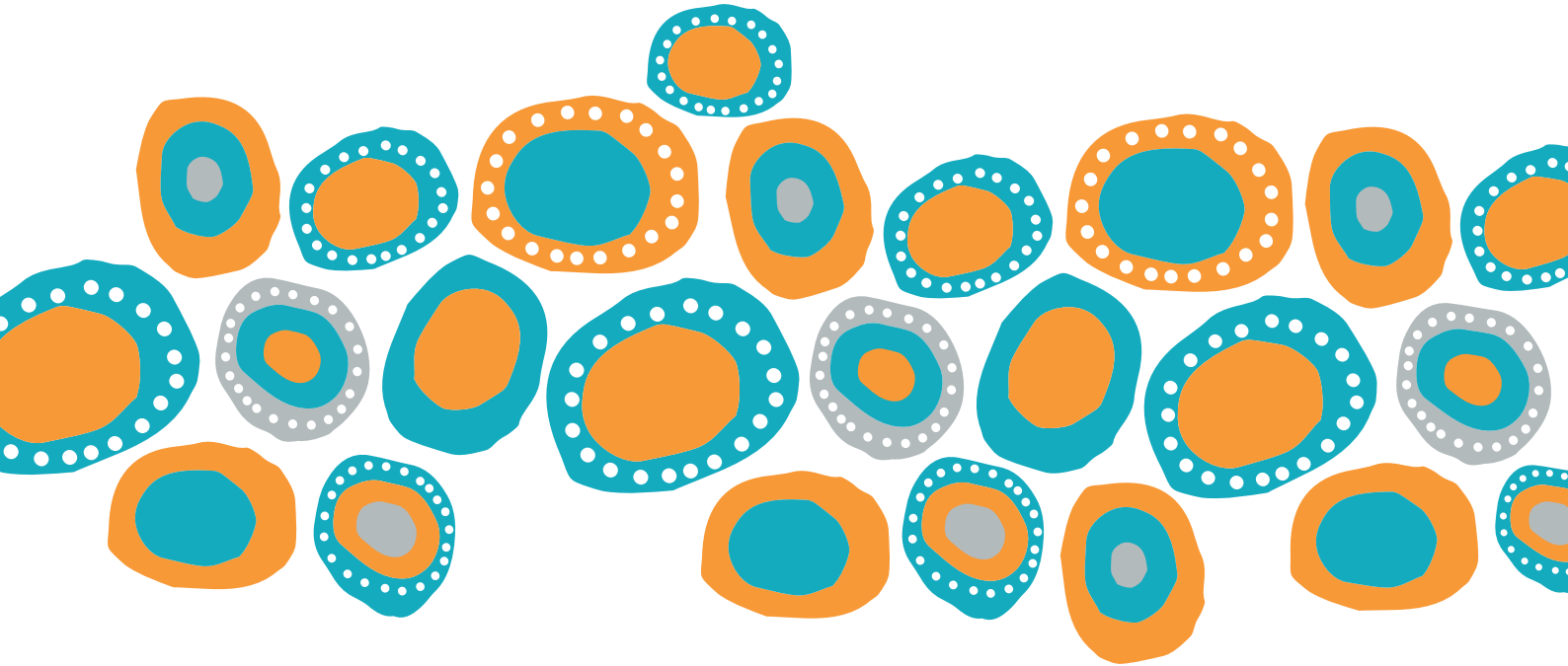




Smarter Justice. Safer Communities



# Free to be Kids

## National Plan of Action

Change the Record Coalition

November 2017



# Free to be Kids National Plan of Action

Our political leaders have a responsibility to make sure children grow up safe and are supported to meet their full potential, in their communities: free to be kids.

Yet across Australia, children are being abused in prisons by authorities meant to protect them. Overwhelmingly the children being imprisoned and abused are Aboriginal and Torres Strait Islander children.

While Aboriginal and Torres Strait Islander children make up less than 6 per cent of children aged 10–17 years, they make up 54 per cent of children in prison.<sup>1</sup> Aboriginal and Torres Strait Islander girls are also far more likely to be in prison than non-Indigenous girls,<sup>2</sup> and their needs are often overlooked.

We cannot allow this national tragedy to continue. We need national leadership to drive change across the country.

The Change the Record Coalition calls on the Federal Government to adopt and report on this 8-point National Plan of Action to end the abuse and over-representation of Aboriginal and Torres Strait Islander children in prison.

