



Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Friday, 1 November 2024

Dear Committee

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

I write to provide my submission to the Inquiry into Australia's youth justice and incarceration system. I make this submission in my capacities as Guardian for Children and Young People, Training Centre Visitor (TCV), Child and Young Person's Visitor (CYPV) and Youth Treatment Orders Visitor (YTOV), I am also the nominated National Preventive Mechanism for South Australia's youth detention centre for OPCAT. In these positions, my role is to advocate for the rights and best interests of children and young people in care and youth detention in South Australia.

This inquiry is timely. Recently, I have witnessed an unprecedented targeting and demonisation of children and young people across Australia. I have seen an attack on children and young people's rights, including abandoned commitments to raise the minimum age of criminal responsibility from the reprehensible age of 10 years old, removal of the principle of 'detention as a last resort', plans to re-introduce archaic and barbaric practices such as the use of spit hoods, and lack of meaningful progress towards preventing harmful isolation practices.

These backwards steps are being taken in the name of community safety; however, they fly in the face of the evidence. My colleagues and I across the Australian and New Zealand Children's Commissioners, Guardians and Advocates network, and Australia's OPCAT National Preventive Mechanism, have called for nationally consistent approaches to preventing torture, rights abuses and harmful responses towards children who need help and rehabilitation, not punitive criminal justice responses – and we have made submissions to the inquiry in this regard.



In making my individual submission, I also wish to give voice to the experts – children and young people who have experienced the criminal justice system firsthand. I believe completely that social policy, and indeed the findings of this inquiry, should be informed and shaped by these voices. You will see that I have included direct quotes from children and young people throughout my submission, highlighting the current issues within youth justice system, but also proposing solutions. It is my ask that these voices be given the proper weight they deserve.

Australia's youth justice and incarceration system is experiencing a human rights crisis, and we are accountable for fixing it. In making this submission I call on the Committee, and on the federal government to demonstrate leadership, and to take actionable steps towards real and meaningful change for children and young people.

Thank you for consideration of my submission. I trust that it supports the Committee's inquiry into this important topic.

With kind regards

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Shona Reid

Guardian for Children and Young People
Training Centre Visitor
Child and Young Person Visitor
Youth Treatment Order Visitor

**Encl. GCYP-TCV Submission to Inquiry into Australia's youth justice and incarceration system*

THE GUARDIAN AND TRAINING CENTRE VISITORS

Submission

Inquiry into Australia's youth justice and incarceration system

October 2024



Guardian
for Children and
Young People



Training Centre
Visitor

Paying Respect & Acknowledgement

The Office of the Guardian for Children and Young People humbly and respectfully acknowledge the lands, waters, skies, histories, legacies, talents, creations, sciences, care, love, kindness, giving and generosity of the First Peoples of the lands that we live, work, walk and play upon.

Our office is based on the lands of the Kurna people, we thank and express our gratitude to Kurna for looking after this place so future generations can enjoy. We work right across the state called South Australia and we pay similar homage to those nations in which we visit.

Our promise is to work and walk with care in all we do - with our dedication to also supporting future generations.

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Introduction

Australia's youth justice and incarceration system is experiencing a human rights crossroads at this point in time. Where Australia's commitment to the doctrines and social ideologies is being tested; and, in fact, some could say this commitment is being abandoned for policy and political convenience.

This inquiry comes at a time when some of the most vulnerable children and young people in our society are being deserted by the people and systems that exist to scaffold and support them.

But it's more than this, there is a seemingly unprecedented targeting and demonisation of children and young people across Australia. Children and young people who are being used as 'click bait' for media sales, political scoring points and, as we see now, the foundation of many election promises. What saddens me the most is that there is little evidence of thought directed towards the very real and lasting consequences that this has for children and young people; and, indeed, the irony that the more the system, politics and private enterprise conducts itself in this manner, the worse the outcomes for broader society will be.

Recently, we have observed regressive movements by states and territories when it comes to children and young people's rights in youth justice and detention, including the:

- conditions of youth detention in Western Australia, and the tragic deaths of two young people while in detention
- removal of the principle of 'detention as a last resort' in Queensland
- decision to reverse the commitment to raise the Minimum Age of Criminal Responsibility (MACR) to 14 years in Victoria
- after increasing the MACR to 12, the Northern Territory government has now lowered the age back down to 10 and re-introduced the use of spit hoods on children in police custody
- lack of meaningful progress towards preventing harmful isolation practices, including solitary confinement in all jurisdictions.

These measures are in direct contradiction with children and young people's rights, best interests and credible expert evidence that talks about children and young people's development and neurodevelopment needs. It also flies in the face of the expert findings and recommendations from multiple royal commissions, inquiries and investigations.

Even beyond these detrimental issues listed above, I have observed through my TCV function that the fundamental rights and best interests of children and young people in detention are undermined every day. This includes where children and young people are:

- subject to severely detrimental practices in places of detention, including in relation to misuse and overuse of various forms of restraints, isolation and solitary confinement practices
- not having their basic physical or mental development/health needs met
- not receiving an education to a standard outlined in legislation, regulations and policies
- not supported through appropriate rehabilitative programs as required.

In addition:

- Aboriginal children and young people are subject to racial profiling and discrimination, dislocation and disassociation from their cultural linkages and connections – all of which impacts negatively on their physical and emotional development.
- children and young people with disability and/or neurodivergence are not adequately identified, supported or cared for.

My submission highlights the issues listed above and addresses the Inquiry's Terms of Reference.

It starts where these discussions need to start, with the rights and best interests of children and young people. I briefly set out the instruments that convey children and young people's rights at an international and local level, and then I outline my observations about non-compliance with these obligations, as evidence of the need for enforceable national minimum standards for youth justice.

I then turn to question of the outcomes and impacts of youth detention, and specifically the outcomes and impacts on children and young people, with specific reference to:

- Minimum Age of Criminal Responsibility
- Concerning practices and the treatment of children and young people in youth detention in South Australia
- The lack of access to healthcare, education, and rehabilitative programs in youth detention in South Australia.

These are areas which require reform as a matter of urgency and priority, to align with the rights and best interests of vulnerable children and young people. I observe that current policies and practices are not complying with these rights and interest; and, in fact, the current conduct of the system and laws are actively facilitating and exacerbating this vulnerability. This has no benefit to the children and young people, nor indeed the wider community and its safety.

Finally, I have paid particular attention to the circumstances of Aboriginal children and young people in detention, who continue to be exposed to the youth justice and youth detention settings at an unconscionably high rate, the inability for our service sector to address this meaningfully has generational effects and it is my hope that my information adds further weight to the extensive expert advice and wisdom from across many Aboriginal community and sector leaders..

While I have sought to address the inquiry's Terms of Reference throughout my submission - and I believe that this inquiry is timely - I do question what the inquiry is planning to achieve, when much of the information about human rights violations in Australia's youth justice system are well known – as are the solutions.

- 1 We know that the rights of children and young people in detention are being breached in youth detention, every day, and in every Australian jurisdiction. And we have expert advice, opinions and recommendations available on how to address these.
- 2 We know that Aboriginal children and young people are overrepresented in youth detention and that there has been no significant progress at a national level towards Closing the Gap. We have expert advice, opinions and recommendations available on how to address this.
- 3 We have heard advocates and experts call for enforceable national minimum standards for youth justice, consistent with international obligations. Yet, we continue to review and not action the valuable expert advice, opinions and recommendations that guide these.

