

**AMNESTY
INTERNATIONAL**



Submission to the
QUEENSLAND PRODUCTIVITY COMMISSION INQUIRY INTO
IMPRISONMENT AND RECIDIVISM

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Submitted by
Amnesty International Australia

Contact: Joel Clark

Title: Advocacy & Government Relations Adviser

Email: joel.clark@amnesty.org.au

Phone: 02 8396 7644 / 0424 242 112

About Amnesty International

Amnesty International is the world's largest independent human rights organisation, comprising more than seven million supporters in more than 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

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1. Summary

- 1.1 Amnesty International welcomes the opportunity to submit to the Queensland Productivity Commission's inquiry into imprisonment and recidivism. Our submission will draw on our research, since 2013, on the over-representation of Aboriginal and Torres Strait Islander children in the Australian justice system.
- 1.2 While Aboriginal and Torres Strait Islander children make up less than 6 percent of children aged 10-17 years, they make up 54 per cent of children in prison.¹
- 1.3 Our research has focussed on the jurisdictions where over-representation of Aboriginal children in the justice system is most stark - Western Australia, Queensland and the Northern Territory.
- 1.4 Amnesty International published a National Overview of this issue, *A brighter tomorrow*,² and a research report on the youth justice system in Western Australia, *There is always a brighter future*, in June 2015.³
- 1.5 In September 2016, Amnesty International released *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*,⁴ which raised serious concerns about the treatment of children in Queensland detention centres and prisons.
- 1.6 Our three reports include recommendations for developing policies at a national, state and territory levels to reduce and ultimately end the over-representation of Aboriginal children in the criminal justice system, and to improve youth justice policies Australia-wide.
- 1.7 This submission will also draw upon the work of Change Record, a coalition of Indigenous and non-Indigenous organisations of which Amnesty International is a member; in particular, *Free to Be Kids: National Plan of Action*⁵ and *The Blueprint for Change*⁶.
- 1.8 Amnesty International has chosen to respond to the terms of reference most relevant to its research. The recommendations contained in this submission go towards ending the overrepresentation of Aboriginal and Torres Strait Islander children in the Australian justice system.

¹ Change the Record, 2017, *Free to be kids: National Plan of Action*, p 1

² Amnesty International Australia, 2015, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, viewed 14 September 2017, available at https://static.amnesty.org.au/wp-content/uploads/2016/09/A_brighter_future_National_report.pdf?x85233 (Amnesty International Australia, *A brighter tomorrow*)

³ Amnesty International Australia, 2015, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia*, viewed 14 September 2017, available at https://static.amnesty.org.au/wp-content/uploads/2016/02/CIE_WA-Report_low-res.pdf?x66249 (Amnesty International Australia, *There is always a brighter future*)

⁴ Amnesty International Australia, 2016, *Heads held high: Keeping Queensland kids out of detention, strong in culture and community*, viewed 14 September 2017, available at https://static.amnesty.org.au/wp-content/uploads/2016/12/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf?x85233 (Amnesty International Australia, *Heads held high*)

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Recommendations

1.9 Amnesty International recommends that the Queensland Government:

Children on Remand

- (1) ensures that the current legislative requirement that the Aboriginal and Torres Strait Islander Legal Services ('ATSILS') be notified when Indigenous children are brought in for questioning be extended to apply in cases of summary offences. The notification requirement should be regularly and independently reviewed in order to ensure police compliance.
- (2) ensures that there is sufficient ongoing funding available to continue the work undertaken by ATSILS and Queensland Indigenous Family Violence Legal Services so that Aboriginal and Torres Strait Islander children are granted full access to legal assistance.
- (3) urgently develops a plan to fund culturally appropriate, Indigenous community controlled bail accommodation and support services with the intention to significantly reduce the number of children on remand.
- (4) puts in place systems that address the current high rate of arrests at supervised bail accommodation to ensure that young people aren't criminalised further.
- (5) reduces the time children spend on remand by investigating the reasons for increasing delays in the finalisation of children's matters in the Magistrates and District Courts, and focussing on why Indigenous children's matters are disproportionately delayed.

The Minimum Age of Criminal Responsibility

- (6) amend section 5 of the *Criminal Code Act 1899* (QLD) to immediately raise the age of criminal responsibility to *at least* 14 years old. There should be no limitations for children under this age and the Government should transition all children out of prison within a year.
- (7) undertakes a study into the prevalence of Fetal Alcohol Spectrum Disorder and other neurological impairments, and the effect that they have on young people in the Queensland justice system.
- (8) provide:
 - a) funding for psychologists to train and undertake neurocognitive testing for children who display risk factors for future offending when in contact with police, doctors or schools;
 - b) funding for health checks, including for ear disease, for children displaying risk factors; and
 - c) ensures at-risk children have access to therapeutic, age-appropriate health and prevention programs to address the issues faced by the child and prevent future

contact with the justice system.

- (9) increases the allocation of funding to Indigenous community-led and controlled organisations, within existing budgets, to support culturally appropriate, place-based Indigenous designed and led preventative programs to address the needs of children under 14 years at risk of entering the justice system. This funding should be allocated to Indigenous-led organisations and programs in proportion to the over-representation of Indigenous kids in the justice system.
- (10) show national leadership on youth justice and advocate for a minimum age of criminal responsibility of 14 years, as part of a national, uniform approach.

Justice Reinvestment

- (11) move to make the Cherbourg justice reinvestment trial permanent, with a long-term funding agreement, and seek to trial new sites in communities of most need.
- (12) supports the establishment of an independent justice reinvestment body.

Learnings from other jurisdictions

- (13) does not consider introducing mandatory sentencing for any offence, particularly in relation to children.
- (14) work with the Western Australian and Northern Territory Governments to learn from evaluations of its targeted early intervention programs and consider developing similar programs in Queensland.

2. International Legal Frameworks

2.1 Through ratification of binding international human rights treaties and the adoption of United Nations (UN) declarations, the Australian Government has committed to ensuring that all people enjoy universally recognised rights and freedoms. The over-representation of Indigenous young people in the criminal justice system has been recognised as a human rights issue by a number of UN treaty bodies and the Special Rapporteur on the Rights of Indigenous Peoples in her 2017 report.⁷

Convention on the Rights of the Child

2.2 The Convention on the Rights of the Child (CRC) is the primary source of the rights relevant to this inquiry. Unique among the major UN human rights treaties, it explicitly recognises the particular needs of Indigenous children.

