

**Submission
No 73**

INQUIRY INTO YOUTH JUSTICE

Organisation: Knowmore

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Knowmore
Legal Service

Inquiry into youth justice in New South Wales

Submission to the Select
Committee on Youth Justice

26 March 2026

Acknowledgement of Country

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.

Content note

This submission discusses experiences of trauma, including child abuse.

If you need to talk to someone, support is available.

13 YARN – 13 92 76

Blue Knot Helpline – 1300 657 380

1800 RESPECT – 1800 737 732

Lifeline – 13 11 14

Suicide Call Back Service – 1300 659 467

Knowmore provides legal help and related support for victims and survivors of child sexual abuse. You can call Knowmore on 1800 605 762.

Summary of Knowmore's submission

- Knowmore has long held concerns about the heightened risk of child sexual abuse for children in prison, arising from findings of the Royal Commission into Institutional Responses to Child Sexual Abuse and our experiences assisting many victims and survivors who experienced child sexual abuse while they were in prison.
- Given the overincarceration of First Nations children and children with disability, we are especially concerned about the heightened risk of child sexual abuse for First Nations children and children with disability in prison.
- The New South Wales 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.
- Responses to offending by children that prioritise child safety and wellbeing not only reduce offending – they also have flow-on benefits for the community and economy. In contrast, the imprisonment of children is extremely expensive and does not effectively address offending.
- In Knowmore's view, the New South Wales Government should prioritise reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community-controlled organisations.
- It is crucial that children, their families and their communities have adequate access to support services in all parts of New South Wales. A significant increase in funding is needed for services that support children to remain safely with their families and communities, and to divert contact from the criminal legal system.

Table of Contents

Acknowledgement of Country	2
Content note	2
Summary of Knowmore’s submission	3
Introduction	6
Knowmore’s overall approach to the inquiry	6
List of recommendations	9
Part 1: general comments relevant to the inquiry as a whole	13
The heightened risk of child sexual abuse for children in prison	13
Children who experience intersectional marginalisation	16
Long-term social and intergenerational impacts	24
Part 2: underlying drivers of children’s contact with the criminal legal system	26
Part 3: reforms to keep children out of prison and to prevent violations of the human rights of children in prison	29
Raising the minimum age of criminal responsibility	31
Repealing stringent bails laws	34
Amending the legislated presumption of doli incapax	37
Passing a Human Rights Act for New South Wales	39
Implementing the Optional Protocol to the Convention Against Torture (OPCAT)	43
Part 4: approaches to offending by children that prioritise child safety and wellbeing	47

Part 5: improving support for victims and survivors of crime	52
Appendix 1: about Knowmore	58
Our service	58
Our clients	59

Introduction

Knowmore's overall approach to the inquiry

Knowmore welcomes the focus of the inquiry of the Select Committee on Youth Justice (the Committee) on evidence-based approaches to reducing the number of children in contact with the criminal legal system in New South Wales.¹ We commend the bipartisan support for the inquiry from members of the New South Wales Parliament and the comprehensive scope of the inquiry.²

The Chair of the Committee, the Hon Aileen MacDonald OAM MLC, has aptly summarised the need for this inquiry and for reform to responses to offending by children:

As at June 2025, there were 234 young people in custody in New South Wales – a 34 per cent increase since June 2023. Behind each of those numbers is a victim, a family, a community, and a child whose life is at risk of being lost to the justice system. Meanwhile, national spending on youth detention has exceeded \$1 billion per year, yet we are failing to keep the community safe.³

Knowmore's approach to the inquiry is informed by our experience assisting victims and survivors of child sexual abuse. In addressing the issues raised by the inquiry, we have reflected on the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability (Disability Royal Commission) and on recent reports by the Australian Human Rights Commission.

Our work intersects with the inquiry's focus in 2 main ways:

¹ Select Committee on Youth Justice, *Parliamentary committee to examine ways to reduce the number of children in the criminal justice system*, 5 December 2025, p 1, <<https://www.parliament.nsw.gov.au/lcdocs/other/22704/Media%20release%20-%20Youth%20justice%20-%20Call%20for%20submissions.pdf>>.

² Cat Woods, *Improving youth justice outcomes*, Law Society of NSW Journal, 27 January 2026, <<https://lsj.com.au/articles/improving-youth-justice-outcomes/>>.

³ Select Committee on Youth Justice, *Parliamentary committee to examine ways to reduce the number of children in the criminal justice system*, p 1.

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 environments.

While we acknowledge that the inquiry has a broader scope relating to reducing the number of children in contact with the criminal legal system, we note that experiences of trauma, including child sexual abuse, can lead to antisocial behaviour that increases the risk of contact with the criminal legal system.⁵ In our view, approaches to reduce offending by children must therefore include reforms to improve the prevention and early identification of child abuse, and access to trauma-informed, culturally safe wraparound support for victims and survivors of child sexual abuse. We also consider that the legal system must work in a way that is fair to victims and survivors of child abuse, and that keeps children, victims and survivors safe from harm.⁶

We note the Terms of Reference for the inquiry include that, 'in undertaking its inquiry, the committee will engage with Aboriginal communities, children and young people with lived experience, service providers, law enforcement, the judiciary, and other stakeholders'.⁷ We welcome this term of reference and urge the Committee to give great weight to the

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

⁵ Amanda McAtamney and Anthony Morgan, *Research in Practice No. 05: Key issues in antisocial behaviour*, December 2009, p 1, <<https://www.aic.gov.au/sites/default/files/2020-05/rip05.pdf>>.

⁶ See Royal Commission, *Criminal justice report: executive summary and parts I and II*, August 2017, p 14, recommendation 1, <<https://www.childabuseroyalcommission.gov.au/criminal-justice>>.

⁷ Select Committee on Youth Justice, *Terms of Reference*, p 2, <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/3155/Terms%20of%20reference%20-%20Youth%20justice%20-%20Updated%2025%20November%202025.pdf>>.

perspectives of people who have experienced the impacts of the criminal legal system as children.⁸

Human rights law recognises that all children have the right to participate in matters that affect them.⁹ In our view, mechanisms to ensure that the voices of children meaningfully inform decision making must be embedded at all levels of government. As noted on page 59, for many victims and survivors of child abuse, contributing to systemic change is an important part of their healing journey. We see the immense value of relevant lived experience of individuals and communities informing inquiries to shape system reform, as it puts the experiences of those impacted at the centre of decision making and helps to ensure that service systems are fit for purpose.¹⁰ As Australia's former National Children's Commissioner Anne Hollonds has recognised, children and families 'are experts in their own lives and understanding the complexity of issues through their insights is critical'.¹¹

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.¹² We have generally used the terminology of 'youth

⁸ See, for example, the experiences of many children shared in Australian Human Rights Commission, *Keeping kids safe and well – Your voices*, December 2021, <https://humanrights.gov.au/data/assets/file/0029/46694/Ahrc_keeping_kids_safe_and_well_2022.pdf>.

⁹ Convention on the Rights of the Child, entry into force 2 September 1990, article 12, <<https://www.ohchr.org/sites/default/files/crc.pdf>>.

¹⁰ See Knowmore, *Helping survivors advocate for change*, accessed 18 March 2026, <<https://knowmore.org.au/leading-change/supporting-survivors/>>; Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Help Way Earlier), 21 June 2024, p 53, <https://humanrights.gov.au/data/assets/pdf_file/0025/25477/1807_help_way_earlier_accessible_0-1-2.pdf>.

¹¹ Australian Human Rights Commission, *Keeping kids safe and well – Your voices*, p 8.

¹² See, for example, Chris Cunneen, *The criminal legal system does not deliver justice for First Nations people, says a new book*, *The Conversation*, 9 November 2022, <<https://theconversation.com/the-criminal-legal-system-does-not-deliver-justice-for-first-nations-people-says-a-new-book-191005>>.

prisons', rather than 'detention centres', acknowledging that these are prison environments.¹³

In preparing our submission, we have had the opportunity to consider the submission prepared by Raise the Age New South Wales.¹⁴ Knowmore has endorsed the Raise the Age New South Wales submission, which raises issues and experiences consistent with what we have noted in our submission to the Committee's inquiry.

Our submission proceeds in 5 parts:

- First, we make general comments, relevant to the inquiry as a whole.
- Second, we discuss the underlying drivers of children's contact with the criminal legal system.
- Third, we address reforms to keep children out of prison and to prevent violations of the human rights of children in prison.
- Fourth, we make comments about approaches to offending by children that prioritise child safety and wellbeing.
- Fifth, we make comments about improving support for victims and survivors of crime.

List of recommendations

Recommendation 1

The New South Wales 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.

¹³ See National Network of Incarcerated and Formerly Incarcerated Women and Girls, *Language guide*, accessed 17 March 2026, p 6, <https://issuu.com/sistersinside/docs/language_guide_v2_2025>. However, we use the terminology of 'detention centres' when referring to the findings of the Royal Commission.

¹⁴ See Raise the Age NSW, *Inquiry into Youth Justice*, 13 March 2026, <<https://www.parliament.nsw.gov.au/lcdocs/submissions/94817/0029%20Raise%20the%20Age%20NSW.pdf>>.

Recommendation 2

The New South Wales Government should prioritise reforms to address the overincarceration of First Nations peoples, including First Nations children and victims and survivors. This should include:

- providing adequate, culturally safe support services for First Nations peoples in the community, recognising the impacts of colonisation, racism and intergenerational trauma
- adopting an evidence-based approach to offending by children, rather than punitive responses that bring children into unnecessary contact with the criminal legal system.

Recommendation 3

The New South Wales Government should prioritise reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community-controlled organisations.

Recommendation 4

The New South Wales Government should raise the minimum age of criminal responsibility to at least 14 years without exceptions.

Recommendation 5

The New South Wales Government should urgently repeal the additional limitation on bail in section 22C of the *Bail Act 2013* (NSW).

Recommendation 6

The New South Wales Government should urgently repeal section 5(7) of the *Children (Criminal Proceedings) Act 1987* (NSW).

Recommendation 7

The New South Wales Government should pass a comprehensive Human Rights Act that includes specific protections for children, including children who come into contact with the criminal legal system, and victims and survivors of child abuse. In doing so, the New South Wales Government must also ensure ongoing funding for community education and awareness programs, particularly for children, around how to report a breach of their rights under the Human Rights Act.

Recommendation 8

The New South Wales Government should ensure the urgent implementation of the Optional Protocol to the Convention Against Torture (OPCAT) in New South Wales, including by:

- designating a National Preventive Mechanism that have child rights expertise
- ensuring that the United Nations Subcommittee on the Prevention of Torture has full access to all places of detention in New South Wales, including youth prisons.

