

Aboriginal Legal Service of Western Australia Limited



Australia's Draft National Report Fourth Cycle Universal Periodic Review

Submission
August 2025

The Aboriginal Legal Service of Western Australia Limited acknowledges the Traditional Custodians of the land on which we all live and work, and pay our respects to their Elders past, present and emerging. We acknowledge and respect the continuing culture and contributions that our First Nations Peoples make to the life of this state and country.

Contents

I.	Introduction.....	3
II.	About ALSWA	3
III.	Key concerns.....	4
	Human rights legislation	4
	Progress towards Closing the Gap	4
	Youth justice	4
	Bail reforms and increasing remand populations	8
	Conditions in detention	10
	Implementation of Optional Protocol to the Convention against Torture (‘OPCAT’) ...	11
	Police accountability	11
IV.	Suggested voluntary commitments	12

I. Introduction

The Aboriginal Legal Service of Western Australia Limited ('ALSWA') welcomes the public consultation on Australia's draft National Report ahead of the fourth cycle of the United Nations Human Rights Council ('UNHRC') Universal Periodic Review ('UPR').

ALSWA fully endorses the Joint Report of the Australian NGO Coalition¹ to the UNHRC ahead of Australia's fourth UPR and is grateful for the opportunity to provide additional feedback on key issues of importance.

II. About ALSWA

ALSWA was established in 1973 and is an Aboriginal Community Controlled Organisation. ALSWA is the lead provider of specialist legal advice, support services and advocacy for Aboriginal people in Western Australia. ALSWA works in collaboration and partnership with communities and key government and non-government partners to rectify legal policies and practices that impact adversely and disproportionately on the legal and human rights of WA's First Peoples.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in the areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is governed by a Board of Directors, who are all Aboriginal. ALSWA is a company limited by guarantee registered with the Australian Securities and Investment Commission and a public benevolent institution registered with the Australian Charities and Not-for-Profits Commission.

ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, child protection and human rights law. Its services are available throughout Western Australia via 11 regional and remote offices and one head office in Perth.

ALSWA also provides a number of additional wraparound services to support clients, including the Bail Support Service and Prison In-Reach Legal Service, the Custody Notification Service, the Custody Wellbeing Service, the Work and Development Permit Service and the Youth Engagement Program. ALSWA also leads the justice reinvestment program, Old Ways New Ways, along with Wadjak Northside Aboriginal Corporation, Stephen Michael Foundation and Hope Community Services. In addition, ALSWA works in partnership with Hope Community Services and other organisations for the delivery of the Waullo Dawn Healing Service and Koolark Healing Service in Armadale and the Marni Pirni Healing Service in Kalgoorlie.

¹ Joint NGO Report on behalf of the Australian NGO Coalition, 17 July 2025 <<https://alhr.org.au/wp/wp-content/uploads/2025/07/2025-26-UPR-Joint-NGO-report.pdf>>.

III. Key concerns

ALSWA has reviewed the Draft National Report and considers that it does not adequately address a number of key issues that should be highlighted during the UPR process. We have set out below a number of concerns we think need to be addressed. This is not an exhaustive list but is rather intended to highlight a number of key issues we think require further consideration, particularly in relation to the rights of Aboriginal and Torres Strait Islander² peoples.

Human rights legislation

1. Australia remains the only liberal democracy in the world without a national Human Rights Act,³ despite strong, evidence-based support for such legislation.⁴ A Federal Human Rights Act, as well as state and territory-based human rights legislation, is critical for ensuring a consistent and comprehensive human rights framework across Australia.

Progress towards Closing the Gap

2. The most recent report⁵ on Australia's progress towards Closing the Gap indicates that while six socio-economic targets show improvement, only four are on track.⁶
3. Notably, four socio-economic targets continue to worsen: imprisonment of Aboriginal adults is increasing, less Aboriginal children are thriving, more Aboriginal children are in out-of-home care, and the social and emotional wellbeing of Aboriginal peoples is declining.⁷
4. Youth justice outcomes have shown no change.⁸

Youth justice

5. Aboriginal children and young people have long been, and continue to be, overpoliced and overrepresented in the criminal justice system.⁹

² Throughout this document, ALSWA uses 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander peoples.

³ See, eg, Human Rights Watch, *World Report 2025: Events of 2024* (Full Report, January 2025) 39 [3] <<https://www.hrw.org/world-report/2025>>.

⁴ See, eg, Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report>; Australian Human Rights Commission, *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report 2023* (Report, 2023) <https://humanrights.gov.au/sites/default/files/2311_freeequal_finalreport_1_1.pdf>.

⁵ Productivity Commission, *Closing the Gap Annual Data Compilation Report* (Report, 30 July 2025) <<https://www.pc.gov.au/closing-the-gap-data/annual-data-report>>.

⁶ Ibid 3-4, 6.

⁷ Ibid.

⁸ Ibid.

⁹ Australian Institute of Health and Welfare, *Youth justice in Australia 2023-24* (Web Report, 28 March 2025) <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2023-24/contents/introduction/youth-justice-system>>.

6. Many children and young people who come into contact with the criminal justice system have complex neurodevelopmental and social vulnerabilities.¹⁰
7. The Commonwealth government has recently recognised the developmental vulnerabilities of adolescents in general, particularly those under the age of 16, in the passage of legislation to enforce a national minimum age for access to social media.¹¹
8. Despite this recognition, the age of criminal responsibility remains 10 under Commonwealth law¹² and across all states and territories in Australia except the Australian Capital Territory, which has delivered on its promise¹³ to raise the age to 14 but maintains exceptions for certain offences.¹⁴
9. While the Northern Territory was the first to raise the age of criminal responsibility from 10 to 12 in 2023, this decision was reversed just over a year after it came into effect.¹⁵
10. Aboriginal youth remain less likely to be diverted from the formal justice system than non-Indigenous youth.¹⁶
11. Virtually all state and territory governments continue to espouse ‘tough on crime’ stances, introducing legislation which risks further criminalising Aboriginal children in contact with the justice system and bringing others into contact with it for the first time. This includes:

¹⁰ See, eg, Australian Human Rights Commission, ‘*Help Way Earlier!*’: *How Australia can transform child justice to improve safety and wellbeing* (Report, 2024) <<https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>>.

¹¹ Australian Government, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (Fact Sheet, 4 December 2024).

¹² Australian Institute of Family Studies, *The Minimum Age of Criminal Responsibility in Australia* (Resource Sheet, July 2025) <<https://aifs.gov.au/resources/resource-sheets/minimum-age-criminal-responsibility-australia>>.

¹³ Lily Nothling, ‘ACT raises the age of criminal responsibility to 14’, *ABC News* (online, 30 June 2025) <<https://www.abc.net.au/news/2025-06-30/act-raises-age-of-criminal-responsibility-to-14/105474436>>.

¹⁴ Australian Institute of Family Studies (n 12).

¹⁵ Annabel Bowles, ‘NT’s CLP government passes legislation to lower the age of criminal responsibility from 12 to 10, in first week of parliament’, *ABC News* (online, 18 October 2024) <<https://www.abc.net.au/news/2024-10-18/nt-parliament-lowers-age-of-criminal-responsibility-to-10-law/104480034>>.

¹⁶ Productivity Commission, *Report on Government Services 2025: Part C Section 6* (10 June 2025) <<https://www.pc.gov.au/ongoing/report-on-government-services/2025/justice/police-services>>.

- a. 'Post and boast' laws in New South Wales,¹⁷ Queensland,¹⁸ Victoria,¹⁹ South Australia,²⁰ Western Australia,²¹ and the Northern Territory,²² which reports suggest predominantly criminalise Aboriginal children and young people;²³
- b. Strict bail laws for children in South Australia,²⁴ Victoria,²⁵ Queensland,²⁶ New South Wales²⁷, Western Australia,²⁸ and the Northern Territory;²⁹ and

¹⁷ Bail and Crimes Amendment Bill 2024 (NSW); see:

<<https://www.parliament.nsw.gov.au/bill/files/18563/Passed%20by%20both%20Houses.pdf>>.

¹⁸ Queensland Community Safety Bill 2024 (Qld); see:

<<https://www.legislation.qld.gov.au/view/whole/html/bill.third/bill-2024-018>>.

¹⁹ Crimes Amendment (Performance Crime) Act 2025 (Vic); see:

<<https://content.legislation.vic.gov.au/sites/default/files/2025-08/601293bs1.pdf>>.

²⁰ Summary Offences (Prohibition of Publication of Certain Material) Amendment Bill 2025 (SA); see:

<[https://www.legislation.sa.gov.au/_legislation/lz/b/current/summary%20offences%20\(prohibition%20of%20publication%20of%20certain%20material\)%20amendment%20bill%202025/b_as%20introduced%20in%20lc/summary%20material%20amendment%20bill%202025.un.pdf](https://www.legislation.sa.gov.au/_legislation/lz/b/current/summary%20offences%20(prohibition%20of%20publication%20of%20certain%20material)%20amendment%20bill%202025/b_as%20introduced%20in%20lc/summary%20material%20amendment%20bill%202025.un.pdf)>.

