSV who are criminalised when misidentified as users of FDSV.

10.4 Australian States and Territories must minimise the harms of carceral system interventions and invest more in specialist early intervention and prevention supports and services, particularly Aboriginal community-led initiatives including legal assistance.

11 Conditions in Custodial Facilities

Conditions and treatment in many adult and youth prisons, and police custody, in Australia are inhumane and fall far short of Australia's international human rights obligations. NATSILS is particularly concerned about inhumane practices that disproportionality impact Aboriginal and Torres Strait people including solitary confinement,[104] spit hoods, strip searching,[105] rolling lockdowns (often due to staff shortages), and handcuffing women during childbirth.[106] These practices are deeply harmful and must be prohibited.

In 2017, the Special Rapporteur recommended that the Government "[e]nsure that culturally appropriate medical care, including mental health services, are available in all detention facilities."[107] This issue remains critical and it is costing Aboriginal people their

[103] Article 3, UNDRIP
[104] See for example, VALS, *Webinar: The Harms of Solitary Confinement* (2021).
[105] Human Rights Law Centre (HRLC), Formerly Incarcerated Girls Justice Advocates Melbourne (FIGJAM), Flat Out, *Ending Strip Searching in Australian Prisons* (2026).
[106] Nous Group, *National Review of First Nations Healthcare in Prisons: Final Report* (July 2024).
[107] United Nations Special Rapporteur on the Rights of Indigenous Peoples, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, A/HRC/36/46/Add.2, para 113(h).

lives.[108] ATSILS across the country continue to represent families whose loved ones have died (including preventable deaths) in prison as a result of woefully inadequate healthcare.

In 2020-2021, both Veronica Nelson[109] and Heather Calgaret[110] passed away in the Dame Phyllis Frost Centre (DPFC) in Victoria. In both Inquests, the Coroner found that their deaths could have been prevented, and that the healthcare provided to them by Correct Care Australasia (CCA), a private multinational company, was inadequate.[111] Prison healthcare in Victoria is now provided by GEO Group Australia[112] – another private company – and continues to be unsafe for Aboriginal people.[113]

Federal, State and Territory governments must take coordinated action to address the crisis of prison healthcare for Aboriginal and/or Torres Strait Islander people. Healthcare should be provided by Aboriginal Community Controlled Health Organisations (ACCHOs), as is the case in the Australian Capital Territory (ACT) where the Winnunga Nimmityjah Aboriginal Health and Community Services provides primary healthcare services in several prisons.[114]

Recommendations

11.1 Prohibit harmful and degrading practices in prisons, including solitary confinement, strip searching, spit hoods, handcuffing women during childbirth, and rolling lockdowns.

11.2 Reform prison healthcare, including by investing in and supporting ACCHOs to provide culturally safe healthcare to Aboriginal and Torres Strait Islander people in prisons across Australia.

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[108] Nous Group, *National Review of First Nations Healthcare in Prisons: Final Report* (July 2024). See also, Victorian Ombudsman, *Investigation into healthcare provision for Aboriginal people in Victorian prisons*, March 2024.
[109] Coroners Court of Victoria (CCoV), *Finding into Death with Inquest (Veronica Nelson)* COR 2020 0021.
[110] CCoV, *Finding into Death with Inquest (Heather Calgaret)*, COR 2021 006365.
[111] CCoV, *Finding into Death with Inquest (Veronica Nelson)*, COR 2020 0021, pp. 342-346; CCoV, *Finding into Death with Inquest (Heather Calgaret)*, COR 2021 006365, p. 276. See also, CCoV, *Finding into Death with Inquest (Michael Suckling)*, COR 2021 001217.
[112] GEO Healthcare - The GEO Group Australia Pty Ltd.
[113] The Victorian Aboriginal Legal Service (VALS) continues to represent the families of Clinton Austin and Marley Wright. Both of these Coronial Inquests examine the adequacy of prison healthcare.
[114] In the ACT, Winnunga Nimmityjah Aboriginal Health and Community Services provides primary healthcare services at the Alexander Maconochie Centre (AMC), Bimberi Youth Justice Centre, Goulburn prison, Cooma Prison, and the Belconnen and Symonston Remand Centres. The services provided by Winnunga include health checks, mental and healthcare plans, social and emotional wellbeing services, medication management, referrals to specialists and allied health, women and men's health and drug and alcohol rehabilitation services See H. Shukralla and J. Tongs, (2020) Australian first in Aboriginal and Torres Strait Islander prisoner health care in the Australian Capital Territory 44(4) *Australian and New Zealand Journal of Public Health* 324; Winnunga Nimmityjah Aboriginal Health Service, *You Do the Crime, you do the Time: Best Practice Model of Holistic Health Service Delivery for Aboriginal and Torres Strait Islander Inmates of the ACT Prison* (2007).