Children and young people, families, and communities – on all sides of politics and ideological beliefs – are tired of rhetoric. For solutions to work, we know that we need to put children and young people at the centre of what we do, give them care, guidance and support they need and deserve. This is the only way we can improve community safety and create a safe place for these very vulnerable children to grow and thrive.

I urge the Committee to be bold and courageous, to consider the evidence, to stand with oversight and advocacy bodies; and, most importantly, to stand behind children and young people in calling for and enacting the change urgently needed...as we stand upon the precipice of a human rights cliff face.

Let's remember their Rights

Inquiry Terms of Reference:

- c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention;
- d) the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights; and
- e) the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations.

“The potential risk for human rights violations in any detention system is a very real risk, and this further increases when we are detaining young people specifically. This is why oversight bodies are essential in holding a rights-based approach to monitoring the conduct of these facilities.

It is simply not okay for our nation's leaders to stand by and say nothing, to do nothing, while children and young people are living very real experiences that are infringing on their rights.

If we are to prove our worthiness as a mature advanced society here in Australia, we must get serious about adhering to and upholding the rights of our most vulnerable people. I am hopeful that the inquiry will be more than mere words, but that it will lead to real and meaningful change for children and young people in detention.”

Shona Reid, The Guardian and Training Centre Visitor

The Committee's terms of reference are rightly focused on the rights of children and young people in detention and the broader youth justice system, including to be protected from torture and other cruel, inhuman or degrading treatment or punishment.

The best interests and wellbeing of children and young people should be both our goal, and the guide to our principles. This is about ethics, protecting children from harm, and it's about what works in our communities.

In this submission, I have chosen to start with setting out those principles and very clear actions required at a federal level to mature Australia's rights and youth justice framework – as well as at a nationally consistent state and territory government and systems level. I do not believe there is any evidence-based scope for debate regarding these principles, which are well-established. But in, raising them again, I affirm my ongoing commitment and voice to calling for this change.

International obligations

All children are entitled to have their rights protected, their inherent vulnerability acknowledged and their value as a human being be recognised.

Children and young people's rights are set out in the *United Nation (UN) Convention of the Rights of the Child*. It is also important to note that the universal human rights contained in the *International*

Covenant on Political and Civil Rights and the *International Covenant on Economic, Social and Cultural Rights* apply equally to children and young people as they do to adults.

Given the known risks for human rights violations for children and young people in detention settings, there are specific additional rules that must be followed in these circumstances, including the:

- UN Standard Minimum Rules for the Protection of Juvenile Justice (the Beijing Rules)
- UN Guidelines for the Administration of Juvenile Delinquency (the Riyadh Guidelines)
- UN Rules for the Protection of Juveniles Deprived of their Liberty.

While Australia has signed up to these international conventions, we must also look at our conduct and assess if we are indeed more than just signatories to these conventions, rule and guidelines, or whether we aim to be the exemplars that we seemingly hold ourselves to be.

As a reflective piece, I draw the Committee's attention to two pertinent examples below.

1 Australia's reservations relating to separation of adults and juveniles in detention

While Australia is a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) **it has declared reservations to ICCPR article 10 and CRC article 37,**¹ articles which state that children and young people deprived of their liberty shall be separated from adults unless it is considered in their best interest not to do so.

It is well accepted that children and young people are not just 'small adults', instead they have needs that are very different than that of adult offenders. For example, children and young people have different developmental needs, and require different programs and services from adult offenders. They also need to be protected from factors such as undue influence or criminalisation that may come from contact with adult offenders.

In light of this, it is not appropriate for Australia to maintain these reservations to the ICCPR and CRC.

2 Australia's inaction in relation to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure

While Australia is a party to the CRC it has **not signed or ratified** the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. This would create an avenue for individuals and groups who are victims of rights violations to communicate this directly to the UN Committee on the Rights of the Child, submissions could also be undertaken on behalf of victims in some circumstances.

The Committee could then act as an advocate for victims of human rights violations and work with the State to enact solutions.

Signing up to the Optional Protocol would demonstrate that Australia is serious about its obligations to children and young people and provide additional accountability and oversight to Australia's youth justice system.

¹ By a communication received on 6 November 1984, the Government of Australia notified the Secretary-General of its decision to partially withdraw its reservations to article 10 "In relation to paragraph 2 (a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraph 2 (b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned".

These two areas show that Australia needs to revisit its international obligations in relation to children and young people's rights and needs to commit to strengthening its approach and aligning with best practice from around the world.

No. The Guardian and Visitors Recommendation

1. That Australia revisits its international obligations relating to children and young people's rights in detention and commits to strengthening its approach and aligning with international best practice.

This should include, but is not limited to:

- Removing all reservations to the International Covenant on Civil and Political Rights article 10 and the Convention on the Rights of the Child article 37.
- Signing and ratifying the Optional Protocol to the Convention on the Rights of the Child on a communication procedure.

Domestic obligations

In addition to international obligations there are also jurisdictional examples of statements of human rights for children and young people in detention.

In South Australia, section 22 of the *Youth Justice Administration Act 2016* requires the maintenance of a Charter of Rights for Youth Detained in Detention Centres, and stipulates that a person exercising functions or powers under a relevant law must, in any dealings with, or in relation to, a youth who is in detention, have regard to, and seek to implement to the fullest extent possible, the terms of the Charter.

Unfortunately, it is my experience that despite the international, national, and jurisdictional obligations, human rights for children and young people in detention are not always viewed as core operational priorities, meaning system and human efficiencies seem to override these fundamentally agreed rules and conventions.

This is fundamental to values held, about the way children and young people can and should be treated. But it is also a symptom of an immature legislative framework for human rights protections – and torture prevention – in Australia.

A Human Rights Act for Australia

In South Australia, I have been a strong advocate for introducing specific human rights legislation at the state level. I believe that this must also be achieved at a federal level. This inquiry is an opportunity to be honest about the state of rights violations against the most vulnerable in our society, and look at the role that a federal Human Rights Act has to play in preventing abuse.

In March 2024, I provided a submission to the South Australian Social Development Committee's Inquiry into the Potential for a Human Rights Act for South Australia.² In making that submission, I acknowledged that there are currently a range of laws in place in South Australia that contribute to protecting children and young people's human rights, including anti-discrimination legislation, compensation avenues for children and young people who experience abuse, and Charters of

² Guardian for Children and Young People, [Submission into the potential for a Human Rights Act for South Australia](#) (March 2024).

Rights for children and young people with specific attributes or needs (including those in care or detention).

I noted that based on these existing protections, some question the value of specific human rights legislation; including whether additional resourcing for oversight mechanisms and procedural steps in government decision-making are appropriate or necessary. However, this argument is fundamentally flawed in that there are numerous examples which evidence the considerable potential of statutory human rights legislation to improve rights awareness and substantive protections, when overlaid with existing mechanisms.³

My work in this space has focussed on challenging the core belief that underlies such queries; namely, that we live in a community that respects human rights and has sufficient rights protections in place.

