



TASMANIAN ABORIGINAL  
LEGAL SERVICE

Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:  
Consultation on Australia’s youth justice and incarceration system  
October 2024

## Introduction:

The Tasmanian Aboriginal Legal Service (TALS) welcome the opportunity to provide feedback on the Consultation on Australia's youth justice and incarceration system.

TALS is a member-based, independent, not-for-profit community legal centre that specialises in the provision of criminal, civil and family law legal information, advice and representation for Aboriginal and Torres Strait Islander peoples across Tasmania. We also have a dedicated service, SiS, for victim/survivors of family violence and sexual abuse.

We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people.

TALS provides culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal Tasmanians. We understand that the most vulnerable people needing access to legal assistance are often also those who face the most difficulties asking for help, and we work hard to ensure everyone can access our services within and outside of traditional legal settings.

We also are an advocate for law reform and for justice, equality and human rights for all First Peoples in Tasmania. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

Response:

## A) The Outcomes and Impacts of Youth Incarceration in Jurisdictions Across Australia

Youth incarceration in Australia has profound and often detrimental consequences, particularly concerning mental health. Detained youths frequently experience elevated rates of psychological distress, trauma, depression, anxiety, and suicidal ideation. Alarmingly, Aboriginal and Torres Strait Islander young people are disproportionately represented in detention facilities, a situation rooted in a legacy of colonialism, systemic racism, and ongoing socio-economic disadvantages. As of 2022-23, the incarceration rate for Aboriginal and Torres Strait Islander youth stands at 29.8 per 10,000, significantly exceeding the target rate of 23.6 per 10,000.<sup>1</sup>

Research indicates that the criminal justice system exacerbates the over-incarceration of vulnerable groups, especially Aboriginal youth. An American study highlighted that "incarcerated and formerly incarcerated individuals face disproportionate morbidity and mortality compared with their non-justice-involved counterparts," compounding social vulnerabilities and hindering successful reintegration.<sup>2</sup> This evidence underscores the notion that over-incarceration perpetuates a cycle in which institutional environments fail to foster rehabilitation, ultimately deteriorating long-term outcomes for young people.<sup>3</sup>

The Victorian Sentencing Advisory Council identified that youths charged early in life are more likely to become repeat offenders, often leading to incarceration in adult facilities by their early 20s.<sup>4</sup> Such findings emphasise the self-perpetuating nature of youth involvement in the justice system and the detrimental effects of early institutionalisation on life trajectories.

Systemic racism within the Australian justice system further marginalises Aboriginal and Torres Strait Islander youth. Research reveals that "the large majority of prisoners in western democracies, including Australia, come from highly disadvantaged backgrounds," with race, class, disability, geography, and intergenerational inequality fuelling the hyper-criminalisation of these groups.<sup>5</sup> Consequently, incarceration often

---

<sup>1</sup> Australian Institute of Health and Welfare (AIHW) 2023, Youth detention population in Australia 2022-23, AIHW, Canberra, viewed 28 October 2024, <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2022-23>.

<sup>2</sup> Heller, M. E., et al. (2021). Incarceration and Health; A Review of the Literature. *American Journal of Public Health*, 111(4), 743-749.

<sup>3</sup> Victorian Sentencing Advisory Council, 2021. Youth Incarceration Report.

<https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-in-the-youth-justice-system>.

<sup>4</sup> Ibid.

<sup>5</sup> Cunneen, C. (1992). Judicial racism. *Aboriginal Law Bulletin*, 1(58), 9-12. Available at: <http://www.austlii.edu.au/au/journals/AboriginalLawB/1992/44.html>

reflects heightened scrutiny of disadvantaged populations rather than the nature of the crimes committed.

The correlation between youth incarceration and poorer adult outcomes is undeniable. Institutional environments impede overall development, leading to long-term repercussions. The Victorian Sentencing Advisory Council confirmed that children charged with offenses early in life are more likely to reoffend, potentially becoming incarcerated in adult facilities before their 22nd birthday.<sup>6</sup> Formerly incarcerated youths experience increased institutional oversight, which heightens their exposure to police and law enforcement due to how Australian jurisdictions tackle social issues linked to criminalisation.

At the Tasmanian Aboriginal Legal Service (TALS), we advocate for the rights and well-being of Aboriginal and Torres Strait Islander youths, recognising the disproportionate impacts of youth incarceration on their lives. National data from the Australian Institute of Health and Welfare (AIHW) shows that incarcerated youth face higher mental health challenges, such as anxiety and depression, compared to their non-incarcerated peers.<sup>7</sup>

For Aboriginal and Torres Strait Islander youth, these impacts are magnified. We witness the profound effects of cultural disconnection and the erosion of community ties, contributing to elevated reoffending rates. In our submission to the Youth Justice Blueprint (2022), we emphasised that many Indigenous youths are incarcerated for minor offences, which could be more effectively addressed through diversionary programs.<sup>8</sup> Ongoing trauma exacerbates their involvement with the justice system, obstructing meaningful rehabilitation and community reintegration.

Mental health challenges among incarcerated youths can lead to long-term psychological issues, impeding their societal reintegration. The trauma of detention can worsen existing mental health conditions, contributing to a vicious cycle of reoffending. Research indicates that integrating mental health support within a comprehensive system can significantly reduce recidivism rates.<sup>9</sup> The intersection of mental health and systemic racism adversely impacts Aboriginal youths, leading to health inequities and heightened psychological distress. Many young people also lack access to adequate

---

<sup>6</sup> Victorian Sentencing Advisory Council, 2021. Victorian Sentencing Advisory Council 2022, *Crossover Kids: Vulnerable Children in the Youth Justice System*, op. cit.

<sup>7</sup> Australian Institute of Health and Welfare (AIHW), 2022. *Mental Health and Young People in Australia*.

<sup>8</sup> Tasmanian Aboriginal Legal Service, 2022. *Submission to the Youth Justice Blueprint*.

<sup>9</sup> McDonald, M., 2021. *Mental Health and Youth Justice: The Pathway to Rehabilitation*. YouthJustice. Journal.

mental health services during and after detention, hindering recovery and reintegration.<sup>10</sup>

Youth incarceration disrupts educational trajectories, contributing to lower educational attainment and limiting future employment opportunities. Indigenous youths removed from their families during formative years suffer from disrupted cultural connections, profoundly affecting their identity and life prospects. The absence of educational support and mentorship exacerbates educational gaps, perpetuating cycles of disadvantage and criminal behaviour.

While mental health is pivotal in youth crime, broader social determinants significantly influence youth incarceration. Factors such as homelessness, family dysfunction, trauma, and inadequate housing elevate the likelihood of criminal behaviour. In Tasmania, limited access to mental health services, housing options, and addiction treatment entrenches youth within criminal pathways, particularly among Aboriginal communities.<sup>11</sup> Policies must address these underlying issues holistically to disrupt cycles of incarceration and enhance long-term outcomes for vulnerable youth. Solutions should pivot from punitive measures to mitigating structural crime drivers like poverty, unstable family environments, and limited educational access.

Stability in housing is vital for preventing youth crime. Research shows that young individuals experiencing housing instability are at a higher risk of engaging in criminal behaviour.<sup>12</sup> In Tasmania, the housing crisis intensifies the vulnerability of at-risk youth, especially those from Aboriginal communities. Stable housing options, including supported independent living and culturally appropriate shelters, can foster safer environments and diminish youth crime involvement. Furthermore, the absence of accessible support services—encompassing mental health, addiction treatment, and family support—exacerbates challenges for at-risk youth. Accessible, and well-funded, services are crucial for intervening before youths enter the justice system. Initiatives targeting at-risk youth and families, particularly those hesitant to engage with traditional services, are vital for crime prevention.<sup>13</sup>

Intergenerational trauma significantly contributes to the overrepresentation of Aboriginal youth in the justice system. Historical policies, including forced removals, alongside systemic racism and socio-economic disadvantage, have left lasting scars on

---

<sup>10</sup> Savaglio, M., Yap, M., Vincent, A., & Skouteris, H. (2024). Mapping community-based youth mental health services in Tasmania, Australia. *Australian Journal of Primary Health* 29(6), PY23074. <https://doi.org/10.1071/PY23074>.