²¹ Criminal Code Amendment (Post and Boast Offence) Bill 2025 (WA); see:

<[https://www.parliament.wa.gov.au/Parliament/Bills.nsf/4F74F26B7A18299C48258CB50017F757/\\$File/Bill%2B25-1.pdf](https://www.parliament.wa.gov.au/Parliament/Bills.nsf/4F74F26B7A18299C48258CB50017F757/$File/Bill%2B25-1.pdf)>.

²² Criminal Code Amendment Bill 2024 (NT); see:

<<https://legislation.nt.gov.au/LegislationPortal/Bills/~link.aspx?id=60EA2C41976F4554A6D9F10B5C99AF27&pz=z>>.

²³ Aboriginal young people represented 78% (38) of all young people (50) charged with a 'post and boast' offence up to March 2025 in New South Wales, according to a presentation given by Jackie Fitzgerald of the New South Wales Bureau of Crime Statistics (BOCSAR) entitled 'Aboriginal incarceration in NSW: Why over-representation has increased and options for improvement' (unpublished, July 2025). See also Josh Hohne, 'High-visibility youth-crime operations to target NSW towns and social media boasting' 9 News (19 March 2025) <<https://www.9news.com.au/national/nsw-police-launch-operation-targeting-youth-crime-across-regional-nsw/70a69422-928a-4375-8beb-a3923383b39f>>; Rhiannon Tuffield, 'Almost 150 Queensland youths charged with 'boasting' about crimes online', 9 News (7 February 2024) <<https://www.9news.com.au/national/queensland-news-police-targeting-rise-in-teen-social-media-crime-in-queensland/eb9f3a2a-eccc-460a-b2f5-571460b74eab>>.

²⁴ The Statutes Amendment (Recidivist Young Offenders) Bill 2025 (SA) proposes changes to legislation in South Australia that will introduce a presumption against bail for children aged 14 and over who have been declared 'recidivist offenders' and are charged with certain offences; see

<https://www.agd.sa.gov.au/_data/assets/pdf_file/0008/1169684/Statutes-Amendment-Recidivist-Young-Offenders-Bill-2025.pdf>.

²⁵ Since March 2024, Victoria has made (and continues to make) numerous changes to its bail laws, including the removal of the presumption of remand as a last resort for children and presumptions against bail and 'high degree of probability' tests for certain repeat offenders; see generally: <<https://humanrights.gov.au/about/news/media-releases/national-childrens-commissioner-condemns-new-victorian-bail-laws-backward>>.

²⁶ Under its 'Making Queensland Safer' initiative, the Queensland government has passed legislation which removes the presumption of detention as a last resort in the arrest and bail of children and further prohibits courts from considering the principle when sentencing children; see generally: <<https://www.abc.net.au/news/2025-06-12/qld-tom-dixon-david-crisafulli-united-nations-youth-crime-law/105406424>>.

²⁷ Legislation passed in 2024 introduced a higher threshold for bail for children aged 14-17 charged with certain offences in New South Wales, requiring bail authorities to have a 'high degree of confidence' that a young person will not commit a serious offence while on bail. This legislation was extended for another three years in March 2025; see generally: <<https://www.theguardian.com/australia-news/2025/mar/16/nsw-youth-bail-laws-extension-chris-minns-labor>>.

²⁸ Children and young people accused of committing a 'serious offence' while on bail for another 'serious offence' continue to be subject to a presumption against bail which requires them to prove there are 'exceptional reasons' that they should not be kept in custody. ALSWA has long raised concerns about the disproportionate impact this provision has on Aboriginal peoples, further noting that a 'serious offence' is defined by Schedule 2 of the *Bail Act 1982* (WA) which includes a wide range of offences, some of which are very serious (murder, aggravated sexual penetration without consent) and others which may be less serious depending on the circumstances (assault occasioning bodily harm, breach of a police order); see, eg, ALSWA, Submission No 74 to Australian Law Reform Commission, *Discussion Paper 84: Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (11 September 2017) 8.