2.3 Australia is a state party to the CRC, having signed and ratified the Convention in 1990. Relevant obligations under the CRC include responsibilities that:

- the best interests of the child is a fundamental principle to be observed, including in the context of criminal justice;⁸
- arrest and detention must be measures of last resort;⁹ and
- a variety of appropriate alternatives to detention should be in place to ensure that children are dealt with in a manner appropriate to their well-being and proportionate to their circumstances.¹⁰

2.4 Article 1 of the CRC defines a child as “every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier.”¹¹ Article 3.1 states that “in all actions concerning children, whether undertaken by ... courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”¹²

2.5 Article 37 of the CRC provides that States Parties shall ensure that “the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest

⁷ Committee on the Rights of the Child, 2012, *Concluding Observations – Australia*, CRC/C/AUS/CO/4, 28 August 2012, viewed 14 September 2017, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf; Committee Against Torture, 2008, *Concluding Observations – Australia*, CAT/C/AUS/CO/3, 22 May 2008, viewed 14 September 2017, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FAUS%2FCO%2F3&Lang=en; Office of the High Commissioner for Human Rights, 2017, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, A/HRC/36/46/Add.2, 8 August 2017, viewed 14 September 2017, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/37/Add.2 (Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*).

⁸ Convention on the Rights of the Child, Art. 3

⁹ Convention on the Rights of the Child, Art. 37(b)

¹⁰ Convention on the Rights of the Child, Art. 40(b)

¹¹ Convention on the Rights of the Child, Art. 1

¹² Convention on the Rights of the Child, Art. 3.1

appropriate period of time.”¹³ Article 40(3) requires States Parties to “promote the establishment [of] measures for dealing with such children without resorting to judicial proceedings ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”¹⁴

- 2.6 In its General Comment 10, on children’s rights in juvenile justice, the Committee on the Rights of the Child says that “a comprehensive policy for juvenile justice must deal with ... the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings.”¹⁵
- 2.7 Article 2(1) of the CRC requires parties to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour ... ethnic or social origin ... or other status.”¹⁶
- 2.8 Article 37 of the CRC requires that “every child deprived of liberty shall be treated with humanity and respect ...and in a manner which takes into account the needs of persons of his or her age.”¹⁷
- 2.9 What this means in practice is set out in more detail in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. These rules include that solitary confinement or any other punishment that may compromise the physical or mental health of the child must be strictly prohibited.¹⁸
- 2.10 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) define solitary confinement as confinement for 22 hours or more a day without meaningful human contact. The rules say that women and children should never be subject to solitary confinement, and prohibit the use of prolonged solitary confinement, defined as confinement in excess of 15 days.¹⁹
- 2.11 This is the overarching international human rights law framework governing the detention of children.
- 2.12 Amnesty International calls on all levels of government to commit to a youth justice approach which is at all times consistent with Australia’s international human rights obligations as laid out above.

¹³ Convention on the Rights of the Child, Art. 37

¹⁴ Convention on the Rights of the Child, Art. 40(3)

¹⁵ UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, available at: <http://www.refworld.org/docid/4670fca12.html>

¹⁶ Convention on the Rights of the Child, Art. 2(1)

¹⁷ Convention on the Rights of the Child, Art. 37

¹⁸ UN General Assembly, 1991, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, 1991, resolution 45/113, entered into force 14 December 1990, viewed 14 September 2017, available at <http://www.refworld.org/docid/3b00f18628.html>.

¹⁹ UN General Assembly, 2015, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)* : note / by the Secretariat, A/C.3/70/L.3, adopted 17 September 2015, viewed 14 September 2017, available at <http://www.refworld.org/docid/56209cd14.html>.

3. Children on Remand

- 3.1 A major contributing factor to imprisonment rates is the amount of young people in detention who are not sentenced. In 2016-17, about 3 in 5 (61%) young people in detention on an average day across Australia were unsentenced—that is, awaiting the outcome of their legal matter or sentencing.²⁰
- 3.2 Queensland has the highest rates of imprisonment for unsentenced youth in Australia. On an average day in 2016-17, 81% of children in detention were unsentenced.²¹
- 3.3 Indigenous children in Queensland spent an average of 71 days in detention on remand, compared with 50 days for non-Indigenous children.²² This was three weeks longer than the national average, with Aboriginal and Torres Strait Islander children spending on average 50 days and non-Indigenous children spending 43 days in detention on remand.²³ As stated in Amnesty’s 2016 report *Heads Held High* it seems as though Indigenous children are spending unjustified, prolonged time on remand.²⁴
- 3.4 This situation is a serious human rights concern. Under the *Convention on the Rights of the Child*, courts and authorities must uphold the principle that detention is a last resort, and when it does occur that it is for the shortest appropriate period of time and that children are released from pre-trial detention “as soon as possible”.²⁵ The Human Rights Committee has said that “pre-trial detention of juveniles should be avoided to the fullest extent possible.”²⁶ This is also reflected in the *UN Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines), which provide a framework for preventative juvenile justice policies such as early intervention programs to support vulnerable families.²⁷

Access to a lawyer during pre-court detention and other support

- 3.5 When a child is apprehended by a police officer, they are taken to a police station or a watchhouse for questioning and processing. Holding cells at police stations are designed to hold people in custody for a short time, while watchhouses are primarily designed to hold

²⁰ Australian Institute of Health and Welfare, 2018, *Youth justice in Australia 2016-17*, p v, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>

²¹ Australian Institute of Health and Welfare, 2018, p 15

²² Australian Institute of Health and Welfare, 2018, Table s118

²³ Australian Institute of Health and Welfare, 2018, Table s118

²⁴ Amnesty International Australia, *Heads Held High*, p 23

²⁵ Committee on the Rights of the Child, 2007, *General Comment No 10: Children’s Rights in Juvenile Justice*, 42nd session, UN Doc CRC/C/GC/10, available at: <http://www.refworld.org/docid/4670fca12.html>

²⁶ Human Rights Committee, 2014, *General Comment 35: Article 9 (Liberty and security of person)*, UN Doc CCPRC/GC/35, para 38, available at:

<https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC35-Article9LibertyandSecurityofperson.aspx>.

