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28th January 2026

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Re: Second Senate Inquiry into Australia's youth justice and incarceration system

Thank you for the opportunity to provide comments on the second 'Senate Inquiry into Australia's Youth Justice and Incarceration System' (**Second Inquiry**). The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (**ATSILS**) lodged a detailed submission, dated 9 October 2024, to the Senate Inquiry into Australia's Youth Justice and Incarceration System in the 47th Parliament (**First Inquiry**), which is **attached** to this submission. We note that the Second Inquiry will consider submissions already provided to the committee as part of the First Inquiry. As the Terms of Reference for the Second Inquiry are largely the same as the First Inquiry, the purpose of this submission is to: (a) express our endorsement for the submission by our national umbrella body, National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**), to the Second Inquiry; and (b) serve as an addendum to our earlier more detailed submission, as a means to provide comments on developments that have occurred in the Queensland jurisdiction since that submission was lodged. Of particular note, is the enactment of the 'Adult Crime, Adult Time' regime in Queensland and a recently introduced Bill which proposes to make the electronic monitoring bail condition pilot for youth permanent and expand its scope of application.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Comments on the Second Inquiry

Endorsement of NATSILS submission

We are aware that our national umbrella body, National Aboriginal and Torres Strait Islander Legal Services (NATSILS), has lodged a submission to the Second Inquiry and we have had the opportunity to review the same. ATSILS endorses this NATSILS submission and the recommendations contained therein.

Introductory comments

On 9 October 2024, ATSILS lodged a written submission to the First Inquiry (**attached**).

We respectfully request that the Committee refer to our earlier submission along with the comments that follow, which serve as an addendum to that submission.

In this submission, we have provided comments on developments that have occurred in the Queensland jurisdiction since that submission was lodged, including with respect to the 'Adult Crime, Adult Time' regime and a recently introduced Bill in relation to the use of electronic monitoring bracelets on children as a condition of bail. We have also taken this opportunity to draw the Committee's attention to our advocacy in relation to addressing the overuse of school suspensions and exclusions against children with disability, Aboriginal and Torres Strait Islander children and children in out-of-home care in Queensland state schools. This appears to be a live issue in other jurisdictions in Australia – not just Queensland. In our final comments, we have also drawn the Committee's attention to certain resources that we believe should be considered as part of this Senate Inquiry.

Notable recent developments in respect of Youth Justice in Queensland

Since the lodgement of our earlier submission, the below notable developments have occurred in the Queensland jurisdiction.

A. The 'Adult Crime, Adult Time' regime

In late 2024, the Queensland government introduced the 'Adult Crime, Adult Time' (ACAT) regime via the *Making Queensland Safer Act 2024* (Qld) which has the effect that children 10 years and older can be given the same penalty as an adult if they were found to have committed one or more of the 13 prescribed Criminal Code offences to which the regime applied at that time including unlawful use of a motor vehicle, break and enter, murder, manslaughter, serious assault, wounding, robbery, burglary, grievous bodily harm, etc.

Additionally, these suite of reforms included:

- (a) the removal of Youth Justice Principle 18 from the Charter of Youth Justice Principles in the *Youth Justice Act 1992* (Qld) (YJ Act), which provided that detention should only be used as a last resort, for the shortest time possible; and
- (b) the removal of the special sentencing consideration in section 150(2)(b) of the YJ Act which provided that non-custodial orders are better than detention in promoting a child's ability to reintegrate.

In mid-2025, the ACAT regime was significantly expanded via the *Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025* (Qld) to increase the number of prescribed offences to which the regime applies from 13 prescribed offences to 33 prescribed offences, by adding 20 additional offences, including the following offences: arson; kidnapping; going armed so as to cause fear; threatening violence; aggravated attempted robbery; endangering a police officer when driving a motor vehicle; rape; etc.

All of the aforementioned reforms were designed to see, and *have* seen, more children incarcerated and for longer periods of time.

