

CORRECTIONAL SERVICES IN AUSTRALIA

YEAR IN REVIEW & 2018 OUTLOOK

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Correctional services attracts media headlines, political scrutiny and fierce debate across the nation. With 112 custodial facilities holding over 41,000 people at a cost of approximately \$3.7 billion, it's little wonder there is intense focus in Australia on whether this investment can be justified by the outcomes. More fundamentally, we need to question whether there is any broad consensus within society on what these outcomes ought to be and what level of resources should be expended to achieve them.

So, what can we expect in 2018 and beyond?

A review of key events and challenges in 2017 is a great place to start.

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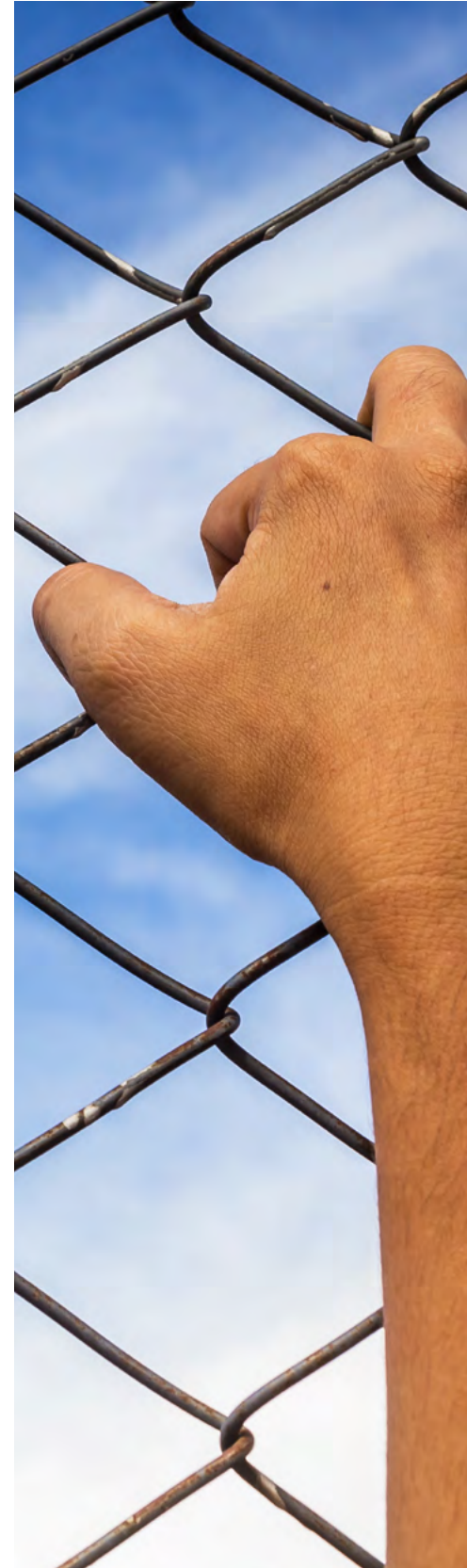
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PART 1: WHERE WERE WE ON 1 JANUARY 2017?

At the start of last year, we were six months into the **Royal Commission** into the Protection and Detention of Children in the Northern Territory (Royal Commission). We were also recently recovering from substantial riots in Victoria's Parkville youth detention centre, which ended up costing the State an estimated \$3.3 million.

Victoria was braced for litigation following its decision to move the Parkville youth detainees into the freshly-gazetted unit in the Barwon adult prison. Meanwhile, Queensland was preparing to move its 17-year-olds from adult prisons into youth detention centres.

A year of substantial change and substantial challenges lay ahead.



PART 2: WHERE HAVE WE GOT TO IN 2017?

We are likely to see all States and Territories considering the adequacy of their physical youth detention centres

KEY THEMES

Royal Commission

The Royal Commission took 16 months to prepare its final report into the Protection and Detention of Children in the Northern Territory. It heard from 214 witnesses, conducted 11 case studies and received more than 480 witness statements.

Its findings and recommendations were not altogether surprising – the system has been in need of immediate reform. Its key observation on youth detention was that current facilities were designed to “break”, not rehabilitate, young people. Until the findings were delivered, the Northern Territory has struggled with sentencing youths. In January 2017, the Chief Justice of the Northern Territory instructed judges to ensure that **youths are properly punished** for crimes after observing a **trend of leniency** following on from issues with Don Dale youth detention facility being put under the spotlight.

