



Submission to the Inquiry into Australia's youth justice and incarceration system

October 2024

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

Dear Senate Legal and Constitutional Affairs Committee,

The [Office of the Children's Commissioner \(OCC\)](#) welcomes the opportunity to make a submission to this landmark Inquiry into Australia's youth justice and incarceration system (the Inquiry)¹. We welcome examination of this important area at Senate level and offer our expertise to support this work.

This is a pivotal moment in the Northern Territory (NT), recognising the current social and political climate we hold deep concerns regarding the potential impact on the rights, interests and wellbeing of Territory children.

We urge this Inquiry and the Australian Government to examine the profile, backgrounds and experiences of children in the youth justice system as one of the most urgent human rights considerations affecting our country and the poor outcomes for justice involved young people relating to their health and mental health, employment prospects and potential for lifelong adversity.

The OCC acknowledges and endorses the findings and recommendations made by National Children's Commissioner, Anne Hollands, in her recent report 'Help Way Earlier' as referenced throughout this submission.² We also support and endorse submissions made by the joint Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA) group and the Australian National Preventative Mechanism (NPM).

Background to the Office of the Children's Commissioner

The Children's Commissioner is an independent statutory officer appointed in accordance with the *Children's Commissioner Act 2013 (NT)* (the Act).³

¹ Parliament of Australia, Australia's youth justice and incarceration system terms of reference, accessed via [webpage](#) 2 October 2024.

² Australian Human Rights Commission, *Help Way Earlier: how Australia can transform child justice to improve safety and wellbeing, 2024*, Sydney: Australian Human Rights Commission.

³ *Children's Commissioner Act, (2013)*, Northern Territory.

The Act articulates the functions, powers and responsibilities of the Children’s Commissioner, which include (amongst others) to promote and advocate for the rights, interests and wellbeing of vulnerable children, and to promote an understanding of and informed public discussion about their rights and best interests. Other functions include receiving complaints about services provided to vulnerable children and young people, which includes those in contact with the youth justice and child protection systems.

The Commissioner has as their priority the best interests of children, with a focus on vulnerable children, in all aspects of their work. Most importantly advocating for the voices of children and young people to be heard in all aspects of decision-making.

As part of functions under the Act, the OCC team conduct regular informal monitoring visits to Don Dale Youth Detention Centre (DDYDC) and Alice Springs Youth Detention Centre (ASYDC). The purpose of these visits is to check on the wellbeing, health and safety of children and young people in custody and to hear from young people on any issues or concerns they may have. The voices of these children and young people are included in this submission, along with the voices of children who have participated in community-based consultations on topics including education and racism.

We acknowledge and honour the significant contribution that children and young people with lived and living experience make to meaningful policy and law reform. We recognise children and young people as experts in their own right. Their views, wishes and ideas must be considered and taken seriously by all adults and decision-makers as stipulated by the United Nations Convention on the Rights of the Child (UNCRC).⁴ In recognition of this, we recommend the Inquiry seek the assistance and input of children and young people to inform this important work by creating child friendly spaces and opportunities for them to contribute.

The Northern Territory context: the outcomes and impact of youth incarceration in jurisdictions across Australia and; the over-incarceration of First Nations children

The Northern Territory youth justice system has remained at crisis point, and at a cross road, for the best part of a decade. High remand populations, failure to identify and respond to unmet health, mental health and disability needs of incarcerated children and failing infrastructure has led to ongoing issues within youth justice facilities.

We have observed ongoing conflict within these facilities, disturbances and incidents such as property damage, assaults, self-harming and suicidal ideation, combined with staffing issues

⁴ Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

and the resultant use of lockdowns, all impacting the safety, mental health and wellbeing of incarcerated children.

Children with profound cognitive disabilities (diagnosed and undiagnosed) and poor mental health are falling through the gaps of an overburdened social service system and ending up in dilapidated custodial facilities ill equipped to support and address their health care needs.

“It’s like half the time we just exist” – young person who participated in community consultations with the OCC

Populist politics and tough on crime debates see children routinely used as footballs in political campaigns for advantage and point scoring, their rights impinged as part of the political discourse.