In our earlier submission, we addressed in detail our views regarding why a tough on crime approach does not work in reducing youth offending. Fundamentally, it is well established that children that are safe and supported have better outcomes and are less likely to be at risk of being in contact with the criminal justice system. Addressing the root causes of offending through place-based early prevention and intervention programs developed by-community-for-community along with providing wraparound supports for children that are at risk of being, or that are already in contact with, the criminal justice system is essential to making a meaningful and lasting difference to youth offending.

We note the obligations of government at all levels under the National Agreement on Closing the Gap (**NACTG**) and, specifically, the Priority Reforms enshrined therein including, but not limited to: Formal Partnerships and Shared Decision-Making; Building the Community-Controlled Sector; and Transforming Government Organisations.

Furthermore, we draw attention to the following relevant socio-economic outcomes of the NACTG which promote better outcomes for children:

- Target 11 – Young people are not overrepresented in the criminal justice system
- Target 12 – Children are not overrepresented in the child protection system
- Target 2 – Children are born healthy and strong
- Target 3 – Children are engaged in high quality, culturally appropriate early childhood education in their early years
- Target 4 – Children thrive in their early years
- Target 5 – Students achieve their full learning potential
- Target 6 – Students reach their full potential through further education pathways
- Target 7 – Youth are engaged in employment or education
- Target 13 – Families and households are safe

- Target 14 – People enjoy high levels of social and emotional wellbeing
- Target 15 – People maintain a distinctive cultural, spiritual and economic relationship with their land and waters.

According to the Australian Government Productivity Commission's Closing the Gap Dashboard Information Repository, Queensland's performance in relation to Target 11 (that Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system) has been assessed as 'worsening' over the period of 2018-19 to 2023-24. Specifically, Queensland has seen a significant increase in the rate of Aboriginal and Torres Strait Islander children in youth detention on an average day over the period between 2016-17 and 2023-24 **from 30.9 per 10,000 children in 2016-17 to 41.1 per 10,000 in 2023-24**¹.

The ACAT regime, by design, will make this metric worse, and this is despite the large body of Australian and international evidence that shows the following:

- (a) The brain of a child is not yet fully developed and consequently they should not be held to the same standard of moral culpability as an adult.

Magnetic Resonance Imaging (**MRI**) evidence gathered in the last twenty years combined with behavioural evidence shows that adolescence is a unique and distinct period of biological and psychological development. An adolescent experiences an extraordinary phase of reorganisation of their brain and exhibits behavioural differences that are markedly different to those shown beforehand in childhood, and afterwards in adulthood. This pattern of significant change, risk taking, sensation-seeking and peer influence shows up across cultures.²

To further drive home this point, we respectfully draw the Committee's attention to a 2011 paper written by Dr Kelly Richards who is a Research Analyst with the Australian Institute of Criminology (**AIC**) in the AIC publication, 'Trends

¹ Closing the Gap dashboard, Target 11, available at < <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/youth-justice/>>.

² Sarah B Johnson, Robert W Blum, Jay N Giedd, 'Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy' (2009) Sept 45(3), 216-21; we also refer the Committee to the work of Professor Sarah-Jayne Blakemore FBA, Professor of Psychology, University of Cambridge; Leader of the Developmental Cognitive Neuroscience Group, and author of the prize winning 'Inventing Ourselves: the Secret Life of the Teenage Brain' (2018) and the pioneering study in the US by M Gardner and L Steinberg, 'Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study March' (2012) Developmental Psychology 48(2), 589.

& Issues in Crime and Criminal Justice' entitled 'What makes Juvenile Offenders Different from Adult Offenders', which relevantly states:

Risk-taking and peer influence

Research on adolescent brain development demonstrates that the second decade of life is a period of rapid change, particularly in the areas of the brain associated with response inhibition, the calibration of risks and rewards and the regulation of emotions (Steinberg 2005). Two key findings have emerged from this body of research that highlight differences between juvenile and adult offenders. First, these changes often occur before juveniles develop competence in decision making:

Changes in arousal and motivation brought on by pubertal maturation precede the development of regulatory competence in a manner that creates a disjunction between the adolescent's affective experience and his or her ability to regulate arousal and motivation (Steinberg 2005: 69–70).