The key findings which are likely to shape the near future are:

- 1 closure of Don Dale Youth Detention Centre and report to the Children’s Commissioner on the program for that closure to be delivered by 17 February 2018;
- 2 increasing the age of criminal responsibility to 12 years, and precluding young people under 14 years from being sent to detention in all but the more serious circumstances;
- 3 ensuring that young people are placed in a detention facility closest to their residence;
- 4 restrictions on contact with family should be removed;
- 5 the use of isolation is restricted to limited circumstances, and must never exceed 24 hours;
- 6 detention centre staff must have demonstrated experience working with vulnerable young people, including an understanding of poverty, cultural identity, mental health and disability;
- 7 improved record keeping;
- 8 all children must be able to make complaints to the Commission for Children and Young People; and
- 9 improved exit-planning processes, which will be evaluated and reported on in five years’ (including with attention to rates of recidivism).

In response to these findings, the Northern Territory Chief Minister has already committed to the closure of Don Dale, \$50 million for a replacement facility (or facilities), and raising the age of criminal responsibility to 12 years. Media attention has focussed on calls for Aboriginal and Torres Strait Islander organisations to lead service delivery for vulnerable young people in the region.

Undoubtedly, all States and Territories will now be grappling with the recommendations in the context of their own jurisdictions, with a view to ensuring they avoid – as far as possible – the same events that caused the Northern Territory Royal Commission, and the same issues it has uncovered.

We are likely to see all States and Territories considering the adequacy of their physical youth detention centres, as well as their models of care and operation, as well as the minimum age of criminal responsibility and diversion programs.

UN Special Rapporteur's mission statement

On 3 April 2017, the United Nations Special Rapporteur on the rights of indigenous peoples released an end of mission statement, following a two-week visit to Australia.

She pointed out that many indigenous children in detention were there for "relatively minor" offences, and said that:

"It is completely inappropriate to detain these children in punitive, rather than rehabilitative, conditions. They are essentially being punished for being poor and in most cases, prison will only aggravate the cycle of violence, poverty and crime."

She called on Australia to detain children "only as a last resort", and to refocus detention away from punishment and towards rehabilitation.

She commended justice reinvestment programs such as Sydney's Clean Slate Without Prejudice Program, a police and indigenous organisation-led initiative that targets youths at risk of offending and which has seen a reduction in youth crime in inner Sydney.

Overcrowding and prison construction

Australia's **imprisonment rates continue to rise** at a rate that substantially threatens the system's ability to provide safe services. As at June 2017, there were over 41,000 people in full-time custody, up 1.5% from the quarter before and 6.5% from June 2016.¹

There has been a 40% increase in the last five years, equating to 11,722 prisoners. These increases are disproportionately attributable to higher numbers of remand (instead of sentenced) prisoners.

Unsurprisingly, prison capacity has not kept pace with this substantial demand for beds.

Multiple states report being over capacity. In 2015-2016, Queensland's high security prisons were at 115.7%. New South Wales' secure prisons were at 128.2% and the national average in 2014-15 was 109.3%. The national average for prison utilisation in 2015-16 was 111.4%.

Fortunately, some **significant construction projects** have been announced and progressed in 2017. Early works have commenced on the Grafton New Correction Centre, with a projected capacity of 1,700, and Victoria's 1,000-bed Ravenhall Prison opened in October 2017.

However, until these structures are complete, prisons continue to adopt **temporary measures** to deal with exceeded capacity. Some of these temporary measures are likely to place further strain on prisoners and those responsible for their day-to-day supervision and care.

Tackling reoffending, and other performance measures

High levels of recidivism (or repeat imprisonment) continue to plague Australia, with around 40% of prisoners returning to corrections services within two years of release.

In August 2016, the South Australian government released its ambitious objective of reducing recidivism by 10% by 2020. In an effort to achieve this target, offenders are required to have management plans which focus on rehabilitation and community integration through the term of their incarceration – not only at the end of it.

There has been a renewed interest in **measuring the performance of custodial centres**, particularly to identify whether both private and public sector-run prisons pass muster. The New South Wales' "Better Prisons" project involved a large-scale benchmarking exercise to improve the performance of its public prisons, identifying key benchmarks by which its prisons must perform.