In implementing OPCAT, the New South Wales Government should also have particular regard to the rights and needs of people experiencing intersectional marginalisation, including First Nations peoples and people with disability, and victims and survivors of child sexual abuse.

Recommendation 9

The New South Wales Government should ensure that children, their families and their communities have adequate access to support services in all parts of New South Wales. This should involve significant increases in funding for services that support children to remain safely with their families and communities, and to divert contact from the criminal legal system.

Service design and delivery should be informed by the evidence-based practices identified in the Australian Human Rights Commission's supplementary paper to *Help Way Earlier Report - Evidence-based approaches to child justice*.

Recommendation 10

The New South Wales Government should implement reforms to ensure that the Victims Support Scheme provides more survivor-focused, trauma-informed and culturally safe support to victims and survivors of child abuse in New South Wales, consistent with Knowmore's recommendations to the second statutory review of the *Victims Rights and Support Act 2013* (NSW).

Recommendation 11

The New South Wales Government should urgently release the report of the second statutory review of the *Victims Rights and Support Act 2013* (NSW).

Part 1: general comments relevant to the inquiry as a whole

We make general comments below, relevant to the inquiry as a whole, about the following matters:

- the heightened risk of child sexual abuse for children in prison
- children who experience intersectional marginalisation
- the long-term social and intergenerational impacts of involvement with the criminal legal system.

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 Commission¹⁵ and our experiences assisting many victims and survivors who experienced child sexual abuse while they were in prison. Given the overincarceration of First Nations children and children with disability,¹⁶ we are especially concerned about the heightened risk of child sexual abuse for First Nations children and children with disability in prison (see further discussion on pages 16–24). In our view, prison is not an appropriate environment for children, and in particular, prison is not a safe environment for children to adequately process and heal from trauma, including child sexual abuse.

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

¹⁶ Over half (56%) of all children in detention on an average night in the June quarter 2025 were First Nations people, see Australian Institute of Health and Welfare, *Youth detention population in Australia 2025*, 10 December 2025, <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2025/contents/about>>; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report, Volume 8, Criminal justice and people with disability*, September 2023, p 81, <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>>.

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.¹⁷ These institutions ‘are typically highly controlled and relatively closed to the outside world’.¹⁸

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’.¹⁹

While children are detained in a range of different detention environments,²⁰ the Royal Commission found that youth detention centres ‘perhaps illustrate the highest level of risk’.²¹ Of the victims and survivors that the Royal Commission heard from in private sessions, 551 (8%) survivors had been sexually abused in youth detention.²² Experiencing sexual abuse in youth detention was particularly common for Aboriginal

¹⁷ Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 38–40.

¹⁸ Royal Commission, *Final report: volume 15, contemporary detention environments*, p 38.

¹⁹ Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 39–43.

²⁰ Royal Commission, *Final report: volume 15, contemporary detention environments*, p 34.

²¹ Royal Commission, *Final report: volume 15, contemporary detention environments*, p 66.

²² Royal Commission, *Final report: volume 2, nature and cause*, December 2017, p 114, table 2.12, <https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_2_nature_and_cause.pdf>.

and/or Torres Strait Islander survivors (15.2%),²³ and survivors who were in adult prisons at the time of participating in their private sessions (32.7%).²⁴

The Royal Commission summarised the ongoing risk presented by youth detention centres 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.*²⁵

This risk is relevant in all states and territories in Australia. We consider this risk to be particularly relevant in New South Wales, a state which has the second highest number of children in prison of all jurisdictions in Australia and where the rate of children in prison has increased in recent years.²⁶

Recommendation 1

The New South Wales 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.

²³ Royal Commission, *Final report: volume 5, private sessions*, December 2017, p 400, table P.13, <https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_5_private_sessions.pdf>.

²⁴ Royal Commission, *Final report: volume 5, private sessions*, p. 434, table S.14.

²⁵ Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 20–21.

²⁶ From the June quarter 2021 to the June quarter 2025, the rate of young people in detention increased in New South Wales. See, Australian Institute of Health and Welfare, *Youth detention population in Australia 2025, State and territory trends*, 10 December 2025, <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2025/contents/state-and-territory-trends>>.

Children who experience intersectional marginalisation

Knowmore recognises that children who experience marginalisation are more likely to come into contact with the criminal legal system and can face systemic barriers to accessing appropriate support prior to, during and following engagement with the criminal legal system. We also note that experiences of marginalisation may overlap to create additional and unique challenges for children within the criminal legal system.

In relation to children in youth prisons, the New South Wales Inspector of Custodial Services has previously acknowledged that:

...many young people in custody have complex behavioural needs or vulnerabilities due to their age, gender, diagnosed and undiagnosed mental health issues, drug and alcohol use, disability, cultural background, experience of trauma and neglect, and lower levels of educational attainment.²⁷

We are particularly concerned about the disproportionate impacts of engagement with the criminal legal system on children who experience marginalisation and are overrepresented in prison populations, including First Nations children and children with disability. We also recognise the intersecting and unique risks faced by First Nations children with disability. We make further comments below about:

- the disproportionate impacts of punitive responses to offending by children on First Nations children, families and communities
- the experiences of children with disability engaging with the criminal legal system.

The disproportionate impacts on First Nations children, families and communities

We note that the Terms of Reference for the inquiry asks about ‘the specific and disproportionate impact of the youth justice system on Aboriginal

²⁷ New South Wales Inspector of Custodial Services, *Inspection of Six Youth Justice Centres in NSW*, December 2020, p 8, <<https://inspectorcustodial.nsw.gov.au/documents/inspection-reports/inspection-of-six-youth-justice-centres-in-NSW.pdf>>.

children, and the adequacy of current strategies to Close the Gap on Aboriginal youth incarceration'.²⁸

As a nation-wide, multidisciplinary service assisting many First Nations victims and survivors of child abuse, Knowmore is deeply concerned by the overincarceration of First Nations children in New South Wales. Recent data shows that First Nations children make up around 60% of the population in youth prisons in New South Wales, despite First Nations children representing around 8% of children in New South Wales.²⁹ This is shameful.

We acknowledge the Royal Commission into Aboriginal Deaths in Custody and note that deaths in custody remain an appalling injustice against First Nations peoples in Australia,³⁰ including in New South Wales. In 2024–25, New South Wales recorded the highest number of Indigenous deaths in prison custody of all states and territories – the highest number recorded in New South Wales since 1979–1980.³¹

We also acknowledge the Royal Commission into Institutional Responses to Child Sexual Abuse, which noted the overrepresentation of First Nations peoples among survivors of institutional child sexual abuse, as well as the significant and disproportionate impacts of institutional child sexual abuse on First Nations peoples, families and communities, including intergenerational impacts.³² The Royal Commission also found that First Nations peoples may experience increased barriers to disclosing child sexual abuse and seeking justice due to 'structural factors or experiences of systemic racism and discrimination' within justice and legal systems,

²⁸ Select Committee on Youth Justice, *Terms of Reference*, p 1.

²⁹ See NSW Bureau of Crime Statistics and Research, *NSW youth detention numbers up 34% since 2023*, 14 August 2025, <<https://bocsar.nsw.gov.au/media/2025/mr-custody-jun2025.html>>.

³⁰ See, for example, ANTA, *Deaths in custody*, 6 December 2024, accessed 4 March 2026, <<https://antar.org.au/issues/justice/deaths-custody/>>.

³¹ Australian Institute of Criminology, *Deaths in custody in Australia 2024–25*, 2025, p 9, <https://www.aic.gov.au/sites/default/files/2025-12/sr57_deaths_in_custody_in_australia_2024-25.pdf>; Kirstie Wellauer and Joanna McCarthy, *Australia records highest number of Indigenous deaths in custody since 1979*, ABC News, 10 December 2025, <<https://www.abc.net.au/news/2025-12-10/largest-number-of-indigenous-deaths-in-custody-since-1979/106121828>>.

³² See, for example, Royal Commission, *Final report: volume 2, nature and cause*, p 3.

which may be reinforced by ‘contemporary experiences of systemic injustice and racism’.³³

In Knowmore’s submission to the Australian Law Reform Commission’s inquiry into justice responses to sexual violence, we noted that:

*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.*³⁴

As discussed on pages 29–31 below, we have been concerned to see the New South Wales Government pursue punitive responses to offending by children 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, and the broader implications of this injustice for reconciliation and healing.

We support holistic solutions to offending by children, such as the Youth Koori Court in New South Wales, which Knowmore’s Elder in Residence has significant experience engaging with. We have faith in the role of Elders to address underlying risks of offending and support the overall wellbeing of First Nations children. Investment in these types of processes also assists in addressing the impacts of colonisation, racism and intergenerational trauma on First Nations people. The value of the Youth Koori Court as a diversionary program and the co-design of these programs with First Nations communities, has also been recognised by the United Nations

³³ Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, December 2017, p 44,

<https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_4_identifying_and_disclosing_child_sexual_abuse.pdf>.

³⁴ Knowmore, *Submission to the Australian Law Reform Commission’s inquiry into justice responses to sexual violence*, 7 June 2024, pp 12–13, <https://knowmore.org.au/wp-content/uploads/2024/06/submission-justice-responses-to-sexual-violence-cth.pdf?trk=public_post_comment-text>.

Working Group on Arbitrary Detention, following a visit to Australia in December 2025.³⁵

In reflecting on the impacts of First Nations engagement with legal systems, Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss, commented that:

*First Nations children are disproportionately affected by failing 'tough on crime' policy approaches adopted by Australian state and territory governments, such as "Adult crime, Adult Time", these sloganised approaches only serve to perpetuate racial profiling and negative stereotyping, condemning our children to a lifetime of abuse, deprivation and disadvantage – a cycle that repeats from generation to generation.*³⁶

In July 2025, the Productivity Commission reported that Australian governments are not on track to meet their targets under the National Agreement on Closing the Gap.³⁷ This includes Target 11, which aims to end the overrepresentation of Aboriginal and Torres Strait Islander young people in the criminal legal system and significantly reduce their imprisonment.³⁸

While we acknowledge that the New South Wales Government has taken steps to Close the Gap on Aboriginal youth incarceration, such as funding

³⁵ United Nations Working Group on Arbitrary Detention, *Working Group on Arbitrary Detention: Preliminary Findings from its visit to Australia (1 to 12 December 2025)*, accessed 26 March 2026, p 5, <<https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>>.

³⁶ Katie Kiss, *A Statement by Aboriginal and Torres Strait Islander Social Justice Commissioner, Katie Kiss on Item 10*, 10 July 2024, <<https://humanrights.gov.au/about-us/media-centre/speeches/aboriginal-and-torres-strait-islander-peoples/emrip-impacts-first-nations-engagement-justice-systems>>.

