

Australian Red Cross Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory

Australian Red Cross welcomes the opportunity to make a submission to the Royal Commission into the failings of the child protection and youth justice systems of the Northern Territory Government.

Since the release of our Vulnerability Report, *Rethinking Justice*¹, in March 2016, Red Cross has been calling for a rethink of our justice systems at a national and state/territory level.

Following the Four Corners program in July 2016, we wrote to the Northern Territory Government calling for an urgent review of youth justice in the Territory. We argued that government must shift the focus away from locking up children towards a system that aims to keep vulnerable young people out of custody

Therefore, our submission focuses on the terms of reference captured under (g) and (h) in the Letters Patent of 28 July 2016. Other organisations will be better placed to respond to matters outlined in (a) to (f) and many of these matters have already been the subject of previous reviews in the Northern Territory.

Our focus is on the way forward. Our submission outlines what needs to change to ensure that those children and young people who are most at risk of entering the child protection and youth justice systems are diverted through early intervention to alternative positive pathways outside these systems.

In doing so, we consider that change will be required at three levels:

Changing the rules: law reform, administrative policies and practices must be addressed.

Changing lives: early intervention options, programs to engage children at risk of anti-social behaviour, increased support for families, through care programs. These types of programs can be supported by the justice reinvestment approach outlined in our Vulnerability Report.

Changing minds: education and training of police, child protection workers, prison officers, housing officers and others, who have contact with children. In addition, the general public must be better informed to overturn the simplistic 'tough on crime' rhetoric often driving current ineffective and inefficient approaches.

We have also recommended changes within the Northern Territory government systems.

¹ Australian Red Cross, 2016. *Rethinking Justice Vulnerability Report 2016*, Australian Red Cross, viewed 5 October 2016, <<http://www.redcross.org.au/files/VulnerabilityReport2016.pdf>>

Our recommendations are based on our staff and volunteers' experience with our clients² and the research underpinning our Vulnerability Report. Our concerns are on the humanitarian consequences for vulnerable people in contact with and impacted by the current child protection and youth justice systems.

Some of our recommendations are not new. However, given the ongoing failings in the child protection and youth justice systems, we now need Government and Opposition/minor parties to join forces with civil society, business and community leaders to lead a rethink and overhaul of both child protection and youth justice in the Northern Territory.

Given the systemically high levels of Indigenous youth incarceration and placement of children in out of home care, particularly in the Northern Territory, Aboriginal and Torres Strait Islander peoples and communities must be leading any change and must have a strong voice in decisions being made.

At a national level, we endorse the Change the Record Coalition Blue Print for Change³ and the Family Matters - Kids Safe in Culture Not in Care⁴ platforms for change. Within the Northern Territory, we work closely with Danila Dilba and other organisations to ensure our work is guided by the aspirations and plans of Aboriginal and Torres Strait Islander peoples and organisations.

Recently, other states and territories have conducted similar Royal Commissions or inquiries into their own child protection and juvenile justice systems. We urge the Northern Territory government to work with and learn from their state and territory counterparts. In this regard, the Federal Government should play a leadership role through COAG in encouraging and promoting best practice models to be adopted across the states and territories.

I would welcome the opportunity to discuss this submission further.

Privacy



Judy Slatyer

Chief Executive Officer

² See appendix 1 for an overview of our justice-related and child and family programs across Australia

³ Change the Record Coalition. 2015. *Blueprint for change: changing the record on the disproportionate imprisonment rates, and rates of violence experienced by Aboriginal and Torres Strait Islander people*. Sydney: Change the Record. Downloaded 18 July 2016 <<https://drive.google.com/file/d/0B3OIOcaEOuaFU3BNc3ZrbI9wa0U/view?pref=2&pli=1>>

⁴ Family Matters. 2014. *Family Matters. Kids safe in culture, not care*. Victoria: Secretariat of National Aboriginal and Islander Child Care. Downloaded 14 November 2016 <<http://healingfoundation.org.au/wordpress/wp-content/uploads/2013/11/Family-Matters-Booklet-2014.pdf>>

Summary of Recommendations

That the Northern Territory Government:

1. adopt a whole of systems integrated approach to underpin its response to the Royal Commission in order to address child protection and youth justice issues
2. appoint a Coordinator General to oversee implementation of the Royal Commission recommendations with sufficient powers to call all portfolios to account and provide regular public implementation, monitoring and reporting
3. direct more funding into early intervention/prevention approaches and programs

That the Australian and State/Territory Governments:

4. immediately ratify the Optional Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT)
5. review current policies in line with the UN Convention on the Rights of the Child
6. adopt the Model Charter of Rights for Children and Young People Detained in Youth Justice Facilities
7. adopt a COAG target for closing the gap on Indigenous incarceration rates
8. review and adopt the recommendations of the recent Senate Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services

That the Territory Government:

9. immediately reform current remand policies to be in line with principles outlined in Section 4 of the Youth Justice Act– specifically that young people are kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time
10. further amend legislation that applies to young people including the Youth Justice Act in line with the recommendations of the North Australian Aboriginal Justice Agency (NAAJA) submission on legislative reforms

That the Australian and Territory Governments:

11. provide increased funding for child wellbeing services, early intervention and family preservation services to meet the needs of very vulnerable children and families

That the Territory Government:

12. explore and support a range of innovative programs/services which have the potential to provide much needed support to young people at all stages of their involvement with the youth justice system including the following:
 - justice reinvestment trials, such as the trial occurring in Katherine
 - wider implementation of Problem solving courts
 - application of community prosecutions models
 - trialing of the Red Cross Community Based Health and First Aid (CBHFA) In Action in a youth detention facility
 - improved police clearance processes to facilitate 'second chance volunteering'
 - support focused on employment and training by trialing the Red Cross through-care WorkREDI initiative.

That the Territory Government:

13. work with the NGO and business sectors on a positive media campaign countering the 'tough of crime' stance and promoting second chances for children and young people involved in the youth justice system

Current Situation

The high rates of youth detention and children in out of home care in the Northern Territory are well documented. As in other states and territories, Aboriginal and Torres Strait Islander children and young people are overrepresented in both systems.