²⁷ United Nations General Assembly, 1990, *UN Guidelines for the Prevention of Juvenile Delinquency*, adopted by General Assembly resolution 45/112, UN Doc A/RES/45/112 (‘The Riyadh Guidelines’), Art. 17, available at:

<https://www.crin.org/en/docs/resources/publications/hrbap/IHCRC/UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency.pdf>.

people overnight or for 24 hours or longer.²⁸ A decision is then made about whether to charge, caution or divert the child into youth conferencing and whether pre-court bail will be granted.²⁹

- 3.6 During 2016-17 in Queensland, 49% of children on remand were in pre-court detention,³⁰ which is a result of police refusal of bail. 55% of children in pre-court detention over the year, were Indigenous.³¹
- 3.7 Having a lawyer present during questioning can assist to control what is asked, advise children of their rights and prevent involuntary admissions.³² This is why it is a critical time for a child to have access to legal advice.
- 3.8 Under Queensland law, police must notify Aboriginal and Torres Strait Islander Legal Services (ATSILS) before interviewing an Aboriginal and Torres Strait Islander person, and allow them to speak to and have a support person present during questioning.³³ Before interviewing any child, police must similarly allow them to speak to a support person and have them present during the interview.³⁴ A support person is defined in the legislation as a parent or guardian of the child, a lawyer for the child, a person acting for the child whose primary purpose is to provide legal services, a person whose name is included in the list of support persons or a justice of peace (other than a justice of peace employed by the police).³⁵
- 3.9 Further, there is a memorandum of understanding between ATSILS and the Queensland Police Service about when ATSILS should be notified.³⁶ However, these protections are only applicable to *indictable* offences.³⁷ Indictable offences are relatively serious crimes or misdemeanours that are dealt with by the higher courts (e.g. burglary, stealing or assault), whereas summary or simple offences refer to less serious offences that may be dealt with by a Magistrates court (e.g. theft, property damage, public nuisance).³⁸ This is an important distinction, as many children are questioned, fined, arrested and detained for summary offences, such as public nuisance, theft or trespass.³⁹ Therefore the memorandum of understanding does not apply in approximately 50.4% of cases.⁴⁰

²⁸ Queensland Police Service, *Operation Procedures Manual*, Chapter 16 Custody, p. 5, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter16.pdf>.

²⁹ *Youth Justice Act 1992* (Qld) ss 48, 49; *Police Powers and Responsibilities Act 2000* (Qld) ss 380, 421.

³⁰ Australian Institute of Health and Welfare, 2018, Table s109a

³¹ Australian Institute of Health and Welfare, 2018, Table s109a

³² Amnesty International Australia, *Heads Held High*, p 21

³³ *Police Powers and Responsibilities Act 2000* (Qld) s 420.

³⁴ *Police Powers and Responsibilities Act 2000* (Qld) s 421.

³⁵ *Police Powers and Responsibilities Act 2000* (Qld) sch 6.

³⁶ Memorandum of Understanding between Queensland Police Service and ATSILS, February 2015 (copy provided by ATSILS to Amnesty International). This refers to notification obligations under *Operation Procedures Manual*, ss 6.3.6, 16.8.7, 16.21.10; *Police Powers and Responsibility Regulation 2012* (Qld) including pt 5, div 1, s 25, pt 5, div 2, s 33 of the *Police Responsibilities Code 2012*.

³⁷ *Police Powers and Responsibilities Act 2000* (Qld) s 414.

³⁸ *Criminal Code Act 1899* (Qld), ch 1 s 3.

³⁹ ABS, *Prisoner Characteristics, 2015* (2015), cat no 4517.0, Table 20.

⁴⁰ Childrens Court of Queensland, *Annual Report 2016-17*, Table 20, p 27, available at: https://www.courts.qld.gov.au/_data/assets/pdf_file/0008/548135/cc-ar-2016-2017.pdf

- 3.10 In *Heads Held High*, Amnesty International presented evidence from Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Queensland Police that indicates despite these agreements and protections, ATSILS are not often notified.⁴¹
- 3.11 **Amnesty International recommends that the Queensland Government ensures that the current legislative requirement that the Aboriginal and Torres Strait Islander Legal Services ('ATSILS') be notified when Indigenous children are brought in for questioning be extended to apply in cases of summary offences. The notification requirement should be regularly and independently reviewed in order to ensure police compliance.**
- 3.12 The National Association of Community Legal Centres, Community Legal Centres Queensland and the Youth Advocacy Centre (YAC) emphasised the importance of legal services being culturally appropriate.⁴² The Committee on CRC has recommended that children are guaranteed culturally sensitive legal assistance.⁴³ Similarly, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recommended that ATSILS should be adequately funded for advice to Indigenous children.⁴⁴
- 3.13 ATSILS and Queensland Indigenous Family Violence Prevention Legal Services (QIVPLS) provide specialised, culturally-tailored services for Indigenous people. Culturally appropriate legal services provide a culturally safe service for Indigenous people, employ Aboriginal and Torres Strait Islander staff and understand cultural sensitivities.⁴⁵
- 3.14 **Amnesty International recommends that the Queensland Government ensures that there is sufficient ongoing funding available to continue the work undertaken by ATSILS and Queensland Indigenous Family Violence Legal Services so that Aboriginal and Torres Strait Islander children are granted full access to legal assistance.**

Supervised bail accommodation

- 3.15 Where a child's home address is deemed unacceptable or they are on a child safety order, children may be bailed to residential accommodation. If there is no adequate residential accommodation available the child will remain on remand in custody.
- 3.16 The Carmody Inquiry, established in 2012 to investigate child protection systems, noted that there were 105 of these facilities in Queensland, which are owned or leased by a non-government organisation, and are typically staffed 24 hours a day by carers, for no more than six children per house. Child Safety Services are responsible for their individual case management, but outsources the day to day care to residential carers.⁴⁶

⁴¹ Amnesty International Australia, *Heads Held High*, p 21

⁴² Amnesty International Australia, *Heads Held High*, p 21

⁴³ Convention on the Rights of the Child, Art. 12.

