

**AMNESTY
INTERNATIONAL**



Submission to the
Independent Review of Youth Detention in Queensland

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Submitted by
Amnesty International Australia

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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, including 78,000 supporters in Queensland.

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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Recommendations

Amnesty International recommends that:

- A. Queensland ensure its Youth Detention policy is fully and expressly compliant with the Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples and the rights protected under these and other relevant human rights instruments.
- B. The Review seeks answers from the Queensland Government in relation to the questions Amnesty has posed and thoroughly tests the claims that the incidents were dealt with promptly.
- C. The Queensland Government immediately stops charging and trying 17-year-olds as adults, and that 17-year-olds are removed from adult prison as soon as possible, in line with Australia's international obligations.
- D. The Queensland Government raise the minimum age of criminal responsibility from 10 to 12 years of age in line with internationally accepted standards.
- E. The Review analyse the extent to which the recommendations of the Ethical Standards Unit Youth Detention Inspectorate were implemented.
- F. Queensland establish an Inspector of Custodial Services, similar to that in Western Australia, to have access to all places of detention including youth detention centres, prisons and police watch houses for the purpose of monitoring and reporting on conditions of detention.
- G. The Queensland Government increase its investment in funding and partnering with Indigenous-led prevention, early intervention and diversion programs.
- H. The Queensland Government fund an Indigenous-led, evidence-based Justice Reinvestment trial to address underlying causes of offending.
- I. The Review consider all 21 recommendations contained in Amnesty International's research report: *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*, was released publicly on 31 August 2016 (Appendix A). These include recommendations regarding addressing the underlying causes of youth crime; investing in Indigenous-led solutions; addressing remand and improving access to legal services; and protecting the rights of children in conflict with the justice system; and improving conditions in detention.

1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide this submission to the Independent Review of Youth Detention in Queensland (the Review).
- 1.2 On 31 August 2016 Amnesty International published a report entitled *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community* (**Appendix A**). The report, based on Amnesty's own research and information obtained under Right to Information laws, raises serious concerns about potential abuses of the human rights of children in Queensland youth detention.
- 1.3 Amnesty International obtained quarterly reports, by Freedom of Information request, from inspections by the DJAG Ethical Standards Unit (the 'Inspectorate') of the Cleveland Youth Detention Centre (CYDC) in Townsville and Brisbane Youth Detention Centre (BYDC) between 2010-2015. Analysis of these documents reveals the potentially unnecessary and excessive use of force in these facilities, and other control and restraint measures such as handcuffs, docs, and invasive search practices that may amount to torture or other ill-treatment. The reports also showed high rates of children self harming in these facilities.
- 1.4 Amnesty International welcomes this Review as an important opportunity to further investigate this evidence. The Review is a critical step towards ensuring children are protected and treated in accordance with their rights in the Queensland youth justice system.
- 1.5 This Review is particularly crucial for addressing issues faced by Aboriginal and Torres Strait Islander children in Queensland. Aboriginal and Torres Strait Islander children make up about 8% of all 10 to 17-year-olds in Queensland but 65% of the youth detention population on an average day.¹
- 1.6 This submission provides a brief overview of the international legal and human rights framework relevant to its inquiry, and expands on the evidence contained in the *Heads Held High* report. The submission also responds to a number of issues highlighted in the Discussion Paper of the Review,² including the adequacy of oversight mechanisms; interim measures required for transfer of 17-year-olds from prison to youth detention; cultural programs and services to address the specific needs of Aboriginal and Torres Strait Islander young people in youth detention; and best practice or international models of youth detention.

2. Wider context of this Review

- 2.1. In investigating allegations of mistreatment of children in Queensland youth detention facilities and prisons, Amnesty International recommends the Review also consider the wider context of this issue. Indigenous children in Queensland are 22 times more likely

¹ Amnesty International, August 2016, *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*, p. 1.

² Independent Review of Youth Detention, October 2016, *Discussion Paper*, https://www.youthdetentionreview.qld.gov.au/_data/assets/pdf_file/0020/2369/DISCUSSION-PAPER_FINAL.pdf.

to be detained than non-Indigenous children. Aboriginal and Torres Strait Islander children make up about 8% of all 10 to 17-year-olds in Queensland but 65% of the youth detention population on an average day.³