My experience, sadly, is that this belief is misplaced. In undertaking my statutory functions, I have observed a consistent and alarming lack of responsiveness in South Australia towards protecting, respecting, and fulfilling the human rights of children and young people in detention. I provide more detail on my observations of harmful practices against children and young people in youth detention throughout this submission.

But, as a core example of the severity of rights violations present in the South Australian youth justice system, I bring to your attention to the South Australian **Youth Treatment Orders Scheme**: a scheme which poses a significant and unacceptable risk to the health, safety and wellbeing of children and young people in South Australia. This example demonstrates the very real risk that legislation with severe human rights implications can currently be passed in any jurisdiction in Australia, with little scrutiny or public accountability for governments.

The Youth Treatment Orders Scheme

The Youth Treatment Orders (YTO) Scheme, established under the *Controlled Substances Act 1984* and *Controlled Substances (Youth Treatment Orders) Regulations 2021* is an experimental mandatory drug treatment scheme, which allows the Youth Court to Order children and young people to undertake drug assessment and treatment. If necessary, the Youth Court can make a Detention Order for the purpose of the assessment or treatment – and, where there is a Detention Order, force can be used to compel the child or young person.

In line with the experimental nature of this scheme, it has been separated into ‘Phase One’ and ‘Phase Two’. Currently, we are in ‘Phase One’: which means that orders can only be sought with respect to young people already detained at the AYTC. Government has selected young people in detention as their ‘test subjects’ to see if mandatory drug rehabilitation in a detention centre works, before subjecting the broader youth community to the same treatment.

At all stages – from an idea, through to draft legislation, and then to operation – I have expressed serious concern about the Scheme, which amounts to a violation of children and young people’s human rights.

In my view, the YTO Scheme is fundamentally incompatible with humane treatment of children and young people, and evidence-based approaches to treating drug addiction and dependency.

In my 2022-23 YTO Visitor Annual Report, I recommended that the Scheme should be repealed. In making this recommendation, I set out principled objections, alongside observations and commentary regarding how the Scheme has operated to date. Despite my recommendation, the legislation has not

³ For a comprehensive collection of such examples, see Australian Human Rights Commission (AHRC), *Position paper: A Human Rights Act for Australia* (2022), (*A Human Rights Act for Australia*).

been repealed. But, concerningly, I am no longer funded to operate a visiting scheme, or undertake relevant inquiries or investigations to provide advice and reporting to Parliament.

At the time the legislation was passed, there was no mechanism which required government to consider or report on rights implications. Nor is there any current obligation to publicly answer or address concerns regarding the rights implications of declining to act on my recommendation to repeal the legislation. This lack of accountability and transparency is entirely unacceptable, when the legislative scheme in question has the potential to result in such serious rights violations against children.⁴

No. The Guardian and Visitors Recommendation

2. That the Australian government legislates a national Human Rights Act, in line with the recommendations of the Australian Human Rights Commission.
3. That the Committee recommends that all state and territory governments legislate for a jurisdictional-level Human Rights Act.

Enforceable national minimum standards for youth justice

The case I outlined above regarding the need for a Human Rights Act in South Australia, also applies to the development of enforceable national minimum standards for youth justice consistent with our international obligations.

This is something I have advocated for both individually and as part of the Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA) collective. As you will be aware, this collective has made a submission to the Committee, to which I am a joint signatory, calling for the development of enforceable minimum youth justice standards (submission 74).⁵

As outlined in the joint submission, these standards must be agreed and endorsed at a national level, or at the very least by state and territory governments, rather than merely being signed off by system administrators.

No. The Guardian and Visitors Recommendation

4. That Australia develops enforceable national minimum standards for youth justice, consistent with its international obligations.

⁴ The *Controlled Substances Act 1984* requires a review of the operation of the YTO Scheme to be completed between the third and fourth anniversaries of the commencement date (November 2024 to November 2025). The Attorney General's Department has advised an intention to commence the review in November 2024 and I will continue to advocate for the scheme to be abolished.

⁵ See also ANZCCGA [Joint Statement on Isolation in Youth Detention](#) (21 February 2021).

All Australian governments' obligations in relation to OPCAT

In addition to my legislated roles and functions, I have also been nominated as part of Australia's National Preventive Mechanism (NPM) under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).⁶

Since January 2023, Australia has held obligations under international law to comply with OPCAT. This includes ensuring an NPM is in place to visit and monitor all places of deprivation of liberty across Australia, with a clear preventive focus.

Australian, state and territory governments are each responsible for nominating NPM bodies, for places under their control where people are deprived of their liberty. Despite the significant time since Australia signed and ratified OPCAT, and despite Australia's NPM obligations commencing on 20 January 2023, the Australian NPM is incomplete, with some jurisdictions (Queensland, New South Wales and Victoria) yet to nominate bodies.

In South Australia, there remain big gaps in the NPM's scope to visit and monitor places where people are deprived of their liberty in South Australia. It is notable that there remains no funding or legislation in South Australia to support activities required under the United Nations Optional Protocol to the Convention against Torture (OPCAT) regarding respect to places where children and young people may be deprived of their liberty.⁷ This includes youth detention facilities, police facilities, health facilities (including hospital emergency departments and wards), residential care houses and other places where OOH is provided.

Despite these gaps, the Australian NPM continues to meet, and continues to work to prevent torture and other ill treatment of people deprived of their liberty. As part of our work, we have made a [joint submission](#) to the Committee in relation to its inquiry (submission 109). This submission outlines the NPM's concerns about youth justice right across the country and makes six recommendations for the Committee to consider for inclusion in its final report. This includes the following recommendation:

We suggest recommending full and consistent OPCAT implementation across all Australian jurisdictions, specifically:

- *Appointment of NPMs to address all remaining gaps in coverage*
- *Fully OPCAT-compliant legislation to empower all NPMs, where lacking*
- *Resolution to funding disagreements to ensure NPMs are adequately resourced to meet their full OPCAT mandate on an ongoing basis.*

I reiterate my support for these recommendations. All Australian governments operate within a federal state system, and must govern responsibly within that federal structure. This level of dispute

⁶ In December 2017, Australia ratified OPCAT, an international agreement aimed at preventing torture and cruel, inhuman or degrading treatment or punishment in places where people are deprived of their liberty. Countries who have signed up to OPCAT are required to establish an NPM, which visits places where people are deprived of their liberty, monitors conditions of detention and helps prevent torture and other ill-treatment. More information about OPCAT is available in [Australia's OPCAT NPM 2022-23 Annual Report](#).

⁷ I have been administratively assigned a role in Australia's NPM by the state government with respect to young people detained at the Youth Justice Centre, that presumptively commenced in January 2023. In a nominal role, I participate actively in National NPM network meetings convened by the Commonwealth Ombudsman. However, I am neither funded nor legislated to undertake the separate responsibilities required for an NPM under OPCAT. Performance of NPM functions is vastly different to that of the TCV (with the TCV being a responsive mechanism and the NPM being a preventative mechanism). Without appropriate legislation and resources, it is not possible to undertake the NPM function as intended. Considerable problems about enabling appropriate scope and capacity to conduct an NPM role remain to be resolved, including with respect to a capacity to engage with Civil Society and the SPT itself.

between state, territory and federal governments is an international embarrassment, and the results for children and young people's lives are reprehensible.