Youth detention in the Northern Territory

In 2014-15, the number of young people aged 10-17 in detention during the year in Northern Territory was 96 per 10,000 young people; the highest of Australia's states and territories. Aboriginal and Torres Strait Islander young people made up 92% of those people aged 10–17 under supervision on an average day in 2014–15⁵.

More disturbing are the very high rates of young people being held on remand. On an average day in 2014-15, 78% of young people in detention in the Northern Territory were on remand. Following the Four Corners program in July 2016, we understand the number of young people on remand has dropped significantly and the reasons behind this should be explored by the Commission.

Child protection in the Northern Territory

The Australian Institute of Health and Welfare reports that as of June 2015, 1,073 children in the Northern Territory were subject to a care and protection order⁶. Aboriginal and Torres Strait Islander children in the Northern Territory comprise a staggering 82% of all children on care and protection orders⁷.

The national rate of Aboriginal and Torres Strait Islander children in out-of-home care is almost 10 times the rate for non-Indigenous children⁸. The most frequently cited reason for the removal of Aboriginal and Torres Strait Islander children is neglect^{9, 10}. The understanding of neglect for children living in Aboriginal and Torres Strait Islander culture is complex and is further complicated by the overlay of non-Indigenous values and a failure to properly understand the complex child rearing kinship roles and supports^{11, 12}. This can be a significant driver of inappropriate child removal¹³.

⁵ Australian Institute of Health and Welfare, 2015. *Young people returning to sentenced youth justice supervision*. Viewed 14 July 2016 <<http://www.aihw.gov.au/publication-detail/?id=60129551651&tab=2>>

⁶ Australian Institute of Health and Welfare, 2015. *Child protection Australia 2014-15*. Canberra, ACT: AIHW Viewed 24 November 2016 <<http://www.aihw.gov.au/mwg-internal/de5fs23hu73ds/progress?id=HjLZUBAeSgmZ0KafOjtXcaI6SXJDidYPT9kcT0JZ20&dl>>.

⁷ Family Matters. 2016. *Northern Territory Issues Paper*. Victoria: Secretariat of National Aboriginal and Islander Child Care. Downloaded 24 November 2016 <<http://www.snaicc.org.au/wp-content/uploads/2016/01/03227.pdf>>

⁸ Australian Institute of Family Studies *Children in care CFCA AIFS Resource Sheet—October 2016*. Viewed 10 October 2016 <<https://aifs.gov.au/cfca/publications/children-care>>.

⁹ Australian Institute of Health and Welfare, 2015. *Child protection Australia 2013-14*. Canberra, ACT: AIHW Viewed 7 July 2016 <<http://www.aihw.gov.au/publication-detail/?id=60129550762>>.

¹⁰ Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children SNAICC Griffith University 2014. Viewed 10 October 2016

¹¹ Janet Stanley, Adam M. Tomison and Julian Pocock, 2003. *Child abuse and neglect in Indigenous Australian communities* NCPC Issues No. 19 — September 2003 NCPC Published by the Australian Institute of Family Studies. Viewed 7 October 2016 <<https://aifs.gov.au/cfca/publications/child-abuse-and-neglect-indigenous-australian-communities>>.

¹² ¹² Healing Foundation, SNAICC, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 2013. *A call for a more just approach for Aboriginal and Torres Strait Islander children and families*. Viewed 8 October 2016 <http://healingfoundation.org.au/wordpress/wp-content/files_mf/1377574333compressedDiscussionPaperfinalforscreen.pdf>

¹³ Australian Institute of Family Studies, 2015. *Child protection and Aboriginal and Torres Strait Islander children CFCA Resource Sheet—September 2015*. Viewed 7 October 16 <<https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>>.

The broader context

Within the broader context there are a range of underlying factors contributing to young people entering into child protection and youth justice systems. As outlined in our Vulnerability Report¹⁴, the main social determinants that lead people (both adults and young people) to have a greater likelihood of contact with the justice system are:

- Involvement with the child protection system and family violence
- Intergenerational incarceration
- Experience within youth detention
- Previous incarceration during adulthood (recidivism)
- Homelessness
- Cognitive disability and mental ill-health
- Drug and alcohol misuse
- Unemployment, low income and poverty
- Low educational attainment
- Living in an area of concentrated disadvantage and poverty.

Among young people in prison, the data reflects the above drivers. For example:

- One fifth of young people under youth justice supervision received homelessness support within two years of their most recent period of supervision¹⁵.
- In NSW, 88% of young people in custody reported symptoms consistent with a mild, moderate or severe psychiatric disorder¹⁶.

There is also consistent evidence of a link between child abuse or neglect and juvenile participation in crime¹⁷.

- Almost half (45%) of those who were in youth detention (aged 10-17) in 2013/14 were also involved in the child protection system, which is 23 times the rate for the general population¹⁸.

The pathway between youth and adult imprisonment is also well established:

- One fifth of adult prisoners have been in juvenile detention according to the Australian Institute of Health and Welfare¹⁹.
- Researchers point to a range of reasons for the connection between adult and youth imprisonment rates including lack of funding for rehabilitation programs in juvenile detention and incarceration leaving children with no knowledge of basic skills for reintegration into society²⁰.

¹⁴ Australian Red Cross op. cit., p. 14.

¹⁵ Australian Institute of Health and Welfare, 2012. Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice. Data linkage series no. 13. Cat. no. CSI 13. Canberra: AIHW.

¹⁶ Australian Human Rights Commission, 2005. *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems – A report by the Aboriginal and Torres Strait Islander Social Justice Commissioner*. Viewed 13 October <<https://www.humanrights.gov.au/publications/indigenous-young-people-cognitive-disabilities-and-australian-juvenile-justice-systems>>.

¹⁷ Australian Institute of Family Studies, 2014. *Effects of child abuse and neglect for children and adolescents*. Viewed 4 August 2016, <<https://aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-children-and-adolescents>>.

¹⁸ Australian Institute of Health and Welfare, 2016. *Young people receiving child protection services and under youth justice supervision 2013–14*. Data linkage series no. 21. Cat. no. CSI 22.

