



# Central Australian Aboriginal Congress

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## Submission to the *Royal Commission into the Protection and Detention of Children in the Northern Territory*

1 November 2016

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## Recommendations

### Voices unheard

1. Congress requests the *Royal Commission into the Protection and Detention of Children in the Northern Territory* revisit the recommendations made by the 1991 Royal Commission Into Aboriginal Deaths In Custody report (including *Too Much Sorry Business*) and the 2007 report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (*Little Children are Sacred*), and assess which of their recommendations regarding child protection and youth justice are still relevant, and recommend their implementation in the contemporary environment.
2. Congress urges the *Royal Commission into the Protection and Detention of Children in the Northern Territory* to investigate the source of and reasons for the misinformation of the public about the abuse of young people in detention in the Northern Territory and hold those responsible to account.

### Disadvantage and inequality

3. Addressing issues of poverty, unemployment, overcrowding and inequality in the Northern Territory are foundational for preventing the involvement of Aboriginal children and young people in the child protection and criminal justice systems.

### Intergenerational trauma and culture

4. That government ensures that all agencies delivering services to Aboriginal people, but especially those dealing with at risk children and young people in the child protection or criminal justice systems use approaches that are trauma-informed and that validate and support Aboriginal culture and ways of being.

### Early childhood development

5. That the Australian and Northern Territory Governments support universal implementation of evidence-based early childhood development programs as the most cost effective long-term strategy for reducing Aboriginal detention and imprisonment rates.

### School education

6. That the Northern Territory Government commit to appropriately resourced and designed education for all school students in the Northern Territory, including by ensuring that students that require them have individual learning plans that include access to family support and therapeutic services provided by Aboriginal community controlled health services, and by supporting the re-establishment of Aboriginal Parents Groups and a Northern Territory Aboriginal Education Advisory Group.

### Adult literacy

7. That the Australian and Northern Territory Government support the extension of the Literacy for Life adult literacy campaign to the Northern Territory to improve

adult literacy, support literacy practices in families, and build a culture that values learning amongst adults and children.

### **Alcohol**

8. The Northern Territory Government should adopt population-level approaches to address issues of alcohol availability, noting in particular (a) that increases in the minimum or floor price of alcohol are an effective way of reducing consumption, especially amongst young people (b) such population-level measures are the most effective ways of preventing FASD (c) evidence-based early childhood development programs are an effective approach to offsetting the developmental deficits caused by alcohol use within the family (whether incurred before or after birth).

### **Aboriginal children in Out of Home Care**

9. That the Northern Territory Government fund the development of a comprehensive strategy to address Out of Home Care for Aboriginal children in the Northern Territory. The strategy should consider: (a) recommendations made by the *Child Protection and Out of Home Care (OOHC) Workshop* hosted by the Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) in April 2016 (b) the establishment of Family Group Conferencing as the legislated mechanism to ensure that all kinship care options are properly explored prior to foster care arrangements being made (c) adequate reimbursement and support for Aboriginal kinship carers, particularly in comparison to 'professional foster carers' (d) transition of responsibility for Out of Home Care from government to Aboriginal community controlled organisations, which will recruit, train and support kinship and foster carers, support all placements of children, and prioritise kinship care, and (e) establishment of an Aboriginal Controlled Child Care Support Service in the Northern Territory with two regional operational centres (Top End and Central Australia) to act as sector-support hubs, providing evidence-based, cultural safe, trauma-informed training and support services to the community-controlled service providers.

### **Community-based mental health / SEWB services**

10. The Australian Government should reform its funding processes to ensure that Aboriginal families and young people in the Northern Territory have adequate access to culturally appropriate mental health and social and emotional wellbeing services delivered by Aboriginal community controlled health services.
11. That the Australian and Northern Territory Governments resource Aboriginal community controlled health services to implement (with appropriate adaptation to the Northern Territory context) community-based, therapeutic services and programs such as Multi-Systemic Therapy, aimed at young Aboriginal people at the first point of contact with police and the criminal justice system.

### **Raising the minimum age of criminal responsibility**

12. That the Northern Territory Government legislate to raise the minimum age of criminal responsibility to 12 years in line with recommended international standards, and on that basis prohibit the detention of any child under 12 years of age.

**Specialist and therapeutic courts**

13. That the Northern Territory Government reform the court system to ensure that it is culturally and therapeutically appropriate for young Aboriginal people. Drawing upon experiences of Aboriginal courts and specialist therapeutic courts elsewhere, all courts dealing with young Aboriginal people in the Northern Territory should: (a) be culturally safe; (b) involve senior Aboriginal community members to assist with understanding the factors driving offending behaviours and in determining effective sentencing; and (c) include access to specialist therapeutic advice to assist with understanding any mental health or other issues related to offending and ensure referral of offenders to appropriate services such as drug and alcohol treatment or mental health services.

**Youth diversionary programs**

14. That the Northern Territory Government provide well-resourced diversionary options for Aboriginal young people in contact with police or courts ensuring that access to diversion programs is provided in regional and remote areas and that Aboriginal Elders or mentors are made an integral part of the diversionary process

**Reform and transfer of youth detention centres**

15. That the Northern Territory Government legislate to explicitly commit the youth detention system to a primary aim of therapeutic rehabilitation rather than punishment.
16. That for the small number of young people who need to be detained for their own wellbeing and the safety of the community, the Northern Territory Government provide small (up to 20 beds), secure Youth Development Centres focussed on therapeutic approaches and staffed by Aboriginal cultural mentors, therapists, social workers and others. The centres should be located as close as possible as the community of origin with a minimum of one in Central Australia and one in Darwin. Such centres may be run, if appropriate and desired, by Aboriginal community controlled organisations.
17. That the Northern Territory Government ensures that the responsibility for youth detention (whether provided directly by government or through Aboriginal non-government organisations) remains permanently with the new Department of Territory Families and cannot be returned to NT Correctional Services.

**Reintegration into family and community**

18. That the Northern Territory and Australian Governments commit to supporting sustained rehabilitative programs within youth detention in the Northern Territory, including ongoing access to and care for those in detention by community-based services, support for literacy and education programs, and reintegration programs that work with offenders, their families and communities post-release.

