

**AMNESTY  
INTERNATIONAL**



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Standing Committee on Indigenous Affairs  
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Dear House of Representatives Standing Committee on Indigenous Affairs,

**Re: Submission to Inquiry into Pathways and Participation Opportunities for Indigenous Australians in Employment and Business**

Amnesty International welcomes the opportunity to provide input into the House of Representatives Standing Committee on Indigenous Affairs' inquiry into pathways and participation opportunities for Indigenous Australians in employment and business.

Indigenous Australians face numerous barriers to employment and training for Indigenous Australians. Amnesty International trusts that many of these barriers will be addressed by training and employment organisations that submit to the inquiry, and call on the Committee to purposefully consult with these organisations during the process.

This submission focuses on the involvement of young Indigenous Australians in the youth justice system as a significant barrier to employment and training. It draws upon the findings of three key pieces of research undertaken by Amnesty International Australia: a national overview of the overrepresentation of Indigenous children in the youth justice system, *A Brighter Tomorrow*<sup>1</sup>, a review of the youth justice system in Queensland, *Heads Held High*<sup>2</sup>, and a review of the youth justice system in Western Australia, *There's Always a Brighter Future*<sup>3</sup>.

Amnesty International recognises the enormous social and health benefits of supporting Aboriginal and Torres Strait Islander communities to live on their traditional homelands, to have access to their culture, and the importance of governments investing adequately in these services.<sup>4</sup> This submission will focus in particular on the importance of investing in culturally relevant justice services that keep young people out of prisons, and in employment and/or training.

It is highly concerning that Indigenous children are vastly overrepresented in the youth justice system. Indigenous young people are 26 times more likely to be in detention nationally than their non-Indigenous peers.<sup>5</sup>

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, substance addiction, and to have a disability or mental illness, among other contributing factors.<sup>6</sup> For example, Aboriginal and Torres

<sup>1</sup> Amnesty International Australia, 2016, *A brighter tomorrow*, [https://www.amnesty.org.au/wp-content/uploads/2016/02/A\\_brighter\\_future\\_National\\_report.pdf](https://www.amnesty.org.au/wp-content/uploads/2016/02/A_brighter_future_National_report.pdf)

<sup>2</sup> Amnesty International Australia, 2017, *Heads held high*, <https://www.amnesty.org.au/report-heads-held-high/>

<sup>3</sup> Amnesty International Australia, 2017, *There's always a brighter future*, Amnesty International Australia, 2016, *Heads held high*, <https://www.amnesty.org.au/report-heads-held-high/>

<sup>4</sup> See for example Amnesty International, *The Land Holds Us: Aboriginal Peoples' right to traditional homelands in the Northern Territory* <https://static.amnesty.org.au/wp-content/uploads/2016/09/AI-homelands-report.pdf?x85233>

<sup>5</sup> Amnesty International Australia, 2016, *A brighter tomorrow*, [https://www.amnesty.org.au/wp-content/uploads/2016/02/A\\_brighter\\_future\\_National\\_report.pdf](https://www.amnesty.org.au/wp-content/uploads/2016/02/A_brighter_future_National_report.pdf)

<sup>6</sup> Amnesty International Australia, 2016, *A brighter tomorrow*, p7.

Strait Islander children in Queensland are nine times more likely to be on child protection orders than non-Indigenous children.<sup>7</sup>

### **Inadequate support for Indigenous-led programs**

There is inadequate funding, training and support for Aboriginal and Torres Strait Islander-led, culturally appropriate early intervention and diversionary programs in the youth justice system in all states and territories. This issue is even more pronounced in remote and regional areas. These programs when run successfully will keep children out of prison, and in employment and training.

Early intervention, prevention and diversion is critical. A recent report from Price Waterhouse Coopers found that justice system costs related to Indigenous incarceration nationally in 2016 were \$3.9 billion, and are forecast to grow to \$10.3 billion annually by 2040. Welfare costs associated with the issue will rise to \$110 million by 2040, while economic costs will reach over \$9 billion annually. The report found that annual savings to the economy of nearly \$19 billion could be achieved by 2040 if the gap between Indigenous and non-Indigenous rates of incarceration was closed. A key recommendation of the report is that Governments must have a “greater focus, and investment in, prevention and early intervention initiatives that address the key drivers of Indigenous incarceration”.<sup>8</sup>

Investment in early intervention, prevention and diversion from the youth justice system should be in culturally appropriate and self-determined programs, particularly those designed and run by local Aboriginal and Torres Strait Islander people. International and domestic studies and inquiries have found that Indigenous designed and led justice programs consistently outperformed those that were externally imposed.<sup>9</sup>

The Indigenous-led solutions and programs that Amnesty International has identified and interviewed in Queensland and Western Australia have consistently struggled to obtain and keep funding. Funding opportunities are often designed to be short-term and/or non-recurrent, causing uncertainty about longevity of important programs and services. This impacts all communities, but is even more significant for remote communities. For example in Palm Island, where community members told Amnesty International that most services are fly-in-fly-out, and are not able to build relationships with or gain a deep understanding of community needs, even though there are community members who are qualified or could be trained to fill those roles. In other regional communities, community-led programs struggle to compete with larger, non-Indigenous organisations for funding. For example, Mona Aboriginal Corporation’s Cultural Horsemanship Program ran a successful trial in 2012, but has since failed to obtain funding.

Australia has international obligations under the Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous people to develop culturally sensitive policy and programming, and 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.<sup>10</sup> These programs will address the barriers that Indigenous young people have in gaining employment and training.

### **Justice Reinvestment**

In its concluding observations of 2010, the Committee for the Elimination of Racial Discrimination recommended that Australia “dedicate sufficient resources to address the social and economic factors underpinning indigenous contact with

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<sup>7</sup> 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.

