



**Redfern
Legal
Centre**

Submission

Inquiry into Australia's Youth Justice and Incarceration System

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1. Introduction

Redfern Legal Centre (RLC) is a non-profit centre that provides access to justice. Established in 1977, RLC was the first community legal centre in NSW and the second in Australia. We provide free legal advice, legal services, and education to people experiencing disadvantages in our local area and statewide. We work to create positive change through policy and law reform work to address inequalities that cause disadvantage.

RLC has a particular focus on human rights and social justice. Our specialist work areas are First Nations justice, tenancy, police accountability, domestic violence, financial abuse, credit and debt and employment. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct casework, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

We welcome the opportunity to contribute to the Senate inquiry into Australia's youth justice and incarceration system. This inquiry can potentially bring about crucial policy changes, and we are eager to share our insights and recommendations.

In 2011, RLC established a statewide dedicated police misconduct practice. Since then, the practice has provided advice in thousands of police misconduct cases, with many involving First Nations people. RLC's police accountability practice is the only specialized practice in NSW that advises and represents clients in complaints against the NSW Police, which highlights our expertise and influence in this field.

Given our unique expertise in policing, our submission will focus on the connection between the policing of First Nations young people and their overrepresentation at all levels of the criminal justice system, including incarceration.

2. Policing of First Nations children and young people

According to figures from the NSW Bureau of Crime Statistics and Research (BOCSAR) and NSW Police, First Nations children are policed at a disproportionately higher rate than non-First Nations children. This over-policing is a significant factor contributing to the over-incarceration of First Nations children.¹ It is crucial to consider this when evaluating Australia's youth justice and incarceration system.

RLC obtained data from the NSW Police through freedom of information requests under the *Government Information (Public Access) Act* (NSW) relating to strip -searches, use of force, stop and searches and move-on directions. The data supports much of the anecdotal evidence from our clients about the disproportionate policing of First Nations children and young people. The data can be viewed in RLC's [Police Accountability Dashboard](#).

In March 2024, BOCSAR reported that 66.4% of youth in detention were First Nations, setting a

¹ Ruth McCausland and Eileen Baldry, 'Who does Australia Lock Up? The Social Determinants of Justice' (2023) 12(3) *International Journal for Crime, Justice and Social Democracy* 37, 43.

concerning new record.² These alarming figures may support a claim that NSW Police are racially profiling those in the New South Wales community.

3. Strip searches

The data from NSW Police regarding strip searches reveals a troubling trend. Between 2017 and 2023, First Nations children underwent strip searches at a significantly higher rate and at a younger age compared to non-First Nations children. During these six years, 241 First Nations children aged 11 to 15 were strip-searched, while only 183 non-First Nations children in the same age group experienced this. These figures are concerning as First Nations children make up only 6.2% of the New South Wales population aged 10–17.³ Additionally, police conducted 448 strip searches of 16 and 17-year-old First Nations children, compared to 674 non-First Nations children in the same age group.⁴

This practice is deeply concerning, as strip searches are inherently humiliating and degrading, particularly for children. The Canadian Supreme Court noted that “women and minorities in particular may have a real fear of strip search and may experience such a search as equivalent to sexual abuse.”⁵

The practice of strip-searching children is inconsistent with Australia’s obligations under the United Nations Convention on the Rights of the Child (UNCRC), which requires children to be treated with dignity and respect. Additionally, the practice undermines trust in law enforcement, especially within First Nations communities. Strip searching of children should only be permitted in exceptional circumstances and only after a court order has been obtained.

4. Disproportionate use of stop and search

A report published by RLC,⁶ collated almost four years of NSW Police data on person searches (excluding strip searches) from 2018 to 2022. The data reveals that children are overrepresented in NSW Police searches. Of the total searches in NSW for the data period, 112,050 searches (13%) were conducted on children, although children only comprise 9.7% of the NSW population. The report also shows that First Nations people are twice as likely to be searched by police compared to non-First Nations people.⁷

This data supports what many of our First Nations clients have reported to us, that is, that they are targeted by police on the basis of their race.

² ‘Aboriginal over-representation in the NSW Criminal Justice System quarterly update March 2024’ *NSW Bureau of Crime Statistics and Research* (Web Page) < <https://bocsar.nsw.gov.au/research-evaluations/2024/cjs-aboriginal-over-representation-quarterly-mar-2024.html>> .

³ Australian Bureau of Statistics (2021) Age (AGEP) and Main Statistical Area Structure (Main ASGS) (UR) by Indigenous Status (INGP) [Census TableBuilder].

⁴ Obtained via GIPA from NSW Police by RLC.

⁵ *R v Golden* [2001] 3 SCR 679.

⁶ Sam Lee and Rebecca Campbell, *NSW Police Person Searches—A Disproportionate Impact* (Redfern Legal Centre February 2023).

⁷ Sam Lee and Rebecca Campbell, *NSW Police Person Searches—A Disproportionate Impact* (Redfern Legal Centre February 2023).

Discriminatory searches increase the risk of entangling First Nations people in the criminal justice system, fostering distrust and exacerbating tensions with police.

In RLC's experience, the overzealous use of search powers often leads to an escalation in the interaction between police and our clients, resulting in unnecessary charges for offences such as offensive language, resist and assault police.

The Law Enforcement Conduct Commission issued a final report in its investigation about the NSW Police Force's use of the Suspect Targeting Management Plan (STMP) on children and young people.