<sup>11</sup> Productivity Commission, 2020. Report on Overcoming Indigenous Disadvantage: Key Indicators 2020.

<sup>12</sup> Atkinson, J 2002, 'Trauma trails, recreating song lines: The transgenerational effects of trauma in Indigenous Australia', *Australian Journal of Social Issues*, vol. 37, no. 4, pp. 473-487.

<sup>13</sup> Tasmanian Council of Social Service (TasCOSS). (2021). *Youth Homelessness in Tasmania: A Call to Action*.

Aboriginal communities, with these effects manifesting in subsequent generations.<sup>14</sup> Addressing these challenges necessitates a broad spectrum of interventions beyond mental health support, including financial assistance, educational opportunities, and social support to disrupt the cycle of disadvantage.

Initiatives like the Koori Court in Victoria offer culturally specific diversion programs aimed at reducing recidivism; however, these programs are often underfunded and not universally accessible across Australian jurisdictions. The Mundy Report<sup>15</sup> (Mundy, B 2023, Independent.review.of.the.National.Legal.Assistance.Partnership.8686\_80- .final.report, Attorney-General's Department, viewed 28 October 2024, <https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25>.) has highlighted the significant underfunding of Aboriginal legal services, including TALS, which plays a critical role in providing support and representation for Aboriginal youth. This lack of funding, combined with insufficient representation and broader supports, contributes to higher incarceration rates among Aboriginal youth.

In Tasmania, TALS has advocated for reforms, including targeted cultural training for detention staff and the expansion of youth-specific diversion programs. Additionally, sustained funding and thorough evaluation of these initiatives are necessary to ensure their efficacy and sustainability. While these measures aim to address the overrepresentation of Aboriginal youth in the criminal justice system, more comprehensive reforms are essential for achieving broader outcomes. Ensuring that Aboriginal legal services are adequately funded and supported is vital for promoting equitable access to justice and reducing the disparities faced by Aboriginal youth in the criminal justice system.

## B) The Over-Incarceration of First Nations Children

The over-incarceration of Aboriginal and Torres Strait Islander youth reflects a national crisis that underscores the enduring impact of colonial practices disrupting cultural connections and community cohesion. The 2023 Closing the Gap Report outlines that Aboriginal and Torres Strait Islander children are disproportionately represented in detention, a situation driven by socio-economic disadvantages such as limited access to education, employment, and adequate housing, compounded by entrenched systemic racism within the justice system. As of 2023, 52% of children in youth detention across Australia were Aboriginal or Torres Strait Islander, despite these groups

---

<sup>14</sup> Mundy, B. 2023. Independent Review of the National Legal Assistance Partnership 2020-25 – Final Report. Attorney-General's Department, <https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25>.

<sup>15</sup> Ibid.

comprising only 5% of the total youth population. This stark contrast is indicative of a broader national issue that requires immediate and comprehensive attention.<sup>16</sup>

In Tasmania, Aboriginal children are similarly overrepresented in youth detention, with data from the Tasmanian Department of Communities indicating that Aboriginal and Torres Strait Islander youths constituted 16% of the total youth detention population in 2021, despite making up only 4% of the youth population.<sup>17</sup> This alarming statistic is reflective of systemic barriers that necessitate urgent reform, including a critical examination of the socio-economic factors that contribute to such high incarceration rates.

Aboriginal children in out-of-home care face heightened vulnerability, often becoming entangled in the justice system due to systemic failures to meet their unique needs. The absence of culturally responsive practices within the child protection system leads to disconnection from families and communities. This phenomenon is echoed nationally, where the Bringing Them Home Report highlights the impact of the Stolen Generations and ongoing trauma on First Nations youth.<sup>18</sup>

Research indicates that incarceration can lead to higher recidivism rates among young people. A study by the Australian Institute of Criminology found that approximately 60% of young offenders released from custody reoffend within two years<sup>19</sup>. This trend is reflected in Tasmania, where the Tasmanian Auditor-General's report (2020) noted that similar recidivism rates exist among Aboriginal youth, highlighting the inadequacies of detention in addressing the root causes of criminal behaviour.<sup>20</sup>

The mental health implications of detention are profound, with evidence showing that 80% of Indigenous youths in detention have experienced traumatic events, leading to anxiety, depression, and conditions such as post-traumatic stress disorder (PTSD)<sup>21</sup>. In Tasmania, the experience of confinement disrupts normal developmental processes and exacerbates existing mental health issues, contributing to a cycle of re-offending that is challenging to break.

The over-incarceration of Aboriginal and Torres Strait Islander youth can be traced back to various social determinants, including poverty, systemic discrimination, and lack of access to education. Nationally, the Victorian Sentencing Advisory Council (2020)

---

<sup>16</sup> Australian Government. (2023). Closing.the.Gap.Report.

<sup>17</sup> Tasmanian Department of Communities. (2021). Youth Detention Statistics.

<sup>18</sup> Human Rights and Equal Opportunity Commission. (1997). Bringing.Them.Home;Report.of.the.National.Inquiry.into.the.Separation.of.Original.and.Torres.Strait.Islander.Children.from.Their.Families.

<sup>19</sup> Australian Institute of Criminology. (2021). Recidivism.of.Young.Offenders.

<sup>20</sup> Tasmanian Auditor-General. (2020). Report.on.YouthJustice.Services. Australian Institute of Health and Welfare. (2022). Youth.Detention.Population.in.Australia.

<sup>21</sup> Victorian Sentencing Advisory Council. (2020). Youth.Detention;Educational.Attainment; Dodd, V. (2022). Indigenous.youth.incarceration.rates.double.those.of.non\_Indigenous.youth. The Guardian.

reported that over 60% of young people in detention had not completed Year 10, highlighting significant educational gaps that are also present in Tasmania.<sup>22</sup>

Efforts to divert young offenders from the justice system are essential in reducing incarceration rates. Nationally, restorative justice, community engagement, and cultural education programs have shown promising results. For instance, initiatives like the Koori Youth Justice Program in Victoria have successfully reduced recidivism rates through culturally relevant practices.<sup>23</sup> Tasmania could benefit from adopting similar programs that incorporate local cultural practices and community engagement to address the unique needs of Aboriginal youth.

Programs integrating trauma-informed care, such as the Marumali program focusing on healing for Stolen Generations survivors, emphasise the necessity of culturally responsive approaches to mitigate the harmful effects of incarceration. TALS has continued to highlight the need for reforms that incorporate trauma-informed, culturally appropriate care for Aboriginal youth in detention, mirroring national calls for change.<sup>24</sup>

Despite ongoing efforts to meet Closing the Gap targets, the overrepresentation of Aboriginal and Torres Strait Islander children in detention remains alarmingly high. Socio-economic disadvantages faced by Aboriginal families—including poverty, unemployment, and lack of educational access—exacerbate the likelihood of justice system involvement. The intersection of systemic racism and intergenerational trauma significantly increases the vulnerability of these children, leading to heightened criminalisation and involvement in youth detention<sup>25</sup>.

Although the overrepresentation of First Nations children is a well-documented issue across Australia, political will to address these systemic challenges in Tasmania and beyond has often been lacking. There appears to be quick fixes that appeal to public opinion rather than responses that address the causes of offending. The narrative is often conflicting between “touch on crime” and a response that is compassionate to the social disadvantage that Aboriginal young people are facing in Tasmania. The Productivity Commission has noted that limited access to education and vocational training in detention centres hampers young people's ability to reintegrate into society post-release, creating a cycle that is difficult to escape.<sup>26</sup>

The disruption of familial bonds and community ties further complicates reintegration, as incarceration isolates young people from their families and communities. These outcomes highlight the urgent need for reform within Tasmania's youth justice system,

---

<sup>22</sup> Victorian Government. (2022). Koori.Youth.Justice.Program.Evaluation.Report.

