



Submission to the
Inquiry into Youth Justice Centres in Victoria

21 March 2017

Submitted by
Amnesty International Australia

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About Amnesty International

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Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

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1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide our views to this inquiry. Our submission will draw particularly on our research, since 2013, on the over-representation of Indigenous children in the justice system in Australia.
- 1.2 Amnesty International has grave concerns that recent developments in Victorian youth justice policy, including the removal of children to the Barwon prison and reported widespread use of solitary confinement, constitute human rights violations. We have criticised these actions and strongly recommend the Victorian Government takes immediate steps to ensure all children are removed from adult prison.¹
- 1.3 Imprisoning children in adult jails and imposing an adult corrections approach on children, whose brains are still developing and whose needs are fundamentally different to adults, both violates their human rights and will fail the Victorian community.
- 1.4 Every other state and territory in Australia has moved away from putting adult corrections departments in charge of youth detention in recognition that all children deserve a chance to rehabilitate and thrive. The steps taken by the Victorian Government in recent months are retrograde, risk doing serious damage to children under the care of the state, and risk unwinding years of progress in Victorian youth justice policy.
- 1.5 Victoria has until recently been seen as a leader in youth justice in Australia. While not underplaying the seriousness of the issues facing the Victorian Government right now, the approach to youth justice which has operated in Victoria under successive governments for the past decade or so is one which Amnesty International has pointed to in our discussions with other jurisdictions. That partly is why the steps taken over the last few months are so damaging. Put simply, we fear that the direction taken in Victoria in recent months – including the transferral of children to adult facilities – are significant retrograde steps at a time when the Royal Commission in the Northern Territory is highlighting the significant harm to children and the community that flows from such an approach.

Recommendations

- 1.6 Amnesty International recommends the Victorian Government:
 - (1) Commit to a youth justice approach which is at all times consistent with Australia's international human rights obligations, including by ensuring children are only ever detained as a last resort and ending the use of solitary confinement
 - (2) Immediately remove all children from adult detention
 - (3) Commit to creating an independent inspection regime in all places where youth are detained, consistent with the Optional Protocol on the Convention Against Torture, which Australia has committed to ratify by the end of 2017
 - (4) Ensure there is adequate and suitable bail accommodation for children and young people on remand across Victoria
 - (5) Review Victorian laws to ensure they prevent remand of children wherever possible and comply with these human rights obligations towards children (all those under the age of 18).
 - (6) Provide necessary leadership for a coordinated national approach to youth justice issues through the Council of Australian Governments (COAG)
 - (7) Legislate for diversionary options to be a core part of the state's youth justice system

¹ Amnesty International statement, 16 February 2017:
<https://www.amnesty.org.au/victoria-remove-children-from-adult-prison/>

(8) Transfer responsibility for youth justice from Corrections Victoria back to the Department of Human Services

2. Background

- 2.1 Since 2013, Amnesty International has conducted independent research on the over-representation of Indigenous children in the justice system in Australia. While our research has focussed on the jurisdictions where over-representation of Indigenous children in the justice system is most stark - particularly Western Australia, Queensland and Northern Territory - we note that numerous common themes have emerged which are relevant to all children – whether Indigenous or non-Indigenous – and apply to the current situation in Victoria.
- 2.2 Amnesty International published a National Overview of this issue in June 2015,² followed by a research report on the youth justice system in Western Australia.³ In September 2016 Amnesty International released *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*,⁴ which raised serious concerns about the treatment of children in Queensland detention centres and prisons. The evidence contained in the *Heads Held High* report contributed to the Queensland Government's establishment of a Youth Justice Review to investigate evidence of abuse and mistreatment in Queensland youth detention centres, which is ongoing.
- 2.3 Our three reports included recommendations for developing policies at a national, state and territory level to reduce and ultimately end the over-representation of Indigenous young people in the criminal justice system, and to improve youth justice policy Australia-wide.
- 2.4 While the thrust of our research has been aimed at reducing the over-representation, if implemented, these recommendations would also reduce the youth detention population overall, by ensuring that detention is only ever used as a measure of last resort, and increasing investment in early intervention, diversion and prevention programs. Ultimately the best way to prevent abuses of children in detention is to ensure children are not detained.

