QPC Inquiry into imprisonment and recidivism
Submission

Professor Kerry Carrington and Professor Russell Hogg

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1. We recommend that measures be taken to minimize if not eliminate reliance on detention (both on remand and under sentence) for children aged less than 15.

2. We recommend that alternatives to remand urgently be made available to the Children’s Courts to reduce the number of vulnerable children experiencing detention for no good reason and at great expense.

3. We recommend that therapeutic principles that reinforce children’s dignity drive the training and treatment of juveniles in custody.

4. We recommend that raising the age of criminal responsibility to 14 and introducing constructive diversion measures would reduce recidivism – especially for Indigenous young people and children in child protection who on average come into the juvenile justice system at a younger age than other cohorts.

5. We recommend the use of therapeutic and de-escalation approaches with damaged children in child protection system. We recommend that ‘acting out’ behavior in residential care should not be criminalized. Residential care workers should be afforded the required training and provided non-criminal options to avoid resorting to police intervention that propels children from care into the juvenile justice system.

6. We recommend these services be bolstered with savings from diverting young people from remand and juvenile justice through diversion.

7. We support the recommendations of the Atkinson Youth Justice Report and recommend that they be implemented with urgency.

8. We support the adoption of the 38 recommendations made by the Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, to be adopted in Qld, including the creation of state level criminal justice targets for closing the gap in over-representation of Indigenous youth and adults in criminal justice and custody. (see Appendix 1).

9. We recommend that the implementation of the Sofronoff Review be evaluated and outcomes made transparent. We also recommend an evaluation of the membership of the parole boards, whether they have adequate Indigenous representation and question why QPS should have three representatives on the board, as this could compromise the independence of the board.

10. Given the emerging evidence about the efficacy of COSA in reducing recidivism and improving community safety, we recommend that this model be trialled in Queensland to assist in meeting the aim of increasing offenders’ successful completion of parole and reintegration and enhancing community safety.

11. We recommend additional investment in alternatives to detention and prison to drive down incarceration rates and reduce recidivism.

12. We recommend that Qld Government develop and implement justice reinvestment a key platform as it is proven to reduce crime, recidivism, prison rates, youth detention, family violence, and drug offences.
Background: Dysfunction in Queensland’s Juvenile and Criminal Justice Systems

It is necessary to begin by recognizing that there is no necessary relationship between levels of imprisonment and crime rates. Increasing reliance on the imprisonment of offenders does not necessarily guarantee reductions in crime and recidivism. Indeed, often high rates of crime go together with a heavy reliance on imprisonment, as in many parts of the United States. Incarceration is not only economically costly, it can also be socially destructive, both for offenders and for whole communities that are subject to heightened levels of penal intervention. It is realistic therefore to aim to reduce crime and to make communities safer at the same time as reducing reliance upon costly and damaging penal policies and practices. This does require adoption of a medium to long term approach, as is the remit of the QPC in this inquiry, but that often sits uncomfortably with the timeframe of the electoral political cycle which so often drives penal policy (Hogg and Brown 1998).

The prison system in Queensland (Qld) is in crisis, experiencing enormous over-crowding, and increases in prisoner assaults (Annual Report, 2018: 41). Since 2012 the prison population has doubled. This is during a period when ironically, as the Productivity Commission Issues paper (QPC 2018) clearly demonstrates, reported crime rates have fallen considerably. The types of crimes for which people end up in prison are less serious reflected in the fact that most people in prison are for very short periods of time. Of the prison population in 2018, almost a third (31.5 % or 2272 of 8800) were on remand an increase on 24% in 2014 (1,676 of 7049).

Last year 63% of young people in Qld youth detention were on remand (AHIW, 2018). We note here that while the terms of reference appear to be primarily focussed on adult imprisonment reference is made to youth offenders and we would stress that an inquiry that aims to ‘improve outcomes for the community over the medium to longer term’ cannot overlook juvenile detention and its nexus with recidivism and adult imprisonment.

Custodial remand (whether of juveniles or adults) is very costly, has harmful effects especially on children and probably does little to enhance community safety (Richards & Renshaw 2013; Carrington and Pereira 2009, White 2014). Remand drives up imprisonment rates. Many adults and juveniles are remanded in custody, not because they have been accused of offences that would warrant a prison sentence upon conviction, but because of the lack of alternatives to incarceration for disadvantaged people with multiple problems such as homelessness, unemployment, mental health problems and or drug addiction. Increasing safe affordable community housing options for these juvenile and adults cohorts (with gender and Indigenous appropriate options) would considerably reduce the use of remand and relieve the crisis in the Qld juvenile and criminal justice systems.

Between 2011 and 2015, there was a significant increase in the number of prisoners refused parole, and larger numbers whose parole was suspended, leading to a return to prison (Graph 1). In 2016 fewer paroles were suspended but greater numbers of prisoners were refused parole. No comparable data is available for 2017 that we could locate. Consequently, decisions of the parole board and the parole system have also contributed to higher imprisonment rates at a time of decreasing crime rates. In 2017 sweeping reforms to probation and parole were announced by Premier Palaszczuk who said, “Mr Sofronoff’s report presents a compelling case for change, with the benefits being greater community safety, savings to the public purse and reduced overcrowding in our State’s prisons.” (Press Release 16 February, 2017). The reforms were designed to reduce crime and reduce prison over-crowding by establishing a new parole board independent of the Department of Corrections. While reported crimes are reducing, imprisonment is still growing. This is costing Qld tax-payers millions of dollars that could otherwise be spent on schools, roads, or hospitals and other services that would contribute in the long term to the prevention of crime and recidivism.
This dysfunction in the juvenile and criminal justice systems, comes at a great opportunity cost to Queenslanders, as the cost of imprisonment is significantly greater than community housing, diversion or community justice alternatives. In Qld it costs $181.55 to detain a prisoner per day (Annual Report, 2018:6), equivalent to $66,266 per prisoner per year. For young people, it costs an astonishing $1,336 per day per detainee on average in Australia, equivalent to $487,640 per detainee per year. In comparison it costs only $13.79 per day to supervise an offender in the community, equivalent to $5033 per annum (Annual Report: 2018: 42). So, while much hope was placed on the Sofronoff’s reforms, to date there is little evidence to suggest they are working to reduce over-reliance on incarceration. However, it could be too early to assess the effectiveness of the reforms. But it could also be that there are multiple reasons underlying the increase in the prison population, of which parole is just one. These other reasons include:

- More offenders sentenced to jail – predominantly for short periods
- Fewer offenders returned to the community by parole boards
- More parole suspensions
- Increases in remand populations due to bail refusal and revocations
- Changes to apprehended violence orders leading to more offenders being refused bail
- Delays in court hearings and sentencing
- Police practices that target offenders on parole (especially in Indigenous communities)
- Police practices that prefer prosecution to caution or diversion
- Lack of viable alternatives to remand, such as safe affordable housing especially for vulnerable populations (homeless, mentally impaired, drug addicted or suffering from a disability)
- Lack of diversionary alternatives in juvenile justice – too many children aged less than 14 remanded in custody
- Lack of innovative and credible alternatives to prison and detention (although more alternatives have been introduced under this government – such as youth conferencing)

The rise in the prison population coincides with a steady decline in the number of recorded offences. Hence there is no substance to any claim that increasing crime is behind the increasing prison population. The issues paper notes that surveys indicate community concern at what is wrongly perceived to be rising crime
rates. Public policy in this area confronts the major difficulty that evidence relating to crime and what works to reduce it runs a poor second to the influences exerted by political, media, commercial and popular investments in talking up the crime problem and the imperative of harsher, punitive measures to combat it (Hogg and Brown 1998). There is no simple solution to this, but the generation of better quality and more readily digestible data would be of benefit to dispelling popular misconceptions, as would the promotion of greater political bi-partisanship (the latter a big ask, we recognize).

Juvenile Justice and Youth Detention in Qld

As the 2017 financial year, the number of young people coming before the Children’s Court dropped from 7,063 to 6,479 (Children’s Court Annual Report 2016:17: 2). Yet the number in detention still rose if only slightly. According to the most recent AIHW report on Juvenile Justice, 964 young people were in detention in Qld on an average night in 2017 (AIHW, 2018). Of these 63% were unsentenced (or on remand). Around 90% in detention were male and 53% were Indigenous, and 13% have come from the pipeline of child protection into juvenile justice. Both these cohorts (Indigenous and children with child protection histories), come into juvenile justice younger. Both these cohorts go on to be massively over-represented in the adult correctional system.

The less exposure young people have to criminal justice interventions, the more likely they are to avoid future offending (Bargen, 2001: 2). Yet in Qld in 2016-17 year, 53% of young people who appeared for the very first time in the juvenile justice system were sentenced to probation, higher than any other state in Australia (AIHW, 2018: 26). Only 1% were sentenced to detention as an outcome of their first interaction with juvenile justice, yet 2 out of 3 children before the Qld Childrens Courts were remanded in custody. Rates of detention in Qld have been rising over the last five years (AIHW: 2018:29), even though the number and rate of juveniles appearing before the courts has declined (Qld Children Court, 2018). This is dysfunctional. Clearly alternatives to detention, like probation and other community sanctions, are seriously under-utilised in this state with adverse consequences.

Under the United Nations Convention on the Rights of the Child (to which Australia is a signatory), custodial detention of young people is to be used as a last resort. Yet youth detention has been increasing Queensland, (AIHW, 2016: 13). If secure care has to be used, it should be used only for violent offences or those which pose extreme and immediate risk to public safety. About 80% of proven offending by juveniles is for non-violent activity (see latest ABS numbers for youth offenders). Around 40% of juveniles sentenced to detention are there for a principal offence which is non-violent (theft or unlawful entry with intent). Hence most of the young people in custody pose no direct threat to the community and would be more suitable candidates for community-based corrections, cautions, diversions or youth conferencing.

Youth detention is notoriously ineffective in rehabilitating young offenders and reducing their rates of recidivism (Carrington & Pereira, 2009; Cunneen, White and Richards, 2015). It is also extremely costly. In 2014-15 $438 million was spent on Australia’s 17 youth detention centres – to detain an average of 885 children per night (Children’s Commissioners, 2016). This costs $1,336 per evening per detainee—a bout five times the cost of a night at the Brisbane Hilton Hotel. The alternatives to custodial sentencing, are not only considerably cheaper, but are less harmful and more effective in rehabilitating young offenders and deterring re-offending (Richards and Renshaw, 2013).

Legislation passed on 11 November 2017, the Youth Justice and Other Legislation (inclusion of 17-year-old Persons) Amendment Act, that will place 17-year olds under the jurisdiction of the juvenile justice system rather than the adult correctional system is most welcome. This finally brings Qld into line with international law and conventions on the rights of the child. However, 17 year olds still remain in adult jail and the transition to juvenile detention has been slow. One reason has apparently been the number of children in detention aged less than 15, for whom the presence of older juveniles is regarded as a risk. That is to say, those under 15 are regarded as vulnerable detainees, but not so vulnerable that strenuous efforts are required to keep them out of detention in the first place.
1. We recommend that measures be taken to minimize if not eliminate reliance on detention (remand and under sentence) for children aged less than 15.

Most young people in detention are on Remand – for no good reason and at great expense

In Qld last year 63% of young people in detention were on remand (AHIW, 2018). This exposes far too many children to short bursts of incarceration by stealth. Richards and Renshaw’s (2013) national study of remand for young people found that a diverse range of factors have influenced rates of remand, including the increasingly complex needs of young offenders, police performance measures, lack of alternatives, and the influence of victims’ rights. Custodial remand is very costly, has harmful effects on children and probably does little to enhance community safety (Richards & Renshaw 2013; Carrington and Pereira 2009, White 2014). The adverse impacts of placing so many young people on custodial remand include: separation from family and community; disruption to educational and employment opportunities; lack of access to rehabilitative programs; association with sentenced offenders; and much more (see Richards & Renshaw 2013 for an overview).

2. We recommend that alternatives to remand urgently be made available to the Children’s Courts to reduce the number of vulnerable children experiencing detention for no good reason and at great expense.