<sup>23</sup> Marumali Program. (2020). Healing.for.Stolen.Generations.

<sup>24</sup> Productivity Commission. (2021). Indigenous.Disadvantage;The.Case.for.Change.

<sup>25</sup> Productivity Commission. (2022). Education.and.Training.in.Youth.Detention.

<sup>26</sup> Australian Human Rights Commission. (2023). The.Rights.of.Original.and.Torres.Strait.Islander.Children.in.Detention.



emphasising rehabilitation over punitive measures. A national commitment to integrating Indigenous perspectives and culturally competent practices into policy and programming is crucial for fostering an equitable and effective youth justice system for all First Nations children.<sup>27</sup>

### C) Compliance and Non-Compliance with Human Rights Standards in Youth Detention

The over-incarceration of Aboriginal and Torres Strait Islander children in Tasmania is a critical issue deeply rooted in historical and ongoing colonial practices, socio-economic disadvantage, and systemic racism within the criminal justice system. The disproportionate rates of incarceration reflect structural inequalities that persist not only in Australian society but also specifically in Tasmanian communities.<sup>28</sup>

Historically, policies such as the forced removal of children—commonly known as the "Stolen Generations"—have inflicted lasting trauma, disrupting the social fabric of Aboriginal communities across Tasmania.<sup>29</sup> This disconnection from culture and family perpetuates cycles of youth incarceration, with Tasmania being no exception. Factors such as poverty, educational disadvantage, and mental health issues further exacerbate the vulnerability of Aboriginal youth to incarceration.<sup>30</sup> Moreover, systemic racism within policing and judicial practices disproportionately affects Indigenous youth, who are more likely to be stopped, searched, and arrested compared to their non-Indigenous counterparts.<sup>31</sup> Research indicates that these biases lead to harsher sentencing outcomes for Indigenous youth, even when the offenses are like those committed by non-Indigenous youth.<sup>32</sup>

---

<sup>27</sup> Australian Government Productivity Commission. (2024, July 31). Closing.the.Gap;Annual.data.compilation.report.July.8680. <https://www.pc.gov.au/closing-the-gap-data/annual-data-report>.

<sup>28</sup> Bamblett, M., & Lewis, P. (2007). Innovative Responses to Indigenous Youth Justice. Australian Indigenous.Law.Review, 11(1), 7-24. Retrieved from <https://www.austlii.edu.au/au/journals/AUIndigLawRw/2007/3.pdf>; Dudgeon, P., Wright, M., Paradies, Y., Garvey, D., & Walker, I. (n.d.). Aboriginal.social?cultural.and.historical.contexts;Assessment.and.management.of.intellectual.disability.in.Aboriginal.and.Torres.Strait.Islander.people. Australian Law Reform Commission. Retrieved from [https://www.alrc.gov.au/wp-content/uploads/2019/08/discussion\\_paper\\_84\\_compressed\\_cover2.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/discussion_paper_84_compressed_cover2.pdf)

<sup>29</sup> Australian Human Rights Commission. (1997). Bringing.them.home;Report.of.the.national.inquiry.into.the.separation.of.Aboriginal.and.Torres.Strait.Islander.children.from.their.families. <https://humanrights.gov.au/our-work/projects/bringing-them-home-report-1997>.

<sup>30</sup> Australian Institute of Health and Welfare. (2020). Youth Justice in Australia 2018-19. Retrieved from <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2018-19>

<sup>31</sup> Australian Institute of Health and Welfare. (2021). Youth detention population in Australia 2021. Retrieved from <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-2021>

<sup>32</sup> Papalia, N., Shepherd, S. M., Spivak, B., Luebbers, S., Shea, D. E., & Fullam, R. (2019). Disparities in Criminal Justice System Responses to First-Time Juvenile Offenders According to Indigenous Status. Criminal Justice and Behavior, 46(8), 1067-1087. <https://doi.org/10.1177/0093854819851830>; Bringing Them Home Report. (1997). Report.of.the.National.Inquiry.into.the.Separation.of.Aboriginal.and.Torres.Strait.Islander.Children.from.Their.Families; Human Rights and Equal Opportunity Commission.

In Tasmania, the lack of diversionary options that cater specifically to the cultural and socio-economic needs of Aboriginal youth compounds their over-representation in detention. Programs designed to divert young people from the justice system often lack cultural appropriateness and accessibility,<sup>33</sup> emphasising the urgent need for systemic changes that prioritise cultural competence in policy implementation and service provision.<sup>34</sup> Efforts to address these systemic factors include the introduction of Indigenous-specific youth diversion programs and increased cultural competency training for justice personnel.<sup>35</sup> Despite these initiatives, the systemic nature of the issue necessitates a long-term commitment to addressing the root causes of over-incarceration.

Australia's youth detention system has faced significant criticism for breaching international human rights norms, particularly regarding practices like solitary confinement, restraint, and excessive use of force.<sup>36</sup> These actions contravene Article 37 of the United Nations Convention on the Rights of the Child (CRC), which mandates that children be treated with dignity and respect, with detention utilised only as a last resort.<sup>37</sup> The 2021 Concluding Observations from the United Nations Committee on the Rights of the Child specifically highlighted Australia's youth detention practices, especially concerning the treatment of Aboriginal and Torres Strait Islander children.<sup>38</sup>

At TALS, we contend that the current punitive youth justice system in Tasmania perpetuates cycles of disadvantage and criminalisation rather than rehabilitation. We often see that detention is seen as the only resort, due to escalating offending as a result of a lack of therapeutic and rehabilitative options for young people, let alone options that are specifically for Aboriginal children. Our advocacy focuses on elevating the voices of Aboriginal children, ensuring their rights are recognised and respected

---

<sup>33</sup> Australian Institute of Criminology. (2020). The relationship between Aboriginal and Torres Strait Islander children's involvement in the child protection system and their risk of offending. Retrieved from <https://www.aic.gov.au/publications/2020/child-protection>; Australian Human Rights Commission. (2024). ›Help.way.earlier“¿How.Australia.can.transform.child.justice.to.improve.safety.and.wellbeing (Publication No. 1807). Australian Human Rights Commission. Retrieved from [https://humanrights.gov.au/sites/default/files/document/publication/1807\\_help\\_way\\_earlier\\_-\\_accessible\\_0.pdf](https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_0.pdf).

