

24 March 2017

Commissioner Mick Gooda and Commissioner Margaret White AO  
Royal Commission into the Detention of Children in the Northern Territory  
GPO Box 4215  
Kingston, ACT 2604

Via: [ChildrenDetentionNT@royalcommission.gov.au](mailto:ChildrenDetentionNT@royalcommission.gov.au)

Dear Commissioners,

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

The Lowitja Institute is pleased to provide the Royal Commission into the Detention of Children in the Northern Territory (the Royal Commission) with this submission to inform improvements to the child protection system and the youth justice system. As Australia's national institute for Aboriginal and Torres Strait Islander health research we recognise the urgent need to reduce the detention and incarceration of Aboriginal and Torres Strait Islander people in the justice system and outline recommendations to support the Royal Commission's consideration of alternatives to the incarceration of young people and how systems can be improved.

The Lowitja Institute acknowledges the swift action by the Federal Government in announcing a Royal Commission into Detention of Children in the Northern Territory in response to the brutal treatment of children detained in the Northern Territory, as aired in the ABC *Four Corners* program on Monday 25 July 2016. It is also important to locate the recommendations and findings of this Royal Commission in the broader context of increasing rates of incarceration for Aboriginal and Torres Strait Islander young people across Australia.

The current child protection and juvenile detention arrangements are not working. The Lowitja Institute can inform the Royal Commission's consideration of changes to national policy, early intervention options, and good-practice approaches to engage with Aboriginal and Torres Strait Islander stakeholders. This submission outlines three critical factors to achieve improvements:

1. drive any future changes through new targets set in national policy,
2. investigate all stages of the justice system particularly early intervention and diversion, and
3. engage Aboriginal and Torres Strait Islander people, organisations, and researchers with expertise and experience with the social and cultural determinants of health and wellbeing.

The Lowitja Institute's submission is based on:

- **Expertise in Aboriginal and Torres Strait Islander health research.** Named in honour of its Patron, Dr Lowitja O'Donoghue AC CBE DSG. We are an Aboriginal and Torres Strait Islander organisation working for the health and wellbeing of Australia's First Peoples through high impact and quality research, knowledge translation and by supporting a new generation of Aboriginal and Torres Strait Islander researchers.
- **Key principles** of Aboriginal and Torres Strait Islander leadership, a broader understanding of health that incorporates wellbeing, and the need for work to have a clear and positive impact.
- **A strong track record leading substantial reform agendas** by working with communities, researchers and policymakers, with Aboriginal and Torres Strait Islander people setting the agenda and driving the outcomes. At present, the Lowitja Institute's Cooperative Research Centre works in partnership with 23 Participants around Australia, including:
  - Aboriginal and Torres Strait Islander health organisations,
  - State, Territory and Australian Government departments, and
  - Academic research institutes.

Further information about the Lowitja Institute can be found at [www.lowitja.org.au](http://www.lowitja.org.au).

## 1. Recent events demand a new approach

Aboriginal and Torres Strait Islander people have a long history of overrepresentation in the youth justice system. Aboriginal and Torres Strait Islander people are around 15 times as likely as non-Indigenous people to be under youth justice supervision and 24 times as likely to be in detention.<sup>1</sup> The images of mistreatment of children at the Don Dale Youth Detention Centre that *Four Corners* presented last year highlight the extent of this policy failure. This raises three key issues that must be addressed to achieve improvements:

1. **Uncoordinated efforts** – There are no national targets or strategies to inform, support and guide policies and services for Aboriginal and Torres Strait Islander young people in detention.
2. **Reactive policies and programs** – There are not enough resources and value placed on early intervention and diversion services. While it is important to meet the immediate needs of Aboriginal and Torres Strait Islander people in the justice system, governments also need to couple this with preventative actions for those at-risk of being in contact with the justice system.
3. **Underutilising Aboriginal and Torres Strait Islander expertise and experiences** – There is patchy engagement with Aboriginal and Torres Strait Islander peoples, organisations, and researchers. This is particularly the case in the early design and later monitoring stages of activities that target Aboriginal and Torres Strait Islander people in the youth justice system.

