Submission to the Productivity Commission
Closing the Gap Review 2026

Queensland Promised to Cut First Nations Child Detention by 30 Per Cent. Instead It Went Up 8 Per Cent.

A submission to the Productivity Commission's 2026 Review of the National Agreement on Closing the Gap

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Quandamooka Country (Manly, Queensland) · Public submission
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About this submission

I am a non-Indigenous essayist and independent researcher with a doctorate in ethics. I publish evidence briefs on Queensland youth justice that trace every figure to its official source.[1]

Earlier in my career I held clinical ethics appointments at the University of Virginia and the University of Nebraska Medical Center, and served as hospital ethicist at the Mater hospitals in Brisbane.

This submission relies only on public records: government statistics, the Queensland Government's own papers for the Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026, the Inspector of Detention Services, submissions to the Queensland Parliament, and the Commission's 2024 Review with the Joint Council's response to it.

I do not speak for Aboriginal and Torres Strait Islander people. The organisations best placed to tell the Commission what these laws mean for their children are community-controlled: among them QATSICPP, ATSILS (Qld), and the National Commissioner for Aboriginal and Torres Strait Islander Children and Young People.

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[1] Philippe Foubert, evidence briefs on Queensland youth justice, with figure-by-figure sources and calculations. https://philippefoubert.com/youth-justice-queensland.html

I ask the Commission to give their evidence the greatest weight. My contribution is narrower: a close reading of the public record, set against the Agreement's text and the Commission's own 2024 recommendations.

Summary

The Commission proposes to examine outcomes affecting children and young people in depth, and asks how governments are "translating reform commitments into action".[2] Queensland youth justice offers a documented test case, and it tests the Commission's 2024 recommendations as much as the Agreement itself.

- **Queensland is moving away from Target 11.** The detention rate for Aboriginal and Torres Strait Islander young people rose from 37.6 per 10,000 in 2018–19 to 40.6 in 2024–25, an increase of about 8 per cent against a target of a 30 per cent fall, and has stood above the baseline for three years running.[3]
- **Four Acts and Bills in 21 months have rewritten Queensland youth justice law.** The Making Queensland Safer Act 2024, its 2025 amendment, the Youth Justice (Circuit Breaker) Amendment Act 2026, and now the Breach Bail, Go to Jail Bill. This submission examines the latest in detail.
- **The Government expects the Bill to increase the number of children held on remand.** Its own human rights statement says so.[4]

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[2] Productivity Commission, Review of the National Agreement on Closing the Gap 2026: Call for submissions, September 2026. https://assets.pc.gov.au/2026-09/closing-the-gap-review-2026-call.pdf

[3] Queensland Family and Child Commission, ROGS 2026 data release: child protection and youth justice (compiling Report on Government Services 2026, Tables 17A.7 to 17A.9). https://www.qfcc.qld.gov.au/sites/default/files/paper-2026-rogs-child-protection-and-youth-justice-data-intel-brief.pdf

[4] Statement of compatibility and statement about exceptional circumstances, Human Rights Act 2019 (Qld), 9 pages. https://www.legislation.qld.gov.au/view/whole/pdf/bill.first.hrc/bill-2026-036/lh

Unsentenced detention is the first driver the Agreement lists for Target 11.[5]

- **The Bill's papers are silent on the Agreement.** Across 31 pages, neither the explanatory notes nor the human rights statements mention Aboriginal or Torres Strait Islander people, Closing the Gap, or Target 11. The consultation section is one sentence and names no one.
- **The Commission's 2024 Review anticipated this, and the fix agreed has not reached Parliament.** Joint Council agreed in June 2025, under Recommendation 3.3, that Cabinet and Budget submissions should demonstrate their impacts on Aboriginal and Torres Strait Islander people; Queensland noted the recommendation as under consideration.[6] Fourteen months later a Bill that its own Government expects to detain more children reached Parliament with no such demonstration in sight. Recommendation 3.3 works inside Cabinet, in confidence. Parliament and the public see nothing.
- **I make five recommendations,** chief among them that the Commission take Recommendation 3.3 from the Cabinet room to the floor of Parliament: a public Closing the Gap impact statement, tabled with any Bill likely to affect a socio-economic target and modelled by Indigenous status before the vote.

