Law Council
OF AUSTRALIA

26 October 2026

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By email: ctg.review.2026@pc.gov.au

Dear Ms Wood

Review of the National Agreement on Closing the Gap 2026

Thank you for the opportunity to make a submission to the Productivity Commission's (**PC**) second review of the National Agreement on Closing the Gap (**Agreement**).

The PC is seeking views on:

- progress against commitments made in the Agreement;
- how actions to achieve progress could be improved; and
- the proposed approach to the review.[1]

As the peak national representative body for the Australian legal profession, the Law Council of Australia has primarily focused its advocacy on the Agreement's justice targets: Target 10 (adult incarceration) and Target 11 (young people in detention). The lack of progress, and indeed backsliding, on those targets as documented by the PC has been of acute concern to the Law Council and its Indigenous Legal Issues Committee. For example, the Productivity Commission's update on Closing the Gap targets of 30 June 2026[2] notes the following in relation to Targets 10 and 11:

- The national First Nations imprisonment rate per 100,000 adults as of 30 June 2025 is 2500.2, compared to 149.1 for non-First Nations adults.
- The highest First Nations imprisonment rate is in Western Australia at 4305.9 per 100,000 adults, compared to 215.9 for non-First Nations adults. The second highest rate is the Northern Territory at 4166.7, compared to 225.4 for non-First Nations people).
- The national imprisonment rate for First Nations adults has been constantly rising since 2023.

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1 Productivity Commission, Review of the National Agreement on Closing the Gap 2026: Call for Submissions (August 2026), 3.
2 Productivity Commission, Closing the Gap Information Repository (Web page, 29 July 2026)

- On an "average day" in 2024-5, 25.7 First Nations young people, per 10,000 First Nations young people, were in detention. This compares to the non-First Nations rate of 1.1.
- On an "average day" in 2024-5, 47.3 First Nations young people aged between 14 and 17 years, per 10,000 young people of that age, were in detention. The equivalent rate for non-First Nations young people was 2.1.

The lack of progress on meeting targets under the Agreement has also drawn criticism from United Nations human rights bodies.[3]

The Law Council has consistently emphasised the need for action both within and outside the justice system to improve Agreement outcomes consistent with Australia's international human rights law obligations and the United Nations Declaration on the Rights of Indigenous Peoples, in particular the principle of self-determination.[4] Since the last review, the Law Council has advocated the PC's recommendation for whole-of-government transformation in order to meet the Agreement's targets. For example, in its 2025 Federal Election Call to Parties, the Law Council observed that:

> *The over-incarceration of First Nations peoples remains an indictment upon our nation. So, too, is the disproportionately large number of First Nations children in the care and protection system …*
>
> *As identified by the Productivity Commission, fundamental changes that disrupt the "business-as-usual" approaches regularly adopted by Australian governments are required if progress is to be made towards meeting the Closing the Gap targets. These approaches mean that Governments too often contradict their own commitments as set out in the Agreement, fail to reflect the priorities and perspectives of First Nations people, and exacerbate disadvantage and discrimination. The Law Council joins the Productivity Commission in calling for whole-of-government, whole-of-organisation strategies for driving and delivering transformation.*[5]

This submission addresses each of the PC's three themes in turn and concludes with six recommendations.

Progress against commitments

The Law Council has acknowledged Federal leadership by the Attorney-General and Minister for Indigenous Australians on this issue, including their efforts to keep First Nations justice on the agenda at the Standing Committee of Attorneys-General and the appointment of the new National Commissioner for Aboriginal and Torres Strait Islander

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3 See for example United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of Australia, UN Doc E/C.12/AUS/CO/6 (25 February 2026), [14]-[15]; Committee on the Elimination of Racial Discrimination, Statement 1 (2026): Overrepresentation of Indigenous Children in Australia's Criminal Justice System (Advance unedited version, 29 April 2026).

4 See for example Law Council of Australia, Oral Statement in the Interactive Dialogue with the Special Rapporteur on the Human Rights of Indigenous Peoples (24 September 2025); Law Council of Australia, Submission to the UN Committee on Economic, Social and Cultural Rights, Australia's Sixth Periodic Report: Parallel Report (9 January 2026); Law Council of Australia, Submission to the Special Rapporteur on the Rights of Indigenous Peoples, Call for Input – Country Visit to Australia (23 March 2026).