This disjuncture, it has been argued, is akin to 'starting an engine without yet having a skilled driver behind the wheel' (Steinberg 2005: 70; see also Romer & Hennessy 2007).

Second, in contrast with the widely held belief that adolescents feel 'invincible', recent research indicates that young people do understand, and indeed sometimes overestimate, risks to themselves (Reyna & Rivers 2008). Adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour) despite understanding the risks involved (Boyer 2006; Steinberg 2005). It appears that adolescents not only consider risks cognitively (by weighing up the potential risks and rewards of a particular act), but socially and/or emotionally (Steinberg 2005). The influence of peers can, for example, heavily impact on young people's risk-taking behaviour (Gatti, Tremblay & Vitaro 2009; Hay, Payne & Chadwick 2004; Steinberg 2005). Importantly, these factors also interact with one another. Not only does sensation seeking encourage attraction to exciting experiences, it also leads adolescents to seek friends with similar interests. These peers further encourage risk taking behaviour (Romer & Hennessy 2007: 98–99).³

³ Dr Kelly Richards, 'What makes juvenile offenders different from adult offenders?' (2011) No. 409 *Trends & Issues in Crime and Criminal Justice*,

- (b) Incarcerating children is ineffective in deterring future offending and often exacerbates existing issues, making children more likely to reoffend (which is entirely counter-productive to the goal to make communities safer), noting that, in 2023, between 84 and 96 percent of children released from a youth detention centre in Queensland reoffended within 12 months following release⁴.
- (c) Incarcerating children can have negative developmental impacts on the child and that detention during the crucial developmental years of a child can cause significant harm to a child's mental health, emotional development and educational outcomes⁵.
- (d) Incarceration of a child does not have a deterrent effect for children, particularly from disadvantaged backgrounds or with neurodiversity (including foetal alcohol spectrum disorder), cognitive impairments or disability or those with histories of abuse⁶.
- (e) Most adolescents outgrow offending behaviour. In particular, we point to we respectfully draw the Committee's attention to the Queensland Treasury's 'Youth Offending Research Brief' (2021) which referenced the work of Livingstone et al (2008) which identified three cohorts of juvenile offenders, two of which were the 'early peaking offenders' and 'late onset offenders' who comprised about 90% of the offending cohort, who were responsible for moderate rates of offending, and desisted after a time.⁷

The studies outlined above demonstrate that adolescents take risks that they would not have taken earlier as a child or would not take later as an adult, adolescents are more influenced by their friends than at any other stage of life, much more than children are and much more than adults are. Those two factors together are a

⁴ Even with the toughest youth laws in Australia, in 2023, between 84 and 96 percent of children released from a youth detention in Queensland reoffended within 12 months following release. Source: Australian Institute of Health and Welfare (2023) Young people returning to sentenced youth justice supervision, 2021-22 supplementary data tables, Table s17, available at <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/data>>.

⁵ Inspector of Detention Services, Cleveland Youth Detention Centre inspection report: focus on separation due to staff shortages (August 2024), available at <<https://www.ombudsman.qld.gov.au/ArticleDocuments/574/IDS%20CYDC%20Inspection%20report%202024%20-%20Focus%20on%20separation%20-%20PUBLIC.PDF.aspx>>.

⁶ Human Rights Watch (2018), *"I Needed Help, Instead I Was Punished"*, available at <<https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>>.

⁷ Michael Livingstone, Anna Stewart, Troy Allard & James Ogilvie, 'Understanding juvenile offending trajectories' (2008) Vol 41 (no. 4) *Australian and New Zealand Journal of Criminology*, 345-363.

'perfect storm'. For example, dangerous driving and binge drinking are behaviours that adolescents do not tend to do on their own. It is when they are with their friends that they will experiment with these risks. One likely consequence of putting more young people than ever before on remand or in youth detention is a much larger 'perfect storm' for exposure to a wider negative peer group that engages in high-risk activities and encourages greater risk-taking.

