

knowmore
free legal help for survivors

Australia's youth justice and incarceration system

Submission to the
Legal and
Constitutional Affairs
References Committee

14 October 2024

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our aim is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

From 2013 to 2018, our service assisted people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). From 1 July 2018, knowmore has delivered legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also delivers financial counselling services to people participating in the NRS, and works with other services in the NRS support network to support and build their capability. Since 2022, knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings, and providing legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Darwin. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 August 2024, knowmore has received 144,757 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 19,599 clients. Almost 2 in 5 clients (39%) identify as Aboriginal and/or Torres Strait Islander peoples. About 1 in 8 clients (13%) are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

100% of clients we assist with the Territories Redress Scheme identify as Aboriginal and/or Torres Strait Islander peoples.

knowmore has a significant client base in all Australian states and territories. We therefore have a strong interest in laws, policies and practices relevant to children and victims and survivors of child abuse in all parts of Australia.

Many of our clients experienced sexual abuse as children while in prison. We therefore also have a strong interest in keeping children out of prison and ensuring that children are safe in all places.

For many of our clients, contributing to systemic change is an important part of their healing journey. Our clients do not want current or future generations of children to have the same experiences of abuse that they did. Advocating for systemic change to prevent child sexual abuse is an important part of standing with our clients and honouring their experiences.

knowmore's submission

knowmore's overall approach to the inquiry

As a nation-wide service assisting victims and survivors of child sexual abuse, knowmore strongly supports reforms to keep children, victims and survivors safe from harm, to hold perpetrators to account, and to provide redress, justice and healing for victims and survivors. knowmore has consistently advocated for reforms in all jurisdictions to better achieve these aims.

In light of our commitments to these aims, we have been concerned to see Australian governments pursuing laws, policies and practices that are not supported by evidence, breach the human rights of children and place children at heightened risk of experiencing child sexual abuse. We are especially concerned by the severe, disproportionate impact of these issues on First Nations children,¹ and the broader implications of this injustice for reconciliation and healing.

In the words of one of our clients, an Aboriginal man with experiences of abuse and incarceration during childhood:

The whole system is a big fail. It's built to lock us up and throw away the key.

knowmore share the views of the National Children's Commissioner Anne Hollonds in welcoming the Committee's inquiry:

... a national inquiry will help shine a light on the failures in our child justice system – failures which continue to destroy and devastate the lives of young people, their families and communities. We are seeing these failures daily, particularly against First Nations and other children living with poverty and disadvantage, and complex needs such as disabilities, mental ill-health and trauma.²

We commend the National Children's Commissioner and the Australian Human Rights Commission (AHRC) for the landmark *Help way earlier* report, which amplifies the voices of children impacted by the legal system and makes 24 recommendations to improve child safety and wellbeing.³ knowmore generally supports these recommendations.

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- 1 Justice Reform Initiative, *Jailing is failing Aboriginal and Torres Strait Islander people*, accessed 11 September 2024, <www.justicereforminitiative.org.au/aboriginal_and_torres_strait_islander_people>.
 - 2 Australian Human Rights Commission, *Children's Commissioner welcomes Senate inquiry into child justice*, 12 September 2024, <humanrights.gov.au/about/news/childrens-commissioner-welcomes-senate-inquiry-child-justice>.
 - 3 Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing (Help way earlier)*, 21 June 2024, pp 12–13, <humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_accessible_0.pdf>.

knowmore's approach to the Committee's inquiry is also informed by our extensive experience assisting victims and survivors of child sexual abuse in all Australian jurisdictions. Our work intersects with the inquiry's focus in 2 main ways:

1. We assist victims and survivors who experienced child sexual abuse from other children, and victims and survivors who experienced child sexual abuse in prison. This includes child sexual abuse from adult perpetrators and other children in prison.⁴
2. We advocate for changes to prevent child sexual abuse, noting the heightened risk of child sexual abuse for children in prison (see the discussion on pages 16 to 18).

While we acknowledge that the inquiry has a broader scope, we also consider that the legal system must work in a way that is fair to victims and survivors of child sexual abuse, and that keeps children, victims and survivors safe from harm.⁵

In this submission, we have generally used the terminology of 'legal responses to offending by children', rather than 'youth justice', recognising that the legal system has often failed to deliver justice and has in fact often exacerbated injustice.⁶ We have generally used the terminology of 'youth prisons', rather than 'detention centres', recognising that these are prison environments.⁷

We have had the opportunity to consider the draft submissions by Smart Justice for Young People and the Youth Advocacy Centre. We endorse these submissions to the Committee's inquiry.

Our submission proceeds in 3 parts:

- First, we make general comments, relevant to the inquiry as a whole, about the need for national leadership to protect the human rights of children and keep children safe from harm in all places.
- Second, we discuss reforms to keep children out of prison and to prevent violations of the human rights of children in prison.
- Third, we make comments about improving support for victims and survivors of child sexual abuse, noting that the same legal system that is failing children who have offended is also failing victims and survivors.

4 See Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Final report: volume 15, contemporary detention environments*, 15 December 2017, pp 81–82, <www.childabuseroyalcommission.gov.au/contemporary-detention-environments>.

5 See Royal Commission, *Criminal justice report: executive summary and parts I and II*, August 2017, pp 13–14, <www.childabuseroyalcommission.gov.au/criminal-justice>.

6 See, for example, C Cunneen, *The criminal legal system does not deliver justice for First Nations people, says a new book*, The Conversation, 9 November 2022, <theconversation.com/the-criminal-legal-system-does-not-deliver-justice-for-first-nations-people-says-a-new-book-191005>.

7 See National Network of Incarcerated and Formerly Incarcerated Women and Girls, *Language guide*, accessed 30 September 2024, p 6, <drive.google.com/file/d/1ckcsauHL2TS2CQVIFJhWErCfoSavK25c/view>.

Recommendations

Recommendation 1

The Australian Government must lead a national response to protect the human rights of children and keep children safe from harm in all places, including in legal responses to offending by children. This response must be evidence-based, having regard to inquiry recommendations, academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.

Recommendation 2

The Australian Government should lead the implementation of the recommendations from the Australian Human Rights Commission's *Help way earlier* report, noting in particular the 4 priorities to enable national reform:

1. establishing a National Taskforce for reform of child justice systems
2. appointing a Cabinet Minister for Children
3. establishing a Ministerial Council for Child Wellbeing
4. passing a National Children's Act and an Australian Human Rights Act.

Recommendation 3

In addition to the Australian Government passing a National Children's Act and an Australian Human Rights Act, all state and territory governments should pass comprehensive human rights laws to better protect the human rights of children and of victims and survivors of child sexual abuse.

Recommendation 4

In leading a national response to protect the human rights of children and keep children safe from harm in all places (see recommendation 1), the Australian Government should prioritise reforms to keep children out of prison and to prevent violations of the human rights of children in prison, including child sexual abuse (see recommendations 5 to 8).

Recommendation 5

The Australian Government should lead work with all state and territory governments to ensure that children, their families and their communities have adequate access to support services in all parts of Australia. This should involve significant increases in funding for services that support children to remain safely with their families and communities, and to avoid contact with or divert contact from the criminal legal system.

Recommendation 6

The Australian Government should lead work with all state and territory governments to raise the minimum age of criminal responsibility to at least 14 years across Australia, building on the work of the Standing Council of Attorneys-General's Age of Criminal Responsibility Working Group.

Recommendation 7

The Australian Government should lead work with all state and territory governments to implement 'enforceable minimum standards for youth justice consistent with our international obligations', as contemplated by the terms of reference for the Committee's inquiry. Australian governments should take the National Standards for Youth Justice in Australia as a starting point and seek to strengthen these standards, consistent with the guidance of the *Help way earlier* report.

A National Taskforce for reform of child justice systems would be the appropriate forum in which to progress this reform (see recommendation 2).