**Aboriginal Justice Agreement**

19. That the Northern Territory Government commit to working with Aboriginal communities and organisations to develop and resource a sustained Aboriginal Justice Agreement in the Northern Territory, which includes an Aboriginal Youth Justice Agreement focused on the needs of Aboriginal young people.

**Aboriginal Children's Commissioner**

20. That the Northern Territory Government strengthen the Office of the Northern Territory Children's Commissioner through the appointment and ongoing resourcing of an Aboriginal Children's Commissioner.

**Monitoring implementation of the Commission's recommendations**

21. That the Royal Commission recommend appropriate and robust measures for the sustainable monitoring of any recommendations it might make regarding the child protection and youth detention systems in the Northern Territory. Given the overwhelming over-representation of Aboriginal people and families in these systems, any monitoring process must involve Aboriginal communities and organisations from the beginning.

# 1 Addressing the Royal Commission's Terms of Reference

## 1.1 Background

Central Australian Aboriginal Congress (Congress) is a large Aboriginal community controlled health service based in Alice Springs in the Northern Territory. Since its establishment in 1973, Congress has developed a comprehensive model of primary health care delivering quality, evidence-based services on a foundation of cultural appropriateness<sup>1</sup>.

Congress welcomes the establishment of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* and supports the appointment of the two expert Aboriginal and non-Aboriginal Commissioners (Mick Gooda and Margaret White).

Congress also strongly supports the focus on the failings in the child protection and youth detention systems and urges the Royal Commission to hold those responsible for these failures to account.

We acknowledge the tight time frames that the Royal Commission has been asked to meet, and would like to assure the Commissioners of our support should they consider more time is needed to conduct the inquiry. From our perspective, it is important not to miss this significant opportunity for systemic change, to correct the long-term failure of governments to address issues facing Aboriginal children, young people and families in the Northern Territory.

As a primary health care provider and advocate, our submission is organised around three domains which form the foundation of a comprehensive approach to primary health care (World Health Organization 1978):

- **Promotion and protection of health and wellbeing** (primary prevention): measures aimed at the whole population – addressing the social and cultural determinants of health,
- **Prevention** (secondary prevention): measures aimed at 'at risk' populations to reduce the number of Aboriginal children entering the child protection, criminal justice or detention systems,
- **Treatment and rehabilitation**: ensuring that those already within the child protection, criminal justice or detention systems have access to services to address the social and emotional wellbeing, physical and mental health issues they face, and to support them to reintegrate with their families and communities.

## 1.2 Voices unheard

The issues facing young Aboriginal people in the child protection and criminal justice systems, and the background social, intergenerational and economic factors driving their overrepresentation, are not new. A quarter of a century ago, such issues were prominent in the reports of the Royal Commission Into Aboriginal Deaths In Custody, including that of the Northern Territory Aboriginal Issues Unit's *Too Much Sorry Business* (Royal

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<sup>1</sup> See **Appendix** for more details about Congress and the services we provide.

Commission Into Aboriginal Deaths In Custody (RCIADIC) 1991). Ten years ago, the report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little Children are Sacred*, also considered at length the issues facing Aboriginal children, young people and families in the Northern Territory (Wild R and Anderson P 2007).

These reports made many findings about how the child protection and criminal justice systems were failing Aboriginal Territorians. Unfortunately, there has been no systematic attempt to implement the recommendations they made to address the issues they found. Instead, successive governments have deployed a 'get tough' rhetoric particularly in relation to Aboriginal youth offending, for no other apparent reason than that it has been deemed to be electorally popular.

The failure to systematically address issues surrounding the youth justice system in particular has been noted by other independent reviews (Northern Territory Government 2011, Office of the Northern Territory Children's Commissioner 2015).

The *Four Corners* program of 25 July (Meldrum-Hanna C and Ferguson S 2016) graphically illustrates the results of this failed approach, as do the disturbing rises in the numbers of Aboriginal children in the child protection system and in detention.

**1.** Congress requests the *Royal Commission into the Protection and Detention of Children in the Northern Territory* revisit the recommendations made by the 1991 Royal Commission Into Aboriginal Deaths In Custody report (including *Too Much Sorry Business*) and the 2007 report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (*Little Children are Sacred*), and assess which of their recommendations regarding child protection and youth justice are still relevant, and recommend their implementation in the contemporary environment.

It is clear that the most senior levels of government in the Northern Territory knew of the abuse of young people in detention prior to the *Four Corners program* going to air in July 2016. Many of the incidents at Don Dale had been the subject of independent reports to government (Office of the Northern Territory Children's Commissioner 2015, Vita M 2015) and had already been reported in the public domain (Kate W and Gregory K 2015). It is also clear that information provided to the public by government about the abuse of children in detention was substantially false, particularly regarding the incidents at Don Dale in August 2014 (see for example (Purtill J 2014, Kate W and Gregory K 2015)).

**2.** Congress urges the *Royal Commission into the Protection and Detention of Children in the Northern Territory* to investigate the source of and reasons for the misinformation of the public about the abuse of young people in detention in the Northern Territory and hold those responsible to account.

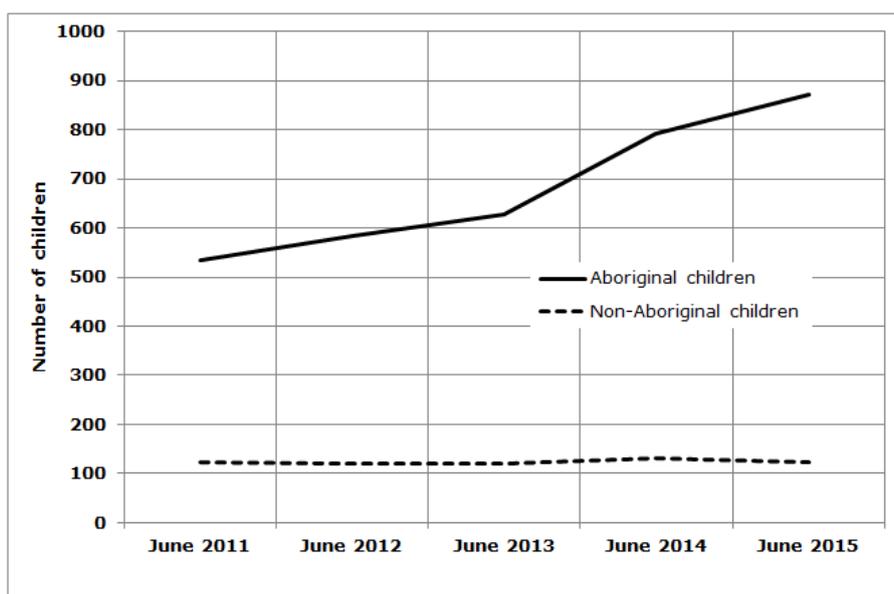
## 2 What we know

The failure to address the issues facing Aboriginal children, young people and families in the Northern Territory over many years has had catastrophic effects.