The science also suggests that responses need to address youth offending to support adolescents growing out of this phase of high-risk behaviour into adulthood, rather than transition the adolescent into adult offending.

We strongly opposed the introduction and subsequent expansion of the ACAT regime and associated regressive amendments on various bases including that: the regime goes against the long-established evidence base which demonstrates that incarceration of children simply does not work in preventing, reducing or deterring offending (as outlined above); the effect of the amendments disproportionately impact Aboriginal and Torres Strait Islander children who are significantly overrepresented in the numbers of children in contact with, or at risk of being in contact with, the criminal justice system; the amendments are contrary to the government's human rights obligations to children such that the amending legislation included express overrides of the *Human Rights Act 2019*; and the amendments were (and remain) at odds with the NACTG, in particular, relating to the targets to reduce overrepresentation of young people in the criminal justice system.

Of particular note is that the Human Rights Statement of Compatibility for the *Making Queensland Safer Act 2024*, written under the hand of the Queensland Attorney-General, the Hon Deborah Frecklington MP, expressly states at page 5:

"I recognise that there may be less restrictive options available to achieve the stated purpose, such as by increasing maximum penalties for specific offences to mirror the maximum penalties for adult offences, without also exposing children to mandatory minimum sentences, or by providing courts with sufficient discretion to impose a sentence that fits the crime and circumstances of the offender.

I also recognise that, according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aims of punishment and denunciation. The amendments will lead to sentences for children that are more punitive than necessary to achieve community safety.

This is in direct conflict with international law standards, set out above, which provides that sentences for a child should always be proportionate to the circumstances of both the child and the offence – mandatory sentencing prevents the application of this principle.

Despite the above statements being made, the ACAT regime was made into law and subsequently significantly expanded, just 6 months thereafter.

We have long been proponents of governments seeking to lead public opinion (rather than following it), via an adopted course of being seen to be 'smart on crime' – which will lead to greater community safety and electoral satisfaction. Addressing the upstream drivers of crime: health, housing, employment, education etc, is crucial – arm-in-arm with the greater utilisation of diversionary and rehabilitation options. Placing young, mostly highly disadvantaged offenders in detention, where they get to mix with and are influenced by the small percentage of hard-core serial offenders, is entirely counter-productive to community safety (and to the futures of those children).

B. Electronic Monitoring of youth as a condition of bail

On 10 December 2025, the Youth Justice (Electronic Monitoring) Amendment Bill 2025 (EM **Bill**) was introduced into Queensland parliament which proposes to:

- make the Queensland electronic monitoring trial for youth 'permanent' by removing the existing expiry provision;
- make electronic monitoring statewide unless the court is advised the child does not live in a location with services to support the condition; and
- remove the current eligibility criteria that the child must be at least 15 years of age, charged with a prescribed indictable offence and previously charged with certain offences.

As the use of electronic monitoring (**EM**) of youth as a condition of bail is relevant to the outcomes and impacts of youth incarceration and consideration of the human rights of children, which represent (a) and (d) of the Terms of Reference of the Second Inquiry respectively, we take this opportunity to address our views on the use of EM bracelets on children.

ATSILS has historically opposed the use of EM on children, and this position has not changed.

There are a number of obstacles which undermine the effectiveness of EM including: the impacts of housing instability which many at risk youth face, the impact of the breach of bail conditions offence in Queensland; compromised effectiveness in rural, remote and regional communities; compromised effectiveness on children living with a disability/disabilities and/or those with a mental health condition or cognitive impairment/s; and the impacts of stigmatisation and marginalisation on at risk children.