<sup>34</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017). Final Report. Retrieved from <https://www.rcwdc.nt.gov.au/>

<sup>35</sup> United Nations. (1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>36</sup> United Nations Committee on the Rights of the Child. (2021). Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia. Retrieved from [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=en)

<sup>37</sup> United Nations. (1989). Convention.on.the.rights.of.the.child. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>38</sup> Muir, K., & Gilling, D. (2018). Aboriginal youth and the justice system: a response to the over-representation of Aboriginal children in the youth justice system. *Indigenous.Law.Bulletin*, 8(14), 1-5. Retrieved from <https://www.austlii.edu.au/au/journals/ILB/2018/30.pdf>

within the justice system. We stress the urgency for comprehensive reforms that encompass culturally sensitive, trauma-informed practices, promoting rehabilitation and healing rather than punishment.<sup>39</sup>

Moreover, the youth detention system has been criticised for its failure to provide adequate mental health support and therapeutic interventions for Aboriginal youth. Often young people in Tasmania are criminalised for poor mental health due to the lack of appropriate mental health supports in the community, including a mental health facility specifically for young people.<sup>40</sup> Reports indicate the need for culturally competent mental health services tailored to the unique challenges faced by Aboriginal youth in Tasmania, who often grapple with issues related to cultural identity and trauma.<sup>41</sup> The lack of culturally safe environments in detention facilities further exacerbates the marginalisation and disenfranchisement of these youth.<sup>42</sup>

The impact of incarceration extends beyond immediate confinement. Aboriginal children in Tasmania frequently encounter barriers to education and vocational training while detained, hindering their reintegration into society post-release. The absence of effective support systems for transitioning youth back into their communities perpetuates cycles of recidivism, as they often return to the same socio-economic conditions that contributed to their initial offending.<sup>43</sup>

In Tasmania there is a lack of appropriate through care, to ensure that a young person is able to access continued supports entering into and leaving detention. Gaps in the child safety system, see young people in the care of the Department recommended to go to detention by their guardian due to a lack of appropriate care options in the community.<sup>44</sup> This is completely unsatisfactory. We have often seen young people commit offences to

---

<sup>39</sup> TALS Submission to the Youth Justice Blueprint (2022); TALS Submission to the Youth Justice Inquiry (2023). Australian Institute of Health and Welfare. (2023). Youth.detention.population.in.Australia. 8689; Retrieved from <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023>.

<sup>40</sup> Ferrante, A., & Loh, N. (2015). Youth justice in Australia: A critical analysis of the effectiveness of youth diversion programs. *The Australian.™.New.Zealand.Journal.of.Criminology*, 48(3), 319-334. doi:10.1177/0004865814557747

<sup>41</sup> Teasdale, K., & Gibbons, D. (2020). Youth mental health in Australia: a global perspective. *The Australian.™.New.Zealand.Journal.of.Psychiatry*, 54(5), 413-414. doi:10.1177/0004867420902286; Robinson, D. (2021). Cultural identity and the rehabilitation of Aboriginal youth. *Australian.Journal.of.Criminology?* 10(3), 263-280.

<sup>42</sup> Clancey, G., Wang, S., & Lin, B. (2020). Youth justice in Australia; Themes from recent inquiries (Trends & issues in crime and criminal justice No. 605). Australian Institute of Criminology. [https://www.aic.gov.au/sites/default/files/2020-09/ti605\\_youth\\_justice\\_in\\_australia.pdf](https://www.aic.gov.au/sites/default/files/2020-09/ti605_youth_justice_in_australia.pdf).

<sup>43</sup> Victorian Equal Opportunity and Human Rights Commission. (2016). The Human Rights of Aboriginal Children in the Youth Justice System. Retrieved from <https://www.humanrights.vic.gov.au/assets/2020-09/The-Human-Rights-of-Aboriginal-Children-in-the-Youth-Justice-System-2016.pdf>

<sup>44</sup> Tasmanian Government. (2020). Youth Justice Reform; Our Commitment to Improving Outcomes for Young People in Tasmania; Tasmanian Government.

be able to go into detention, to secure their safety due to lack of options in the community, highlighting the inadequacies in the system.

At TALS, we advocate for compliance with human rights standards and culturally responsive practices within youth detention facilities in Tasmania. We emphasise the importance of investing in community-led initiatives that prioritise rehabilitation and reintegration rather than punitive measures. Programs focusing on cultural competence, education, and mental health support are essential for promoting positive outcomes for Aboriginal and Torres Strait Islander youth.<sup>45</sup>

Youth incarceration in Tasmania has profound and often detrimental consequences that extend beyond mental health, affecting various aspects of young people's lives, particularly in Aboriginal and Torres Strait Islander communities. Detained youths frequently experience elevated rates of psychological distress, trauma, depression, anxiety, and suicidal ideation.<sup>46</sup>

Research indicates that the criminal justice system exacerbates the over-incarceration of vulnerable groups, particularly Aboriginal youth.<sup>47</sup> Like findings in other regions, incarcerated and formerly incarcerated individuals in Tasmania face disproportionate morbidity and mortality compared with their non-justice-involved counterparts, compounding social vulnerabilities and hindering successful reintegration.<sup>48</sup> One such finding was the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017) that exposed alarming human rights violations against Aboriginal children, highlighting systemic issues that persist within youth detention systems throughout Australia.<sup>49</sup> Additionally, international bodies, including the United Nations, have raised concerns regarding Australia's non-compliance with key principles in the UNCRC, particularly Article 37, which prohibits torture and cruel treatment.<sup>50</sup>

---

<sup>45</sup> Savaglio, M., Yap, M., Vincent, A., & Skouteris, H. (2024). Mapping community-based youth mental health services in Tasmania, Australia. *Australian Journal of Primary Health* 29(6), PY23074. <https://doi.org/10.1071/PY23074>.

<sup>46</sup> Australian Institute of Health and Welfare. (2021). Youth detention population in Australia 2020. Retrieved from <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-2020>

<sup>47</sup> Boffa, C., & Mackay, A. (2024). Hyperincarceration and human rights abuses of First Nations children in juvenile detention in Queensland and the Northern Territory. *Current Issues in Criminal Justice*, 1–17. <https://doi.org/10.1080/10345329.2023.2293317>.

<sup>48</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner. (2021). Social Justice and Native Title Report 2021. Retrieved from <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice-reports-2021>

<sup>49</sup> United Nations Committee on the Elimination of Racial Discrimination. (2021). Concluding observations on the combined tenth to twelfth periodic reports of Australia. Retrieved from [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/AUS/CO/10-12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/AUS/CO/10-12&Lang=en)

<sup>50</sup> United Nations Committee on the Rights of the Child. (2019). General Comment No. 24 (2019) on children's rights in the child justice system. Retrieved from [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en)

Furthermore, the youth detention system has been criticised for its failure to provide adequate mental health support and therapeutic interventions for Aboriginal youth in Tasmania. The lack of culturally safe environments in detention facilities further exacerbates the marginalisation and disenfranchisement of these youth.<sup>51</sup>

To mitigate the effects of incarceration and enhance outcomes for Aboriginal and Torres Strait Islander youth in Tasmania, it is essential to implement culturally responsive policies that focus on prevention and rehabilitation. This necessitates collaboration between government agencies, community organisations, and Indigenous leaders to create tailored programs that address the unique needs of these young people. By promoting diversionary measures, culturally competent education and vocational training programs, and trauma-informed support, we can disrupt the cycle of incarceration and foster healthier, more resilient communities.<sup>52</sup>

#### D) Australia's International Obligations in Youth Detention and Justice System Reform

Australia is a signatory to several international treaties, including the United Nations Convention on the Rights of the Child (CRC), which stipulates that children should not be detained unless absolutely necessary, and that detention should be a measure of last resort.<sup>53</sup> However, Australia's treatment of youth in detention, particularly First Nations children, has been widely criticised for its non-compliance with international human rights standards due to maintaining high incarceration rates of First Nations youth, often for minor offences, and failing to provide culturally safe detention environments.<sup>54</sup>

Furthermore, the UN Committee on the Rights of the Child has expressed concern over the disproportionate incarceration of Aboriginal children and the conditions of their

---

<sup>51</sup> Milroy, H., Watson, M., Kashyap, S., & Dudgeon, P. (2021). First Nations peoples and the law. *AUSTRALIAN BAR REVIEW*, 50(3), 510–522.

<https://search.informit.org/doi/10.3316/agispt.20211109056541>.

<sup>52</sup> Victorian Equal Opportunity and Human Rights Commission. (2018, July). *Aboriginal.cultural.rights.in.youth.justice.centres*. <https://ccyp.vic.gov.au/assets/resources/Aboriginal-Cultural-Rights/Aboriginal-cultural-rights-in-youth-justice-centres-WEB-180718.pdf>; McMillan, K., & Davis, M. (2016). *Review.of.youth.detention.centres*. Queensland Government Department of Justice and Attorney-General. <https://www.qld.gov.au/>; Queensland Government. (2017). *Government.response.to.the.review.of.youth.detention.centres.report*. Department of Justice and Attorney-General. <https://www.qld.gov.au/>.