The Commission's report, [Operation Tepito](#), outlined significant concerns with the STMP's application to young people, including observations that some STMP-related policing interactions with young people were, or may have been, unlawful. According to the report, the consistent overrepresentation of First Nations young people as STMP targets indicated the ongoing discriminatory effect of the policy.

5. The overuse of force

The use of force by NSW police disproportionately affects First Nations children. Between 2017 and 2023, 57.2% of children subjected to force by police were First Nations.⁸

RLC has represented First Nations children who have suffered physical violence at the hands of police, including one 14-year-old child who was hospitalised following an arrest in Northern NSW. On 11 September 2022, a small strike force of plain clothes police officers targeted one community in the Northern Rivers area. The aim was to identify and, if necessary, arrest young offenders. The police officers were not using body-worn video (BWV). During the patrol, a 14-year-old First Nations young person was chased and tackled by a police officer, handcuffed, and left with a bleeding head after being punched. Footage shows the young boy moaning in immense pain and moving in and out of consciousness as he waits for the ambulance to arrive. He was taken to the hospital and then to a police station following his discharge from hospital.

The Law Enforcement Conduct Commission [investigated the incident and found](#) that while the arrest was lawful and force used was not excessive, "the officers should have considered diversionary options under the Young Offenders Act 1997. Arrest for a young person should have been the last resort".⁹

The NSW Police ['Use of Force Manual'](#) does not contain a chapter specifically addressing the use of force against children. RLC considers that comprehensive guidance should be provided to police in all Australian jurisdictions regarding the risks of using force against children and the responsibility to promptly assess whether medical assistance is necessary when force is employed.

⁸ Obtained via GIPA from NSW Police by RLC.

⁹ Law Enforcement Conduct Commission, *Operation Mantus* (report under s 132 of the Law Enforcement Conduct Commission Act 2016 concerning alleged excessive use of force and issues concerning police interviews of young persons in custody December 2023) p.3.

RLC continues to push for a parliamentary inquiry into the use of force by NSW Police and would welcome the Australian Parliament investigating this issue on a national level. The excessive use of force against children is potentially a violation of Article 19 of the UNCRC, which requires that children be safeguarded from all forms of physical harm, including violence, by law enforcement. The disproportionate use of force against First Nations Children may also be a breach of the International Convention on the Elimination of All Forms of Racial Discrimination.

6. Power of arrest is not being used as a last resort

The principle that arrest should be a measure of last resort (as stated in Article 37 of the UNCRC) is reflected in state legislation such as the *Young Offenders Act 1997* (NSW). However, RLC is concerned that police are not sufficiently considering the principle of “last resort”, especially when it comes to children. RLC has advised in numerous cases in which First Nations children were arrested for minor offences, often as a first rather than a last resort. This frequent and unnecessary use of arrest not only increases the likelihood of incarceration but also leads to confrontational encounters with police, which, in turn, can result in charges such as resisting arrest or assaulting police officers.

Operation Mainz,¹⁰ a case investigated by the Law Enforcement Conduct Commission, gravely illustrates the failure of NSW Police, especially in regional areas, to use arrest as a last resort.

The incident involved a 16-year-old First Nations young person who was strip searched on a main street in a major town in regional NSW. The young person had in his possession 2 grams of cannabis. The Law Enforcement Conduct Commission found that none of the officers considered alternatives to arrest pursuant to the *Young Offenders Act 1997* (NSW). No warning was given or caution issued. Police could have taken the young person home and proceeded with a Court Attendance Notice but did not do this either. Instead they arrested and detained him, after strip searching him twice and forcing him to squat, and transporting him in a caged truck, for what one of the Sergeant's conceded was a ‘tiny, tiny amount’ of cannabis.

7. Conclusion

RLC submits that the over-policing of First Nations children and young people, which inevitably leads to over-incarceration, not only fails to meet Australia's international obligations under the UNCRC and International Convention on the Elimination of All Forms of Racial Discrimination but also the aspirations outlined in the Closing the Gap Report.

The statistics from NSW Police tell a grim story where First Nations children and young people are over policed from a young age compared to non-First Nations children. The more interactions a person has with police, the more likely they will end up in the criminal justice system.

Australia is a signatory to the UNCRC, which requires that all public institutions, including courts, administrative authorities, and legislative bodies, prioritise the child's best interest (Article 3). Article 19 of the UNCRC mandates that governments protect children from all forms of violence and abuse. Article 40 of the UNCRC demands that children accused of breaking the law be treated

¹⁰ Law Enforcement Conduct Commission, *Operation Mainz* (report under s 132 of the Law Enforcement Conduct Commission Act 2016 May 2020).

with dignity. NSW policing practices, including strip searches, use of force, and stop and search powers, all disproportionately used against First Nations children, offend these articles, and urgent change is needed.

By adopting the recommendations outlined below, we can tackle the systemic issues within policing and ensure a more just future for all children in Australia.

8. Recommendations

- 8.1 All Australian jurisdictions prohibit the strip searching of children aged 10-17. Strip searching of children should only be permitted in exceptional circumstances and only if a court order has been obtained.
- 8.2 The minimum age of criminal responsibility for all offences in all jurisdictions should be raised from 10 to 14 years.
- 8.3 The National Police Ministers Council sets minimum standards for the use of force against children and young people, including handcuffs, leg sweeps, tackles, batons, police dogs and Tasers, by way of a national agreement between states and territories.
- 8.4 The Commonwealth develop Closing the Gap Justice targets relevant to policing in recognition of policing as a gateway to incarceration.
- 8.5 The Commonwealth establishes enforceable national minimum policing standards for children and young people that are consistent with Australia's international obligations.