

**Independent Submission to the Senate Legal and Constitutional Affairs
References Committee**

Australia's youth justice and incarceration system

1. Professional background and context

1.i. I have been engaged with youth justice research, theory, policy and practice for over forty years.

1.ii. I am a professionally qualified social worker and during the 11-year period 1982-1993 I was employed in practice and operational management in the Probation Service, an NGO and two Local Authority Social Services Departments providing services for a range of socially and economically disadvantaged children and young people in the UK, including those in conflict with the law.

1.iii. I first joined the academic staff at the University of Liverpool, UK, in 1993. In 2006 I was appointed to a Personal Chair in Criminology and Social Policy and, in 2009, I was appointed to the endowed Charles Booth Chair of Social Science. In 2016 I was designated an 'Accomplished Professor' by the University and in 2020 the titles 'Professor Emeritus' and 'Honorary Professor' were conferred.

1.iv. In addition to my position at the University of Liverpool, I have longstanding associations with Universities in Australia. In particular, I am a Visiting Professorial Fellow/Honorary Professor and a member of the Centre for Crime, Law and Justice at the Faculty of Law and Justice (School of Law, Society and Criminology), University of New South Wales, Sydney.

1.v. Throughout my academic career my research interests have been, and remain, situated at the inter-disciplinary interface(s) of criminal justice, criminology, law, social/public policy, history, sociology and socio-legal studies. More specifically, I am perhaps best known for my work in the fields of youth criminology and youth/juvenile justice studies within which I have earned significant visibility and international standing. I have a particular expertise in international and comparative youth justice and child welfare regimes.

1.vi. I have researched and published extensively and my most recent books include: *Youth Crime and Justice*, 2nd edition (Sage, 2015); *Justice and Penal Reform: Re-shaping the penal landscape* (Routledge, 2016) *Juvenile Justice in Europe: Past, Present and Future* (Routledge, 2019) and *Youth Justice and Penalty in Comparative Context* (Routledge, 2021).

1.vii. I have a keen interest in research-policy-practice relations and, over many years, I have provided expert evidence to a range of parliamentary committees, independent inquiries and international studies.

1.viii. Between 2010 and 2017, I was an appointed member of the Panel of European Youth Researchers (PEYR), an expert group established by the European Commission and the Council of Europe to advise on European youth policy and research.

1.ix. In 2017, I was conferred Fellow (Academician) of the Academy of Social Sciences in the UK.

1.x. In 2018, I was awarded a 'Juvenile Justice Without Borders International Award' by the International Juvenile Justice Observatory (IJJO) based in Brussels, Belgium.

1.xi. Over 2017-19, I was a member of the Expert Advisory Board that guided and supported the United Nations Global Study on Children Deprived of Liberty. A summary report of the Study was presented to the United Nations General Assembly in New York in October 2019 and the full report was launched in Geneva in November 2019.

1.xii. In 2023-24, I was a member of the Australian Children's Commissioner's Academic Advisory Group for her inquiry into 'Youth Justice and Child wellbeing Reform Across Australia'.

1.xiii. Currently I am the Chair/Convenor of both the British Society of Criminology 'Youth Criminology/Youth Justice Network' (YC/YJN) and the European Society of Criminology 'Thematic Working Group on Juvenile Justice' (TWGJJ).

1.xiv. The above provides a resumé of my professional background and comprises the context from which I make this submission.

2. Focus of submission

2.i. I address each of the five core areas/questions raised by the Legal and Constitutional Affairs References Committee. Given the imposed confines, I draw largely (but not exclusively) on my own published research outputs (authored either individually or collaboratively). Additionally, each cited output includes extensive referencing to the wider corpora of published international research. This submission accompanies the evidence that I provided for the Australian Children's Commissioner's inquiry into 'Youth Justice and Child Wellbeing Reform Across Australia' that can be found here: https://humanrights.gov.au/sites/default/files/emeritus_professor_barry_goldson_university_of_liverpool_submission_redacted_0.pdf

The impacts and outcomes of youth incarceration in jurisdictions across Australia.

2.ii Youth justice interventions in general, and the practices of youth incarceration in particular, impact disproportionately on the most damaged, distressed and disadvantaged

children and young people in Australia, as is the case in jurisdictions elsewhere in the world (Nowak, 2019; Goldson *et al*, 2021).