Youth justice, and policies that affect our most vulnerable children, must be separated from politics. Irrespective of which political party holds office, we must hold firm the expectation that the Government of the day make sound legal and policy decisions based on evidence, consistent with human rights and minimum standards and in compliance with international law. We must never lower our expectations for children – we must want them to thrive in life, be safe in their communities and be seen in the capacity of their full potential. At present in the Territory, the public narrative lies in the sentiment that some children are deserving of protection, care and support but not those who are most at risk of contact with the youth justice system. Proposed reforms to laws and policies that impact often the vulnerable and marginalised children are reflective of this.

“People hear bad stuff about young people but not good stuff” – child who participated in community consultations with the OCC

Youth justice, ‘youth crime’, anti-social behaviour amongst children and young people are arguably the most popular social and political topics in the NT, with Aboriginal children and communities centred most prominently in stereotypical and derogatory narratives linked to youth crime. Children and young people are often the ‘hottest’ news topic, both in mainstream media and in social media commentary online. Children tell us that they are acutely aware of the public narrative around them, and that this makes them feel shame, humiliation and sadness with many feeling unwelcome and unwanted in their own communities.⁵

“Sponge, they suck up everything around them – how their household, school, how they are treated” – child who participated in community consultations with the OCC

The rights and interests of children and young people are consistently positioned against those of the broader NT community in public commentary. This sends a message to Territory children that they are not valued, that their rights do not matter and that they should be seen but not heard. It also sends a message to the broader community that certain categories of children should be feared and treated differently particularly children engaging in ‘anti-social’

⁵ Office of the Children’s Commissioner Northern Territory, [*“Its up to everyone to call it out” children and young people’s experiences of racism in the Northern Territory*](#), (2024).

behaviours that are often linked to disadvantage, poverty and trauma. The public narrative about children and young people undermines or impedes opportunities to assist and support vulnerable children earlier in ways that can address risk and need and in turn contribute to safer communities.

“When I was little I was scared, I didn’t know what to think or what to do and it made me worry all the time. I got into trouble a lot because I was silly making bad decisions” – child in youth detention

The recently appointed Territory Government has promised to lower the age of criminal responsibility to 10 years from 12, and has publically spoken about their plans to re-introduce the use of spit hoods on children.⁶⁷ These retrograde reforms are perhaps one of the most significant departures from evidenced based, humane and rights focused policies affecting children that we have ever seen in the Territory. Vulnerable children, who are often living with a disability and experiencing chronic social and economic disadvantage, will continue to bear the consequences.

“They need to have better welfare workers..they need to train them better” – child in youth detention

As the only Australian jurisdiction that has had a Royal Commission that examined in significant depth the mistreatment of children involved in both the Territory’s youth justice and child protection systems,⁸ it is reasonable to expect that the NT would have progressed meaningful reforms that promote, safeguard and protect the rights of children.

The Territory led as the first jurisdiction in Australia to raise the minimum age of criminal responsibility to 12, in line with efforts to expand the use of community led diversionary and restorative justice alternatives to keep children in the community. Just over 12 months later, we are set to roll back these reforms and re-introduce draconian laws that will see more young and vulnerable children being excluded from earlier supports and services in favour of more punitive responses focused on control, containment and punishment.

Enshrining and protecting the rights of children in both laws and policies should not be dependent on election cycles. In the Territory, election cycles undermine the rights of children and; sustainable policy, and law reform that meaningfully addresses the wellbeing of vulnerable children, young people and families. An authorising environment must be established at a Commonwealth level that embeds protections and safeguards for the human rights of Australia’s children and young people. The OCC proposes this can be achieved by

⁶ ABC News, *NT chief minister says government has ‘mandate’ to lower the age of criminal responsibility, despite Productivity Commission warning*, article accessed via [webpage](#) and ABC News, *NT Opposition Leader Lia Finocchiaro ‘absolutely supportive’ of reinstating spit hoods in youth detention centres*, accessed via [webpage](#).

⁷ Country Liberal Party, *The new CLP TEAM: Our Plan*, accessed via [webpage](#) October 2024 and Country Liberal Party, *Territorians Do Not Trust Labor to Reduce Crime*, accessed via [webpage](#) dated 13 May 2024.

⁸ Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, [Volumes 1-4](#), November 2017.

implementing Commonwealth legislation that embeds and operationalises the UNCRC through a National Children’s Act as well as a federal Human Rights Act.

