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Megan Mitchell
National Children's Commissioner
Australian Human Rights Commission
Sydney NSW 2000

AMNESTY INTERNATIONAL AUSTRALIA

Street address:
79 Myrtle Street
Chippendale
NSW 2008
T: (02) 83967618
E: exec.admin@amnesty.org.au

ABN 64 002 806 233

Postal address:
Locked bag 23
Broadway
NSW 2007
F: (02) 83967677
W: www.amnesty.org.au

Dear Commissioner,

OPCAT and Youth Justice Detention Centres

On behalf of Amnesty International's 520,000 Australian supporters, I welcome the opportunity to provide comment on the importance of Australia's ratification of the Optional Protocol to the Convention against Torture (OPCAT) and other issues related to youth justice detention centres.

As you are aware, Amnesty International is conducting research into issues related to Indigenous youth justice. In the past twelve months, we have released two research reports – one focussed on the over-representation of Indigenous children in the Western Australian criminal justice system, and one overviews Indigenous youth justice reform priorities across the country.¹ Amnesty is currently undertaking research on youth justice issues in Queensland, and will begin to publish our findings later this year.

Before responding to this inquiry's specific questions, it is important to highlight the fact that Indigenous young people are disproportionately held in youth detention right across the country. Though Indigenous children make up less than 6% of young people aged 10–17 in Australia, more than half (54%) of the children in detention are Indigenous.

The reasons for this are complex and often inter-related. Our research in Western Australia, for example, identified a number of factors contributing to the high rates of offending and contact with the justice system by Aboriginal young people, including:

- Unresolved intergenerational trauma;
- Cultural dislocation and dispossession;
- Overcrowding and homelessness;
- Family violence;
- Poverty;
- Lack of parental supervision;
- Lack of education;
- Alcohol and drug abuse;
- Policing practices;
- Fetal alcohol spectrum disorder.

These factors have led to a situation in Western Australia where Aboriginal young people make up just over 6 per cent of the state's 10-17 year old population, but more than 76 per cent of all young people in detention.²

The over-incarceration of Indigenous young people will have shocking consequences for generations to come. This is particularly so where Indigenous children are subjected to abuse or poor treatment in detention. Australia's ratification of OPCAT is a critical step towards preventing abuse and ill treatment in Australia's youth detention facilities.

¹ For further information, see http://www.amnesty.org.au/images/uploads/aus/A_brighter_future_National_report.pdf and http://www.amnesty.org.au/images/uploads/aus/CIE_WA-Report_low-res.pdf

² <http://www.correctiveservices.wa.gov.au/files/about-us/statistics-publications/statistics/2015/quick-ref/201512-qrs-youth-custody.pdf>

The comments below relate directly to a number the questions you have raised in this inquiry.

Are the current oversight, complaints and monitoring mechanisms relating to the treatment and rights of children and young people in detention (youth justice centres and adult facilities) adequate? If not, how could they be improved?

No. There have been numerous reports of abuse in certain youth justice facilities – most recently in Queensland³ and the Northern Territory⁴ – which have not resulted in concerted action. Most jurisdictions do not have an independent inspector with adequate powers. This should not be the case.

While the situation varies across Australia, all jurisdictions should have independent officers exercising a statutory power to monitor facilities, investigate complaints, and make recommendations to government. Such officers should have, as part of their remit, a mandate to ensure human rights standards are given adequate protections in youth detention facilities as well as in police lock-ups, as required under OPCAT. These independent officers should be able to initiate their own investigations – as well as act on complaints. Such officers should also report regularly on the treatment and rights of children and young people in detention in their jurisdiction, and these reports should be public.

Are there particular examples of good practice in relation to the promotion and safeguarding of children's rights in detention facilities?

Amnesty draws your attention to the WA Office of the Inspector of Custodial Services, which is a fully independent office, and has made numerous observations and recommendations in recent years to inform and improve Western Australia's youth justice system. The Western Australian Office of the Inspector of Custodial Services (OICS) is a strong model and the OICS has done impactful and important work to improve the conditions at Banksia Hill Detention Centre and the WA youth justice system broadly.

