



Submission from the Central Australian  
Aboriginal Legal Aid Service Inc  
to the Commonwealth Senate Community  
Affairs References Committee

Inquiry into Commonwealth Funding and  
Administration of Mental Health Services

July 2011

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# 1 Introduction and Scope of the Submission

The Central Australian Aboriginal Legal Aid Service Inc (**CAALAS**) prepared this submission in response to the Commonwealth Senate Community Affairs References Committee Inquiry into Commonwealth Funding and Administration of Mental Health Services (**'the Inquiry'**).

As discussed at Part 2 below, the core of CAALAS' work involves the provision of legal services in the areas of criminal, civil, family and welfare rights law to Aboriginal people in Central Australia. CAALAS is not therefore an expert on mental health and does not profess to be knowledgeable about Commonwealth funding and administration of mental health services. However, CAALAS is the largest legal practice in Central Australia and represents the vast majority of defendants before the criminal courts in our jurisdiction. Consequently, CAALAS is uniquely placed to note, both anecdotally and through clients, the short fallings in the provision of mental health services in Central Australia that result in Aboriginal people coming before the court or being managed inappropriately through the criminal process as a result of mental health issues.

Although there are eight terms of references that the Inquiry will examine, CAALAS' response relates only to part of one term:

*"(f) the adequacy of mental health funding and services for disadvantaged groups, including:...*  
*(ii) Indigenous communities"*

This submission outlines CAALAS' concerns about the inadequacy of mental health services in Central Australia. In particular CAALAS notes:

- that clients with mental health, organic brain and intellectual difficulties in Central Australia are often left undiagnosed and untreated until regular intersection with the criminal justice system;
- that current mental health service provision in Central Australia, particularly in remote Aboriginal communities, is inadequate to provide ongoing treatment for people already diagnosed with mental health concerns, often resulting in unnecessarily lengthy periods of imprisonment for people with mental health concerns before the criminal courts; and
- that clients with impairments that render them unfit to plead in criminal proceedings are unjustly subjected to extended, and essentially indefinite, periods of incarceration due to the absence of sufficient supported accommodation and treatment facilities.

## 2 About CAALAS

Founded in 1973 as the first Aboriginal organisation in Alice Springs, CAALAS provides high quality, culturally appropriate legal advice and representation to Aboriginal and Torres Strait Islander people living in Central Australia in the areas of criminal, civil, family and welfare rights law. The organisation also advocates for the rights of Aboriginal people<sup>1</sup> and improved

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<sup>1</sup> In this submission, 'Aboriginal people' refers to Aboriginal and Torres Strait Islander people.

social justice outcomes. Additionally, CAALAS provides community legal education, support for youth interacting with the justice system and assistance to prisoners, detainees and their families to support reintegration into the community.

CAALAS strives to achieve its vision statement of "Justice, dignity and equal rights and treatment before the law for Aboriginal people in Central Australia" through its service provision across approximately 90,000 square kilometres of the Northern Territory (NT). CAALAS is led by a Council of elected Aboriginal representatives and funded solely by the Commonwealth Attorney-General's Department to operate two permanent offices (in Alice Springs and Tennant Creek) and to conduct a range of outreach trips and clinics, and attend bush court circuits.

### **3 Availability of mental health services for prompt diagnosis**

CAALAS regularly acts for clients in the criminal jurisdiction who present with behaviours consistent with mental illness, psychosis, organic brain injury, intellectual disability or other conditions that impair their behaviour and thought processes. Often, these health concerns are related to their offending however there is no existing diagnosis that can be presented to the court.

**Case Study:** A 26 year old Aboriginal man has a long history of recidivist offending dating back to 1998, when he was 13 years old. Largely, the offences for which the young man found himself before the court were property and theft offences and breaches of orders. The young man was alcohol dependent and often committed offences in an attempt to secure more alcohol. Despite his clear impairments, it was not until significant interaction with the criminal justice system, evidenced through at least 56 criminal files, that the young man was subject to an application for a guardianship order under the *Adult Guardianship Act* (NT). Approximately six years before the man's referral to the Adult Guardianship Panel, CAALAS had sought for the man to be assessed and diagnosed however this was not possible due to an absence of appropriately qualified, available practitioners. The man is now subject to an Adult Guardianship Order however due to the limited resources of the Executive Officer of Adult Guardianship in Central Australia, continues to find himself before the courts and sentenced to lengthy terms of imprisonment.

