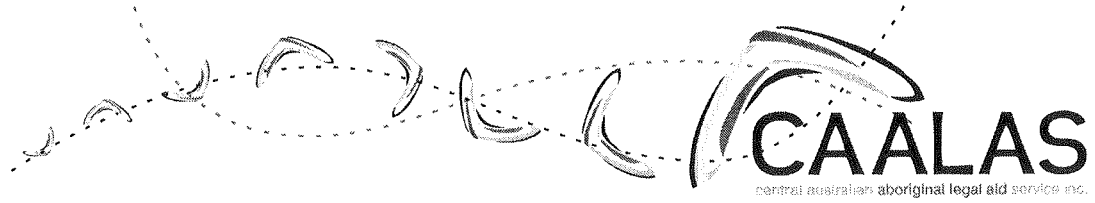


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**Central Australian Aboriginal Legal Aid Service Inc**

**Submission in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system**

**December 2009**

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## Key Submissions

1. The Central Australian Aboriginal Legal Aid Service (CAALAS) welcomes the opportunity to make submissions to the Federal Attorney General's Department in relation to the high level of involvement of Indigenous Juveniles and young adults in the criminal justice system.
2. As the core legal service providers for Aboriginal people in the Central Australian region, we play an integral role in representing and advocating for young people involved in the criminal justice system. CAALAS services the vast majority of Aboriginal young people in the criminal justice system in the Central Australian region.
3. CAALAS supports the principles enunciated in the *Youth Justice Act (NT)*. In particular, we applaud an approach to youth justice which promotes diversionary programs as a central tenet of effective justice, and likewise prescribes detention as a disposition of last resort.
4. CAALAS endorses culturally appropriate and adequately funded early intervention and diversionary approaches which aim to reduce Aboriginal young people's over-representation in the criminal justice system.
5. It is our experience that youth justice currently operates in the Northern Territory in an ad-hoc fashion and is under-resourced, culturally inappropriate and not youth specific. We believe that this leads to young people being treated as 'little adults' in the court system, in contrast to other Australian jurisdictions.
6. It is our position that the current system contributes to an increase in Aboriginal youth involvement in the criminal justice system, and substantial reform is required for positive change to eventuate with respect to young Aboriginal people in the Northern Territory.
7. We note that in the Northern Territory there is no Department of Youth Justice or youth justice system as such, unlike other Australian jurisdictions. We further note that there are no targeted services or positions within the justice system such as youth justice officers, Aboriginal youth liaison officers, policy officers or specialist youth workers – positions which exist in other States.
8. We consider that a holistic, resourced, coordinated and culturally appropriate youth justice system should be implemented in the Northern Territory as a part of a package which aims at reducing Aboriginal young people's involvement in the criminal justice system.

## **Positive Social Engagement**

9. CAALAS considers that the development and promotion of healthy behaviour and social norms amongst young people to be critical to reducing the over-representation of Aboriginal young people in the justice system.
10. It is beyond the scope of this submission to discuss the main causes of Indigenous youth offending in Central Australia, but obviously they largely stem from and are closely related to the extensive and well-documented disadvantages and problems experienced by members of Indigenous communities in rural and remote Australia. The Northern Territory is the youngest jurisdiction in Australia, with the highest birth rates, particularly amongst the Indigenous community. It is highly likely that in the decades to come, the proportion of both Aboriginal people and young people in the Central Australian population will increase substantially.
11. In addition, we consider that aspects of the criminal justice system of itself serve to discourage positive social engagement for young people in the Northern Territory. Whilst we strongly advocate for early intervention models which deter young people from the criminal justice system, we also advocate for a youth specific criminal justice system which is proactive in attempting to stop the cycle of recidivism and continual engagement in the court system.

