

BY: ATSIA

House of Representatives Standing Committee on Aboriginal and Torres Strait  
Islander Affairs - Inquiry into the high levels of involvement of Indigenous  
juveniles and young adults in the criminal justice system

Tasmanian Submission

March 2010

**Introduction:**

Tasmania recognises the importance of providing culturally safe and appropriate programs and services to the Aboriginal population, including juveniles and young adults, and emphasises the importance of cultural competency training in the delivery of these services.

**Background and contextual information:**

In its latest *Juvenile Justice in Australia* report<sup>1</sup>, the Australian Institute of Health and Welfare (AIHW) reports that the number of young people in detention on an average day in Australia (excluding NSW where data were not available) increased by 17 per cent from 540 in 2004-05 to 630 in 2007-08<sup>2</sup>. Tasmania reported the second lowest total number of individual young people in detention on an average day during 2007-08 at 29<sup>3</sup>.

The *Juvenile Justice in Australia 2007-08* report indicates that there has been a rise in the detention rate of Indigenous young people and suggests that they were 30 times more likely to be detained on an average day nationally. Tasmania reported the third lowest Indigenous young person, average day detention rate per 1 000 (6.02), compared to the national rate (net of New South Wales which did not submit data) of 7.05<sup>4</sup>. Nevertheless, the detention rate of Indigenous young people in Tasmania remains a concern.

The AIHW media release<sup>5</sup> for the *Juvenile Justice in Australia, 2007-08* report indicates that in Australia, Indigenous young people in detention are more likely to be un-sentenced than non-Indigenous young people. The Institute says the comparison is almost 60 per cent un-sentenced Indigenous young people on an average day compared to 14 per cent of non-Indigenous young people. In Tasmania on an average day during 2006-07, the number of Indigenous young people un-sentenced in detention was 8 or 24.2 per cent of a total of 33 young people in detention (Indigenous and non-Indigenous).

In 2007-08, on an average day, the number of Indigenous young people un-sentenced in detention was 7 of a total of 29 or 24 per cent of young people in detention (Indigenous and non-Indigenous).

<sup>1</sup> *Juvenile Justice in Australia 2007-2008*, Australian Institute of Health and Welfare, Canberra, November 2009. Cat No. JUV 5.

<sup>2</sup> Media release, 'Juvenile detention numbers on the rise', AIHW, 4 November 2009.

<sup>3</sup> *Juvenile Justice in Australia 2007-2008*, Table 5.2, p.58.

<sup>4</sup> *Ibid*, Table 5.4, p.61.

<sup>5</sup> Media release, 'Juvenile detention numbers on the rise', AIHW, 4 November 2009.

R.G.

## Department of Premier and Cabinet

Executive Building, 15 Murray Street, Hobart TAS  
GPO Box 123, Hobart, TAS 7001 Australia  
Ph 1300 135 513 Fax (03) 6233 2769  
Web [www.dpac.tas.gov.au](http://www.dpac.tas.gov.au)



The Hon B Debus MP  
Chair  
Standing Committee on Aboriginal and Torres Strait Islander Affairs  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Dear Mr Debus

I refer to your letter to the Premier, David Bartlett MP, inviting a submission to the Standing Committee's Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system.

Due to the State election on 20 March 2010 and the Tasmanian Government now being in caretaker mode, your correspondence has been referred to me for reply.

Please find attached a Tasmanian submission.

Thank you for the opportunity to provide a submission to your Inquiry.

Yours sincerely

The number and percentage of young Indigenous people in un-sentenced detention has shown little variation in Tasmania in the past two report periods and is 36 per cent below the national figure of 60 per cent cited by AIHW<sup>6</sup>. It still remains that the number and percentage of Indigenous young people who are un-sentenced in detention is a concern.

Un-published Ashley Youth Detention Centre (AYDC) data shows that the average number and proportion of Indigenous young people on site was 8.7 (25.9 per cent) in 2004-2005, 8.3 (26.8 per cent) in 2005-2006 and 8.2 (28.6 per cent) in 2006-2007.

In 2007-2008 the average number and proportion was 11.6 or 41.5 per cent. In 2008-2009 the AYDC data shows the average number and proportion of Indigenous young people in detention was 9.1 or 32 per cent of the detention population.

The number of young people remanded in custody or sentenced to a warrant of detention is determined by the courts. While AYDC has no control over the number or the proportion of Indigenous young people who are remanded or sentenced to detention by the courts, Indigenous young people continue to be over represented in the population who are on remand or sentenced to detention.

