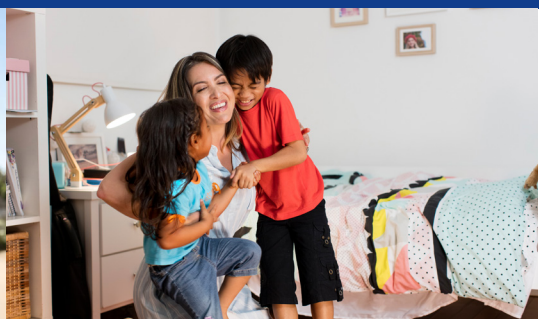
Last Resort, Not First Response



Last Resort, Not First Response: Protecting young people in our justice system

Locking up children does not make communities safer. Yet in much of Australia, children as young as ten can still be arrested, charged, and placed into detention systems that do little to improve their life chances.

All children should be able to grow up in safe, nurturing communities. However, despite overwhelming evidence of harm, a wave of punitive laws and policies across the country means some children are spending more time in cells than in homes, schools, or community settings.

Each year, the Anglicare Australia Network supports more than 42,000 children and young people through services such as counselling and mental health, education, and youth homelessness services. This includes specialised assistance for those at risk or with lived experience with the youth justice system. Through these services, our Network aims to support all children and young people, especially those at risk. Our programs work to help children and young people build positive relationships and develop the skills they need to navigate challenges and make positive choices for their future.

Despite Australia often being cast as the land of the "fair go," our agencies have often found that children who encounter the criminal justice system are denied fairness. Children as young as ten are being locked away at a critical stage of development, causing deep harm and limiting their futures. Increasingly, evidence shows that reducing youth crime requires investment in prevention and early intervention, not punishment. Without support, the underlying drivers of offending are rarely addressed.

Many children involved in youth justice are living in poverty, have mental ill health, use alcohol or other drugs, are in unstable housing, have experienced family violence, or have had contact with the out-of-home care system. These factors can shape behaviour in ways incarceration cannot fix. Instead, young people are pushed into systems that are overly punitive, under-resourced, and deeply unequal. Harmful practices, such as spit hoods, strip searches, and the use of extended solitary confinement, continue despite opposition from international experts and clear evidence of damage. Imprisoning children so young also breaches Australia's human rights obligations.

Governments across Australia must act urgently. Every day we allow youth incarceration to continue, more children are denied their rights and their potential.

The criminal age of responsibility

Youth justice systems are governed by state and territory laws, including the minimum age of criminal responsibility. This is the age at which a child is deemed capable of understanding that their actions were wrong and can face criminal charges.

Australia is required under the United Nations Convention on the Rights of the Child (UNCRC) to ensure that the best interests of the child are paramount, and that detention is used only as a last resort. In 2019, informed by growing evidence on child development and brain functioning, the United Nations recommended raising the age of criminal responsibility to fourteen. At that time, the minimum age across all Australian jurisdictions was ten. Rather than progressing toward our obligations, several states and territories have since moved backwards. This is a decision the United Nations Working Group on Arbitrary Detention (UN WGAD) has called "inhumane."[1]

Table 1. Minimum age of criminal responsibility across Australia, 2025[2]

Jurisdiction	Minimum age of criminal responsibility	Commitments to change
Australia	10 years	None.
NSW	10 years	None.
Queensland	10 years	None.
Victoria	12 years	Walked back previous commitment to raise age to 14 years by 2027.
WA	10 years	None.
South Australia	10 years	Considering raising minimum age to 12 years.
Tasmania	10 years	Committed to raising minimum age to 14 years by 2029.
NT	10 years	Raised to 12 years in August 2023 and lowered to 10 years in October 2024.
ACT	14 years	None.

Not only do many jurisdictions still allow the incarceration of ten-year-olds, but several have taken steps that directly contradict Australia's human rights responsibilities.

In July 2025, the Northern Territory passed laws removing the requirement that detention be a last resort.[3] It also expanded the list of offences ineligible for diversion and reintroduced restraints such as anti-spit hoods, despite the Royal Commission recommending their prohibition.[4] The re-introduction of these practices has also been called out by UN WGAD, who noted they are prohibited under international law.[5]

Additionally, Queensland's "Adult Crime, Adult Time" laws mean children can now face the same penalties as adults for 33 offences.[6] Victoria and New South Wales have both tightened bail laws in ways that disproportionately affect young people.[7] [8]

These policies ignore decades of research showing that "tough on crime" approaches are ineffective and harmful. Neuroscience shows that children's brains are still developing. They are more impulsive, more susceptible to peer influence, and less able to understand consequences.[9] Reflecting this, most offences by children are non-violent,[10] occur close to home, and are committed in groups.[11] These are behaviours linked to developmental immaturity rather than criminal intent.

