



QUEENSLAND

“Heads held high”

Keeping Queensland kids out of detention, strong in culture and community



Cover: Aboriginal and Torres Strait Islander children take part in the Mona Aboriginal Corporation's Cultural Horsemanship Program near Mount Isa, June 2016. Patrick Cooke, Angela and David Sammon, and Rex Ah-One began the program in response to a lack of culturally appropriate healing programs.

All images: © Wayne Quilliam

Published in August 2016 by:

Amnesty International Australia
ABN 64 002 806 233
Locked Bag 23
Broadway NSW 2007

www.amnesty.org.au

© Amnesty International 2016

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers. To request permission or for any other enquiries, please contact publications@amnesty.org.au

CONTENTS

1. EXECUTIVE SUMMARY	1
METHODOLOGY.....	3
ACKNOWLEDGEMENTS	4
2. RECOMMENDATIONS	5
RECOMMENDATIONS TO THE QUEENSLAND GOVERNMENT	5
RECOMMENDATIONS TO THE COMMONWEALTH GOVERNMENT	7
3. BACKGROUND.....	8
AUSTRALIA’S INTERNATIONAL OBLIGATIONS	11
QUEENSLAND’S POLICY APPROACH AND DEVELOPMENTS.....	13
4. CHILDREN IN CONFLICT WITH THE LAW	16
MINIMUM AGE OF CRIMINAL RESPONSIBILITY	16
TRIAL OF CHILDREN AS ADULTS	18
5. CONDITIONS OF DETENTION	20
USE OF UNNECESSARY OR EXCESSIVE FORCE	20
SELF HARM AT CYDC	21
USE OF DOGS	25
SOLITARY CONFINEMENT.....	27
USE OF RESTRAINTS: HANDCUFFS	28
INVASIVE SEARCH PRACTICES	29
IMMEDIATE ACTION REQUIRED.....	31
6. INDIGENOUS CHILDREN ON REMAND	33
ACCESS TO A LAWYER AND OTHER SUPPORT	34
BAIL REFUSAL: TAKEN AWAY FROM FAMILIES INTO RESIDENTIALS AND DETENTION	36
SUPERVISED BAIL ACCOMMODATION	39
PROCEDURAL DELAYS	41
FETAL ALCOHOL SPECTRUM DISORDER.....	43
7. INDIGENOUS COMMUNITIES HOLD THE ANSWERS.....	46
CURRENT DIVERSION OPTIONS	48
INDIGENOUS-LED PROGRAMS AND SERVICES	49
MONA ABORIGINAL CORPORATION’S CULTURAL HORSEMANSHIP PROGRAM	52
CULTURALLY APPROPRIATE PROGRAMS IN PARTNERSHIP WITH INDIGENOUS COMMUNITIES AND LEADERS	54
JUSTICE REINVESTMENT.....	55
8. CONCLUSION.....	59



“Being a young Indigenous person, I strongly believe that culture and identity are imperative for us to grow and develop as healthy young people.

I grew up when we were told that we Indigenous people wouldn’t become much. I could have easily gone two ways. I could have thrown my hands up and said yeah they are right, I’m not going to go very far...

I’m proud to say that I was stronger than that. I had a sense of culture, I had a family that supported me. I want there to be a lot more Indigenous people in the future standing up and saying I’m capable and I can go places – because we can.”

Justice King, 18-year-old Waayni woman from Mount Isa, interviewed 27 June 2016

GLOSSARY

ATSILS	Aboriginal and Torres Strait Islander Legal Service of Queensland
BYDC	Brisbane Youth Detention Centre
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CYDC	Cleveland Youth Detention Centre
Declaration	United Nations Declaration on the Rights of Indigenous Peoples
DJAG	Department of Justice and Attorney General, including the Youth Justice Unit
FASD	Fetal Alcohol Spectrum Disorder
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Committee on the Elimination of all Forms of Racial Discrimination
Inspectorate	Ethical Standards Unit of the Department of Justice and Attorney General
OPCAT	First Optional Protocol to the Convention against Torture
QPS	Queensland Police Service
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
UN	United Nations
YAC	Youth Advocacy Centre
YPA	Young People Ahead

1. EXECUTIVE SUMMARY

When Aboriginal and Torres Strait Islander children are strong in their identity and culture, and have the support of their communities, they can face even the toughest challenges.¹ But many Indigenous children have been disconnected from their culture and too frequently end up in detention, away from their community.

Despite comprising only 6% of the population of 10 to 17-year-olds, Indigenous children make up over half of the youth detention population in Australia.² Nationally, Aboriginal and Torres Strait Islander children are 24 times more likely to be incarcerated than non-Indigenous children.³ Recent media coverage of the abuse of Indigenous children in the Northern Territory's youth detention centre has brought international attention to the broader injustices facing Indigenous children in the Australian justice system.⁴

In this report, the third in a series of reports for the Community is Everything campaign, Amnesty International documents similar concerns about the conditions and treatment of Aboriginal and Torres Strait Islander children in detention in Queensland.

The report also considers the wider human rights implications presented by the over-representation of Aboriginal and Torres Strait Islander children in Queensland's youth justice system. Indigenous children in Queensland are 22 times more likely to be detained than non-Indigenous children.⁵ Aboriginal and Torres Strait Islander children make up about 8% of all 10 to 17-year-olds in Queensland but 65% of the youth detention population on an average day.⁶

¹ Amnesty International acknowledges that in some Indigenous societies, people who have been through ceremonial business or initiation are considered to be men and women, however Amnesty International uses the term 'child' to describe young people aged under 18-years-old in accordance with the UN Convention on the Rights of the Child. No disrespect is intended by the use of these descriptors.

² Australian Institute of Health and Welfare (AIHW), *Youth Justice in Australia 2014-2015* (2016), Tables S76a, S144. Totals may include a small number of children whose Indigenous status is unknown. Indigenous children represent an estimated 125,059 out of 2,278,694 10 to 17-year-olds. Indigenous children comprised 436 of 752 children in detention on an average day.

³ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S77a. On an average day, Indigenous children in Australia are in detention at a rate of 34.9 per 10,000 compared to a rate of 1.5 per 10,000 for non-Indigenous children (including Northern Territory (NT) and Western Australian (WA) nonstandard data).

⁴ C Meldrum-Hanna, M Fallon, and E Worthington, *Australia's Shame*, Four Corners, Australian Broadcasting Service, 25 July 2016, available at <http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm>.

⁵ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S77a. Indigenous children in Queensland are in detention at a rate of 30.3 per 10,000 compared to a rate of 1.4 per 10,000 for non-Indigenous children.

⁶ AIHW, *Youth Justice in Australia 2014-2015* (2016), Tables S77a, S145. On an average day, Indigenous children in Queensland are in detention at a rate of 30.3 per 10,000 compared to a rate of 1.4 per 10,000 for non-Indigenous children. Indigenous young people represent an estimated 36,573 out of 486,188 10 to 17-year-olds. Totals may include a small number of young people whose Indigenous status is unknown.

Indigenous girls in Queensland are 33 times as likely to be in detention as non-Indigenous girls.⁷

While there have been recent positive developments from the Queensland Government in youth justice, many entrenched issues continue to require action. For example, this report documents new findings about self-harm, the use of dogs, invasive search procedures and mechanical restraints in youth detention centres, from documents recently obtained from a freedom of information request.

This report finds that a number of factors are contributing towards high rates of remand: barriers to accessing culturally-appropriate legal advice, refusal of bail for a number of reasons including the home environment, as well as procedural delays. The report also finds that Queensland has the highest number of 10 and 11-year-old children in detention in Australia, as well as being the only state to treat 17-year-olds as adults. There is also a lack of culturally appropriate diversionary options for Queensland children. Finally, the report identifies the need to support, and partner with, Aboriginal and Torres Strait Islander communities and organisations to develop solutions to prevent the next generation being lost behind bars.

Aboriginal and Torres Strait Islander children are more likely to end up behind bars because they are more likely to be disadvantaged, removed from their families, absent from school, experiencing violence, racism and trauma, abusing substances, and to have a disability or mental illness, among other contributing factors.⁸ Twenty-five years ago, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that these social and health issues can be determinants of contact with the justice system, and need to be addressed in order to end the over-representation of Indigenous people in custody.⁹ In the course of Amnesty International's research, Aboriginal and Torres Strait Islander leaders and community organisations consistently highlighted that more needs to be done to

⁷ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S77a. On an average day, Indigenous girls in Queensland were detained at a rate of 12.4 per 10,000 compared with 0.4 per 10,000 of non-Indigenous girls.

⁸ See Amnesty International Australia, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia* (2015), p. 3, available at http://www.amnesty.org.au/resources/activist/A_brighter_future_national_summary.pdf; T Vinson, M Rawsthorne, A Beavis and M Ericson, *Dropping off the Edge Report 2015: Persistent Communal Disadvantage in Australia*, Jesuit Social Services and Catholic Social Services (2015), pp. 31, 38. See also Close the Gap Campaign Steering Committee, *Closing the Gap: Progress and Priorities Report 2016* (2016), available at https://www.humanrights.gov.au/sites/default/files/document/publication/Progress_priorities_report_CTG_2016_0.pdf; R White, 'Indigenous Young People and Hyperincarceration in Australia' (2015) 15 (3) *Youth Justice*, pp. 257-260.

⁹ E Johnson, *Royal Commission into Aboriginal Deaths in Custody: National Report* (1991), vol 2, para. 14.4.4; vol 5, see recs 63-76.

address the underlying factors that contribute to the over-representation of Indigenous children in detention, through early intervention, prevention and diversion programs.

Amnesty International Australia presents its preliminary findings in this report, and more detailed research findings will follow.

METHODOLOGY

This report is based on research carried out between 2014 and 2016 by Amnesty International. Amnesty International interviewed over 150 people in the course of this research. Several participants have requested that certain details not be made public. In order to respect these wishes, and in some instances to protect the identity of children, some names and locations have been withheld.

The report is informed by conversations and interviews with Aboriginal and Torres Strait Islander children, leaders, Elders and community members throughout Queensland. This includes court officers and lawyers of the Aboriginal and Torres Strait Islander Legal Service of Queensland (ATSILS) and staff of other Indigenous-controlled organisations. In particular, the research has focused on Mount Isa, Townsville, Palm Island and Logan. Amnesty International interviewed non-Indigenous lawyers, as well as non-Indigenous service providers and organisations working with Aboriginal and Torres Strait Islander children. Amnesty International interviewed staff within the Queensland Police Service (QPS), the Youth Justice Services section of the Department of Justice and Attorney General (DJAG) and local government.

Amnesty International also reviewed existing data, case law, legislation, parliamentary debates, documents obtained through freedom of information requests, United Nations materials, government and academic reports and inquiries into the Queensland youth justice system. Data from the 2014-2015 financial year is used where available. Amnesty International made a number of data requests to the Queensland authorities, including to the Australian Institute of Health and Welfare and submitted questionnaires to various government departments and organisations.

ACKNOWLEDGEMENTS

Amnesty International is indebted to the many Indigenous organisations and individuals across Queensland who generously shared their stories, perspectives and insights with us in the course of this research. Amnesty International hopes that this report will build much needed support for the many passionate, determined and resilient Aboriginal and Torres Strait Islander communities, individuals and organisations in Queensland that are working towards a brighter future for their children.

Amnesty International thanks the other organisations and individuals interviewed for this report, including community organisations working with Indigenous youth, legal practitioners, police and magistrates. Amnesty International thanks the Queensland Government for its participation in the research. Amnesty International acknowledges that the views expressed by DJAG and the QPS staff are not necessarily those of DJAG or the QPS and that any errors of omission or commission are the responsibility of the author.

2. RECOMMENDATIONS

RECOMMENDATIONS TO THE QUEENSLAND GOVERNMENT

On addressing underlying causes of youth crime

1. Ensure culturally appropriate and Indigenous-led holistic family support and early intervention services are funded and supported with training and capacity building.
2. Ensure funding is made available to Aboriginal and Torres Strait Islander Legal Service of Queensland (ATSILS) and other legal service providers, in partnership with disability advocacy services, to seek appropriate supports for, and court reports for assessments of, clients with suspected fetal alcohol spectrum disorder (FASD) and cognitive impairment.
3. Explore linkages between the court system and the National Disability Insurance Scheme, to ensure adequate support services are available to children with FASD and cognitive impairment.
4. Ensure that there is, more broadly, Indigenous community access to diagnosis for FASD and cognitive impairment.
5. Fund an Indigenous-led, evidence-based Justice Reinvestment trial to address underlying causes of offending.

On Indigenous-led solutions

6. Fund and support, including through preferential tendering and building the capacity of, Indigenous organisations and communities to support culturally appropriate, Aboriginal and Torres Strait Islander designed and led programs at all stages of the justice system, particularly early intervention and diversion services.
7. Work with local Indigenous organisations to assist with supporting funding applications, training staff and monitoring/evaluating these programs.

On addressing remand and access to legal services

8. Ensure that the legislative requirement that ATSILS be notified when Indigenous children are brought in for questioning be extended to summary offences, and review this requirement for police compliance.
9. Ensure that there is sufficient ongoing funding available to continue the work undertaken by the ATSILS and Queensland Indigenous Family Violence Legal

Services, and functions under Recommendation 8, so that Indigenous children are granted full access to legal assistance.

10. Investigate the reasons for increasing delays in the finalisation of children's matters in the Magistrates and District courts in order to reduce and prevent the time that children spend on remand.
11. Fund culturally appropriate, Indigenous community controlled bail accommodation and support services.

On children in conflict with the justice system

12. Investigate reasons for the lower rates of cautioning for Indigenous children and the lower participation rates of Indigenous children in diversionary options (such as youth justice conferencing).
13. Raise the age of criminal responsibility to 12 years of age.
14. Immediately stop trying 17-year-olds as adults and immediately transition 17-year-olds out of adult prisons into youth detention.
15. Develop an enforceable Human Rights Bill, in consultation with Indigenous and community sector organisations that incorporates, among others, international law and standards on the rights of children and Indigenous Peoples.

On conditions of detention

16. Appoint an impartial and independent Inspector of Custodial Services, to have access to youth detention centres and police watchhouses for the purpose of monitoring and reporting on conditions of detention, to carry out thorough, independent and impartial investigations into all allegations of torture or other ill-treatment of children of detention and ensure that conditions of detention are adequate and in accordance with international standards.
17. Work in partnership with the Commonwealth Government to prioritise the ratification of the Optional Protocol to the Convention against Torture (OPCAT) and set up a national preventative mechanism.

RECOMMENDATIONS TO THE COMMONWEALTH GOVERNMENT

1. Immediately implement the outstanding recommendations made in Amnesty International's 2015 report.¹⁰
2. Raise the age of criminal responsibility to 12 years of age.
3. Ratify the OPCAT without delay, and establish an independent national preventative mechanism under the guidance of the Subcommittee on the Prevention of Torture.
4. Fund and support, including building the capacity of, Aboriginal and Torres Strait Islander designed and led programs at all stages of the justice system, particularly early intervention and diversion services.

¹⁰ Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia* (2015).

3. BACKGROUND

“There are bad influences in prison... They have all those kids who’ve been there for a long time teaching the youngfellas how to act up and all that... but if they send them out to the communities, to the old fellas, they can teach them how to be good, and the old way.”

Imahl Shaw, 14-year-old Indigenous boy from Mount Isa, interviewed on 26 June 2016



Imahl Shaw and his brother Mieharli Shaw in Mount Isa, June 2016. © Wayne Quilliam

From at least 1897 until 1979, Queensland laws and government policies dictated that many Aboriginal and Torres Strait Islander people were moved far away from their traditional country to Cherbourg or Palm Island, where they were forced to live in missions and penal colonies, under the guise of protecting them.¹¹ Uncle Albert Holt spoke to this history of invasion, dispossession and discrimination for Indigenous Peoples when he noted the impact of “Powerlessness, abject poverty, cultural isolation, despair, stripped of control of our destiny.”¹²

¹¹ Australian Human Rights Commission, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Bringing them Home* (1997), pt 2, ch 5.

¹² Albert Holt, *Murri on a Mission: Gunned Gunned* (2014), p. 24.

The consequences of this history are still seen today: Aboriginal and Torres Strait Islander children in Queensland are nine times as likely to be on a child protection order than non-Indigenous children.¹³ There are similar rates at the national level.¹⁴ Aboriginal and Torres Strait Islander children in Queensland are also less likely to attend school,¹⁵ and have lower literacy¹⁶ and numeracy¹⁷ levels than non-Indigenous children, again reflected in national trends. A higher proportion of Indigenous children in Queensland have a disability (18.4%) than non-Indigenous children (16.5%), just under the national averages.¹⁸

Twenty-five years ago, the RCIADIC found that these social and health issues can be determinants of contact with the justice system, and needed to be addressed to end the over-representation of Indigenous people in custody, particularly children.¹⁹ These continuing inequalities are reflected in the high rates of incarceration of Indigenous children in Queensland today.

On an average day in 2014-2015, Aboriginal and Torres Strait Islander children in Queensland were detained at a rate just below the national daily average for Indigenous young people.²⁰ The likelihood of Indigenous children being detained in Queensland on an average day increased from 17 to 22 times from 2010-11 to

¹³ AIHW, *Child Protection Australia 2014-15* (2016), Table 4.4. Indigenous children in Queensland were on child protection orders at a rate of 44 per 1,000 compared with 5.1 per 1,000 for non-Indigenous children.

¹⁴ AIHW, *Child Protection Australia 2014-15* (2016), Table 4.4. Indigenous children in Australia were on child protection orders at a rate of 57.5 per 1,000 compared with 6.3 per 1,000 for non-Indigenous children.

¹⁵ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), available at <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/key-indicators-2014#thereport>, Table 7A.1.1. This data is from government schools in 2013. In Queensland the rate of school attendance for Indigenous children was, on average, 84% compared with 92% for non-Indigenous children. Nationally, the rate of school attendance for Indigenous children was, on average, 82% compared with 93% for non-Indigenous children.

¹⁶ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), Tables 4A.4.37 and 4A.4.38: Proportion of Year 9 students who achieved at or above the national minimum standard for writing and reading. Rates in Queensland for Indigenous children for reading are 76% (compared with 94% non-Indigenous) and writing is 58% (compared with 83% for non-Indigenous). Nationally, rates for Indigenous children for reading are 74% (compared with 95% for non-Indigenous) and writing is at 51% (compared with 85% for non-Indigenous).

¹⁷ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), Table 4A.4.36. Proportion of Year 9 students who achieved at or above the national minimum standard for numeracy. The rates in Queensland for Indigenous children are 68% compared with 92% for non-Indigenous children. Nationally the rate for Indigenous children is 66% compared with 92% for non-Indigenous children.

¹⁸ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), Table 4A.8.9: percentage that have a disability from year 2011-13. Nationally 22% of Indigenous children have a disability compared with 13% of non-Indigenous children.

¹⁹ E Johnson, *Royal Commission into Aboriginal Deaths in Custody: National Report* (1991), vol 2, para. 14.4.4; vol 5, see recs 63-76.

²⁰ AIHW, *Youth Justice in Australia: 2014-2015* (2016), Table S77a. On an average day, Indigenous children in Queensland are in detention at a rate of 30.3 per 10,000 compared to a rate of 1.4 per 10,000 for non-Indigenous children. Nationally, on an average day, Indigenous children are in detention at a rate of 34.9 per 10,000 compared to a rate of 1.5 per 10,000 for non-Indigenous children.

2014–15.²¹ Queensland had the largest number of young people under youth justice supervision (including in the community and in detention) on an average day in Australia.²²

In Queensland, Aboriginal and Torres Strait Islander children make up around 8% of all 10 to 17-year-olds but comprise 65% of the youth detention population on an average day (111 out of 172).²³ This included 89 Indigenous boys (out of 142 boys in total).²⁴ Girls comprised 18% of the total detention population (31 out of 172), and of those girls, 71% were Indigenous (22 out of 31 girls in total).²⁵

Nationally, the rate of detention of girls decreased from 2010-11 to 2014-2015, whereas in Queensland, the rate of girls in detention rose.²⁶ This was especially so for Indigenous girls. From 2010-2015, Indigenous girls have become much more likely to be in detention than non-Indigenous girls (from 13 to 19 times as likely to be in detention during the year), in line with national trends.²⁷ This is a greater increase compared with the rates of detention for Indigenous boys in Queensland over the same period (from 15 to 18 times as likely as non-Indigenous boys to be in detention during the year), in line with national trends.²⁸ On an average day in 2014-2015, Aboriginal and Torres Strait Islander girls were 33 times as likely to be in detention as non-Indigenous girls in Queensland.²⁹

In 2014-2015, the top four types of offences by children that proceeded to court in Queensland were:

- Theft and related offences (26%)
- Unlawful entry with intent (18%)
- Acts intended to cause injury (12%)

²¹ AIHW, *Youth Justice in Australia: 2014-2015* (2016), Table S85a. Indigenous children in Queensland were detained at a rate of 22.8 per 10,000 (1.3 per 10,000 for non-Indigenous) in 2010-2011 compared with 30.3 per 10,000 (1.4 per 10,000 for non-Indigenous) in 2014-2015.

²² AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S1a. Queensland had 1,524 young people under youth justice supervision on an average day, higher than 1,436 young people in New South Wales, 1,155 young people in Victoria and 754 young people in Western Australia.

²³ AIHW, *Youth Justice in Australia 2014-2015* (2016), Tables S77a, S145. Indigenous young people represent an estimated 36,573 out of 486,188 10 to 17-year-olds. Totals may include a small number of young people whose Indigenous status is unknown.

²⁴ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S76a.

²⁵ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S76a.

²⁶ AIHW, *Youth Justice in Australia 2014-2015* (2016), Tables S91a. The rate of Queensland girls in detention on an average day rose from 0.6 in 2010-2011 (compared with 5.2 for boys) to 1.3 in 2014-2015 (compared with 5.7 for boys). Nationally, the rates of girls in detention on an average day decreased from 0.8 in 2010-2011 (compared with 7.4 for boys) to 0.7 in 2014-2015 (compared with 5.8 for boys).

²⁷ AIHW, *Youth Justice in Australia 2014-2015* (2016), Tables S90b, S91b.

²⁸ AIHW, *Youth Justice in Australia 2014-2015* (2016), Tables S90b, S91b.

²⁹ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S77a. Indigenous girls were 12.4 per 10,000 compared with 0.4 per 10,000 of non-Indigenous girls.

- Public order offences (12%).³⁰

Queensland had the highest numbers of children proven guilty in finalised children’s court matters (combined Magistrate and District matters) in Australia in 2014-2015,³¹ and 98% (5,762 of 5,878) were finalised by a plea of guilty.³²

The President of Queensland’s Childrens Court reported in 2014 that 75% of children in the justice system are known to the child protection systems.³³ In interviews, ATSILS, magistrates, academics and community members spoke of the need to provide culturally appropriate and Aboriginal and Torres Strait Islander-led services to support families and prevent children from being unnecessarily removed from them, and to address underlying causes of offending.³⁴

AUSTRALIA’S INTERNATIONAL OBLIGATIONS

Under international law, “all persons” – including children – have fair trial and procedural rights, which states must respect and protect. Additional youth justice protections also exist under international human rights law in recognition that children may differ from adults in their physical and psychological development.

The Convention on the Rights of the Child (CRC) is the primary source of provisions for these rights.³⁵ Unique among the major United Nations (UN) human rights treaties, it explicitly recognises the particular needs of Indigenous children.³⁶ Australia signed and ratified the CRC in 1990.³⁷ Key human rights obligations under the CRC include that:

³⁰ Australian Bureau of Statistics (ABS), *Criminal Courts, Australia, 2014-2015* (2016), cat no 4513.0, Table 22. Out of the total 6,823 finalised offences in childrens’ court matters: 1,764 were theft and related, 1,225 were unlawful entry with intent, 846 were acts intended to cause injury, 816 were public order offences.

³¹ ABS, *Criminal Courts, Australia, 2014-2015* (2016), cat no 4513.0, Tables 7, 22.

³² ABS, *Criminal Courts, Australia, 2014-2015* (2016), cat no 4513.0, Table 25. ‘Proven guilty’ includes a guilty plea by defendant, guilty finding by the court, or guilty ex parte.

³³ Childrens Court of Queensland, *Annual Report 2013-2014* (2014), p. 2.

³⁴ Written response by Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd to Amnesty International questionnaire (26 June 2016); Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with Queensland University of Technology (‘QUT’) Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015; Amnesty International interview with ATSILS, Townsville, 23 June 2016; Amnesty International interview with Anti-Discrimination Commission Queensland (‘ADCQ’), Liz Bond and Lea Yettica-Paulson, Brisbane, 29 October 2015; Amnesty International interview with Community Legal Centres Queensland (‘CLCQ’) and National Association of Community Legal Centres (‘NACLC’) James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with Qld Department of Justice and Attorney General (‘DJAG’) Indigenous Justice Programs, Renee Kyle and Chris White, Brisbane, 27 October 2015; Amnesty International interview with DJAG, Indigenous Justice Program Officer, Townsville, 23 February 2016; Amnesty International interview with Aboriginal and Torres Strait Islander Working Group and Kalkadoon Ltd, Mount Isa, 2 November 2015.

³⁵ *UN Convention on the Rights of the Child*, adopted 20 November 1989, 1577 UNTS 3, entered into force 2 September 1990. Australia ratified on 17 December 1990.

³⁶ Convention on the Rights of the Child, Arts. 17(d), 29(d), p. 30.

- The best interests of the child is a fundamental principle to be observed in all actions concerning children, including in the context of criminal justice;³⁸
- Arrest and detention must be measures of last resort and for the shortest appropriate period of time;³⁹
- All children must have access to prompt and adequate legal representation, as well as the capacity to challenge charges brought against them;⁴⁰ and
- Appropriate alternatives to detention should be in place to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.⁴¹

Further criminal justice protections are found under the International Covenant on Civil and Political Rights (ICCPR)⁴² and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).⁴³ Australia ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁴⁴ in 1975. ICERD prohibits any “distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁴⁵

Australia also has obligations to protect the rights of children in detention and to prevent torture and other ill-treatment, including to independently investigate and ensure accountability for perpetrators under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.⁴⁶ Australia

³⁷ United Nations Treaty Collection, *Status of Convention on the Rights of the Child*, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

³⁸ Convention on the Rights of the Child, Arts. 3(1), 37(c), 40(2)(b)(iii).

³⁹ Convention on the Rights of the Child, Art. 37.

⁴⁰ Convention on the Rights of the Child, Art. 37(d).

⁴¹ Convention on the Rights of the Child, Art. 37(c).

⁴² *International Covenant on Civil and Political Rights*, adopted 16 December 1966, 999 UNTS 171, entered into force 23 March 1976 ('ICCPR'). Australia ratified on 13 August 1980.

⁴³ *International Convention on the Elimination of All Forms of Discrimination Against Women*, adopted 18 December 1979, 1249 UNTS 13, entered into force 3 September 1981 ('CEDAW'). Australia ratified on 28 July 1983.

⁴⁴ *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted 21 December 1965, 660 UNTS 195, entered into force 4 January 1969 ('ICERD'). Australia ratified on 30 September 1975.

⁴⁵ ICERD, Arts. 1(1), 2(2).

⁴⁶ *UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, adopted by General Assembly resolution 39/46, 1465 UNTS 85, entered into force 26 June 1987.

ratified the Convention against Torture in 1989, and has signed, but not yet ratified OPCAT.⁴⁷

Australia endorsed the Declaration on the Rights of Indigenous Peoples (the Declaration) on 3 April 2009.⁴⁸ The Declaration states that particular attention should be given to “the rights and special needs of indigenous ... youth, children and persons with disabilities”,⁴⁹ and sets out the right of Indigenous Peoples “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions”.⁵⁰

QUEENSLAND’S POLICY APPROACH AND DEVELOPMENTS

In 2014, the former government introduced a series of legislative changes to the youth justice system in an attempt to address a pattern of children committing more serious offences.⁵¹ This included mandatory military-style boot camps for repeat motor vehicle offenders in Townsville, allowing publication of the details of children facing criminal trials, expressly prohibiting courts from considering the principle that detention is a last resort, opening courts for children’s hearings for repeat offenders and introducing the automatic transfer of 17-year-old children to adult prisons when they have sentences of youth offences of six months or more.⁵²

Amnesty International, as well as many Queensland advocacy groups, opposed the introduction of these laws as involving violations upon the rights of children, and in particular the rights of Aboriginal and Torres Strait Islander children.⁵³

Amnesty International has provided submissions calling for the Queensland Government to repeal these changes,⁵⁴ and in June 2016, the Queensland

⁴⁷ United Nations Treaty Collection, *Status of Convention against Torture*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en. Australia ratified the Convention against Torture on 8 August 1989. Australia signed the Optional Protocol on the Convention against Torture in May 2009.

⁴⁸ J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, ‘Statement on the United Nations Declaration on the Rights of Indigenous Peoples’ (Speech delivered at Parliament House, Canberra, 3 April 2009).

⁴⁹ *UN Declaration on the Rights of Indigenous Peoples*, adopted by UN General Assembly resolution GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, UN Doc A/RES/61/295 (13 September 2007), Art. 21.

⁵⁰ *UN Declaration on the Rights of Indigenous Peoples*, Art. 5.

⁵¹ *Youth Justice and Other Legislation Amendment Act 2014* (Qld); see Explanatory Notes, *Youth Justice and Other Legislation Amendment Bill 2014* (Qld).

⁵² See *Queensland Youth Justice and Other Legislation Amendment Act 2014* (Qld).

⁵³ See Amnesty International Australia, Submission No 19 to the Legal Affairs and Community Safety Committee, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2014*, 26 February 2014.

⁵⁴ Amnesty International Australia, Submission No 26 to the Legal Affairs and Community Safety Committee, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2015*, 25 January 2016; Amnesty International Submission, Submission to the Queensland Department of Justice and Attorney-General, *Consultation on the Youth Justice Reform*

Parliament passed legislation reversing these damaging changes.⁵⁵ In addition, the Queensland Government has introduced a number of promising reforms, including the reintroduction of the Murri Courts⁵⁶ and other specialised courts, additional funding for legal services including family violence prevention legal services, community services to support Indigenous families and most recently, restorative justice pathways for children.⁵⁷

Amnesty International also notes the valuable contribution of many Community Justice Groups around Queensland of improving relationships between Department of Justice and Attorney General (DJAG), police and the Indigenous community.⁵⁸ These groups usually comprise of Indigenous community leaders and assist children and families through the youth justice process. This can include facilitating the attendance of programs for victims and offenders; supervising Community Service Orders; assisting in youth justice conferencing; visiting prisons and detention centres; attending police interviews and attending court.⁵⁹

The DJAG has an Indigenous Cultural Capability Framework and Action Plan (2015-2019) and established a Youth Justice First Nations Actions Board. This body comprises of Aboriginal and Torres Strait Islander Youth Justice staff who advise on policy, practice and delivery.⁶⁰ Amnesty International looks forward to DJAG's

Discussion Paper, 19 February 2016; Amnesty International Australia, Submission to the Queensland Department of Justice and Attorney-General, *Consultation on the Proposed Reforms to the Youth Justice Act 1992 and Childrens Court Act 1992 (Issues Paper)*, 2 February 2015; Amnesty International Australia, Submission No 11 to the Legal Affairs and Community Safety Committee, *Inquiry into the Youth Justice and Other Amendments Bill 2016*, 9 May 2016.

⁵⁵ *Youth Justice and Other Legislation Amendment Bill 2016* (Qld); *Youth Justice and Other Legislation Amendment Bill 2015* (Qld).

⁵⁶ A Morgan and E Louis, Australian Institute of Criminology, *Evaluation of the Queensland Murri Court: Final Report* (2010) p. 1. Operating within a Magistrates Court framework, Murri Courts provide opportunities for Indigenous Elders, family, Indigenous community organisations and Community Justice Groups to input into the sentencing of Indigenous people. Murri Courts have the potential to result in lesser sentences for offenders who complete a program decided by the Murri Court Elders and the Magistrate. Youth Murri Courts have been trialled in the youth justice system in Queensland.

⁵⁷ Premier and Minister for the Arts and Attorney-General and Minister for Justice and Minister for Training and Skills, and Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence (Joint Media Release), 'Palaszczuk Government plan to address domestic and family violence', 14 June 2016. Minister for Justice and Minister for Training and Skills, Media Release, 'Palaszczuk Government to improve access and efficiency in justice system', 14 June 2016. Minister for Justice and Minister for Training and Skills, Media Release, 'Additional services for vulnerable Queenslanders', 12 January 2016; Minister for Justice and Minister for Training and Skills, Media Release, 'Court programs to address crime reinstated', 14 July 2015; Minister for Justice and Minister for Training and Skills, Media Release, 'Boot camp bill hits \$16.7m, independent evaluation finds', 20 August 2015; Minister for Aboriginal and Torres Strait Islander Partnerships, Media Release, '\$150 million to support Aboriginal and Torres Strait Islander families', 11 May 2016.