5 Law Council of Australia, 2025 Federal Election Call to Parties (March 2025), 20

Children and Young People.[6] The Law Council also recently welcomed the Australian Government's acceptance of recommendations regarding Closing the Gap in its Fourth Cycle Universal Periodic Review.[7]

However, the Law Council's Indigenous Legal Issues Committee has observed that there has been little, if any, perceptible change of government attitude and commitment to First Nations partnership or leadership (the foundation of Priority Reform 1) as was recommended in the PC's 2024 report.[8] Indeed, the Law Council shares the Committee's view that in the Northern Territory and Queensland the disregard and disrespect for self-determination as an essential foundation for sustainable improvement across all target areas is so profound as to require consideration of other levers of change which supplement the Agreement model, including the options outlined below.

- The Law Council's December 2025 submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into Australia's youth justice and incarceration system documented alarming developments in those jurisdictions, which have the highest rates of First Nations young people in detention.[9] Some of the more significant of these developments are set out in the Law Council's 2025 submissions to the Senate Legal and Constitutional Affairs References Committee inquiry into Australia's youth justice and incarceration system[10], and include the following. In NSW, section 22C was introduced into the *Bail Act 2013* (NSW) to mandate the refusal of bail for young people accused of certain serious offences committed while on bail unless there is a "high degree of confidence the young person will not commit a [further] serious indictable offence". This test departs from the principle of detention as a last resort in Article 37(b) of the Convention on the Rights of the Child (CRC) and applies a more stringent standard to young people than that applied to adults in the same circumstances.[11]

- In the Northern Territory, the *Bail and Youth Justice Legislation Amendment Act 2025* (NT) amended the criteria to be considered in bail applications by young people such that decision makers can no longer consider when granting bail that the incarceration of children should be a last resort and should only occur for the shortest appropriate period of time.[12]

- Queensland has adopted two tranches of "Making Queensland Safer" laws, popularly known as the "adult time, adult crime" laws. The first tranche, the *Making Queensland Safer Act 2024* (Qld), prescribed 13 offences as "significant offences" for which children could now receive the same sentences as adults. The second tranche, the *Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025* (Qld), added a further 20 offences to the relevant list. These amendments:

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6 Law Council of Australia, "Key Issues on SCAG Agenda" (Media release, 14 November 2025); Malarndirri McCarthy, New Commissioner to Foster Change for First Nations Children and Youth (Media release, 4 August 2025).

7 Law Council of Australia, Action Needed as Australia Accepts Fewer than Half of UN Human Rights Recommendations (Media release, 2 July 2026).

8 Productivity Commission, Closing the Gap Review (Report, 7 February 2024), 4, 11.

9 Law Council of Australia, Submission no 112 to Senate Legal and Constitutional Affairs References Committee, *Inquiry into Australia's Youth Justice and Incarceration System* (23 December 2025), [29] – [49].

10 Ibid, Part 1.

11 Ibid, [20].

12 Ibid, [30].

- removed the principle that children should be detained only as a last resort from the *Youth Justice Act 1992* (Qld);
- specifically overrode the *Human Rights Act 2019* (Qld);
- allowed for identifying information about children being sentenced for "significant offences" to be published; and
- provided for children to be transferred to adult facilities within one day of their 18th birthday.[13]

How actions to achieve progress could be improved

In that submission, the Law Council identified several options for the Federal Government to demonstrate leadership on child justice, including by reviewing funding arrangements with States and Territories for opportunities to incentivise progress towards Closing the Gap outcomes and ensuring that funding is best directed to projects with demonstrated positive community impact.[14]

Relevant to all jurisdictions, the References Committee's final report emphasised the need for national cooperation and coordination to address this crisis, including through the introduction of national minimum standards in relation to youth justice in Australia and the establishment of a cross-portfolio National Child and Community Safety Taskforce, among other recommendations.[15]

The Law Council's submission to the Parliamentary inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people further invited the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs to consider the role and extent of systemic racism in the design, operation and implementation of existing laws and policies, and within organisations and institutions, in contributing to the lack of progress on Closing the Gap targets.[16] Its findings may also be relevant to the PC's present review.