Australia's imprisonment rates continue to rise at a rate that substantially threatens the system's ability to provide safe services

1. Australian Bureau of Statistics, available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0>

It is clear that the rise in prison utilisation is largely attributable to a significant increase in the number of remand detainees

AUSTRALIA-WIDE

Optional Protocol to the Convention against Torture

On 15 December 2017, the Australian Government ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**)

OPCAT aims to prevent mistreatment in detention by providing for **inspection and oversight mechanisms**. The oversight bodies would be a domestic Australian entity or network responsible for inspections (called the National Preventative Mechanism). Reports have indicated that the National Preventative Mechanism would be made up of a **network of Federal and State bodies**.

A call for tougher bail laws

The debate between competing safety considerations – **overcrowding and community safety** – continues, with Prime Minister Malcolm Turnbull calling on States to implement tougher bail and parole laws after incidents of high-profile deadly crimes committed by persons on bail.

At the same time, it is clear that the rise in prison utilisation is largely attributable to a significant increase in the number of remand detainees. A solution to reducing prison overcapacity would be to release many of these remand detainees into the community, pending their trial.

The Commonwealth, States and Territories continue to struggle with finding the right balance and high profile incidents tend to upset that balance.

One Queensland solution mooted in the youth justice space has been to develop “supervised bail accommodation” (or “bail houses”) to keep juveniles awaiting trial out of detention, but under monitoring conditions. Such a model would look after youths who would otherwise be at risk of homelessness.



NORTHERN TERRITORY

Replacement of the Don Dale Detention Centre

The Northern Territory's **vision for the youth detention facility to replace Don Dale** has been criticised by architecture experts.

The Outline Design Brief shows a campus-style facility with activity facilities such as a swimming pool, sports courts, fitness facilities and spaces for dancing. It proposes "cottage-style" accommodation with small numbers of detainees sharing a community-living feel, but with safe spaces for those who are at-risk or displaying problematic behaviour.

However, the brief was described in evidence to the Royal Commission as "poorly researched and prepared", pointing to references to outdated legislation and failing to properly address the objectives of the facility with an inmate-focus.

It is likely the vision for the replacement facility will be reviewed and amended in light of the Royal Commission findings and recommendations.

Class actions and limitation of actions

The Royal Commission has also given extra profile to a series of legal actions against the Northern Territory government brought by detainees.

A **large class action** has been brought by youth detainees for alleged abuse while in detention between August 2006 and November 2017. So far, attempts to settle have been unsuccessful. The Federal Court has also rejected the governments' application to have the cases heard separately, finding that the class action was the only way of ensuring access to justice.

Separately, submissions have been made to the Royal Commission about the limitation of actions for claims brought by detainees. Currently the limitation is two months for actions against police and six months against detention centre authorities, however the Northern Territory Legal Aid Commission is seeking to have both these limitations changed to three years starting from the later of release from detention or the claimant turning 18 years old.

It is likely the vision for the replacement facility will be reviewed and amended in light of the Royal Commission findings



An independent review of Victoria's youth justice system released in July 2017 has described the system as being in "crisis"

VICTORIA

The legality of youth detention in adult prison

Victoria has gone through a **series of legal battles** over its decision to move rioting Parkville youths into a unit of Barwon adult prison for accommodation while the \$3.3 million damage to Parkville was rectified. The Victorian Government gazetted the unit at Barwon – making it a youth detention facility – in order to facilitate the transfer.

The decision was challenged and on 21 December 2016, the Supreme Court of Victoria found that the decision to gazette the unit was made without sufficient consideration to human rights (under the Victorian Charter of Human Rights, of which there is no equivalent in any other Australian State). It was found that the conditions in the Grevillea unit at Barwon amounted to treatment or punishment in a "cruel, inhuman or degrading way" (section 10(b) of the Charter), was against every child's rights to "such protection as is in his or her best interest and is needed by him or her by reason of being a child" (section 17(2)) and was against the right of every person deprived of liberty to be "treated with humanity and with respect for the inherent dignity of the human person" (section 22(1)).

On 23 December 2016, the Court of Appeal ordered the Government to remove the children and place them in lawful youth justice centres by Christmas. On 24 December 2016, the Victorian government re-gazetted the unit as a youth justice and a remand centre.

