



28 October 2016

Providing legal aid and assistance to Aboriginal people of the Central Australian Region:

- Criminal
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- Mental Health
- Restorative Justice
- Welfare Rights
- Youth Justice

Office of the Royal Commission
Royal Commission into the Protection and Detention of Children in the Northern Territory
PO Box 4215
Kingston ACT 2604

By email: ChildDetentionNT@royalcommission.gov.au

To the Honourable Margaret White AO and Michael Gooda,

Initial submission from the Central Australian Aboriginal Legal Aid Service (CAALAS)

We are writing in response to the initial call for submissions that has been made by the Royal Commission into the Protection and Detention of Children in the NT (**'the Commission'**). We understand that information provided in this round of submissions will be used to assist the Commission in planning its further work, and that this information need not be presented in an overly formal way. We confirm the indication from your Office that information received in this round will not be made by public by the Commission.

We are grateful for these indications which are of assistance to us as we seek to provide the Commission with information that is helpful and illuminating, in circumstances where resourcing issues have not enabled us to prepare a thorough, formal or polished submission at this early stage. We confirm our intention to provide further written submissions to the Commission as the inquiry progresses, which may take the form of either a joint submission or a discrete submission from CAALAS.

In the meantime, we confirm that a number of previous submissions and letters have been provided by CAALAS to the Commission, and that these submissions highlight longstanding, ongoing systemic issues across the youth justice and care and protection systems in the NT. Unfortunately the

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majority of these recommendations still stand, because little has changed due to a history of governmental inactivity in terms of implementing sound recommendations made as a result of past inquiries. Submissions and letters that we have provided the Commission to date include:

1. Joint letter from CAALAS and NTLAC to Mark Payne, Commissioner of Correctional Services – 27 September 2016
2. Joint CAALAS and NAAJA response on the Optional Protocol to the Convention against Torture (OPCAT) in the context of Youth Justice Detention Centres – June 2016
3. CAALAS response to Review of the Department of Correctional Services – May 2016
4. Joint letter from CAALAS and NTLAC to Mark Payne, Commissioner of Correctional Services – 22 November 2015
5. CAALAS submission to the Department of Chief Minister re: draft Strong Society, Confident Culture Strategy – September 2015
6. CAALAS and NAAJA joint letter to Ms Salli Cohen, Executive Director Youth Justice re: Draft Youth Justice Framework – 2 March 2015
7. CAALAS and NAAJA submission to the Review of the Community Justice Centre Act – November 2014
8. Joint submission by CAALAS, NAAJA and NTLAC to the Review of Youth Detention in the NT – November 2014
9. CAALAS letter to Minister Elferink, re: Review of Youth Detention in the NT – October 2014
10. CAALAS and NTLAC Submission on the Youth Justice Framework – September 2014
11. CAALAS and NAAJA response to the Correctional Services Bill 2014 – July 2014
12. CAALAS and NAAJA response to the Correctional Services Bill 2014 – May 2014
13. NAAJA and CAALAS joint submission to the NT Parliamentary Inquiry into Foetal Alcohol Syndrome disorders (FASD) – May 2014

14. CAALAS submission to the Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander Communities – April 2014
15. CAALAS submission to the Australian Human Rights Commission: Consultation on access to justice in the criminal justice system for people with disability - August 2013
16. CAALAS submission to the NT Government Consultation on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013 – July 2013
17. CAALAS submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia - March 2013
18. CAALAS submission to the NT Government Review of the Bail Act (NT) – March 2013 (including attachment “Set up to Fail – Aboriginal Youth, Bail and Children’s Rights in Central Australia” – CAALAS research project, March 2013)
19. Letter from CAALAS and NAAJA to the Youth Justice Unit regarding implementation of the Youth Justice Review recommendations – February 2012
20. Letter from CAALAS to Attorney General Rob Knight, endorsed by other NGO’s – 29 February 2012
21. Letter from CAALAS to Ann Bradford, Youth Justice Review Implementation Program Steering Committee, endorsed by other NGO’s – 29 February 2012
22. CAALAS submission to the Review of the NT Youth Justice System – July 2011
23. CAALAS 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

In addition to these previous policy and advocacy activities, we also wish to advise the Commission of further current and recent concerns that have been brought to our attention by clients and staff in relation to both the youth justice and care and protection systems. At this early stage we have collated this information as a series of themed dot points. The points are loosely themed and have not been collated in response to each and every term of reference. These points are non-exhaustive, and simply reflect CAALAS’

preliminary discussions since the announcement of this Royal Commission. We will draw the attention of the Commission to further issues as we become aware of them.