Detention without Brutality

For those serious juvenile offenders for whom detention is required, the detention regimes should be run on therapeutic principles. The abuse of young people in detention (as exposed in recent Qld and Northern Territory inquiries) is a systemic institutional problem, not a the consequence of a few rotten apples in the system. The use of restraints, isolation and humiliating punishments in detention is strongly discouraged by international research and contrary to international human rights instruments – not least because it so often leads to the re-traumatising of an already vulnerable group (Australian Custodial Australia’s Children Commissioners and Guardians, 2016). While custodial environments are about control and containment, that does not mean they have to involve brutal and inhuman treatment. Control can be achieved dynamically through negotiation and through the long hard yards of consistently reinforcing children’s dignity and their right to be heard and taken seriously – even, perhaps especially, in custody. Victoria is on the cusp of pushing through widespread changes to the juvenile custodial system with a therapeutic approach the desired norm. Research demonstrates that the "best" custodial spaces (those least likely to perpetrate abuse) are those which pay close attention to the nature of, and relationship between, organisational climates (the larger forces of partisan politics, budgetary constraints, public demands, etc), organisational structures (the laws, regulations, and administrative arrangements set up to ensure security and safe dealings within correctional settings) and organisational cultures (the informal norms and customs developed by groups within organisations that are oriented towards coping with external and internally driven challenges) (Goldsmith, Halsey, Groves, 2016: 19-27). While many youth workers in the juvenile justice system strive to support young offenders, few, if any custodial facilities in Australia can claim to adequately balance these issues.

3. We recommend that therapeutic principles that reinforce children’s dignity drive the training and treatment of juveniles in custody.
Increasing Age of Criminal Responsibility

The age of criminal responsibility in all Australian jurisdictions is 10. However, the rebuttable presumption of doli incapax applies to children aged between 10-14. This principle presumes that children between 10-14 are incapable of being held criminally responsible unless the prosecution can establish otherwise. A Family and Child Commission inquiry into the age of criminal responsibility in Qld ‘found 10 to 12-year-olds are not developmentally mature enough to be held criminally responsible for their actions...The low minimum age of criminal responsibility further victimises children who are already victims of circumstance....We also know Aboriginal and Torres Strait Islander children are overrepresented in the youth justice system and comprise the majority of children in youth detention (The Queensland Family and Child Commission, 2017: 3). That inquiry recommended that the age of criminal responsibility be increased to 12, that detention be eliminated as a sentencing option (The Queensland Family and Child Commission, 2017: 3).

We argue that this recommendation would have much more impact if the minimum age of criminal responsibility was increased to 14 (the age doli incapax). This which would prevent the remand in detention or detention in police custody of children aged 10-14, who account for 15% of juvenile offenders in Qld (Childrens Court 2018:21). Raising the age of criminal responsibility would decrease the over incarceration of Indigenous youth in Qld, as they are disproportionately drawn into the juvenile justice system at a younger age and comprise the majority of young people in juvenile justice aged less than 14 (AIHW 2018).

"On average, Indigenous young people entered youth justice supervision at a younger age than non-Indigenous young people—2 in 5 (40%) Indigenous young people under supervision in 2016–17 were first supervised when aged 10–13, compared with about 1 in 7 (15%) non-Indigenous young people.” (AIHW, 2018: 26)

Research suggests that young offenders who appear in court as a result of their first offence, instead of being diverted, have double the rate of reoffending as youth who at the same age were diverted from the system (Cunningham, 2007:6). The earlier the contact the higher the rate of recidivism. Consequently, it is vital to divert young offenders from the formal reach of the justice system.

An important Western Australian study identified a relationship between age at first contact and rate of recidivism among Indigenous males. Of Indigenous males aged 10-14 at first contact, 38% progressed to further contacts, compared to 28% among those aged 15-17 at first initiation with the juvenile justice system (Ferrante, Loh & Maller, 2004:44). A South Australian study of the trajectories of offending among 3344 juveniles born in 1984 and apprehended at least once by police between the ages of 10 and 17 (Marshall, 2006 :3) found that the proportion of Indigenous youth rose from 4.3% of the group who ceased committing offences to 48% of youth who had a very high trajectory (Marshall, 2006:8). The high level of repeat contact does not cease when Indigenous youth enter adulthood. Research on a cohort of 5476 juveniles found that ‘The odds of an Indigenous juvenile defendant appearing in an adult court within eight years of his or her first court appearance are more than nine times higher than those for a non-Indigenous defendant’ (Chen et al, 2005: 4).

4. We recommend that raising the age of criminal responsibility to 14 and introducing constructive diversion measures would reduce recidivism – especially for Indigenous young people and children in child protection who on average come into the juvenile justice system at a younger age than other cohorts.
Reducing the fast track from Care to Detention – Reforming Child Protection

Young people with a child protection history comprise a significant portion of those who enter the juvenile justice system. They also enter at a younger age. An AIHW study found that ‘Of those under juvenile justice supervision who had one or more substantiated child protection notifications, 21% first entered supervision aged 10–13 compared with 6% of those with no substantiated notifications.’ (AIHW: 2012: vii). Indigenous children are placed in out of home care at 9.5 times the rate of non-Indigenous children (AIHW, 2012:54). A study undertaken (not yet published) by Professor Tamara Walsh, (UQ Law School) discovered a ‘pipeline’ conveying children from residential care under child protection orders into the juvenile justice system in Qld (paper presented to the juvenile justice consultations). Many are indigenous, victims of neglect, family violence, and homelessness. These children are too easily criminalized by the child protection system meant to care for them. The Atkinson report on youth justice found that 13% of children in the youth justice system had been the subject of care and protection orders (Atkinson, 2018).

We strenuously support the recommendations of the Atkinson youth justice inquiry to address this problem (see below).

The nexus between child welfare and juvenile justice has a long history (Carrington 1993; Carrington and Pereira 2009). Young children in care or under child and protection orders are especially vulnerable to criminalization for very petty offences (such as fare evasion, malicious injury to property (such as minor damage to a residential care centre); assault (such as throwing toast or food at youth officers). They are also especially vulnerable to breach of probation offences as they are under constant surveillance, unlike children not in care. The recent move of Youth Justice into the Child Protection portfolio presents an ideal opportunity to address the systemic factors that propel children under protection and in out of home care into the youth justice system.