In considering the recommendations and observations arising from Australia's NPM, I also draw the Committee's attention to previous joint statements, submissions and reports which have significant relevance to the Committee's inquiry:

- Joint Statement – [Reintroduction of spit hoods for children in the NT is not the answer](#) (18 October 2024)
- [Submission to the Committee against Torture](#) (23 August 2024)
- [Annual Report 2022-23](#) (10 July 2024)
- Joint Statement – [Little funding for torture prevention in federal Budget](#) (20 May 2024)
- [Response to the Report of the Subcommittee on Prevention of Torture 2022 visit to Australia](#) (19 March 2024)

No. The Guardian and Visitors Recommendation

5. That the Committee acts on the recommendations made by myself and my colleagues in Australia's National Preventive Mechanism under OPCAT and the Australia and New Zealand's Children's Commissioners, Guardians and Advocates network.

The reality of detention

Inquiry Terms of Reference:

- a) the outcomes and impacts of youth incarceration in jurisdictions across Australia.

In the above discussion, I have outlined fundamental (and minimum) changes to frameworks and settings necessary to reform Australia's youth justice approach – to be both effective, and rights-respecting.

In doing so, I am speaking to the Committee and I am speaking to governments across Australia.

And, in doing so, I believe that the Committee and those governments already know the way children and young people are treated in youth detention.

But one of my biggest concerns is that those who hold the greatest democratic power – being the majority of people enrolled to vote, over the age of 18 years – do not yet truly believe how bad things are. If that level of understanding was truly there, I do not believe that we could possibly still be having these debates.

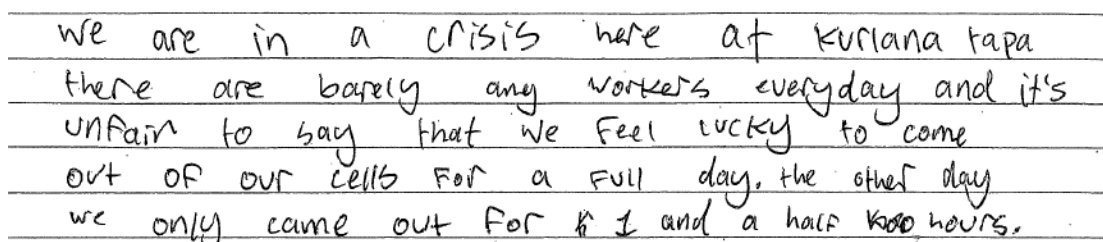
So, I have to think that the majority of people enrolled to vote and over the age of 18 years must believe that many children and young people involved in youth justice or detention are doing ok, and are getting the help they need. That maybe they know there are bad things happening, but they think it's the minority and systems are working to fix it. Or maybe that the conditions in youth detention aren't great, but it's the best we can do. Some people might think the conditions are too soft, that it's like a holiday or better than the standards a lot of children are living in.

But I think that even many who feel strongly that community safety should be prioritised over individual rights of children – even if that means detention and lockdowns and devices like spit-hoods – would feel shocked by the actual reality of what these environments are like for children.

I believe the biggest task in achieving youth justice reform is to share children and young people's truths and experiences as widely as I can. Because conditions in youth detention throughout Australia are harsh, and often cruel. Sometimes, the physical environment is quite pretty and there's access to nice courtyards, good technology and daily meals. The reality of detention is that the two pictures below are the same facility, the Adelaide Youth Training Centre. But the colourful architecture and beautiful garden (on the left), is a world apart from the picture within a young person's bedroom (on the right).



In changing our approach to youth justice, our communities have to face the reality that the left is a pretty picture, but the right is a child's reality in detention. For a child or young person who is scheduled to spend between 10 and 14 hours a day in their bedroom – before accounting for issues like lockdowns, isolation and segregation practices – that is where they are living their life. At times, they may be on safety plans that say they have to be kept in that room for up to 20 hours a day. At times, they may be kept in there for longer.



we are in a crisis here at Kurlana Tapa
there are barely any workers everyday and it's
unfair to say that we feel lucky to come
out of our cells for a full day, the other day
we only came out for 1 and a half hours.

Image: Excerpt from a letter written by a young person to my office, in July 2022

In understanding how we've come to where we are, we need to confront the difference between how we want youth justice to look, and what it actually looks like.

Overview of how it's meant to work

When children and young people enter a detention facility legislation, operational models and even society generally has expectations regarding their care, rehabilitation, and overall well-being. These expectations often revolve around every child and young person having access to and benefit from:

- **Safety and Protection:** where they are kept safe from harm, including protection from abuse, neglect, or exposure to violence. The environment should be secure and supportive.
- **Rehabilitation and Support:** where rehabilitation programs are tailored to the needs of the children, whether they are dealing with behavioural issues, mental health/ill concerns, substance abuse, or other challenges. This includes access to therapy, counselling, and life skills training.
- **Education and Skill Development:** where education or receive vocational training is continued or established to help them return into society successfully. Facilities are expected to provide learning opportunities that meet their educational needs and variances.
- **Emotional and Psychological Care:** where they receive adequate emotional and psychological support. Including access to mental health professionals, peer support, and other forms of therapeutic care.
- **Reintegration and Socialisation:** where they are prepared and supported for healthy reintegration into their communities. This includes helping them develop healthy relationships and coping mechanisms, responsible behaviours, and the skills needed to achieve their full potential upon release.
- **Family Involvement and Support:** where efforts are made to involve families in the rehabilitation process, fostering communication, and supporting family connection when it is safe and in the best interest of the child.
- **Accountability and Fairness:** where those responsible for the operation of youth detention facilities operate transparently, with respect for the rights and best interests of the children and young people. This includes being held accountable for the quality of care and ensuring that the children and young people are treated fairly and with dignity.

These expectations are meant to ensure that children and young people in these facilities receive the care, guidance, and support necessary to overcome challenges and contribute positively to society in the future.

Whilst these are the expectations as idealised by society, my observations, in reality, is that South Australia's youth detention facility is yet to achieve these. In fact, my previous reports and inspections of this facility has highlighted concerns that the system (both youth detention and youth justice) is harming children and young people, perpetuating existing trauma, introducing new trauma, and dictating poorer outcomes across all life domains.

“We need to ask ourselves if we are indeed helping or hurting young people in youth detention facilities and youth justice more generally.

We need to come to a realisation that if we are not helping, then we are actually contributing greater harm and greater trauma, not just for the individual young person, but for our collective community.

We might not see it in the short term, but we are destined to bear the consequences in the years to come.”

Shona Reid, The Guardian and Training Centre Visitor

My observations are that the youth justice and incarceration system is currently based on a policing and containment response with the misguided view that this will improve community safety – where, in fact, time has shown that such a punitive response only worsens outcomes for the wider community and creates greater social and economic costs for the sector.

What's actually happening

In my capacity as the Training Centre Visitor, I visit and operate a call-line for children and young people who are detained at the AYTC.

In 2023-24, the AYTC had an average daily population of 32 children and young people. Across the year there were **692 total admissions** to the AYTC (427 of these were admissions of Aboriginal and Torres Strait Islander children and young people), and **312 individual** children and young people are represented in these admissions (177 Aboriginal and Torres Strait Islander children and young people).

In 2023-24, **308 enquires** were made to me in my capacity as the TCV, across 237 points of contact for children and young people. My Advocates and I visited the AYTC 53 times, with 1,200+ children and young people present during these visits. Advocacy was required after 44 (83%) of these visits, and 222 advocacy files were opened throughout the year.