Recommendation 8

The Australian Government should lead work with all state and territory governments to fully implement the Optional Protocol to the Convention Against Torture (OPCAT), including by designating members of the National Preventive Mechanism that have child rights expertise in all jurisdictions. In implementing OPCAT, Australian governments should also have particular regard to the rights and needs of Aboriginal and/or Torres Strait Islander peoples, and victims and survivors of child sexual abuse.

Recommendation 9

All participants in the legal system should strive to embed a trauma-informed approach to child sexual abuse across all parts of the legal system. This includes the police, lawyers, judges, court staff, government decision-makers and support services.

Recommendation 10

The Australian Government, and all state and territory governments, should ensure that victims and survivors of child sexual abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience.

Recommendation 11

The Australian Government, and all state and territory governments, should prioritise redress as part of broader processes for truth, justice and healing, including for victims and survivors of child sexual abuse. In doing this, governments should draw on the lessons learned from existing and previous redress schemes, including the National Redress Scheme and Stolen Generations redress schemes.

General comments relevant to the inquiry as a whole

The need for national leadership to keep children safe

As noted on page 5, our submission is informed by our experience as a nation-wide service, assisting victims and survivors of child sexual abuse in all Australian jurisdictions. A striking feature of legal responses to offending by children in Australia is the significant inconsistencies between jurisdictions. These inconsistencies affect almost every aspect of legal responses to offending by children, including:

- the minimum age of criminal responsibility
- which behaviours are considered to be criminal
- the legal protections for children in the criminal legal process
- the support available for children, their families and their communities, including the supports available for children who have been incarcerated to reintegrate with their families and communities
- the support available to victims and survivors of crime, including offending by children.

There is no good reason for this level of inconsistency between Australian jurisdictions. It results in significantly different experiences and outcomes for children, victims and survivors, depending on where they live and where the offence occurred. It also creates challenges for services in providing support for children, victims and survivors, as there is often no one approach to service delivery that will work across all Australian jurisdictions. Services must often develop and maintain different processes for each Australian jurisdiction they work in, diverting limited resources away from service delivery to navigating inconsistencies between jurisdictions. Legal responses to offending by children often become especially complicated when they involve more than one jurisdiction. This is frequently an issue in cross border communities (for example, in northern Australia), where jurisdictional borders are often at odds with the lived experience of local communities.

knowmore shares the perspective of the AHRC, expressed in the *Help way earlier* report, about the piecemeal approach to reform in Australia:

Recommendations from many inquiries, including Royal Commissions, have attempted to guide reform, in particular by focusing on prevention and early intervention in both child justice and child protection systems. However, responses have been piecemeal, uncoordinated and inadequate.

Despite evidence of the social determinants that are the root causes of offending behaviour, policy responses to these children are often only tinkering with the symptoms, with tougher policing, stricter bail laws, and incarceration. This is done under the guise of keeping the community safe. However, human rights

*and community safety are not opposing goals. The solutions lie in transformational thinking and action to address systemic disadvantage.*⁸

We note, in particular, that the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) made 409 recommendations,⁹ the majority of which were directed to Australian governments (including federal, state and territory governments). These include recommendations specific to 'contemporary out-of-home-care' and 'contemporary detention environments'.¹⁰ Although Australian governments have made considerable reforms to address child sexual abuse, none have fully implemented all the relevant recommendations from the Royal Commission. In all jurisdictions, many recommendations remain unimplemented, to the detriment of children and victims and survivors of child sexual abuse.

We also note that the Australian Government, and all state and territory governments, have endorsed the National Framework for Protecting Australia's Children (National Framework).¹¹ The National Framework recognises that all jurisdictions are responsible for working together to protect children in Australia,¹² but in particular, that 'the Australian Government provides national leadership in improving the wellbeing of Australia's children, families and communities'.¹³ As the *Help way earlier* report notes, 'the perception that child justice is a state issue suggests the narrowest possible definition of "child justice" and overlooks the extent to which it is bound up in child wellbeing' –¹⁴ an area in which the Australian Government leads work under the National Framework.

In knowmore's view, the Australian Government must lead a national response to protect the human rights of children and keep children safe from harm in all places, including in the context of legal responses to offending by children. This response must be evidence-based, having regard to inquiry recommendations, academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.

8 Australian Human Rights Commission, *Help way earlier*, p 9.

9 Royal Commission, *Final report recommendations*, 15 December 2017, <www.childabuseroyalcommission.gov.au/recommendations>.

10 Royal Commission, *Final report recommendations*, pp 35–41 and 45–49.

11 Australian Government, *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* (National Framework), 2021, pp 2–3, <www.dss.gov.au/the-national-framework-for-protecting-australias-children-2021-2031>.

12 National Framework, p 2.

13 National Framework, p 15.

14 Australian Human Rights Commission, *Help way earlier*, p 103.

Recommendation 1

The Australian Government must lead a national response to protect the human rights of children and keep children safe from harm in all places, including in legal responses to offending by children. This response must be evidence-based, having regard to inquiry recommendations, academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.

We make further comments about adopting an evidence-based approach to offending by children on pages 19 to 21.

As noted on page 5, knowmore generally supports the recommendations from the *Help way earlier* report.¹⁵ Of particular relevance to the need for national leadership, we note the 4 priorities to enable national reform from the *Help way earlier* report. In summary, these are:

1. establishing a National Taskforce for reform of child justice systems
2. appointing a Cabinet Minister for Children
3. establishing a Ministerial Council for Child Wellbeing
4. passing a National Children's Act and an Australian Human Rights Act.¹⁶

We consider that the Australian Government should lead the implementation of the recommendations from the *Help way earlier* report, noting in particular the 4 priorities to enable national reform.

Recommendation 2

The Australian Government should lead the implementation of the recommendations from the Australian Human Rights Commission's *Help way earlier* report, noting in particular the 4 priorities to enable national reform:

5. establishing a National Taskforce for reform of child justice systems
6. appointing a Cabinet Minister for Children
7. establishing a Ministerial Council for Child Wellbeing
8. passing a National Children's Act and an Australian Human Rights Act.

We make further comments about the need for a National Children's Act and an Australian Human Rights Act below.

15 Australian Human Rights Commission, *Help way earlier*, p 12.

16 Australian Human Rights Commission, *Help way earlier*, p 12.

Protecting the human rights of children in Australia

The human rights of children in all parts of Australia are inadequately protected. This contributes to violations of children's human rights and inadequate responses when such violations occur, including in the context of legal responses to offending by children.

The inadequate protection of children's human rights is linked to the generally inadequate protection of people's human rights in Australia. The AHRC has described Australia's human rights protections as 'patchy', 'forming an incomplete and piecemeal framework, with many gaps'.¹⁷ The AHRC summarised the significance of these gaps as follows:

*The gaps in our legal coverage of human rights mean that there is not a consistent, principled and complementary framework for protecting human rights. Decision makers are not required to consider and act in accordance with human rights. There are limited avenues to seek review of government decisions or actions that violate a person's human rights.*¹⁸

Of particular relevance to children, and knowmore's clients broadly, the AHRC noted:

*The consequences of Australia's lack of human rights protections acutely affect people who experience disadvantage, marginalisation and discrimination. It is the most vulnerable people who can fall through the cracks in the existing frameworks.*¹⁹

We note similar comments about the about the protection of children's rights from the *Help way earlier* report:

... legal protections of child rights in Australia continue to be piecemeal and inconsistent across the country and do not provide children with an effective remedy for any child rights violations, especially for children in the child protection and justice systems.

*There is currently no federal legislation that directly and adequately incorporates the full spectrum of child rights, and that can effectively hold the Australian Government to account for protecting child rights across the nation. Policy affecting children is uncoordinated, widely spread across portfolios, and there is a lack of monitoring and accountability for reform.*²⁰

Given the focus of our work, we are especially concerned about the human rights implications of child sexual abuse. Child sexual abuse is obviously a severe violation of a child's human rights, with impacts extending across the victim or survivor's life.²¹ These

17 Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia (Free and Equal)*, December 2022, p 46, <[humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf](https://www.humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf)>.