5. **We recommend the use of therapeutic and de-escalation approaches with damaged children in child protection system. We recommend that ‘acting out’ behavior in residential care should not be criminalized. Residential care workers should be afforded the required training and provided non-criminal options to avoid resorting to police intervention that propels children from care into the juvenile justice system.**

Bail and Probation of Young People

Bail breaches are often the result of unrealistically onerous bail conditions being put in place. In Qld during 2016-17 ‘One-quarter of probation orders and community service orders and 40% of all conditional release orders, were subject to breach action on or before 30 June 2017.’ (Childrens Court Annual Report, 2018:2). The 2013 report on Bail and Remand for young people in Australia notes concerns that ‘young people granted bail are often subject to inappropriately high numbers of bail conditions’ which are often ‘unrelated to the young person’s offending’, so that ‘these behaviours would not be a criminal offence if the young person was not on bail’. (Richards and Renshaw, 2013, 74-75). The Report notes that ‘criminalising breaches of bail criminalises non-criminal behaviours and results in the unnecessary accumulation of fresh charges against young people. In particular, where young people receive bail conditions that are intended to address their welfare needs, stakeholders argued that it is counterintuitive for a breach of these conditions to constitute a criminal offence. As described above, therefore, a distinction should be made between ‘technical’ and ‘criminal’ breaches of bail conditions imposed on young people’. (Richards and Renshaw, 2013, 80). Housing, employment, mental health and drug and alcohol services are critical to offenders returning to the community and thus to the effectiveness of the parole system.

6. **We recommend these services be bolstered with savings from diverting young people from remand and juvenile justice through diversion.**
Diversionary Alternatives to detention, probation and parole for Young People

Stigmatisation of young people through formal juvenile justice interventions is a major factor contributing to re-offending and driver to adult incarceration (Bargen, 2001; Carrington and Pereira 2009). Diversion programs such as police cautions, warnings and youth conferencing prevent the stigmatization of young people that occurs through the formal criminal justice system. We therefore applaud the introduction of youth conferencing on 1 July 2016, which processed 2110 court referrals in the 2016-17 year. According to the Childrens Court annual report:

“Of those, 95% resulted in an agreement reached between the participants (including the victims of the crime). Of those participants who participated in a satisfaction survey, 94% were satisfied with the process and outcome of the conferences.” (Childrens Court, 2018:2).

The Qld government commissioned Bob Atkinson to undertake an investigation into youth justice in the state, guided by the following principles:

1. Intervene early
2. Keep children out of court
3. Keep children out of custody, and
4. Reduce reoffending.

The Report delivered the following recommendations:

• coordinated, multi-government agency approaches to high-risk children and families including sharing information, co-location, coordinated case management and shared goals;

• services delivered by government and nongovernment agencies being available at times of need (e.g., night-time and weekends)

• a focus on attendance at school and vocational training

• increased options for police to divert child offenders from prosecution

• increased options for courts to divert children from detention centres

• increased options for children to remain in the community rather than be remanded in custody

• greater specialisation in the children’s criminal jurisdiction, and

• a trial of ‘Protected Admissions’ involving a wide range of stakeholders but primarily Youth Justice within the Department of Child Safety, Youth and Women (DCSYW), the Queensland Police Service (QPS), the Crime and Corruption Commission (CCC), the Department of Justice and Attorney General (DJAG), Legal Aid Queensland (LAQ) and the Aboriginal and Torres Strait Islander Legal Service (ATSILS), the intent being for engagement in dialogue to enable a police diversion rather than prosecution.’ (Youth Justice Taskforce, 2018:7)

7. **We support the recommendations of the Atkinson Youth Justice Report and recommend that they be implemented with urgency.**
Reducing Indigenous Over-Incarceration

The issues paper also demonstrates that Indigenous offenders, especially young Indigenous offenders are massively over-represented in juvenile detention and adult prison in Qld. Last year Indigenous prisoners comprised 32% of prisoners and 23% of those on parole (Queensland Corrective Services for 2017–2018, Annual Report). They are 16 times over-represented in prison and 11.5 times on parole. The over-representation of Indigenous youth in the Qld juvenile justice is far worse. In 2012 Indigenous youth accounted for 42% of juvenile offender in Qld. In 2017 they accounted for 48% (this amounts to a rate per 1000 increase from 45 to 48 per 1000) (Childrens Court Annual Report, 2018:15). In 2016–17, 53% of all young people in detention were Indigenous – making them around 24 times over-represented in youth detention in Qld. Qld has the second highest rate of Indigenous youth under juvenile justice supervision in Australia – only exceeded by Northern Territory (AIHW, 2018:8). These rates of Indigenous incarceration are catastrophic.

The over-representation of Indigenous people in custody first rose to national prominence in 1987 with the establishment of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). A major and surprising finding of the Royal Commission was that Indigenous people were detained in custody at 29 times the rate for the general population (this figure included police custody). Describing the number of Aboriginal juveniles in custody at the time as a national crisis by any standard Hal Wootten, the then Commissioner noted their over-representation in maximum security units was even higher than in other institutions (Wootten 1991: 346). The Commissioner then went on to say:

Generally, the cases demonstrate the failure of the juvenile justice system to achieve any success in dealing with children and youths who come to the attention of the juvenile welfare or justice systems. (Wootten, 1991:346)

Almost 27 years later, sadly little has changed for the better. The Australian Law Reform Commission thoroughly canvassed the reasons for this chronic over-representation in its recent report, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133).* It made 38 recommendations to address this systemic issue.

8. **We support the adoption of the 38 recommendations** made by the *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, to be adopted in Qld, including the creation of state level criminal justice targets for closing the gap in over-representation of Indigenous youth and adults in criminal justice and custody.** (see Appendix 1).

Social and historical inequality underlie the causes of Indigenous inter-generational incarceration. Australia cannot continue to incarcerate its way out of these deeply social, cultural and economic problems. We might “contain” the problem for the briefest moment, but the effects of custody will endure and eventually wreak further havoc – into the next generation. Queensland Corrective Services has an Aboriginal and Torres Strait Islander Unit, the Murridhagun Cultural Centre, ‘to provide advisory, planning and support services to QCS and relevant prisoners.’ (Annual Report 2018: 34). This initiative is to be commended. However, the much bigger problem to be addressed is reducing the catastrophic levels of Indigenous incarceration in both juvenile and adult prisons. Such levels of incarceration do not reduce crime in Indigenous communities, they contribute to social breakdown and increased crime.