³⁷ Productivity Commission, *Closing the Gap Annual Data Compilation Report*, July 2025, p 3, <<https://assets.pc.gov.au/2025-10/closing-the-gap-annual-data-Compilation-july2025.pdf?VersionId=9X7LLZW8iMzuSBI2bw8hblQodXZDI08C>>.

³⁸ Closing the Gap, *Closing the Gap targets and outcomes*, accessed 17 March 2026, <<https://www.closingthegap.gov.au/national-agreement/targets>>; Productivity Commission, *Closing the Gap Annual Data Compilation Report*, p 9.

numerous Justice Reinvestment sites in New South Wales,³⁹ the unconscionably high number of First Nations children in New South Wales prisons indicates that the government's current approach is not adequate to achieve Target 11 under the National Agreement on Closing the Gap.

In Knowmore's view, the path towards reducing the overincarceration of First Nations children in New South Wales must start with listening to the First Nations children, families and communities most affected. On pages 48-49 below, we discuss the three-point youth crime prevention plan which has been developed by a coalition of Aboriginal and legal organisations in New South Wales.⁴⁰

Similarly, in discussing effective early interventions for First Nations children, the New South Wales Parliament's Committee on Law and Safety acknowledged that:

*Co-design and culturally appropriate delivery through Aboriginal Community Controlled Organisations (ACCOs) is the best way to recognise self-determination, and provide support in a way that is accessible and culturally appropriate.*⁴¹

Knowmore recommends that the New South Wales Government prioritise reforms to address the overincarceration of First Nations peoples, including First Nations children and victims and survivors. This should include:

³⁹ New South Wales Government, Department of Communities and Justice, *Justice Reinvestment in NSW*, accessed 18 March 2026, <<https://dcj.nsw.gov.au/legal-and-justice/strategies-and-plans/justice-reinvestment.html>>; New South Wales Government, *NSW Government takes action to make communities safer and support young people in regions*, 12 March 2024, <<https://www.nsw.gov.au/media-releases/nsw-government-takes-action-to-make-communities-safer-and-support-young-people-regions>>.

⁴⁰ Aboriginal Legal Service (NSW/ACT), *Aboriginal and legal groups horrified at secret plan to throw more children in jail*, 11 March 2024, accessed 18 March 2026, <<https://www.alsnswact.org.au/secret-plan-to-throw-more-children-in-jail>>.

⁴¹ Legislative Assembly Committee on Law and Safety, *Community safety in regional and rural communities Interim report: Addressing the drivers of youth crime through early intervention*, May 2025, p 49, paragraph 3.63, <<https://www.parliament.nsw.gov.au/ladocs/inquiries/3042/Report%20-%20Community%20safety%20in%20regional%20and%20rural%20communities%20-%20interim%20report%20addressing%20the%20drivers%20of%20youth%20crime%20through%20early%20intervention.pdf>>.

- providing adequate, culturally safe support services for First Nations peoples in the community, recognising the impacts of colonisation, racism and intergenerational trauma
- adopting an evidence-based approach to offending by children, rather than punitive responses that bring children into unnecessary contact with the criminal legal system.

Recommendation 2

The New South Wales Government should prioritise reforms to address the overincarceration of First Nations peoples, including First Nations children and victims and survivors. This should include:

- providing adequate, culturally safe support services for First Nations peoples in the community, recognising the impacts of colonisation, racism and intergenerational trauma
- adopting an evidence-based approach to offending by children, rather than punitive responses that bring children into unnecessary contact with the criminal legal system.

Experiences of children with disability

We note that the Terms of Reference for the inquiry asks about ‘the experience of children with disability in youth detention’.⁴²

The Disability Royal Commission highlighted that children with disability are overrepresented in the criminal legal system.⁴³ Given this overrepresentation, we believe particular consideration should be given to the experiences of children with disability who come into contact with the criminal legal system.

⁴² Select Committee on Youth Justice, *Terms of Reference*, p 2.

⁴³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report, Volume 8, Criminal justice and people with disability*, September 2023, p 81, <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>>.

The Royal Commission into Institutional Responses to Child Sexual Abuse found that children with disability face a significantly increased risk of sexual abuse in institutional settings. The Royal Commission noted that:

- The 'risk of child sexual abuse of children with disability has been estimated to be around 3 times that of the general population, with some estimates being considerably higher'.⁴⁴
- Children with disability are also more likely than other children to have experienced repeated incidents of sexual abuse by the time they are 18 years old'.⁴⁵

According to research commissioned by the Royal Commission, this increased risk is due to a range of factors, including the overrepresentation of children with disability in high-risk institutional settings, including in particular youth prisons, and the likelihood that they will spend longer periods of time in those settings.⁴⁶

In addition to the increased risk of experiencing institutional child sexual abuse, the Royal Commission found that people with disability face significant barriers that can prevent disclosure and/or inhibit adequate responses to disclosure.⁴⁷ As a result, the prevalence and risk of institutional child sexual abuse among people with disability may be much higher than estimated.

These findings are consistent with research commissioned by the Disability Royal Commission, which highlighted that people with disability face an increased risk of violence, abuse and neglect and may also face additional

⁴⁴ Royal Commission, *Report of case study no. 41: institutional responses to allegations of the sexual abuse of children with disability*, May 2017, p 17, <<https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Case%20Study%2041%20-%20Findings%20Report%20-%20Disability%20service%20providers.pdf>>.

⁴⁵ Royal Commission, *Final report: volume 2, nature and cause*, p 91.

⁴⁶ Gwynnyth Llewellyn, Sarah Wayland and Gabrielle Hindmarsh, *Disability and child sexual abuse in institutional contexts*, November 2016, p 7, <<https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Disability%20and%20child%20sexual%20abuse%20in%20institutional%20contexts%20-%20Causes.pdf>>.

⁴⁷ Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, p 42.

challenges in reporting their abuse.⁴⁸ The Disability Royal Commission also noted that the risk of abuse may increase for people at risk of heightened marginalisation including women and girls with disability, people with communication disabilities, Aboriginal and/or Torres Strait Islander people with disability, culturally and linguistically diverse people with disability and/or LGBTQI+ people with disability.⁴⁹

Further, the Disability Royal Commission acknowledged that people with disability in prison are:

- more likely to have difficulty coping with the prison environment
- more likely to experience a higher rate of comorbid mental health disorders and physical conditions than prisoners without disability
- at higher risk of reoffending.⁵⁰

In light of the above, it is critical that children with disability receive specialised and ongoing support throughout their engagement with the criminal legal system. We note that under international human rights law, children with disability ‘have the right to special care and assistance, so they can fully enjoy their rights on an equal basis with other children’.⁵¹ Unfortunately, many children with disability are not experiencing the benefit of this right in practice.

Following consultation with children about their experiences of the criminal legal system, the Australian Human Rights Commission observed that ‘more than one in five children and young people (22.2%) indicated that they had a disability and had poor access to appropriate support

⁴⁸ Centre for Evidence and Implementation and Monash University, *Rapid evidence review: violence, abuse, neglect and exploitation of people with disability*, 24 August 2021, accessed 17 March 2026, pp 1–3,

<<https://disability.royalcommission.gov.au/publications/rapid-evidence-review-violence-abuse-neglect-and-exploitation-people-disability>>.

⁴⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, accessed 17 March 2026, p 295,

<<https://disability.royalcommission.gov.au/publications/interim-report>>.

⁵⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report, Volume 8, Criminal justice and people with disability*, p 43.

⁵¹ Australian Human Rights Commission, *Help Way Earlier*, p 61. See also, Convention on the Rights of the Child, article 23; Convention on the Rights of Persons with Disabilities, entry into force 3 May 2008, article 7, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>>.

services'.⁵² The Australian Human Rights Commission further indicated that the need for appropriate support for children with disability becomes 'more pronounced' as children further engage with the criminal legal system.

The Disability Royal Commission recommended that:

*State and territory governments should ensure timely screening and expert assessment are available for individual children with cognitive disability involved in the criminal justice system (including, but not limited to, detention settings) and that they receive appropriate responses, including therapeutic and other interventions.*⁵³

Knowmore supports this recommendation and urges the New South Wales Government to implement this and other recommendations of the Disability Royal Commission, to improve the safety and wellbeing of children with disability in youth prisons.⁵⁴ The New South Wales Government should also report publicly on their progress to implement these recommendations, to ensure greater transparency and accountability.

Long-term social and intergenerational impacts

We note that the Terms of Reference for the inquiry asks about 'the long-term social and intergenerational impacts of youth justice involvement'.⁵⁵

While Knowmore acknowledges that the impacts of involvement with the criminal legal system are broad and can affect all aspects of a child's life, including social, health and socioeconomic outcomes,⁵⁶ our comments in

⁵² Australian Human Rights Commission, *Help Way Earlier*, p 32.

⁵³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report, Volume 8, Criminal justice and people with disability*, p 110, recommendation 8.4.

⁵⁴ See for example, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report, Volume 8, Criminal justice and people with disability*, p 112, recommendation 8.5 and p 109, recommendation 8.3.

⁵⁵ Select Committee on Youth Justice, *Terms of Reference*, p 2.

⁵⁶ Australian Institute of Health and Welfare, *Closing the Gap targets: key findings and implications*, 6 March 2025, accessed 17 March 2026, <<https://www.aihw.gov.au/reports/indigenous-australians/closing-the-gap-targets-key-findings-implications/contents/youth-justice#status>>.

response to this term of reference relate to the impacts of child sexual abuse in prison environments, reflecting the focus of our work.

As discussed on pages 13–15, there is a heightened risk of child sexual abuse for children in prison environments. Child sexual abuse is obviously a severe violation of a child’s human rights, with impacts extending across the victim or survivor’s life.⁵⁷ These impacts were extensively documented by the Royal Commission into Institutional Responses to Child Sexual Abuse and include impacts on:

- physical health
- mental health
- relationships
- connection to culture
- education
- employment
- housing
- economic security.⁵⁸

The Royal Commission also found that for many victims and survivors, the experience of child sexual abuse in youth prison contributed to ‘a cycle of reoffending and incarceration they have struggled to break, often driven by anger, substance use and mental health problems’.⁵⁹ These experiences are consistent with those of the victims and survivors Knowmore has assisted.

We also note that due to the significant barriers that victims and survivors face in disclosing child sexual abuse,⁶⁰ and the high number of survivors who never disclose the abuse,⁶¹ many victims and survivors do not receive

⁵⁷ Royal Commission, *Final report: volume 3, impacts*, 15 December 2017, p 9, <<https://www.childabuseroyalcommission.gov.au/impacts>>.

⁵⁸ Royal Commission, *Final report: volume 3, impacts*, pp 73–156.

⁵⁹ Royal Commission, *Final report: volume 15, contemporary detention environments*, p 101.

⁶⁰ Royal Commission, *Final Report: Volume 4, Identifying and disclosing child sexual abuse*, p 77.

⁶¹ Ben Matthews et al., *Disclosure and non-disclosure of childhood sexual abuse in Australia: Results from a national survey*, Child Abuse & Neglect, February 2025, p 11, <<https://www.sciencedirect.com/science/article/pii/S0145213424005763?via%3Dihub>>.

specialised support to address the impacts of child sexual abuse throughout their lives.

In light of the above, we consider that all Australian governments, including the New South Wales Government, should take steps to minimise the number of children in prison, who are placed at an increased risk of experiencing child sexual abuse. We also consider that governments should take steps to ensure that children in prison are supported to make safe disclosures of child abuse.⁶²

Part 2: underlying drivers of children's contact with the criminal legal system

We note that the Terms of Reference for the inquiry asks about 'the underlying drivers of children's contact with the criminal justice system'.⁶³

Studies have noted that children in Australia commonly engage with the criminal legal system following experiences of poverty, insecure housing, child abuse and maltreatment, racism, poor educational outcomes and contact with the child protection system.⁶⁴ Although such factors have been referred to as 'predictors' of criminality, we support the view that

⁶² For further discussion on supporting children to make safe disclosures of child abuse in youth prisons, see Knowmore, *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability on criminal justice system issues related to the sexual abuse of children with disability*, 27 March 2020, p 23, recommendation 15.6, <<https://knowmore.org.au/wp-content/uploads/2021/03/submission-criminal-justice-system-issues-related-to-the-sexual-abuse-of....pdf>>.

⁶³ Select Committee on Youth Justice, *Terms of Reference*, p 1.

⁶⁴ Lisa Ewenson, *Lived experiences of youth justice detention in Australia: reframing the institution in a decarcerated state*, *Australian Journal of Human Rights*, September 2024, p 43, <<https://www.tandfonline.com/doi/epdf/10.1080/1323238X.2024.2412386?needAccess=true>>; Min-Taec Kim and Fan Cheng, *Predicting first criminal justice contact before age 18 using a large linked administrative dataset*, *Crime and Justice Bulletin*, December 2025, pp 3-4, <<https://bocsar.nsw.gov.au/documents/publications/cjb/cjb251-300/CJB270-Report-Birth-cohort-study.pdf>>.

these factors 'are indicators of underlying social and economic disadvantage rather than factors that have a direct causal relationship with the outcome [of criminality]'.⁶⁵

Similarly, the former National Children's Commissioner, Anne Hollonds, has stated that:

...there are common threads for kids who get into trouble: poverty, homelessness, violence and abuse, health and mental health issues, disabilities and learning problems, dropping out early from school and – for many First Nations and migrant families – systemic racism and intergenerational trauma. For most, these are disadvantages from birth.

...

*But the systems that are meant to help – like health, education and social services – are fragmented and uncoordinated and these children are falling through the gaps.*⁶⁶

Disadvantages experienced by children in New South Wales who engage with the criminal legal system, are evident from the Youth Justice NSW 2022 Young People in Custody Health Survey Report.⁶⁷ Key findings of the report included that, of the children surveyed:

- 97.2% experienced/witnessed a traumatic event at least once in their life
- 64% experienced abuse or neglect
- 62.1% had an interaction with the child protection system in the previous 10 years
- 20.2% may have intellectual disability

⁶⁵ Min-Taec Kim and Fan Cheng, *Predicting first criminal justice contact before age 18 using a large linked administrative dataset*, p 3.

⁶⁶ Anne Hollonds, *Australia is failing its children. A 'tough on crime' approach to youth justice puts politics before prevention*, 10 October 2024, <<https://humanrights.gov.au/about-us/media-centre/opinion-pieces/opinion-pieces/australia-failing-its-children-tough-crime-approach-youth-justice-puts-politics>>.

⁶⁷ New South Wales Government, *2022 Young People in Custody Health Survey Report*, February 2026, <https://www.nsw.gov.au/sites/default/files/noindex/2026-02/ypichs_report_final_0.pdf>.

- 95.7% had been suspended from school
- 59.6% had at least one parent who had been incarcerated
- 82.1% reported symptoms associated with at least one psychological disorder.⁶⁸

We commend the former National Children’s Commissioner and the Australian Human Rights Commission 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.⁶⁹ 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.⁷⁰

Children across Australia told the Australian Human Rights Commission what they need to support them to stay out of trouble, including:

- a safe home or place to live
- positive activities to do
- cultural and traditional activities
- training for a job
- going to school
- services and supports.⁷¹

In Knowmore’s view, the New South Wales Government should ensure that children across New South Wales, their families and their communities, have adequate access to services that support children to remain safely with their families and communities, avoid contact with the criminal legal system, and services that assist in identifying children who have experienced trauma and provide support to address trauma, including child sexual abuse.

⁶⁸ New South Wales Government, *2022 Young People in Custody Health Survey Report*, pp xxviii- xxxvi.

⁶⁹ Australian Human Rights Commission, *Help way earlier*, pp 12–13.

⁷⁰ See, for example, Australian Human Rights Commission, *Help way earlier*, p 55.

⁷¹ Australian Human Rights Commission, *Help way earlier*, p 32.

Part 3: reforms to keep children out of prison and to prevent violations of the human rights of children in prison

We note that the Terms of Reference for the inquiry states that ‘in undertaking its inquiry, the Committee will identify legislative, policy and practice reforms required to reduce the number of children in contact with the youth justice system and to build safer, more resilient communities’.⁷² We urge the Committee to consider the reforms discussed on pages 31–47 below, aimed at keeping children in communities and preventing violations of the human rights of children in prison.

In recent years, we have been concerned to see Australian governments, including the New South Wales Government, 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 in prison environments.⁷³ This has included the New South Wales Government introducing laws that are likely to lead to an increase in the number of children in prison, despite the evidence that shows that punitive responses to offending by children often undermine community safety and put children at significant risk of harm.⁷⁴

Recent laws of concern in New South Wales include:

⁷² Select Committee on Youth Justice, *Terms of Reference*, p 2.

⁷³ See Knowmore, *Supplementary Submission on Australia’s youth justice and incarceration system*, 18 December 2025, pp 7–12, <<https://knowmore.org.au/wp-content/uploads/2026/01/supplementary-submission-australias-youth-justice-and-incarceration-system-cth.pdf>>.

⁷⁴ See Knowmore, *Submission on Australia’s youth justice and incarceration system*, 14 October 2024, pp 16–21, <<https://knowmore.org.au/wp-content/uploads/2024/10/submission-inquiry-into-Australias-youth-justice-and-incarceration-system-cth.pdf>>.

- weakening the presumption of *doli incapax*, which will result in more 10- to 14-year old children being convicted of criminal offences⁷⁵
- the tightening of bail laws, making it harder for children to be released on bail.⁷⁶

We acknowledge that in contrast to the above laws, there are existing legislative mechanisms to divert children in New South Wales from youth prisons. For example, the *Young Offenders Act 1997* (NSW) sets out procedures such as youth justice conferences, cautions and warnings as a preferred way to deal with children who commit or are alleged to have committed certain offences, in place of court proceedings.⁷⁷

The New South Wales Parliament recently passed legislation to improve the threshold for accessing diversion, replacing the requirement on children to 'admit' an offence with the requirement to make a 'non-denial statement'.⁷⁸ The amending legislation also clarifies that non-denial statements do not show that a child 'knew, at the time of the offence, that it was seriously wrong to engage in the conduct'.⁷⁹ This means that non-denial statements cannot be used to rebut *doli incapax*.⁸⁰ This reform to address the constraints on diversion was recommended by the review of

⁷⁵ *Children (Criminal Proceedings) Act 1987* (NSW), section 5(7), as amended by the *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025* (NSW). See also, Aboriginal Legal Service (NSW/ACT), *NSW Government youth justice bill gives with one hand and takes with the other*, 19 November 2025, accessed 16 December 2025,

<https://www.alsnswact.org.au/nsw_government_youth_justice_bill_gives_with_one_h_and_and_takes_with_the_other>; New South Wales Bar Association, *Statement on proposed doli incapax reforms*, 20 November 2025, accessed 16 December 2025, <https://nswbar.asn.au/uploads/pdf-documents/submissions/NSWBA_-_Statement_on_proposed_doli_incapax_reforms_-_FINAL.pdf>.

⁷⁶ *Bail and Crimes Amendment Act 2024* (NSW); *Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025* (NSW).

⁷⁷ See *Young Offenders Act 1997* (NSW), section 3.

⁷⁸ *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Bill 2025* (NSW), Schedule 2.

⁷⁹ *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Bill 2025* (NSW), Schedule 2, Clause 9(6).

⁸⁰ Legislative Assembly Committee on Law and Safety, *Community safety in regional and rural communities Final report*, March 2026, p 60, paragraph 5.31,

<<https://www.parliament.nsw.gov.au/ladocs/inquiries/3042/Community%20safety%20in%20regional%20and%20rural%20communities%20-%20Final%20report%20-%20March%202026.PDF>>.

doli incapax (Recommendation 4).⁸¹ We consider this reform to be a positive step toward reducing the number of children in prison, however, as we discuss on pages 31–47 below, there is much more work to be done.

Knowmore recommends that the New South Wales Government prioritise reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community-controlled organisations.

Recommendation 3

The New South Wales Government should prioritise reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community-controlled organisations.

Our comments below address the following reforms to assist in keeping children in New South Wales out of prison and preventing violations of the human rights of children in prison:

- raising the minimum age of criminal responsibility
- repealing stringent bail laws
- amending the legislated presumption of doli incapax
- passing a Human Rights Act for New South Wales
- implementing the Optional Protocol to the Convention Against Torture (OPCAT).

Raising the minimum age of criminal responsibility

In New South Wales, the minimum age of criminal responsibility is 10.⁸² Knowmore shares the concerns expressed by Children’s Commissioners and Guardians from across Australia, including the National Children’s Commissioner:

⁸¹ Review of doli incapax, p 69, recommendation 4(1),(4).

⁸² *Children (Criminal Proceedings) Act 1987* (NSW), section 5.

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.⁸³

Knowmore supports raising the minimum age of criminal responsibility to at least 14 years old in all states and territories. We note that progress has already been made in Victoria and the Australian Capital Territory.

In September 2025 the Victorian Government raised the minimum age of criminal responsibility from 10 years to 12 years⁸⁴ and in July 2025, the Australian Capital Territory became the first jurisdiction in Australia to raise the minimum age of criminal responsibility to 14 years for most offences.⁸⁵ Although the Australian Capital Territory is now the leading jurisdiction on this issue, we remain concerned by exceptions to the reform, which continue to place 12- and 13 year old children at risk of criminalisation, imprisonment and abuse.⁸⁶

The United Nations Committee on the Rights of the Child have also raised concern about the use of exceptions to the minimum age of criminal responsibility and strongly recommended that 'States parties abolish such approaches and set one standardized age below which children cannot be held responsible in criminal law, without exception'.⁸⁷ Knowmore supports this recommendation.