3. Human Rights Frameworks

- 3.1 Before moving to the specific situation in Victoria, it is worthwhile to quickly appraise the international human rights framework applicable to the detention of children in Australia.
- 3.2 Under international human rights law, all fair trial and procedural rights that apply to adults apply equally to children, but additional juvenile justice protections exist under the international human rights framework. This is in recognition that children differ from adults in their physical and psychological and development. The Convention on the Rights of the Child (CRC) is the primary source of these rights. Importantly, the CRC also recognises the particular needs of Indigenous children.
- 3.3 Australia is a state party to the CRC, having signed and ratified the Convention in 1990. Relevant obligations under the CRC include responsibilities that:
- the best interests of the child is a fundamental principle to be observed, including in the context of criminal justice;
 - arrest and detention must be measures of last resort; and
 - a variety of appropriate alternatives to detention should be in place to ensure that children are dealt with in a manner appropriate to their well-being and proportionate to their circumstances.

² Amnesty International (2015): [A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia](#)

³ Amnesty International (2015): [There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia](#)

⁴ Amnesty International (2016): [Heads held high: Keeping Queensland kids out of detention, strong in culture and community](#)

- 3.4 Article 1 of the CRC defines a child as “every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier.” Article 3.1 states that “in all actions concerning children, whether undertaken by ... courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”
- 3.5 Article 37 of the CRC provides that States Parties shall ensure that “the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.” Article 40(3) requires States Parties to “promote the establishment [of] measures for dealing with such children without resorting to judicial proceedings ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”
- 3.6 In its General Comment 10, on children’s rights in juvenile justice, the Committee on the Rights of the Child says that “a comprehensive policy for juvenile justice must deal with ... the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings.”
- 3.7 Article 2 (1) of the CRC requires parties to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour ... ethnic or social origin ... or other status.”
- 3.8 Article 37 of the CRC requires that “every child deprived of liberty shall be treated with humanity and respect ...and in a manner which takes into account the needs of persons of his or her age.”
- 3.9 What this means in practice is set out in more detail in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. These rules include that solitary confinement or any other punishment that may compromise the physical or mental health of the child must be strictly prohibited.⁵
- 3.10 The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) define solitary confinement as confinement for 22 hours or more a day without meaningful human contact. The rules say that women and children should never be subject to solitary confinement, and prohibit the use of prolonged solitary confinement, defined as confinement in excess of 15 days.⁶
- 3.11 This is the overarching international human rights law framework governing the detention of children.
- 3.12 In addition, Victoria also has its own *Charter of Rights and Responsibilities (the Charter)*, s23 of which places obligations on Victoria to ensure all detained children are segregated from detained adults, and for children to be treated in a way that is appropriate for his or her age. Section 22 of the Charter provides that ‘[a]ll persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. Section 10(b) of the Charter requires that a ‘person must not be treated or punished in a cruel, inhuman or degrading way.’
- 3.13 In short, the decisions taken by the Victorian Government over the past few months put it in breach of both its own *Charter of Rights and Responsibilities*,⁷ and constitute human rights abuses under international law.
- 3.14 Amnesty International calls on Victoria to commit to a youth justice approach which is at all times consistent with Australia’s international human rights obligations, including by ensuring children are only ever detained as a last resort and ending the use of solitary confinement.**

⁵ UN General Assembly, [United Nations Rules for the Protection of Juveniles Deprived of Their Liberty](#) : resolution / adopted by the General Assembly, 2 April 1991, A/RES/45/113

⁶ UN General Assembly, [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the Mandela Rules) : note / by the Secretariat, 29 September 2015, A/C.3/70/L.3

⁷ *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children [2016] VSC 796* (21 December 2016)

4. The security and safety of staff and young people who have, or are accused of having, offended in Victorian youth justice centres