18 Australian Human Rights Commission, *Free and Equal*, p 47.

19 Australian Human Rights Commission, *Free and Equal*, p 47.

20 Australian Human Rights Commission, *Help way earlier*, p 29.

21 Royal Commission, *Final report: volume 3, impacts*, 15 December 2017, p 9, <www.childabuseroyalcommission.gov.au/impacts>.

impacts were extensively documented in volume 3 of the Royal Commission's final report and include impacts on:

- physical health
- mental health
- relationships
- connection to culture
- education
- employment
- housing
- economic security.²²

All of these impacts have human rights implications, which are not adequately addressed by existing laws in any Australian jurisdiction.

In knowmore's view, comprehensive human rights laws are needed in all Australian jurisdictions to better protect the human rights of children and of victims and survivors of child sexual abuse. As noted on page 12 above, the *Help way earlier* report recommended that the Australian Government pass a National Children's Act and an Australian Human Rights Act as a priority.²³ This aligns with previous recommendations of the AHRC and the Australian Parliament's Joint Committee on Human Rights – namely, that the Australian Government establish a Human Rights Act.²⁴

We note that Victoria, Queensland and the Australian Capital Territory have already taken this important step to improve protection of people's human rights, including the human rights of children.²⁵ We implore other jurisdictions to follow suit and for all jurisdictions to work towards implementing the strongest possible model for protecting the human rights of children.

Comprehensive human rights laws are especially important and urgent in the context of legal responses to offending by children. We note the heightened risk of child sexual abuse for children in prison, which we discuss further on pages 16 to 18. In addition to their other benefits, comprehensive human rights laws have significant potential both to reduce the number of children in prison and to better protect the human rights of children in prison.

22 Royal Commission, *Final report: volume 3, impacts*, pp 73–156.

23 Australian Human Rights Commission, *Help way earlier*, p 12.

24 Australian Human Rights Commission, *Free and Equal*, p 33; Australian Parliament (Parliamentary Joint Committee on Human Rights), *Inquiry into Australia's Human Rights Framework*, May 2024, pp 310–311, recommendation 2, <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report>.

25 *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2019* (Qld); *Human Rights Act 2004* (ACT).

This is illustrated by the following case study, which the AHRC included in its position paper, *Free and Equal: A Human Rights Act for Australia*.²⁶

Case study from the Australian Human Rights Commission: children in juvenile detention

After riot damage to a youth justice centre, the Victorian Government set up a new youth justice centre in a unit in the maximum security adult Barwon Prison and started transferring children as young as 15 there. The conditions in the unit were extremely harsh and children were subject to extended solitary confinement, regular handcuffing and denied proper education.

A number of First Nations children took legal action using the [Victorian] Charter and other laws to challenge their transfer to the prison. In response, the Victorian Government agreed to remove all First Nations children from the adult prison. A number of non-Indigenous children then brought a similar legal action challenging the decision to set up the unit in the adult prison and transfer children there.

When the Minister then made a fresh decision that kept the children in the adult prison, certain children brought a final challenge using the Charter and other laws. The Supreme Court again ruled that the government's actions breached the children's rights to humane treatment in detention and protection as is in their best interests. The Court ordered that the Minister stop detaining the children at the prison and all children were transferred back into existing youth justice centres. The Court also ruled that a decision approving the use of capsicum spray in the unit in the adult prison was unlawful.

Extracted from Human Rights Law Centre, 101 Charter Cases, 2022.

knowmore has made detailed comments about the importance of human rights laws for children, victims and survivors, including in a recent submission to the Australian Parliament's Joint Committee on Human Rights.²⁷ We recommend that, in addition to the Australian Government passing a National Children's Act and an Australian Human Rights Act, all state and territory governments should pass comprehensive human rights laws to better protect the human rights of children and of victims and survivors of child sexual abuse.

Recommendation 3

In addition to the Australian Government passing a National Children's Act and an Australian Human Rights Act, all state and territory governments should pass comprehensive human rights laws to better protect the human rights of children and of victims and survivors of child sexual abuse.

26 Australian Human Rights Commission, *Free and Equal*, p 90.

27 knowmore, *Submission to the inquiry into Australia's Human Rights Framework*, 17 July 2023, <knowmore.org.au/wp-content/uploads/2023/08/submission-inquiry-into-australias-human-rights-framework-cth.pdf>.

We make further comments about human rights standards below in relation to raising the minimum age of criminal responsibility (see pages 22 to 23), improving the monitoring of prison environments (see pages 26 to 28) and the importance of redress for truth, justice and healing (see pages 34 to 36).

The heightened risk of child sexual abuse for children in prison

knowmore has long held concerns about the heightened risk of child sexual abuse for children in prison, arising from findings of the Royal Commission²⁸ and our experience assisting many survivors who experienced child sexual abuse while they were in prison. Given the overincarceration of First Nations children,²⁹ we are especially concerned about the heightened risk of child sexual abuse for First Nations children in prison.

The heightened risk of child sexual abuse in prison environments is linked to the fact that many of these places have characteristics of 'total' or 'closed' institutions.³⁰ These institutions 'are typically highly controlled and relatively closed to the outside world'.³¹ The Royal Commission took a strong interest in total or closed institutions, due to the heightened risk of child sexual abuse in these places.³²

The following characteristics of prison environments increase the risk of child sexual abuse:

- environmental characteristics, such as 'the deprivation of liberty and lack of privacy'
- operational characteristics, such as 'isolation and disconnection from family, friends, community and culture; lack of trusted adults; the power imbalance between adult staff and detained children; and the use of strict rules, discipline and punishment'
- cultural characteristics, such as 'a lack of voice for children and cultures of disrespecting children, tolerating the humiliating and degrading treatment of children, and engendering strong group allegiance among management staff'.³³

While Australian governments imprison children in a range of different prison environments,³⁴ the Royal Commission found that youth prisons 'perhaps illustrate the highest level of risk'.³⁵ Of the 6,875 survivors the Royal Commission heard from in private sessions, 551 (8%) had been sexually abused in youth prisons.³⁶ Experiencing sexual abuse in

28 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 20–21.

29 Justice Reform Initiative, *Jailing is failing Aboriginal and Torres Strait Islander people*.

30 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 38–40.

31 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 38.

32 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 39–40.

33 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 39–43.

34 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 34.

35 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 66.

36 Royal Commission, *Final report: volume 2, nature and cause*, 15 December 2017, p 114, table 2.12, <www.childabuseroyalcommission.gov.au/nature-and-cause>.

youth prisons was particularly common for Aboriginal and/or Torres Strait Islander survivors (15.2%),³⁷ and survivors who were in adult prisons at the time of participating in their private sessions (32.7%).³⁸

The Royal Commission summarised the ongoing risk presented by youth prisons as follows:

*All youth detention centres are closed, secure environments under the control of adults who exercise a high degree of power and authority over detained children. This power dynamic can also allow perpetrators to exploit opportunities to sexually abuse children, prevent abuse from being identified and inhibit disclosure, both at the time of abuse and in the following years.*³⁹

In addition to child sexual abuse, many of knowmore's clients have experienced physical abuse, emotional abuse, neglect and other violations of their human rights while in prison environments, including youth prisons. Similarly, the United Nations Committee against Torture has raised serious concerns about the treatment of children in Australia's youth prisons, including concerns about verbal abuse, racist remarks, the use of restraints, solitary confinement, children not always being separated from adults and children's lack of awareness about their rights and how to report abuses (see the discussion about improving the monitoring of prison environments on pages 26 to 28 below).⁴⁰

These issues are relevant in all states and territories, as all states and territories imprison children. In many states and territories, the number of children in prison has increased in recent years.⁴¹ We are especially concerned to see laws and policies that are likely to further increase the imprisonment of children being advocated for and adopted at the state and territory level. For example, we made detailed comments in a submission to the Queensland Parliament's former Youth Justice Reform Select Committee in January 2024 about recent changes in Queensland that were not supported by evidence.⁴² Since then, the Queensland Government has made a further change to remove the principle that a child is to be

37 Royal Commission, *Final report: volume 5, private sessions*, 15 December 2017, p 400, table P.13, <www.childabuseroyalcommission.gov.au/final-report-private-sessions>.