Examples of this work include:

- [Review into incident at Banksia Hill Detention Centre](#)⁵
- [The management of young women and girls at Banksia Hill Detention Centre](#)⁶
- [Mentally impaired accused on 'custody orders': Not guilty, but incarcerated indefinitely](#)⁷
- [Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre](#)⁸

We note however, that the OICS does not currently have the legal power or resources to inspect police lock ups. This should change.

How do children and young people in detention experience and understand the current oversight, complaints and monitoring mechanisms?

Oversight, complaint and monitoring mechanisms are not necessarily well known to vulnerable people and can be complex to navigate. There is not always assistance available to individuals going through complaints processes, as it falls outside of the usual scope of legal assistance. Victims of rights abuses in detention may fear seeking assistance for fear of being further targeted. In order for human rights abuse victims to seek remedy effectively, more must be done for people to understand their rights in detention and for more help to be available.

³ See: <http://www.theguardian.com/australia-news/2016/jan/22/aboriginal-boy-11-bashed-by-guards-in-youth-detention-centre-say-family>

⁴ See: <http://www.amnesty.org.au/indigenous-rights/comments/38056/>

⁵ See: <http://www.oics.wa.gov.au/reports/85-directed-review-incident-banksia-hill-detention-centre-20-jnauary-2013/>

⁶ See: <http://www.oics.wa.gov.au/wp-content/uploads/2014/04/86-Management-of-Girls-at-Banksia.pdf>

⁷ See: <http://www.oics.wa.gov.au/reports/mentally-impaired-accused-custody-orders-guilty-incarcerated-indefinitely/>

⁸ See: <http://www.oics.wa.gov.au/reports/97-report-announced-inspection-banksia-hill-juvenile-detention-centre/>

The Custody Notification Service, which is operated in New South Wales and the Australian Capital Territory by the Aboriginal Legal Service (ACT/NSW), offers a good example of how this can work for Indigenous young people. The CNS is a 24-hour legal service for Indigenous people taken into custody. Under NSW law, police must contact the ALS when an Indigenous person is taken into custody – CNS lawyers are on hand to ensure legal rights are respected, family is informed, and any required medical assistance is provided. The CNS was established in response to recommendations arising from the 1991 Royal Commission into Aboriginal Deaths in Custody. Importantly, since it was set up, no Indigenous people have died in police cell custody.

A service such as the CNS should operate in every jurisdiction and be fully funded.

How well do children and young people in correctional detention (youth justice centres and adult facilities) understand their human rights, including those under the Convention on the Rights of the Child? What could be done to better promote the human rights of children in these facilities?

Children and young people in detention around Australia are often drawn from the most disadvantaged sections of Australian society. The Australian Law Reform Commission, for example, has noted that for many children and young people who come into contact with the legal system, they are already struggling with related disadvantages – such as family breakdown, abuse, disability, educational, and socio-economic disadvantage.⁹

There are also a number of related issues here. Many Indigenous young people are in detention large distances from home – away from crucial family support networks – or may suffer mental health issues and unresolved intergenerational trauma. It is crucial that children and young people in detention have access to legal assistance and adequate health care.

It is imperative that children and young people in detention are aware of their human rights; it is also absolutely fundamental that children and young people are aware of their legal rights within any one jurisdiction, and that these rights are protected.

Amnesty International has raised concerns that there is significant unmet legal need for Indigenous Australians, bringing into question whether legal rights are being adequately protected, let alone understood.¹⁰ This requires legal aid services are properly funded. Amnesty also directs the Commissioner to the recent Productivity Commission report on access to justice.¹¹

How well do staff understand and promote children's rights, including those under the Convention on the Rights of the Child?