According to the most recent census data<sup>7</sup>, the Tasmanian Indigenous population is approximately 3.2 per cent of the total population of Tasmania, while the cohort of young persons aged 10-19 years represents approximately 0.8 per cent of the total population.

Tasmania had the second lowest number of young people in detention on an average day (29) in 2007-08<sup>8</sup>. The number of young people in detention on an average day in 2007-08 ranged from 18 in the Australian Capital Territory to 164 in Western Australia<sup>9</sup>. During the period 2004-05 to 2007-08, the total number of young people un-sentenced (remanded) or sentenced to detention has decreased every year from 37 in 2004-05 to 29 in 2007-08<sup>10</sup>.

Where appropriate, Youth Justice Services in Tasmania work towards detention being the last resort for young offenders.

---

<sup>6</sup> Tasmanian figures derived from *Juvenile Justice in Australia 2007-2008*, Table A24 p. 101.

<sup>7</sup> Australian Bureau of Statistics, 2006, census information.

<sup>8</sup> *Juvenile Justice in Australia 2007-2008*, Table 5.2, p.58.

<sup>9</sup> *Ibid*, Table A20, p. 99.

<sup>10</sup> *Ibid*, Table A24, p.102.

## Response to the Terms of Reference:

### **1. How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;**

It is important to assist children to develop pro-social attitudes and behaviours from an early age and intervene early in the development of anti-social attitudes and behaviour in order to foster positive social engagement. While parental influences are present from the start, teachers begin to play an integral role in shaping children's behaviour from the age of three years.

Parents and teachers teach children socially appropriate ways to express themselves and control their behaviour through modelling and behavioural reinforcement. Such abilities are important for the development of pro-social behaviour.

The Department of Education operates the Ashley School located within the AYDC at Deloraine in North West Tasmania. All student programs provided at the Ashley School are in accordance with the principles of the *Youth Justice Act 1997* and specifically linked to the five key principles of Restorative Justice which are:

- reparation;
- responsibility;
- rehabilitation;
- diversion; and
- deterrence.

The programs undertaken by students at the Ashley School place a strong emphasis on the development of social norms and behaviours. Programs include health and wellbeing; peer relationships; re-integrating into school/home; coping with transition, leisure and recreation; and anger management.

Programs offered by Tasmanian Corrective Services aim primarily to address offenders' anti-social attitudes and behaviours and assist them to develop pro-social lifestyles.

### **2. The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;**

Chronic alcohol abuse can impair learning and memory, undermine relationships with family and friends, and contribute to the development of delinquent behaviour. Illicit drug use is associated with the commission of more serious juvenile offences.

Children with strong family ties, adequate school performance and access to non substance abusing role models are less likely to engage in substance abuse and crime.

Evidence suggests that significant proportions of adult and juvenile offenders present with substance abuse problems often comorbid with mental health issues, which could most effectively be addressed by collaborative approaches between Health and Justice authorities.

Health authorities can assist Justice authorities to break the drug crime cycle by providing a range of primary prevention and early intervention strategies, as well as a broad range of treatment options for mandated clients, including expanding the availability of psychotherapies and reducing the barriers to information exchange.

As a general observation, diversionary programs related to alcohol and substance abuse must be targeted to be effective, and need to be specific to the needs of Indigenous young people, rather than an extension of existing adult programs.

**3. Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;**

School experiences can have a significant bearing on the development or otherwise of anti-social and offending behaviour. For instance, positive school experiences have been demonstrated to buffer adolescents from broken and dysfunctional families against involvement in anti-social behaviour. Conversely, academic failure which can be generated by low IQ, learning disabilities, physical and/or emotional difficulties can engender frustration, peer rejection and diminished self-esteem leading to the development of further psychological and behavioural dysfunction.

Chronic absenteeism due to lack of academic achievement, peer conflict, psychological or behavioural problems, and/or low parental support for school attendance places children at increased risk of disengagement. Such experiences and behaviours increase the risk of 'dropping out' or being expelled from school. This provides further opportunities for disillusioned youth to begin socialising with similarly unsuccessful peers and may lead to greater involvement in substance abuse, anti-social and offending behaviour.

Initiatives include improved strategies for maximising Indigenous attendance and engagement in education and training; increased community engagement between Aboriginal families and schools; and implementation of personalised learning plans for Indigenous students in schools.