12 Implementation of OPCAT

A key way to address appalling prison conditions across Australia is through robust independent detention monitoring. The signing of OPCAT in 2017 by Australia was triggered by the final report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory.[115] Despite that, Australia has still not established a fully functional National Preventive Mechanism (NPM). Only 6 jurisdictions have designated bodies to form part of the multi-body Australian NPM (Victoria, New South Wales and Queensland have not taken any steps to implement). The existing NPMs are not adequately funded and there the legislative framework to ensure compliance with the OPCAT is inadequate.[116]

Recommendation

12.1 All Australian Governments – including Victoria, New South Wales and Queensland – must support Australia's compliance with the OPCAT by designating or establishing a body (or bodies) to form part of the multi-body Australian NPM. All NPM bodies must be culturally appropriate, adequately funded and resourced, and have the legislated mandate, powers, privileges and immunities outlined in the OPCAT.

13 Parole Systems

Parole models in all Australian States and Territories have been criticised for denying prisoners one or more 'of the key features of a fair process'.[117] This has resulted in parole systems that are dysfunctional, inaccessible, and disadvantageous to parole-eligible incarcerated Aboriginal and Torres Strait Islander people, who are more likely to remain in custody beyond their non-parole period than non-Aboriginal people.[118]

Ensuring procedural fairness and accountability in parole decision-making is essential for incarcerated Aboriginal and Torres Strait Islander people, who have long been less likely to be approved for parole, and more likely to be returned to custody for breaching parole, than non-Indigenous incarcerated people.[119] Many incarcerated Aboriginal and Torres

[115] Archived at https://webarchive.nla.gov.au/awa/20181010002802/https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx

[116] Australian National Preventive Mechanism, *Monitoring places of detention under the Optional Protocol to the Convention against Torture: Annual Report of the Australian Preventive Mechanism 1 July 2023- 30 June 2024*, (2023), pp 7-9.

[117] Bronwyn Naylor and Johannes Schmidt, 'Do Prisoners Have a Right to Fairness Before the Parole Board?' (2010) 32(437) *Sydney Law Review* 437, 438. See also para 616 in the Queensland Parole System Review Final Report (2016) available at https://parolereview.premiers.qld.gov.au/assets/queensland-parole-system-review-final-report.pdf

[118] See, eg, Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 301-17.

[119] See, eg, Clarke R Jones, *Obstacles to Parole and Community Based Sentencing Alternatives for Aboriginal and Torres Strait Islander Offenders* (Report, 2019) 2.