**Enhancing the effectiveness of parole and community-based sanctions**

In 2017 following the Sofronoff Review, a new parole board was established with revised procedures to enhance the effectiveness parole outcomes in Qld.
The overriding consideration in the parole system is community safety. If we conceive of that as something that should encompass the welfare of offenders as well as others, the most desirable way of serving that end is to have offenders reintegrate successfully into the community. That is the best long-term guarantee of increased community safety.

Relying on the data relating to Queensland Correctional Services from the 2016 Commonwealth Report on Government Services (Productivity Commission, 2016), in 2014-2015 the average daily population of offenders under supervision whether in prison or in the community numbered 23,500. Of these, approximately 30% only were in prison. When we look at total recurrent expenditures we find that this 30% of offenders consumed 90% of the correctional budget, leaving a paltry 10% of the budget to support the supervision of 70% of offenders in the community. There is little wonder therefore that unsustainable caseloads and other resource burdens work against the effective operation of the parole system (and community sanctions like probation). It produces a number of mutually reinforcing adverse effects on the entire correctional system, which adversely affect the performance of the parole system, and result in suspensions of parole that could otherwise have been avoided.

Community sentences like probation are likely to have less credibility with the courts (and the media and wider community), which inclines the courts to a greater reliance on imprisonment. It can reasonably be expected that credible demonstrably effective alternatives to custody would affect the willingness of the courts to sentence offenders to short terms of imprisonment. The average length of stay in custody is less than 2 months. This includes remand prisoners as well as sentenced prisoners. The former raises separate issues to do with the bail system which require attention, both with respect to the grant of bail and the circumstances in which persons on bail are breached and end up on remand. The annual flow of sentenced prisoners through the system also includes many short-termers. It has to be asked what purposes are served by short-term prison sentences, and what are the opportunity costs? From the standpoint of community safety do the benefits outweigh the likely criminogenic effects that flow from the disruptive impacts on the lives of offenders? At a net recurrent cost per day of almost $200 for each prisoner (compared with less than $15 for an offender supervised in the community) might not more money be better spent on enhancing the effectiveness of alternatives to custody, reducing offender/staff ratios (by far the highest of any jurisdiction in the country at 35:1, compared to the national average of 21:1) and improving the quality of supervision and support. This could reduce the numbers entering prison in the first place and enhance the effectiveness of the parole system for those who are sentenced to terms of imprisonment. It could also reduce the suspensions of parole which have increased significantly since 2012.

It is also necessary to critically evaluate the growing role of risk in the management of offenders. Predicting future offending is a notoriously inexact process and there is a marked tendency to err on the side of caution and risk aversion, thereby producing a high number of false positives. Under the ‘Next Generation Case Management Model’ levels of service and intensity of supervision are adjusted according to offender risk, but excessive caseloads are likely to orient officers and the system to compliance – monitoring for breach of conditions, a focus on static risk factors and risk aversion – rather than the more resource-intensive and time-consuming tasks of supervision and support needed to successfully reintegrate high needs parolees into the community. This would explain the high rates of parole suspension/cancellation which in turn contributes to prison overcrowding and cost blow-outs in prison budgets and works against effective prison programmes.

This creates a vicious spiral which dooms the parole system, at almost every level, to sub-optimal performance and perhaps (given the numbers) short term crisis management. Large sums of money are spent on the costly ‘churning’ of offenders through the system – into, out of and back into prison – to the detriment of services and forms of intervention that we know increase the chances that prisoners returning to the community will desist from offending, like assistance with housing, employment and accessing mental health and drug and alcohol services (Ross, 2005; Baldry, 2005; Borzycki and E Baldry, 2003; J. Petersilia; 2000; Hagan & R. Dinovitzer, 1999). The reality at the end of the day is that all but a few offenders sentenced to prison are released into the community at some point. The safety of the community is best served if the carceral-offending cycle can be interrupted at the earliest possible opportunity for the greatest number of offenders.
Community safety is invoked to justify long sentences and long non-parole periods. The effect however may be to simply neutralize the risk presented by such offenders in the short term while exacerbating them in the long term. After a lengthy period in custody (usually in maximum security) an offender will be released with limited (and in cases where they have been denied parole, no) provision for supervision in the community to support and monitor what for most prisoners is a difficult, even traumatic, period of transition and adjustment given the effects of long term incarceration (Cohen and Taylor, 1972). This could hardly be said to serve the interests of community safety.

9. We recommend that the implementation of the Sofronoff Review be evaluated and outcomes made transparent. We also recommend an evaluation of the membership of the parole boards, whether they have adequate Indigenous representation and question why QPS should have three representatives on the board, as this could compromise the independence of the board.

Alternatives to Custody

In particular here, we commend the idea of establishing Circles of Support and Accountability (COSA) and refer the inquiry to the detailed submission to QPC by Dr Kelly Richards on their efficacy. While COSA were initially designed to work with sex offenders released from prison at their Warrant Expiry Date (ie having served their entire sentence in prison and being released into the community without parole supervision), they have since been utilised in addition to parole in some locations (see eg Bates et al. 2007; Quaker Peace and Social Witness 2005; Richards 2011). McCartan et al.’s (2014) analysis of COSA case files in the UK found that COSA complemented (rather than duplicated) the statutory supervision of sex offenders by supporting core members’ compliance with supervision and treatment programs. (Carrington, Hogg and Richards, 2016)

10. Given the emerging evidence about the efficacy of COSA in reducing recidivism and improving community safety, we recommend that this model be trialled in Queensland to assist in meeting the aim of increasing offenders’ successful completion of parole and reintegration and enhancing community safety.

A substantial body of research, undertaken over many years and across multiple jurisdictions, shows that alternatives to imprisonment, like probation, community service orders and intensive correction orders, are certainly no less effective than imprisonment at reducing recidivism and generally markedly superior. NSW introduced Intensive Correction Orders (ICO) in 2010 as an alternative to full-time custody. An ICO can only be imposed if the court has already decided to impose a prison sentence of up to 2 years in duration. A recent study by the NSW Bureau of Crime Statistics and Research (BOCSAR) (Wang and Poynton, 2017) found a substantial reduction in the risk of re-offending for an offender receiving an ICO compared with an offender subject to a short prison sentence up to 2 years. An earlier BOCSAR study (Ringland and Weatherburn, 2013) observed significantly lower rates of offending amongst a cohort on ICOs compared to 2 matched groups, one who had received supervised suspended sentences and other periodic detention. These findings support other research showing that intensive supervision coupled with treatment can be expected to have a significantly greater impact on the reoffending rates of offenders who currently receive prison sentences of up to two years than incarceration. This would also be at substantially less financial cost than prison. The problem in NSW (noted by the Sentencing Council) is that ICOs are currently underutilized. If carefully designed and properly resourced, alternatives like the ICO could reduce both the reliance on imprisonment and recidivism.