⁴⁴ E Johnson, 1991, *Royal Commission into Aboriginal Deaths in Custody: National Report*, vol 5, rec 234.

⁴⁵ Amnesty International Australia, *Heads Held High*, p 21

⁴⁶ Queensland Child Protection Commission of Inquiry, 2013, *Taking Responsibility: A Roadmap for Queensland Child Protection*, p. 263.

- 3.17 Queensland Attorney-General Yvette D’Ath acknowledged that one of the reasons that there is such a high number of young people on remand in Queensland is “because there is no suitable accommodation or support service for their release on supervision”.⁴⁷
- 3.18 Nine additional supervised bail accommodation facilities were set to be opened by mid-2018. Five of these facilities were not operational as of August 2018, and the Government had indicated that there were delays in opening them.⁴⁸
- 3.19 Queensland Shadow Attorney-General said that the new facilities “aren’t good for community safety and certainly are not helping to rehabilitate our young offenders” and vowed that “[u]nder an LNP Government, young offenders will be kept in youth detention facilities and not allowed to run riot in the community”.⁴⁹
- 3.20 **Amnesty International recommends that the Queensland Government urgently develops a plan to fund culturally appropriate, Indigenous community controlled bail accommodation and support services with the intention to significantly reduce the number of children on remand.**
- 3.21 In *Heads Held High*, Amnesty International found that children were regularly being charged with criminal offences whilst in supervised accommodation.⁵⁰ This issue was highlighted by the Carmody Inquiry which said “it is damning that, as at 30 June 2012, 27.6% of children in licensed care services had been charged with placement-related offending.”⁵¹
- 3.22 The result of criminalisation of children in these facilities is their further entrenchment in the justice system.⁵²
- 3.23 **Amnesty International recommends that the Queensland Government puts in place systems that address the current high rate of arrests at supervised bail accommodation to ensure that young people aren’t criminalised further.**

Procedural delays

- 3.24 The number of days to finalise a court matter in children’s proceedings in Queensland is extensive, and significantly contributes to the high rate of children in remand.

⁴⁷ The Honourable Yvette D’Ath MP, 2017, *Media Statement: Palaszczuk Government details reforms of youth justice system*, available at: <http://statements.qld.gov.au/Statement/2017/9/15/palaszczuk-government-details-reforms-of-youth-justice-system>

⁴⁸ Legal Affairs and Community Safety Committee, 2018, *Estimates - Justice and Attorney-General*, available at: http://www.parliament.qld.gov.au/documents/hansard/2018/2018_07_26_EstimatesLAC.pdf

⁴⁹ David Janetzki MP, 2018, *LNP rules out bail houses in Queensland*, available at: <https://www.deb2020.com.au/lnp-rules-out-bail-houses-in-queensland/>.

⁵⁰ Amnesty International Australia, *Heads Held High*, p 22

⁵¹ Queensland Child Protection Commission of Inquiry, 2013, *Taking Responsibility: A Roadmap for Queensland Child Protection*, p. 265.

⁵² Queensland Child Protection Commission of Inquiry, 2013, *Taking Responsibility: A Roadmap for Queensland Child Protection*, p. 265. See Legal Aid Queensland, Submission to Queensland Child Protection Commission of Inquiry, 26 October 2012.

- 3.25 In 2016-17, it took an average of 51 days to finalise children’s proceedings in the Magistrates Court and 369 days to finalise proceedings in the Children’s Courts.⁵³ This is longest average duration of proceedings for both courts in the past five years.⁵⁴
- 3.26 According to the CRC, children facing criminal proceedings are entitled to be brought to trial as speedily as possible, and decisions in juvenile proceedings should be taken without delay.⁵⁵
- 3.27 **Amnesty International recommends that, reduces the time children spend on remand by investigating the reasons for increasing delays in the finalisation of children’s matters in the Magistrates and District Courts, and focussing on why Indigenous children’s matters are disproportionately delayed.**

4. The Minimum Age of Criminal Responsibility

- 4.1 The current minimum age of criminal responsibility - that is, the age children can be placed in detention - is ten years old. Citing human rights, legal and medical expertise, Amnesty International has called for the minimum age of criminal responsibility to be raised to fourteen years, in all jurisdictions.⁵⁶
- 4.2 In Queensland, if the minimum age of criminal responsibility was raised to fourteen years, there would have been 15.5% fewer children imprisoned in 2016-17.⁵⁷

Arguments to raise the minimum age of criminal responsibility

Human rights obligations

- 4.3 The global median age of criminality of 14 years old.⁵⁸ Most European countries set their ages of criminal responsibility at between 14 and 16 years and China, Russia, Kazakhstan, Japan, Sierra Leone and Azerbaijan have 14 years as the age.⁵⁹
- 4.4 The United Nations Committee on the Rights of the Child has said that countries should be working towards a minimum age of criminal responsibility of 14 years or older.⁶⁰

⁵³ Childrens Court of Queensland, 2017, *Annual Report 2016-17*, Table 9, p 21, available at: https://www.courts.qld.gov.au/_data/assets/pdf_file/0008/548135/cc-ar-2016-2017.pdf

⁵⁴ Childrens Court of Queensland, 2017, *Annual Report 2016-17*, Table 9, p 21, available at: https://www.courts.qld.gov.au/_data/assets/pdf_file/0008/548135/cc-ar-2016-2017.pdf

⁵⁵ Convention on the Rights of the Child, Art 40(2)(b)(iii); ICCPR Art. 10(2)(b).

⁵⁶ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 3, available at: <https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>

⁵⁷ Australian Institute of Health and Welfare, 2018, Table s74B. Calculated by taking the percentage of 10-13 year olds imprisoned of the total number of children imprisoned.

⁵⁸ Australian Human Rights Commission, National Children’s Commissioner, 2016, *Children’s Rights Report 2016*, p.187.