2.iii. Not all, and not only, the most disadvantaged children and young people 'offend' but, wherever and whenever we might care to look in the world, the children who are typically found in penal detention are the very young people who are systematically marginalized, excluded and isolated in the infrastructure of everyday life (Goldson, 2015; Goldson *et al*, 2021).

2.iv. Identifiable groups of children and young people are especially (and disproportionately) prone to youth incarceration and its deleterious impacts including: Aboriginal and Torres Strait Islander and black and minority ethnic children and young people (see below); children and young people known to social welfare and child protection agencies; children and young people with mental health disorders and/or cognitive/neuro-disabilities, and; children and young people living at the most acute ends of social and economic adversity and exclusion (Baldry *et al*, 2018; Goldson *et al*, 2021).

2.v. Paradoxically, therefore, the very children and young people in greatest need of welfare support and safeguarding (including the protections and benefits conferred by international human rights standards - see below), are often those who are most readily criminalized and incarcerated and whose human rights are most severely compromised, if not violated (see, for example: Cunneen *et al*, 2016; Cunneen *et al*, 2018; Goldson *et al*, 2021).

2.vi. Disproportionate forms of criminalization and custodial detention typically impose profoundly damaging impacts on such children and young people who tend to be cycled and recycled through the same systems on multiple/repeat occasions (Goldson, 2005; Goldson, 2015; Bateman *et al*, 2024). International evidence consistently points to the corrosive short-, medium- and longer-term impacts of youth incarceration (Nowak, 2019; Goldson *et al*, 2021; Bateman *et al*, 2024).

2.vii. The impacts and outcomes of youth incarceration are not only problematic regarding the wellbeing of children and young people. When measured and benchmarked with reference to crime prevention and community safety, for example, penal detention is both extremely expensive and a spectacularly ineffective mode of intervention. In this sense, youth incarceration not only exposes children and young people to myriad harms; it also repeatedly fails the public interest (Goldson, 2015; Goldson *et al*, 2021; Bateman *et al*, 2024).

2.viii. There is a compelling need to develop strategies, legal frameworks and policies across Australia that are aimed towards replacing youth incarceration with practices that best meet the complex needs of children and young people and serve the wider public interest (Goldson *et al*, 2021).

The over-incarceration of First Nations children.

2.ix. Volumes of research-based publications and reports, together with numerous and repeated official inquiries – including Royal Commissions – have persistently revealed the over-incarceration of First Nations children in Australia for decades (see for example: Human Rights and Equal Opportunities Commission, 1997; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011; Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, 2017a and 2017b). Notwithstanding the accumulated evidence, however, such over-incarceration persists.

2.x. Currently, the over-incarceration of First Nations children and young people is evident in *every* State and Territory of Australia but in *some* discrete States and Territories rates of over-incarceration assume exceptionally striking forms. In Queensland, for example, Aboriginal and Torres Strait Islander children are locked-up at 32 times the rate of non-Indigenous young people, in South Australia 36 times and in Western Australia 38 times. Furthermore, at a sub-State and/or sub-Territory level the child's precise domiciliary/familial location is critical. Aboriginal and Torres Strait Islander children are significantly more likely than non-Indigenous young people to live in 'outer regional', 'remote' or 'very remote' areas where the prospects of being remanded and/or sentenced to penal detention are especially high (Goldson *et al*, 2021: especially Chapter 5).

2.xi. The negative impacts and outcomes of youth incarceration (see above) weigh most heavily on First Nations children across Australia and, more heavily still, on First Nations children in identifiable States and Territories.

2.xii. The United Nations Global Study on Children Deprived of Liberty represents the most ambitious and wide-ranging study of youth incarceration. The Study urges every nation-state in the world to: 'develop and implement a national strategy aimed at replacing the detention of children in penal facilities with non-custodial solutions based upon broad consultation with experts, civil society and children themselves' (Nowak, 2019: 336). Across Australia, there are many First Nation-led 'pioneering and promising approaches' that offer the prospect of 'redressing the deleterious excesses of racialised penalty' (Goldson *et al*, 2021: 198-200).

2.xiii. Such approaches must be resourced and nurtured to finally reverse the long-established over-incarceration of First Nations children.

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.