⁸³ 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 6 March 2026, <<https://raisetheage.org.au/news-stories/australias-childrens-commissioners-and-guardians-open-letter-to-raise-the-age-of-criminal-responsibility>>.

⁸⁴ *Youth Justice Act 2024* (Vic), section 10.

⁸⁵ *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* (ACT).

⁸⁶ See *Criminal Code 2002* (ACT), section 25(2), as amended by the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023* (ACT).

⁸⁷ United Nations Committee on the Rights of the Child, *General comment no. 24 (2019) on children's rights in the child justice system*, 18 September 2019, p 7, paragraph 25, <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>>.

We also share the concern expressed by Australian Children’s Commissioners and Guardians that a patchwork approach to deciding the age of criminal responsibility across Australian states and territories, ‘will result in a confusion of legislation and practices across the country, and operational challenges for police and service providers’.⁸⁸ 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, without exceptions.

Raising the age of criminal responsibility to at least 14 would bring New South Wales and Australia into closer alignment with contemporary human rights standards and the expectations of the international community.⁸⁹

The Committee on the Rights of the Child, which monitors implementation of the Convention on the Rights of the Child, 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 ...*⁹⁰

In addition to keeping children safer and out of prison, raising the minimum age of criminal responsibility may also have broader benefits for

⁸⁸ Australia’s Children’s Commissioners and Guardians, *Open letter to raise the age of criminal responsibility*.

⁸⁹ Human Rights Law Centre, *120+ countries call on Australia to act on youth incarceration crisis, Human Rights Act and gender-based violence at United Nations*, 27 January 2026, accessed 25 March 2026, <<https://www.hrlc.org.au/news/120-countries-call-on-australia-to-act-on-human-rights/>>.

⁹⁰ Committee on the Rights of the Child, *General comment no. 24 (2019) on children’s rights in the child justice system*, p 6, paragraph 22.

communities in New South Wales. In the *2023–24 NSW Indigenous Expenditure Report*, the New South Wales Treasury reported that there is ‘strong evidence that raising the age of criminal responsibility would deliver social and economic benefits’.⁹¹ The Treasury further noted that:

*Studies have revealed that the younger a child is when they encounter the criminal justice system, the more likely they are to reoffend. Raising the age of criminal responsibility could reduce recidivism rates and create an opportunity to identify children at risk and engage with appropriate early intervention services.*⁹²

We make further comments on pages 50–51 below about the benefits of approaches to offending by children that prioritise child safety and wellbeing.

Knowmore recommends that the New South Wales Government raise the minimum age of criminal responsibility to at least 14 years without exceptions.

Recommendation 4

The New South Wales Government should raise the minimum age of criminal responsibility to at least 14 years without exceptions.

Repealing stringent bails laws

In recent years, the New South Wales Government has introduced new bail laws to make it harder for children to be granted bail, leading to more children being held on remand.⁹³ We note that most children in detention in New South Wales are held on remand, ‘with 75.6 per cent awaiting court in December 2025’.⁹⁴ We are particularly concerned about the impact of tighter bail laws on First Nations children, given that almost double the

⁹¹ New South Wales Treasury, *2023–24 NSW Indigenous Expenditure Report*, accessed 17 March 2026, p 55, <<https://www.nsw.gov.au/sites/default/files/noindex/2024-07/2023-24-nsw-indigenous-expenditure-report.pdf>>.

⁹² New South Wales Treasury, *2023–24 NSW Indigenous Expenditure Report*, p 55.

⁹³ *Bail and Crimes Amendment Act 2024* (NSW); *Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025* (NSW).

⁹⁴ NSW Bureau of Crime Statistics and Research, Custody, February 2026, accessed 16 March 2026, <<https://bocsar.nsw.gov.au/statistics-dashboards/custody.html>>.

proportion of First Nations children were refused bail by New South Wales courts between 2014 and 2023, compared with non-Indigenous children.⁹⁵

We note a concerning trend of punitive bail amendments in New South Wales, which, according to the Australian Institute of Criminology, had the 'highest proportion of punitive changes' in bail legislation made over the last 6 years, alongside Western Australia.⁹⁶

Knowmore is particularly concerned by legislation passed by the New South Wales Parliament on 21 March 2024,⁹⁷ which created an additional bail test for children between 14 and 18 years charged with committing certain serious break and enter offences or motor vehicle theft offences while on bail for similar offences. Under this additional bail limitation, bail must not be granted to such children unless a police officer or a court has a high degree of confidence the child will not commit a serious indictable offence while on bail.⁹⁸

Although the additional bail limitation was originally legislated to expire after a period of 12 months (on 3 April 2025), it has been extended for an additional 18 months under legislation passed by the New South Wales Parliament on 25 March 2025.⁹⁹ The additional bail limitation is currently due to expire on 1 October 2026.¹⁰⁰ Given that the additional limitation on bail has already been extended once, we are concerned that it will be extended again.

The initial proposal for the additional bail limitation was opposed by 560 lawyers, community workers and academics, including Knowmore staff, in

⁹⁵ Australian Institute of Criminology, *Bail and remand across Australia*, February 2026, p 1, <https://www.aic.gov.au/sites/default/files/2026-02/ijc_bail_and_remand_across_australia.pdf>.

⁹⁶ Australian Institute of Criminology, *Bail and remand across Australia*, p 7.

⁹⁷ *Bail and Crimes Amendment Act 2024* (NSW), schedule 1.

⁹⁸ New South Wales Government, *New bail and performance crime laws passed to prevent youth crime*, 22 March 2024, <<https://www.nsw.gov.au/media-releases/new-bail-and-performance-crime-laws-passed-to-prevent-youth-crime>>.

⁹⁹ *Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025* (NSW).

¹⁰⁰ *Bail Act 2013* (NSW), section 22C(5).

an open letter to the New South Wales Government.¹⁰¹ The open letter urged the New South Wales Government to instead adopt the three-point youth crime prevention plan, developed by a coalition of Aboriginal and legal organisations in New South Wales (see discussion on pages 48-49).

Further critique from the legal profession in New South Wales included claims that the additional bail limitation would lead to the 'incarceration of children and young people who would otherwise not have been incarcerated,¹⁰² and that 'we've seen those bail changes [the additional bail limitation] serve to further keep young people in custody where, frankly, the rehabilitation we want to see isn't happening in a custodial centre'.¹⁰³

We note that alongside the additional limitation on bail, there are other challenges for young people to stay in community. For example, it is a criminal offence for a child in New South Wales to fail to appear before a court as required when on bail.¹⁰⁴ Further, the Australian Institute of Criminology's recent *Bail and remand across Australia* report, commented that 'the imposition of onerous bail conditions can set people up to fail, further entrenching them in the criminal justice system'.¹⁰⁵ In our view, onerous bail conditions and restrictions on the granting of bail are particularly harmful for children, who are placed at an unacceptable risk of experiencing significant harm in prison environments (see pages 13-15).

In Knowmore's view, the additional limitation on bail should be urgently repealed.

¹⁰¹ Aboriginal Legal Service (NSW/ACT), *Open letter to NSW Premier Minns and the Labor Government from 560 lawyers, community workers and academics*, 18 March 2024, <<https://www.alsnswact.org.au/open-letter-from-lawyers-community-workers-and-academics>>.

¹⁰² Karl Hoerr, *Law Society warns youth bail reforms are 'unprecedented'*, Law Society of NSW Journal, 21 March 2024, <<https://lsj.com.au/articles/law-society-warns-youth-bail-reforms-are-unprecedented/>>.

¹⁰³ James Clifford, Legislative Assembly Committee on Law and Safety, Community safety in regional and rural communities, *Transcript of proceedings*, 2 October 2024, p 29, <<https://www.parliament.nsw.gov.au/ladocs/transcripts/3378/Corrected%20transcript%20-%20Public%20Hearing%20-%202022%20October%202024%20-%20Committee%20on%20Law%20and%20Safety.pdf>>.

¹⁰⁴ *Bail Act 2013* (NSW), section 79.

¹⁰⁵ Australian Institute of Criminology, *Bail and remand across Australia*, p 18.

Recommendation 5

The New South Wales Government should urgently repeal the additional limitation on bail in section 22C of the *Bail Act 2013* (NSW).

Amending the legislated presumption of *doli incapax*

The common law in New South Wales presumes that children between 10 and 14 years are unable to understand that their behaviour was wrong and therefore cannot be held criminally responsible unless proved otherwise.¹⁰⁶ This is known as the presumption of *doli incapax*. The presumption can assist in reducing the number of children under 14 years in youth prisons. Knowmore is concerned that recent reform in New South Wales has weakened the presumption of *doli incapax* and consequently more 10- to 14-year-old children will be convicted of criminal offences.¹⁰⁷

The United Nations Committee on the Rights of the Child has urged nations to do away with presumptions such as *doli incapax* and instead establish one appropriate minimum age of criminal responsibility.¹⁰⁸ In Knowmore's view, the minimum age of criminal responsibility should be raised to at least 14 years in all Australian jurisdictions, including New South Wales, without exceptions (see discussion on pages 31-34). We do however acknowledge that in the absence of such reform to the minimum age of criminal responsibility, the presumption of *doli incapax* remains an important protection for children aged 10-14 years in New South Wales.

The recent reform in New South Wales followed the *Review of the operation of doli incapax in NSW for children under 14* (the review of *doli incapax*), which recommended that the presumption of *doli incapax* should be

¹⁰⁶ *RP v The Queen* (2016) 259 CLR 641.

¹⁰⁷ *Children (Criminal Proceedings) Act 1987* (NSW), section 5(7), as amended by the *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025* (NSW). See also, Aboriginal Legal Service (NSW/ACT), *NSW Government youth justice bill gives with one hand and takes with the other*; New South Wales Bar Association, *Statement on proposed doli incapax reforms*.

¹⁰⁸ United Nations Committee on the Rights of the Child, *General comment no. 24 (2019) on children's rights in the child justice system*, p 7, paragraphs 26-27.

legislated, noting that legislation must be consistent with the common law test for rebutting *doli incapax*.¹⁰⁹

Legislation which aimed to, among other things, enshrine the common law presumption of *doli incapax*, passed New South Wales Parliament on 27 November 2025.¹¹⁰ One of the corresponding amendments to the *Children (Criminal Proceedings) Act 1987* (NSW), permits a court to determine that the presumption of *doli incapax* has been rebutted on the basis of the offending conduct and surrounding circumstances alone, despite other evidence of the child's intellectual and moral development.¹¹¹

In light of this amendment, the common law test¹¹² is not accurately reflected in legislation and the presumption of *doli incapax* in New South Wales has been weakened.¹¹³ This was acknowledged by the New South Wales Parliament's Legislation Review Committee which noted that:

By explicitly allowing a court to determine that the presumption of doli incapax has been rebutted, without or despite evidence of the child's education and environment, the Bill may weaken the common law presumption.