- 2.2. This issue is not isolated to Queensland: The rate at which Indigenous young people are incarcerated throughout Australia is a national crisis. Nationally, during 2014-15, Aboriginal and Torres Strait Islander children were 24 times more likely to be incarcerated than non-Indigenous children.⁴
- 2.3. Since 2014, Amnesty International has been undertaking research on the disproportionate rates at which Aboriginal and Torres Strait Islander children are incarcerated in Australia, with a focus on Western Australia, Queensland and the Northern Territory. In addition to the *Heads Held High* report we have also published a national overview of the issue (**Appendix B**), and a report on Indigenous youth justice in Western Australia (**Appendix C**).
- 2.4. Amnesty International's research has found that Aboriginal and Torres Strait Islander children are more likely to end up behind bars because they are more likely to be disadvantaged, removed from their families, absent from school, experiencing violence, racism and trauma, have a substance abuse issue, and to have a disability or mental illness, among other contributing factors. These findings are far from new. Twenty-five years ago, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that these social and health issues can be determinants of contact with the justice system, and need to be addressed in order to end the over-representation of Indigenous people in custody.
- 2.5. Indigenous children in Queensland are also more likely than their non-Indigenous peers to be held in detention on remand because of a lack of culturally-appropriate legal services, refusal of bail for a number of reasons including home environment, and a lack of culturally appropriate diversionary options.
- 2.6. This Review is an opportunity to provide recommendations to the Queensland Government to tackle the underlying causes and system deficiencies that are resulting in Indigenous children being detained in the first place.

3. International Legal Frameworks

- 3.1. Best practice models of youth detention are based on, and compliant with, international human rights law.
- 3.2. The three Amnesty International reports attached to this submission provide a detailed analysis of the international human rights legal framework applicable to youth detention in Australia. A brief overview follows below.

³ Amnesty International, August 2016, *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*, p. 1.

⁴ Amnesty International, August 2016, *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*, p. 1.

Convention on the Rights of the Child

- 3.3. Under international law, all fair trial and procedural rights that apply to adults apply equally to children, but additional juvenile justice protections exist under the international human rights framework in recognition that children differ from adults in their physical and psychological and development. The *Convention on the Rights of the Child* (CRC) is the primary source of these rights. Importantly, the CRC also recognises the particular needs of Indigenous children.
- 3.4. Australia is a state party to the CRC, having signed and ratified the Convention in 1990. Under the Convention, the Australian Government bears ultimate responsibility for respecting, protecting and fulfilling the rights set out in the Convention and other international legal instruments, including that:
 - 3.4.1. the best interests of the child is a fundamental principle to be observed, including in the context of criminal justice;⁵
 - 3.4.2. arrest and detention must be measures of last resort;⁶ and
 - 3.4.3. 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.⁷
- 3.5. 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.” 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.”
- 3.6. Article 37 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 appropriate period of time.” 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.”
- 3.7. 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.”
- 3.8. 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.”

⁵ Convention on the Rights of the Child, Arts. 3(1), 37(c), 40(2)(b)(iii).

⁶ Convention on the Rights of the Child, Art. 37.

⁷ Convention on the Rights of the Child, Art. 37(d).

- 3.9. This is the overarching international human rights law framework governing the detention of children.

Declaration on the Rights of Indigenous People

- 3.10. The UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (the Declaration) in 2007, which contains numerous human rights provisions relevant to the detention on Indigenous children in Queensland and across Australia. The Australian Government endorsed the Declaration in 2009.
- 3.11. The Declaration has been characterised as constituting “the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world” and recognises “the right of indigenous families and communities to retain shared responsibility for the upbringing ... and well-being of their children.”⁸
- 3.12. It recognises the right of Indigenous peoples to promote, develop and maintain their distinct institutions, customs, spirituality, traditions and practices, including juridical systems. The right “to the improvement of their economic and social conditions” without discrimination, is also recognised.” The Declaration states that particular attention should be given to “the rights and special needs of indigenous ... youth, children and persons with disabilities.”⁹ Under the Declaration, Indigenous Peoples have “the right to participate in decision-making in matters which would affect their rights” through their own representatives chosen in accordance with their processes.¹⁰
- 3.13. Under the Declaration, States are required to take steps to ensure continuing improvement of Indigenous Peoples’ economic and social conditions.
- 3.14. Amnesty International recommends Queensland ensure its Youth Detention policy is fully and expressly compliant with the CRC and the Declaration and the rights protected under these and other relevant human rights instruments.

4. Amnesty International’s research on youth detention in Queensland

- 4.1. As part of a five-year national campaign to reduce the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system, Amnesty International conducted research in Queensland during 2014-2016.
- 4.2. Amnesty International researchers interviewed Aboriginal and Torres Strait Islander children, leaders, Elders, organisations and community members throughout Queensland. This included court officers and lawyers of the Aboriginal and Torres Strait Islander Legal Service of Queensland (ATSILS) and staff of other Indigenous-controlled organisations. In particular, the research focused on Mount Isa, Townsville, Palm Island and Logan. Amnesty International also interviewed non-Indigenous lawyers, non-

⁸ *UN Declaration on the Rights of Indigenous Peoples*, <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>.

⁹ *UN Declaration on the Rights of Indigenous Peoples*, adopted by UN General Assembly resolution GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, UN Doc A/RES/61/295 (13 September 2007), Art. 21.