2.xiv. Various international human rights standards pertain to children and young people in detention in Australia including: United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (1985); United Nations Convention on the Rights of the Child (UNCRC) (1989); United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990); United Nations Rules for the

Protection of Juveniles Deprived of their Liberty (the JDL or Havana Rules) (1990); and United Nations Committee on the Rights of the Child General Comment No. 24: 'Children's Rights in the Child Justice System' (2019) (that replaced General Comment No. 10 – 'Children's Rights in Juvenile Justice').

2.xv. Notwithstanding the corpora of such international standards, however, volumes of research-based publications, reports and official inquiries (including Royal Commissions) (see 2.ix. above) persistently reveal Australia's non-compliance with, and violation of, the same standards (Cunneen *et al*, 2016; Goldson *et al*, 2021).

2.xvi. In 2012, the United Nations Committee on the Rights of the Child reported: 'the Committee regrets that despite its earlier recommendations, the juvenile justice system of the State party [Australia] still requires substantial reforms for it to conform to international standards' (United Nations Committee on the Rights of the Child, 2012: para. 82). The same Committee also recommended that Australia should 'expeditiously establish an accessible and effective mechanism for investigating and addressing cases of abuse at its youth detention centres' (ibid: para 84(f)).

2.xvii. In 2019, the United Nations Committee's (most recent) report on Australia's record of compliance and non-compliance with its obligations regarding the human rights of children and young people in detention expressed its 'serious concern' about: 'the enduring overrepresentation of Aboriginal and Torres Strait Islander children and their parents and carers in the justice system'; 'reports that children in detention are frequently subjected to verbal abuse and racist remarks, deliberately denied access to water, restrained in ways that are potentially dangerous and excessively subjected to isolation'; 'the high number of children in detention, both on remand and after sentencing'; and 'children in detention not being separated from adults' (United Nations Committee on the Rights of the Child, 2019: para. 47 (b)-(e)).

2.xviii. It is clear that conditions in State, Territory and Federal prisons and detention centres fail to protect and/or promote the human rights of children and young people in Australia. Moreover, and as stated above, the over-incarceration of First Nations children and young people – and the concomitant violation of their human rights – obtains in *every* State and Territory of Australia. In *some* discrete States and Territories such phenomena are especially conspicuous (Goldson *et al*, 2021). There is a self-evident case for the implementation of enforceable *national minimum standards* for youth justice consistent with Australia's international obligations (see below).

The Commonwealth's international obligations regarding youth justice including the rights of the child, freedom from torture and civil rights.

2.xix. Several international human rights standards pertain to children and young people in detention in Australia (see above). In particular, the United Nations Convention on the Rights of the Child provides:

- In all actions concerning children... the best interests of the child shall be a primary consideration (Article 3)

- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37a)
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37b)
- Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so (Article 37c)
- States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (Article 40(1))
- States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected (Article 40(3)) (United Nations General Assembly, 1989).

2.xx. There is ample evidence – accumulated over several decades – that such obligations are routinely and repeatedly violated in Australia (Cunneen *et al*, 2016; Goldson *et al*, 2021).

The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

2.xxi. It is clearly vital to acknowledge that human rights violations are pervasive in youth justice and youth incarceration systems across Australia.

2. xxii. It is also imperative in Australia to implement a nationally co-ordinated strategic response to address the persistent and ubiquitous injustices that prevail within youth justice and youth incarceration systems within every State and Territory.

2.xxiii. A common misunderstanding relating to human rights discourse is such to imply that to respect 'best interest' principles and recognise the human rights of children and

young people in youth justice and youth incarceration systems, is somehow tantamount to compromising effective practice, neglecting the public interest and undermining the imperatives of crime reduction. In fact, precisely the opposite obtains and there is strong correspondence between key provisions of international human rights standards (including those outlined above) and what are known to be vital ingredients of the most *effective practice*. In other words, if youth justice policymakers, managers and practitioners are to observe the evidence-base and to conform to the principles of 'what works' they must necessarily also take account of, and apply, human rights standards (Goldson, 2019).

The implementation of enforceable national minimum standards for youth justice - consistent with Australia's international obligations - will serve at least three key purposes:

- Such national minimum standards would help to address pervasive human rights violations in youth justice and youth incarceration systems in every State and Territory
- The emphasis on *enforceable national standards* would serve to underpin more consistent and co-ordinated strategic responses across Australia
- The implementation of national minimum standards consistent with Australia's international obligations would also align youth justice policy and practice more closely with the evidence base and, as such, best meet the wider public interest.

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