¹⁹ Australian Institute of Health and Welfare, 2015. *The health of Australia's prisoners 2015*. Cat. no. PHE 207. Canberra: AIHW. Viewed 15 June 2016, <<http://www.aihw.gov.au/publication-detail/?id=60129553527>>.

²⁰ Australian Law Reform Commission, 1997. *Seen and heard: Priority for children in the legal process*. Chapter 20: Detention. Australian Law Reform Commission Canberra. Viewed 5 August 2016 <<http://www.alrc.gov.au/publications/report-84>>.

Given the high levels of disadvantage and multiple complex needs of children and young people in child protection and youth justice systems, the emphasis should be on rehabilitation and early intervention programs. However, in practice the opposite appears to be the case, with the expenditure from government primarily in prisons/detention facilities, leaving many young people repeatedly cycling through prison to become repeat offenders.

Therefore, our submission argues for rethinking the youth detention system and for systemic reform to the child protection and youth justice systems to:

- produce safer communities
- target government expenditure effectively to the causes of crime through family support
- provide early intervention and rehabilitation programs; and
- Improve the lives of vulnerable children, young people and their families.

SYSTEMS CHANGES

Whole of government approach to child protection and youth justice systems

Given the complexity of disadvantage often confronting families with children in either the child protection or youth justice systems, government should consider a whole of government and child-centered approach to better coordinate service delivery. Previous reviews have identified that siloed approaches within governments do not work²¹. Children, young people and their families need access to a full range of coordinated services, requiring a number of portfolios to work together including, health, education, housing, children and families.

Red Cross acknowledges the Northern Territory Whole of Government Youth Justice Framework 2015-2020²² and the actions outlined in this document. Red Cross supports its intention to facilitate improved engagement by the justice sector with communities and affected families. In addition, its actions which prioritise strengthening of social and cultural connections can provide a culturally sensitive approach to diversion and pro-social engagement with at-risk young people. However, the potential for the framework to provide the basis for an effective through-care model is dependent on:

- broad acceptance within and outside government
- effective collaboration between the key government agencies and organisations in the non-government sector
- implementation from a child centered perspective.

While adopting whole of government approaches can be challenging, lessons can be drawn from previous trials such as the COAG Indigenous trial sites which were implemented between 2003 and 2006. The evaluation of these trials²³ pointed to the challenges to be addressed in future whole of government initiatives including an emphasis on ensuring staff had the right skills and training to work in a joined up way across government(s) and with communities.

Similarly, the Remote Indigenous Services Coordinator-General highlighted similar lessons in his final biannual report²⁴ to the Federal Minister for Indigenous Affairs, stating that key lessons for government include:

- Carefully selected, well-trained and supported government staff based locally in or near the community is conducive to better working relationships with communities and service providers.
- The governance of governments must be transparent, of high quality and well administered. Processes for working between and across levels of governments need not be overcomplicated but must ensure accountability.

²¹ Carney, J., 2011. *Review of the Northern Territory Youth Justice System: Report*. Northern Territory Government. Viewed 9 Oct 2016 <https://www.nt.gov.au/_data/assets/pdf_file/0017/238211/youth-justice-review-report.pdf>.

²² Northern Territory Government, 2015. *Northern Territory Whole of Government Youth Justice Framework 2015-2020*. Viewed 7 November 2016 <https://correctionalservices.nt.gov.au/_data/assets/pdf_file/0005/368096/FINAL_Youth-Justice-Framework-2015-2020.pdf>

²³ Morgan Disney & Associates Pty. Ltd, Tracey Whetnall Consulting & Wis-Wel Consulting Pty Ltd. 2006. *Synopsis Review of the COAG Trial Evaluations*. The Office of Indigenous Policy Coordination. Viewed 17 November 2016 <https://www.dss.gov.au/sites/default/files/documents/05_2012/coag_trials_overview.pdf>

²⁴ Australian Government. 2014. *Coordinator General for Remote Indigenous Services, Final Biannual Report*. Office of the Coordinator General for remote Indigenous Services. Viewed 17 November 2016 <http://www.papertracker.com.au/pdfs/cgris_report09.pdf>

The recent appointment of Peter Shergold AC to act as the NSW Coordinator-General for Refugee Resettlement could also provide useful contemporary guidance for whole-of-government cooperation. Professor Shergold, who was also involved in the COAG Indigenous trials, has taken responsibility for coordinating across governments, government agencies and NGOs to resettle refugees in NSW. Professor Shergold has said that: 'It is vital that all the agencies of the State Government work together in a coordinated way to wrap support services around the refugee families as they arrive'²⁵.

The Government should also consider the appointment of a Coordinator General role as cited earlier to oversee the implementation of the Royal Commission recommendations. Such a role could ensure transparent reporting and accountability across all relevant portfolios and have sufficient powers to hold all levels of government to account.

Relocation of youth justice to the Territory Families portfolio

In addition to a whole of government approach, we welcome the recent relocation of youth justice from Corrections to the Territory Families portfolio and note that this provides a full integration across family, community and child protection systems.

Underpinning this new portfolio arrangement, there is a significant need for additional resources to be directed away from detention and into early intervention and child/family support programs. The Northern Territory Children's Commissioner has highlighted that there were 20,465 child protection reports in 2015-16, an increase of 20% from 2014-15. It has been acknowledged that the limited capacity of the department to appropriately follow up and prioritise responses to these notifications has continued to increase the risk of harm to vulnerable young people in the Northern Territory²⁶.

With this shift of portfolio there is also the opportunity to modify the practices and organisational culture of these government departments, to ensure practices are trauma informed and focused on child development. The Sanctuary Model²⁷ provides an example of a successful blueprint for organisational change, with a focus on creating safe and healing environments for clients and ensuring best practice from service providers. This model can support government departments to shift towards a culture that is trauma informed and places the need of clients at the centre.

Recommendations:

That the Territory Government:

1. adopt a whole of systems integrated approach to underpin its response to the Royal Commission in order to address child protection and youth justice issues.
2. appoint a Coordinator General to oversee implementation of the Royal Commission recommendations with sufficient powers to call all portfolios to account and provide regular public implementation monitoring and reporting.
3. direct more funding into early intervention/prevention approaches and programs.