⁵⁹ Child Rights International Network (CRIN), 2018 *Minimum ages of criminal responsibility around the world*, accessed 14 August, available at <https://www.crin.org/en/home/ages>

⁶⁰ Committee on the Rights of the Child, 2007, *General comment No. 10 (2007) Children’s rights in juvenile justice*, CRC/C/GC/10, p.11, accessed 2 August 2018, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

- 4.5 Australia has been repeatedly been criticised by the United Nations, including long-standing criticism from the UNCRC,⁶¹ 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.⁶²
- 4.6 **Amnesty International recommends that the Queensland Government amend section 5 of the *Criminal Code Act 1899* (QLD) to immediately raise the age of criminal responsibility to at least 14 years old⁶³. There should be no limitations for children under this age and the Government should transition all children out of prison within a year.**

Brain development, mental capacity and health

- 4.7 Children do not yet understand the consequences of their actions,⁶⁴ meaning that they are being imprisoned for actions that they may not be responsible for.
- 4.8 There is a significant body of evidence which demonstrates that children who have brain injuries, developmental impairments, mental health issues and psychological issues, including Fetal Alcohol Spectrum Disorder (FASD) are being punished, rather than protected, by the justice system.⁶⁵
- 4.9 FASD relates to a 'spectrum of disabilities including physical, cognitive, intellectual, learning, behavioural, social and executive functioning abnormalities and problems with communication, motor skills, attention and memory'.⁶⁶ It can result in a range of difficulties for children such as difficulties understanding cause and effect, learning from past experiences

⁶¹ 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).

⁶² United Nations Human Rights Council, 2017, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, accessed, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/234/24/PDF/G1723424.pdf?OpenElement>.

⁶³ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 14

⁶⁴ Australian Early Development Census, 2015, *Brain Development in Children*, available at: <https://www.aedc.gov.au/resources/detail/brain-development-in-children>.

⁶⁵ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 6

⁶⁶ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Report of the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Fetal Alcohol Spectrum Disorders (FASD: The Hidden Harm)*, p viii, accessed 2 January 2015, www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=/spla/fasd/report/fullreport.pdf.

and decision making.⁶⁷ Studies show that there is higher birth prevalence and incidence rates of FASD in Indigenous communities.⁶⁸

- 4.10 A recent study of the Banksia Hill Detention Centre in Western Australia found one in three children in prison had FASD and one in nine had some form of neurodevelopmental disorder. Symptoms of the severe neurodevelopmental impairments included attention, executive functioning and / or language, cognition and memory, and 25 per cent were assessed to have an IQ score of less than 70.⁶⁹
- 4.11 In NSW a study of children in eight prisons found that 45.8 per cent had borderline or lower intellectual functioning.⁷⁰
- 4.12 **Amnesty International recommends that it undertakes a study into the prevalence of Fetal Alcohol Spectrum Disorder and other neurological impairments, and the effect that they have on young people in the Queensland justice system.**
- 4.13 Health issues can also lead young people to the justice system. Acute otitis media (AOM), glue ear (common middle ear infection), or runny ear (CSOM) can cause long term hearing loss if not treated and 'lead to delayed language development, poor auditory perception and interpersonal problems in young children.'⁷¹ The ongoing effects of ears problems are seen in behavioural problems, educational underperformance, school dropout and illiteracy, which often leads to underemployment and involvement in criminal activity and the justice system.⁷²
- 4.14 Aboriginal and Torres Strait Islander children have ear diseases at 2.9 times the rate of the non-Indigenous population, and are much more likely to have contact with the justice system than their non-Indigenous peers.⁷³
- 4.15 Measures such as school screening, general practitioner hearing checks, auditory screening, specialist treatment, and education for families and schools in prevention and treatment, could reduce the crippling effect of chronic ear disease on the rate children come into contact

⁶⁷ Bower et al, Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia, 2017, *BMJ Open*, p.1, available at <https://bmjopen.bmj.com/content/8/2/e019605>.

⁶⁸ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 6

⁶⁹ Bower et al, 2017, Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia, *BMJ Open*, p.6-8, available at <https://bmjopen.bmj.com/content/8/2/e019605>.

⁷⁰ Haysom. L et al, 2014, 'Intellectual disability in young people in custody in NSW - prevalence and makers', *Journal of Intellectual Disability Research*, vol. 58, pp1004-14.

⁷¹ 2016, Royal Australian College of Surgeons and Australian Society of Otolaryngology Head and Neck Surgery, *SUBMISSION: Implementation Plan Advisory group (IPAG) consultation 2017*, p.2, accessed 6 August 2018, submission available at https://www.surgeons.org/media/25342091/2017-05-05_submission_racs_asohns_ipag-consultation_final.pdf.

⁷² 2013, Burns. J and Thomson. N, 'Review of ear health and hearing among Indigenous Australians', *Healthinfonet* . vol. 14, No.4, Accessed 6 August, available at http://healthbulletin.org.au/wp-content/uploads/2013/10/ear_health_review_2013.pdf.

⁷³ 2017, Prime Minister and Cabinet, Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report, accessed 16 August 2018, available at <https://www.pmc.gov.au/sites/default/files/publications/indigenous/hpf-2017/tier1/115.html>.

with the justice system.⁷⁴ Furthermore, testing when in contact with the justice system should occur to ensure children are not being penalised for medical issues.

4.16 Amnesty International recommends that the Queensland Government provide:

a) funding for psychologists to train and undertake neurocognitive testing for children who display risk factors for future offending when in contact with police, doctors or schools;

b) funding for health checks, including for ear disease, for children displaying risk factors; and

c) ensures at-risk children have access to therapeutic, age-appropriate health and prevention programs to address the issues faced by the child and prevent future contact with the justice system.