¹⁰ *UN Declaration on the Rights of Indigenous Peoples*, Art. 5., <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>.

Indigenous service providers and organisations working with Aboriginal and Torres Strait Islander children as well as staff within the Queensland Police Service (QPS), the Youth Justice Services section of the Department of Justice and Attorney General (DJAG) and local government.

- 4.3. Amnesty International also reviewed existing data, case law, legislation, parliamentary debates, documents obtained through freedom of information requests, United Nations materials, government and academic reports and inquiries into the Queensland youth justice system.
- 4.4. The resulting Amnesty International report, *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*, was released publicly on 31 August 2016. (**Appendix C**). The report details a number of concerns held by Amnesty International relating to conditions experienced by children in Queensland's youth detention centres.¹¹

5. Requests under Right to Information

- 5.1. On 16 June 2016, Amnesty International requested access to the quarterly reports from inspections by the DJAG Ethical Standards Unit Youth Detention Inspectorate (the 'Inspectorate') of Cleveland Youth Detention Centre ('CYDC') in Townsville and Brisbane Youth Detention Centre ('BYDC') from January 2010 - 17 June 2016. By letter dated 1 August 2016, Amnesty International was granted full access to the Inspectorate's quarterly reports of CYDC and BYDC from 2010-2015.
- 5.2. Amnesty International was told that the decision did not include the release of the March 2016 Inspectorate reports because they had not been finalised at the time of the request. Amnesty International requested the March 2016 Inspectorate reports in a separate Right to Information request (Ref 170191) on 12 August 2016 but has not yet received the reports or a decision on their release.
- 5.3. An analysis of the documents received revealed a number of incidents involving youth detainees that potentially raise human rights concerns including excessive use of force, inappropriate use of restraints, the use of dogs, invasive search practices and use of separation and isolation. The reports also raise concerns about high rates of children self harming in youth detention facilities. A detailed account of these concerns is available in the attached *Heads Held High* report (**Appendix A, pages 20 - 32**).

¹¹ See Appendix C, pp. 20-32.

6. Engagement with the Queensland Government regarding youth detention concerns

- 6.1. On 11 August 2016, Amnesty International outlined these concerns in a letter to the Queensland Attorney-General (**Appendix D**). The letter asked for an immediate response and requested further information to clarify, among other factors:
 - 6.1.1. The actions the government has taken to address the high rates of self-harm in youth detention centres, and the policies and procedures for reporting of self-harm incidents and care for children at risk of self-harm.
 - 6.1.2. Whether these incidents have been independently investigated with regard to potential human rights violations, and whether staff suspected of human rights abuses have been suspended pending an independent investigation.
 - 6.1.3. The outcomes of those investigations, including whether children who have experienced human rights violations have been provided an effective remedy.
- 6.2. Amnesty International has requested the release of CCTV footage of the incidents the subject of this letter, but this application was refused by DJAG by letter dated 21 September 2016. Amnesty International has requested an internal review of the decision.
- 6.3. Amnesty International welcomed the Attorney-General's announcement on 19 August 2016 of this independent review of Queensland's Youth Detention Centres.¹²
- 6.4. Amnesty International received a letter dated 12 October 2016 in response from the Attorney-General. This letter (**Appendix E**) did not respond specifically to Amnesty's concerns and allegations of human rights abuses in youth detention, but noted that a review into detention was underway.
- 6.5. Amnesty International also received a letter dated 12 October 2016 from Sean Harvey, Assistant Director of Youth Justice (**Appendix F**). This letter responds to some of the concerns raised by Amnesty International, and includes the following claims:
 - 6.5.1. young people may not be asked to lift their breasts or genitals during searches;
 - 6.5.2. ankle cuffs are no longer used in detention centres;
 - 6.5.3. young people are not forced to change into suicide prevention garments;
 - 6.5.4. "separation" (i.e. solitary confinement) has never been used for disciplinary purposes;
 - 6.5.5. Youth Justice has a zero tolerance policy for excessive use of force;
 - 6.5.6. dogs are not used as a general security measure at youth detention centres and the use of the dog at Cleveland Youth Detention Centre was

¹² Attorney-General and Minister for Justice and Minister for Training and Skills, Media Release, 19 August 2016, 'Attorney-General orders independent review of Queensland Youth Detention Centres', <http://statements.qld.gov.au/Statement/2016/8/19/attorneygeneral-orders-independent-review-of-queensland-youthdetention-centres>.

“immediately discontinued when it was identified that the handler had used the animal for an unauthorised purpose”.