²⁵ New South Wales Government, 2015. *Peter Shergold to coordinate resettlement*. Media Release 14th September 2015. Viewed 28 October 2016 <<https://www.nsw.gov.au/media-releases-premier/peter-shergold-coordinate-resettlement>>.

²⁶ Office of The Children's Commissioner, 2016. *Annual Report 2015-2016*. Northern Territory Government. NT. Viewed 1 December 2016 <http://www.childrenscommissioner.nt.gov.au/mwg-internal/de5fs23hu73ds/progress?id=0iZiQu_VSSNy9eLcMwg3vb6-J3OD8E0eSvt3urlBsZc>

²⁷ Sanctuary Institute. Downloaded 7 December 2016 <<http://thesanctuaryinstitute.org/about-us/the-sanctuary-model>>

WHAT NEEDS TO CHANGE: CHANGING RULES

This section addresses legislative reform options and policy changes that should be considered to avoid inappropriate treatment in facilities (refer Letters Patent terms of reference (g) (i) and to further reduce the likelihood of children and young people being placed in detention in the first place. Changing the rules that underpin our child protection and youth justice systems will need to be driven at both the national and territory levels.

National reforms

There are three legislative changes that would support improvements in the child protection and youth detention facilities in the Northern Territory and other states/territories.

1. Ratification by all governments of the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT)

The Australian Government signed the OPCAT on 19 May 2009, but has not yet ratified the agreement. Once Australia ratifies the OPCAT and becomes a full party to it, it would be required to establish a National Preventative Mechanism (NPM). The purpose of a NPM is to provide a monitoring and reporting mechanism for all forms of detention. Such a mechanism would prevent inappropriate treatment of children and young persons detained in any facilities. In addition, states and territories would be required to enact enabling legislation. To this end in 2013 the Northern Territory Government drafted the *Monitoring of Places of Detention Bill (2013)*²⁸ to ensure that the government is prepared for the expected ratification of OPCAT²⁹. A number of other organisations have already called on the Australian Government to ratify the OPCAT including the Australian Human Rights Commission, the Human Rights Law Centre, Australian Council of Social Services and the Change the Record Coalition. We join these organisations in recommending that the Australian Government ratify the OPCAT and work with states and territories on a model for the NPM.

The National Children's Commissioner, Megan Mitchell, has been conducting visits to juvenile detention centers across Australia to consider the application of OPCAT within these facilities. A report based on these visits and detailing recommendations on OPCAT and its application within juvenile justice was anticipated to be released at the end of 2016.³⁰

2. Review current policies in line with the UN Convention on the Rights of the Child

We propose a review of current youth justice policies and laws based on recommendations made by the Committee on the Rights of the Child³¹ to ensure the Australian youth justice

²⁸ Northern Territory Government, 2013. *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) (National Uniform Legislation) Bill 2013 (Northern Territory)*. Viewed 1 November 2016 <<http://www.austlii.edu.au/au/legis/nt/bill/mopodpttcatulb20131177/index.html>>

²⁹ Northern Territory Government, 2013. *Consultation paper for the purposes of the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013 (Northern Territory)*. Viewed 1 November 2016, <https://justice.nt.gov.au/_data/assets/pdf_file/0014/171302/consultation-paper-for-monitoring-places-of-detention.pdf>.

³⁰ Australian Human Rights Commission, 2016. *OPCAT and Australia*. Viewed 1 November <<https://www.humanrights.gov.au/news/stories/opcat-and-australia>>.

³¹ Amnesty International Australia. (2015). *A brighter tomorrow: keeping Indigenous kids in the community and out of detention in Australia*. New South Wales: Amnesty International. Downloaded 14/04/2016 <http://www.amnesty.org.au/images/uploads/aus/A_brighter_future_National_report.pdf>

systems align with international standards of the United Nations Convention on the Rights of the Child including:

- removing Australia’s reservation to Article 37 (c) of the Convention which requires that children in youth detention facilities are separated from adults unless it is in the best interests of the child not to do so
- raising the criminal age of responsibility from 10 to 12 across all Australian jurisdictions
- reviewing sentencing practices to ensure detention is a measure of last resort. (The NT Government should also address this issue – see below).

3. Adopt the Model Charter of Rights for Children and Young People Detained in Youth Justice Facilities

The Model Charter of Rights for Children and Young People Detained in Youth Justice Facilities outlines the rights of young people to be able to raise concerns to an independent body, such as an official visitor.

The Charter developed by Australian Children’s Commissioners and Guardians (ACCG) is based on international agreements to which Australia is a signatory. The Charter is designed to provide young people in youth detention facilities with a plain language guide to their rights and entitlements while in custody.

The Commissioners and Guardians have promoted and applied the charter within each jurisdiction and a copy of the Charter was also provided by the ACCG to youth justice administrators in each State and Territory.

Red Cross also encourages the formal endorsement of the Charter by youth justice administrators and governments nationally through its incorporation into policy and legislation. In South Australia, the Youth Justice Administration Bill 2015³² requires Ministerial endorsement of the charter and promotion and implementation by youth justice administration.

4. Adopt a COAG justice target

We note and welcome the recent announcement by the Federal Attorney General and Minister for Indigenous Affairs to hold an inquiry into Indigenous incarceration rates. We emphasise the value of the expertise, experience and previous recommendations put forward by Aboriginal and Torres Strait Islander organisations, and encourage government to use these as a starting point for this inquiry. We also recommend that one of the outcomes of this inquiry should be the setting of a COAG target for closing the gap in Indigenous incarceration.

³² South Australian Government, 2015. *South Australian Youth Justice Administrations Bill*, 2016. Viewed 1 November 2016, <https://www.legislation.sa.gov.au/LZ/B/CURRENT/YOUTH%20JUSTICE%20ADMINISTRATION%20BILL%202016/E_AS%20PASSED%20LC/YOUTH%20JUSTICE%20ADMINISTRATION%20BILL%202015.UN.PDF>

5. Review and adopt the recommendations of the Senate Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services

Twenty five years on from Royal Commission into Aboriginal Deaths In Custody³³, the most recent Senate Inquiry Report into Aboriginal and Torres Strait Islander experience of law enforcement and justice services includes recommendations that Red Cross considers are critical to driving improvements in Indigenous and juvenile justice, including:

- management of young people with fetal alcohol spectrum disorder
- support for legal assistance services
- support for Aboriginal led justice reinvestment projects
- support for programs which strengthen families and communities through a focus on early intervention and support.