Housing instability - The success of EM is predicated upon the child having stability of housing, amongst other things. Many at risk youth experience instability in housing and homelessness. This in and of itself might result in the child being deemed not to be suitable for an EM condition. For those that are deemed suitable and then go on to experience housing insecurity, it might be very difficult, if not impossible, to comply with curfew requirements and other relevant monitoring conditions. It might also significantly hinder a child's ability to keep the EM device charged. This can result in scenarios where children that do not have the ability to secure stable housing are penalised for the same through breach of their monitoring conditions. Further, the EM framework does not appear to consider that young people are less in control of their environment, including housing, than adults.

The breach of bail offence and potential for punitive outcomes - With the breach of bail conditions offence being re-introduced in Queensland, strict compliance with EM conditions exposes a child to the risk of being charged for even minor breaches, which could see them subject to a term of imprisonment, further entrenching the child in the criminal justice system. Additionally, such might expose the child to greater penalty than what they might have received if they were granted bail without an EM condition or if they were detained in custody on remand. Therefore, the effect of EM can be punitive on the child and entrench the child in criminal pathways.

Compromised effectiveness in rural, remote, or regional areas - Those living in rural, remote, or regional areas might experience limited network connectivity which can make EM devices unreliable. Inadvertent breaches could occur. For example, a person who is living on Country might inadvertently breach EM conditions by moving into geographical areas that have no GPS coverage for cultural practices or for any other legitimate purpose.

The effectiveness of EM on children living with a disability/disabilities or mental health issues/concerns is very limited - A significant proportion of our clients that seek representation for criminal law matters suffer from mental health

issues/concerns and/or have cognitive or other impairments/disabilities. Many have Foetal Alcohol Spectrum Disorder (**FASD**). It can be very challenging for an individual experiencing such challenges to be able to sufficiently comprehend and/or comply with EM requirements. Inadvertent breaches might occur for reasons that they should not be penalised for.

Stigmatisation and marginalisation - Stigmatisation and/or marginalisation of individuals wearing a GPS tracking ankle bracelet is a reality, and in the case of children, it can be argued to be even more significant given their crucial age for development and growth at this stage of their life. Having a GPS monitoring device strapped to a child's ankle can have negative impacts on their mental health, self-worth, self-image and potentially embed an identity linked with criminality, even though they have not yet been found guilty of any relevant charge. It also discourages some children from attending school out of shame. Further, EM devices have the potential to isolate a child by undermining their anonymity which is inconsistent with the fundamental right of the child to be presumed innocent until proven guilty of any relevant charge.

Intersectionality generally - The impact of EM is exponentially exacerbated for children that experience intersectional disadvantage. Take the example of a child living with FASD who is experiencing housing insecurity and lives in a rural, remote, or regional area.

Counter-intuitive impacts - In some instances, in particular, for at-risk youth, we have observed that EM devices might be seen as an initiation or a badge of honour and, therefore, the use of EM devices has the potential to be counterintuitive to reducing recidivism and instead has the potential to embed criminal pathways for a child.

EM devices do not change a child's lack of maturity, nor will it speed up their brain development. It will not necessarily address impulsivity, engaging in risky behaviour, influence by peer pressure, nor a failure to adequately think about consequences before taking a particular course of action, etc. This can only occur via providing wrap-around supports to the child to help address their needs and help them develop strategies for behaving in socially responsible ways.

We further note that the Queensland government's own commissioned independent review of the EM trial, which was used as a means to justify this Bill, did not, in our view, provide sufficient evidence to prove that EM is an effective tool for children for a number of reasons including that whilst it noted that many stakeholders reported that outcomes were strongly influenced by the young person's intrinsic motivation, family environment and the presence of a role

model, it only measured the *combined impact* of EM devices and wrap-around supports, with the Evaluation Final Report stating that 'The evaluation was not designed to isolate the impact of EMDs from the impact of wrap-around supports.' In our view, had the impact of wrap-around supports in isolation been measured, there might well have been evidence to establish that the wrap-around supports in isolation are the key to better outcomes.

