



**North Australian Aboriginal Justice Agency  
Submission to the  
Youth Justice Review Panel**

**A Review of the Northern  
Territory Youth Justice System**

**July 2011**

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## 1. Summary

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Over 90% of young people in custody in the Northern Territory (NT) are Aboriginal.<sup>1</sup>

The grossly disproportionate involvement of Aboriginal young people in the youth justice system must be addressed. Unfortunately, the evidence is that current approaches to youth justice are not working. They are not preventing offending. They are not ensuring that the Territory's youth have the best chance to succeed and become productive members of society. They are not making the community safer.

This submission identifies how the causes of over-representation of Aboriginal young people in the criminal justice system can be tackled. It seeks to put forward innovative approaches to youth justice which are best practice and supported by evidence and examples in other jurisdictions

### **Part One: Youth Justice – Some Guiding Principles**

The first part of this submission suggests guiding principles for approaching youth justice. An effective youth justice system must be non-marginalising, specialist, therapeutic and culturally relevant. The diagram at the beginning identifies the components of a holistic approach to youth justice. We recommend that the *Youth Justice Act 2005* (NT) (the *Youth Justice Act*) include a clear provision framing the youth justice system as one which looks to both the justice and welfare considerations of young people.

The NT youth justice system must provide youth-specific interventions that will build upon cultural strengths, and develop meaningful strategies to address the unique issues underpinning youth offending. Properly resourcing early intervention, diversionary and rehabilitative youth justice initiatives in both towns and remote areas is central to an effective youth justice system.

### **Part Two: How can the Youth Justice System be Improved?**

The second part of this submission identifies a range of practical ways in which the youth justice system can be improved. These proposals are founded upon NAAJA's extensive experience working within the youth justice system, and our consistent experience that the current youth justice system often fails to meet the needs of Aboriginal young people. Our proposals are evidence-based, and look to effective programs in the NT, elsewhere in Australia and overseas.

Our proposals span the involvement of young people within the justice system, from first contact with the police, to court processes and sentences, and subsequently to detention support and community legal education.

### **Part Three: Young Offender's Perspectives**

The third part of this submission gives perspectives of Aboriginal people who have been involved in the youth justice system. This provides tangible and first-hand context for our submissions.

NAAJA supports a youth justice system which is youth-specialised, community-driven and culturally responsive. We need to move away from heavy-handed and generalised approaches to youth justice and rather foster dialogue with Aboriginal communities, and Aboriginal young people, to develop effective youth justice initiatives that reduce offending and incarceration rates.

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<sup>1</sup> Northern Territory Department of Justice, *NT Correctional Services Annual Statistics 2008-2009* (2009) 8  
<[www.nt.gov.au/.../NTCS%20Annual%20Statistics%202008-09\\_EBook.pdf](http://www.nt.gov.au/.../NTCS%20Annual%20Statistics%202008-09_EBook.pdf)>

## **2. Summary of Recommendations**

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### **Part A: Youth Justice – Guiding Principles**

#### **What Works and What Doesn't Work**

Recommendation 1: The Review Panel should look to other best practice youth justice models, and reject punitive approaches in favour of a rehabilitative and therapeutic approach.

#### **A Holistic Response to Youth Justice**

Recommendation 2: Section 3 of the *Youth Justice Act* should be amended to insert a provision making clear that the primary objective of the *Youth Justice Act* is the rehabilitation of young offenders.

Recommendation 3: An independent Government department should be established to administer youth justice, which holistically embraces responsibility for the justice and social needs of young people.

#### **A Specialised Youth Precinct**

Recommendation 4: A specialist and independent youth court should be established, and should be co-located with youth specific Government and non-Government services.

#### **Embedding a Restorative Justice and Therapeutic Jurisprudence Approach**

Recommendation 5: Youth justice policy should embrace therapeutic jurisprudence and restorative justice techniques which are appropriate to Aboriginal young people.

#### **Specific Needs of Aboriginal Young People**

Recommendation 6: All youth justice practices should be culturally relevant for Aboriginal young people.

Recommendation 7: Cultural considerations should be embedded at all stages of youth justice proceedings.

#### **Victim Status and Trauma**

Recommendation 8: Significant efforts should be made to identify and respond to the issues of victim status and trauma of young people in the youth justice system.

#### **Community Driven Responses**

Recommendation 9: Aboriginal communities should be empowered to become active stakeholders in the youth justice system. Structures should be created to ensure the inclusion, and active participation, of Aboriginal Elders.

### **Integrating Child In Need of Protection Matters**

Recommendation 10: Youth Justice and CINOP proceedings should be heard in a specific youth justice court.

### **Role of Youth Justice Officers and Department of Families and Children Workers**

Recommendation 11: Section 4(b) of the *Youth Justice Act* should be re-drafted to change the focus from acknowledging the needs of the youth, to adopting an approach in all dealings with the young person that is individualised, strengths-based, collaborative and empowering.

Recommendation 12: The role of Corrections Officers and DFC workers should be redefined. Client-centred approaches that assist young offenders deal with the issues linked to their offending that place a greater emphasis on support, supervision and mentoring should be preferred to the current approaches, which are characterised by a focus on statutory compliance.

## **Part B: How Can the Youth Justice System be Improved?**

### **Before Court**

#### **Properly Resourcing Existing Options Under the *Youth Justice Act***

Recommendation 13: The NT Government should properly resource existing therapeutic options under the *Youth Justice Act*.

Recommendation 14: The NT Government should commit to adequately funding youth specific rehabilitative services in all areas of the Northern Territory, including regional towns and remote communities.

### **Diversion**

Recommendation 15: The provision excluding a right of review from police decisions to decline someone diversion should be removed from the *Youth Justice Act*.

Recommendation 16: The court should have an unfettered power to refer a young person onto the diversion program, without requiring prosecution consent.

Recommendation 17: The *Youth Justice Act* should be amended to strongly encourage diversion for certain minor offences, and certain types of offenders.

- Recommendation 18: Diversion should be considered a core aspect of the Youth Justice system, and it should be offered in all remote communities.
- Recommendation 19: Diversion programs should be conducted within an age appropriate time frame.
- Recommendation 20: Diversion should be administered by an independent body, distinct from the police.
- Recommendation 21: Government should introduce a review of the diversion system in the NT.

### **Police Practices**

- Recommendation 22: Police should develop and implement complaints procedures specific for young people that are 'youth-friendly'.
- Recommendation 23: The caution administered to young people needs to be reworded. To be effective for young people, it needs to be in plain English and should use words such as: 'If you say to me that you don't want to talk about this, I will stop asking you questions about it'.
- Recommendation 24: A provision should be inserted into the *Youth Justice Act* modelled on s 420 of the *Police Powers and Responsibilities Act 2000* (Qld).
- Recommendation 25: A requirement should be included for police to contact a magistrate if a young person has been in custody for a certain period of time (two hours), and no adults have been contacted or have been able to attend police station.
- Recommendation 26: NAAJA recommends that a provision be inserted into the *Youth Justice Act* that states that where a young person indicates through their legal representative that they do not wish to participate in an electronic record of interview, police be required to not proceed with an interview.
- Recommendation 27: It should not be a requirement of diversion that a young person make formal admissions.
- Recommendation 28: A copy of young people's rights (or a modified copy of NT Police General Orders pertaining to young people) should be displayed in Watch Houses where young people are processed.
- Recommendation 29: Stricter requirements should be included in the police practice manual, or the *Youth Justice Act*, to mandate diversion for all relatively minor matters, and preclude arrest and bail for certain types of offences.

- Recommendation 30: NT Police need to develop strong and constructive community engagement projects with Aboriginal young people and local Aboriginal communities. These should be modeled on the Clean Slate Without Prejudice project in Redfern.
- Recommendation 31: Police should have more extensive training regarding working effectively with Aboriginal young people.

## **Bail**

- Recommendation 32: Pro-bail, youth specific bail provisions should be inserted into either the *Bail Act*, or as part of a separate bail regime for young people in the *Youth Justice Act*. The starting point should be that remanding a young person in custody is to be the option of last resort.
- Recommendation 33: The power for courts to remand a young person in circumstances where the young person is unlikely to receive a term of imprisonment should be removed, unless exceptional circumstances apply.
- Recommendation 34: Section 51 of the *Youth Justice Act* should be amended to include a provision allowing the court to order an urgent s 51 report within 48 hours.
- Recommendation 35: The NT Government should introduce and resource a Supervised Bail Program modeled on the WA Supervised Bail Program
- Recommendation 36: A legislative provision should be introduced explicitly stating that bail conditions should not be overly onerous or oppressive.
- Recommendation 37: The practice of arresting and bailing young people should be avoided at all costs, and youth justice matters should be proceeded with by way of summons.

## **During Court**

### **Youth Friendly Proceedings**

- Recommendation 38: Youth court proceedings should be conducted in a youth friendly fashion, and the Youth Justice Court should be serviced by youth-specific magistrates, prosecutors and defence counsel.

### **Closed Courts and Removing Provisions Allowing the Publication of Identifying Information**

- Recommendation 39: Youth Justice Courts should be closed, unless the Court provides reasons for deciding otherwise.

Recommendation 40: Section 50 of the *Youth Justice Act* should be amended to preclude publication of identifying information relating to a young person involved in youth justice proceedings.

In the alternative, s 50 should be amended in terms similar to s 234 of the *Juvenile Justice Act 1992* (Qld) which gives a court the power to allow the publication of identifying information for only the most serious of offences, and only where it is in the public interest to do so.

### **Additional Sentencing Options in the Youth Justice Court**

Recommendation 41: Lower end, community based, sentencing practices should be encouraged in Youth Justice Courts.

Recommendation 42: The new sentencing dispositions made available under the 'New Era in Corrections' policies should be extended to the *Youth Justice Act*.

### **Fines for Young People**

Recommendation 43: Young people should be excluded from mandatory financial penalty regimes, including the requirement to impose victim's levies. Whether or not a young person is fined, or required to pay a victim's levy, should be a discretion left to the Youth Justice Court Magistrate.

### **Young People and Violent Offending**

Recommendation 44: Mandatory sentencing should *not* be included in the *Youth Justice Act*.

Recommendation 45: Tailored rehabilitation programs specific to young violent offenders should be funded, developed and implemented as a matter of priority in the NT youth justice system. These should include culturally relevant anger management, and Indigenous Family Violence programs.

### **Need for Youth Specific Mental Health Workers and Psychologists**

Recommendation 46: The Youth Justice Court should be required to inquire into a young person's mental health needs when a party to the proceedings raises the issue to ensure that court orders are specifically tailored to a young person's specific needs.

### **Community Courts for Young People**

Recommendation 47: The NT Government should re-commit to supporting Community Courts by adequately resourcing and funding

them. The NT Government should look to Victoria's Koori Courts for a good practice example.

Recommendation 48: The NT Government should commit to the thirty minimum standards in the NATSILS document, 'Minimum Standards for Aboriginal and Torres Strait Islander Courts'.

Recommendation 49: The NT Government should engage Elders and ensure the constitution of the panel of Elders is culturally correct for each case. Proceedings should be conducted mostly in Language.

Recommendation 50: Specific legislation should be drafted, providing a legal mandate for Community Courts.

### **Youth Conferencing for Complex, Entrenched Offenders**

Recommendation 51: The NT Government should specifically fund the Community Justice Centre to convene youth justice conferences.

Recommendation 52: Specific mediation projects in remote communities such as the Ponki (Peace in Tiwi) Mediation should be developed, so that youth justice conferencing is culturally relevant to the parties and the local community.

### **Detention**

#### **Young People in Custody not being Kept with Adult Defendants**

Recommendation 53: More effort should be made to ensure young people are not kept in custody with, or exposed to, adults in custody.

#### **Detention Support**

Recommendation 54: The NT Government should fund a dedicated Youth Justice Support Officer as part of NAAJA's Prison Support Officer project. Consideration should also be given to providing similar funding to the NT Legal Aid Commission for a similar service for non-Aboriginal young people.

#### **Throughcare**

Recommendation 55: The NT Government should provide significant additional resources and support to Throughcare projects.

#### **Parole for Young People**

Recommendation 56: Youth-specific provisions should be inserted into the *Parole of Prisoners Act*. Section 3HA of the Act should be removed so that procedural fairness applies to parole proceedings. This would allow young people to be more involved people in the parole process

Recommendation 57: Young people should be supervised by youth specific parole officers who approach their supervisory role using a youth friendly intensive case management framework, as opposed to a strict statutory compliance model.

### **Outside Court**

#### **Legal Education**

Recommendation 58: The NT Government should provide additional resources allow organisations such as NAAJA to deliver comprehensive legal education packages to young people across the Top End of the NT.

#### **Role of Elders**

Recommendation 59: The NT Government should provide resources to allow Elders to play a regular, meaningful and tangible role in Youth Justice Court proceedings. Elders should be paid for their time in court and a panel of a large number of Elders, both male and female, and from various communities and regions, should be established, to ensure that Elders present in court are the right Elders for a particular defendant.

#### **Law and Justice Groups**

Recommendation 60: The NT Government should establish and support Law and Justice Groups in remote communities. The NT Government's approach to Law and Justice Groups should be informed by the Queensland Community Justice Group model.

#### **Cultural Reconnection, Healing and Mentoring**

Recommendation 61: The NT Government should provide additional funding and resources to cultural re-connection, healing and mentoring programs in the NT.

#### **Specialist Drug and Alcohol Rehabilitation Services**

Recommendation 62: The NT Government should ensure that appropriate facilities are in place for young people to access substance abuse counselling, rehabilitation and treatment, which are accessible to both regional and remote young people.

Recommendation 63: The NT Government should give additional funding to best practice examples, such as the Strong Bala Men's Program in Katherine, to ensure their long-term viability, and used as a model for the development of other programs.

#### **Youth Camps**

Recommendation 64: The NT Government should provide additional resources to programs across the NT that provide best-practice, safe and culturally relevant youth camps.

**Role of Families and Part 6A Family Responsibility Agreements**

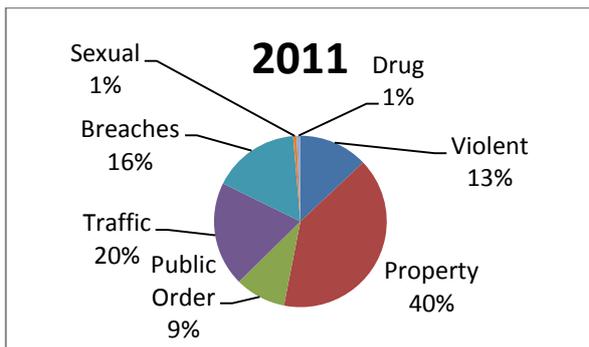
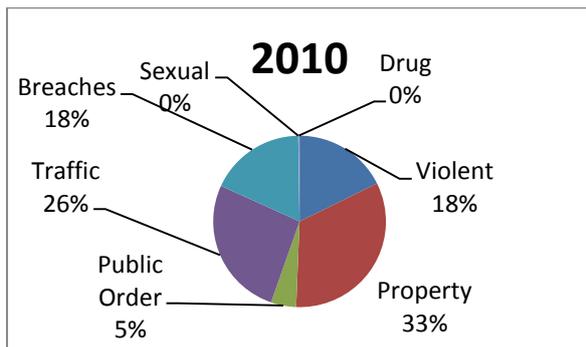
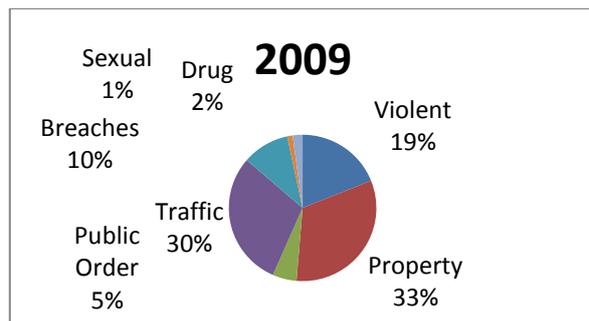
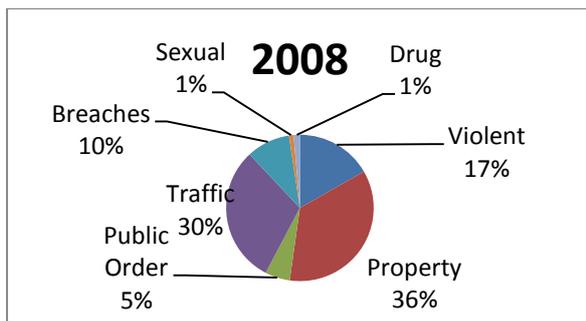
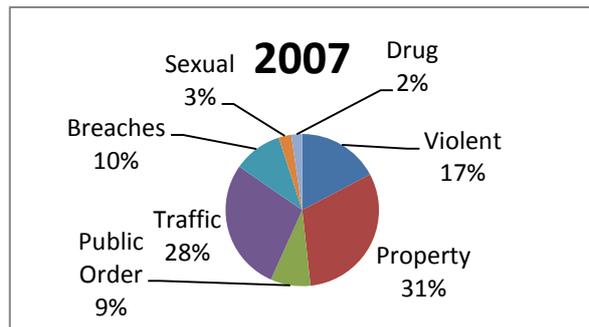
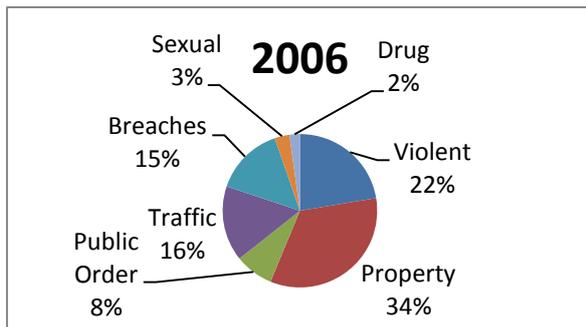
Recommendation 65: Family Responsibility Agreements should either be abolished, or reframed to be therapeutic rather than punitive in nature.

