



Human Rights Bill 2025

COMMITTEE ON COMMUNITY SERVICES

Submission of the Community Restorative Centre (CRC)

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*Prepared by Dr Rory Gillard, Advocacy, Research and Policy Unit, in consultation with
CRC staff Damien Linnane, Tracey Murray, Alex Faraguna and Chris Sheppard*



ACKNOWLEDGEMENT OF COUNTRY

CRC acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water, and community. The offices of CRC stand on the lands of the Gadigal, Wangal, Bidjigal, Wiljkali, Baarkintji, Darug, Wiradjuri, Dharawal, Awabakal, and Worimi peoples. We pay our respects to Elders, past and present.

The overrepresentation of First Nations people in the criminal legal system¹ across this continent is a national shame. We recognise the harm caused by these systems and the tireless advocacy of First Nations people to reduce the criminalisation of their communities. Ultimately, incarceration is not part of First Nations cultures, and First Nations people have had, and continue to have, systems of accountability outside of the colonial carceral system.

ACKNOWLEDGING PARLIAMENT AS PART OF COLONISATION

The CRC acknowledges that the establishment of Parliament is inseparable from the histories and structures of colonisation, and that the very processes underlying this inquiry reflect those colonial legacies. By engaging with this submission procedure, we remain mindful of how these frameworks can perpetuate inequitable power relations. Consequently, we approach this process with a critical awareness of its colonial origins, striving to foster practices that centre Indigenous rights as we pursue meaningful healing.

Indigenous communities have championed alternative ways of knowing, being, and doing that often diverge from the structures and protocols underpinning current parliamentary processes. Central to these practices is yarning, a relational and community-embedded method of knowledge sharing that inherently challenges Western frameworks of governance and inquiry. Recognising the legitimacy and transformative potential of these Indigenous methodologies is essential for fostering meaningful and equitable engagement in all legislative and policy spaces.

ABOUT COMMUNITY RESTORATIVE CENTRE

Community Restorative Centre (CRC) is a lead NGO in New South Wales (NSW) providing specialist support to people affected by the criminal legal system, with a particular emphasis on the provision of post-prison and reintegration programs for people with multiple and intersecting needs.

CRC has over 70 years of specialist experience supporting people involved with prison

¹ We use the term ‘criminal legal system’, as opposed to ‘criminal justice system’ to reflect that the ‘justice system’ in Australia has been imposed on First Nations communities without their consent through settler colonialism. The term ‘criminal legal system’ also highlights the way the system-including police, courts and prisons- frequently fail to deliver justice. These failures are part of a broader, ongoing problem. This is evident in the fact that First Nations people in Australia have the highest imprisonment rate in the world, are racially targeted by police, and experience a lack of accountability from the ‘justice system’ when First Nations people die in custody.



systems. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal legal system involvement, and build pathways out of the criminal legal system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social isolation, physical and mental health, disability, employment, education, family relationships, financial hardship, and histories of trauma. We have programs that support a range of communities, including a program in the Far West of NSW for First Nations communities, a youth program, a program focused on linking people to housing, a domestic and family violence-focused program for women, and more.

INTRODUCTION

Thank you for the opportunity to contribute to the inquiry into the Human Rights Bill. In this submission, we focus on the benefits of a comprehensive Human Rights Act for people with prison system involvement and those at risk of it. We emphasise that NSW is falling behind other jurisdictions that have human rights acts, like Victoria and the ACT. Through media portrayals and political commentary, we often see people with prison system involvement being depicted as though they are not deserving of the same human rights as others in the community because of their criminal convictions. This creates danger in places of detention where people are then not able to access healthcare, may be subject to non-disciplinary solitary confinement, torture or face other deleterious prison conditions with no recourse for breaches of their rights. Legislating human rights protections that cover people in places of detention is particularly important considering this context.

Recommendation 1: legislate a Human Rights Act for NSW.

CONTEXT

Who is in prison in NSW?

At March 2026, there were 14,070 adults and 220 children and young people incarcerated in NSW (BOCSAR, 2026). The social drivers (or determinants) of incarceration play a much more impactful role in determining who will be incarcerated than any individual act that someone might be convicted of. Given the ongoing impacts of colonisation, dispossession, structural racism and the ongoing legacy of racist government policies, being a First Nations person is a social determinant of incarceration (Boffa & Mackay, 2025; McCausland & Baldry, 2023, pp. 43, 45). So too is being homeless, living in poverty, early police contact, having undiagnosed mental health concerns, being in out-of-home care and the functioning of the criminal legal system- for instance, through hyper surveillance by police (McCausland & Baldry, 2023, pp. 45, 46). The social determinants of incarceration lead to the hyperincarceration of specific cohorts, like First Nations people, people who are homeless, people who have a disability and queer communities (Critical Resistance, 2011, p. 346; McCausland & Baldry, 2023, pp. 37, 45).

