

04/11/2016

Youth Detention Review

GPO Box 149

Brisbane QLD 4001

via email: [enquiries@youthdetention.qld.gov.au](mailto:enquiries@youthdetention.qld.gov.au)

Dear Ms McMillan and Professor Davis,

### **QLD YOUTH DETENTION REVIEW**

The Change the Record (CTR) Coalition welcomes the opportunity to provide a brief submission to Queensland's Independent Youth Detention Review (Review).

The CTR Coalition<sup>1</sup> is a group of leading Aboriginal and Torres Strait Islander, legal, community and human rights organisations working collaboratively to address the disproportionate rates of violence and imprisonment experienced by Aboriginal and Torres Strait Islander people. The CTR Coalition is calling for greater investment in early intervention, prevention and diversion strategies. These are smarter solutions that increase safety, address the root causes of violence against women, cut reoffending and imprisonment rates, and build stronger and safer communities.

The CTR Coalition has identified two overarching goals, to:

- (a) Close the gap in rates of imprisonment between Aboriginal and Torres Strait Islander and non-Indigenous people, by 2040; and
- (b) Cut the disproportionate rates of violence to at least close the gap by 2040 with priority strategies for women and children.

Our submission to the Review relates to both these goals, as well as our collective concern about recent reports of alleged mistreatment in Queensland youth detention facilities and, more broadly, the high imprisonment rates of Aboriginal and Torres Strait Islander young people in Queensland.

This submission does not endeavor to respond in detail to all of the Terms of Reference for this Review. Instead we seek to make some general comments about the broader context of the over-imprisonment of Aboriginal and Torres Strait Islander young people, and outline a series of recommendations related to improving treatment and conditions in detention (ToR A - ii/iii) and alternative approaches to programmes and services to reduce Aboriginal and Torres Strait Islander young peoples' imprisonment and reoffending rates (ToR A - v/vi).

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<sup>1</sup> See *Appendix 1* for further information on the Change the Record Coalition.

## Background

The extremely concerning reports of abuse in Queensland's Brisbane and Cleveland Youth Detention Centres detailed alleged use of excessive force, fear, intimidation and isolation, predominantly towards Aboriginal and Torres Strait Islander children. The detention of young people must only be used as a measure of last resort, and it is entirely unacceptable that children could be subjected to this type of treatment whilst in the care of the state. As a result we strongly welcome the Review's focus on investigating these specific instances of alleged mistreatment.

However, in investigating the specific claims of abuse of young people in Queensland youth detention facilities and prisons, it is also critically important that the Review takes into consideration the wider context of this issue. Within Queensland, Aboriginal and Torres Strait Islander young people are currently 22 times more likely to be incarcerated than non-Indigenous youth.<sup>2</sup> And, whilst they make up about 8% of all 10 to 17-year-olds in Queensland they account for 65% of the youth detention population on an average day.<sup>3</sup> These figures are mirrored nationally, where Aboriginal and Torres Strait Islander young people are currently being incarcerated at 24 times the rate of non-Indigenous children.<sup>4</sup>

The high rates of both imprisonment and victimisation of Aboriginal and Torres Strait young people have been directly linked to broader issues of social and economic disadvantage, which Aboriginal and Torres Strait Islander people and communities also experience at disproportionate rates.<sup>5</sup> Some of these underlying factors include high levels of poverty, unemployment, drug and alcohol addiction, mental illness and disability, experience of family violence, poor education outcomes, homelessness, over-representation in the child protection system and a loss of connection to community and culture. This Review provides an important opportunity to provide recommendations to the Queensland Government which seek to address some of these driving factors.

The current national trend of a punitive 'tough on crime' approach to youth offending and misbehaviour fails to recognise that young people are still developing and that far more appropriate opportunities for support and positive reinforcement exist than putting children behind bars. In addition, exposure to youth detention also substantially increases the likelihood of involvement in crime as an adult. As a result the CTR Coalition strongly

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<sup>2</sup> AIHW, Youth Justice in Australia: 2014-2015 (2016), Table S85a.

<sup>3</sup> AIHW, Youth Justice in Australia 2014-2015(2016), Tables S77a, S145.

<sup>4</sup> AIHW, Youth Justice in Australia 2014-2015(2016), Table S77a.

<sup>5</sup> The Royal Commission into Aboriginal Deaths in Custody (1991); Law Reform Commission of Western Australia, Aboriginal Customary Laws, Discussion Paper (2005) (in particular, see pp 97-99); House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Doing Time —Time for Doing (2011).

recommends that the Queensland Government increases its focus on investing into early intervention, prevention and diversion initiatives, which will support young people at risk to achieve their full potential.

In addition, we urge the Queensland Government to commit to take immediate steps to improve youth detention conditions. This should include a commitment to end the use of excessive restraints and solitary confinement in all youth detention facilities, and an increased focus on ensuring the provision of appropriate education and treatment programmes within youth detention facilities.

### **Recommendations**

The CTR Coalition would like to draw the Review's attention to our *Blueprint for Change* which was launched in November 2015. The *Blueprint for Change* is a concrete plan for Federal, State and Territory Governments to change the record on the disproportionate rates of violence experienced by Aboriginal and Torres Strait Islander people, and high levels of imprisonment.