Strait Islander people in Australia face significant barriers in advocating for their suitability for parole and complying with their parole conditions, including limited access to information; limited access to legal and community supports (particularly for individuals living in remote and regional areas); poor levels of literacy and education; cognitive and neurological impairments; mental ill-health; housing instability; and lack of employment.[120] These barriers are exacerbated by overcrowding within Australia's custodial estates, the deleterious effects of which include limited access to programs and services aimed at facilitating rehabilitation and reintegration (and often pre-requisites for favourable consideration of parole).[121]

The Commonwealth Government has recently recognised the need to depoliticise and improve parole decision-making for people serving sentences for federal offences in Australia by establishing an independent Commonwealth Parole Board.[122] While this is a positive development, these reforms do not address the issue of the absence of procedural fairness.[123] Parole models across Australia require reforms that 'include key features of procedural fairness and accountability'[124] in order to improve successful outcomes for incarcerated Aboriginal and Torres Strait Islander people on, or eligible for, parole.

Recommendations

13.1 Parole models across Australia must be reformed to include the right to obtain legal advice and representation when making submissions to, or appearing before, an independent parole decision-making body; the right to access materials on which parole decision-makers will base their decisions and reasons for denial of parole; and the right to appeal against a decision made in respect of parole.[125]

13.2 State and Territory governments must ensure that ATSILS receive additional, adequate funding for the purpose of providing culturally appropriate secure legal advice and representation to parole-eligible incarcerated Aboriginal people.

14 Removal of Children

Aboriginal and Torres Strait Islander children continue to be removed from their families at appallingly high rates. Even more concerning is the falling rates across the nation of

[120] Ibid 4.
[121] See p 20-21 of this submission.
[122] See, eg, Commonwealth, Parliamentary Debates, House of Representatives, 8 October 2025, 1584 (Michelle Rowland, Attorney-General).
[123] See Parliamentary Joint Committee on Human Rights, Parliament of Australia, Human Rights Scrutiny Report (Report No 8 of 2025, 11 December 2025) 128-43 and particularly at 139 [2.97].
[124] Bronwyn Naylor and Johannes Schmidt (n 116) 438.
[125] As is the case in comparable international jurisdictions such as England and Wales, Scotland, New Zealand, and Canada.

reunification[126] for those children who are removed by the state. In all States and Territories across Australia, the child protection system is rife with system racism. There is a critical need for transformational change – including standalone child protection legislation – to ensure that Aboriginal and Torres Strait Islander families remain together and can access wrap-around support from a strong and well-resourced Aboriginal Community Controlled Sector. This includes support to prevent the removal of their children, as well as the support necessary to reunify them to their parents, family and community if they are removed.

The Closing the Gap National Agreement aims to reduce the rate of over-representation of Aboriginal children in the out-of-home-care (OOHC) system by 45%, by 2031. Yet the situation for Aboriginal and Torres Strait Islander children is not improving. Between 2020 and 2024, the national rate of Aboriginal and Torres Strait Islander child removal has steadily increased, compared to a decrease for non-Aboriginal children.[127] Victoria has the highest rate of Aboriginal and Torres Strait Islander child removal across any jurisdiction in Australia.[128]

In their May 2025 update examining the pathways from OOHC for Aboriginal and Torres Strait Islander children,[129] the Australian Institute of Health and Welfare identified that the national reunification (or restoration) rates for Aboriginal children in OOHC have declined over the last 5 years.[130] In closing the gap, governments need to address both the rising rates of removals and the declining rates of reunification.

The high rates of Aboriginal and Torres Strait child removal are the legacy of over 230 years of racist laws and policies, with persisting issues including: lack of transparency and accountability, lack of investment in early intervention and culturally safe wrap around services[131], a failure to comply with the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)[132] and criminalisation of children and young people in