Amnesty draws your attention to the recent Vita review of the Northern Territory's youth detention system, which criticised the lack of training for youth detention workers.¹²

While the review did not specifically mention children's rights, the report highlighted the distinct lack of appropriate training to ensure staff members were culturally aware:

In recognition that the vast majority of detainees in detention are from Aboriginal and/or Torres Strait Islander descent, training for staff must include cultural awareness delivered by an appropriately qualified instructor. This

⁹ <http://www.alrc.gov.au/publications/4-children-legal-process/disadvantages-adverse-outcomes>

¹⁰ For further discussion, see Amnesty International (2015), *A brighter tomorrow*, pp21-2

¹¹ See: <http://www.pc.gov.au/inquiries/completed/access-justice/report>

¹² Michael Vita (2015), Review of the Northern Territory Youth Detention System Report, full report can be accessed at https://www.nt.gov.au/_data/assets/pdf_file/0004/238198/Review-of-the-Northern-Territory-Youth-Detention-System-January-2015.pdf

will no doubt help staff understand aboriginal culture when managing detainees and increase the likelihood of making the right decisions and improving relationships, communication and behaviour.¹³

We also note the findings of the recent review of the Victorian Charter of Human Rights and responsibilities in relation to the specific youth justice related impacts.¹⁴ The Review outlines how the Charter led the Department of Human Services, who deal with youth justice in Victoria, to work with human rights experts to build human rights considerations into operational documents.

Example: shaping policy and putting it into practice

In July and August 2012, five children were transferred from youth justice centres to adult prison, including a 16-year-old Aboriginal boy who was held in solitary confinement at Port Phillip Prison for a number of months.

These events prompted the Department of Human Services (the Department) to begin work to minimise the number of young people, particularly children, transferred from youth justice centres to prison. As part of this work, the Department requested that the [Victorian Equal Opportunity and Human Rights] Commission review key policy documents relating to the transfer of youth justice clients to adult prisons.¹⁵

How could the ratification of OPCAT and the establishment of a NPM benefit children and young people in detention (youth justice centres and adult facilities)?

Amnesty International has called for the Australian government to immediately ratify the OPCAT and to create a National Preventive Mechanism (NPM). Amnesty has also called for both the NPM and the UN's Subcommittee on the Prevention of Torture access to all places where people are deprived of their liberty, including youth detention centres.¹⁶

An obvious benefit from ratification would be to ensure independent domestic and international oversight of Australia's places of youth detention. Independent oversight is critical in order to ensure fair and just treatment of children in detention and to ensure accountability and public confidence in the youth detention system in Australia. Independent oversight would also enable the monitoring and sharing of best practice amongst jurisdictions and provide a mechanism for identifying areas requiring improvement to meet human rights standards.

The age of criminal responsibility is 10 years in all Australian jurisdictions. The Convention on the Rights of the Child does not specify what such a minimum age of criminal responsibility should be. However the Committee on the Rights of the Child recommends 12 years of age should be the absolute minimum age. The Committee on the Rights of the Child has noted Australia's non-compliance with this standard and it has recommended Australia raise its minimum age of criminal responsibility. What is your view on this?

Amnesty notes the Committee on the Rights of the Child's Concluding Observations in 2005 noted the age of criminal responsibility in Australia was "too low" and should be increased to 12. This recommendation was reiterated in 2012.

Amnesty International agrees. 10 and 11 year olds have not developed to the requisite level of maturity to be held criminally responsible, and legislation in Australia is out of step with international standards. It is worth noting the disproportionate impact the low age of criminal responsibility has on Indigenous children than their non-Indigenous peers. In 2014-15, Indigenous 10 and 11 year olds made up 74 per cent of all 10 and 11 year olds in detention in Australia (34 out of 46).

¹³ Michael Vita (2015), Review of the Northern Territory Youth Detention System Report, p.27

¹⁴ See: http://assets.justice.vic.gov.au/justice/resources/3848843f-afd1-47a5-9279-1a1a87ac2aad/report_final_charter_review_2015.pdf

¹⁵ The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006
http://assets.justice.vic.gov.au/justice/resources/3848843f-afd1-47a5-9279-1a1a87ac2aad/report_final_charter_review_2015.pdf, page 33.

¹⁶ See, for example: <http://www.amnesty.org.au/news/comments/35544/>

Australia should increase the age of criminal responsibility to 12 in order to comply with the minimum internationally acceptable level.

Amnesty International would welcome the opportunity to discuss this submission further. We will continue to engage with the Commission as our research continues.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie Cousins', with a long horizontal flourish extending to the right.

Stephanie Cousins
Government Relations Manager
A/Indigenous Rights Manager