²⁹ The passage of the Bail and Youth Justice Legislation Amendment Bill 2025 (NT) amended the *Youth Justice Act 2005* (NT) to remove the legislated principle that a youth should only be kept in detention as a last resort and for the shortest appropriate period of time, and further amended the *Bail Act 1982* (NT) to require that bail must not be granted to a person unless the court has 'a high degree of confidence' that the person will not commit certain offences; see: <<https://agd.nt.gov.au/law-reform-reviews/law-reforms/strengthening-bail-in-the-nt>>.

- c. Legislative provisions in Victoria³⁰ (and similar promised amendments in Western Australia)³¹ to allow GPS monitoring of children on bail.
12. These stances are reactionary and actively undermine the ability of evidence-based, culturally safe and trauma-informed diversionary programs to meet their objectives.³²

³⁰ Under Division 1 of Part 22.1 of the Youth Justice Act 2024 (Vic) which commenced on 22 April 2025.

³¹ Laws in Western Australia will allow the monitoring of children subject to curfews ‘using the latest technology’; see: <<https://magentamarshall.com.au/archive/plan-for-rockingham/youth-crime/>>.

³² See, eg, Giovanni Torre, ‘WA Police target Indigenous youth rehabilitation event, arresting three boys in front of other children, *National Indigenous Times* (online, 14 November 2024) <<https://nit.com.au/14-11-2024/14868/wa-police-target-indigenous-youth-rehabilitation-event-arresting-three-boys-in-front-of-other-children>>.

13. Young people in detention across Australia have been facing solitary confinement,³³ unsafe facilities,³⁴ and incidents involving excessive force.³⁵ Two children recently died in youth detention within the space of a year.³⁶

Bail reforms and increasing remand populations

14. Australia's increasing use of pre-trial detention and imposition of restrictions on bail for accused persons is indicative of the erosion of the presumptions of innocence and loss of liberty as a last resort.³⁷

³³ This issue has been examined and criticised by a Royal Commission, the National Children's Commission, prison inspectors, a Federal Parliamentary Inquiry, Supreme Courts, and an ongoing coronial inquest. See, eg, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 87-118 [3.3]-[3.8] <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>>; Australian Human Rights Commission, 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing (Report, 2024) <<https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>>; Office of the Inspector of Custodial Services (WA), 2021 *Inspection of the Intensive Support Unit at Banksia Hill Detention Centre* (March 2022) <<https://www.oics.wa.gov.au/wp-content/uploads/2022/03/Banksia-Report-141.pdf>>; Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Interim Report of the Senate Inquiry into the Youth Justice System* (Report, February 2025) <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000499/toc_pdf/Australia%e2%80%99youthjusticeandincarcerationsystem.pdf>; Australian Associated Press, 'Former WA justice boss concedes children subject to 'institutional abuse' under his watch, Cleveland Dodd inquest hears', *The Guardian* (online, 25 July 2024) <<https://www.theguardian.com/australia-news/article/2024/jul/25/cleveland-dodd-inquest-wa-death-in-custody-ntwnfb>>; *VYZ by Next Friend XYZ v Chief Executive Officer of the Department of Justice* [2022] WASC 27; *CRU by Next Friend CRU2 v Chief Executive Officer of the Department of Justice* [2023] WASC 257.

³⁴ For example, the Queensland Government has repeatedly overridden its Human Rights Act to accommodate the detention of young people in adult watch houses for prolonged periods, which has been broadly condemned. See, eg, Rachel Riga and Kate McKenna, 'Advocates say children are being held in adult watch houses in Queensland for weeks at a time' *ABC News* (online, 7 February 2023) <https://www.abc.net.au/news/2023-02-07/children-held-in-adult-watch-houses-youth-justice-system-crisis/101936438?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web>; Queensland Family and Child Commission, Queensland Government, *Queensland Child Rights Report 2023* (2023) 31-32 <<https://www.qfcc.qld.gov.au/sites/default/files/2023-08/QFCC%20Child%20Rights%20Report%202023%20%281%29.pdf>>; Eden Gillespie, 'Queensland police to investigate allegations disabled child was tormented in watch house' *ABC News* (online, 26 February 2025) <<https://www.abc.net.au/news/2025-02-26/police-commissioner-qps-investigation-cairns-watch-house/104981370>>. Similar issues have also recently arisen in the Northern Territory: see Samantha Dick, 'Detainment of 15-year-old girl in NT police watch house reignites human rights concerns' *ABC News* (online, 25 March 2025) <<https://www.abc.net.au/news/2025-03-25/nt-teenager-held-in-palmerston-police-watch-house-three-nights/105089906>>. Further, in Tasmania, young people housed in adult watch-houses have been exposed to 'threats of sexual abuse, violent behaviour and inhumane and degrading treatment': see Madeleine Rojahn, 'Tasmania's prison watchdog calls for end to practice of housing kids in adult watch-houses' *ABC News* (online, 11 June 2025) <<https://www.abc.net.au/news/2025-06-11/calls-for-end-children-prison-watch-houses-custodial-inspector/105389752>>.