### 2.1 Child protection in the Northern Territory

The Northern Territory has a very high, and rising, number of children who are involved in the child protection system, either as the subject of an investigation of a notification, or on a care and protection order, or in out-of-home care. By 2014-15, the number of children had risen to the point where almost 1 in 10 (9.2%) of Northern Territory children were receiving child protection services (Australian Institute of Health and Welfare (AIHW) 2016). In the most serious cases, children have to be removed from their family homes. Again, the figures for the Northern Territory are alarming: the number of children in out-of-home care rose by an average of 16% per year between 2011 and 2015 (from 533 to 873 children). This increase was entirely due to an increase in the numbers of Aboriginal children who had been removed from their families (Office of the Northern Territory Children’s Commissioner 2015). See *Figure 1*.

**Figure 1: Number of children in care by Aboriginality, 2011 to 2015**

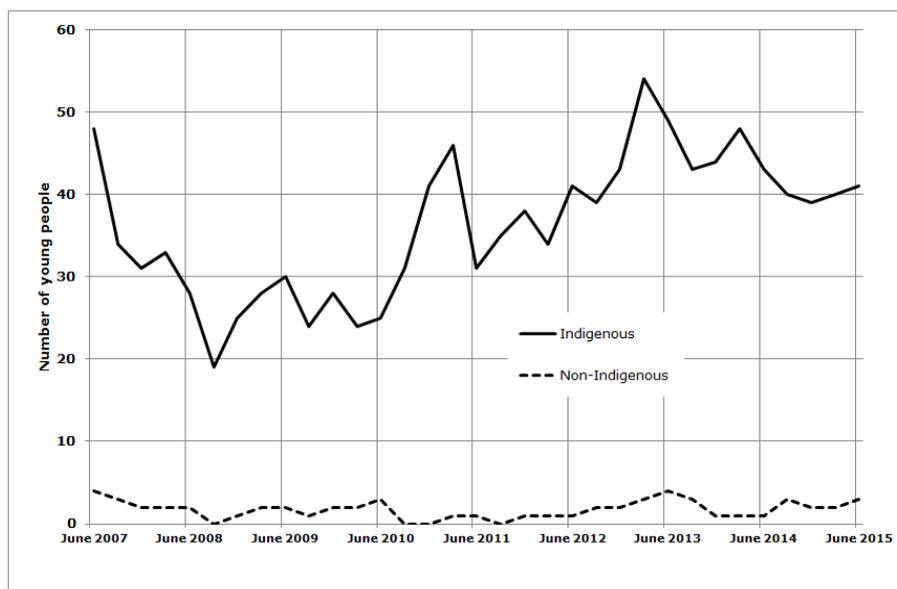


Source: (Office of the Northern Territory Children’s Commissioner 2015)

### 2.2 Juvenile detention in the Northern Territory

There have been similar dramatic rises in the number of Northern Territory young people in detention in the Northern Territory (see *Figure 2*).

**Figure 2: Young people (all ages) in detention in the Northern Territory on an average night, 2011 to 2015**



Sources: (Australian Institute of Health and Welfare (AIHW) 2011) (Australian Institute of Health and Welfare (AIHW) 2015)

While the quarterly numbers are small and therefore fluctuate, the trends are clear: from September 2008 to March 2013, the numbers of young people in detention in the Northern Territory almost trebled (from an average of 19 to 54 per night). This increase was almost entirely made up of Aboriginal young people. Since March 2013, the number has fallen somewhat, but it still over double what it was in 2008. Throughout, an average of 95% of young people in detention are Aboriginal; in fact there have been some 3 month periods when the entire population of young people detention have been Aboriginal (Australian Institute of Health and Welfare (AIHW) 2011, Australian Institute of Health and Welfare (AIHW) 2015).

The drivers for the increases in incarceration are a complex mix of social factors, offending patterns and government policy. However, a major recent report concluded that in the Northern Territory:

*The increasing arrest rate for minor offenses also continues to be a significant issue ...This over-policing, together with the fact that Indigenous people are generally more likely to attract police attention, and the failure of policymakers to deal with the multiple sources of disadvantage that exist in Indigenous communities, such as inadequate housing, preventable chronic health issues, mental illness, low-levels of education, high unemployment, cultural alienation, racism, substance abuse and family dysfunction are significant causes of the high incarceration rate in the Northern Territory (Jones C and Guthrie J 2016)*

It is important to note that a high proportion (an average of 62% for 2011 to 2015) of young people in detention have not yet been sentenced; the actual number of young people convicted of an offence and sentenced to detention is therefore very small at any one time – between 10 and 18 per night in detention for 2011 to 2015 across the whole of the Northern Territory (Australian Institute of Health and Welfare (AIHW) 2015).

### 3 Promotion and protection of health and wellbeing

*Primary prevention measures aimed at the whole Aboriginal population to help prevent Aboriginal children and young people from being removed from their families and/or becoming involved in the criminal justice system.*

#### 3.1 Disadvantage and inequality

Many Aboriginal children and young people are happy, engaged with their families and culture, and prepared to make a positive contribution to their communities and to the Northern Territory as a whole. However, others come from backgrounds of profound disadvantage which are marked by intergenerational poverty, overcrowding and unemployment. **Parliamentary Privilege**

However, as well as absolute poverty, societies that are more unequal have been shown to be more prone to violence and to have higher rates of children in need of child protection (Wilkinson R and Pickett K 2009).

