

**Aboriginal Peak Organisations
Northern Territory (APO NT)**

An alliance of the Central and Northern Land Councils and
Aboriginal Medical Services Alliance Northern Territory



North Australian Aboriginal Justice Agency

NGO Alternative Report to the United Nations Committee on the Rights of the Child: Response to the Australian Government's State Report on the United Nations Convention on the Rights of the Child

A joint report from the Aboriginal Peak Organisations of the Northern Territory (APO NT) and the North Australian Aboriginal Justice Agency (NAAJA) on issues affecting Aboriginal Children in the Northern Territory

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Introduction

The Aboriginal Peak Organisations Northern Territory (**APO NT**) is an alliance comprising the Central Land Council (**CLC**), Northern Land Council (**NLC**) and the Aboriginal Medical Services Alliance of the NT (**AMSANT**). The alliance was created to provide a more effective response to key issues of joint interest and concern affecting Aboriginal people in the Northern Territory.

The North Australian Aboriginal Justice Agency (**NAAJA**) delivers high quality and culturally competent legal services for Aboriginal people throughout the Northern Territory. In addition to core legal practice in criminal and civil law, NAAJA provides throughcare and law and justice related services that aim to ensure that Aboriginal people have real access to justice.

Our organisations have come together to develop this report to ensure that the perspectives and circumstances of Aboriginal Children in the Northern Territory are given the attention they demand in the Committee's next set of concluding observations to Australia.

Although Australia is one of the richest and most stable countries in the world, Aboriginal Australians have experienced diminishing wellbeing across far too many domains since the colonisation of Australia. The trauma associated with this history – the dispossession of land and language and removal of children from their families – remains with Aboriginal people today, and continues in the form of government policies and practices that fail to recognise this history or to support the cultural rights and worldviews of our Aboriginal people.

Article 30 of the United Nations Convention of the Rights of the Child (**UNCRC**) states children of Indigenous origin “...shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language”

APO NT and NAAJA assert that the continued failure of the Australian Government – through its institutions, policies and legislation – to acknowledge and support the cultural strengths that have maintained the Aboriginal peoples of Australia for some 60,000 years underpins the continued disparity in outcomes for Aboriginal children that are outlined throughout this report.

The Australian Government's failure to adhere to Article 30 is demonstrated in particular by the following, which are discussed in more detail in the body of this report:

- Absence of a constitutionally enshrined decision-making structure for Aboriginal people.
- Continued removal of Aboriginal children from their families and communities and insufficient planning to ensure connection to culture when children are removed.
- Limited access to bilingual and culturally relevant education.
- Lack of mechanisms for Aboriginal Elders and those with cultural authority to actively participate in decision-making in the justice system, including court processes involving Aboriginal children.
- Lack of access to culturally appropriate health (including mental health) services and culturally strengthening programs and activities for young people, particularly in remote communities.

- Directing children and young people not to use Aboriginal language in youth detention centres¹
- Failure to comply with the principle of detention as a last resort, impeding the right of Aboriginal children to maintain cultural connections to country.

We call on the Australian Government to ensure that the development and implementation of its legislation, policies and practices relevant to children across its jurisdictions promote the rights of all Aboriginal children to enjoy their language and culture.

We hope that this report will support the UNCRC to hold the Australian and Northern Territory Government's to account on their numerous failures to meet their obligations to Aboriginal children in Australia under the UN Convention on the Rights of the Child.

I. General measures of implementation

Reservations (concluding observation 10)

1. There remain serious concerns that the Australian Government has not withdrawn its reservation to article 37 (c) despite numerous recommendations from the UNCRC to do so. We understand that the reservation remains because while most children who have been sentenced are held in specific juvenile detention facilities, there have been instances where children may be transferred to and detained in adult facilities. Similarly arguments have been made that Australia's geography and demography pose challenges to ensuring children in juvenile detention settings can maintain contact with their families.
2. **The Australian Government withdraw its reservation to article 37(c) and consult with its jurisdictions to ensure adequate legislative provisions are in place to ensure adherence to this article.**

Legislation and implementation (concluding observation 12)

3. There has been little meaningful change in this reporting period to bring domestic laws and practice into conformity with the principles and conventions of the Convention, and to enact a comprehensive child rights Act at the national level.
4. Australia remains the only common law country and the only democracy in the world without a legislated charter or bill of rights. At the state and territory level, Victoria and the Australian Capital Territory have enacted legislation requiring (amongst other things) that human rights are taken into account when developing new laws and those public authorities (such as those responsible for detention centres and out-of-home care facilities) always act in a way that is compatible with human rights. NAAJA and APO NT support the introduction of a Human Rights Act in the Northern Territory to promote and

protect human rights, modeled on the Victorian and ACT legislation. This Human Rights Act should include civil, political, economic, social and cultural rights.

5. The absence of a charter or bill of rights at a national level means that Australia lacks the checks and balances to promote the protection of rights and freedoms. Systems of accountability to ensure that children's rights are upheld are not strong enough, and there is lack of access to effective remedies. As commentators have observed, the abuse and mistreatment of children at Don Dale Youth Detention Centre (**Don Dale**) which sparked the Northern Territory Royal Commission into the Protection and Detention of Children (**NT Royal Commission**) may have been stopped much earlier by a judicial ruling if Australia had a bill of rights.ⁱⁱ APO NT and NAAJA continue to hold serious concerns that the conditions in youth detention centres violate Aboriginal children's rights under the UNCRC and are inconsistent with international standards (discussed further in 'Special measures').
6. Australia's joint fifth and sixth report notes that the Northern Territory has established a Social Policy Scrutiny Committee to inquire into and report on whether any matter or bill referred to it has sufficient regard to the rights and liberties of individuals. While the introduction of this committee is a step in the right direction, it is our position that the committee is not a sufficient mechanism to safeguard the rights of children. Parliament is not required to take the committee's report into account, and it can also bypass the committee process altogether as has recently occurred with the *Youth Justice Legislation Amendment Bill 2018* (NT) regarding youth detention and amendments to the *Liquor Act* (NT) regarding alcohol reform. In both instances there was no mechanism to scrutinise the impact of the legislative amendments on the rights of children and again underscores the need for comprehensive human rights act to ensure consistent human rights protections for all Australians.
7. **The Australian Government strengthen its legislative protection of human rights by introducing a comprehensive federal Human Rights Act which fully incorporates the provisions of the Convention and its Optional Protocols.**

Coordination (concluding observation 14) and Allocation of Resources (concluding observation 20)

8. The lack of coordination between the Commonwealth and Northern Territory governments in the funding and delivery of services to children and families continues to hinder significant improvements in outcomes for children and families. The NT Royal Commission found there was no cohesive framework or strategy to guide expenditure in the NT, and that services were delivered in a siloed rather than comprehensive way.ⁱⁱⁱ
9. In response to the NT Royal Commission's recommendation, the Commonwealth and Northern Territory governments have agreed to develop a Joint Coordinated Funding Framework through which investments in child protection and youth justice services would

be agreed and allocated, in consultation with Aboriginal community controlled organisations, the NGO sector and local communities.

10. A further recommendation of the NT Royal Commission to improve coordination of service funding and delivery was the formation of an NT Children and Families Tripartite Forum. This Forum was established earlier this year with representatives from the Northern Territory and Commonwealth Governments and the community sector, including Aboriginal controlled organisations.
11. **The Australian Government fulfil its commitment to the establishment of a Joint Funding framework for the Northern Territory and ensure continued transparency for the allocation of resources for all children and families in Australia.**

Independent monitoring (concluding observation 18)

12. Independent monitoring of children's rights in the NT needs to be strengthened by expanding and enhancing the functions and powers of the Children's Commissioner. The NT Royal Commission found that the current functions of the Northern Territory Children's Commissioner under the *Children's Commissioner Act* (NT) are relatively narrow compared to other jurisdictions and identified a number of limitations with the structure, capacity and functions of the current Office of the Children's Commissioner including the scope, role, functions, powers, size of the office and resources provided.^{iv} In particular, the Children's Commissioner presently only has jurisdiction over 'vulnerable' children, not all children in the Northern Territory. This unnecessarily segments the population of children and gives rise to inadequate oversight of the status of children generally in the Northern Territory.
13. The Northern Territory is one of the only jurisdictions where the Children's Commissioner does not have a specific advocacy role. The NT Royal Commission recognised the importance of the Commissioner acting as a prominent and public advocate for children in the Northern Territory, especially in relation to government policy and priority setting.^v In the context of the Northern Territory, where Aboriginal children are grossly over-represented in the youth justice and child protection systems, Aboriginal representation at the highest levels of the Children's Commission is critical. As the experience in other jurisdictions has shown, having an Aboriginal Children's Commissioner enhances the effectiveness of its important monitoring functions. It makes complaints more likely, it provides an Aboriginal-centric view at a high level, support for the Aboriginal community sector and an ability to engage with the Aboriginal community more generally. The Northern Territory Government has supported in principle the NT Royal Commission's recommendation to appoint two Co-Commissioners, one of whom will be an Aboriginal person. There has been little tangible progress in implementing this recommendation.
14. **The Australian Government ensure that the Office of the Children's Commissioner in the Northern Territory is adequately resourced to perform an expanded range of**

functions in line with the NT Royal Commission's recommendations, and that legislation is enacted requiring at least one Commissioner to be an Aboriginal person.

III. General Principles

Non-Discrimination [article 2] (concluding observation 30 (a))

15. We note the Australian Government's failure to respond directly to concluding observations 30 (a) – (d) in the joint fifth and sixth report to the UNCRC which relate to the continued systematic discrimination against Aboriginal and Torres Strait Islander people through Australian Government Policy. This is an unacceptable oversight on the part of the Australian Government.
16. Aboriginal children and their families continue to experience unacceptable levels of racism and discrimination in Australia. These experiences contribute to stress, anxiety and disempowerment and are associated with poor physical and mental health outcomes. Institutional racism across Australia's health, education, welfare and criminal justice systems and in the provision of public housing continue to impact provision and accessibility of basic services and opportunities for Aboriginal children and their families.
17. **The Australian Government commit to constitutional reform to recognise Aboriginal people as the first peoples of Australia, including through the insertion of a constitutional provision directed at prohibiting racial discrimination. This provision would be designed to prevent the Commonwealth Parliament from using Constitutional powers to discriminate, and to strengthen the operation of the *Racial Discrimination Act 1975 (Cth)*.**

Non-Discrimination [article 2] (concluding observation 30 (b))

18. Ten years after the introduction of the Closing the Gap Strategy and targets aimed at eliminating the inequality in outcomes between Aboriginal and non-Aboriginal Australians, only three of seven targets are on track to be met in Australia, and only two in the NT. Children in the NT continue to experience the worst outcomes in the nation across indicators of physical and mental health, prevalence of developmental vulnerability and disability, over-representation in child protection and youth justice Systems, and poor educational outcomes. The failure of this Strategy to set us on the right track to achieving equality in outcomes for Aboriginal children reflects inadequate and often poorly allocated resourcing, and a lack of focused and coordinated intervention. Transforming this dynamic over the next ten years will require leadership, vision, and a willingness to work in genuine partnership with Aboriginal people and their communities.

19. **The Australian Government reform the structure and administration of the Closing the Gap strategy to ensure:**
- (a) **A formal and ongoing Aboriginal governance structure to advise and lead the Closing the Gap process and to participate in monitoring, coordination and implementation of Closing the Gap policies and programs.**
 - (b) **An increase in the absolute levels of expenditure on programs and services that are explicitly targeted to Aboriginal people to at least 30% of total Indigenous expenditure and an increase in the total expenditure on the health of Aboriginal people to at least 2.5 times the non-Indigenous expenditure, in line with level of need.**
 - (c) **Reporting against the Closing the Gap targets is broken down by region and remoteness, and that specific actions are taken to redress the very concerning outcomes for Aboriginal people living in remote areas.**
 - (d) **That the process of funds allocation to Closing the Gap programs and services recognise Aboriginal Controlled organisations as preferred providers of services to Aboriginal people, and incorporate capacity development for these organisations where necessary.**

Non-Discrimination [article 2] (concluding observation 30 (c) and (d))

20. There continues to be inadequate mechanisms for consultation and participation of Aboriginal people in policy formulation, decision-making and implementation processes of projects and programs that affect them. The Northern Territory Emergency Response (The Intervention) of 2007 is one of the clearest demonstrations of the destructive impact of Government measures imposed upon Aboriginal people unilaterally, and of the imperative for a constitutionally enshrined mechanism for Aboriginal people to practice self-determination.
21. Between December 2016 and May 2017 some twelve hundred Aboriginal delegates took part in dialogues held around the country as part of the work of the Referendum Council which culminated in the development of the *Uluru Statement from the Heart*. This Statement calls for the establishment of a 'First Nations Voice' - a constitutionally-entrenched national body representing Aboriginal and Torres Strait Islander people. The Australian Government has so far rejected the establishment of this body.
22. **In accordance with Article 2 of the Convention on the Rights of the Child, as well as Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Australian Government must work with Aboriginal people to establish a constitutionally-entrenched First Nations Voice and statutory Makarrata Commission to facilitate agreement-making and truth telling, as called for in the *Uluru Statement From the Heart*.**

Non-Discrimination [article 2] (concluding observation 30 (e))

23. The NT Department of Attorney Generals and Justice has stated that the *NT Anti-Discrimination Act* is in “urgent need of modernisation”. The Act is currently out of line with contemporary standards and expectations and is inconsistent with the protections provided by equivalent Acts in other jurisdictions, including in its provisions against discrimination on the basis of sexual orientation and gender identity. The NT Anti-Discrimination Commission is also currently under-resourced and under-staffed to such an extent that they are unable to adequately exercise important functions, such as own motion investigations.
24. **The Australian Government should support the reform of the NT Anti-Discrimination Act in line with the 2017 *Modernisation of the Anti-discrimination Act* discussion paper. This reform should take into account the submissions made by the community in response to that paper. Additional resources should be allocated to the NT Anti-Discrimination Commission to ensure it is able to fully execute all of its functions.**

Best interests of the child [article 3] (concluding observation 32)

25. The principle of the best interests of the child continues to be inconsistently applied, poorly understood and not fully integrated in all legislative, administrative and judicial proceedings as well as policies and programs relevant to children.
26. The NT Royal Commission found that the principle had particularly been compromised for children in Out of Home Care (**OoHC**) due to a failure to provide adequate care planning.^{vi} The Commission made a number of recommendations to strengthen legislative consideration of a child’s best interests when making placement decisions. These recommendations should be implemented without further delay.
27. Section 10 of the *Care and Protection of Children Act* (NT) states that the best interests of the child are the paramount concern when a decision involving a child is made, and sets out a list of considerations for determining a child’s best interests. These considerations should be strengthened to ensure a sharper focus on the importance of family and culture. One of the prime considerations for determining what is in a child’s best interests should be a child’s right to enjoy their Indigenous language and culture. The *Care and Protection of Children Act* (NT) should be amended so that a child’s right to enjoy their culture is considered as part of determining their best interests.
28. **The Australian Government strengthen legislative provisions regarding the best interests of the child by specifically including a provision requiring a child’s right to enjoy their culture to be considered when determining a child’s best interests.**

Respect for the views of the child [article 12] (concluding observation 34)

29. There are continued institutional and generational barriers to children's meaningful and empowered participation relating to issues that affect them. This is true for all children, but when this intersects with the state of continued inequality and discrimination for Aboriginal people in Australia, ensuring that there are adequate mechanisms for Aboriginal children to be heard is particularly important.
30. **The Australian Government establish a national forum for Aboriginal children to have their voices heard at the federal and jurisdictional levels. This forum would be able to report up to the National Voice to Parliament, as called for in the *Uluru Statement from the Heart*.**
31. Children's voices are not being adequately heard in child protection and youth justice proceedings. The NT Royal Commission found that there is nothing to suggest that the views of children and young people have been or are taken into account in developing and implementing laws, policies and procedures about matters that concern them.^{vii}
32. Mechanisms to promote the meaningful and empowered participation of children should be embedded across the youth justice and care and protection systems. In particular, strong, culturally responsive Aboriginal family-led decision making mechanisms should be legislated and embedded in both child protection and youth justice systems. Family Group Conferencing (**FGC**) was piloted in Alice Springs and operated as part of the care and protection system from 2011-2013. The program was positively evaluated, and was regarded by local services as beneficial in ensuring kinship care options were found.^{viii} In New Zealand, FGC has reduced the need for formal court orders – in 2013 only 26% of Youth Court appearances resulted in a formal order.^{ix} The approach is also considered to have been effective at addressing the underlying causes of offending and preventing recidivism by locating interventions where the major risk factors for youth offending often start – within the home and family.^x
33. **The Australian Government legislate and embed strong, culturally responsive Aboriginal family-led decision making mechanisms and child-inclusive decision-making and dispute resolution processes in both the child protection and youth justice systems.**
34. In the care and protection context, legal representatives should be appointed for all children involved in child protection court proceedings, irrespective of the age of a child or the fact that the parents are consenting to the child protection department's application. The role of the legal representative of a child is to act on the instructions of the child or act in their best interests regardless of their instructions, and to present the view and wishes of the child to the court. The legal representative for a child plays a crucial role in ensuring that a child's best interests are upheld and in bringing the court's attention to any failures by child protection authorities to address the best interests of a child. For this important

role to be performed effectively, it is essential that the legal representative of the child is independent, and is independently funded. Child representatives should be specialist lawyers who are trauma informed and skilled in engaging with vulnerable children.