We hope that this preliminary information is of assistance, and ask that you do not hesitate to contact us should you wish to have further discussion about any of the issues raised.

We look forward to continuing our discussions with the Commission about these important matters.

Yours faithfully

CENTRAL AUSTRALIAN ABORIGINAL LEGAL AID SERVICE INC.

Privacy

Eileen Van Iersel
CEO

ATTACHMENT

Preliminary brief to the Royal Commission by CAALAS: Current and recent issues observed in the youth detention and child protection systems in Central Australia

Failings in the care and protection system

- CAALAS frequently observes a lack of compliance with the Aboriginal Child Placement principle in relation to out of home care arrangements by the Department of Children and Families (now known as Territory Families; hereafter "the Department"). The placement of an Aboriginal child with non-Indigenous foster carers does not appear to be used as an option of last resort;
- Frequently, the Department does not appear to make proper or adequate enquiries with the children's families prior to removing the children and placing children with non Indigenous foster carers. We have observed frequent delays by the Department in conducting kinship care assessments. We have been approached by clients who are extremely frustrated about the lack of responsiveness of the Department, when they are actively putting themselves forward as potential kinship carers. Delays in kinship care assessments are not in the best interests of children and can and do prejudice family members who are seeking to have children placed in their care. That is because the longer the process takes, the more attached children become to their foster carers making it more difficult to move them to other long term carers;
- We have observed that family members are not adequately or appropriately consulted by the Department whilst care plans are being developed;
- Care plans are often poor quality, and lacking in substance regarding reunification plans and preserving and encouraging family and cultural connection;
- We have observed an increasing trend by the Department to seek Protection Orders that will last until a child is 18, rather than shorter term orders that would enable a review of the situation and whether family circumstances have changed. Once a long term Protection Order is made it is very difficult to have it reviewed;
- We are concerned that Courts are limited in their ability to make decisions in the best interests of the child, due to parents and family members often not being included in care and protection proceedings. Postal service of documentation, combined with literacy

- and language barriers can mean that parents are not always aware of care and protection matters being listed, or of the seriousness of proceedings. We observe many care and protection matters to be finalised at court without a parent or other relative being present;
- We have observed instances where a young person in the care of the Department has had youth justice matters, during which the Department has agreed that youth detention is the most suitable placement for the young person in circumstances where there is no other appropriate facility to house and look after the young person. Custody should always be a last resort and is not a substitute for an appropriate out of home care placement. For example, it has been noted by local Judges “that detention should not be used as an alternative placement option for Territory Families”. In addition, the lack of appropriate placement options can impact on the length of time a young person is remanded in custody;
 - We are concerned that legal outcomes for young people are prejudiced due to inadequate service provision and information by the Department, including where there are not appropriate out of home care placements that may assist the Court in properly considering bail applications and other non-custodial outcomes;
 - We have noted that long term recidivist offenders in the care of the Department often present to the court with no cognitive assessment ever being conducted despite long term care and protection orders being in place;
 - We are concerned that the Department may not always be aware of instances where young people in their care have been arrested or taken into custody. Section 23 of the *Youth Justice Act* clearly sets out the requirement for responsible persons to be notified when a youth is taken into custody;
 - We are concerned that relevant information is not provided to the young person’s legal representative prior to their youth court matters being heard, such as updated Care Plans that will include details that are relevant to the court;
 - We are concerned that children who are the subject of care and protection applications do not always have strong, independent advocacy through the appointment of an independent children’s lawyer.

