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Joint Media Release: Law Council of Australia and the Law Society of Western Australia

Excessive use of force on children unconscionable

The Law Council of Australia and the Law Society of Western Australia are deeply concerned by the revelations in last night's *Four Corners* report of the excessive use of force and restraints directed at children at Banksia Hill Detention Centre.

"These events further demonstrate the urgent need for all governments to take meaningful and urgent actions to ensure youth detention facilities are managed in accordance with Australia's international obligations," Law Council of Australia President, Mr Tass Liveris said.

"It also highlights once more the need to address the alarming overrepresentation of First Nations children in the youth justice system. Recent figures suggest that First Nations children make-up around half of young people in detention and just 6 per cent of the population.

"Once again, the Law Council calls for all governments to increase minimum age of criminal responsibility without delay.

"The Convention on the Rights of the Child requires that no children be subject to torture or suffer other cruel or degrading treatment or punishment, and that arresting, detaining and imprisonment of children should only occur as a last resort and for the shortest time possible."

The Standing Committee of Attorneys-General has First Nations justice issues on its standing agenda, and improvements and commitments on these issues must be urgently canvassed at its next meeting.

Law Society of Western Australia Senior Vice President, Ante Golem said, "To think that what we saw Monday night could be occurring anywhere, yet alone here in Australia and our home state of Western Australia, is unacceptable."

Mr Golem reinforced the comments made by the Law Society President, Rebecca Lee in a media release on 25 October 2022 saying that the Western Australian Government needs to urgently look at how it can redirect funding to the programmes that work to reduce the root causes of crime before behaviour escalates, and how to house children appropriately when either bail is inappropriate, or a custodial sentence is to be imposed. The system is broken if juvenile detainees are being housed in conditions described as cruel and punishing, and as having no rehabilitative effect.

The Law Council and Law Society believe a ‘justice reinvestment’ approach is urgently needed. “This requires the redirection of funds spent on incarceration towards community support and prevention and the provision of diversion and rehabilitation programs,” Mr Golem explained.

The Law Council reiterates its strong concern regarding the recent suspension by the United Nations Subcommittee on Prevention of Torture (SPT) of its visit to Australia, in light of the obstructions it encountered in carrying out its mandate to inspect detention facilities under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

“The SPT has a positive role to monitor and provide recommendations and assistance to improve places of detention, increasing transparency regarding the situation of vulnerable children and adults in closed detention conditions,” Mr Liveris said. “The suspension will delay in the SPT’s provision of findings and recommendations in relation to its visit of Banksia Hill.”

Urgent action by governments is required to fully implement Australia’s OPCAT obligations.

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