- 35. The Australian Government ensure legal representatives are appointed for all children involved in child protection court proceedings who will act in the best interests of the child, and to present the views and wishes of the child to the court. Child representatives should be independent and specialist lawyers who are trauma informed and skilled at engaging with vulnerable children.**

IV. Civil Rights and Freedoms

Preservation of Identity [article 8] (concluding observation 38)

36. Australia's joint fifth and sixth report to the UNCRC fails to respond to the Committee's concluding observation 38, which recommends the implementation of the recommendations of the *Bringing Them Home Report* as well as ensuring full respect for Aboriginal children's rights to their identity, culture, language and family relationships.
37. Aboriginal people live in communities that are built on strong relationships, values and kinship networks. Past government policies of assimilation, including the removal of children from their families, damaged the passing of cultural knowledge from one generation to another with devastating effects. Several reports have highlighted the negative effects of forced removal and institutionalisation, including absence of relationship and parenting models, and a sense of unresolved trauma.^{xi}
38. Aboriginal children removed and separated from family, culture and community are at greater risk to their social and emotional wellbeing, health and educational attainment. For these reasons, as the NT Royal Commission highlighted, human rights principles provide that all efforts should be made to keep children and young people living with their parents where appropriate, and that where a child is removed, safe reunification should always be preferred.^{xii}
39. Australia's joint fifth and sixth report to the Committee notes that all states and territories have committed to implementing the Aboriginal Child Placement Principle (the Principle). The Principle was developed to reflect and apply the framework of Aboriginal kinship relationships and obligations and guide child protection services to strengthen Aboriginal children's connections with their family, community and cultural identity.^{xiii} Aboriginal-led approaches driven by Aboriginal community controlled organisations are essential across all elements – the empowerment of families and communities is critical to effective prevention efforts, to quality placement decisions that are aligned with the Principle and to support long-term cultural connections for children in OoHC.^{xiv}

40. There is no published data from which a proper examination of the application of the Principle in the Northern Territory can be made. There is little, if any, ability to monitor how well child protection staff understand and implement the Principle. The data that is available shows that the Northern Territory Government has systematically failed to identify and use kinship carers for Aboriginal children.^{xv} Of the Aboriginal children in OoHC at 30 June 2016, only 30.1% were living with Aboriginal kin, with a total of 36.3% living with Aboriginal relative/kin, another Aboriginal caregiver or in Aboriginal residential care.^{xvi} Training in understanding Aboriginal kinship systems and culturally appropriate kinship care is not adequate for the purpose of kinship care placements and must be significantly improved.
- 41. The Australian Government periodically review its compliance with the Aboriginal Child Placement Principle and make the results of this review available publically.**
- 42. The Australian Government ensure the implementation of the Aboriginal Child Placement Principle, and its underpinning values, are the subject of ongoing training alongside cultural competency training, provided to all staff and carers.**
43. The Royal Commission heard evidence from young people, regarding their lack of contact visits with parents and other siblings whilst in care.^{xvii} This was reiterated in evidence from foster carers about the difficulty of getting the department to assist with maintaining a child's connection with family and community. Evidence presented to the Royal Commission demonstrated that limited contact between parents and their children diminishes the chance of reunification.
- 44. The development of cultural support plans for all Aboriginal children in the OoHC is important for every individual child as it will ensure meaningful connection to family, culture and community is maintained. The Australian Government must ensure these plans are developed for all children in OoHC, with the child's family and community.**

Protection of Privacy [article 16] (concluding observation 42)

45. Australia's joint fifth and sixth report to the UNCRC fails to respond to the Committee's recommendation that Australia enact comprehensive national legislation enshrining the right to privacy, or the recommendation that Australia establish child-specific and child-friendly mechanisms to increase the protection of children involved in penal proceedings. The Committed noted its concern about the inadequacy of privacy protection for children involved in penal proceedings, including legislation in the Northern Territory permitting the publication of personal details of a person, including minors, who has carried-out "anti-social behavior."
46. Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**The Beijing Rules**) which states that: *'The juvenile's right to privacy shall be*

respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling and in principle, no information that may lead to the identification of a juvenile offender shall be published.'

47. The NT Royal Commission found that contrary to the Beijing Rules to which Australia is a party, proceedings in the Youth Justice Court are open to the public and identifying material about youth involved in proceedings may be published. The NT Royal Commission heard that media reporting identifying young offenders can affect their prospects of rehabilitation, their sense of identify and their connection to the community. This impact can be further exacerbated by posting an offender's name and photograph on social media. Aboriginal children in the Northern Territory have been 'named and shamed' through NT Police social media message boards and in press photography in the *Centralian Advocate*, an Alice Springs newspaper.^{xviii}
48. The Northern Territory Government supported the NT Royal Commission's recommendation that proceedings under the *Youth Justice Act* (NT) should be heard in closed court, similar to child protection proceedings under the *Care and Protection of Children Act* (NT). Northern Territory legislation should be brought into line with that of other states, including prohibiting the publication of any identifying material on social or other media about suspected children and young people.^{xix}
49. **The Australian Government encourage the implementation of legislative reforms enshrining a young person's right to privacy.**

V. Violence against Children

Abuse and neglect [article 19], sexual exploitation and abuse [article 34] and the availability of children's helplines

50. The Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (**NT Board of Inquiry**) noted that current mechanisms put in place to address the issue of child sexual abuse, are not child-centred and fail to address the underlying barriers to reporting.^{xx} The report noted that while some reports of suspected child sexual abuse are made to the relevant authorities, there is, at best, a reluctance to make reports and, at worst, a failure to do so. In particular, children and young people who are exposed to sexual violence are often reluctant to report this to the relevant authorities.^{xxi}
51. The NT Board of Inquiry also highlighted that investigation and court procedures for child victims are extraordinarily traumatic. The report noted that a more child-friendly approach is required; 'best practice would certainly suggest an environment which decreases emotional stress on young people in these pressured situations.' Other states and countries have moved towards a more child-centred approach to disclosing, investigating and prosecuting child sexual abuse matters. The Nordic 'Barnahus Model',^{xxii} which has been adapted from the Children' Advocacy Centre model in the United States,^{xxiii} ensures

that all services are delivered under one roof, including the forensic interview, medical examination and child/family therapy. This model, which is currently being implemented in the United Kingdom, is gaining attention as international best practice in helping to ensure access to all necessary supports, and encouraging disclosures of child sexual abuse.^{xxiv}

52. The Australian Government investigate options for a more child-centred approach to disclosure and investigation of child sexual abuse.

53. The NT Board of Inquiry noted ongoing concerns with the adequacy of the existing Sexual Assault Referral Centres (**SARC**), and recommended an urgent upgrade to these facilities to increase capacity to respond to sexual assault cases, particularly in remote communities. Following the Board of Inquiry's report, funding for SARCs was increased, and a mobile outreach service known as SARC-MOS was funded to deliver services and to victims of child sexual abuse in remote areas from July 2008, however the funding for this program ceased in early 2016 and has not been replaced. There is currently no funding for the provision of ongoing counselling services by SARC to children who return to remote communities.

54. The Australian Government support its jurisdictions to provide sexual assault services including counselling for child victims of sexual assault and sexual abuse in remote areas.

