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2 February 2010

Ms Anna Dacre
Committee Secretary
Standing Committee on Aboriginal and Torres Strait Islander Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Ms Dacre,

**Re: Inquiry into the high levels of involvement of Indigenous juveniles
and young adults in the criminal justice system**

Thank you for the opportunity to respond on behalf of the Courts Administration Authority (CAA) to the Standing Committee on Aboriginal and Torres Strait Islander Affairs' inquiry into the high levels of Indigenous young people's contact with the criminal justice system.

The CAA is an independent statutory authority responsible for providing administrative services to the court system in South Australia. The CAA's Court Services Division supports the Youth Court as well as the Family Conference Team, the Care and Protection Team, and also employs an Aboriginal Youth Justice Officer. It is from these areas of CAA operations that most of the information relevant to your inquiry has been sourced.

It may be of interest to the Committee that the CAA's 2008/2009 juvenile defendant statistics confirm the overrepresentation of Indigenous young people in the justice system. In 2008/2009 of all CAA lodgements (excluding expiation) for juvenile defendants 17 years and under, 25.6 % were for Aboriginal juveniles.

Please find attached the CAA's response to the SCATSIA inquiry, addressing points 2-6 of the Terms of Reference.

Yours sincerely,


Ruth Ambler
Director Court Services

COURTS ADMINISTRATION AUTHORITY SOUTH AUSTRALIA
RESPONSE TO THE SCATSIA INQUIRY INTO THE HIGH LEVELS OF INVOLVEMENT OF INDIGENOUS JUVENILES AND YOUNG ADULTS IN THE CRIMINAL JUSTICE SYSTEM

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ATSIA

TERMS OF REFERENCE

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;

YOUTH COURT ASSESSMENT REFERRAL DRUG SCHEME (YOUTH CARDS) MODEL

The CAA Specialist Courts team operate the Youth CARDS. It is a referral scheme that enables young people to voluntarily access drug and/or alcohol treatment as part of the court process. It consists of three court based administrative processes: assessment; referral to drug and alcohol treatment services; and provision of a final court report for sentencing.

The aims of Youth CARDS are to:

- Enhance the operation and outcomes of the juvenile justice system by providing direct court and family conference access to a structured drug and/or alcohol treatment program.
- Encourage drug users to address their drug and/or alcohol use and related issues, including offending, by capitalising on the reality that the individual has entered into the juvenile justice system as a result of being charged for drug and/or alcohol related crime.
- Reduce the risk of further offending to support drug and/or alcohol use.
- Reduce associated criminal activity and harm to themselves or others.

The Youth CARDS model allows defendants to focus on treating their drug and/or alcohol issues in isolation from their legal matters. Therefore, the scheme is designed so that agreement to become involved is not an admission of guilt for the offence and that failure to attend or engage in the treatment scheme does not result in punitive consequences. The Magistrate or Judge however can consider successful engagement in the treatment scheme as a factor in determining sentence.

ABORIGINAL YOUTH JUSTICE OFFICER AND YOUTH JUSTICE COORDINATORS

The Aboriginal Youth Justice Officer and Youth Justice Coordinators who work within the Family Conference Team are aware of specific programs within health, youth and family services agencies for Indigenous young people. They are able to identify the individual needs of their young court users and refer them to appropriate programs. These staff remain alert to any systemic patterns that may emerge and communicate matters of concern to youth justice forums such as the Youth Justice Aboriginal Advisory Panel chaired by Families SA.

TERMS OF REFERENCE

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;

This Term of Reference is considered by the CAA as primarily a matter for educational authorities, noting the critical importance of responding to students' non-attendance at school through both the role of Education Officers responsible for truancy, and individual school policies such as no school - no pool, and no school - no football, which are currently operating in various South Australian schools.

DVD EDUCATIONAL RESOURCE PROJECT

The DVD Educational Resource Project is a youth engagement and early intervention initiative being developed collaboratively by justice and educational stakeholders to produce a locally based educational resource in 2010, that can be delivered to Primary school students in years 6 and 7 in 2011. The project is currently being coordinated by the CAA's Aboriginal Youth Justice Officer.

The project aims to address the issue of recidivism by producing an educational DVD that will assist in young people's improved understanding of common offences which result in high numbers of juveniles appearing before the Youth Court. It will support the existing South Australian Police (SAPOL) Crime Prevention curriculum that is available at Department of Education and Children's Services (DECS) Primary Schools. The development of the educational DVD will be led by Year 11 and 12 students from an Aboriginal High School, Warriappendi Secondary School, whose contribution will be accredited as part of the South Australian Certificate of Education (SACE) Media Studies curriculum. 'Peer Leadership' training will commence in 2010 to educate year 10 students in both the resource and presentation skills ready for supported delivery to primary schools in 2011.