Recommended alternative solutions

As we have expressed in our prior advocacy, in our view, the following solutions will have a much more marked impact on youth offending and compliance with bail conditions than the use of EM:

- bail conditions need to be drafted more carefully with consideration of a level of flexibility, especially considering the particular situation of the individual involved including, relevantly, impacts of intersectionality, cultural practices, etc. so that individuals are not set up to fail;
- a network of bail supported accommodation throughout the State and other community-based alternatives for children on remand (for Aboriginal and Torres Strait Islander children, it is strongly recommended that these services be delivered by local community-controlled organisations for their best chances of success);
- more holistic place-based supports/integrated services delivered by community-controlled organisations that address key needs of the child as required, for example, to address hunger, housing stability, homelessness, substance use/misuse, family disfunction, health (including mental health) and education (this would involve ensuring that such organisations are funded and that funding is maintained, to avoid the funding insecurity that we have seen in the past where great initiatives are halted in their tracks due to being de-funded);
- ongoing training for police officers, courts/judicial officers, youth detention and correctional staff about the challenges faced by intersectional populations; and
- a strong focus on prevention and early intervention initiatives that are aimed at addressing the root causes of offending and long-lasting investment and considered policy to improve social determinants including housing, health, employment and education, consistent with the government's obligations under the National Agreement on Closing the Gap.

In reference to the role of the Commonwealth government, we respectfully refer to the recommendations in the NATSILS submission to the Second Inquiry, which we endorse, and which relate to:

- (a) evidence-based solutions that the Commonwealth government can implement to address youth offending in a meaningful way, within the scope of its powers; and
- (b) addressing punitive youth justice laws across the various States and Territories in Australia which disproportionately impact Aboriginal and Torres Strait Islander children.

Terms of Reference (f) – ‘any related matters’

We refer to subparagraph (f) of the Terms of Reference and take this opportunity to draw your attention to the following additional matters.

Youth offenders and youth offences have significantly dropped in the last 10 years, so why the harsh punitive response?

According to recent data from the Australian Bureau of Statistics and as aptly highlighted in a December 2025 article in *The Conversation* written by Associate Professor in Criminology, Macquarie University, Alex Simpson, entitled ‘Is Australia in a youth crime crisis? Here’s what the numbers say’⁸, in 2023-24, there were 46,798 offenders aged between 10 and 17 years proceeded against by police, which **represents a decrease of 3%** (or 1,216 offenders) from 2022-23, being 1,764 offenders per 100,000 people aged 10-17⁹. We note that whilst there are limitations on this data, according to the analysis in *The Conversation*, **the last 10 years has seen a 28% decrease in the rate of offenders per 100,000 people aged 10-17**¹⁰. Data from the Australian Bureau of Statistics also shows **a drop in the rate of youth offences per 100,000 persons aged 10-17 years over the same 10-year period in all jurisdictions in Australia, including Queensland**¹¹.

Notably, **between 2020 and 2024, the number of children in youth detention on an average night increased from 791 to 845 and 60% of these children identified as being Aboriginal and Torres Strait Islander children**¹².

⁸ Alex Simpson, ‘Is Australia in a youth crime crisis? Here’s what the numbers say’ (1 Dec 2025), *The Conversation* (online), <<https://theconversation.com/is-australia-in-a-youth-crime-crisis-heres-what-the-numbers-say-270375>>.

⁹ Australian Bureau of Statistics, Recorded Crime – Offenders (2023-24) available at <<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#key-statistics>>.

¹⁰ Refer note 8.

¹¹ Refer note 9.

¹² Refer Note 8; Australian Institute of Health and Welfare, Youth detention population in Australia 2024, available at <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2024/contents/about>>.

The data begs the question: are we really in a youth justice 'crisis' such that would justify such harsh legal responses which disproportionately and discriminately impact Aboriginal and Torres Strait Islander children?

The answer, in our view, is clearly - **no**.

United Nations Working Group on Arbitrary Detention visit to Australia (1 to 12 December 2025)

Between 1 and 12 December, the United Nations Working Group on Arbitrary Detention (**Working Group**) published its findings in relation to its recent visit to Australia in a Report.