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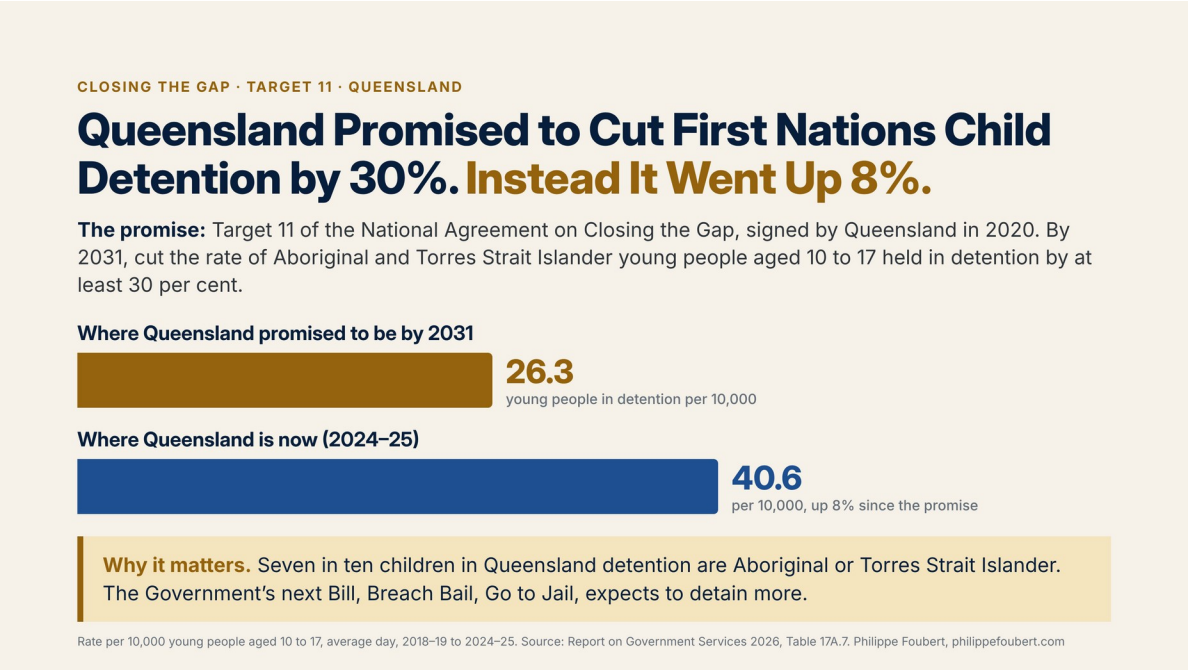
[5] National Agreement on Closing the Gap (2020): Target 11 and its drivers (Table B, page 34), Priority Reforms Three and Four, and clause 59. https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf

[6] Joint Council on Closing the Gap, Response to the Productivity Commission's 2024 Review of the National Agreement on Closing the Gap, published 20 June 2025 (Recommendation 3.3 and the parties' responses). https://www.closingthegap.gov.au/sites/default/files/2025-08/Joint-Council-Response-to-the-2024-Productivity-Commission-Review.pdf



Where this submission answers the Commission's questions

Question	Call for submissions, September 2026	Answered in
Q21	How are governments translating reform commitments into action? Are outcomes and targets appropriately defined and measured?	Sections 1, 2; Recommendation 4
Q14	How should agencies engage and share decisions across the development, delivery and evaluation of policy?	Section 3; Recommendation 3
Q5	How could the Priority Reforms be better integrated into broader governance systems?	Section 3; Recommendation 1
Q12, Q13	How have governments improved the availability of data, and who decides what is collected?	Recommendation 2
Q4	What is affecting progress towards independent mechanisms?	Recommendation 5
Q19	What are the most significant enablers or barriers to progress on the outcomes?	Sections 1, 3

1. Queensland and Target 11

Target 11 commits governments, by 2031, to reduce the rate of Aboriginal and Torres Strait Islander young people aged 10 to 17 in detention by at least 30

per cent.[7] Nationally the rate was 25.7 per 10,000 in 2024–25, and the Commission's dashboard assesses no change from the baseline.[8] Queensland's figures are moving the wrong way:

Youth detention in Queensland, average day, rate per 10,000 young people aged 10 to 17

Year	First Nations rate	Non-Indigenous rate	Ratio
2017–18	34.3	1.2	28.1
2018–19 (baseline)	**37.6**	**1.4**	**27.0**
2019–20	29.7	1.1	28.1
2020–21	30.2	1.5	19.8
2021–22	36.4	1.8	20.7
2022–23	40.3	1.6	25.4
2023–24	41.6	1.5	26.8
2024–25	40.6	1.5	26.3
2031 (Target 11 path)	**about 26.3**	**–**	**–**

Source: Report on Government Services 2026, Table 17A.7, as compiled by the Queensland Family and Child Commission.[9] The 2031 figure is 70 per cent of the 2018–19 rate.

The rate fell in 2024–25 from its 2023–24 peak, and the Government may cite that fall. It remains above the 2018–19 baseline for the third year running, the pandemic years of 2019–20 to 2021–22 explain the only sustained dip, and the Government's own papers for its next Bill anticipate more children in detention.

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[7] National Agreement on Closing the Gap (2020): Target 11 and its drivers (Table B, page 34), Priority Reforms Three and Four, and clause 59. https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf

[8] Productivity Commission, Closing the Gap Information Repository, Target 11 dashboard (2024–25 data). https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/youth-justice/

[9] Queensland Family and Child Commission, ROGS 2026 data release: child protection and youth justice (compiling Report on Government Services 2026, Tables 17A.7 to 17A.9). https://www.qfcc.qld.gov.au/sites/default/files/paper-2026-rogs-child-protection-and-youth-justice-data-intel-brief.pdf

Three further facts bear on the drivers the Agreement lists under Target 11:

- **Unsentenced detention.** On an average day in 2024–25, 252 of the 285 young people in Queensland detention, 88 per cent, had not been sentenced.[10]
- **Over-representation.** Aboriginal and Torres Strait Islander young people were 72 per cent of those in detention on an average day, and 26 times as likely as other young people to have been detained.[11]
- **Young children.** Queensland recorded the highest number of Aboriginal and Torres Strait Islander children aged 10 to 13 in detention of any jurisdiction (91). They made up 73.4 per cent of all children of that age in Queensland detention.[12]

These rises have not followed a rise in offending. Police records put Queensland's 2024–25 youth offender rate at its lowest point in eleven years, 36.8 per cent below 2014–15.[13] Detention is rising because of how the system responds, which is the domain of law and policy that the Agreement asks governments to change.

2. A test case: the Breach Bail, Go to Jail Bill

The legislative sequence

The Bill is the fourth instrument in 21 months to rewrite Queensland youth justice law. The Making Queensland Safer Act 2024, passed on 12 December

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[10] Childrens Court of Queensland, Annual Report 2024–25 (unsentenced detention, Figure 18; First Nations share and rate ratio). https://www.courts.qld.gov.au/__data/assets/pdf_file/0011/891641/cc-ar-2024-2025.pdf

[11] Childrens Court of Queensland, Annual Report 2024–25 (unsentenced detention, Figure 18; First Nations share and rate ratio). https://www.courts.qld.gov.au/__data/assets/pdf_file/0011/891641/cc-ar-2024-2025.pdf

[12] Queensland Family and Child Commission, ROGS 2026 data release: child protection and youth justice (compiling Report on Government Services 2026, Tables 17A.7 to 17A.9). https://www.qfcc.qld.gov.au/sites/default/files/paper-2026-rogs-child-protection-and-youth-justice-data-intel-brief.pdf

[13] Queensland Government Statistician's Office, Crime report, Queensland, 2024–25. https://www.qgso.qld.gov.au/issues/7856/crime-report-qld-2024-25.pdf

2024, applied adult penalties to children for 13 listed offences, removed detention as a last resort, and overrode the Human Rights Act 2019 for five years.[14] The Making Queensland Safer (Adult Crime, Adult Time) Amendment Act 2025, passed on 21 May 2025, added 20 offences to that list.[15] The Youth Justice (Circuit Breaker) Amendment Act 2026, passed on 17 September 2026, created a court-ordered residential program as a bail condition and sentence order.[16] The Breach Bail, Go to Jail Bill followed within weeks.