⁵⁸ See KPMG Australia for DJAG, *Evaluation of the Community Justice Group Program Final Report 2010* (2010), p. 119.

⁵⁹ Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015; Amnesty International interview with DJAG, Indigenous Justice Programs, Renee Kyle and Chris White, Brisbane, 27 October 2015; Amnesty International interview with Community Justice Group, Townsville 24 February 2016; Amnesty International interview with Cliff Weatherall, Brother Marty McHugh and Calvin Page, Mount Isa, 4 November 2015; Amnesty International interview with DJAG, Indigenous Justice Program Officer, Townsville, 23 February 2016.

⁶⁰ DJAG, Youth Justice Services response to Amnesty International questionnaire, 3 August 2016.

policy on working with young lesbian, gay, bisexual, transgender, questioning and intersex young people⁶¹ as Lesbian, Gay, Bisexual, Transgender, Bisexual, Intersex (LGBTI) Indigenous children can experience intersectional discrimination.⁶²

At the time of writing, Queensland Parliament was considering the introduction of a Queensland Human Rights Act.⁶³ Queensland authorities have not taken all necessary steps to adapt their laws and policies in a way that gives effect to Australia's international obligations. As illustrated in this report, within the context of the justice system, there are clear gaps in the existing protections of human rights. This includes a lack of effective remedies where human rights abuses occur. The introduction of a Human Rights Act can provide enforceable legal rights and obligations for all Queenslanders, particularly those at a higher risk of having their human rights violated, as well as promote a rights-based culture.

In an Amnesty International submission to the Queensland Parliament's inquiry, we noted how a Human Rights Act can further protect the human rights of children. This is particularly the case for Indigenous children in the justice system.⁶⁴ Human rights legislation in other Australian jurisdictions has protected the human rights of children, including the right to a fair trial⁶⁵ and the use of prolonged periods of solitary confinement in detention.⁶⁶ For these reasons, Amnesty International considers that a Human Rights Act would improve the protection of the rights of children in the Queensland justice system.⁶⁷

While these reforms are welcome, Amnesty International has identified several critical issues, which need to be addressed to reduce the over-representation of Aboriginal and Torres Strait Islander children in the justice system.

⁶¹ DJAG, Youth Justice Services response to Amnesty International questionnaire, 3 August 2016.

⁶² The Healing Foundation Canberra, The Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP), *Sexuality and Gender Diverse Populations (Lesbian, Gay, Bisexual, Transsexual, Queer and Intersex - LGBTIQI) Roundtable Report*, Canberra, (20 March 2015).

⁶³ See Legal Affairs and Community Safety Committee, Parliament of Queensland, *Inquiry into a possible Human Rights Act for Queensland* (2016), available at <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1030.pdf>.

⁶⁴ See Amnesty International Queensland and Northern News South Wales, Submission No 395 to Queensland Parliament, *Human Rights Inquiry*, 18 April 2016, available at

<https://www.parliament.qld.gov.au/documents/committees/LACSC/2015/14-HumanRights/submissions/395.pdf>.

⁶⁵ See *SI bhnf CC v K bhnf IS* [2005] ACTSC 125 (2 December 2005); *TM v Karapanos and Bakes* [2011] ACTSC 74.

⁶⁶ Victorian Ombudsman, *Investigation into Children Transferred from the Youth Justice System to the Adult Prison System* (2013), pp. 4, 27, available at <https://www.ombudsman.vic.gov.au/getattachment/6a579e49-212e-42b0-9d3c-791e2d60e102/reports-publications/parliamentary-reports/investigation-into-children-transferred-from-the-y.aspx>.

⁶⁷ For Amnesty International's position on the benefits of a Human Rights Act, see Amnesty International, Submission to Commonwealth Parliament, *National Human Rights Consultation*, 12 June 2009.

4. CHILDREN IN CONFLICT WITH THE LAW



© Wayne Quilliam

In contravention to international law and standards, the age of criminal responsibility is 10 in all Australian states and territories.⁶⁸ Practically, this means that children as young as 10 years old are being held in youth detention centres around the country, including in Queensland. Further, Queensland is the only state or territory in Australia to treat 17-year-olds as adults in the criminal justice system. These laws and policies are contrary to Australia's international obligations.

MINIMUM AGE OF CRIMINAL RESPONSIBILITY

The Committee on the Rights of the Child has concluded that 12 is the lowest internationally acceptable minimum age of criminal responsibility.⁶⁹ Children who have not reached the minimum age of criminal responsibility should not be

⁶⁸ Australian Institute of Criminology, 'The age of criminal responsibility' (2005) SSN 1445-7288, available at www.aic.gov.au/publications/current%20series/cfi/101-120/cfi106.html

⁶⁹ Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd sess, UN Doc CRC/C/GC/10 (25 April 2007), para. 32.

formally charged with an offence or held responsible within a criminal justice procedure.⁷⁰ Yet, according to state and territory criminal legislation, the age of criminal responsibility in all Australia is 10 years old.⁷¹

Aboriginal and Torres Strait Islander children are more heavily over-represented among 10 and 11-year-olds in contact with the criminal justice system and in detention than those in older age brackets. In 2014–15, Indigenous children made up 74% of all 10 and 11-year-olds in detention in Australia throughout the year.⁷²

Queensland research interviews showed a perception that Aboriginal and Torres Strait Islander children are coming into contact with the justice system at a very young age.⁷³ The statistics support this finding. In 2014-2015, Queensland held 15 children under the age of 12 years in detention, which was the highest number of any Australian state or territory.⁷⁴ Indigenous children are extremely over-represented in this age range: of children aged 10 to 12 years in Queensland detention over the year of 2014-2015, 71% were Aboriginal and Torres Strait Islander (45 of 63).⁷⁵ Of these 10 to 12-year-old children in Queensland detention, 16% were girls (10 of 63).⁷⁶

Further, Queensland had by far the highest numbers of children aged 10 and 11-years-old who were proven guilty in Children’s Court matters in Australia in 2014-2015.⁷⁷

In its Concluding Observations in 2005 the UN Committee on the Rights of the Child said that the age of criminal responsibility in Australia is “too low” and

⁷⁰ Committee on the Rights of the Child, *General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 62nd sess, UN Doc CRC/C/GC/14, (29 May 2013).

⁷¹ See *Crimes Act 1914* (Cth) ss 4M, 4N; *Criminal Code Act 1995* (Cth) s 7.1; *Criminal Code Act 1995* (Cth) s 7.2; *Criminal Code 2002* (ACT) ss 25, 26; *Children and Young People Act 1999* (ACT) ss 7, 8, 69; *Children (Criminal Proceedings) Act 1987* (NSW) ss 3, 5; *Criminal Code Act* (NT) ss 38(1), 38(2); *Juvenile Justice Act* (NT) s 3; *Criminal Code Act 1899* (Qld) ss 29(1), 29(2); *Juvenile Justice Act 1992* (Qld) sch 4; *Young Offenders Act 1993* (SA) ss 4, 5; *Criminal Code Act 1924* (TAS) ss 18(1), 18(2); *Youth Justice Act 1997* (TAS) s 3; *Children and Young Persons Act 1989* (Vic) ss 3, 127; *Criminal Code Act Compilation Act 1913* (WA) s 29; *Young Offenders Act 1994* (WA) s 3.

⁷² AIHW, *Youth Justice in Australia 2014-15* (2016), Table S78b. 10 and 11-year-olds comprised 46 out of 4,721 children detained throughout the year. Includes WA and NT non-standard data.

⁷³ Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015; Amnesty International interview with Ken Georgetown, Murri Watch, Brisbane, 28 October 2015; Amnesty International interview with Indigenous community, Mount Isa, 2 December 2015; Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016.

⁷⁴ AIHW, *Youth Justice in Australia: 2014-2015* (2016), Table S74b. Compared with 8 children aged 10 and 11-years-old in WA, 6 in NSW and NT, 5 in SA, 2 in ACT and 1 in Victoria.

⁷⁵ AIHW, *Amnesty International Data Request 2016*, Table 2c.

⁷⁶ AIHW, *Amnesty International Data Request 2016*, Table 2c. Note that this data was not disaggregated by Indigenous and non-Indigenous children.

⁷⁷ ABS, *Criminal Courts, Australia, 2014-2015* (2016), cat no 4513.0, Table 7. ‘Proven guilty’ includes a guilty plea by defendant, guilty finding by the court, or guilty ex parte. Queensland had 34 ten-year-olds proven guilty, whereas all other jurisdictions had less than three; Queensland had 88 11-year-olds proven guilty, whereas all other jurisdictions had less than 30.

recommended raising it to 12.⁷⁸ This recommendation was reiterated during the review carried out by the Committee in 2012,⁷⁹ as well as recommended during Australia's recent Universal Periodic Review before the Human Rights Council in 2016.⁸⁰ In order to conform with the minimum internationally acceptable level, Queensland must raise the minimum age of criminal responsibility to 12 years of age.

TRIAL OF CHILDREN AS ADULTS

The CRC defines a child as any person below the age of 18 years unless majority is obtained earlier in the domestic laws applicable to the child. While 18 years is the age of majority for voting, drinking and gambling in Queensland, 17-year-olds are treated as adults in its criminal justice system.⁸¹ The CRC also provides that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so".⁸² In 2012, the UN Committee on the Rights of the Child reiterated its recommendation, first made in 2005, that Australia should remove children who are 17 years old from the adult justice system in Queensland.⁸³

However, as at 1 August 2016, there were 49 children aged 17 years held in adult prisons in Queensland.⁸⁴ Community members, lawyers and advocacy organisations have raised concerns about 17-year-olds being treated as adults in the Queensland criminal justice system.⁸⁵ Amnesty International's interviews with lawyers, advocates and family members found that a significant number of adult prisons did not provide appropriate services to 17-year-olds such as education,

⁷⁸ Committee on the Rights of the Child, *Concluding Observations – Australia*, 40th sess, UN Doc CRC/C/15/Add.268 (20 October 2005), para. 73-74.

⁷⁹ Committee on the Rights of the Child, *Concluding Observations – Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012), para. 84.

⁸⁰ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, 31st sess, UN Doc A/HRC/31/14 (13 January 2016).

⁸¹ See *Youth Justice Act 1992* (Qld), sch 4.

⁸² Convention on the Rights of the Child, Art. 37(c).

⁸³ Committee on the Rights of the Child, *Concluding Observations: Australia*, 60th session, UN Doc CRC/C/AUS/CO/4 (28 August 2012), para. 84.d.

⁸⁴ Queensland Government Data, *Custodial Offender Snapshot as at 01 08 2016* (2016), available at <https://data.qld.gov.au/dataset/custodial-offender-snapshot-statewide/resource/4bad7fe4-5a0e-4c47-98d5-2a0608e7ae53>.

⁸⁵ Amnesty International interview with (Name withheld), Logan, 13 May 2016; Amnesty International interview with ADCQ, Liz Bond and Lea Yettica-Paulson, Brisbane, 29 October 2015; Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016; Amnesty International interview with ATSIILS Lawyers, Palm Island, 2 March 2016.

and access to basic items like soap and toothbrushes.⁸⁶ Our interviews raised concerns about overcrowding in adult prisons.⁸⁷

The Queensland Government passed a Bill to end the automatic transfer of 17-year-olds to adult prisons where they have committed an offence as a child but have six months or more on their sentence, by raising the age of transfer to 18.⁸⁸ However, this does not bring Queensland into compliance with CRC and other applicable standards. If a 17-year-old commits an offence, they will continue to be tried as adults in the criminal justice system, including being detained in adult prisons.⁸⁹

Amnesty International is of the view that to comply with international standards, the Queensland Government must immediately stop trying 17-year-olds as adults in the criminal justice system and immediately transition 17-year-olds out of adult prisons into youth detention.

⁸⁶ Amnesty International interview with Debbie Kilroy, Sisters Inside, Brisbane, 17 November 2015; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with (Name withheld), Logan, 13 May 2016.

⁸⁷ Amnesty International interview with Debbie Kilroy, Sisters Inside, Brisbane, 17 November 2015; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015.

⁸⁸ See *Youth Justice and Other Amendments Bill 2016* (Qld).

⁸⁹ See *Youth Justice Act 1992* (Qld), sch 4.

5. CONDITIONS OF DETENTION

Amnesty International has obtained quarterly reports, by freedom of information request, from inspections by the DJAG Ethical Standards Unit (the 'Inspectorate') of Cleveland Youth Detention Centre (CYDC) in Townsville and Brisbane Youth Detention Centre (BYDC) from 2010-2015. An analysis of these documents reveals a number of human rights concerns, including the use of potentially unnecessary and excessive use of force, and other control and restraint measures that may amount to torture or other ill-treatment.

USE OF UNNECESSARY OR EXCESSIVE FORCE

The Inspectorate has repeatedly raised concerns about allegations of unnecessary or excessive use of force against children detained in both CYDC and BYDC, and has criticised the adequacy of reporting and monitoring of instances of use of force.⁹⁰ However, the Inspectorate reports do not always detail the full contents of allegations or the results of complaints or outcomes of the investigations, which does not allow for a determination of whether the use of force has been unnecessary or excessive.

According to official reports, 344 distinct use of force incidents were recorded in 2009 in CYDC.⁹¹ Use of force continued to be an issue of concern in 2010, with high numbers of incidents recorded by the Inspectorate, including five referrals for misconduct, and staff using force without employing de-escalation techniques.⁹² There were four separate incidents where children suffered fractured wrists as a result of control and restraint techniques.⁹³

One concerning incident in CYDC in 2012 involved use of force where a child resisted transfer. Other children and staff were involved in the incident, and as a result 11 children and 13 staff were treated for pain or injuries.⁹⁴ In June 2012,

⁹⁰ DJAG Ethical Standards Unit Youth Detention Inspectorate ('DJAG Inspectorate'), *Cleveland Youth Detention Centre ('CYDC') Inspection Report, March Quarter 2010*, pp. 7, 12.

⁹¹ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2010*, p. 7. Note that reports are submitted by the DJAG, Ethical Standards Unit, Youth Detention Inspectorate every three months: January-March, April - June, July - September, October - December.

⁹² DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2010*, pp. 7, 12; DJAG Inspectorate, *CYDC Interim Inspection Report, March Quarter 2011*, pp. 4, 6; DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2010*, p. 21.

⁹³ DJAG Inspectorate, *CYDC Inspection Report, December Quarter 2010*, p. 19.

⁹⁴ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2012*, pp. 13-14.

there were 251 applications of use of force, but only four instances generated complaints.⁹⁵

In BYDC in 2009, there were four alleged assaults on children and other incidents involving injuries sustained by children during the use of restraints.⁹⁶ There was a large increase in use of force from 2011 to 2013 (from 159 to 277 incidents).⁹⁷ From June 2012 – March 2013, seven challenges of use of force against children were “substantiated”.⁹⁸

Amnesty International has requested further information on current investigations and outcomes on these allegations from the relevant authorities.

In accordance with international law and standards, the use of force when policing persons in custody or detention is only permitted when strictly necessary for the maintenance of security and order within the institution or when personal safety is threatened.⁹⁹ In particular, force should never be used for the purpose of punishment.¹⁰⁰ Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.¹⁰¹

SELF HARM AT CYDC

From January to December 2014, the Inspectorate reported 30 incidents of self-harming or attempted self-harm at CYDC (compared with four instances at BYDC).¹⁰² This included 20 instances of children tying ligatures around their neck.¹⁰³ This increased significantly in 2015 to 31 instances of children tying ligatures around their neck¹⁰⁴ (compared with 8 instances in BYDC).¹⁰⁵

⁹⁵ DJAG Inspectorate, *CYDC Inspection Report*, September Quarter 2012, pp. 13-14.

⁹⁶ DJAG Inspectorate, *Brisbane Youth Detention Centre ('BYDC') Inspection Report*, June Quarter 2010, p. 9.

⁹⁷ DJAG Inspectorate, *BYDC Inspection Report*, December Quarter 2013, p. 18.

⁹⁸ DJAG Inspectorate, *BYDC Inspection Report*, March Quarter 2013, p. 16.

⁹⁹ *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 8th sess, 27 August to 7 September 1990 ('UN BPUFF'), Principle 15.

¹⁰⁰ *UN Standard Minimum Rules for the Treatment of Prisoners*, Commission on Crime Prevention and Criminal Justice, 24th sess, UN Doc E/CN.15/2015/L.6/Rev.1 (21 May 2015), adopted by UN General Assembly Resolution 70/175, 17 December 2015 ('The Mandela Rules'), Rule 43.