### 3. Statistical Analysis

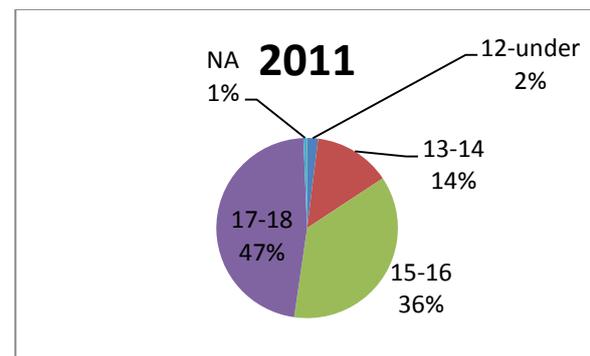
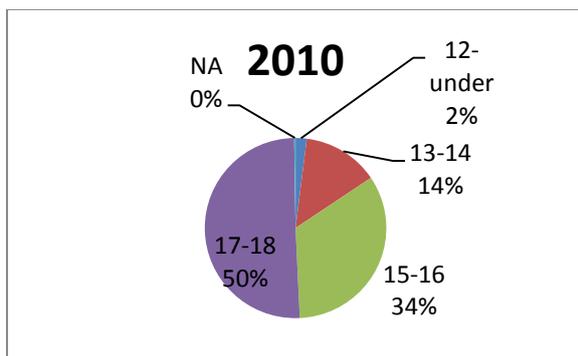
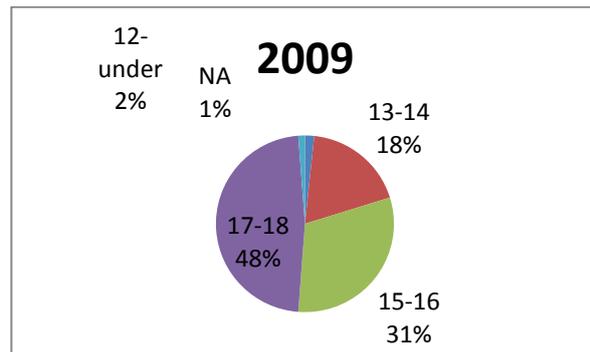
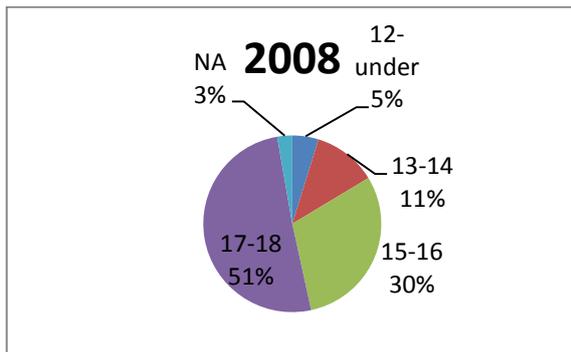
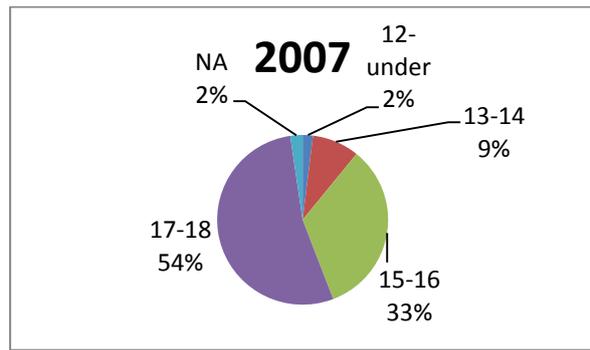
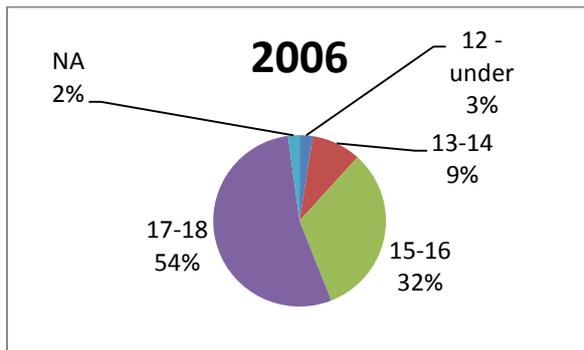
Attached to this submission are statistics that NAAJA has compiled for the period 1 January 2006 – 30 June 2011 (please note the statistics for 2011 are projection only. We have tallied data for the period 1 January 2011 – 30 June 2011 and the numbers cited represent an estimate for the January – December 2011 period).

The following is a summary of NAAJA's statistics:

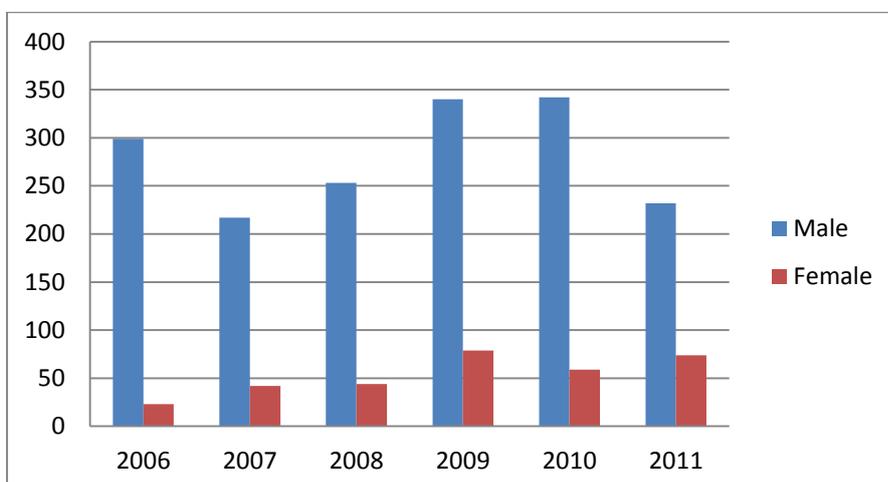
#### a. Offence Type



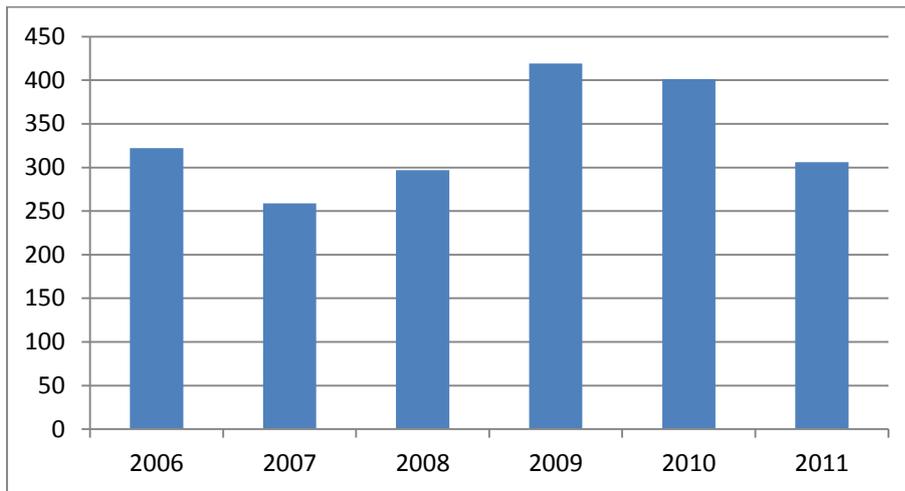
**b. Age Range of Clients**



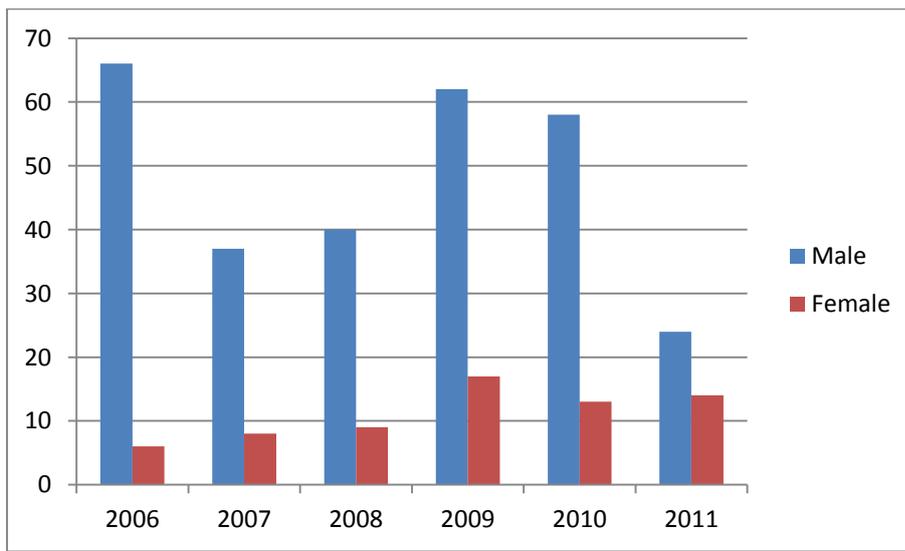
**c. Gender of Clients**

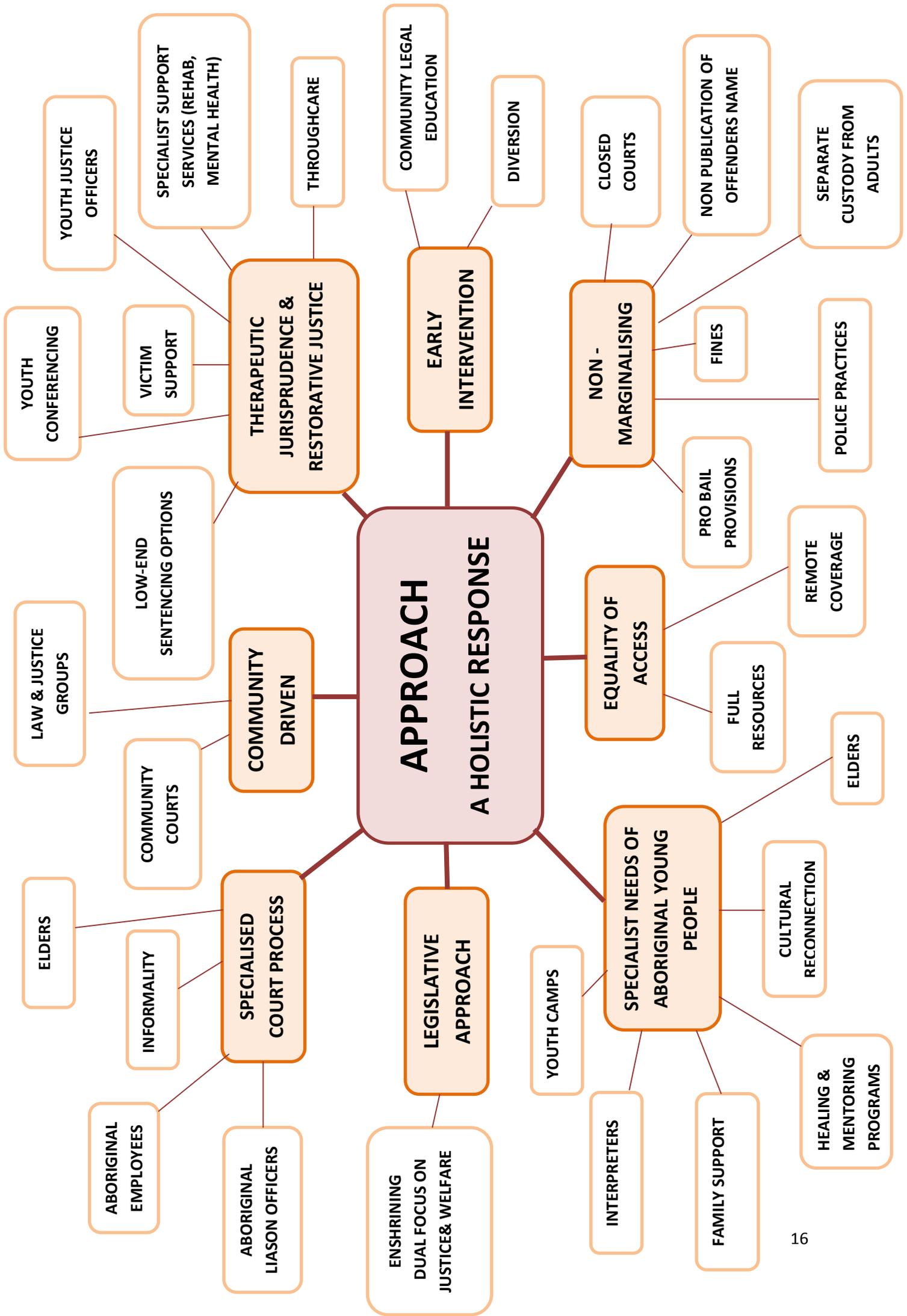


**d. Total Number of Clients**



**e. Violent Offences**





## Part A: Youth Justice – Guiding Principles

### 4. What Works and What Doesn't Work

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#### Recommendation 1:

The Review Panel should look to other best practice youth justice models, and reject punitive approaches in favour of a rehabilitative and therapeutic approach.

#### a. Punitive Approaches Do Not Work

The 2010 'Review of Effective Practice in Juvenile Justice' prepared by Noetic Solutions for the NSW Minister for Juvenile Justice (the NSW Review) contained some clear messages about what works, and what doesn't work when it comes to juvenile justice:

Evidence produced over more than thirty years through empirical studies conducted in Australia, the USA, New Zealand and Europe clearly shows that traditional penal or 'get tough' methods of reducing juvenile crime, such as juvenile incarceration, overly strict bail legislation, trying juveniles in adult courts, 'scared straight' programs, boot camps and so on, are ineffective. Not only do these methods tend to be ineffective in reducing recidivism among young people, but they are also amongst the most costly means of dealing with juvenile crime.

The Review points to three reasons why these approaches are unsuccessful:

- The stigmatising effect resulting from the labelling of young offenders by courts, police, inmates or institutions within the juvenile justice system as well by the community at large;
- Reinforcement of offenders' criminal behaviour resulting from the collective detention, incarceration or remand of young offenders and the failure to provide a healthy family and peer environment or positive role model; and
- Failure to address the underlying factors behind the offending behaviour of young people – which may include having a dysfunctional family, substance abuse problems, mental health issues and so on.

#### b. Addressing Causal Factors of Offending Works

The NSW Review found that:

There is ample evidence in support of certain other methods of dealing with juvenile crime. These effective methods tend to focus on addressing the underlying factors behind the offending behaviour of juveniles. This may involve the removal or reduction of 'risk factors', such as family dysfunction, a delinquent peer group, truancy or alcohol abuse, as well as the adding or strengthening of 'protective factors' such as good parenting, having a positive role model or part-time employment.

The NSW Review went on to comment that:

In addressing these many factors, such methods emphasise the need to divert young offenders from entering the juvenile justice system altogether so that the offender can receive the necessary services or treatment and remain in an environment which is conducive to behavioural reform. Given that many of the factors that predict youth offending are

environmental in nature, effective responses to youth crime often include programs which deliver family, school or community-based therapies and services.<sup>2</sup>

NAAJA agrees with these findings. We endorse the comments by Western Australian (WA) Children's Court Magistrate Deen Potter:

Indigenous children, despite gratuitous, self-serving rhetoric by politicians, community leaders and victims' rights groups to the contrary, remain victim to their immediate situation. The capacity of juvenile justice systems to respond to Indigenous youth has been severely compromised by a lack of resources and the imposition of an adult corrective services model that fails to give each young person the individual attention that is essential to successful rehabilitation.<sup>3</sup>

We urge this Review to reject populist approaches to youth justice that are not evidence-based. This submission seeks to put forward innovative approaches to youth justice which are best practice, and supported by evidence and examples in other jurisdictions. .

## 5. A Holistic Response to Youth Justice

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### a. The Welfare of Young People

#### Recommendation 2:

Section 3 of the *Youth Justice Act* should be amended to insert a provision making clear that the primary objective of the *Youth Justice Act* is the rehabilitation of young offenders.

NAAJA considers that a best practice approach to youth justice must address the holistic needs of young people. It is our submission that youth offending should be dealt with differently to adult offending. This is because young offenders are distinct from adult offenders criminogenically, psychologically, sociologically and biologically.<sup>4</sup> Young people involved in the criminal justice system can often be characterised by their lack of maturity, undiagnosed mental illness, previous victim experience, willingness to take risks and their capacity for rehabilitation with positive interventions.

Youth justice should be concerned with the welfare of young people. We endorse the comments of WA Magistrate Deen Potter, who commented in the context of the *Young Offenders Act* (WA),

With respect, when one examines the principles of juvenile justice contained in the *Young Offenders Act*, it is arguable that there has not been a complete dislocation of notions of welfare from the sentencing exercise and that the Act does not only reflect sentencing legislation. If there has been any dislocation between welfare and justice then this has occurred incrementally over time at a systemic, political as well as a practical administrative level. Further, there is an inherent hypocrisy in a community that cries out for the protection of

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<sup>2</sup> Noetic Solutions, 'Review of Effective Practice in Juvenile Justice' (Report for the Minister of Juvenile Justice, NSW, January 2010) 54-55.

<sup>3</sup> Deen Potter, 'Indigenous Youth and Restorative Justice in Western Australia' (2010) 20 *Journal of Judicial Administration* 92, 104.

<sup>4</sup> Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?* (February 2011) Australian Institute of Criminology, 2 <<http://www.aic.gov.au/documents/4/2/2/%7B4227C0AD-AD0A-47E6-88AF-399535916190%7Dtandi409.pdf>>

children while seeking the incarceration of those same children who, through their offending behaviours, replicate or respond to their unrecognised and unaddressed victim status.<sup>5</sup>

It is essential that the *Youth Justice Act* make clear that the youth justice regime is not simply concerned with the criminal behaviour of young people, but their holistic needs as well. Unless this is made clear in the Act, it will remain the case that some magistrates will interpret the youth jurisdiction as dealing with ‘mini adults’ rather than a separate and distinct jurisdiction for young people where rehabilitation must be the primary guiding principle.

NAAJA also supports comments by Dr Harry Blagg in his report, ‘Youth Justice in Western Australia’ prepared for the Commissioner for Children and Young People WA in December 2009 (the WA Review) as to the gaps between the justice and child protection services. We consider that this gap is equally, if not more pressing in the NT.

One of the key sources of concern in Western Australia is the critical disconnect between the justice and welfare systems where children from families in crisis are concerned. The division of responsibilities between justice and child protection services has meant that the most vulnerable children are falling between the gaps and are not being adequately supported. Better coordination and integration of services might be achieved by closing the gap between justice and welfare. The best practice examples detailed in this paper are from jurisdictions (Victoria and New Zealand) where youth justice has remained part of human services rather than absorbed into corrections.<sup>6</sup>

## **b. A New Youth Justice Department?**

### **Recommendation 3:**

An independent Government department should be established to administer youth justice, which holistically embraces responsibility for the justice and social needs of young people.

NAAJA does not have a particular position as to whether youth justice should be housed within the Department of Justice, Department of Health, or be established as an independent statutory authority. We consider it more important that whichever Department or Authority it may be, there must be an embracing of responsibility for the criminogenic and social needs of young people in the youth justice system.

## **6. A Specialised Youth Precinct**

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### **a. A Specialist Youth Court**

#### **Recommendation 4:**

A specialist and independent youth court should be established, and should be co-located with youth specific Government and non-Government services.

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<sup>5</sup> Deen Potter, ‘Indigenous Youth and Restorative Justice in Western Australia’ (2010) 20 *Journal of Judicial Administration* 92, 97-98.

<sup>6</sup> Harry Blagg, ‘Youth Justice in Western Australia’ (Report for the Commissioner for Children and Young People WA, 17 December 2009) 5.

Youth offending requires a unique and specialised criminal justice response. In recognition of the profound difference between adult and youth offenders, it is accepted best practice that a youth court be held separate from an adult court.

NAAJA submits that it is very difficult for a magistrate taking 'on and off their youth justice hat' to give full effect to the specialised nature of the jurisdiction. It is NAAJA's experience that young people are treated as 'mini adults' in a system where young people's matters are in the same list, or the same court room, as adults. Separating youth courts from adult courts is consistent with the different sentencing regimes applied in each court. The entire focus of a youth court is rehabilitative, rather than punitive.

There is an argument that exposing young people to the adult jurisdiction has a deterrent effect. This has been proven to be ineffective, and indeed there is evidence to suggest that such a practice can increase the likelihood of reoffending.<sup>7</sup>

NAAJA endorses the importance of separate court lists and court rooms. This allows a Magistrate, the prosecutor and defence lawyer to fully engage with the specialised and age-appropriate nature of the youth jurisdiction. It also allows for the youth court to operate in a youth friendly fashion and for the therapeutic and rehabilitative intention of the *Youth Justice Act* to be given proper effect.

We recognise the difficulty this practice poses for remote circuit courts. In bush courts, the court should list all youth matters at a particular time, on a particular day, rather than having youth matters interspersed throughout the adult list. Listing youth matters at a discreet time and date would enable the court to engage more fully with the specialist requirements of a youth court. It would also ensure that young people are not 'over-exposed' to the criminal justice system through spending the day waiting at court, alongside adult offenders.

## **b. Coordinated Service Provision**

Establishing an independent youth court also facilitates the co-location of youth services. Having a 'youth hub' enables smooth referral processes, and also acts as a 'one-stop-shop' for addressing the varied issues underpinning youth offending.

A more streamlined version of an entire youth hub would be to have the services required present at the youth court on sitting days. Having coordinated Government and non-Government services present on youth court days enables holistic service provision, and ensures the full spectrum of social issues contributing to a young person's propensity to offend, are addressed. The Neighbourhood Justice Centre in Victoria<sup>8</sup> is an example of co-located justice and social service provision.