These strategies are included in the National Indigenous Education Action Plan, currently under development, and the State response to this Action Plan.

**4. The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;**

The State Implementation Plan for the National Partnership Agreement on Youth Attainment and Transition has a strong Indigenous focus within its three reform areas. These are maximising engagement, attainment and successful transition; school, business and community partnerships; and individualised, personalised support for young people at risk.

Tasmania reports annually against performance indicators for this national partnership.

5. **Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;**

There is a range of programs operating in Tasmania that support diversion of people from juvenile detention centres and crime, and provide support for those returning from such centres. In particular, the Committee may wish to note the following examples:

i. *meenah mienne*

*meenah mienne* ('my dream') is a mentoring program that brings young people and artists in the Aboriginal community together to share time, tell stories and create art. Through one-on-one mentoring, arts activities, and special cultural projects, *meenah mienne* aims to:

- improve the emotional health and wellbeing of young people;
- foster intergenerational community connection;
- increase opportunities for social and economic participation;
- support educational achievement; and
- assist transition into the workforce.

The program targets Aboriginal young people connected with, and at risk of connection with, the youth justice system in northern Tasmania. Established by Tasmanian Aboriginal community members and artists, *meenah mienne* is governed by an Advisory Group of Aboriginal community members and expert advisors in youth justice and business chaired by Elder Aunty Phyllis Pitchford. It is auspiced by the Tasmanian Aboriginal Child Care Association and staffed by a part-time Coordinator and Community Project Worker. *meenah mienne* is in its second year of operation, currently supporting over 20 young people, some of whom are residents at the AYDC.

*meenah mienne* has recently been successful in gaining additional funds from the Tasmanian Community Fund to incorporate literacy and numeracy elements into the program. This will extend the foundational work of *meenah mienne*'s arts mentoring model and provide more structured and formal learning opportunities.

The program's objectives are:

- To provide a meaningful, real-life context for enquiry-based learning activities that encourage young people to improve prose literacy, document literacy, numeracy and problem-solving skills;
- To integrate a focus on literacy development and assessment into *meenah mienne*'s current program in partnership with the Department of Education and Department of Health and Human Services (DHHS) and other government and non-government youth service providers; and
- To establish a community-led social enterprise that is sustainable beyond the life of the Tasmania Community Fund grant provision.

The *Literacy Through Art and Business* project is a three-year staged project in which *meenah mienne* participants (mentor-artists, young 'buddy' artists and their families) will develop and implement annual business plans to make, market and sell their artworks:

- at local craft and tourist markets (2010);
- on the internet through a *meenah mienne* website 'shopping cart' (2011); and
- at *meenah mienne's* Tamar St gallery through curated exhibition planning and management (2012).

For these participants, the main literacy building strategies are to:

- research traditional and contemporary Tasmanian Aboriginal art and cultural practices;
- write project schedules;
- develop business plans;
- write and design catalogues;
- write and design advertising materials and other publications;
- publish websites;
- communicate with the public at markets, on the internet, and in the gallery;
- work collaboratively with others; and
- evaluate and write reports about projects.

This program is aiming to increase the longer term opportunities of young aboriginal offenders through art and education. It is too early to evaluate the success of this approach in achieving the desired outcomes however a formal evaluation will be undertaken throughout implementation.

## ii. *Youth at Risk Strategy*

While Tasmania does have lower numbers and proportions of young Indigenous people in detention in comparison to most other jurisdictions, Indigenous people remain over-represented in the detention population.

The DHHS Youth at Risk program will assist in the development and implementation of integrated and collaborative case management for young people who are assessed to have unmet needs that may lead to further offending and incarceration. This process will assist some young Indigenous people onto pro-active pathways that lead away from the criminal justice system.

Three areas have been identified as the initial key priorities for Youth at Risk focus areas in Tasmania: youth justice; targeted youth at risk support; and homelessness and accommodation.

Under each priority area a range of initiatives are in the process of being established and/or implemented. The majority of initiatives require DHHS to take on the lead agency role; however there are also elements that involve other State Government agencies.

As the Committee would appreciate, to adequately address a range of risk factors and provide a more targeted support system for young people at risk in Tasmania, a whole of government approach is required in partnership to support these targeted DHHS priorities.