...by potentially reducing the evidentiary threshold for rebutting the presumption, the Bill may undermine an important and

¹⁰⁹ See The Hon. Geoffrey Bellew SC and Mr Jeffrey Loy, *Review of the operation of doli incapax in NSW for children under 14* (Review of *doli incapax*), August 2025, p 55, recommendation 2, <www.dcj.nsw.gov.au/documents/legal-and-justice/laws-and-legislation/final-report-doli-Incapax-Review-29-August-2025.pdf>.

¹¹⁰ *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025* (NSW).

¹¹¹ *Children (Criminal Proceedings) Act 1987* (NSW), section 5(7), as amended by the *Children (Criminal Proceedings) and Young Offenders Legislation Amendment Act 2025* (NSW).

¹¹² *RP v The Queen* (2016) 259 CLR 641.

¹¹³ See Legislative Assembly Committee on Law and Safety, Inquiry into Community Safety in Regional and Rural Communities, *Transcript of proceedings*, 24 November 2025, pp 18-19, <<https://www.parliament.nsw.gov.au/ladocs/transcripts/3657/Transcript%20-%20public%20hearing%20-%2024%20November%202025%20-%20community%20safety%20in%20regional%20and%20rural%20communities.pdf>>.

*longstanding criminal law safeguard that is designed to shield children from criminal responsibility.*¹¹⁴

In Knowmore's view, the legislative provision that weakens the presumption of doli incapax – section 5(7) of the *Children (Criminal Proceedings) Act 1987* (NSW), should be urgently repealed.

Recommendation 6

The New South Wales Government should urgently repeal section 5(7) of the *Children (Criminal Proceedings) Act 1987* (NSW).

Passing a Human Rights Act for New South Wales

We note that the Terms of Reference for the inquiry asks about 'governance and oversight mechanisms, including the role and effectiveness of NSW Government agencies in coordinating a whole-of government response'.¹¹⁵

In Knowmore's view, establishing a Human Rights Act for New South Wales would greatly assist in coordinating a holistic response to preventing violations of the human rights of children who come into contact with the criminal legal system, including children in prison. It will also contribute to greater recognition and protection of the human rights of all children and victims and survivors of child abuse in New South Wales.

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

Of particular relevance to children, and Knowmore's clients broadly, the Australian Human Rights Commission have noted that:

¹¹⁴ Parliament of New South Wales, Legislation Review Committee, *Legislation Review Digest No. 40/58*, February 2026, p 30,

<<https://www.parliament.nsw.gov.au/ladocs/digests/727/Legislation%20Review%20Digest%20No.%2040%20of%2058%20-%203%20February%202026.pdf>>.

¹¹⁵ Select Committee on Youth Justice, *Terms of Reference*, p 2.

*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.*¹¹⁶

Given the focus of our work, we are especially concerned about the human rights implications of child sexual abuse. As noted on pages 24–26, child sexual abuse is a severe violation of a child's human rights, with impacts extending across the victim or survivor's life.¹¹⁷ These impacts have human rights implications, which are not adequately addressed by existing laws in any Australian jurisdiction.

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.¹¹⁸

In New South Wales, the abhorrent use of solitary confinement or "separation"¹¹⁹ as punishment in youth prisons, has been well

¹¹⁶ Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia (Free and Equal)*, December 2022, p 47, <https://humanrights.gov.au/_data/assets/file/0026/46853/Free_equal_hra_2022_-_main_report_rgb_0.pdf>.

¹¹⁷ Royal Commission, *Final report: volume 3, impacts*, p 9.

¹¹⁸ United Nations Committee against Torture, *Concluding observations on the sixth periodic report of Australia*, 5 December 2022, p 11, paragraph 37, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAUS%2fCO%2f6&Lang=en>.

¹¹⁹ Rather than the terminology of 'isolation', New South Wales legislation commonly recognises the 'separation' of children from their peers. See Australian Human Rights Commission, *'Left alone': A review of solitary confinement and similar practices in Australia's youth justice systems*, December 2025, pp 46–47, <https://humanrights.gov.au/_data/assets/pdf_file/0034/78748/2511-REPORT_Solitary_ACC_FINAL2.pdf>.

documented.¹²⁰ We have recently been alarmed by a report by the Human Rights Law Centre, which highlights that children are routinely strip searched in New South Wales prisons and contraband is rarely found.¹²¹

In Knowmore's view, passing a Human Rights Act is an important step in better recognising and protecting the human rights of all people in New South Wales, including children and victims and survivors of child abuse. We note that Victoria, Queensland and the Australian Capital Territory have already taken this important step to improve the protection of people's human rights, including the human rights of children.¹²² We urge New South Wales to follow suit and 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 13 to 15. 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.

On 23 October 2025, the *Human Rights Bill 2025* (NSW) (Human Rights Bill) was introduced into the New South Wales Legislative Assembly and on 18 March 2026, the Bill was referred to the Legislative Assembly Committee on Community Services for inquiry and report.¹²³ Knowmore commends the New South Wales Parliament for commencing an inquiry into a Human Rights Act.

Human Rights Act for NSW – an alliance of more than 120 legal and community organisations, faith bodies and unions, including Knowmore –

¹²⁰ For example, see Inspector of Custodial Services NSW, *Use of force, separation, segregation and confinement in NSW juvenile justice centres*, November 2018, p 110, <<https://www.parliament.nsw.gov.au/tp/files/75033/use%20of%20force%20seperation%20segregation%20confinement%20nsw%20juvenile%20justice%20centre.pdf>>.

¹²¹ Human Rights Law Centre, *Ending strip searching in Australian prisons*, March 2026, pp 3, 7, and 17, <<https://www.hrlc.org.au/app/uploads/2026/03/Strip-searching-report.pdf>>.

¹²² *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2019* (Qld); *Human Rights Act 2004* (ACT).

¹²³ Legislative Assembly, *Hansard*, 18 March 2026, p 21, <<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-162641/HANSARD-1323879322-162662>>.

have been advocating for a Human Rights Act in New South Wales for many years.¹²⁴ Additionally, support for human rights legislation in New South Wales is strong within the legal profession, with the peak representative bodies for solicitors and barristers in New South Wales, recently calling for a public inquiry into a Human Rights Act.¹²⁵

Knowmore supports the Legislative Assembly Committee on Community Services considering how best a Human Rights Act could safeguard the rights of children who come into contact with the criminal legal system and the rights of victims and survivors of child abuse. For example, with regard to proposed provisions in the Human Rights Bill¹²⁶ and in consultation with people who have experienced the impacts of the criminal legal system as children, victims and survivors of child abuse and support services.

Knowmore recommends that the New South Wales Government pass a comprehensive Human Rights Act that includes specific protections for children, including children who come into contact with the criminal legal system, and victims and survivors of child abuse. In doing so, the New South Wales Government should also ensure ongoing funding for community education and awareness programs, particularly for children, around how to report a breach of their rights under the Human Rights Act.

¹²⁴ Human Rights Act for New South Wales, *What we do*, accessed 17 March 2026, <<https://humanrightsforNSW.org/what-we-do>>.

¹²⁵ The Law Society of New South Wales and New South Wales Bar Association, *A public inquiry into a NSW Human Rights Act*, 17 March 2026, accessed 18 March 2026, <<https://newshub-website-data.s3.ap-southeast-2.amazonaws.com/2026/03/17054159/170326-NSW-Bar-Association-Law-Society-of-NSW-A-public-inquiry-into-a-NSW-Human-Rights-Act.pdf>>.

¹²⁶ *Human Rights Bill 2025* (NSW), clauses 16–18 and 27, 28, 29, 31(1)(b) and 32.

Recommendation 7

The New South Wales Government should pass a comprehensive Human Rights Act that includes specific protections for children, including children who come into contact with the criminal legal system, and victims and survivors of child abuse. In doing so, the New South Wales Government should also ensure ongoing funding for community education and awareness programs, particularly for children, around how to report a breach of their rights under the Human Rights Act.

Implementing the Optional Protocol to the Convention Against Torture (OPCAT)

In Knowmore's view, improving the monitoring of youth prisons is vital to ensuring that the human rights of children are protected and that there are adequate responses when their rights are breached.

The Royal Commission highlighted independent oversight and monitoring as a key strategy for creating safer detention environments for children.¹²⁷ 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).¹²⁸

In light of this, Knowmore is deeply concerned that there remain significant gaps in Australia's OPCAT implementation.

For example, as a federation, Australia has chosen to establish a 'multi-NPM network [the Australian National Preventive Mechanism] combining

¹²⁷ Royal Commission, *Final Report: Volume 15, Contemporary Detention Environments*, p. 67.

¹²⁸ Royal Commission, *Final report: volume 15, contemporary detention environments*, pp. 54–55.

federal and state bodies',¹²⁹ which requires all Australian governments to designate NPMs to regularly inspect places of detention, including youth prisons.¹³⁰

As at March 2026, almost a decade after OPCAT was ratified in Australia, New South Wales, Victoria and Queensland are yet to appoint NPMs.¹³¹ The Australian 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.¹³²

A recent article by the Law Society of New South Wales Journal notes that 'the NSW Government has continually stated it will not make any moves to designate an inspector unless it is provided with ongoing funding from the

¹²⁹ 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* (Australian NPM Annual Report 2022–23), 1 July 2022 – 30 June 2023, 25 March 2024, p 3, <https://www.ombudsman.gov.au/_data/assets/pdf_file/0019/304534/Australian-NPM-Annual-Report-2022-23.pdf>.

¹³⁰ Australian Human Rights Commission, *Optional Protocol to the Convention against Torture (OPCAT)*, accessed 18 March 2026, <<https://humanrights.gov.au/resource-hub/by-resource-type/publications/asylum-seekers-and-refugees-resources/guides/opcat-optional-protocol-convention-against-torture>>.

¹³¹ Denham Sadler, *Australia still isn't meeting its anti-torture obligations*, 10 March 2026, Law Society of NSW Journal, <<https://lsj.com.au/articles/australia-still-isnt-meeting-its-anti-torture-obligations/>>.

¹³² Australian NPM Annual Report 2022–23, p 9.

federal government'.¹³³ In Knowmore's view, this is simply not good enough. The safety of children in all places, including prisons, should be the priority of all Australian Governments and any barriers to designate an NPM in New South Wales should be urgently resolved.