The Lowitja Institute asks the Royal Commission to consider these issues when investigating ways to improve the youth justice system.

## 2. There are ways forward to address these issues

Recent developments in Aboriginal and Torres Strait Islander affairs, the child protection sector, and the youth justice sector can inform improvements. These developments include growing calls for justice targets, a growing evidence-base on Justice Reinvestment and early intervention, and greater recognition of health determinants, including the existence of intergenerational trauma as a determinant. Each of these are described in greater detail below.

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<sup>1</sup> Youth justice in Australia 2014–15, Australian Institute of Health and Welfare. P 7.  
<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554930>

## 2.1 There are resounding calls for justice targets to drive change

As noted earlier, there is no unifying reference point or coordinated view of what success looks like to reduce the number of Aboriginal and Torres Strait Islander young people in the justice system. Discussions on this are gaining momentum and have been prompted by Aboriginal and Torres Strait Islander organisations, the Australian Human Rights Commission, and political leaders. Table 1 below outlines supporting statements from each of these sources.

Table 1 – Recent calls for justice targets

Source	Context	What they said
Aboriginal and Torres Strait Islander organisations in <b>The Redfern Statement</b> <sup>2</sup>	In June 2016, a coalition of Aboriginal and Torres Strait Islander organisations led a call to action for the Federal Government to meaningfully address Aboriginal and Torres Strait Islander disadvantage.	<i>We therefore call on the next Federal Government to...recommit to Closing the Gap in this generation, by and in partnership with COAG and Aboriginal and Torres Strait Islander people:</i> <ul style="list-style-type: none"> <li>• <i>Setting targets and developing evidence-based, prevention and early intervention oriented national strategies which will drive activity and outcomes addressing...incarceration.</i></li> </ul>
The Australian Human Rights Commission's <b>Social Justice and Native Title Report 2016</b> <sup>3</sup>	The Report supports the calls within the Redfern Statement and its role as a platform for positive changes.	<i>Key to changing these statistics and the experiences of Indigenous peoples is proper engagement – real listening, valuing and implementing the solutions proposed by Indigenous Australians...In practice this would include... following through on setting justice targets and encouraging state and territory governments to do the same.</i>
The Australian Human Rights Commission's <b>Children's Rights Report 2016</b> <sup>4</sup>	The National Children's Commissioner's Report focuses on children and young people detained in youth justice centres or adult facilities.	<i>Recommendation 11: That the Council of Australian Governments resource a national strategy to reduce the over-representation of Aboriginal and Torres Strait Islander children and adults in detention under the Close the Gap Framework, including:</i> <ol style="list-style-type: none"> <li><i>Strategies to address underlying social and economic causes of children and young people coming into contact with the criminal justice system.</i></li> <li><i>Establishing justice targets and strategies aimed at significantly reducing the number of Aboriginal and Torres Strait Islander children and young people in detention.</i></li> </ol>
Opposition Leader, Mr Bill Shorten's <b>Closing the Gap Speech</b> <sup>5</sup>	In 2015, opposition leader Mr Bill Shorten referred to setting national justice targets in his Closing the Gap speech to Parliament. This call was repeated in 2017 <sup>6</sup> .	<i>The current Closing the Gap targets are designed to span a life...But there is an essential plank missing from this platform: justice...It is time to speak out against this silent emergency – it is time for the Closing the Gap framework to include a justice target.</i>

The Lowitja Institute calls for bi-partisanship on this issue and strongly endorses the need for justice targets to reduce Aboriginal and Torres Strait Islander incarceration in the COAG Closing the Gap Framework.

