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RE: The Optional Protocol to the Convention against Torture (OPCAT) in the context of Youth Justice Detention Centres

Dear Ms Mitchell,

Thank you for the opportunity to provide input into your consultation on the Optional Protocol to the Convention against Torture (OPCAT) in the context of youth justice detention centres. The South Australian Council of Social Service (SACOSS) has long advocated for progressive reform of South Australia's juvenile justice system, and many of our members provide support to young people in the criminal justice system. In the preparation of this submission we have drawn from discussions with key members and stakeholders with expertise in the area of your consultation.

In this submission SACOSS will briefly address your question regarding the age of criminal responsibility and the matter of holding children under the age of 12 in secure justice facilities. While not specifically requested, we will also provide a view on the issue of Aboriginal over-representation in youth justice detention as it is an important human rights issue, and an area SACOSS has explored extensively.

Age of criminal responsibility

SACOSS acknowledges the UN Committee on the Rights of the Child, noting Australia's non-compliance with standards regarding an absolute minimum age for criminal responsibility being no less than 12 years of age, and we support lifting the minimum age in SA and all Australian jurisdictions.

SACOSS is particularly concerned with the growth in numbers of children aged between 10 and 12 being admitted to secure training facilities in SA. The table below shows that over the last decade the figure has almost doubled, and conversations with stakeholders suggest that the projected figures are underestimated.

Children aged 10–12 admitted into secure youth training centres in SA

Year	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15 Projected	15/16 Projected
No. of 10-12 year olds	17	20	14	17	22	28	33	38	32	30	30

Source: Government of South Australia Budget Papers 2005/6 to 2015/16, Budget Paper 4: agency statements

We have not had access to data on the ethnicity of 10-12 year olds detained in SA, but we believe it is highly likely that there is an even greater over-representation of Aboriginal children in this group because it is recognised that Aboriginal young people are more likely to come into contact with the juvenile justice system at a younger age¹.

Anecdotal evidence from stakeholders also suggests that some children who offend are being detained on remand, not because of the risk they pose to the community, but primarily for welfare reasons, for example because they do not have adequate adult supervision or safe premises to be released to. If this is the case, it could be that the increasing number of children aged 10-12 being admitted to youth justice facilities may in part be a result of a poorly functioning child protection system. It would be important to consider whether a secure youth justice facility is the most appropriate placement for children who reside in social contexts that foster criminal behaviour or are subject to abuse or neglect.

At SACOSS we believe a child's capacity and the context of their offending should be important in determining their criminal responsibility. SACOSS asserts that with an increase to the minimum age of criminal responsibility the *doli incapax* presumption (that is, the presumption that a child is incapable of a crime) should also be lifted, so that it would apply to older juvenile offenders. Where the *doli incapax* presumption applies it would be necessary to assess a child or young person's capacity on an individual basis, taking into account their intellectual capacity and other social and contextual factors. Regardless of the outcome of such an assessment it would also be vital for the state to ensure that welfare or other concerns for the child are addressed.

Aboriginal over-representation in juvenile detention

SACOSS is particularly concerned with the issue of Aboriginal over-representation and last year published the report *Justice or an Unjust System? Aboriginal over-representation in South Australia's juvenile justice system*. Our report highlights the growing issue of Aboriginal over-representation despite some success from the South Australian Government, SA Police and the court system in reducing overall numbers of young people entering juvenile detention.

The figures on over-representation in this context are stark. In South Australia between 1996 and 2013 the proportion of Aboriginal young people in detention grew from 22% to 46% and the over-representation ratio (that is the number of times more likely an Aboriginal young person is to be in detention than a non-Aboriginal young person) grew from 13.7 to 19 times².

Key Aboriginal stakeholders within the South Australian justice system were interviewed as a part of SACOSS' research. Stakeholders expressed concern that the juvenile justice system has taken a more punitive approach in recent years, that diversionary practices were not as effective for Aboriginal young people, and that culturally appropriate services and Aboriginal leadership were underdeveloped and under-resourced.

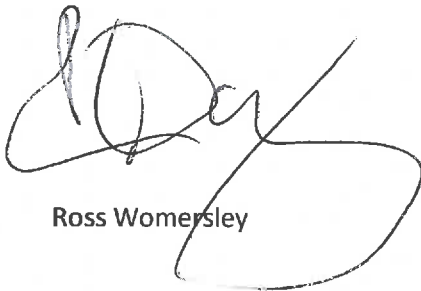
In order to reverse the alarming trend of increasing over-representation in the juvenile system, SACOSS has called for greater self-determination for Aboriginal people and specifically the creation of an Aboriginal Justice Agreement as a mechanism to achieve greater engagement of Aboriginal people and communities within our justice processes.

¹ Australian Institute of Health and Welfare, 2012, *Indigenous young people in the juvenile justice system 2010-2011*. Bulletin no. 109. Cat. No AUS 164, Canberra.

² Earl, C, Ogle, G, and McArthur, E 2015 *Justice or an Unjust System? Aboriginal over-representation in South Australia's juvenile justice system*, South Australian Council of Social Service.

We'd like to thank you for your invitation to contribute to your consultation and for your considerations of our comments. If there are any areas of our submission on which you would like to seek further clarification you are very welcome to contact myself or Dr Catherine Earl, SACOSS Senior Policy Officer, email Catherine@sacoss.org.au or phone 8305 4225.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ross Womersley', with a large, sweeping loop at the end.

Ross Womersley

