

# A brighter tomorrow

Keeping Indigenous kids in the community and out of detention in Australia



Amnesty International is indebted to the many Indigenous organisations and individuals who have generously shared their stories, perspectives and insights in the course of this research.

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While Amnesty International uses the term 'Indigenous' in this summary, we note that many people prefer to use the terms Aboriginal and/or Torres Strait Islander or names of specific language groups. No disrespect is intended by the use of this general descriptors.

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## FOREWORD

Mick Gooda  
Aboriginal and Torres Strait Islander  
Social Justice Commissioner

Two and a half decades on from the Royal Commission into Aboriginal Deaths in Custody, our people are more likely than ever to be incarcerated.

This is particularly so for our young people.

We need an approach that starts to address the underlying causes of crime and starts to divert resources away from imprisonment and into local communities. This is a justice reinvestment approach that suggests that both early intervention and community responses are necessary to achieving long-term change.

Our mob needs to be in control of this change. We know what works best for our communities.

I have been inspired by the courage of the Bourke community in tackling the over-representation of their young people in the justice system. This has been a long, difficult conversation, addressing the underlying issues of health, education, jobs and support for families. I strongly advocate for this justice reinvestment approach.

I've also seen the transformative power of culture. In Redfern, the community takes care of young men who were in frequent contact with the police.<sup>1</sup> Community leaders recently took some young men on a five-day intensive bush camp with Indigenous mentors. Afterwards there was a ceremony welcoming these young men back to community. Instead of being made invisible, they were embraced.

It is time to work with our peoples in creating this urgently needed change, so that we are able to look after the precious resource that are our young people. Investing in their development – socially, culturally, financially – is the way to a better future.

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<sup>1</sup> <http://tribalwarrior.org/training-and-mentoring/tribal-warrior-mentoring-program/>

Kids have healthy, happy childhoods when they live in loving and nurturing communities. It's kids' connections with family and community that allows them to flourish, and sets them up for a good life.

But government policies are separating Indigenous kids from their communities. By locking up kids as young as 10, we are repeating our past mistakes and threatening our future as a fair, just and harmonious community.

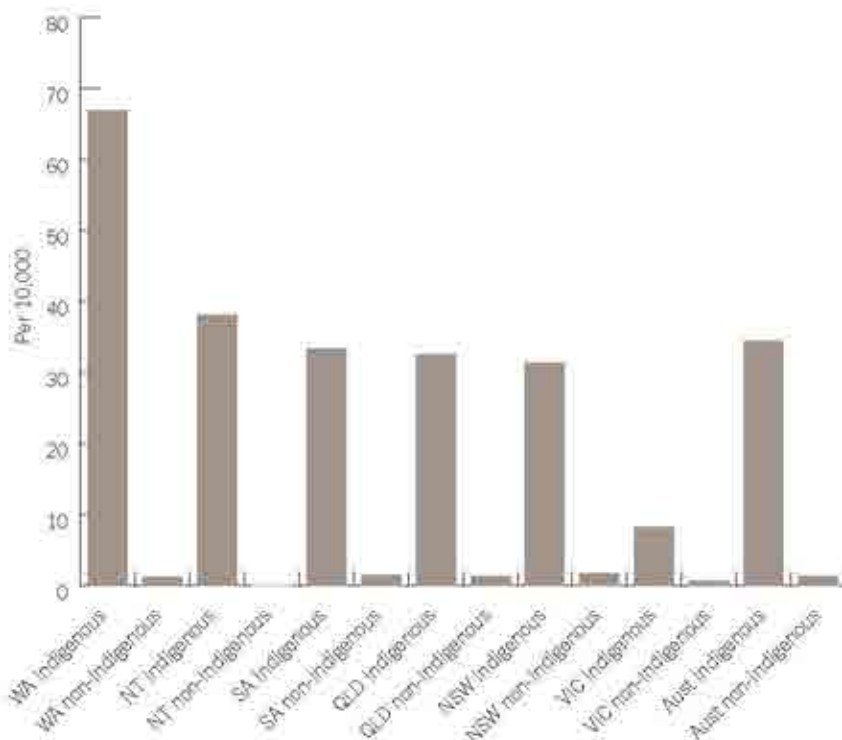
This report finds many ways that the Australian Government can improve its efforts to reduce the numbers of young Indigenous people incarcerated across the country. The report sets out practical recommendations for the Australian Government, including through ensuring Australia complies with international legal obligations, and through ongoing federal funding to the many successful Indigenous-led initiatives that keep young people in communities and on track.

**The statistics**

In 2013-2014, Indigenous young people were 26 times more likely to be in detention than non-Indigenous young people.<sup>2</sup> Aboriginal and Torres Strait Islander young people make up just over 5 per cent of the Australian population of 10 to 17-year-olds, but more than half (59 per cent) of those in detention.<sup>4</sup>

The Aboriginal and Torres Strait Islander population has more people in younger age brackets than the non-Indigenous population.<sup>5</sup> In light of this, the National Congress of Australia's First Peoples noted in 2013 that "unless the rate of increase in youth detention can be reduced, rates of incarceration across the Aboriginal and Torres Strait Islander population are likely to continue to increase into the future."<sup>6</sup>

The rates of Indigenous and non-Indigenous youth detention vary from one jurisdiction to another. Western Australia, Queensland and the Northern Territory have, respectively, the highest rate of over-representation of Indigenous youth in detention; the fastest-growing rate of Indigenous youth detention; and the highest proportion of youth in detention who are Indigenous. However as the graph below shows, change is needed throughout Australia. Most of the recommendations in this National Overview apply to all Australian states and territories.



*Young people (aged 10 to 17) in detention on an average day 2013-14\**

*Indigenous young people are more likely to be incarcerated today than at any other time since the Royal Commission into Aboriginal Deaths in Custody in 1991.*

Standing Committee on Aboriginal and Torres Strait Islander Affairs<sup>2</sup>

- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*, [2.3] [www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=atsia/se ntencing/report/fullreport.pdf](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=atsia/se ntencing/report/fullreport.pdf) (accessed 1 October 2014).
- AIHW, *Youth Detention Population Australia in Australia 2014*, s.10; calculated average over the four quarters of the 2013-14 financial year, [www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675](http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549675) (accessed 22 December 2014).
- AIHW, *Youth Detention Population in Australia 2014*, tables s.2 and s.8. 430 out of 724.
- Australian Bureau of Statistics (ABS) 3238.0.55.001 – *Estimates of Aboriginal and Torres Strait Islander Australians*, June 2011, Notes, [www.abs.gov.au/AUSSTATS/abs@nsf/lookup/3238.0.55.001/Main+Features+June%202011?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@nsf/lookup/3238.0.55.001>Main+Features+June%202011?OpenDocument) (accessed 9 April 2015). ABS 3238.0 – *Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026, Summary Australia*, [www.abs.gov.au/ausstats/abs@nsf/Products/C19A0006E4794A3FACA25700900143A3D?opendocument](http://www.abs.gov.au/ausstats/abs@nsf/Products/C19A0006E4794A3FACA25700900143A3D?opendocument) (accessed 9 April 2015).
- National Congress of Australia's First Peoples, *National Justice Policy (February 2013)*, p.13 <http://nationalcongress.com.au/wp-content/uploads/2013/02/CongressJusticePolicy.pdf> (accessed 9 April 2015).
- AIHW, *Youth Detention Population in Australia 2014*, Table s.10. Figures based on a calculated average over the four quarters of June 2013 to June 2014. No non-Indigenous rate for the Northern Territory is provided due to less than five non-Indigenous young people in detention for each reported quarter. Tasmania and ACT not provided due to less than five Indigenous young people in detention in at least two of the relevant quarters.

## CASE STUDY: MARANGUKA JUSTICE REINVESTMENT INITIATIVE, BOURKE

At a community meeting in the New South Wales town of Bourke in 2013, local Aboriginal leaders and young people articulated a vision for a more coordinated and community-led approach to the problems facing their community.

Recognising that the local community was best placed to develop solutions to help kids and families flourish, the Aboriginal leadership in Bourke developed a comprehensive agenda for change. They named their strategy Maranguka, a Ngemba Nation word which translates as 'to give to the people', 'caring' and 'offering help'.

The first priority of Maranguka is to reduce Aboriginal young people's contact with the criminal justice system. Starting in 2013, Maranguka has partnered with Just Reinvest NSW and others to develop a watertight case for justice reinvestment to be implemented in Bourke. They will then take that case for change to the New South Wales Government for action.

As part of this justice reinvestment trial, made possible with philanthropic funds, community members are now working with their young people and partners to tackle some initial issues that contribute to young people's involvement with the justice system.

The community is developing a driver licensing program and a program to support people not to breach bail conditions. They are also consulting with stakeholders about a warrant clinic to create support plans for young people who have committed less serious offences, which will help them stay out of custody.

Together the Bourke community is creating a brighter tomorrow for Indigenous kids.

*Too many of my community were being locked up. Kids were being taken away. Families were being shattered, again and again ... And this was happening despite the huge amount of money government was channelling through the large number of service organisations in this town.*

*So we started talking together ... We decided that a new way of thinking and doing things needed to be developed that helped our children. We decided it was time for our community to move beyond the existing service delivery model, a model which had clearly failed.*

Alistair Ferguson, Bourke Aboriginal Community Working Party<sup>8</sup>

<sup>8</sup> Aboriginal Legal Service NSW/ACT, 'Key reforms being kick-started in Bourke', [www.alsnswact.org.au/news\\_items/149](http://www.alsnswact.org.au/news_items/149).

Photo: Tim J Keegan via flickr. [bit.ly/1INtdCs](http://bit.ly/1INtdCs)

In Australia, each state and territory government is responsible for its own laws, policies and practices for dealing with young people accused of committing, or convicted of, offences. However it is the Australian Government, as a signatory to international human rights conventions, that bears ultimate responsibility for fulfilling the rights of Indigenous young people in all states and territories.

In Australia there are state and territory-based laws that breach international human rights obligations. The Australian Government should invalidate these laws, or work with the states and territories to have them repealed.

### Violations of the UN Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC), which Australia has signed and ratified, is the primary source for internationally-agreed children's rights. Under international law, children (those under 18) have all fair trial and procedural rights that apply to adults as well as additional juvenile justice protections.

The Committee on the Rights of the Child, which monitors State Parties' implementation of CRC, noted in 2012 that Australia's juvenile justice system "requires substantial reforms for it to conform to international standards."<sup>9</sup>

#### AGE OF CRIMINAL RESPONSIBILITY

Across Australia children are held criminally responsible from just 10 years of age despite the Committee on the Rights of the Child having concluded that 12 is the lowest internationally acceptable minimum age of criminal responsibility.

#### DETAINING CHILDREN WITH ADULTS

At the time of ratifying CRC, Australia made a reservation to Article 37(c) which requires children to be separated from adults in prison, unless it is in the child's best interests not to do so. This reservation has been justified to detain children with adult prisoners where separation is not "considered to be feasible having regard to the geography and demography of Australia."<sup>10</sup> The Committee on the Rights of the Child has repeatedly recommended that the reservation be withdrawn.<sup>11</sup>

#### DETENTION CONDITIONS, NORTHERN TERRITORY

The Convention on the Rights of the Child states that every child deprived of their liberty must be treated with humanity, taking into account their age-specific needs. Youth detention conditions in the Northern Territory do not appear to comply with these international human rights standards.<sup>12</sup>

At the Alice Springs Youth Detention Centre young people are only separated from the adult prisoners by a fence. Young people are taken to the visiting block at the adult prison to speak with visitors and are handcuffed on their way to and from the visiting block.

All of the young people in detention in Darwin were transferred to a dilapidated former adult facility at Berrimah in December 2014. The previous government had planned to demolish this facility because it was old, in a poor state of repair and had an "inappropriate and outdated design."<sup>13</sup> Legal representatives have stated that the facilities are inappropriate for young people.<sup>14</sup>

#### NO NATIONAL MECHANISM TO INVESTIGATE VIOLATIONS IN DETENTION

The Committee on the Rights of the Child has commented that Australia needs "an effective mechanism for investigating and addressing cases of abuse at [Australia's] youth detention centres."<sup>15</sup> The Optional Protocol to the Convention Against Torture provides an avenue for doing so and should be ratified by Australia.<sup>16</sup> Australia should also sign and ratify the Third Optional Protocol to the Convention on the Rights of the Child, which establishes an individual complaints mechanism for children.<sup>17</sup>

*The juvenile justice system of [Australia] still requires substantial reforms for it to conform to international standards.*

UN Committee on the Rights of the Child, 2012

9. Committee on the Rights of the Child, *Concluding Observations – Australia* (28 August 2012) CRC/C/AUS/CO/4 [82]
10. United Nations Treaty Collection, 11 Convention on the Rights of the Child, Declarations and Reservations.
11. Committee on the Rights of the Child, *Concluding Observations – Australia* (28 August 2012) CRC/C/AUS/CO/4, [9]
12. Correspondence with youth worker, Central Australian Aboriginal Legal Service (13 June 2014); Correspondence with legal representative, 16 January 2015 (details withheld); Conversation with Eddie Cubillo, NATSILS (2 February 2015).
13. Findings of Inquest into the death of Robert Martin Johnson [2012] NTMCO05, oral evidence of NT Correctional Services commissioner Ken Middlebrook [177]-[178]; www.nt.gov.au/justice/courtsupp/coronerdocuments/DO0142010\_johnson.pdf (accessed 8 April 2015).
14. Conversations with legal representative (details withheld).
15. Committee on the Rights of the Child, *Concluding Observations – Australia* (28 August 2012) CRC/C/AUS/CO/4, [84](f)
16. United Nations Treaty Collection, 9.b Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002.
17. United Nations Treaty Collection, 11.d Optional Protocol to the Convention on the Rights of the Child on a communications procedure, New York, 19 December 2011.

*Reducing Incarceration rates is going to take commitment, action and coordination from all Australian governments.*

Shane Duffy, NATSILS Chairperson<sup>23</sup>

#### MANDATORY SENTENCING, WESTERN AUSTRALIA

The Western *Australian Criminal Code Act 1913 (WA)* requires magistrates to impose mandatory minimum sentences on young offenders in a number of circumstances. This directly contravenes CRC, which states that detention for those under 18 must only be as a measure of last resort, and that all sentences, first and foremost, take into account the best interests of the child. The Committee on the Rights of the Child have recommended the laws be repealed.<sup>18</sup> Instead the Western Australian Government is in the process of extending mandatory sentencing.

#### MULTIPLES BREACH OF CRC, QUEENSLAND

Queensland treats 17-year-olds as adults in its criminal justice system. This is in contravention to CRC, which states that those under 18 must be treated as children in the eyes of the law. In 2012 the Committee on the Rights of the Child again recommended that Australia remove 17-year-olds from the adult justice system in Queensland.<sup>19</sup> Ignoring this recommendation, in 2014, the Queensland Government amended its *Youth Justice Act 1992 (Qld)* to require all 17-year-olds with six months or more left of their sentence to be transferred to adult jails. This is contrary to Article 37(c) of CRC.

In 2014 the Queensland Government introduced a further law which says that the court must disregard the principle that detention be a last resort, in direct conflict with CRC.<sup>20</sup>

#### NEED FOR MORE BAIL ACCOMMODATION

Between June 2013 and June 2014 Indigenous young people were 23 times more likely than their non-Indigenous counterparts to be in unsentenced detention.<sup>21</sup> International human rights standards require that detention for persons awaiting trial must be the exception rather than the rule.<sup>22</sup> However Indigenous young people are often held in detention on remand simply due to a lack of suitable accommodation and support to comply with bail conditions.

#### Ending Indigenous incarceration together

The Australian Government currently plays a role in promoting policy reforms which need coordinated action by all Australian governments. The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia, and is the primary mechanism through which the Australian Government can work with states and territories to reduce Indigenous youth incarceration.

#### JUSTICE TARGETS

In 2008, COAG agreed to six 'Closing the Gap' targets relating to Indigenous life expectancy, infant mortality, early childhood development, education and employment. Closing the Gap targets have improved data collection, coordination, and tracking of efforts to address Indigenous disadvantage across all states and territories.

However despite much discussion, COAG has yet to adopt a justice target within the Closing the Gap strategy.

The National Congress of Australia's First Peoples has consistently called for justice targets to be included in the Closing the Gap strategy.<sup>24</sup> The Aboriginal and Torres Strait Islander Social Justice Commissioner's 2014 report also includes a recommendation that the Australian Government revise its current position on targets as part of Closing the Gap, to include justice targets to reduce Indigenous youth incarceration rates and create safer communities through reduced rates of experienced violence.<sup>25</sup>

#### BETTER DATA FOR BETTER SOLUTIONS

The Council of Australian Governments (COAG) also provides an avenue for federal, state and territory governments to improve the coordinated collection and use of data to reform the youth justice system.

There are many inconsistencies and gaps between states and territories in collecting data on contact with the youth justice system. The inadequacy of this information is one of the barriers preventing policy makers from more effectively responding to the over-representation of Indigenous young people in detention.

18 Committee on the Rights of the Child, *Concluding Observations – Australia* (28 August 2012) CRC/C/AUS/CO/4, [82]

19 Committee on the Rights of the Child, *Concluding Observations – Australia* CRC/C/AUS/CO/4 [84, d]

20 *Youth Justice and Other Legislation Amendment Act 2014 (Qld)* s 9, amending section 150(2)(e) of the *Youth Justice Act 1992 (Qld)* and s 34 which inserts section 9A into the *Penalties and Sentences Act 1992 (Qld)*.

21 Australian Institute of Health and Wellbeing, *Youth Detention Population in Australia 2014*, Table s 20.

22 Human Rights Committee, General Comment 35 and Article 9 of the ICCPR, [38], United Nations Rules for the Protection of Juveniles Deprived of their Liberty, [77]

23 'Indigenous legal services peak body slams justice targets "backflip"', *The Australian*, 20 November 2014

24 National Congress of Australia's First Peoples, National Justice Policy, p 16 <http://nationalcongress.com.au/wp-content/uploads/2013/02/CongressJusticePolicy.pdf> (accessed 12 January 2015).

25 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014*, '4.3 Justice targets', [4.5], [www.humanrights.gov.au/sites/default/files/document/publication/SJNTR%20FINAL.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/SJNTR%20FINAL.pdf) (accessed 12 January 2015)

## Justice reinvestment

The UN Committee for the Elimination of Racial Discrimination has recommended that Australia "dedicate sufficient resources to address the social and economic factors underpinning indigenous contact with the criminal justice system" and encouraged Australia to adopt "a justice reinvestment strategy."<sup>26</sup>

Justice reinvestment re-directs money spent on prisons to community-based initiatives which address the underlying causes of crime, thereby cutting crime and saving money.

Indigenous leaders and community organisations have consistently highlighted that more needs to be done to address the underlying factors that contribute to Indigenous youth in detention through locally-designed early intervention, prevention and diversion programs.

## Indigenous legal services

The current funding uncertainty, shortfalls and government cuts to specialised Indigenous legal services mean that many Indigenous young people do not always get the legal assistance they need.<sup>27</sup>

The Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) provide specialised, culturally tailored services for Indigenous people, including young people. Numerous inquiries have concluded that both of these Indigenous legal services are significantly underfunded.<sup>28</sup>

In March 2015 the Australian Government reversed cuts to the state and territory-based ATSILS, which were to take effect from June 2015.

While the FVPLS heard in March 2015 that their funding will be maintained, 60 per cent of the FVPLS centres have only been funded for one year.<sup>29</sup>

## BETTER SOLUTIONS FOR FASD

Fetal alcohol spectrum disorders (FASD) describes a range of impacts caused by exposure to alcohol in the womb. The consequences vary along a spectrum of disabilities including: physical, cognitive, intellectual, learning, behavioural, social and executive functioning disabilities, and problems with communication, motor skills, attention and memory. In many cases the damage is not physically apparent "but can manifest itself in lifelong learning difficulties and cognitive impairment."<sup>30</sup>

FASD presents a range of challenges which make contact with the criminal justice system more likely.

There is currently no official diagnostic tool which makes diagnosis difficult. Diagnosis is essential in ensuring fair trials for people affected with FASD. The current process for making diagnosis is also time consuming, which can lead to young people being held in detention on remand awaiting a diagnosis.

FASD is not formally recognised as a disability, so people affected by FASD and their carers find it difficult to access adequate funding and support. Community-designed and led programs also lack the resources to provide early support to young people affected with FASD, which is essential in ensuring their behaviour is dealt with early in life and not as a criminal justice issue.

In July 2014, the Australian Government announced \$9.2 million dollars to fund the National FASD Action Plan. Amnesty International welcomes this step, but notes that the plan does not undertake to recognise FASD as a disability nor include budget to assist the families of young people at risk of contact with the justice system.

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- 26 Committee on the Elimination of Racial Discrimination, *Concluding Observations – Australia*, CERD/C/AUS/CO/15-17, [20]
  - 27 Correspondence with the Victoria Williams, Aboriginal Legal Service of Western Australia (5 February 2015).
  - 28 Productivity Commission, *Access to Justice Arrangements*, Inquiry report, Volume 2; 2013 Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time For Doing: indigenous youth in the criminal justice system*, Senate Legal and Constitutional References Committee, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice (2004)*; Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Inquiry into Access to Justice (2009)*;
  - 29 Allison Neville, National Justice Coalition Steering Committee Meeting (20 March 2014);
  - 30 Report of the House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into Fetal Alcohol Spectrum Disorders (FASD: The Hidden Harm)*



## CASE STUDY: SARAH

Sarah\* is employed at a local Aboriginal organisation in the Kimberley, and is planning to start her own business. She attributes her promising future to her involvement as a teenager with the Yiriman Project women's program.

When Sarah was 15, she went out bush with the Yiriman Women's Program for a week, where she connected with her grandmother's country. She learned about local stories, songlines and to dance and sing.

The experience had a real impact on Sarah and gave her a sense of belonging and respect; she is on track for a bright future.

*I got out of it a sense of belonging. People say you find yourself more when you enter your inner self. When I went out there I took a step back and said, this is me, this is where family come from, my ancestors walked this land, so I sort of found myself. I find that a sense of belonging gives you a sense of respect.*

*When my parents split, about 10, I went through a bad patch ... but women's programs kept me away from trouble.*

\*name has been changed

Photo © Ingetje Tadros

- 1  
Legislate in order to override state and territory-based laws that do not conform with the Convention on the Rights of the Child, including by the introduction of legislation to the effect that:
  - Notwithstanding any state or territory law which provides otherwise, in sentencing or considering a bail application for any person up to and including the age of 17, the court must observe the principle that detention is a measure of last resort.
  - Any state or territory law that requires the imposition of a mandatory minimum sentence on a child or young person up to and including the age of 17 is invalid.
  - Any state or territory law treats a person up to and including age 17 as an adult for the purpose of criminal prosecution is invalid.
  - Any state or territory laws that treats a person below the age of 12 as criminally responsible is invalid, and the doctrine of *doli incapax* continues to apply to 12, 13 and 14-year-olds.
- 2  
Immediately withdraw the reservation to Article 37(c) of the Convention on the Rights of the Child.
- 3  
Ratify the Optional Protocol to the Convention Against Torture (OPCAT) without delay, and create an independent National Preventative Mechanism (NPM) under the guidance of the Subcommittee on the Prevention of Torture (SPT). Allow both the NPM and SPT access to all places where people are deprived of liberty, including youth detention facilities.
- 4  
Take immediate steps to become a party to the Third Optional Protocol to the Convention on the Rights of the Child (on a communications procedure).
- 5  
Ensure that ongoing funding is made available to so that the managing and coordinating role played by the NATSILS can continue. Ensure sufficient ongoing funding is available to continue the work undertaken by the Family Violence Prevention Legal Service (FVPLS).
- 6  
Work with the state and territory governments to quantify the level of unmet legal need currently experienced by Indigenous young people and their families; and take immediate steps to make up the shortfall in funding to ensure that all young people facing criminal proceedings are granted full access to legal assistance.
- 7  
Commence work with all state and territory governments, through COAG, to identify and address gaps in the collection of standard and disaggregated data related to youth contact with the justice system. This should include taking immediate steps to integrate information on arrest and police diversion into the Juvenile Justice National Minimum Data Set (JJ NMDS) and better link JJ NMDS data with child protection and adult corrections data.
- 8  
Work with the Western Australian and Northern Territory governments to ensure that they provide JJ NMDS data in the required standard format.
- 9  
Begin a process, through COAG, to develop justice targets to reduce Indigenous youth detention rates and create safer communities (through reduced rates of experienced violence). Such targets should be developed in consultation with Indigenous Peoples and their organisations that represent offenders and victims.
- 10  
Take a leading role, through COAG, to identify the data required to implement a justice reinvestment approach, including by tasking a technical body with assisting states and territories and coordinate a national approach to the data collection.
- 11  
Work with state and territory governments to ensure that the adoption of a justice reinvestment approach occurs in close consultation with Indigenous communities and their representatives.
- 12  
Recognise Fetal Alcohol Spectrum Disorders (FASD) as a disability under the National Disability Insurance Scheme and on the Department of Social Services' List of Recognised Disabilities.
- 13  
Provide sufficient resources to Indigenous community-designed and led initiatives to address the effects of FASD to ensure that it is treated as a disability rather than becoming a criminal justice issue.
- 14  
Urgently finalise an official diagnostic tool for FASD.
- 15  
Work with state and territory governments to identify areas of unmet need for bail accommodation. Fund Indigenous community controlled bail accommodation and support services to ensure that Indigenous young people are not held in detention on remand solely due to a lack of other options. Particular focus should be given to young girls and boys in out-of-home care, and those with mental health issues and cognitive impairments, including those with FASD.
- 16  
Work with the state and territory governments to develop youth bail legislation requiring that pre-trial detention should occur only as a last resort where there is a risk of flight or where release would interfere with the administration of justice. Under the uniform youth bail legislation, pre-trial detention should occur only after a case-by-case assessment of necessity and proportionality.



## CASE STUDY: NOWANUP

Kids flourish when they are with their communities, which is why Aboriginal-led youth programs work.

Eugene has worked with Aboriginal young people for nearly 10 years. Together with other Noongar Elders in the South West of Western Australia, Eugene has run cultural knowledge camps for Aboriginal young people as an alternative to detention.

The camps, at a property called Nowanup, helped boys reconnect to themselves, their culture and community.

Kids come back from Nowanup happier, healthier, and with a sense of belonging. But despite the program's success, Eugene is struggling to find the funding to keep it alive.

*They learn the song and dance about respect for self. They learn the stories of their old people that were the first caretakers of the country ... They walk the trails that their old people used to take young people on a long time ago, to learn about respect for the land.*

*These young fellows then go back to support their Elders in their own towns...The answers are in the land ... The land can heal our young people.*

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