This early intervention program will be designed to challenge currently held beliefs regarding the nature of identified offending, aiming to educate young people at an earlier age when they are first likely to enter the Juvenile Justice system. Script writing for scenarios features the concept of 'joint enterprise' offending, bails, obligations, non-association; remand centres vs detention centres, restorative justice processes and victim awareness. There is flexibility for input from a range of services including the Judiciary, SAPOL, and the Legal Services Commission.

The project aims to enhance relationships between young people, families and local agencies and services, including SAPOL and DECS, and promote a sense of community connectedness. Young people will have the opportunity to engage with SAPOL Community Constables in a positive, pro-active environment that encourages them to build different types of relationships with the Police at an earlier stage of their lives. It is anticipated that young people will build self esteem, self worth, confidence and a sense of contributing to their local community. Their learning will be accredited and they will be better educated around Juvenile Justice issues that continue to impact negatively on a local community.

EDUCATION MANAGER (LAW COURTS)

The Education Manager (Law Courts) is a position funded by the Department of Education and Children's Services (DECS) and located in the Adelaide Magistrates Court.

The Education Manager (Law Courts) receives visits from 10,000 -12,000 students across years 4 -12 annually and from throughout South Australia. Indigenous youth and young adults form part of the student cohort in a number of classes.

During their visits students learn about the workings of courts, issues that arise in the context of courts, court processes and an understanding of the role of Aboriginal Justice Officers within the CAA. Each group is made aware of special interest courts such as the Aboriginal (Nunga) Court and the rationale behind such courts, the provision of services to support the diverse range of court users and depending on the negotiated focus of the visit, career information pertaining to some of the different roles.

Specific multi-visit programmes have been offered for Aboriginal youth from the Anangu Pitjantjatjara Yankunytjatjara Lands who attend the Wiltja program at Woodville High School, Aboriginal students at Ross Smith Secondary and students from Kurna Plains School.

Questioning of groups is often provocative and inquiry based in order to elicit thoughtful responses and discussion. A range of mock court scenarios provide the opportunity to contextualise offending and encourage discussion and debate. Where group numbers and circumstances permit, students may have access to basement cells in the Magistrates Court as well as holding cells to gain an appreciation of what these are like and how they function.

While hard to evaluate, anecdotal feedback suggests that in many cases the court experience, as part of a negotiated learning activity, is a highlight and something that leaves a lasting impression. At the most basic level, some familiarity with the criminal court process can mitigate feelings of anxiety and promote confidence in courts.

ABORIGINAL JUSTICE OFFICERS

Aboriginal Justice Officers, including the Aboriginal Youth Justice Officer, attend annual Aboriginal youth expos such as Vibe Alive promoting greater education and understanding amongst Aboriginal youth of the court system and opportunities for future employment within the CAA.

TERMS OF REFERENCE

THE EFFECTIVENESS OF ARRANGEMENTS FOR TRANSITIONING FROM EDUCATION TO WORK AND HOW THE EFFECTIVENESS OF THE 'LEARN OR EARN' CONCEPT CAN BE MAXIMISED;

As a general comment it is evident to the CAA through the experience of dealing with young defendants in the Youth Court and in the juvenile detention centres, that there is a real need for these young people to receive practical training that leads directly to employment and/or apprenticeships such as welding, brick-laying, forklift driving. The benefits of acquiring trade skills leading to employment, a stable income and lifestyle, greater self esteem and social inclusion, are self evident.

ICAN WORKS STRATEGY

The Aboriginal Youth Justice Officer has been significantly involved in linking Aboriginal Youth Court clients to the Innovative Community Action Networks (ICAN) and associated initiatives.

ICANs are an initiative arising from the Social Inclusion *Making the Connections* School Retention Action Plan, which brings together young people, families, schools, community groups, businesses and different levels of government to find solutions to local issues that prevent young people from completing their education.

The ICAN Works Strategy is an integration of three key initiatives (ICAN/Flexible Learning Options, Alternative Learning Options Program and Assertive Management) with three government departments: Department of Education and Children's Services (DECS), Department of Further Education, Employment, Science and Technology (DFEEST) and Department of Families and Communities (Families SA).