Detaining children does little to improve community safety. In fact, it increases the likelihood of long-term contact with the justice system. In New South Wales, children incarcerated during adolescence are five times more likely to be imprisoned as adults.[12] The evidence is unequivocal: these punitive approaches do not work.

Tackling the drivers of disadvantage

As the evidence of harm has grown, so too has understanding of the groups most at risk of justice system involvement. Their overrepresentation reflects deep structural inequities.

First Nations children are the most disproportionately affected. In 2023-24, they made up 60 percent of young people in detention, despite being just 5.7 percent of Australians aged ten to seventeen.[13] This imbalance reflects the ongoing legacy of colonisation including forced removals, dispossession, the erosion of kinship structures, and disconnection from culture and country.[14]

Children in out-of-home care are also significantly overrepresented. Many have experienced family violence, mental ill health, substance use, or neglect. These are traumas with long-term developmental impacts. Being in care, particularly residential care, can further increase the likelihood of entering the justice system. Children may be denied bail due to unstable housing or lack of support,[15] funnelling them deeper into the system rather than protecting them.

Breaking these cycles means diverting children away from the environments that cause harm. Prevention and early intervention must replace punitive responses. This means connecting children with therapeutic support, culturally safe services, and stable housing before harm escalates.

Supporting young people where it matters

Anglicare Australia believes every child deserves support to participate fully in their community. Yet across the country, many laws and policies work directly against this goal.

Much of the recent escalation in youth justice responses has been fuelled by media-driven moral panic about a supposed "youth crime crisis." But the panic is unfounded, with Australian Bureau of Statistics data showing that youth offending is falling.[16] This stigma has real effects, including discouraging young people from seeking help when they need it. It also has impacts on broader community safety, wellbeing, and cohesion.

When Anglicare Australia Network members speak with young people about what keeps them out of trouble, they consistently identify positive relationships with family, friends, community as key protective factors.[17] Fear of incarceration is rarely mentioned. This highlights the need to invest in families and address the structural risks that push children toward offending: poverty, insecure housing, family dysfunction, and disrupted schooling.

Meaningful reform requires national leadership. The Australian Government must ensure youth justice systems across all jurisdictions uphold human rights, promote consistent standards, and invest in the underlying drivers of disadvantage. Improving outcomes will only be possible through sustained, targeted investment in systems and services that address root causes – not through ever-harsher punishments that fail to make our communities safer.

Recommendations

Anglicare Australia calls on Federal, State and Territory governments to:

- Raise the minimum age of criminal responsibility to fourteen in every jurisdiction.
- Ensure that detention is used only as a last resort for all minors.
- Ensure that when detention does occur, young people are held in purpose-built, therapeutic facilities with appropriate programs.
- Invest in universal and early intervention programs that prevent contact with the justice system. These should include programs to reduce school exclusion, lift income support above the poverty line, and build more social housing.
- Fund First Nations community-controlled organisations to lead solutions that reduce the overrepresentation of First Nations children.

1 Office of the High Commissioner for Human Rights (2025) Working Group on Arbitrary Detention: Preliminary Findings from its visit to Australia.

2 Australian Institute of Family Studies (2025) The Minimum Age of Criminal Responsibility in Australia.

3 NT Government (2025) Youth Justice Bill Overview.

4 NT Royal Commission (2017) Royal Commission into the Protection and Detention of Children in the Northern Territory.

5 Op cit: Office of the High Commissioner for Human Rights (2025).

6 Queensland Government (2025) Queensland Government Empowers Local Governments to Deliver for Queenslanders.

7 Victoria State Government (2024) Stronger Youth Offender Laws Pass Parliament.

8 NSW Government (2024) New Bail and Performance Crime Laws Passed to Prevent Youth Crime.

9 Luna, B. (2012) The Relevance of Immaturities in the Juvenile Brain to Culpability and Rehabilitation. Hastings Law Journal.

10 Baidawi, S., Ball, R., Sheehan, R. and Papalia, N. (2024) Children Aged 10 to 13 in the Justice System. Australian Institute of Criminology

11 Cunneen, C. and White, R. (2007) Juvenile Justice: Youth and Crime in Australia. Oxford University Press.

12 Akpanekpo, E. I. et al. (2025) Young detainees often have poor mental health. The earlier they're incarcerated, the worse it gets.

13 Australian Institute of Health and Welfare (2024) Youth Detention Population in Australia 2024.

14 Australian Institute of Health and Welfare (2025) Closing the Gap Targets.

15 Australian Human Rights Commission (2024) "Help Way Earlier!" How Australia can transform child justice to improve safety and wellbeing.

16 Australian Bureau of Statistics (2025) Recorded Crime- Offenders.

17 Anglicare Southern Queensland (2024) I know my life can get better.

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