The need to better protect people in prison through legislating human rights

The need for better protection of the rights of people in prison is brought home by accounts



of indignity and dehumanising treatment faced by some who have been incarcerated. For instance, one staff member with lived experience of the system shared her experience of being strip-searched whilst incarcerated: ‘you become a piece of meat, the intrusiveness, you get desensitised to that lack of respect, and all the quips that come from the guards about people’s bodies’. The staff member also shared, ‘the guards will give you disinformation to stress you out- for instance, by saying you have ice in your urine when you don’t. They can do things to get a reaction from you’. A gender diverse person we support reported that prison staff were trying to break down their mental health and wellbeing. They said this occurred through the act of ‘therapy’, a practice involving incarcerated people being cycled through different prisons in response to the perception that they are troublemakers or misbehaving. The client said the practice was: ‘designed to prevent them [people who are incarcerated] from getting comfortable and ensures any supportive relationships are severed, with the inmate left feeling isolated and unsafe. It’s designed to break the inmate and smash their mental health’. The experiences we have mentioned are out of alignment with human rights expectations, such as article 10(1) of the International Covenant on Civil and Political Rights (ICCPR), which states that if people are deprived of their liberty, they need to be treated with humanity and dignity. Embedding rights like this in the Act will ensure NSW is acting in accordance with Australia’s international human rights obligations.

In our work, we see further instances of human rights concerns faced by people who have been incarcerated, which legislating human rights would help safeguard against. Examples of human rights concerns we see include:

- People not having access to the equivalent level of healthcare as that which is available in the community. This includes access to dentistry services, alcohol and other drugs (AOD) services and gender affirming care. People in prison are also not generally able to access Medicare (Linnane et al., 2023). This means many people in prison cannot access essential services like the 715 Health Assessment, which is a health check for Aboriginal and Torres Strait Islander people to help flag risk factors for illness and chronic conditions (Department of Health, 2022). Not having access to Medicare also means people are not able to access things like Medicare-supported counselling and specialist support. Poor access to healthcare has negative impacts on society and government, including through the subsequent higher costs of people unnecessarily showing up at emergency departments once they exit prison.
- People being locked in their cells for prolonged periods, which can sometimes have to do with staff shortages. Such treatment can breach the human right to freedom from torture. The NSW Ombudsman recently reported instances of people in the South Coast Correctional Centre in NSW being limited to their cell for 24 hours a day, 7 days a week, for durations between 2 weeks- 3 months (Ombudsman NSW, 2026). This impinges on their human rights to dignity, humanity and freedom from torture.
- A recent regulation in NSW makes it easier for trans and gender diverse (TGD) people’s gender identities to be ignored in prison placement and strip searching, which may be out of alignment with the human right to dignity and respect (Cohn, 2026, p. 9), in addition to non-discrimination set out in the ICCPR (Trans



Justice Sydney, 2026). Such rules can increase the vulnerability of TGD people to sexualised violence, harassment and self-harm in prison.

- The high remand population in NSW raises concern about people's human right to liberty being inhibited.

An example of current gaps in legal protection for people in prison

There is a hesitancy on the part of courts to intervene in matters deemed to be administrative in prisons, which means incarcerated people are vulnerable to insufficient avenues to protect their human rights. In the case of *Kelleher v Commissioner, Department of Corrective Services* (1999) NSWSC 86, it was recognised that courts across the continent, 'have tended to interpret prison legislation so as to give full scope to the power of correctional authorities to carry out the tasks of prison administration and management without undue influence from the courts' (*Kelleher v Commissioner, Department of Corrective Services*, 1999). In the case, it was recognised that there were some instances where it was possible for incarcerated people to call upon courts. This includes for the provision of public law remedies. Notably, many matters considered to be administrative for prisons can in fact be very impactful for people's human rights, including the ability of prisons to classify and separate people, access to education and recreation, and access to sexual health support. The case of *Kelleher v Commissioner, Department of Corrective Services* highlights that people can be disconnected from access to court processes to enforce their human rights. This indicates the need for better protection for people in prison through human rights legislation, including that which enables recourse through the courts.