55. The establishment of a confidential children's helpline may also help to address the barriers faced by children and young people in reporting sexual violence and assault by providing easy to access, confidential advice and support. Similar helplines are well-established worldwide, especially throughout Europe, and they have been reported to provide a reliable means of reporting accurately on sexual violence, supporting victims with counselling and referral, and calling attention to gaps in child protection systems.^{xxv}

56. The Australian Government Consider implementing a *confidential* and more comprehensive children's helpline, adopting the approach of the UK and Europe.

57. Australia's joint fifth and sixth report to the UNCRC did not respond to the Committee's concern that children receiving health services, particularly sexual and reproductive health services, are not ensured their right to privacy. The Northern Territory is currently the only jurisdiction in Australia that has universal mandatory reporting, requiring every adult to report suspected child abuse or neglect.^{xxvi}

58. The recent Royal Commission into Institutional Responses to Child Sexual Abuse in Australia made a series of recommendations aimed at achieving a nationally consistent approach to mandatory reporting and ensuring that reporters have access to guidelines and experts to provide timely advice on their reporting obligations.

59. AMSANT recently compiled a report of a series of community consultations in the Northern Territory, detailing Aboriginal community voices on proposed child protection and youth

justice reforms in the Northern Territory. The report identified unintended consequences of the universal mandatory reporting requirements, namely that these requirements are causing children and young people who are victims of abuse or assault to feel that they have nobody that they can confidentially approach for support.^{xxvii}

- 60. The Australian Government urge the review of universal mandatory reporting requirements in the Northern Territory, in light of evidence of unintended negative consequences and in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.**

VI. Family environment and alternative care

Assistance to parents and provision of childcare services [article 18] (concluding observation 50)

61. During this reporting cycle, Aboriginal people in the Northern Territory have continued to experience a lack of access to child care services, family support and early intervention services, particularly in remote communities. There is a critical need for universal access to comprehensive, culturally appropriate primary health care incorporating quality antenatal and postnatal care, nurse home visitation, parenting programs, intensive child development programs, and 2 years preschool.^{xxviii}
62. In its joint fifth and sixth report, the Australian Government notes the introduction of Intensive Family Support Services funded since 2010. However this service is not available Territory-wide. Where the vast majority of people engaging with IFSS are Aboriginal, Aboriginal community controlled organisations, including health services, should be the preferred providers of this service. The accessibility of these services must be increased so that they are available to all families throughout the Northern Territory. This could be done on an outreach basis.
- 63. The Australian Government ensure that comprehensive, culturally appropriate intensive family support services are available universally across urban, regional and remote communities.**
- 64. The Australian Government adopt a public health approach to ensure that the weight of investment is shifted from the high cost statutory end of the system to the preventative measures of primary and secondary interventions, leading to ongoing cost reductions at the statutory end over time.**

Separation from parents [article 9] and children deprived of family environment [article 20] (concluding observation 52)

65. On 30 June 2017, 1049 children were placed in out-of-home-care (**OoHC**), 89% of these were Aboriginal yet only 31.9% were placed with Aboriginal carers. Only one Aboriginal-controlled organisation is currently funded to provide OoHC services in the Northern Territory. Evidence provided to the NT Royal Commission detailed failing of Territory Families to identify suitable kinship carers due to a lack of understanding of kinship connections in Aboriginal culture.
66. The NT Royal Commission reported that there is a chronic shortage of Aboriginal foster and kinship carers especially in remote communities, and carers have reported feeling unsupported. There has been limited identification of kinship carers for Aboriginal children. To address this shortage, expensive placements in family day care centres and residential care facilities have been purchased, at great expense and with negative outcomes for children, families and communities. The majority of children placed in these options are more than likely to be placed in a non-Aboriginal placement heightening the risk of the child losing the connection to their kin and culture.
67. Aboriginal children powerfully described to the NT Royal Commission their experiences in OoHC and what child protection authorities need to change:

No matter what colour of their skin, we are all one blood just different colour. Still love them like they are your own kid. Welfare needs to show that, no matter what kid comes in, treat them like your own children, don't treat them different than your own kid. Welfare needs to understand it. Kids have a brain and heart and feeling, their hearts are soft and can break easy. But in their brain they remember everything. In their brain they are going through a hard life because what you are doing to them. They are trying to find a good track. But welfare take them off the track. If you treat them well they will turn around and have respect back and love you.^{xxix}

68. The NT Royal Commission recommended a range of strategies to increase the number of foster and kinship carers, to improve support for carers, to improve engagement with children in care and their parents, to review the structure of the OoHC system to better meet the needs of Aboriginal children, and to increase the number of Aboriginal children being placed with Aboriginal families.^{xxx}
69. The Northern Territory Government together with APO NT and the Secretariat of National Aboriginal and Islander Child Care (**SNAICC**) committed to the development of a comprehensive strategy for the establishment of Aboriginal-led and managed OoHC and

family support services in the Northern Territory. (OoHC is discussed further in 'Preservation of Identity' above).

70. **The Australian Government support the Northern Territory in implementing and adequately resourcing the Aboriginal OoHC Strategy, to ensure better supports for Aboriginal foster and kinship carers and greater recognition of improved health and wellbeing outcomes for children who maintain connection to family and community.**
71. Aboriginal children continue to be significantly over-represented in the child protection system and OoHC. The Northern Territory has the highest rates of children on care and protection orders and living in OoHC in the country.^{xxxix} Between 2011 and 2015 the number of children in OoHC rose by an average of 16% per year—a growth entirely due to the increased numbers of Aboriginal children who had been removed from their families.^{xxxix}
72. The NT Royal Commission found that the OoHC system is failing to meet some of the minimum standards set by government legislation and policy. It described the system as ineffective and unsustainable, noting that it is likely to increase the adversity faced by some children in care.^{xxxix} OoHC services for Aboriginal children should be transferred to Aboriginal community controlled organisations. Evidence demonstrates that culturally competent services lead to increased access to services by Aboriginal children and their families.^{xxxix}
73. **The Australian Government support the transfer of provision of OoHC services for Aboriginal children to community controlled organisations wherever possible to support the placement of Aboriginal children and young people with kinship or Aboriginal foster carers and the retention of culture, identity and language.**
74. **The Australian Government adopt the Council of Europe 'Rights of Children at risk and in care'^{xxxix} including specific rights for children living in residential institutions, guidelines and quality standards. This would ensure the placement of a child remains the exception and that the placement must guarantee full enjoyment of the child's fundamental rights.**

Family reunification [article 10]

75. The NT Royal Commission found that despite the express provisions in Territory legislation, policy and guidelines, Territory Families has not appropriately planned for or managed the interests of many young people leaving OoHC.^{xxxix} The lack of support for these children when transitioning from OoHC arrangements leaves them incredibly vulnerable and more likely to end up without stable accommodation or in contact with the criminal justice system.
76. **The Australian Government should encourage all jurisdictions – following the example of South Australia and Tasmania – including the Northern Territory to**

commit to extending OoHC until 21 years of age. Transition from care should be further strengthened by:

- a) **Mandatory exit planning, an exit interview and support provided to assist in the transition from care, which should continue up until the age of 25 years, if desired or otherwise appropriate**
- b) **Enshrining these measures in legislation to keep government to account**
- c) **Ensuring access to support services; the development of a one-on-one personal relationship through this transitional period will increase the likelihood that services will be accessed.**

VII. Disability, basic health and welfare

Measures taken for children with disabilities [article 23] (concluding observation 58)

77. Aboriginal children in Australia are twice as likely to have a disability as non-Aboriginal children^{xxxvii} and are also experiencing developmental vulnerabilities at significantly greater rates. Data from the Australian Early Development Census (AEDC) demonstrates the high prevalence of developmental vulnerability in Aboriginal children across the Northern Territory, with 37% developmentally vulnerable in one or more domains and 23% across two or more domains.^{xxxviii} The impacts of childhood disability continue to shape the trajectory of life for many Aboriginal people, who are significantly over-represented as a population among homeless people, in the criminal and juvenile justice systems, and in the care and protection system.^{xxxix}
78. A 2017 Report on the delivery of outcomes under the *National Disability Strategy 2010-2020* highlighted ongoing barriers to accessing disability supports and specialist care for all people living with a disability in Australia, and noted the particular challenges of access for Aboriginal and Torres Strait Islander people.^{xl}
79. When the barriers to access the right to health for an Aboriginal person intersect with those for a person with disability, the consequence for a child who is Aboriginal and with disability is a heightened likelihood of going through their childhood with an undetected and unsupported disability. The effect of this carries forward into their schooling years and places them on a lifelong trajectory of disadvantage.
80. **The Australian Government ensure universal access to culturally appropriate early intervention and disability support for Aboriginal children including access to necessary health professionals, such as paediatricians and specialist allied health staff, for diagnosis and ongoing treatment.**
81. Australia is currently in the process of rolling out a National Disability Insurance Scheme (NDIS) with transition expected to be complete by 2020. While the NDIS presents an opportunity for many Aboriginal children with disabilities to engage with the disability service system in a substantive way for the first time – including through the Early