- 6.6. However, information in the reports from the Youth Detention Inspectorate conflicts with some of these claims. For example, the reports show that the inappropriate use of dogs was reported in March 2015, but the practice did not end until October 2015. This conflicts with the claim in 5.5.6 that the practice was “immediately discontinued”.
- 6.7. Amnesty International is seeking answers to questions put to the Queensland Government including:
 - 6.7.1. What measures are in place to ensure that children - particularly Indigenous children - are made aware of their rights while in detention?
 - 6.7.2. What complaints procedures are available to children in youth detention, and what protections are in place to ensure that they are not at risk during or after making a complaint?
 - 6.7.3. Whether these incidents were further investigated and the outcomes of those investigations
 - 6.7.4. Whether use of force in these incidents was used as a last resort, and was necessary and proportionate
 - 6.7.5. Where use of force was found to be excessive or unlawful, whether children were provided with reparations
 - 6.7.6. The reasons for the low number of complaints received on use of force.
 - 6.7.7. The causes of self-harm among children in youth detention.
 - 6.7.8. The preventative measures in place to minimise the risk of self-harm among youth detainees.
 - 6.7.9. The mental health assessments and services that are available to children, and whether these are culturally appropriate for Indigenous children.
 - 6.7.10. The care that is given to children who have self-harmed or attempted to self-harm.
 - 6.7.11. The reporting requirements in cases of self-harm or attempted self-harm, including reporting to the Directors-General of the Youth Detention Centres, and to the Government.
 - 6.7.12. Whether the incidents outlined above were further investigated and the outcomes of those investigations.
 - 6.7.13. The actions the Government has taken to address the high rates of self-harm in youth detention.
 - 6.7.14. Who was responsible for authorising the presence and /or use of dogs in youth detention centres?
 - 6.7.15. Why there was a significant delay by the Government in implementing recommendations from the Inspectorate to cease the use of dogs in youth detention facilities?

- 6.7.16. Current policies and procedures regarding the separation of children in youth detention, including who is responsible for authorising the use of isolation.
 - 6.7.17. The documentation and recording requirements when children are placed into isolation.
 - 6.7.18. Whether isolation is used as a disciplinary measure in youth detention centres.
 - 6.7.19. What guidelines and/or procedures govern the use of mechanical restraints in youth detention centres?
 - 6.7.20. What training is given to youth detention centre staff to ensure that instructions regarding mechanical restraints are upheld in day-to-day operations as well as in exceptional circumstances, and what measures are taken against those who fail to comply with those instructions?
 - 6.7.21. Whether the incidents outlined above were investigated and the outcomes of those investigations.
 - 6.7.22. whether there have since been any incidents of partially clothed searches involving squatting and lifting.
 - 6.7.23. the procedures and reporting requirements relating to strip and body cavity searches of children in Queensland including both those in police custody and in corrections facilities.
- 6.8. Amnesty International maintains that all potential human rights abuses must be independently investigated, that those staff members suspected of having perpetrated abuses are immediately suspended during investigation and if found responsible, appropriately disciplined or otherwise sanctioned. Further, international law requires that children who have had their rights abused must have access to an effective remedy.
- 6.9. Amnesty International recommends that the Review seek answers from the Queensland Government in relation to the questions outlined above and thoroughly test the claims that matters were dealt with promptly.

7. The operation and management of Queensland prisons with respect to 17-year-old prisoners

- 7.1. As at 1 August 2016, there were 49 children aged 17 years held in adult prisons in Queensland.¹³
- 7.2. Amnesty International has been concerned about the treatment of 17-year-olds as adults in Queensland's justice system for many years. International standards define children

¹³ Queensland Government Data, *Custodial Offender Snapshot as at 01 08 2016* (2016), available at <https://data.qld.gov.au/dataset/custodial-offender-snapshot-statewide/resource/4bad7fe4-5a0e-4c47-98d5-2a0608e7ae53>.

as aged under 18 years, and require that children be detained separately from adults.¹⁴ While 18 years is the age of majority for voting, drinking and gambling in Queensland, 17-year-olds are treated as adults in its criminal justice system.

- 7.3. The UN Committee on the Rights of the Child has called for juvenile justice protections to extend to all individuals who were under the age of 18 at the time of the offences, regardless of the age of majority in the particular jurisdiction and regardless of their actual age at the time of trial or sentencing. In 2012, the Committee reiterated its recommendation, first made in 2005, that Australia should remove children who are 17 years old from the adult justice system in Queensland.
- 7.4. Adult prisons are not appropriate facilities to hold children as they do not necessarily cater to children's specific needs. An 18-year-old woman told Amnesty International that she was "absolutely gobsmacked" and hugely shocked when she went into the adult prison as a 17-year-old. Amnesty International's research, including interviews with lawyers, advocates and family members, found that a significant number of adult prisons did not provide appropriate services to 17-year-olds. For example, adequate access to education programs, or provision to basic items like soap and toothbrushes. Interviews also raised concerns about overcrowding in adult prisons.
- 7.5. A carer of a 17-year-old detained in an adult prison told Amnesty International that children in adult prisons are "basically left to rot, and treated like dirt" and that "a lot of animals out there are probably treated a lot better... I feel like I'm going back into the 18th century when I walk in there, with their attitude to everything. It's just all about punishment, retribution, and vindictiveness and nothing about rehabilitation."
- 7.6. Amnesty International is concerned about the use of restraints and solitary confinement of 17-year-olds in Queensland prisons, following the release of footage showing a 17-year-old restrained and confined in a Brisbane adult prison in August.¹⁵ Under international law and standards, the use of restraints against juveniles must be limited to "exceptional cases, where all other control methods have been exhausted and failed."¹⁶
- 7.7. Further, children in detention who are suffering from mental illness should be treated in a specialised facility.¹⁷ Means of restraint should never be used as a routine measure and their use must be justified by the requirement of the concrete situation where it is necessary and proportionate to the circumstances to prevent a person from harming a law enforcement official, a third person or him/herself, or to prevent the person from escaping. The authorities must ensure that means of restraint are not used in a way that amount to torture or other cruel, inhuman or degrading treatment or punishment, and that does not cause injury.