What the Bill does

The Attorney-General introduced the Bill on 27 August 2026.[17] A child convicted of an Adult Crime, Adult Time offence committed on bail must serve at least one year wholly in detention. Police and courts must refuse bail unless satisfied, to a high degree of confidence, that the child will not commit another such offence. Police will no longer have to consider a caution or other diversion before charging a child. The Bill fixes its own commencement for 30 November 2026.[18]

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[14] Queensland Government, ministerial media statement, 12 December 2024, "A Fresh Start for Queensland: Parliament approves Making Queensland Safer Laws"; Human Rights Law Centre, explainer on the Making Queensland Safer Act 2024. https://statements.qld.gov.au/statements/101719

[15] Queensland Law Society Proctor, "Making Qld Safer Amendment Bill passed", May 2025 (passed 21 May 2025; 20 offences added to section 175A). https://www.qlsproctor.com.au/2025/05/making-qld-safer-amendment-bill-passed/

[16] Queensland Parliament, Justice, Integrity and Community Safety Committee, Youth Justice (Circuit Breaker) Amendment Bill 2026 (introduced 25 June 2026; passed 17 September 2026). https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=0&id=8594

[17] Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld), as introduced 27 August 2026. https://www.legislation.qld.gov.au/view/whole/pdf/bill.first/bill-2026-036/lh

[18] Explanatory notes to the Bill, 22 pages (consultation statement, page 9; diversion; commencement; cost). https://www.legislation.qld.gov.au/view/whole/pdf/bill.first.exp/bill-2026-036/lh

What the Government's papers concede

> "It is anticipated that these reforms will increase the number of children and adults held on remand or otherwise detained in youth detention centres or police watch-houses." Statement of compatibility, page 5.[19]

> "The Government accepts that these new provisions are incompatible with human rights and therefore the HR Act is being overridden and its application is entirely excluded." Statement about exceptional circumstances, page 8.[20]

What the papers leave out

- **Any reference to First Nations children or to Closing the Gap.** I searched the full text of the 22-page explanatory notes and the 9-page human rights statements. Neither uses the words Aboriginal, Torres Strait Islander, Indigenous, First Nations, or Closing the Gap.[21]
- **A consultation record.** The consultation section reads, in full: "The development of the reforms set out in the Bill have been informed by consultation." It names no organisation.[22]
- **Any estimate of numbers or cost.** The Inspector of Detention Services told the committee: "It is not clear whether there has been any detailed modelling about how great the increase in the number of

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[19] Statement of compatibility and statement about exceptional circumstances, Human Rights Act 2019 (Qld), 9 pages. https://www.legislation.qld.gov.au/view/whole/pdf/bill.first.hrc/bill-2026-036/lh

[20] Statement of compatibility and statement about exceptional circumstances, Human Rights Act 2019 (Qld), 9 pages. https://www.legislation.qld.gov.au/view/whole/pdf/bill.first.hrc/bill-2026-036/lh

[21] Explanatory notes to the Bill, 22 pages (consultation statement, page 9; diversion; commencement; cost). https://www.legislation.qld.gov.au/view/whole/pdf/bill.first.exp/bill-2026-036/lh

[22] Explanatory notes to the Bill, 22 pages (consultation statement, page 9; diversion; commencement; cost). https://www.legislation.qld.gov.au/view/whole/pdf/bill.first.exp/bill-2026-036/lh

detainees will be, how quickly the increases will occur, or which facilities will be most impacted."[23]

- **Time for community response.** Submissions to the parliamentary committee closed on 7 September 2026, eleven days after introduction.[24]

Yet the Government's own youth justice strategy states: "The Queensland Government is committed to Closing the Gap targets with a specific focus within the youth justice system on Target 11."[25]

What community-controlled organisations told Parliament

- **QATSICPP**, Queensland's Youth Justice Peak, consulted 64 of its youth justice-funded members. It opposes the new offence, the mandatory minimum, the high degree of confidence test, the removal of mandatory diversion, and the Human Rights Act overrides. It asks, at the least, that children aged 10 to 13 be excluded from the new offence.[26]
- **ATSILS (Qld)** opposes the Bill, warning in part that it will "worsen overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal custody system."[27]