These reforms to youth justice would complement the clear call for national action outlined in Change the Record's Blueprint for Change. This must be adopted in full as a comprehensive response to the broader over-imprisonment of all Aboriginal and Torres Strait Islander people.

As outlined in the Redfern Statement,<sup>3</sup> Aboriginal and Torres Strait Islander communities, their organisations and representative bodies must be directly involved in the development of laws, policies and practices and in decision-making about matters that affect them. These principles must apply to the development, implementation and monitoring of this National Plan of Action.

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## 1 Support children, families and communities to stay strong and together

There are many reasons why Aboriginal and Torres Strait Islander children are so over-imprisoned. The disadvantage experienced by many Aboriginal and Torres Strait Islander children means that, by no fault of their own, they are more likely to end up in prison.<sup>4</sup> Further, research has pointed to bias by police against diverting or cautioning Aboriginal and Torres Strait Islander people, particularly children.<sup>5</sup>

To give children the best chance to thrive, more needs to be done to support and strengthen families to stay together, keeping kids in their communities. The most effective way to do this is for governments to invest in targeted programs to support children and their families that are focused on addressing the causes of their disadvantage. These factors include:

- intergenerational trauma through past and present policies and practices,
- racism and systemic discrimination by institutions and service systems;
- the increasing removal of children through child protection policies and practices;
- homelessness;
- drug misuse;
- intergenerational lived experience of poverty;
- family violence;
- disability; and
- poor health outcomes.<sup>6</sup>

All of these factors impact upon the general emotional health and wellbeing of Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander leaders and organisations have consistently highlighted that their organisations and communities must be supported and resourced to design and deliver holistic programs and services that are centred upon cultural strengths, language and connection to land. Investment in these programs have proven critical to preventing children from coming into contact or becoming entrenched in the youth justice system, including by preventing family violence and child removal.<sup>7</sup> Where community-led and appropriately resourced, justice reinvestment can be an effective mechanism to reduce the disproportionate levels of Aboriginal and Torres Strait Islander children in prison, as demonstrated by programs in Bourke and Cowra in New South Wales.<sup>8</sup>

Change The Record's recently commissioned study found closing the justice gap between Aboriginal and Torres Strait Islander people and non-Indigenous rates of imprisonment would "generate savings to the economy of \$18.9 billion per year in 2040".<sup>9</sup> It is critical that the Federal Government makes up the shortfall between expenditure on children's prisons and community-based justice services (in 2015–16 this was \$252.2m<sup>10</sup>) with a fund for community based early intervention, prevention and diversion programs. This should preference Aboriginal and Torres Strait Islander designed and run programs and be delivered over 10 years.

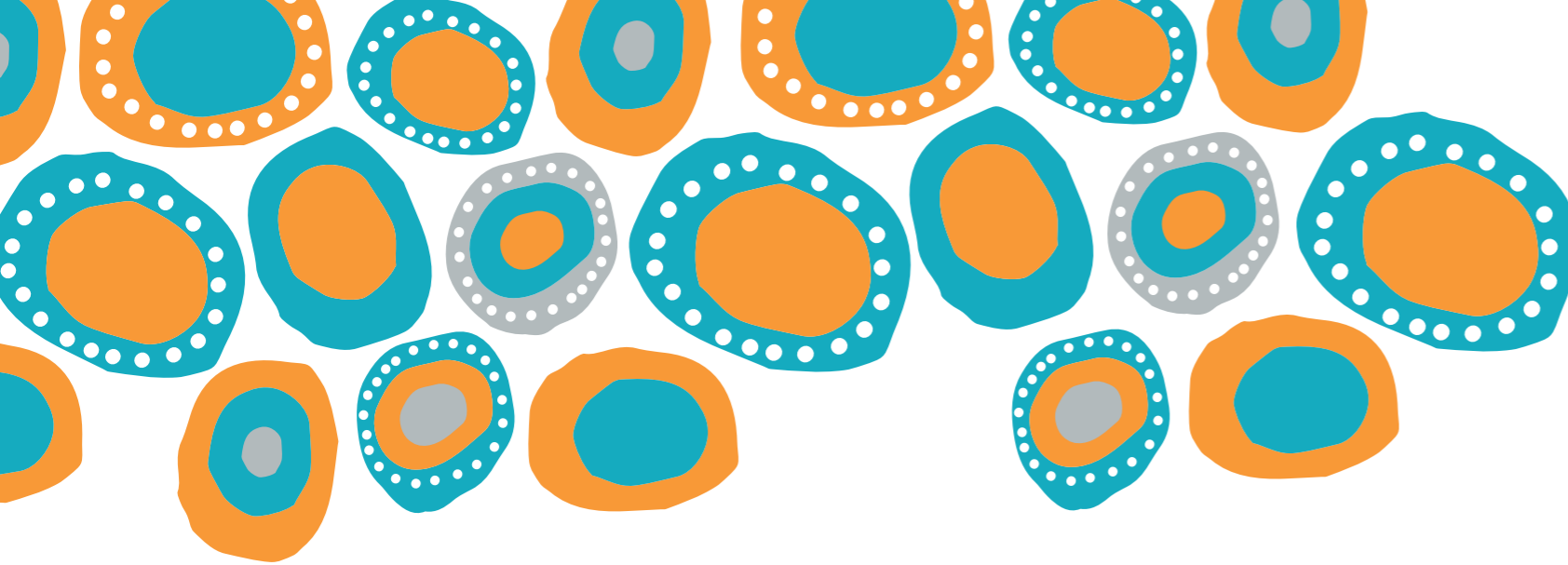
## 2 Raise the age of criminal responsibility to 14