The development of these areas as key priorities recognises that all young people need services that respond to them as individuals and all young people benefit from agencies that work well together to support their development, interests and aspirations and meet their needs. For young people with multiple risk factors this is even more important. For this group of young people there is a need for strategic, timely and targeted ranges of interventions. There is also a need to develop targeted support to prevent continued risk through early intervention strategies.

With regard to youth justice, the Youth at Risk Strategy aims to improve outcomes for young people currently in or at risk of entering the youth justice system coupled with reduction in youth crime and increased community safety. The initiatives listed below aim to provide a strategic and targeted response to areas of the youth justice system – both custodial and community – that currently impact on the outcomes for young people and the broader community:

- Early intervention:
  - o Development of a statewide process for Police and Education staff to provide cross referencing of data after the first contact with police by a young person or child. An initial trial will be undertaken in the Kingston area to assess longer term application statewide.
- Court system including bail and sentencing options:
  - o Scoping of need and potential models for establishing a Children's Court model in Tasmania;
  - o Exploring and developing alternatives to custody through establishing alternative bail options including structured and supported bail programs; and
  - o Cost analysis of diversionary bail supervision and support processes versus remand into AYDC.
- AYDC:
  - o Development and implementation of a new behavioural management program;
  - o Continuing enhancements to on-site education and training provision;
  - o Further development of the learning transition pre and post AYDC; and
  - o Integration of case management models for individual young people pre, during and post detention.
- Community Youth Justice:
  - o Integration of case management between child protection and community youth justice services for clients who are across both systems.



iii. *Lungtalanana Program*

AYDC has access to the Tasmanian Aboriginal Centre's (TAC) Lungtalanana (Clarke Island) facility, an alternative that can be used for young people who meet the assessment criteria. The TAC also has programs that address the educational, cultural, and vocational training needs of Indigenous young people.

The Lungtalanana program was developed by the Aboriginal community in response to the Recommendation 62 of the Royal Commission into Aboriginal deaths in custody. The Commission identified the need to develop strategies that would reduce the rate at which Aboriginal juveniles were involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities whether by being declared to be in need of care, detained, imprisoned or otherwise.

Activities undertaken as part of the program include:

- land management practices;
- repairing and reconstructing old buildings;
- traditional economic activities such as hunting, fishing and gathering;
- monitoring the environment and the flora and fauna;
- activities designed to enhance personal self esteem;
- reconnecting with family;
- developing personal techniques in order to cope with life without causing hardship to others;
- access to full range of TAC services including; counsellors (including drug and alcohol and anger management workers), doctors, nurses, legal field officers and elders on an as needs basis;
- maintenance of educational activities; and
- farming activities.

iv. *Project U-Turn*

Project U-Turn is a diversionary program for young people aged 15-20 years with a history of motor vehicle theft, or who are at risk of becoming involved in motor vehicle theft. The core component of the program is a structured ten-week automotive training course in car maintenance and body work, delivered in a workshop environment.

Other components of the program include: case management and personal development; links to employment and further education; recreational activities; literacy and numeracy education; road safety education and post-course support.

Project U-Turn is not specifically for Indigenous young offenders, however a number of participants report Aboriginality.

v. *Court Mandated Diversion of Drug Offenders Program*

The goal of the Court Mandated Diversion of Drug Offenders program (CMD) is to break the drug-crime cycle by involving adult and juvenile offenders in treatment and rehabilitation programs and providing them with alternative pathways through increasing their access to drug, alcohol, or other welfare services.

CMD is available to adult and juvenile offenders who plead or are found guilty of committing certain drug possession or use crimes, or non-violent crimes in order to support or pay for illicit drug use, or who (as a result of drug use) have committed certain family violence crimes. CMD operates within all of Tasmania's Magistrates Courts. It is not available to offenders appearing in the Tasmanian Supreme Court.

CMD has three categories:

- Category One – provided as a condition of bail following a plea or finding of guilt and prior to sentence. Category One is designed to have a maximum duration of 12 weeks. Offenders' compliance and success with a Category One order is taken into account at the point of sentencing. For some offenders, this may mean a further court direction to undertake a Category Two or Three order.
- Category Two – provided as a condition of probation or suspended sentence. Treatment is determined by the Court after consideration of an assessment report and may be for the period of the court order but is generally for less than 12 months.
- Category Three – provided as a sentencing option in its own right. The Drug Treatment Order (or DTO) is for offenders who would otherwise be subject to imprisonment. The term of imprisonment is held in abeyance, subject to satisfactory progress in the treatment program. This order includes regular court review and sanctions for minor levels of non-compliance which can also be suspended as an incentive for improved engagement. This level of diversion is available to offenders with complex needs who might benefit from extensive, longer term treatment, up to 18 months.

