

Aboriginal children 'kept in detention' despite being granted bail in Western Australia

Aboriginal Legal Service says it has 'grave concerns' government department failed in duty to find the children suitable accommodation



Eight Indigenous children have been kept in custody in Western Australia after being granted bail since June 2019 because authorities did not know where to house them, the Aboriginal Legal Service says.

Calla Wahlquist

Tue 28 Dec 2021

Aboriginal children in Western Australia have been kept in detention after being granted bail because child protection services did not know where to house them, the Aboriginal Legal Service has said.

The Aboriginal Legal Service of Western Australia wrote to the state's minister for children, Simone McGurk, as well as the attorney general and the Department of Communities this month saying it had "grave concerns" that the department had failed in its duty to find suitable accommodation for children who had been caught up in the criminal justice system.

ALSWA has contacted the department about eight children since June 2019 who had been detained in Banksia Hill youth detention centre despite being granted bail, because suitable accommodation could not be found.

In one case, a 14-year-old boy with just one charge on his criminal record was held in detention for three weeks despite being granted bail at his first appearance before the court because the department did not sign his bail undertaking.

Children cannot be released on bail unless an adult, usually a parent or guardian, accepts responsibility for ensuring they comply with any bail conditions, including turning up to any future court dates. If a child is in the care of the state, the state is their guardian and must sign the undertaking.

ALSWA's director of legal services, Peter Collins, said the department's decision not to sign the bail undertaking was contrary to the state's obligations under the Children and Community Services Act, which requires the department to "regard the best interest of the child as the paramount consideration", and also contradicted the principle that detaining a young person in custody must be the option of last resort.

"We wish to express our frustration with the repeated failures on the part of the department to meet their obligations to find appropriate placements for young people in its care," Collins wrote.

"The fact that ALSWA lawyers have frequently been pivotal in ensuring young people are secured placements in these instances, and that these placements are often with family members who are already known to the department, beggars belief.

"We urge you to act on the above concerns as a matter of priority."

The letter was dated 13 December. As of 24 December, ALSWA had not received a response.

A spokesperson from the department told Guardian Australia there could sometimes be a delay between a child being granted bail and being released from custody, to arrange appropriate housing and transport.

"There is often an expectation that once a child or young person is granted bail, they are released from custody immediately," the spokesperson said. "A range of factors, including transport arrangements and care planning, must be coordinated before Communities can safely provide bail for children in care – both for the child or young person and the broader community."

The department said it tried to maintain the child's previous foster placement, "however, there are occasions where the level of support required may not be available at the point that bail is granted and Communities cannot adequately ensure the safety of the young person or the community".

"The safety and wellbeing of children is always the Department of Communities' number one priority."

Collins said it was the fourth time the legal service had written to the department about the matter since June 2019 and the department had had "ample opportunity to put procedures in place to provide suitable care for young people with complex needs".

He said many of the children involved had very complex needs, including cognitive and behavioural conditions and mental health considerations, which were best supported by a community-based detention order, not by being held in custody.

The Western Australian Labor party passed a motion at its state party conference in September to raise the age of criminal responsibility from 10 to 14.

The state's attorney general, John Quigley, led the working group of the national council of attorneys general, which in a leaked draft report recommended the age of criminal responsibility be lifted to 14, or failing that, to 12, with a minimum age of detention at 14. To date only the Australian Capital Territory has pledged to introduce the reform.