There is also widespread community concern that poor housing and overcrowding is having a major negative impact on the ability of parents to care for and protect children as well as their ability to ensure children get sufficient sleep to attend school the next day. This is clearly supported by evidence (Silburn S, McKenzie J et al. 2014) and needs to be addressed as a key social determinant of both child protection and then youth detention.

**3.** Addressing issues of poverty, unemployment, overcrowding and inequality in the Northern Territory are foundational for preventing the involvement of Aboriginal children and young people in the child protection and criminal justice systems.

#### 3.2 Intergenerational trauma and culture

Many of the drivers of offending and detention in Aboriginal communities are similar to those experienced by other populations. However, there are also factors unique to the Aboriginal experience including the history and ongoing process of colonisation such as loss of land, suppression of language and culture, forcible removal of children from families, destruction of an independent economic base, and the experience of racism.

This historical and ongoing experience is now recognised as resulting in 'intergenerational trauma' whereby traumatic experiences

*... can be transferred from the first generation of survivors that have experienced (or witnessed) it directly in the past to the second and further generations of descendants of the survivors ... this intergenerational trauma ... is passed from adults to children in cyclic processes as 'cumulative emotional and psychological wounding' (Atkinson J 2013)*

It is the view of many Aboriginal people that intergenerational trauma is a key driver of many health, wellbeing and social issues faced by the many Aboriginal people and communities today. Their views are increasingly supported by evidence from the social sciences. For example, a recent study examined the health and wellbeing status of Aboriginal people who had either been removed from their families as children, or who had parents, grandparents/great-grandparents or siblings who had been removed. This



5. That the Australian and Northern Territory Governments support universal implementation of evidence-based early childhood development programs as the most cost effective long-term strategy for reducing Aboriginal detention and imprisonment rates.

### 3.4 School education

There is a strong relationship between school performance, rates of school retention, truancy and involvement in crime – a study in Victoria found that two-thirds of children and young people in custody had either been expelled or were disengaged from school (Jesuit Social Services 2013). The importance of school engagement and performance has been made evident through the success of interventions which have improved performance and reduced involvement in crime (Weatherburn D 2001).

The Northern Territory education system is failing Aboriginal children. The proportion of Aboriginal school children who meet the national reading writing, spelling, grammar and punctuation, and numeracy benchmarks is greatly lower than that for non-Aboriginal children in the Northern Territory, and the Northern Territory has the widest attendance gap in Australia, with the gap widening in the higher grades (Australian Institute of Health and Welfare (AIHW) 2015). One of the major reasons for the very poor educational outcomes being achieved in the Northern Territory is that children are not school ready by age 5 due to their disadvantaged early childhoods. This is very evident in the Australian Early Development Census (AEDC) scores where the latest results for 2015 show that by the time they start school, Aboriginal and Torres Strait Islander children in the Alice Springs region are *six times* as likely to be vulnerable on two or more of five developmental domains compared to their non-Indigenous classmates (43% of Indigenous children, 7% of non-Indigenous children) (Australian Department of Education and Training 2016). The gap is even greater for Aboriginal children from the remote communities across Central Australia where up to 80% of children are developmentally vulnerable on two or more domains. This is the key gap that needs to be closed as it is the foundation of the life long Life Expectancy Gap. Addressing early childhood as outlined above therefore provides a 'bottom up' pathway to improved school attendance and better outcomes as children are better able to understand what they are being taught and find learning an empowering experience.

Notwithstanding early childhood development (see 3.3 above) and the importance of adult literacy to support children's engagement in school (see 3.5 below), the education system has a responsibility to improve educational engagement and results in Northern Territory schools for Aboriginal children.

There are examples of schools in different parts of Australia that have children on individual learning plans with appropriate support services and are able to make a significant difference to learning outcomes even when children begin school developmentally vulnerable on a number of domains in the AEDC scores (see for example (Milligan L 2015)).

This has been well described in the *Revolution School* TV series on Kambrya College in Melbourne. An excerpt from the series website is very informative:

*In 2008 Kambrya's Year 12 results put it in the bottom ten per cent of secondary schools in Victoria. Making the Grade follows the transformation of the school under the leadership of principal Michael Muscat, to the point where it is in the top 25% of*

*schools. Muscat and his colleagues manage more than 1000 students, including those struggling to cope with school and home life. Making the Grade gives a raw and honest insight into the challenges facing these teenagers, while also showcasing what really works in classrooms to improve academic results. The series highlights the internationally renowned research of Professor John Hattie, and one of the world's top ranked education institutions, the University of Melbourne's Graduate School of Education. During 20 years of research analysing more than 70,000 studies involving a third of a billion students from around the world, Professor Hattie has established what is most effective to improve student learning (ABC Online 2016).*

Schools are often the first place that become aware that young people are having difficulties and appropriate, evidence based action needs to be taken well before young people either drop out or are expelled. There is a very strong evidence based to what needs to be done to improve outcomes in schools and yet this is not being systematically implemented in the Northern Territory. Professor John Hattie from the University of Melbourne is a world leader in this field (Hattie J 2009) and yet the NT Education Department has not to our knowledge ever sought advice from an expert like him to assist them to address their very poor outcomes. There is a long tradition in the health sector of using evidence to inform practice and collecting data that enables improvements to be measured. It is high time this type of scientific rigor was applied to education.

6. That the Northern Territory Government commit to evidence-based, appropriately resourced and designed education for all school students in the Northern Territory, including by ensuring that students that require them have individual learning plans that include access to family support and therapeutic services provided by Aboriginal community controlled health services, and by supporting the re-establishment of Aboriginal Parents Groups and a Northern Territory Aboriginal Education Advisory Group.

### 3.5 Adult literacy

Improving adult literacy is critical to addressing the drivers of disadvantage, social inequality, poverty, poor school performances, and incarceration. It is well-known that literacy levels among Aboriginal adults in Australia are significantly lower than those in the non-Aboriginal population. While there has been no national-level attempt to measure literacy levels in the Aboriginal community, evidence from various sources suggests that at least 35% of the Aboriginal and Torres Strait Islander adult population have minimal English language literacy, with the figure rising much higher in rural and remote areas such as in much of the Northern Territory (Boughton B 2009).