<sup>8</sup> PWC, *Indigenous incarceration: Unlock the facts* (2017), Recommendation 4, p 11.

<sup>9</sup> 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).

<sup>10</sup> 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*, 7<sup>th</sup> 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, 61<sup>st</sup> sess, 107<sup>th</sup> plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007), Arts. 11, 18.

the criminal justice system.”<sup>11</sup> The Committee specifically encouraged Australia to adopt ‘a justice reinvestment strategy’ in order to do so.<sup>12</sup>

Justice reinvestment is an approach to addressing expanding prison populations through investment in communities. It is premised on the fact that it is possible to identify, by analysing data, which communities produce large numbers of offenders, and to strategically use that information to guide investment in community programs to most effectively reduce imprisonment numbers.<sup>13</sup> 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.”<sup>14</sup> Amnesty International Australia strongly believes that a justice reinvestment approach to community programming will divert young Indigenous Australians from the youth justice system to education, employment and training.

### **The age of criminal responsibility**

In all Australian states and territories the minimum age of criminal responsibility is 10.<sup>15</sup> This means that children as young as 10 are arrested by police, locked up in police cells, hauled before courts and sent to youth prisons – often in prisons far away from their community. Amnesty International Australia released a report, *The Sky Is the Limit*,<sup>16</sup> that recommends that all states and territories raise the age of criminal responsibility to at least fourteen; this would have a significant effect on diverting young people away from the justice system and into employment, education and training.

Amnesty International Australia also submitted to the Council of Attorneys-General Age of Criminal Responsibility Working Group review.<sup>17</sup> The findings and recommendations of this report should be taken into consideration for this inquiry.

Australia has been repeatedly criticised by the United Nations, including long-standing criticism from the United Nations Committee on the Rights of the Child<sup>18</sup>, and most recently by the Committee on the Elimination of Racial Discrimination, for failing to reform the current minimum age of criminal responsibility. When the Special Rapporteur on the Rights of Indigenous Peoples visited Australia in 2017 she said that the routine detention of 10 and 11 year-old children was the most distressing aspect of her visit.<sup>19</sup>

### **Recommendations**

Amnesty International recommends that all governments:

1. Increase funding and support for culturally appropriate, Aboriginal and Torres Strait Islander designed and led programs at all stages of the justice system, particularly early intervention and diversion services.
2. Work in partnership with Indigenous organisations and communities to build their capacity to design and implement programs that improve young people’s access to employment, education and training.
3. Ensure culturally appropriate and Indigenous-led holistic family support and early intervention services are funded and supported with training and capacity building.
4. Fully fund an Indigenous-led, evidence-based Justice Reinvestment trial to address underlying causes of offending, using the learnings of the Cherbourg justice reinvestment scoping project, and the Marunguka Justice Reinvestment Project in New South Wales.

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<sup>11</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations – Australia CERD/C/AUS/CO/15-17, [20]

<sup>12</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations – Australia CERD/C/AUS/CO/15-17, [20]

<sup>13</sup> M Schwartz, ‘Building Communities, 2010, *Not Prisons: Justice Reinvestment and Indigenous Over-Imprisonment*’, 14 (1) Australian Indigenous Law Review, p 2 [www.ilc.unsw.edu.au/sites/ilc.unsw.edu.au/files/articles/AILR%2014-1\\_Melanie%20Schwartz.pdf](http://www.ilc.unsw.edu.au/sites/ilc.unsw.edu.au/files/articles/AILR%2014-1_Melanie%20Schwartz.pdf)

<sup>14</sup> Senate Standing Committee on Legal and Constitutional Affairs inquiry into the value of a Justice Reinvestment approach to criminal justice in Australia, [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/201013/justicereinvestment/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/201013/justicereinvestment/report/index)

<sup>15</sup> Australian Institute of Criminology, 2005, ‘The age of criminal responsibility’, *Crime facts info no. 106*, ISSN 1445-7288 Canberra, [www.aic.gov.au/publications/current%20series/cfi/101120/cfi106.html](http://www.aic.gov.au/publications/current%20series/cfi/101120/cfi106.html)

<sup>16</sup> Amnesty International Australia, 2019, *The Sky is the Limit*, <https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>

<sup>17</sup> Amnesty International Australia, 2020, *Submission to the Council of Attorneys-General Age of Criminal Responsibility Working Group review*, [https://www.amnesty.org.au/wp-content/uploads/2020/02/Submission\\_Age-of-Criminal-Responsibility.pdf](https://www.amnesty.org.au/wp-content/uploads/2020/02/Submission_Age-of-Criminal-Responsibility.pdf)

<sup>18</sup> United Nations Committee on the Rights of the Child, Sessions of the Committee, 1997: paragraphs 11 and 29, 2005: paragraph 73; 2012: paragraph 82(a).

<sup>19</sup> United Nations Human Rights Council, 2017, *Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Australia*, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/234/24/PDF/G1723424.pdf?OpenElement>

5. Adopt targets to end the representation of Aboriginal and Torres Strait Islander children in detention, to shape the direction and priority of early intervention and diversion services as a proactive way of lowering overrepresentation.
6. Raise the minimum age of criminal responsibility to at least fourteen, and abolish the concept of *doli incapax*.

Amnesty International Australia strongly asserts that involvement in youth justice is a barrier for young Indigenous Australians to access employment, education and training. Investing in Indigenous-led solutions and programs that divert young people away from the justice system, investing in youth justice systems, and raising the minimum age of criminal responsibility will address this significant barrier. Amnesty International Australia looks forward to the Standing Committee's report and the government's response and action.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lidia Thorpe', written in a cursive style.

Lidia Thorpe  
Indigenous Rights Lead  
Amnesty International Australia