38 Royal Commission, *Final report: volume 5, private sessions*, p 434, table S.14.

39 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 20–21.

40 United Nations Committee against Torture, *Concluding observations on the sixth periodic report of Australia*, 5 December 2022, p 11, paragraph 37, <tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAUS%2fCO%2f6&Lang=en>.

41 Justice Reform Initiative, *Children's imprisonment in Australia 2023: an overview of youth detention*, May 2024, pp 6 and 8, <assets.nationbuilder.com/justicereforminitiative/pages/410/attachments/original/1713851456/JRI_Children_Imprisonment_Overview_April24.pdf?1713851456>.

42 knowmore, *Submission to the inquiry into youth justice reform in Queensland*, 15 February 2024, p 10, <knowmore.org.au/wp-content/uploads/2024/01/submission-inquiry-into-youth-justice-reform-qlld.pdf>. The Queensland Parliament's former Youth Justice Reform Select Committee was dissolved on 17 April 2024. For more information, see Julius Dennis, *Disbanded Youth Justice Reform Select Committee hands down interim report today as advocates express 'disappointment'*, ABC News, 18 April 2024, <www.abc.net.au/news/2024-04-18/qlld-the-youth-justice-reform-select-committee-disbanded-reaction/103738328>.

imprisoned 'only as a last resort' – a change that knowmore (and many other community-based organisations) opposed.⁴³

While Queensland has the highest number of children in prison,⁴⁴ Queensland is not alone in pursuing laws and policies that are likely to increase the imprisonment of children. For example, the NSW Government recently passed a law making it more difficult for children to be released on bail in particular circumstances (among other things).⁴⁵ knowmore was one of more than 60 organisations that signed an open letter opposing this change.⁴⁶

knowmore considers that keeping children out of prison is a priority for preventing child sexual abuse. We recommend that, in leading a national response to protect the human rights of children and keep children safe from harm in all places (see recommendation 1), the Australian Government should prioritise reforms to keep children out of prison and to prevent violations of the human rights of children in prison, including child sexual abuse.

Recommendation 4

In leading a national response to protect the human rights of children and keep children safe from harm in all places (see recommendation 1), the Australian Government should prioritise reforms to keep children out of prison and to prevent violations of the human rights of children in prison, including child sexual abuse (see recommendations 5 to 8).

We make further comments about 4 areas of reform on pages 19 to 28.

43 *Youth Justice Act 1992* (Qld), schedule 1, principle 18, as amended by *Queensland Community Safety Act 2024* (Qld), section 132; Queensland Parliament, *Queensland Community Safety Bill 2024: submissions*, accessed 2 October 2024, <www.parliament.qld.gov.au/Work-of-Committees/Inquiries/Inquiry-Details?id=4413>.

44 Justice Reform Initiative, *Children's imprisonment in Australia 2023: an overview of youth detention*, May 2024, pp 5 and 7.

45 *Bail and Crimes Amendment Act 2024* (NSW). See also NSW Government (Attorney General), *New bail and performance crime laws passed to prevent youth crime*, 22 March 2024, <www.nsw.gov.au/media-releases/new-bail-and-performance-crime-laws-passed-to-prevent-youth-crime>.

46 Aboriginal Legal Service (NSW/ACT), *Open letter to Premier Chris Minns from 60 organisations: don't turn your back on Closing the Gap*, 17 March 2024, <www.alsnswact.org.au/open-letter-premier-chris-minns>.

Reforms to keep children out of prison and to prevent violations of the human rights of children in prison

In leading a national response to protect the human rights of children and keep children safe from harm in all places, knowmore considers that the Australian Government should prioritise reforms to keep children out of prison and to prevent violations of the human rights of children in prison (see recommendation 4 on page 18). We make further comments below about the following 4 areas of reform:

- adopting an evidence-based approach to offending by children
- raising the minimum age of criminal responsibility to at least 14 years
- strengthening the National Standards for Youth Justice in Australia (National Standards for Youth Justice)
- improving the monitoring of prison environments, including youth prisons.

In addition, we consider that comprehensive human rights laws have significant potential both to reduce the number of children in prison and to better protect the human rights of children in prison. We have made comments about the importance of comprehensive human rights laws for children on pages 13 to 16.

Adopting an evidence-based approach to offending by children

As noted on page 5, we have been concerned to see Australian governments pursuing laws, policies and practices that are not supported by evidence. In some cases, the evidence has suggested that the laws and policies being pursued will harm victims and survivors and make the community less safe. For example, we note the following comments by researchers at the University of Queensland in a report submitted to the Queensland Parliament's former Youth Justice Reform Select Committee:

Public safety is an important goal of the youth justice system, however, harsh criminal law responses do not make the community safer. Instead, they seem to have a 'crime-causing' effect. If the goal of community safety is to be met, we need to find a way to stop children from offending and re-offending.

...

We need to ask: why are the basic needs of these children not being met in the community?

...

More important than the court process is what is being done outside the courtroom to assist these children to obtain housing, support, treatment, and, ideally, love.⁴⁷

We also note the following comments made by academics from Griffith University in their submission to the Queensland Parliament's former Youth Justice Reform Select Committee:

While there may be a desire to implement traditional criminal justice solutions involving serious sanctions and detention ... these are costly band-aid solutions that can appear to promote community safety in the short-term, but will lead to a range of negative unintended and counterproductive impacts in the medium to long term ... Community safety is ultimately undermined by increasing the use of youth detention over the medium and long term.⁴⁸

These comments align with knowmore's long held concerns about the heightened risk of child sexual abuse for children in prison (see pages 16 to 18). As noted above, knowmore's concerns arise from findings of the Royal Commission and our experience assisting many survivors who experienced child sexual abuse in prison.

We also note the Royal Commission's finding that people in prison are significantly more likely than people in the general population to have experienced child sexual abuse.⁴⁹ While recognising that 'the vast majority of child sexual abuse victims did not go on to commit crimes', the Royal Commission also identified 'common patterns in the lives of those survivors who were involved in criminal behaviour', with the criminal behaviour clearly reflecting the impacts of the abuse.⁵⁰ This highlights a complex and troubling dynamic that we often see in the experiences of our clients who have been in prison, where childhood trauma leads to offending and imprisonment, leading to further childhood trauma, which leads to further offending and imprisonment, including into adulthood. This process is harmful both to children and to the broader community.

Ultimately, reforms that lack an evidence base are often ineffective and harmful, and not respectful of children or victims and survivors of crime. We note that, in addition to the 4 priorities to enable national reform (see page 12 above), the *Help way earlier* report made 19 recommendations for evidence-based reform.⁵¹ A significant theme of these recommendations is that Australian governments need to increase access to services that address the root causes of children's offending, including health, education, income support and housing.⁵² This aligns with good practice examples from particular jurisdictions – for

47 Tamara Wash, Jane Beilby, Phylcia Lim and Lucy Cornwell, *Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system*, April 2023, pp 4 and 8, <documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000008.pdf>.

48 Molly McCarthy and Troy Allard, *Submission to the inquiry into youth justice reform in Queensland*, 16 November 2023, pp 7–8, <documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000013.pdf>.