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[23] Queensland Ombudsman and Inspector of Detention Services, submission 254 to the Justice, Integrity and Community Safety Committee, page 2. https://documents.parliament.qld.gov.au/com/JICSC-CD82/BBGJOLAB20-F045/submissions/00000254.pdf

[24] Queensland Parliament, Justice, Integrity and Community Safety Committee, inquiry page for the Bill (submissions closed 7 September 2026; report due 16 October 2026). https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=0&id=8607

[25] Queensland Government, A Safer Queensland: Queensland Youth Justice Strategy 2024–2028. https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/92dc8f1c-c8e3-439d-86e6-767fd12de899/a-safer-queensland-queensland-youth-justice-strategy-2024-2028.pdf

[26] QATSICPP, submission 070 to the committee, September 2026. https://documents.parliament.qld.gov.au/com/JICSC-CD82/BBGJOLAB20-F045/submissions/00000070.pdf

[27] ATSILS (Qld), submission 255 to the committee. https://documents.parliament.qld.gov.au/com/JICSC-CD82/BBGJOLAB20-F045/submissions/00000255.pdf

- **The National Commissioner for Aboriginal and Torres Strait Islander Children and Young People** made as her primary recommendation that the Bill "not be passed."[28]

The nearest published evidence points the same way. Under the New South Wales "high degree of confidence" test for children, Aboriginal and Torres Strait Islander young people accounted for 79 per cent of the cases in which it applied and 84 per cent of the cases in which bail was refused.[29] On 8 October 2026 the Inspector of Detention Services withdrew his recommendation to close the Wacol Youth Remand Centre, a police-built facility he found unsuitable for children, warning that the Bill may leave children detained "in large numbers and for lengthy periods in watch-houses."[30]

3. What the case shows about the Agreement

Read against the Agreement, the record answers four of the questions in the Commission's call for submissions.

- **Shared decision-making (Priority Reform One; Q14).** The Bill makes a significant change to a system in which seven in ten detained children are Aboriginal or Torres Strait Islander. The public record shows no decision shared with the Youth Justice Peak before introduction. The Peak's role was to respond, within eleven days, to a Bill already written.

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[28] National Commission for Aboriginal and Torres Strait Islander Children and Young People, submission 224 to the committee. https://documents.parliament.qld.gov.au/com/JICSC-CD82/BBGJOLAB20-F045/submissions/00000224.pdf

[29] Queensland Law Society, submission 252 to the committee (reporting the New South Wales statutory review of section 22C, Bail Act 2013). https://documents.parliament.qld.gov.au/com/JICSC-CD82/BBGJOLAB20-F045/submissions/00000252.pdf

[30] Inspector of Detention Services, Wacol Youth Remand Centre inspection report, tabled 8 October 2026, page 14. https://www.ombudsman.qld.gov.au/Publications/Detention-inspection-reports/wacol-youth-remand-centre-inspection-report

- **Transforming government (Priority Reform Three; Q5).** Clause 59(f) commits governments, when undertaking significant changes to policy that primarily impact on Aboriginal and Torres Strait Islander people, to "engage fully and transparently." The Agreement's jurisdictional actions under the same Priority Reform state that when governments change policies affecting its outcomes, "they will do so in line with this Agreement."[31] The Bill's papers give Parliament and the public no way to judge whether either commitment was met.
- **Shared access to data (Priority Reform Four; Q12, Q13).** The Government expects more children on remand, but has published no estimate at all, and none by Indigenous status, age or region. The Agreement commits governments to collect and report data "at sufficient levels of disaggregation."[32]
- **From reform to outcomes (Q21).** The Bill acts directly on unsentenced detention, the first driver the Agreement lists for Target 11, in the direction away from the target.