Integrated and coordinated service provision is central to a youth justice system aimed at addressing the underlying causes of youth offending. This is because youth offending is attributed to a host of broader social, familial and environmental triggers. Young people often come to court with their families or carers. If appropriate services were readily available, on the spot referrals could be made, and even included in sentencing dispositions. Co-locating

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<sup>7</sup> Noetic Solutions, 'Review of Effective Practice in Juvenile Justice' (Report for the Minister for Juvenile Justice NSW, January 2010) 39.

<sup>8</sup> See: Victorian Government, *Our Philosophy: Restorative Justice* (2011) Neighborhood Justice Centre <<http://www.neighbourhoodjustice.vic.gov.au/site/page.cfm?u=230>>.

youth services, or having youth services available on youth court days, facilitates a holistic, multi-agency response to the complex issue of youth offending.

## 7. Embedding a Restorative Justice and Therapeutic Jurisprudence Approach

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### Recommendation 5:

Youth justice policy should embrace therapeutic jurisprudence and restorative justice techniques which are appropriate to Aboriginal people.

#### a. Therapeutic Jurisprudence

The goal of the youth justice jurisdiction is rehabilitation, and to stop young people reoffending and cycling through the criminal justice system into adulthood. Therapeutic jurisprudence considers the law as a broad social force which has the potential to produce both therapeutic and anti-therapeutic consequences: to either address or compound the underlying causes of offending.<sup>9</sup> NAAJA submits that in order to facilitate the rehabilitation of young people, the *Youth Justice Act* should apply therapeutically and promote therapeutic outcomes.

It is NAAJA's experience that the NT youth justice system predominantly operates in an anti-therapeutic fashion, negatively impacting on the social and emotional wellbeing of the young people exposed to it. The NT's high youth incarceration and recidivism rates are evidence of the anti-therapeutic impact of current youth justice practices. A key focus of this review should be on how to make the youth justice system in the NT more therapeutic: how to use the law, and the court's application of the law, to ensure young people do not continue to cycle through the criminal justice system. This would put into action the rehabilitative goals of the *Youth Justice Act*, and may be a key ingredient in reducing youth recidivism rates.

There are a number of therapeutic, non-resource intensive practices discussed below which NAAJA suggests this review should adopt. These include making the Youth Justice Court more youth friendly through adopting simple language and informal procedures, increasing the role of elders, having specifically trained practitioners, magistrates and prosecutors, having separate court rooms and court days, placing Aboriginal art and symbols around the court room, and combining the Youth Justice and Child in Need of Protection jurisdictions.

#### b. Restorative Justice

Restorative justice practices involve a facilitated discussion between the victim, the community and the offender, aimed at reconciling the harms caused by the crime.<sup>10</sup> Restorative justice practices provide the offender, community and victim with a space to ventilate the impact of the crime perpetrated, and to collectively decide upon a remedy. Restorative justice is based on a philosophy of reintegrating the offender back into the

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<sup>9</sup> Chief Magistrate Hillary Hannam, 'Therapeutic Jurisprudence in the NT: Are we there yet? Where to from here?' (Paper presented at the Inaugural Seminar of the Australian and New Zealand Association of Psychiatry, Psychology and Law, NT Branch, 31 March 2011).

<sup>10</sup> John Braithwaite, 'Restorative Justice and Social Justice' in Eugene McLaughlin, Ross Ferguson, Gordon Hughes and Louise Westmarland (eds), *Restorative Justice: Critical Issues* (2003) 157.

community.<sup>11</sup> Current Youth Justice practices in the NT take account of restorative justice practices through section 84 of the *Youth Justice Act*, which provides for pre-sentence conferencing, and also through victim-offender conferencing in the diversionary stage.

The restorative justice discipline offers creative alternatives to traditional law and order practices.<sup>12</sup> They promote offender accountability, and victim and community participation. NAAJA supports restorative justice practices and recommends that they be properly resourced and utilised by the courts. We suggest below that further restorative justice practices be adopted, such as youth specific community courts, and youth drug and alcohol courts.

### **c. Aboriginal Young People and Restorative and Therapeutic Justice**

Over 80% of young people engaged in the NT criminal justice system are Aboriginal.<sup>13</sup> Therapeutic jurisprudence and restorative justice approaches must be measured against their cultural relevance for Aboriginal young people. Many Aboriginal young people are alienated by the youth justice system in the NT because the system ignores, rather than actively engages, with their socio-cultural identity and reality.

West Australian Magistrate Deen Potter recently published an article challenging the applicability of restorative justice practices to Aboriginal young people.<sup>14</sup> In highlighting the marginality of most Aboriginal young offenders, he questions the reintegration aspirations of general restorative justice practices, when Aboriginal young people were never part of the community the practice is attempting to reintegrate them back into. The article has strong resonance for the NT. Importantly, Magistrate Potter concludes:

The starting point for restorative justice to be genuinely effective with this (Aboriginal) cohort of offenders is to design, deliver, and integrate, holistic approaches that involve direction from and coordination by Aboriginal people themselves. Community-up approaches are essential.<sup>15</sup>

NAAJA strongly supports the 'community-up' approach Magistrate Potter suggests. We recognise that this is time-and resource-intensive, however community consultation and participation is a core ingredient of successful justice initiatives, whether they are restorative, therapeutic or otherwise. Without properly engaging Aboriginal communities in the restorative, or therapeutic justice process, the underlying intention of community reintegration is missed. Likewise, the opportunity to transform a young offender, and to address the underlying causes of their offending, is missed.

## **8. Specific Needs of Aboriginal Young People**

### **Recommendation 6:**

<sup>11</sup> Ibid 160.

<sup>12</sup> Ibid 162.

<sup>13</sup> Sentencing Advisory Council, *Juvenile Detainee Indigenous Rates* (2008) <<http://www.sentencingcouncil.vic.gov.au/page/about-sentencing/sentencing-statistics/juveniles-detention/juvenile-detainee-indigenous-rates>>.

<sup>14</sup> Deen Potter, 'Indigenous Youth and Restorative Justice in Western Australia' (2010) 20 *Journal of Judicial Administration* 92.

<sup>15</sup> Ibid 101.

All youth justice practices should be culturally relevant for Aboriginal young people.

### **a. The National Indigenous Law and Justice Framework (NILJF)<sup>16</sup>**

The NILJF is a national best-practice approach to addressing the issues surrounding the interaction between Aboriginal people and the criminal justice systems in Australia. The Commonwealth and all State and Territory governments including the NT government endorsed the NILJF in November 2009.

The NILJF ‘articulates a vision that Australian governments, Aboriginal and Torres Strait Islander peoples, service providers and other relevant stakeholders can close the gap in law and justice outcomes experienced by Indigenous people.’ The NT Government and this Review Panel should look to the NILJF for guidance on how the NT Youth Justice System can better meet the needs of Aboriginal young people.

Some important Strategies and Objectives include:

Strategy 1.1.3: eliminate discriminatory attitudes, practices and impacts where they exist within police, youth justice, courts and corrective services and other justice related agencies.

Objective 1.2: provide Aboriginal and Torres Strait Islander peoples in urban, regional and remote settings with access to services that are effective, inclusive, responsive, equitable and efficient.

Strategy 1.2.2: ensure that service providers engender trust within the Aboriginal and Torres Strait Islander peoples they serve.

Strategy 2.3.2: implement a holistic response to address the factors leading to over-representation in the criminal justice system of Indigenous women, Indigenous men, and Indigenous youth’ through the following:

- 2.3.2a Identify the factors driving over-representation of Indigenous women, men and youth as discrete groups in the justice system.
- 2.3.2b Develop and implement culturally competent action to address identified drivers of over representation of Indigenous women, men and youth in the justice system.
- 2.3.2c Identify barriers to procedural fairness in justice pathways and develop mechanisms to eliminate those barriers.
- 2.3.2d Establish Indigenous driver licensing and training programs to reduce minor offending and increase safety.

This Review should give consideration to how these strategies and actions can be explicitly incorporated into the NT Youth Justice system.

### **b. Remoteness and Language Needs**

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<sup>16</sup>See National Indigenous Law and Justice Framework at <[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(8AB0BDE05570AAD0EF9C283AA8F533E3\)~IPS++National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC/\\$file/IPS+-+National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(8AB0BDE05570AAD0EF9C283AA8F533E3)~IPS++National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC/$file/IPS+-+National+Indigenous+Law+and+Justice+Framework+-+NILJF+-+FINAL+-+Word+version.DOC)>

The language and cross-cultural barriers experienced by many of the Aboriginal young people negotiating the criminal justice system must be grappled with by the Review.

Approximately 29% of the Australian population, including 64% of the Aboriginal population, live in rural and remote areas.<sup>17</sup> This percentage is significantly higher in the NT than other parts of Australia. The ABS found that 81% of Aboriginal people in the NT live in remote or very remote areas.<sup>18</sup>

Approximately 11% of Aboriginal and Torres Strait Islander peoples speak an Aboriginal or Torres Strait Island language as their main language at home.<sup>19</sup> This percentage increases to 42% in many remote areas of Australia.<sup>20</sup> Almost one in five (19%) of Aboriginal and Torres Strait Island language speakers report that they do not speak English well or at all.<sup>21</sup>

There continues to be a shortage of interpreters available to Aboriginal people participating in court proceedings. Largely, this can be attributed to the insufficient funding received by interpreter services and related problems of inadequate resources available for training, recruitment and retention of staff.

There are occasions when an interpreter is used who might not be formally qualified, or a family or friend acts as interpreter, though they may have only a limited understanding of the legal concepts involved, or in some instances and where absolutely necessary, with no interpreter at all.

### **c. Conceptual Understanding**

Many Aboriginal young people lack the comprehension skills to fully understand the criminal justice process.

Often Aboriginal young people sign documents they do not fully understand. The difficulties that Aboriginal young people experience in understanding high-level concepts and technical legal terms should be recognized and addressed, if youth justice is to be meaningful.

It is instructive in this regard to consider the implications of research undertaken by Aboriginal Resources and Development Services Inc (ARDS) where as part of their 2008, 'An Absence of Mutual Respect' report.<sup>22</sup> During this research, 200 Yolgnu people were surveyed about their understanding of 30 legal terms, which included 'conditions', 'consent', 'undertake' and 'oblige'.

In analysing the results, ARDS noted that:

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<sup>17</sup> AIHW 2000 as quoted at 5 <[http://www.nhmrc.gov.au/\\_files\\_nhmrc/file/publications/synopses/hp16.pdf](http://www.nhmrc.gov.au/_files_nhmrc/file/publications/synopses/hp16.pdf)>

<sup>18</sup> See Australian Bureau of Statistics, 4705.0 - Population Distribution, Aboriginal and Torres Strait Islander Australians (2006) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4705.0Main+Features12006?OpenDocument>>

<sup>19</sup> Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey* (2008) Australian Bureau of Statistics

<<http://abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4714.0Main%20Features52008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=#PARALINK4>> at 4 May 2010.

<sup>20</sup> Ibid.

<sup>21</sup> Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Australians* (2006) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/70E4BD21542AAD18CA257718002A7CC1?opendocument>> at 4 May 2010.

<sup>22</sup> Aboriginal Resources and Development Services (Inc), *An Absence of Mutual Respect* (2008) <[http://www.ards.com.au/print/Absence\\_of\\_Mutual\\_Respect-FINAL.pdf](http://www.ards.com.au/print/Absence_of_Mutual_Respect-FINAL.pdf)>

The extent of the problems facing Yolgnu people when they have to interact with the Balanda (Anglo) legal system show clearly in the overall results below, with over 95% of Yolgnu surveyed unable to correctly identify the meaning of the 30 commonly used English legal terms which are commonly used in the legal context in the NT.<sup>23</sup>

The ARDS survey results illustrate the scale of the problem that needs to be considered in assessing understanding. There is real danger that Aboriginal young people will be ill-equipped to participate in court proceedings or excluded from accessing services unless specific resources are dedicated to ensuring Aboriginal young people clearly understand the concepts being discussed in court.

These findings were starkly documented in the 2007 'Little Children are Sacred' report.

It became clear to the Inquiry during its consultations that in many of the communities visited, the "language barrier" and the "cultural gap" was greater in the younger generation.<sup>24</sup>

Whilst this language and cultural gap is particularly pressing in remote communities, it also affects Aboriginal young people in Darwin, Alice Springs, Katherine and other towns.

#### **d. Better Addressing the Needs of Aboriginal Young People**

##### **Recommendation 7:**

Cultural considerations should be embedded at all stages of youth justice proceedings.

Any attempt by the youth justice system to better meet the needs of Aboriginal young people must start from a position of trying to understand the world view of Aboriginal young people.

The Little Children are Sacred report pointed out that:

As well as many Aboriginal people not understanding the "mainstream" world view, it was a common theme of the Inquiry's consultations that many Aboriginal people thought that the "mainstream" world failed to understand their "world view".

To properly address the mental, physical, cultural and spiritual needs of Aboriginal young people in the youth justice system, there needs to be more innovative thinking in terms of how the Government and non Government sectors can most effectively and meaningfully provide services for Aboriginal young people.

The Review of Programmes in South Australian Youth Training Centres noted that, '[f]or many respondents the key to effective working with Indigenous young people lies in the ability of services to maintain or strengthen connections with family members and support systems.'<sup>25</sup>

There needs to be a dedicated focus on utilising external non-Government services that are run by Aboriginal people for Aboriginal people. Consideration needs to be given to the use of

<sup>23</sup> Ibid 21.

<sup>24</sup> Pat Anderson & Rex Wild *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse - AmpeAkelyernemaneMekemekarle ('Little Children are Sacred')* (2007) 51.

<sup>25</sup> Guardian for Children and Young People, *Review of Programmes in Youth Training Centres – Part 2: Consultations and Recommendations* <<http://www.sapo.org.au/pub/pub10623.html>> 20.

Elders and significant family members in proceedings involving Aboriginal young people as well as in post-sentence rehabilitation programs, in order to more effectively meet the needs, and understand the world-view, of Aboriginal young people.

## 9. Victim Status and Trauma

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### **Recommendation 8:**

Significant efforts should be made to identify and respond, in a culturally relevant way, to the issues of victim status and trauma of young people in the youth justice system.

Many young people in the youth justice system are also victims of criminal offending, or have otherwise suffered trauma. WA Children's Court Magistrate Deen Potter points out that:

It is not a politically palatable fact to accept, discuss or champion, but the reality is that a very large proportion of young offenders, whether they are chronic recidivists or operating at the margins of the criminal justice system, are also victims of crime themselves.<sup>26</sup>

Potter goes on to comment that 'the depth and range of investigations into Indigenous communities, [suggests] that many of these young people were unreported victims of crime well before they became offenders.'<sup>27</sup>

Evidence from the Balanu Foundation supports this assertion. David Cole notes that data collected from participants of the Balanu Foundation shows that the 'overall percentage of participants who have and or continue to experience violence is 89%, with the boys at 87% and 95% for the girls.'<sup>28</sup>

Cole goes one step further. He speaks not just about prior and or contemporaneous experiences of violence, but to the trauma afflicting a great many Aboriginal young people in the Northern Territory:

The youth we see before us today I call the lost generation. They are hurting, traumatised, confused and angry and have been failed and neglected by family breakdown and a system which fails to see or address the trauma they have endured from an early age.<sup>29</sup>

A properly resources, holistic youth justice system, prefaced on rehabilitation and not punishment, affords a crucial window of opportunity to properly address issues of victim status and trauma.

## 10. Community Driven responses

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<sup>26</sup> Potter D, 'Indigenous Youth and restorative Justice in Western Australia' (2010) 20 JJA 92, at 100

<sup>27</sup> Ibid

<sup>28</sup> D Cole *The Social Determinants of Youth at Risk: reflections on the Balanu Healing Program with Darwin Youth* (2009) 41.

<sup>29</sup> Ibid 13.

**Recommendation 9:**

Aboriginal communities should be empowered to become active stakeholders in the youth justice system. Structures should be created to ensure the inclusion, and active participation, of Aboriginal Elders.

The Final Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) commented:

If there is one lesson we can learn from history, it is that solutions imposed from the outside will only create their own problems. The issue of giving back to Aboriginal people the power to control their own lives is therefore central to any strategies which are designed to address these underlying issues.

Real justice solutions are those that are driven by the local community, that empower Elders to show leadership and allow for Elders to be involved in mainstream justice processes. Effective justice responses must be developed in collaboration with local communities.

The NSW Review commented:

With respect to the provision of culturally relevant programs, jurisdictions in Australia have tended to address this need by modifying existing mainstream programs to include Indigenous cultural components rather than by emphasising the promotion of programs which are organically developed by Indigenous communities.

The 'Little Children are Sacred' report also pointed to the evidence base to support community-driven justice initiatives:

There is now sufficient evidence to show that well resourced programs that are owned and run by the community are more successful than generic, short term, and sometimes inflexible programs imposed on communities.

This is because community-based and community-owned initiatives inherently respond to the problems faced by the community and are culturally relevant to that community. They are driven by real community need rather than divorced governmental ideology.<sup>30</sup>

The responses to youth justice issues that communities as diverse as Darwin, Alice Springs, Maningrida and Lajamanu come up with will inevitably be significantly different. It is essential that Aboriginal communities be involved at all stages of creating the responses to youth justice issues.

## **11. Integrating Child in Need of Protection Matters**

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<sup>30</sup> Pat Anderson & Rex Wild *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse - AmpeAkelyernemaneMekemekarle ('Little Children are Sacred')* (2007) 53.

**Recommendation 10:**

Youth Justice and CINOP proceedings should be heard in a specific youth justice court.

An integrated, independent Youth Court could hear both the Child in Need of Protection (CINOP) matters, and criminal matters. This combined jurisdiction occurs in both Western Australia, and Victoria. It allows for a more holistic approach to youth offending, which is consistent with understanding youth offending in the context of many young people's experience as victims.

It is NAAJA's experience that many young people involved in the criminal justice system, have been, or are, also in the care of the Minister. This creates an inherent tension between one court focussing on the young person as victim in need of protection, and the other court focussing on the young person as perpetrator, whom the community needs protection from. Combining both jurisdictions would promote better understanding of the inter-connection between youth offending, and youth experiences of victimisation.<sup>31</sup> It would also require Northern Territory Department of Families and Children (DFC) workers to be actively engaged in a young person's criminal matters.

NAAJA is aware that this would only be possible in town-based courts where the CINOP court sits. We consider it important that youth justice matters continue to be heard on community at the circuit sitting, where ever possible.

## **12. Role of Youth Justice Officers and Department of Families and Children (DFC) Workers**

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**Recommendation 11:**

Section 4(b) of the *Youth Justice Act* should be re-drafted to change the focus from acknowledging the needs of the youth, to adopting an approach in all dealings with the young person that is individualised, strengths-based, collaborative and empowering.

### **a. The Importance of a Client-Centred Approach**

Research shows that interventions with clients will be more successful when they are client-centred and tailored to the individual needs of the client as opposed to statutory, compliance-based and defined by rigid, bureaucratic systems.<sup>32</sup>

Section 3(e) of the *Youth Justice Act* provides that one of the objects of the *Youth Justice Act* is 'to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation'. Section 4(b) states that 'one of the principles of the Act is that 'the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in socially responsible ways.'

<sup>31</sup> Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?* (February 2011) Australian Institute of Criminology, 4 <<http://www.aic.gov.au/documents/4/2/2/%7B4227C0AD-AD0A-47E6-88AF-399535916190%7Dtandi409.pdf>>

<sup>32</sup> See, for example the discussion of multi-systemic therapy in Noetic Solutions, 'Review of Effective Practice in Juvenile Justice' (Report for the Minister for Juvenile Justice NSW, January 2010) 36. Multi-systemic therapy targets chronic and violent juvenile offenders and seeks to address specific factors in the youth's environment (such as family, peer group, school, neighbourhood) that contribute to their offending behaviour.