We respectfully urge the Committee to consider the findings of the Working group.

Notably:

- (a) **In relation to the minimum age of criminal responsibility**—The Working Group stated that 'The Working Group is shocked about the extremely young ages from which children may be detained in Australia, in violation of fundamental human rights norms.'¹³; 'The Commonwealth minimum age also remains unconscionably young at 10 years old'.¹⁴; and that 'The Working Group strongly encourages the Commonwealth, States and territories to increase the minimum age of criminal responsibility to at least 14 and to expand alternative means of addressing children's offending'.¹⁵
- (b) **In relation to youth detention conditions**—The Working Group observed that over 800 persons aged 10–17 are detained in Australia, with over 80% on remand in some jurisdictions.¹⁶ They also found that detained children are often held in prison-like accommodation alongside convicted detainees, violating international standards. The Working Group spoke on the 'grave mistreatment' of children in detention in WA, including isolation for 23 hours a day due to staff shortages, leading to suicides and mental health crises.¹⁷ This issue is not localised to just WA,

¹³United Nations Working Group on Arbitrary Detention Visit to Australia: Preliminary Findings from its visit to Australia (1 to 12 December 2025), available at <<https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>>, p6.

¹⁴ Note 11.

¹⁵ Note 11, p7.

¹⁶ Note 10, p7.

¹⁷ Ibid.

but has been a significant issue in youth detention centres in Queensland and, in particular, Cleveland Youth Detention Centre. The Working Group called for prohibiting detention of children in adult facilities and solitary confinement, adopting therapeutic approaches focussed on rehabilitation.¹⁸

- (c) **In relation to Aboriginal and Torres Strait Islander Youth**—The Working Group found that Aboriginal and Torres Strait Islander youth are disproportionately represented in detention, that systemic discrimination and socio-economic disadvantages contribute to their overrepresentation, that positive initiatives like culturally tailored sentencing courts and community-based programs (for example the Maranguka Justice Reinvestment Project) were encouraged to reduce the rates of detention of youth.¹⁹
- (d) **In relation to transparency and oversight**—The Working Group called on greater transparency and independent oversight to ensure humane treatment of children in detention, noting that they were denied access to key youth detention facilities in Western Australia and the Northern Territory.²⁰
- (e) **In relation to programs and engagement**—the Working group identified that youth detention facilities lack engaging programs leaving children under stimulated and recommended providing e-learning tablets with learning activities and adopting models such as the ACT's Therapeutic Support Panel to address detained children's needs.²¹
- (f) **In relation to legislation and sentencing**—The Working Group notably identified that harsh sentencing laws, such as mandatory minimums and life sentences, are applied to children in some jurisdictions. The Working Group urged that these be repealed. We note that the Working Group specifically called out Queensland's 'Adult Crime, Adult Time' laws and stated that they violate human rights norms.²²
- (g) **Spit Hoods and Restraint chairs**—The Working Group lamented the continued use of spit hoods and restraint chairs on children in police custody despite recommendations that these be banned. They recommended that immediate legislative action is needed to ban these practices.²³

Fundamentally, the Working Group supported what the sector has been calling for over decades – the need for holistic, community-led and culturally appropriate solutions to address youth justice issues and a reduced reliance on detention.

¹⁸ Ibid.

¹⁹ Note 10, p5.

²⁰ Note 10, p8.

²¹ Ibid.

²² Note 10, p7.

²³ Note 10, p7.

Keeping children in schools and the overuse of exclusionary discipline and suspension in Queensland state schools

The overuse of exclusionary discipline, i.e., school suspensions and exclusions, against children with disability in schools is of immense concern.

In the Queensland jurisdiction, recent data released by the Queensland government shows that in Term 2 of 2025 despite students with disability making up approximately 25% of the state school student cohort, these children constituted 64% of suspended students, which is the highest that this figure has been in the last 12 months²⁴.