## **Independent Youth Justice System**

12. Currently, the Central Australian region has no specifically trained Youth Justice Magistrate, no youth specific Community Corrections workers and no separate Youth Court. We consider that the outcome of this is that the specific needs of young people are often over-looked.
13. CAALAS would strongly support the development of an appropriately resourced and holistic youth justice system which was geared towards addressing the specific needs of young people who are engaged in the justice system. We consider this to be an integral ingredient for developing positive social engagement for Aboriginal young people in the Northern Territory.
14. As part of a youth specific justice system, we consider the following to be important elements:
  - A separate Youth Court with an attached youth specific Magistrate and youth specific clinicians;
  - Specific Community Corrections Youth Workers;
  - Aboriginal young people employed to work in the Youth Justice System;
  - More funded Community Corrections sentencing options;
  - An independent Diversionary body.

### Restorative Justice Principles

15. We further support the introduction of restorative justice principles into a youth justice system. An example of a culturally appropriate response to the disproportionate number of Aboriginal young people engaged in the justice system can be found in the Children's Koori Court model developed in Victoria.
16. We would strongly endorse a Children's Koori Court equivalent being introduced in the Northern Territory. Currently, Community Courts operate sporadically at various remote locations throughout the Northern Territory. They occasionally sit as Youth Justice Community Courts. Unfortunately, there appears to be a lack of judicial and political will to adequately resource and further develop Community Courts. Therefore, it appears that restorative justice initiatives are not being given the requisite levels of support and funding they require to be effective.
17. Similarly, the *Youth Justice Act (NT)* makes provision for pre-sentence conferencing. The Government has allocated no funds towards the development of a service, nor additional funds to an existing service, for the purposes of facilitating pre-sentence conferencing. CAALAS supports conferencing as a meaningful restorative justice initiative and consider it an important diversionary program which has the potential to foster positive social engagement.

### Limited Sentencing Options

18. There is currently limited scope for Magistrates to impose non-custodial sentencing options when dealing with young people. We consider this to be a crucial factor when considering the high proportion of Aboriginal young people in custody.
19. Whilst the *Youth Justice Act (NT)* stipulates that custody is a matter of last resort, we note that often young people are required to either serve time on remand or as part of a sentence.
20. We strongly support the introduction of diverse, funded, community based and culturally appropriate sentencing options as a means of utilising the criminal justice system to increase positive social engagement of young people.
21. As a component of the above recommendation, we consider it crucial that Community Corrections be allocated youth specific workers who are tasked with supervising court orders.

## The Current System

22. CAALAS considers that the current criminal justice and youth justice system operate in such a way so as to hinder the development of social norms and behaviours for Aboriginal young people in the Northern Territory.
23. One example of this can be demonstrated through the imposition of onerous bail conditions placed on Aboriginal juveniles and young adults for minor offences.
24. It is common for a young person to be placed on strict bail conditions regardless of the seriousness of the offence. This means that a young person who is before the courts for a minor or diversionary matter, will often be required to comply with bail conditions such as:
  - Curfew requirements;
  - Residential requirements;
  - Restrictions on coming into the Alice Springs region; and
  - Rigorous reporting and supervision requirements.
25. CAALAS submits that strict bail conditions such as these have a negative impact on the social norms and behaviours for Aboriginal young people. For example, a young person may not be allowed to attend a Blue Light Disco, or go to football or other sport training because it is outside of curfew hours. Likewise, a young person may not be able to attend remote Cultural Business because of a residential requirement. Whilst the Courts are occasionally (although not always) amenable to varying a young person's bail to facilitate this positive engagement, our experience is that it is both unrealistic and counter-productive to the aim of reducing youth involvement in the criminal justice system to ask a young person to appear before a court for the purposes of a bail variation.
26. Our experience shows that such onerous bail conditions impede the development of healthy behavior and social norms. Additionally, they elevate the risk of a young person being remanded in detention for conditional breaches of bail.
27. The following is a case study:
  - Sam has been charged with unlawful entry, criminal damage and stealing from an incident which involved a group of young people breaking into the Sports Store and stealing sporting goods.
  - The offending occurred at night, so Sam was placed on bail which involved curfew and residential conditions.
  - Sam's matter was mentioned in court and adjourned to allow Sam's lawyer to write representations for the charges to be amended.
  - In the meantime, a death occurred in Sam's immediate family.

