

The Senate

Legal and Constitutional Affairs
References Committee

Australia's youth justice and incarceration
system

June 2025

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List of recommendations

Recommendation 1

- 1.6 The committee recommends that the Senate takes note of this final report and the committee's interim report tabled on 28 February 2025.

Chapter 1

Final report

1.1 During the 47th Parliament, on 11 September 2024, the Senate referred an inquiry into Australia's youth justice and incarceration system to the Legal and Constitutional Affairs References Committee (the committee) for inquiry and report by 26 November 2024.¹ This date was subsequently extended, with a final report due by 1 July 2025.²

1.2 In anticipation of the announcement of the 2025 Federal Election, the committee tabled a substantive interim report on 28 February 2025. That report contained the following recommendations:

Recommendation 1

6.11 The committee strongly recommends that the Senate continues to pursue an inquiry into the incarceration of children in Australia given the significant and disturbing evidence received by the committee as detailed in this interim report and the issues raised in the report of the National Children's Commissioner entitled *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*.

Recommendation 2

6.12 The committee recommends that the Senate in the 48th Parliament considers whether to refer to the Senate Legal and Constitutional Affairs References Committee an inquiry into Australia's child justice and detention system, with particular reference to the Commonwealth's responsibilities as they relate to:

- a) the incarceration of children, including the disproportionate incarceration of First Nations children;
- b) compliance with international obligations relating to the detention of children;
- c) responding to the recommendations of the National Children's Commissioner's report entitled *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*; and
- (d) any other related matter.

1.3 On 28 March 2025, the Prime Minister, the Hon Anthony Albanese MP, announced the 2025 Federal Election for 3 May 2025 and the 47th Parliament was prorogued.

¹ *Journals of the Senate*, No. 130–11 September 2024, pp. 3976–3977.

² *Journals of the Senate*, No. 138–10 October 2024, p. 4169; *Journals of the Senate*, No. 146–28 November 2024, p. 4495.

- 1.4 Between 28 March and 3 June 2025, the committee was unable to further progress its inquiry, for example with further public hearings to take evidence from interested stakeholders and people with lived experience of Australia's system of youth justice.
- 1.5 Consistent with the recommendations in its interim report, the committee urges the Senate to re-refer an inquiry into the incarceration of children in Australia in the 48th Parliament.

Recommendation 1

- 1.6 **The committee recommends that the Senate takes note of this final report and the committee's interim report tabled on 28 February 2025.**

Senator Paul Scarr
Chair

Senator Thorpe Additional Comments to Final Report

- 1.1 I refer to my Additional Comments and Recommendations to the Interim Report and provide the following summary statement for inclusion in the Final Report, subject to any further inquiry by the 48th Parliament.
- 1.2 I echo the urgent demands from community stakeholders in calling for urgent Federal intervention in state and territory laws, policies and practices that incarcerate children, and disproportionately and violently target First Nations children. The Interim Report made it clear that the federal government has the power and responsibility to act and must do so urgently.
- 1.3 In April 2025, the United Nations Committee on the Elimination of Racial Discrimination (CERD) accepted a formal complaint under its Early Warning and Urgent Action procedure, citing a 'significant, persistent, and escalating pattern of racial discrimination against Aboriginal and Torres Strait Islander children across Australia'. This mechanism is reserved for the most serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination that are worsening and require immediate international attention.
- 1.4 The federal government, tasked with ensuring national human rights compliance and coordination, is enabling a system in which state and territory governments freely implement racist, punitive "tough on crime" laws, policies and practices, without evidence, accountability, or regard for their gross violations of children's rights and international obligations. Billions in funding are provided for police and prisons, while communities are left without the basic resources they need to keep children safe, strong, supported, and free.
- 1.5 The Interim Report outlined what decades of inquiries, reports, and community advocates have been saying: Criminalising children goes against all best evidence, harms children, does nothing to keep communities safe, and must not continue.
- 1.6 Decades ago, the *Bringing Them Home* report 1997 and the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC) exposed how systemic racism, dispossession, poverty, and child removals drive incarceration and laid out a path for change. These reports made it clear federal intervention and leadership were urgent then; the 2024 *Help Way Earlier* report from the National Children's Commissioner confirms this is non-negotiable now.
- 1.7 Meanwhile, state and territory governments continue to pursue colonial policies of removing and incarcerating First Nations children through punitive systems falsely framed as protective. The *Bringing them Home* report found that the

forced removal of Aboriginal and Torres Strait Islander children constitutes genocide under international law; an act now also criminalised in domestic legislation under section 268.7 of the *Criminal Code Act 1995* (Cth). Today Aboriginal and Torres Strait Islander children comprised approximately 41 per cent of all children in out-of-home care, despite representing only about six per cent of the total child population. Evidence shows that children removed from their families into "state care" are at significant risk of being criminalised in what the Victorian Yoorrook Justice Commission identified as a clear, systemic pipeline from care to incarceration.