Failings in the youth justice system

- Legal outcomes for our young clients continue to be prejudiced by the lack of a specialist Youth Justice Court in Alice Springs. The

current approach is alienating and intimidating for youth, and is often not conducive to therapeutic, diversionary and non-custodial options being properly explored;

- Diversion options are not utilised as often as they should be;
- There is a general lack of compliance with the principles of the *Youth Justice Act*, including the requirement that a young person should be held in custody for the shortest time possible and as a last resort;
- There is a general lack of compliance with national and international standards such as the Australasian Juvenile Justice Administrators and the Convention on the Rights of the Child;
- Young people in the youth justice system are disadvantaged by the lack of through care support, which would enable thorough post release planning, reduce the risk of reoffending, and promote successful reintegration;
- There is a lack of supported bail accommodation options, alternative housing and care facilities for young people in Alice Springs and Tennant Creek who come into contact with the youth justice system;
- Young people are also disadvantaged by a lack of resourcing for assessments regarding mental health, cognitive issues, and FASD;
- Previously CAALAS has had concerns about the transfer of young detainees from Central Australia to the Top End whilst on remand, due to the difficulties this creates in terms of taking legal instructions to progress their matters and conducting assessments relevant for bail proposals or other non-custodial outcomes;
- We are aware of instances where, in the course of being transferred to Darwin, young people have been taken on commercial flights and led through the Alice Springs Airport whilst handcuffed.

Treatment in youth detention

- We are aware of verbal threats being made recently by corrections staff to clients in custody at the Alice Springs Youth Detention Centre (ASYDC), which led to a client fearing that he would be assaulted;
- We are aware of corrections staff recently swearing at a child in detention at the ASYDC. This child also witnessed four staff "chuck" a boy on the ground;
- We have observed a general heightened anxiety amongst young people entering youth detention, because of well publicised, previous abuses that have occurred in detention and a fear that they will be subjected to the same treatment. Recently a young female client became very distressed at the prospect of being in custody at the

ASYDC, because she knew that a corrections officer implicated in these previous abuses was still employed there;

- A 17 year old female client was recently in custody at Court, and was placed in a cell with a female adult prisoner when she is a young person and should be kept separate. Once this was noticed by a guard, the young client was moved to a separate cell in the adult section which was adjacent to male offenders. It is essential that there are facilities for young people in custody to be completely separated from adults in custody;
- A young client recently advised of very offensive comments being made to her by a corrections officer, regarding the notoriety and reputation of her family within the corrections system. The client was very upset;
- A client currently in custody at ASYDC reported being locked down in her cell at 6.30pm, and not allowed out until 7.00am the next day (unless it is to go to the bathroom, etc). We have received general feedback from several clients that there is an excessive use of lock down at ASYDC overnight, however the exact policy regarding overnight lockdown remains unclear;
- We have been advised by a female client that there are not always female staff on duty when there are young women in custody at ASYDC;
- Clients have observed that the behaviour of corrections officers from the adult prison working in ASYDC is far worse than those who are more regularly employed at the ASYDC. Clients have reported being treated like "big house mob" by corrections officers who are from the adult system;
- Clients have reported that ASYDC is boring, that there is a lack of programs and that in some instances they would prefer to be transferred to Darwin because it is better up there. It is not acceptable that clients have to choose between adequate service provision, and proximity to family and country;
- There is currently a lack of appropriate space for assessments and professional visits at ASYDC;
- When clients are in police custody following arrest, we have observed repeated instances where the right to silence is not adhered to. Police have proceeded to interview young people, even after the young people have spoken with a lawyer who has relayed their instructions to police that they do not wish to participate in an interview;
- We have received multiple reports of physical violence that occurred at Aranda House approximately 6-7 years ago. The separate

incidents relayed by our clients relate to violence by the same corrections staff member who has previously been charged with assaulting a young person in detention, and who remains employed at ASYDC. Discussions with clients who were in custody at this time (and at ASYDC after the closure of Aranda House) have indicated that there was an entrenched culture of abuse, in which they saw violent and abusive behaviour by staff as the norm rather than the exception. Clients have confirmed that they thought this behaviour was normal, and have asked how their treatment was meant to be different. Clients apparently had little knowledge of their rights in the system and have indicated it was hard to access this information from corrections staff.