

JOINT STATEMENT – QUEENSLAND LAW CHANGE AND DETENTION OF CHILDREN IN WATCH HOUSES AND ADULT PRISONS

We are members of the Australian National Preventive Mechanism (NPM) appointed or nominated by the Australian, Australian Capital Territory, Northern Territory, and Western Australian Governments, to implement the United Nations (UN) *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

On 24 August, the Queensland Parliament legislated to retrospectively permit the indefinite detention of children in police watch houses and adult correctional facilities by suspending the application of aspects of Queensland's Human Rights Act.

International obligations

We draw to the attention of all Australian governments that Australia is subject to internationally recognised human rights obligations. These include, but are not limited to, obligations:

- prohibiting torture and other ill treatment (under the *International Covenant on Civil and Political Rights* (ICCPR),¹ the *Convention on the Rights of Persons with Disabilities* (CRPD),² and the *Convention on the Rights of the Child* (CRC))³
- to prevent torture and ill treatment (under the *Convention against Torture* (CAT),⁴ and the CRPD)⁵
- prohibiting arbitrary detention or deprivation of liberty (under the ICCPR,⁶ the CRC,⁷ and the CRPD)⁸
- to arrest, detain or imprison a child only as a measure of last resort and for the shortest appropriate period of time (under the CRC)⁹
- to ensure that in all actions concerning children, the best interests of the child are a primary consideration (under the CRC,¹⁰ and the CRPD).¹¹

Children should not be detained in police watch houses for more than a few hours.

Police watch houses are not designed for long-term detention, and neither watch houses nor adult correctional facilities are designed for children. We are gravely concerned about the long-term and indefinite detention of children in Queensland in these highly unsuitable environments, noting reports of extended periods in solitary confinement, no access to necessary child-appropriate facilities, and limited natural light, fresh air, exercise, and activity opportunities. Given the significant rates of incarceration of First Nations peoples of all ages, including in Queensland, we are also concerned the Queensland Government's actions will have a disproportionate impact on First Nations children, who already face other sustained, compounded challenges.

We draw attention to the observations of the UN Committee on the Rights of the Child that children must not be placed in adult detention environments,¹² including due to the impacts of this on their rehabilitation and future reintegration into society. A core consideration of NPMs under OPCAT is the extent to which detention environments within the criminal justice system are rehabilitative. Children detained in police watchhouses and adult prisons are not being rehabilitated. As a result, and in addition to violating the rights of children, this measure is not in the community's long-term interests and will not increase community safety.

Legislative protections are necessary to strictly cap the period any child is able to be detained in police watch houses and other adult detention environments. These protections should ensure that such practice is a very short-term measure, and should explicitly require that children receive all appropriate support and protections to limit harm. Watch houses have limited capacity to ensure adequate separation of children from adults and adequate gender separation, and lack capacity to provide education and therapeutic interventions. Despite this, in Queensland in 2021–22 children were detained in watch houses for between one and two weeks almost 150 times.¹³ Young people in the youth justice system also have a high prevalence of health problems during detention, and enabling their prolonged detention in unsuitable environments will exacerbate this.

Governments need to address systemic, underlying issues

We encourage all governments to address the deeper issues pervading youth justice as a matter of urgency. While the Queensland Government has indicated these amendments are a stop-gap measure until the completion of new youth detention centres in 2026, this is too long to wait to address immediate needs and concerns in the youth justice system.

We reiterate one of the concluding observations of the UN Committee against Torture which last year implored Australia to actively promote alternative measures for children accused of criminal offences, such as diversionary and counselling programs.¹⁴ We also observe the ongoing work across Australia towards raising the age of criminal responsibility, but that progress is piecemeal and inconsistent. We note that the minimum age of criminal responsibility encouraged by the UN is 14 years. In Queensland it is 10 years old. Ten year old children should not be detained in police watchhouses and adult prisons.

Detention of children must always be a last resort, and governments must always act with the best interests of the child as a primary consideration. Appropriate support must be in place to divert children away from the criminal justice system, and evidence-based approaches should be used to intervene and ultimately prevent interactions between children and young people with the criminal justice system in the first place. The Queensland Government has previously acknowledged the need to focus on alternative, preventive approaches, with two pillars of its own *Youth Justice Strategy 2019–23* being to ‘intervene early’ and ‘keep children out of custody’.

Implementing OPCAT

Finally, we note that the establishment of the Australian NPM is not yet complete, and that Queensland is one of the jurisdictions which to date is yet to name an NPM or NPMs for places of detention under their control. We are pleased Queensland now has legislation in effect allowing access by the Subcommittee for the Prevention of Torture to many places of detention in Queensland, including adult prisons, youth detention centres and watch houses. We are also pleased that Queensland now has an Inspector of Detention Services, with their enabling legislation now in effect. We urge the Queensland Government to nominate an NPM to support Australia to meet its international obligations, and help fulfil the domestic element of the visit system created by OPCAT.



¹ *International Covenant on Civil and Political Rights* Article 7.

² *Convention on the Rights of Persons with Disabilities* Article 15(1).

³ *Convention on the Rights of the Child* Article 37(a).

⁴ *Convention against Torture* Article 2(1).

⁵ *Convention on the Rights of Persons with Disabilities* Article 15(2).

⁶ *International Covenant on Civil and Political Rights* Article 9.

⁷ *Convention on the Rights of the Child* Article 37(b).

⁸ *Convention on the Rights of Persons with Disabilities* Article 14(1)(b).

⁹ *Convention on the Rights of the Child* Article 37(b).

¹⁰ *Convention on the Rights of the Child* Article 3(1).

¹¹ *Convention on the Rights of Persons with Disabilities* Article 7(2).

¹² Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, CRC/C/GC/24, paragraph 92.

¹³ Queensland Family and Child Commission, *Queensland Child Rights Report 2023*, page 32.

¹⁴ Committee against Torture, *Concluding observations on the sixth periodic report of Australia* (2022), CAT/C/AUS/CO/6, paragraph 38.