49 Royal Commission, *Final report: volume 3, impacts*, p 144.

50 Royal Commission, *Final report: volume 3, impacts*, pp 144–146.

51 Australian Human Rights Commission, *Help way earlier*, pp 12–13.

52 See, for example, Australian Human Rights Commission, *Help way earlier*, p 55.

example, the Queensland Council of Social Service's 'service-led response to children under the age of 14 years old'⁵³ and Social Reinvestment Western Australia's 'Blueprint for a better future'.⁵⁴

These recommendations and examples also reflect the experiences of knowmore's clients. Our clients who were imprisoned as children generally experienced severe marginalisation and trauma, both inside and outside of prison, that they were not adequately supported to navigate. While we can assist clients in accordance with our funding agreements, it is often challenging for us to connect clients with services that can provide appropriate support in a timely manner, due to the widespread underfunding of services and the generally fragmented nature of Australia's support service system.

We recommend that the Australian Government lead work with all state and territory governments to ensure that children, their families and their communities have adequate access to support services in all parts of Australia. This should involve significant increases in funding for services that support children to remain safely with their families and communities, and to avoid contact with or divert contact from the criminal legal system.

Recommendation 5

The Australian Government should lead work with all state and territory governments to ensure that children, their families and their communities have adequate access to support services in all parts of Australia. This should involve significant increases in funding for services that support children to remain safely with their families and communities, and to avoid contact with or divert contact from the criminal legal system.

We also note that the *Help way earlier* report's recommendations for evidence-based actions include raising the minimum age of criminal responsibility to 14 years and fully implementing the Optional Protocol to the Convention Against Torture (OPCAT).⁵⁵ We make further comments in support of these recommendations on pages 22 to 23 and 26 to 28 below.

53 Queensland Council of Social Service, *Queensland Budget 2023: invest in Queensland's youth services*, 14 November 2022, p 1, <www.qcoss.org.au/wp-content/uploads/2023/02/2.0-Youth-services-budget-ask-23-24.pdf>.

54 Social Reinvestment Western Australia, *Blueprint for a better future: paving the way for youth justice reform in Western Australia*, 1 August 2022, <www.socialreinvestmentwa.org.au/blueprint-for-a-better-future>.

55 Australian Human Rights Commission, *Help way earlier*, p13, recommendations 20 and 22.

Raising the minimum age of criminal responsibility to at least 14 years

In most Australian jurisdictions, the minimum age of criminal responsibility is 10 years.⁵⁶ With respect to this, knowmore shares the concerns expressed by Children's Commissioners and Guardians from across Australia, including the National Children's Commissioner:

Every day that the age of criminal responsibility remains unchanged, is another day that children as young as 10 can be taken through police stations, courts and locked up in youth detention centres. This causes ongoing harm to children and fails to deliver on community safety. It particularly harms First Nations children and children with disabilities, who are particularly targeted and impacted by the criminal legal system.⁵⁷

Similarly, the *Help way earlier* report states:

This area of reform must have national leadership to coordinate legislation across the Commonwealth in line with the minimum age of 14 as recommended by the [United Nations Committee on the Rights of the Child]. First Nations and disability advocates, in particular, have emphasised that a consistent, rights-based and national approach to raising the minimum age to 14 years, will assist with addressing the overrepresentation of marginalised children in custody.⁵⁸

On page 5 above, we shared the perspective of one of our clients, an Aboriginal man with experiences of abuse and incarceration during childhood. This same client made the following comments about putting 10 year old kids in prison:

It isn't a normal thing to do. It's ruining their lives. Once they are in the system, it's a hard thing to get out of.

In knowmore's view, there must be national leadership to raise the minimum age of criminal responsibility to at least 14 years in all Australian jurisdictions. We share the concern expressed by Australian Children's Commissioners and Guardians that a patchwork approach to deciding the age of criminal responsibility 'will result in a confusion of legislation and practices across the country, and operational challenges for police and service providers' (see the discussion about inconsistencies between jurisdictions on pages 10 to 11 above).⁵⁹ We note that the Standing Council of Attorneys-General (SCAG) has already considered the matter at length,⁶⁰ with SCAG's Age of Criminal Responsibility

56 Australian Human Rights Commission, *Help way earlier*, p 92.

57 The open letter was signed by 12 Children's Commissioners and Guardians. See Australia's Children's Commissioners and Guardians, *Open letter to raise the age of criminal responsibility*, 28 November 2023, accessed 11 October 2024, <raisetheage.org.au/news-stories/australias-childrens-commissioners-and-guardians-open-letter-to-raise-the-age-of-criminal-responsibility>.

58 Australian Human Rights Commission, *Help way earlier*, p 93.

59 Australia's Children's Commissioners and Guardians, *Open letter to raise the age of criminal responsibility*.

60 See Australian Human Rights Commission, *Help way earlier*, pp 92–94.

Working Group providing a report in September 2023 with principles to support reform to raise the minimum age of criminal responsibility.⁶¹

Raising the age of criminal responsibility to at least 14 years would bring Australia into closer alignment with contemporary human rights standards. Australia is a party to the Convention on the Rights of the Child. This provides that the best interests of the child must be a primary consideration in all actions concerning children, and that children must have the protection and care that is necessary for their wellbeing.⁶²

The Committee on the Rights of the Child, which monitors implementation of the Convention, observes that the 'the most common minimum age of criminal responsibility internationally is 14' and that a minimum age of at least 14 years old is supported by scientific evidence:

*States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances ...*⁶³

Australian Children's Commissioners and Guardians also highlighted 'substantial human rights issues that have been identified in youth detention across the country'. These human rights issues include child sexual abuse (see the discussion about the heightened risk of child sexual abuse for children in prison on pages 16 to 18 above).

knowmore recommends that the Australian Government lead work with all state and territory governments to raise the minimum age of criminal responsibility to at least 14 years across Australia, building on the work of SCAG's Age of Criminal Responsibility Working Group.

Recommendation 6

The Australian Government should lead work with all state and territory governments to raise the minimum age of criminal responsibility to at least 14 years across Australia, building on the work of the Standing Council of Attorneys-General's Age of Criminal Responsibility Working Group.

61 Standing Council of Attorneys-General, *Age of Criminal Responsibility Working Group Report*, September 2023, pp 6 and 11, <www.ag.gov.au/sites/default/files/2023-12/age-of-criminal-responsibility-working-group-report-2023-scag.pdf>.

62 Convention on the Rights of the Child, article 3.

63 Committee on the Rights of the Child, *General comment no. 24 (2019) on children's rights in the child justice system*, 11 November 2019, p 6, <www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>.

Strengthening the National Standards for Youth Justice

We note that the terms of reference for the Committee's inquiry include 'the benefits and need for enforceable minimum standards for youth justice consistent with our international obligations'. We also note that all Australian jurisdictions have endorsed the National Standards for Youth Justice.⁶⁴ However, as the *Help way earlier* report observes, the National Standards for Youth Justice remain 'aspirational' and are not legally binding, with significant inconsistencies between jurisdictions as to the nature and extent of accountability efforts (see the discussion about inconsistencies between jurisdictions on pages 10 to 11 above).⁶⁵ As stated in the *Help way earlier* report:

*Given the extensive concerns raised about the rights and wellbeing of children in detention in a large number of reports and inquiries, it is evident that these non-binding standards have been insufficient to ensure the protection of children. Further, there is no mechanism for public accountability on how these Standards are being implemented. One of the areas of action for the National Taskforce for reform of child justice systems should be to strengthen these agreed national standards, to ensure they have greater force and public accountability and enable the protection of children and their human rights.*⁶⁶

These insights are broadly consistent with those of the Royal Commission, which emphasised the need for national leadership and coordination to improve children's safety in institutions.⁶⁷ The Royal Commission recommended that institutions implement 10 Child Safe Standards,⁶⁸ and that state and territory governments pass laws to require compliance of institutions engaged in child-related work, including youth prisons.⁶⁹ The Child Safe Standards have been incorporated into the National Principles for Child Safe Organisations, which have been endorsed by the Australian Government and all state and territory

64 Australasian Youth Justice Administrators, *National Standards for Youth Justice in Australia 2023* (National Standards for Youth Justice), accessed 11 October 2024, p 7, <ayja.org.au/wp-content/uploads/2023/10/AYJA-National-Standards-for-Youth-Justice-in-Australia-FINAL-for-Launch-16-October-2023-October-2023.pdf>; Australian Human Rights Commission, *Help way earlier*, p 94.