<sup>2</sup> Redfern Statement, National Congress of Australia's First Peoples, 2016:<http://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June- Final.pdf>

<sup>3</sup> Social Justice and Native Title Report 2016, Australian Human Rights Commission, p 49. <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-2>

<sup>4</sup> Children's Rights Report 2016, Australian Human Rights Commission, p 10-11: <https://www.humanrights.gov.au/our-work/childrensrights/publications/childrens-rights-report-2016>

<sup>5</sup> Closing the Gap – Speech to Parliament, Bill Shorten. 11 February 2015. <http://www.billshorten.com.au/closing-the-gap-speech-to-parliament>

<sup>6</sup> A long way from Closing the Gap, Bill Shorten. Media Release, 14 February 2017. [http://www.billshorten.com.au/a\\_long\\_way\\_from\\_closing\\_the\\_gap\\_tuesday\\_14\\_february\\_2017](http://www.billshorten.com.au/a_long_way_from_closing_the_gap_tuesday_14_february_2017)

## 2.2 Justice Reinvestment is recognised as a promising alternative

Evidence increasingly points to the limitations of incarceration as a tool for effective justice, and to the strong link between contact with the justice system and poor health and social outcomes. Initiatives that directly address these underlying issues adopt a 'Justice Reinvestment' approach. There is growing recognition and good-practice examples of this preventative (rather than punitive) approach where funding is diverted away from gaols and towards work that is led and driven by Aboriginal and Torres Strait Islander people and communities.<sup>7,8</sup> Imprisonment is expensive: per year, prison beds cost some \$100,000 for adults and some \$200,000 in youth justice.<sup>9</sup> Rates of incarceration and recidivism demonstrate that these public monies are misdirected.<sup>10</sup> Justice Reinvestment invests in services such as mental health, drug and alcohol, employment initiatives and housing to address the underlying factors associated with crime. This reduces the likelihood of people entering the criminal justice system. The Lowitja Institute strongly recommends that governments consider Justice Reinvestment so resources are used more effectively and directed at services to help people avoid contact with the criminal justice system.

## 2.3 The child protection sector is calling for stronger early intervention and diversion approaches

The landmark *Bringing Them Home Report*, released twenty years ago, highlights that Aboriginal children in out-of-home care are more likely to come in contact with the juvenile justice system.<sup>11</sup> More recent work further informs efforts to divert Aboriginal and Torres Strait Islander children in out-of-home-care from entering or progressing in the youth justice system. In 2016, the Commission for Children and Young People in Victoria reported on the Taskforce 1000 project and inquiry which reviewed the case plans and circumstances of almost 1,000 Aboriginal children in out-of-home care.<sup>12,13</sup> As noted in Table 1, the Commission for Children and Young People Victoria recommended that the government advocate through COAG for a reduction in the incarceration of Aboriginal children and young people to be included in Close the Gap targets. It also found that future work in this area needs to focus on:

- Building the capacity of Aboriginal Community Controlled Organisations to develop and implement intensive diversionary strategies along the justice continuum,
- ensuring adequate resources and workers in Aboriginal and Torres Strait Islander frontline services, and
- more regular and detailed monitoring and reporting on Aboriginal and Torres Strait Islander people in contact with the child protection and youth justice systems.

The Lowitja Institute recommends that all governments set targets and monitor changes to the out-of-home care system for Aboriginal and Torres Strait Islander children and young people, in a national framework such as COAG.

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<sup>7</sup> Senate Legal and Constitutional Affairs Committee, Parliament of Australia, Value of a justice reinvestment approach to criminal justice in Australia (2013); House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, Doing Time - Time For Doing: Indigenous youth in the criminal justice system (2011); Community Development and Justice Standing Committee, Parliament of Western Australia, Making our prisons work (2010); Legal and Constitutional Affairs Committee, Parliament of New South Wales, Access to Justice (2009); Noetic Solutions Pty Limited, A Strategic Review of the New South Wales Juvenile Justice System (2010).