Australian Government Productivity Commission. (2024, July 31). *Closing.the.Gap;Annual.data.compilation.report.July.8680*. <https://www.pc.gov.au/closing-the-gap-data/annual-data-report>.

<sup>53</sup> United Nations Convention on the Rights of the Child (CRC). (1989). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; Royal Commission into Aboriginal Deaths in Custody. (1991). *Final.report.of.the.Royal.Commission.into.Aboriginal.deaths.in.custody*. Australian Government Publishing Service. <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

<sup>54</sup> United Nations. (1989). *Convention.on.the.rights.of.the.child*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

detention.<sup>55</sup> Australia has also failed to implement meaningful reforms to address these issues, despite recommendations from national and international bodies. The United Nations Convention on the Rights of the Child (CRC), which obliges the government to uphold the rights of children, including the right to protection from discrimination, the right to education, and the right to appropriate health care. However, the current state of youth detention facilities in Australia frequently contravenes these obligations. According to the Australian Institute of Health and Welfare, youth detention facilities often lack access to mental health services, which has resulted in increased psychological distress and exacerbated existing mental health issues among detained youth.<sup>56</sup> The absence of culturally safe support services perpetuates feelings of alienation and further marginalizes Aboriginal and Torres Strait Islander children.<sup>57</sup> The treatment of youth in detention is a critical issue, as it directly contradicts Australia's commitment to the CRC and the International Covenant on Civil and Political Rights (ICCPR), both of which safeguard children's rights to protection from torture and cruel, inhuman, or degrading treatment or punishment.<sup>58</sup>

Australia's obligations under international human rights law are unequivocal: children should not be subject to punitive detention, and youth justice systems must prioritise rehabilitation over punishment.<sup>59</sup> The Government continues to let young people down by not having appropriate rehabilitation options leaving young people vulnerable to detention as the only resort. Despite these commitments, Australia's youth detention system has faced persistent criticism from international bodies for failing to comply with essential human rights standards.

The United Nations Convention on the Rights of the Child (CRC), to which Australia is a signatory, provides specific protections for children in detention. Article 37 mandates

---

<sup>55</sup> Australian Institute of Health and Welfare. (2021). Youth detention population in Australia 2020. Retrieved from <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-australia-2020/contents/summary>

<sup>56</sup> International Covenant on Civil and Political Rights (ICCPR). (1966). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>; Walsh, T., Fitzgerald, R., Cornwell, L., & Scarpato, C. (2021). Raise the age – and then what? Exploring the alternatives to criminalising children under 14 years of age. James.Cook.University. Law.Review.28(3), 37.

<sup>57</sup> Holland, L., Lee, C., Toombs, M., Smirnov, A., & Reid, N. (2024). Resisting the incarceration of Aboriginal and Torres Strait Islander children: A scoping review to determine the cultural responsiveness of diversion programs. *First.Nations.Health.and.Wellbeing\_The.Lowitja.Journal*, 100023. <https://doi.org/10.37351/fnhw.v2024.100023>.

<sup>58</sup> UN Committee on the Rights of the Child. (2023). General.Comment.No.80.(8675).on.children's.rights.in.the.child.justice.system; Youth.justice.and.child.wellbeing.reform. <https://lawcouncil.au/publicassets/71bf9867-542b-ee11-9489-005056be13b5/4391%20-%20S%20-%20Youth%20Justice%20and%20Child%20Wellbeing.pdf>.

<sup>59</sup> Commissioner for Children and Young People Tasmania. (2016). Human.rights.standards.in.youth.detention.facilities.in.Australia;The.use.of.restraint?disciplinary.regimes.and.other.specified.practices. Retrieved from <https://www.childcomm.tas.gov.au/wp-content/uploads/2016/10/report-accg-human-rights-the-use-of-restraint-disciplinary-regimes-and-other-specified-practices.pdf>.

that children must not be subjected to torture or inhuman treatment, must not be detained arbitrarily, and should only be detained as a last resort. Additionally, Australia is bound by the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture, both of which impose similar obligations regarding the treatment of detainees.

International scrutiny has raised serious concerns about Australia's youth detention practices, particularly regarding Aboriginal and Torres Strait Islander children. In its 2021 report, the UN Committee on the Rights of the Child<sup>60</sup> highlighted Australia's limited progress in addressing systemic issues contributing to the over-incarceration of Indigenous youth. The Committee expressed alarm over the continued use of solitary confinement, physical restraints, and inadequate rehabilitation services.<sup>61</sup>

To fulfill its international obligations, Australia must implement reforms to ensure its youth justice system aligns with international standards. Key measures should include ending the use of solitary confinement, reducing the overrepresentation of Aboriginal and Torres Strait Islander children in detention, and providing culturally appropriate rehabilitation services.<sup>62</sup>

We have seen significant periods where young people in detention in Tasmania are not able to engage in meaningful education due to restrictive practices as a result of low staffing meaning they are confined to their cells during what would be usual school hours. This leaves an unsatisfactory situation where young people are not getting access to the education, they would receive in the community which is a breach of human rights.<sup>63</sup>

---

<sup>60</sup> Committee on the Rights of the Child. (2021). Day of general discussion; Children's rights and alternative care outcome report. <https://www.ohchr.org/sites/default/files/2022-06/13Jun2022-DGD-Outcome-report-and-Recommendations.pdf>.

<sup>61</sup> Australian Human Rights Commission. (1997). Bringing them home; Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families (Chapter 24: Juvenile justice). <https://humanrights.gov.au/our-work/projects/bringing-them-home-chapter-24>; Holland, L., Lee, C., Toombs, M., Smirnov, A., & Reid, N. (2024). Resisting the incarceration of Aboriginal and Torres Strait Islander children: A scoping review to determine the cultural responsiveness of diversion programs. *First Nations Health and Wellbeing: The Lowitja Journal*, 100023. <https://doi.org/10.37351/fnhw.v2024.100023>.

<sup>62</sup> Holland, L., Lee, C., Toombs, M., Smirnov, A., & Reid, N. (2024). Resisting the incarceration of Aboriginal and Torres Strait Islander children: A scoping review to determine the cultural responsiveness of diversion programs. *First Nations Health and Wellbeing: The Lowitja Journal*, 100023. <https://doi.org/10.37351/fnhw.v2024.100023>.

<sup>63</sup> White, J., te Riele, K., Corcoran, T., Baker, A., Moylan, P., & Manan, R. A. (2019). Improving educational connection for young people in custody; Final report. Victoria University, University of Tasmania, & Deakin University. <https://www.vu.edu.au/sites/default/files/Improving-educational-connection-for-young-people-in-custody.pdf>.

In Tasmania, the over-incarceration of Aboriginal children remains a pressing concern. Despite the state's commitment to the National Agreement on Closing the Gap<sup>64</sup>, Aboriginal children are still detained at rates significantly higher than their non-Aboriginal counterparts. Without meaningful reforms to the youth justice system—including increased investment in diversion programs and culturally responsive services—Australia will continue to fall short of its international obligations.

### Addressing Youth Detention Reform

In addressing youth detention reform, the core challenges facing Australia's juvenile justice system become evident in the areas of compliance, national standards, and program deficiencies. However, a deeper understanding emerges when these issues are examined through practical and strategic lenses. Notably, the lack of standardization exacerbates the vulnerability of detained youth, particularly among Aboriginal and Torres Strait Islander children.

To truly reform the juvenile justice system, there should be a greater emphasis on alternative strategies to detention, accompanied by adequate investment in community-based programs that focus on prevention, rehabilitation, and support. These alternatives can offer more effective and culturally relevant solutions, ultimately reducing the reliance on detention as a punitive measure.