Childhood Early Intervention gateway for children up to six years of age – there remain many challenges to overcome for this to be an effective scheme for Aboriginal people, including:

- a) The NDIS is an individualist, competitive market approach, not a social model approach as promoted by the Convention on the Rights of Persons with Disabilities. This approach fails to incentivise providers to build community capacity or demonstrate cultural competencies and is yet to adequately demonstrate how services will be provided in areas where markets are thin or non-existent.
- b) As noted above, lack of access to health professionals, particularly in remote areas, will mean difficulty for many in obtaining diagnosis and proof of eligibility to access supports under the scheme.
- c) The Productivity Commission has acknowledged the disability workforce is not currently growing quickly enough to meet demand within the NDIS, nor is the workforce adequately responding to the cultural needs of Aboriginal people.

82. The competitive market approach to the NDIS will not provide the desired outcomes for Aboriginal communities and children, particularly in remote areas where markets are thin or non-existent. The Australian Government must consider a different approach for these communities whereby the funds for eligible clients are directly commissioned to existing health service providers and/or pooled within regional service hubs for provision of outreach services.

Right to Life, Survival and Development [article 6]

83. Rates of infant and child mortality remain higher for Aboriginal children in Australia, although these rates have greatly improved in recent decades largely due to improved access to primary health care. Between 2011 and 2015 for children aged 1-4 years the mortality rates was 2.1 times higher for Aboriginal children nationally, and 3.6 times higher in the Northern Territory.^{xii}

84. Improvements in infant and child mortality have resulted primarily from improved access to primary health care. The Australian Government must prioritise universal access to culturally appropriate health care for Aboriginal children and their families, particularly in remote areas.

85. The first few years of life, from conception to pre-school age, are essential in establishing the path that a child will follow towards adult health and wellbeing. In Aboriginal communities in the Northern Territory, protective factors for children include attachment to culture and being nurtured within broad family networks. Adverse events may include imprisonment of a parent, family or community violence, parental substance misuse, poverty and neglect.

86. Children from disadvantaged backgrounds often face multiple physical, psychological and emotional hardships and stressors. The combined effects of these hardships can take a

heavy toll on children's health, leading to high levels of toxic stress and suboptimal development. Aboriginal children in the Northern Territory have a greater chance of exposure to the cumulative impacts of multiple stressors than do non-Aboriginal children. However, we know that early childhood intervention is the most cost-effective intervention to break cycles of intergenerational disadvantage and trauma and improve long-term outcomes.

87. **A child health and early childhood development core services model has been developed for the Northern Territory in cooperation with the Australian Government's Department of Health, and must be fully implemented. This model identifies the need for universal, indicated and targeted measures to be provided across the following services; quality antenatal and postnatal care, nurse home visitation, parenting programs, intensive child development programs, and 2 years preschool.^{xliii}**

Health and health services [article 24] (concluding observation 60 and 61)

88. Aboriginal children continue to experience poorer health outcomes across a range of indicators including; infant and child mortality, lower birth weights, higher rates of skin and ear infections, behavioural and emotional disorders and cognitive impairments.^{xliii}

89. The Aboriginal Community Controlled Health Service (**ACCHS**) sector bring with them strong relationships with communities, understanding of community needs, cultural competence, and a permanent presence in Aboriginal communities. Studies have shown that Aboriginal controlled health services are 23% better at attracting and retaining Aboriginal clients than mainstream providers.^{xliiv} These services are cultural safe and are achieving increased sustainable Aboriginal employment and leadership capacity in the health sector.

90. **The Australian Government support the expansion of the suite of core funded services for primary health care to ensure the capacity of the Aboriginal Primary Health Care sector to create more efficient and effective health outcomes for Aboriginal children and their families. This should include funding for early childhood programs, mental health and alcohol and other drug services, family support and comprehensive chronic disease prevention programs.**

Mental Health [article 24] (concluding observation 65)

91. The level of funding of mental health services in Australia is substantially lower than that of other developed countries and is not commensurate with the high levels of need apparent within many Aboriginal communities. Australia's Longitudinal Study of Indigenous Children (LSIC) showed that 23% of Aboriginal children were at high risk of clinically significant emotional and behavioural difficulties.^{xliv} From 2011-15, the Aboriginal

suicide rate was twice that of the non-Aboriginal population and 3.9 times higher among those aged 15–24^{xlvi}.

- 92. Integrating social and emotional wellbeing, mental health and alcohol and other drugs into Primary Health Care services is the most cost-effective approach to the delivery of mental health services throughout rural and remote areas. The Australian Government should adopt and fund this model for all ACCHSs, as recommended by the 2015 National Mental Health Commission’s Review of Mental Health Programmes, *Contributing Lives, Thriving Communities*.^{xlvii}**

Sexual and reproductive health [article 24] (concluding observation 67)

93. As noted in Australia’s joint fifth and sixth report to the UNCRC, the proportion of births to teenage mothers remains high among Aboriginal women as compared with the rest of the population, with one in 4 (24%) teenage mothers identified as Aboriginal in 2015^{xlviii}.
94. Rates of sexually transmitted infections among young Aboriginal people in Australia also remain alarmingly high in many places. There are currently four jurisdictions across northern and central Australia, including the Northern Territory, which are experiencing an outbreak of infectious syphilis affecting predominantly young (15-29 year old) Aboriginal people. 823 cases have been reported in the Northern Territory since the outbreak began in 2013, 64% of whom are 15-29 years of age.^{xlix}
95. A national strategic approach was developed and endorsed in 2017 by the Australian Health Minister’s Advisory Council for an enhanced response to the disproportionately high rates of sexually transmitted infections and blood born viruses among Aboriginal people, with a commitment of \$8.8m in funding to support the enhanced response. APO NT and NAAJA support the Government’s commitment to this response but note that more proactive and sustainable long-term solutions are needed to prevent an outbreak such as this from occurring again.
- 96. The Australian Government ensure adequate resourcing of primary health care to provide appropriate:**
- a) Quality antenatal and postnatal care and education**
 - b) Training and support for Aboriginal midwives and Aboriginal Health Practitioners for women’s health consults.**
 - c) Health promotion activities such as community sexual health education campaigns that are culturally relevant and in an accessible language.**
97. **The Australian Government continue to work closely with Aboriginal Community Controlled Health Services and their jurisdictional peak bodies in the syphilis outbreak regions to implement the national strategic approach.**

Measures to protect children from substance abuse [article 33]

98. While smoking rates are declining nationally since the introduction of key tobacco control measures, smoking rates of Aboriginal people who live in remote areas have not dropped in the past 20 years.ⁱ The most recent National Aboriginal and Torres Strait Islander Health Survey reported that 21.3% of young Aboriginal people aged 15–17 were current daily smokers, compared to 4.1% of non-Aboriginal young people in the same age group.ⁱⁱ
99. The inequity of gains among population groups is effectively widening the gap in health status between Aboriginal and non-Aboriginal people Australia wide, but most especially in remote Northern Territory. To reduce smoking among this population, it is essential to address poor social determinants of health and other life stressors which are a barrier to successfully quitting experienced by many Aboriginal people and therefore contribute to the normalisation of smoking in many young people's communities.
100. **The Australian Government support the introduction of legislation in all jurisdictions to ensure reduced exposure to tobacco for children, including the prohibition of children under 18 selling tobacco products, and increasing the number of smoke-free public areas.**
101. **The Australian Government provide adequate resourcing for culturally appropriate and language-specific education and community campaigns on the harms of tobacco use.**
102. Fetal Alcohol Spectrum Disorder (**FASD**) is the term used to describe the lifelong physical and/or neurodevelopmental impairments that can result from maternal consumption of alcohol during pregnancy. While there are no reliable figures on the prevalence of FASD in Australia, based on the data that is available it is suspected that rates are higher among Aboriginal children and communities.ⁱⁱⁱ
103. It is likely that a significant number of Aboriginal children and families in the Northern Territory are affected by FASD due to the high prevalence of alcohol related harms experienced by this group. Some 30% of Aboriginal adults in the Northern Territory report drinking alcohol at a risky or high risk level, and one in eight women report alcohol consumption at their first antenatal visit.ⁱⁱⁱⁱ We note the Australian and Northern Territory Governments are both in the process of developing FASD Strategies with a strong focus on prevention to be launched before the end of 2018.
104. **The Australian Government ensure the commitment of adequate resourcing to achieve the goals outlined in the National FASD Strategy, and jurisdictional equivalents. Allocation of resources must be responsive to the high burden of alcohol-related harms in Aboriginal communities.**