Adult literacy is fundamental to developing 'literacy practices' (reading, writing, interpreting text) within families, which then support children to engage and perform well at school (see 3.4 above). While adult literacy courses delivered through formal education providers may be successful with individuals, they are unable to reach a large enough number of people to have a population level effect on literacy. An alternative approach being implemented in Aboriginal communities of Western NSW by the Literacy for Life Foundation is the mass campaign model, which uses local leaders and literacy facilitators to help adults in the community to achieve a basic level of English language literacy proficiency and build a culture of community literacy to support everyone, adults and children, to value learning (Boughton B, Ah Chee D et al. 2011).

7. That the Australian and Northern Territory Government support the extension of the Literacy for Life adult literacy campaign to the Northern Territory to improve adult literacy, support literacy practices in families, and build a culture that values learning amongst adults and children.

### 3.6 Alcohol

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There is incontrovertible evidence that increasing the price of alcohol, and particularly that of cheap alcohol, reduces consumption and alcohol related harm; it is also a highly cost effective intervention (Babor T and Caetano R 2010). Introduction of a floor price for alcohol is particularly effective in reducing alcohol consumption and related harms most amongst disadvantaged populations and young people (Stockwell T, Auld M et al. 2012).

Drinking at the time of conception and during pregnancy can lead to Foetal Alcohol Spectrum Disorder (FASD) which is associated with health and social problems throughout life, including learning difficulties, impaired ability to perform work tasks, increased chance of developing mental illness, drug and alcohol issues and contact with the criminal justice system. In line with key studies (National Indigenous Drug and Alcohol Committee 2012), reducing the prevalence of FASD in the Northern Territory should focus on broad-based public health measures to reduce alcohol consumption amongst the whole population, including women and men of child-bearing age. In addition, early childhood development programs are needed to offset the developmental deficits caused by alcohol use within the family, whether incurred before or after birth (see 3.3 above).

Congress has investigated these issues extensively in the past. Parliamentary [REDACTED]  
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8. The Northern Territory Government should adopt population-level approaches to address issues of alcohol availability, noting in particular

- (a) that increases in the minimum or floor price of alcohol are an effective way of reducing consumption, especially amongst young people
- (b) such population-level measures are the most effective ways of preventing FASD
- (c) evidence-based early childhood development programs are an effective approach to offsetting the developmental deficits caused by alcohol use within the family (whether incurred before or after birth).

## 4 Prevention

Secondary prevention measures aimed at children and families 'at risk', to reduce the number of Aboriginal children entering the child protection, criminal justice or detention systems.

### 4.1 Aboriginal children in Out of Home Care

The number of Aboriginal children in the Northern Territory removed from their families because of abuse or neglect has been rising rapidly in recent years (see *Figure 1*). In those cases where Aboriginal children need to be removed from their family environment, the Northern Territory in common with all other Australian jurisdictions has adopted the Indigenous Child Placement Principles, such that Aboriginal and Torres Strait Islander children removed from their family are placed with relatives/kin, other Aboriginal caregivers or in Aboriginal residential care wherever possible (Lock J A 1997).

While nearly 90% of children in out of home care in the Northern Territory are Aboriginal, only 35% of these children are placed in accordance with the Principles. This is the lowest proportion of any jurisdiction, despite the Northern Territory having the highest proportion of Aboriginal and Torres Strait Islander children in care (Australian Institute of Health and Welfare (AIHW) 2016).

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While the issue of Out of Home Care in the Northern Territory is complex, almost all actors in the system believe that the current system is failing Aboriginal children. At a *Child Protection and Out of Home Care (OOHC) Workshop* hosted by the Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) in April 2016, a wide range of recommendations were agreed to address the system's failings; Congress endorses these recommendations (AMSANT (Aboriginal Medical Services Alliance Northern Territory) 2016).

In our view, two issues in particular need attention. First, family group conferencing is an evidence-based approach that includes the extended family of a child in decision-making about the wellbeing of a child who is at risk of removal. The Department of

Children and Families trialled such an approach in Alice Springs, but discontinued it, apparently because it was considered too expensive, even though it was effective at ensuring more children were placed in appropriate kinship care.

Secondly, Aboriginal families that take on the responsibility of kinship care should be adequately supported and reimbursed. For example, we understand that 'professional foster carers' may be paid at a much greater rate (up to \$1200 per week per child) than Aboriginal kinship carers and/or general foster carers (\$270 per week per child), and have lower minimum standards to meet. We also understand that the NT is the only jurisdiction that allows carers holding only a Commonwealth Family Day Care certificate to be employed as "professional foster carers". This is not an adequate level of qualification for this type of care which should only be used as a last resort.

- 9.** That the Northern Territory Government fund the development of a comprehensive strategy to address Out of Home Care for Aboriginal children in the Northern Territory. The strategy should consider:
- (a) recommendations made by the *Child Protection and Out of Home Care (OOHC) Workshop* hosted by the Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) in April 2016
  - (b) the establishment of Family Group Conferencing as the legislated mechanism to ensure that all kinship care options are properly explored prior to foster care arrangements being made
  - (c) adequate reimbursement and support for Aboriginal kinship carers, particularly in comparison to 'professional foster carers'
  - (d) transition of responsibility for Out of Home Care from government to Aboriginal community controlled organisations, which will recruit, train and support kinship and foster carers, support all placements of children, and prioritise kinship care, and
  - (e) establishment of an Aboriginal Controlled Child Care Support Service in the Northern Territory with two regional operational centres (Top End and Central Australia) to act as sector-support hubs, providing evidence-based, cultural safe, trauma-informed training and support services to the community-controlled service providers.

#### **4.2 Community-based mental health / SEWB services**

The Northern Territory Aboriginal community has high level of mental ill health and/or poor social and emotional wellbeing (SEWB), with a quarter of Aboriginal adults reporting high or very high levels of psychological distress (Australian Institute of Health and Welfare (AIHW) 2015). Despite the very high levels of distress, it is estimated that around 70 per cent of young people who experience mental health and substance use problems do not actively seek services (Northern Territory Primary Health Network 2016). This however, needs to be understood in a context where for many young people there are no services available and so they have little or no experience of what mental health services can do. In Alice Springs where good quality mental health services are available there are very good access rates by young people with the support of dedicated youth health services.