- 1.8 Governments are not fit guardians for children. Prisons are not safe places for children, they are sites of violence. Kids are being abused, traumatised, and in some cases, dying in these systems. Upon release, most children and their families receive little or no support, remaining vulnerable to the same structural harms that led to their criminalisation.
- 1.9 The Interim Report makes clear that the Commonwealth and all states and territories are bound by international human rights obligations, including the Optional Protocol to the Convention Against Torture (OPCAT), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Rights of the Child (CRC). When these obligations are breached, the Commonwealth has both the power and the responsibility to intervene.
- 1.10 I repeat, the federal government has the power and responsibility to act. There is not a lack of solutions, or alternatives to incarceration, but a lack of political will.
- 1.11 Practically every submission called for urgent action to move beyond outdated incarceration policies and instead address the root causes of criminalisation. This requires long-term, needs-based and flexible funding for community-led, First Nations-controlled diversion programs, delivered on Country and grounded in cultural safety, therapeutic care, and trauma-informed practice. These services are either unavailable to most children or severely under-resourced, despite clear evidence of their effectiveness.
- 1.12 Funding must be prioritised for services that are delivered by and for First Peoples, as these services remain disproportionately under-resourced despite overwhelming demand and demonstrated effectiveness. Just some examples of First Nations-led programs include, [Grandmothers Against Removal](#), [Redfern Youth Connect](#), [Balit Ngalu](#) and [Nelly's Healing Centre](#).
- 1.13 Sovereign First Nations Peoples have the inherent right to self-determination, the right to govern our own political, social, and economic affairs according to our laws, cultures, and priorities, free from external interference. This is a fundamental principle of international law, affirmed by key instruments Australia has endorsed, including the UNDRIP.

1.14 Any inquiry that goes ahead in the 48th Parliament must move beyond carceral frameworks and focus on how to deliver long term, flexible investment into community-based prevention, diversion, and long-term solutions including housing, education, healthcare, and wraparound support services.¹ It must centre First Nations sovereign, self-determined solutions, mandate state and territory compliance with human rights obligations alongside enforceable decarceration targets, reallocate funding away from prisons and policing toward non-violent, evidence-based, community-led alternatives that address the root causes of criminalisation such as poverty, housing insecurity, systemic racism, and land dispossession.

1.15 As pointed out by the Institute for Collaborative Race Research:

Justice for Black communities cannot be found in the very system that commits violence against them every day. The same reformist recommendations that train and fund police, or create 'more appropriate' prisons for children do nothing to change the fundamental violence of the system. We must actually address the conditions of criminalisation and adopt a non-violent approach to keeping communities safe.²

1.16 The issue is not children or their families, it is harmful government action.

Senator Lidia Thorpe
Participating Member

¹ Institute for Collaborative Race Research, *Submission 18*, p. 6.

² Institute for Collaborative Race Research, *Submission 18*, p. 2.

Appendix 1

Submissions and additional information

- 1 KidsXpress
- 2 The Australia Institute
 - Attachment 1
- 3 Professor Tamara Walsh, University of Queensland
 - Attachment 1
- 4 Sentencing Advisory Council (Victoria)
- 5 Victorian Aboriginal Child and Community Agency
- 6 Professor Barry Goldson, University of Liverpool
- 7 Care and Kindness: Wings of Inclusion
- 8 Law and Advocacy Centre for Women
- 9 SA Commission for Children and Young People
- 10 Helen Manos
- 11 Damien Linnane
- 12 Royal Australasian College of General Practitioners
- 13 Dr Michael Levy AM
- 14 Keith Hamburger AM
- 15 Eamon Ryan, Inspector of Custodial Services (WA)
- 16 Djirra
- 17 Australian Centre for Health Law Research
- 18 Greg Peak
- 19 Richard Brooking
- 20 Justice Reform Initiative
- 21 Hello Initiative
- 22 Mr Eric Hayward
- 23 Professor Andrew Day, University of Melbourne
- 24 CREATE Foundation
- 25 Association of Alcohol and Other Drug Agencies NT (AADANT)
- 26 African Communities Council of South Australia
- 27 NOFASD Australia
- 28 Raise the Age NSW
- 29 yourtown
- 30 Australian Association for Restorative Justice
- 31 Youth Off The Streets
- 32 Australian Alcohol and Other Drugs Council (AADC)
- 33 Anglicare Victoria
- 34 Common Grace
- 35 Centre for Multicultural Youth