¹⁴ The Convention on the Rights of the Child (CRC) defines a child as any person below the age of 18 years unless majority is obtained earlier in the domestic laws applicable to the child. The CRC also provides that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so".

¹⁵ David Murray, Courier Mail, 'Footage from inside Brisbane prison shows teen confronted by seven prison officers and put in spit mask', 30 August 2016, <http://www.couriermail.com.au/news/queensland/footage-from-inside-brisbane-prison-shows-teen-confronted-by-seven-police-and-put-in-spit-mask/news-story/36723715c6226a32f5443177713b6967>.

¹⁶ UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted by UN General Assembly Resolution 45/113, UN Doc A/RES/45/113, 14 December 1990, Rule 64.

¹⁷ UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted by UN General Assembly Resolution 45/113, UN Doc A/RES/45/113, 14 December 1990, Rule 53.

- 7.8. Amnesty International welcomes the introduction of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016*
- 7.9. While Amnesty International appreciates the complexities of transitioning all 17-year-olds from the adult criminal justice system to youth detention, Australia's international obligations require that the Queensland Government ensure that all 17-year-olds currently in adult prison are transferred to youth detention as soon as possible, unless it is in the best interests of the child not to do so.¹⁸
- 7.10. It is critical that the rights of the child remain paramount throughout the transition process, including the consideration of international human rights principles by the decision maker (such as the principle that detention be a last resort for children and the right to be separated from adults), as well as procedural rights such as the right to appeal decisions made by transitional regulation, including those regarding the transfer of a child from adult detention.
- 7.11. Amnesty International recommends that the Queensland Government immediately stops charging and trying 17-year-olds as adults, and that 17-year-olds are removed from adult prison as soon as possible, in line with Australia's international obligations.

8. Interim measures required for transfer of 17-year-olds from prison to youth detention

- 8.1. Amnesty International supports the transfer of 17-year-olds from prison to youth detention as soon as possible. Amnesty International made a submission to the Queensland Parliament's Education, Tourism, Innovation and Small Business Committee inquiry into the *Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Bill 2016* in support of the legislation.¹⁹
- 8.2. One of the main concerns of the Government in transitioning 17-year-olds to youth detention is the safety of younger children in those facilities. Amnesty International notes that Queensland is the only Australian jurisdiction who places 17-year-olds into adult correctional facilities, and that all other States and Territories are able to manage different age groups of children in detention. Professor Kerry Carrington, in her recent submission,²⁰ argues that the trend data for serious offenders in Queensland youth detention shows that "...they are very few in number [and] most of them in the current system are aged 15 or 16 anyway." She notes that, "[a]dding 17 year olds presents no further risk in this sense." She concludes that, "...the evidence from all other jurisdictions attests that having 17 year olds in detention with younger detainees is not an insurmountable issue."

¹⁸ Convention on the Rights of the Child, Art. 37(c).

¹⁹ Amnesty International, Submission to the Youth Justice (Inclusion of 17 year old persons) Amendment Bill inquiry,

<https://www.parliament.qld.gov.au/documents/committees/ETISBC/2016/11YouthJustice/submissions/010.pdf>.

²⁰ Professor Kerry Carrington, Submission to the Youth Justice (Inclusion of 17 year old persons) Amendment Bill inquiry,

<https://www.parliament.qld.gov.au/documents/committees/ETISBC/2016/11YouthJustice/submissions/004.pdf>.