TERMS OF REFERENCE

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;

FAMILY CONFERENCE TEAM PROGRAM

Under the South Australian *Young Offenders Act 1993*, (the Act) any offence meeting the criteria for diversion under the Act may be referred to a family conference. Matters coming to family conferences are diverted from the Youth Court for resolution. If a young person attends and participates in a family conference they have the opportunity to resolve their offending behaviour without receiving a court record.

Youth Justice Coordinators convene family conferences, which allow the young person who has committed an offence to meet the victim of the offence and to better understand the consequences of their offending behaviour. They also enable the young person to try to make amends, and provide an opportunity to restore relationships between the young offender and people close to him or her and others affected by the offence. Those who must attend the conference are the offender, a police representative and a Youth Justice Coordinator. Other participants may include the offender's parents or guardians, the victim and a person to support the victim.

The conference aims to find a suitable outcome for the offence; for example, a caution, community service, payment of compensation, an apology, a promise to work at the site of the damage or to do anything else that might be appropriate in the circumstances. These outcome options are provided for in the legislation and are individually mandated by the decision of the conference.

Indigenous clients

Homelessness, poverty, discrimination, family violence and substance abuse are all real issues for Indigenous youth, and put them at significant risk of offending earlier than non-Indigenous youth. Access, communication and fear of justice processes are barriers to young people participating in justice systems. Consequences of this may include having many outstanding matters to be dealt with in the justice system and ongoing offending.

In the Port Augusta area a Youth Justice Co-ordinator position has been redefined as an Indigenous Youth Justice Co-ordinator taking into account some of the cultural considerations required for conferencing specific to the Port Augusta area.

In the metropolitan area the Youth Court (including the Family Conference Team) is piloting the use of an Aboriginal Youth Justice Officer to assist with working with young Indigenous clients. The Aboriginal Youth Justice Officer (AYJO) will be able to support Indigenous youth and their families coming to Family Conference and making informed decisions regarding the care, correction and guidance of that youth. Through links and networking in the Aboriginal community, the AYJO will be able to support young people gaining appropriate access to justice systems, and support them participating in the outcomes of the justice system.

Servicing Remote Areas

Family Conference circuits to remote areas include:

- Anangu Pitjantjatjara Yankunyatjara (APY) Lands: far north-west of SA: Indulkana, Ernabella, Mimili, Amata, Fregon, Umuwa, Pipalyatjara, Kalka, (NB: Distance from Adelaide to Pipalyatjara is 1700kms.)
- Maralinga Lands: Yalata and Oak Valley (NB: Distance from Pt Augusta to Oak Valley via Yalata is 1100 kms.)
- Ceduna, Koonibba and homelands
- Woomera and Roxby Downs
- Nepabunna, Leigh Creek, Maree, Oodnadatta

Family Conference circuits are arranged by the Youth Justice Co-ordinator assigned to the area, and where possible the Indigenous Youth Justice Coordinator position services the remote and northern areas. Initial contact to assess information is made by phone with families, schools, Community Constables, Councils, and/or the Community Health workers. The Youth Justice Co-ordinator must plan the circuit to cover the various locations in an efficient way, with consideration given to the long distances involved, the number of referrals being dealt with on the trip, and the need for flexibility to accommodate unplanned changes.

A Family Conference in an Aboriginal community may involve immediate and extended family and often several generations are present, although not everyone speaks. Usually the victim is someone known to everyone. Family Conferences provide the opportunity for a young person to take responsibility for what they have done and to find ways to make amends. Usually there is an expression of remorse and apologies to those affected. Sometimes there are several circles of people who will be at the meeting; some who may sit or stand closer to the centre of the meeting have specific relationships to the youth or his/her family. For example, a group of older women will gather for a Family Conference for a young woman, but only a few will speak. Often these meetings are held outside, perhaps outside the youth's home next to a fire or at a central community location.

Where there are Community Constables living in the communities they can be a helpful resource, both when setting up a circuit plan as well as during a conference, as they can give information about the location of families or youths when arranging a circuit, and when the Youth Justice Co-ordinator arrives in the community, finding the Constable is usually the first step in holding the conference.

They are usually aware of where all the useful participants are to be found, and also help decide where the best venue to meet will be, given the circumstances on the day. They know where a family has gone, which young men have recently been initiated, and which Uncles or Aunties should be present at the Family Conference. The Community Constable takes the role of the police representative in the conference, which means that having a police officer from, say, Marla is unnecessary. In other areas, police will travel to the communities for Family Conferences.