This re-gazettal was subject to legal challenge, with judgment on 11 May 2017 finding the government's actions (again) unlawful. The judgment noted that although by the time of the re-gazettal conditions at Grevillea had changed to some extent, it remained unsuitable for the detention of children. It was also held that because of the overcapacity in the system, the Department had determined that a certain number of children had to be transferred to Grevillea, regardless of its suitability for detaining children.

The government has gone on record that it would "vigorously defend" any claims for compensation by youths detained at Barwon.

New detention centre

In the wake of the Parkville youth detention centre damage, the Victorian Government announced that it has set aside almost \$300 million to **build a new youth detention centre**.

The location of the centre was originally Werribee South, but was later moved to Cherry Creek after substantial opposition from the Werribee South community. It will take the high-risk offenders currently housed at Malmsbury detention centre, which was designed for low- and medium-risk inmates only.

It is reported that the new centre will have smaller accommodation units including "cooling-off" spaces and a "low stimulus" room designed in consultation with mental health and behaviour experts.

Youth justice review and report

An **independent review of Victoria's youth justice system** released in July 2017 has described the system as being in "crisis" and calling for "significant structural and cultural reform".

It described that officers were not properly disciplining inappropriate behaviour and not asserting sufficient control, suggesting that such leniency can be fertile ground for rioting by detainees.

Recommendations accepted by the Victorian Government include a new youth justice system with a modern operating model to better manage youth detainees, improved workforce capability and additional safety and response staff, a new risk and needs assessment system to reduce recidivism and establishing the position of an Aboriginal Liaison Officer.

Youth remand court

In May 2017, the Victorian Government established the Fast Track Remand Court to **expedite processing the trials of youths on remand**. The Court requires criminal matters in Melbourne's Children's Court to be heard within a maximum of 10 weeks from the date of remand to the date of the contested hearing, with milestones at the first and second mention between those times.

Drones legislation

On 10 August 2017, legislation passed the Victorian Parliament to provide that it is an offence to possess a drone above or near a prison in a way that threatens the security of the prison. The offence carries a penalty of 2 years' imprisonment. Escort officers and police officers are also permitted to order a person suspected of committing the offence to leave the neighbourhood.

South Australia has also introduced legislation to Parliament to create an offence of having a drone within 100 meters of a prison, with the maximum penalty for contravention of \$10,000 or two years' imprisonment. The Chief Executive may also seize and retain any drones caught within the restricted space. The legislation is yet to pass Parliament.

New South Wales, Tasmania and Queensland are also reported to be grappling with the issues regarding **the use of drones around prisons**, but have not yet introduced any equivalent legislation.

Youth detention laws

The *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* (Vic) passed parliament on 7 September 2017, bringing with it **a raft of youth justice reforms** in an effort to provide alternatives to youth detention, but also to more strongly punish crimes committed in youth detention facilities.

The amendments include:

- allowing the Children's Court to refer serious criminal matters to a higher court where it considers its sentencing options are inadequate to respond to the offending;
- allowing for aggregate sentencing instead of individual sentences for each crime, where crimes are founded on the same facts or are offences of a same or similar character;
- establishing "intensive supervision and monitoring" youth control orders as an alternative to detention for youths up to 21 years old;
- limiting the types of offences for which an adult will be eligible to serve detention in a youth justice facility;
- requiring the judiciary to consider community safety considerations in sentencing;
- imposing mandatory parole conditions for children who are charged with committing certain serious offences;
- reporting on the use of force in youth justice facilities to the Secretary; and
- increasing penalties for offences committed in youth justice facilities.

Recommendations accepted by the Victorian Government include a new youth justice system with a modern operating model to better manage youth detainees

The vast majority of young people in youth detention in Queensland are on remand

ACT

Reducing recidivism trial

In April 2017, the ACT announced a **12-month trial program** for ten indigenous families, aiming to **reduce recidivism** by providing social worker support to address health, housing, education and employment. The “justice reinvestment” program was co-designed with Aboriginal and Torres Strait Islander service providers and community groups.

Inspector of Correctional Services

On 8 December 2017, the ACT Government passed the *Inspector of Corrective Services Act 2017* (ACT), which establishes the role of Inspector of Correctional Services from December 2017 to provide **independent oversight and systemic examination of ACT detention facilities**. The ACT aims to promote continuous improvement and best practice in corrective services.