- 8.3. Amnesty International also recommends the Queensland Government raise the minimum age of criminal responsibility from 10 to 12 years of age in line with internationally accepted standards. The Committee on the Rights of the Child has concluded that 12 is the lowest internationally acceptable minimum age of criminal responsibility. In its Concluding Observations in 2005 the Committee said that the age of criminal responsibility in Australia is “too low” and recommended raising it to 12. This recommendation was reiterated in 2012.
- 8.4. Amnesty International also notes that as of June 2016, Queensland’s adult prisons were operating at approximately 116 per cent capacity.²¹ In contrast, the Attorney-General has indicated that as of July 2016, Queensland’s youth detention centres were not at capacity.²²

9. Oversight of Queensland youth detention centres

- 9.1. Amnesty International understands there are several layers of oversight of youth detention centres in Queensland, including: the Ombudsman, the Office of Public Guardian, the Queensland Family and Child Commission and DJAG’s Ethical Standards Unit Youth Detention Inspectorate.
- 9.2. However, there are limitations of each of these oversight mechanisms, depending on their statutory responsibilities and jurisdiction. Each entity has different powers as to how, when and why they can monitor, inquire and report on potential human rights abuses in youth detention centres.
- 9.3. Amnesty International understands that the Ethical Standards Unit reports quarterly on issues of policy, and to a limited extent, individual cases; the Ombudsman has powers to investigate complaints; the Office of Public Guardian can conduct individual advocacy where children under child safety orders are in detention as well as providing support through the Community Visitors Program; and the Queensland Family and Child Commission has an advocacy function for youth detention issues. In spite of all these mechanisms, it is clear that there are gaps in oversight and an overall lack of transparency.

²¹ Minister for Police, Fire and Emergency Services and Minister for Corrective Services, Media Release, 14 June 2016, <http://statements.qld.gov.au/Statement/2016/6/14/easing-overcrowding-in-our-prisons-a-priority>.

²² Brisbane Times, 26 July 2016, *AG says youth detention royal commission not needed in Queensland*, <http://www.brisbanetimes.com.au/queensland/ag-says-youth-detention-royal-commission-not-needed-in-queensland-20160726-gqeb6n.html>

- 9.4. The jurisdiction of many of the current oversight mechanisms depends upon a complaint being made. Yet the Ethical Standards Unit's Quarterly Inspection Reports revealed concerns - raised over a number of years - about the accessibility and adequacy of the current complaints processes in both CYDC and BYDC.
- 9.5. It is imperative that potential human rights abuses are independently investigated, that those staff members suspected of having perpetrated abuses are immediately suspended during investigation and if found responsible, appropriately disciplined or otherwise sanctioned.²³ Further, international law requires that children who have had their rights abused must have access to an effective remedy.²⁴
- 9.6. DJAG's Ethical Standards Unit Youth Detention Inspectorate provides quarterly inspection reports on both youth detention centres. However, it is not an independent body. Amnesty International's analysis of the reports from 2010-2015 has revealed a number of instances where recommendations were made and were either ignored or otherwise not implemented. This suggests that there is a systemic issue and independent oversight is needed at this level.
- 9.7. Amnesty International recommends that the Review analyse the extent to which the recommendations of the Ethical Standards Unit Youth Detention Inspectorate's were implemented.
- 9.8. Amnesty International believes that while there is some regular monitoring of places of detention, the processes for complaints and investigations should be better aligned between agencies so that incidents can be escalated and followed up appropriately, including providing suitable remedy for victims of abuse.
- 9.9. Amnesty International recommends that Queensland establish an Inspector of Custodial Services, similar to that in Western Australia, to have access to all places of detention including youth detention centres, prisons and police watch houses for the purpose of monitoring and reporting on conditions of detention.
- 9.10. The Inspector of Custodial Services would carry out regular, thorough, independent and impartial investigations into all allegations of mistreatment, torture or other ill-treatment of children in detention and ensure that conditions of detention are adequate and in accordance with international standards.

²³ UN BPUFF, Principles 22-26; OPCAT, Art. 17. See also Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (2015), pp. 63-84.

²⁴ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly Resolution 40/34, UN Doc A/RES/40/34, 96th plen mtg, 29 November 1985, para. 18; CRC, Art. 39; Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, 42nd session, UN Doc CRC/C/GC/10 (25 April 2007), para. 6.

10. Current cultural programs and services and their effectiveness in addressing the specific needs of Aboriginal and Torres Strait Islander young people in youth detention.

- 10.1. The Committee on the Rights of the Child has encouraged States to support Indigenous Peoples to design and implement restorative justice systems and community-based programmes and services that consider the needs and cultures of Indigenous children, their families and communities.²⁵ International and domestic studies and inquiries have found that Indigenous designed and led justice programs consistently outperform those that are externally imposed.²⁶
- 10.2. There are a number of Indigenous-led, early intervention, prevention and diversion programs in Queensland which may assist to reduce the numbers of Indigenous children entering into the justice system, as well as recidivism. Amnesty International believes there are a number of effective Indigenous-led programs that would benefit from further government support, including the following:
- 10.2.1. Red Dust Healing in Townsville, which works in detention centres and schools to deliver cultural healing programs for at risk children, with a focus on dealing with rejection and having positive relationships and role models. Randal Ross told Amnesty International that in 2006, the program ran in Cleveland Youth Detention Centre with 40 boys, and their progress was monitored for two years: none of the children returned to detention in that time and only eight boys reoffended, on minor offences.²⁷
 - 10.2.2. Uncle Alfred's Men's Group, which provides cultural healing and support for young and older men in Townsville, as they are transitioning out of prison, or for early intervention.²⁸
 - 10.2.3. The ATSIILS Service Throughcare program in Townsville, which supports youth detainees before and after release to address their offending behaviour and to reduce their likelihood of reoffending.²⁹

