

Safeguarding children in correctional detention

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On an average day in 2016–17 there were 913 young people in detention in Australia.¹ Although this data signifies an 18% reduction in the number of minors under supervision since 2012–13², Aboriginal and Torres Strait Islander (ATSI) over-representation in youth detention continues to be a prevalent issue. Indeed it is increasing, with young ATSI peoples now 18 times more likely to be under supervision than non-Indigenous children, and representing over half the population of incarcerated youth, nationally.³ In fact, the latest report on juvenile detention from the Australian Institute of Health and Welfare reveals that all children currently in detention in the NT are ATSI.⁴

The distressing footage that emerged from Don Dale Youth Detention Centre in the NT in July 2016, and subsequent reports from other facilities around the country, starkly illustrate the need for improved oversight and monitoring mechanisms of these closed environments.

The Royal Commission into the Protection and Detention of Children in the Northern Territory (the NT Royal Commission)⁵ further highlighted the occurrence of serious human rights violations in relation to children detained within juvenile detention facilities. Secure environments such as these create particular power imbalances and vulnerabilities that require careful monitoring and a high level of transparency to prevent abuses from occurring. By adding children into the mix, that risk is only heightened.

This finding was echoed in during the five-year term of the recently concluded Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

As Children's Commissioner, I addressed both Royal

Commissions to emphasise the importance of adopting a human rights approach to child welfare, care and safety.

In 2015 and 2016, just prior to the establishment of the NT Royal Commission, I investigated the treatment and oversight of children in correctional detention. In doing this work, I consulted with children and young people in detention about their rights and ways to make sure that their rights are met while in detention. I spoke with just under 100 children and young people in youth and adult correctional facilities across Australia.

Most children and young people knew that they had temporarily lost their right to freedom. Nevertheless, they were largely unaware that they had any other rights—in fact, 31% said they were not told about their rights when they arrived, and a further 33% could not recall if they had been told anything about their rights. Very few were willing to complain about things that worried or concerned them because they thought that either nothing would happen, or that they would be punished in some way for speaking up.

When I discussed their rights with them, contact with loved ones, education, access to health and professional services were among the rights the children and young people most valued. In particular, I heard about the importance of being respected and the difference that respectful and fair treatment by staff made to their day-to-day life and in turn to their behaviour towards others. As one young person explained, “we aren’t all bad people just cos we’re locked up.”

During our conversations, the children and young people raised the damaging effects of collective punishment, body searches, and the use of physical force. They told me

that long periods of segregation or isolation as a form of punishment left them “sad”, “angry” and “depressed”. One child said he felt “like an animal”.

The factors which young people felt affected their wellbeing in youth detention align with the basic human rights found in the major international treaties like the Convention on the Rights of the Child. Children and young people in youth justice facilities may have temporarily lost the right to liberty as a result of criminal offending. However, in losing their freedom, these young people have not forfeited their other basic human rights so important to their development as human beings.

In my 2016 statutory report to the Australian Government,⁶ I examined how the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (OPCAT) could help ensure that the human rights of children in detention are better protected, and recommended that Protocol be ratified and implemented.

The purpose of OPCAT is to ‘bring to operational life’ the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment (CAT). The OPCAT does not create or impose further substantive obligations upon Australia. Rather, it aims to assist the implementation of articles 2(1) and 16 of the CAT.

In recognition of its capacity to augment the protection of incarcerated children, the NT Royal Commission noted the importance and significance of the ratification and implementation of OPCAT for the ongoing oversight and protection of children in detention in the NT.⁷

Australia ratified OPCAT in December 2017. Australia’s ratification of OPCAT requires it to establish a national system of inspections for all places of detention. The monitoring processes in the OPCAT increase transparency and accountability in places of detention. Increased transparency will assist in identifying breaches of human rights and prevent breaches from occurring in the first place. It will also serve to provide a platform for enhancing practices and policies in line with community standards and expectations. I very much welcome the Australian Government’s ratification of OPCAT and consequent

commitment to protect the human rights of both children who are incarcerated.

The legacy of the Royal Commission will also assist in embedding institutional cultures, practices and responses that respect the rights of the child, including in places where children are detained.

At the Australian Human Rights Commission we have been leading work in collaboration with Australian state and territory governments to deliver a set of National Principles for Child Safe Organisations. These Principles recognise that a focus on children’s rights and their wellbeing is the fundamental platform for keeping children safe. The Principles are based on the Child Safe Standards proposed by the Royal Commission⁸ but with broader scope that goes beyond sexual abuse to cover all forms of harm to children.

While Article 19 of the UN Convention on the Rights of the Child emphasises the child’s right to be safe and free from harm, this right is a necessary precondition for the other rights set out in the Convention to be met.

The principles cover all aspects of an organisations culture and operations. This includes having strong leadership and governance processes that embed a rights and safety culture, ensuring children and young people understand their rights, can participate and have a voice, and involving families and communities in safeguarding conversations. It’s also critical that children’s diverse needs, cultures and backgrounds are recognised, respected and addressed.

Every organisation, including youth justice centres, must also have effective processes for recruiting, training and supporting staff and dealing with concerns, complaints and incidents. Managing risks to children in both physical and online environments is another important principle, recognising in particular the contemporary challenges and opportunities associated with new technological platforms.

The principles also require organisations to have current, accessible child safety and wellbeing policies and procedures, and for them to be regularly reviewed and improved.



National Principles for Child Safe Organisations



As complementary national initiatives, OPCAT and the National Principles, once implemented, present an opportunity to bring a human rights approach to the safeguarding of child wellbeing in youth justice settings.

To find out more about the Child Safe Organisations work, and tools and resources in development, please visit www.humanrights.gov.au/our-work/childrens-rights/projects/child-safe-organisations.

1 Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17* (2018), 15 <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2016-17/contents/table-of-contents>.

2 Ibid, p.28.

3 Ibid, p.30.

4 Australian Institute of Health and Welfare, *Youth Detention Population in*

Australia 2017 (5 December 2017), Table S10, <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2017/data>.

5 Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) <https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx>.

6 Australian Human Rights Commission, *Children's Rights Report 2016* (2016) <https://www.humanrights.gov.au/our-work/childrens-rights/projects/childrens-rights-reports>.

7 Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) vol 1, 204. <https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx>.

8 Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017) vol 6 https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf