



**Inquiry into the incarceration rate of Aboriginal and Torres Strait
Islander Peoples**

Submission to the Australian Law Reform Commission

28 September 2017

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About UNICEF Australia

1. UNICEF is a multilateral organisation that works in over 190 countries to promote and protect the rights of children. UNICEF supports child health and nutrition, clean water and sanitation, quality basic education for all boys and girls, and the protection of children from violence, exploitation, abuse and HIV. UNICEF is one of 13-member agencies of the Interagency Panel on Juvenile Justice, which is a network mandated by the United Nations Economic and Social Council (ECOSOC) to provide technical assistance in juvenile justice.ⁱ
2. UNICEF Australia is a national committee of UNICEF, which advocates for the rights of all children and works to improve public and government support for child rights and international development. UNICEF Australia is a supporting organisation of the Aboriginal and Torres Strait Islander-led coalitions; Change The Record and Family Matters. We have had the benefit of reviewing the submission of Change The Record and we **are pleased to endorse it**, along with the policy, legal and practical recommendations outlined in the *Blueprint for Change* developed by Change The Record.ⁱⁱ UNICEF Australia is also the co-convenor of the Australian Child Rights Taskforce, which periodically reviews Australia's compliance with its commitments to children under the *Convention on the Rights of the Child*.ⁱⁱⁱ
3. UNICEF Australia welcomes the current Australian Law Reform Commission (ALRC) Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples, and is grateful for the opportunity to lodge a submission on this issue of deep concern.

Parameters of the ALRC Inquiry

4. ALRC Discussion Paper 84 states “[t]his Inquiry focuses on the incarceration of adult Aboriginal and Torres Strait Islander people”.^{iv} As such, we note that Discussion Paper 84 indicates that juvenile justice systems will not be specifically examined by the current Inquiry.
5. UNICEF Australia recognises that the Terms of Reference of the current Inquiry are significantly broad and that resource constraints must come into consideration. We also recognise the concurrent work of the Royal Commission into the Protection and Detention of Children in the Northern Territory that is considering the treatment of

young people in youth detention centres in the Northern Territory, and UNICEF Australia has made a submission to the Royal Commission also.

6. For the reasons outlined in this submission, UNICEF Australia submits that youth justice systems require deep examination and subsequent reform in order to reduce the overall incarceration rates of Aboriginal and Torres Strait Islander peoples across Australia; both children and adults. Other areas of policy and law affecting children and families that contribute to, or otherwise prevent, children coming into contact with criminal justice systems should also be considered. This should include, for example, school suspensions and exclusions, child protection (including specifically, the treatment of children in out of home care, particularly children in residential care) and birth registration.
7. For comprehensive and informed recommendations for reform to youth justice systems to be articulated, it would be necessary to conduct extensive outreach and consultation with the many advocates, lawyers, community members, judicial officers, police, prosecutors, organisations and academics working in youth justice that have intimate knowledge of issues that exist at a state and territory level, along with the many young people who have had experiences within these systems. Garnering the views and experiences of these groups, most importantly Aboriginal and Torres Strait Islander peoples, is critical to informed and specific recommendations for law reform to youth justice systems that should be considered across all jurisdictions and/or to develop a uniform approach where appropriate.

Recommendations to the ALRC

Recommendation 1: The ALRC should include in its Inquiry an examination of juvenile justice systems across Australia and make subsequent recommendations for uniform reform with the overall aim of reducing the number of children who are subject to youth detention, ensure the rehabilitative aims of youth justice systems are realised and improve conditions in detention in every jurisdiction in Australia. In the alternative, the ALRC should consider and pursue strategies to share learnings from the current Inquiry and repercussions for reform to youth justice systems with relevant stakeholders, including those working in youth justice systems at state and territory levels.

Recommendation 2: As part of its examination of juvenile justice systems, the ALRC should consider the laws and policies specifically applying to children and

families that might contribute to, or otherwise prevent, children coming into conflict with the law including those relating to child protection, education (exclusion and suspension) and birth registration.

Recommendation 3: The ALRC should consider and specify in its final report what recommendations made in relation to the adult criminal justice system should also be replicated and/or considered in juvenile justice systems across Australia (i.e. the inclusion of Aboriginality as a sentencing factor, increasing the availability of community-based sentencing options etc.).

Recommendation 4: The ALRC should, as part of an examination of juvenile justice systems across Australia (as part of the current inquiry, or subsequent to), engage in specific outreach and consultation with youth justice experts, advocates and young people who have lived experiences of juvenile justice systems across Australia, in particular, Aboriginal and Torres Strait Islander young people and community representatives, to develop specific recommendations for reform to juvenile justice systems.

Parameters of this submission

8. This short submission outlines some overarching observations about the need for a critical examination of juvenile justice systems across Australia, and general recommendations for reform. These recommendations are high-level, take a national perspective and are aimed at reducing the number of children, including Aboriginal and Torres Strait Islander children, in youth detention. They are not comprehensive in their nature. At the same time, UNICEF Australia believes these recommendations, if implemented in their fullest, would provide for better outcomes for community safety through a greater emphasis on supporting young people to address underlying causes that have contributed to their contact with the law. This refers to evidence-based responses tailored to rehabilitation, reintegration and, and for Aboriginal and Torres Strait Islander children and young people in particular – connection to culture – a known protective factor. Our recommendations therefore do not respond specifically to the questions raised in the Discussion Paper 84.

Youth justice systems across Australia

9. UNICEF Australia submits that there is an urgent need to assess and improve youth justice systems across Australia. This is necessary to improve the safety, rehabilitation and outcomes of children who continue to be impacted by these systems, but also to reduce the overall incarceration rates of Aboriginal and Torres

Strait Islander peoples; both children and adults. We highlight the following in support of this conclusion:

- i. ***The acknowledged pathway from juvenile detention to adult incarceration*** – Contact with juvenile detention has significant repercussions for adult incarceration rates. This is acknowledged in the Discussion Paper 84 which states that “...juvenile detention can be seen as a key driver of adult incarceration.”^v As such, avoiding resort to youth detention in all appropriate cases should be seen as a key strategy to reduce adult incarceration rates.
- ii. ***The over-representation of Aboriginal and Torres Strait Islander people is most acute in juvenile detention*** – Over 2015-2016, Aboriginal and Torres Strait Islander children were 25 times more likely than non-Indigenous children to be subjected to youth detention.^{vi} By way of comparison, Aboriginal and Torres Strait Islander adults were 13 times more likely than non-Indigenous adults to be subjected to detention in 2016.^{vii} Although we note and applaud the overall decline in total numbers of children in youth detention, the alarming and marked over-representation of Aboriginal and Torres Strait Islander children requires specific examination alongside examination of the over-representation in the adult system.
- iii. ***The unacceptably high numbers of children in custody who are on remand*** – Additionally, the high numbers of children held in detention on remand is unacceptable. In the June quarter of 2016, 57% of the youth population in detention, or 519 young people, were unsentenced.^{viii} This compares to around 27% of the adult population, or 9,898 prisoners, being unsentenced as at 30 June 2015.^{ix} This represents a significant disparity between the treatment of children and adults.
- iv. ***The separate and distinct requirements of youth justice systems*** – Recognising the vulnerabilities of children, international law, including the *Convention on the Rights of the Child* and associated standards applying to youth justice systems^x outline the obligation of governments to ensure that youth justice systems treat young people with the key objectives of rehabilitation, reintegration and protecting their best interests as a primary consideration. The obligation to protect the best interests of children applies equally to children in the criminal justice system and requires that “...the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.”^{xi} Many have raised serious concerns about the extent to

which this is being realised in practice in Australia, and in some instances relevant state legislation excludes the relevance of the best interests principle when dealing with children who have offended.^{xii}

- v. ***The compelling and widespread evidence of harmful conditions in youth detention systems*** – There have been over 13 different state and territory inquiries into conditions and practices in youth detention settings over the last two years.^{xiii} The conditions and practices highlighted through such inquiries illustrate that youth detention settings have been failing to ensure conducive to the rehabilitative aims of youth justice systems.^{xiv} It also demonstrates that these issues are systemic and widespread, and demonstrated the duplication, inefficiency and the proliferation of resource-intensive inquiries after the fact. National recommendations could assist states and territories considering these similar issues.

10. Additionally, several previous inquiries that have focused on the experiences of children are also relevant to the current inquiry. These include, for example, the *Seen and Heard: priority for children in legal processes*^{xv} (1997, ALRC and the Human Rights and Equal Opportunity Commission) and *Doing time, time for doing* (2011, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs).^{xvi} Regrettably, many of the recommendations made in these reports remain unimplemented.^{xvii}

11. The United Nations Committee on the Rights of the Child has also consistently highlighted the over-representation of Aboriginal and Torres Strait Islander children in juvenile justice systems as an issue of concern on each occasion that Australia has been reviewed.^{xviii} In 2018, Australia will again be reviewed by the Committee on the Rights of the Child. Part of this review will consider the extent to which Australia has implemented the Committee's previous recommendations, including those made in relation to the administration of juvenile justice.

12. All of these factors demonstrate that it is critically important, timely, and appropriate for the Federal Government, along with State and Territory Governments, to commit to meaningful reforms to policy, law and practice applying to youth justice systems across Australia. This is not only necessary to protect the rights of children – both Aboriginal and Torres Strait Islander children – who are presently affected by these

systems, but to also reduce the overall incarceration rates of all Aboriginal and Torres Strait Islander peoples; the very purpose of the current ALRC Inquiry.

The need for a human rights-based approach to youth justice

13. UNICEF Australia and many others have long advocated for a human rights-based approach to working with children who are accused of offences or have been found guilty of offending behaviour. As part of this, juvenile justice systems across Australia should be seeking alignment with international human rights law and associated standards, including:

- *Convention on the Rights of the Child* 1990 (CRC);
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* 1985 (The Beijing Rules);
- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* 1990 (The Havana Rules);
- *United Nations Guidelines for the Prevention of Juvenile Delinquency* 1990 (Riyadh Guidelines);
- *Guidelines for Action on Children in the Criminal Justice System* 1997 (The Vienna Guidelines); and
- General Comment No. 10 *Children's rights in juvenile justice* (2007), published by the Committee on the Rights of the Child.

14. At a very high-level, these standards emphasise the obligation on governments to establish and ensure a separate and distinct youth justice system that is tailored to the needs and rights of children, with policy and legislative responses that are oriented towards:

- i. The prevention of circumstances that may lead to offending and conflict with the law;
- ii. The use of diversionary options;
- iii. The use of alternatives to detention to ensure detention is used as a last resort only;
- iv. Ensuring places of detention are safe and respect the rights of children; and
- v. The effective rehabilitation and reintegration of the child.

15. The recommendations outlined below are intended to help governments pursue these aims.

16. A critical aspect of adopting a human rights-based approach to youth justice in the context of Australia is to increase efforts to realise the *United Nations Declaration on the Rights of Indigenous Peoples*, and Article 30 of the *Convention on the Rights of the Child* regarding the right of Indigenous children to enjoy their culture. These require, amongst other things, Australian Governments to realise the right of Aboriginal and Torres Strait Islander peoples to self-determination. In this respect, UNICEF Australia observes the relevance and importance of the *Uluru Statement From The Heart*^{xxix} and the position articulated by Change the Record that “[c]ulturally appropriate support, delivered by Aboriginal and Torres Strait Islander community controlled organisations, is vital for Aboriginal and Torres Strait Islander people at all stages of the justice system”.^{xx}

Recommendations to Australian Governments

Cross-cutting recommendations

Recommendation 5: As recommended by Change The Record,^{xxi} Federal, State and Territory governments work in partnership with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies, to forge agreement through the Council of Australian Governments to set the following justice targets:

- i. Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people by 2040, with an interim target of halving the gap by 2030; and
- ii. Cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to close the gap by 2040.

Recommendation 6: As recommended by Change The Record,^{xxii} that the process to develop national justice targets identifies sub-targets to resource Aboriginal and Torres Strait Islander community controlled organisations that deliver front line services to assist to meet these justice targets.

Recommendation 7: That Australian Governments develop uniform and legislated national standards for juvenile justice systems (including youth detention) that protect the rights of children as outlined in Australia’s international treaty commitments and associated standards applying to juvenile justice.^{xxiii} The standards should be

developed in consultation with relevant State and Territory authorities, Aboriginal and Torres Strait Islander organisations, community groups, peak bodies such as juvenile justice advisory councils and young people.

Recommendation 8: That State and Territory Governments establish through legislation an Aboriginal and Torres Strait Islander Children’s Commissioner in each State and Territory jurisdiction and provide sufficient resources for the office to effectively discharge its functions.

Recommendation 9: That, in consultation with Aboriginal and Torres Strait Islander communities and organisations, State and Territory Governments consider, with a view to establishing, specialist courts for Aboriginal and Torres Strait Islander children where these do not exist, and adequately resource those already in existence.