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

²⁶ See The Harvard Project on American Indian Economic Development, *Justice in Indian Country* (2015), available at <http://hpaied.org/exhibits/justice-indian-country>. See also Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (2014), para. 4.106; A Daly, G Barrett and R Williams, 'A Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee: the economic case for local dispute management services', 9 June 2015, Occasional seminar AIATSIS, Canberra, available at <http://aiatsis.gov.au/news-and-events/news/cost-benefit-analysis-ymjc>; Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia* (2013).

²⁷ For more information, see <http://www.thereddust.com/>; <https://www.amnesty.org.au/randall-ross-red-dust-healing/>

²⁸ For more information, see <https://www.youtube.com/watch?v=qYdZSVK7Ask>.

²⁹ For more information, see <http://www.atsils.org.au/prisoner-throughcare/>

- 10.2.4. Wayne Parker's backyard boxing program and proposed YOUFLA program, which aims to assist Aboriginal and Torres Strait Islander children involved in the justice system with rehabilitation by working on country, learning skills and culture.³⁰
 - 10.2.5. Leann Shaw and Stephanie King's Community Yarning Circle in Mount Isa, which empowers community members to reach out for assistance to deal with the impact of drugs on themselves and their families.³¹
 - 10.2.6. Aunty Joan and Uncle Alec Marshall's cultural activities and bush tucker garden at Central State School in Mount Isa.³²
 - 10.2.7. Logan Elder's Culture in the Park, which engages with at-risk Aboriginal and Torres Strait Islander children, providing cultural support, mentoring and guidance from the Logan Elders, and opportunities to participate in cultural activities.³³
 - 10.2.8. Aunty Jenny Prior, who provides cultural healing and support for women inside prisons in Townsville.
 - 10.2.9. Murri Watch, which provides drug rehabilitation centres and custody contact services in watch houses and youth detention centres, across Queensland.
 - 10.2.10. Cathy Freeman Foundation's early intervention programs on Palm Island, and across Queensland, which focus on sport and education.³⁴
 - 10.2.11. Bahloo Women's Shelter in Brisbane, which provides culturally safe accommodation for homeless young women and girls.
 - 10.2.12. Townsville Aboriginal and Islander Health Service, which provides a culturally appropriate comprehensive model of health care including youth.
- 10.3. The Mona Aboriginal Corporation's Cultural Horsemanship program is an example of an Indigenous-led program that uses culture, connection, and community as well as practical work and life skills to set young people up for a better future.³⁵
- 10.4. A lack of funding and resources, training and support is a common experience among the Indigenous-controlled organisations interviewed by Amnesty International. A large number of these programs are run by Elders and Indigenous community members volunteering their time. This is despite many of these programs having an impact on the lives of Aboriginal and Torres Strait Islander children involved in the justice system.

³⁰ For more information, see <https://www.amnesty.org.au/indigenous-boxing-wayne-parker/>

³¹ For more information, see http://www.northweststar.com.au/story/2986468/enough-is-enough/?fb_action_ids=10152975033443884&fb_action_types=og.likes

³² For more information, see <http://www.abc.net.au/news/2016-01-08/mt-isa-bush-tucker-garden-helps-indigenous-students-connect/7074816>

³³ For more information, see <http://mypolice.qld.gov.au/logan/2014/08/25/aunt-peggy-talks-culture-park/>

³⁴ For more information, see <http://www.healthinfonet.ecu.edu.au/key-resources/organisations?oid=1242>

³⁵ For more information, see <https://www.amnesty.org.au/mona-horsemanship-program/>

- 10.5. Amnesty International is encouraged that the total Government spend on prevention programs is budgeted to rise from \$5.7 million in 2015-16 to \$8.94 million in 2016-17.³⁶
- 10.6. Amnesty International recommends the Queensland Government increase its investment in funding and partnering with Indigenous-led prevention, early intervention and diversion programs.