Justice approaches to young people need to change so that addressing the needs of the young person is the critical concern. This is particularly important where young people are in the care of DFC, or where they have pressing welfare needs but are above the age where DFC will intervene. At whatever age a young person has welfare issues, it is important that Youth Justice Officers and DFC workers work in a collaborative way to provide for the holistic needs of the young person concerned.

Community Corrections are uniquely placed to work with young people to address the reasons underpinning their offending. At present, Community Corrections have a generic approach to adults and young people alike, and a strict compliance-based approach to all persons in the criminal justice system.

The WA Review lamented the shift in WA Corrections in recent years towards this compliance-focussed model:

The role (of juvenile justice workers) seems to have moved away from engagement of the young person and their families and has moved towards ensuring compliance and writing reports.<sup>33</sup>

Along similar lines, the New Zealand Chief Justice, Sean Elias, noted the current over-emphasis on compliance, policing and risk assessment by Corrections Officers in New Zealand. She too suggested that ‘...the functions of advising, assisting and befriending ought to be reinstated’.<sup>34</sup>

A compliance-based approach fails in two crucial areas:

Firstly, it does not prioritise addressing the underlying issues that a young person might be dealing with, and imposes a barrier to the building of a positive, open relationship between the supervising officer and the client.

Secondly, it results in many Aboriginal and non-Aboriginal young people having their supervisory orders breached for non-compliance. It is questionable whether the interests of the community are protected when young people are conditionally breached. This is especially the case if a young person’s failure to report might be linked to the failure of an adult or guardian to properly support them to meet their reporting obligations.

It is essential that agencies such as Community Corrections embrace client-centred approaches to dealing with the reasons underpinning a young person’s offending.

## **b. What Does A Client-Centred Approach Look Like?**

Client-centred approaches build on a young person’s strengths. It commences from a position of developing a relationship of trust and confidence with the young person. It acknowledges that only by doing this will a young person’s underlying issues be brought to the surface.

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<sup>33</sup> Harry Blagg, ‘Youth Justice in Western Australia’ (Report for the Commissioner for Children and Young People WA, 17 December 2009) 12.

<sup>34</sup> Sian Elias, ‘Blameless Babes’ (Speech delivered at the Annual Shirley Smith Address, Wellington, 9 July 2009) <<http://www.courtsofnz.govt.nz/speechpapers/Shirley%20Smith%202009%20lecture-Blameless%20Babes-9%20July%202009.pdf>>

It then identifies underlying issues to a young person's offending, and works in collaboration with the young person to develop a plan as to how to address these issues. The plan might include substance abuse issues, accommodation, employment, education, training, mental health, health, life skills, recreational, reconnection to family and community and social connectedness needs.

In working with young people, the following principles are of paramount importance.<sup>35</sup>

- A single point of contact– the relationship with the supervising worker is the foundation on which the process is based, working in partnership with the individual and their family or guardian. Supervising workers are also a single point of contact for other service providers.
- Life strengths approach – acknowledges that every individual has strengths that should be the focus of the interaction between the supervising worker and the client. This approach maximises the physical, social and psychological wellbeing of the young person to achieve their optimal level of successful participation in the community, commensurate with their capacity and choice.
- Collaboration - supervising workers work collaboratively with other service providers and professionals involved with a client to ensure the best possible outcomes for that person.
- Individualised – client focused support ensures each person receives the appropriate level and type of support according to their needs, culture and budget constraints, working towards jointly agreed goals.
- Continuity of care - clients have a right to expect continuity of service across time and service boundaries to ensure their individual needs are met.
- Flexibility - support can be delivered in a way that suits individuals' needs and varies according to the changing needs of the individual.
- Boundary – spanning – supervising workers draw upon all available resources, both formal and informal to provide support in the most cost effective manner.
- Culturally relevant – supervising workers have strong cross-cultural communication skills, utilize interpreters when appropriate, are attuned to culturally important issues, and incorporate culturally empowering elements to meaningfully address our clients' needs.
- Innovative – supervising workers work 'outside the square' to find innovative ways to meet their clients' needs.
- Empowerment - clients are supported, through the provision of information, to manage their own affairs as far as possible.

### c. Role of DFC Workers

#### **Recommendation 12:**

The role of Corrections Officers and DFC workers should be redefined. Client-centred approaches that assist young offenders deal with the issues linked to their offending that place a greater emphasis on support, supervision and mentoring should be preferred to the current approaches, which are characterised by a focus on statutory compliance.

<sup>35</sup> These principles have been taken from NAAJA's Indigenous Throughcare Project.

The WA Review noted that the confused delineations of roles between Community Corrections officers, and DFC workers, results in some young people receiving little support from either service.

NAAJA's experience is that some DFC workers do not have incentives to take ownership of young people in their care. NAAJA has observed an unwillingness by some DFC workers to take responsibility for, and independently and forcefully advocate in the best interests of, young people in their care. In an extreme example, NAAJA has acted for clients where their DFC worker has advocated against bail, preferring Don Dale over community based accommodation.

**Case Study: A Young Person in the Care of the Minister.**

A Section 51 Report was ordered because the young person had no means of family support or assistance. We attach a de-identified copy of that report.

The report writer found that the young person was at risk of harm. However, the report writer did not propose to resolve the risk. The young person's legal representative put her extreme concern on the record her extreme concern as to the lack of action on the Department's part on the record. In this case, the presiding magistrate agreed.

The Corrections officer present advised the court that she had made three official notifications regarding the young person and that no action had been taken. Two of these notifications related to the police having to be called to a Darwin property to assist as the youth was in a tree with a rope around his neck, threatening suicide. The presiding magistrate was, unsurprisingly, very concerned about this.

The presiding magistrate advised that she would write to the Minister about this young person in light of the inadequate response of the Department in this case. The young person's lawyer has been advised by the Corrections officer that the Department have since visited the youth, have got him a place at Bush Mob and are working on a boarding school enrolment. The Department is also working on setting up a store account for the young person so he can buy food.

## Part B: How Can the Youth Justice System be Improved?

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### 13. Before Court

#### 13.1 Properly Resourcing Existing Options Under the Current *Youth Justice Act*

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##### **Recommendation 13:**

The NT Government should properly resource existing therapeutic programs under the *Youth Justice Act*.

The current *Youth Justice Act* has a number of positive community based, therapeutic options. The problem is there are not properly resources. This is particularly the case for regional areas and remote communities. The lack of availability of non-custodial sentencing options leads to a more accelerated ascent up the sentencing ladder, resulting in early exposure to incarceration.

In town centres such as Darwin and Alice Springs, there are some rehabilitative resources available to the courts. Community work is sporadically available, but there are no specialist alcohol and drug rehabilitation services for young people, no youth-specific mental health programs, very limited access to restorative justice initiatives such as pre-sentence conferencing or community courts, and limited programs to assist young people convicted of violent offences.

The NT Government should commit to adequately resourcing existing community based, therapeutic options under the current *Youth Justice Act* in all areas. More young people should be subject to community based orders, and less young people should be sent to jail.

##### **a. More Resources in Regional and Remote Areas**

##### **Recommendation 14:**

The NT Government should commit to adequately funding youth specific rehabilitative services in all areas of the Northern Territory, including regional towns and remote communities.

The need for additional resources in regional and remote areas is urgent. The WA Youth Justice Review refers to the concept of 'Justice by Geography':

Aboriginal children and young people in parts of the state, such as the Pilbara, Eastern Goldfields and the East Kimberley are subject to a form of 'Justice by Geography'. Their location determines the quality and consistency of the services they receive. There have been

a number of issues raised in the Kimberley area demonstrating that Aboriginal young people in the region receive an inferior service in comparison with the metro area.<sup>36</sup>

In the NT, it is not infrequent for a court to ask that a defendant be assessed for community work in a remote community, and for there to be no community work available. This applies not just to community work orders, but most, if not all supervised non-custodial options other than fines.

For example, a defendant in Darwin may be able to attend psychological counselling or an alcohol rehabilitation centre or be sentenced to a term of imprisonment suspended on condition of home detention. However a person from a remote community would either not have recourse to these options, or in the case of a residential option, have to travel sometimes thousands of kilometres and be separated from family and other pro-social factors to participate in such a program.

These issues were recently highlighted by Magistrate Oliver in testimony before the House of Representatives 'Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System'. Her Honour stated:

I mentioned before that I am going to Borroloola next week. Last time I was out there, a month ago, there were no community projects. That is the case across many, many communities. Community work is not available. Home detention is not a viable option, sometimes because of overcrowding in the house or the sort of conduct that is being engaged in by other people who are living in the house. There are no surveillance officers available to go and check on people who have been ordered to serve home detention. So the sentencing dispositions are very limited.<sup>37</sup>

Her Honour went on to conclude that:

[T]he other thing I would note about rehabilitation is that it is basically only available in the major centres.<sup>38</sup>

In 2008-09, \$2.8 billion was collectively spent by all Australian states and territories on prisons and periodic detention centres, compared to \$0.4 billion on community corrections.<sup>39</sup> While making up close to 50% of the prison population, Aboriginal peoples constituted only 18.5% of the total national community corrections population in 2008-09.<sup>40</sup>

Community based sentencing options are a key element in dealing more effectively with young people in the youth justice system. Unless tangible and meaningful non-custodial sentencing options exist, it is impossible to incorporate a rehabilitative component into sentencing, and therefore impossible to target underlying causes of offending.

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<sup>36</sup> Harry Blagg, 'Youth Justice in Western Australia' (Report for the Commissioner for Children and Young People WA, 17 December 2009) 24.

<sup>37</sup> See the transcript of proceedings from the Darwin hearings at ATSI 49 <<http://www.aph.gov.au/hansard/reps/commtee/R12981.pdf>> at 4 June 2010.

<sup>38</sup> Ibid 51.

<sup>39</sup> Productivity Commission, *Corrective Services* (2010).3 <[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0008/93932/28-chapter8.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0008/93932/28-chapter8.pdf)>

<sup>40</sup> Ibid?

## 13.2 Diversion

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The philosophy of diversion recognises the negative consequences of exposing young people to the criminal justice system. It also recognises the reality that most young people 'grow out of crime'<sup>41</sup> when exposed to positive interventions. Diversion offers young people a path way out of crime, without exposing them to the stigma and alienating impacts of the criminal justice system. Diversion is an essential ingredient of an effective youth justice system.

A recent study by the Australian Institute of Criminology found that young people who were diverted from the court system were less likely to have further involvement in the criminal justice system.<sup>42</sup> Accordingly, the decision not to divert a young person is loaded with implications, and may lead to a sequence of events, which subsequently become serious.

### a. Aboriginal Young People and Diversion

#### **Recommendation 15:**

The provision excluding a right of review from police decisions to decline someone diversion should be removed from the *Youth Justice Act*.

#### **Recommendation 16:**

The court should have an unfettered power to refer a young person onto the diversion program, without requiring prosecution consent.

Research has consistently indicated that Aboriginal young people are less likely to be diverted when compared with non-Aboriginal young people.<sup>43</sup> In 2008, 46% of non-Aboriginal young people were denied a diversion option, compared with 52% of Aboriginal young people.<sup>44</sup> This discrepancy is compounded by the stark statistic that Aboriginal young people represent 80% of police apprehensions, and are close to 90% of the NT's youth incarcerated population.<sup>45</sup> The impact of this discrepancy is that Aboriginal young people have a higher rate of entrenchment in the more punitive aspects of the criminal justice system.<sup>46</sup>

Police have an unfettered power to administer all aspects of diversion in the NT. Section 44 of the *Youth Justice Act* gives police an absolute and unappealable discretion over the decision to divert a young person, and over the decision to determine whether a young person has successfully completed diversion.

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<sup>41</sup> Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?* (February 2011) Australian Institute of Criminology, 2 <<http://www.aic.gov.au/documents/4/2/2/%7B4227C0AD-AD0A-47E6-88AF-399535916190%7Dtandi409.pdf>>

<sup>42</sup> Troy Allard, Anna Stewart, April Chrzanowski, James Ogilvie, Dan Birks and Simon Little, *Police Diversion of Young Offenders and Indigenous Over Representation* (March 2010) Australian Institute of Criminology <<http://www.aic.gov.au/documents/0/9/2/{092C048E-7721-4CD8-99A6-1BC89C47D329}tandi390.pdf>>

<sup>43</sup> Kelly Richards, *Police Referred Restorative Justice for Juveniles in Australia* (August 2010) Australian Institute of Criminology <<http://www.aic.gov.au/documents/8/B/B/{8BB6EC00-2FDD-4CB9-A70F-DC451C3C22BD}tandi398.pdf>>

<sup>44</sup> Ibid.

<sup>45</sup> Northern Territory Department of Justice, *NT Correctional Services Annual Statistics 2008-09* (2009) <[www.nt.gov.au/.../NTCS%20Annual%20Statistics%202008-09\\_EBook.pdf](http://www.nt.gov.au/.../NTCS%20Annual%20Statistics%202008-09_EBook.pdf)>

<sup>46</sup> Larissa Behrendt, Chris Cunneen and Terri Libesman (eds), *Indigenous Legal Relations in Australia* (2000) 101.

By contrast, the court only has a referral power through s 64. The prosecution, represented by a police prosecutor in Youth Justice Court proceedings, must consent for a court referral to be valid. This effectively gives police a veto power over the Magistrate's decision to refer a young person to diversion. In this sense, police power over the diversion process, from start to finish, is absolute.

Giving the judiciary an unfettered referral power is a move supported by evidence:

The evidence suggests that the greater the police control of the referral process the less likely it is that Indigenous young people will benefit from (diversionary) conferencing. In states where there is a possibility of the Children's Court, as well as police, referring young people to a conference, there is less adverse discrimination. Courts appear more willing than police to refer Aboriginal youth.<sup>47</sup>

### a. Encouraging Diversion

#### **Recommendation 17:**

The *Youth Justice Act* should be amended to strongly encourage diversion for certain minor offences, and certain types of offenders.

The *Youth Justice Act* should be amended to strongly encourage diversion for certain minor offences, and certain types of offenders (such as first time offenders). It is NAAJA's experience that s 39(3) of the *Youth Justice Act* is often used to avoid the requirement to divert in s 39(2).

Section 39(2) reads:

The officer must, instead of charging the youth with the offence, do one or more of the following as the officer considers appropriate:

- (a) Give the youth a verbal warning;
- (b) Give the youth a written warning;
- (c) Case a Youth Justice Conference involving the youth to be convened;
- (d) Refer the youth to a diversion program.

Section 39(3) qualifies s 39(2) by stating:

Subsection (2) does not apply if:

- (a) the youth has left the Territory of the youth's whereabouts is unknown; or
- (b) the alleged offence is a serious offence; or
- (c) the youth has, on 2 previous occasions, been dealt with by Youth Justice Conference or diversion program (or on one of the occasions by the Youth Justice Conference and on the other by diversion program); or
- (d) the youth has some other history that makes diversion as unsuitable option (including a history of previous diversion or previous convictions).

Although s 39(2) of the *Youth Justice Act* includes the word 'must', NAAJA considers that s 39(3) needs to be more strictly confined. It is our experience that s 39(3) is frequently used by police as justification for refusing diversion.

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<sup>47</sup> Ibid 105.

In addition, we consider that the courts should be empowered to monitor decisions to refuse diversion, and remit matters back to diversion where s 39 has not been given its full effect.

#### **b. Remote Access to Diversion**

##### **Recommendation 18:**

Diversion should be considered a core aspect of the Youth Justice system, and it should be offered in all remote communities.

Diversion is not available in most regional and remote areas across the Top End of the NT.

Lack of access to diversion is likely to be one of the main reasons why Aboriginal young people are diverted at a lower rate, when compared with non-Aboriginal young people. Increased resources must be made available to ensure that remote Aboriginal young people are offered the same opportunities for diversion that are available to young people in metropolitan areas.

NAAJA is aware and supportive of programs such as the Tiwi Youth Diversion and Development Unit, and the Mount Theo program for Walpiri young people. We support further development of remote diversion, using these community based programs as good practice examples.

#### **c. Appropriate Time Frames**

##### **Recommendation 19:**

Diversion programs should be conducted within an age appropriate time frame.

Diversions need to be carried out in an appropriate time frame. Section 4(M) of the *Youth Justice Act* reads:

A decision affecting a youth should, as far as practicable, be made and implemented within a time frame appropriate to the youth's sense of time.

It is NAAJA's experience that some diversion matters can take up to six months to finalise. Often this results in a youth failing diversion, because they have not been exposed to the therapeutic benefits of diversion at the critical time. Diversion programs should be conducted within appropriate time frames.

#### **d. The WA Experience**

##### **Recommendation 20:**

Diversion should be administered by an independent body, distinct from the police.

The Western Australian *Young Offenders Act* establishes Juvenile Justice Teams (JJTs), who receive direct diversion referrals from the police.<sup>48</sup> There are eight JJTs across the metropolitan area and additional JJTs in regional areas.

<sup>48</sup> See: *Young Offenders Act 1994* (WA) ss 24-40 which establish the comprehensive Juvenile Justice Team regime in WA.

JJTs are an independent, youth specific body who are tasked with arranging family group meetings involving the young person, their family, the police and sometimes the victim to discuss the offender and their offending. At the end of the meeting, an action plan is designed, which serves as a contract for the young person.

The action plan may require the young person to provide a formal apology or complete counselling, voluntary work or some other task. These commitments are recorded and the JJT coordinator supports and monitors the young person's progress against their action plan until completion.

If the young person completes the action plan, the matter is dismissed and no conviction is recorded. However if the young person does not comply with the action plan, the matter is referred back to the police or the court. The Court also retains an independent, unfettered power to refer a young person to a JJT, notwithstanding the views of the prosecution.<sup>49</sup>

NAAJA supports the development of an independent diversion body, similar to WA's JJTs model.

#### **e. Failed Diversions**

NAAJA is concerned that rigid case management practices can contribute to young people not completing their diversion commitments, and therefore failing diversion and having their matter referred back into the court process.

Diversionary officers need a specialised youth approach. There are times when they must work proactively to assist young people complete diversion, particularly where the young person has little family or other supports. Diversionary officers should act as broader case managers and consider diversion an opportunity to address a host underlying criminogenic and social issues. This is consistent with how the JJTs operate in WA.

#### **Comment by NAAJA's Youth Justice Lawyer:**

Descriptions of diversion from my clients vary. I acknowledge that there have been some very good ones. But many sound like they are asked to pick up rubbish for a couple of days. Indeed one client told me that the police officer told her they would have her cleaning toilets if she got diversion. Small wonder diversion failed in that case and small wonder that kids who simply pick up rubbish for two days don't make a link between their offending behaviour and the response. Police then complain about how diversion has no impact.

Ironically the diversions that I would consider effective are also tougher on the kids who go through them. They often involve meeting with victims, writing apologies, making direct reparation and conferences. Contrast this to Court proceedings where our kids normally sit passively whilst their lawyer speaks on their behalf. If there is genuine and imaginative commitment to diversion, it can genuinely challenge our kids in a way that Court does not. It is time that the idea that it is a 'soft' option is challenged.'

#### **f. Review of Diversion in the NT**

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<sup>49</sup> *Young Offenders Act 1994 (WA)* s 28.

**Recommendation 21:**

Government should introduce a review of the diversion system in the NT.

It is important to consider the effectiveness of the current diversionary programs in the NT. NAAJA recommends a review of diversion be undertaken to ascertain whether NT diversion is operating as an effective tool in avoiding the entanglement of young people in the youth justice system. The review should consider the following questions:

- The number of young people being diverted (Aboriginal and non-Aboriginal);
- The types of offending being diverted;
- The number of young people successfully completing diversion;
- The length of time it takes to complete diversion;
- The number of remote young people being offered diversion;
- Whether NT diversion is culturally relevant to Aboriginal young people;
- The rates of recidivism post successfully completing diversion as compared with the rates of recidivism after attending court, and
- Whether it is best practice for diversion to remain within NT Police or be transferred to an independent service.