- 4.1 Youth justice centres should be safe and secure for both staff and the young people detained within them. Staff have a right to work in a safe and secure workplace. The young people detained at the youth justice centre are in the care of the state, and have a right to live in a safe and secure environment.
- 4.2 While not a panacea, the safety and security of both staff and children who are detained could be improved with the introduction of a fully independent inspector of custodial services. The Australian Government has signalled its intention to ratify the Optional Protocol to the Convention Against Torture (OPCAT) later in 2017 which, among other requirements, would create an obligation for a nationwide system of independent inspection of all places of detention.
- 4.3 Amnesty notes that currently inspection of Victorian detention centres is undertaken by a regime run from within Corrections Victoria. In her most recent report, the National Children's Commissioner noted such an arrangement would not fully meet the requirements under OPCAT.
- 4.4 **Over the course of this year, Amnesty urges the Victorian Government to develop and fund a fully independent inspector with oversight and inspection of all places of detention, including facilities for children on remand, and for children who may be held at any time in police cells.**
- 4.5 This inspector should be required to report regularly on conditions in places of detention in Victoria, also should not be prevented from interviewing children in detention.
- 4.6 Amnesty believes this sort of independent and transparent oversight can help create better and safer conditions for both children and staff in detention centres. This is because a functioning and independent inspection regime could help reveal developing issues within a place of detention before they grow into wider and more entrenched problems or crises.

5. Increase in the numbers of young people on remand in the last ten years

- 5.1 Minimising the unnecessary use of detention on remand is important given the obligations Australia has to ensure children are detained as a last resort only. It is also good policy to ensure children are not unnecessarily being placed in detention given the harm and criminogenic impact this has. Refusal of bail for children should be a last resort and any conditions imposed should be based on a case-by-case assessment of necessity and proportionality.
- 5.2 One issue which has been commonplace in Victoria other jurisdictions across Australia when looking at increases in the numbers of children on remand has been the lack of alternative bail accommodation and support to comply with bail conditions. This lack of suitable accommodation has been identified by the National Aboriginal and Torres Strait Islander Legal Services as an issue that is "likely to impact more on particular groups of young people, including young people from regional, rural and remote areas ... and by extension, Indigenous young people."⁸ The House of Representatives Standing Committee report on the high rates of Indigenous youth involvement in the justice system noted that "the single biggest factor in being unable to comply with bail conditions is the lack of appropriate accommodation available to young [people accused of offences] whilst they are awaiting sentencing [or acquittal]."⁹

5.3 Amnesty recommends Victoria ensure there is adequate and suitable bail accommodation across

⁸ Amnesty International: [A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia](#), p 31.

⁹ Amnesty International: [A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia](#), p 31.

the state for children and young people on remand. This will help to both limit and lower the number of young people who are on remand but also in detention.

- 5.4 Amnesty also recommends a review of Victorian laws to ensure they prevent remand of children wherever possible and comply with these human rights obligations towards children (all those under the age of 18).

6. Implications of incarcerating young people who have significant exposure to trauma, alcohol and drug misuse

- 6.1 Amnesty International acknowledges youth justice is a complex policy with which to grapple. The state is more often than not dealing with children who have significant histories with trauma, abuse and neglect and are among the state's most vulnerable children. This is one reason why, at the heart of youth justice policy, must be a determination to care and rehabilitate, not punish.
- 6.2 One study Amnesty urges the Committee to look into is the recent *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model* from the Harvard Kennedy School the United States.¹⁰ This study, providing a historical view of the youth justice system in the United States, which has traditionally been conceived of as a modified version of the adult corrections system, demonstrates just how complete the policy failure of this approach has been. It is a system, according to this study, which is characterised by “high costs and recidivism rates and institutional conditions that are often appalling.”¹¹ This is an “inherently flawed model” to help young people get their lives back on track.¹² The study notes a number of relevant US examples for where this model is being replaced.
- 6.3 The imperative to replace this model is compounded when you take a look at which children are being incarcerated in Victoria.
- 6.4 2016's snapshot survey by Victoria's Youth Parole Board illustrates the links which obviously exist between exposure to trauma, alcohol and drug use, and incarceration. On a particular day, the Youth Parole Board found that of young people held either on sentence or remand:
- 63 per cent were victims of abuse, trauma or neglect
 - 30 per cent presented with mental health issues
 - 18 per cent had a history of self harm or suicidal ideation
 - 24 per cent presented with issues concerning their intellectual functioning
 - 11 per cent were registered with Disability Services
 - 66 per cent had a history of both alcohol and drug misuse¹³
- 6.5 The links between trauma, alcohol and drug use and children coming into contact with the youth justice system are clear. The solution to dealing with vulnerable children is to address the root causes that lead to offending.

¹⁰ See:

https://www.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/ntcc_the_future_of_youth_justice.pdf

¹¹ See above, p 2.