While no precise figures for the Northern Territory are available, a very high proportion (up to 90%) of young people in contact with the criminal justice system and/or in

detention have mental health issues, and/or come from family backgrounds marked by significant trauma (Indig D, Vecchiato C et al. 2011).

**4.2.1 Adequate funding for culturally appropriate mental health / social and emotional wellbeing services**

There is a need for culturally appropriate mental health / social and emotional wellbeing services for the wider Aboriginal community, including young people. The inappropriateness of current mental health and social and emotional wellbeing service arrangements for the Aboriginal and Torres Strait Islander community was recently noted in the *Report of the National Review of Mental Health Programmes and Services* which concluded that:

*For many Aboriginal and Torres Strait Islander people ... the mental health system requires them to rely on general population services and programmes. However, the degree to which they are accessed by Aboriginal and Torres Strait Islander people or are contributing to better mental health outcomes is largely unknown (National Mental Health Commission 2014).*

The Report found numerous barriers to adequate social and emotional wellbeing and mental health services for Aboriginal and Torres Strait Islander people, including a lack of a clear funding processes for preferred community controlled, culturally capable models of care.

This problem has been exacerbated by the Australian Government's competitive funding processes, particularly those implemented under the Indigenous Advancement Strategy.

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There is a need to support the needs based, collaborative funding processes developed through planning bodies such as the Northern Territory Aboriginal Health Forum which have been demonstrated to allocate funds according to need and build the capacity of Aboriginal community controlled health services. Accountability for outcomes is achieved through resourcing an evidence based core services model with corresponding key performance indicators. This approach is currently being applied to Aboriginal specific mental health and AOD resources and provides a clear and more effective alternative to competitive tendering.

**10.**The Australian Government should reform its funding processes to ensure that Aboriginal families and young people in the Northern Territory have adequate access to culturally appropriate mental health and social and emotional wellbeing services delivered by Aboriginal community controlled health services.

**4.2.2 Community-based services for young people at risk of detention**

There are a number of community-based approaches to young people at risk of involvement in the criminal justice system which have demonstrated effects on improved

recidivism rates and which are considerably more cost effective than detention. Delivered in community rather than institutional settings, and on an individual rather than group basis, in such programs

*the most important elements of effective practice is the nature of the relationships between those offering support and the children ... The involvement of family is critically important (Jesuit Social Services 2013).*

These programs have been shown to reduce anti-social and violent behaviours and to promote the influence of protective factors for children. They include Family Functional Therapy, Aggression Replacement Training, and Multi-Systemic Therapy (MST). MST is already in use in parts of Australia and is particularly well-evidenced. Parliamentary

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**11.** That the Australian and Northern Territory Governments resource Aboriginal community controlled health services to implement (with appropriate adaptation to the Northern Territory context) community-based, therapeutic services and programs such as Multi-Systemic Therapy, aimed at young Aboriginal people at the first point of contact with police and the criminal justice system.

## 5 Treatment and rehabilitation

*Ensuring that those already within the child protection, criminal justice or detention systems have access to services to address the social and emotional wellbeing, physical and mental health issues they face, and to support them to reintegrate with their families and communities.*

### 5.1 Raising the minimum age of criminal responsibility

Currently, children as young as 10 years old in the Northern Territory can be held criminally responsible for their actions, and consequently placed in detention if convicted of offences (Northern Territory Government 2011).

This is consistent with other jurisdictions in Australia, and while technically in line with the United Nations Convention on the Rights of the Child, which leaves it to individual states to set the minimum age for criminal responsibility, it does not meet the minimum age recommended by the UN Committee on the Rights of the Child (12 years) and is lower than the minimum age adopted by most western democracies (United Nations Committee on the Rights of the Child 2007, Australian Child Rights Taskforce 2016).

This recommendation is based on evidence that children under 12 need to be with their families to have the greatest chance of successful rehabilitation. Such young children and their families can be supported with MST programs from local Aboriginal health services supporting the family and the young person to make the necessary changes. In situations where it is necessary to remove the child under 12 then temporary kinship care or other types of Out of Home Care are far preferable to any form of detention.

**12.** That the Northern Territory Government legislate to raise the minimum age of criminal responsibility to 12 years in line with recommended international standards, and on that basis prohibit the detention of any child under 12 years of age.

## 5.2 Specialist and therapeutic courts

Courts in the Northern Territory deal with young offenders bearing multiple different layers of disadvantage within a complex and diverse cross-cultural environment. Many young Aboriginal people who appear before the court:

- come from traumatised backgrounds, and may have severe mental health / social and emotional wellbeing issues,
- have issues with alcohol and drugs which in many cases has affected their offending, and/or
- come from locally specific Aboriginal cultural environments, including where English may be a poorly understood second language.

Some may also have undiagnosed FASD or other cognitive and developmental impairments.

All of these factors should be taken into account by the courts as factors in driving offending behaviours, as considerations for the delivery of culturally safe court services, and to ensure natural justice such that Aboriginal young people can understand and participate in the court process.

Across Australia, various approaches have been used to ensure that court processes are appropriate for young people, that they embed cultural understanding and are therapeutically informed.

The Children's Koori Court in Victoria is a good model, which allows the young Aboriginal accused and their families to ensure court orders are appropriate to a young person's social and cultural situation, and involves local services to engage with young people and accept referrals. As well as specialist youth courts, other effective approaches have included specialist Aboriginal courts (New South Wales, Victoria, Western Australia, and Queensland) and mental health courts (South Australia, Western Australia, Victoria and Tasmania).

Specialist and therapeutic courts work to steer young people away from the criminal justice system and reduce reoffending by addressing the issues driving a person's offending behaviours and helping them to address these (Weatherburn D, Jones C et al. 2008) (Department of Justice (Victoria) 2010). Such courts use team based approaches including suitable professional therapeutic expertise and Aboriginal community involvement to refer clients to support services such as drug and alcohol treatment, accommodation, and mental health services such as Multi-Systemic Therapy (see 4.2.2 above). In the Northern Territory SMART courts provided specialist approaches to alcohol-related offending but were shut down by the previous Northern Territory Government in 2012; however, we understand a specialist youth court has been established in Darwin and is working well.