The role and effectiveness of such alternatives are however hampered by at least two mutually reinforcing factors. First, as noted above, the prison devours most of the resources in correctional budgets, reducing what is available to support a broad range of innovative alternative sanctions with which courts and corrections might more effectively meet the goals of the sentencing system. Meaningful alternatives could be provided at a fraction of the cost of incarceration, but starving of them resources sets them up to fail. Secondly, and relatedly, the prison has colonised the penal imagination. Too often, and without any understanding of what it means to be closely supervised in the community or undertake unpaid work on a community service order or even to struggle with the payment of fines, anything but a prison sentence is
represented as ‘getting off’ or ‘getting a slap on the wrist.’ More resources poured into effective alternative sanctions, more stories, more knowledge and greater community education in relation to the penal system are essential steps to begin to turn around the excessive and costly reliance on imprisonment.

11. We recommend additional investment in alternatives to detention and prison to drive down incarceration rates and reduce recidivism

Justice Reinvestment

Justice reinvestment (JR) provides a promising framework for a more comprehensive re-ordering of priorities and redistribution of resources in the penal system (see generally Brown et al, 2016). It has been the subject of an Australian Senate Inquiry (2013) and the 2017 ALRC Pathways to Justice report recommended that Commonwealth, state and territory governments provide support to establish an independent justice reinvestment body to promote the reinvestment of resources from the criminal justice system to local community-led, place-based and cooperative initiatives that address the underlying drivers of crime and incarceration. The recourse to JR initiatives in some states in America (often traditionally punitive states in the American south) and elsewhere reflects growing concern at the seemingly inexorable rise in imprisonment rates, the economic cost of prison expansion and that prisons at best play a limited role in reducing crime and at worst are criminogenic, a driver of social breakdown in many communities (usually minority communities and/or the poorest areas) most affected by criminal justice intervention. This is graphically illustrated by the methodologies employed in JR strategies which map criminal justice expenditures onto localities and demonstrate the often vast sums of public money invested in locking up community members to no constructive end and which might be better spent on providing the services and infrastructure likely to prevent local crime but which are often denied impoverished communities.

The results are encouraging, no more so than with one of the most sophisticated local JR initiatives undertaken in Australia, the Maranguka Justice Reinvestment Project in Bourke in north-west NSW. Bourke over many years has had the highest rates of violent and property crime in the state. Bourke is a community of just over 3,000 people, 30% of whom are Aboriginal. Relying on 2013 figures Just Reinvest showed that over $3 million was being spent each year on imprisoning or supervising offenders in the Bourke community. In that year the local Aboriginal community joined with non-profit Just Reinvest NSW to develop local solutions to their persistent crime problems. The project was undertaken with the philanthropic and corporate support. No government money was provided. Implementation commenced in 2015. Strategies targeted early childhood (including the provision of universal health checks for all three-year olds), kids aged 8 to 18 (with a particular emphasis on tackling truancy) and issues facing adult men. The project worked closely with other agencies, especially the police, adopting a problem-solving approach to community issues rather than relying on arrest and prosecution. Results were released in October 2018 relating to the first two years of the project. The following outcomes were amongst those reported –

- 18% reduction in the number of major offences reported
- 39% reduction in the number of domestic violence related assaults reported
- 39% reduction in the number of people proceeded against for drug offences
- 35% reduction in the number of people proceeded against for driving offences
- 12% reduction in the total number of young people proceeded against for offences
- 48% reduction in the rate of domestic violence reoffending amongst offenders aged 26 and over
- 72% reduction in the number of young people (up to 25) proceeded against for driving without a licence
- A driver licensing program has also resulted in 236 community members getting their licence

The positive outcomes attracted attention in the international media (The Economist) as well the leading daily newspapers. They attest to the potential for JR to reorient our thinking around reliance on costly punitive measures against crime as distinct from investing in community-based preventive strategies that engage and mobilize local communities, nurture coordination across agencies and build local capacity.
In light of these encouraging outcomes it is worth pondering Just Reinvest NSW’s policy platform issued ahead of the 2019 NSW State Election and consider whether, along with the recommendations of the ALRC in its Pathways report, the QPC might consider making recommendations along similar lines - http://www.justreinvest.org.au/wp-content/uploads/2018/10/Policy-Platform-2019.pdf

Key components of the platform ask the NSW Government to:

Support community-led solutions to break the cycle of offending and build vibrant futures for children and young people through:

1. Allocating $5 million over 5 years from the corrections budget for three new community-led justice reinvestment initiatives across NSW.

2. Providing $5 million over 5 years from the corrections budget for the establishment of an independent NSW justice reinvestment body overseen by a board with Aboriginal and Torres Strait Islander leadership.

Implement reforms to reduce the prison population and shift spending away from building prisons to building safer, stronger communities:

3. Commit to policy and legislative reforms to immediately reduce the prison population in NSW, including those proposed in the Just Reinvest NSW Policy Paper: Smarter Sentencing and Parole Law Reform, as well as adequate resourcing to ensure effective implementation of the sentencing and parole law reforms in the NSW Criminal Justice Reform Package.

4. Report annually on projected and actual costs and savings associated with the implementation of sentencing and parole law reforms and driver disqualification reforms in the NSW Criminal Justice Reform Package.

12. We recommend that Qld Government develop and implement justice reinvestment a key platform as it is proven to reduce crime, recidivism, prison rates, youth detention, family violence, and drug offences.

Concluding Comments

Today Australia’s convicts probably mostly elicit sympathy; there is certainly no shortage of Australians keen to track and claim convict ancestry and tell the stories both of hardship that got them into trouble with the law and of redeemed lives in the colony. For all its dark side, Australia’s convict experience is probably most accurately characterized overall as a penological success story: for so many convicts who given opportunities denied them at home turned their lives around and for colonies that in a remarkably short space of time were transformed from Bentham’s ‘thief colonies’, widely represented as sink holes of moral depravity, to successful liberal democratic societies with relatively low crime rates. It is no accident that those who paid the highest price for this transformation that benefitted so many convicts and settlers, the dispossessed Indigenous peoples, are today the most incarcerated population in the world. Our own history tells us, as much as any criminological research, that opportunity and inclusion reduce recidivism and reliance on imprisonment and that dispossession and exclusion do the opposite (Hogg and Brown in Carrington et al, 2018).