Recommendations

That the Australian and State/Territory Governments:

4. immediately ratify the Optional Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT).
5. review current policies in line with the UN Convention on the Rights of the Child.
6. adopt the Model Charter of Rights for Children and Young People Detained in Youth Justice Facilities.
7. adopt a COAG target for closing the gap on Indigenous incarceration rates.
8. review and adopt the recommendations of the most recent Senate Inquiry into Aboriginal and Torres Strait Islander experience of law enforcement and justice services.

Northern Territory reforms

We propose that existing NT youth justice laws be reviewed and where appropriate amended to better reflect the principles set out in Section 4 of the Youth Justice Act (see Appendix 2). This Act includes a number of principles that, if reflected in other legislation, could provide a more humanitarian approach overall to children and young people who have offended.

In particular, the following changes are recommended:

1. Reform of remand policies to ensure that children and young people are kept on remand for the minimal time possible.

Custodial remand has been identified ‘as one of the most taxing and unstable prison experiences’. This may result in a range of negative outcomes for young people including future reoffending³⁴.

As noted, we understand that rates of remand have been unacceptably high and only dropped significantly after the Four Corners Program. We also understand that rates have

³³ Aboriginal Legal Rights Movement, No date. *Recommendations of the Royal Commission into Aboriginal Deaths in Custody*. South Australia: Aboriginal Legal Rights Movement. Viewed 14 November 2016
<<http://www.alrm.org.au/information/General%20Information/Royal%20Commission%20into%20Aboriginal%20Deaths%20in%20Custody.pdf>>

³⁴ Richards K and Renshaw L, 2013. *Bail and remand for young people in Australia: A national research project*. Canberra. Australian Institute of Criminology Research and Public Policy Series. Viewed 27 July 16
<http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp125/05_introduction.html>.

increased again slightly but have not returned to the previously high levels. However, this needs to be monitored closely as high levels of remand run counter to Principle (c) of the Youth Justice Act, which states that a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time³⁵. Alternative options should be developed and promoted to police, magistrates and others when considering placement of children and young people in custody.

Red Cross supports Action 2.4 outlined in the Northern Territory Whole of Government Youth Justice Framework³⁶ that commits to develop a youth bail support program. The establishment of such a program has the potential to increase young people's ability to meet eligibility criteria and maintain compliance with bail conditions. This would also be expected to have a positive impact on reducing remand rates.

2. Use of Restraints

Red Cross notes the recent amendment to the Youth Justice Legislation Bill 2016³⁷, which prohibits the use of mechanical restraints and limits the use of approved restraints (Handcuffs, ankle cuffs and waist-restraining belts.). Approved restraints are only to be used as a matter of last resort, in situations where all other methods have been exhausted, staff are unable to de-escalate a young person's behavior and where it is necessary to ensure the safety of the young person or others.

Additional regulations included in the Amendment will serve to ensure greater accountability from staff in youth detention centers to ensure that in situations where restraints are deemed necessary, the force in which restraints are applied and the type and duration of the restraint pose the least possible risk to the young persons' wellbeing.

Red Cross further supports the announcement that the Northern Territory Government plans to re-draft the Territory's Youth Justice Act informed by the findings of this Royal Commission. Red Cross encourages the Northern Territory Government to consult widely to inform changes to the Youth Justice Act to ensure that youth justice facilities in the Northern Territory are better equipped to address the specific needs of young people and their safety and wellbeing is prioritised.

Monitoring of the use of any restraints and solitary confinement should in all instances be documented and reported to an independent monitoring mechanism, such as the mechanism outlined in the OPCAT³⁸ to ensure practices within youth detention facilities meet the UN standards of treatment.

3. Other reforms should be adopted as per the North Australian Aboriginal Justice Agency (NAAJA) submission on legislative reforms.

³⁵ Australasian Legal Information Institute (2016). *Northern Territory Consolidated Acts. Youth Justice Act- Sect 5*. NSW: University of New South Wales & University Of Technology. Downloaded 14 November 2016 <<http://www.austlii.edu.au/>>

³⁶ Northern Territory Government, 2015. *Northern Territory Whole of Government Youth Justice Framework 2015-2020*. Viewed 7 November 2016 < https://correctionalservices.nt.gov.au/_data/assets/pdf_file/0005/368096/FINAL_Youth-Justice-Framework-2015-2020.pdf>

³⁷ Northern Territory Government (2016) *Youth Justice Legislation Amendment Bill 2016*. Northern Territory. Downloaded 8 December 2016 < https://legislation.nt.gov.au/LegislationPortal/Bills/By-Title#header_bill_acc_Y>

³⁸ Australian Human Rights Commission, 2016. *Optional Protocol to the Convention against Torture (OPCAT)*. Viewed 9 December < <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/optional-protocol-convention-against-torture-opcat>>.

We endorse the NAAJA submission³⁹ and commend it to the Commission for its valuable recommendations for legislative reform in the Northern Territory justice system. While not all recommendations are specifically relevant to the Youth Justice Act, we believe the following amendments to legislation would make a significant contribution to improved outcomes for young people in the youth justice system:

- repeal of legislative provisions that create mandatory sentencing
- repeal s16AA Crimes Act 1914 (Cth), to allow cultural background to be included as a factor to be considered in sentencing decisions
- the removal of the offence of breach of bail for youth offenders
- review of how presumptions against bail apply to youth.
- removal of victims levy for youth offenders.

Recommendations

That the Territory Government:

9. immediately reform current remand policies to be in line with principles outlined in Section 4 of the Youth Justice Act– specifically that young people are in kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and the shortest appropriate period of time.
10. further amend legislation that applies to young people including the Youth Justice Act in line with the recommendations of the North Australian Aboriginal Justice Agency (NAAJA) submission on legislative reforms.