The practical benefits of human rights legislation

Cases in other jurisdictions show the material benefits of human rights legislation for people in prison.

Concerns regarding strip searching

The case of *Thompson v Minogue* [2021] VSCA 358 demonstrates the significance of human rights legislation for protecting people's dignity in prison, specifically in the context of strip searching (Human Rights Law Centre, n.d.; *Minogue v Thompson*, 2021). Here, it was found that the use of strip searches in prison was inappropriate when they were routinely required before urine analysis for drug and alcohol testing. The excessive use of strip searches was found to be in breach of section 22(1) of the Victorian Charter of Human Rights and Responsibilities, which stipulates the need for humane and dignified treatment while detained. The practice was also found to be in breach of the right to privacy under section 13(a) of the Charter.

Being denied access to exercise and open air in prison

ACT's Human Rights Act played an important role in safeguarding the right to exercise and access to outside space in the case of *Davidson v Director-General, Justice and Community Safety Directorate* [2022] ACTSC 83. Here, Nathan James Davidson, who was being held in solitary confinement for 63 days, did not have access to adequate open air exercise (*Davidson v Director-General, Justice and Community Safety Directorate*, 2022). During this period, he detailed attempting to take his own life, and reported being, 'at the lowest point



of his entire life' (*Davidson v Director-General, Justice and Community Safety Directorate*, 2022). The ACT's Human Rights Act provided Davidson with a cause of action to have the matter heard before the ACT Supreme Court. The court found, amongst other things, that section 19(1) of the ACT's Human Rights Act had been breached by the prison conditions. Section 19(1) provides for the right to humane, respectful and dignified treatment for people who are deprived of their liberty. The case provided a reminder that policy and practice in ACT's prisons needs to be compatible with people's human rights (Aimaq, 2022).

FEEDBACK ON THE BILL

Implementing Australia's international obligations

We support the Bill incorporating Australia's pre-existing binding obligations under international law, in addition to non-binding instruments that protect the human rights of people in prison. International instruments that are particularly relevant to the people we support, and that we are thus keen to see incorporated, include:

- the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)
 - The Declaration, which was endorsed in 2009 by Australia but has not been implemented (Australian Human Rights Commission, 2021), includes the right to self-determination (article 3), the right to practice Culture (article 11), and the right to be involved in decision-making on topics that impact Indigenous peoples' rights (article 18)
- The *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention against Torture) and its *Optional Protocol* (OPCAT)
- the Nelson Mandela Rules (also known as the *United Nations Standard Minimum Rules for the Treatment of Prisoners*)
 - The Rules, inter alia, stipulate the right to equivalent healthcare in prison as that is available in the community (rule 24)
- the *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules)
- The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules).

Recommendation 2: that the Bill incorporate Australia's pre-existing binding obligations under international law, in addition to non-binding instruments that protect the human rights of people in prison, like the Nelson Mandela Rules.

The right to diversion and prevention initiatives

Some staff mentioned there should be a human right to prevention and diversion programs in the Act, to reduce prison system contact. NSW incarcerates the largest number of people in Australia (ABS, 2025), making the right to prevention and diversion programs particularly important. Legislating the right to prevention and diversion initiatives supports the implementation of recommendations made in the Royal Commission into Aboriginal Deaths in Custody. Such recommendations include that imprisonment be a last resort (recommendation 92), that a range of alternatives to prison should be available



(recommendation 109), and that non-custodial options should be resourced for First Nations people (recommendation 112) (Johnston, 1991).

Prison system alternatives do not just help reduce recidivism, but are also more financially sensible for government. For instance, an evaluation of CRC's programs found that our work led to savings to the legal system of up to \$16 million over 3 years, which was a result of CRC supporting 275 new clients (Sotiri et al., n.d., p. 14).

The need for more prevention and diversion initiatives was clear amongst young people supported by CRC's youth-focused program, Pathways Home. When asked what they needed to help keep them out of custody, some said:

- 'Better support in schools to help us and our families'
- 'More programs like Pathways Home to work with young people in custody and help them get their shit together in the community'
- 'More programs to keep young people active. Heaps of programs, good programs'.