Standard of living and measures including housing, poverty and inequality [Article 27]

105. During this reporting cycle, unacceptable levels of overcrowding and homelessness have persisted in Aboriginal communities which have demonstrated links to poor health, education and family outcomes.^{liv} In the Northern Territory, some 53% of Aboriginal people are living in overcrowded dwellings, with these rates increasing significantly with degree of remoteness.^{lv} In the Northern Territory, almost 80% of Aboriginal people reside in remote or very remote areas.
106. Access to adequate housing is a basic human right and social determinant which is fundamental to the achievement of good health, wellbeing and life outcomes of children and their families. This is demonstrated in a recent study from the Northern Territory which showed that overcrowding is a major determinant of poor school attendance.^{lvi}
107. Poor housing, situations of overcrowding and poverty are key determinants for acute rheumatic fever (**ARF**) which can lead to rheumatic heart disease (**RHD**), an infectious disease virtually unknown in the broader Australian community but prevalent in many communities in Northern Australia.
108. Nationally, in 2015 the prevalence of RHD for Aboriginal Australians was 37 times the rate for other Australians, and in the Northern Territory 98% of all cases of ARF recorded between 2011 and 2015 were among Aboriginal people. ARF particularly impacts children and young adults: for Aboriginal people, 51% of cases occurred in children aged 5–14, and 27% in the 15–24 age group.^{lvii}
109. **The Australian Government increase investment in housing stock for Aboriginal communities, including in urban areas, to reduce overcrowding. Allocation of investment must take into account population growth and ensuring adequate resourcing for cyclical repairs and maintenance.**
110. **The Australian Government must ensure housing strategies for remote communities are planned in conjunction with the delivery of essential service infrastructure and capacity such as electricity, water, sewerage and roads, recognising that houses can only produce a healthy environment if they are serviced.**
111. Maintaining a connection to country is vital for the health and well-being of many remote Aboriginal people in the Northern Territory. For many, this means living on remote homelands. In a significant 1998 study published in the *Australian and New Zealand Journal of Public Health*, McDermott *et al* released their finding in respect of the comparative health outcomes between those living on country, and those living in a centralised community. It was found that those living on country had lower rates of diabetes, cardiovascular risk factors, hospitalisation and death.^{lviii} A follow-up study, carried out a decade on in 2008, showed that those living on country continued to have

lower rates of the above health incidents in comparison to the average rates for Aboriginal people living in the Northern Territory.^{lix}

112. **The Australian Government assist Aboriginal people to live on country by supporting increased funding to homelands housing, maintenance, and establishment of essential services.**
113. Land tenure reforms introduced by the Australian Government have removed Aboriginal control as a consequence of passing ownership and control of housing from Aboriginal community-controlled organisations to state public housing authorities. This is in contravention of the right to administer housing and other programs that is afforded under Article 23 of the UNDRIP.
114. Failure to resolve tenure arrangements under the current government housing policy has seen a number of communities miss out on funding. In Central Australia, five communities initially refused to consent to long term leasing over their community. However, when they did agree to forty-year housing leases, the Government shifted its policy position from forty to ninety-year leases and then a community township leasing model. Without housing leases in place, these communities are missing out on much needed capital investment in housing and repairs and maintenance. Currently, these communities are only receiving essential 'make safe' repairs, despite continuing to pay rent to the Northern Territory Government.
115. **The Australian Government support the establishment of Aboriginal community-controlled housing organisations, to manage new and existing housing stock to ensure culturally appropriate decision making, and provide opportunities for local skills and employment.**
116. **The Australian Government support the development of a remote community controlled housing system which prioritises the physical and mental health of people in remote communities, provides for greater Aboriginal control over housing, and supports the rebuilding of Aboriginal community-controlled housing organisations.**

VIII. Education, leisure and cultural activities

The right to education [article 28] and the aims of education [article 29]

117. Aboriginal children in the Northern Territory experience the worst educational outcomes in Australia. Results from the 2014 National Assessment Program for Literacy and Numeracy (**NAPLAN**) in the Northern Territory revealed on average only 34% of Aboriginal students were at or above the benchmark for reading, compared with 91% for non-Aboriginal students.

118. Similarly, in Term 1 of 2018 the attendance gaps between Aboriginal and non-Aboriginal students, ranged from 21-22% in the primary school years (Years 1–6), to 29% in Year 10-12.^{lx} In 2014-15, only 30% of young Aboriginal people in the Northern Territory (20-24 years) had attained Year 12 compared with 89% of non-Aboriginal 20-24 year olds.^{lxi} There has been no meaningful change in attendance rates for Aboriginal children since COAG set its target in 2014. In fact attendance rates in remote areas are worse.
119. **The Australian Government must commit to implementing evidence-based, appropriately resourced and designed education for all school students. This should include the development of individual learning plans for students with disability, developmental delay or mental health issues that include access to family support and therapeutic services.**
120. **The Australian Government should reform education funding to ensure investment is distributed according to need, and in particular that public schools are adequately resourced to meet the needs of their students.**
121. There remains a lack of access to bilingual education for many Aboriginal children in Australia. Bilingual education programs create a strong link between the community and its culture, and decrease the alienation felt by Aboriginal students in schools where teaching is by members of the dominant community, in language which is not the students' mother tongue.^{lxii}
122. It has been demonstrated that Aboriginal youth in remote areas who speak an Indigenous language are less likely to experience risk factors associated with poor wellbeing.^{lxiii} International and Australian research also indicates better educational outcomes for children learning at school initially in their first language.^{lxiv}
123. **The Australian Government should work with state and territory governments to provide adequately resourced bilingual school education programs for Aboriginal communities from the earliest years of learning, where the child's first language is an Indigenous language.**
124. The Australian curriculum continues to lack cultural relevance for Aboriginal children in Australia. Evidence from research examining schooling and education has found that teaching programs characterised by a high degree of Aboriginal involvement and control produced significant benefits for participants, and that engaging parents in children's learning was critical.^{lxv} Prioritising Aboriginal employment in schools is an essential component to increasing overall Aboriginal involvement and cultural competence and responsiveness within schools.^{lxvi}
125. **Provision of Aboriginal scholarships for further education and training to increase the employment of Aboriginal people in teaching and other positions within our school systems.**

Cultural rights of children belonging to Indigenous groups [Article 30]

126. We refer the UNCRC to the comments made in the introduction of this report in relation to Article 30 and reiterate that the institutions, policies and legislation enacted by the Australian Government continue to fall short in acknowledging and supporting the cultural strengths of Aboriginal children and their families. It is our position that this failure is fundamental to the continued disparity in outcomes for Australia's Aboriginal children.
127. **The Australian Government ensure that the development and implementation of its legislation, policies and practices relevant to children across its jurisdictions promote the rights of all Aboriginal children to enjoy their language and culture.**

IX. Special protection measures

Administration of Juvenile Justice [article 40] (concluding observation 84)

128. Despite repeated recommendations by the Committee, Australian Governments have failed to raise the minimum age of criminal responsibility. Currently in Australia children as young as 10 are considered criminally responsible and can be subjected to criminal hearings and sanctions. This is out of line with the Committee's position, and standards upheld throughout the rest of the world where the median minimum age is 13.5 years.^{lxvii} The NT Royal Commission recommended that the minimum age of criminal responsibility be increased to 12 years of age, and the Northern Territory Government has supported this recommendation in principle. Legislation should be enacted to raise the minimum age of criminal responsibility in the Northern Territory without further delay.
129. **The Australian Government work with all jurisdictions to increase the minimum age of criminal responsibility to at least 12 years.**
130. In Central Australia, the Barkley and other remote regions of the Northern Territory there is no specialist youth court to ensure that the unique needs and vulnerabilities of children in the justice system are being met. Nor is there adequate specialist professional development and training for judges, court staff, prosecutors and lawyers involved in youth matters before the court. In the Northern Territory, there are no formal mechanisms for Aboriginal Elders and those with cultural authority to participate in court processes, as is the case in other jurisdictions with established Koori Courts such as Victoria and NSW.
131. The establishment of formal, remunerated pathways for Elders to participate in court processes is crucial to promoting culturally-strengthening initiatives across the youth justice system. International examples such as the lay advocate model in New Zealand, where advocates ensure the Court is made aware of all cultural matters relevant to proceedings, and the use of Gladue Reports in Canada, which are pre-sentence reports written by an Aboriginal person that provide recommendations to the court about what an

appropriate sentence might be, and include information about the Aboriginal persons' background, should be considered and adapted to the NT context.