Doli incapax: no longer protecting children under 14

4.17 *Doli incapax* is a latin term meaning ‘incapable of wrong’. *Doli incapax* describes the inability of children under the minimum age of criminal responsibility to form criminal intent.⁷⁵ In addition to the statutory minimum age of criminal responsibility, *doli incapax* is enshrined in the Criminal Codes of each Australian jurisdiction and applies to children aged between 10 years and 14 years.⁷⁶

4.18 Research has been conducted in Victoria which has found that the threshold of rebutting *doli incapax* has been lowered.⁷⁷ Legal stakeholders who shared examples from their professional practice say the automatic principle of *doli incapax* for children under 14 no longer applies:

“Instead, for a child to be deemed doli incapax the onus now falls on the defence to actively pursue an assessment that determines this child lacked capacity to know that their actions were seriously wrong. In practice this can mean that children are denied the protection of being doli incapax.”⁷⁸

4.19 Further problems with the operation of *doli incapax* is outlined in Amnesty International’s research.⁷⁹

⁷⁴ 2016, Royal Australian College of Surgeons and Australian Society of Otolaryngology Head and Neck Surgery, *SUBMISSION: Implemnataion Plan Advisory group (IPAG) consultation 2017*, p.3, accessed 6 August 2018, submission available at https://www.surgeons.org/media/25342091/2017-05-05_submission_racs_asohns_ipag-consultation_final.pdf

⁷⁵ Johnston M., 2006, ‘Doli Incapax – the Criminal Responsibility of Children,’ *Children’s Court of New South Wales*, p.1.

⁷⁶ Australian Institute of Criminology, 2005, *The age of criminal responsibility*, accessed 1 August 2018, available at <https://aic.gov.au/publications/cfi/cfi106>.

⁷⁷ Bartholomew. T, 1998, ‘Legal and Clinical Enactment of the *Doli Incapax* Defence in Supreme Court of Victoria, Australia’, *Psychiatry, Psychology and Law*, Vol. 5, No.1, pp.95-105.

⁷⁸ O’Brien, W. and Fitz-Gibbon, K, 2017, ‘The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders’ Views and the Need for Principled Reform’, *Youth Justice*, Vol.17, No.2, p.142.

⁷⁹ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 10

Effect on rates of re-offending

- 4.20 The Queensland Family and Child Commission found that prison does not deter re-offending. Locking up 10 to 14 year-olds makes them less likely to finish school, tertiary education and training and secure a job.⁸⁰
- 4.21 In 2015 the NSW Bureau of Crime Statistics and Research found that children have a higher rate of re-offending than adult offenders. Almost 80 per cent of children who committed crimes were re-convicted within 10 years, compared with 56 per cent of adult offenders.⁸¹
- 4.22 Statistics show that applying criminal penalties to young children increases the likelihood they will get into trouble later in life, with children arrested before the age of 14 three times more likely than children arrested after 14 years to reoffend as adults.⁸²

The savings

- 4.23 In 2017 PiC, the Indigenous consulting branch of Price Waterhouse Coopers, and Change the Record coalition undertook a study focused on the costs of Indigenous incarceration in Australia, using the current rates of re-offending to forecast the number of Indigenous people likely to return to prison and the associated cost. In 2016 it cost \$7.9 billion per annum to imprison Indigenous people, with costs projected to grow to \$9.7 billion by 2020 and \$19.8 billion per annum by 2040. Closing the gap on Indigenous incarceration could save \$18.9 billion in 2040.⁸³
- 4.24 A range of studies indicate that a reduction in crime rates among children and young people translates to a reduction in adult crime. A meta-analysis of initiatives targeting young people who had offended found that recidivism can be significantly reduced by up to 91 per cent.⁸⁴
- 4.25 The PiC report mapped the projected reduction in re-offending and cost, if custodial sentences for Indigenous children who offend were replaced by cognitive behavioural therapy or multisystemic therapy, holistic case management and support. This approach indicated a reduction in the recidivism rates over four years of between 4 to 15 percentage

⁸⁰ Queensland Family and Child Commission, 2017, *The Age of Criminal Responsibility in Queensland*, p. 29.

⁸¹ Agnew-Pauley, W and Holmes, J, 2015, 'Re-offending in NSW', *Crime and Justice Statistics: Bureau Brief*, NSW Bureau of Crime and Statistics Research, p.1, accessed 1 August 2018, available at <http://www.bocsar.nsw.gov.au/Documents/BB/bb108.pdf>

⁸² Queensland Family & Child Commission, 2017, *The age of criminal responsibility in Queensland*, p.30, accessed 6 August 2018, available at <https://www.qfcc.qld.gov.au/sites/default/files/Forpercent20professionals/policy/minimum-age-criminal-responsibility.pdf>.

⁸³ PiC, *Indigenous incarceration: Unlock the facts*, 2017 p.7, available at <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>.

⁸⁴ Allard, T, Oglivie J, and Stewart, A, 2007, 'The efficacy of strategies to reduce juvenile offending', *Justice Modelling @ Griffith*, p.iii, accessed 6 August 2018, available at https://www.researchgate.net/publication/238732479_The_Efficacy_of_Strategies_to_Reduce_Juvenile_Offending.

points in each year and savings of \$10.6 billion in 2040 and by \$153.6 billion in total present value terms.⁸⁵

Supporting Indigenous-led solutions

- 4.26 There is a significant body of evidence most recently from the Royal Commission into the Protection and Detention of Children in the Northern Territory and the Australian Law Reform Commission which indicates that for Indigenous people including children, early intervention and diversion programs run by Indigenous-led organisations and leaders work best. Report after report has recommended that these programs use a trauma informed therapeutic approach, that they be locally run place-based programs run and controlled by Indigenous people.⁸⁶
- 4.27 Raising the age of criminal responsibility to 14 years and supporting young children with therapeutic and culturally-appropriate support through Indigenous-led solutions will reduce the likelihood of their entry into the justice system, decrease recidivism rates and set them up to succeed.⁸⁷
- 4.28 **Amnesty International recommends that the Queensland Government increases the allocation of funding to Indigenous community-led and controlled organisations, within existing budgets, to support culturally appropriate, place-based Indigenous designed and led preventative programs to address the needs of children under 14 years at risk of entering the justice system. This funding should be allocated to Indigenous-led organisations and programs in proportion to the over-representation of Indigenous kids in the justice system.**

The Atkinson Report on Youth Justice

- 4.29 In his *Report on Youth Justice*, Bob Atkinson AO PM, called on the Queensland Government to support in principle raising the minimum age of criminal responsibility to twelve subject to national agreement and implementation by State and Territory governments; a comprehensive impact analysis, and establishment of needs based program and diversions for 8-11 year old children engaged in offending behaviour.⁸⁸

⁸⁵ PIC, *Indigenous incarceration: Unlock the facts*, 2017, p.56

⁸⁶ See Royal Commission into the Protection and Detention of Children in the Northern Territory, Chapter 7 - Community Engagement, and Recommendations 7.1, 7.2, 7.3 and see also 2017, Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, Chapters 7: Community based sentences especially culturally appropriate community based sentencing options p.262, Chapter 10: Access to justice especially Other specialist courts, lists and diversion programs, p.333-336., Chapter 11: Aboriginal and Torres Strait Islander Women, especially diversion, p.368-370, Recommendations 4.1, 4.2, 5.2, 7.1, 7.3, 10.1, 10.2, 10.3, 11.1 accessed 24 August, available at https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_133_amended1.pdf.