The top five issues raised by children and young people in the AYTC relate to **physical health, staff, facilities, peers, and cultural support**. Other significant issues include incidents, isolations, court processes, and mental health. I take particular care to monitor the circumstances of children under 14 years, and dual involved children and young people (subject to both remand/detention and child protection orders).

Below I highlight some of the ongoing issues faced by children and young people in detention in South Australia:

- 1 isolations, lock downs and segregations

- 2 limited access to education and rehabilitative programs
- 3 significant gaps in services to support health and wellbeing

These issues demonstrate the way that this youth detention model is breaching children and young people's rights and best interests at both an individual and systemic level, and represent key areas where reform is required, is necessary and is urgent.

Isolations, lock downs and segregations

In my capacity as the Training Centre Visitor, I addressed isolation in youth detention in my 2022-23 Annual Report,⁸ and it remains an ongoing issue for children and young people detained at the AYTC, both those sentenced and on remand.

By its nature, detention separates young people from community, family, friends and broader society. In South Australia, a sentence of detention works towards the broad aims of ensuring the rehabilitation of the individual young person. Where necessary, community safety and individual deterrence for young people are also relevant considerations.⁹

Youth detention is **not intended** to be a punishment. In fact, there is a heavy focus in legislation – and broader human rights principles and on ensuring that youth detention is rehabilitative.

While detention is not intended to be a punishment, the practical reality is that young people have a harsh experience, including being isolated from their daily lives and supports. During their time in the AYTC, young people may miss school trips, sports games, religious functions, cultural obligations and events, birthday parties, and other life events and memories important to young people their age.

While they are detained, the legal (and societal) expectation is that these young people will be supported to grow and rehabilitate, so they can leave the AYTC and re-join the community. To do so, they require access to rehabilitative services and programs, peer support, education, physical and mental health care and cultural support. Importantly, they also need positive role modelling and the opportunity to address any past traumas which may have contributed to their current circumstances.

After close analysis of the living conditions, daily routines, and voice of young people, I question whether the AYTC is meeting its core legislative obligations. Most significantly over the last few years, isolation has been an overwhelmingly prevalent issue raised by young people, not just through their direct voice, but behaviour and presentations.

As a result of the harm that isolation causes, key United Nations bodies (including the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) have stated that 'solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture.'¹⁰

Despite TCV advocacy, 2019 recommendations from the South Australian Ombudsman, and significant public campaigning, the Department of Human Services remains unable to provide accurate records about the time young people spend 'out of rooms'. But young people's voices and

⁸ [Training Centre Visitor Annual Report 2022-23](#).

⁹ Youth Justice Administration Act 2016 (SA), s 3; Young Offenders Act 1993 (SA), s 3; Sentencing Act 1991 (SA), ss 3-4.

¹⁰ Juan Ernesto Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc A/HRC/28/68 (5 March 2015) para [44]. In accordance with the Mandela Rules, solitary confinement refers to the confinement of prisoners for 22 hours or more a day without meaningful human contact: Mandela Rules, r 44; see A/66/268, paras. 77 and 86, and A/68/295, para [61].

experiences have been clear – they are not spending enough time ‘out of rooms’, with tangible impacts on their rehabilitation, mental and physical health. Young people say:

“Imagine your kids in here. You wouldn’t just leave them locked in this room.”

Young person at the AYTC

“We are just left in our rooms with our emotions and thoughts and when we come out we just explode.”

Young person at the AYTC

“It’s a breach of our human rights!”

Young person at the AYTC

“[Time in rooms] builds up anger.”

Young person at the AYTC

No. The Guardian and Visitors Recommendation

6. That the isolation of children and young people in detention is prohibited in all Australian jurisdictions, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other alternatives have been exhausted.
7. That detention facilities are required to track, record and report publicly on the length of time children and young people are held in isolation.

Limited access to education and rehabilitative programs

Youth detention in South Australia has a legislative responsibility to serve a rehabilitative function. This restorative approach is a core fundamental obligation of AYTC, to provide an environment that rehabilitates, addresses treatment needs, and supports young people to successfully reengage well into the community.

Time in the AYTC is a concentrated opportunity for often vulnerable children and young people to connect with services to better their lives and circumstances, such as medical care, psychological support and assessments. However, young people rarely tell myself and my staff that they feel that they were improving over their time in detention. Rather, their time is filled with combative relationships (with staff and other young people), limited access to professional services and inconsistent education and programmatic opportunities.

Education

As noted in my Training Centre Visitor Annual Report 2023-23, providing education in a detention setting is highly challenging. Young people in detention may be as young as 10, meaning that the

education service needs to cater for young people from year 5 to year 12, potentially within a single classroom. Of the young people attending class each day:

- approximately 90% have a disability or disability-related need
- many have inconsistent engagement with education in the community
- some may have no correlation between age and educational level
- many are in and out of detention for broken periods through a school year, complicating their engagement with teachers and curriculum.

Noting the above, considerable effort is made to support the learning needs of young people in the AYTC at any one time. I recognise the work of the teachers and their attention and efforts in this area.

Despite these limitations, young people place great value on their time in school. This is most evident in their reaction to class cancellations – for some young people, being told they are not attending school has resulted in heightened behaviours and verbalised disappointment.

The educational barriers are compounded by the inconsistency of young people's access to the education service. To get to class, AYTC operational staff must be available to provide escort and supervision for each lesson group. Any AYTC operational staff shortages may therefore result in school lessons being cancelled, or significantly reduced for young people.

In analysing data provided by the education service in the AYTC, I examined the length of time in which young people had access to education (beyond mere unit attendance logs).

Over the 2022-23 financial year, 3 in 4 school days reported reduced lesson time for some or all young people across AYTC. The impact of this reduced lesson time can vary significantly – it may be as little as 10 minutes, or school cancellation for the entire day. There was a significant proportion of school days where at least one lesson was cancelled for a unit.¹¹ As a result of these cancellations and reduced lessons, I concluded that, over the financial year, units spent an average of two hours and 45 minutes in education classes each day.

Concerningly, I identified that on 58.9% of school days in 2022-23, all lessons were cancelled for young people in the Protective Actions Unit.¹² While young people in this unit may be precluded from attending school for reasonable security or safety reasons, the outcome is that young people with established high needs for rehabilitative and education support are deprived of it. I assert that there should be alternative options to access education for young people in these situations. These are exactly the young people that need engagement in these activities and the AYTC and education service should be designing and creating unique opportunities to suit them and their needs.

In the community, there is capacity for teachers, parents/legal guardians and individual young people to collaboratively decide on flexible learning arrangements, to support young people struggling with school attendance or participation. I would like to emphasise this is not the case in the AYTC, this limited school attendance does not reflect individual need. In fact, it often runs counter to it.

I note that the inconsistent access to education can have different impacts on young people:

¹¹ At this point in time there are 5 units within AYTC, each unit consist of 12 individual rooms. Meaning, the maximum capacity of each unit is for 12 young people.

¹² Operational rules define protective actions as: 'the range of additional actions and supports available to support a resident in consideration of both their static and dynamic risk factors. Protective Actions are tailored to a resident's individual needs in consideration of their safety, the safety of others and the security of AYTC.