Governments right across Australia are imprisoning kids as young as 10, and four out of five 10 and 11 year olds in prison are Aboriginal and Torres Strait Islander children.<sup>11</sup> When children enter the system at this young age they are highly likely to return as adults, especially those who spend time in custody.<sup>12</sup>

Australia has been repeatedly criticised by the UN Committee on the Rights of the Child for having an age of criminal responsibility which is unreasonably low.<sup>13</sup> Children under the age of 14 are undergoing significant growth and development such that they may not have the required capacity to be criminally

responsible.<sup>14</sup> Children should not be in prison, as the institutions, conditions and separation from family can be extremely harmful to their health and development.<sup>15</sup>

This is why the Federal Government must work with all State and Territory governments to raise the age of criminal responsibility to at least 14 years of age in all Australian jurisdictions.



### 3

## Get children who are not sentenced out of prison

On an average day, 60 per cent of Aboriginal and Torres Strait Islander children in prisons are not sentenced or are awaiting trial ('on remand').<sup>16</sup> Time on remand can have a severe and damaging impact on a child, leading to longer term harm and ongoing contact with the justice system.<sup>17</sup>

There are steps governments can take to stop this. First, the Federal Government must implement the Family Matters Roadmap<sup>18</sup> across Australia, as a measure towards preventing Aboriginal and Torres Strait Islander children being denied bail on the basis of welfare concerns.

Further, there must be more community-based accommodation and support services. The Federal Government must work with all State and Territory governments to support local community driven solutions including accommodation and support services. These must be safe and culturally appropriate (preferably Aboriginal and Torres Strait Islander community-controlled), and directed to preventing a child's further entrenchment in the youth justice system.<sup>19</sup>

### 4

## Adequately fund Aboriginal and Torres Strait Islander community-controlled legal and other support services

Aboriginal and Torres Strait Islander community-controlled legal service providers are best placed to provide legal support to Aboriginal and Torres Strait Islander children in contact with the justice system.<sup>20</sup> In 2014, the Productivity Commission called for Government to meet the significant unmet legal need among Aboriginal and Torres Strait Islander people, recognising that the "inevitable consequence of these unmet legal needs is a further cementing of the longstanding over-representation of Indigenous Australians in the criminal justice system."<sup>21</sup>

The Federal Government must provide adequate and consistent funding to Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services so that children, and their families, are provided with necessary culturally safe support and legal advice.

Similarly, it is vital to support Aboriginal and Torres Strait Islander-controlled services in health, education and disability, among other areas, to holistically address the disadvantage that results in the over-imprisonment of Aboriginal and Torres Strait Islander children.

### 5

## End abusive practices in prisons

Governments at every level have a responsibility to ensure the abuse and mistreatment of children across Australia (as we have seen at Don Dale, Cleveland, Banksia Hill, Barwon, and Bimberi) will not be repeated. Currently there is a litany of inquiries into the practices and the mistreatment of children in prisons across Australia, including the use of solitary confinement, strip searching, physical violence, inappropriate use of dogs and restraints.<sup>22</sup> Australia is breaching its obligations under international law to ensure that every child deprived of their liberty is protected and treated with humanity. Locking children in prison is harmful to their growth and wellbeing, and can compound mental illness and trauma.<sup>23</sup> The Federal Government must immediately end the abuse (including torture, cruel, inhuman or degrading treatment or punishment) of all children in prison.