- 36 Tiraapendi Wodli Justice Reinvestment
- 37 Professor Fiona Stanley, Professor Carol Bower, Professor Patricia Dudgeon, Dr Jocelyn Jones, Dr Hannah McGlade, Dr Sharynne Hamilton & Dr Hayley Passmore
- Attachment 1
 - Attachment 2
 - Attachment 3
- 38 Queensland African Communities Council
- 39 Metropolitan Youth Health
- 40 Associate Professor Tamara Blakemore, Associate Professor Shaun McCarthy & Dr Louise Rak, University of Newcastle
- 41 Mr Bob Beadman
- 42 Dr Meg Perkins
- 43 Mr Joe Horner
- 44 Mr Stephen Encisco
- 45 Multicultural Youth Advocacy Network
- 46 Ms Olivia Conan-Davies
- 47 Junction Australia
- 48 Institute of Public Affairs
- 49 Redfern Legal Centre
- 50 Royal Australasian College of Physicians
- 51 National Justice Project & Jumbunna Institute for Indigenous Education and Research
- 52 Dr Fiona Robards & Professor Elizabeth Elliott, University of Sydney
- 53 PeakCare Queensland Inc.
- 54 Uniting Church in Australia, Queensland Synod
- 55 Australian Medical Association
- 56 Save the Children & 54 reasons
- 57 Queensland Network of Alcohol and Other Drug Agencies
- 58 Australian Institute of Health and Welfare
- 59 Centre for Excellence in Therapeutic Care, Australian Childhood Foundation
- 60 Australians for Native Title and Reconciliation (ANTAR)
- 61 Associate Professor Catia Malvaso, University of Adelaide
- 62 Queensland Aboriginal and Torres Strait Islander Child Protection Peak
- 63 Australian Child Rights Taskforce
- 64 Australian Research Alliance for Children and Youth (ARACY)
- 65 Australian Human Rights Commission
- 66 NAPCAN
- 67 Dr Lisa Ewenson, UNSW Sydney
- 68 Faircloth McNair & Associates
- 69 Australian Psychological Society
- 70 Alcohol Tobacco and Other Drug Association ACT (ATODA)
- 71 Jesuit Social Services

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- 72 Royal Australian and New Zealand College of Psychiatrists (RANZCP)
- 73 Queensland Indigenous Family Violence Legal Service (QIFVLS)
- 74 Australian and New Zealand Children's Commissioners, Guardians and Advocates
- 75 Multicultural Australia
- 76 Life Without Barriers
- 77 Federation of Community Legal Centres
- 78 Youth Affairs Council Victoria
- 79 Justice Collaboration, University of Sydney
- 80 Network of Councils of Social Service
- 81 Youthlaw
- 82 Human Rights Law Centre & Change the Record
- 83 UNICEF Australia
- 84 SHINE for Kids
- 85 ACT Public Advocate and Children and Young People Commissioner
- 86 NSW Council for Civil Liberties
- 87 Professor John Tobin, University of Melbourne
- 88 Dr Terry Hutchinson, Southern Cross University
- 89 Amnesty International Australia
- 90 ACT Aboriginal and Torres Strait Islander Children and Young People Commissioner
- 91 Justice and Equity Centre
- 92 Mr Luke Twyford, Queensland Family and Child Commission
- 93 Tasmanian Council of Social Service
- 94 Women's Legal Service Victoria
- 95 Youth Support and Advocacy Service
- 96 Fams
- 97 Catholic Religious Australia
- 98 WA Commissioner for Children and Young People
- 99 First Peoples Disability Network
- 100 Emeritus Distinguished Professor Rob White, University of Tasmania
- Attachment 1
 - Attachment 2
 - Attachment 3
 - Attachment 4
- 101 St Vincent de Paul Society National Council
- 102 No to Violence
- 103 Centre for Excellence in Child & Family Welfare
- 104 South Australian Council of Social Service (SACOSS)
- 105 Northern Territory Paediatricians
- 106 Maranguka Limited
- Attachment 1
- 107 Council of Aboriginal Services Western Australia (CASWA)

