

Questions taken on notice

Senate Legal and Constitutional Affairs References Committee Inquiry into Australia's youth justice and incarceration system

Answer to question taken on notice

Asked by: Senator POCOCK

Addressed to: Ms Vanessa TURNBULL-ROBERTS, ACT Aboriginal and Torres Strait Islander
Children and Young People Commissioner

Question:

Commissioner Turnbull-Roberts, in the interest of time I might ask you a separate question that's related. In your submission you say: 'Tragically in the ACT there is a direct pipeline from child protection to Bimberi to adult prison.' This seems to indicate a pretty appalling failure of programs that actually work with young people to divert them and keep them out of detention. Can you comment on this? What needs to change and why aren't we seeing this, given that people in the ACT, I'd say, probably want to see this from their leadership in government.

Ms Vanessa TURNBULL-ROBERTS: The answer to the Senator's question is as follows:

Ms Turnbull-Roberts provided a video response to this question. Following earlier technical submission challenges, final lodgement with the Committee Secretariat occurred on 14 February 2025.

A link to this response is also provided below:

<https://vimeo.com/1056625531/78d433cd39?share=copy>

Questions taken on notice

Senate Legal and Constitutional Affairs References Committee Inquiry into Australia's youth justice and incarceration system

Answer to question taken on notice

Asked by: Senator GREEN

Addressed to: All ANZCCGA representatives

Question:

Jointly or separately, to finish at a place where we can start with other witnesses, what are the key priorities for the Australian and New Zealand Children's Commissioners, Guardians and Advocates right now in terms of immediate policy requests or reforms?

ANZCCGA: The answer to the Senator's question is as follows:

Right now, the ANZCCGA's top priority request is for the Commonwealth to unequivocally demonstrate its commitment to children's rights by embedding the United Nations Convention on the Rights of the Child (UNCRC) into domestic law, as called for in part 7 of the UNCRC's Committee on the Rights of the Child's Concluding Observations of 2019.¹

Protecting and promoting the rights, safety, and wellbeing of Australian and New Zealand children and young people is a core priority underpinning the individual and collective work of all ANZCCGA members.

In accordance with this, we have long advocated for reforms to improve preventative and early intervention responses for children and young people who are at risk of coming into contact with the youth justice system (and their families), as well as improvements to the conditions within state and territory youth detention centres.

In various submissions and statements over the years, ANZCCGA members have jointly and collectively identified a range of actions that could be taken at state/territory and federal levels to better respond to the root causes and downstream impacts for children and young people whose condition and/or situation makes them vulnerable to youth justice system involvement, notably by prioritising responses that appropriately recognise and support them within the context of their families and communities.

¹ United Nations Convention on the Rights of the Child's Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Australia CRC/C/AUS/CO/5-6. Online at [UNCRC-Committee-Concluding-Observations-CRC/C/AUS/CO/5-6](https://www.unhcr.org/refugees/149484141)

In support of our advocacy in respect of youth justice matters, some specific actions that we have taken collectively over the years include:

- In November 2017, the then Australian Children's Commissioners and Guardians (ACCG) developed a comprehensive Statement on Conditions and Treatment in Youth Justice Detention, which was endorsed in November 2017. *(Note: copy attached)*
- In September 2019, the then Australian and New Zealand Children's Commissioners and Guardians (ANZCCG) wrote to the Australian and New Zealand Attorneys-General calling for both of these Commonwealth jurisdictions to raise the minimum age of criminal responsibility (MACR) to 14 years.
- In November 2019, the then ANZCCG issued two media releases – one calling for the Council of Attorneys-General to recognise and respond to the root cause drivers behind involvement in youth justice alongside raising the MACR; and the other commending the vision for change of then 12-year-old Djujan from the Northern Territory who appeared before the United Nations Committee on the Rights of the Child to speak up about the challenges for Aboriginal children in Australia.²
- In February 2020, the then ANZCCG wrote to the Council of Attorneys-General – Age of Criminal Responsibility Working Group Review commending their consideration of raising the MACR in Australia.
- In November 2021, the then ANZCCG issued a media statement commenting on the Attorneys-General not having gone far enough in respect of making commitments and pursuing progress toward raising the MACR.
- In March 2022, ANZCCGA members wrote to state and territory Attorneys-General and relevant Ministers calling for a ban on the use of spit hoods and mechanical restraint chairs on children.
- In November 2023, ANZCCGA members raised concerns about the lack of consultation by the Australasian Youth Justice Administrators in revising the Juvenile Justice Standards (the Standards) in Australia, which were launched on 16 October 2023. The ANZCCG noted at that time that initial reviews of the Standards by some of our jurisdictional offices identified numerous issues with the document, including ambiguities, inconsistencies, and misalignment with international best practice.
- In February 2024, the ANZCCGA issued a Joint Statement on Isolation in Youth Detention calling for an end to the harmful practice of isolating children and young people in youth detention. *(Note: copy attached)*

² [The speech 12-year-old Aboriginal child, Djujan, delivered at the UN Human Rights Council | HRLC](#)

The ANZCCGA also has an agreed list of 11 priorities that were first ratified in April 2023. At the ANZCCGA meeting on 12 February 2025, ANZCCGA members reaffirmed their commitment to these priorities, albeit while agreeing that they would be updated this year.

The ANZCCGA priorities are provided as an attachment to this response, noting that while these centre on Aboriginal and Torres Strait Islander children and young people (given their disproportionate representation in systems like child protection and youth justice), this has been done with deliberate recognition that if we get things right for Aboriginal and Torres Strait Islander children and young people, we get things right for all children and young people.

(Note: Should the Committee be interested in receiving copies of the other ANZCCGA documents listed on the previous page, we would be pleased to provide them.)

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Senate Legal and Constitutional Affairs References Committee Inquiry into Australia's youth justice and incarceration system

Answer to question taken on notice

Asked by: CHAIR

Addressed to: All ANZCCGA representatives

Question:

I'm going to give each of you an open opportunity to respond to the Attorney-General's Department's submission. If you could review that submission and provide your thoughts, reflections and any commentary in relation to that submission please.

ANZCCGA: The answer to the Chair's question is as follows:

The Attorney-General's Department (AGD) submission serves to highlight opportunities for the Commonwealth Government to demonstrate strengthened leadership in respect of whole-of-system prevention and early intervention responses and promoting consistent protections for the rights of children and young people in contact with youth justice and other systems that provide for their safety and wellbeing.

The Commonwealth's role and responsibilities need to be understood differently. It is not about the Commonwealth's involvement in 'youth justice' or managing state/territory-based youth justice systems. The focus should be on the Commonwealth's responsibility to ensure that these systems do not violate the human rights of children by ensuring that these systems operate in line with international law and uphold Australia's obligations.

As duty bearer, the Commonwealth must set the standard through demonstrable efforts to assert and meet obligations, including by intervening when jurisdictions implement laws and policies that flagrantly violate children's rights and undermine efforts to achieve outcomes. Protecting and promoting children's rights, including those interacting with youth justice systems, is a primary responsibility of the Commonwealth. When governments at any level fail to act on known abuse or neglect, including by implementing necessary reforms, they become complicit in the perpetration of torture and cruel treatment.

As a signatory to the United Nations Convention on the Rights of the Child (UNCRC), Australia is required to undertake all appropriate legislative, administrative and other measures for the implementation of child rights. There is a glaring gap in the AGD submission in terms of the weight and treatment given to Australia's obligations under the UNCRC.

The UNCRC clearly articulates the roles and responsibilities of the Australian Government concerning children and young people in conflict with the law and the last concluding observations³ make this point clear, emphasising the need for national child rights legislation as a core tool to regulate systems like youth justice, which significantly impact the lives of children and young people. Such legislation would seek to ensure that systems operate in ways that do not violate children's rights and provide legal recourse should a violation occur.