Recommendation 3.3 and its limit

The Commission's 2024 Review recommended that governments "review and update Cabinet and Budget processes so that they explicitly promote, support and encourage the Priority Reforms." Joint Council agreed on 20 June 2025 that the review of those processes would "consider Cabinet and Budget submissions demonstrate the impacts of proposals on Aboriginal and Torres Strait Islander people." Queensland noted the recommendation and advised that the matter was under consideration.[33] The Commonwealth now requires a First Nations Impact Analysis for every new policy proposal and Cabinet

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[31] National Agreement on Closing the Gap (2020): Target 11 and its drivers (Table B, page 34), Priority Reforms Three and Four, and clause 59. https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf

[32] National Agreement on Closing the Gap (2020): Target 11 and its drivers (Table B, page 34), Priority Reforms Three and Four, and clause 59. https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf

submission.[34] Its February 2026 progress update reports no equivalent step by Queensland.

The Breach Bail Bill shows two things about that recommendation. First, in Queensland it has not been implemented in any form visible to Parliament: a Bill expected to detain more children in a system where seven in ten detained children are First Nations reached the House with papers that do not mention them. Second, even full implementation would leave the gap this submission describes. A Cabinet impact analysis is confidential. It informs ministers before a decision; it tells Parliament, the Youth Justice Peak, and the public nothing when the Bill is debated. Queensland's Human Rights Act shows the alternative. By requiring a public statement of compatibility, it obliged this Government to put in writing that its Bill will hold more children on remand. The Agreement has no equivalent, so its commitments stay invisible at the moment they matter most.

The point is structural. The Agreement binds executive governments, but the largest single influences on Target 11 are statutes: bail law, sentencing law, the age of criminal responsibility. Four Queensland instruments in 21 months demonstrate how quickly the statute book can move while the Agreement's machinery stands still.

4. Recommendations

The Commission should recommend that:

1. **A public Closing the Gap impact statement.** Joint Council extend Recommendation 3.3 from the Cabinet room to the floor of Parliament:

[33] Joint Council on Closing the Gap, Response to the Productivity Commission's 2024 Review of the National Agreement on Closing the Gap, published 20 June 2025 (Recommendation 3.3 and the parties' responses). https://www.closingthegap.gov.au/sites/default/files/2025-08/Joint-Council-Response-to-the-2024-Productivity-Commission-Review.pdf

[34] Commonwealth Closing the Gap Annual Report 2025, Appendix D: Progress update on the 2024 Productivity Commission Review recommendations (February 2026). https://www.niaa.gov.au/sites/default/files/documents/2026-02/CTG-2026%20Appendix-D.pdf

every Bill and budget measure likely to affect a socio-economic target is tabled with a statement of its expected effect on that target, prepared with the relevant Aboriginal and Torres Strait Islander partners. Parties could give it effect through legislation, cabinet rules or standing orders, as Queensland already does for human rights, and report the Bills so assessed in their Closing the Gap annual reports.

2. **Modelling before the vote.** Where a measure is expected to change detention numbers, governments publish estimates by Indigenous status, age and region before Parliament votes, and report actual effects at twelve months, consistent with Priority Reform Four.
3. **A recorded partnership step.** Explanatory material for such measures name the Aboriginal and Torres Strait Islander partners consulted, when, what they advised, and how the government responded, consistent with clause 59(f).
4. **A Queensland case study.** Within its focus on children and young people, the Commission examine the four Queensland instruments of 2024 to 2026 against Target 11, and annotate the Target 11 trajectory with the commencement dates of legislation that acts on the listed drivers (unsentenced detention rates and average time in unsentenced detention), adding the time children spend in police watch-houses, so that the data and the law can be read together.
5. **A role for independent oversight.** The independent mechanisms under Priority Reform Three have standing to report publicly, before the vote, on whether significant new legislation is consistent with the Agreement. The Commission asks what is affecting progress towards those mechanisms; this case shows what one would have had to say.

Further information

Every figure in this submission is drawn from the sources in the footnotes. My evidence briefs set out the official tables and the arithmetic behind each figure, and I am glad to provide them or answer questions.[35]

The submissions of QATSICPP, ATSILS (Qld) and the National Commissioner, and the voices of the communities they serve, remain the first evidence on this question.

[35] Philippe Foubert, evidence briefs on Queensland youth justice, with figure-by-figure sources and calculations. https://philippefoubert.com/youth-justice-queensland.html