In the report tendered to the Court in the application for adult guardianship for the above client, several circumstances of the young man's life were reported that are not dissimilar to those of many CAALAS clients. It was noted that the young man's parents were both long term alcoholics whose alcoholism prevented them from being positive parents, that the young man was exposed to alcohol and other drugs from an early age and that his education was compromised by poor life style. Additionally, it was noted that the young man had many close relatives who had spent extended periods of their adult life incarcerated in prison. A psychiatrist who assessed the young man concluded that his early exposure to alcohol and other drugs and dysfunctional lifestyle had disrupted his education and personal development.

Sadly, such circumstances are not uncommon for CAALAS clients. Many are raised in dysfunctional environments with considerable exposure to and experience of trauma. Aboriginal people are recognised as experiencing greater and more frequent life stressors

than non-Aboriginal people. This is associated with poorer health outcomes and an elevated risk of developing conditions such as depression.<sup>2</sup> In 2002, 82 percent of Aboriginal people aged fifteen years or over reported experiencing at least one life stressor in the last twelve months.<sup>3</sup> In 2008, 32 percent of Aboriginal people aged 18 years and over had experienced high or very high psychological stress. This was more than twice the rate than for non-Aboriginal people.<sup>4</sup>

CAALAS submits that given the intelligence that Aboriginal people more frequently experience mental health concerns and the high concentration of Aboriginal people in Central Australia, it is necessary for the Government to fund more mental health services in the region. It is inappropriate for persons with significant mental, cognitive or intellectual difficulties to remain undiagnosed and unsupported, despite presenting with troubled behaviour, until interaction with the criminal justice system. However, this is a common scenario in Central Australia and CAALAS notes that it is not unsurprising given that in 2002, the supply of medical specialists, such as psychiatrists, per person in capital cities was ten times more than in remote areas.<sup>5</sup>

## 4 Availability of treatment services

CAALAS acts for numerous clients who experience lengthy periods of incarceration as a result of inadequate mental health treatment and support services. In the absence of such services, Magistrates conclude that despite mental health issues or lower than normal cognitive abilities, considerable sentences of imprisonment are required for the protection of the community.<sup>6</sup>

**Case Study:** An Aboriginal man from a remote Central Australian Aboriginal community was exhibiting conspicuously peculiar behaviour such as hoarding items in his residence. He committed several offences and was remanded in custody for reports and assessments to be undertaken, the outcome of which recommended that he return to his community after a period of imprisonment and receive treatment for his conditions. The man had community support for his return however there were no regular mental health services that visited his community to provide support. Due to the likely sporadic access to mental health services he would receive if returned to his community, the man was sentenced to a lengthier period of imprisonment.

<sup>2</sup> Wilkinson and Marmot, 2003, *Social Determinants of Health: the Solid Facts*, World Health Organisation, available at <[http://www.euro.who.int/\\_data/assets/pdf\\_file/0005/98438/e81384.pdf](http://www.euro.who.int/_data/assets/pdf_file/0005/98438/e81384.pdf)>.

<sup>3</sup> ABS, 2005, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Summary available at <<http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/959B3EA8F830D288CA2570990004361C?opendocument>>

<sup>4</sup> ABS, 2010, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, Adult Health: Psychological distress*, available at <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter7152010>>.

<sup>5</sup> ABS, 2005, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Summary available at <<http://www.abs.gov.au/ausstats/abs@.nsf/Previousproduct/A4E060387CBBF3C3CA25709900128C77?opendocument>>.

<sup>6</sup> Mr J Neill SM, 2010, *Police v MF*, NT Court of Summary Jurisdiction Alice Springs.