The history of prisons policy across Australia for the last 30 years or so has largely revolved around governments promising to build more prisons and introduce harsher sentencing regimes. This they claimed was the path to enhanced public safety and restoring public confidence in the justice system. But the massive expansion of the prison estate and prison populations across the country seems to have done very little to restore that confidence or make the community feel any safer. This hasn’t influenced the political response which has typically been to double-down on punitiveness rather than engage in a re-think. It may have been Albert Einstein who said that the definition of madness is doing the same thing over and over and expecting the outcome to be different.
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Appendix 1 - Measures to Reduce the Detention and Prison Populations

Juvenile Detention and adult imprisonment are costly, harmful and criminogenic. Measures that can be taken to reduce detention and imprisonment include:

- Adopt and implement the recommendations of The Law Reform Commission (2018), *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)*, (Appendix 1)
- Raise the age of criminal responsibility to 14
- Adopt the recommendations of the Atkinson Youth Justice Report (2018)
- Stop the pipeline of children moving from the residential care system to the juvenile justice system
- Divert all minor offenders who are no risk to the community from custody (both adult and Juvenile)
- Provide bail support to reduce remand populations and more community support programs to reduce the number breaching bail conditions and entering or re-entering prison.
- Provide more housing for those who would otherwise be remanded (ie. Homeless, young people, Indigenous offenders, women experiencing violence)
- Evaluate, monitor and adequately support community justice programs
• Invest in innovative new justice measures, such as trialling *Circles of Support and Accountability (COSA)* see submission by Dr Kelly Richards
• Adopt a Justice Reinvestment approach to criminal justice to reduce Indigenous over-incarceration as a matter of urgency
• Enhance the access to community corrections in rural and regional areas – to reduce unnecessary incarceration of offenders from these locations
• Provide enhanced support for prisoners with complex needs – such as mental health, drug and alcohol problems – not only during imprisonment but especially during periods of parole – to reduce breaches and recidivism
• Promote a bi-partisan commitment to resist the law and order auctions at election time

Appendix 2

**Recommendations** of The Law Reform Commission (2018), *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)*, Commonwealth of Australia, Canberra.

4. Justice Reinvestment

**Recommendation 4–1** Commonwealth, state and territory governments should provide support for the establishment of an independent justice reinvestment body. The purpose of the body should be to promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration, and to provide expertise on the implementation of justice reinvestment.

Its functions should include:

- providing technical expertise in relation to justice reinvestment;
- assisting in developing justice reinvestment plans in local sites; and
- maintaining a database of evidence-based justice reinvestment strategies.

The justice reinvestment body should be overseen by a board with Aboriginal and Torres Strait Islander leadership.

**Recommendation 4–2** Commonwealth, state and territory governments should support justice reinvestment trials initiated in partnership with Aboriginal and Torres Strait Islander communities, including through:

- facilitating access to localised data related to criminal justice and other relevant government service provision, and associated costs;
- supporting local justice reinvestment initiatives; and
- facilitating participation by, and coordination between, relevant government departments and agencies.

5. Bail

**Recommendation 5–1** State and territory bail laws should be amended to include standalone provisions that require bail authorities to consider any issues that arise due to a person’s Aboriginality, including cultural background, ties to family and place, and cultural obligations. These would particularly facilitate release on bail with effective conditions for Aboriginal and Torres Strait Islander people who are accused of low-level offending.

The *Bail Act 1977* (Vic) incorporates such a provision.
As with all other bail considerations, the requirement to consider issues that arise due to a person’s Aboriginality would not supersede considerations of community safety.

**Recommendation 5–2** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to:

- develop guidelines on the application of bail provisions requiring bail authorities to consider any issues that arise due to a person’s Aboriginality, in collaboration with peak legal bodies; and
- identify gaps in the provision of culturally appropriate bail support programs and diversion options, and develop and implement relevant bail support and diversion options.

### 6. Sentencing and Aboriginality

**Recommendation 6–1** Sentencing legislation should provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.

**Recommendation 6–2** State and territory governments, in partnership with relevant Aboriginal and Torres Strait Islander organisations, should develop and implement schemes that would facilitate the preparation of ‘Indigenous Experience Reports’ for Aboriginal and Torres Strait Islander offenders appearing for sentence in superior courts.

**Recommendation 6–3** State and territory governments, in partnership with relevant Aboriginal and Torres Strait Islander organisations and communities, should develop options for the presentation of information about unique systemic and background factors that have an impact on Aboriginal and Torres Strait Islander peoples in the courts of summary jurisdiction, including through Elders, community justice groups, community profiles and other means.

### 7. Community-based Sentences

**Recommendation 7–1** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations and community organisations to improve access to community-based sentencing options for Aboriginal and Torres Strait Islander offenders, by:

- expanding the geographic reach of community-based sentencing options, particularly in regional and remote areas;
- providing community-based sentencing options that are culturally appropriate; and
- making community-based sentencing options accessible to offenders with complex needs, to reduce reoffending.

**Recommendation 7–2** Using the Victorian Community Correction Order regime as an example, state and territory governments should implement community-based sentencing options that allow for the greatest flexibility in sentencing structure and the imposition of conditions to reduce reoffending.

**Recommendation 7–3** State and territory governments and agencies should work with relevant Aboriginal and Torres Strait Islander organisations to provide the necessary programs and support to facilitate the successful completion of community-based sentences by Aboriginal and Torres Strait Islander offenders.

**Recommendation 7–4** In the absence of the availability of appropriate community-based sentencing options, suspended sentences should not be abolished.

**Recommendation 7–5** In the absence of the availability of appropriate community-based sentencing options, short sentences should not be abolished.

### 8. Mandatory Sentencing
Recommendation 8–1 Commonwealth, state and territory governments should repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction of an offender that has a disproportionate impact on Aboriginal and Torres Strait Islander peoples.

