

Crimes Amendment (Prohibiting the Strip Searching of Children) Bill 2026 (Cth)

18 September 2026

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About the Justice and Equity Centre

The Justice and Equity Centre stands for a society that is fair and free from discrimination and disadvantage. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we use the law and policy advocacy to challenge injustice and inequality. We do this through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We collaborate and partner in our work with people and communities who are experiencing marginalisation and disadvantage and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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Recommendations

Recommendation 1

The Committee support the passage of the Bill. The Crimes Act 1914 (Cth) should be amended to provide greater protection for children who are subjected to strip searches pursuant to Commonwealth legislation by criminalising that conduct.

Recommendation. 2

If strip searches on children are not prohibited by passage of the Bill, the Commonwealth Government should coordinate a national reform process with State and Territory governments to review and amend strip-search laws.

Recommendation. 3

If strip searches on children are not prohibited by passage of the Bill, the Commonwealth Government should coordinate a national effort to incorporate child-protection principles in police powers legislation, including specific safeguards for strip searching children.

1. Introduction

The Justice and Equity Centre ('JEC') welcomes the opportunity to make this submission to the Senate Legal and Constitutional Affairs Legislation Committee's ('Committee') inquiry into the Crimes Amendment (Prohibiting the Strip Searching of Children) Bill 2026 ('Bill').

We welcome and support the objectives of the Bill, which seeks to amend section 3ZI of the *Crimes Act 1914* (Cth) ('Crimes Act') by raising the age under which a strip search must not be conducted on a person from 10 to 18 years old, and inserting a new section 90C that introduces a general prohibition on conducting a strip search on a person under 18 years old.

We consider that prohibiting the strip searching of children under the age of 18 is an appropriate step to safeguard the rights and interests of children and ensure Australia's compliance with international human rights law. As Aboriginal and Torres Strait Islander people continue to be targeted by policing practices and overrepresented in prison and youth detention populations in Australia, the Bill also contributes to ending a practice which has the potential to disproportionately harm First Nations people.

The JEC has had the benefit of reviewing Redfern Legal Centre's ('RLC') submission to this inquiry. RLC has conducted significant research and advocacy regarding strip search laws and has run a landmark class action in relation to unlawful strip searches. The JEC supports the observations and endorses the recommendations set out in RLC's submission to this inquiry.

The JEC notes that it may be appropriate to incorporate certain limited exceptions into the prohibition in the proposed s 90C. For example, where it is considered necessary on reasonable grounds to prevent serious injury or death to the person being searched or another person. Otherwise, the JEC supports passage of the Bill in its current form.

If the Bill does not pass, the JEC echoes RLC's call for the Commonwealth Government to coordinate a national reform process with State and Territory governments to review and amend strip-search laws, considering Australia's international obligations and the substantial evidence in support of the prohibition of the practice.

Our support for the Bill is informed by expert legal advice received by the JEC and the National Aboriginal and Torres Strait Islander Legal Services ('NATSILS') in 2025 which advised that the Australian Government has the power to legislate minimum standards for the treatment of children in state and territory criminal legal systems, in reliance on the external affairs power and Australia's obligations under international treaties. A copy of that advice (the 'National Child Rights Advice'), prepared by Kate Eastman AM SC and Emma Dunlop of counsel, is at **Annexure A**. We consider that a similar constitutional position applies with respect to this Bill.

2. The need for the Bill

We endorse the observations in the RLC submission to this inquiry about the reasons reform is needed. In summary, those reasons are:

- strip searches are ineffective, finding illicit or prohibited items in only a small proportion of cases;
- strip search practices are improperly discriminatory, conducted at significantly higher rates on First Nations children;
- strip searches are extremely harmful - children and young people subjected to these searches may suffer trauma, anxiety, fear, shame, guilt, powerlessness and stress;
- strip searches have the potential to re-traumatise children and young people who are survivors of sexual assault; and
- strip search powers are often misused, conducted in situations beyond the lawful power of the strip searching authority.

The remainder of our submission considers Australia's obligations under international law in relation to the practice of conducting strip searches on children under the age of 18.

3. Australia's obligations under international law

The JEC is concerned that strip searching children in Australia contravenes international laws and standards that prohibit certain harmful treatment and seek to ensure the protection of the liberty, security and dignity of children. Australia's obligations under international treaties which it has signed and ratified, may support the constitutionality of the Bill.

3.1 Relevant treaties to which Australia is a signatory

Australia has signed and ratified the Convention on the Rights of the Child ('CRC'),¹ the International Covenant on Civil and Political Rights ('ICCPR'),² and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT').³ Each of these treaties imposes relevant obligations upon Australia, with respect to the strip searching of children. The full text of each of the treaty articles referred to in this submission is at **Annexure B**.

Under the CRC, Australia is obligated to take all appropriate legislative measures to prevent physical or mental violence, injury or abuse to children (Article 19(1)) and to ensure that no child be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37(a)).

The CRC also provides as general principles that in all actions concerning children the best interests of the child shall be a primary consideration (Article 3(1)) and that all appropriate legislative, administrative, and other measures shall be undertaken for the implementation of the rights provided to children under the CRC (Article 4).

¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990, ratified 17 December 1990).

² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976, ratified 13 August 1980).

³ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987, ratified 8 August 1989) ('*Convention against Torture*').

The ICCPR imposes obligations with respect to all people subject to Australia's jurisdiction, not just children. It obliges Australia to take necessary steps including to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ICCPR (Article 2(2)), including that:

- No one shall be subjected to cruel, inhuman or degrading treatment or punishment (Article 7); and
- Every person has the right to liberty and security of the person (Article 9).

The CAT imposes on Australia an obligation to prevent acts of torture by any person (Article 2) and cruel, inhuman or degrading treatment when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (Article 16(1)). Cruel, inhuman and degrading treatment and punishment are commonly referred to together as 'ill treatment'.⁴

Non-binding international standards are also relevant to Australia's approach to prohibiting the strip searching children.

The United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules') specifically provide that intrusive searches, including strip searches and body cavity searches, should only be undertaken if 'absolutely necessary'. The rules state that prison facilities should develop and use alternative practices to strip searching (like body scanners and pat/frisk searches), and that searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy.⁵

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules') provide that personnel of detention facilities should ensure and protect the human dignity and fundamental human rights of juveniles by ensuring to respect the rights of juveniles to privacy, preventing any form of harsh, cruel, inhuman or degrading treatment, and ensuring the full protection of the physical and mental health of juveniles.⁶

The Special Rapporteur on Torture has explicitly recommended that strip searches are not performed on children without reasonable suspicion.⁷

⁴ See, for e.g., Australian Government Attorney-General's Department, *Prohibition on torture and cruel, inhuman or degrading treatment or punishment: Public sector guidance sheet*, available: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/prohibition-torture-and-cruel-inhuman-or-degrading-treatment-or-punishment>.

⁵ *The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)*, GA Res 70/175, UN Doc A/RES/70/175 (adopted 17 December 2015) ('the Nelson Mandela Rules') Rules 51 and 52.

⁶ *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules)*, GA Res 45/113, UN Doc A/RES/45/113 (adopted 14 December 1990) ('the Havana Rules') Rule 87.

⁷ Juan Ernesto Méndez, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc A/HRC/28/68 (5 March 2015) [86](f).

3.2 Strip searching may constitute torture or cruel, inhuman or degrading treatment

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recognised that body searches, in particular strip and invasive body searches, can constitute cruel, inhuman and degrading treatment when conducted in a disproportionate, humiliating or discriminatory manner.⁸ They may also amount to torture if conducted for a prohibited purpose or for any reason based on discrimination and leading to severe pain and suffering.⁹

Noting the observations in the RLC submission regarding the traumatic impacts of strip searching on children, the low rates at which strip searches find prohibited items, and the disproportionate use of strip searches on Aboriginal and Torres Strait Islander Children, it would appear that strip searches are occurring in circumstances that amount to torture or ill treatment. In such circumstances, those strip searches are contrary to Australia's obligations under CRC Article 37(a), ICCPR Article 7 and CAT Articles 2 and 16.

Torture is currently criminalised by s 268.13 of the Schedule (The Criminal Code) to the *Criminal Code Act 1995* (Cth) and s 23Q of the *Crimes Act 1914* (Cth) provides that a person under arrest or being questioned about a Commonwealth offence must not be subjected to cruel, inhuman or degrading treatment. The Bill enhances these protections by providing a broader set of protections against strip searching of children which may amount to torture or ill treatment.

3.3 Strip searching interferes with security of person and causes harm

'Security of the person' as referred to in ICCPR Article 9 means freedom from injury to the body and the mind, or bodily and mental integrity.¹⁰ It obliges states like Australia to take appropriate measures to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.¹¹ In that sense it overlaps with CRC Article 19(1) which requires states to protect children from all forms of physical and mental harm.

As the RLC submission explains, strip searching can cause substantial mental harm and physical pain and distress. Strip searching may trigger prior experiences of trauma and contribute to the emergence of new psychological conditions, including PTSD. The evidence suggests the harm is particularly pronounced when experienced by children. Where strip searches are finding prohibited items at low rates, and alternatives like body scanners are available, strip searching of children may amount to unjustifiable interference with the security of the person contrary to

⁸ United Nations Human Rights Council, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc A/HRC/31/57 (5 January 2016) [23].

⁹ Ibid.

¹⁰ Human Rights Committee, *General Comment No 35: Article 9 (Liberty and Security of the Person)* 112th sess, UN Doc CCPR/C/GC/35) (16 December 2014) ('*General Comment No 35*') [3].

¹¹ Ibid [9].

ICCPR Article 9 and a failure to protect a child from physical and mental harm, contrary to CRC Article 19(1).

3.4 National Child Rights Advice

As the National Child Rights Advice at Annexure A explains, section 51(xxix) of the Australian Constitution (the ‘external affairs power’) provides the Commonwealth Government with the power to enact national legislation to implement a treaty obligation binding on Australia.

To be characterised as a law with respect to ‘external affairs’, a law must be ‘reasonably capable of being considered appropriate and adapted to implementing the treaty’. The test for determining whether the law is reasonably capable of being considered as giving effect to the relevant treaty involves a consideration of the object for the advancement or attainment of which the law was enacted.

Given the strip search of a child may be contrary to a number of international law obligations binding on Australia (as set out above), the prohibition of that practice gives effect to those obligations.