

**AMNESTY
INTERNATIONAL**



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Queensland Productivity Commission
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Dear Productivity Commission

Re: Submission to Inquiry into Service delivery in Queensland's remote and discrete Indigenous communities

Amnesty International welcomes the opportunity to provide input into the inquiry into Service delivery in Queensland's remote and discrete Indigenous communities.

Amnesty International recognises the enormous social and health benefits of supporting Aboriginal and Torres Strait Islander communities to live on country and on their traditional homelands, and the importance of governments investing adequately in these services.¹ This submission will focus in particular on the importance of investing in culturally relevant justice services for remote and discrete Indigenous communities in Queensland.

Amnesty International has been working with Queensland communities and Government on addressing the overrepresentation of Indigenous children in the justice system since 2014. In particular, we have worked with Aboriginal and Torres Strait Islander communities in Mount Isa, Logan, Townsville and Palm Island. In 2016, we launched our report, *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community* (**Appendix A**).

It is highly concerning that Indigenous children in Queensland, while comprising only 6 per cent of the population, comprise 65% of the youth prison population. Aboriginal and Torres Strait Islander children in Queensland are 22 times as likely to be detained than non-Indigenous children.²

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. Aboriginal and Torres Strait Islander children in Queensland are nine times more likely to be on child protection orders than non-Indigenous children.³ A higher proportion of Indigenous children in Queensland have a disability (18.4%) than non-Indigenous children (16.5%).⁴

Inadequate support for Indigenous-led programs

There is inadequate funding, training and support for Aboriginal and Torres Strait Islander-led, culturally appropriate early

¹ 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>

² 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.

³ 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.

⁴ 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.

intervention and diversionary programs in the youth justice system in Queensland. This issue is even more pronounced in remote and regional areas. A high proportion of Indigenous children involved in the justice system come from remote and regional communities in Queensland, where early intervention and diversionary services and programs are limited.

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”.⁵

In 2015-2016, the Queensland government spent \$96.6 million on detention-based supervision, the second highest expenditure on youth detention in Australia.⁶ That year Queensland also spent \$65.9 million on community based youth justice services,⁷ but only a fraction of this funding is targeted towards Indigenous-led programs and initiatives.

Investment in early intervention, prevention and diversion from the youth justice system should be in culturally appropriate 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.⁸

The Indigenous-led programs and services that Amnesty International has identified and interviewed in Queensland 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.

Amnesty International notes the recent announcement of Tender #DJAG5281617 for the provision of indigenous-led cultural mentoring program or young Aboriginal and Torres Strait Islander males and females aged 10-17 years in the Townsville area who are involved with the youth justice system, or are at risk of entering the youth justice system.⁹ This is an example of the type of Indigenous-led programs that Amnesty International has identified as an effective investment in early intervention, prevention and diversion from the youth justice system.

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.¹⁰

⁵ PWC, *Indigenous incarceration: Unlock the facts* (2017), Recommendation 4, p 11.

⁶ Productivity Commission, *Report on Government Services 2017*: Volume F, Chapter 17, Table 17A.1 State and Territory government real recurrent expenditure on youth justice services, (2015-16 dollars)

⁷ Productivity Commission, *Report on Government Services 2017*, Table 17A.1.

⁸ 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).

⁹ Minister for Disability Services, Minister for Seniors and Minister Assisting the Premier on North Queensland, ‘Calls for Indigenous groups to join fight against youth crime’, 29 May 2017, available at <http://statements.cabinet.qld.gov.au/Statement/2017/5/29/calls-for-local-indigenous-groups-to-joint-fight-against-youth-crime>

¹⁰ 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*

Legal services

Culturally relevant legal services are underfunded across Australia. The Australian Government Productivity Commission found in its December 2014 Report that across the country Indigenous legal services are not sufficiently funded,¹¹ and need to be funded to access remote and regional areas so that all Indigenous people have access to legal services. Queensland Indigenous Family Legal Services (QIFLS) have reported insufficient funding contributes to the difficulties they face to adequately provide services needed by victims of domestic and family violence, particularly in remote and regional communities.¹²

Amnesty International identifies the Aboriginal and Torres Strait Islander Legal Service and Queensland Indigenous Family Violence Legal Services as an important source of legal assistance and recommend for its increased and sustained funding to help assure full legal access for Indigenous people.

Fetal Alcohol Spectrum Disorder (FASD)

FASD is an umbrella term used to describe a range of impacts caused by exposure to alcohol in the womb.¹³ 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.¹⁴ 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.¹⁵

Amnesty International has heard repeatedly from communities, service providers and government about limited access to diagnosis for FASD.¹⁶ The effects that this has on Aboriginal and Torres Strait Islander children, particularly as an identified contributing factor towards the overrepresentation in the justice system, must be taken into consideration in the delivery of services in remote and discrete Indigenous communities.

Justice Reinvestment

Amnesty International welcomes the Queensland Attorney General's recent announcement of a Justice Reinvestment scoping project in Cherbourg. Community-led justice reinvestment has positive implications for service delivery and has been delivering promising results for the Aboriginal community in Bourke, New South Wales. More information on Bourke's Justice Reinvestment project can be obtained from the Just Reinvest NSW website:

<http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>.

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.

¹¹ Productivity Commission, *Access to Justice Arrangements: Inquiry report* (2014) Volume 2, p 761.

¹² Queensland Indigenous Family Violence Legal Service Submissions to the Productivity Commission, p3, available from <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub046-access-justice.pdf>

¹³ Burns et al, 'Counting Fetal Alcohol Spectrum Disorder in Australia: The evidence and the challenges' (2013) 32 *Drug and Alcohol Review*, p. 461.

¹⁴ Report of the House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into Fetal Alcohol Spectrum Disorders (FASD: The Hidden Harm)* (2012), p. viii, available at www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/fasd/report/fullreport.pdf.

¹⁵ 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.mhdc.unsw.edu.au/sites/www.mhdc.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.mhdc.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](https://www.mhdc.unsw.edu.au/233/E%20Baldry,%20R%20McCausland,%20L%20Dowse%20and%20E%20McEntyre,%20A%20predictable%20and%20preventable%20path%20Aboriginal%20people%20with%20mental%20and%20cognitive%20disabilities%20in%20the%20criminal%20justice%20system) (2015) p. 19, available at <https://www.mhdc.unsw.edu.au/>.

¹⁶ 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.

Recommendations

Amnesty International recommends that the Queensland Government:

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. Use preferential tendering as a way to ensure funding opportunities are culturally appropriate and led by Aboriginal and Torres Strait Islander communities.
3. Work in partnership with Indigenous organisations and communities to build their capacity to design and implement programs.
4. Increase the standard length of funding contracts in remote and discrete Indigenous communities to allow adequate time for service providers to establish their operations, have a period of stability in service delivery and for handover before the conclusion of the contract.
5. Ensure culturally appropriate and Indigenous-led holistic family support and early intervention services are funded and supported with training and capacity building.
6. Ensure that there is sufficient ongoing funding available to continue the work undertaken by the Aboriginal and Torres Strait Islander Legal Services and Queensland Indigenous Family Violence Legal Services, so that Indigenous children are granted full access to legal assistance.
7. Ensure that there is, more broadly, Indigenous community access to diagnosis for Fetal Alcohol Spectrum Disorder and cognitive impairment.
8. 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.
9. 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.

Amnesty International looks forward to the Productivity Commission's report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roxanne Moore', with a stylized flourish at the end.

Roxanne Moore
Indigenous Rights Campaigner