

**Submission
No 42**

INQUIRY INTO YOUTH JUSTICE

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**Submission by Dr Lisa Ewenson to the Parliament of NSW Legislative Council's
Select Committee on Youth Justice**

Inquiry into Youth Justice - March 2026

1. My name is Dr Lisa Ewenson and I am currently employed as a Research Fellow within the Faculty of Arts, Design and Architecture, at the University of New South Wales, Sydney. From 30 March 2026, I will be employed as a Chancellor's Research Fellow in the Faculty of Law, at the University of Technology Sydney.
2. I am a qualified legal practitioner admitted to practice in the Supreme Court of the Northern Territory (NT). I am also a social worker and a member of the Australian Association of Social Workers.
3. I worked in the criminal justice system in the Northern Territory in 2000-2001. Between 2006-2012 I worked as a Senior Policy & Legal Advisor in the Victorian Department of Human Services, within the area of Youth Justice. Between 2018-2022 I completed a PhD which involved undertaking empirical research through narrative inquiry with children and young people recently released from youth justice detention in New South Wales (NSW) (Ewenson, 2022).
4. Through my varied and extensive professional and research experiences I have a strong understanding of the youth justice systems across the Northern Territory, NSW and Victoria, and of the lives of the children and young people who are entangled within them.
5. To support my submission for this Inquiry, I submit a chapter I published in 2023, titled 'Contemporary Youth Detention Experiences in New South Wales'. This chapter is attached electronically in full to support this submission. This chapter forms Chapter 7 of the edited collection, *Youth Crime, Youth Justice and Children's Courts in NSW* (editors Garner Clancey and Rohan Lulham). The publishers of this edited collection, LexisNexis, have kindly granted permission for this chapter to be republished electronically for the purposes of the NSW Legislative Council's Select Committee on Youth Justice's *Inquiry into Youth Justice*. Accordingly, it's noted that this chapter was first published in *Youth Crime, Youth Justice and Children's Courts in NSW*, Copyright © 2026 Lexis Nexis. All rights reserved.

6. I have included this published chapter with this submission to further embed the lived experiences of youth justice detention in NSW, so that this Inquiry is informed by the experiences of these previously detained children and young people.

Contemporary Youth Detention Experiences in New South Wales – Summary of the Chapter

7. Please accept this chapter (attached) as part of my submission to this Committee's Inquiry (Ewenson, 2023).
8. In summary, this chapter built upon qualitative research that aimed to "weave together a richer, more nuanced understanding of contemporary life in youth justice detention in New South Wales through learning from the meaningful participation of those who have experienced it" (Ewenson, 2023, para. 7.4). The views and experiences of 12 young people previously detained within youth detention in NSW informed this chapter, three of these young people had Pacific Islander heritage, three had Anglo-Saxon heritage and six were First Nations young people. Seven of these participants were young women and five were men (Ewenson, 2023, para. 7.6). These interviews were undertaken across the summer of 2020/2021. Further details about the research process are described within the attached chapter (Ewenson, 2023, para. 7.6).
9. While the qualitative research informing this chapter was focused on the experiences of youth justice detention in New South Wales, the thoughtful and extended narratives of the children and young people who participated in this research revealed their experiences of the deep failings of our society long before their first contact with the criminal justice system.
10. Educational exclusion, including exclusion caused by unaddressed schoolyard bullying and racism, leading to prolonged disengagement from school, was a commonality for these young people I interviewed upon their recent release from youth justice detention (Ewenson, 2023, para. 7.31).
11. Profound housing instability over the course of their entire lives was experienced by the majority of the children and young people I interviewed. This profound societal failure of not providing adequate housing for all translated into youth detention serving as a form of relative housing respite for some of the research participants, which is an extraordinarily stark indictment on our social welfare system, and our society overall (Ewenson, 2022).

12. There was some positive recognition of cultural supports provided for First Nation's children and young people in youth justice detention, but this highlighted, to some extent, the separation that these children and young people had experienced from their culture prior to detention, separation due to the intergenerational and ongoing harms caused by colonisation (Ewenson, 2023, paras. 7.19-7.30).
13. It was found that youth justice detention in NSW did not always provide an environment of physical and psychological safety (Ewenson, 2023, paras. 7.37-7.41), a finding repeated in numerous youth justice government inquiries, royal commissions and ombudsman reports across the nation (see e.g., Ewenson & Naylor, 2021).
14. The desire for positive relational connection while in detention, and beyond, as could be expected of any child or young person, was overwhelming from those I interviewed. The majority of these children and young people I interviewed had been connected in some way with the child protection system prior to detention (Ewenson, 2023, paras. 7.9-7.18).
15. As presented in this attached chapter, it is clear that the vast majority of children and young people entwined within the criminal justice system have been propelled there through causal factors (social/economic determinants) that are no fault of their own, factors including prolonged educational exclusion, extended housing precarity, the endemic intergenerational harms caused by colonisation, insufficient supports for families overall, and relational failings in the child protection system. These overarching findings have been repeated and highlighted in other research endeavours, including within the recently released *2022 Young People in Custody Health Survey* by the NSW Department of Communities and Justice (Perry et al., 2025).