“There needs to be more programs on the outside for kids” – child in youth detention

It is often vulnerable and marginalised children who are most impacted by human rights violations in this jurisdiction; those most affected by harmful, detrimental law and policy that undermines their rights, best interests, and wellbeing in childhood. In recognition that at least 92% of children under youth justice supervision in the Territory identify as Aboriginal,^{9,10} systemic racism in both policy and law reform must be acknowledged as a central feature in driving the overrepresentation of Aboriginal children in the youth justice system.^{11,12} Racism remains a crucial yet unrecognised factor that contributes to both the apprehension and re-apprehension of Aboriginal children and young people.¹³

In a jurisdiction where 100% of children in detention are routinely Aboriginal children, and in line with well-established evidence, it is safe to conclude that the lowering of the age of criminal responsibility will only serve to increase the number of Aboriginal children and young people in the NT’s youth justice system.^{14,15} This reform will not make our community safer and as demonstrated in well-documented research, will only create a higher risk for ongoing, serious offending by children and young people.¹⁶ Lowering the age of criminal responsibility sets not only vulnerable children up to fail, but fails to increase safety for our communities.

“(They need) someone to be there for them” – child who participated in community consultations with the OCC

There is a strong association between child protection and youth offending, with research suggesting a clear trajectory between child protection service engagement and entry into the justice system.¹⁷ In the Northern Territory, 69% of children subject to youth justice supervision in 2020-21 had an interaction with the child protection system in the preceding 5 years.¹⁸ Research conducted for the Royal Commission found that the level of offending increased as the level of involvement with the child protection system increased.¹⁹ Research

⁹ While this submission uses the term ‘Aboriginal’, we respectfully acknowledge that Torres Strait Islander people are First Nations people living in the Northern Territory. The use of the term ‘Aboriginal’ should be read to include ‘Aboriginal and Torres Strait Islander’ peoples. Indigenous is used when it is the title of a report, quotation or program.

¹⁰ Australian Institute of Health and Welfare, [Youth justice in Australia 2022-23 Northern Territory](#) (March 2024).

¹¹ Australian Institute of Health and Welfare, [Aboriginal and Torres Strait Islander Health Performance Framework: 2.11 contact with the criminal justice system](#).

¹² Yoorrook Justice Commission, [Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems](#), (2023).

¹³ Queensland Child and Family Commission, *Exiting youth detention report*, (2024).

¹⁴ Yoorrook Justice Commission, [Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems](#), (2023).

¹⁵ Australian Institute of Health and Welfare, *Youth justice in Australia 2022-23*, (March 2024).

¹⁶ Sentencing Advisory Council of Victoria, [Re-offending by children and young people in Victoria](#), (2016).

¹⁷ Royal Commission into the Protection and Detention of Children in the Northern Territory, Final report Volume 3B Chapter 35, (2017).

¹⁸ *ibid.*

¹⁹ *ibid.*

also demonstrates increased likelihood of children with child protection history receiving the most severe sentence types, including detention.²⁰

Screening and assessments are critical to achieving an understanding of individual needs across both the child protection and youth justice systems.²¹ The failure to appropriately identify and respond to health, disability and trauma needs can lead to children becoming entrenched in the youth justice system and may result in their engagement in more serious and violent offending.²²

Contact with the youth justice system is often the result of a failed service system that is not meeting the needs of our most vulnerable children and families. We must focus on supporting children and young people to remain connected to positive supports, including education, health, community and culture through community led alternatives with a trauma informed focus. We must tackle the root causes of crime by addressing chronic health, social and economic disadvantage that many children face through the provision of safe and affordable housing, delivering evidence-based responses to domestic, family and sexual violence and addressing cost of living stress for families.

“Sport helps me stay out of trouble” – child who participated in community consultations with the OCC

This week, the OCC will publish a report reflecting on the characteristics and experiences of children aged 10 to 13 years who were incarcerated in Territory youth detention centres. We undertook an analysis of custodial, child protection, health and education data for 17 children (aged 10-13 at the time of detention) to identify common factors including adverse childhood experiences amongst this cohort.²³ This analysis included identifying prior involvement with child protection, exposure to family violence and trauma histories, health and disability status and educational engagement.

“Owning my own house and having my own car. Being my own boss. Having independence” – child who participated in community consultations with the OCC

All 17 children had been exposed to multiple adverse childhood experiences.

This data provides a keen insight into the interrelated challenges and adversity each child was experiencing prior to their entry into custody:

Child protection

- 100% of children had child protection involvement through notifications of alleged harm.

²⁰ Sentencing Advisory Council, ‘Crossover Kids’: Vulnerable Children in the Youth Justice System, (2019).

²¹ Royal Commission into the Protection and Detention of Children in the Northern Territory, Final report Volume 3B Chapter 35, (2017).

²² Sentencing Advisory Council, ‘Crossover Kids’: Vulnerable Children in the Youth Justice System (2019), 77 and Australian Institute of Criminology, Adverse childhood experiences and trauma among young people in the youth justice system, (2022).

²³ Office of the Children’s Commissioner Northern Territory, *Our most vulnerable children bearing the consequences of a failed system*, (2024).

- 94% children had reported notifications of exposure to domestic and/or family violence.

Health and disability

- 77% of children had mental health needs or cognitive disability:
 - 59% of children had a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD)
 - 18% of children had a diagnosis of Oppositional Defiant Disorder (ODD)
 - 12% of children had a diagnosis of Foetal Alcohol Spectrum Disorder (FASD)
 - 5% of children were assessed to have an intellectual disability
- 47% of children had multiple diagnosis of cognitive disabilities.

“I was going to school...mentors would come pick me up and take me out to do stuff” – child in youth detention

Education

- School attendance rates dropped off substantially in the later primary years with particularly poor attendance by grade 6.

Recidivism

- 16 out of 17 children had multiple admissions to detention in 2022/23.
- 3 children went on to have in excess of 20 admissions to detention in 2023/24.
 - All 3 of these children had diagnosed disabilities.

“Adults just don’t realise that we are just products of the system, no one actually wants to help us. They just lock us up instead. They don’t know what life is actually like for us” – child in youth detention

The Territory’s poor progress towards Closing the Gap in reducing the overrepresentation of Aboriginal children in contact with the youth justice system further evidences failed commitment to protecting the rights and best interests of young Aboriginal children.²⁴

“It always feels like because we’re young, we know less. But we already know a lot about racism” – young person who participated in community consultations with the OCC

²⁴ Australian Productivity Commission, [Closing the Gap targets and outcomes](#), (2024).

Recommendations

- The Australian Government establish a National Taskforce for reform of child justice systems.²⁵
- The Australian Government appoint a Cabinet Minister for Children.²⁶
- The Australian Government establish a Ministerial Council for Wellbeing.²⁷
- The Australian Government establish child rights impact assessments for use on all existing and proposed laws and policies that affect children.²⁸

Australia's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights

Australia ratified the United Nations Convention on the Rights of the Children (UNCRC) in 1990.²⁹ Despite making continued commitments to abide by international law, unlike our progressive international counterparts, no tangible action has been taken to operationalise the UNCRC into domestic law in Australia.³⁰

“Them young ones are annoying but they should put them with the champions (centre cycle) to teach them good stuff. They get crazy, scared and worried and do silly things. I know cause that’s what I did” – child in youth detention

Whilst ratification is important, unless clear and meaningful action is taken to make these mechanisms enforceable across Australia, including in all States and Territories, it becomes tokenistic and renders rights meaningless with no recourse for Government’s lack of compliance with international law. This is further compounded in the NT given the absence of a Human Rights Act that would protect the rights of all Territorians, particularly individuals from marginalised and vulnerable communities.

²⁵ Australian Human Rights Commission, *Help Way Earlier: how Australia can transform child justice to improve safety and wellbeing*, 2024, Sydney: Australian Human Rights Commission.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

³⁰ Australian Human Rights Commission, *Help Way Earlier: how Australia can transform child justice to improve safety and wellbeing*, 2024 pg 29-31, Sydney: Australian Human Rights Commission.

“For my family, cause of DV, drinking, nowhere safe to go so you break into homes, that’s what I did” – child in youth detention

Australia has drawn ongoing criticism from the United Nations for our failed compliance with both the UNCRC and our failure to raise the age of legal responsibility from 10 to 14 years in line with well-established international law. In addition to criticism from the UN Committee on the Rights of the Child in 2019,³¹ at the 2021 Universal Periodic Review, 122 countries criticised Australia for our failure to protect the rights of vulnerable children through our regressive age of criminal responsibility.³²

“The younger ones need to be told by the older ones to stop coming in here” – child in youth detention

Under the UNCRC, Australia is required to undertake ‘all appropriate legislative, administrative and other measures for the implementation of child rights’.³³

The rights of children must be respected and protected. This can be achieved through operationalising the UNCRC into domestic law and mandating child’s rights impact assessments for both current and proposed law and policy reforms.