¹² Above n 10, page 4

¹³ Youth Parole Board [Annual Report 2015–16](#), p 14

7. Additional options for keeping young people out of youth justice centres

- 7.1 Amnesty International urges the Victorian Government to develop policy responses which are not simply focussed on how human rights are respected in places of detention, important as that is. The question that also must be asked is how do we find solutions to prevent children from being detained in the first place?
- 7.2 For example, the widely recognised link between family violence, out of home care, homelessness and youth offending means the ongoing implementation of the recommendations of the Victorian Royal Commission into Family Violence should remain a long term priority. The announcement on 1 March that the Victorian Government will implement the recommendations from two inquiries by the Commissioner for Aboriginal Children and Young People into services provided to Aboriginal children in out-of-home care is also crucially important.
- 7.3 As the above statistics show. There is also a lot more work to be done to address the root causes to keep children out of detention.

Accommodation

- 7.4 Similarly to issues related to bail accommodation, there is also a shortage of accommodation for those children who may otherwise be eligible for parole. The Youth Parole Board noted in their 2015-16 annual report that: “Accommodation for young people coming up to parole is still a difficult problem. This seems to apply particularly to the more complex young people involved with child protection, or those with an intellectual disability or mental health issues. The proportion of young people with present or former child protection involvement is very high.”¹⁴ The Youth Parole Board must be satisfied that suitable accommodation is available before granting parole, so this lack of accommodation contributes to refusal of parole where it would otherwise be granted and longer periods in detention for children.

Diversion

- 7.5 A constant theme in Amnesty International’s research on youth justice in Australia has been the need for properly funded diversionary programs to play a key role in ensuring children are given every possible chance to avoid the labyrinth of the criminal justice system.
- 7.6 While diversion has long been part of the Victorian youth justice system, Amnesty would echo the calls from other civil society organisations for the adoption of a legislative framework for diversion to help ensure the option is available across the state.¹⁵ We also note the Royal Commission into Family Violence made a similar recommendation (Recommendation 127), and the Victorian Government has since adopted all recommendations.

The need for data on which children are offending

- 7.7 Data available suggests that contrary to popular opinion, the number of young people who have offended in Victoria fell in the decade from 2006 to 2015.¹⁶ At the same time, the number of offences committed by this smaller cohort increased.¹⁷ We urge the Committee to recommend to the Government invest resources to determine why this is happening – the youth justice system may actually be working well for lower level young people who offend, but be failing those children with complex needs. Yet without adequately considering the

¹⁴ Youth Parole Board [Annual Report 2015–16](#), xiv

¹⁵ For example Jesuit Social Services (2016):

<https://jss.org.au/youth-diversion-helps-young-people-avoid-lifetime-involvement-with-the-justice-system/>

¹⁶ Crime Statistics Agency (2016):

<https://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/downward-trend-in-the-number-of-young-offenders-2006-to-2015>

¹⁷ Crime Statistics Agency (2016):

https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2016/07/5f/06b914686/20160706_in_fact3.pdf

relevant data,, it's difficult to tell.

A coordinated national approach is needed

7.8 Amnesty also points the Committee to work that is happening nationwide around issues related to diversion, bail and other measures to ensure children are not placed in detention in the first place. In the past six months alone, around Australia there has been:

- The commencement of the Northern Territory Royal Commission into Child Protection and Youth Detention
- A Green Paper published in Western Australia looking at reform of the *Youth Offenders Act (WA)*
- Queensland's Independent Youth Detention Inquiry
- The Northern Territory's \$18.2 million announcement of new youth diversion programs
- Newly elected WA Government's election commitment of \$22 million for intensive "multi systemic therapy" for young people with complex needs who are offending.

7.9 In addition, New South Wales is undertaking a justice reinvestment trial in Bourke and other placed based justice reinvestment trials are occurring, at varying levels of advancement, across Australia (e.g Katherine, Cowra, Port Augusta) .

7.10 This work is significant, but not coordinated. The Victorian Government should ensure state and territories governments can share knowledge and approaches to see what works best. While some such coordination occurs via the Law, Crime and Community Safety Council, the Australian Juvenile Justice Administrators and other forums, Amnesty International notes that that US Council of State Governments' Justice Centre,¹⁸ the Norwegian National Crime Prevention Council¹⁹ and UK Justice Data Lab²⁰ are models that have led to a more coordinated consideration of evidence, good practice and key learnings from initiatives in other jurisdictions.