We are also concerned that the UN Subcommittee suspended and later terminated its scheduled monitoring visit to Australia in October 2022, after being refused full access to places of detention in Queensland and New South Wales.¹³⁴

While Queensland has since made changes to address the legislative barriers that interfered with the UN Subcommittee's ability to access places of detention in Queensland in 2022,¹³⁵ in our view, these changes fall significantly short of what OPCAT requires and risk a re-occurrence of the problem.¹³⁶ New South Wales has not taken similar action to address the issues that led to the UN Subcommittee terminating their visit to Australia, which leaves New South Wales out of step with other Australian jurisdictions.

¹³³ Denham Sadler, *Australia still isn't meeting its anti-torture obligations*. See also, Hon. Michael Daley MP, *Response to the Committee's 2023 review of annual and other reports of oversighted agencies*, accessed 18 March 2026, <<https://www.parliament.nsw.gov.au/ladocs/inquiries/2995/Government%20response%20-%202023%20review%20of%20annual%20and%20other%20reports%20of%20oversighted%20agencies.pdf>>.

¹³⁴ United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *UN torture prevention body suspends visit to Australia citing lack of co-operation*, 23 October 2022, <<https://www.ohchr.org/en/press-releases/2022/10/un-torture-prevention-body-suspends-visit-australia-citing-lack-co-operation>>; Australian Human Rights Commission, *Urgent action needed following termination of UN inspection*, 22 February 2023, <<https://humanrights.gov.au/about-us/news/urgent-action-needed-following-termination-un-inspection>>.

¹³⁵ *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023* (Qld).

¹³⁶ See, Knowmore's *Submission to the Legal Affairs and Safety Committee on the Monitoring of Places of Detention (OPCAT) Bill 2022*, 11 January 2023, <<https://knowmore.org.au/wp-content/uploads/2023/01/submission-monitoring-of-places-of-detention-opcat-bill-2022-qld.pdf>>.

In response to the UN Subcommittee's criticism,¹³⁷ then Minister for Corrections, the Hon. Geoffrey Lee, stated that in principle the New South Wales Government 'support the objectives of OPCAT' but that the government are not going to be 'dictated to by an unelected body' and that until an agreement is reached with the Australian Government around 'operational security and funding negotiations', they will continue to refuse the UN Subcommittee access to detention facilities.¹³⁸

We are particularly troubled by this position, as independent oversight and monitoring of prison environments in New South Wales is critical in supporting improvements to conditions for people in prison, including children. Knowmore recommends that the New South Wales Government take steps to ensure that the United Nations Subcommittee on the Prevention of Torture has full access to all places of detention in New South Wales, including youth prisons.

The Help way earlier report recommended that 'Australian Governments fully implement [OPCAT], including by designating National Preventive Mechanisms that have child rights expertise in all jurisdictions'.¹³⁹ Knowmore supports this recommendation. We would add that, in implementing OPCAT, Australian governments, including New South Wales, should also have particular regard to the rights and needs of people experiencing intersectional marginalisation, including First Nations peoples, people with disability and victims and survivors of child sexual abuse.

¹³⁷ See, United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *UN torture prevention body suspends visit to Australia citing lack of co-operation*.

¹³⁸ Legislative Council, Dr Geoff Lee, *Hansard*, 24 October 2022, pp 6-7, <<https://www.parliament.nsw.gov.au/lcdocs/transcripts/3063/Transcript%20-%20PC%205%20-%20Corrections%20-%2024%20October%202022%20-%20CORRECTED.pdf>>.

¹³⁹ Australian Human Rights Commission, Help way earlier, p 95, recommendation 22.

Recommendation 8

The New South Wales Government should ensure the urgent implementation of the Optional Protocol to the Convention Against Torture (OPCAT) in New South Wales, including by:

- designating a National Preventive Mechanism that have child rights expertise
- ensuring that the United Nations Subcommittee on the Prevention of Torture has full access to all places of detention in New South Wales, including youth prisons.

In implementing OPCAT, the New South Wales Government should also have particular regard to the rights and needs of people experiencing intersectional marginalisation, including First Nations peoples and people with disability, and victims and survivors of child sexual abuse.

Part 4: approaches to offending by children that prioritise child safety and wellbeing

We note that the Terms of Reference for the inquiry asks about ‘the availability, effectiveness, and evaluation of evidence-based and community-led responses that prevent offending and reoffending, including diversionary programs and early intervention strategies’ and ‘alternative youth justice models and frameworks’.¹⁴⁰

Before making further comments in response to this term of reference, we wish to emphasise that imprisonment should never be seen as the default response to offending by children. Under international human rights law, children should only be imprisoned ‘as a measure of last resort and for the

¹⁴⁰ Select Committee on Youth Justice, *Terms of Reference*, p 1.

shortest appropriate period of time'.¹⁴¹ The Royal Commission adopted this standard, noting the heightened risk of child sexual abuse for children in prison. This standard continues to be required by domestic law in some Australian jurisdictions, including New South Wales.¹⁴²

In light of the above, we consider that approaches to offending by children that prioritise child safety and wellbeing should not be regarded as 'alternative' to incarceration, but rather the default response.

Knowmore supports the three-point youth crime prevention plan (the three-point plan), as proposed by a coalition of Aboriginal and legal organisations in New South Wales. We have extracted the three-point plan below:

1. *Resources allocated for local communities to support after-school, evening and weekend activities that engage at-risk young people.*
2. *Intensive and targeted programs and responses for at-risk children with appropriate referral services.*
3. *Formal community partnerships between police and Aboriginal controlled services.*¹⁴³

As noted on pages 35–36, the three-point plan has been endorsed by lawyers, community workers and academics, including Knowmore staff, in an open letter to the New South Wales Government.¹⁴⁴

We consider that the three-point plan, in particular point 2, aligns with the 12 evidence-based practices, identified in the Australian Human Rights Commission's supplementary paper to the landmark Help way earlier report, on evidence-based approaches to child justice, published in

¹⁴¹ Convention on the Rights of the Child, article 37(b).

¹⁴² See, for example, *Youth Justice Act 1997* (Tas), section 5(1)(g); *Children and Young People Act 2008* (ACT), section 94(1)(f); *Young Offenders Act 1997* (NSW), section 7(a).

¹⁴³ Aboriginal Legal Service (NSW/ACT), *Aboriginal and legal groups horrified at secret plan to throw more children in jail.*

¹⁴⁴ Aboriginal Legal Service (NSW/ACT), *Open letter to NSW Premier Minns and the Labor Government from 560 lawyers, community workers and academics.*

October 2025 (the supplementary paper).¹⁴⁵ In Knowmore's view, the supplementary paper is a valuable addition to the evidence about effective approaches to offending by children that prioritise child safety and wellbeing.

In summary, the supplementary paper:

... shows how primary prevention, early intervention, integrated services and therapeutic community-based approaches that emphasise family and cultural connections can transform outcomes for children.

*[It] also show[s] that sustained and collective commitment to reform across the health, education, welfare and justice sectors is crucial to success.*¹⁴⁶

The 12 evidence-based practices identified by the supplementary paper include:

- 'positioning children and families at the centre of decision-making in policy and service design and delivery'
- 'investing in reform of upstream service systems for primary prevention and early intervention'
- 'integrating multi-agency collaboration across health, education, justice, and social services to meet the needs of children and their families'
- 'using holistic and therapeutic responses to address underlying causes of offending (trauma, poverty, disability) through integrated services'

¹⁴⁵ Australian Human Rights Commission, *Evidence-based approaches to child justice, Supplementary paper to 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (Supplementary paper to Help way earlier), October 2025, <<https://humanrights.gov.au/?a=71852>>.

¹⁴⁶ Australian Human Rights Commission, *Evidence-based approaches to child justice: summary*, October 2025, accessed 18 March 2026, <<https://humanrights.gov.au/resource-hub/by-resource-type/publications/uncategorised/evidence-based-approaches-to-child-justice>>.

- ‘aligning legislation and government policies with a human rights framework, with the best interests of children the primary consideration’.¹⁴⁷

These evidence-based practices also align with the following recommendation that Raise the Age New South Wales made to this inquiry:

*That the NSW Government should work with experts and community organisations who support children, families and communities – particularly the NSW Coalition of Aboriginal Peak Organisations – to design and deliver a human services system response that prioritises holistic, community-led early support and therapeutic pathways for children as an alternative to criminalisation.*¹⁴⁸

Knowmore supports this recommendation and urges the New South Wales Government to recognise the existing expertise of many community-based organisations in providing evidence-based support to children, families and communities.

Responses to offending by children that prioritise child safety and wellbeing not only reduce offending – they also have flow-on benefits for the community and economy, including ‘re-engagement in education’ and ‘improved health and wellbeing’.¹⁴⁹ In contrast, the imprisonment of children is extremely expensive and does not effectively address offending.

The Productivity Commission’s latest report on government services, published in January 2026, shows that government spending on the imprisonment of children nationally was \$1.1 billion in 2024–25.¹⁵⁰ A significant reinvestment of this spending in approaches to offending by children that prioritise child safety and wellbeing could significantly improve outcomes, without additional spending.

The Legislative Assembly Committee on Law and Safety’s inquiry into community safety in regional and rural communities, recently identified

¹⁴⁷ Australian Human Rights Commission, Supplementary paper to Help way earlier, p 9.

¹⁴⁸ Raise the Age NSW, *Inquiry into Youth Justice*, p 6, recommendation 2.

¹⁴⁹ Justice Reform Initiative, *Australia now spends \$1 billion a year locking up children—it’s time for a smarter approach*, 31 January 2025, <<https://www.justicereforminitiative.org.au/australia-now-spends-1-billion-a-year-locking-up-children-it-s-time-for-a-smarter-approach>>.

¹⁵⁰ Productivity Commission, *Report on Government Services 2026: Part F, Community services*, 29 January 2026, p 199, <<https://www.pc.gov.au/ongoing/report-on-government-services/community-services/>>.

that the effectiveness of early intervention initiatives was undermined by ‘service “gaps”, inefficiencies in referral processes, and limitations around government funding’¹⁵¹ We are concerned that children living in regional, rural and remote communities in New South Wales experience additional barriers to accessing vital services that support their wellbeing, due to ‘sustained regional disinvestment’ and ‘persistent locational disadvantage’ in these areas.¹⁵²

Children across Australia have indicated that they are far more likely to access support services within their local community and that services need to be free, low cost or subsidised in order to be accessible.¹⁵³ This reinforces the importance of community- and place based approaches to offending by children, as highlighted in the supplementary paper.¹⁵⁴ For example, the diversion model known as the Baulaarr Bagay Warruwi Burranba-li-gu model, led by the Dharriwaa Elders Group in Walgett, New South Wales, has proven to be effective in reducing criminal behaviour and improving outcomes among First Nations children.¹⁵⁵

Knowmore recommends that the New South Wales Government ensure that children, their families and their communities have adequate access to support services in all parts of New South Wales. This should involve significant increases in funding for services that support children to remain safely with their families and communities, and to divert contact from the criminal legal system.