All states and territories must have fully resourced and independent inspectors with unimpeded access to child prisons. As Australia moves towards

ratification of the United Nations Optional Protocol on the Convention against Torture, we recommend governments build upon the Western Australian model of the Independent Inspector of Custodial Services as best practice, with the additional need for it to extend to police lock ups, secure care and mental health facilities.

Children belong in their communities, not in prison. The imprisonment of children is ineffective, abusive, and needs to be overhauled. Our children need community-based programs designed from a cultural and therapeutic approach that uphold the best interests of the child and support children to reach their full potential at home or in a small, home-like environment. This means that everything from the overarching philosophy, design and layout, to staffing and programs must reflect and respond to the unique needs of children, whilst also being responsive to differences in culture, gender, age and disability.

### 6

## Set targets to end the overrepresentation of Aboriginal and Torres Strait Islander children in prison

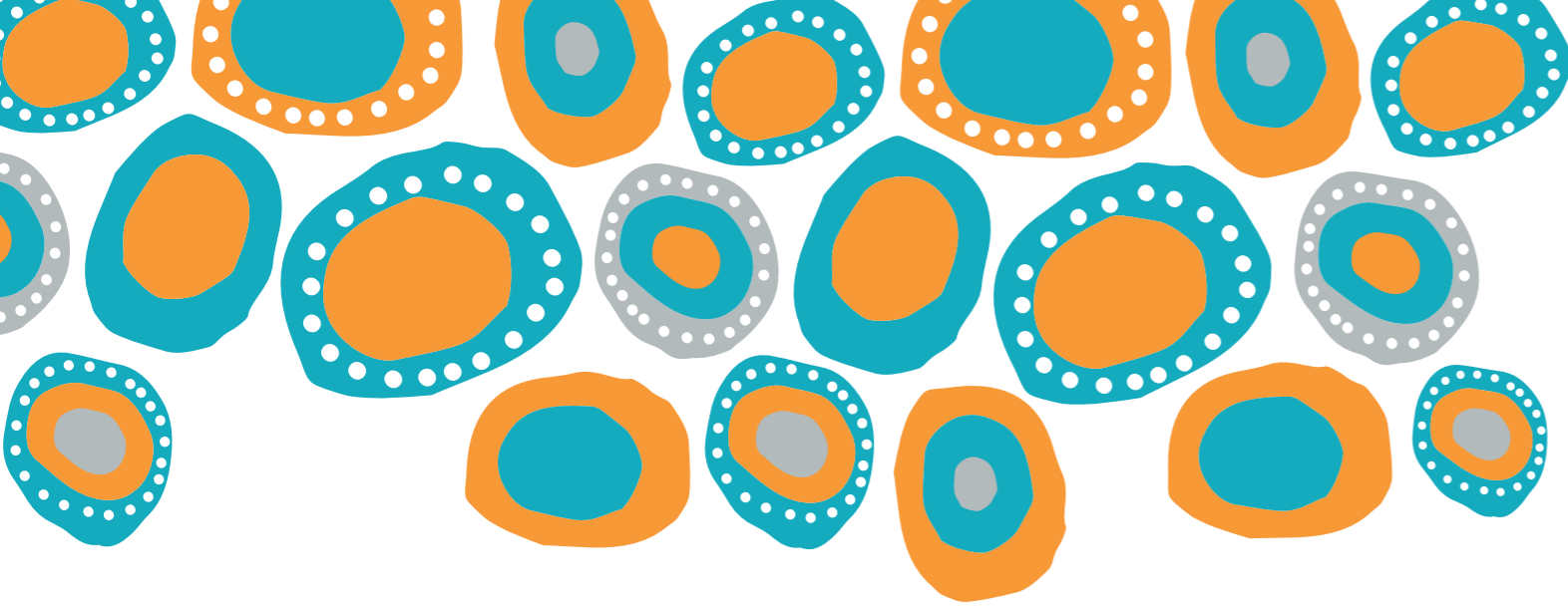
The failure to include the overrepresentation of Aboriginal and Torres Strait Islander people in prisons and disproportionate of Aboriginal and Torres Strait Islander women and children as victims of violence in the Closing the Gap framework remains a glaring omission. Targets are a proven mechanism to achieve real progress and accountability for change, where they have national reporting obligations and measures of transparency.<sup>24</sup>

The Federal Government must heed the continued calls of Aboriginal and Torres Strait Islander leaders and experts, and commit to:

- include justice targets as part of COAG's Closing the Gap targets "refresh" process to:
  - close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander people by 2040, and

– cut the disproportionate rates of violence against Aboriginal and Torres Strait Islander people to at least close the gap by 2040, with priority strategies for women and children.