<sup>8</sup> Australian Capital Territory Government, *Justice Reinvestment Strategy*, Justice and Community Safety Directorate <<https://justice.act.gov.au/page/view/3829/title/justice-reinvestment-strategy>>; Australian National University, *Reducing incarceration using Justice Reinvestment: an exploratory case study* (12 July 2016) National Centre for Indigenous Studies <<http://ncis.anu.edu.au/cowra/>>; Just Reinvest NSW, *Justice Reinvestment in Bourke* (28 September 2016)

<sup>9</sup> Report on Government Services 2016, Australian Government Productivity Commission: <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/justice/corrective-services#key-facts>

<sup>10</sup> Recidivism among prisoners: Who comes back? <http://www.aic.gov.au/publications/current%20series/tandi/521-540/tandi530.html>

<sup>11</sup> Commonwealth of Australia, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney: Human Rights and Equal Opportunity Commission, 1997).

<sup>12</sup> Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria, Commission for Children and Young People Victoria, 2016: <http://www.cccp.vic.gov.au/publications/index.htm>

<sup>13</sup> Taskforce 1000, Department of Health and Human Services Victoria: <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/taskforce-1000>

## 2.4 There is growing evidence of health issues as a direct contributor

Physical and mental health issues directly contribute to overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. Cultural determinants of health, such as culture, empowerment, and racism also have important connections to the health and wellbeing of Aboriginal and Torres Strait Islander people. This link is critical to prevent contact with the justice system. The First People's Justice Consortium provides the following description on this link in a submission to a Senate Inquiry on the *Indefinite Detention of People with Cognitive and Psychiatric Impairment*:

*By the time an Aboriginal or Torres Strait Islander person with a disability first come into contact with the criminal justice system, they will most likely have had a life of unmanaged disability. Coupled with discrimination, based on their Aboriginality and disability, they will have faced barriers from the time they are born, of poverty, early exposure to life in institutions through the child protection system, struggles at school, lack of appropriate health care and an inability to secure employment.*<sup>14</sup>

A House of Representatives Committee report on Aboriginal and Torres Strait Islander youth in the justice system also finds that major contributors include:

- mental health issues
- alcohol, drug and substance misuse
- Foetal Alcohol Spectrum Disorder
- hearing loss

The Committee reports that the most effective strategy to address these contributors is to invest in early intervention. It also highlights the importance of locally-led and holistic approaches that addresses health issues the entire way through the criminal justice system, from youth at-risk or in contact with police, to the courts, to those in detention and post-release. Aboriginal and Torres Strait Islander leadership is critical to effectively implementing these early intervention initiatives and holistic approaches.

## 2.5 Intergenerational trauma remains an under-recognised determinant

Intergenerational trauma is experienced by Aboriginal and Torres Strait Islander peoples worldwide and results from colonisation, dispossession and loss of culture. This directly links to the health issues listed above. For Aboriginal and Torres Strait Islander peoples to overcome this trauma, governments must demonstrate an ongoing commitment to the human, cultural and legal rights, including the right to self-determination. The Lowitja Institute's 'International Indigenous Health and Wellbeing Conference' called for this in a Conference statement last year. The statement asserts that Indigenous peoples across the world have the right to self-determination, as expressed in the United Nations Declaration on the Rights of Indigenous peoples<sup>15,16</sup>. The right to self-determination underpins the right to health. This statement also asserts that 'the truth about Indigenous peoples must be told, heard and known, for justice to ensue. Only then can we achieve genuine reconciliation'. Healing from intergenerational trauma is fundamental to reducing the detention and incarceration of Aboriginal and Torres Strait Islander peoples in the justice system, and enabling full economic, social and community participation.