Australia is required under international law to comply with a number of key child rights principles, standards and rules developed by the United Nations in addition to the UNCRC, including:

- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)³⁴
- The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)³⁵
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing rules)³⁶
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)³⁷
- The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)³⁸

³¹ Committee on the Rights of the Child, Concluding Observations on the combined fifth and sixth periodic reports of Australia, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019).

³² Human Rights Law Centre, *Major UN human rights review highlights need for Australia to raise the age of criminal responsibility*, published 20 January 2021, accessed via [webpage](#).

³³ Article 4, Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

³⁴ United Nations Declaration on the Rights of Indigenous Peoples, accessed via [webpage](#) October 2024, (entered into force 3 September 2007).

³⁵ Australian Human Rights Commission, Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, accessed via [webpage](#) October 2024.

³⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice accessed via [webpage](#) October 2024.

³⁷ United Nations Rules for the Protection of Juveniles Deprived of their Liberty accessed via [webpage](#) October 2024.

³⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners accessed via [webpage](#) October 2024.

- The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)³⁹

It is imperative that the UNCRC, UNDRIP and complimentary international standards and rules are given prominence within domestic law and policies. Only then will they have impact and meaning in safeguarding and protecting the rights of children and young people in contact with the youth justice system.

The OCC observes that the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022* was passed in October 2022.⁴⁰ Despite being identified as the NT National Preventative Mechanism (NPM) for children, no additional resources have been identified for the OCC to fulfil this important prevention, monitoring and oversight function. OPCAT legislation continues to sit idle in the NT. The further evidences failed commitment to preventing abuse, mistreatment and harm of children in places of detention.

“Someone safe they can ask for help” – child who participated in community consultations with the OCC

“YOREOs only get involved after you get in trouble. There’s not really programs that try and help beforehand” – child who participated in community consultations with the OCC

Recommendations

- The Australian Government establish a National Children’s Act that incorporates the UNCRC.⁴¹
- The Australian Government establish a federal Human Rights Act that incorporates the UNDRIP and the Beijing, Havana and Nelson Mandela Rules.
- The Northern Territory Government establish a Human Rights Act as a matter of priority.

³⁹ United Nations Guidelines for the Prevention of Juvenile Delinquency accessed via [webpage](#) October 2024.

⁴⁰ Australian Human Rights Commission, [Road Map to OPCAT Compliance](#), (2022).

⁴¹ Australian Human Rights Commission, *Help Way Earlier: how Australia can transform child justice to improve safety and wellbeing*, (2024) Sydney: Australian Human Rights Commission.

The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

The OCC supports the need for enforceable national minimum standards for youth justice (national minimum standards), consistent with our international obligations. National minimum standards create opportunity for international law to be directly operationalised in policy and practice.

“Some of the kids in (redacted) I hang out with, get caught up in stealing and run amok. If there were more programs or something to stop them” – child who participated in community consultations with the OCC

As part of our functions under the Act, the OCC Monitoring and Investigations team conduct both formal and informal monitoring visits at both DDYDC and ASYDC. In 2023-24, the OCC conducted a total of 30 informal monitoring visits:

- 4 visits were undertaken to ASYDC
- 26 visits were undertaken to DDYDC

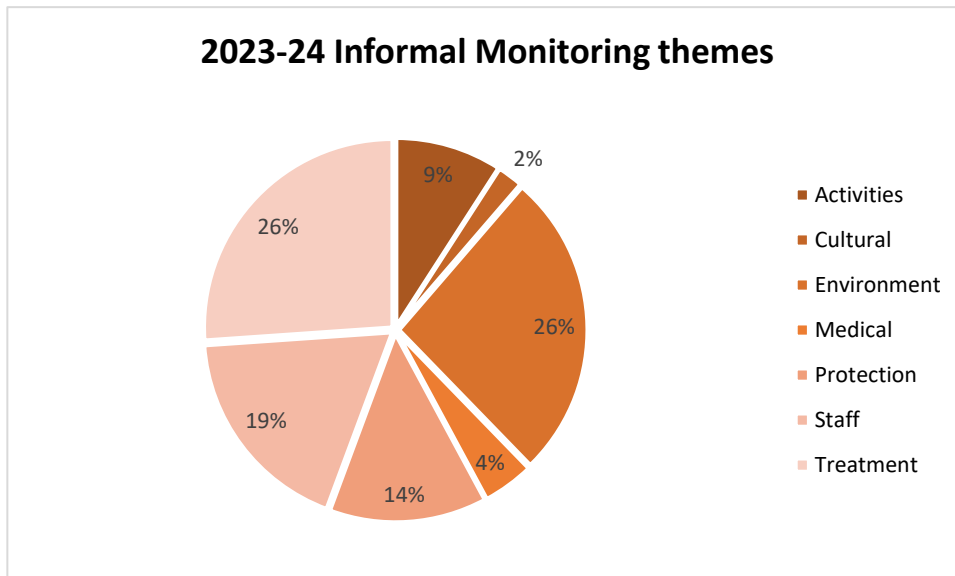
The OCC notes that for the majority of the 2023-24 period, ASYDC was non-operational whilst undergoing refurbishment and young people from Central Australia were transferred to DDYDC during this time. On average, OCC staff attended DDYDC fortnightly during 2023-24.

“There are only programs that are there to ‘improve’, but I never see the programs actually help with substance abuse or anything serious. Never actually addresses the problems” – child who participated in community consultations with the OCC

Following completion of refurbishment works, Central Australian young people were transferred back to ASYDC in May 2024. The OCC has undertaken 4 informal monitoring visits of the ASYDC since the facility re-opened.

Children and young people in detention raised concerns with the OCC on **318** individual issues during our informal monitoring visits in 2023-24. Key themes in the concerns raised by children and young people were:

- 26% related to the living environment in youth detention
- 26% related to treatment in youth detention
- 19% related to staff working in youth detention
- 14% related to protection
- 9% related to activities and contact with others in youth detention
- 4% related to medical services in youth detention
- 2% related to culturally appropriate and responsive service delivery in youth detention



As monitors of the NT’s youth detention centres, we advocate the need for national minimum standards to establish clear benchmarks and indicators that should be expected, respected, measured and achieved for incarcerated children. The OCC supports the standards developed by the [Australian Capital Territory Inspector of Correctional Services](#)⁴² and suggests these standards could form the starting point for drafting of national minimum standards.

“The problem lies in that people don’t know how to go ask for those services – worried about looking weak and small. It’s all about ego and self-esteem. It’s about reputation” – child who participated in community consultations with the OCC

The use of separation practices in youth detention

Incarcerated children and young people in the NT regularly raise the use of separation practices with the OCC during informal monitoring visits. National minimum standards would allow for greater safeguarding and protections for vulnerable children who are subject to the use of these opaque practices.

Sometimes separation practices are also referred to as ‘isolation’ – these terms are interchangeable as they mean children and young people are locked in their cell on their own. Children and young people are also under a form of separation when they are classified as being ‘at risk’ of suicide or self-harm. Separation practices can be harmful and the deleterious impact of their use on children is well established.⁴³

⁴² Australian Capital Territory Inspector of Correctional Services, [ACT Standards for Youth Detention Places](#), April 2024.

⁴³ United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party](#), published December 2023.

It's really stressful to have to talk about problems at home. It's hard because your family are good and bad and it's hard to leave them" – child who participated in community consultations with the OCC

Rolling lockdowns are another type of separation practice in the NT. They are the practice of locking children in their cell so other young people held in the other wings of the accommodation unit can be unlocked for out of cell time. Rolling lockdowns often occur because there is not enough staff working in youth detention. The OCC have ongoing concerns about rolling lockdowns as they mean that young people are locked in their cells alone, sometimes for long periods of time, without access to fresh air or meaningful engagement. Children and young people tell us that lockdowns make them feel frustrated, and are not conducive to positive mental health. When they do have out of cell time, children and young people told us that they spend a lot of time on their allocated accommodation block, and do not spend much time in recreation spaces or classrooms.

A notification must be provided to the Children's Commissioner when a separation occurs in a youth detention centre, including brief details regarding what happened. No such notifications are required to be provided to the OCC when a child is placed At Risk, or when lockdowns occur in youth detention centres.