Language and culture

In most remote Aboriginal communities, English is a second language. The Courts Administration Authority books interpreters through the Interpreting and Translating Centre or private providers. There are many cultural considerations that are made, in particular, in terms of letting local people decide who should or should not be at the conference and where it should be held.

A Youth Justice Co-ordinator needs to be flexible about time and often people can wait for hours for a key person to arrive. The Youth Justice Co-ordinator can find that the supporters present are very resourceful at suggesting appropriate and realistic outcomes for the youths or in acknowledging what has already happened to resolve the offending behaviour.

Transience

Aboriginal families may be transient between locations. School holidays are predictably a time when people go visiting, so conferences tend to be avoided then. This is an issue affecting the timeliness of holding Family Conferences because if people move about, the file sometimes needs to be held over until the next visit to the area. Often a circuit will need to be cancelled or postponed at the last minute due to business, or because of a funeral, or because the community says it's the wrong time to come.

Referrals

The police in remote locations have made steady referrals to Family Conference over the years, but never in large numbers. The population is very low and spread over huge distances. The Youth Court tends not to divert files to Family Conference in remote locations. Police can change staff frequently. Providing resources to circuit to remote areas is expensive. As remote communities are entitled to an experienced and expert family conference service, these costs must be accepted. Currently most areas are serviced every 2-3 months. For the far north the Youth Justice Co-ordinator usually conducts a circuit when sufficient files have been referred. Ideally a regular circuit maintains connections with necessary networks and people delivering other programmes to the area.

Mining Company towns

Some young people who offend in "company" towns like Roxby Downs and Leigh Creek are living there unwillingly because their parents have moved there for work. They feel alienated from the community when they get into trouble and their families have often left their extended family and supporters behind in the city. Many people work shifts, resulting in children not being supervised adequately. Often a young person referred to Family Conference will have been excluded from school and there are few opportunities for early school leavers. In these towns, a young person's reputation can be severely damaged when they commit offences, despite confidentiality by police, and this affects their chances to find work. Child and Adolescent Mental Health Service and Drug and Alcohol Services Council provide regular services.

Offences

Many Family Conference referrals from remote communities involve property-related offences (breaks, theft, damage), often with the school or store as victim. We receive many referrals for youths who sniff petrol, which is an offence under s.42d of the *Pitjantjatjara Land Rights Act, 1981*. Often assaults are referred to Family Conference and should be dealt with quickly if this is to be an effective process.

Other social and health issues affecting young people in remote Aboriginal communities include truancy, drug or alcohol abuse by family members, violence, poor nutrition, lack of supervision, lack of support with study, and the absence of significant family members due to incarceration. It is difficult to address the offending behaviour that brings a youth to a Family Conference without confronting these other significant factors affecting their lives and wellbeing. Input from relatives and key community members provide important information to the Family Conference.

Post conference resources

Regular visits are necessary to maintain networks and an understanding of the availability of programs and other youth opportunities. Because there are so few resources in remote communities, when a key person leaves, the change is significant and sometimes results in the end of a program. Some health services are provided from the Northern Territory, for example the Women's Health Service travels to the APY Lands from Alice Springs.

Often there are few opportunities for education and training for young people past Yr 9 or 10, unless distance education, CDEP opportunities or TAFE courses have been established, or they can attend a high school or TAFE in Adelaide or at the Northern Territory. The Youth Justice Co-ordinator needs to keep abreast of the availability of current and relevant programs and courses in specific locations through meeting with key community people who have an understanding of local issues and latest developments.

ABORIGINAL SOBRIETY GROUP

The Aboriginal Sobriety Group (ASG) is a South Australian community based organisation which provides culturally appropriate care and support to Aboriginal people who wish to lead an alcohol and drug-free lifestyle. ASG administers a range of programs and services covering crisis intervention, assessment, referral, counselling, stabilisation and longer term rehabilitation.

The ASG offers programs and support to Aboriginal adults and juveniles who are in contact with the courts through liaison with CAA staff such as Aboriginal Justice Officers and the Specialist Courts team. The support provided by ASG to Aboriginal Drug Court clients has contributed to their ongoing attendance and completion of the Drug Court program.

TERMS OF REFERENCE

THE SCOPE FOR 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;

ABORIGINAL YOUTH JUSTICE OFFICER

The Youth Court employs an Aboriginal Youth Justice Officer who is responsible for the development, delivery, monitoring and review of a culturally sensitive service to Aboriginal youth, families and the Aboriginal Community. The role provides a range of services and information to Aboriginal young people appearing before the Youth Court, which contribute to the efficient, effective and more culturally responsive operation of the Youth Court.