7.11 **Amnesty urges the Victorian Attorney-General or Victorian Premier to advocate for a coordinated national approach to youth detention and related issues through the Council of Australian Governments.**

8. The culture, policies, practises and reporting of management at the centres

8.1 Amnesty International has not inspected youth justice centres in Victoria. Our input below relates to relevant secondary sources from other jurisdictions.

8.2 We draw the Committee's attention to the work of the Western Australian Office of the Inspector of Custodial

¹⁸ See Justice Center, Council of State Governments: <http://csgjusticecenter.org/jr>

¹⁹ The [National Crime Prevention Council \(NCPC\)](#) philosophy is as follows.

NCPC believes that

- Crime can and should be prevented.
- Truly effective prevention requires addressing causes of crime and reducing opportunities for it to occur.
- Everyone, no matter what age, position, or capacity, can and must take individual action to stop crime.
- The problems of crime, violence, and drug abuse are best addressed through local action supported by local and state policies.
- Comprehensive crime prevention action plans (coordinated strategies and policies that address causes as well as occurrences of crime) are vital to long-term community success against crime.
- Partnerships that actively involve the local community and its residents are key to preventing crime.
- Prevention is a highly cost-effective alternative to the costs of crime to individuals, neighborhoods, and communities.
- Crime prevention action should be grounded in research and tested approaches and aided by evaluation.

²⁰ The Justice Data Lab is a pilot that "gives organisations working with offenders access to central reoffending data. The service provides this information to help organisations to assess the impact of their work on reducing reoffending. It also helps develop a collaborative understanding of effective rehabilitation." <https://www.gov.uk/government/publications/justice-data-lab>

Services (OICS), which is a fully independent office, and has made numerous observations and recommendations in recent years to inform and improve the Western Australian youth justice system. While not a perfect system (the OICS does not have the power to inspect police lockups, for example), it is a system which can help report on problematic policies and practices within detention centres.²¹ His work in the aftermath of strikingly similar circumstances to those now faced in Victoria provides important lessons from which Victoria could learn. As was raised in section 4 above, Victoria needs an independent inspector of custodial services.

- 8.3 We also urge the Committee to closely follow the evidence being provided to the NT Royal Commission, and examine the Commission's initial findings which will be published later this month (31 March).

9. The role of the Department of Health and Human Services in overseeing practices at the centres

- 9.1 Victoria's machinery of government changes which moved youth justice into Corrections makes it a stark outlier. Every other state and territory but Western Australia has moved youth justice out of the relevant corrections department (with the Northern Territory doing so in September 2016),²² rather than moving youth justice *back into* corrections.
- 9.2 We would point the Committee to the evidence which is currently being heard in the Northern Territory as a stark example of what can happen when adult corrections staff with inadequate training are given the responsibility of caring for traumatised children. In essence, we urge Victoria to take heed the evidence emerging from the Northern Territory.
- 9.3 **Amnesty urges the Committee to recommend the Victorian government reverse its decision in late 2016 to move responsibility for youth justice policy to Corrections Victoria.**

10. Conclusion

- 10.1 Amnesty acknowledges youth justice policy is complex. Children who come into contact with the criminal justice system are often those with complex needs, from disadvantaged backgrounds, and have often experienced significant trauma. They are also children who are still developing. Australian governments at all levels are also bound by numerous international legal conventions guaranteeing children's human rights.
- 10.2 Amnesty strongly opposes the recent trend in Victorian youth justice policy, which risks setting the state back decades and overturning evidence-based policy. Victoria has generally been a leader in sensible, compassionate youth justice policy which has as its foundation this respect for the special needs of children, and respect for human rights.
- 10.3 The current trend in Victoria has been a series of backward steps, and we urge the Committee to pay attention to the unfolding revelations from the Northern Territory Royal Commission as a warning on what can unravel when youth justice policy is not underpinned by human rights obligations.

²¹ See, for example:

<http://www.oics.wa.gov.au/reports/85-directed-review-incident-banksia-hill-detention-centre-20-jnauary-2013/>
<http://www.oics.wa.gov.au/reports/97-report-announced-inspection-banksia-hill-juvenile-detention-centre/>;
<http://www.oics.wa.gov.au/reports/86-management-young-women-girls-banksia-hill-detention-centre/> ;

²² Western Australia has established what is effectively a separate Youth Justice Division, albeit formally within the Corrective Services department.