⁸⁷ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 10

⁸⁸ Bob Atkinson AO APM, 2018, *Report on Youth Justice*, p106, available at: <https://www.csyw.qld.gov.au/resources/dcsyw/youth-justice/youth-justice-report-strategy/youth-justice-report.pdf>

- 4.30 Amnesty International notes the significant body of evidence discussed above that clearly concludes that the optimum age to raise the minimum age of criminal responsibility to is fourteen.
- 4.31 Amnesty International also notes that Mr Atkinson suggested that a minimum age of criminal responsibility later be advanced to fourteen as ‘criminal justice, human services, health and education systems build the requisite capabilities for non-criminal responses to offending by very young children’.⁸⁹ Amnesty International asserts that such capabilities can be built now with a move to a minimum age of criminal responsibility as soon as possible.
- 4.32 The *Report on Youth Justice* also recommended that the Queensland Government advocate for consideration of raising the minimum age of criminal responsibility to 12 years as part of a national agenda for all states and territories for implementation as a uniform approach.⁹⁰ Amnesty International agrees that there should be national consistency to this, but that the age should be raised to fourteen.
- 4.33 **Amnesty International recommends that the Queensland Government show national leadership on youth justice and advocate for a minimum age of criminal responsibility of 14 years, as part of a national, uniform approach.**

5. Justice Reinvestment

- 5.1 Justice Reinvestment is an evidence-based approach to reducing incarceration rates by investing in, and supporting communities to address the underlying social issues leading to offending. The approach was developed in the United States “as a means of curbing spending on corrections and reinvesting savings from this reduced spending in strategies that can decrease crime and strengthen neighbourhoods.”⁹¹
- 5.2 In contrast to the United States, Justice Reinvestment in Australia has largely been a community-driven process. Maranguka and the Bourke Tribal Council have led the Maranguka Justice Reinvestment Project since 2013, in partnership with JustReinvest NSW.⁹² Justice Reinvestment in Bourke has focused on coordination and partnership between community, service providers, government and police. This has led to the Bourke Warrant Clinic — a support network for young people including not-for-profit workers and government officials from family, education and health sectors. A magistrate may hold a warrant for arrest of a child or young person for two weeks, during which the support team will work with the young person to develop a plan to address their offending with the clinic. This plan can include attendance at education or community programs.⁹³

⁸⁹ Bob Atkinson AO APM, 2018, *Report on Youth Justice*, p106

⁹⁰ Bob Atkinson AO APM, 2018, *Report on Youth Justice*, p106

⁹¹ Senate Legal and Constitutional Affairs References Committee, 2013, *Value of a justice reinvestment approach to criminal justice in Australia*, available at: https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2010-13/justicereinvestment/report/index

⁹² JustReinvest NSW, *Justice Reinvestment in Bourke*, available at <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>.

⁹³ K Allman, ‘Breaking the Prison Cycle’, 2016, 25 *Law Society of NSW Journal*, p. 29.

Justice Reinvestment in Queensland

- 5.3 Amnesty International welcomes the Queensland Attorney General's announcement of a Justice Reinvestment scoping project in Cherbourg.⁹⁴
- 5.4 One of the significant benefits is the perceived cost-benefit to government and the wider community. Consistently in our research in Queensland, people raised family violence as an underlying cause of contact with the justice system, as well as poverty, mental health, child protection, housing, education, employment, substance abuse, and other health issues.⁹⁵
- 5.5 In 2014-2015, the Queensland government spent \$89.2 million on detention-based supervision, the second highest expenditure on youth detention in Australia.⁹⁶ The cost per child per day in detention on an average day in Queensland is \$1,445, which is above the national average.⁹⁷ A Justice Reinvestment approach would instead see a portion of these dollars be allocated to addressing these underlying causes of offending and on preventing children from becoming entrenched in the justice system.
- 5.6 A possible barrier to expanded justice reinvestment programs in Queensland is the need to 'frontload' the funding of programs. That is, justice reinvestment program require a significant initial outlay of funding, which can be difficult for the electorate to understand.
- 5.7 **Amnesty International recommends that the Queensland Government move to make the Cherbourg justice reinvestment trial permanent, with a long-term funding agreement, and seek to trial new sites in communities of most need.**

Justice Reinvestment National Body

- 5.8 In its report *Pathways to Justice*, the Australian Law Reform Commission recommends that Commonwealth, state and territory provide support for the establishment of an independent justice reinvestment body. It states that 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.⁹⁸
- 5.9 The functions of a national body 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.⁹⁹
- 5.10 Amnesty International has learned from its experience working with Indigenous-led organisations that they face issues with writing and applying for funds, governance matters,

⁹⁴ The Honourable Mark Furner MP, 2017, *Media Statements: Cherbourg to pilot first social reinvestment program*, available at:

<http://statements.qld.gov.au/Statement/2017/9/13/cherbourg-to-pilot-first-social-reinvestment-program>

⁹⁵ Amnesty International Australia, *Heads Held High*, p 29

⁹⁶ Productivity Commission, *Report on Government Services* (2016), Table 16A.1.

⁹⁷ Productivity Commission, *Report on Government Services* (2016), Table 16A.24. National average was \$1,391.

⁹⁸ Australian Law Reform Commission, 2018, *Pathways to Justice*, Chapter 4: Justice Reinvestment, available at: <https://www.alrc.gov.au/publications/national-justice-reinvestment-body>

⁹⁹ Australian Law Reform Commission, 2018, *Pathways to Justice*, Chapter 4: Justice Reinvestment

scalability of their program, and evaluation. A national body should also provide advice and expertise on these matters.