### 13.3 Police Practices

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**Recommendation 22:**

Police should develop and implement complaints procedures specific for young people that are more 'youth-friendly.'

Police have a vital role to play in the youth justice system. Their interactions with young people can, through positive policing initiatives, create strong and trusting bonds with young people and lead to reductions in crime. Equally, negative experiences with young people can further alienate young people at risk of offending or further offending. As noted in the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report, 'Doing Time - Time for Doing Indigenous youth in the criminal justice system':

The Committee acknowledges that there are many stories of inspirational police officers working with Indigenous communities and elders to develop positive relationships between communities and the police force. However, when this is not the case, the outcomes for Indigenous youth can be extremely serious, and can lead to negative consequences for whole communities.<sup>50</sup>

#### a. Police Interviews

**Recommendation 23:**

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<sup>50</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report, *Doing Time - Time for Doing Indigenous youth in the criminal justice system* (June 2011) 203. See: <<http://www.aph.gov.au/house/committee/atsia/sentencing/report/fullreport.pdf>>

The caution administered to young people needs to be reworded. To be effective for young people, it needs to be in plain English and should use words such as: 'If you say to me that you don't want to talk about this, I will stop asking you questions about it.'

(i) Responsible Adults

**Recommendation 24:**

A provision should be inserted into the *Youth Justice Act* modelled on s 420 of the *Police Powers and Responsibilities Act 2000 (Qld)*.

Police should be required to inform a young person of their right to have an adult present for questioning, and right to inform an adult if arrested. This could be in words such as: 'you are allowed to have an adult support person with you. If you want someone here with you I will not ask you any more questions until we have tried to find that person.'

A stronger requirement is needed for police to bring a family member with a young person at the time of arrest, rather than making phone calls after the young person has already been in custody for a number of hours.

**Recommendation 25:**

A requirement should be included for police to contact a magistrate if a young person has been in custody for a certain period of time (two hours), and no adults have been contacted or have been able to attend the police station.

(ii) Exercise of Right to Silence

**Recommendation 26:**

NAAJA recommends that a provision be inserted into the *Youth Justice Act* that states that where a young person indicates through their legal representative that they do not wish to participate in an electronic record of interview, police be required to not proceed with an interview.

NAAJA is concerned about current police practices in relation to electronic records of interview with young people. When a young person indicates to police that they wish to seek legal advice prior to commencing a record of interview, police are obliged to facilitate this.<sup>51</sup>

When police telephone NAAJA's 24-hour on-call service and a NAAJA solicitor speaks to an Aboriginal young person, if we receive instructions from a young person that they do not wish to participate in an interview, our solicitors advise the attending police officers that the young person wishes to exercise their right to silence.

<sup>51</sup> See, for example Rule 8 of the Anunga Rules (*R v Anunga* (1976) 11 ALR 412): 'Should an Aboriginal seek legal assistance, reasonable steps should be taken to obtain such assistance. If an Aboriginal states that he does not wish to answer further questions or any questions the interrogation should not continue.'

It is NAAJA's view that the record of interview should not proceed any further in those circumstances, the young person having clearly conveyed through their legal representative that they do not wish to participate in a record of interview.<sup>52</sup>

NAAJA's experience is that under a guise of 'putting the allegations to the young person', or encouraging a young person that an interview with police is 'their chance to tell their story', police seek to press on with the interview. Many young people, particularly Aboriginal young people, participate in interviews under these circumstances.

In terms of the integrity of the criminal justice system, admissions elicited in these circumstances should be of grave concern to this Review. Our Youth Justice solicitors can readily point to examples where admissions made have had extremely serious ramifications in terms of a young person's ability to defend charges that they dispute, and where those admissions were made after efforts by the young person to assert their right to silence.

Safeguards need to be included in the *Youth Justice Act* to protect young people's rights in police custody. These include:

- Ensuring young people have a support person present;
- Ensuring young people have access to legal advice;
- Police officers not interviewing young people when their legal representative has indicated an unwillingness to participate in the interview;
- Using youth friendly, simple language to explain the caution and a young person's rights; and
- Not holding a young person in police custody for lengthy periods of time.

NAAJA recommends that a provision be inserted into the *Youth Justice Act* modelled on section 420 of the *Police Powers and Responsibilities Act 2000* (Qld). Section 420 provides:

(1) This section applies if—  
(a) a police officer wants to question a relevant person; and  
(b) the police officer reasonably suspects the person is an adult Aborigine or Torres Strait Islander.

(2) Unless the police officer is aware that the person has arranged for a lawyer to be present during questioning, the police officer must--  
(a) inform the person that a representative of a legal aid organisation will be notified that the person is in custody for the offence; and  
(b) as soon as reasonably practicable, notify or attempt to notify a representative of the organisation.

(3) Subsection (2) does not apply if, having regard to the person's level of education and understanding, a police officer reasonably suspects the person is not at a disadvantage in comparison with members of the Australian community generally.

(4) The police officer must not question the person unless--

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<sup>52</sup> As well as Rule 8 of the Anunga Rules, Guideline 3.1.8 of the NT Police General Orders states that 'if a suspect states that he/she does not wish to answer any, or any further questions, the interrogation should not continue past that point.' Once a lawyer conveys to police that their client does not wish to answer questions, it is our view that Guideline 3.1.8 is invoked.

(a) before questioning starts, the police officer has, if practicable, allowed the person to speak to the support person, if practicable, in circumstances in which the conversation will not be overheard; and

(b) a support person is present while the person is being questioned.

(5) Subsection (4) does not apply if the person has, by a written or electronically recorded waiver, expressly and voluntarily waived his or her right to have a support person present.

(6) If the police officer considers the support person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during questioning.

(iii) Admissions Needing to be Recorded

**Recommendation 27:**

It should not be a requirement of diversion that a young person make formal admissions.

It should not be a requirement of diversion that a young person make formal admissions for a referral to be made. Currently police practice is to insist that allegations be put to a young person on tape, and that they make admissions in order for a diversion referral to occur.

NAAJA considers this to be improper practice, as it denies a young person their fundamental right to silence. Further, NAAJA is aware of a number of instances where a young person has agreed to participate in an interview, on the likelihood of being referred for diversion, with the police officer subsequently choosing to proceed with formal charges. NAAJA considers it important that the practice of requiring admissions for a diversion referral be changed.

(iv) Interactions with Police Generally

**Recommendation 28:**

A copy of young people's rights (or a modified copy of NT Police General Orders pertaining to young people) should be displayed in Watch Houses where young people are processed.

NAAJA receives reports of young people and their families having very limited understanding of processes involving police. For example, young people report to NAAJA that they have only a very limited understanding of the Caution administered by police. This needs to be reworded. To be effective for young people, it needs to be in plain English and should use words such as, 'If you say to me that you don't want to talk about this, I will stop asking you questions about it.'

Also, a copy of young people's rights (or a modified copy of NT Police General Orders pertaining to young people) should be displayed in Watch Houses where young people are processed. This is especially important with regards to taking intimate and non-intimate samples from young people. Many young people and parents report feeling pressured into consenting to samples being taken, or are not informed they have a choice, and that they can speak to a magistrate in certain circumstances.

NAAJA has also been told of instances of young people being kept in custody for long periods of time, before attempts are made to contact family or to allow the young people to speak with a lawyer. We are also aware of issues with police arresting young people from remote communities, and not bringing family who were present at the time of arrest to attend with the young people. Family then may be unable to support the young people whilst in police custody and may be without transportation or have difficulty making their own way into the police station. Police should be required to contact a magistrate if a young person has been in custody for a certain period of time (such as two hours) and no adults have been contacted or have been able to attend police station.

## **b. Minor Matters**

### **Recommendation 29:**

Stricter requirements should be included in the police practice manual, or the *Youth Justice Act* to mandate diversion for all relatively minor matters, and preclude arrest and bail for certain types of offences.

As noted in the section on Diversion, we encounter situations where Police have declined to refer a young person for diversion, even in the case of minor offending. In our experience, Police sometimes choose to proceed with formal charges through the courts where they consider the young person needs to be sent a message, to either punish them or where police cannot see a rehabilitative pathway for the young person.

It is conceded that some young people come from backgrounds and have personal circumstances that make diversion a difficult proposition. As demonstrated in the following case study, this should not lead police to proceed with formal charges for relatively minor matters, or arrest a young person when less restrictive options are available.

### **Case Study – Trespass Charge**

In 2010, H was issued with a Trespass Notice at Casuarina Square Shopping Centre. Police arrested him in front of family and strangers and took him to the Watch House.

In addition, they made the decision to put him on bail for this offence, despite the fact that the offence is not one that carries jail as a contemplated penalty.

This case study raises serious concerns given that H was arrested and bailed for an offence that he could not be sentenced to detention for, as well as the failure by police to comply with the principle that all other avenues be exhausted before proceeding to arrest a young person and formally charge them.

## **c. Police Community Engagement with Aboriginal Young People**

Relationships between Police and young people are a crucial intersection of the youth justice system. Where these relationships are fractious, antagonistic, distrustful or hostile, there are

serious implications for escalating situations of confrontation, and community safety generally.

By contrast, if these relationships are open and built on mutual respect and open dialogue, significant benefits for the young people concerned, Police and the community generally are possible.

NAAJA has been informed of a number of allegations of inappropriate Police behavior. These include allegations of use of force, sexual impropriety, threats, intimidation and unlawful arrests and detention.

We acknowledge the limitations of placing significant weight upon individual anecdotal reports. However, the pervasive nature of the disclosures, and the barriers that can operate to disincline young people, especially Aboriginal young people, to make formal complaints against Police lead us to conclude that these reports need to be taken seriously.

Because these allegations are untested, it is difficult to know where the truth lies. However, if there is truth to them, it reinforces the urgency of Police action in two respects:

1. That Police develop ways to improve community engagement with Aboriginal young people, and
2. That Police implements complaints procedures specific for young people that are more 'youth-friendly.'

#### **d. Redfern Example: Positive Policing in Action**

##### **Recommendation 30:**

NT Police need to develop strong and constructive community engagement projects with Aboriginal young people and local Aboriginal communities. These should be modeled on the Clean Slate Without Prejudice project in Redfern.

NAAJA strongly supports initiatives to create better relationships between police and local Aboriginal communities. NAAJA is aware of the constructive work that Redfern Police in New South Wales have undertaken in recent years. This has included:

- Working with the local Aboriginal community through the Local Area Command Aboriginal Consultative Committee, which includes groups such as the Aboriginal Housing Company, Babana, Wyanga, Mudgin Gal, Aboriginal Medical Service, Aboriginal Legal Service and the Redfern Community Centre - City of Sydney Council. This collaboration has forged relationships between Police and the community, which has facilitated a joint focus on local issues including health, fitness and crime prevention.
- 'Clean Slate Without Prejudice': With the advice of three prominent Aboriginal leaders, 10 young males, with a propensity to commit robberies, were selected to participate in this diversionary program. Following this program, no robberies were committed by the participants. A new version of the program commenced in March, 2010.

- Boxing: From 5.45am to 7.00am, each Monday, Wednesday and Friday, Police conduct boxing fitness classes with Aboriginal youth and Aboriginal leaders. A number of the youth bring their fathers along.
- Oz Tag: Redfern Police sponsor the local Aboriginal Oz Tag team 'D'Fern' which plays against local police teams four times per year.<sup>53</sup>

NAAJA is particularly impressed by the Clean Slate Without Prejudice project. As well as contributing to a reduction of crime in the local community, Redfern Police have created strong relationships with these young people. There have also been other significant benefits documented. In the attached article, 'Mentoring Indigenous Young People: the Tribal Warrior Program'<sup>54</sup>, other flow-on benefits include links to training and employment opportunities, mentoring, cultural reconnection, promoting positive involvement of elders and reductions in juvenile offending. Redfern Local Area Command statistics indicate that in 2009, the percentage of Aboriginal young men charged with robberies decreased by 80%.

#### e. Police Training

##### **Recommendation 31:**

Police should have more extensive training regarding working effectively with Aboriginal young people.

Police should receive extensive training with a youth-specific component. Effective policing with young people requires an entirely different skill-set to dealing effectively with adults. We agree with the comments of the recently released report by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 'Doing Time - Time for Doing Indigenous youth in the criminal justice system' that

More extensive training is required for police personnel regarding young Indigenous people in terms of risk factors for offending behaviour and the impact that an early entry into the criminal justice system can have on an Indigenous person's criminal trajectory. The Committee considers that better training on the available forms of diversion and on best methods for caution or referral, rather than arrest, are essential.<sup>55</sup>

### 13.4. Bail

##### **Recommendation 32:**

<sup>53</sup> New South Wales Government, *The Changing Face of Redfern and Waterloo* (16 February 2010). See: <<http://www.nsw.gov.au/projects/changing-face-redfern-and-waterloo>>

<sup>54</sup> Tribal Warrior Association, 'Mentoring Indigenous Young People: the Tribal Warrior Program' *Judicial Officers Bulletin* 23 (1) February 2011: 5-6

<sup>55</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing Indigenous youth in the criminal justice system* (2011) 61. See: <<http://www.aph.gov.au/house/committee/atsia/sentencing/report/fullreport.pdf>>

Pro-bail, youth specific bail provisions should be inserted into either the *Bail Act*, or as part of a separate bail regime for young people in the *Youth Justice Act*. The starting point must be that remanding a young person in custody is to be the option of last resort.

The NT has no youth-specific bail provisions. The same presumptions in the *Bail Act 1982* (NT) ('the *Bail Act*'), apply in relation to young people just as they apply to adults. This is of concern because the presumptions against bail in the *Bail Act* are at odds with the *Youth Justice Act* principle that custody be a matter of last resort.

NAAJA recommends that youth-specific pro-bail considerations be inserted either into the *Bail Act*, or into the *Youth Justice Act*. Recent publications by the Australian Institute of Criminology identify increases in youth remand rates as a concerning trend which requires policy attention: over 50% of all young people detained are on remand.<sup>56</sup> Of the remanded young people, few are likely to receive an actual custodial sentence.<sup>57</sup>

#### a. The Social Cost of Remand

##### **Recommendation 33:**

The power for courts to remand a young person in circumstances where the young person is unlikely to receive a term of imprisonment should be removed, unless exceptional circumstances apply.

The long term effects of remanding young people, in particular Aboriginal young people, are concerning. These include social isolation and alienation, family and community disharmony, stigmatization, reduced opportunities to form pro-social, community-based friendships, increased disruption to education, reduced opportunities to participate in important cultural initiations and ceremonies, and reduced opportunities for rehabilitation. The NSW Youth Justice review comments that:

Evidence indicates that the remanding of youth is often associated with a range of negative consequences including increased recidivism, poor conditions in remand facilities as a result of over-crowding and far greater costs in comparison with alternatives such as bail and community supervision.<sup>58</sup>

Most importantly, there is no evidence to suggest that high remand rates correlate to a reduction in crime rates. Conversely, research has found that a period of remand is a significant contributing factor in increasing the chances of recidivism.<sup>59</sup>

In light of the concerning ramifications of remand practices, the option for courts to remand a young person in circumstances where the young person is unlikely to receive a term of imprisonment should be removed, unless exceptional circumstances apply. Exposing young people to the risk factor of remand should be done cautiously and only in rare and exceptional circumstances. Bail and community based supervision should *always* be preferred over remand and this should be explicitly legislated for. NAAJA considers explicit

<sup>56</sup> Kelly Richards, *Trends in Juvenile Detention in Australia* (May 2011) Australian Institute of Criminology <<http://www.aic.gov.au/documents/D/6/D/{D6D891BB-1D5B-45E2-A5BA-A80322537752}tandi416.pdf>>

<sup>57</sup> Ibid.

<sup>58</sup> NSW Justice Review?

<sup>59</sup> Noetic Solutions, 'Review of Effective Practice in Juvenile Justice' (Report for the Minister for Juvenile Justice NSW, January 2010) 45.

legislation which forces the courts and police to consider custody as a matter of last resort (as opposed to it currently only being a principle of the *Youth Justice Act*),<sup>60</sup> is warranted.

#### **b. Where a Responsible Adult is Difficult to Locate**

##### **Recommendation 34:**

Section 51 of the *Youth Justice Act* should be amended to include a provision allowing the court to order an urgent s 51 report within 48 hours.

NAAJA Youth Justice Court lawyers regularly encounter the situation where it is difficult to contact a responsible adult for a young person. In situation such as this, and where there are concerns for the young's person's welfare, a court may order a report under section 51 of the *Youth Justice Act* as to whether the youth is in need of protection. At present, this leads to a situation where the young person is remanded in custody, and in our experience, it is all too often that the young person is remanded for several weeks pending the preparation of the report.

It is essential that s 51 of the *Youth Justice Act* be amended to enable the court to require the urgent provision of a s 51 report within 48 hours.

#### **c. Example - Supervised Bail Program**

##### **Recommendation 35:**

The NT Government should introduce and resource a Supervised Bail Program modeled on the WA Supervised Bail Program.

Supervised Bail also has an important role of facilitating the granting of bail where it is difficult to locate a responsible adult. It reduces the number of young people exposed to custody by providing specialist workers to young people, so that they need not be unnecessarily remanded in custody because responsible adults cannot be immediately located.

The WA Department of Corrective Services employs bail coordinators at the Children's Court and Rangeview Remand Centre. They have two important roles:

1. Assisting in the location of a responsible adult to sign a bail undertaking; and
2. The bail coordinator can act as the responsible adult, though only when no-one else can be found.

The WA Supervised Bail Program is a best-practice which this Review should consider.

#### **d. The Financial Cost of Remand**

Remanding young people is both an ineffective and expensive punitive justice response. The NSW Youth Justice Review reported that remanding a young person costs an estimated \$556 per person per day, where as community-cased supervision costs \$23 per person per

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<sup>60</sup> *Youth Justice Act* (NT) s 4(C).

day.<sup>61</sup> This figure does not take account of the additional long term costs of exposing young people to a significant reoffending risk factor, and likewise, the reinvestment savings of providing young people with community based supervision.

#### **e. Pro-Bail Practices are Needed**

##### **Recommendation 36:**

A legislative provision should be introduced explicitly stating that bail conditions should not be overly onerous or oppressive.

If courts are to be encouraged away from a remand culture, bail conditions should be proportionate to the offending, and not overly-strict. The Royal Commission into Aboriginal Deaths in Custody raised the issue of 'unreal conditions', which expose young people to a pattern of being 'recycled' through the cells and courts.<sup>62</sup> Bail conditions should not act as punishment, and be overly onerous or oppressive.

Bail support programs should also be provided to ensure young people have access to adequate and safe accommodation, and have an opportunity to access other relevant support services while bailed, to increase their likelihood of complying with bail conditions.

#### **f. Summons Preferred over Bail and Arrest**

##### **Recommendation 37:**

The practice of arresting and bailing young people should be avoided at all costs, and youth justice matters should be proceeded with by way of summons.

Police and courts should be required to summons young people, as opposed to bailing them, in most circumstances, unless exceptional circumstances apply. This is provided for in s 22 of the *Youth Justice Act*, however in NAAJA's experience this less punitive option is under-utilized.

Summoning a young person is a less intrusive and punitive approach because it does not expose young people to being held in police custody, having bail determined, and the potential to breach bail conditions. Research in other states has shown that Aboriginal young people are less likely to be proceeded with by way of summons, and are more likely to be held in police custody and subsequently charged and bailed.<sup>63</sup> The practice of arresting and bailing young people should be avoided at all costs, and youth justice matters should be proceeded with by way of summons.

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<sup>61</sup> Noetic Solutions, 'Review of Effective Practice in Juvenile Justice' (Report for the Minister for Juvenile Justice NSW, January 2010) 46.