- 108 Professor Ruth McCausland and Professor Eileen Baldry, UNSW Sydney
- 109 Australian National Preventive Mechanism
- 110 Dr Molly McCarthy, Deakin University, and Professor Keith McVilly,
University of Melbourne
- Attachment 1
- 111 Just Reinvest NSW
- 112 Anglicare Southern Queensland
- 113 ADHD X
- Attachment 1
- 114 Justice Health Group
- 115 Youth Advocacy Centre
- 116 The Kids Research Institute Australia
- 117 Miss Maggie Blanden
- 118 Commissioner for Children and Young People (Tas)
- 119 Hope Community Services
- 120 Queensland Advocacy for Inclusion
- 121 The Salvation Army
- 122 Australasian Society for Developmental Paediatricians
- 123 Queensland Council of Social Service
- 124 Clinical Associate Professor Raewyn Mutch
- 125 NSW Ombudsman
- 126 NT Council of Social Service
- 127 Intellectual Disability Rights Service
- 128 Sisters Inside Inc. & National Network of Incarcerated and Formerly
Incarcerated Women and Girls
- 129 Youth Affairs Council of SA
- 130 Community Restorative Centre
- 131 Katherine Women's Legal Service (KWILS)
- 132 Indigenous Allied Health Australia and Indigenous Allied Health Australia,
NT Workforce Development
- 133 Smart Justice for Young People
- 134 Parents under Pressure Program (Griffith University) and Beyond the Pale
Indigenous Corporation
- 135 ANU Law Reform and Social Justice Research Hub
- 136 Australian Youth Justice Action Circle
- 137 Voices of Influence Australia
- 138 Social Reinvestment WA
- Attachment 1
 - Attachment 2
 - Attachment 3
- 139 Ms Zoë Robinson, Advocate for Children and Young People (NSW)
- 140 Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara Women's Council

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- 141 Parliamentary Commissioner for Administrative Investigations (WA)
- 142 Koorie Youth Council
- 143 The Shopfront Youth Legal Centre
- 144 Uniting Church in Australia, Synod of Victoria and Tasmania
- 145 Mr James Burford, Ms Yvette Holt & Dr Georgina Dimopoulos, Southern Cross University
- 146 Maurice Blackburn
- 147 Community Justice Coalition
- 148 Justice Action
- 149 North Australian Aboriginal Justice Agency (NAAJA)
- 150 Darwin Amnesty Action Group
- 151 Commissioner for Aboriginal Children and Young People (SA)
- 152 Aboriginal and Torres Strait Islander Legal Service (Qld) (ATSILS)
- 153 Reserve Magistrate Jennifer Bowles, Churchill Fellow
- 154 Australian Education Union
- 155 Yuwaya Ngarra-li Partnership
- 156 Australian Youth Affairs Coalition
- 157 headspace
- 158 Coalition of Peaks
- 159 Vacro
- 160 Commissioner Natalie Lewis, Queensland Family and Child Commission
- 161 Nic Carson
- 162 Tasmanian Aboriginal Centre
- 163 Professor John Mendoza
- 164 Victorian Commission for Children and Young People
- 165 Associate Professor Jocelyn Jones & Juliet Brook, Edith Cowan University
- 166 Big hART
- 167 Sarah Nelson
- 168 knowmore
- 169 Public Health Association of Australia
- 170 Partnership for Justice in Health
- 171 Aboriginal Health Council of Western Australia (AHCWA)
- 172 National Legal Aid
- Attachment 1
 - Attachment 2
- 173 SNAICC – National Voice for our Children
- 174 Dr Anita Mackay, La Trobe University
- 175 Westjustice
- 176 Northern Territory Anti-Discrimination Commissioner
- Attachment 1
 - Attachment 2
 - Attachment 3
 - Attachment 4