³⁵ See, eg, Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Interim Report of the Senate Inquiry into the Youth Justice System* (Report, February 2025) 107 [4.15]-[4.21] <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000499/toc_pdf/Australia%e2%80%99youthjusticeandincarcerationsystem.pdf>; Northern Territory Aboriginal Justice Agency and Aboriginal Peak Organisations Northern Territory, Submission No 148 to the Australian Human Rights Commission, *Youth Justice and Child Wellbeing Reform Project across Australia* (June 2023) 5 <https://humanrights.gov.au/sites/default/files/northern_australian_aboriginal_justice_agency_submission_0.pdf>; Grace Tobin et al, 'Boys handcuffed, held down by guards and sat on in dangerous youth detention 'folding' restraint' *ABC News* (online, 14 November 2022) <<https://www.abc.net.au/news/2022-11-14/video-shows-dangerous-youth-detention-restraint-on-teenage-boy/101632832>>.

³⁶ Rhiannon Shine and Andrea Mayes, 'Banksia Hill teenager becomes the second child to die by suicide in WA's troubled youth detention system' *ABC News* (online, 30 August 2024) <<https://www.abc.net.au/news/2024-08-30/banksia-hill-suicide-second-child-death-wa-youth-detention-104290074>>; Keane Burke, 'Coroner in Cleveland Dodd inquest indicates he may call for urgent closure of Unit 18' *ABC News* (online, 11 December 2024) <<https://www.abc.net.au/news/2024-12-11/cleveland-dodd-inquest-coroner-may-call-for-closure-of-unit-18/104712784>>.

³⁷ See Doreen Chen, 'International perspectives on using bail to improve Indigenous criminal justice outcomes' (Research Brief 29, Indigenous Justice Clearinghouse, October 2020) <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/doreen-chen-international-perspectives-on-using-bail-ijc-2020.pdf>>.

15. Aboriginal peoples have long been, and continue to be, grossly overrepresented in prison populations across Australia.³⁸
16. Since 2021, there has been a significant and disproportionate increase in the average number of Aboriginal adults in detention across Australia compared to non-Indigenous adults.³⁹

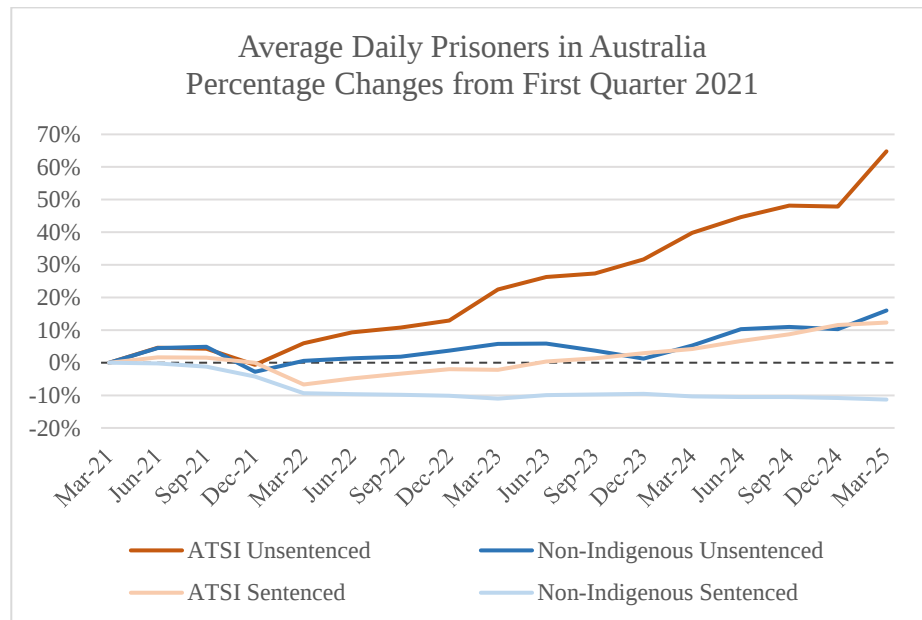


Figure 1 (Source: Australian Bureau of Statistics – Corrective Services data)

