



AUSTRALIAN
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HUMAN RIGHTS

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The Hon. Malcolm Turnbull MP, Prime Minister of Australia

By email: malcolm.turnbull.mp@aph.gov.au

Dear Prime Minister,

RE: Royal Commission should include a broader inquiry into the youth justice system and other immediate steps must be taken to protect Australia's children

Australian Lawyers for Human Rights (ALHR) welcomes your decision commence a Royal Commission into abuse at the Northern Territory's Don Dale Youth Detention Centre.

Australia is bound by international human rights laws that oblige your Government to ensure every child deprived of their liberty is treated with humanity and no child is subjected to torture or other cruel, inhumane or degrading treatment or punishment.

We urge you to ensure that terms of reference for the Royal Commission include a broader inquiry into the youth justice systems in all Australian jurisdictions. Deep systemic failures exist in Australia's treatment of children within the criminal justice system and we call on you not to miss the opportunity to address them.

ALHR supports and endorses calls made by over 107 expert organisations for the Royal Commission to, as a matter of priority, investigate the situation in the Northern Territory, including ensuring those involved in abuse and torture are held to account along with those responsible for the systemic failure. As a second step, the Royal Commission must conduct a broader investigation across all Australian State and Territory jurisdictions into the underlying factors driving engagement with the justice system and the treatment of children in juvenile detention.

1. Human Rights Violations in the youth justice system are not confined to the Northern Territory

The Four Corners report that aired on Monday night delivered to our lounge rooms treatment of children that you wouldn't think possible in a civilized nation. The degree of abuse committed by persons entrusted with the care and protection of some of the Northern Territory's most vulnerable children is truly shocking and distressing. However, it is clear that

these serious violations of Australia's international human rights obligations are not an isolated incident nor confined to the Northern Territory. '

In March 2015, the United Nations Special Rapporteur on Torture, Juan Mendez, tabled a report outlining the current international benchmarks that are expected of countries when it comes to detaining children¹.

Juan Mendez, in interpreting and setting standards under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in the context of Australia's youth detention policies said,

"...Australia's youth detention policies are out of date. We're allowing a number of physically and psychologically harmful practices to continue, and permitting punitive policies and practice, which do not priorities young people's rehabilitation or reintegration"².

Further, Mr Mendez specifically raised concerns with respect to the mandatory sentencing of young people and imposing life sentences without parole in Australia and asserted that no circumstances warrant these practices. His report makes it clear that the use of practices such as strip searches and solitary confinement on children in Australia are inherently dangerous, cause irreversible psychological trauma and are completely inconsistent with Australia's legal human rights obligations.

Solitary confinement of juveniles does not only occur in the Northern Territory. Indeed it is still used in many other states in Australia including Western Australia, Queensland and Victoria. **Spit-hoods are not only used in the Northern Territory.** South Australia uses them, they are available for use in Queensland watch houses and Western Australia has just finished trialling them with a view to use across their police force. Children in these States are therefore not guaranteed protection from their use. **Queensland imprisons 17-year-old children in adult gaols**, a practise which is entirely inconsistent with international human rights norms.

It is unfathomable that a democratic developed nation such as Australia could allow a level of abuse against juveniles that includes the use of chemical weapons (tear gas), water torture, physical abuse, the use of cable ties, mechanical restraints, restraint chairs and spit hoods, and extended periods of solitary confinement. All of these abusive measures have been used on children. Our children.

It is the considered view of ALHR that many aspects of Australia's treatment of juveniles held in detention are in breach of Australia's binding legal obligations under the:

- a) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,³
- b) *Convention on the Rights of the Child*,⁴

¹Human Rights Law Centre, Torture Convention Standards (March 2015) <http://hrlc.org.au/wp-content/uploads/2015/04/TortureConventionStandards_March2015.pdf>.

² Human Rights Law Centre, *Australian Youth Justice Practices are Failing* (17 April 2015) <hrlc.org.au/ausyouthjusticepracticesarefailing/>.

³ Signed by Australia on 10 Dec 1985 and ratified by Australia on 8 Aug 1989.

⁴ Signed by Australia on 22 Aug 1990 and ratified by Australia on 17 Dec 1990.

- c) UN Standard Minimum Rules for the Administration of Juvenile Justice (the *Beijing Rules*);⁵ and
- d) UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).⁶

The terms of reference for the Royal Commission must, therefore, necessarily be broader than the incidents exposed in the Four Corners program. It is vital that it considers the legislation and policy approaches that underpin the treatment of young people in detention across Australia.

2. Human Rights Abuses in youth detention are disproportionately perpetrated against Indigenous youth across the whole of Australia

Twenty-five (25) years ago the Royal Commission into Aboriginal Deaths in Custody included a recommendation that imprisonment should only be utilised only as a sanction of last resort yet the current over-representation of Aboriginal young people in detention, especially on remand has been described as a national crisis.

According to the most recent statistics⁷, Indigenous children are 26 times more likely to be imprisoned than non-Indigenous children, yet Indigenous Australian's account for only 3% of Australia's population. The Northern Territory already has a juvenile detention rate that is 6 times the national average and 97% of these children are Aboriginal. Almost three quarters of the youths detained in the Northern Territory are on remand after bail has been refused. Internationally the NT tops all countries in the United Nations figures for imprisonment rates.