<sup>62</sup> Larissa Behrendt, Chris Cunneen and Terri Libesman, *Indigenous Legal Relations in Australia* (2009) 103.

<sup>63</sup> *Ibid* 102.

## 14. During Court

### 14.1 Youth Friendly Proceedings

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#### **Recommendation 38:**

Youth court proceedings should be conducted in a youth friendly fashion, and the Youth Justice Court should be serviced by youth-specific magistrates, prosecutors and defence counsel.

Courtrooms that are used for Youth Justice Court proceedings should be set up in a youth-friendly fashion. This will allow young people to be engaged in, rather than alienated from, the court process. Intimidating processes and formal courtroom procedures serve to further marginalise young people. This is particularly so for Aboriginal young people. It is NAAJA's experience that many Aboriginal young people do not understand the court process they are subject to – they experience it as foreign and rely on their lawyer to make sense of proceedings.

In Victoria, youth friendly court processes are facilitated by prosecutors not being in uniform, and counsel not standing when addressing the court. The Koori Youth Court has Aboriginal art and flags decorating the room. Other youth friendly features include:

- Addressing the young person by their first name (as opposed to Master or Ms);
- The magistrate not sitting on a raised platform;
- Sitting in a circle arrangement;
- Using youth friendly, simple language;
- Young people having the charge read in plain English; and
- Family and Elders being included in proceedings.

With Aboriginal young people comprising the majority of clients accessing the Youth Justice Court, it is important for the court to be both youth friendly, and culturally relevant. Youth justice will only be effective for Aboriginal young people if it is tailored to their socio-cultural needs, and they are encouraged and able to participate in proceedings.

Likewise, magistrates, prosecutors and defence counsel servicing the court should be provided with youth-specific training to ensure they have appropriate skills for the clientele. This should include training in effective communication with young people, effective behaviour change techniques, and Aboriginal cultural awareness training.

### 14.2 Closed Courts and Removing Provisions Allowing Publication of Names of Youths

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#### **a. Closed Courts**

#### **Recommendation 39:**

Youth Justice Courts should be closed, unless the Court provides reasons for deciding otherwise.

Closing youth justice courts is consistent with the rehabilitative aims of the jurisdiction. Opening youth justice courts, and exposing young people to media, is anti-therapeutic and has a potentially socially isolating impact.<sup>64</sup> Further, academics such as Duncan Chapel suggest that allowing for the publication of identifying information is contrary to United Nations Conventions, such as the Convention on the Rights of the Child, and the Beijing Rules.<sup>65</sup>

There are different jurisdictional practices. Queensland and NSW close their youth justice courts, whilst Victoria keeps the court open, however restricts identifying publication. NAAJA recommends that the NT youth justice courts be closed, or alternatively adopt the Victorian model whereby the court is open to the public, however there are strict publication restrictions.

## **b. Removing Provisions Allowing Publication of Names of Youths**

### **Recommendation 40:**

Section 50 of the *Youth Justice Act* should be amended to preclude publication of identifying information relating to a young person involved in youth justice proceedings.

In the alternative, s 50 should be amended in terms similar to s 234 of the *Juvenile Justice Act 1992 (Qld)* which gives a court the power to allow the publication of identifying information for only the most serious of offences, and only where it is in the public interest to do so.<sup>66</sup>

Section 50 of the *Youth Justice Act* permits the naming of young persons involved in court proceedings, except where the court makes an order to restrict the publication of those proceedings.

No other jurisdiction in Australia allows prima facie publication of youth justice proceedings. This provision should be removed. It runs contrary to the fundamental principles of rehabilitation that are enunciated as the guiding principles to dealing with young people in the *Youth Justice Act*.

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<sup>64</sup> Duncan Chappell and Robyn Lincoln, 'Abandoning Identity Protection for Juvenile Offenders' (2007) 18(3) *Journal of the Institute of Criminology*.

<sup>65</sup> *Ibid.*

<sup>66</sup> Section 234 states that a court may allow publication of identifying information if:

- (a) a court makes an order relating to a child found guilty of a serious offence that is a life offence and
- (b) the offence involves the commission of violence against a person and
- (c) the court considers
  - (i) the offence to be a particularly heinous offence having regard to all the circumstances and
  - (ii) that it would be in the interests of justice to allow publication of identifying information about the child.

Publicly identifying a young person in a small communities such as those in the NT can undermine the young person's capacity to reintegrate and have lasting negative impacts on a young person's rehabilitation.

### 14.3 Additional Sentencing Options in Youth Justice Court

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#### a. More Lower Ended Sentencing Options

##### **Recommendation 41:**

Lower end, community based, sentencing practices should be encouraged in Youth Justice Courts.

The Youth Justice Act provides a variety of lower-end sentencing options.<sup>67</sup> These include cautions, deferral of sentencing, dismissals and discharges. It is NAAJA's experience that these lower end sentencing options are rarely used and young people progress up the sentencing hierarchy in a similar way to adults. For a first and relatively minor offence a young person will usually receive a good behaviour bond. For a second or subsequent offence they will usually receive a community work order, and for repeat offending a young person will be subject to the custodial options.<sup>68</sup>

Most young offending can be categorized as episodic, and responsive to particular developmental, familial or social circumstances.<sup>69</sup> This type of intensive and episodic offending often results in a young person having numerous court appearances, in a short period of time.

Current sentencing practices result in these types of offenders being quickly exposed to custodial sentences. If courts made use of the lower end sentencing options available in the *Youth Justice Act*, there would more opportunity for community based interventions. Further, if young people were not subjected to the same linear sentencing progression as adults, there would be more opportunity to avoid custodial exposure.

#### b. New Community Based Dispositions

##### **Recommendation 42:**

The new sentencing dispositions made available under the 'New Era in Corrections' policies should be extended to the *Youth Justice Act*.

NAAJA supports the introduction of two new community based sentencing dispositions as part of the 'New Era in Corrections' package. We consider that young people should also have the benefit of these, and further suggest that young violent offenders should not be

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<sup>67</sup> *Youth Justice Act* (NT) pt 6, div 2.

<sup>68</sup> For another example of substantive lower end offences, see: *Children Youth and Families Act 2005* (Vic).

<sup>69</sup> Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?* (February 2011) Australian Institute of Criminology, 3 <<http://www.aic.gov.au/documents/4/2/2/%7B4227C0AD-AD0A-47E6-88AF-399535916190%7Dtandi409.pdf>>

precluded from these dispositions. Creating new community based dispositions further facilitates young people being sentenced to, and treated in, the community.

## 14.4 Fines

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### **Recommendation 43:**

Young people should be excluded from mandatory financial penalty regimes, including the requirement to impose victim's levies. Whether or not a young person is fined, or required to pay a victim's levy, should be a discretion left to the Youth Justice Court Magistrate.

Most young people do not have any capacity to pay a fine or victim's levies. This results in the financial penalty accruing large administrative costs over the period of time the young person is unable to pay. By the time a young person reaches employment age, or is capable of entering into a payment plan, their fines have increased substantially due to the accrual of the administrative costs. Young people should have the opportunity to begin adulthood without the taint of financial debt.

It is in keeping with the therapeutic nature of the youth jurisdiction that young people not be exposed to mandatory financial penalty regimes, including the issuing of victim's levies. The issuing of a financial penalty and/or victims' levies should be at the discretion of the presiding Youth Justice Court Magistrate.

The court can then take into account the capacity of the young person to pay the financial penalty, or victim's levy. If the young person has no capacity, issuing a fine or victim's levy exposes them to counter-therapeutic implications. These include license suspension, and beginning adulthood with an outstanding debt.

## 14.5 Young People and Violent Offending

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### **Recommendation 44:**

Mandatory sentencing should *not* be included in the *Youth Justice Act*.

Young violent offenders should be processed within the same rehabilitative framework as other young offenders. There is a trend in the NT to exclude violent offenders from rehabilitative, community based options and subject them to mandatory sentencing regimes. There is very little evidence that NAAJA is aware of to support the effectiveness of mandatory sentencing in deterring or reducing crime. Conversely, there is evidence to suggest that custody does not have a deterrent effect, and in the case of young people, may be detrimental for a young person's, positive and pro-social development.<sup>70</sup>

### **Recommendation 45:**

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<sup>70</sup> Don Weatherburn, Sumitra Vignaendra, Andrew McGrath, *The specific deterrent effect of custodial penalties on juvenile reoffending* (September 2009) Australian Institute of Criminology <<http://www.aic.gov.au/documents/A/3/D/%7BA3DB5DEB-2A53-4272-87CF-CE510D13481B%7Dtbp33.pdf>>

Tailored rehabilitation programs specific to young violent offenders should be funded, developed and implemented as a matter of priority in the NT youth justice system. These should include culturally relevant anger management, and Indigenous Family Violence programs.

Violent offences comprise the majority of matters for which young people in the NT are sentenced to detention.<sup>71</sup> However, NAAJA is not aware of any youth-specific behaviour change, rehabilitation or anger management programs specific to this category of offender in the NT. NAAJA considers it essential to reducing youth violent offending rates that the specific rehabilitative needs of this offending group be addressed. We support community based rehabilitation programs which are culturally relevant, and youth specific.

When considering how to address the issue of youth violent offending, it is important to consider that young people are also disproportionately the victim's of criminal offending (as discussed above). The AIC reported earlier this year that:<sup>72</sup>

Young people are not only disproportionately the *perpetrators* of crime; they are also disproportionately the *victims* of crime....Young people aged 15 to 24 years are at a higher risk of assault than any other age group in Australia and males aged 15 to 19 years are more than twice as likely to become a victim of robbery as males aged 25 or older, and all females. Statistics also show that juveniles comprise substantial proportions of victims of sexual offences. In 2007, the highest rate of recorded sexual assault in Australia was for 10 to 14 year old females, at 544 per 100,000 population. For males, rates were also highest among juveniles, with 95 per 100,000 population 10 to 14 year olds reporting a sexual assault.<sup>73</sup>

The pathway between being a victim of crime, and becoming a perpetrator of crime, is well documented. In the same way that there is a paucity of counselling and rehabilitation programs for perpetrators of crime in the NT, the youth justice system offers few victim specific programs. The result is that many youth offenders have not addressed the complex issues associated with victimhood.

## 14.6 Need for Youth Specific Mental Health Workers and Psychologists

### Recommendation 46:

The Youth Justice Court should be required to inquire into a young person's mental health needs when a party to the proceedings raises the issue to ensure that court orders are tailored to a young person's specific needs.

The connection between youth offending, mental illness and intellectual disability is an under-explored area in the NT. A NSW study found that intellectual disability was particularly high amongst Aboriginal young offenders, and that over 88% of young people in custody

<sup>71</sup> Northern Territory Department of Justice, *NT Correctional Services Annual Statistics 2008-2009* (2009) 8

<[www.nt.gov.au/.../NTCS%20Annual%20Statistics%202008-09\\_EBook.pdf](http://www.nt.gov.au/.../NTCS%20Annual%20Statistics%202008-09_EBook.pdf)>

<sup>72</sup> Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?* (February 2011) Australian Institute of Criminology, 3 <<http://www.aic.gov.au/documents/4/2/2/%7B4227C0AD-AD0A-47E6-88AF-399535916190%7Dtandi409.pdf>>

<sup>73</sup> *Ibid.*

reported symptoms consistent with mental illness.<sup>74</sup> It is NAAJA's experience that many Aboriginal young offenders have never been properly assessed, despite presenting with obvious symptoms. These young people cycle through the criminal justice system without receiving the specialist interventions which could identify and begin to address the underlying cases of offending.

Alcohol consumption is a major, well known social issue in the NT. Despite this, foetal alcohol disorders are markedly undiagnosed and unaddressed in the NT. The prevalence of such disorders amongst Aboriginal young offenders is unknown. NAAJA refers the Review to the comprehensive discussion of Foetal Alcohol Spectrum Disorder, contained in the 'Doing Time – Time for Doing' report.

NAAJA submits that it is essential for the youth justice system to address the complex connection between youth crime, mental illness, developmental disorders, and intellectual disability. We recognise that this requires intensive and specialist engagement. However we suggest that there is little benefit in cycling impaired or unwell young people through a youth justice system which consistently fails to address the reasons for their offending. There is also the potential for harm in exposing this particularly vulnerable group of young people to ill-thought out criminal justice interventions.

#### **a. Other Jurisdictional Practices**

Both NSW and Victoria have recognised the importance of addressing this issue when administering youth justice. The Victorian Children's Court has an attached 'Children's Court Clinic', staffed by specialist psychologists and psychiatrists. Clinic practitioners provide assessment and reports recommending specific treatment needs, and also act as a referral service.<sup>75</sup>

In NSW mental health nurses are available at youth courts. They provide assessment and referral services, ensuring the court is fully informed of a young person's mental health status at the time of sentencing. This means that court processes and sentences can be tailored to a young person's developmental and cognitive needs.

An example of this is a court, armed with a report outlining a young offender's specific mental health needs, ordering a sentence that involves a requirement for the young person to attend counseling or treatment. Another example is a court choosing not to impose a particular sentence because the forensic report highlights developmental issues which makes the young person unlikely to be able to comply with, or indeed benefit from, the order.

There is a cogent justice reinvestment argument in making mental health resources available to the Youth Justice Court. If the court's intention is rehabilitative, and ultimately to stop young people repeat offending, then court orders must reflect the limitations, needs and capacities of the young person subject to it.

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<sup>74</sup> Kelly Richards, *Trends in Juvenile Detention in Australia* (May 2011) Australian Institute of Criminology <<http://www.aic.gov.au/documents/D/6/D/{D6D891BB-1D5B-45E2-A5BA-A80322537752}tandi416.pdf>>.

<sup>75</sup> See: Children's Court of Victoria, *Children's Court Clinic* (2009) <<http://www.childrencourt.vic.gov.au/CA256CA800017845/page/Family+Division-Clinic?OpenDocument&1=20-Family+Division-&2=90-Clinic-&3=->>>.

## 14.7 Community Courts for Young People

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### **Recommendation 47:**

The NT Government should re-commit to supporting Community Courts by adequately resourcing and funding them. The NT Government should look to Victoria's Koori Courts for a good practice example.

Following on from the success of Koori Courts in Victoria, Nunga Courts in South Australia, Murri Courts in Queensland, and Circle Sentencing in New South Wales, the NT commenced Community Courts in 2005.

The overall aims of Community Courts include: empowering Aboriginal communities; achieving more sustainable and culturally informed sentencing outcomes; increased court attendance; reduced recidivism; increased understanding of the court process; and broad therapeutic healing outcomes for the offender, victim and the community.

The benefits of Community Courts are well documented both nationally and internationally. The Royal Commission into Aboriginal Deaths in Custody makes specific reference to the Community Court process when discussing means of diverting people away from custody.<sup>76</sup> Additionally, the NT Government has cited Community Courts as forming part of their 'Closing the Gap' strategy.<sup>77</sup> Likewise, recommendation 39 of the 'Little Children are Sacred Report' discusses the importance of exploring '...alternative models of sentencing that incorporate Aboriginal notions of justice and rely less on custodial sentences and more on restoring the wellbeing of victims, offenders, families and communities'.<sup>78</sup>

NAAJA supports the further utilisation of Community Courts as an important way of fostering meaningful justice outcomes for Aboriginal young people, and for providing safer communities in the NT. We consider that Community Courts have significant benefits for Aboriginal defendants, including:

- Greater understanding of the court process by the defendant, victim, and community;
- The justice system working collaboratively with Aboriginal community members, and increasing community involvement, understanding of, and engagement in the judicial system;
- Encouraging local communities to take responsibility for their own law and justice issues; and
- Better and more informed sentencing outcomes for Aboriginal defendants, victims and the community.

### **a. How Community Courts Should Work**

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<sup>76</sup> Royal Commission into Aboriginal Deaths in Custody states in chapter 1.6.9: 'Another area of importance in the sentencing process, as far as Aboriginal defendants are concerned, is input from Aboriginal communities, and particularly discrete communities, as to their views on penalty and the role that they may play in supervising non-custodial options.'

<sup>77</sup> See: Office of Indigenous Policy, Department of the Chief Minister (NT), 'Agenda for Action: A Whole of Government Approach to Indigenous Affairs in the Northern Territory 2005-2009' (2006) 10(2) *Australian Indigenous Law Reporter* 95.

**Recommendation 48:**

The NT Government should commit to the thirty minimum standards in the NATSILS document, 'Minimum Standards for Aboriginal and Torres Strait Islander Courts'.

Community Courts function in a similar manner to the earlier description of Koori Children's Courts. The composition of the court includes Elders, offenders, victims (in some cases), the offender's family, the Magistrate, prosecutor, Community Court Coordinator and defence lawyer. The court is characterised by its informality, its cultural relevance, its open dialogue, its use of Aboriginal language and its circular seating arrangement. Elders play an active role is engaging in discussion with the defendant, and assisting the magistrate to arrive at the appropriate sentence in a particular case.

The success of Community Courts has most plainly been seen in North Eastern Arnhem Land. As with other community-justice initiatives, Community Courts must be community driven and community owned. The development of the Nhulunbuy Community Court, under the stewardship of then Chief Magistrate Jenny Blokland, demonstrates this.

Nhulunbuy Community Court has been operating for around 7 years. It had been successful because it was developed in a way requested by the Yolngu people. Nhulunbuy Community Court was established after by three senior elders to Ms Blokland asking for a Court that would assist their people. Ms Blokland agreed. Her Honour described the process in these terms:

Community courts commenced in Nhulunbuy (North East Arnhem Land) in about 2003/2004 after the respected Yolngu educator, linguist and community worker Raymattja Marika visited the Nhulunbuy Court's Chambers stating that 'down South' there are Koori Courts, Nunga Courts, circle sentencing and that the Yolngu wanted a 'Yolngu Court'. Being a new Magistrate at the time, I wasn't sure if I could, with any authenticity, preside in a court called a 'Yolngu Court'. With other developments occurring in Darwin (our then Chief Magistrate Mr Hugh Bradley came to an agreement with Yilli Rreung Council to trial 'circle sentencing' in Darwin, Nhulunbuy and the Tiwi Islands and make some funds available for the process), we settled on 'Community Court' to describe an informal participatory process. Subsequently there were general public meetings and education sessions involving Dr Kate Auty (formerly a Victorian Magistrate and now in Western Australia) and a number of restorative justice practitioners and educators in allied professional groups. The Community Court possesses some principles referable to restorative justice but whether the goals of restorative justice are met, depends greatly on the level and extent of participation, the type of case and the level of engagement of all relevant parties.<sup>79</sup>

It was agreed that the most important people to sit as panel members of this Court would be the Elders from the clan that the defendant in a particular case came from. Other community members and the victim were also involved. Banambi Wunungmurra advised he did not want it established like Darwin, where a panel of Elders who did not have a particular relationship with the defendant would sit on a Community Court panel. Banambi Wunungmurra was adamant that there would be no panels, but only the appropriate people from each clan would be involved in each case.

**b. Appropriate Elders**

<sup>79</sup> Blokland J, 'The Northern Territory Experience', (Paper presented at the Australian Institute of Judicial Administration Indigenous Courts Conference, Mildura, 4-7 September 2007) 7.  
See: <<http://www.aija.org.au/Ind%20Courts%20Conf%2007/Papers/Blokland.pdf>>

**Recommendation 49:**

The NT Government should engage Elders and ensure the constitution of the panel of Elders is culturally correct for each case. Proceedings should be conducted mostly in Language.

NAAJA's experience is that where Community Courts have been successful, it has been almost entirely due to the relationship between the Elders and the particular defendant. This is in contrast to having a set panel of Elders, who may not be appropriate for every referred case.

Unfortunately, this culturally considered approach has not been occurring in recent times. A NAAJA Client Service Officer, Sharon Yunupingu (formerly Briston), observed:

There were no Elders, just a panel of people not related to the defendant. It appears a panel has been made up against the wishes of the people that originally set this Court up. This does not work in this area as the defendant does not have to listen to any one other than their own elder.