**Case Study:** A 29 year old Aboriginal man from a remote community had repeated contact with the criminal justice system over a period of over twelve years. The man, like many Aboriginal people, regularly moved between his remote community and family in Alice Springs. The man was diagnosed with psychosis and when incarcerated was supported to regularly take the anti-psychotic medication he was prescribed. When released, the man lacked support from mental health services, particularly given his itinerant movements, and failed to take his medication as required resulting in psychotic incidents and offending.

**Case Study:** A 22 year old Aboriginal female who resided in Alice Springs had been diagnosed with Foetal Alcohol Syndrome. She has, since 2008, been subject to an Adult Guardianship Order. Despite this, the female has had repeated contact with the criminal justice system since 2008 and consequently experienced many periods of imprisonment. Magistrates in Alice Springs comment on the inappropriateness of imprisoning the woman but note the dearth of alternate options: *"The Northern Territory Government has chosen not to provide any services for people such as [X] .... The Northern Territory Government is well aware that there are people such as [X] in this community who need assistance, and they have chosen, at an executive level, to make a decision not to provide those services....I expect they're saying that the criminal justice system should be picking up and dealing with people who suffer as she suffers from an illness. In my opinion that's highly inappropriate....There are... few sentencing options available to this court....There is nothing to be gained from giving consideration to specific deterrence, there is very little gained in giving consideration to ... rehabilitation."*<sup>7</sup>

CAALAS submits that given the already disproportionate rates of incarceration of Aboriginal people, it is highly dangerous and unacceptable that Aboriginal people are subjected to longer periods of imprisonment due to the unavailability of mental health services in their community. It is alarming that even in a community such as Alice Springs it is rare for a person the subject of an Adult Guardianship Order to have access to supported accommodation and the requisite treatment and support services.

CAALAS notes that at the Standing Committee of Attorneys-General's meeting held in Adelaide on 21 and 22 July 2011, *"Ministers discussed the unacceptable rates of incarceration of Indigenous Australians...and agreed: (a) to significantly reduce the gap in Indigenous offending and victimisation.... (b) to ask First Ministers to refer to COAG the possible adoption of justice specific Indigenous closing the gap targets, acknowledging that in many instances their relative occurrence are due to variable factors outside the justice system."*<sup>8</sup>

CAALAS considers that one such variable factor is the current inadequate provision of mental health services in communities largely populated by Aboriginal people and that this factor must be addressed by Government as a matter of urgency in order to protect human rights and address Aboriginal incarceration rates.

<sup>77</sup> Mr G Borchers SM, 2009, *Police v RF*, Northern Territory Court of Summary Jurisdiction Alice Springs.

<sup>8</sup> Standing Committee of Attorneys-General, 21 and 22 July 2011, *Communique*, Adelaide.

## 5 Sentencing of persons unfit to plead

The *Criminal Code Act 1983* (NT) ('the Act') states that an accused person may be found unfit to stand trial for numerous reasons including: their inability to understand the nature of the charge against them; their inability to plead to the charge and exercise the right of challenge; their inability to understand the nature of the trial; their inability to follow the course of the proceedings; their inability to understand the substantial effect of any evidence that may be given in support of the prosecution; or their inability to instruct their legal counsel.<sup>9</sup>

The Act states that where a person is found unfit to stand trial and is unlikely to become fit within the following twelve months, the matter must go to a special hearing within three months. The purpose of a special hearing is for a jury to determine whether the person is not guilty of the offence, not guilty of the offence due to their mental impairment or whether the person committed the offence.<sup>10</sup> Where a jury at special hearing finds that the accused person is not guilty of the offence due to mental impairment or that the person committed the offence, the Court must either declare the accused person liable to supervision under Division 5 of the Act or release the accused person unconditionally.<sup>11</sup>

A supervision order may involve custodial supervision, in a prison or another place the Court considers appropriate, or non-custodial supervision. The Act states that a custodial supervision order committing a person to custody in prison should not be made unless a Court is satisfied there is no other practicable alternative, given the circumstances of the person.<sup>12</sup>