17. One of the key factors that contributes to the overrepresentation of Aboriginal adults on remand is the difficulty in obtaining bail.⁴⁰
18. This difficulty is compounded by increasingly punitive and highly politicised ‘tough on crime’ policies that increase police interactions with Aboriginal people in the community, broaden the circumstances in which harsher penalties may be imposed for an offence, and increase the likelihood that Aboriginal people who enter the justice system will reoffend or remain in the system for longer periods.⁴¹

³⁸ See, eg, *Royal Commission into Aboriginal Deaths in Custody* (1991); Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017); Thalia Anthony et al, ‘30 years on: Royal Commission into Aboriginal Deaths in Custody recommendations remain unimplemented’ (Working Paper No. 140/2021, Centre for Aboriginal Economic Policy Research, Australian National University, 2021) <<https://caepr.cass.anu.edu.au/research/publications>>; Louis Schetzer and Mindy Sotiri, ‘Reforming Bail and Remand’ (Justice Reform Initiative Position Paper, November 2024) <https://www.justicereforminitiative.org.au/position_papers>.

³⁹ See Figure 1.

⁴⁰ See, eg, ALSWA, Submission to the Department of the Attorney General Government of Western Australia Review of the Bail Act 1982 (October 2010); ALSWA, Submission No 10 to Senate Finance and Public Administration References Committee, Parliament of Australia, *Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services* (29 April 2015); ALSWA, Submission No 74 to Australian Law Reform Commission, *Discussion Paper 84: Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (11 September 2017).

⁴¹ See, eg, Brenda Lin, Brendan Delahunty and Garner Clancey, ‘“Law and order” policy’ in Diana Perche et al (eds), *Australian Politics and Policy* (Sydney University Press, 2024) 1126; Louis Schetzer and Mindy Sotiri, ‘Reforming Bail and Remand’ (Justice Reform Initiative Position Paper, November 2024) <https://www.justicereforminitiative.org.au/position_papers>; Max Travers et al, ‘Bail decision-making and pre-trial services: A comparative study of magistrates courts in four Australian states’ (Report to the Criminology Research Advisory Council Grant: CRG 34/16–17, Australian Institute of Criminology, October 2020).

19. Australia cannot and will not achieve the outcome of Closing the Gap Target 10⁴² if state and territory governments continue to pass legislation which blatantly disregards their commitments to this objective.⁴³

Conditions in detention

20. The issues associated with rapidly increasing prison remand populations across Australia have been widely reported.⁴⁴
21. In Western Australia, the Office of the Inspector of Custodial Services (‘OICS WA’) noted in its most recent annual report⁴⁵ that record high populations in adult prisons across the state have largely been driven by the increasing number of people entering custody on remand.⁴⁶ This has led to massive overcrowding which, together with staffing issues, continues to have deleterious effects on the wellbeing of individuals held in custodial facilities across the state.⁴⁷
22. In addition to the impact of cramped and unhygienic cells, insufficient access to rehabilitative programs, and routine lockdowns on prisoners,⁴⁸ the OICS WA noted that:

As a result of these population pressures, more Aboriginal people are being held in facilities off Country away from their family and culture. Maintaining connection to family, kinship and culture is integral to the emotional and social wellbeing of First Nations peoples.⁴⁹

23. Across Australia, custodial inspections and coronial inquests continue to reveal conditions that are detrimental to health, safety, and wellbeing and are recognised as violating the human rights of persons held in custody.⁵⁰

⁴² By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent; see <<https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/7-difference/b-targets/b10>>.

⁴³ Examples include the expansion of circumstances in which a presumption against bail applies in the Northern Territory following the passage of the Bail Legislation Amendment Bill 2024 (NT) and the recent passage of Victoria’s Bail Further Amendment Bill 2025 (Vic). See above nn 17-30.