For those youth who are placed in detention, Aboriginal children must receive culturally appropriate support. This support can facilitate lower rates of community disconnection and foster a smoother reintegration process upon their return to society. Creating a supportive environment in detention settings is essential to help Aboriginal youth maintain their cultural identity and connections, which are vital for their well-being.

Additionally, establishing a minimum age of incarceration is crucial to protect younger children from the adverse effects of detention. By raising this threshold, we can prioritize the needs of vulnerable youth and redirect them towards more constructive pathways that focus on rehabilitation rather than punishment.<sup>65</sup>

A more coordinated national framework, based on targeted interventions and comprehensive support systems, must be implemented to mitigate the risks inherent in these systems and to promote a more just and equitable approach to youth justice.

### Fragmented Systems and the Need for National Standards

---

<sup>64</sup> Closing the Gap. (2020). National Agreement on Closing the Gap. Australian Government. <https://www.closingthegap.gov.au/national-agreement>.

<sup>65</sup> Australian Medical Association & Law Council of Australia. (2019). Policy statement: Minimum age of criminal responsibility. <https://lawcouncil.au/publicassets/20fb2a76-c61f-4a11-9403-005056be13b5/AMA%20and%20LCA%20Policy%20Statement%20on%20Minimum%20Age%20of%20Criminal%20Responsibility.pdf>.



The fractured approach to youth justice across states and territories is one of the central problems in managing youth detention. Without binding national standards, the treatment of young people in detention varies significantly. Cross-jurisdictional comparisons highlight how states like Western Australia have approached the issue differently, creating disparities that make enforcing a cohesive, equitable system harder. Such inconsistencies across jurisdictions undermine the broader push for compliance, allowing regions to fall short of basic humane treatment for young offenders.<sup>66</sup>

Expanding on this, it's evident that some regions focus more on punitive measures rather than educational or rehabilitative programs, further widening the gap in how young offenders are treated. For example, the lack of specialised programs in certain territories that address the specific needs of youth not only prevents them from developing new skills but also increases the likelihood of recidivism. This discrepancy underscores the critical need for a national standard that is adaptable yet enforceable, ensuring that all regions are held to the same principles when it comes to the care and rehabilitation of young people.

#### Addressing the Lack of Rehabilitation Programs

A critical issue is the absence of structured rehabilitation and education programs within juvenile detention facilities. Reports indicate that many facilities prioritise containment over education, limiting the opportunities for detained youth to acquire skills or qualifications. The lack of access to quality education and mental health services further perpetuates cycles of incarceration.<sup>67</sup> Additionally, educational initiatives often do not meet the cultural needs of Aboriginal and Torres Strait Islander youth, limiting their engagement and success.<sup>68</sup> Implementing culturally competent rehabilitation programs can help address the gaps in service provision.

#### Implementation of Trauma-Informed Approaches

Furthermore, a trauma-informed approach must be central to reforming youth detention practices.<sup>69</sup> Many young people in detention have experienced significant trauma,

---

<sup>66</sup> Help Way Earlier: How Australia can transform child justice to improve safety and wellbeing (Publication No. 1807). Australian Human Rights Commission. Retrieved from [https://humanrights.gov.au/sites/default/files/document/publication/1807\\_help\\_way\\_earlier\\_-\\_accessible\\_0.pdf](https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_0.pdf).

<sup>67</sup> Australian Institute of Health and Welfare. (2022). Australia's children; Retrieved from <https://www.aihw.gov.au/reports/children-youth/australias-children>.

<sup>68</sup> Atkinson, J., Nelson, J., Brooks, R., Atkinson, C., & Ryan, K. (2014). Addressing Individual and Community Transgenerational Trauma. In P. Dudgeon, H. Milroy & R. Walker (Eds.). Working Together. Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice (pp. 289-302). West Perth: Kulunga Research Network.

<sup>69</sup> Lujan, M.J.W.M., & Fanniff, A.M. (2018). Justice for All: Trauma and the Need for Safety and Fairness Within Juvenile Justice Facilities. *Criminal Justice and Behavior*, 45(1), 63-81; Bateman, J., Henderson, C., & Kezelman, C. (2013). Trauma-Informed Care and Practice: Towards a cultural shift in policy reform across mental health and human services in Australia? A National Strategic Direction? Position Paper and

which can manifest in behavioural issues. The failure to recognise and address these underlying trauma factors exacerbates the challenges faced by youth in detention. Training staff in trauma-informed best practices can improve interactions with detained youth, fostering a more supportive environment conducive to rehabilitation.<sup>70</sup> Additionally, developing strong community partnerships to support reintegration efforts post-release can mitigate the risk of recidivism.

#### E) Establishing National Minimum Standards and Effective Mechanisms for Monitoring and Enforcing Compliance

One of the most significant reforms required to address the issues highlighted in this inquiry is the introduction of enforceable national minimum standards for youth justice. These standards should be designed to ensure that all children in detention are treated with dignity and their rights are protected in accordance with Australia's international obligations. Such standards should include mandatory cultural competence training for detention centre staff, the provision of culturally appropriate education, and the inclusion of Aboriginal elders and community leaders in the development and implementation of rehabilitation programs. Detention should be a last resort; however, diversionary programs should be expanded to offer young people alternative pathways that focus on healing rather than punishment.

In addition, age-appropriate care should be guaranteed, with an emphasis on mental health support and family reunification. Addressing individual, social, and cultural factors contributing to youth offending is essential for long-term rehabilitation and desistance. This approach requires a holistic view of youth justice that considers the interactions between biological, psychological, and social factors in shaping criminal behaviour.<sup>71</sup>

The Office of the Custodial Inspector Tasmania Annual Report 2023-24<sup>72</sup> indicates that the importance of ensuring that young people in custody receive adequate time out of their rooms cannot be overstated. The report highlights that a minimum of 10 hours out of room each day is essential, yet this benchmark has rarely been achieved at the

---

Recommendations.of.the.National.Trauma\_Informed.Care.and.Practice.Advisory.Working.Group. Sydney, Australia: Mental Health Coordinating Council.

<sup>70</sup> Flocks, J. Calvin, E., Chriss, S., & Prado-Steiman, M. (2017). The Case for Trauma-Informed, Gender-Specific Prevention/Early Intervention Programming in Reducing Female Juvenile Delinquency in Florida. *Northwestern Journal of Law and Social Policy* 78(2), 1-45.

<sup>71</sup> Kong, C. (2024). Disproportionate incarceration rates of Indigenous Australians: A human rights violation. *International Journal of Health Sciences Research*, 2(4), 92-98. [https://terra-docs.s3.us-east-2.amazonaws.com/IJHSR/Articles/volume6-issue4/IJHSR\\_2024\\_64\\_92.pdf](https://terra-docs.s3.us-east-2.amazonaws.com/IJHSR/Articles/volume6-issue4/IJHSR_2024_64_92.pdf)

<sup>72</sup> Office of the Custodial Inspector. (2024). Annual report.8689- 80. [https://www.custodialinspector.tas.gov.au/\\_data/assets/pdf\\_file/0011/785990/2023-24-Annual-Report-Office-of-the-Custodial-Inspector.pdf](https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0011/785990/2023-24-Annual-Report-Office-of-the-Custodial-Inspector.pdf).

Ashley Youth Detention Centre (AYDC). Moreover, inaccuracies in the recording methods complicate the assessment of actual time spent out of room, directly impacting the mental and emotional well-being of the young people housed there.

To address the systemic issues within Australia's youth detention system, there is a pressing need for the establishment of national minimum standards for the treatment of children in detention. These standards should be based on Australia's international human rights obligations and should prioritise the rehabilitation and reintegration of children into society.