The Law Council also continues to advocate a mandatory Justice Impact Test, so that the effect of new laws and policies on the justice system, including on progress towards the justice targets, is assessed before they are made rather than after. The Law Council's Justice Impact Assessment Framework provides a practical tool for this purpose, consistent with Priority Reform 3 (transforming government organisations).[17]

Achieving the justice targets also depends on a strong community-controlled sector, consistent with Priority Reform 2. Aboriginal and Torres Strait Islander Legal Services and

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13 Ibid, [44] – [45].
14 Ibid, [98].
15 Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Australia's Youth Justice and Incarceration System* (Report, September 2026), xi.
16 Law Council of Australia, Submission no 623 to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander People* (5 June 2026) 10 [20].
17 See Law Council of Australia, Justice Impact Assessment Framework (August 2026); Law Council of Australia, "Law Council Calls for Justice Impact Test on New Laws" (Media release, 13 August 2026); Law Institute of Victoria, "Law Council Calls for Justice Impact Test on New Laws" (Web page, 15 October 2026).

other community-controlled justice organisations need sustainable, needs-based funding to plan and expand their services.[18]

The proposed approach to the review

Governments at all levels should also be accountable for delivering on their commitments under the Agreement and related matters. The PC's Call for Submissions notes the findings in previous reviews that "accountability mechanisms lacked independence, consequences for inaction, clear responsibilities and monitoring and evaluation to motivate meaningful change", and that "independent mechanisms to monitor progress had yet to be established across all jurisdictions".[19] The Call for Submissions also refers to the key recommendation of the 2025 First Nations-led review that:

> *The existing roadmap on monitoring and accountability needs to be implemented. Accountability processes should reflect genuine partnership and be guided by community-led measures of success.*[20]

The Law Council supports the PC assessing, in this review, the effectiveness of the accountability mechanisms in the Agreement, informed by these earlier findings and recommendations.[21]

Recommendations

The Law Council recommends that:

1. governments implement the existing monitoring and accountability roadmap, establishing independent mechanisms in every jurisdiction with clear responsibilities, public reporting and consequences for inaction;

2. the Federal Government review its funding agreements with the States and Territories to incentivise progress towards the justice targets, and direct funding to programs with demonstrated positive community impact;

3. governments implement the References Committee's recommendations for national minimum standards for youth justice and a cross-portfolio National Child and Community Safety Taskforce;

4. governments adopt a mandatory Justice Impact Test for laws and policies affecting the justice system;

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[18] Law Council of Australia, "National Access to Justice Partnership" (Media release, 6 September 2024). The Law Council also signed an open letter to the Prime Minister, authored by the National Aboriginal and Torres Strait Islander Legal Service, calling for a national emergency summit on youth justice. See National Aboriginal and Torres Strait Islander Legal Service, "Sign the Open Letter to Prime Minister Anthony Albanese" (Web page, 2026).

[19] Productivity Commission, Review of the National Agreement on Closing the Gap 2026: Call for Submissions (August 2026) 4.

[20] Ibid, 5; referring to Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, "Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review" (June 2025), Recommendation 4, 14.

[21] See also Law Council of Australia. Submission to Productivity Commission, "Draft Report – Review of the National Agreement on Closing the Gap" (27 October 2023) [13], 85.

5. governments should raise the minimum age of criminal responsibility, including at the federal level, from 10 to 14 years, for all offences, without exception;[22] and

6. governments provide sustainable, needs-based funding for Aboriginal and Torres Strait Islander Legal Services and other community-controlled justice organisations.

Closing the Gap must remain a top priority for all governments in Australia. However, as identified in the PC's previous review, fundamental, transformative change is still required if progress is to be made towards the Agreement's targets – and for the Agreement itself to remain an effective mechanism to uphold the rights of First Nations peoples in Australia.

The Law Council looks forward to the PC's release of its draft report for this review. If you have any questions or if you would like to discuss this matter further, please contact Alan Freckelton, Senior Policy Lawyer, in the first instance.

Yours sincerely

Tania Wolff
President

[22] Law Council of Australia, Submission no 112 to Senate Legal and Constitutional Affairs References Committee, *Inquiry into Australia's Youth Justice and Incarceration System* (23 December 2025), Recommendation 5, 4.