CTR's *Blueprint for Change* makes a number of recommendations which are of particular relevance to this Review, including:

1. *Ensure legislation is in place that mandates that the principle of detention as a measure of last resort be observed at all times for any person up to and including the age of 17;*
2. *Increase the age of criminal responsibility to age 12 (in line with recommendations from the Committee on the Rights of the Child), and ensure the presumption of legal incapacity continues to apply to 12, 13 and 14-year-olds;*
3. *Whilst observing the principle that detention must only be used as a measure of last resort, ensure that any person up to and including the age of 17, is detained in appropriate facilities. Youth detention facilities should be built for purpose and provide the supports that vulnerable children need in an appropriate and therapeutic environment;*
4. *Support the development of specialist youth courts;*
5. *Ensure that legislation in each jurisdiction dictating bail considerations and presumptions includes a presumption in favour of bail for young people and ensures that bail conditions take account of social and cultural factors and can be reasonably*

*met by Aboriginal and Torres Strait Islander peoples;*

- 6. Ensure that exclusion from school is used as a matter of last resort and that all appropriate supports are provided to enable Aboriginal and Torres Strait Islander children and young people to succeed at school. This should include the provision of restorative justice initiatives and healing programmes within school to enable the early resolution of issues.*
- 7. Improve detention conditions, particularly practices which can retraumatise individuals with lived experience of violence.*

In addition, the CTR Coalition also recommends:

- 8. Ensure conditions in youth detention are human rights compliant, including by ensuring that solitary confinement is prohibited; strip searching is conducted on a risk rather than routine basis; certain restraints only permissible in exceptional circumstances; and appropriate and adequate medical treatment and education be made available;*
- 9. The Queensland Government increase its investment in funding and partnering with Aboriginal and Torres Strait Islander community-led prevention, early intervention and diversion programs;*
- 10. The Queensland Government fund an Aboriginal and Torres Strait Islander community-led, and evidence-based, justice reinvestment pilot.*

For further information and additional principles for reform please see the CTR Coalition's *Blueprint for Change* which has been attached at *Appendix 2* and is also available online at: <https://changetherecord.org.au/blueprint-for-change>.

This year marks twenty-five years since the final report of the Royal Commission into Aboriginal Deaths in Custody was handed down. Since then, there have been countless other inquiries that have looked at the over-representation of Aboriginal and Torres Strait Islander people within the justice system. It is therefore critical that the recommendations from this inquiry do not sit on the shelf. The Inquiry should consider strongly recommending that an accountability and reporting mechanism, with Aboriginal and Torres Strait Islander oversight, is developed. This would enable regular monitoring and reporting to ensure the findings of this Inquiry are fully considered and actioned by all levels of government.

We would also like to note our endorsement of the recommendations contained in



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submissions to this review by the Aboriginal and Torres Strait Islander Legal Services (QLD) and Amnesty International Australia. In addition, we would like note broad support for submissions from CTR members as well emphasise the need for the Royal Commission, and all levels of government, to listen to Aboriginal and Torres Strait Islander Community Controlled Organisations and Peaks.

If you have any questions in relation to this letter please contact Shannon Longhurst, Principal Advisor to the CTR Coalition, by phone 0409 711 061 or via email [shannon@changetherecord.org.au](mailto:shannon@changetherecord.org.au).

Kind Regards,

A handwritten signature in black ink, appearing to read 'Shane Duffy'.

Mr Shane Duffy  
Co-Chair, Change the Record Coalition

A handwritten signature in black ink, appearing to read 'Antoinette Braybrook'.

Ms Antoinette Braybrook  
Co-Chair, Change the Record Coalition

## Appendix 1

The 'Change the Record' (CTR) Coalition is a group of leading Aboriginal and Torres Strait Islander, community and human rights organisations working collaboratively to address the disproportionate rates of incarceration and violence experienced by Indigenous Australians.

The CTR Coalition has identified two goals:

- Close the gap in rates of imprisonment by 2040; and
- Cut the disproportionate rates of violence to at least close the gap by 2040 with priority strategies for women and children.

The CTR Coalition is calling for greater investment in early intervention, prevention and diversion strategies. These are smarter solutions that increase safety; address the root causes of violence against women, cut re-offending and imprisonment rates, and build stronger and safer communities.

The CTR Coalition Steering Committee includes:

- Aboriginal and Torres Strait Islander Social Justice Commissioner
- ANTaR
- Amnesty International
- Australian Council of Social Service
- Federation of Community Legal Centres (Vic)
- First Peoples Disability Network (Australia)
- Human Rights Law Centre
- Law Council of Australia
- National Aboriginal Community Controlled Health Organisations
- National Association of Community Legal Centres
- National Aboriginal and Torres Strait Islander Legal Services
- National Aboriginal and Torres Strait Islander Women's Alliance
- National Congress of Australia's First Peoples
- National Family Violence Prevention Legal Services Forum
- Oxfam Australia
- Secretariat of National Aboriginal and Islander Child Care
- Sisters Inside
- Victorian Commissioner for Aboriginal Children and Young People, Andrew Jackomos