Offenders are assessed for CMD according to their drug treatment, general health and welfare and criminogenic needs.

Individual Management Plans are developed based on the assessment which then guides the delivery of integrated intervention and treatment through a case management approach.

Offenders on CMD orders may be directed into individual counselling, group counselling, and/or residential rehabilitation. They may also be subject to periodic urine testing. Referrals to non-CMD services may be included in the individual management plans (eg to mental health, housing or disability services). Case Managers are responsible for the implementation of the individual management plans.

To date approximately 13 per cent of program participants have identified as Aboriginal or Torres Strait Islander.

vi. *Mental Health Diversion List*

The Mental Health Diversion List (MHDL), a 'problem solving court' pilot program that diverts eligible defendants to mental health and other welfare services to address the underlying issues of their criminal behaviour, has been operating from the Hobart Magistrates Court for two years.

Using provisions within the *Bail Act 1994 (Tas)* and *Sentencing Act 1997 (Tas)*, the MHDL seeks to provide an alternative to criminal sanctions where the mental illness is causative of the offending behaviour.

The evaluation of the List conducted recently produced some promising results. It concluded that overall the MHDL has been largely successful in achieving the following objectives and outcomes:

- Offering a more therapeutic approach to the criminal justice system for mentally ill defendants;
- Reducing the re-offending rates of participants;
- Improving the coordination between the criminal justice agencies and health service providers; and
- Reportedly saving valuable court resources and time with respect to the avoidance of special hearings under section 15 of the *Criminal Justice (Mental Impairment) Act 1999*.

The value of the pilot program has led the Court to begin implementing the report's recommendations, including investigating expansion of the List to the north of the State.

Tasmania Police also offers a diversion program.

vii. *Justice Mentoring Program*

The Justice Mentoring Service is a pre and post release program that aims to assist Aboriginal prisoners with their reintegration. Mentors typically begin working with participants around their housing, employment and general support needs three months before their release and this continues for six months post release.

viii. *Cultural Connection Program*

The program aims to enhance the integration of Aboriginal prisoners into society post their release. The focus of the program is to improve the participant's health and wellbeing by using Aboriginal culture, outdoor recreational activities, and wilderness therapy workshops.

The program involves minimum security prisoners being taken on two three-day camps to begin their reconnection back to land and culture.

The first camp is usually held at Putalina and involves participants being put through a series of challenges to teach them survival skills, team work, and trust. Approximately one to two months later they are taken on a more challenging three day trek into the wilderness visiting a cave of Aboriginal significance along the way.

ix. *Aboriginal Healing Program & Men's Group*

The Aboriginal Healing Program & Men's group aims to initiate healing through healing camps and giving continual support through the Men's Group. A counsellor attends both programs to give support when required.

The program comprises a preparation day, involving activities around gaining trust; and one three day camp, including activities to continue the trust building process and talks with an Aboriginal Elder around issues that may cause offending behaviour.

x. *Other programs*

In addition to these specific programs, the Department of Education (Aboriginal Education Unit) provides cultural programs within the Ashley School aimed at strengthening the cultural knowledge and pride of Indigenous young people. The Department also works closely with the AYDC to ensure strong case management of students leaving the centre and returning to a mainstream school.

**6. The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;**

In relation to the Ashley School at AYDC:

- Australian Government funding has supported new school buildings and building upgrades and the employment of an Aboriginal caseworker on site for two years;
- AYDC Case Management has a Memorandum of Understanding with Centrelink that assists with the process for students to have youth allowance/income support processes in place before they leave the facility.
- The Department of Education has participated on cross agency groups such as the Inter Agency Working Group on the Review of Juvenile Remandees in Tasmania during 2007 and the Youth Justice Services/Department of Education Steering group on Education and Training at the AYDC;
- The Department's Aboriginal Education Unit has been involved in discussions on the use of Clarke Island (Iungtalanana) as an alternative centre for some Indigenous detainees and has assisted in providing curriculum advice regarding the Indigenous Tutorial Assistance Scheme; and
- State Government funding is supporting extra staffing and more school time access (48 weeks per year instead of 40).

7. The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

No submission.