132. **The Australian Government:**

- a) **Adopt a youth-specific, therapeutic and culturally strengthening approach to the administration of youth justice matters by expanding and adequately resourcing the Youth Justice Court to sit in urban, regional and remote areas**
- b) **Implement specialist training of judges, court staff, prosecutors and lawyers involved in youth matters including child and adolescent development, neuro-disability, trauma and cross-cultural training**
- c) **Introduce mechanisms to ensure Aboriginal Elders and those with cultural authority can actively participate in court processes**

133. Children and young people who come into contact with the youth justice and care and protection systems have complex and overlapping vulnerabilities, needs and challenges which are not being addressed. Currently in the Northern Territory, there is no coherent, comprehensive process to assess the needs of vulnerable children and their families, to ensure that a tailored package of supports can be developed to meet the needs of the young person. New Zealand has developed a tool called Tuituia which is based on detailed work to develop and validate measures across domains that are important in directing action to support, service and hold young people and families accountable.^{lxviii} A similar culturally appropriate, comprehensive assessment tool should be considered for the Northern Territory.

134. In particular, it is critical that the youth justice system addresses the complex connection between youth offending, mental illness, developmental disorders and disability. There is a significant under-identification of disability among Aboriginal young people, and experts suggest that disability should be an assumed factor for all young people interacting with the youth justice system.^{lxix} This is borne out by a 2015-16 study of young people at the Banksia Hill Detention Centre in Western Australia that found that that 89% of the 10 to 17 year olds detained had at least one domain of severe neurodevelopmental impairment.^{lxx} Thirty six per cent of the children detained at the facility were diagnosed with FASD – the highest prevalence rate of FASD in a youth justice setting in the world.^{lxxi}

135. Additional steps should be taken by the youth justice system to understand the causes of a young person's behaviour, such as comprehensive neurodevelopmental assessments, rather than disciplinary approaches that are likely to exacerbate those behaviours.

136. **The Australian Government ensure that all young people in contact with the youth justice system have access to comprehensive holistic assessments, including neurodevelopmental assessment, that are linked in with appropriate therapy and support services to meet their needs.**

Detention as a last resort [articles 37 and 40 (3)-(4)]

137. The provisions of the UNCRC, which emphasize diversionary options and enshrine the principle of detention as a measure of last resort, are often not realised due to a lack of alternative sanctions and diversion options. Reducing the gross over-representation of Aboriginal young people in detention requires a greater commitment to non-custodial sentencing alternatives. Immediate priority should be given to identifying, supporting and adequately funding local Aboriginal-controlled organisations to deliver therapeutic programs such as healing camps for young people.
138. Research indicates that an Aboriginal child is less likely to be diverted when compared to a non-Aboriginal child.^{lxxii} In 2015, 32.6% of Aboriginal children and young people accused of offences were diverted, compared with 47.9% of non-Aboriginal children and young people.^{lxxiii} Inconsistent police decision-making and lack of transparency around diversion decisions affects Aboriginal young people's access to diversion and results in a higher rate of entrenchment in the more punitive aspects of the youth justice system.
139. In the Northern Territory, diversion programs are not sufficient to meet demand and have historically been under-resourced particularly in remote communities. There needs to be a greater emphasis on diversion across the youth justice system. Coordinated and sustained efforts must be made to ensure that opportunities for diversion are available at critical points including prior to first contact with police, at the time of police contact and at court.
140. Diversion should be underpinned by therapeutic and restorative justice principles and include a range of intervention strategies such as identifying young people at risk of entering the youth justice system, diversion by police at initial contact, and referral to services like drug and alcohol counselling, culturally strengthening rehabilitation programs and youth justice conferencing.
141. The youth justice system in New Zealand is premised upon the diversionary principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter. In this system, roughly 80% of young offenders never come before the Court, and are instead dealt with by Police Youth Aid, the specialist youth division of police. It is estimated that 83% of children dealt with by alternative action through Police Youth Aid never reoffend.^{lxxiv}
142. **The Australian Government:**
- a) Amend the *Youth Justice Act* (NT) to facilitate greater access to diversion and expand the range of youth diversion programs to ensure availability in urban, regional and remote areas**
 - b) Invest in non-custodial sentencing alternatives, including supporting and resourcing Aboriginal communities and organisations to develop and deliver programs on country**

143. There continue to be high numbers of Aboriginal young people on remand in the Northern Territory. On an average day in 2016–17, more than three-quarters (77%) of young people in detention were unsentenced,^{lxxv} suggesting that detention is not a genuine measure of last resort.
144. The Northern Territory had the highest rate of young people aged 10-17 in unsentenced detention on average day in 2016-17 (12 per 10,000). 93 per cent of young people in unsentenced detention on an average day in 2016-17 were Aboriginal.^{lxxvi}
145. Aboriginal children are often declined bail due to issues related to poverty, whether it is overcrowded housing, limited support services and resources for young people and families (particularly for remote communities), children’s vulnerabilities and disabilities that see them remanded in custody for safety or treatment, or the infrequency and inadequacy of sitting times of Youth Justice Courts in remote Aboriginal communities.
146. APO NT and NAAJA welcome the introduction of supported bail accommodation services in Darwin and Alice Springs. However, the absence of bail support programs in remote Aboriginal communities remains a concern and needs to be immediately addressed for any real change to occur. Young people should have access to tailored case management plans, incorporating educational, social and community-based activities and programs to address offending behaviours, education, housing, health and other needs.
147. In order to reduce the high numbers of young people on remand, legislation must be enacted to include youth-specific, pro-bail provisions that reflect the therapeutic and rehabilitative aims of the youth justice system and meet the specific needs of Aboriginal young people. Remand in custody for children and young people should be the option of last resort.
148. **The Australian Government should expand the range of supported bail accommodation and culturally responsive support services available to children in urban, regional and remote areas of the Northern Territory.**
149. **The Australian Government should ensures its jurisdictions develop pro-bail, youth specific provisions bail laws to reduce the high number of children on remand.**

Children deprived of their liberty [article 37 (b)-(d)]

Policing practices

150. NAAJA and APO NT hold serious concerns that police practices in the Northern Territory are inconsistent with the provisions of Article 37 and Article 40, including promoting a child’s sense of dignity and worth. Aboriginal young people are more likely to be denied access to youth diversion, taken to court, overcharged,^{lxxvii} denied access to programs, and not have their vulnerabilities or trauma recognised.