We are aware, based on earlier data obtained, that in Queensland state schools:

- children with disability that also identify as Aboriginal and Torres Strait Islander have a higher risk of receiving exclusionary discipline; and
- children with disability, that identify as Aboriginal and Torres Strait Islander and are also in out-of-home care are at an even higher risk of receiving exclusionary discipline²⁵.

As a result of our concerns relating to the overuse of suspensions and exclusions against children with disability, ATSILS became a joint-partner with Queensland Advocacy for Inclusion (QAI), Youth Advocacy Centre (YAC), PeakCare and Youth Affairs Network Qld (YANQ) in a targeted advocacy partnership called 'A Right to Learn' which calls for progressive reform to address the overuse of exclusionary discipline against children with disability. This campaign has been going for 3 years and counting.

Consistent with the long-standing advocacy of the Campaign, we are of the view that:

- students with disability should be able to access quality education at all stages of life, from childcare and school to tertiary education;
- every student deserves the right to learn in an inclusive environment;
- suspensions and exclusions to be used only as a last resort; and
- students with disability should be learning alongside their peers, not separated from them.

²⁴ Queensland Parliament, Question on Notice No. 103, Asked on 26 August 2025.

²⁵ Department of Education and Training (November 2020) State school enrolments, 2016-20; <https://qed.qld.gov.au/our-publications/reports/statistics/Documents/enrolments-summary.pdf>.

In the context of what can be done about this issue at the Commonwealth level, we recently made submissions to the recent Disability Discrimination Act (DDA) Review, conducted by the Commonwealth Attorney-General's Office, that:

- (a) section 22(2)(b) of the DDA be amended to explicitly cover 'suspension and exclusion' as well as expulsions;
- (b) consideration be given to protecting against all exclusionary practices for students with disability;
- (c) the DDA and associated Disability Standards for Education be amended to require education authorities to avoid the use of exclusionary discipline unless it is necessary as a last resort to avert serious harm to the student, other students, or staff.

With respect to exceptions or limits on when the exclusion is unlawful, we support DRC Recommendation 7.2, i.e. that exclusionary discipline on students with disability should be avoided unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff.

In our submission, we strongly recommended that the revised DDA should state that before using exclusionary discipline on students with disability, educational authorities should be required to:

- (a) consult with the student with disability and their supports;
- (b) consider all available and appropriate alternative adjustments, measures or actions;
- (c) consider the impact of exclusionary discipline on the best interests of the student and their right to education; and
- (d) consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children.

We also recommended that provisions should also be made to ensure:

- (a) a duty on principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management;
- (b) a robust review or appeals process for with supports for students with disability and their families or carers;
- (c) students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline;
- (d) students with disability are supported to re-engage in education post exclusion;
- (e) the creation and retention of documentation describing consultation and consideration; and
- (f) the student is provided with reasons for the decision to use exclusionary discipline.

Additionally, we submitted that the DDA should not seek to adopt a model relating to exclusionary discipline from any other states or territories. Instead, we recommended that DRC Recommendation 7.2 be implemented.

Other resources

We would also like to respectfully draw the Committee's attention to the following resources which we consider will be of significant benefit to review whilst traversing relevant issues relating to this Senate Inquiry.

- (a) The Australian Human Rights Commission research report entitled 'Improving the safety and wellbeing of vulnerable children', dated June 2024, which sought to provide a national focus for reforms to the child protection and youth justice systems. In doing so the study undertook a thematic analysis of over 3,000 recommendations from 61 state, territory and Commonwealth reports and inquiries into child protection and youth justice between just 2010 and 2022.

- (b) The Queensland Inspector of Detention Services 'Combined Inspection Report for Youth Detention Centres' published in 2024 which included the findings of the Inspector of Detention Services' 2024 inspections of three Queensland youth detention centres, being Brisbane Youth Detention Centre, Cleveland Youth Detention Centre and West Moreton Youth Detention Centre.

We thank you for the opportunity to provide feedback on the Review.

Yours faithfully,

Shane Duffy
Chief Executive Officer