

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

**Submission by Dr Michael Levy AM, Public Health Physician to the Parliamentary Enquiry
into Australia's Youth Justice and Incarceration System**

6th October 2024

By email: legcon.sen@aph.gov.au

Dear Committee Secretary

I am a Public Health Physician, with over 24 years' clinical experience (1994 – 2019) at the interface of the health and the criminal justice systems. I was recognised in 2014 as a Member of the Order of Australia. Additionally, between 2019 and 2023 I served as the Medical Expert on the Northern Territory (NT) Department of Families, Housing and Communities Clinical Governance Committee. That Committee provided a degree of oversight to the Northern Territory Juvenile Justice system. I have recently participated in two inspections of the ACT Youth Detention Centre (Bimberi), once again as the medical expert - with the Office of Inspector of Custodial Services. Finally, I have limited experience with the Council of Europe Committee for the Prevention of Torture (including an inspection of a United Kingdom Youth Detention Centre) and have been an invited participant on reviews conducted by the Western Australian Inspector of Custodial Services, both in NT and in Western Australia itself.

a) the outcomes and impacts of youth incarceration in jurisdictions across Australia.

The Australian Institute of Health and Welfare reports accurately on this, and associated issues. The last report was released on 28 March 2024 I have nothing to add in response to this question.

b) the over-incarceration of First Nations children

The Australian Institute of Health and Welfare reports accurately on this, and associated issues. The last report was released on 28 March 2024 I have nothing to add in response to this question.

c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention.

And

d) the Commonwealth's international obligations in regard to youth justice including the rights of the child, freedom from torture and civil rights.

Australia ratified the Convention on the Rights of the Child in 1990. The very basic principle enunciated in that Convention was the principle of "In the best interests of the Child".

There is a lack of commitment to independent and competent oversight of sites of Youth Detention. In 2019, Australia ratified the Optional Protocol to the United Nations (UN) Convention Against Torture (OPCAT). Implementation has been delayed, and National Preventative Mechanisms have not yet been identified in each jurisdiction. When the UN Subcommittee on the Prevention of Torture ceased its visit to Australia in October 2023, citing obstacles by Australian jurisdictions (Queensland and New South Wales were not named in official communiques, but have been named by the Commonwealth Attorney-General's Department), this nation joined Rwanda, as the only countries to date to have obstructed the multilateral oversight program that 91 states internationally have ratified. The Committee did enter Don Dale Centre outside Darwin.

What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? All jurisdictions need to acknowledge that the pre-determinants of youth crime do not reside in the justice domain, rather due to prenatal deprivation (including exposure to alcohol, tobacco and other drugs), social disadvantage (including parental engagement with the criminal justice system), behaviour disorder leading to school disengagement – a joined effort by the social service, health and education systems need to find solutions which distance the young offender from the police and criminal justice systems. Recent funding for Justice Reinvestment begins to address some of this principle, but until funds are excised out of policing and the criminal justice systems, and transferred to community-based social service, health and education services, "the best interests of the child" will not even begin to be addressed.

There is so little that Australia can hold up as evidence-based initiatives in child welfare, and the criminal justice system. At best, we apply adult solutions to the issues that confront children. However, have we got to the situation that youth detention looks, feels and conducts itself as an adult system look-alike. The Commissions of Enquiry into the Tasmanian Juvenile Justice system (namely Ashley Youth Detention Centre), the Northern Territory Youth Detention and Care systems ("Don Dale" and so much more), and many the Reports from the Western Australian Custodial Inspectorate (Rangeview and Banksia Hill) – are witness enough to the failures of State and Territory jurisdictions to safely and humanely respond to the issues that youth 'crime' "challenges". Too often, the responses are systemic abuses and abrogation of

human rights. None can provide evidence for the most basic understanding of, and respect for, “In the best interests of the Child”.

The disparity of absolute numbers in detention, the rates of juvenile detention, the conduct of the different jurisdiction – screams out for national oversight. Once again, the ratification of OPCAT provides the Commonwealth Government to begin engaging in the oversight of all juvenile justice systems in the nation. The Commonwealth Attorney-General needs to assume a leadership role in this. The National Children's Commissioner needs to assume a role in working with jurisdictional counterparts to bring the voices of children into this process. While it might be symbolic, I would call on the Commonwealth Government, at no risk to itself, to legislate its commitment to act “in the best interests of the child’ by raising the MACR to 14 years, in one single step, “without exceptions” – and then in every Australian territory and state jurisdiction.

e) the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations.

I am not impressed that any of the State and Territory Governments, who are each responsible for Juvenile Justice, take this commitment seriously. I am not aware that something like a Child Impact Assessment has ever been conducted in the process of developing legislation, policies or procedures related to Youth Justice and Youth Detention. The limping progress across the Australian jurisdictions, regarding the Minimum Age of Criminal Responsibility (MACR) bears witness to the lack of respect being offered to the rights of Australian children. Even as we still have no agreed national minimum age, the NT had opted for 12 years (without exclusions)¹, the ACT has chosen a staged change – first 12 years, and in two years’ time 14 years (with exclusions). The Australian Institute of Health and Welfare reported that there were 499 children under the age of 14 years who spent time in detention between June 2019 and June 2020, throughout Australia – 43 of those were aged under 12 years. Under the *Crimes Act 1914 (Commonwealth) (Crimes Act)*, the minimum age of criminal responsibility for Commonwealth offences is 10 years of age. The Commonwealth Government, at no risk to itself, could act “in the best interests of the child’ by raising the MACR to 14 years.

f) any related matters

The Commonwealth Attorney-General could use the cessation of the SPT visit in 2022 to set a minimum standard from States and Territories; first youth justice (later adult detention).