65 National Standards for Youth Justice, p 4; Australian Human Rights Commission, *Help way earlier*, p 94.

66 Australian Human Rights Commission, *Help way earlier*, p 94.

67 Royal Commission, *Final report: volume 6, making institutions child safe*, 15 December 2017, pp 17–18, <www.childabuseroyalcommission.gov.au/making-institutions-child-safe>.

68 Royal Commission, *Final report: volume 6, making institutions child safe*, pp 211–212, recommendations 6.4–6.5.

69 Royal Commission, *Final report: volume 6, making institutions child safe*, p 292, recommendations 6.8–6.9

governments.⁷⁰ knowmore has consistently advocated for the implementation of the Child Safe Standards and the National Principles for Child Safe Organisations.⁷¹

We note that standard 8.1 of the National Standards for Youth Justice is that 'National Principles of Child Safe Organisations are applied'. This highlights the potential for 'enforceable minimum standards for youth justice' to support the implementation of the National Principles for Child Safe Organisations and drive improvements to children's safety.

We recommend that the Australian Government lead work with all state and territory governments to implement 'enforceable minimum standards for youth justice consistent with our international obligations', as contemplated by the terms of reference for the Committee's inquiry. Australian governments should take the National Standards for Youth Justice as a starting point and seek to strengthen these standards, consistent with the guidance of the *Help way earlier* report. We share the AHRC's view that a National Taskforce for reform of child justice systems would be the appropriate forum in which to progress this reform (see the discussion on pages 10 to 12 above and, in particular, recommendation 2).

Recommendation 7

The Australian Government should lead work with all state and territory governments to implement 'enforceable minimum standards for youth justice consistent with our international obligations', as contemplated by the terms of reference for the Committee's inquiry. Australian governments should take the National Standards for Youth Justice in Australia as a starting point and seek to strengthen these standards, consistent with the guidance of the *Help way earlier* report.

A National Taskforce for reform of child justice systems would be the appropriate forum in which to progress this reform (see recommendation 2).

We also note that standard 8.6 is to 'Helpfully engage with independent oversight or inspection mechanisms for youth custodial facilities'. This aligns with our comments below about the importance of improving monitoring of prison environments.

70 Council of Australian Governments, *National Principles for Child Safe Organisations*, accessed 11 October 2024, pp 6–7, <childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf>.

71 See, for example, knowmore, *Submission on the Child and Youth Safe Organisations Bill 2022 – Consultation Draft*, 30 September 2022, <knowmore.org.au/wp-content/uploads/2023/06/submission-child-and-youth-safe-organisations-bill-2022-consultation-draft-tas.pdf>; knowmore, *Submission on New South Wales's draft Children's Guardian Amendment (Child Safe Scheme) Bill 2021*, 5 February 2021, <knowmore.org.au/wp-content/uploads/2022/04/submission-draft-childrens-guardian-amendment-child-safe-scheme-bill-2021-nsw.pdf>.

Improving the monitoring of prison environments

The Royal Commission highlighted independent oversight and monitoring as a key strategy for creating safer prison environments for children.⁷² It specifically recognised that the Optional Protocol to the Convention Against Torture (OPCAT) 'is significant for all children in detention' because of the independent oversight and monitoring role it gives to 2 bodies:

1. the National Preventive Mechanism (NPM)
2. the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Subcommittee).⁷³

In light of this, knowmore is deeply concerned that there remain significant gaps in Australia's OPCAT implementation. We note that Australian's National Preventive Mechanism is a network:

*We are, collectively, all the bodies and people nominated or appointed by Australian governments as NPMs across Australia, with responsibility to consider the treatment of persons deprived of liberty in places controlled by those governments. We are each independent entities with individual responsibilities within our individual jurisdictions.*⁷⁴

The National Preventive Mechanism has commented:

Resourcing constraints and unresolved funding disputes between the federal, state and territory governments remain outstanding and have significantly hindered Australia's OPCAT implementation. No members [of the Australian National Preventive Mechanism] are adequately resourced to carry out their NPM role.

Beyond resourcing, in the absence of appropriate legislation we have further concerns around both Australian NPM members and the [United Nations] Subcommittee on Prevention of Torture (SPT) being able to fulfil their OPCAT mandates.

*There also remain significant gaps in the oversight of Australia's places of detention, with Australia's three most populous jurisdictions yet to appoint NPMs.*⁷⁵

We are especially concerned that the UN Subcommittee suspended its visit to Australia on 22 October 2022, noting that:

72 Royal Commission, *Final report: volume 15, contemporary detention environments*, p. 67.

73 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp. 54–55.

74 Australian National Preventive Mechanism, *Monitoring places of detention under the Optional Protocol to the Convention against Torture: annual report of the Australian National Preventive Mechanism, 1 July 2022 – 30 June 2023*, 25 March 2024, p 5, <www.ombudsman.gov.au/_data/assets/pdf_file/0019/304534/Australian-NPM-Annual-Report-2022-23-304534.pdf>.

75 Australian National Preventive Mechanism, p 9.

*... it had been prevented from visiting several places of detention, had experienced difficulties in carrying out a full visit at other locations and had not been given all the relevant information and documentation that it had requested.*⁷⁶

The UN Subcommittee cited 'a lack of co-operation stemming from internal disagreements, especially with respect to the States of Queensland and New South Wales'.⁷⁷ While the Queensland Government has since made some relevant legal changes,⁷⁸ these changes fall significantly short of what OPCAT requires and risk a re-occurrence of the problem.⁷⁹ As highlighted by our submission to the Queensland Parliament's former Legal Affairs and Safety Committee, we are especially about the impacts of inadequate OPCAT implementation for children and victims and survivors of child sexual abuse, noting the heightened risk of child sexual abuse for children in prison environments, and the already significant barriers to disclosure that victims and survivors experience.⁸⁰

The *Help way earlier* report recommends that 'Australian Governments fully implement [OPCAT], including by designating National Preventive Mechanisms that have child rights expertise in all jurisdictions'.⁸¹ knowmore supports this recommendation. We note the Australian Government's responsibility for nation-wide OPCAT implementation and would add that the Australian Government should lead the work to implement this recommendation with all state and territory governments.⁸² We would also add that, in implementing OPCAT, Australian governments should also have particular regard to the rights and needs of Aboriginal and/or Torres Strait Islander peoples, and victims and survivors of child sexual abuse.

76 United Nations Committee against Torture, *Concluding observations on the sixth periodic report of Australia*, p 13, paragraph 43.

77 United Nations Office of the High Commissioner for Human Rights, 'UN torture prevention body suspends visit to Australia citing lack of cooperation', 23 October 2022, <www.ohchr.org/en/press-releases/2022/10/un-torture-prevention-body-suspends-visit-australia-citing-lack-co-operation>.

78 *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023* (Qld).

79 knowmore, *Submission on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022*, 11 January 2023, <knowmore.org.au/wp-content/uploads/2023/01/submission-monitoring-of-places-of-detention-opcat-bill-2022-qld.pdf>.

80 knowmore, *Submission on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022*, pp 5–7 and 10–12.

81 Australian Human Rights Commission, *Help way earlier*, p 95, recommendation 22.

82 See Association for the Prevention of Torture, *Implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in federal and other decentralised states*, March 2011, pp 5–6, <www.apt.ch/sites/default/files/publications/OPCAT%20and%20Federal%20States%20-%20Eng.pdf>.

Recommendation 8

The Australian Government should lead work with all state and territory governments to fully implement the Optional Protocol to the Convention Against Torture (OPCAT), including by designating members of the National Preventive Mechanism that have child rights expertise in all jurisdictions. In implementing OPCAT, Australian governments should also have particular regard to the rights and needs of Aboriginal and/or Torres Strait Islander peoples, and victims and survivors of child sexual abuse.