⁴⁴ See, eg, Eden Gillespie, “‘Always a bed in prison’: Australia’s housing crisis blamed for rise in unsentenced prisoners”, *Guardian Australia* (online, 4 February 2024) <<https://www.theguardian.com/australia-news/2024/feb/04/always-a-bed-in-prison-australias-housing-crisis-blamed-for-rise-in-unsentenced-prisoners>>; Maani Truu and Casey Briggs, ‘More than a third of prisoners are locked up without a sentence. For decades, that number has been growing’, *ABC News* (online, 25 February 2023) <<https://www.abc.net.au/news/2023-02-25/one-third-of-australian-prisoners-are-unsentenced-on-remand/102015092>>; Adeshola Ore, ‘Unsentenced prisoners make up a third of Australia’s prison population as bail refusals boom’, *Guardian Australia* (online, 1 February 2023) <<https://www.theguardian.com/australia-news/2023/jan/31/unsentenced-prisoners-make-up-a-third-of-australias-prison-population-as-bail-refusals-boom>>.

⁴⁵ Office of the Inspector of Custodial Services (WA), *Annual Report 2023-24* (Report, 5 November 2024) <<https://www.oics.wa.gov.au/reports-publications/>>.

⁴⁶ *Ibid* 23.

⁴⁷ *Ibid*.

⁴⁸ *Ibid* 28–29.

⁴⁹ *Ibid* 24 [citations omitted].

⁵⁰ See, eg, Office of the Inspector of Custodial Services (WA), *2025 Follow-up Inspection of Hakea Prison* (Report, June 2025) <<https://www.oics.wa.gov.au/reports-publications/>>; Ariel Bogle and Christopher Knaus, ‘New data reveals increase in staggering death toll from known hanging points in Australian jails’, *Guardian Australia* (online, 11 July 2025) <https://www.theguardian.com/australia-news/2025/jul/11/death-toll-from-suicides-using-known-ligature-points-in-australian-prisons-climbs-on-release-of-new-information-ntwnfb?CMP=share_btn_url>; *Inquest into the Death of Sam Phillip Chisholm* (Coroner’s Court of Western Australia, Coroner Jenkin, 12 June 2025); Ariel Bogle and Christopher Knaus, ‘After Chelsea’s mother died in an unsafe cell the coroner delivered a scathing message’, *Guardian Australia*

24. Together with preventative oversight mechanisms, coronial findings are essential to protecting persons deprived of their liberty and improving the conditions of custodial facilities. However, Australia lacks a national, searchable database of recommendations arising from these findings and the responses to them.⁵¹

Implementation of Optional Protocol to the Convention against Torture ('OPCAT')

25. ALSWA acknowledges that some work has been undertaken to progress the implementation of OPCAT in Australia since the Third Cycle UPR in 2021.⁵²
26. However, progress towards the implementation of OPCAT in Australia remains inadequate.
27. The Draft National Report fails to acknowledge that Australia missed its January 2023 deadline for compliance with OPCAT, and that the key impediment to the full implementation of OPCAT in Australia is a lack of agreement on funding.⁵³
28. New South Wales, Queensland, and Victoria maintain the position that they will not nominate or establish National Preventative Mechanisms (NPMs) until they receive assurance of adequate funding from the Commonwealth.⁵⁴
29. In Western Australia, NPMs are limited in their ability to meet their obligations under OPCAT by both inadequate funding and the need for enabling legislation that has yet to be drafted.⁵⁵
30. Despite these issues, there has been no mention of OPCAT in the Standing Council of Attorneys-General (SCAG) Communiqués since February 2024.
31. There is also no mention of OPCAT in the Federal Budget 2025-26.⁵⁶

Police accountability

32. Independent oversight of police forces in Australia remains inadequate.

(online, 11 June 2025) <https://www.theguardian.com/australia-news/2025/jun/11/australian-coroners-hanging-points-prison-investigation-ntwnfb?CMP=share_btn_url>.

⁵¹ While the National Coronial Information System's 'Fatal facts' tool is a valuable resource, ALSWA notes that it does not include responses to coronial recommendations.

⁵² Australia's fourth Universal Periodic Review Draft National Report, 28 [157-158].

⁵³ Australian National Preventive Mechanism ('Australian NPM'), 'Written Contribution to List of Issues Prior to Reporting: Seventh periodic report of Australia under the International Covenant on Civil and Political Rights' (28 May 2025) 12 [4] <https://www.ombudsman.gov.au/_data/assets/pdf_file/0024/318516/Australian-NPM-written-contribution-to-LOIPR-ICCPR-seventh-periodic-review.pdf>.

⁵⁴ *Joint Australian, State and Territory Response to the Disability Royal Commission* (Report, Australian Government, 30 July 2024) 60, 94, 97 <<https://www.health.gov.au/sites/default/files/2025-07/joint-government-response-to-disability-royal-commission-recommendations.pdf>>.