The Commonwealth Ombudsman's Office to be funded to explore, and then enact, the roles that that Office could play in national oversight of youth detention by territory and state jurisdictions.

Children to be engaged in consultation on issues that affect them. Child-sensitive, age-sensitive and culturally-sensitive engagement – is not easy, but we, as a nation, need to learn those processes.

¹ The recently elected NT Government has stated its intention to repeal all enabling legislation, even before it has been enacted.

Yours sincerely

Dr Michael H. Levy AM (MB, BS. MPH. FAFPHM.)

SOME REFERENCES USED IN PREPARING THIS SUBMISSION

National

https://www.ombudsman.gov.au/_data/assets/pdf_file/0010/304102/Commonwealth-NPM-Annual-Report-2022-23.pdf (See pages 37-39)

<https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice>

Youth Justice (2024) <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>

The Royal Commission “The Protection and Detention of Children in the Northern Territory” (Report tabled in November 2017).

https://www.abc.net.au/news/2023-10-05/fact-check-young-indigenous-man-jail-university-anthony-albanese/102932912?utm_campaign=newsweb-article-new-share-null&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

Is a 10-year-old too young to be held criminally responsible? | BTN High

<https://www.youtube.com/watch?v=0zcDeRDGQBE>

Exploring the Potential of Justice Reinvestment in Cowra - Community

Report <https://nceph.anu.edu.au/research/research-stories/exploring-potential-justice-reinvestment-cowra-community-report> (Dr Jill Guthrie, Australian National University 2018)

Australian Capital Territory

HUMAN RIGHTS AUDIT OF QUAMBY YOUTH DETENTION CENTRE. Human Rights and Discrimination Commissioner, ACT Human Rights Office. (30 June 2005)

The Government's response to recommendations 1 and 3 of Coroner Somes' inquest into a death at Quamby. Report Number 10. Standing Committee on Education, Community Services and Recreation. Legislative Assembly for the Australian Capital Territory (August 2001)

New South Wales

<https://www.theguardian.com/australia-news/2024/mar/12/nsw-premier-chris-minns-youth-crime-law-changes-bail-act>

Northern Territory

https://www.abc.net.au/news/2023-02-13/nt-don-dale-sexual-abuse-government-sued-lawsuit/101954666?utm_campaign=abc_news_web&utm_content=mail&utm_medium=content_shared&utm_source=abc_news_web

https://www.abc.net.au/news/2024-02-23/marion-scrymgour-criticises-youth-crime-approach/103505388?utm_source=abc_news_app&utm_medium=content_shared&utm_campaign=abc_news_app&utm_content=other

<https://www.abc.net.au/news/2023-02-04/fasd-fetal-alcohol-aboriginal-youth-crime-alice-springs/101854566>

Queensland

https://www.abc.net.au/news/2010-01-04/qld-examines-juvenile-detention-laws/1197432?utm_campaign=abc_news_web&utm_content=mail&utm_medium=content_shared&utm_source=abc_news_web (2010 video has 'expired')

https://www.abc.net.au/news/2023-02-19/queensland-youth-detention-wayne-shaw-courts/101990824?utm_campaign=abc_news_web&utm_content=mail&utm_medium=content_shared&utm_source=abc_news_web

https://www.abc.net.au/news/2023-02-20/queensland-youth-crime-prevention-government-policy-police/101995802?utm_campaign=abc_news_web&utm_content=mail&utm_medium=content_shared&utm_source=abc_news_web

https://www.abc.net.au/news/2023-02-23/inside-queensland-youth-detention-centre-youth-crime/102011108?utm_campaign=abc_news_web&utm_content=mail&utm_medium=content_shared&utm_source=abc_news_web

<https://www.abc.net.au/news/2024-08-28/cleveland-youth-detention-centre-report-human-rights-concerns/104276008>

<https://www.abc.net.au/news/2024-08-31/prison-watchdog-calls-out-mixed-signals-on-qld-youth-detention/104290800>

South Australia

Nothing – which in itself could be a concern.

Tasmania

<https://www.abc.net.au/news/2024-06-21/ashley-youth-detention-centre-class-action-75-million/104008158>

Victoria

<https://www.abc.net.au/news/2024-03-14/victoria-police-raise-the-age-criminal-responsibility-debate/103582956>

Western Australia

https://www.abc.net.au/news/2023-08-12/lawyers-unite-for-better-deal-for-banksia-hill-detainees/102690118?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

<https://www.abc.net.au/news/2023-11-04/unit-18-necessary-evil-any-questions-youth-justice-investigation/103041978>

<https://www.oics.wa.gov.au/reports/148-inspection-of-banksia-hill-detention-centre-and-unit-18-at-casuarina-prison-part-one/>

<https://www.theguardian.com/australia-news/2023/jun/08/banksia-hill-detention-centre-in-acute-crisis-inspector-finds>

<https://www.abc.net.au/news/2023-11-06/cleveland-dodd-death-unit-18-suicide-preventable/103054968>