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<sup>14</sup> Aboriginal and Torres Strait Islander perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment; A Submission to the Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment, A First People's Disability Justice Consortium, 2016: [http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf)

<sup>15</sup> The Lowitja Institute International Indigenous Health and Wellbeing Conference 2016 full conference statement, Melbourne, November 2016: <http://www.lowitjaconf2016.org.au/statement/>

<sup>16</sup> United Nations Declaration on the Rights of Indigenous Peoples: <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>

### 3. Aboriginal and Torres Strait Islander leaders and communities need to inform next steps

The next steps for any changes should include working with Aboriginal and Torres Strait Islander stakeholders. For too long, programs and services have been determined as successful or unsuccessful, by policymakers who fail to fully partner with Aboriginal and Torres Strait Islander leaders and communities. These stakeholders are best positioned to determine priorities and shape programs at the community level. Aboriginal and Torres Strait Islander leaders and communities offer an evidence base that is critical in any major policy reform agenda. There are two recent examples that highlight the importance of this close engagement: One is the *Indigenous Advancement Strategy* which demonstrates the pitfalls in failing to do this, and the second is the *Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan* which showcases the gains from engaging with Aboriginal and Torres Strait Islander leaders. Each of these are described below.

The Department of Prime Minister and Cabinet's *Indigenous Advancement Strategy* (IAS) moved more than half of the overall funding allocation away from Aboriginal and Torres Strait Islander Community Controlled Organisations.<sup>17</sup> As a major policy reform agenda, the IAS failed to engage Aboriginal and Torres Strait Islander leaders and communities, and it failed to use the existing evidence base from its inception. In a statement to a Parliamentary Inquiry on the IAS, then Associate Secretary of the Department of Prime Minister and Cabinet said:

*...the key thing for us, I think, is that we did not engage heavily enough at the beginning of the process...we did not have a consistent enough engagement plan and mechanism for engaging more broadly with service providers and the community more generally, and a plan to then build that into thinking about how we get from where we are to where we need to be.*<sup>18</sup>

In contrast to the IAS approach described above, Aboriginal and Torres Strait Islander health leaders and organisations have worked diligently and collaboratively with the Australian Government in the development of:

- The *National Aboriginal and Torres Strait Islander Health Plan 2013–2023*, and
- The *Implementation Plan for the National and Torres Strait Islander Health Plan*

The success of the Implementation Plan relies on the continued involvement of the National Health Leadership Forum (the national representative body for Aboriginal and Torres Strait Islander peak organisations who provide advice on health) in the monitoring and evaluation of the Plan's application. This dependency is also recognised by the Australian Human Rights Commission<sup>19</sup>. Furthermore, Aboriginal and Torres Strait Islander engagement needs to be coupled with a whole of government approach at both the Federal and State level to realise this vision. It also needs to extend to social determinants such as education, employment, housing, social systems and the health system itself.

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<sup>17</sup> Commonwealth Indigenous Advancement Strategy tendering processes, Australian Government, 2016: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Commonwealth\\_Indigenous/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Commonwealth_Indigenous/Report)

<sup>18</sup> Ms Liza Carroll, Associate Secretary, Indigenous Affairs, Department of the Prime Minister and Cabinet (PM&C), *Committee Hansard*, 29 June 2015, p. 69

<sup>19</sup> Social Justice and Native Title Report 2016, Australian Human Rights Commission, <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-2>

#### 4. Recommendations

In summary, the Lowitja Institute recommends that Federal, State and Territory governments:

1. Set justice targets for reducing Aboriginal and Torres Strait Islander incarceration in the COAG and Close the Gap framework
2. Set targets and monitor changes to the out-of-home care system for Aboriginal and Torres Strait Islander children and young people, in a national framework, such as COAG
3. Fund and support Aboriginal and Torres Strait Islander designed and led programs at all stages of the justice system, particularly early intervention and diversion services
4. Consider Justice Reinvestment to invest in services that help people avoid contact with the criminal justice system
5. Prioritise engagement with Aboriginal and Torres Strait Islander peoples, organisations and researchers in planning and monitoring the reduction of incarceration for Aboriginal and Torres Strait Islander people

If you have any questions regarding our submission to this Inquiry, please contact me on [romlie.mokak@lowitja.org.au](mailto:romlie.mokak@lowitja.org.au), (03) 8341 5514.

Yours sincerely



Romlie Mokak  
Chief Executive Officer