¹⁰¹ *The Mandela Rules*, Rule 82(1); UN BPUFF, Principles 6, 22.

¹⁰² DJAG Inspectorate, *CYDC Inspection Report*, March Quarter 2015, p. 11.

¹⁰³ DJAG Inspectorate, *CYDC Inspection Report*, March Quarter 2015, p. 11.

¹⁰⁴ DJAG Inspectorate, *CYDC Inspection Report*, December Quarter 2015, p. 15.

¹⁰⁵ In eight incidents in 2014 and at least five incidents in 2015, the primary reason provided by children for their self-harm was their loss of rewards or consequences in accordance with the centre's behaviour development model.

These high rates of self-harm raise serious human rights concerns for children. The cause of these high rates is not clear from the Inspectorate's reports, and require further independent investigation. The Inspectorate recorded some of the reasons for self harm, where available, as including the centre's behavioural management model, being stressed, family issues, a joke gone wrong, and court outcomes.¹⁰⁶

The proportion of Indigenous children who are self-harming in detention has also not been analysed by the Inspectorate. On an average day in 2015, CYDC's population comprised 89% Aboriginal and Torres Strait Islander children.¹⁰⁷ This is significant because nationally, Indigenous children are disproportionately at risk of suffering from mental health issues. For example, national suicide rates of 10-19-year-old Indigenous young people is five times higher than non-Indigenous young people.¹⁰⁸ Girls are at an even higher risk of self-harm,¹⁰⁹ and in particular, the risk of self-harm to Indigenous girls in CYDC should be further investigated.

Amnesty International is also concerned at policies relating to the response to self-harm incidents that include, where a child refuses to comply, forced stripping of their clothes to put on suicide prevention clothing, which restricts any movement. On numerous occasions, the Inspectorate has made recommendations against these practices, yet the practices continued in both BYDC and CYDC.¹¹⁰ In BYDC in June 2010, a young girl was forced to strip and get into suicide prevention clothing,¹¹¹ as well as two other children in reported incidents in 2011.¹¹²

One particular incident of concern from CYDC occurred in January 2013. A 17-year-old boy was identified as being at a high suicide risk. When he refused to comply with staff directions, 14 staff responded to the situation. Several staff members used physical force to remove him from a bench and stabilise him on the floor. Handcuffs and leg cuffs were used. The child was then taken to a

¹⁰⁶ DJAG Inspectorate, *CYDC Inspection Report, December Quarter 2015*, p. 15.

¹⁰⁷ DJAG, Youth Justice Services response to Amnesty International questionnaire, 3 August 2016.

¹⁰⁸ AIHW, *The health and welfare of Australia's Aboriginal and Torres Strait Islander people* (2015), Table S5.5 (37.5 per 100,000 for Indigenous young people compared with 6.5 per 100,000 for non-Indigenous young people). See M Mitchell and M Gooda, 'Self-harm and help-seeking among Aboriginal and Torres Strait children and young people' (2015) 8(17) *Indigenous Law Bulletin*, pp. 24-29; People Culture Environment, *The Elders' Report into Preventing Indigenous Self-harm and Youth Suicide* (2014); Australian Human Rights Commission, *Children's Rights Report 2014* (2014) p. 54.

¹⁰⁹ Australian Human Rights Commission, *Children's Rights Report 2014* (2014), pp. 71, 153.

¹¹⁰ See for instance, *BYDC Inspection Report, June Quarter 2010*; *BYDC Inspection Report, December Quarter 2011*; *CYDC Inspection Report, March Quarter 2013*;

¹¹¹ DJAG Inspectorate, *BYDC Inspection Report, June Quarter 2010*, p. 11.

¹¹² DJAG Inspectorate, *BYDC Inspection Report, December Quarter 2011*, p. 29.

separation room where his clothing was cut off him using a rescue knife. The boy was left naked in the room, with a pair of tear resistant shorts, but they did not appear to fit the child. He was left naked in isolation for over one hour, before staff provided him with a gown.¹¹³



Still from CCTV footage showing a boy, identified as high risk of suicide, being restrained with hand cuffs and ankle cuffs. Source: Inspectorate's Report CYDC March Quarter 2013.

The Inspectorate noted concern that the incident was not classified as a “level-three reportable incident”, and no staff members reported the matter as an “incident of concern”. The Inspectorate reported that there was no internal review of the incident as the child did not make a complaint.¹¹⁴ An internal review was recommended by the Inspectorate. However, the CYDC Director advised that there were insufficient resources to conduct a review, and in November 2014 had not indicated to the Inspectorate that there would be a review. The Inspectorate’s recommendation was then closed.¹¹⁵

¹¹³ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2013*, pp. 11-15.

¹¹⁴ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2013*, pp. 11-15.

¹¹⁵ DJAG Inspectorate, *CYDC Inspection Report, December Quarter 2014*, p. 16.

There is not any indication in the Inspectorate reports that independent investigations were conducted or that these children were granted an effective remedy for any human rights violations they may have been subjected to.



Still of CCTV footage of a boy in an isolation cell, moments before video shows his clothes being cut off with a knife. Source: Inspectorate's Report CYDC March Quarter 2013.

Under international law and standards, the use of restraints against juveniles must be limited to “exceptional cases, where all other control methods have been exhausted and failed.”¹¹⁶ Further, children in detention who are suffering from mental illness should be treated in a specialised institution.¹¹⁷ Means of restraint should never be used as a routine measure and their use must be justified by the requirement of the concrete situation where it is necessary and proportionate to the circumstances to prevent a person from harming a law enforcement official, a third person or him/herself, or to prevent the person from escaping. The authorities must ensure that means of restraint are not used in a way that amount to torture or other cruel, inhuman or degrading treatment or punishment, and that does not cause injury.

¹¹⁶ *UN Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by UN General Assembly Resolution 45/113, UN Doc A/RES/45/113, 14 December 1990, Rule 64.

¹¹⁷ *UN Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by UN General Assembly Resolution 45/113, UN Doc A/RES/45/113, 14 December 1990, Rule 53.

The Committee against Torture in 2014 recommended Australia to bring the conditions of detention into line with international norms and standards, including the Standard Minimum Rules for the Treatment of Prisoners (also known as the 'Mandela Rules') and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), including by ensuring adequate mental health care for detainees.¹¹⁸ To date, neither the Commonwealth or Queensland Governments have made significant changes to respond to these recommendations.

USE OF DOGS

The Inspectorate's report contains several cases regarding the use of dogs to respond to situations involving children at CYDC.

In 2014, a security guard and his dog were deployed to the scene where a boy on a roof was threatening to self-harm or suicide by hanging. The Inspectorate found that the presence of the dog and guard increased the young person's anxiety.¹¹⁹ In another incident in August 2015, a guard allowed an un-muzzled dog to approach an Indigenous girl in an "aggressive manner" while she was attempting to get out of a pool.¹²⁰ A still from CCTV footage then shows the dog on its hind legs barking at the children in the pool. An Inspector witnessed another incident where a dog was used to "aggressively bark and strain its leash towards the young people for no apparent reason."¹²¹

¹¹⁸ Committee against Torture, *Concluding Observations: Australia*, UN Doc CAT/C/AUS/CO/4-5, 23 December 2014, para. 11.

¹¹⁹ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2015*, p. 15.

¹²⁰ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 12.

¹²¹ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 14.



An Indigenous girl recoils back into the pool after attempting to leave and being approached by an un-muzzled dog. Source: Inspectorate's Report CYDC September Quarter 2015.

In March 2015, the Inspectorate recommended that the Department give consideration to ceasing this practice,¹²² and these practices ended on 16 September 2015.¹²³ While Amnesty International welcomes this important decision, the organisation is particularly concerned that the dogs continued to be used for seven months after it was recommended that the practice cease.

Amnesty International has documented the use of dogs to instil fear into prisoners as a torture method used around the world.¹²⁴ This practice at CYDC may amount to torture and other ill-treatment, and is of special concern when used in cases involving children.

¹²² DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, pp. 12-13.

¹²³ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 15.

¹²⁴ Amnesty International, *Torture in 2014: 30 Years of Broken Promises* (2014), p. 25.



An un-muzzled dog stands on its hind legs and appears to bark at children in the pool. Source: Inspectorate's Report CYDC September Quarter 2015.

SOLITARY CONFINEMENT

Amnesty International is concerned about practices relating to the separation of children in isolation and the use of solitary confinement.¹²⁵ Particularly in BYDC, there were continual concerns about a lack of clear rules around the admission of children into the separation unit, limited visits by caseworkers and psychologists, and insufficient details about why children were held there.¹²⁶

Similarly, concerns have been raised at CYDC, including that reasons given for separation were broad and strayed from statutory requirements.¹²⁷ A disturbing incident in March 2012 involved eight Aboriginal children who were held for “near-continuous cell confinement” (approximately 22 hours per day) in solitary confinement for 10 days.¹²⁸ For the first two days, they were not allowed to leave their rooms at all. These incidents were not authorised as they were not recorded as separation incidents.¹²⁹

A Children’s Commission report in 2014 raised concern about the use of solitary confinement in CYDC and made 24 recommendations including to establish an

¹²⁵ *The Mandela Rules*, Rule 44.

¹²⁶ DJAG Inspectorate, *BYDC Inspection Report, March Quarter 2010*, p. 16; DJAG Inspectorate, *BYDC Inspection Report, September Quarter 2011*, pp. 8-38; DJAG Inspectorate, *BYDC Inspection Report, June Quarter 2011*, p. 15.

¹²⁷ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2013*, p. 18.

¹²⁸ DJAG Inspectorate, *CYDC Inspection Report, June Quarter 2012*, p. 3.

¹²⁹ DJAG Inspectorate, *CYDC Inspection Report, June Quarter 2012*, pp. 6-9.

HEADS HELD HIGH

KEEPING QUEENSLAND KIDS OUT OF DETENTION, STRONG IN CULTURE AND COMMUNITY

AMNESTY INTERNATIONAL AUSTRALIA

independent Youth Detention Inspector, conduct proactive monitoring to ensure compliance with legislation, improve their record keeping practice, develop better training around use of locked door separations, and that the Department contact the children and their parents or guardian in a culturally appropriate way, to express regret and inform them that they could seek advice on legal remedies available to them.¹³⁰

Nevertheless, concerns were reported as recently as June 2015 in CYDC about the lack of proper documentation and recording of children being placed in solitary confinement.¹³¹

Solitary confinement must not be imposed on children, and must be strictly prohibited in domestic law as set out in the Mandela Rules and the UN Rules for the Protection of Juveniles Deprived of their Liberty.¹³²

USE OF RESTRAINTS: HANDCUFFS

The use of mechanical restraints to control children in detention have also been reported, particularly at CYDC.¹³³ Amnesty International is concerned about incidents of handcuffing children for family visits and during physical recreation that appear to have been used contrary to international law and standards.

In December 2014, one young person was made to wear handcuffs during a visit from his infant son. He complained to the community visitor that he “had tried to hold his son at the last visit and found this awkward wearing handcuffs”.¹³⁴ In March 2015, one child was handcuffed while playing basketball, which resulted in the child falling over.¹³⁵ Leg-cuffs were applied to another child for participation in ball games. The Inspectorate found that this “suggests that the use of mechanical restraints at CYDC on young people during physical exercise is not a recent or one-off practice.”¹³⁶

¹³⁰ Queensland Commission for Children and Young People and Child Guardian, *Child Guardian Summary Investigation Report: The use of separation at a Youth Detention Centre* (2014) pp. 28-32, available at http://pandora.nla.gov.au/pan/14014/20140117-1126/www.ccyprg.qld.gov.au/pdf/publications/reports/YDC_summary_report.pdf.

¹³¹ DJAG Inspectorate, *CYDC Inspection Report, June Quarter 2015*, p. 18.

¹³² *The Mandela Rules*, Rule 45(2); *UN Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by UN General Assembly Resolution 45/113, UN Doc A/RES/45/113, 14 December 1990, Rule 67.

¹³³ The approved mechanical restraints include: handcuffs, nylon body belt for self-harm incidents, lockable zip ties (when handcuffs are unavailable) and ankle cuffs (in extreme high risk or emergency situations), see DJAG Inspectorate, *CYDC Inspection Report, June Quarter 2015*, p. 13.

¹³⁴ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2015*, pp. 21-22.

¹³⁵ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2015*, p. 23.

¹³⁶ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2015*, p. 23.

HEADS HELD HIGH

KEEPING QUEENSLAND KIDS OUT OF DETENTION, STRONG IN CULTURE AND COMMUNITY

AMNESTY INTERNATIONAL AUSTRALIA

Concerns about the use of mechanical restraints was raised in the Forde Inquiry,¹³⁷ and the Queensland Ombudsman has indicated ongoing concerns.¹³⁸ The UN Committee on the Rights of the Child has stated that restraints may only be used on children “when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted.”¹³⁹

Permitted instruments and methods of restraint may only be used when necessary and proportionate to the specific circumstance, and when authorised by law. They must not be applied for longer than strictly necessary and must never be used as punishment.¹⁴⁰ Unjustified use or misuse of restraints on children may amount to torture and other ill-treatment in contravention to the Convention against Torture and the CRC.

The Inspectorate described the use of handcuffs in family visit incident as “excessive” and that it was not possible to present a “convincing justification”.¹⁴¹ The Inspectorate recommended that handcuffs never be applied to children during physical recreation activities and reported that a policy was adopted in April 2015 to prohibit this specific practice.¹⁴²

Regardless of whether new policies have been implemented, if after investigation restraints are determined to have been used in contradiction with international standards, children who were subjected to restraints in violation of their human rights are entitled to an effective remedy and adequate reparations, in accordance to Australia’s obligations under international law.

INVASIVE SEARCH PRACTICES

The Inspectorate noted practices of invasive searches occurring in CYDC. In September 2015, a young girl raised concerns that, during partially unclothed searches upon returning from court, girls are required to squat.¹⁴³ At the time the Youth Detention Centre Operations Manual authorised that, during partially

¹³⁷ Commission of Inquiry, *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions* (1999), available at <http://fordefoundation.org.au/u/lib/cms/forde-inquiry-report.pdf>.

¹³⁸ Letter from the Queensland Ombudsman to Amnesty International Australia, 15 June 2016.

¹³⁹ Committee on the Rights of the Child, *General Comment No 10: Children’s Rights in Juvenile Justice*, UN Doc CRC/C/GC/10, 25 April 2007, para. 89.

¹⁴⁰ *The Mandela Rules*, Rules 47-48.

¹⁴¹ DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2015*, p. 21.

¹⁴² DJAG Inspectorate, *CYDC Inspection Report, March Quarter 2015*, p. 30.

¹⁴³ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 19.

clothed searches, children can be asked to squat, girls asked to lift their breasts where necessary, and boys required to lift their genitals prior to squatting.¹⁴⁴

The Queensland Ombudsman investigated these practices in 2014¹⁴⁵ and reported that given the high rates of sexual abuse among female prisoners, “strip searches have the capacity to negatively impact (including re-traumatise) female prisoners more significantly than other parts of the population and may jeopardise attempts at rehabilitation.”¹⁴⁶

These same practices of squatting and lifting are prohibited in the adult prisons.¹⁴⁷ The Inspectorate recommended that searches of children in detention involving the removal of clothes be made consistent with those for adult prisoners in correctional centres and recorded that this was ‘completed’ by DJAG on 4 December 2015.¹⁴⁸

However, policies must be brought in line with Australia’s obligations under CRC. Body searches of people in detention must be necessary, reasonable and proportionate, and must be regulated by national law. Law enforcement officials are required to carry out such searches in a manner consistent with the dignity of the person being searched by trained staff of the same gender.¹⁴⁹ Strip searches and invasive body searches carried out in a humiliating manner may constitute torture or other ill-treatment.

The Mandela Rules provide that intrusive searches, including strip and body cavity searches, should be undertaken only if “absolutely necessary”.¹⁵⁰ Further, the Australian Law Reform Commission has previously raised concerns about these practices and recommended that searches only be conducted pursuant to a court order.¹⁵¹

¹⁴⁴ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 19.

¹⁴⁵ Queensland Ombudsman, *The Strip Searching of Female Prisoners at the Townsville Correctional Facility* (2014), as cited in DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 19.

¹⁴⁶ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 20.

¹⁴⁷ Note that Sister’s Inside has noted concern to Amnesty International that this practice continues in adult prisons.

Email from Debbie Kilroy, Sisters Inside, to Amnesty International Australia, 23 August 2016.

¹⁴⁸ DJAG Inspectorate, *CYDC Inspection Report, September Quarter 2015*, p. 20.