Recommendation 10: That child protection, and youth justice (including youth detention) become standing agenda items for meetings of the Council of Australian Governments.

Recommendations to help ensure a separate and distinct youth justice system that is tailored to the needs and rights of children

Recommendation 11: That Australian Governments ensure that all children (people under 18 years of age) alleged of, or found guilty of a criminal offence, are dealt by specialist children’s courts and judicial officers that have specialist expertise to engage with children. All jurisdictions should consider:

- a) Expanding the coverage of specialist Children’s Court Magistrates, particularly to ensure coverage in remote and regional areas;
- b) Ensuring that judicial officers overseeing cases involving children receive specialised training (for example, on neuroscience, communicating effectively with children, childhood development, trauma (including inter-generational trauma) and cultural competence);
- c) Reviewing, with a view to abolishing, instances where children (people aged below the age of 18 years) do not benefit from the specialist system for children; and
- d) Ensuring the availability and use of specialist bench books to aid judicial officers in their dealings with children.

Recommendation 12: That Australian Governments raise the minimum age of criminal responsibility to at least 12 years of age (with the preservation of *doli*

incapax),^{xxiv} and ensure the availability of alternative supports for children younger than the minimum age of criminal responsibility.

Recommendations to help ensure the fullest availability and use of diversion strategies

Recommendation 13: That State, Territory and, where relevant, Federal Governments, ensure the fullest availability of diversion options are available in law for children every child alleged as, accused of, or recognized as having offended. These should be available at every stage in the criminal process and for all decision-makers including police, prosecutors and judicial officers. This should require, for example:

- a) Abolishing mandatory sentencing laws (for example, s 401(4)(a)(ii) of the *Criminal Code* (WA));
- b) Abolishing restrictions applying to diversionary options (for example s 39(3)(c) of the *Youth Justice Act 2006* (NT) provides that if the young person has been dealt with by a Youth Justice Conference or diversion program on two previous occasions, the diversion options listed in section 39(2) are not available (essentially, a “3 strikes” limitation));
- c) Abolishing restrictions on judicial discretion to resort to diversion (for example, the *Youth Justice Act 2006* (NT) permits the use of diversion in certain circumstances by the police (s 39) and by the court, with the consent of the prosecution (s 64)); and
- d) Providing dedicated resources to ensure the practical availability of diversionary options, including culturally appropriate diversion options, in all areas (including remote and rural locations).

Recommendations to help ensure the fullest availability and use of alternatives to detention so that detention is only ever used as a measure of last resort

Recommendation 14: That Australian Governments should ensure the fullest availability and use of alternatives to detention in law and practice so that detention is only ever used as a measure of last resort at all stages. This should require, for example:

- a) Reforming bail laws and associated practices so as to reduce the occurrence of detention for breach of bail conditions;
- b) Ensuring that bail conditions imposed are reasonable, proportionate, and necessary;

- c) Ensuring the availability of culturally appropriate bail support options;
- d) Ensuring the availability of alternative accommodation for children, particularly in remote and rural locations; and
- e) Ensuring the availability of rehabilitation programs, including residential programs focusing on substance misuse and/or mental health issues.

Recommendations to help ensure places of youth detention uphold the rights of children

Recommendation 15: Ensure that places of youth detention are required to uphold the rights and dignity of all children subject to custody, and provide a rehabilitative and trauma-informed environment and practices. This should require, for example:

- a) The establishment of national standards applying to youth detention that:
 - i. Are legally binding;
 - ii. Are uniform across all jurisdictions;
 - iii. Protect the rights of children (including through specifying the differentiated treatment and special protection necessary); and
 - iv. Are developed through an open, transparent and consultative process (including specifically with Aboriginal and Torres Strait Islander communities);
- b) The establishment of specific inspection standards for Aboriginal and Torres Strait Islander children and adults, to be developed in partnership with Aboriginal and Torres Strait Islander people and community controlled organisations;
- c) The establishment of child-sensitive complaints mechanisms in places of youth detention; and
- d) The establishment of, and provision of sustainable funding for, custody notification services for Aboriginal and Torres Strait Islander children and adults in every jurisdiction.

Recommendations regarding connected and reinforcing policy measures

Recommendation 16: That Australian Governments adopt policy measures to support legal reforms such as those outlined above, including:

- a) Establishing a dedicated and adequate resourced federal Ministry and Office for Children;

- b) Providing dedicated, adequate and sustainable funding for specialist youth legal advice agencies and programs in every jurisdiction;
- c) Providing dedicated, adequate and sustainable funding for Aboriginal and Torres Strait Islander Legal Services Community Legal Centres, Legal Aid Commissions and to engage with young people, and make their services more accessible to young people;
- d) Providing dedicated, adequate and sustainable funding and supports for Aboriginal community controlled organisations to develop and deliver culturally appropriate supports to children and families, including through all stages of contact with youth justice systems;
- e) Improving data collection within youth justice systems as identified by the National Children’s Commissioner;^{xxv} and
- f) Increasing dedicated, adequate and sustainable funding for prevention, diversion and restorative justice strategies and programs, particularly to ensure that all children can have equitable access (including, in particular, in remote and rural locations).

Case study – Investment in prevention, diversion and restorative justice strategies in Victoria

The 2017 *Youth Justice Review and Strategy* commissioned by the Victorian Government highlighted the little expenditure on prevention and early intervention in that state as follows:

Most of the state’s youth justice expenditure is focused on the acute end of the system, with little expenditure on prevention and early intervention activity. Specifically, the analysis of 2016–17 data showed that:

- *the majority (58 per cent) of investment is allocated to youth justice custodial supervision*
- *community-based supervision accounts for 26 per cent of investment in youth justice*
- *one per cent of youth justice investment is allocated to two early intervention programs: the Community Based Koori Youth Justice Program and Youth Support Services*
- *three per cent is allocated to court-based diversion and restorative justice (this comprises the Children’s Court Pre-Plea Diversion Program and Youth Justice Group Conferencing)*

- *the Youth Health and Rehabilitation Service (YHaRS) constitutes five per cent of system investment and is delivered via a consortium comprising Caraniche, Youth Support and Advocacy Services and St Vincent's Hospital Melbourne.*^{xxvi}

Contact

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- ⁱ United Nations Economic and Social Council, *Administration of juvenile justice*, ESC Res 1997/30, 36th plenary meeting, (21 July 1997) (*The Vienna Guidelines*).
- ⁱⁱ Change The Record Steering Committee, *Blueprint For Change* (2015) <<https://changetherecord.org.au/policy-framework-blueprint-for-change>>.
- ⁱⁱⁱ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- ^{iv} Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples Discussion Paper (DP 84)* ('Discussion Paper 84') (2017) <<http://www.alrc.gov.au/publications/indigenous-incarceration-rates-dp84>>, [1.17].
- ^v *Ibid*, [1.18].
- ^{vi} Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Bulletin 139, (2017), <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129559053>> 2.
- ^{vii} Australian Bureau of Statistics, *4517.0 Prisoners in Australia, 2016* (2016) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Imprisonment%20rates~12>>.
- ^{viii} Australian Institute of Health and Welfare, *Youth detention population in Australia 2016*, Bulletin 138 (2016), <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129557685>> 7.
- ^{ix} Australian Bureau of Statistics, *4517.0 Prisoners in Australia, 2015*, 'Prisoner characteristics, Australia' (2015) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2015~Main%20Features~Prisoner%20characteristics,%20Australia~28>>.
- ^x These include the Convention on the Rights of the Child 1989 (CRC); United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (The Beijing Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (The Havana Rules); United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines); Administration of juvenile justice 1997 (The Vienna Guidelines); General Comment No. 10 (2007) Children's rights in juvenile justice ('General Comment No. 10).
- ^{xi} General Comment No. 10, *ibid*, [10].
- ^{xii} For example, the *Children, Youth and Families Act* 2005 (Vic) outlines in Part 1.2 Principles that decision makers are to have regard to when making decisions under the act. These principles include the best interests of the child as a paramount consideration. Sections 8(4) and 9(2) provide however that the principles do not apply to decisions made under Chapter 5 (Children and the criminal law) or Chapter 7 (The Children's Court of Australia).
- ^{xiii} Victorian Commission for Children and Young People *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017) <https://www.parliament.vic.gov.au/file_uploads/CCYP_-_Inquiry_Report_-_The_Same_Four_Walls_L1NNtqzB.pdf>; Department of Health and Human Services, *Review of youth support, youth diversion and youth justice services*, <<http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/youth-justice-review>>, accessed 28 July 2017; Parliament of Victoria, *Inquiry into Youth Justice centres in Victoria* (2016) <<http://www.parliament.vic.gov.au/lsic/inquiries/inquiry/447>>, accessed 28 July 2017; Queensland Government, *Independent Review of Youth Detention* (2017) <<http://www.youthdetentionreview.qld.gov.au/>> accessed 28 July 2017; Office of the Children's Commissioner, Northern Territory, *Own initiative investigation report – Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre* (2015) <<http://www.childrenscommissioner.nt.gov.au/publications/Childrens%20Commissioner%20DDYDC%20-%20Report%20to%20Minister%20170915.pdf>>; Commonwealth of Australia, *Royal Commission into the Protection and Detention of Children in the Northern Territory* (2016) <<https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>>; Sarah Gerathy, 'Juvenile Justice: NSW to review youth detention centres amid detainee isolation claims', *ABC News* (27 October 2016) <<http://www.abc.net.au/news/2016-10-27/nsw-to-review-juvenile-detention-centres/7970194>>; Office of the Inspector of Custodial Services, NSW Government, *How use of force against detainees in Juvenile Justice Centres in NSW is managed* (4 November 2016) <<http://www.custodialinspector.justice.nsw.gov.au/Pages/current-inspections/how-use-force-against-detainees-juvenile-justice-centres-managed.aspx>>; Guardians for Children and Young People, *Go to your room! The use of seclusion in youth detention* (2016) <<http://www.gcyp.sa.gov.au/2016/04/go-to-your-room-the-use-of-seclusion-in-youth-detention/>>, accessed 28 July 2017; Department of Corrective Services, Government of Western Australia, *Young people in the justice system: A review of the Young Offenders Act 1994* (2016), <<https://www.correctiveservices.wa.gov.au/youth-justice/young-offenders-act.aspx>>, accessed 28 July 2017; and Office of the Inspector of Custodial Services (Western Australia), *Behaviour management practices at*

Banksia Hill Detention Centre (June 2017) <<http://www.oics.wa.gov.au/wp-content/uploads/2017/07/Full-report.pdf>>.

^{xiv} Australian NGO Coalition Submission to the Human Rights Committee, *Australia’s Compliance with the International Covenant on Civil and Political Rights* (2017) <http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_NGO_AUS_28925_E.pdf>, 57-58.

^{xv} Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, *Seen and heard: priority for children in the legal process ALRC 84* (1997).

^{xvi} Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, ‘Doing time – Time for Doing’ (2011).

^{xvii} See, for example, James McDougall, Tiffany Overall and Peter Henley ‘Seen and Heard Revisited’ [2008] ALRCRefJI 3 (2008) 92 *Australian Law Reform Commission Reform Journal* 9.

^{xviii} Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Australia* (21 October 1997), 16th Sess, UN Doc. CRC/C/15/Add.79, [22], Committee on the Rights of the Child, *Concluding Observations: Australia* (20 October 2005), 40th Sess, UN Doc. CRC/C/15/Add.268, [5] and [72]-[73] and Committee on the Rights of the Child, *Concluding Observations: Australia* (28 August 2012), UN Doc. CRC/C/AUS/CO/4, 60th Sess, [29] and [82]-[84].

^{xix} *Uluru Statement From The Heart* (2017) <https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF>.

^{xx} Change the Record, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (12 September 2017), ii.

^{xxi} Change The Record, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (12 September 2017), vi.

^{xxii} *Ibid.*

^{xxiii} These include the Convention on the Rights of the Child 1989 (CRC); United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (The Beijing Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (The Havana Rules); United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines); Administration of juvenile justice 1997 (The Vienna Guidelines); General Comment No. 10 (2007) Children’s rights in juvenile justice

^{xxiv} National Children’s Commissioner, *Children’s Rights Report 2016*, <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>, 191.

^{xxv} “It is essential for us to know the numbers of children and young people who are detained in youth justice facilities, their sex, age, Indigenous status, why they are detained and for how long they are detained.

It would also be highly desirable to broaden the collection of this data to include, for example, information about children and young people with disability, those from culturally and linguistically diverse backgrounds, and children and young people who are lesbian, gay, bisexual, transgender and intersex.” National Children’s Commissioner, Megan Mitchell, *Children’s Rights Report 2016*, Australian Human Rights Commission (2016) <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>, 153.

^{xxvi} Victoria State Government, *Youth Justice Review and Strategy: meeting needs and reducing offending – Executive Summary* (2017)

<<http://www.justice.vic.gov.au/home/justice+system/youth+justice/youth+justice+review+and+strategy+meeting+needs+and+reducing+offending>>, 6.