While the AGD submission briefly notes Australia's obligations under the UNCRC and other international treaties, it fails to detail how the Commonwealth is upholding its responsibilities in respect of youth justice as well as those systems that respond to root cause issues underpinning offending behaviours (e.g., health, education, and disability services).

The AGD submission also fails to identify where the Commonwealth has a lead role in respect of these underlying drivers, for example under the National Agreement on Closing the Gap or the Safe and Supported framework. Further, despite mentioning the involvement of the Justice Policy Partnership (JPP) in various activities, it notes that the JPP is only now finalising its Implementation Roadmap despite this partnership having been established in 2021 and the Strategic Framework having been agreed in 2023.

There is also limited or no information in the AGD submission that speaks specifically to the Commonwealth's responsibilities in respect of national strategies that directly contribute to reducing and preventing children and young people's involvement with youth justice, such as:

- National Plan to Reduce Violence Against Women and Children
- National Children's Mental Health and Wellbeing Strategy
- 10-year Early Years Strategy
- National Housing and Homelessness Plan
- National Aboriginal and Torres Strait Islander Education Strategy
- The National Aboriginal and Torres Strait Islander Health Plan

There is also inadequate commentary on the Commonwealth's role in respect of:

- enforcing the National Principles for Child Safe Organisations, in response to the Royal Commission into Institutional Responses to Child Sexual Abuse
- implementing recommendations from the Disability Royal Commission
- requiring action from states and territories to meet the objectives of the 'MACR principle-based framework' from the SCAG working group.

³ United Nations Convention on the Rights of the Child's Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Australia CRC/C/AUS/CO/5-6. Online at [UNCRC-Committee-Concluding-Observations-CRC/C/AUS/CO/5-6](https://www.unhcr.org/refugees/35962393)

The AGD submission also fails to reflect on evidence from Australian Institute of Criminology youth justice studies – specifically the impact of Adverse Childhood Experiences (ACEs), the link between child protection and youth justice and the inadequacy of responses for children and young people involved with these systems (especially Aboriginal and Torres Strait Islander children and young people), and the importance of recidivism monitoring.

These gaps and omissions leave the ANZCCGA questioning whether the Commonwealth is receiving adequate and accurate information about its obligations and the extent to which it is achieving progress toward same. Additionally, it is unclear whether it is understood that being a signatory to various National Frameworks, Agreements, Strategies, and Plans does not replace or diminish the Commonwealth's primary obligations under the UNCRC.

To effect true systems change will require a strong child rights foundation and a deep understanding of, and commitment to acting on, the evidence. It will also require the involvement of, and genuine collaboration between, all systems (both direct and indirect) in developing, ratifying, and implementing the frameworks and strategies that seek to respond to known drivers of downstream youth justice system involvement.

ANZCCGA members remain unified in calling for Commonwealth, state and territory governments to heed the evidence and take immediate steps to legislate for an increase in the minimum age of criminal responsibility in all jurisdictions to 14 years (without exception) and to move from a criminal justice response for children under 14 years to a developmentally appropriate, trauma-informed, and culturally safe early intervention model that supports children and young people in their families and communities.

In support of this, we draw the Committee's attention to the detailed evidence in the National Children's Commissioner's *"Help way earlier!"*⁴ report, as well as the collective and individual submissions made by ANZCCGA members to this current Inquiry. We also commend the joint submission from Save the Children and 54 Reasons in which they have laid out a compelling argument for a 10-year national youth justice strategy accompanied by appropriate policy commitments, investments, and action plans/oversight.

The Commonwealth has a duty of care and powers that allow for a more proactive response. Section 51(xxix) of the Constitution allows the Commonwealth to legislate on matters relating to international treaties, including children's rights. Further, the Commonwealth provides funding to states and territories for the operation of their youth justice systems, which (as is the case in systems like health and education) can be tied to compliance with obligations established by the Commonwealth.