Given the very high proportion of Aboriginal people before the courts in the Northern Territory (approximately 80%) setting up specialist Aboriginal courts would be less

appropriate than in other jurisdictions: because the great majority of those offending are Aboriginal, *all* courts in the Northern Territory should be able to operate as 'Aboriginal courts' with culturally safe processes and the ability to involve senior Aboriginal community members to provide the cultural understanding of the factors driving offending. Similarly, given the high level of mental health / social and emotional wellbeing and addiction issues, all courts dealing with Aboriginal young people should be able to draw upon specialist therapeutic expertise that are able to advise on these issues.

**13.** That the Northern Territory Government reform the court system to ensure that it is culturally and therapeutically appropriate for young Aboriginal people. Drawing upon experiences of Aboriginal youth courts and specialist therapeutic courts elsewhere, all courts dealing with young Aboriginal people in the Northern Territory should: (a) be culturally safe; (b) involve senior Aboriginal community members to assist with understanding the factors driving offending behaviours and in determining effective sentencing; and (c) include access to specialist therapeutic advice to assist with understanding any mental health or other issues related to offending and to ensure referral of offenders to appropriate services such as drug and alcohol treatment or mental health services.

### 5.3 Youth diversionary programs

There is strong evidence that detention has a very negative effect on young people, through stigmatisation, disruption to positive family and community relationships, and exposure to the risk of further criminalisation (Holman B and Ziedenberg J 2006). Diversionary programs aim for better outcomes for people involved in the criminal justice system, as well as for the community, by giving those accused or convicted of offences with the opportunity to avoid a criminal record or to be detained by meeting certain treatment and training requirements. Diversion can occur at many stages in the criminal justice process.

As far as Aboriginal and Torres Strait Islander offenders are concerned, diversion programs have been shown to lead to reduced drug and substance use and reoffending, especially if programs include culturally appropriate treatment and rehabilitation and Aboriginal and Torres Strait Islander community Elders or facilitators (Closing the Gap Clearinghouse (AIHW & AIFS) 2013).

**14.** That the Northern Territory Government provide well-resourced diversionary options for Aboriginal young people in contact with police or courts ensuring that access to diversion programs is provided in regional and remote areas and that Aboriginal Elders or mentors are made an integral part of the diversionary process

### 5.4 Reform and transfer of youth detention centres

Punitive approaches to detention are well-established to be ineffective and expensive, with youth justice beds costing around \$200,000 per year in Australia (Jones C and Guthrie J 2016). Prevention approaches, and those that divert young offenders away from detention are therefore the most important strategies to deal long-term with the issue of youth detention.

However, even with properly resourced prevention and diversion programs, there will still be some young offenders who need to be detained both for the protection of the community and for their own wellbeing. The number of such young people may be very small. For example, the Northern Territory Government review of the criminal justice system in 2011 found that acts intended to cause injury were only the third most common offences for which young people were convicted and had been stable for some time (Northern Territory Government 2011), while the numbers of young people in detention was rising significantly (Australian Institute of Health and Welfare (AIHW) 2011). This indicates that increasing incarceration was not in response to increases in violent crime, and that the proportion of young people in detention today for violent crime may be low.

For that small number of young people where the risk to the community is so great that detention is necessary, the focus should be therapeutic treatment in smaller residential units rather than punishment in large institutions. Such an approach has been shown to achieve exceptional reductions in juvenile recidivism, for example in Missouri, USA where youth detention facilities were replaced with small group homes that provided personal attention and therapy (McGinness A and McDermott T 2010). The benefits of this approach have been well documented:

*instead of standard-fare correctional supervision, Missouri offers a demanding, carefully crafted, multi-layered treatment experience designed to challenge troubled teens and to help them make lasting behavioural changes and prepare for successful transitions back to the community. The results have been impressive with children released from Missouri youth justice facilities much less likely to re-offend and return to custody than in similar systems in America. In addition, the system has a strong record for staff safety and a low number of critical incidents involving detained children. (Jesuit Social Services 2013).*

Such reforms in the Northern Territory should be accompanied by a legislated commitment to the detention of young people being primarily focussed on therapeutic rehabilitation. This approach should also be reflected in moving responsibility for youth detention out of NT Correctional Services, and to an agency with a culture of therapeutic rather than punitive approaches.

**15.** That the Northern Territory Government legislate to explicitly commit the youth detention system to a primary aim of therapeutic rehabilitation rather than punishment.

**16.** That for the small number of young people who need to be detained for their own wellbeing and the safety of the community, the Northern Territory Government provide small (up to 20 beds), secure Youth Development Centres focussed on therapeutic approaches and staffed by Aboriginal cultural mentors, therapists, social workers and others. The centres should be located as close as possible as the community of origin with a minimum of one in Central Australia and one in Darwin. Such centres may be run, if appropriate and desired, by Aboriginal community controlled organisations.

**17.** That the Northern Territory Government ensures that the responsibility for youth detention (whether provided directly by government or through Aboriginal non-government organisations) remains permanently with the new Department of Territory Families and cannot be returned to NT Correctional Services.

## 5.5 Reintegration into family and community

A key part of the reorientation of youth detention should be preparing the young people in Youth Development centres for reintegration into the lives of their families and communities such that

*everything that happens in a juvenile detention facility should in some way, either directly or indirectly, be aimed at that young persons eventual successful release and reintegration back into the community (Vita M 2015).*

Those in youth detention require long-term, individualised support to address the range of issues contributing to their offending behaviour; and the young person's family and community may also need support to assist them to support reintegration into the community (Jones C and Guthrie J 2016). In particular, national and international research shows that education is an important contributor to a young person's rehabilitation (Northern Territory Government 2011).

Rehabilitation programs within detention should be linked to, and provided by, the community-based programs already working with young people at risk of detention (see 4.2.2 above), and continue to provide support to young people and their families after their release. As always, and especially given the very high proportion of Aboriginal young people in detention in the Northern Territory, such rehabilitative programs should place a very high premium on cultural safety, and thus be delivered by Aboriginal community-controlled organisations wherever possible.

**18.** That the Northern Territory and Australian Governments commit to supporting sustained rehabilitative programs within youth detention in the Northern Territory, including ongoing access to and care for those in detention by community-based services, support for literacy and education programs, and reintegration programs that work with offenders, their families and communities post-release.