For those who are actively engaged in education outside the centre

- Creates a gap in their education causing difficulty in reengagement upon returning to school after their time at the Centre.
- Increases anxiety keeping the learning and education level they held prior to admission.
- Contributes to disengagement from education upon exiting the Centre.

For those who are not actively engaged in education outside the centre

- Reinforces existing lack of contact with education and school systems.
- Potentially exacerbates or widens the gap between them and their peers in community.

Rehabilitative Programs

Outside of formal education (including on weekends and school holidays) young people have a right to access to programs to support their vocational and emotional development, in fact it is in their best interest to do so.

The Department of Human Services describes these as targeting "...criminal thinking, mental health, trauma, family inclusiveness, cultural identity and connection, social and independent skills, relationship skills and education."¹³

In practice, delivery is variable due to external provider and AYTC operational restrictions or capacity. In 2022-23, while a total of **467 programs** were scheduled, only **260 were delivered**, with the remaining **207 (44.3%) cancelled**.

This can be a source of frustration for young people, particularly when school or other forms of recreational and educational stimulation are not available. Young people shared how they track other units' movements to and from programs, seeking information on the quality of the activities, and whether they will be supported to attend. For programs which comprise not only a source of rehabilitation but a young person's cultural support, cancellations can be particularly distressing, which impacts on their quality of time within the centre.

Another factor to consider in relation to program cancellation, is the impact programs can sometimes have on young people's routines. Young people reported efforts to facilitate other units' program attendance meant they were confined to their rooms or unit spaces, because staff were diverted away from their area to support attendance of young people to such programs. This could be particularly frustrating when a program was only available to certain young people in a unit because of their specific needs. What this demonstrates is the operationally the AYTC has not structured its workforce to support the ongoing viability of rehabilitative programs, which is counter intuitive to their legislative function.

It simply cannot be said that children and young people detained in the AYTC have adequate access to quality rehabilitative programs in accordance with their rights to such programs, and children and young people are acutely aware of this reality, feeling as those they are being set up to fail.

"I'm destined for the adult system anyway. I was born into institutions, I'll stay in institutions my whole life."

Young person at the AYTC

¹³ Government of South Australia, Department of Human Services, About the Centre, available at: <https://dhs.sa.gov.au/how-we-help/youth-justice/youth-justice-services/kurlana-tapa-youth-justice-centre/about-the-centre>. Accessed in October 2024.

“If there was a program to educate me, you know? Yeah. That would have helped me...that would have helped.”

Young person at the AYTC

No. The Guardian and Visitors Recommendation

8. Establish minimum standards for quality rehabilitative program provision within youth detention facilities. Ensuring that children and young people in detention are provided with real and meaningful access to education services and evidence based rehabilitative programs, tailored to their unique needs.

Significant gaps in services to support health and wellbeing

In South Australia the Charter of Rights for Youths in Youth Detention sets out that children and young people detained in the AYTC have a right to see a doctor or nurse whenever they need, have their health assessed soon after they arrive, and to receive proper health care. Unfortunately, this is not often the case.

Health care in the AYTC

Professional health care in the AYTC is provided by the MYHealth (A Women's and Children's Health Network service) on-site nursing program which operates a Community Health Service model.

Children and young people have access to health care on admission, request, or referral. Referral will usually occur for care of minor injuries or illness, or to triage more serious matters. In all instances, access to health services (even if the young person is 16 and over) occurs through AYTC operational staff. This method of accessing health care provides no opportunity for direct contact by young people to a health professional, creating opportunities for miscommunication and violates the rights of young people to talk about their personal health matters in a private or in a discrete manner.

Ordinarily, nurses are scheduled for six days per week (various hours during these six days), and doctors three times a week. However, this health care support is facilitated by AYTC operational staff and is dependent upon operational viability to facilitate access to such support. As a result, operational issues, staff shortages, human error and incidents can impact children and young people's access to these services in a timely way – or at all.

Outside clinic hours, medical issues are assessed and triaged by non-medically qualified AYTC operational staff. In some instances, they turn to locums, phone consultations, or in urgent situations, hospital attendance to attend to needs. I believe that the reliance on non-medical staff to make these assessments is unfair to AYTC operational staff and children and young people. This also carries significant health risks for children and young people and organisational risk (potentially litigation) to AYTC if medical needs and intervention are not identified appropriately, or within a timely manner.

Non-medically training AYTC operational staff are also responsible for monitoring health conditions and physically providing prescribed medication to children and young people – which carries significant risk for all parties with very serious health ramifications if not undertaken with appropriate medical supervision.

Health needs on admission and delays in assessment

Children and young people often present to the AYTC with existing health issues which may impact not only their risk of harm during their detention, but their capacity to engage meaningfully in rehabilitation. These can include:

- *Pre-existing conditions*: in addition to reported high rates of neurodevelopmental disabilities, young people may have conditions like diabetes, allergies, asthma and other issues which impact their day-to-day interactions with Centre life. Alongside these pre-existing conditions may be prescriptions for medication which must be administered and monitored.
- *Untreated or healing injuries*: young people may present with physical injuries, which make them more vulnerable in restraints or assaults, including potential concussions, or traumatic brain injuries.
- *Self-harm*: high rates of self-harm behaviours have been observed.
- *Historical or recent drug use*: at times, young people 'coming down' off substances may be admitted. Young people have also been found with illicit substances inside the AYTC.

While the AYTC does not directly provide health care services to these vulnerable young people, it must ensure they have access to appropriate health care.

Operational practice requires young people must be 'medically assessed by a MYHealth nurse as soon as practicable' after admission. While there is no specific time limit placed on when this occurs, operational orders note that an assessment occurring more than 24 hours after admission is 'an unlikely event' which would require senior staff making an assessment on whether alternative care is required.¹⁴

In 2022-23, I heard reports of young people waiting for over seven days for assessment, impacted by factors like availability of clinic staff, movement being limited due to Protective Actions responses, and staff shortages preventing young people being escorted to the health centre. Unfortunately, these issues have also been prevalent in 2023-24.

I have sought more information around the average time taken between admission and health assessment, however, I have been informed that this is not available due to this element of a young person's time in care being managed by two separate government departments. Indeed, the interconnection between youth justice, health, education and child protection, and these department's working in silos is often a barrier to better understanding and supporting children and young people's journeys and trajectories.

Mental health and self-harm

A key focus of advocacy for children and young people at AYTC is in relation to existing mental health/illness conditions or exacerbated risk to poor mental health. Each child or young person that enters AYTC has invariably been exposed to adverse childhood experiences, trauma symptoms, substance misuse, and behaviour dysregulation are prevalent.

Some young people enter the AYTC with diagnosed mental health conditions, but many are undiagnosed or undergoing assessment. In many cases, these processes can stall during their time in detention and in some instances, mental health supports are only being accessed in AYTC.

What makes this area complex is that children and young people who may be receiving supports for mental health are simultaneously impacted by the custodial environment, which may cause them further trauma or mental ill-health.

¹⁴ Government of South Australia, Adelaide Youth Training Centre – Security Order 20: Admission Transfer and Release (v2.1, December 2016), para [3.4.9].