⁵⁵ Office of the Inspector of Custodial Services (WA), *Annual Report 2023-24* (Report, 5 November 2024) 39 <<https://www.oics.wa.gov.au/wp-content/uploads/2024/10/2023-24-Annual-Report-Final.pdf>>; Australian NPM, *Annual Report 2023-24* (Report) 51 <https://www.ombudsman.gov.au/_data/assets/pdf_file/0018/317160/Australian-NPM-Annual-Report-2023-24.pdf>.

⁵⁶ Australian NPM Joint Statement, 'Critical torture prevention work again underfunded' (online, 26 March 2025) <https://www.ombudsman.gov.au/_data/assets/pdf_file/0024/317445/Australian-NPM-joint-statement-Federal-Budget-2025-26.pdf>.

33. A 2024 study⁵⁷ that examined contact between Aboriginal peoples and the criminal justice system identified a high rate of arrest as ‘the leading proximate cause’⁵⁸ of the overrepresentation of Aboriginal peoples in Australian custodial facilities.
34. Marked differences ‘consistent with the influence of criminal law and law enforcement policy’ remain between Australian states and territories even after controlling for factors that influence the risk of Aboriginal people being arrested (such as gender, drug and alcohol use, mental well-being, and membership of the Stolen Generations).⁵⁹
35. In the first six months of 2025, Aboriginal people were arrested and detained in Western Australia police facilities on 22,157 occasions.⁶⁰
36. There is no publicly available data pertaining to the arrest and detention of non-Aboriginal people by police in Western Australia. This ‘precludes the production of national data about police proceedings or the number of times an offender was proceeded against by police’,⁶¹ as data pertaining to police proceedings and the Aboriginality of defendants is available for all other states and territories in Australia.⁶²
37. There is no publicly available information regarding the ongoing maintenance of police custodial facilities in Australia.

IV. Suggested voluntary commitments

ALSWA submits that the Australian Government consider making the following voluntary commitments during its appearance at the UPR in January 2026. Each of the commitments we seek are supported by significant evidence and broad-based support from civil society, as reflected in the Joint NGO Coalition Report.

1. Australia commits to establishing a national Human Rights Act.
2. Australia commits to a national approach to the reform of child justice and related systems as a matter of urgency.
 - Fully implement the recommendations of the Australian Human Rights Commission report *Help way earlier! How Australia can transform child justice to improve safety and wellbeing* (2024).
 - Re-refer an inquiry into the incarceration of children in Australia in the 48th Parliament.⁶³

⁵⁷ Don Weatherburn et al, *Towards a theory of Indigenous contact with the criminal justice system* (Research Report No 32, Australian Institute of Criminology, 22 May 2024) <<https://www.aic.gov.au/publications/rr/rr32>>.

⁵⁸ Ibid vii.

⁵⁹ Ibid 31.

⁶⁰ Custody Notification Service (CNS) Data WA, unpublished.

⁶¹ Australian Bureau of Statistics, Recorded Crime – Offenders methodology (6 March 2025) <<https://www.abs.gov.au/methodologies/recorded-crime-offenders-methodology/2023-24>>.

⁶² Ibid.

⁶³ Legal and Constitutional Affairs References Committee, Australia’s youth justice and incarceration system (Report, June 2025) 1.

3. Australia commits to raising the age of criminal responsibility to at least 14 years.
4. Australia commits to ensuring the full implementation of the Optional Protocol to the Convention against Torture (OPCAT) as a matter of urgency.
 - Ensure that all states and territories establish NPMs and enact enabling legislation.
 - Ensure that NPMs are provided with secure, ongoing funding to meet their obligations.
 - Adopt a comprehensive approach to the definition of ‘places of deprivation of liberty’.⁶⁴
5. Australia commits to establishing a mandatory national database of Coronial Inquest findings, recommendations, and responses.
6. Australia commits to signing and ratifying the Third Optional Protocol to the Convention on the Rights of the Child (UNCRC) on a Communications Procedure (OPIC).
7. Australia commits to fully implementing the recommendations of the:
 - Royal Commission into Aboriginal Deaths in Custody (1991);
 - Royal Commission into the Detention and Protection of Children in the Northern Territory (2017); and
 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020).
8. Australia commits to increasing funding for ATSILS.

⁶⁴ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment No. 1 (2024) on Article 4 of the Optional Protocol (Places of Deprivation of Liberty)*, 53rd Session, UN Doc CAT/OP/GC/1 (4 July 2024).