## 6 Supporting and maintaining positive change

### 6.1 Aboriginal Justice Agreement

Reforming the criminal justice system to deal more appropriately with young Aboriginal people in the Northern Territory is a complex task. There is a high level of distrust of the system by many in the Aboriginal community, which the shocking scenes revealed in July's *Four Corners* program only confirmed. Under these circumstances, it will take a sustained commitment over time to build a genuinely collaborative response to the significant overrepresentation of Aboriginal young people in the criminal justice system.

The Aboriginal Justice Agreement process in Victoria provides a model of how Government could proceed in building such a collaborative process. From its beginning in 2000, the agreement has led to a partnership between government and the Koori

community which has delivered significant improvements in the rates of over-representation of Aboriginal people in the criminal justice system, which remain significantly lower than the national average.

**19.** That the Northern Territory Government commit to working with Aboriginal communities and organisations to develop and resource a sustained Aboriginal Justice Agreement in the Northern Territory, which includes an Aboriginal Youth Justice Agreement focused on the needs of Aboriginal young people.

## 6.2 Aboriginal Children's Commissioner

The Office of the Northern Territory Children's Commissioner has provided important public information and independent reporting on the state of health and wellbeing of Northern Territory children and young people. The Commissioner's report into events at Don Dale has been particularly significant in uncovering the abuse of young people in detention.

Given the very high number of Aboriginal children in the child protection system and involved in the criminal justice system, the Office of the Northern Territory Children's Commissioner should be strengthened through the appointment of an additional Aboriginal Children's Commissioner.

**20.** That the Northern Territory Government strengthen the Office of the Northern Territory Children's Commissioner through the appointment and ongoing resourcing of an Aboriginal Children's Commissioner.

## 6.3 Monitoring implementation of the Commission's recommendations

Australia has held numerous inquiries into issues surrounding the health and wellbeing of the nation's First Peoples. Over the last three decades these have included most significantly the *National Aboriginal Health Strategy* (1989), the *Royal Commission Into Aboriginal Deaths In Custody* (1991) and the *Bringing Them Home* report (1997). In the Northern Territory, and in particular reference to the issues before the current Royal Commission, the 2007 Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse also conducted a very in depth examination of issues affecting Northern Territory Aboriginal children and their families. There have also been over the years very many parliamentary inquiries into issues surrounding Aboriginal disadvantage.

However, the record of implementation of the recommendations flowing from these inquiries has been very poor:

*In the past 25 years – a generation in fact – we have had the Royal Commission into Aboriginal Deaths in Custody, the Bringing them home Report and Reconciliation: Australia's Challenge: the final report of the Council for Aboriginal Reconciliation. These reports, and numerous other Coroner and Social Justice Reports, have made over 400 recommendations, most of which have either been partially implemented for short term periods or ignored altogether (Aboriginal and Torres Strait Islander Peak Organisations 2016).*

Some Governments have defended their poor record of implementation by stating that they are not obligated to implement recommendations made by independent inquiries. While this is true, it does not release them from being held to account for failures to act,

whether that is through rejecting recommendations made by such inquiries, or by accepting them but then failing to effectively implement them.

As the Commissioners will be aware, there have already been doubts expressed about whether the *Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory* would repeat of this pattern of exhaustive investigation followed by at best limited implementation – not because of any failing on the part of the Commission or its staff, but because of the failure of government to adopt a systematic approach to responding to and implementing its recommendations.

**21.** That the Royal Commission recommend appropriate and robust measures for the sustainable monitoring of any recommendations it might make regarding the child protection and youth detention systems in the Northern Territory. Given the overwhelming over-representation of Aboriginal people and families in these systems, any monitoring process must involve Aboriginal communities and organisations from the beginning.

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## Appendix: Central Australian Aboriginal Congress

### Background

Central Australian Aboriginal Congress is a large Aboriginal community controlled health service based in Alice Springs in the Northern Territory. Since the 1970s, Congress has developed a comprehensive model of primary health care delivering quality, evidence-based services on a foundation of cultural appropriateness. Today, Congress is one of the most experienced organisations in the country in Aboriginal health, a national leader in comprehensive primary health care, and a strong political advocate for the health of our people.

### Governance

Incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* Congress' is under the direction of a Board of nine Directors: six elected by the membership plus three independent Directors to provide expertise on primary health care, financial management, and governance and administration.

Directors Meetings are held a minimum of four and a maximum of eight times a year. In addition, Congress has seven Sub-Committees of the Board: Finance, Risk and Audit; Clinical Governance; Research; Governance; Male Health; Female Health; and Human Resources.

### Services

Congress' culturally appropriate services care for the social, emotional, cultural and physical health and wellbeing of Aboriginal peoples in Central Australia. Our services include:

- *Main Clinic*, providing Aboriginal people with medical and dental care and medicines
- *Alukura Women's Health Service* providing Aboriginal women's health and maternity care
- *Ingkintja Male Health Service* including a 'Men's Shed' providing care for Aboriginal male health and wellbeing
- *Child & Family Service* providing care and support for Aboriginal children and their families, helping children to develop and learn in the critical early years
- *Social & Emotional Wellbeing Service* providing therapy, counseling and cultural and social support including treatment for addictions
- *Remote Health Services* delivering primary health care in the Aboriginal communities of Amoonguna, Ltentye Apurte (Santa Teresa), Ntaria (Hermannsburg), Wallace Rockhole, Utju (Areyonga) and Mutitjulu
- *Education & Training Service* providing training for our people interested in becoming Aboriginal Health Practitioners.

In addition, Congress engages in public health activities to address the underlying social and economic determinants of health. All these services are supported by business

services including finance, human resources, information technology, communications and asset and records management.

Congress has a strong focus on Continuous Quality Improvement (CQI) processes, and is AGPAL and ISO9001:2008 accredited.

With an operating income (for the 2014-15 financial year) of over \$39M p.a., Congress is a large, successful and sustainable service and a major employer of Aboriginal people in the region. As at 30 June 2015 Congress employed 307 staff in full-time, part time and casual roles, 144 (47%) of them being Aboriginal and Torres Strait Islander people.

For further information about Congress visit our website: [www.caac.org.au](http://www.caac.org.au)