Being detained is an inherently stressful event. Young people are being held in an institutional and often tumultuous environment – sometimes for the first time in their lives – away from family, friends and other supports. For those with experiences of childhood and adolescent trauma, this is also an environment where they are surrounded by potential triggers – including frequent violence, isolation, restrictive practices and conflict (peer and adult).

The stress the custodial environment can place on *staff* is very well recognised – following restraints or assaults, staff have access to workplace provisions like debriefs, and employee assistance programs. Where trauma or injury (including mental health) is significant, there may be work cover available, or more commonly staff may be provided the opportunity to leave their shifts early if they are distressed following an incident.

Emphasis on any person’s wellbeing in these circumstances is essential. However, it is concerning to note that in many circumstances this same care is not extended to children and young people.



“Staff need to take mental health into consideration.”

Young person at the AYTC

Indeed, the TCV has witnessed the impacts on children and young people, demonstrated by a high incidence of self-harm in the AYTC. When a young person is heightened and distressed, it is not uncommon for those behaviours to spiral and be turned inward. In fact, 43% of incidents in 2022-23 involved a young person who either engaged in self-harm behaviour, or where the TCV identified a risk of self-harm through expressing ideation and/or other factors. This figure does not account for the self-harm behaviours and ideation in the lead up to incidents, nor self-harm which staff have not formally recorded as an incident.

It is clear that there is something wrong.

When it comes to accessing mental health care, informal methods used (and often preferred) by young people to seek emotional and mental health support, like phone or internet counselling, are unavailable in the AYTC. When they are secured in their rooms, young people are restricted to talking through doors, cuff traps, or intercoms – they are not assured of privacy in any of these cases.

Responsive and preventative mental health care available to young people in detention is essential to prevent serious injury or harm. This is recognised in both legislation and international conventions establishing young people in detention have a right to access **high-standard** treatment and mental health care.

Psychiatric staff do attend the AYTC for this purpose, however their access to young people is determined by AYTC operations. The TCV has been made aware of occasions where psychiatric support was provided through cuff traps, or only available during a young person’s mandated exercise routine, meaning young people’s half hour of outdoor time was spent talking (in full view of staff) to their mental health support.

Management of young people’s day-to-day mental health falls to AYTC operational staff. While these staff have some mental health training, the tools at their disposal are blunt, focussed on containment of risk and reduction of physical harm. The custodial practices to neutralise behaviours may be distressing for young people with mental health issues or trauma backgrounds. Examples include:

- use of mechanical restraints like handcuffs or leg-wraps
- restraint by staff, potentially including prone

- isolation of young people in their rooms or in padded “safe rooms”
- use of “canvas” – where clothing and underwear are replaced with a tunic, made of tough fabric, to prevent softer materials being ripped to make ligatures.

The TCV is concerned for both the young people and the staffing cohort that are required to navigate this complex area. The AYTC is simply not equipped to manage these situations, and there are dire consequences for children and young people and their rights.

Disability and neurodivergence

The experiences of children and young people with disability in detention has most recently been examined by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Specifically, the Royal Commission found:

- Children with disability are over-represented in youth detention. While in youth detention, they are exposed to substantial risks of violence, abuse and neglect.
- Detention settings are characterised by strict discipline and rules. This exacerbates the vulnerabilities of children with disability who often lack access to therapeutic support and trauma-informed care.
- There is no comprehensive national source of data about the number of children with disability in youth detention. However, the available data indicates that a significant majority of children in youth detention have one or more disability.
- Isolation amounting to solitary confinement is over-used in youth detention centres. It has not been used only as a last resort.
- State and territory youth justice legislation should be amended to prohibit the use or practice of solitary confinement (defined as isolation for a period of 22 hours or more per day) and to define the safeguards governing isolation or seclusion of children with disability.
- Youth justice agencies and their staff need to be better informed about the impact of detention and isolation on children with disability and the needs of children with disabilities who are placed in isolation.¹⁵

The Royal Commission made recommendations relating to the prohibition of solitary confinement in youth detention, the need for screening and assessment for disability in youth detention, and the need for disability training for staff in youth detention.¹⁶ I support these recommendations.

I also believe that screening and assessment, and staff training should not just extend to support for children and young people with disability in detention, but that this must also be extended to children and young people with neurodivergence. I note that Queensland has recently started screening children and young people in detention for neurodevelopmental conditions including ADHD and co-occurring conditions.

I along with many of my colleagues from around the nation, are calling on all jurisdictions to undertake similar screenings.

Even before children and young people enter the criminal justice system there have been multiple missed opportunities – in schools and sometimes in child protection – to conduct assessments, and to identify appropriate supports for children and young people.

¹⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report Volume 8: Criminal Justice and People with Disability](#) (September 2023).

¹⁶ Ibid, Recommendations 8.3-8.5.

“We see far too many children and young people who have fallen through the cracks, and undiagnosed ADHD and autism significantly influence the behaviours and challenges that bring them into contact with police.”

Shona Reid, The Guardian and Training Centre Visitor

Once in the criminal justice system, and in detention, screening can help us better understand what is going on for a young person and how we can support them – and this must be done at the earliest possible opportunity. We know that this is extremely important as neurodivergent children and young people and those with disability are disproportionately affected by the use of force, restraints and segregation in youth detention.

No. The Guardian and Visitors Recommendation

9. That all children and young people in detention have access to high quality health care, to support both their physical and neurological development and their mental health. Including:
 - Robust screening process upon admission – including assessments for physical and mental health, disability and neurodivergence,
 - Full access to high quality health services during admission and the duration of their admissions
 - All health screenings, assessments, medication provision and medical services must be delivered by trained health professionals
 - Trauma informed approach to a medical care model is developed and sustained across the entirety of a young person’s journey through the criminal justice system.

Primary school children in lock-up

With the reality of detention firmly in mind, let's remember that we are currently locking up 10-year-olds – children in Year 5 at school – in detention in Australia.

In my engagement with stakeholders and community members across (with a diverse range of political views and perspectives), I have observed that there aren't many who are ok with young children growing up in detention. The question most often comes down to: what's the alternative?

There are people all over the country running programs with a strong evidence-base, working tirelessly one-on-one with children and young people to rehabilitate them – and make sure that both they are looked after, and people in the community are not impacted by harmful behaviours. This is cheaper, more effective and healing for communities.

In South Australia, I have observed a frustrating issue where this action on raising the age appears to be dependent on first imagining alternative ways to lock children up – and then funding and legislating those options. That's a lengthy process, subject to debate, parliamentary processes, rebalancing departmental budgets which runs the risk of causing the same level of harm to children – or even new and unintended harms.

I have, and will continue to be, a strong advocate for passing legislation to raise the minimum age of criminal responsibility to 14 years, without exception.

But even without that legislative change, there is no reason for governments to delay funding the social and rehabilitative programs for children – that the vast majority of people want, and will experience the benefits of.

So imagine if, instead, we went ahead and diverted investment towards what nearly every community in Australia wants, and children and young people desperately need – effective rehabilitation.

These alternatives require leadership and investment. I fervently hope to see the Committee make recommendations to raise the age of criminal responsibility in every Australian jurisdiction to the age of 14 years.

But that change should not be a precursor to investing, right now, in the programs that will work. And I feel a sense of hope that, if we could first see the change that is possible with those programs, then maybe the whole of our community can come on board this journey.