9. Prison Programs and Parole

Recommendation 9–1 State and territory corrective services agencies should develop prison programs with relevant Aboriginal and Torres Strait Islander organisations that address offending behaviours and/or prepare people for release. These programs should be made available to:

- prisoners held on remand;
- prisoners serving short sentences; and
- female Aboriginal and Torres Strait Islander prisoners.

Recommendation 9–2 To maximise the number of eligible Aboriginal and Torres Strait Islander prisoners released on parole, state and territory governments should:

- introduce statutory regimes of automatic court-ordered parole for sentences of under three years, supported by the provision of prison programs for prisoners serving short sentences; and
- abolish parole revocation schemes that require the time spent on parole to be served again in prison if parole is revoked.

10. Access to Justice

Recommendation 10–1 State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to:

- establish interpreter services within the criminal justice system where needed; and
- monitor and evaluate their use.

Recommendation 10–2 Where needed, state and territory governments should establish specialist Aboriginal and Torres Strait Islander sentencing courts. These courts should incorporate individualised case management, wraparound services, and be culturally competent, culturally safe and culturally appropriate.

Recommendation 10–3 Relevant Aboriginal Torres Strait Islander organisations should play a central role in the design, implementation and evaluation of specialist Aboriginal and Torres Strait Islander sentencing courts.

Recommendation 10–4 Where not already in place, state and territory governments should introduce special hearing processes to make qualified determinations regarding guilt after a person is found unfit to stand trial.

Recommendation 10–5 Where not already in place, state and territory governments should implement Recommendation 7–2 of the ALRC Report Equality, Capacity and Disability in Commonwealth Laws to provide for a fixed term when a person is found unfit to stand trial and ensure regular periodic review while that person is in detention.

11. Aboriginal and Torres Strait Islander Women

Recommendation 11–1 Programs and services delivered to female Aboriginal and Torres Strait Islander offenders within the criminal justice system—leading up to, during and post-incarceration—should take into account their particular needs so as to improve their chances of rehabilitation, reduce their likelihood of reoffending and decrease their involvement with the criminal justice system. Such programs and services, including those provided by NGOs, police, courts and corrections, must be:

- developed with and delivered by Aboriginal and Torres Strait Islander women; and
• trauma-informed and culturally appropriate.

**Recommendation 11–2** Police engaging with Aboriginal and Torres Strait Islander people and communities should receive instruction in best practice for handling allegations and incidents of family violence—including preventative intervention and prompt response—in those communities.

**12. Fines and Driver Licences**

**Recommendation 12–1** Fine default should not result in the imprisonment of the defaulter. State and territory governments should abolish provisions in fine enforcement statutes that provide for imprisonment in lieu of, or as a result of, unpaid fines.

**Recommendation 12–2** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to develop options that:

• reduce the imposition of fines and infringement notices;

• limit the penalty amounts of infringement notices;

• avoid suspension of driver licences for fine default; and

• provide alternative ways of paying fines and infringement notices.

**Recommendation 12–3** State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations and community organisations to identify areas without services relevant to driver licensing and to provide those services, particularly in regional and remote communities.

**Recommendation 12–4** State and territory governments should review the effect on Aboriginal and Torres Strait Islander peoples of statutory provisions that criminalise offensive language with a view to:

• repealing the provisions; or

• narrowing the application of those provisions to language that is abusive or threatening.

**13. Alcohol**

**Recommendation 13–1** All initiatives to reduce the harmful effects of alcohol in Aboriginal and Torres Strait Islander communities should be developed with, and led by, these communities to meet their particular needs.

**Recommendation 13–2** Commonwealth, state and territory governments should enable and provide support to Aboriginal and Torres Strait Islander communities that wish to

• develop and implement local liquor accords; and/or

• develop plans to prevent the sale of full strength alcohol or reduce the availability of particular alcohol ranges or products within their communities.

**14. Police Accountability**

**Recommendation 14–1** Commonwealth, state and territory governments should review police procedures and practices so that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples.

**Recommendation 14–2** To provide Aboriginal and Torres Strait Islander people and communities with greater confidence in the integrity of police complaints handling processes, Commonwealth, state and territory governments should review their police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations.

**Recommendation 14–3** Commonwealth, state and territory governments should introduce a statutory requirement for police to contact an Aboriginal and Torres Strait Islander legal service, or equivalent service, as soon as possible after an Aboriginal and Torres Strait Islander person is detained in custody for
any reason—including for protective reasons. A maximum period within which the notification must occur should be prescribed.

**Recommendation 14** In order to further enhance cultural change within police that will ensure police practices and procedures do not disproportionately contribute to the incarceration of Aboriginal and Torres Strait Islander peoples, the following initiatives should be considered:

- increasing Aboriginal and Torres Strait Islander employment within police;
- providing specific cultural awareness training for police being deployed to an area with a significant Aboriginal and Torres Strait Islander population;
- providing for lessons from successful cooperation between police and Aboriginal and Torres Strait Islander peoples to be recorded and shared;
- undertaking careful and timely succession planning for the replacement of key personnel with effective relationships with Aboriginal and Torres Strait Islander communities;
- improving public reporting on community engagement initiatives with Aboriginal and Torres Strait Islander peoples; and
- entering into Reconciliation Action Plans.

**15. Child Protection and Adult Incarceration**

**Recommendation 15** Acknowledging the high rate of removal of Aboriginal and Torres Strait Islander children into out-of-home care and the recognised links between out-of-home care, juvenile justice and adult incarceration, the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children.

**16. Criminal Justice Targets and Aboriginal Justice Agreements**

**Recommendation 16** The Commonwealth Government, in consultation with state and territory governments, should develop national criminal justice targets. These should be developed in partnership with peak Aboriginal and Torres Strait Islander organisations, and should include specified targets by which to reduce the rate of:

- incarceration of Aboriginal and Torres Strait Islander people; and
- violence against Aboriginal and Torres Strait Islander people.

**Recommendation 16–2** Where not currently operating, state and territory governments should renew or develop an Aboriginal Justice Agreement in partnership with relevant Aboriginal and Torres Strait Islander organisations.

**End Notes**

1 Article 37 of the Convention on the Rights of the Child which has been ratified by the Commonwealth stipulates that States Parties shall ensure that ‘(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’. These principles are echoed in other international instruments including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Standard Minimum Rules for the Treatment of Prisoners.