- establish a National Agreement which includes a reporting mechanism, as well as measurable sub-targets relating to children and a commitment to halve the gap in the above overarching goals by no later than 2030, and
- establish measurable sub-targets relating to children, as part of the justice target, that focus on providing adequate resourcing to Aboriginal and Torres Strait Islander community controlled organisations.



## 7 Improve collection and use of data

Data collection and publication on youth justice in Australia is not sufficient in all states and territories to provide an evidence base for a fully informed policy approach.<sup>25</sup> Better coordinated data collection, mapping of services and programs, and analysis across states and territories will help to identify priorities and track progress against targets to close the justice gap. To help to get to the bottom of the reasons for the over-representation of Aboriginal and Torres Strait Islander young people in the justice system, all Australian governments need to collect better data

that protects the identity of children but helps us to understand the trends of different age groups, genders, disability, socio-economic groups, and geographic locations.

We call on the Federal Government to establish or task a national body, with Aboriginal and Torres Strait Islander representation, to coordinate a national approach to data collection and policy development relating to Aboriginal and Torres Strait Islander imprisonment and violence rates.

## 8 Work through COAG to reform State and Territory laws that breach children's rights

The Royal Commission into the Protection and Detention of Children in the Northern Territory has proposed clear and considered solutions to the human rights abuses of children in prison in the Northern Territory. The Royal Commission builds on a long history of research and inquiries into the solutions needed to end the overrepresentation of Aboriginal and Torres Strait Islander children in prison.

There are a range of state and territory laws that are in clear breach of children's rights. For example, the United Nations Committee on the Rights of the Child has repeatedly recommended that Western Australia's mandatory minimum sentencing laws be abolished because they are inconsistent with imprisonment being a last resort for children.<sup>26</sup> In the Northern Territory, Queensland and, until recently, Victoria, children are being held in adult prisons despite this being a clear violation of the UN Convention on the Rights of the Child.

To end this national tragedy, the Federal Government, through COAG, must lead a national overhaul of juvenile justice systems, laws, policies and practices. This work must be done in partnership with Aboriginal and Torres Strait Islander leaders, organisations and communities. It must build on the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, with a strong focus on keeping children out of prison<sup>27</sup> with a view to developing national minimum benchmarks for laws and policies to underpin this National Plan of Action.

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2. Ibid, Table S76a: 'Young people aged 10–17 in detention on an average day(a) by sex and Indigenous status, states and territories, 2015–16'.
3. See Aboriginal and Torres Strait Islander Peak Organisations, *Redfern Statement* (2016), [http://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-\\_Final.pdf](http://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-_Final.pdf). The Redfern Statement is a call for a more just approach to Aboriginal and Torres Strait Islander affairs from government, with a central platform of self-determination, adequately resourced and supported through Aboriginal and Torres Strait Islander Community Controlled Organisations, as vital to achieving better outcomes for Aboriginal and Torres Strait Islander people and communities.
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21. Productivity Commission, above n 19, 770–784.
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## About Change the Record

Change the Record is an unprecedented coalition of leading Aboriginal and Torres Strait Islander, human rights, legal and community organisations calling for urgent and coordinated national action to close the gap in imprisonment rates of Aboriginal and Torres Strait Islander people and cut disproportionate rates of violence experienced by Aboriginal and Torres Strait Islander people, particularly women and children.

Change the Record is overseen by a Steering Committee, made up of leading Aboriginal and Torres Strait Islander, human rights and community organisations, including:

ANTaR

Amnesty International

Australian Council of Social Service

Federation of Community Legal Centres (Vic)

First Peoples Disability Network (Australia)

Human Rights Law Centre

Law Council of Australia

National Aboriginal Community Controlled Health Organisations

National Aboriginal and Torres Strait Islander Legal Services

National Aboriginal and Torres Strait Islander Women's Alliance

National Association of Community Legal Centres

National Congress of Australia's First Peoples

National Family Violence Prevention Legal Services Forum

Oxfam Australia

SNAICC – National Voice for Our Children

Sisters Inside

Victorian Commissioner for Aboriginal Children and Young People,  
Andrew Jackomos

Aboriginal and Torres Strait Islander Social Justice Commissioner,  
Australian Human Rights Commission

The artwork depicts a pathway of stepping stones filled with experiences and opportunities. Cover artwork by Gilimbaa artist Rachael Sarra (Goreng Goreng) © 2017.



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