No. The Guardian and Visitors Recommendation

10. That investment in holistic diversionary services and initiatives for children and young people (including their families) is delivered immediately within current legislative and reform capabilities, with a solidified national approach stimulating sector development and capabilities in this areas in alignment with Closing the Gap and Safe and Supported Frameworks.

11. The MACR should be raised to 14 years old, in all Australian jurisdictions, with no exceptions.

Aboriginal children and young people in detention

Inquiry Terms of Reference:

- b) the over-incarceration of First Nations children.

In 2023-24, there were 692 admissions to the AYTC, 472 (68%) of these were of Aboriginal children and young people.

These admissions related to 312 individual children and young people, and 177 (57%) of these were Aboriginal children and young people.

I actively monitor these figures, as part of monitoring Closing the Gap Target 11 – to reduce the rate of Aboriginal children young people in detention by at least 30 per cent by 2031. While monitoring trends in the number and personal characteristics of Aboriginal children and young people in detention is essential to properly understanding progress against Target 11 (as well as the cultural support needs), I also stress the importance of looking beyond mere numbers about overrepresentation. It is essential to:

- critically examine the experiences of Aboriginal children and young people in detention
- understand where they are thriving and being left behind
- steer systems and resources where they are most effective.

Aboriginal children and young people in detention face all of the challenges I have previously explored in this submission – but they also tell us about the added challenge of feeling disconnected from their families and communities, often with no avenues to remedy this, and that a lack of cultural support affects both their wellbeing and rehabilitative needs.

“Government has to realise. They got to open your ears and realise. You only see Aboriginal kids in here.”

Young person at the AYTC

So what can we do to reduce overrepresentation, and to better support Aboriginal children and young people in youth detention? There's a significant amount of research in this space, that has been overlooked, only partially implemented – and oftentimes ignored.

This includes national inquiries such as the Royal Commission into Aboriginal Deaths in Custody which handed down its final report in 1991, to more recent research undertaken to inform the National Partnership Agreement on Closing the Gap which was refreshed in 2019 to include youth justice targets.

There has also been local activity in most states and jurisdictions, including in South Australia. In September 2022, the South Australia Attorney-General appointed eight members to an Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia.

The Advisory Commission comprised of South Australian Aboriginal leaders with expertise and knowledge in the criminal justice system, as well as members from Canada and New Zealand, who shared insights on effective solutions that have been implemented overseas.

The Advisory Commission handed down its report in February 2023, making 41 recommendations to address the overrepresentation of Aboriginal people in custody in South Australia¹⁷ including that the South Australian Government:

- Fund evidence-based programs to disrupt the relationship between children being placed in State care and the risk of contact with the criminal justice system. These programs should take a holistic approach to supporting the family unit as well as the child or young person, and be designed and delivered by Aboriginal Community Controlled Organisations.
- Legislate to raise the MACR to 14 years.
- Fund Aboriginal Community Controlled Organisations to develop and implement health and behavioural intervention programs and support services for young people under 14 years of age who display offending behaviours, or behaviour associated with needs not being met, and their family members.

But more than these specific recommendations the Advisory Commission set out the importance of addressing and eliminating racism, increasing government and service accountability, facilitating Aboriginal self-determination and leadership, promoting early intervention, focusing on support and rehabilitation, and reforming services responses.

As demonstrated by this and other inquiries, commissions and reports, Aboriginal leaders, people, and communities have the solutions. They are the experts. It is up to government to come to the table, put their money where their mouth is, and to give credence to the solutions posed by the experts so that we can address disparate outcomes for Aboriginal children and young people in youth justice and detention – but also more broadly across all social determinants.

No. The Guardian and Visitors Recommendation

12. That high quality supports be provided Aboriginal children and young people in contact with youth justice and detention, including but not limited to:
- a renewed focus on the National Partnership Agreement on Closing the Gap Target 11 – to reduce the rate of Aboriginal children and young people in detention by at least 30% by 2031.
 - increased emphasis on cultural support and connection for Aboriginal children and young people within youth detention settings.
 - engagement with the Aboriginal expertise to guide service delivery and enhancements in this area.

¹⁷ Advisory Commission into Incarceration Rates of Aboriginal Peoples in South Australia, [Report](#) (February 2023).

Recommendations

As contained throughout this submission, I recommend:

- 1 That Australia revisits its international obligations relating to children and young people's rights in detention and commits to strengthening its approach and aligning with international best practice. Including, but not limited to:
 - Removing all reservations to the International Covenant on Civil and Political Rights article 10 and the Convention on the Rights of the Child article 37.
 - Signing and ratifying the Optional Protocol to the Convention on the Rights of the Child on a communication procedure.
- 2 That the Australian government legislates a national Human Rights Act, in line with the recommendations of the Australian Human Rights Commission
- 3 That the Committee recommends that all state and territory governments legislate for a jurisdictional-level Human Rights Act.
- 4 That Australia develops enforceable national minimum standards for youth justice consistent with its international obligations.
- 5 That the Committee heeds the recommendations made by myself and my colleagues in Australia's National Preventive Mechanism under OPCAT and the Australia and New Zealand's Children's Commissioners, Guardians and Advocates network.
- 6 That the isolation of children and young people in detention is prohibited in all Australian jurisdictions, except when necessary to prevent an imminent and serious threat of injury to the child or others, and only when all other alternatives have been exhausted.
- 7 That detention facilities are required to track, record and report publicly on the length of time children and young people are held in isolation.
- 8 Establish minimum standards for quality rehabilitative program provision within youth detention facilities. Ensuring that children and young people in detention are provided with real and meaningful access to education services and evidence based rehabilitative programs, tailored to their unique needs.
- 9 That all children and young people in detention have access to high quality health care, to support both their physical and neurological development and their mental health. Including:
 - Robust screening process upon admission – including assessments for physical and mental health, disability and neurodivergence,
 - Full access to high quality health services during admission and the duration of their admissions
 - All health screenings, assessments, medication provision and medical services must be delivered by trained health professionals
 - Trauma informed approach to a medical care model is developed and sustained across the entirety of a young person's journey through the criminal justice system.
- 10 That investment in holistic diversionary services and initiatives for children and young people (including their families) is delivered immediately within current legislative and reform capabilities, with a solidified national approach stimulating sector development and capabilities in this areas in alignment with Closing the Gap and Safe and Supported Frameworks.
- 11 That the MACR is raised to 14 years old, in all Australian jurisdictions, with no exceptions.

- 12 That high quality supports be provided Aboriginal children and young people in contact with youth justice and detention, including but not limited to:
- a renewed focus on the National Partnership Agreement on Closing the Gap Target 11 – to reduce the rate of Aboriginal children and young people in detention by at least 30% by 2031.
 - increased emphasis on cultural support and connection for Aboriginal children and young people within youth detention settings.
 - engagement with the Aboriginal Community Controlled sector to guide service delivery and enhancements in this area.

In the spirit of my submission, I make three additional recommendations:

- 13 That the Committee seeks out and listen to the voices of children and young people with lived experience of the criminal justice system to inform its findings and recommendations.
- 14 That the Committee calls out the unacceptable human rights violations occurring in youth detention settings across Australia and the need for urgent reform.
- 15 That the Committee recognises the need to support children and young people within the community as a priority over heavy-handed criminogenic responses that are ineffective at improving community safety.