Further considerations

16. Since the publication of the chapter summarised above, I have made a submission to the Commonwealth's Senate Legal and Constitutional Affairs References Committee's *Inquiry into Australia's Youth Justice and Incarceration System* (Ewenson, 2024b) (Commonwealth Inquiry), and I have also published in the *Australian Journal of Human Rights* (Ewenson, 2024a - an open access publication), where I have written about the urgent need for decarceration in the context of youth justice detention across Australia. The *Australian Journal of Human Rights* article is titled, 'Lived Experiences of Youth Justice Detention in Australia: Reframing the Institution in a Decarcerated State', and this was awarded the 2025 Andrea Durbach Prize for outstanding human rights scholarship (Ewenson, 2024a).

17. The points I seek to make here about the further decarceration of the youth justice system in NSW remain the same as those I made in the publications noted in the paragraph above. I will therefore, in part, repeat what I expressed in my submission to the Commonwealth Inquiry.
18. International human rights law provides a raft of instruments relevant to children in detention, and Australia, as a member of the international community, should uphold these standards. These instruments include: the United Nations Convention on the Rights of the Child (1989) (UN CRoC); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') (1985); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines') (1990); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules') (1990); The United Nations Declaration on the Rights of Indigenous People (2007) (UN DRIP), and the United Nations Committee on the Rights of the Child General Comment No. 24: 'Children's Rights in the Child Justice System' (2019) (for further discussion see Ewenson, 2022, chp. 3).
19. The process of youth justice detention does not resolve the underlying systemic and structural issues facing children and young people who come into contact with the criminal justice system, nor does it eliminate recidivism, with across the nation around 57.8 per cent of children and young people returned to some form of youth justice supervision within 12 months of their release (Productivity Commission, 2024, fig. 17.2). Australia should learn from international jurisdictions where youth justice facilities have been abolished in entirety, such as Scotland (Scottish Government, 2024). Abolition should be undertaken in the recognition that youth justice detention centres can be profoundly harmful, that they are expensive to run, and that they do not assist with reducing recidivism. In a socially just world youth justice detention facilities would simply not exist.
20. In the recognition that youth justice detention abolition across Australia may not occur in the near future, for children who are already in contact with the criminal justice system in New South Wales, there are five preliminary elements which would promote dramatic decarceration (Ewenson, 2024a).
- a) Raise the age of minimum criminal responsibility to at least 14 years of age (Fitz-Gibbon & O'Brien, 2019; Hamer & Crofts, 2023; UN CRC, United Nations Committee on the Rights of the Child 2019, para. 22; Beijing Rules 1985, r 4).

- b) Only detain children as a very 'last resort' for the most serious violent persistent offending, for the shortest possible periods of time (UN CRoC 1989, art 37(b); Beijing Rules 1985, r 17; Havana Rules 1990, r 2).
- c) Eliminate the use of pre-sentence detention (remand), and introduce further intensive bail supervision programs (van den Brink, 2019).
- d) Do not detain any child who has fetal alcohol spectrum disorder (FASD), or any other neurodevelopmental disorders or disabilities (see also, Bower et al., 2018; UN CRC, United Nations Committee on the Rights of the Child 2019, para. 28), and
- e) Cease the mass disproportionate imprisonment of First Nations children in detention across Australia (Finlay et al., 2016). Currently First Nations children comprise around 57 per cent of children detained across Australia when First Nations people comprise around 3.8 per cent of the broader population (ABS, 2023; AIHW, 2024). Efforts to remedy this disproportionate representation must be intensified, with population parity a minimum goal (see e.g., O'Brien, 2021; Reeve et al., 2022). The disproportionate incarceration of First Nations children has been denounced by both the UN Human Rights Committee and the UN Committee on the Rights of the Child, both demanding an immediate reduction in the number of First Nations children detained (UN HRC, 2017; UN CRC, 2019). Moreover, Australia is obliged, through the *International Convention on the Elimination of all forms of Racial Discrimination*, to 'adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races' (ICEFRD, 1965, preamble). This applies with regards to all of the institutions which propel First Nations, and other racialized children and young people, towards detention (see also, Ewenson, 2025). The disproportionate representation of First Nations children and young people in detention across Australia is undoubtedly a direct legacy of the ongoing processes of colonisation (Finlay et al., 2016).