The establishment of national minimum standards is critical to ensuring that youth detention facilities across Australia meet basic human rights requirements. Such standards should include prohibitions on the use of solitary confinement, restraints, and force, as well as requirements for the provision of culturally appropriate services and mental health support. At present, Australia lacks a consistent framework for monitoring and enforcing compliance with international human rights standards in youth detention facilities. This has led to significant discrepancies in the treatment of children across different jurisdictions, with some facilities falling far short of basic human rights standards.<sup>73</sup>

TALS advocates for the establishment of an independent body empowered to monitor and enforce compliance with national minimum standards for youth detention facilities. This body should have the authority to conduct regular inspections and hold governments accountable for any breaches of human rights. It is crucial that this independent body specifically prioritizes the rights and well-being of Aboriginal and Torres Strait Islander children, who are disproportionately affected by punitive youth justice policies.

Furthermore, the Office of the Custodial Inspector Tasmania Annual Report 2023-24<sup>74</sup> points to the lengthy investigation processes for staff involved in allegations of child sexual abuse, which have taken years to resolve. Such delays not only impact staff but also create an environment of uncertainty for young people, who often experience

---

<sup>73</sup> Fitz-Gibbon, K. (2018). The treatment of Australian children in detention: A human rights law analysis of media coverage in the wake of abuses at the Don Dale detention centre. *UNSW Law Journal* 41(1), 5-31. <https://doi.org/10.53637/UNSWLJ.v41i1.1>; Australian Human Rights Commission. (2011). Information concerning Australia and the Convention on the Rights of the Child; Submission to the Committee on the Rights of the Child. <https://humanrights.gov.au/our-work/legal/information-concerning-australia-and-convention-rights-child>.

<sup>74</sup> Office of the Custodial Inspector. (2024). Annual report. 8689-80. [https://www.custodialinspector.tas.gov.au/\\_data/assets/pdf\\_file/0011/785990/2023-24-Annual-Report-Office-of-the-Custodial-Inspector.pdf](https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0011/785990/2023-24-Annual-Report-Office-of-the-Custodial-Inspector.pdf).

lockdowns due to staff shortages. Timely investigations are essential for maintaining trust and safety within the facility.<sup>75</sup>

Additionally, we must acknowledge the significant underfunding of Aboriginal legal services, such as TALS, as highlighted in the Mundy review. This lack of funding not only hampers effective representation but also contributes to higher incarceration rates among Aboriginal youth.

To complement the independent oversight, there should be a greater emphasis on alternative strategies to detention, with adequate investment in culturally appropriate support services that facilitate reintegration for Aboriginal youth upon their return to the community. This includes ensuring that when Aboriginal children are placed in detention, they receive cultural support to minimize disconnection from their communities.<sup>76</sup>

To break the cycle of over-incarceration, it is critical to implement systemic changes that address the root causes of youth offending and offer culturally grounded, trauma-responsive alternatives to detention.<sup>77</sup> These changes must prioritise prevention through early intervention and address the systemic factors that contribute to youth offending, including improving access to culturally relevant services, education, and employment opportunities, particularly in First Nations communities.

Preventive measures should include community-based programs that support youth and families, emphasising cultural connection and healing. The Australian Human Rights Commission's 2024 report<sup>78</sup> highlights the importance of alternative justice models, such as diversionary programs and restorative justice initiatives, which focus on rehabilitation and healing rather than punishment. These programs offer young people the chance to be held accountable in ways that restore relationships within their community and focus on personal growth rather than confinement.

Moreover, trauma-responsive approaches that acknowledge the lasting impacts of colonisation, intergenerational trauma, and past injustice are essential. These

---

<sup>75</sup> Kezelman, C.A., & Stavropoulos, P.A. (2012). *Practice Guidelines for Treatment of Complex Trauma and Trauma-Informed Care and Service Delivery*. Sydney, Australia: Adults Surviving Child Abuse.

<sup>76</sup> Commission for Children and Young People, 'Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system: Summary and recommendations', Commission for Children and Young People (2021) <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYPOYOW-Summary-Final-090621.pdf>

<sup>77</sup> Holland, L., Sutherland, K., Davis, M., & Duhig, M. (2023). Resisting the incarceration of Aboriginal and Torres Strait Islander children: A scoping review to determine the cultural responsiveness of diversion programs. *First Nations Health and Wellbeing: The Lowitja Journal* 26(0), 100023. <https://doi.org/10.37343/lowitja.100023>.

<sup>78</sup> 'Help way earlier': How Australia can transform child justice to improve safety and wellbeing (Publication No. 1807). Australian Human Rights Commission. Retrieved from [https://humanrights.gov.au/sites/default/files/document/publication/1807\\_help\\_way\\_earlier\\_-\\_accessible\\_0.pdf](https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_0.pdf).

approaches must be embedded within both diversionary and detention programs, ensuring that young people are supported in ways that promote healing, not harm.<sup>79</sup>

## F) Any Related Matters

In addition to the primary issues outlined above, several related matters warrant consideration in effectively addressing youth offending behaviour. The development of culturally appropriate rehabilitation programs and the promotion of community-led initiatives are vital components of any comprehensive strategy. Programs that recognise the unique cultural contexts of Aboriginal and Torres Strait Islander youth have shown promise in reducing recidivism and fostering positive outcomes.<sup>80</sup>

Furthermore, the importance of family and community support in preventing youth crime cannot be overstated. Investing in community-led solutions that empower families and promote cultural identity will be crucial in addressing the systemic factors contributing to youth offending.<sup>81</sup> Aligning local justice practices with international norms involves integrating culturally sensitive practices that respect Aboriginal and Torres Strait Islander values and traditions.<sup>82</sup>

Investing in community-based alternatives to incarceration is essential for reducing the number of youths in detention.<sup>83</sup> Programs focusing on early intervention and support for at-risk youth can prevent offending behaviours and foster social cohesion.<sup>84</sup> Non-governmental organisations play a critical role in supporting youth in the justice system by providing advocacy, legal representation, and rehabilitation programs. Collaboration between government and community organisations is essential for effective youth justice reform, ensuring that services are accessible and tailored to the needs of young people.<sup>85</sup>

---

<sup>79</sup> Bringing Them Home Report. (1997). Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families; Human Rights and Equal Opportunity Commission.

<sup>80</sup> Australian Institute of Health and Welfare (AIHW). (2023). Youth Detention Population in Australia; 8689; Youth Justice Coalition. (2021). Addressing the Drivers of Youth Crime; A Framework for Action.

<sup>81</sup> SNAICC. (2023). Addressing Intergenerational Trauma in Aboriginal Communities.

<sup>82</sup> Victorian Equal Opportunity and Human Rights Commission. (2018, July). Aboriginal cultural rights in youth justice centres. <https://ccyp.vic.gov.au/assets/resources/Aboriginal-Cultural-Rights/Aboriginal-cultural-rights-in-youth-justice-centres-WEB-180718.pdf>; United Nations. (1989). Convention on the rights of the child. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>83</sup> Office of the Custodial Inspector. (2024). Annual report 8689-80. [https://www.custodialinspector.tas.gov.au/\\_data/assets/pdf\\_file/0011/785990/2023-24-Annual-Report-Office-of-the-Custodial-Inspector.pdf](https://www.custodialinspector.tas.gov.au/_data/assets/pdf_file/0011/785990/2023-24-Annual-Report-Office-of-the-Custodial-Inspector.pdf). Closing the Gap. (2020). National Agreement on Closing the Gap. Australian Government. <https://www.closingthegap.gov.au/national-agreement>.

<sup>84</sup> Victorian Sentencing Advisory Council. (2021). Sentencing Children and Young People in Victoria.

<sup>85</sup> Human Rights Watch. (2024). World Report 8680. Human Rights Watch.

Raising public awareness about the issues faced by youth in detention is crucial for driving systemic change.<sup>86</sup> Advocacy campaigns can influence policy and promote the rights of young people, ensuring their voices are heard in the justice system. Building partnerships with local communities can enhance the effectiveness of programs aimed at preventing youth offending, fostering a sense of belonging and support. Engaging young people in the design and implementation of programs can empower them and lead to more successful outcomes.<sup>87</sup>

Improving oversight and accountability mechanisms, ensuring access to education and mental health services, and engaging community-based restorative justice programs are essential steps toward aligning Australian practices with international standards.<sup>88</sup> Several jurisdictions abroad have adopted restorative justice practices that focus on rehabilitation rather than punishment.<sup>89</sup> These practices could be highly effective in the Australian context, particularly in reducing recidivism and promoting healing. Such approaches would not only align with the values of Aboriginal and Torres Strait Islander communities but also enhance the overall efficacy of the youth justice system.<sup>90</sup>

## Recommendations

To effectively combat the over-incarceration of First Nations children, the following actions are essential:

1. **Introduction of Enforceable National Minimum Standards:** Establish enforceable standards for youth justice that include culturally competent care and rehabilitation programs.
2. **Expansion of Diversionary Programs:** Increase funding and support for diversionary programs and community-based interventions to reduce reliance on incarceration.

---

<sup>86</sup> White, J., te Riele, K., Corcoran, T., Baker, A., Moylan, P., & Manan, R. A. (2019). Improving educational connection for young people in custody; Final report. Victoria University, University of Tasmania, & Deakin University. <https://www.vu.edu.au/sites/default/files/Improving-educational-connection-for-young-people-in-custody.pdf>; Australian Human Rights Commission. (2023, July 24). Youth justice and child wellbeing reform. <https://lawcouncil.au/publicassets/71bf9867-542b-ee11-9489-005056be13b5/4391%20-%20S%20-%20Youth%20Justice%20and%20Child%20Wellbeing.pdf>.

<sup>87</sup> Australian Institute of Health and Welfare (AIHW). (2023). Youth Detention Population in Australia; 8689.

<sup>88</sup> U.S. Department of Justice. (2018). The Health Status of Incarcerated Individuals; A Review of the Evidence.

<sup>89</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017). Final report.

<sup>90</sup> National Indigenous Australians Agency. (2024). Commonwealth Closing the Gap 8689 annual report and 8680 implementation plan. Australian Government. <https://www.indigenous.gov.au/resource-centre/current/commonwealth-closing-the-gap-2023-annual-report-and-2024-implementation-plan>.

3. **Establishment of an Independent Oversight Body:** Create an independent body to monitor youth detention facilities and ensure compliance with human rights standards.
4. **Implementation of Trauma-Informed Approaches:** Recognize the impact of historical and intergenerational trauma on First Nations children by embedding trauma-informed practices within both diversionary and detention programs.
5. **Investment in Youth Justice Services:** Advocate for greater investment in youth justice services, particularly those targeting Aboriginal youth, to address the systemic issues of over-incarceration and support the initiatives outlined in the Closing the Gap (CtG) framework.

These recommendations aim to create a holistic approach to youth justice that prioritises rehabilitation, cultural sensitivity, and community engagement, ultimately fostering a more just and equitable system for all children.

You can incorporate the feedback about the unfounded media rhetoric and the lack of political will into your paragraph by adding a few sentences that highlight these issues. Here's a revised version of your text that includes these points:

Australia's youth justice system is at a critical juncture. The over-reliance on incarceration, particularly for First Nations children, has created a system that fails to protect the rights of young people or address the root causes of offending. This issue is exacerbated by a rhetoric that promotes a tough-on-crime approach, often fuelled by media narratives that are completely unfounded by evidence. Such sensationalized portrayals contribute to a public perception that prioritizes punitive measures over meaningful reform.

Moreover, the lack of political will to pursue comprehensive policy changes further hinders progress. There is a pressing need for reform, including the implementation of diversionary programs, restorative justice practices, and community-led interventions that focus on rehabilitation rather than punishment. Investment in early intervention and prevention strategies is crucial to reducing the number of young people entering the criminal justice system. Addressing the socio-economic factors that contribute to youth offending, such as poverty, housing instability, and lack of access to education and healthcare, is key to breaking the cycle of criminalization and creating safer, more just communities. A national approach to youth justice, underpinned by enforceable human rights standards, would ensure that all young people, regardless of their background or location, are treated with dignity and respect. Reforming the system to focus on

rehabilitation, prevention, and community-based alternatives is essential to creating a fairer and more effective youth justice system in Australia.<sup>91</sup>

To break the cycle of over-incarceration, it is critical to implement systemic changes that address the root causes of youth offending and offer culturally grounded, trauma-responsive alternatives to detention. These changes must prioritise prevention through early intervention and address the systemic factors that contribute to youth offending. This includes improving access to culturally relevant services, education, and employment opportunities, particularly in First Nations communities.

Preventive measures should include community-based programs that support youth and families, emphasising cultural connection and healing. The Australian Human Rights Commission's 2024<sup>92</sup> report highlights the importance of alternative justice models, such as diversionary programs and restorative justice initiatives, which focus on rehabilitation and healing rather than punishment. These programs offer young people the chance to be held accountable in ways that restore relationships within their community and focus on personal growth rather than confinement.

Moreover, trauma-responsive approaches that acknowledge the lasting impacts of colonisation, intergenerational trauma, and past injustice are essential. These approaches must be embedded within both diversionary and detention programs, ensuring that young people are supported in ways that promote healing, not harm.

## Conclusion

The over-incarceration of Aboriginal and Torres Strait Islander children in Australia's youth justice system is a pressing issue that requires urgent attention. Despite Australia's international human rights obligations, children in detention—particularly Aboriginal children—continue to face significant challenges, including exposure to punitive practices that exacerbate their vulnerabilities. To address these systemic issues, Australia must prioritise and invest in the rehabilitation and reintegration of children, establish national minimum standards for youth detention, and implement effective mechanisms for monitoring and enforcing compliance. Without significant reform, Australia will continue to fail its most vulnerable children, perpetuating cycles of disadvantage and criminalisation.

In summary, the over-incarceration of Aboriginal youth reflects deep-rooted systemic issues that extend beyond individual behaviour. A comprehensive approach that

---

<sup>91</sup> ›Help.way.earlier\*";How.Australia.can.transform.child.justice.to.improve.safety.and.wellbeing (Publication No. 1807). Australian Human Rights Commission. Retrieved from [https://humanrights.gov.au/sites/default/files/document/publication/1807\\_help\\_way\\_earlier\\_-\\_accessible\\_0.pdf](https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_0.pdf).

<sup>92</sup> Justice Reform Initiative. (2023). Submission.to.the.Human.Rights.Commission;Children.and.the.criminal.justice.system.in.Australia. [https://humanrights.gov.au/sites/default/files/justice\\_reform\\_initiative\\_submission\\_redacted\\_0.pdf](https://humanrights.gov.au/sites/default/files/justice_reform_initiative_submission_redacted_0.pdf).



addresses mental health, educational opportunities, housing stability, and trauma is essential to breaking the cycle of incarceration. By focusing on holistic solutions and community-based initiatives, we can create pathways that empower Aboriginal youth, fostering their resilience and potential while simultaneously working to dismantle the structural inequalities that contribute to their overrepresentation in the justice system.

If you have any questions or would like to discuss anything in the contents of this report, please reach out to me directly.

Warmest regards,

A handwritten signature in black ink, appearing to be 'Jake Smith', with a stylized flourish at the end.

Jake Smith (He/Him)

Chief Executive Officer

P: 1800 595 162 | M: 0492 857 491 | E: [jsmith@tals.net.au](mailto:jsmith@tals.net.au)

Level 1, Office 1A, 67-69 Brisbane Street, Launceston

P O Box 161, Launceston TAS 7250