QUEENSLAND

Detention of 17-year-olds

In November 2016, the Queensland Parliament passed legislation to provide that 17-year-olds must not be detained in adult facilities. Previously, it was the only State or Territory to detain **17-year-olds in adult facilities**.

The legislation was expected to come into effect by November 2017, but this has recently been extended to 13 February 2018. The government has committed to having all 17-year-olds out of adult detention by that date.

The vast majority of young people in youth detention in Queensland are on remand. The **transition plan** involves a raft of measures to reduce detention numbers and improve processing times, including:

- nine supervised bail accommodation houses as an alternative to remand detention;
- more resources for courts; and
- increased funding for after-hours legal services and Legal Aid Queensland.

The transition plan also provides for Queensland’s youth detention facilities to hold 10 to 13 year olds separated from the 14 to 17-year-olds.

Youth detention review

Closely after the announcement of the Northern Territory Royal Commission, issues in Queensland’s youth detention facilities were exposed by the media and the Government quickly announced an **independent Youth Detention Review**. The report was delivered on 14 December 2016 and released to the public (with a number of redactions) on 26 April 2017. Following advice sought by the Attorney-General about the number of redactions, a revised version was released with fewer redactions in late June 2017.

The report stopped **short of finding that there was “systematic mistreatment”** in youth detention centres, but identified numerous issues and made 83 recommendations, including those on the use of force and the discontinuation of the use of security dogs.

The government accepted all 83 recommendations from the report, including the establishment of an independent statutory Office of the Inspector of Custodial Services (in a similar form to Western Australia’s).

New Parole Board

Queensland has sought to implement the findings of its November 2016 Parole System Review, with a **new Parole Board** commencing in July 2017. Parole Board Queensland replaced three previous parole boards, and is mandated to decide applications for parole within 120 (rather than 180) days.

The government has also rolled out the use of GPS trackers to better monitor released offenders.

TASMANIA

Release system issues

In March 2017, KPMG released a report into the Tasmanian prison system, criticising its **information handling and prisoner release practices**. It reveals that 7 prisoners were wrongfully set free in 12 months, as “[t]here is no single source of accurate, reliable and verifiable data for information used in the criminal justice sector.”

The Report’s key recommendation was for Tasmania to procure an IT system that integrates across the prison services, courts and policy, and greater training of staff. The IT system was due to be upgraded in 2013 but was suspended due to budget cuts.

Custodial Inspector report

In October 2017, Tasmania’s Custodial Inspector tabled a report in Parliament outlining issues with Tasmania’s prisons, particularly the **significant overcrowding**. It notes that overcrowding reduces prisoners’ ability to access rehabilitative programs. It is also critical of detention facilities, noting that many are out of date, don’t have appropriate natural lighting and water, defective showers and poor access to toilets, and are not suited to Tasmanian winter.

Tasmania is considering the feasibility of constructing a new prison in the north, however such a decision is likely to be made after the State election, which is predicted to be in early-to-mid 2018.

The Report’s key recommendation was for Tasmania to procure an IT system that integrates across the prison services, courts and policy, and greater training of staff



The State Government was considering increasing the maximum detention period for youths from three to four years, allowing trials in adult courts from 16 years, and removing the availability of youth detention for those over 18 years

SOUTH AUSTRALIA

Proposed youth justice reform

There have been various reports in the media about proposed reforms to South Australia's youth justice system, but none have yet resulted in legislative change.

In April 2017, it was reported that the South Australian Government was considering **raising the age of criminal responsibility** from 10 to 12 years, limiting offences that result in detention and removing fines for those who cannot afford them.

In May 2017, it was reported that the State Government was considering **increasing the maximum detention period for youths** from three to four years, allowing trials in adult courts from 16 years, and removing the availability of youth detention for those over 18 years.

So far, none of these policy ideas have been implemented, but we may see them progressed in 2018.

Raft of changes under proposed legislation

On 18 October 2017, the government introduced legislation to Parliament to establish the ability of the Governor to appoint **official inspectors for each correctional institution**.

It also prohibits **drones within 100 meters of a prison**, with the maximum penalty for contravention of \$10,000 or 2 years' imprisonment. The Chief Executive may also seize and retain any drones caught within the restricted space.