We consider that service design and delivery should be informed by the evidence-based practices identified in the supplementary paper.

¹⁵¹ Legislative Assembly Committee on Law and Safety, *Community safety in regional and rural communities Interim report: Addressing the drivers of youth crime through early intervention*, p v.

¹⁵² Community Legal Centres NSW, *Review of the Anti-Discrimination Act 1977*, September 2025, p 4, <<https://lawreform.nsw.gov.au/documents/Current-projects/ada/submissions/ad214.pdf>>.

¹⁵³ Australian Human Rights Commission, *Keeping kids safe and well – Your voices*, pp 40-41.

¹⁵⁴ Australian Human Rights Commission, Supplementary paper to Help Way Earlier, p 9.

¹⁵⁵ See, Australian Human Rights Commission, Supplementary paper to Help Way Earlier, pp 24-30.

Recommendation 9

The New South Wales Government should ensure that children, their families and their communities have adequate access to support services in all parts of New South Wales. This should involve significant increases in funding for services that support children to remain safely with their families and communities, and to divert contact from the criminal legal system.

Service design and delivery should be informed by the evidence-based practices identified in the Australian Human Rights Commission's supplementary paper to *Help Way Earlier Report - Evidence-based approaches to child justice*.

Alongside the need for significant increases in funding for services that support children to remain safely with their families and communities, we also emphasise the importance of accessible, independent, free trauma-informed and culturally safe legal assistance and related support for children navigating the legal system, including specialist support for victims and survivors of child abuse.¹⁵⁶ We make further comments about improving support for victims and survivors of crime on pages 52-57 below.

Part 5: improving support for victims and survivors of crime

We acknowledge that the Terms of Reference for the inquiry does not ask specifically about support for victims and survivors of crime. As noted on page 7, we consider that the criminal legal system must work in a way that is fair to victims and survivors of child abuse. As a nation-wide service supporting victims and survivors of child abuse, including in New South Wales, we consider that improving support for victims of crime is an

¹⁵⁶ See Knowmore, Submission on Australia's youth justice and incarceration system, pp 31-33.

important part of holistic reform to the criminal legal system, including responses to offending by children.

As noted on page 27, the 2022 Young People in Custody Health Survey Report showed that more than half (64%) of children in custody in New South Wales who were surveyed, had experienced abuse or neglect.¹⁵⁷ We consider this to be a conservative figure in light of the significant barriers to disclosing child sexual abuse that victims and survivors experience and the Royal Commission's finding that it takes victims and survivors, on average, 23.9 years to disclose abuse for the first time.¹⁵⁸ We therefore consider that ensuring appropriate support for victims and survivors of child abuse is a relevant consideration for the Committee.

The Royal Commission recognised that engaging with the legal system can be traumatic for victims and survivors, 'triggering the impacts of the abuse even after many years'.¹⁵⁹ This is consistent with our clients' experiences.¹⁶⁰ A common experience reported by our clients who have sought a criminal legal response to child sexual abuse is a feeling of being marginalised or excluded from the process. Some clients have perceived that their interests were given little consideration in the criminal legal process.

In our experience, victims and survivors of child abuse are often particularly frustrated by barriers that impact on their ability to meaningfully participate in police and prosecution processes. For example, a lack of understanding or consideration of the impacts of child sexual abuse – for example, in relation to memory.¹⁶¹ Such problems are compounded by a lack of appropriate, dedicated support for victims and survivors throughout their engagement with the criminal legal system.

¹⁵⁷ New South Wales Government, *2022 Young People in Custody Health Survey Report*, p xxxv.

¹⁵⁸ See Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, p 30.

¹⁵⁹ Royal Commission, *Final report: volume 3, impacts*, p 184.

¹⁶⁰ See, for example, Knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, pp 11–12.

¹⁶¹ See Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 253.

To address these concerns, we consider that the support provided to victims and survivors through the criminal legal system in New South Wales should be improved by:

- embedding a trauma-informed approach to working with victims and survivors at every stage of the criminal legal process, including any interactions with the police, prosecutors, courts and support services
- providing victims and survivors with access to free, independent, trauma-informed legal assistance and wraparound support throughout their engagement with the criminal legal system.

These improvements should apply regardless of whether victims and survivors experience offending by children or offending by adults.

Knowmore recognises that an effective, trauma-informed and survivor-centred statutory victims' support scheme can provide an important avenue for victims and survivors of child abuse to seek recognition of the harm and trauma they experienced as children, as well as financial and counselling support to assist them to alleviate the impacts of the abuse on their lives. Where statutory victims' support schemes fail to meet these standards, they significantly impact the ability of victims and survivors to access justice and support.

Knowmore has assisted many victims and survivors of child abuse in New South Wales to access financial and counselling support through the Victims Support Scheme. We therefore have a strong interest in reforms that result in improvements to the Victims Support Scheme.

The second statutory review of the *Victims Rights and Support Act 2013* (NSW) (the second statutory review) was conducted by the NSW Department of Communities and Justice in 2022 and submissions to the review closed on 22 July 2022.¹⁶² The review sought public feedback on whether the policy objectives of the *Victims Rights and Support Act 2013*

¹⁶² New South Wales Department of Communities and Justice, *Statutory Review of the Victims Rights and Support Act 2013, Background Paper*, April 2022, p 4, <<https://dcj.nsw.gov.au/documents/about-us/engage-with-us/public-consultations/review-of-the-victims-rights-and-support-act-2013-/Statutory-Review-of-the-Victims-Rights-and-Support-Act-2013-background-paper.pdf>>.

(NSW) (the Victims Rights Act) remain valid and whether the terms of the Victims Rights Act remain appropriate to meet those policy objectives.¹⁶³

Knowmore made a submission to the second statutory review, urging the New South Wales Government to implement reforms to increase the accessibility of the Victims Support Scheme for survivors, increase the capacity of the Scheme to deliver outcomes for survivors, review the Scheme's evidentiary requirements and to improve the counselling component of the Scheme.¹⁶⁴ We do not seek to repeat our comments to the second statutory review here.

In Knowmore's view, the New South Wales Government should implement reforms to ensure that the Victims Support Scheme provides more survivor-focused, trauma-informed and culturally safe support to victims and survivors of child abuse in New South Wales, consistent with Knowmore's recommendations to the second statutory review of the Victims Rights Act.

Recommendation 10

The New South Wales Government should implement reforms to ensure that the Victims Support Scheme provides more survivor-focused, trauma-informed and culturally safe support to victims and survivors of child abuse in New South Wales, consistent with Knowmore's recommendations to the second statutory review of the *Victims Rights and Support Act 2013* (NSW).

The NSW Department of Communities and Justice is required to table a report in parliament on the outcome of each review of the Victims Rights Act, within 12 months after the end of the review.¹⁶⁵ Almost 4 years after the second statutory review commenced, the NSW Department of

¹⁶³ New South Wales Department of Communities and Justice, *Statutory Review of the Victims Rights and Support Act 2013, Background Paper*, p 4.

¹⁶⁴ Knowmore, *Submission to the NSW Department of Communities and Justice on the review of the Victims Rights and Support Act 2013*, 11 July 2022, <<https://knowmore.org.au/wp-content/uploads/2023/06/submission-statutory-review-victims-rights-and-support-act-2013-nsw.pdf>>.

¹⁶⁵ *Victims Rights and Support Act 2013* (NSW), section 119(3).

Communities and Justice has yet to table the report of the review.¹⁶⁶ We also note that the Victims Rights Act requires that reviews of the Act are conducted every 3–5 years,¹⁶⁷ which means that the next review of the Act is expected to commence in 2027.

While Knowmore welcomes the establishment an Independent Victims Commissioner in New South Wales,¹⁶⁸ without the report of the second statutory review, services (such as Knowmore) and victims and survivors of crime, are largely in the dark about the status of other reforms in relation to the Victims Rights Act, including the operation of the Victims Support Scheme. For example, we don't know what reform the New South Wales Government recommended in the second statutory review, the reasoning behind the government's recommendations or the implementation status of the recommendations.

The report of the second statutory review is also beneficial to support services who assist victims and survivors of crime to access the Victims Support Scheme, as the report would likely include statistics and operational information about the Victims Support Scheme, that may improve the service delivery of support services. Operational information in relation to the Victims Support Scheme may also inform further advocacy by support services, to improve access to and experience of the Scheme for victims and survivors of crime.

In light of the above, we consider that the significant delay in the release of the report of the second statutory review has hindered reform to improve

¹⁶⁶ New South Wales Department of Communities and Justice, *Review of the Victims Rights and Support Act 2013*, accessed 10 March 2026, <<https://dcj.nsw.gov.au/about-us/engage-with-us/past-consultations/statutory-reviews/review-of-the-victims-rights-and-support-act-2013.html>>; Women's Legal Service NSW, *Submission to the Australian Law Reform Commission Issues Paper: Justice Responses to Sexual Violence*, 14 June 2024, p 32, paragraph 147, <<https://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Response-to-ALRC-IP-Justice-Responses-to-SV-w-Appendix-fa.pdf>>.

¹⁶⁷ *Victims Rights and Support Act 2013* (NSW), section 119(2)(b).

¹⁶⁸ See, *Victims Rights and Victims of Crime Commissioner Act 2025* (NSW); New South Wales Government, *NSW Government establishing independent commissioner to advocate for victim survivors of crime*, 7 August 2025, <<https://www.nsw.gov.au/ministerial-releases/nsw-government-establishing-independent-commissioner-to-advocate-for%20victim-survivors-of-crime>>.

access to services and support for victims and survivors in New South Wales, including in relation to the Victims Support Scheme.

Knowmore recommends that the New South Wales Government urgently release the report of the second statutory review.

Recommendation 11

The New South Wales Government should urgently release the report of the second statutory review of the *Victims Rights and Support Act 2013* (NSW).

Appendix 1: 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 December 2025, Knowmore has received 240,405 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 25,055 clients. Almost 2 in 5 clients (39%) identify as Aboriginal and/or Torres Strait Islander peoples. About 1 in 10 clients (9%) 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 client we assist with the Territories Redress Scheme identify as Aboriginal and/or Torres Strait Islander peoples.

Our clients in New South Wales

Knowmore has a significant client in New South Wales – 23 per cent of our clients reside in the state. We therefore have a strong interest in laws, policies and practices relevant to children and victims and survivors of child abuse in New South Wales.

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

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