Juveniles in Western Australia are 52 times more likely to be imprisoned than their white peers. Australian Institute of Health and Welfare data reveals that in NSW and SA Indigenous young people are 15 times more likely than their non-indigenous counterparts to be under youth justice supervision, and in Victoria 11 times, and QLD 16 times⁸.

It is, therefore, clear that the human rights abuses witnessed via our TV screens are being disproportionately perpetrated against Indigenous youth.

ALHR strongly supports calls from Aboriginal Peak Organisations for the Royal Commission's terms of reference to include:

- **the over-representation of Aboriginal young people in detention, especially on remand;**
- **the role of the Department of Children and Families in caring for Aboriginal young people who come in contact with the criminal justice system;**
- **the availability of trauma support and counselling for Aboriginal young people in the community.**

⁵ Adopted by the United Nations General Assembly on 29 Nov 1985.

⁶ Adopted by the United Nations General Assembly on 17 December 2015.

⁷ Australian Institute of Health and Welfare, *Juvenile Justice National Minimum Data Set (2015)* <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>.

⁸ Ibid.

3. Royal Commission must be independent

The Northern Territory Government has been aware of the distressing events occurring within its juvenile detention system since the release in 2015 of the *Vita Review* and the Children's Commissioner Report. Many of the recommendations of these reports have not been implemented despite the fact that they revealed multiple incidents within the juvenile detention facilities which include spit-hooding, gassing, hand cuffing, shackling and extensive periods of unlawful solitary confinement.

ALHR, therefore, supports calls from Aboriginal Peak Organisations to ensure that the Northern Territory Government has no role in the development or oversight of the Royal Commission, including the provision of funding or developing the terms of reference.

4. Further Immediate steps required to protect the rights of children in Australia's youth justice system – a Royal Commission alone is not enough

While ALHR welcomes the Royal Commission, we call on you to take further immediate action to protect the rights of all young Australians currently held in detention:

1. We urgently call on the Australian Government to ratify the *Optional Protocol to the Convention against Torture* and adopt a Federal Human Rights Act so that the human rights of all Australian citizens, including our youth, can be legally protected.
2. We call for all jurisdictions within Australia to adopt practices where detention of juveniles is limited to exceptional cases and alternatives to detention are favoured.
3. Where detention is undertaken, we call for children to be detained in purpose-built age-appropriate facilities with non-prison like environments which are run by specialised staff trained in dealing with children.
4. We call for the immediate appointment of an Independent Custodial Inspector with unfettered access to youth extension centers to ensure that national and international standards are being complied with (such as in NSW and WA) in all States and Territories that do not already have one.
5. We call for the immediate closure of the Don Dale Youth Detention Centre.
6. We call for the immediate repeal of legislation provisions in all jurisdictions within Australia which enable the use of chemical weapons (tear gas), solitary confinement, mechanical chairs, cable ties, weight belts, shackles and spit hoods on children in detention.
7. We call for higher standards of training and skills of personnel that work with juvenile detainees with a focus on rehabilitation of children as opposed to punitive measures.
8. We call for appropriately funded, evidence based diversionary and education programs to be rolled out in all jurisdictions in Australia which recognise the principle that detention is a last resort for children and should be providing a therapeutic environment that can help youth offenders on a path to rehabilitation and reintegration upon release back into society.

9. We call for the minimum age of criminal responsibility of juveniles to be increased to 12 years, not 10 years, in all jurisdictions within Australia.
10. We call for minors to be charged as minors until they are 18 years old, not 17 years old as it is in Queensland currently.

5. Detention is Not an Effective Deterrent for Juveniles

The use of detention for juvenile offenders has not been shown to reduce crime rates or rates of reoffending. Locking-up children and adults on remand unnecessarily risks exposing them to the criminal justice system; which in turn generally increases their chances of becoming repeat offenders.

Research indicates that time in a juvenile justice centre is the most significant factor in increasing the odds of recidivism. For example, research from the Australian Institute of Health and Welfare has shown that children who are placed in detention are three times more likely to end up back in detention within 12 months than those who get a community-based sentence.

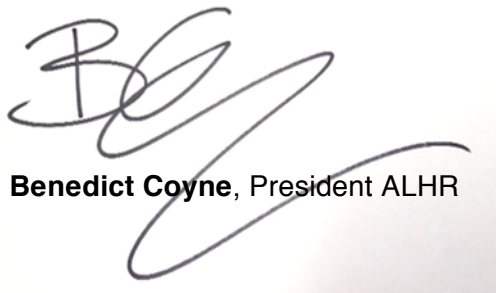
Periods of detention represent missed opportunities to intervene in juveniles' lives with constructive programs. A more responsible and cost effective approach would be the introduction of proven and effective early intervention and diversion programs and restorative justice approaches.

The Australian Government must reflect on the damage that it is enabling people in a position of power to do against our children. The trauma that they are receiving in juvenile detention not only is in fundamental breach of Australia's human rights obligations to these children, but is doing a damage so profound and irreversible that it may entrench within these children a criminal mindset and create a pathway for an adult life of crime.

Australia is better than this and our children deserve much better.

We thank you for your leadership in recognising the need for a Royal Commission. We urge you to demonstrate a genuine commitment to all Australian children by ensuring the terms of reference are sufficiently broad, and Australia has ratified and implemented the international norms to which it has committed.

Yours faithfully,



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Australian Lawyers for Human Rights

ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.