⁴ National Children's Commissioner (AHRC) 2024. "Help Way Earlier". Online at ['Help way earlier!': How Australia can transform child justice to improve safety and wellbeing!](#)

In accordance with the concluding observations of the United Nations Committee on the Rights of the Child in 2019,⁵ ANZCCGA members therefore call on the Commonwealth to take immediate steps to enact federal legislation that protects, promotes, and upholds our international obligations in respect of child rights, supported by an implementation plan with clear and explicit requirements for all jurisdictions and accountability mechanisms that ensure action.

Additionally, and more specifically in respect of youth justice, we recommend a 10-year national youth justice strategy inclusive of:

- **National minimum youth justice standards:** Establishing enforceable national minimum standards for all youth detention facilities, including that detention only be used as a last resort, to address the inconsistent and weak protections arising from states and territories operating under different policies.
- **Justice reinvestment:** Adopting a national policy commitment to justice reinvestment that centres on redirecting funding from punitive responses into community-based prevention and early intervention to better demonstrate leadership and responsibility under the UNCRC.
- **Full implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT):** Establishing a federal prohibition of all forms of cruel, inhuman or degrading treatment and, in support of ensuring appropriate accountability, properly resourcing an independent National Preventive Mechanism to enable monitoring of these systems and accessible complaints processes for incarcerated children and young people.

The following two quotes from young people help highlight the connection between the youth justice system and other systems in which the Commonwealth has 'skin in the game':

...Most kids that get locked up or in trouble, they're usually kids that have fallen through the cracks before...they've done crime and shit for a reason. – Stevie, 15 years old.⁶

If a 10-year-old's committing a crime, obviously there's something wrong at home. They're going to rebel against their parents, and then they're eventually going to rebel against the police. That's the way it works...at the end of the day, there's always something. – Joe, 18 years old.⁷

⁵ United Nations Convention on the Rights of the Child's Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Australia CRC/C/AUS/CO/5-6. Online at [UNCRC-Committee-Concluding-Observations-CRC/C/AUS/CO/5-6](#)

⁶ Commissioner for Children and Young People (Tas) 2024. "Kids that have fallen through the cracks". Online at [Voices-of-YP-in-YJ-Project-Kids-that-have-fallen-through-the-cracks.pdf](#)

⁷ Ibid

In support of Stevie and Joe, and all of the many children and young people who need us to hear their voices and improve their futures, we call upon the Australian Government to bring the issue of youth justice and incarceration to the attention of National Cabinet in a manner that focuses attention on upstream preventative and diversionary responses centred first and foremost on enhanced support that takes a whole-of-system approach to improving outcomes for children and young people within the context of their families and communities.

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Answer to question taken on notice

Asked by: CHAIR

Addressed to: All ANZCCGA representatives

Question:

The Law Council of Australia, in their submission, talk about, to use their phrase, 'the responsibility dilemma' in terms of international human rights where you have a federal system—so the federal government enters into the human rights treaty, but then you have a state which is actually legally responsible for some of the issues which are covered by the treaty—and how that all works in practice. I'm very interested in your thoughts and reflections in relation to the commentary in the Law Council of Australia's submission in section D.

ANZCCGA: The answer to the Chair's question is as follows:

As outlined in detail in the ANZCCGA response to the previous question, the Commonwealth Government has a duty of care to ensure that all governments in Australia meet our international human rights obligations, including those under the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the United Nations Convention on the Rights of the Child (UNCRC).

While states and territories are often individually called out by Committees, and from an international perspective are viewed, as having a shared responsibility for upholding human rights obligations, there is currently a lack of state/territory-level accountability (despite some jurisdictions having legislated for human rights).

The Australian Government is a party to the Vienna Convention on the Law of Treaties.⁸ This treaty establishes that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (article 27) and “a treaty is binding upon each party in respect of its entire territory” (article 29). Therefore, the Australian Government can and should pass legislation implementing its international human rights obligations, including the UNCRC, into domestic law and establish appropriate mechanisms to ensure accountability.