Improving support for victims and survivors of child sexual abuse

On page 6, we outlined how knowmore's work intersects with the Committee's inquiry – we assist victims and survivors who experienced child sexual abuse from other children, and victims and survivors who experienced child sexual abuse in prison (whether from adult perpetrators or other children). In our view, the support required for victims and survivors of child sexual abuse does not fundamentally differ with respect to these factors. In all cases, victims and survivors of child sexual abuse require redress, justice and healing.

We note that the Australian Law Reform Commission (ALRC) is currently undertaking an inquiry into justice responses to sexual violence,⁸³ to which knowmore made a detailed submission.⁸⁴ The ALRC has been asked to provide a final report to the Attorney-General by 22 January 2025.⁸⁵ knowmore hopes that the ALRC's inquiry will make strong recommendations to improve victims' and survivors' experiences of the legal system in Australia and that Australian governments will swiftly implement these recommendations. As noted in our submission to the ALRC's inquiry, many recommendations of this nature have been made before and are long overdue for implementation.⁸⁶

Given the focus of the Committee's inquiry, we do not repeat all of our comments from our submission to the ALRC's inquiry. Drawing on that submission, and our broader experience assisting victims and survivors of child sexual abuse, we wish to highlight an important point: the same legal system that is failing children who have offended is also failing victims and survivors.

The legal system is failing victims and survivors of child sexual abuse

We have made detailed comments above (on pages 5 to 28) about how the legal system is failing children who have offended, breaching their human rights and placing them at heightened risk of experiencing child sexual abuse. In our experience, this same legal system is failing victims and survivors of child sexual abuse, regardless of where they experienced

83 Australian Law Reform Commission, *Justice responses to sexual violence*, 23 January 2024, <www.alrc.gov.au/inquiry/justice-responses-to-sexual-violence/>.

84 knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, 7 June 2024, <knowmore.org.au/wp-content/uploads/2024/06/submission-justice-responses-to-sexual-violence-cth.pdf>.

85 Australian Law Reform Commission, *Terms of reference*, 23 January 2024, <www.alrc.gov.au/inquiry/justice-responses-to-sexual-violence/terms-of-reference/>.

86 knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, pp 5 and 29–31.

child sexual abuse and whether they experienced child sexual abuse from an adult perpetrator or from another child.

In our submission to the ALRC's inquiry, we summarised victims' and survivors' experiences of the Australian legal system in the following terms:

It takes great courage for victims and survivors of child sexual abuse to even approach the legal system. This is a system that has failed to protect them from harm as children. In many cases, it is the legal system that has exposed victims and survivors to harm.

...

Many victims and survivors of child sexual abuse achieve life-changing outcomes through the legal system. However, many are also let down by legal processes that are not survivor-focused – processes that are inaccessible, retraumatising and culturally unsafe. Many victims and survivors never receive justice for the abuse perpetrated against them as children and many feel that the legal system only exacerbated the harm.⁸⁷

These issues are heightened for many victims and survivors of child sexual abuse who experience intersectional marginalisation – for example, Aboriginal and/or Torres Strait Islander victims and survivors of child sexual abuse:

A particularly unjust dynamic exists for Aboriginal and/or Torres Strait Islander peoples, whereby Australian governments disproportionately place Aboriginal and/or Torres Strait Islander children in jail and out-of-home care, where children are at heightened risk of being sexually abused, only to later deny many of those same Aboriginal and/or Torres Strait Islander people an adequate legal response to the abuse.⁸⁸

The combined impact of these issues is a legal system that often fails to provide a just or effective response to child sexual abuse, including in the context of legal responses to offending by children.

Our submission to the ALRC's inquiry made 23 recommendations to address this,⁸⁹ underpinned by the principle that all participants in the legal system should strive to embed a trauma-informed approach to child sexual abuse across all parts of the legal system. This includes the police, lawyers, judges, court staff, government decision-makers and support services.⁹⁰

87 knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, pp 11–12.

88 knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, pp 12–13

89 knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, pp 6–10.

90 knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, pp 13–14.

Recommendation 9

All participants in the legal system should strive to embed a trauma-informed approach to child sexual abuse across all parts of the legal system. This includes the police, lawyers, judges, court staff, government decision-makers and support services.

We make comments below about 2 key matters relevant to embedding a trauma-informed approach across the legal system, including in the context to legal responses to offending by children:

1. the importance of free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience
2. the importance of redress for truth, justice and healing, including for victims and survivors of child sexual abuse.

Strengthening protection of the human rights of children, victims and survivors is also essential to embedding a trauma-informed approach. We have made comments about this on pages 13 to 16 above.⁹¹

The importance of free legal assistance and wraparound support

As highlighted on page 30, the legal system is complex and often inaccessible and retraumatising for victims and survivors of child sexual abuse. Many inquiries, over many years and across Australian jurisdictions, have highlighted the need to provide victims and survivors with greater support to navigate the legal system.⁹² For example, the Victorian Victims of Crime Commissioner (VOCC) recently made the following observations in a systemic inquiry into victim participation in the justice system:

There have been sufficient reviews and inquiries, including reviews examining the existing system in depth, to demonstrate that the current approach to victim support is not meeting victims' needs.

91 See also knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, pp 51–54.

92 See, for example, Royal Commission, *Final report: volume 9, advocacy, support and therapeutic treatment services*, 15 December 2017, pp 15–16, recommendation 9.4, <www.childabuseroyalcommission.gov.au/advocacy-support-and-therapeutic-treatment-services>; Queensland Women's Safety and Justice Taskforce, *Hear her voice: report two, volume one*, July 2022, p 129, recommendation 9, <www.womenstaskforce.qld.gov.au/publications>; Victorian Victims of Crime Commissioner, *Sidelined and silenced: systemic inquiry into victim participation in the justice system (Sidelined and silenced)*, November 2023, p 360, <victimsofcrimecommissioner.vic.gov.au/media/lpufjx5h/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf>.

...

*Victims need, and deserve, a properly resourced victim support system that can provide the type of support they need, including in duration, intensity and specialisation. The current victim support system has already been found to be inadequate and falling short.*⁹³

In relation to legal assistance specifically, the Victorian Victims of Crime Commissioner commented that:

Findings relating to victims' unmet legal needs are not new.

...

*Victims' views, consultations with experts and stakeholders, and the overwhelming evidence from previous reviews and inquiries, support the VOCC's conclusion that enhanced legal advice and assistance is fundamental to victim participation in the justice system.*⁹⁴

The Victorian Victims of Crime Commissioner recommended that the Victorian Government 'fund an enhanced victim support system in Victoria' and expand the existing Victims Legal Service in Victoria 'to provide victims with specialist, state-funded legal assistance in relation to the comprehensive range of legal issues that victims face'.⁹⁵ knowmore supports these recommendations. However, as a nation-wide service that assists victims and survivors of child sexual abuse, we are concerned by the gaps in assistance in all parts of Australia and recognise the importance of a nationally consistent response. In knowmore's view, victims and survivors of child sexual abuse in all parts of Australia should have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience. This is particularly important for ensuring that victims and survivors not only have meaningful access to legal options, but to the full range of services that can assist victims and survivors with redress, justice and healing.

Some elements of such a service already exist, or will soon be piloted, in many parts of Australia.⁹⁶ However, the support service system for victims and survivors of child sexual abuse in Australia is complex and fragmented, with fractures typically reflecting the limitations of funding arrangements. There is not presently a service that provides free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors of child sexual abuse experience.

We envisage a comprehensive service assisting victims and survivors of child sexual abuse with at least the broad range of matters identified by the Victorian Victims of Crime Commissioner.⁹⁷ In addition to those matters, the same comprehensive service should be

93 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, p 360.

94 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, pp 369 and 373.

95 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, pp 362 and 376.

96 For more information, see knowmore, *Submission to the Australian Law Reform Commission on justice responses to sexual violence*, pp 15–16.

97 Victorian Victims of Crime Commissioner, *Sidelined and silenced*, pp 373–375.

funded to assist victims and survivors of child sexual abuse to understand and access their redress and compensation options (see further discussion on pages 34 to 36).

Based on our experience as a multidisciplinary service, we consider it essential for this legal assistance to be delivered by dedicated services that can provide wraparound support, recognising the impacts of child sexual abuse and the importance of a trauma-informed response (see pages 13 to 14 and 29 to 31). The following are key features of knowmore's service delivery model that we recommend be embedded as good practice in the delivery of free, independent and trauma-informed legal assistance to victims and survivors:

- a targeted service that ensures funding is first used to assist victims and survivors who most need legal assistance and who are least able to otherwise access this assistance
- an integrated, multidisciplinary team that brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide a holistic, comprehensive response to clients' legal and associated non-legal needs
- a supportive, client-centred culture that focuses on providing victims and survivors with assistance at a pace that is suitable for them
- staff and systems built on an understanding of the profound and life-long impacts of childhood trauma on clients' lives, to drive responses that are trauma-informed and appropriate
- a framework of Aboriginal and/or Torres Strait Islander cultural safety, which has an appreciation and conceptualisation of Aboriginal and Torres Strait Islander cultural knowledge as its own discipline at its centre.

These features can be summarised by describing knowmore as a service that delivers targeted, joined-up, timely, appropriate, survivor-focused, trauma-informed and culturally safe legal assistance and other support to victims and survivors of child sexual abuse.⁹⁸ We consider this offers a valuable and feasible model for supporting victims and survivors of violent offences more broadly with the legal issues that they experience.

Recommendation 10

The Australian Government, and all state and territory governments, should ensure that victims and survivors of child sexual abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience.

98 The qualities of targeted, joined-up, timely and appropriate reflect what the Law and Justice Foundation of New South Wales has previously identified as the 4 key precepts of public legal assistance services. See P Pleasence, C Coumarelos, S Forell and HM McDonald, *Reshaping legal assistance services: building on the evidence base, a discussion paper*, Law and Justice Foundation of New South Wales, April 2014, p iii, [www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf).

The importance of redress for truth, justice and healing

As noted on page 29, all victims and survivors of child sexual abuse require redress, justice and healing. Our comments here are informed by our extensive experience assisting victims and survivors of institutional child sexual abuse and the Stolen Generations to access redress under the National Redress Scheme (NRS) and the Territories Stolen Generations Redress Scheme (Territories Redress Scheme) respectively (see the discussion about our service on page 3). This experience has equipped us with a deep appreciation of the importance of redress for truth, justice and healing, as well as a keen understanding of how redress processes in Australia can be improved.

We note that the terms of reference for the Committee's inquiry refer to 'the Commonwealth's international legal obligations in regards to youth justice'. The right to redress is recognised in international human rights law – there is a right to accessible and effective remedies for violations of civil and political rights, arising from article 2 of the International Covenant on Civil and Political Rights.⁹⁹ The United Nations General Assembly has also adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which states the following key principle:

*Victims should be treated with compassion and respect for their dignity. They are entitled to access the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.*¹⁰⁰

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) also specifically recognises rights to redress for Indigenous peoples,¹⁰¹ including First Nations peoples in Australia.

In an Australian context, redress has developed as an important mechanism for truth, justice and healing in a variety of contexts. Redress has often been especially important for people experiencing marginalisation, who experience significant barriers to accessing traditional legal processes in Australia and often have not been granted just outcomes under these processes.¹⁰²

99 United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, pp 6–8, <internet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2001%2FRev.1%2FAdd.13&Lang=en>.

100 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, article 4, <www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

101 United Nations Declaration on the Rights of Indigenous Peoples, articles 8, 11, 20, 28 and 32.

102 See Australian Human Rights Commission, *Free and Equal*, pp 189–190.

Importantly, redress is distinct from compensation of the sort that might be obtained through a process of civil litigation.¹⁰³ Civil litigation is a complex process, taking place through the courts and placing survivors at risk of incurring significant legal and other expenses. It involves a close examination of the specific harm experienced. It may result in a much higher payment than a redress process, if the survivor succeeds in their case. In contrast, redress is an administrative process and is generally more accessible to people experiencing marginalisation. Redress processes typically have less demanding evidence requirements than civil litigation and often have important restorative components, in addition to a financial payment.

For example, the National Redress Scheme generally offers eligible survivors:

- a redress payment of up to \$150,000 depending on the type of abuse experienced – the average payment is about \$89,000, with some survivors receiving a higher payment and some survivors receiving a lower payment¹⁰⁴
- counselling and psychological care
- a direct personal response from the institution(s) responsible for the abuse – that is, an opportunity for survivors to receive an apology or other recognition from the institution(s) for the harm they experienced.

The Territories Redress Scheme generally offers eligible survivors:

- a redress payment of \$75,000 to recognise the harm of forced removal
- a \$7,000 payment to help the survivor with healing
- a personal acknowledgement, where the survivor tells their story about the impact of the removal to a senior government person and receives acknowledgement face-to-face or in writing.

knowmore advocates to improve these redress schemes – for example, we have made detailed submissions to the Australian Parliament's Joint Standing Committee on Implementation of the National Redress Scheme.¹⁰⁵ However, we also consider that these

103 See Royal Commission, *Redress and civil litigation report*, September 2015, pp 91–92, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf>.

104 Australian Government (Department of Social Services), *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme* (submission 9, supplementary submission 8), accessed 11 October 2024, p 41, <www.aph.gov.au/DocumentStore.ashx?id=e043ba05-6fce-4d46-a65f-97ddddd5797&subId=734158>.

105 See, for example, knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 7 February 2023, <knowmore.org.au/wp-content/uploads/2023/03/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-cth.pdf>; *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: seventh year of the National Redress Scheme*, 26 July 2024, pp 10–40, <knowmore.org.au/wp-content/uploads/2024/08/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-seventh-year-cth.pdf>.

redress schemes provide a valuable starting point for considering what redress might look like as a process for truth, justice and healing.

For many of knowmore's clients, the redress they receive from the National Redress Scheme and/or the Territories Redress Scheme is life-changing. Our clients frequently tell us that their redress outcomes have helped to address the impacts of the harm perpetrated against them as children. For example, some of our clients have used their redress payments to establish a stable housing situation, in turn providing them with the security to pursue education or employment opportunities. Many of our clients have also benefitted from the counselling and psychological care component of the National Redress Scheme, experiencing improved mental health and relationships, with positive flow-on effects across their lives. These outcomes clearly have important benefits – for victims and survivors, for their families, for governments, and for people and communities in Australia broadly.¹⁰⁶

In knowmore's view, the Australian Government, and all state and territory governments, should prioritise redress as part of broader processes for truth, justice and healing, including for victims and survivors of child sexual abuse. In doing this, governments should draw on the lessons learned from existing and previous redress schemes, including the National Redress Scheme and Stolen Generations redress schemes.

Recommendation 11

The Australian Government, and all state and territory governments, should prioritise redress as part of broader processes for truth, justice and healing, including for victims and survivors of child sexual abuse. In doing this, governments should draw on the lessons learned from existing and previous redress schemes, including the National Redress Scheme and Stolen Generations redress schemes.

¹⁰⁶ This is consistent with the Royal Commission's observations about the ripple effects of child sexual abuse and the *Bringing them Home* report's observations about the effects of forced removal. See Royal Commission, *Final report: volume 3, impacts*, pp 202–234; *Bringing them Home, Bringing them Home report (1997)*, accessed 11 October 2023, chapter 11, <bth.humanrights.gov.au/the-report/bringing-them-home-report>.

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Image inspired by original artwork by Ngunawal man Dean Bell, depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

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