In CAALAS' experience, in Central Australia, most, if not all clients who are found unfit to plead are subject to custodial supervision orders committing them to prison, in the absence of appropriate alternate mental health facilities. Of significant concern, the Act states that the frequency with which a person's supervision order is subject to review is equivalent to the period of imprisonment or supervision that the Court considers would have been appropriate if the person had been found guilty of the offence charge, or the non-parole period that would have been set if the appropriate penalty would have been life imprisonment.<sup>13</sup> Consequently, reviews may occur infrequently depending on the nature of the offending, regardless of the level of mental impairment of the accused person and their unsuitability to imprisonment in a mainstream prison.

Upon review, where the Court considers that the safety of the accused person or community is likely to be at serious risk if the person is released unconditionally, the Court must confirm or vary the supervision order.<sup>14</sup>

CAALAS notes that many clients who are found unfit to plead have significant mental health issues or cognitive or intellectual disabilities. Consequently, these clients require support in the community and unconditional release is rarely an option without the person themselves

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<sup>9</sup> Section 43J, *Criminal Code Act 1983* (NT).

<sup>10</sup> Section 43V, *Criminal Code Act 1983* (NT).

<sup>11</sup> Section 43X, *Criminal Code Act 1983* (NT).

<sup>12</sup> Subsection 43ZA(2), *Criminal Code Act 1983* (NT).

<sup>13</sup> Section 43ZG, *Criminal Code Act 1983* (NT).

<sup>14</sup> *Ibid.*

being at risk of harm. In the absence of appropriate mental health facilities and services and supported accommodation, unconditional release is improbable for these seriously ill people. Moreover, as there is currently no mental health facility in Central Australia where a person may be committed under a custodial supervision order, the Court is obliged to commit people with unfitness to plead issues to an NT Correctional Centre.

**Case Study:** A 19 year old Aboriginal man who was based in Alice Springs was charged with an assault. The man was diagnosed with an organic brain injury and alcohol dependence. He was subject to an Adult Guardianship Order although due to the limited resources of the office of the Executive Officer of Adult Guardianship in Central Australia, his guardians were able to do little more than monitor his activities. Questions of the man's fitness to plead were raised by prosecutions and conceded. At special hearing, the man was found not guilty of the offences by reason of mental impairment and the Court ordered a custodial supervision order. In the absence of an alternative, appropriate place in which the man could be supervised in custody, he was committed to the Alice Springs Correctional Centre (**ASCC**). The man's supervision order has been reviewed and is again currently under review. The nature of the man's disability is such that there is no prospect of improvement. As there remains a lack of alternate facilities in which he may be supervised in custody, the man is expected to remain committed in the ASCC despite his young age, indefinitely.

**Case Study:** A 20 year old Aboriginal man with no prior criminal behaviour was found unfit to plead on an assault charge. The man had an intellectual impairment and possibly suffered from Foetal Alcohol Syndrome. He was the subject of an Adult Guardianship Order. The assault charge related to an incident where the man, whilst in supported accommodation in Alice Springs, broke a window and threatened a carer with a shard of glass. As a consequence of these actions, the man was found unsuitable to be provided with a non-custodial supervision order. The young man is consequently incarcerated in the ASCC indefinitely given that his condition will not improve and there is no appropriate alternative place in which he may be supervised. As with the above case study, this matter has been reviewed and is currently up for further review. The young man's disabilities are life-long. Until an appropriate alternative accommodation is provided he is likely to remain incarcerated.

## 6 Conclusion

CAALAS submits that it is improper that people with mental health issues, intellectual disabilities and cognitive impairments are managed through the criminal justice system and subject to lengthy periods of imprisonment. These characteristics are matters to be addressed and managed within the health, rather than the criminal justice system. CAALAS strongly implores the Government to consider the consequences of inadequate mental health service provision in Central Australia on mentally ill persons and their families and provide increased funding for mental health services in the region.