The Aboriginal Youth Justice Officer supports Aboriginal youth, their families and the court system to make informed decisions regarding the care, correction and guidance of Aboriginal youth. Through building links and networks within the Aboriginal community and service providers for Aboriginal youth, the Aboriginal Youth Justice Officer assists Aboriginal youth gain appropriate access to justice systems and supports them participating in the outcomes of the justice system.

The Aboriginal Youth Justice Officer contributes to the education of Aboriginal young people about the operation of the court and the criminal justice system by providing accurate information and advice on court procedures and provides an interface between the Aboriginal community and the Youth court.

IMPROVING FAMILY CONFERENCE SERVICE FOR ABORIGINAL CLIENTS

Increasing referrals and effectiveness

The Family Conference Team are aware of the need to increase referrals to family conferences through potential changes to SAPOL practice, judiciary referring matters out of court and further discussion with the Aboriginal Legal Rights Movement. In particular the CAA considers that defence lawyers need more training to better understand the diversion system and the benefits it offers for young offenders, rather than the traditional adversarial system of criminal practice. Furthermore, the CAA emphasises that SAPOL and other community resources need to ensure that family conferences occur in a timely manner to maintain the connection for the young person between their offending behaviour and the consequences.

The Family Conference Team also recognises the need to increase the effectiveness of family conferences by providing greater pre and post conference support, further consultation, and employing more Aboriginal staff.

The link between child abuse and neglect, and offending behaviour

The link between child abuse and neglect, and offending behaviour is now well established, and has been acknowledged in a number of significant reports, including the Review of Child Protection in South Australia¹ (the Layton report) and the National Crime Prevention report *Pathways to Prevention, Developmental and Early Intervention Approaches to Crime in Australia, 1999*².

In particular results from the NSW Bureau of Crime Statistics and Research report "Social and Economic stress, Child Neglect and Juvenile Delinquency"³ support the need for policies that address child abuse and neglect as a key element of crime prevention. Poverty, unemployment, sole parent families, lack of residential stability, and crowded living conditions, were all related to measures of abuse and neglect, on the one hand, and to juvenile crime on the other. Of all the factors measured, however, neglect and abuse were the strongest predictors of juvenile crime.

The report *Pathways from Child Maltreatment to Juvenile Offending*⁴ details the findings of a longitudinal study of a cohort of 41,700 children born in Queensland in 1983, and examines the relationship between maltreatment history and juvenile offending. The research concludes that there is a causal relationship between maltreatment and juvenile offending. Maltreated children are more likely to offend in adolescence, than non-maltreated children. Children maltreated in adolescence or in both childhood and adolescence were more like to offend than those only maltreated in childhood.⁵ Indigenous children were more likely to be maltreated and much more likely to enter the juvenile justice system.⁶

The experience of coordinators in the Care and Protection Unit and the Family Conference Team supports the connection between these two problem areas. Some young people appear in both conferencing systems simultaneously or consecutively.

¹ Robyn Layton QC (2003) Review of Child Protection in South Australia. Adelaide: Government of South Australia

² National Crime Prevention. (1999) Pathways to prevention : developmental and early intervention approaches to crime in Australia, Summary Volume. Canberra : National Crime Prevention, Attorney-Generals Department

³ D. Weatherburn, B.Lind (1997) Social and Economic Stress, Child Neglect and Juvenile Delinquency. Sydney: NSW Bureau of Crime Statistics and Research

⁴ A. Stewart, S.Dennison, E.Watson (2002) Pathways from Child Maltreatment to Juvenile Offending. Canberra: Australian Institute of Criminology

⁵ *ibid.*, p.6

⁶ *ibid.*, p.4

Within the child protection arena many young children under the age of ten are already experiencing behavioural problems, in particular, aggressive or antisocial behaviours which may be precursors to offending. Again, the National Crime Prevention report refers to studies which show that persistent aggressive behaviour at ages 3 - 4 is correlated with aggressive behaviours at later ages, and that this later behaviour is correlated with delinquency at later ages (p 47). Current responses in South Australia to these young children are often fragmented, inconsistent and short term, so that the opportunity for effective interventions to support change is lost.

Whilst not all these troubled children will go on to offend, there is a need to strengthen protective factors both in the family and other social institutions. The proven impact of child abuse and neglect on youth offending suggests that prevention strategies and effective intervention in child abuse and neglect should be priority areas for youth crime prevention.