- Attachment 5
- 177 Gilbert + Tobin
- 178 South-East Monash Legal Service
- 179 Aboriginal Legal Service of Western Australia Limited
- 180 Australian Indigenous Doctors' Association
- 181 Jumbunna Institute for Indigenous Education and Research
 - Attachment 1
- 182 Mr Shane Northcott
- 183 Victoria Legal Aid
- 184 Children's Court of New South Wales
- 185 Institute for Collaborative Race Research
- 186 Justice Reinvestment Network Australia
- 187 Australian Centre for Child Protection, University of South Australia
- 188 Aboriginal Health and Medical Research Council of NSW
- 189 Community and Public Sector Union / Civil Service Association of WA
- 190 Professor Leah Bromfield & Mr Robert Benjamin
- 191 Levitt Robinson
 - Attachment 1
 - Attachment 2
 - Attachment 3
- 192 Central Australian Aboriginal Congress
- 193 Northern Territory Government
- 194 Office of the Children's Commissioner NT
- 195 Law Council of Australia
- 196 Victorian Aboriginal Legal Service (VALS)
- 197 Mx Aia Newport
- 198 Roxanne Moore
- 199 Legal Aid NT
 - Attachment 1
- 200 Tasmanian Government
- 201 Aboriginal Legal Service (NSW/ACT)
- 202 National Aboriginal and Torres Strait Islander Legal Services
- 203 Queensland Human Rights Commission
- 204 Attorney-General's Department
- 205 Tasmanian Aboriginal Legal Service
- 206 Youth Law Australia and Centre for Criminology, Law and Justice, UNSW
- 207 Ms Shona Reid, Guardian for Children and Young People (SA)
 - Attachment 1
- 208 Angela Sdrinis Legal
- 209 Aboriginal Legal Rights Movement (SA)
- 210 Name Withheld

-
- 211 Name Withheld
212 Confidential
213 Confidential
214 Ms Margaret Walker
215 Confidential
216 Confidential
217 Confidential
218 Confidential
219 Confidential
220 Nick Feik
221 Anti-Slavery Australia
222 ACT Inspector of Custodial Services
223 Jack Davenport
224 Office of the Public Guardian (Qld)
 - Attachment 1
 - Attachment 2
 - Attachment 3225 African Australian Advocacy Centre (AAAC)

Additional Information

- 1 Commissioner for Children & Young People, Commissioner's Policy Position, The need for rights-based reform of South Australia's child justice system, January 2025, provided by Commissioner Helen Connolly (received 24 January 2025)

Answer to Question on Notice

- 1 First Nations Advocates Against Family Violence, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 11 February 2025)
- 2 Australian Child Rights Taskforce, answers to questions on notice, 3 February 2025 (received 14 February 2025)
- 3 Coalition of Peaks, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 14 February 2025)
- 4 Law Council of Australia, answers to written and spoken questions on notice, 3 February & 11 February 2025 (received 14 February 2025)
- 5 UNICEF Australia, answers to questions on notice, 3 February 2025 (received 14 February 2025)
- 6 Australian and New Zealand Children's Commissioners, Guardians and Advocates, answers to questions on notice, 3 February 2025 (received 14 February 2025)
- 7 Attorney-General's Department, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 14 February 2025)

- 8 SNAICC - National Voice for our Children, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 18 February 2025)
- 9 Australian Human Rights Commission, answers to questions on notice, 3 February 2025 (received 18 February 2025)
- 10 Justice Action, response to questions on notice, 3 February 2025 (received 18 February 2025)
- 11 National Aboriginal and Torres Strait Islander Legal Service, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 18 February 2025)
- 12 National Commission for Aboriginal and Torres Strait Islander Children and Young People, answers to written and spoken questions on notice, 3 February & 11 February 2025 (received 20 February 2025)
- 13 Department of Social Services, answers to written and spoken questions on notice, 3 February & 11 February 2025 (received 20 February 2025)
- 14 Office of the Commissioner for Aboriginal and Torres Strait Islander Children and Young People, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 27 February 2025)
- 15 National Indigenous Australians Agency, answers to questions on notice, 3 February 2025 (received 27 February 2025)
- 16 Australian Federal Police, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 28 February 2025)
- 17 National Indigenous Australians Agency, answers to written questions on notice from Senator Thorpe, 11 February 2025 (received 5 March 2025)
- 18 Attorney-General's Department, answers to questions on notice, 3 February 2025 (received 17 March 2025)

Correspondence

- 1 Letter from the Queensland Sentencing Advisory Council dated 2 October 2024
- 2 Letter from the Department of the Premier and Cabinet (Queensland) dated 3 October 2024

Tabled Documents

- 1 Letter from Joint Council on Closing the Gap to the NT Attorney-General, dated January 2025, tabled at a public hearing on 3 February 2025