- 5.11 Aboriginal and Torres Strait Islander leadership and cultural expertise must be embedded at all levels of the proposed body.
- 5.12 **Amnesty International recommends that the Queensland government supports the establishment of an independent justice reinvestment body.**

6. Learnings from other jurisdictions

- 6.1 Every Australian jurisdiction has held recent inquiries or consultations on youth justice,¹⁰⁰ often coming to similar conclusions and making the same recommendations.
- 6.2 Two key learnings from other jurisdictions that Queensland should adopt are that mandatory sentencing should never be adopted, and that targeted diversion programs should be investigated for development.

Mandatory Sentencing

- 6.3 The Australian Law Reform Commission found that mandatory sentencing increases incarceration, is costly, and is not effective as a crime deterrent. Mandatory sentencing may also disproportionately affect particular groups within society, including Aboriginal and Torres Strait Islander peoples - especially those found guilty of property crime.¹⁰¹
- 6.4 Amnesty International has consistently supported the abolition of mandatory sentencing, and has called for it to not to be introduced in the future, and that if it is, that the Federal Government overrides it.¹⁰²
- 6.5 Western Australia applies mandatory sentencing to repeat home burglary¹⁰³ and this has been found to have a disproportionate impact on Aboriginal and Torres Strait Islander people.¹⁰⁴
- 6.6 There is also evidence that shows that Aboriginal and Torres Strait Islander children are significantly disproportionately affected by mandatory sentencing. For example, from 2000 to 2005, approximately 87% of all children sentenced under the mandatory sentencing for repeat home burglary laws in Western Australia were Aboriginal.¹⁰⁵

¹⁰⁰ Change the Record, *Free to be Kids: National Plan of Action*, p 4

¹⁰¹ Australian Law Reform Commission, 2018, *Pathways to Justice*, p 16

¹⁰² Amnesty International Australia, 2017, *Submission to the Australian Law Reform Commission Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islanders*, p 15, available at: <https://www.amnesty.org.au/submission-incarceration-rates-indigenous-september-2017/>.

¹⁰³ *Criminal Code Act Compilation Act 1913 (WA)* s 401(4)(b)

¹⁰⁴ Australian Law Reform Commission, 2018, *Pathways to Justice*, Chapter 8: Mandatory Sentencing

¹⁰⁵ Aboriginal Legal Service of Western Australia, 2017, *Submission to the review of the Young Offenders Act 1994 (WA)*, p 37, available at: <http://www.als.org.au/wp-content/uploads/2015/08/ALSWA-Submission-to-the-Review-of-the-Young-Offenders-Act-7-April-2017.pdf>

- 6.7 Reviews have concluded that the mandatory penalty ‘had little effect on the criminal justice system’.¹⁰⁶
- 6.8 Mandatory sentencing also exists in the Northern Territory and New South Wales and evidence has been provided that suggests these laws also disproportionately affect Aboriginal people.¹⁰⁷
- 6.9 **Amnesty International recommends that the Queensland Government does not consider introducing mandatory sentencing for any offence, particularly in relation to children.**

Targeted Early Intervention Programs

- 6.10 Target 120 is an early intervention program being rolled out in Western Australia which aims to support up to 300 young people and their families on addressing the issues that increase a young person’s likelihood of offending, including substance abuse, lack of housing, domestic violence, trauma, mental health issues and poor attendance at school.¹⁰⁸
- 6.11 It is a targeted program using a casework model in which each young person and their family has a dedicated service worker who will work in partnership with multiple agencies including police, health, education, child protection and justice, as well as non-government service providers. The government says that this is to “ensure that there is a co-ordinated and well-managed response to each young person and their family to get them back on track”.¹⁰⁹
- 6.12 Target 120 has been developed based on the New Zealand model of early intervention. This approach more than halved the number of children and young people being placed in detention.¹¹⁰
- 6.13 The Northern Territory Government has announced a similar program that will target thirty high-risk youths in Alice Springs. The government says that program’s core focus is to reduce crime and anti-social behaviour in Alice Springs through early intervention and prevention tactics using a case management model.¹¹¹
- 6.14 **Amnesty International recommends that the Queensland Government work with the Western Australian and Northern Territory Governments to learn from evaluations of**

¹⁰⁶ Rowena Johns, ‘Sentencing Law: A Review of Developments 1998–2001’ (Briefing Paper No 2/202, Parliamentary Library, Parliament of NSW, 2002) 75, citing Department of Justice (WA), *Review of Section 401 of the Criminal Code* (2001).

¹⁰⁷ Australian Law Reform Commission, 2018, *Pathways to Justice*, Chapter 8: Mandatory Sentencing

¹⁰⁸ The Honourable Mark McGowan MP and the Honourable Simone McGurk MP, 2018, *Media Statement: \$20.5 million to target and reduce offending by young people*, available at:

<https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/05/20-point-5-million-dollars-to-target-and-reduce-offending-by-young-people.aspx>

¹⁰⁹ The Honourable Mark McGowan MP and the Honourable Simone McGurk MP, 2018, *Media Statement: \$20.5 million to target and reduce offending by young people*

¹¹⁰ Daile Cross, 2018, *Glimpse inside: How Perth’s ‘notorious’ youth prison must change to help traumatised kids*, available at:

<https://www.watoday.com.au/national/western-australia/glimpse-inside-how-perth-s-notorious-youth-prison-must-change-to-help-traumatised-kids-20180729-p4zu90.html>

¹¹¹ The Honourable Michael Gunner and the Honourable Dale Wakefield, 2018, *Creating Safer Communities: Plan to Target 30 High-Risk Alice Springs Youths*, available at:

<http://newsroom.nt.gov.au/mediaRelease/27254>

its targeted early intervention programs and consider developing similar programs in Queensland.

7. Conclusion

- 7.1 Amnesty International concludes that by addressing the issues related to children in remand, the minimum age of criminal responsibility, justice reinvestment, mandatory sentencing and target early intervention programs, the Queensland Government can significantly reduce the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system.