11. Best practice or international models of youth detention

- 11.1. Amnesty International notes that the Discussion Paper³⁷ released by the Independent Review seeks "...[a]ny information relating to national and international models of service delivery responding to young people and offending behaviour management that may be relevant to the review."
- 11.2. Amnesty International is encouraged that the Queensland Government is implementing a trauma-informed approach to youth justice and that "...[a]ll diversionary programs include support for Aboriginal and Torres Strait Islander young people and are delivered by significant proportions of Aboriginal and Torres Strait Islander staff who are either employed by non-government organisations or by the Department of Justice and Attorney-General."
- 11.3. It is also promising that, "Youth Justice staff are trained in engaging and working with Aboriginal and Torres Strait Islander people and in applying trauma-informed practices that specifically take into account their unique historical and current experiences of trauma."
- 11.4. Nevertheless, there are models that are emerging as best practice for youth detention that should be considered seriously for trial in Queensland. One of these is the concept of 'justice reinvestment'. Former Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda has described justice reinvestment as "...a powerful crime prevention strategy that can help create safer communities by investing in evidence based prevention and treatment programs."³⁸
- 11.5. However, justice reinvestment goes beyond simply crime prevention programs. While it necessarily includes political leadership, bipartisan support and law reform as essential elements, it also includes, "localism, community control and better cooperation between local services."³⁹ Justice reinvestment appears to have been successful in a number of US states such as Texas, where it enjoys conservative support. However, some have expressed concern that, in practice, it has often been a top-down, law reform oriented

³⁶ Queensland Parliament, Answer to Question on Notice, <https://www.parliament.qld.gov.au/documents/tableOffice/questionsAnswers/2016/1413-2016.pdf>.

³⁷ Independent Review of Youth Detention, October 2016, Discussion Paper, https://www.youthdetentionreview.qld.gov.au/data/assets/pdf_file/0020/2369/DISCUSSION-PAPER_FINAL.pdf.

³⁸ Social Justice Commissioner, *Social Justice and Native Title Report 2014*, '4.4 Justice Reinvestment', p 103 www.humanrights.gov.au/sites/default/files/document/publication/SJNTR%20FINAL.pdf.

³⁹ Social Justice Commissioner, *Social Justice and Native Title Report 2014*, '4.2 Justice Reinvestment', p 108 www.humanrights.gov.au/sites/default/files/document/publication/SJNTR%20FINAL.pdf.

approach.⁴⁰

- 11.6. Amnesty International considers that, consistent with international standards, a justice reinvestment approach must be rolled out in a way that involves Indigenous people in making decisions and that it is inclusive of Indigenous-led and designed programs (and those delivered in partnership with Indigenous communities). The Committee on the Rights of the Child has said that States Parties should support the development of community-based programs and services that consider the needs and culture of Indigenous children, their families and communities. The UN Expert Mechanism on the Rights of Indigenous Peoples recently prepared a study on access to justice which recommended that: “States should work with indigenous peoples to develop alternatives for indigenous children in conflict with the law, including the design and implementation of culturally appropriate juvenile justice services and the use of restorative justice approaches ... including restorative justice and indigenous juridical systems.”⁴¹
- 11.7. Amnesty International recommends the Queensland Government fund an Indigenous-led, evidence-based Justice Reinvestment trial to address underlying causes of offending.

12. Conclusion

- 12.1. Amnesty International thanks the Independent Review of Youth Detention for its consideration of this submission. We anticipate the findings and recommendations of this Review as a means to improve conditions for children involved in Queensland justice system.

⁴⁰ University of New South Wales, Justice Reinvestment Project, Fact Sheet: JR in the USA – Fieldwork Reflections, 2014, <http://justicereinvestment.unsw.edu.au/sites/justicereinvestment.unsw.edu.au/files/AJRP%20Fact%20Sheet%20Reflections%20CY.pdf>. (accessed 26 October 2016): see in particular the notes regarding the justice reinvestment approach in Hawaii where “[c]oncerns were raised by some that civil society and the Native Hawaiian community weren’t included ‘at the table’ to decide on reforms and shape implementation”, feedback from a research trip to the USA by Ben Schokman to the National Justice Coalition, 19 November 2014.

⁴¹ Amnesty International, *A brighter tomorrow: keeping Indigenous kids in the community and out of detention in Australia*, https://static.amnesty.org.au/wp-content/uploads/2016/09/A_brighter_future_National_report.pdf.

13. Appendices Index

Appendix	Document	Link
A	Amnesty International report, <i>Heads Held High: Keeping Queensland kids out of detention, strong in culture and community</i>	https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf
B	Amnesty International report, <i>A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia</i>	https://static.amnesty.org.au/wp-content/uploads/2016/09/A_brighter_future_National_report.pdf
C	Amnesty International report, <i>There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia</i>	https://static.amnesty.org.au/wp-content/uploads/2016/09/CIE_WA-Report_low-res.pdf
D	Amnesty International letter to the Queensland Attorney-General, 11 August 2016	No link available.
E	Letter from the Queensland Attorney-General to Amnesty International, 12 October 2016	No link available.
F	Letter from Department of Justice and Attorney-General to Amnesty International, 12 October 2016	No link available.