

UNITED NATIONS HUMAN RIGHTS COUNCIL
37TH SESSION OF THE UPR WORKING GROUP
AUSTRALIA'S 3RD UNIVERSAL PERIODIC REVIEW
25 JANUARY 2021

ABORIGINAL INTERVENTION: AS PART OF THE AUSTRALIAN NGO COALITION

Intervention delivered by Nerita Waight, on behalf of the National Aboriginal and Torres Strait Islander Legal Services

Honourable delegates, thank you. My name is Nerita Waight, co-chair of the National Aboriginal and Torres Strait Islander Legal Services, I acknowledge I am on Kulin land.

Since the 1991 Royal Commission into Aboriginal Deaths in Custody,¹ there has been on average one Indigenous death in custody every three weeks, totalling over 441,² and no criminal convictions for those responsible. Systemic racism, over-policing and discrimination, and failure to address underlying social issues, means that as 3% of the population we are 28% of people in prison.³ Most imprisoned Indigenous women are survivors of family violence.⁴ COVID-19 has seen increased family violence, disproportionate fines and human rights breaches in prisons.⁵ Our young people are criminalised for their disadvantage and abused in prison; Indigenous 10-13 years olds comprise 65% of children in youth detention.⁶

¹ *Royal Commission into Aboriginal Deaths in Custody: National Report [Vol 1-5]* ('Royal Commission') (1991). Available at: <<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html>>.

² The Guardian Australia, 'Deaths Inside: Indigenous Australian deaths in custody', *The Guardian Australia*. Available at: <<https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody>>.

³ Australian Bureau of Statistics, 'Prisoners in Australia' (2019). Available at: <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>>; Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133* (2017), 24. Available at: <https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>; Royal Commission, above at n 1.

⁴ Australian Law Reform Commission, above at n 3, 24.

⁵ National Aboriginal and Torres Strait Islander Legal Services, *Submission to the Commonwealth Parliament's Senate Select Committee on COVID-19* (28 May 2020). Available at: <<http://www.natsils.org.au/portals/natsils/submission/NATSILS%20Submission%20to%20the%20Senate%20Select%20Committee%20on%20COVID-19%2028%20May%202020%20F6c0e.pdf?ver=2020-05-28-113053-070>>.

⁶ Australian Institute of Health and Welfare, *Youth Justice in Australia 2018-19* (2020). Available at: <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2018-19>>.

Every state and territory imprisons 10-year-old children, denying them their culture, family, connection to land and a fair future.⁷

We urge you to call on the Australian Government to raise the age of criminal responsibility to at least 14 years of age, and to stop imprisoning children under 16, as per the UN Committee of the Rights of the Child and prior UPR recommendations.⁸ We urge you to call on the Australian Government to address systemic racism by fully implementing the recommendations of the Royal Commission⁹ and the Pathways to Justice Inquiry,¹⁰ including through law reform, and increased Aboriginal-controlled diversion, housing, legal, family violence, justice reinvestment and disability supports.

Thank you.

⁷ Sophie Trevitt and Bill Browne, Change the Record and The Australia Institute, *Raising the Age of Criminal Responsibility* (2020). Available at: <<https://changetherecord.org.au/RaiseTheAge>>.

⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review Australia*, 31st sess, UN Doc A/HRC/31/14 (13 January 2016) 22 [136.172 – 136.179]; Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019).

⁹ Royal Commission, above at n 1.

¹⁰ Australian Law Reform Commission, above at n 3.