³⁹ National Australian Aboriginal Justice Agency, 2016. *Policy Document: NAAJA Submissions to the New NT Government on Law Reform*. Northern Territory.

WHAT NEEDS TO CHANGE: CHANGING LIVES

The Commission's terms of reference refer to what improvements could be made to the child protection system, including the identification of early intervention options and pathways for children at risk of engaging in anti-social behavior.

Changing lives of vulnerable young people and their families will require a concerted effort to disrupt the frequent pathway of children becoming at risk, being removed from their families, dropping out of education, becoming involved in criminal activities and finding their way into youth detention facilities.

It will require a holistic approach to address the underlying causes of their initial risk. In doing so, government will need to rebalance funding across the phases of the child protection and youth justice systems, with increased funding in early intervention to prevent young people entering detention. At the same time, young people already in the system cannot be neglected – they also need increased funding for rehabilitation and improving their reintegration into communities. Therefore, our recommendations target all stages of the child protection and youth detention systems from early intervention and prevention to young people exiting detention and reintegrating into their communities.

Child protection system

1. Increase support for universal and family preservation services

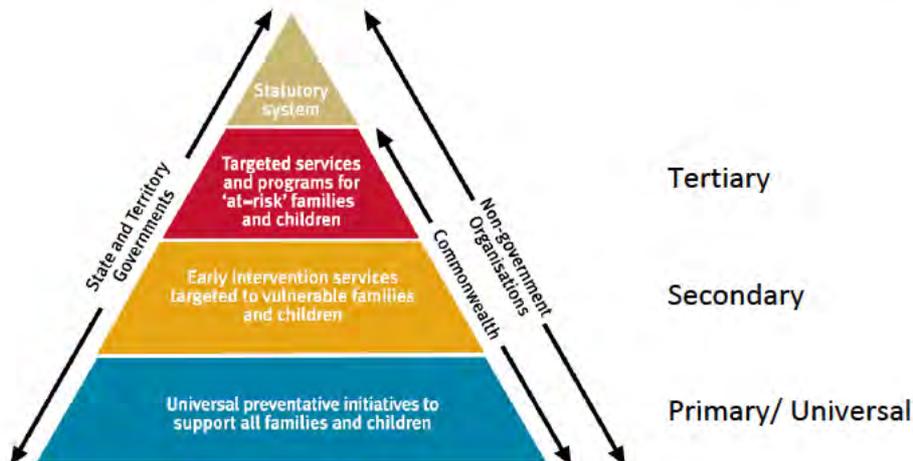
Protecting Children is Everyone's Business:⁴⁰ The National Framework for Protecting Australia's Children 2009–2020 acknowledges the complexity of factors that contribute to poor outcomes for children and adopts a public health approach to the provision of a continuum of supports and services. This approach moves from seeing 'protecting children' merely as a response to abuse and neglect to one of promoting the safety and wellbeing of children. Under a public health model, priority is placed on having universal supports available for all families. More intensive secondary prevention interventions are provided to those families who need additional assistance with a focus on early intervention. Tertiary child protection services are a last resort and the least desirable option for children, families, communities and governments.

Within this public health approach, we argue that sufficient funds must be provided for the primary and secondary levels to prevent families falling into the tertiary level of 'last resort'.

Just as a health system is more than hospitals, so a system for the protection of children is more than a statutory child protection service⁴¹.

⁴⁰ Commonwealth of Australia, 2009. *National Framework for Protecting Australia's Children 2009–2020 Protecting Children is Everyone's Business*.

⁴¹ *ibid* p. 6.



Source: *National Framework for Protecting Australia's Children 2009–2020 Protecting Children is Everyone's Business* p 6

Intensive family support and family preservation services (secondary services) form a critical part of the broader child protection system. They are targeted to prevent separation of children from their primary caregivers due to child protection concerns and reunite families where separation has already occurred by ensuring child safety and improving family functioning and parenting practices. These services can at times also form a bridge between the tertiary and secondary services.

Family preservation services need to be further provided across the Northern Territory with a particular focus on how best to deliver such services for Aboriginal and Torres Strait Islander families. The Moving to Prevention project reviewed targeted family support services for Aboriginal and Torres Strait Islander families and their children and identified success factors for achieving positive outcomes as follows:

- how services were matched to child and family needs
- how staff built trusting relationships and partnerships with family members
- the intensity and duration of service provision
- how family members participated in decision making and case planning
- how services were provided in culturally-competent and respectful ways⁴².

Both Federal and State Governments are increasingly funding and piloting these services^{43,44}. Evidence of the effectiveness of intensive family support / preservation services continues to grow, including the provision of highly specialised therapeutic trauma informed services. New South Wales prioritised this form of service delivery for two innovative social benefit bonds released for tender in 2011.

⁴² SNAICC & Griffith University, 2014. *Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children*. Viewed 8 October 2016

<https://www.dss.gov.au/sites/default/files/documents/03_2015/moving_to_prevention.pdf>

⁴³ Parenting Research Centre, 2016. *Intensive Family Support Services (IFSS)*. Viewed 8 October 2016, <<http://www.ifss.net.au/>>

⁴⁴ Northern Territory Government, 2010. *Growing them strong, together* Report of the Board of Inquiry- into the Child Protection System in the Northern Territory 2010. Viewed 8 October 2016, <https://childprotectioninquiry.nt.gov.au/report_of_the_board_of_inquiry>.

More recently, in NSW a service redesign project is being carried out by the Families and Community Services Department to prioritise a targeted early intervention (TEI) program⁴⁵. This initiative may also offer useful insights for the Northern Territory Government.

Recommendations:

That the Australian and Territory Governments:

11. provide increased funding for child wellbeing services, early intervention and family preservation services to meet the needs of very vulnerable children and families.

Youth justice system

As noted earlier, our emphasis is on services and programs that will keep young people out of prison. However, effective services and programs must continue to take a strength based approach and address the needs of young people who cycle through detention and back into the community. The focus must always be on improving the humanitarian outcomes for these young people, drawing on their strengths and creating new opportunities for them to participate fully in society. The programs and services outlined below address each stage of a young person's involvement with the youth justice system.