151. The principle of arrest as a measure of last resort is not routinely complied with.^{lxxviii} The *Youth Justice Act* (NT) requires police to proceed by way of summons (notice to appear in court) rather than by arrest except in prescribed circumstances.^{lxxix} The NT Royal Commission found that police have failed to comply with this requirement.^{lxxx} Particularly concerning is the arrest of young people at school:

I was arrested at school by the police and taken to the Watch House. I didn't like being arrested at my school, this happened once before as well, because I felt a lot of shame with the police coming there. They could have picked me up from [my] house^{lxxxi}

152. The NT Royal Commission found that children and young people were held in police custody at the watch house for unreasonably long periods of time.^{lxxxii} In one instance, three young people from Alice Springs aged 12, 13 and 14 were held for over 30 hours.^{lxxxiii} This practice has continued since the NT Royal Commission. A recent example from Alice Springs saw a 12 year old child with no prior convictions detained in a police watch house for 36 hours. Conditions in police watch houses, especially in remote communities, are inappropriate for the detention of children, unhygienic and do not afford privacy. In many remote police stations, young Aboriginal people who are in custody are often placed in cells with adult prisoners.
153. During this reporting period, Aboriginal children in police custody have not routinely had access to prompt legal advice and other assistance due to poor police training, inconsistent police practices and the lack of a mandated requirement for notification and access to a lawyer. The Commonwealth and Northern Territory governments have agreed to implement a custody notification service that will enable any Aboriginal young person (or adult) who is arrested or detained by police to access a NAAJA lawyer by phone for the purpose of legal advice prior to interview, and before any investigatory or forensic procedures are employed. The service will also seek to check on the young person's wellbeing, safety and treatment, which will reduce Aboriginal young people's risk of harm or injury while in police custody.
154. Under the UNCRC, Aboriginal children have the right to the free assistance of an interpreter in their own language for any dealings with police, whether it is questioning, searches, obtaining forensic material, arrest or custody. In NAAJA's experience, there is a wholly inadequate use of Aboriginal-language interpreters for the questioning of Aboriginal children.
155. **The Australian Government work with the Northern Territory Government to ensure that:**
- (a) Consistent with the recommendation of the NT Royal Commission, a specialist youth division is established and youth-orientated police procedures and practices are introduced and enforced, consistent with the UNCRC**

- (b) Police officers are trained in youth engagement, cultural competency, use of interpreters, the impact of cognitive and intellectual disabilities such as FASD, the effects of trauma, and childhood and adolescent brain development**
- (c) A custody notification system is introduced without further delay, and includes adequate resourcing for Aboriginal and Torres Strait Islander legal services to provide legal advice and representation, and check on the wellbeing, safety and treatment of young people**
- (d) Immediate investment in infrastructure upgrades at police stations and court houses, especially in remote communities, to ensure that holding cells are appropriate for the detention of children**

Youth detention

156. Since the Committee's last Concluding Observations on Australia, conditions in youth detention centres in the Northern Territory failed to meet the basic principles articulated by the Convention, the Havana Rules, Beijing Rules and the Committee's General Comment No. 10. Significant work remains to ensure the youth detention environment in the Northern Territory is genuinely rehabilitative, non-punitive, therapeutic and culturally responsive.
157. During this reporting period, Aboriginal young people continue to be grossly overrepresented in youth detention, representing 94% of the detention population in 2015-16.^{lxxxiv} In June 2018, it was reported that 100% of young people in detention were Aboriginal, and that the proportions have not changed since the NT Royal Commission.^{lxxxv}
158. Many Aboriginal young people bravely came forward to tell the NT Royal Commission about their experiences of youth detention. Their evidence provides a deeper understanding of the injustices and trauma they have faced and is a powerful indictment of the system that continues to fail them.

I feel like it's been a nightmare being locked up as [a] kid. Most of the time I feared for my life at Don Dale. Every night, since I've been locked up as a kid, I have nightmares. I feel like everything that I did, and being in Don Dale meant that I haven't been able to reach my goals in life. I want to tell my story to everyone because I hope that what I did and what happened to me doesn't happen to other kids.^{lxxxvi}

I thought Don Dale was going to make me better but I think it just made me tougher.^{lxxxvii}

... being locked down for all that time, and those other things that used to happen to us inmates in these places, did not make us better, they just made us worse in the head ... going through these kinds of events was another part of the reason why we would go on to offend.^{lxxxviii}

159. Aboriginal young people in detention in the Northern Territory have continued to be subject to abuse and mistreatment. The NT Royal Commission found the detention system failed to comply with basic human rights standards in the treatment of young people. The Commission found:
- youth detention centres were not fit for accommodating, let alone rehabilitating, children and young people;
 - the inadequate facilities put children and young people's health, safety and wellbeing at serious risk;
 - severe, prison-like and unhygienic conditions, and inadequate security due to poor infrastructure, caused children and young people to suffer punishment;
 - children were subject to verbal abuse, physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets;
 - children were dared or bribed to carry out degrading and humiliating acts, or to commit acts of violence on each other;
 - youth justice officers restrained children using force to their head and neck areas, ground stabilised children by throwing them forcefully onto the ground, and applied pressure or body weight to their 'window of safety', being their torso area; and
 - isolation has continued to be used inappropriately, punitively and inconsistently with the *Youth Justice Act* (NT) which has caused suffering to many children and young people and, very likely in some cases, lasting psychological damage.^{lxxxix}
160. Since the NT Royal Commission handed down its report, the Northern Territory Government has introduced amendments to the *Youth Justice Act* (NT) designed to:
- prohibit the use of force, restraints and isolation for the purposes of disciplining a child or young person in detention
 - clearly define and limit the circumstances upon when and how the use of force and restraints can be used towards young people in detention;
 - regulate and restrict the circumstances when strip searches can be conducted; and
 - prohibit the isolation of young people, and clarify the circumstances and ways in which young people can be separated when in detention.
161. NAAJA and APO NT welcome these amendments, however without concurrent changes to policy, procedure, operational philosophy and staffing structure, the experiences of young people in detention in the Northern Territory have changed very little. NAAJA and APO NT continue to hold serious concerns about the treatment of young people in detention^{xc}, including excessive periods of lock downs, lack of access to education, limited or no access to case management services, insufficient access to culturally appropriate health services and mental health psychological services, lack of access to programs and activities, and inadequate facilities to cater for girls and young women in detention. In particular, we remain concerned that access to therapeutic support and cultural programs is often affected by conditions in detention; programs are often cancelled due to staff shortages or as punishment for incidences that young people are involved in.

162. While we acknowledge that there has been significant investment by the Northern Territory Government to improve the physical appearance and infrastructure at Don Dale, the facilities are not utilised in a manner that is conducive to a youth justice model of learning, wellbeing and development. In particular, we remain concerned that the high turnover of staff (many of whom are not trained in child development or trauma informed care), is detrimental to the development of young people in the detention centres.
163. The Northern Territory Government has committed to funding new, purpose-built youth justice facilities in Darwin and Alice Springs. Any secure facilities for the detention of children should be co-designed with the Aboriginal community controlled sector. These should be small, purpose-built therapeutic facilities designed to promote rehabilitation and education, and enable Aboriginal children and young people to maintain connection to their family, community and culture.
164. **The Australian Government:**
- a) take immediate steps to ensure legislation, policies, procedures and practices related to youth detention operations comply with international human rights standards as articulated by the Convention, Beijing Rules, Havana Rules and other applicable instruments**
 - b) ensure staff at youth detention centres are appropriately qualified and receive training in trauma-responsive de-escalation techniques**
 - c) ensure that the Office of the Children’s Commissioner is adequately resourced to perform monitoring functions consistent with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**
 - d) adopt a code of practice/standards for children in youth facilities. These standards could be modelled on the Council of Europe’s 2005 Recommendation on the Rights of Children Living in Residential Institutions.^{xci}**

ⁱ *Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, (November 2017), Volume 2A, 401. The Royal Commission found that staff members from the Department of Correctional Services and the Department of Education had on occasions directed children and young people not to use Aboriginal language.

ⁱⁱ See, eg, George Williams and Daniel Reynolds, *A Charter of Rights for Australia* (2017); Gillian Triggs, *Speaking Up* (2018), 128.

ⁱⁱⁱ *Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, (November 2017), Volume 1, 233.

^{iv} *Ibid*, Volume 4, 9-10.

^v *Ibid*, Volume 4, 17

^{vi} *Ibid*, Volume 3A, 387.

^{vii} *Ibid*, Volume 1, 109.

^{viii} Arney F, McGuinness K and Westby M *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs*. (Centre for Child Development and Education, Menzies School of Health Research 2012)

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- ix His Honour Judge Andrew Becroft, Principal Youth Court Judge for NZ, *It's all Relative: the Absolute Importance of the Family in Youth Justice (a NZ Perspective)*, (2015), 13.
- x Ibid, 7
- xi See e.g *Bringing them home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, (1997), tendered 13 October 2016, 488.
- xii Australian Institute of Health and Welfare, *Permanency planning in child protection, Child welfare series*, No. 64. Cat. no. CWS 58. Canberra: AIHW, (2016), 2.
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- xvi Ibid, Volume 3A, 381.
- xvii Ibid, Volume 3A 404.
- xviii See <https://www.abc.net.au/news/2018-09-28/newspaper-sued-defamation-child-photo-youth-crisis/10316664>.
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- xxv See Marieke Noz. *Child helplines as awareness-raising, referral and reporting mechanisms on sexual violence against children*, Child Helpline International at <https://www.coe.int/t/dg3/>
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