⁸ Vienna Convention on the Law of Treaties 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. Online at [Vienna Convention on the Law of Treaties \(1969\)](#)

As a signatory to the UNCRC, Australia voluntarily carries “the burden of demonstrating that every effort has been made to use all its available resources to satisfy as a matter of priority the rights under the Convention”.⁹ In other words, and notwithstanding the division of responsibilities, Australia has agreed to be bound to take all appropriate steps (including legislative, administrative, and other measures) to ensure its compliance with the standards articulated under the UNCRC.

Importantly, and as recently articulated by the Tasmanian Commissioner for Children and Young People, *“It is a vital role of government to design, implement and resource policies, programs, services, and activities across the public health continuum to meet the inherent needs of children, parents and carers, and the communities that support them. The provision and resourcing of health services, education, disability services, child safety, justice services and others, reflect a complex intersection of federal and state responsibilities, where both levels of government have different, but sometimes overlapping, responsibilities.”*¹⁰

It should be noted that there are no provisions in the Commonwealth Constitution or any of the State Constitutions or the Territory self-government Acts that place youth justice only in the hands of the states or territories. Further, and as noted in the ANZCCGA response to the previous question, section 51(xxix) of the Constitution allows the Commonwealth to legislate on matters relating to international treaties, including children’s rights.

This was supported by a 2023 Constitutional Law Opinion provided to the ANZCCGA by the Australian Child Rights Taskforce in which it was stated that “the Australian Government has as much legislative power to regulate child rights as it wants to have. It could pass valid legislation implementing every single one of its international human rights obligations, including the entirety of the [United Nations] Convention on the Rights of the Child, into justiciable and enforceable domestic law.”

The UNCRC Committee’s concluding observations¹¹ provide a definitive reference point for the Commonwealth to understand what they CAN and should do, particularly when it comes to recognising their role and responsibilities for children and young people in conflict with the law and/or entangled within youth justice systems in any state or territory. The failure to respond and meaningfully act on the UNCRC Committee’s repeated recommendations has resulted in harm to many children and the degradation of Australia’s system of justice.

⁹ Tobin, John (ed.), *The UN Convention on the Rights of the Child: A Commentary*. Oxford Commentaries on International Law (2019), Oxford University Press), 111.

¹⁰ Commissioner for Children and Young People (Tas) 2024. “Kids that have fallen through the cracks”. Online at [Voices-of-YP-in-YJ-Project-Kids-that-have-fallen-through-the-cracks.pdf](#)

¹¹ United Nations Convention on the Rights of the Child’s Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Australia CRC/C/AUS/CO/5-6. Online at [UNCRC-Committee-Concluding-Observations-CRC/C/AUS/CO/5-6](#)

In seeking to uphold its international obligations, the Commonwealth CAN and should exercise leadership to regulate and reform youth justice systems especially in view of current practices whereby some states and territories are not only failing to meet UNCRC obligations and OPCAT standards (e.g., through the use of solitary confinement, excessive force, or inhumane conditions) but are actively legislating in ways that are counter to our international obligations.

Notwithstanding Australia's international law obligations, there are several other moral and pragmatic reasons for the Committee to recommend a child rights-based approach to youth justice:

- The failure, harm, and cost of punitive models for our children and young people
- It provides a long-term solution to more effectively address offending behaviours
- It is therefore more effective in reducing crime and increasing community safety
- A rights-based approach offers a comprehensive model and is more cost effective
- The ability of a rights-based approach to balance all interests
- A rights-based approach is 'common sense'.¹²

In summary, ANZCCGA members are not convinced that there is a true "dilemma". Indeed, the Inquiry provides a unique opportunity to provide greater clarity regarding the status of the UNCRC within Australia's domestic laws, the benefits that arise from a rights-based approach, and the leadership role of the Commonwealth in taking and ensuring accountability for meaningful action that ensures progressive compliance with our obligations under the UNCRC (and in doing so, meaningfully driving improved community safety across the country).

In accordance with this, ANZCCGA members call on the Commonwealth to intervene – at minimum, by legislating child rights protections and setting national minimum standards, with provisions that allow for the withholding of funding until compliance is met.

¹² Professor John Tobin, Online at [Submission 87](#).