Further suggestions were expressed by 150 children and young people in the Human Rights Commission's *Help Way Earlier* report (Australian Human Rights Commission, 2024). Here, children and young people were asked what would help them stay out of trouble and promote their strength. Three of the top answers included safe accommodation, positive activities being available to them, and being able to access traditional and cultural initiatives (Australian Human Rights Commission, 2024, p. 32). Embedding the right to prevention and diversion initiatives in the Human Rights Act would help people at risk of criminalisation remain in the community and precipitate notable savings to government (KPMG, 2018, p. 24; Sotiri et al., n.d., p. 14).

Recommendation 3: That a right to prevention and diversion initiatives be embedded in the Act.

The right to a remedy

Remedies should be accessible to people in prison for breaches of rights in the Bill, including through the NSW Human Rights Commission, relevant public bodies and the courts.

Remedies should be quick and accessible to people in prison. One staff member with lived experience of the prison system also commented that there should be remedies beyond the government being fined (for instance, through disciplinary action against a prison officer who breaches human rights). This was important for him to ensure accountability for harm caused.

People should also have access to free or affordable legal representation to support them in upholding their rights and seeking a remedy. People we support are more likely to be experiencing poverty and homelessness, making access to legal representation particularly important.

Recommendation 4: The right to quick and accessible remedies in the Act, including those that promote personal accountability for those who breach the Act.



The right to consultation

We support the right of affected communities to be consulted in the development and review of law and government policy that affects them to be included in the Act. Such consultation can be facilitated through means like working groups in prisons. An issue that has emphasised the need for a right to consultation has been the recent development of law and policy with respect to TGD people in NSW prisons, which has not involved necessary consultation with TGD communities (Cohn, 2026, p. 7).

Recommendation 5: The right for communities to be consulted about law and policy that impacts them should be included in the Act.

The Act should be supported by sufficient resourcing

We support a suggestion put forward by the the Human Rights Act for NSW Alliance to transition the Anti-Discrimination Board NSW into a NSW Human Rights Commission, which would require resourcing (Human Rights Act for NSW Alliance, n.d.). The government should also ensure funds for the rollout of human rights education to support the ongoing implementation of the Act, which would include a targeted focus on minoritised, stigmatised and disadvantaged groups, such as people impacted by the prison system. We also encourage the provision of funding for legal services and other advocacy supports to ensure people can access their rights.

Recommendation 6: Implementing the Act should be sufficiently resourced.

A positive obligation to promote human rights

We support public bodies, like workplaces, government and services having a positive obligation to promote human rights. We say this particularly noting that people we support are often low capacity, as the period following release from prison is often incredibly busy with needing to find housing, get identification, set up a bank account, set up Centrelink payments, access drug and alcohol services and more. People who are incarcerated are also more likely to be First Nations, have a disability, be homeless, have unmet mental health needs, and/or be part of LGBTQASB+ communities, meaning that in addition to the busyness of reintegrating into the community after prison, they can be experiencing multiple, intersecting forms of discrimination and disadvantage. Placing a positive duty on public bodies to act in accordance with human rights can help shift the labour from already disadvantaged and minoritised communities to public bodies in creating a shared responsibility for protecting human rights. Examples of ways that public bodies can realise this public duty include training, public campaigns, and policy and practice updates.

Recommendation 7: The Act should include a positive obligation on the part of public bodies to promote human rights.

Limitations on rights

We recognise there will need to be a limitations clause governing the Act, given the human right to liberty, for instance, is limited through incarceration. Apart from understandable examples like this, incarceration should not be used as a justification for inhibiting people's access to human rights under the Act. Certain rights under international law are absolute,



such as freedom from torture, and as such, they should not be subject to limitations.

Recommendation 8: The limitations clause in the Act should not be used to bar people in prison from accessing the wide-ranging protections in the Act that others enjoy. Absolute rights under international law, like freedom from torture, should not be subject to any limitation.

Monitoring the Act's implementation

We support the government being obliged to track and publicly report on its implementation of, and adherence to, the Act regularly for accountability.

Recommendation 9: That the government track and publicly report on its adherence to the Human Rights Act regularly.

| CONCLUSION

Thank you for taking the time to consider our submission, which focuses on the necessity of a Human Rights Act for people who are incarcerated, or who are at risk of it. People in prison are some of the most vulnerable and disadvantaged in the community, making a Human Rights Act that incorporates international human rights obligations that protect incarcerated communities particularly crucial. We welcome any further correspondence from the Committee if it is useful.



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