The legislation is currently progressing through second reading.

Prison management issues

South Australia's opposition are promising to follow New South Wales in implementing **mobile phone jamming technology**, if elected. They are pushing for particular technology which is able to identify illegal use of mobile phones, and record information about the attempted contact, such as the intended recipient.



WESTERN AUSTRALIA

Banksia report

In June 2017, Western Australia's Inspector of Custodial Services released a report into Banksia Hill juvenile detention centre, exposing numerous failings. It found that with detention costing \$360,000 per year per child, **the centre should be delivering better safety, stability and services.**

The report recommends that youths should be detained closer to home in **smaller facilities** across the State, and that Banksia should be repurposed. After initially rejecting the recommendation, the government is now exploring ways to make it happen.

Wandoo and drug and alcohol rehabilitation prison

It has been reported that the Wandoo Reintegration Facility will be redeveloped into a **drug and alcohol rehabilitation prison** after May 2018 when the current operating contract expires. This repurposed facility will be aimed at breaking the cycle of drug and alcohol related crime. The Wandoo facility is currently operated by private sector company, Serco, and the prison was described by the Inspector of Custodial Services in January 2017 as a **model of best practice**, noting that other prisons could learn from Wandoo.

Whilst the creation of a dedicated facility targeting drug and alcohol addiction is undoubtedly a positive step, it is unfortunate that it will result in the repurposing of the facility with reportedly the best prison offender management model in the State. The redevelopment will cost the State \$9.6 million.

NEW SOUTH WALES

Benchmarking against private prisons

When tendering for management of the John Morony Correctional Centre, New South Wales took the unprecedented step of allowing its internal department (Corrective Services NSW) to bid alongside three private sector consortia. The process was designed to **increase competition and generate better standards and outcomes.**

In May 2017, the government selected Corrective Services NSW, finding that its proposal would achieve value for money for the State.

More broadly, the New South Wales government looked to its 2 privately managed prisons to set the standards for its 35 publically managed prisons. Over the next few years, each public prison will have a set budget and performance targets appropriate for its size, role, function and security classification.

The privately-operated Junee Correctional Centre has recently announced a \$220 million expansion.

The report recommends that youths should be detained closer to home in smaller facilities across the State

PART 3: WHAT DOES 2018 HAVE IN STORE?

The key themes for 2018 can be found in the events, successes and challenges of 2017.

We will no doubt see reform in the space of **youth detention**, as States aim to implement the recommendations of the Royal Commission. After Queensland successfully transitions out its 17-year-olds from adult jail, hopefully by March 2018, Australia may be able to withdraw its reservation to Article 37(c) of the International Convention on the Rights of the Child, as it will be compliant with its requirement to have youths in youth facilities.

Each State will continue to struggle with **overcrowding** and **capacity issues** until one or some of them see a breakthrough in reducing remand numbers and recidivism rates. It is unlikely to happen overnight, but may eventuate after some carefully planned prevention programs and community reintegration support.

States will continue to develop policies aimed at **reducing recidivism** and ensuring that both privately and publicly run centres are **performing to identified benchmarks**.

States and Territories will **continue to partner with the private sector** for the provision of custodial services. Whilst Wandoo in Western Australian will revert to public hands at the end of its operating contract, in New South Wales (Parklea) and Queensland (Arthur Gorrie and the Southern Queensland Correctional Centre), Governments are expected to retender their operating contracts to the private sector at the expiry of those contracts.

Responsible age is not yet a legislative trend, as every Australian jurisdiction still sets the minimum age of criminal responsibility at 10 years. However, the calls for the **minimum age to be raised to 12 years are growing**. The Royal Commission has called for the age of criminal responsibility to be 12 years, with detention for those of 12 and 13 years being a last resort. The Northern Territory has already committed to this course of action, and other States and Territories may follow.

Finally, if Australia fulfils its commitment to ratify OPCAT, it will put in place a **national prevention mechanism** which will involve **State and federal oversight bodies**. While the Western Australian, South Australian, Tasmanian and New South Wales models may have the requisite independence mechanisms to meet the mark, other States may need to adjust the structure and reporting of their inspection bodies to meet OPCAT requirements for genuine independence.



Each State will continue to struggle with overcrowding and capacity issues until one or some of them see a breakthrough in reducing remand numbers and recidivism rates



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