[126] Some jurisdictions (such as NSW) use the terminology 'restoration'.
[127] SNAAIC, *Family Matters Report 2025*, (2025) p. 49.
[128] SNAAIC, *Family Matters Report 2025*, (2025) p. 49. In 24, the rate of Aboriginal and/or Torres Strait Islander children in care was 50.3 per 1,000 children across Australia, and 90.5 per 1,000 children in Victoria. See *Victorian Government Aboriginal Affairs Report 2024*, p. 35 In 2023-24, Aboriginal and/or Torres Strait Islander children in Victoria were placed in OOHC at a rate 20.6 times that of non-Aboriginal children. See *Victorian Government Aboriginal Affairs Report 2024*, p. 35.
[129] AIHW, Pathways from out-of-home care for Aboriginal and Torres Strait Islander children (May 2025)
[130] SNAICC New report shows widening gap in reunification rates among Aboriginal and Torres Strait Islander children in OOHC - Media Release (23 May 2025)
[131] See Newton, BJ, et al *Realising Aboriginal Community Controlled Approaches to Child Reunification*, Aboriginal Journal of Social Sciences (18 August 2025), Found at: https://bettercarenetwork.org/sites/default/files/2025-09/Aust-J-Social-Issues---2025---Newton---Realising-Aboriginal-Community-Controlled-Approaches-to-Child-Reunification.pdf
[132] The Aboriginal and Torres Strait Islander Child Placement Principle comprises five interrelated elements; Prevention, Partnership, Placement, Participation and Connection, which must be applied together to realise the full intent of the Principle. By centreing prevention, cultural connection, community leadership and self-determination, the ATSICPP supports stronger connections for children and families and contributes to reducing over-representation of Aboriginal and Torres Strait Islander children in child protection systems. See SNAICC, https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/

out-of-home care, particularly residential care.[133] "The interconnectedness of the youth justice and child protection systems highlights a systemic failure and the strong need for culturally appropriate supports to divert at-risk children from further involvement with the child protection and the justice system."[134]

There have been some small improvements, including for example, reversing the permanency amendments in Victoria, which had imposed a blanket restriction on children being reunited with their families after 12 months (or 24 months in exceptional circumstances), regardless of the best interests of the child.[135]

Recommendations

14.1 Overhaul the child protection systems in each State and Territory, including through transfer of power, resources and authority to Aboriginal and Torres Strait Islander communities.

14.2 Substantially invest in ACCOs to provide early intervention and wrap around support to keep children safe and help Aboriginal and Torres Strait Islander families stay together, and where they are removed, children come home and stay home.

15 Reparations for members of the Stolen Generations

Despite the profound, enduring and well documented harm caused by the policies that created the Stolen Generations,[136] Australia has been slow and inconsistent in establishing reparations schemes for survivors, with many survivors passing away before receiving any meaningful reparations. Whilst some jurisdictions have introduced limited redress schemes,[137] these have varied significantly in terms of eligibility, compensation and recognition, which means many survivors have been left without meaningful acknowledgment or support. The absence of a unified reparations scheme at the national level further underscores the lack of consistent support for survivors.[138]

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[133] For more information on care criminalisation, see Colvin, E, Australian Institute of Criminology (2020) Children in out-of-home care and the criminal justice system Final Report; Gerard, A et al, *I'm not getting out of bed!' The criminalisation of young people in residential care*, Journal of Criminology, Volume 52, Issue 1; Gerard, A et al (2023) *Children, Care and Crime – Trauma and Transformation*, Routledge Studies in Crime and Society, Found at: https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/9781003093367-previewpdf.pdf

[134] Catherine Liddle, SNAICC, Child protection systems not keeping our children safe - Media Release (25 October 2024)

[135] See VALS Media Release, "Stability for our children and families is connection to Culture and community" - **Stability for our children and families is connection to Culture and community - VALS**

[136] See e.g. Bringing them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families: bringing_them_home_report.pdf (1997).

[137] These include recent schemes introduced in Western Australia: WA Stolen Generations Redress Scheme and Victoria: Stolen Generations Reparations Package | vic.gov.au

[138] A recommendation that Australia introduces a comprehensive national reparations scheme was also made by the former Special Rapporteur for Indigenous Peoples in 2017: A_HRC_36_46_Add-2-EN.pdf [93].

Recommendation

15.1 The Federal Government should establish a national reparations scheme for survivors of the Stolen Generations.