21. With regards to reshaping any highly limited form of youth justice detention in the future, the below summary engages with key provisions of Australia's international human rights obligations that should underpin the form and operation of any carceral environments for children and young people.

22. Young people in detention retain the right to be cared for, educated and nurtured – all while engaging with their cultural background. Children and young people who are imprisoned within youth justice detention centres must be provided with a nurturing, trauma-informed, therapeutic, educational, safe and culturally responsive environment that does not further harm or traumatise them (UN CRoC 1989, arts 18, 30 & 40; UN DRIP 2007; CAT, 1984; Beijing Rules 1985, r 19 & 26; CRPD, 2006, art 15; Havana Rules 1990, r 12, 28, 32, 33, 38).
23. Youth justice detention staffing must be culturally reflective of the young people detained and the significant majority of staff must hold qualifications in the caring professions. This point is imperative to transform any future smaller therapeutic youth justice environments, and it has been incorporated within other youth detention settings, such as in Spain (Diagrama Foundation, 2020). The staffing of youth justice detention centres must comprise of a majority of people with qualifications in education, psychology, social work and other caring professions. The staffing must also substantially reflect the cultural make-up of the young people in detention (UN DRIP, 2007; Beijing Rules 1985, r 1.6 & 22; Havana Rules 1990, r 81-87).
24. Young people, if detained, must be provided small home-style environments of various forms suited to the needs of young people from different cultural backgrounds. Children have the right to be part of a family, and any alternative placement of children should replicate culturally safe family-style environments, recognising that these vary significantly across cultural groups (ICCPR, 1966, art 23 & 24; Riyadh Guidelines, 1990, para. 14; UN DRIP, 2007, annex).
25. Children and young people with disabilities or developmental delays, including those with FASD, should not be in the youth justice system at all, even if they have reached the minimum age of criminal responsibility. They should instead be provided with the therapeutic and wrap-around assistance they need elsewhere (UN CRC, United Nations Committee on the Rights of the Child 2019, para. 28; Havana Rules 1990, r 53).
26. Long-term and amply resourced pathways out of detention must be facilitated for all children, including generous income provision, stable adequate housing, meaningful education, training or work opportunities, and access to community and cultural supports, as these are the determinants of whether someone will have future contact with the criminal justice system, and these are the underpinning elements of people's lives which need appropriate and enduring resourcing (McCausland & Baldry, 2023; Shepherd & Ilalio, 2016).

27. I have proposed a model which could shape such dramatically limited youth detention environments in alignment with these human rights frameworks, as summarised above. I have called this a '**NESST**' model. **NESST** is an acronym standing for **N**urturing, **E**ducation and training, **S**afety (physically, psychologically and culturally), **S**afety through effective oversight mechanisms, and **T**ransitions, which must be amply resourced for children and young people upon their release into the long-term. For further explanation and detail on this provisional model, refer to these related publications (Ewenson, 2022, 2023, 2024a).
28. It is important to note that although youth justice detention systems in Australia operate at the state and territory level, the Commonwealth could potentially rely on the external affairs power under the Constitution to legislate in this area. The Commonwealth could choose to legislate a human-rights based model for youth detention systems to ensure, across all Australian jurisdictions, both compliance with international human rights law obligations and consistency of practice (see e.g., 'Tasmanian Dams Case': *Commonwealth v Tasmania* [1983] HCA 21 - 158 CLR 1; 57 ALJR 450 (Mason, 2015)). My research in NSW and the Northern Territory confirmed that the standards of youth justice detention are variable across our federalised nation (Ewenson, 2024a). Instead, a human rights-based approach, and consistently high standards of care in any detaining environment, should be provided to all children and young people across the country, alongside genuine efforts of decarceration leading towards the ultimate goal of the abolition of youth justice detention.

Conclusion

29. In this submission I have endeavoured to provide, in summary form, key principles to dramatically reduce the number of children and young people coming into the youth justice detention system in New South Wales, and to reshape any remaining limited youth justice detention arrangements. A summary of international human rights law frameworks relevant to detention has been provided, along with the reimagined 'NESST' model.
30. However, the larger and broader process of creating a socially just world requires fundamentally addressing the underlying structural factors which propel children and young people towards youth justice systems. In a wealthy nation such as Australia, the vast inequalities and inequities which effectively drive the contact of children and young people with the criminal justice system must urgently be addressed, and no children or young people should be detained in youth justice detention centres.

31. Please do not hesitate to contact me if you have any queries about this submission. I hope that this Inquiry makes meaningful progress in significantly advancing the promotion and protection of the rights of children and young people in New South Wales who are at risk of becoming entwined within the youth justice system.

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