1. Early intervention

As outlined in our Vulnerability Report, Australian Red Cross supports the broader sector view that justice reinvestment offers a strong approach to transforming our justice systems. For young people at risk of detention, justice reinvestment would offer them a chance to change their lives and build positive futures supported by their families and communities.

Justice reinvestment is a community centered approach that redirects money away from incarcerating people and invests in locally driven and owned solutions aimed at addressing the underlying causes of crime.

The community centered approach is central to justice reinvestment and involves local stakeholders collaborating across their community to identify the drivers of criminal justice costs and potential solutions. For example, in Woorabinda in Central Queensland, Red Cross has been working with the community to support their vision and goals. Through investment in their young people, training in leadership and skills development, the Woorabinda community has witnessed a drop of 55% in the number of young people subject to youth justice orders.

There are a number of other justice reinvestment trials underway across the states and territories including one in Katherine in the Northern Territory. We would encourage the Royal Commission to directly explore this and similar initiatives.

For those young people who still come into contact with the justice system we must also offer alternative programs and pathways that divert young people from the system, to minimise the damage and negative consequences of their criminal behaviours. These alternatives are outlined in the following sections.

⁴⁵ New South Wales Government, 2016. *Targeted Earlier Intervention Program Reform*. Viewed 15 October 2016, <<https://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/targeted-earlier-intervention-reform>>.

2. Sentencing options

2.1 Problem solving courts

In problem solving courts, judges and magistrates have a range of sentencing options available other than incarceration, including sentenced treatment programs, community restoration and restorative justice programs. Offenders are held accountable through a reporting system requiring them to report progress to the court on a regular basis. This is predetermined by the judge at the time of sentencing. Typically for those offenders who successfully complete programs, charges are dropped, while for those who fail to comply, a predetermined prison or community-based sentence will be enforced⁴⁶.

In general, problem-solving courts take a less formal, flexible approach than conventional courts. This also includes a focus on the use of plain English and ensuring participants are able to understand and engage with the legal process. This approach and the design of the courts contribute to making participants feel more comfortable and as a result, more compliant with court orders.

The types of problem solving courts that have been established in Australia include:

- neighborhood justice centers/courts
- drug and mental health courts
- Indigenous sentencing Courts.

Indigenous sentencing courts address the unique needs of Aboriginal and Torres Strait Islander peoples in a culturally sensitive way. Across Australia there are a number of adult and youth Indigenous Sentencing Courts. There is a wide variation amongst these courts, with eligibility and legislative frameworks differing across the country. The Commission should explore their successes and possible further development in the Territory.

2.2 Community prosecutions

Community prosecution initiatives could be used in the Northern Territory to redirect young people from the court system and engage them in meaningful diversion and restorative justice initiatives. In the USA, community prosecution initiatives are being used to change the way courts respond to defendants⁴⁷.

One initiative, Prosecutor Integrity (PI), led by advocate Adam Foss, is working to change the role of prosecutors, by providing them with new tools and influencing the way they approach their cases. 'Prosecutor Integrity is rooted in the belief that prosecutors are the most powerful actors in the justice system, with the unique ability to protect crime victims, improve community and public safety, and to bring about transformative change in an effort to end mass incarceration. With this belief, PI seeks to cultivate a movement of prosecutors, trained to view each case through a lens of cultural competency, integrity, compassion and concern for the safety of the public, wellbeing of the victim and the betterment of the

⁴⁶ Berman G, Aubrey F 2009. *Lasting Change or Passing Fad? Problem Solving Justice in England and Wales*. Policy Exchange. London. Viewed 4 November 2016 < <http://justideas.info/research/lasting-change-or-passing-fad-problem-solving-justice-england-and-wales?url=research%2Fbrowse%2Fall%2Falpha&mode=browse&type=all&sort=alpha&page=43>>

⁴⁷ Centre for Court Innovation 2016. Problem-solving justice. Viewed 18 July 2016 <<http://www.courtinnovation.org/topic/problem-solving-justice>>.

person charged with the crime using recent advances in social, behavioral, and neurological sciences.⁴⁸

A community prosecutor role differs from the traditional prosecutor role by diverting the young person from the court system to a more restorative and problem solving solution. For example, a young person who has committed an offence related to receiving and selling stolen goods, admits guilt. At this point, instead of progressing the case to the court, a community prosecutor organises a financial plan for the young person to repay the costs of stolen goods and organises for the young person to participate in restorative justice conferencing with the victim. The young person is further linked to community based supports, such as employment services, to address the issues that lead to the offending initially. The young person as a result does not receive a conviction for the offence and is diverted from further engagement with the justice system.

The Commission may wish to further explore similar approaches for young people in the Northern Territory.

3. Prison programs

From our experience and research within Australia and overseas, there are innovative programs that could be tested and implemented within or outside detention facilities to help young people build on their strengths.

3.1 Step Out program

The Red Cross Step Out program in South Australia supports young people aged between 14 and 25 who have been involved with the youth justice system more than once, or received more than one youth justice order, and/or are at risk of re-offending. Step Out links these young people to a dedicated mentor and without such support nine out of 10 would be institutionalised according to local police.⁴⁹

3.2 Community Based Health and First Aid (CBHFA) In Action, in custodial facilities

In Ireland, Red Cross has been running the award winning program, CBHFA In Action in the prison setting⁵⁰. This unique program based on community development principles, trains prisoners as 'special status' volunteers. Volunteers are empowered through the program to provide peer-to-peer support and education to improve the health, well-being and safety of their fellow prisoners, and the prison community as a whole. These empowered prisoners have often addressed serious safety issues with a reported 50% reduction in weapons assaults. Early indications are also positive regarding reductions in recidivism rates.

Red Cross in Australia will be trialing the model in three prisons, one in Queensland and two in NSW. We will work closely with Aboriginal and Torres Strait Islander leaders on the design of the program and to extend the volunteering experience beyond the prison setting. The impact of the program will be externally evaluated.