She went on to comment that:

There needs to be more liaising with the Yolngu people to ensure this works. It does not want to become another Balanda initiative because then it won't work.'

**c. Community Courts Should Occur in Language**

Community Court proceedings should be entirely in Language. This facilitates talking and engagement between the Elders, other community members, the judiciary and the defendant. Again, this is no longer occurring. Proceedings are now often in English to the convenience of non-Aboriginal participants and the Elders as a result, are disengaged.

One of NAAJA's Nhulunbuy Office lawyers, Lindy Harland, observed:

At a very base level the youth needs to be engaged in the process, and with his counsel, otherwise very little will be gained. I have sat in Community Courts where a Magistrate gives their opinion and then asks if the panel members agree with their view (which of course they do!). Then the youth is lectured by the Magistrate. There is very little interaction with the youth or the family. Nothing is resolved or proposed as a solution and this approach is largely ineffective.

It is also instructive to consider these comments of Ms Blokland on the approach needed to make Community Courts successful:

When available, the Court engages its own interpreter so that discussion between people present at Court can be interpreted to the Court in English. Usually an interpreter is provided by either the North Australian Aboriginal Justice Agency or police or the prosecutor. The respected persons who sit are generally drawn on recommendation of the Community Corrections Officer, (formerly Ms Sharon Briston who was pivotal in setting up the Community Court and now Ms Mayitili Marika, a Yolngu woman who is also completing a law degree), in consultation and with the consent of the parties. As it would be unheard of for a Yolngu person to be present, sit or speak in a setting where their own law or gurutu (kinship) did not permit, I am very confident that only people in an appropriate relationship to the parties would sit.

Two of the respected persons involved in setting up the Community Court in Nhulunbuy and sitting as respected persons on many cases early on, (Ms Raymattja Marika and Mr Barnambi Wunungmurra) were made Justices of the Peace giving a sense of acknowledgment under both systems of law. As there are some 17 land owning clans on the Gove Peninsula and many more in the region generally, it is difficult for all parties involved to try to ensure that the most appropriate person is present as a senior clansman or woman. It is not always possible. It is important as much as possible for the Court to draw upon a wide range of appropriate people who may wish to be involved in the Community Court. It is hoped this lessens the possibility of only dominant personalities being heard.

### **Case Studies of Young People Participating in Community Courts**

NAAJA acted for two different juveniles with multiple unlawful entry/steal files whose matters proceeded through a Community Court. Both had a combination of petrol sniffing and cannabis use.

Youth 'A' hadn't been to school in the previous three years. The presiding magistrate asked why this was the case. A's father said that the youth didn't want to go to school and it was too difficult to get him to change his mind. There was then a lot of talk between the panel members, the magistrate and the father about schooling.

NAAJA asked the youth what was going on and why he didn't like school. He told me he was always bullied by older boys and that made him sad and angry. This made him 'hate' school. This information was presented to the court and there was discussion about the importance of schooling in both English and Yolngu.

Youth 'B' wasn't attending school consistently because his father kept sending the youth back and forth to homelands, to stay with different family members. The youth wanted to reside with his father (and mother) in Yirrkala. The presiding magistrate said that the youth had to reside with his parents.

The presiding magistrate told both youths that they had to go to school and a plan was developed for the Nhulunbuy Corrections Officer to monitor and support this. A discussion occurred around what Youth A could do if he were in the situation where he was bullied. The presiding magistrate and Community Court Panel of Elders also told family members in both instances very sternly that they had to make sure that the youths attended school and that Corrections would be there to make sure they were going to school.

The youths agreed that they would go to school and the Nhulunbuy Corrections Officer agreed to supervise their schooling, and to talk to the teachers about bullying.

The presiding magistrate adjourned all matters for 6 months with the following conditions:

1. Live at home with parents
2. Attend school everyday when in session and remain in school for the day
3. No alcohol, drugs or sniffing
4. Obey reasonable directions of parents
5. Supervision of Community Corrections
6. Curfew 8pm-7am unless in immediate company of a parent

After 6 months, the youths returned to court for review and sentence. There had been some initial hiccups for both youths in terms of school attendance. The Nhulunbuy Corrections Officer visited both families and instead of initiating breach proceedings, the Officer issued warnings. From that time, Youth A had no further unapproved absences, and Youth B only had one more unapproved absence. The Nhulunbuy Corrections Officer again spoke to him about this, and did not breach him.

Youth A was described as making 'leaps and bounds' by his teacher. He had a 98% attendance rate. His confidence had increased and he was making an effort to engage. It was discovered that he had very low levels of literacy and numeracy and he was then provided with additional intensive assistance. Notably, this youth was happy and his family very proud of him.

Youth B was described as making a consistent effort. He had an 89% attendance rate. His literacy and numeracy levels were improving. The youth was enjoying practical subjects and had enrolled in a VET program.

In terms of court outcome, both boys received no conviction good behaviour bonds, with the same conditions as noted above. So far they have been doing very well.

#### **d. The Future of Community Courts**

##### **Recommendation 50:**

Specific legislation should be drafted, providing a legal mandate for Community Courts.

Community Courts in the NT received a significant boost following the 'Little Children Are Sacred' report. Recommendation 74 was to 'Develop language-group specific Aboriginal Courts.' After the report, the NT Government announced that it would expand the use of Community Courts in remote communities at an additional cost of \$2.1 million over five years.

However, Community Courts are currently functioning to only a small percentage of their potential capacity. The NT has one Community Courts Coordinator whose role is to oversee Community Courts across the entire NT. This is in stark contrast with other jurisdictions such as Victoria, where there are numerous Koori Court employees who support the operation of Koori Courts.

Similarly, the NT has no legislation to guide the operation of Community Courts. Whilst there are broad guidelines, they have no binding effect. This means that each magistrate decides which matters can and can not be heard in Community Courts, and the process by which Community Courts operate. This leads to inconsistencies between how Community Courts operate.

NAAJA is concerned that Community Courts are becoming a 'Balanda initiative' that are unlikely to achieve meaningful justice outcomes. It is essential that the NT Government re-commit to the approach instigated by Ms Blokland and the three North Eastern Arnhem Land leaders who identified the key ingredients needed for Community Courts to be successful.

In considering best practice guidance, NAAJA draws the Review's attention to the National Aboriginal and Torres Strait Islander Legal Services' document, 'Minimum Standards for Aboriginal and Torres Strait Islander Courts' (attached). This highlights a range of matters that we consider central to successful Community Courts.

## 14.8 Youth Conferencing for complex, entrenched offenders

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### **Recommendation 51:**

The NT Government should specifically fund the Community Justice Centre to convene youth justice conferences.

A significantly under-utilised provision of the *Youth Justice Act* is s 84, which gives a court the power to order pre-sentence conferencing. Section 84 reads:

- (1) The Court may, when determining the appropriate sentence for a youth who has been found guilty of an offence, adjourn the proceedings and order the youth to participate in a pre-sentencing conference.
- (2) A pre-sentencing conference may be with any of the victims of the offence the youth is charged with, community representatives, members of the youth's family or any other persons as the Court considers appropriate.
- (3) The Court may:
  - (a) direct that the conference be convened at a specified time and place; and
  - (b) appoint a person who is appropriately qualified as the convenor of the conference.
- (4) The convenor must report to the Court as to the outcome of the conference.

### **a. Why Youth Conferencing is Important**

Youth Conferencing and victim-offender mediation has substantial behaviour-change potential in relation to Aboriginal young people in the criminal justice system. Mediated meetings with the victim of an offence, community representatives, members of the young person's family and other appropriate people, can have a powerful restorative impact on the young person. Youth conferencing has the potential to play a significant role in dealing with Aboriginal young people pleading guilty to serious charges, who are not otherwise suitable for diversion.

Although youth conferencing has existed as a pre-sentence option under the *Youth Justice Act* since its introduction in 2006, it has not had the dedicated resources to ensure its successful implementation. In particular, no agency has been given the direct responsibility or necessary resources to promote or implement youth conferencing.

### **b. The Community Justice Centre (CJC)**

In the NT, the CJC provides free, culturally relevant mediations. The CJC uses a co-mediation model, with two mediators employed on a case-by-case basis to bring their particular skill set to individual mediations.

The CJC has undertaken some pre-release mediations involving sentenced prisoners nearing release for extremely serious offences (usually homicide offences). The CJC uses a co-mediation model which incorporates the skills and expertise of Aboriginal mediators from remote communities along with western trained mediators.

It is hoped that their model will be progressively expanded to include mediations involving juveniles, pre-sentence mediation, and pre-release mediations for less serious offending.

### **c. Culturally Relevant Youth Conferencing**

#### **Recommendation 52:**

Specific mediation projects in remote communities such as the Ponki (Peace in Tiwi) Mediation should be developed, so that youth justice conferencing is culturally relevant to the parties and the local community.

The WA Review notes that ‘Aboriginal young people have not benefited to the same extent as non-Aboriginal young people from diversionary initiatives and restorative justice.’<sup>80</sup>

Similarly, WA Magistrate Deen Potter cautions against the use of mainstream mediation processes for Aboriginal young people. He argues that:

The practical application of restorative justice in its current forms can only have limited relevance to a sector of the community that has become used to a lack of economic and educational opportunity, over-policing, alienating court and corrective processes, incarceration and which is further generally disenfranchised and disengaged from the mainstream culture within which it uncomfortably sits.<sup>81</sup>

Further, we note the recommendations of the recent report, ‘Solid Work You Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia’ prepared by the National Alternative Dispute Resolution Advisory Council (NADRAC) for the Federal Court of Australia’s Indigenous Dispute Resolution & Conflict Management Case Study Project.

The NADRAC report points to the need for Aboriginal-specific mediation services. Unless mediation has a culturally relevant methodology for the parties involved, it will not get to the root causes of disputes between Aboriginal people. The report offers examples of mediation services which use culturally relevant methodologies,<sup>82</sup> and NAAJA refers the Review Panel to this document.

### **d. The Tiwi Islands Example**

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<sup>80</sup> Ibid.

<sup>81</sup> Deen Potter, ‘Indigenous Youth and Restorative Justice in Western Australia’ (2010) 20 *Journal of Judicial Administration* 92, 101.

<sup>82</sup> National Alternative Dispute Resolution Advisory Council, *Solid Work you Mob Are Doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia* (2009).

In 2009, NAAJA ran a 12-month project with the NT CJC to enhance the skills of local Tiwi mediators, so that they would be skilled in both Tiwi and Western mediation traditions, and to improve access to mediation in the Tiwi Islands by creating the framework for a sustainable local mediation service.

The model seeks to unify traditional Tiwi dispute resolution processes with contemporary Western mediation practices. The most notable feature of the Ponki (Peace in Tiwi) Mediation approach is the emphasis placed on skin groups. The Ponki mediators include representatives from all of the four Tiwi skin groups. The appropriate mediators in a particular matter will vary according to the skin groups of the parties to a particular dispute. The skin group approach to mediation in the Tiwi Islands enables the Ponki (Peace in Tiwi) Mediation to work in a culturally safe, culturally relevant process consistent with traditional Tiwi dispute resolution practices.

As a result of the project, 15 Tiwi mediators received certificates of completion of the Ponki (Peace in Tiwi) Mediation Workshop. These mediators are currently working with the CJC towards national accreditation and once achieved, they will be able to undertake mediations on a sessional basis through the CJC.

#### **e. The Future of Youth Conferencing in the NT**

If youth conferencing is to become a viable pre-sentencing option, the NT Government needs to devote specific resources to youth conferencing. This includes increasing the capacity of the CJC so that mediator's expert in youth conferencing can be employed.

We also consider that Youth Justice Court magistrates must be empowered as the 'hub' from which youth conferencing can take place. This draws on the fact that 'Courts can provide assistance by providing their support in a variety of ways for the rehabilitative and transformative process.'<sup>83</sup>If a youth conferencing officer is present at court, there will be an easily accessible process that is more likely to be utilised by magistrates, defence lawyers and families of young persons attending court.

We also agree with WA Magistrate Deen Potter that there is a need for 'integrated, holistic approaches that involve direction from and coordination by Aboriginal people themselves'. In this regard, we note the steady steps towards developing a Tiwi Islands Mediation Service as a model that could be followed in other remote communities.

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<sup>83</sup> Deen Potter, 'Indigenous Youth and Restorative Justice in Western Australia' (2010) 20 *Journal of Judicial Administration* 92, 101.

## 15. Detention

### 15.1 Young People in Custody Should Not be Kept With Adults

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#### **Recommendation 53:**

More effort should be made to ensure young people are not kept in custody with, or exposed to, adults in custody.

It is accepted best practice that young people in custody be kept separate from adults. Article 37(c) of the United Nations Convention on the Rights of the Child requires that:

[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person...In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...

Section 26 of *Youth Justice Act* provides for the separation of youth from adults 'where practical'. The practice recognises the risk factors involved in exposing young offenders to adults, and seeks to ameliorate these negative influences. In NAAJA's experience, this practice is compromised in police custody and in the court holding cells. In these facilities, young people will usually be kept in separate cells, however be exposed to adult offenders who are being held in adjoining cells.

#### Sexual Harassment of a Young Woman in the Darwin Court Cells

A young female client kept in the cells at the Darwin Magistrates Court told her NAAJA lawyer that she was subjected to sexually explicit comments from adult defendants in nearby cells. She was within sight and hearing of adult defendants

NAAJA understands that current practice in this type of situation is for court security officers is to ask that the young person's matter be dealt with as soon as possible, to limit their exposure to this type of conduct.

NAAJA suggests the following initiatives be considered where resources do not allow for the complete segregation of adults and youths in custody:

- Requiring police to process young people in the watch house expediently, either releasing them, or transferring them to a youth specific detention facility as soon as possible;
- Similar to the New Era in Corrections goal of reducing adult incarceration rates to the national benchmark, Government could also commit to reducing youth incarceration rates to the national benchmark;
- Pro-bail provisions would reduce the number of young people in remand, and therefore travelling in and out of the court holding cells;
- Pro-summons provisions would reduce the number of young people held in police cells;

- Holding the Youth Justice Court on a day which is not a traditionally busy main list day, where there are normally a large number of in-custody matters;
- Holding the Youth Justice Court in a separate building to adult courts, or if this is not possible in Darwin, utilizing Court 7 for the Youth Justice Court
- Dealing with Youth Justice Court matters first on circuit courts.

## 15.2 Detention Support

### **Recommendation 54:**

The NT Government should fund a dedicated Youth Justice Support Officer as part of NAAJA's Prison Support Officer Project. Consideration should also be given to providing similar funding to the NT Legal Aid Commission for a similar service to non-Aboriginal young people.

NAAJA received funding from the Commonwealth Attorney-General's Department to commence a Prison Support Officer project. The project commenced in September 2009 and NAAJA employs two Prison Support Officers who are based at Darwin Correctional Centre (DCC). They assist both adult prisoners at DCC, as well as juvenile detainees at the Don Dale Juvenile Detention Centre (Don Dale).

There are two components to the Prison Support Officer role:

1. Parole: to assist clients through parole process, from those just sentenced and how to prepare, to those with application currently pending, to those refused who want to re-apply.
2. General enquiries: prisoners can request to see Prison Support Officer for any reason, including legal, health or family related issues. The Prison Support Officer role is to make appropriate referrals in timely way.

One of NAAJA's Prison Support Officers has a dedicated focus on assisting young people at Don Dale. This includes:

- Establishing contact with new detainees and providing basic legal advice;
- Liaising with lawyers in Darwin, Alice Springs & Katherine in relation to enquiries a detainee might have;
- Maintaining contact with detainees throughout their detention at Don Dale;
- Working closely with Caseworkers and provide support and assistance in their dealings with detainees;
- Identifying special needs clients and referring for further assistance to NAAJA's Advocacy Solicitor, who specialises in prison rights issues, as required; and
- Conducting weekly visits to Don Dale and attending case management meetings to discuss the progress of individual clients.

### **Case Study: Youth Specific Prison Support Officer**

In December 2010, NAAJA's Prison Support Officers during their regular Don Dale weekly visit came across three young people from Kununurra, WA. They were faced with an Unlawful Use of Motor Vehicle charge, having taken a car and driven across the border into

the NT. They were apprehended by police, taken to Katherine, and bail was considered by phone to an on-call Magistrate. Bail was denied and they were then taken in custody to Don Dale in Darwin.

Because of the involvement of NAAJA's Prison Support Officer, an immediate referral was made to NAAJA's Youth Court lawyer. Assistance was also provided in terms of contacting family members in Katherine and Kununurra and preparing a bail application.

NAAJA's Prison Support Officers have assisted eight young people to apply for parole. With regular engagement with family, Corrections Officers and Don Dale caseworkers, NAAJA assists these detainees to develop a rigorous parole plan. This has included such things as assisting young people enrol at Charles Darwin University, working with the Department of Families and Children in relation to clients in the care of the Department and identifying and seeking treatment for mental health issues.

NAAJA is grateful for the support of the Commonwealth Attorney-General's Department which has funded the project and committed to supporting the project for the next two years. However, it is important that the project be given long-term funding to ensure its ongoing viability and also that the NT Government take some funding responsibility for this important aspect of the NT youth justice system.

### 15.3 Throughcare

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#### **Recommendation 55:**

The NT Government should provide significant additional resources and support to Throughcare projects.

In February 2010, NAAJA commenced an Indigenous Throughcare Project which aims to provide intensive pre and post release rehabilitation and reintegration services for Aboriginal prisoners from the Darwin Correctional Centre and Don Dale Juvenile Detention Centre. Mission Australia offers a similar Throughcare project, with one officer in Darwin and one in Alice Springs.

NAAJA's Indigenous Throughcare Project provides strength-based case management and referral services for individual prisoners to assist them with accessing opportunities when they are released from prison by addressing their diverse transitional needs including rehabilitation, accommodation, employment, education, training, health, life skills, reconnection to family and community and social connectedness.

The Indigenous Throughcare Project's ultimate goal is to reduce repeat offending by supporting Aboriginal prisoners and juvenile detainees upon their release from prison through the delivery of high quality through care services for the first 6 months post-release.

#### **a. Focus on Young People**

At the time of writing, NAAJA's Indigenous Throughcare Project currently has 9 current clients who are juveniles. With a total of 28 active clients, this represents 30 percent of our total caseload.

## **b. High Needs**

The Indigenous Throughcare Project does not have a specific prisoner area of focus, although we recognise the additional level of need facing juvenile detainees and prisoners in the mainstream section of Darwin Correctional centre. Our criteria for acceptance are that prospective clients must be of Aboriginal or Torres Strait Islander descent, must voluntarily enter the project and must have pressing personal circumstances or 'high needs'. 'High needs' is difficult to define given the multitude of individual points of need. We have adopted the following criteria from chapter 5 of the Commonwealth Attorney General Department's, 'Interventions for Prisoners Returning to the Community'<sup>84</sup> that underpin the services we provide:

1. Homelessness or marginal accommodation, i.e. residing in temporary accommodation with a need to obtain permanency. Poor rental history.
2. No income or unstable income. Poor or no credit rating.
3. Unemployment and lack of employability. Literacy and numeracy, English as second or subsequent language.
4. Family relationships. Involvement with welfare agencies, history of family violence, cultural/payback issues.
5. Community Support – what is available? Friends, links to sports or cultural groups.
6. Substance misuse. Alcohol and other drugs.
7. Health. Mental and or physical disabilities.
8. Relationship with other agencies i.e. Community Corrections (under supervision) or FAHCSIA (under care).

To avoid duplication of services with the Mission Australia Throughcare project, as well as the services provided by the Reintegration Team at the Darwin Correctional Centre, we communicate with those services prior to formally accepting a new client.