In 2023-24, the OCC were notified of:

- 217 instances of the use separation on children
- 58 children separated

"They need to support the parents more, give them vouchers for food and clothes for kids" – child in youth detention

In 2023-24, the OCC observed the increase of separations⁴⁴ when managing incidents at DDYDC. The OCC acknowledges that during this period the additional pressures of transferred young people, staffing capacity and change in environment may have impacted the youth detention environment. However, the OCC continue to have concerns relating to this practice because separations cannot be considered alone, as they often occur in a broader context of lockdowns, use of force incidents and At Risk placements.

"Most kids who are in care, their foster family is, bad. Not all - some are good. Some of the foster parents do drugs are alcoholic, abuse the kids and are not fit to be carers. Some kids who are in foster care, they don't bother coming to school, they become like their foster parents" – child who participated in community consultations with the OCC

The Children's Commissioner joined with State and Territory counterparts in the Australian and New Zealand Children's Commissioners, Guardians and Advocates (ANZCCGA) group to release a joint statement on the use of isolation in youth detention facilities.⁴⁵ ANZCCGA call for an end to the harmful practice of isolating children and young people in youth detention. The use of isolation practices on children should be prohibited, except when necessary to

⁴⁴ Office of the Children's Commissioner, *Annual Report 2021-2022, (2022)*, pg 71 – noting increase from 204 separations recorded for 72 separate children in 2021-22 to 217 for 58 children in 2023-24.

⁴⁵ Australian and New Zealand Children's Commissioners, Guardians and Advocates, [ANZCCGA Joint Statement on Isolation in Youth Detention](#), published 21 February 2024.

prevent an imminent and serious threat of injury to the child or others, and only when all other alternatives have been exhausted. Where isolation is used, it must be for the shortest amount of time possible and be publicly reported to an independent oversight mechanism.

“We were homeless. I come to school so I don’t become a lowlife. I want to have a nice future. We were homeless for 11 months” – child who participated in community consultations with the OCC

The OCC emphasises the absence of clear national counting rules for out of cell/out of room time for incarcerated children and young people. We advocate the need for national counting rules to be established and reported on as part of the Productivity Commission’s Report on Government services (RoGs) data capture. This is crucial in ensuring transparency and accountability in places of detention where incarcerated children are detained. Active implementation and resourcing of OPCAT goes hand in hand with this.

As outlined by ANZCCGA in their joint statement, minimum standards should address the minimum amount of time children and young people must spend out of their cells with access to meaningful human contact, regardless of the reasons for the isolation⁴⁶ – both on a single day and over longer periods. The relevant measures should be based on nationally consistent definitions and reporting mechanisms, to improve transparency and independent oversight bodies’ access to the full and accurate information required to monitor children and young people’s rights in detention.⁴⁷

The OCC supports the recommendation from the National Children’s Commissioner on the need for Australian Governments to prohibit solitary confinement practices in places of detention for children and young people.⁴⁸

Recommendations

- **The Australian Government establish enforceable national minimum standards for youth justice (national minimum standards), consistent with international law obligations.**

⁴⁶ The word isolation can be used interchangeably with separation, confinement, night mode, controlled cell occupancy, segregation, ‘at-risk’ or during periods of lockdown. The term isolation is used to capture all circumstances.

⁴⁷ Australian and New Zealand Children’s Commissioners, Guardians and Advocates, [ANZCCGA Joint Statement on Isolation in Youth Detention](#), published 21 February 2024.

⁴⁸ Australian Human Rights Commission, *Help Way Earlier: how Australia can transform child justice to improve safety and wellbeing pg 91*, 2024, Sydney: Australian Human Rights Commission.

- **Australian Governments legislate to prohibit solitary confinement practices in child detention facilities and prohibit the use of isolation as punishment in any circumstance.⁴⁹**
- **The Australian Government fully implement and resource OPCAT NPMs in each State and Territory.**
- **The Australian Government establish clear counting rules for out of cell/room time for children in youth detention settings. This data should be captured by all States and Territories and reported on as part of RoGs.**

The OCC welcomes the opportunity to make this submission and would further welcome the opportunity to appear in person/online at public hearings associated with this Inquiry. For further information about this submission, please contact Elle Jackson, Community Engagement and Communications Officer, on 08 8999 6080 or at elle.jackson@nt.gov.au. Yours sincerely,



Shahleena Musk
Children's Commissioner
10 October 2024

⁴⁹ Australian Human Rights Commission , *Help Way Earlier: how Australia can transform child justice to improve safety and wellbeing*, 2024, Sydney: Australian Human Rights Commission