- According to traditional custom, Sam's family had to vacate the house that they were living in and reside at an alternative location.
- The police breached Sam's bail because he was not residing at the prescribed address.
- Sam spent the morning in custody before being bailed to an alternative address.
- One week later the end of the football season arrived and Sam decided to attend a party and celebrate with his friends.
- Sam was again breached and spent time in custody for not complying with his curfew bail condition.
- Sam's family decided to move him to a remote community where some family lived, due to this trouble with the police.
- There was no High School on the community so Sam stopped attending school for a period of time.
- Three weeks later, facts had been agreed upon and Sam's matter was before the court. Sam received a without conviction good behavior bond for this offending.

28. As this example demonstrates, specific policy consideration needs to be given to how the current court system in the Northern Territory impedes the development of social norms and behaviours for Aboriginal young people.

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29. As outlined above, CAALAS advocates for the development of a specific youth justice system which is adequately funded, coordinated and dynamic and which works towards the implementation of culturally appropriate restorative justice initiatives. We further consider it imperative that any youth justice system be framed in youth friendly terms so that young people understand the court system and experience it as meaningful and restorative rather than alienating and punitive.

### **Alcohol Use and Other Substance Abuse**

30. It is our experience that a high proportion of youth offenders have a history of alcohol use or other substance abuse. These issues often present as a factor at the time of offending. We believe that the lack of culturally appropriate rehabilitative services available for young people is inextricably linked to the occurrence of alcohol and drug related crime in the Northern Territory. As such, we consider that it is vital for the Federal Government to commit to developing culturally appropriate and youth specific rehabilitative services.

### *Alice Springs Region*

31. Within Alice Springs, there is currently one residential program available for Aboriginal young people being the BushMob program. Unfortunately BushMob is not an accredited program for the purposes of the CREDIT NT court program (Court Referral and Evaluation for Drug Intervention Treatment). This means that young people have no urban residential programs

available to them if they want to derive the benefits of the CREDIT NT court bail program. Additionally, BushMob is not a specific drug and alcohol rehabilitation service.

32. In the remote Central Australian region, there are two residential rehabilitation services which are available for certain Aboriginal young people; Mount Theo and Ilpurlau.

### *Mount Theo*

33. Mount Theo is a Warlpiri specific youth service provider operating from the Yuendumu Community. The service has a residential outstation component, where young people are engaged in station maintenance and cultural activities, along with other 'day program' youth engagement type services including education and sports, which operate from within the community. Mount Theo was developed and continues to be operated by Yuendumu Elders.
34. CAALAS strongly supports Mount Theo as a rehabilitative and diversionary avenue for young people to achieve behaviour change through connecting to culture and participating in education. CAALAS utilises this service as a component of diversion, bail or sentence, when young people fit the cultural criteria.

### *Ilpurla Outstation*

35. Ilpurla Outstation is another youth specific intensive residential rehabilitation facility which has a strong focus on addressing volatile substance abuse as well as drug and alcohol abuse. The family-run program is based at an outstation and young people are engaged in learning station skills such as horse and cattle care and management as well as learning about the pastoral industry. Where possible, the program aims to link young people into school and employment opportunities at the end of the residential program. Mr Barry Abbott who runs the program is open to working with Indigenous and non-Indigenous young people, and the service is utilised by CAALAS.
36. Both the Mount Theo and Ilpurla Outstation programs were highlighted in the Report of the Community Affairs References Committee, Senate of Australia, 20 June 2006; *Beyond Petrol Sniffing: Reviewing hope for Indigenous Communities*. We support the recommendations made by this Committee, in particular, recommendations 14 and 15 which emphasise the importance of community ownership, family and youth involvement in the development of such programs as well as the importance of supporting the program with appropriate expertise.
37. We consider that the success of both the Mount Theo program and the Ilpurla Outstation is largely due to them being culturally appropriate and both initiated and run by Aboriginal people who are the Traditional Owners and Elders of the respective lands.

38. CAALAS strongly supports similar models being developed and funded in other Aboriginal communities as early intervention and diversionary models. We urge the Federal Government to consider Aboriginal consultation, ownership and employment as central to a successful community based diversionary model.

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39. CAALAS endorses the Mount Theo program as a best practice example of a service which supports the diversion of young people from the criminal justice system.

40. CAALAS further recommends that a culturally specific youth residential rehabilitation service be funded in Alice Springs as part of an overall strategy aimed at reducing the number of young Aboriginal people involved in the criminal justice system. We further consider this to be an early intervention strategy, as young people will have the opportunity to be supported to address and manage substance abuse and surrounding issues.

### **Alcohol and Drug Use and Mental Health**

41. It is our experience that many young people come before the Youth Justice Court with undiagnosed mental health issues, possibly as a result of previous substance misuse, or in the case of Alcohol Fetal Syndrome, a parent's previous substance misuse. We consider that the lack of Aboriginal and youth specific mental health service providers in the Northern Territory has a significant impact on the recidivism rates of young adult involvement in the criminal justice system.

42. We note that whilst in other jurisdictions young people have the benefit of mental health intervention and assessment (such as through the Children's Clinic in the Children's Court of Victoria), Northern Territory Aboriginal young people appear and are sentenced without the benefit of having their full circumstances put before the court. This crucial opportunity for intervention is usually missed due to both a lack of culturally appropriate services and an impetus to have young people's court matters finalised quickly so that they are no longer engaged in the criminal justice system.

43. The following CAALAS case study highlights the impact of both youth substance misuse and mental health issues on the criminal justice process:

- Jerome is seventeen years old and has been charged with driving without a license and drink driving. He is on a suspended sentence for an unlawful entry charge.
- Police have refused Jerome bail and he is remanded in detention.
- Jerome acknowledges that he used to sniff petrol on a regular basis for a period of three years.
- He also instructs that since he stopped sniffing, he has been drinking on a regular basis.



- Jerome presents as very slow and with significant communication difficulties.
- Community Corrections assess Jerome as unsuitable for supervision due to his communication difficulties. They also assess him as having a lack of insight and remorse into his offending behavior.
- If Jerome were eighteen years old he would have available to him two residential rehabilitation services (DASA and CAAAPU).
- Given Jerome is seventeen years old, the only rehabilitation service available to him is Ilpurla Outstation (Jerome has no Warlpiri connections).
- Jerome does not want to go to Ilpurla because he is very close to his family who all live in Alice Springs and he does not want to be away from them.
- Jerome pleads guilty before the court for the substantive offences and for breaching the suspended sentence.
- The sentencing Magistrate has no option but to give Jerome a term of detention.

44. CAALAS strongly urges both the Territory and Federal Governments to provide appropriate resources to specifically address the issues of substance misuse and mental health as they apply to the youth justice system.

45. We recommend that a Central Australian Aboriginal mental health youth worker position be established to work within the criminal justice system as a means of addressing and treating the large number of young people who come before the criminal justice system with undiagnosed mental health issues.

### Youth Health Service

46. Additionally, CAALAS strongly supports the development and implementation of culturally appropriate youth treatment services, with specialised skills and knowledge surrounding the specific substance misuse and mental health issues experienced by Aboriginal young people in the Northern Territory. We would further support these services being linked in with the youth justice system as a component of an early intervention model.

47. In particular, we note the key recommendation made by the Northern Territory Coroner in the Coronial Inquest into the Death of Kunmanara Forbes [2009] MTMC 024 where he advocated for the establishment of an Adolescent Health Service, within the NT Department of Health. This recommendation is yet to be implemented.

### Diversion

48. CAALAS supports Part 3 of the *Youth Justice Act (NT)* which provides that a police officer must divert a young person, except in certain circumstances as prescribed by the legislation. We endorse early intervention and diversionary schemes as a necessary response to the over-representation of Aboriginal young people in the criminal justice system.

49. Despite this commendable intention, our experience is that many young people are not being diverted, as the investigating officer does not consider them an appropriate candidate. We consider that it is inappropriate for investigating police officers to act as the 'gatekeepers' of diversion. This is because we consider the decision not to divert a young person as a pivotal moment in directing a young person into the criminal justice system and therefore exposing them to the damaging and potentially spiraling impacts of this system.
50. In addition to the above raised issues, the diversion process in the Northern Territory is a lengthy process often with a delayed assessment period. This often results in a young person remaining on bail and appearing before the Youth Justice Court on a number of occasions, whilst awaiting their diversion assessment or finalisation. Again, we consider this counter to the intention of diversion as being a scheme to keep young people out of the court system.
51. We further note that diversion is only available to young people who reside in urban areas or on communities where there is a police station. In our experience this results in young people from remote areas being disadvantaged and more exposed to involvement in the criminal justice system.
52. Furthermore, many young people are breached whilst on the diversion program for having moved to a remote area with family or for being 'un-contactable'. It is our submission that diversion should operate in a culturally appropriate fashion and accommodate the transient nature of many Aboriginal young people.
53. CAALAS supports a review of the diversion system in the Northern Territory as a means of assessing whether the program is achieving its diversionary aims and operating in an effective, culturally aware manner.

### **Coordinated and Targeted Service Provision**

54. Many young people who are involved in the youth justice system are also in the care of the Chief Executive Officer of the Department of Health and Families, either under a sole or shared parental responsibility order made by the Local Court pursuant to the *Care and protection of Children Act (NT)*.
55. It is our experience that Northern Territory Families and Children's Services are often reluctant or insufficiently resourced to enter into joint case management plans when attempting to ensure a supported outcome for the young person.
56. It is also our experience that Northern Territory Families and Children's Services will occasionally advocate for the incarceration of a young person. We consider this to be inconsistent with the principles of the *Youth Justice Act (NT)*.

57. Furthermore, it is our experience that Northern Territory Families and Children's Services will frequently not attend when a young person in the care of the Chief Executive Officer has court, or they attend without any specific knowledge of the young person. Additionally, many young people in the care of the Chief Executive Officer will fail to appear which will result in a warrant being issued and the likelihood of incarceration increasing substantially.
58. We recommend that Northern Territory Families and Children's Services be required to submit a report to the court outlining the circumstances of the particular young person, every time a young person in the care of the Chief Executive Officer comes before the court (which we understand to be a statutory practice in Western Australia). This will not only inform the court more thoroughly of the young person's circumstances, but will also increase the likelihood of coordinated service provision.
59. We further consider that a youth specific CREDIT NT court worker would likewise assist as a central point for coordinating targeted, youth specific service provision. Whilst a young person is technically not excluded from the CREDIT NT program, it is our submission that a young person is more likely to succeed on the program if the Clinician has a specific knowledge of youth issues.

## **Early Intervention Programs**

60. We recognise that many of our young clients have been born and reared in families which have struggled with gross problems: chronic substance abuse, endemic violence, appalling living conditions, permanent unemployment and poverty, remoteness from community services taken for granted by most Australians, and a deep sense of cultural alienation and despair. Unless meaningful steps are taken at or even before the birth of these children to address these disadvantages, they will be at high risk of subsequently engaging in anti-social and criminal behaviour.
61. CAALAS recommends that further resources be allocated to the establishment of intensive family support programs to provide early intervention to assist children living in Aboriginal communities in remote and rural areas, so as to reduce the risk that as they grow, these children will engage in harmful or risky behaviours which may bring them in contact with the criminal justice system. One such program is the Tyerrtye Arntarnte-Areme Caring for People Targeted Family Support Service, which is being established by Central Australian Aboriginal Congress.

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