¹⁴⁹ UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* (the Bangkok Rules), UN Doc E/RES/2010/16 (22 July 2010), Rules 19-25. See also UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988.

¹⁵⁰ *The Mandela Rules*, Rule 52(1).

¹⁵¹ Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (1997), paras. 18.130-18.136, recs 220, 221.

Amnesty International is concerned about the persistent use of invasive search practices of children in detention, which on several occasions has been documented in ways that are contrary to the dignity of the children.

IMMEDIATE ACTION REQUIRED

Australia must ensure that conditions in detention are in line with its obligations under international law, including the absolute prohibition of torture and other ill-treatment. It is particularly concerning that high numbers of children on remand have been exposed to such conditions that have breached human rights provisions and that the authorities have not taken adequate measures to provide justice and reparations, including guarantees of non-recurrence, for such acts.

Amnesty International has written a letter to the Queensland Attorney General detailing our human rights concerns with the incidents previously described, and requested further information to clarify, among other factors:¹⁵²

- the actions the government has taken to address the high rates of self-harm in youth detention centres, and the policies and procedures for reporting of self-harm incidents and care for children at risk of self-harm.
- whether these incidents have been independently investigated with regard to potential human rights violations, and whether staff suspected of human rights abuses have been suspended pending an independent investigation.
- the outcomes of those investigations, including whether children who have experienced human rights violations have been provided an effective remedy.

It is imperative that potential human rights abuses are independently investigated, that those staff members suspected of having perpetrated abuses are immediately suspended during investigation and if found responsible, appropriately disciplined or otherwise sanctioned.¹⁵³ Further, international law requires that children who have had their rights abused must have access to an effective remedy.¹⁵⁴

¹⁵² Letter from Amnesty International Australia to Qld Attorney General Yvette D'Ath, 11 August 2016.

¹⁵³ UN BPUFF, Principles 22-26; OPCAT, Art. 17. See also Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (2015), pp. 63-84.

¹⁵⁴ *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly Resolution 40/34, UN Doc A/RES/40/34, 96th plen mtg, 29 November 1985, para. 18; CRC, Art. 39; Committee on the

However, the Ethical Standards Unit is not independent of government, and therefore does not meet international requirements.¹⁵⁵ In comparison, the Western Australian Office of the Inspector of Custodial Services, has independent and impartial oversight of detention centres and prisons, meeting international requirements.¹⁵⁶

At the time of writing of this report, Amnesty International has not received a formal response from the Queensland authorities. However, Amnesty International welcomes the Attorney General's announcement of an independent review into Queensland youth detention centres.¹⁵⁷ Amnesty International recommends that the terms of reference of the review must be set in consultation with Indigenous communities, leaders and representative organisations as well as the youth justice sector, and recommends that at least one of the co-chairs of the review is an Aboriginal and Torres Strait Islander person.

Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007), para. 6.

¹⁵⁵ The Ethical Standards Unit forms part of the DJAG. See <http://www.justice.qld.gov.au/corporate/about-us/business-areas/office-of-director-general>.

¹⁵⁶ In Western Australia, the Office of the Inspector of Custodial Services is an independent statutory body that monitors and reports on the conditions of youth detention facilities and prisons. Reports and publications of the Inspector available at <http://www.oics.wa.gov.au/reports-publications/>.

¹⁵⁷ Attorney-General and Minister for Justice and Minister for Training and Skills, Media Release, 'Attorney-General orders independent review of Queensland Youth Detention Centres', 19 August 2016, available at <http://statements.qld.gov.au/Statement/2016/8/19/attorneygeneral-orders-independent-review-of-queensland-youth-detention-centres>.

6. INDIGENOUS CHILDREN ON REMAND

A child is 'remanded' in custody when they are denied bail prior to and during their court proceedings or, if tried and convicted, prior to sentencing:

*When police arrest and charge a suspect with one or more criminal offences, the suspect can either be granted bail or remanded in custody... a person remanded in custody may be waiting for an initial court hearing, a subsequent court hearing (including a sentencing hearing), or the outcome of an appeal.*¹⁵⁸

During 2014-2015, on an average day, 83% (142 of 172) of children held in Queensland youth detention were on remand.¹⁵⁹ Over half (61%) of these children on remand were Aboriginal and Torres Strait Islander children.¹⁶⁰ This was far higher than the national picture, where the daily average of children on remand was 60%, of which 57% were Indigenous.¹⁶¹ In Queensland during 2014-2015, 17% (25 of 145) of children on remand were girls.¹⁶²

According to the Children's Court Annual Report for 2014-2015: "In 36% of all detention orders made, the offender had served the full period at the date of sentence with no period of supervised release in the community".¹⁶³ This means that some children will have served their entire sentence on remand.

This situation is a serious human rights concern.¹⁶⁴ Under the CRC, courts and authorities must uphold the principle that detention is a last resort, and for the

¹⁵⁸ K Richards and L Renshaw, Australian Institute of Criminology No 125, *Bail and Remand for Young People in Australia: A national research project* (2013), p. 5.

¹⁵⁹ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S110a. Note that Amnesty International uses the term 'remand' as synonymous with AIHW's definition of 'unsentenced detention', which includes young people in police-referred detention and on court-referred remand.

¹⁶⁰ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S110a. In Qld, 89 children of 144 children on remand were Indigenous.

¹⁶¹ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S110a. Includes non-standard data from WA and NT. Nationally, 259 children of 456 children on remand were Indigenous.

¹⁶² AIHW, *Amnesty International Data Request 2016*, Table 2c. Note that this data is not disaggregated to Indigenous and non-Indigenous girls.

¹⁶³ Childrens Court of Queensland, *Annual Report 2014-2015* (2015), p. 5.

¹⁶⁴ Convention on the Rights of the Child, Arts. 5, 37(b), 37(d); ICCPR, art 9(3); *UN Guidelines for the Prevention of Juvenile Delinquency*, adopted by General Assembly resolution 45/112, 14 December 1990, UN Doc A/RES/45/112 ('The Riyadh Guidelines'), Art. 17.

shortest appropriate period of time, and release children from pre-trial detention “as soon as possible”.¹⁶⁵ The Human Rights Committee has said that “pre-trial detention of juveniles should be avoided to the fullest extent possible.”¹⁶⁶ This is also reflected in the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), which provide a framework for preventative juvenile justice policies such as early intervention programs to support vulnerable families.¹⁶⁷

Amnesty International research has found that the following reasons contribute to the high rates of remand in Queensland.

ACCESS TO A LAWYER AND OTHER SUPPORT

When a child is apprehended by a police officer, they are taken to a police station or a watchhouse for questioning and processing. Holding cells at police stations are designed to hold people in custody for a short time, while watchhouses are primarily designed to hold people overnight or for 24 hours or longer.¹⁶⁸ A decision is then made about whether to charge, caution or divert the child into youth conferencing and whether pre-court bail will be granted.¹⁶⁹

During Queensland 2014-2015, 42% of children on remand were in pre-court detention (370 of 882),¹⁷⁰ which is a result of police refusal of bail. In Queensland, three out of five children in pre-court detention on an average day, and 52% of children over the year, were Indigenous – higher than the national average.¹⁷¹

Having a lawyer present during questioning can assist to control what is asked, advise children of their rights and prevent involuntary admissions.¹⁷² This is why it is a critical time for a child to have access to legal advice.

Under Queensland law, police must notify ATSILS before interviewing an Aboriginal and Torres Strait Islander person, and allow them to speak to and have

¹⁶⁵ Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007).

¹⁶⁶ Human Rights Committee, *General Comment 35: Article 9 (Liberty and security of person)*, UN Doc CCPR/C/GC/35 (16 December 2014) para. 38.

¹⁶⁷ *The Riyadh Guidelines*, Art. 17.

¹⁶⁸ Queensland Police Service, *Operation Procedures Manual*, Chapter 16 Custody, p. 5,

<https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter16.pdf>.

¹⁶⁹ *Youth Justice Act 1992* (Qld) ss 48, 49; *Police Powers and Responsibilities Act 2000* (Qld) ss 380, 421.

¹⁷⁰ AIHW, *Youth Justice in Australia 2014-2015* (2016), Table S110b.

¹⁷¹ AIHW, *Youth Justice in Australia 2014-2015* (2016), Tables S110a, S110b. 192 Indigenous children of 370 total children were in police-referred pre-court detention over the year.

¹⁷² Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with ATSILS Lawyers, Beenleigh, 30 June 2016; Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; see also *R v Gam* (2011) QCA 288, 12-13.

a support person present during questioning.¹⁷³ Before interviewing any child, police must similarly allow them to speak to a support person and have them present during the interview.¹⁷⁴ A support person is defined in the legislation as a parent or guardian of the child, a lawyer for the child, a person acting for the child whose primary purpose is to provide legal services, a person whose name is included in the list of support persons or a justice of peace (other than a justice of peace employed by the police).¹⁷⁵

Further, there is a memorandum of understanding between ATSILS and the QPS about when ATSILS should be notified.¹⁷⁶ However, these protections are only applicable to *indictable* offences.¹⁷⁷ ‘Indictable’ offences are relatively serious crimes or misdemeanours that are dealt with by the higher courts (e.g. burglary, stealing or assault), whereas ‘summary’ or ‘simple’ offences refer to less serious offences that may be dealt with by a Magistrates court (e.g. theft, property damage, public nuisance).¹⁷⁸ This is an important distinction, as many children are questioned, fined, arrested and detained for summary offences, such as public nuisance, theft or trespass.¹⁷⁹

Despite these agreements and protections, in practice, ATSILS lawyers in Mount Isa, Townsville, Palm Island and Logan have informed Amnesty International that they are not often notified that an Aboriginal and Torres Strait Islander child is in the watchhouse or being questioned.¹⁸⁰ An ATSILS lawyers in Townsville told Amnesty: “As a general rule, we might get notified 5% of the time... the police in Townsville don't generally contact us even though they're legislatively required to

¹⁷³ *Police Powers and Responsibilities Act 2000* (Qld) s 420.

¹⁷⁴ *Police Powers and Responsibilities Act 2000* (Qld) s 421.

¹⁷⁵ *Police Powers and Responsibilities Act 2000* (Qld) sch 6.

¹⁷⁶ Memorandum of Understanding between Queensland Police Service and ATSILS, February 2015 (copy provided by ATSILS to Amnesty International). This refers to notification obligations under *Operation Procedures Manual*, ss 6.3.6, 16.8.7, 16.21.10; *Police Powers and Responsibility Regulation 2012* (Qld) including pt 5, div 1, s 25, pt 5, div 2, s 33 of the *Police Responsibilities Code 2012*.

¹⁷⁷ *Police Powers and Responsibilities Act 2000* (Qld) s 414.

¹⁷⁸ *Criminal Code Act 1899* (Qld), ch 1 s 3.

¹⁷⁹ ABS, *Prisoner Characteristics, 2015* (2015), cat no 4517.0, Table 20.

¹⁸⁰ Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; Amnesty International interview with Young People Ahead Alvin Hava, Mount Isa, 2 November 2015; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016; Amnesty International interview with ATSILS Lawyers, Beenleigh, 30 June 2016; Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; Amnesty International interview with Townsville Police Detective Senior Constable Dan Stehr, Townsville, 24 June 2016; Amnesty International interview with Townsville Police Sergeant Shane Turner, Townsville, 24 June 2016; Amnesty International interview with Mount Isa Police Officer, Mount Isa, 4 December 2015; Amnesty International interview with ATSILS Lawyers, Mount Isa, 4 November 2015.

do so.”¹⁸¹ Similarly in Beenleigh, an ATSILS lawyer said that, for summary offences, they weren’t notified, but had to “look at the watchhouse list in the morning.”¹⁸²

Interviews with police officers indicated that, in some jurisdictions, ATSILS will not be notified when a child is brought in for questioning.¹⁸³ For example, when asked who was to be notified, Senior Constable Stehr from Townsville said, “There's an obligation once a child is lodged at the watchhouse that the Department of Child Safety must be informed... [for an interview at the station] we'd always notify the parents, but no official bodies or government departments.”¹⁸⁴

Further, the National Association of Community Legal Centres, Community Legal Centres Queensland and the Youth Advocacy Centre (YAC) emphasised the importance of legal services being culturally appropriate.¹⁸⁵ The Committee on CRC has recommended that children are guaranteed culturally sensitive legal assistance.¹⁸⁶ Similarly, RCIADIC recommended that ATSILS should be adequately funded for advice to Indigenous children.¹⁸⁷

ATSILS and Queensland Indigenous Family Violence Prevention Legal Services (QIVPLS) provide specialised, culturally-tailored services for Indigenous people.¹⁸⁸ Culturally appropriate legal services provide a culturally safe service for Indigenous people, employ Aboriginal and Torres Strait Islander staff and understand cultural sensitivities.¹⁸⁹

BAIL REFUSAL: TAKEN AWAY FROM FAMILIES INTO RESIDENTIALS AND DETENTION

In accordance with the right to liberty and the presumption of innocence, people charged with a criminal offence should not, as a general rule, be held in custody pending trial.¹⁹⁰ To justify detention pending trial, the State must establish the necessity and proportionality of the measure, assessing if the release would create a substantial risk of flight, harm to others or interference with the evidence or investigation that cannot be allayed by other means.

¹⁸¹ Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016.

¹⁸² Amnesty International interview with ATSILS Lawyers, Beenleigh, 30 June 2016.

¹⁸³ Amnesty International interview with Police Officer, Mount Isa, 4 December 2015.

¹⁸⁴ Amnesty International interview with Townsville Police Detective Senior Constable Dan Stehr, Townsville, 24 June 2016.

¹⁸⁵ Amnesty International interview with QAILS and NACLCL James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015.

¹⁸⁶ Convention on the Rights of the Child, Art. 12.

¹⁸⁷ E Johnson, *Royal Commission into Aboriginal Deaths in Custody: National Report* (1991), vol 5, rec 234.

¹⁸⁸ Written response by Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd to Amnesty International questionnaire (26 June 2016); Amnesty International interview with QAILS and NACLCL James Farrell and Amanda Alford, Brisbane, 16 November 2015.

¹⁸⁹ Amnesty International interview with ATSILS, Townsville, 23 June 2016.

¹⁹⁰ Convention on the Rights of the Child, Art. 37(b); ICCPR, Art. 9(3).

When granting bail, the court must take into account a number of considerations, namely the likelihood of re-offending on bail and failing to appear, and interference with the investigation or the course of justice.¹⁹¹ Amnesty International's research has revealed a number of reasons why bail may be refused for Aboriginal and Torres Strait Islander children at the court stage:

- **No bail application and risk of reoffending:** DJAG indicated that a recent state-wide analysis shows that for the period April-June 2015, the main reason that children were remanded in custody was because 46% of the time no bail application was made and 32% of the time bail was denied on the basis of risk of reoffending.¹⁹² DJAG did not further explain these outcomes.
- **Parent not at court:** While not strictly a requirement of bail, interviews with lawyers, magistrates and police revealed that courts are reluctant to grant bail in the absence of a parent attending court.¹⁹³
- **Breach of bail:** Curfew is a common bail condition, requiring children to be at home during certain hours.¹⁹⁴ Police monitor curfew compliance with "door knock" checks made once or twice a night, but police told Amnesty International that a special taskforce was performing door knock checks up to six times a night in Townsville approximately 18 months ago.¹⁹⁵ A Townsville Police Officer, Sergeant Shane Turner explained: "You want these people to be part of a functioning society but you keep them up all night by checking that they are at home, that doesn't make sense to me... they'll be sleeping all day anyway, so they'll be up all night, and there's more chance they'll go out and offend".¹⁹⁶ Breach of bail will

¹⁹¹ *Bail Act 1980* (Qld); *Youth Justice Act 1992* (Qld) s 48.

¹⁹² DJAG, Youth Justice Services response to Amnesty International questionnaire, 3 August 2016. p. 5.

¹⁹³ Amnesty International interview with ATSILS officer, Townsville, 23 June 2016; Amnesty International interview with ATSILS lawyer, Townsville, 23 June 2016; Amnesty International interview with ATSILS Lawyers, Beenleigh, 30 June 2016; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with Townsville Police Detective Senior Constable Dan Stehr, Townsville, 24 June 2016; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016.

¹⁹⁴ Amnesty International interview with Debbie Kilroy, Sisters Inside, Brisbane, 17 November 2015; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with Acting Officer in Charge Glenn Laurence, Palm Island, 1 March 2016; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016; Amnesty International interview with Police Officer, Mount Isa, 4 December 2015; Amnesty International interview with Young People Ahead Alvin Hava, Mount Isa, 2 November 2015; Amnesty International interview with Youth Advocacy Centre, YBASS Coordinator Erin Mackie, Brisbane, 26 October 2015; Amnesty International interview with Senior Police Liaison Officer, Mount Isa, 3 December 2015.

¹⁹⁵ Amnesty International interview with Police Sgt Shane Turner, Townsville, 24 June 2016; Amnesty International interview with ATSILS Lawyers, Beenleigh, 30 June 2016; Amnesty International interview with ATSILS Lawyers, Mount Isa, 29 June 2016; Amnesty International interview with Townsville Police Detective Senior Constable Dan Stehr, Townsville, 24 June 2016; Amnesty International interview with Police Officer, Mount Isa, 4 December 2015; Amnesty International interview with ATSILS officer, Palm Island, 1 March 2016.

¹⁹⁶ Amnesty International interview with Townsville Police Sergeant Shane Turner, Townsville, 24 June 2016.

usually result in a child coming back before the courts after police issue a Notice of Exercise.¹⁹⁷ Depending on the circumstances of the case, further bail may be refused as a result.¹⁹⁸

- **Lack of suitable bail address:** Interviews with police, peak bodies, ATSILS, service providers and magistrates indicated that an address may not be suitable due to overcrowding in the home,¹⁹⁹ other people who have offended living at the same address,²⁰⁰ safety,²⁰¹ parental supervision and the home environment.²⁰² Amnesty International has been told by police and magistrates of instances where Aboriginal and Torres Strait Islander children have been put in detention “for their own welfare”.²⁰³

There are a number of bail support services, which can assist children, families and the court to address these issues.²⁰⁴ For example, an evaluation of Youth Advocacy Centre’s Youth Bail Accommodation Support Service shows that bail

¹⁹⁷ Amnesty International interview with Magistrate Peter Smid, Townsville, 23 June 2016; Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; Amnesty International interview with Magistrate Pamela Dowse, Logan, 30 June 2016; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016.

¹⁹⁸ Amnesty International interview with Townsville Police Detective Senior Constable Dan Stehr, Townsville, 24 June 2016; Amnesty International interview with Acting Officer in Charge Glenn Laurence, Palm Island, 1 March 2016; Amnesty International interview with Police Sergeant, Mount Isa, 3 November 2015; Amnesty International interview with Police Officer, Mount Isa, 4 December 2015; Amnesty International interview with Magistrate Peter Smid, Townsville, 23 June 2016; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015.

¹⁹⁹ Amnesty International interview with Young People Ahead, General Manager Alvin Hava, Mount Isa, 2 November 2015; Amnesty International interview with QAILS and NACLIC James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with Magistrate Peter Smid, Townsville, 23 June 2016; Amnesty International interview with ATSILS Lawyer, Palm Island, 1 March 2016.

²⁰⁰ Amnesty International interview with Youth Advocacy Centre, YBASS Coordinator Erin Mackie, Brisbane, 26 October 2015; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016; Amnesty International interview with Magistrate Peter Smid, Townsville, 23 June 2016.

²⁰¹ Amnesty International interview with Police Sergeant, Mount Isa, 3 November 2015; Amnesty International interview with ATSILS Lawyers, Mount Isa, 29 June 2016; Amnesty International interview with Magistrate Pamela Dowse, Logan, 30 June 2016.

²⁰² Amnesty International interview with Police Palm Island Acting Officer in Charge Glenn Laurence, Palm Island, 1 March 2016; Amnesty International interview with Senior Sergeant, Mount Isa Police, Mount Isa, 3 November 2015; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016; Amnesty International Questionnaire, Written response by Aboriginal and Torres Strait Islander Legal Service (Qld), Brisbane, 26 June 2016; Amnesty International interview with Townsville Police Detective Senior Constable Dan Stehr, Townsville, 24 June 2016; Amnesty International interview with Magistrate Pamela Dowse, Logan, 30 June 2016; Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; Amnesty International interview with Bahloo Womens Youth Shelter staff, Brisbane, 27 October 2015; Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015.

²⁰³ Amnesty International interview with Police Sergeant, Mount Isa, 3 November 2015; Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015.

²⁰⁴ Amnesty International interview with Young People Ahead Alvin Hava, Mount Isa, 2 November 2015; Amnesty International interview with Youth Advocacy Centre, YBASS Coordinator Erin Mackie, Brisbane, 26 October 2015; Amnesty International interview with QAILS and NACLIC James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with Police Mount Isa Sergeant Catherine Purcell, Mount Isa, 2 December 2015; Amnesty International interview with Daphne Tapim, TAIHS, Townsville, 22 February 2016; Amnesty International interview with Ken Georgetown, Murri Watch, Brisbane, 28 October 2015; Amnesty International interview with Queensland Youth Services Inc CEO Wendy Lang and Richard Outtrim, Townsville, 26 February 2016; Amnesty International interview with Bahloo Womens Youth Shelter, Brisbane, 27 October 2015.

support services can be successful in reducing the number of young people in detention on remand.²⁰⁵ However, it is important that these bail support services be run in partnership with Aboriginal and Torres Strait Islander people and by Indigenous staff, and where possible be provided by Indigenous-run organisations.²⁰⁶

SUPERVISED BAIL ACCOMMODATION

Research findings indicate that there is not sufficient bail accommodation to meet demand.²⁰⁷ Where a child's home address is deemed unacceptable or they are on a child safety order, children may be bailed to residential accommodation. The Carmody Inquiry, established in 2012 to investigate child protection systems and led by the Honourable Tim Carmody QC, noted that there were 105 of these facilities in Queensland, which are owned or leased by a non-government organisation, and are typically staffed 24 hours a day by carers, for no more than six children per house. Child Safety Services are responsible for their individual case management, but outsources the day to day care to these residential workers.²⁰⁸

As of 30 June 2015, there were 663 children in residential care in Queensland, and 46% (308) were Aboriginal and Torres Strait Islander.²⁰⁹ In interviews with Amnesty International children, magistrates, police, lawyers, Indigenous and non-Indigenous organisations, communities and Elders, all raised concerns about the existing residential facilities.²¹⁰ This includes concerns about the quality of

²⁰⁵ Jenny Gilmore, *Youth Bail Accommodation Support Service: Service Evaluation* (2004), 37. Provided by Youth Advocacy Centre to Amnesty International by email dated 26 October 2015.

²⁰⁶ For example, Murri Watch previously ran these services in Townsville, but lost funding.

²⁰⁷ Amnesty International interview with Youth Advocacy Centre YBASS Coordinator Erin Mackie, Brisbane, 26 October 2015.

²⁰⁸ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection* (2013), p. 263.

²⁰⁹ Queensland Department of Communities, Child Safety and Disability Services, 'Table LA.2: Children living away from home, by primary placement and Indigenous status, Queensland' (2016), available at <https://www.communities.qld.gov.au/resources/childsafety/about-us/performance/child-protection/living-away-home-2.xls>.

²¹⁰ Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with Police Sergeant, Mount Isa, 3 November 2015; Amnesty International interview with Youth Advocacy Centre YBASS Coordinator Erin Mackie, Brisbane, 26 October 2015; Amnesty International interview with QAILS and NACLIC James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with Bahloo Womens Youth Shelter, Brisbane, 27 October 2015; Amnesty International interview with Randal Ross, Townsville, 25 February 2016; Amnesty International interview with Aboriginal & Torres Strait Island Womens Legal Services in North Queensland staff, Townsville, 25 February 2016; Amnesty International interview with Townsville Aboriginal and Islanders Health Service Joanne Stout, Townsville, 25 February 2016; Amnesty International interview with Queensland Youth Services Inc CEO Wendy Lang and Richard Outtrim, Townsville, 26 February 2016; Amnesty International interview with (Name withheld), Logan, 13 May 2016; Amnesty International interview with Indigenous community, Mount Isa, 2 December 2015; Amnesty International interview with Daphne Tapim, TAIHS, Townsville, 22 February 2016; Amnesty International interview with ATSIILS Lawyers Palm Island, Palm Island, 2 March 2016; Amnesty International interview with Police Sergeant, Mount Isa, 3 November 2015.

supervision and cultural competency of the youth workers supervising the children,²¹¹ and practices including alerting police of breaches of bail rather than assisting the child to comply.²¹²

Another concern raised repeatedly by Aboriginal and Torres Strait Islander children and parents, community members, lawyers and magistrates is that children were being charged with criminal offences by residential care staff.²¹³ According to interviews held by Amnesty International, the most common charges are assault, wilful damage to property, and breaching bail.²¹⁴ This issue was highlighted by the Carmody Inquiry: “It is damning that, as at 30 June 2012, 27.6% of children in licensed care services had been charged with placement-related offending.”²¹⁵ The result is further entrenchment of these children in the justice system.²¹⁶ Lawyer Debbie Kilroy of Sisters Inside described the situation of an 11-year-old Aboriginal child: “She’s got seven pages of criminal history from incidents inside the resie care place... she’s said I’m not going back there because I don’t want to be criminalised and go to prison.”²¹⁷

²¹¹ Amnesty International interview with Randal Ross, Townsville, 25 February 2016; Amnesty International interview with Townsville Aboriginal and Islanders Health Service Joanne Stout, Townsville, 25 February 2016; Amnesty International interview with Queensland Youth Services Inc CEO Wendy Lang and Richard Outtrim, Townsville, 26 February 2016; Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with Bahloo Womens Youth Shelter staff, Brisbane, 27 October 2015.

²¹² Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with Police Sergeant, Mount Isa, 3 November 2015; Amnesty International interview with Mona Corporation and Elders Angela Sammon, Yvonne Andrew, Leanne Shaw, Stephanie King, Aunty Joan Marshall and Patrick Cooke, Mount Isa, 5 November 2015.

²¹³ Amnesty International interview with Gladys Willis, Majandi (Yidinji nation), Lama Lama and Bwgcolman woman, and Kerry Hahne, Koori woman from Victoria, Townsville, 27 February 2016; Amnesty International interview with ATSILS, Townsville, 23 June 2016; Amnesty International interview with (Name withheld), Logan, 13 May 2016; Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016; Amnesty International interview with Debbie Kilroy, Sisters Inside, Brisbane, 17 November 2015, 82; Amnesty International interview with Queensland Youth Services Inc CEO Wendy Lang and Richard Outtrim, Townsville, 26 February 2016.

²¹⁴ Amnesty International interview with Gladys and Kerry Majandi and Trisha, Townsville, 27 February 2016; Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; Amnesty International interview with (Name withheld), Logan, 13 May 2016; Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016; Amnesty International interview with Debbie Kilroy, Sisters Inside, Brisbane, 17 November 2015; Amnesty International interview with Aboriginal young person, Townsville, February 2016 (details withheld); Amnesty International interview with Queensland Youth Services Inc CEO Wendy Lang and Richard Outtrim, Townsville, 26 February 2016.

²¹⁵ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection* (2013) p. 265.

²¹⁶ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection* (2013) p. 265. See Legal Aid Queensland, Submission to Queensland Child Protection Commission of Inquiry, 26 October 2012.

²¹⁷ Amnesty International interview with Debbie Kilroy, Sisters Inside, Brisbane, 17 November 2015.

Adam,²¹⁸ an 18-year-old Aboriginal young person, was previously under child safety orders due to family circumstances. He was first sent to residential care when he was 14 years old after being denied bail. Since then, Adam has been in and out of residential care and youth detention for four years. He recently moved out once he turned 18.

Adam said that children in residential care are being charged frequently by the youth workers. “The boys are sick of it,” he said. “The police asked us if there is anything that they can do to provide support to help with less charges from the workers.” Adam said that charges of assault and wilful damage are the most common.

Adam said that the youth workers at residential care were “real lazy” and that they just don’t care. He said that there were issues with the quality of meals provided, and that some youth workers in the residential care would swear at him, threaten him, lock him in the house and call him names.

This raises potential human rights violations under the CRC.²¹⁹ Article 3 of the CRC states that “institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”.²²⁰

When taken from their families and placed under bail supervision, Aboriginal and Torres Strait Islander children should have access to safe, culturally appropriate and Indigenous-run accommodation options.

PROCEDURAL DELAYS

The number of days to finalise a court matter in children’s proceedings is extensive. In 2014-2015, it took an average of 50 days to finalise children’s proceedings in the Magistrates Court, and 324 days to finalise proceedings in the Childrens Court.²²¹ This length of time has doubled since 2010-2011 for the Magistrates Court, and has increased by 13% in the Childrens Court in the same period.²²²

Children facing criminal proceedings are entitled to be brought to trial as speedily as possible, and decisions in juvenile proceedings should be taken without

²¹⁸ Name has been changed. Amnesty International interview with Aboriginal young man, Townsville, February 2016 (details withheld).

²¹⁹ Convention on the Rights of the Child, Arts. 5, 37(b), 37(d); ICCPR, Art. 9(3); *The Riyadh Guidelines*, para. 17.

²²⁰ Convention on the Rights of the Child, Art. 3.

²²¹ Childrens Court of Queensland, *Annual Report 2014-2015* (2015), p. 32.

²²² Childrens Court of Queensland, *Annual Report 2014-2015* (2015), p. 32.

delay.²²³ States have an obligation to ensure that the time between the commission of the offence and the judicial decision is as short as possible.

The Queensland authorities must urgently investigate the reasons for these delays, as it appears that Aboriginal and Torres Strait Islander children are spending unjustified prolonged time on remand. Indigenous children in Queensland spent an average of 65 days in detention on remand, compared with 56 days for non-Indigenous children.²²⁴ This was two weeks longer than the national average, with Aboriginal and Torres Strait Islander children spending on average 46 days and non-Indigenous children spending 38 days in detention on remand.²²⁵ The median length of a period of remand for Aboriginal and Torres Strait Islander children was 17 days (eight days nationally), compared with nine days for non-Indigenous children (five days nationally).²²⁶

Lawyers interviewed by Amnesty International have spoken about inadequate time and facilities granted to the children to prepare their defence. In particular, they described delays in accessing their clients due to a limited number of meeting rooms at youth detention centres – sometimes waiting up to a week to meet with them.²²⁷ The managers of youth detention centres have told Amnesty International that Cleveland Youth Detention Centre has four meeting rooms and Brisbane Youth Detention Centre has two.²²⁸ A lack of access to children would result in an initial delay for proceedings, because instructions are needed before lawyers can represent a child.

Another factor which led to delays are the amount of time for a brief of evidence to be produced in case conferencing.²²⁹

²²³ Convention on the Rights of the Child, Art 40(2)(b)(iii); ICCPR Art. 10(2)(b).

²²⁴ AIHW, *Youth Justice in Australia: 2014-2015* (2016), Table S118. Average duration calculated from the summed length of periods of unsentenced detention that occurred within the financial year.

²²⁵ AIHW, *Youth Justice in Australia: 2014-2015* (2016), Table S118. Average duration calculated from the summed length of periods of unsentenced detention that occurred within the financial year. This includes non-standard data from Western Australia and Northern Territory.

²²⁶ AIHW, *Youth Justice in Australia: 2014-2015* (2016), Table S117. The duration of periods of detention separated by a transfer to another remand or detention centre were summed.

²²⁷ Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with ATSILS Lawyers Palm Island, Palm Island, 2 March 2016; Amnesty International interview with ATSILS Townsville Lawyer, Townsville, 23 June 2016; Amnesty International interview with ATSILS Lawyers Logan, Logan, 30 June 2016.

²²⁸ Interviews with Executive Director BYDC, Glen Knights, and Acting Executive Director of CYDC, Fran Biddulph-Amaral, Brisbane, 2 August 2016.

²²⁹ Amnesty International interview with ATSILS Lawyers Palm Island, Palm Island, 2 March 2016; Amnesty International interview with Magistrate Pamela Dowse, Logan, 30 June 2016; Amnesty International interview with ATSILS Lawyers Logan, Logan, 30 June 2016; Amnesty International interview with ATSILS Lawyers Palm Island, Palm Island, 2 March 2016.

FETAL ALCOHOL SPECTRUM DISORDER

One other reason for delay raised in the course of this research is the lack of access to court medical reports for children with suspected Fetal Alcohol Spectrum Disorder (FASD) and cognitive impairment.

FASD is an umbrella term used to describe a range of impacts caused by exposure to alcohol in the womb.²³⁰ The consequences vary along a spectrum of disabilities including: physical, cognitive, intellectual, learning, behavioural, social and executive functioning disabilities, and problems with communication, motor skills, attention and memory.²³¹

Aboriginal and Torres Strait Islander people are more likely to have a cognitive disability, and Indigenous people with cognitive impairment are over-represented in criminal justice across Australia. Studies have found that particularly for children, disability-related behaviours and the responses to life circumstances are criminalised.²³²

In 2015, the Indigenous Australians with Mental and Cognitive Disability in the Criminal Justice System Project found that Indigenous people with mental and cognitive impairment are “significantly more likely to have experienced earlier and more frequent contact with the justice system.”²³³ This is particularly so for Indigenous women with complex needs, who had significantly higher convictions and episodes of imprisonment than males and non-Indigenous women.²³⁴

However, it is difficult to tell how widespread FASD is in Queensland, without studies having established its prevalence.²³⁵ Further, for some children the

²³⁰ L Burns et al, ‘Counting Fetal Alcohol Spectrum Disorder in Australia: The evidence and the challenges’ (2013) 32 *Drug and Alcohol Review*, p. 461.

²³¹ Report of the House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into Fetal Alcohol Spectrum Disorders (FASD: The Hidden Harm)*, p. viii, available at www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=/spla/fasd/report/fullreport.pdf.

²³² E Baldry, L Dowse, and M Clarence, *People with mental and cognitive disabilities: Pathways into Prison, Background Paper for Outlaws to Inclusion Conference* (2012), p. 16, available at <https://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/MHDCDbackgroundOutlaws%20Conf1.pdf>; N Rushworth, for Brain Injury Australia, *Out of Sight, Out of Mind. People with ABI and the Criminal Justice System* (2011); J Simpson and M Sotiri, for Aboriginal and Torres Strait Islander Services, *Criminal Justice and Indigenous People with Cognitive Disabilities* (2004); E Baldry, R McCausland, L Dowse and E McEntyre, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system* (2015) p. 19, available at <https://www.mhdcd.unsw.edu.au/>.

²³³ E Baldry, R McCausland, L Dowse and E McEntyre, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system* (2015) p. 10, available at <https://www.mhdcd.unsw.edu.au/>.

²³⁴ E Baldry, R McCausland, L Dowse and E McEntyre, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system* (2015) p. 16, available at <https://www.mhdcd.unsw.edu.au/>.

²³⁵ See University of Sydney, Professor E Elliott, *Building capacity for FASD screening and diagnosis through a prevalence study: The Cherbourg Project; Elliott E; National Health and Medical Research Council (NHMRC)*, available at <http://sydney.edu.au/medicine/people/academics/profiles/elizabeth.elliott.php>.

symptoms cannot be seen externally. “They’re the kids that are most invisible. They’ve got no outwards signs, they look normal – people expect them to behave normally,” Dr Jan Hammill explained to Amnesty International.²³⁶

Amnesty International heard repeatedly from communities, service providers and government about limited access to diagnosis for FASD in Queensland and the lack of a standard diagnostic tool.²³⁷ “Many people have to move to Townsville from Palm Island to access services for children with FASD,” an Elder from Palm Island told Amnesty International.²³⁸

Amnesty International acknowledges the reforms that DJAG is making to its assessment and training of staff in this area.²³⁹ DJAG has been investigating intellectual disability screening tools for use to assist in providing appropriate support for children and young people attending court and within the criminal justice system.²⁴⁰ Further, the National Disability Insurance Scheme (NDIS) provides an opportunity to further strengthen links between the criminal justice system and the disability sector for children.²⁴¹ However, children only reach DJAG after becoming subject to a Youth Justice order, so earlier access to diagnosis is necessary.

ATSILS, YAC and magistrates informed Amnesty International that a lack of funding for these reports makes it necessary to refer clients to Legal Aid to then the request of the report, which may take several weeks to arrive and may result in more time spent on remand.²⁴² A multi-disciplinary approach is required, as many legal advocates may not have the expertise to obtain the appropriate support for their clients with a disability.²⁴³

²³⁶ Amnesty International interview with University of Queensland Dr Janet Hammill, Brisbane, 26 October 2015.

²³⁷ Amnesty International interview with Magistrate Pamela Dowse, Logan, 30 June 2016; Amnesty International interview with female Elder, Palm Island, 2 March 2016; Amnesty International interview with University of Queensland Dr Janet Hammill, Brisbane, 26 October 2015; Amnesty International interview with Young People Ahead, General Manager Alvin Hava, Mount Isa, 2 November 2015; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with PCYC Mount Isa Angelica Jalali, Mount Isa, 1 December 2015.

²³⁸ Amnesty International interview with female Elder, Palm Island, 2 March 2016.

²³⁹ DJAG, Youth Justice response to Amnesty International Questionnaire, 3 August 2016.

²⁴⁰ DJAG, Youth Justice response to Amnesty International Questionnaire, 3 August 2016.

²⁴¹ Email from First Peoples Disability Network to Amnesty International, 23 August 2016.

²⁴² Amnesty International interview with Magistrate Pamela Dowse, Logan, 30 June 2016; Amnesty International interview with Youth Advocacy Centre CEO and staff, Brisbane, 19 November 2015; Amnesty International interview with ATSILS Lawyer, Townsville, 23 June 2016; Amnesty International interview with ATSILS Lawyers, Mount Isa, 29 June 2016; Amnesty International interview with ATSILS Lawyers, Beenleigh, 30 June 2016; Amnesty International interview with Magistrate Peter Smid, Townsville, 23 June 2016.

²⁴³ First Peoples Disability Justice Consortium, Submission No 39 to the Senate Standing Committee on Community Affairs, *Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment*, April 2016.

Amnesty International has previously outlined concerns about whether detention is appropriate for children with cognitive impairment.²⁴⁴ First Peoples Disability Network has emphasised the need for establishing alternative pathways away from detention and into supported disability programs.²⁴⁵

²⁴⁴ See Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia* (2015), pp. 29 - 31.

²⁴⁵ First Peoples Disability Justice Consortium, Submission No 39 to the Senate Standing Committee on Community Affairs, *Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment*, April 2016.

7. INDIGENOUS COMMUNITIES HOLD THE ANSWERS

“Culture is about knowing where you come from. Many of our young people don’t have that opportunity to experience their culture... many of them are looking for identity, but don’t know where to look. And we always say, if you do not know where you come from, then how are you supposed to know where you are going?”

Randal Ross, Juru/Erub and Kanaka man from Townsville, interviewed 20 July 2016.



Elder Uncle Alec Marshall shares stories with children on country at Flora Downs station, near Mount Isa. © Wayne Quilliam

Throughout Australia, Amnesty International has identified a lack of funding, training and support for Aboriginal and Torres Strait Islander-led, culturally appropriate early intervention and diversionary programs in the youth justice system.²⁴⁶

²⁴⁶ See Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia* (2015).

Diversion and early intervention approaches and programs are critical in order for Australia to fulfil its obligations under the CRC and other applicable norms and standards under international law.²⁴⁷ The UN Committee on the Rights of the Child has stated that States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system.²⁴⁸ States are required to consult with Indigenous communities and children to “develop policy and programming efforts in a culturally sensitive manner”.²⁴⁹ The Committee on the Rights of the Child has also encouraged States to support Indigenous Peoples to design and implement restorative justice systems and community-based programmes and services that consider the needs and cultures of Indigenous children, their families and communities.²⁵⁰

Further, international and domestic studies and inquiries have found that Indigenous designed and led justice programs consistently outperformed those that were externally imposed.²⁵¹

Elders, community members, magistrates, police, national representative organisations and academics have told Amnesty International that solutions should include more prevention and early intervention programs.²⁵² Ownership by community, especially those involving Elders, was seen as critical to an effective solution by community members, magistrates, Police-Citizens Youth Clubs and

²⁴⁷ Convention on the Rights of the Child, Arts. 3(1), 37(b), 40(1), 40(3).

²⁴⁸ Convention on the Rights of the Child, Art. 40(3)(b); Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007), para. 26.

²⁴⁹ Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007), para. 80.

²⁵⁰ Committee on the Rights of the Child, *General Comment No 11: Indigenous children and their rights under the Convention*, UN Doc No CRC/C/GC/11 (12 February 2009), para. 75; See also Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, *Advice No 6: Restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*, 7th sess, UN Doc A/HRC/EMRIP/2014/3/Rev.1, 25 June 2014, rec B.10; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007), Arts. 11, 18.

²⁵¹ See The Harvard Project on American Indian Economic Development, *Justice in Indian Country* (2015), available at <http://hpaied.org/exhibits/justice-indian-country>. See also Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), para. 4.106; A Daly, G Barrett and R Williams, 'A Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee: the economic case for local dispute management services', 9 June 2015, Occasional seminar AIATSIS, Canberra, available at <http://aiatsis.gov.au/news-and-events/news/cost-benefit-analysis-ymjc>; Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013).

²⁵² Amnesty International interview with Indigenous community, Mount Isa, 2 December 2015; Amnesty International interview with Justice King, Mount Isa, 3 December 2015; Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with QAILS and NACL James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015; Amnesty International interview with Police Officer, Mount Isa, 4 December 2015; Amnesty International interview with Police Mount Isa Sergeant Catherine Purcell, Mount Isa, 2 December 2015.

academics.²⁵³ Further, Elders and community members, magistrates and academics agreed that programs and services should be culturally appropriate.²⁵⁴

CURRENT DIVERSION OPTIONS

There are a small number of diversionary options in the Queensland youth justice system. The main avenues for diversion are cautioning or warnings at the police level, or restorative justice at the police and court levels. There are also diversion services contracted out by DJAG, which include youth offender support services, supported community accommodation, bail support services, employment project officers and specialist counselling services.²⁵⁵ Yet only two out of these 16 services funded for 2016-2017 was run by an Indigenous-controlled organisation.²⁵⁶

Available data shows that for Queensland children aged 10-16 years in 2012-2013, only 27% of the total number of cautions issued were given to Indigenous children.²⁵⁷ Only 19% of Indigenous children processed by police were issued a caution, compared with 36% of non-Indigenous children.²⁵⁸ That year, Indigenous children comprised 57% of the total youth detention population in Queensland.²⁵⁹ There are a number of factors police consider before issuing a caution including the previous criminal history of the child and the seriousness of the offence.²⁶⁰

“Restorative justice” refers to youth justice conferencing. Children have to admit guilt to participate, but this does not form part of their criminal history. Conferencing is convened by Youth Justice, and brings the young offender, guardians or support persons, the victim and police together to discuss an outcome agreeable to the victim to remedy the wrong caused by the child. The solution is formulated into an agreement, for which there can be consequences if

²⁵³ Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016; Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015; Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with Indigenous community, Mount Isa, 2 December 2015.

²⁵⁴ Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015; Amnesty International interview with Indigenous community, Mount Isa, 2 December 2015; Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015.

²⁵⁵ DJAG, Youth Justice response to Amnesty International Questionnaire, 3 August 2016.

²⁵⁶ Youth Justice outsourced services - organisations contracted to deliver services to youth justice clients 2016-17 provided to Amnesty International in DJAG, Youth Justice response to Amnesty International questionnaire, 3 August 2016.

²⁵⁷ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), Table 11A.3.17. 2,659 of the total of 9,714 cautions issued.

²⁵⁸ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), Table 11A.3.17. Of 13,976 Indigenous children processed by police, 2,659 were cautioned. Of 19,539 non-Indigenous children processed by police, 7,055 were cautioned.

²⁵⁹ AIHW, *Youth Justice in Australia 2012-13* (2014), Table S74b.

²⁶⁰ *Youth Justice Act 1991* (Qld), ss 15-21; Queensland Police Service, *Operation Procedures Manual* (2016) pt 5.3, available at <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter5.pdf>.

breached, such as returning to court for prosecution. Conferencing has been well received from the government's evaluations with a 95% satisfaction rate.²⁶¹ This was reiterated in Amnesty International's interviews with Elders, children, community, Aboriginal and Torres Strait Islander organisations, police and magistrates. For example, Magistrate Guttridge from Mount Isa highlighted the benefits, "The Youth Justice Conferences were one of the best things they did... that is one of the programs that they should definitely reinstate, because it had a much more positive impact...from a community perspective, and from a recidivist perspective, it's far more beneficial."²⁶²

However, there is a low participation rate for Indigenous children. Aboriginal and Torres Strait Islander children accounted for 27% of all referrals received in 2014–15, compared with 34% of all referrals in the previous financial year.²⁶³ Academic Kelly Richards said: "One of the problems is that while we've got diversion and conferencing, it's used less for Indigenous young people, the research is pretty clear. The white kids get the benefit of that and the Indigenous kids skip through to sentencing".²⁶⁴

It is not entirely clear why this is so. DJAG is currently undertaking a state-wide project aimed at enhancing restorative justice opportunities for all young offenders and those most impacted by their behaviour.²⁶⁵ While there is insufficient public data available to determine whether racial bias contributes to these figures, these low rates of diversion of Indigenous children compared with high rates of their over-representation in detention raise concerns about discrimination.²⁶⁶

INDIGENOUS-LED PROGRAMS AND SERVICES

Amnesty International has encountered an abundance of Aboriginal and Torres Strait Islander organisations providing programs and services at the early intervention and diversionary stages, for Indigenous children at risk of becoming involved in the justice system, or at risk of reoffending.

²⁶¹ Childrens Court of Queensland, *Annual Report 2014-2015* (2015), p. 22; Childrens Court of Queensland, *Annual Report 2013-2014* (2014), p. 30.

²⁶² Amnesty International interview with Magistrate Stephen Guttridge, Mount Isa, 3 November 2015.

²⁶³ Childrens Court of Queensland, *Annual Report 2014-2015* (2015), pp. 21-22.

²⁶⁴ Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015. See also K Richards, Australian Institute of Criminology, *Juveniles' contact with the criminal justice system in Australia* (2009), pp. 57-60.

²⁶⁵ DJAG, Youth Justice response to Amnesty questionnaire, 3 August 2016.

²⁶⁶ Convention on the Rights of the Child, Art. 2; CERD Arts. 2, 3; Committee on the Elimination of Racial Discrimination, *General recommendation XIV on article 1, paragraph 1, of the Convention*, 42nd sess, UN Doc A/48/18 (1993); Committee on the Rights of the Child, *General Comment No 10: Children's Rights in Juvenile Justice*, 42nd sess, UN Doc CRC/C/GC/10 (25 April 2007) para. 6.



An Aboriginal boy learns how to repair fencing at Toomby Station, on the outskirts of Townsville, as part of ATSILS' Throughcare Program, July 2016. © Wayne Quilliam.

There are many Indigenous early intervention and diversionary programs and services that Amnesty International has been informed about in the course of this research, including:

- Red Dust Healing in Townsville, which works in detention centres and schools to deliver cultural healing programs for at risk children, with a focus on dealing with rejection and having positive relationships and role models. Randal Ross told Amnesty International that in 2006, the program ran in Cleveland Youth Detention Centre with 40 boys, and their progress was monitored for two years: none of the children returned to detention in that time and only eight boys reoffended, on minor offences.²⁶⁷
- Uncle Alfred's Men's Group, which provides cultural healing and support for young and older men in Townsville, as they are transitioning out of prison, or for early intervention.²⁶⁸
- The ATSILS Service Throughcare program in Townsville, which supports youth detainees before and after release to address their offending behaviour and to reduce their likelihood of reoffending.²⁶⁹

²⁶⁷ Amnesty International Interviews with Randal Ross, Townsville, 25 February 2016 and 20 July 2016.

²⁶⁸ Amnesty International interview with Uncle Alfred Smallwood and Gail Mabo, Townsville, 26 February 2016.

- Wayne Parker’s backyard boxing program and proposed YOUFLA program, which aims to assist Aboriginal and Torres Strait Islander children involved in the justice system with rehabilitation by working on country, learning skills and culture.²⁷⁰
- Leann Shaw and Stephanie King’s Community Yarning Circle in Mount Isa, which empowers community members to reach out for assistance to deal with the impact of drugs on themselves and their families.²⁷¹
- Aunty Joan and Uncle Alec Marshall’s cultural activities and bush tucker garden at Central State School in Mount Isa.²⁷²
- Logan Elder’s Culture in the Park, which engages with at-risk Aboriginal and Torres Strait Islander children, providing cultural support, mentoring and guidance from the Logan Elders, and opportunities to participate in cultural activities.²⁷³
- Aunty Jenny Prior, who provides cultural healing and support for women inside prisons in Townsville.²⁷⁴
- Murri Watch, which provides drug rehabilitation centres and custody contact services in watch houses and youth detention centres, across Queensland.²⁷⁵
- Cathy Freeman Foundation’s early intervention programs on Palm Island, and across Queensland, which focus on sport and education.²⁷⁶
- Bahloo Women’s Shelter in Brisbane, which provides culturally safe accommodation for homeless young women and girls.²⁷⁷
- Townsville Aboriginal and Islander Health Service, which provides a culturally appropriate comprehensive model of health care including youth shelters.²⁷⁸

However, a lack of funding and resources, training and support was a common experience among the Indigenous-controlled organisations interviewed by Amnesty International. A large number of these programs are run by Elders and Indigenous community members volunteering their time. This is despite many of

²⁶⁹ ATSILS, *ATSILS Throughcare Program*, available at http://www.atsils.org.au/wp-content/uploads/2014/11/FACT-SHEET_PrisonerThroughcare.pdf; Amnesty International interview with Trevor Prior, Townsville, 19 July 2016.

²⁷⁰ Amnesty International interviews with Wayne Parker, Townsville, 26 February 2016 and 19 July 2016.

²⁷¹ Amnesty International interview with Leann Shaw and Stephanie King, Mount Isa, 5 November 2015.

²⁷² Amnesty International interview with Aunty Joan Marshall and Uncle Alec Marshall, Mount Isa, 4 December 2015.

²⁷³ Amnesty International interviews with Aunty Peggy Tidyman Logan, 20 November 2015 and 19 February 2016.

²⁷⁴ Amnesty International interviews with Aunty Jenny Pryor, Townsville, 20 July 2016.

²⁷⁵ Amnesty International interview with Ken Georgetown, Brisbane, 28 October 2015.

²⁷⁶ For more information, see Cathy Freeman Foundation, available at <http://www.cathyfreemanfoundation.org.au/>.

²⁷⁷ Amnesty International interview with Bahloo Womens Youth Shelter staff, Brisbane, 27 October 2015.

²⁷⁸ Amnesty International interview with Daphne Tapim, TAIHS, Townsville, 22 February 2016; for more information see TAIHS, available at <http://www.taihs.net.au>.

these programs having an impact on the lives of Aboriginal and Torres Strait Islander children involved in the justice system.

The Mona Aboriginal Corporation's Cultural Horsemanship program is an example of an Indigenous-led program that uses culture, connection, and community as well as practical work and life skills to set young people up for a better future.

MONA ABORIGINAL CORPORATION'S CULTURAL HORSEMANSHIP PROGRAM²⁷⁹



A young Aboriginal boy rides a horse with co-founder David Sammon as part of Mona's Cultural Horsemanship program on Flora Downs Station, near Mount Isa, June 2016.

© Wayne Quilliam

Patrick Cooke, Angela and David Sammon, and Rex Ah-One began Mona Aboriginal Corporation's cultural horsemanship program in response to a lack of culturally appropriate healing programs. Patrick Cooke, Chairperson of Mona Corp and Aboriginal man from the Mount Isa region, explained how the program aims to connect at-risk Indigenous children with country: "What's missing in a lots of

²⁷⁹ Amnesty International interview with Angela Sammon and Patrick Cooke, Mount Isa, 5 November 2011; Amnesty International Interviews with Angela Sammon, David Sammon, Mark Johnny, Dane Sammon, girl and boy (details withheld), Mount Isa, 27-28 June 2016. Amnesty International interview with Patrick Cooke, by telephone, 18 February 2016 and 23 August 2016.

children's lives is getting back to country and back to culture. A lot of non-Indigenous programs lack the cultural connectivity."

An initial trial in 2012 was followed by an evaluation which showed clear indicators of success, including cost-effectiveness and behavioural changes in the participants, as noted by School Principals and program mentors.

The Cultural Horsemanship Program is designed to run for 15 weeks and teaches children and young people respect, mechanical training and skills, domestic skills and routine such as meal preparation, fencing and yard building skills, animal husbandry skills, education, recreation and cultural activities such as hunting and gathering and learning their culture and identity.

The program has a focus on restoring pride to Indigenous young people, with spiritual guidance and support from Elders and mentors in the program.

Many Aboriginal and Torres Strait Islander children that have been through the program have faced mental health issues and have been involved in the criminal justice system. The Mona team has helped a 16-year-old Aboriginal, Torres Strait and South Sea Islander girl, Nivea*, who ended up with a warning from police after being with her friends when they were stealing.

But her situation turned around once she started going out on country. "It's been way better – I get in less trouble... I come out here to the station work with them. You have to get up early but it's better. You learn all this new stuff and meet new people."

The Mona Program has also helped 17-year-old Aboriginal young person, Curtis*. He was having a difficult time after leaving boarding school. "Every time I come out bush it's just good – it gets me away from all the bad stuff. When you are out bush you have nothing to do but working... most boys don't get into mischief out here 'cause they're away from town." Mentor, Warumugu man Mark Johnny, says he saw a lot of change in Curtis through the program.

When asked about his hopes for the future, Curtis says he wants to do stock work, and be a manager. "I mainly look up to David, he takes a lot of young fellas out bush and helps 'em out and shows them more people skills, and shows me that too."

Since 2013, Mona Corporation have repeatedly sought funding to no avail. The program remains unfunded. “Tomorrow another kid will commit suicide, another child will go to jail, another generation will be lost. If we could save the life of one child, that’s a generation,” Jingili Mudburra woman Angela Sammon, co-founder, told Amnesty International. “Our kids should be shining; they should be walking with their heads held high.”

Patrick Cooke spoke about how he hopes the program can help the next generation: “Our way forward from this is about empowering our youth of today for tomorrow. It’s about building the capacity, not only of youth but of families, to strive toward the future.”

**Names have been changed*

CULTURALLY APPROPRIATE PROGRAMS IN PARTNERSHIP WITH INDIGENOUS COMMUNITIES AND LEADERS

Amnesty International noted many non-Indigenous Queensland organisations demonstrating leadership in partnering with Aboriginal and Torres Strait Islander Elders and leaders to deliver culturally appropriate programs for children that have been in contact with the criminal justice system.

For example, Sisters Inside in Brisbane is an independent community organisation that advocates for the rights of women in the justice system. Sisters Inside run weekly Indigenous painting workshops for Aboriginal and Torres Strait Islander children, particularly young girls, to connect with their culture and to be mentored by older women. These workshops culminate in exhibitions where Indigenous children sell their paintings.²⁸⁰

²⁸⁰ Amnesty International Interviews with Sisters Inside, Debbie Kilroy, mentor and young participants, Brisbane, 17 November 2015 and 21 July 2016.



*An Indigenous girl participates in the painting workshop at Sisters Inside, July 2016.
© Wayne Quilliam*

Young People Ahead (YPA) is a non-government organisation based in Mount Isa, which aims to provide culturally appropriate services for Aboriginal and Torres Strait Islander children and young people. YPA have run a weekly cultural activities program, connecting young people with their community Elders to learn about traditional food, artwork and artefacts, and Elders' stories and life experiences.²⁸¹

JUSTICE REINVESTMENT

Justice Reinvestment is an evidence-based approach to reducing incarceration rates by investing in, and supporting, communities to address the underlying social issues leading to offending. The approach was developed in the United States "as a means of curbing spending on corrections and reinvesting savings from this reduced spending in strategies that can decrease crime and strengthen neighbourhoods."²⁸²

²⁸¹ Amnesty International interview with Young People Ahead, General Manager Alvin Hava, Mount Isa, 2 November 2015; Interviews with YPA staff and participants and observation of cultural activities, Mount Isa, 3 December 2015.

²⁸² Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013).

In contrast to the United States, Justice Reinvestment in Australia has largely been a community-driven process. Maranguka and the Bourke Tribal Council have led the Maranguka Justice Reinvestment Project since 2013, in partnership with JustReinvest NSW.²⁸³ Justice Reinvestment in Bourke has focused on coordination and partnership between community, service providers, government and police. This has led to the Bourke Warrant Clinic — a support network for young people including not-for-profit workers and government officials from family, education and health sectors. A magistrate may hold a warrant for arrest of a child or young person for two weeks, during which the support team will work with the young person to develop a plan to address their offending with the clinic. This plan can include attendance at education or community programs.²⁸⁴

There are currently justice reinvestment projects in Katherine, Cowra and Ceduna in partnership with academic and non-government organisations, as well as government-led justice reinvestment trials underway in the Australian Capital Territory, and announced in South Australia.²⁸⁵

Justice Reinvestment was considered as a positive solution by a significant number of individuals and organisations who spoke to Amnesty International.²⁸⁶ “I don't think it's just an investment, I think it's a community reinvestment,” said a Police Sergeant from Townsville. “I still believe this whole issue of youth justice... is a community issue, it's not an individual issue.”²⁸⁷

Another strong advantage identified is that it is preventative, and driven and owned by the community.²⁸⁸ Lex Wotton, an Aboriginal man from Palm Island,

²⁸³ JustReinvest NSW, *Justice Reinvestment in Bourke*, available at <http://www.iustreinvest.org.au/justice-reinvestment-in-bourke/>.

²⁸⁴ K Allman, 'Breaking the Prison Cycle' (2016) 25 *Law Society of NSW Journal*, p. 29.

²⁸⁵ See Cowra Guardian, 'Justice Reinvestment program reaches new milestone', 8 January 2016, <http://www.cowraguardian.com.au/story/3649006/justice-reinvestment-program-reaches-new-milestone/?cs=593>; ACT Government, *Justice Reinvestment Strategy*, <http://www.justice.act.gov.au/page/view/3829/title/justice-reinvestment-strategy>; Northern Territory Council of Social Service Inc, *Justice Reinvestment Project*, <http://www.ntcoss.org.au/current-projects/justice-reinvestment-project/>; Red Cross, *Building Bridges into the*

Community, http://www.redcross.org.au/annualreport_2014/year-in-review/building-bridges.html; Attorney General's Department SA, *Justice Reinvestment*, <http://www.agd.sa.gov.au/initiatives/more-our-initiatives/justice-reinvestment>.

²⁸⁶ Amnesty International interview with University of Queensland Dr Janet Hammill, Brisbane, 26 October 2015; Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015; Amnesty International interview with ADCQ, Liz Bond and Lea Yettica-Paulson, Brisbane, 29 October 2015; Amnesty International interview with QAILS and NACLCL James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with Father Mick Lowcock, Mount Isa, 3 December 2015; Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016; Amnesty International interview with Diane Foster, Palm Island, 2 March 2016.

²⁸⁷ Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016.

²⁸⁸ Amnesty International interview with ADCQ, Liz Bond and Lea Yettica-Paulson, Brisbane, 29 October 2015; Amnesty International interview with QAILS and NACLCL James Farrell and Amanda Alford, Brisbane, 16 November 2015, Amnesty International interview with QUT Professor Kerry Carrington and Dr Kelly Richards, Brisbane, 27 October 2015; Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016.

believes it would be beneficial for government to invest money back into the community to address justice issues: “Something like justice reinvestment needs to be developed by the community here. All the services just fly in and deliver the service, then take off.”²⁸⁹ Two Aboriginal women with links to Palm Island have developed a proposal around justice reinvestment ideas with a focus on self-management, self-government and sovereignty. However, they told Amnesty International that they encountered difficulties when it came to accessing the necessary data and funding to progress the project.²⁹⁰

One of the significant benefits is the perceived cost-benefit to government and the wider community.²⁹¹ Consistently in our research in Queensland, people raised family violence as an underlying cause of contact with the justice system, as well as poverty, mental health, child protection, housing, education, employment, substance abuse, and other health issues.²⁹²

In 2014-2015, the Queensland government spent \$89.2 million on detention-based supervision, the second highest expenditure on youth detention in Australia.²⁹³ The cost per child per day in detention on an average day in Queensland is \$1,445, which is above the national average.²⁹⁴ A Justice Reinvestment approach would instead see a portion of these dollars be allocated to addressing these underlying causes of offending and on preventing children from becoming entrenched in the justice system.

Justice Reinvestment has been recommended for trial in Australia by the Committee on the Elimination of Racial Discrimination, and the Productivity

²⁸⁹ Amnesty International interview with Lex Wotton, Palm Island, 29 February 2016.

²⁹⁰ Amnesty International interview with Gladys Willis, Majandi (Yidinji nation), Lama Lama and Bwgcolman woman, and Kerry Hahne, Koori woman from Victoria, Townsville, 27 February 2016.

²⁹¹ Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016; Amnesty International interview with Father Mick, Mount Isa, 3 December 2015; Amnesty International interview with QAILS and NACL James Farrell and Amanda Alford, Brisbane, 16 November 2015.

²⁹² Amnesty International interview with PCYC Angelica Jalali, Mount Isa, 1 December 2015; Amnesty International interview with Youth Advocacy Centre, YBASS Coordinator Erin Mackie, Brisbane, 26 October 2015; Amnesty International interview with Injilnji Youth Services Lewis Atinjilnji and Kylie Haapakoski, Mount Isa, 5 November 2015; Amnesty International interview with QAILS and NACL James Farrell and Amanda Alford, Brisbane, 16 November 2015; Amnesty International interview with Police Mount Isa Sergeant Catherine Purcell, Mount Isa, 2 December 2015; Amnesty International interview with Randal Ross, Townsville, 25 February 2016; Amnesty International interview with Aboriginal & Torres Strait Island Womens Legal Services in North Queensland staff, Townsville, 25 February 2016; Amnesty International interview with ATSILS Lawyers, Palm Island, 2 March 2016; Amnesty International interview with Youth and Family Service, Logan, 29 October 2015; Amnesty International interview with Bahloo Womens Youth Shelter, Brisbane, 27 October 2015; Amnesty International interview with Justice King, Mount Isa, 3 December 2015; Amnesty International interview with Police Sergeant and PCYC, Townsville, 23 February 2016; Amnesty International interview with Topsy Harry, Department of Housing, Mount Isa, 4 November 2015.

²⁹³ Productivity Commission, *Report on Government Services* (2016), Table 16A.1.

²⁹⁴ Productivity Commission, *Report on Government Services* (2016), Table 16A.24. National average was \$1,391.

Commission,²⁹⁵ and a Senate Standing Committee on Legal and Constitutional Affairs finalised a report on the value of a justice reinvestment approach to criminal justice in Australia in 2013.²⁹⁶ In addition, a 2014 Queensland Parliamentary Inquiry on strategies to prevent and reduce criminal activity in Queensland recommended that the government commit to a justice reinvestment trial, in an Indigenous or regional community.²⁹⁷

²⁹⁵ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), para. 4.106.

²⁹⁶ Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013).

²⁹⁷ Queensland Parliament, Legal Affairs and Community Safety Committee, *Inquiry on strategies to prevent and reduce criminal activity in Queensland*, Report No 82 (2014), rec 16, available at <http://www.parliament.qld.gov.au/documents/committees/lacsc/2014/crimeinquiry2014/rpt-082-28nov2014.pdf>.

HEADS HELD HIGH

KEEPING QUEENSLAND KIDS OUT OF DETENTION, STRONG IN CULTURE AND COMMUNITY

AMNESTY INTERNATIONAL AUSTRALIA

8. CONCLUSION

Aboriginal and Torres Strait Islander children are over-represented in the criminal justice system in Queensland for many reasons, including the continuous policies and practices of governments. While there have recently been many promising developments, systemic issues remain unaddressed, resulting in:

- a high number of 10 and 11-year-old children in detention
- many 17-year-olds tried as adults and held in adult prison
- inadequate conditions of detention
- extremely high rates of children on remand.

The way in which the Queensland criminal justice system deals with children in conflict with the law has raised several concerns under the CRC, the Convention against Torture and other international norms and standards relating to the treatment of children in detention. Successive Queensland governments have failed to bring laws and policies in line with Australia's obligations under international law, allowing for continuous human rights violations against children, and particularly, Indigenous children.

However, Amnesty International was able to gather information about many promising Aboriginal and Torres Strait Islander solutions to these issues, particularly in the areas of early intervention and diversion. Yet out of the 16 programs that the DJAG funds to work with youth justice clients, only two are run by Indigenous-controlled organisations. In line with international obligations, Indigenous communities should be supported to implement culturally-appropriate prevention and diversionary programs.

All levels of government must act now to put an end to these human rights violations and prevent another generation of Aboriginal and Torres Strait Islander children from being lost behind bars, and to ensure a brighter tomorrow for Indigenous children – one where they are strong in their culture; safe, healthy and happy in their communities; and are walking with their heads held high.

Amnesty International is an independent, global movement that campaigns courageously for human rights for everyone. We're ordinary people from all walks of life, standing together for justice, freedom, human dignity and equality. We use our passion and commitment to bring torturers to justice, change oppressive laws and free people imprisoned just for voicing their opinion. We're independent of any government, political ideology, economic interest or religion to ensure we can speak out on human rights abuses wherever they occur.

AMNESTY
INTERNATIONAL



Amnesty International Australia
ABN 64 002 806 233
Locked Bag 23
Broadway NSW 2007

www.amnesty.org.au