⁴⁸ Prosecutor Integrity. Downloaded 14 July 2016 <<http://prosecutorintegrity.com/>>

⁴⁹ Australian Red Cross, op cit. p 24

⁵⁰ Irish Red Cross. 2016. *Prison Program-Community Based Health and First Aid*. Viewed 14 November 2016 <<https://www.redcross.ie/CBHFA>>

4. Reintegration programs

We understand the importance of providing ongoing support beyond the prison walls. There are good examples of ‘through care’ programs, with an emphasis on support that starts well before a prisoner is released and continues to support their integration into communities.

4.1 Reforming police clearance processes for young people seeking employment and voluntary work

Opportunities such as employment and volunteering for young people beyond school age are essential to connect young people with the broader community, and support the development of a prosocial identity.

Existing police clearance processes can create barriers for young people with criminal records to take up these opportunities. Young people leaving detention may be denied opportunities to re-build their skills and start on a pathway to employment due to their criminal record. Red Cross is interested in exploring ‘second chance’ volunteering particularly for young people, who may otherwise be denied access to volunteering for the rest of their lives. The SA Country Fire Service has been running a successful volunteering program for prisoners from the Cadell prison and such programs are worth exploring for their application to young people in detention.

4.2 WorkREDI

The Red Cross WorkREDI initiative is a structured support, education and pre and post release mentoring program for adult offenders. WorkREDI supports offenders in a ‘through care’ approach over a 9 month period – (12 weeks prior to release and 6 months following release.) to ensure that individuals participating in the program are supported to successfully reintegrate back into society with a focus on developing the work ready skills needed for employment and/or other training opportunities. This ‘through care’ approach is complementary to the Seek Education or Employment not Detention (SEED) program, currently run by the NT Department of Correctional Services.⁵¹

Individuals selected for participation are identified on the basis of a range of factors, with an emphasis on those most at risk of social isolation post-release. The model balances educational input, onsite experience including customer services skills, practical job seeking activity, and vocational educational opportunities.

WorkREDI provides value for money through the use of skilled volunteers in education and mentor roles, and access to Red Cross business arms which provide legitimate, ‘real-life’ work experiences. Beyond the period of the WorkREDI program participants may also choose to remain connected to Red Cross activity through volunteering opportunities.

⁵¹ Department of Correctional Services (2016) *2015-16 Annual Report*. Northern Territory Government. Viewed 2 November 2016 <https://correctionalservices.nt.gov.au/_data/assets/pdf_file/0007/379771/Corrections-Annual-Report-2015-16.pdf>

Recommendations:

That the Territory Government:

12. explore and support a range of innovative programs/services which have the potential to provide much needed support to young people at all stages of their involvement with the youth justice system including the following:

- justice reinvestment trials, such as the trial occurring in Katherine
- implementation of problem solving courts
- application of community prosecutions models
- trialing of Community Based Health and First Aid (CBHFA) In Action in a youth detention facility
- improved police clearance processes to facilitate 'second chance volunteering'
- provide support for employment and training, by trialing the Red Cross through care WorkREDI initiative.

WHAT NEEDS TO CHANGE: CHANGING MINDS

'A political and public will must be established in order to challenge the hearts and minds of the community to assert that our most vulnerable children and families are worthy of respect, care and support – whatever it takes.'⁵²

Central to the success of any reforms will be the public will and support for major change. Otherwise, the most likely scenario is that the 'tough on crime' rhetoric will continue to prevail and undermine positive and sensible reforms.

While young people should continue to be punished for serious crime, the public debate needs to shift from simplistic responses such as being 'harder' or 'softer' to rethinking what are the most 'effective responses' to youth crime and applying the available resources to them.

The Yellow Ribbon Project in Singapore provides a positive example of a government leading the way on driving change in community attitudes (changing minds) regarding offenders. Launched in 2004, it is transforming a system that was 'tough on crime' to one with rehabilitation and reintegration at its core.

The Yellow Ribbon Project creates awareness among the general public, to facilitate 'a second chance' for offenders post release. The Yellow Ribbon Project identified the stigma offenders are subjected to and the impact of this on their ability to fully reintegrate and desist from offending.

Through the project's community action initiatives recidivism rates have decreased from 44.4% (1998) to 27.4% (2011).⁵³

Recommendations:

13. That the Territory Government: work with the NGO and business sectors on a positive media campaign countering the 'tough of crime' stance and promoting second chances for children and young people involved in the youth justice system.

⁵² Boyle 2012. p 8. *Imagine: A system willing and able to support children and families- An exploration of the effective use of intensive family support services to address child abuse and neglect.* Viewed 4.11.16, <http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0004/175999/Boyle_Chris.pdf>

⁵³ Leong, L., 2014. *Towards a society without re-offending.* Singapore: Institute of Leadership and Organisation Development. Viewed 4 August 2016, <<https://www.ccollege.gov.sg/Knowledge/Pages/Towards-a-Society-without-Re-offending.aspx>>.

Appendix 1 – Australian Red Cross – justice programs

‘Australian Red Cross is a leading humanitarian agency and part of the wider International Red Cross and Red Crescent Movement. Red Cross and Red Crescent National Societies around the world have a long history of working in prisons and in the area of criminal justice.

In Australia, we seek to contribute to safer and more socially cohesive communities through getting better outcomes from more effective criminal justice systems⁵⁴.’

In March 2016, we launched our Vulnerability Report on ‘Rethinking Justice’ in which we recommended all governments in Australia take specific actions to reduce overall incarceration rates by 10% over the next 5 years and set a specific COAG target to halve the gap in Indigenous incarceration rates. We also highlighted the value of justice reinvestment approaches to addressing the underlying causes of crime particularly less serious criminal activity among vulnerable groups⁴⁹.

We currently provide a range of different services, activities, information and support for offenders, those at risk of offending and their families/communities. The Australian Red Cross, Creating Safer Communities brochure which is included with this submission provides a detailed overview of Red Cross Justice Programs delivered in each State and Territory and our broader work with vulnerable young people and their families. We aim to work at the early intervention end, recognising the needs of children and young people who are already in the system. We also understand the connections and drivers that exist within the child protection system often provide an inevitable pathway to youth detention.

⁵⁴ Australian Red Cross (2016) *Vulnerability Report: Rethinking Justice*. Accessed on 17/11/2016 from <http://www.redcross.org.au/files/VulnerabilityReport2016.pdf>