NAAJA's Indigenous Throughcare Project has implemented a cap on the maximum caseload of 12 file clients per worker. This is to ensure clients are provided with the appropriate level of support and to avoid over-commitment of service provision. NAAJA had initially set this as 20 per worker, however we have revised this in light of feedback from the Attorney General's Department as to the appropriate balance between high quality case management and servicing larger numbers of clients.

Once maximum caseloads are reached, further acceptance of clients is considered, but only where there is sufficient capacity to ensure thorough and effective case management and that our staff will not be placed at risk of burn out.

Referrals are accepted from prisoners themselves, NAAJA's Prison Support Officers and other NAAJA staff, Darwin Correctional Centre's Sentence Management team, Don Dale Juvenile Detention Centre, NT Community Corrections, other service providers and family of prisoners and detainees.

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<sup>84</sup> Commonwealth Attorney General Department, 'Interventions for Prisoners Returning to the Community' (March 2005), <<http://www.ag.gov.au/agd/WWW/ncphome.nsf/Page/RWP97F159B523B4BA72CA256FF500064FB7>>

NAAJA's Indigenous Throughcare Project Co-ordinator attends regular meetings with key stakeholders and where practical, operational issues are discussed, as well as particular clients and how their post-release needs can best be met.

Since the implementation of smaller case loads, the level of intensity at which we are working with our clients has been immensely beneficial to both client and caseworker. Relationships are much stronger with the clients and communication, the key to successful case management, is proving to be the engine to our success. We are finding ourselves as integral parts of people's lives, assisting in family negotiations and support, client/service provider interactions and mentoring roles.

NAAJA's Indigenous Throughcare Project is currently being externally evaluated. It is too early to assess its success in reducing recidivism but the following case studies point to some of its successes in working with individual clients to address some of the high risk factors that can lead to re-offending, as well putting in place pro-social supports, boosting self-esteem and increasing motivation and sense of purpose.

### **c. Case Studies: The Importance of Throughcare**

#### **Case Study 'A': The Importance of Post Release Support in Gaining Education**

B, aged 17, was placed in the care of the Minister in Queensland as child and frequently moved between foster homes and her grandparents. When her mother moved to Katherine, B followed, though she did not have permission to do so. Soon after, her mother evicted her. B drifted to Darwin where she soon found herself in trouble. She served a portion of her sentence and was recently released under a suspended sentence.

Whilst in detention, NAAJA's Indigenous Throughcare Project worked extensively with B to plan her transition post-detention. From the outset of this process, B expressed an ambition to study nursing. To do so, would need to complete school. There is no statutory bar to someone of B's age enrolling in school, but schools that wish to exclude particular students can use age as a reason to obstruct enrolment.

B and her throughcare worker discussed the school she was to attend, the principal from the Don Dale School was consulted and preliminary contact was made with that school. The school baulked at enrolling B, stating her age as a barrier and suggesting that a work ready program may best suit her needs. B's Throughcare worker made enquiries within the Education Department which confirmed there was no reason that B could not enrol in the school of her choice. The Education Department has a team that works specifically with students such as B who have special needs. B was awarded a caseworker who has worked tirelessly to secure B's education.

B is now enrolled in the Northern Territory Open Education Centre (NTOEC). NTOEC offers B a pathway into mainstream schooling.

Without the support of NAAJA's Indigenous Throughcare Project, B may have fallen through a gap following the school system's rejection of her application. Without the focus of schooling and the motivation of a potential nursing career, she would have been at risk of re-offending.

### **Case Study 'B': Personal Development, Positive Behavioural Change and Preparation for Release**

C has been in detention since he was 12, and has been in custody more often than he can count. He is now nearly 18. C has no contact with his father, and his mother “took off” when he was around 3. He lived with foster parents and was largely brought up by his grandparents. He speaks very warmly of them. They are ageing and their health is in decline. C has considered moving back in with them on release, but is realising that he is too old to live with them. They currently care for his younger siblings. C feels a responsibility to pitch in and do his part in the family’s future. His dedication to his grandparents and his younger siblings is unmistakable.

C is determined to end his cycle of offending and detention, but is unsure about what will do on release.

After extensive conversations with NAAJA’s Indigenous Throughcare Project worker, C says he would like to work around horses. His Throughcare worker investigated the possibility of volunteer work with the Volunteers Association, and based on their invaluable assistance, C’s worker contacted the Riding for the Disabled Association (RDA). RDA embraced the idea of accepting Don Dale volunteers with alacrity.

Before C could begin volunteering with RDA, he worked hard to achieve Open Classification. C came close to this achievement a number of times, but would stumble at the last hurdle. Don Dale’s head youth worker observed that C seemed to struggle with seeing himself as anyone other than a person in trouble.

C and his Throughcare worker also discussed strategies to help him deal with frustrations he feels in custody. C felt that a youth worker was goading him, which made him angry. C and his Throughcare worker discussed the importance of not letting these things rile him and jeopardise his own goals, like achieving open classification. C said that he had told the youth worker that he was upsetting him and that the youth worker persisted. C said he “told him off” but didn’t allow his anger to swell up.

C has now commenced volunteering at RDA. He says he has been made to feel welcome and he finds the work there a source of great satisfaction. C’s increasingly more mature attitude indicates that this is the first step in regaining a foothold in the community. C is developing personal insight. He said fears the outcome being left to his own devices. Together with his Throughcare worker, C is looking at alternatives such as joining the army where structure is built into his daily life.

## **15.4 Parole for Young People**

### **Recommendation 56:**

Youth-specific provisions should be inserted into the *Parole of Prisoners Act*. Section 3HA of the Act should be removed so that procedural fairness applies to parole proceedings. This would allow young people to be more involved people in the parole process.

### **Recommendation 57:**

Young people should be supervised by youth specific parole officers who approach their supervisory role using a youth friendly intensive case management framework, as opposed to a strict statutory compliance model.

Parole is only a question for people who receive a sentence upwards of twelve months. It does not apply to lower end offending. Parole is an opportunity for the most serious young offenders to be engaged in their rehabilitation, and to be supported when they are released.

A supported release through an effective parole system is a key ingredient in reducing the likelihood of reoffending and ensuring community safety. Parole often acts as an incentive for both adult and young prisoners to participate in prison based rehabilitative and vocational programmes, progress through the prison classification system, and also to give consideration to a realistic post release plan.

All parole matters in the NT are governed by the *Parole of Prisoners Act 1971* (NT) ('the *Parole Act*'). There are no provisions specifically relating to young people. Young people are subject to the same processes, time frames and requirements as adults. It is NAAJA's experience that Aboriginal young people are reluctant to engage in the parole process due to a lack of understanding of, or confusion about, parole processes and requirements.

This alienation from the parole system is compounded by the exclusion of natural justice from parole proceedings through section 3HA of the *Parole Act*. NAAJA considers that young people should be encouraged to participate in, rather than be excluded from parole processes. This is because parole increases the likelihood of a successful reintegration. The alternative of a young offender serving their full term, not participating in rehabilitative programmes, and being unsupervised upon release, is more expensive and counter to the promotion of safer communities.

NAAJA considers that youth-friendly provisions be inserted into the *Parole Act*. An important aspect of young people engaging in rehabilitation and a supported release, is allowing for their engagement in parole proceedings and providing for natural justice. We also recommend that young people be supervised by youth specific parole officers. A transparent, youth friendly parole system which engages young offenders is central to successfully reintegrating serious young offenders, and keeping them out of jail.

## 16. Outside Court

### 16.1 Legal Education

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#### **Recommendation 58:**

The NT Government should provide additional resources to allow organisations such as NAAJA to deliver comprehensive legal education packages to young people across the Top End of the NT.

NAAJA has a comprehensive legal education practice. We have been undertaking community legal education with young people for approximately four years. Some of our current projects include working with young people at the Brahminy Youth Camps and the Balanu Foundation, senior high school students at the Clontarf Academy at Casuarina Senior College, supporting Aboriginal high school students to undertake work placements at NAAJA, and undertaking legal education on a sessional basis at various schools throughout Darwin, Katherine and remote communities in the Top End of the Northern Territory.

Where possible, NAAJA works with Elders from local communities to deliver 'Two Way' legal messages to young people, incorporating the Western legal system and traditional legal and cultural concepts.

#### **a. The Need for Legal Education**

There is a significant need for legal education for young people in the NT. This is especially the case for Aboriginal young people. The 'Little Children are Sacred' report commented:

One of the first steps in genuine reform, therefore, is empowering Aboriginal people with conceptual knowledge...People need to be empowered with knowledge and once that knowledge reaches critical mass, then they will be in a position to themselves create the structures that are needed to service their communities.

The following are examples of legal education areas of need:

- Lack of understanding about answering police powers and police complaint mechanisms.
- Lack of understanding about young people's rights in the criminal justice system.
- Lack of understanding by young people of the court process.
- Lack of understanding around civil law rights, for example when entering a mobile phone plan.

#### **b. Culturally Relevant Legal Education**

Meaningful cross-cultural legal education should not be through an 'information-dumping' process. It should rather engage with the specific linguistic and cultural needs of particular groups of people, so that barriers to understanding can be identified. Information is only beneficial if young people are also armed with the skills and confidence to use the information. For example, young people should not just be explained their right to silence, but rather have the opportunity to workshop how they can put that right into practice, and to discuss barriers.

#### **c. NAAJA's Community Legal Education**

There is a need for legal education to be delivered by appropriately qualified legal educators and by appropriately skilled cross-cultural educators. NAAJA employs two solicitors with extensive experience as practicing criminal lawyers in an Aboriginal context. It is imperative that legal education for Aboriginal young people should be delivered in a culturally relevant way.

Additional resources are needed to allow organisations such as NAAJA to deliver comprehensive legal education packages to young people across the Top End of the NT.

NAAJA, for example has funding for only two solicitors to cover the entire Top End of the NT. This impairs our capacity to tailor community legal education packages to be specifically youth friendly.

## 16.2 Role of Elders

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### **Recommendation 59:**

The NT Government should provide resources to allow Elders to play a regular, meaningful and tangible role in Youth Justice Court proceedings. Elders should be paid for their time in court and a panel of a large number of Elders, both male and female and from various communities and regions should be established, to ensure that Elders present in court are the right elders for a particular defendant.

Utilising the expertise of elders would improve the capacity of the youth justice system to respond more effectively to the needs of Aboriginal young people.

Section 3(e) of the *Youth Justice Act* provides that one of the objects of the Act is:

To ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation.

Section 4 of the *Youth Justice Act* expresses some of the clear principles that underpin the way Aboriginal young people are to be dealt with under the *Youth Justice Act*. Some of the pertinent provisions include:

(b) the youth should be dealt with in a way that acknowledges his or her needs and will provide him or her with the opportunity to develop in socially responsible ways.

(h) family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened;

(j) a youth's sense of racial, ethnic or cultural identity should be acknowledged and he or she should have the opportunity to maintain it;

(o) if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community;

(p) programs and services established under this Act for youth should:

- 1.1.1 be culturally appropriate; and
- 1.1.2 promote their health and self-respect; and
- 1.1.3 foster their sense of responsibility; and
- 1.1.4 encourage attitudes and the development of skills that will help them to develop their potential as members of society;

It is NAAJA's submission that these principles can only be given effect if a meaningful and tangible role for Elders is created in Youth Justice Court proceedings.

Elders have the potential to strengthen a young person's ties with his/her community, assist a young person to develop socially responsible ways, and assist in helping young people dislocated from their culture to re-connect with their cultural identity.

In addition, there is further benefit in elders being part of court proceedings in breaking down the formality (and for many young people, hostility) of mainstream courtroom environments. Elders can contribute to giving cultural safety to court proceedings.

#### **a. Example - Koori Children's Court**

The Victorian Koori Children's Court offers an instructive model as to how the role of Elders can be integrated into the conventional Youth Justice Court.

The Koori Children's Court is not a separate court with separate sentencing orders. As in any criminal case, it is the magistrate who remains responsible for making the sentencing order.

The main differences are in terms of the role of Elders, the cultural relevance of the Court, and the sentencing process, which is about identifying and addressing the underlying issues contributing to the young person's offending. The process is very different from what occurs in a traditional court. In the Koori Court the voice of the defendant, family and community are always present and central.<sup>85</sup>

The courtroom has an oval table at which all persons involved in the case are seated. The Magistrate generally sits with two elders on either side. Also sitting at the table will be the Koori Court Officer (KCO), the prosecutor, a youth justice worker, the defence lawyer, the young person and family members. Other workers involved with the defendant, for example drug and alcohol workers, also sit at the bar table. The KCO and other support workers will inform the court of matters relevant to the defendant and advise of possible support persons or programs.

The Victorian Children's Court President, Paul Grant provided the following synopsis of the operation of the Koori Children's Court:

It is a matter for the elders and respected persons what they say. Often they will speak strongly to a young person on the importance of obeying the law and the harm they have caused to the victim and the community by their misbehaviour. They may talk to the young person about the harm they cause to all Aboriginal people and to their heritage by their misconduct; about the young persons family and regard within the Aboriginal community; how the misbehaviour has distressed the family; encourage the young person to change their behaviour and work with agencies that offer support in that regard; or offer advice based on the Elders own experience. It is the elders and respected persons who give the Court its unique authority and flavour. Defendants will nearly always engage in discussion with the elders and respected persons and accord respect to the process.

Two things are particularly striking from the comments of President Grant.

Firstly, the integrated way in which all relevant parties are able to raise issues, and then with the assistance of the Koori Court Officer and other support workers, develop strategies to address those issues. Secondly, the powerful role that Elders can play when given the platform to do so. By involving Elders in the process, the Koori Children's Court becomes culturally relevant, safe and empowering.

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<sup>85</sup> Paul Grant, *The Children's Koori Court (Criminal Division)* (2007) 6  
<<http://indigenoustjustice.gov.au/db/publications/278589.html>>

## **b. Elders in the NT Youth Court**

There are a variety of roles Elders can play in NT Youth Court proceedings. These include:

- As members of Law and Justice Groups, being present in court and providing a magistrate or judge with information about the defendant and community context;
- Accepting referrals from police for diversions;
- Working as mediators in youth conferences;
- Sitting as Community Court panel members;
- Working with young people after they have been sentenced, for example as mentors, or on youth camps;
- Working for the Court as Aboriginal Court Liaison Officers.

It is important to note that different Elders relevant for one young person will not necessarily be the correct Elders for another young person. It is essential to establish a panel of Elders, both male and female, and from different regions of the NT, who can be part of court proceedings as appropriate for particular young people.

Similarly, it is essential that Elders are remunerated for their time in court. Just as with any other professional in court, it is unreasonable to expect Elders to perform these significant roles without financial reimbursement.

## **16.3 Law and Justice Groups**

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### **Recommendation 60:**

The NT Government should establish and support Law and Justice Groups in remote communities. The NT Government's approach to Law and Justice Groups should be informed by the Queensland Community Justice Group model.

Law and Justice Groups (LJG's) are an example of Aboriginal community-driven responses to youth justice. LJG's enable local communities to develop and implement local solutions to local justice issues. They do this in a manner that recognises and empowers local community Elders through a mechanism that restores traditional authority and that can get to the heart of conflicts.

LJG's draw on the strengths of communities to effectively resolve conflict issues. This was illustrated in the inaugural 'Kurduju Committee Report' by the Combined Communities of Ali-Curung, Lajamanu and Yuendumu Law and Justice Committees in December 2001. The Kurduju Committee comprised representatives from the three communities of Ali-Curung, Lajamanu and Yuendumu. Founding Chairperson, Gwen Brown, described the Kurduju Committee as 'a unique forum to come together to discuss and document what works well

for our communities and why.’ She went on to comment that the strength of the Committee and its initiatives was ‘because we have been able to draw on the strength of our culture.’<sup>86</sup>

This last point cannot be overstated. Aboriginal communities, through their traditional culture and law, individually and collectively have the expertise to solve their local law and justice issues. As Gwen Brown later stated in her Foreword:

Our message is simple. No fancy programs and no big expenditure items. As we have said throughout this report, the Kardina (non-Aboriginal) way for addressing these issues does not work for us and it is time communities received assistance, encouragement and practical support in developing and implementing community based initiatives.<sup>87</sup>

In the NT, LJJ’s were trialled in three Central Australian communities. Through the former Office of Aboriginal Development, the Aboriginal Law and Justice Strategy was developed, and part of the Strategy involved the establishment of Community Justice Groups at Ali-Curung in 1996, in Lajamanu in 1999 and in Yuendumu in 2002. Since that time, funding has largely been withdrawn from LJJ’s (with the exception of Yuendumu), and they have not been implemented in other communities in the NT.

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recommended:

[I]n the case of discrete or remote communities sentencing authorities (should) consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims, such consultation should in appropriate circumstances relate to sentences in individual cases.<sup>88</sup>

#### **a. The Queensland Example:**

Queensland has well entrenched Community Justice Groups (CJG’s).<sup>89</sup> The Queensland Government states:

The Department of Justice and Attorney-General’s (JAG’s) Community Justice Group Program allocates funding to Aboriginal and Torres Strait Islander organisations to develop strategies within their communities for dealing with justice-related issues and to decrease Aboriginal and Torres Strait Islanders’ contact with the justice system. It gives members of Aboriginal and Torres Strait Islander communities and organisations the opportunity to work cooperatively with magistrates, police, corrective services personnel and staff from other government agencies. The program is an important part of the Queensland Government’s response to the RCIADIC recommendations.<sup>90</sup>

New groups have since been established in Goondiwindi and Tully-Cardwell, increasing the number of community justice groups in Queensland to 52.

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<sup>86</sup> The Combined Communities of Ali-Curung, Lajamanu and Yuendumu Law and Justice Committees, *Kurduju Committee Report*, Volume 1, December 2001, Chairperson’s Foreword.

<sup>87</sup> Ibid.

<sup>88</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, [22.4.5].

<sup>89</sup> The terms Law and Justice Group and Community Justice Group are sometimes used interchangeably.

<sup>90</sup> Queensland Government, *Community Justice Groups* (2009) Department of Justice and Attorney General <[www.justice.qld.gov.au/\\_data/.../Community\\_justice\\_groups.pdf](http://www.justice.qld.gov.au/_data/.../Community_justice_groups.pdf)>

In 2011, the Queensland Government announced an increase in funding for the State's 52 community justice groups from \$415,000 to \$4.04 million. The Queensland Attorney-General, Cameron Dick pointed out:

Community justice groups play a crucial role in helping to reduce the number of Aboriginal and Torres Strait Islander people who have contact with the criminal justice system and, particularly, the disproportionately high rates of Indigenous imprisonment... They also provide support directly to the courts, making submissions on relevant cultural matters that magistrates and judges consider when they are sentencing offenders.<sup>91</sup>

The Queensland Department of Justice reported in their Annual Report 2009/10:

The community justice groups program engages with and builds the capacity of Indigenous people to resolve justice-related issues at a community level. It forges strong links between government agencies and Aboriginal and Torres Strait Islander communities based on mutual ownership of the causes of, and solutions to, overrepresentation of Indigenous persons in all aspects of the criminal justice system... During 2009–10, community justice groups provided assistance and support to more than 46,000 clients across the state and made more than 4,000 oral and written submissions to our courts.<sup>92</sup>

Queensland's CJG's are a clear example of 'what works' in terms of community-driven solutions to local justice problems.

### **c. The Re-Establishment of LJG's in the NT**

The 'Little Children are Sacred' report made strong recommendations in relation to LJG's.<sup>93</sup> The Report urged the government to establish and support LJG's on an ongoing basis in all Aboriginal communities which wished to participate. It recommended that such groups be developed following consultation with communities and in recommendation 73, described in detail their role and features as follows:

- (i) Role of LJG's
1. Set community rules and community sanctions provided they are consistent with Northern Territory law (including rules as to appropriate sexual behaviour by both children and adults);
  2. Present information to courts for sentencing and bail purposes about an accused who is a member of their community and provide information or evidence about Aboriginal law and culture;
  3. Be involved in diversionary programs and participate in the supervision of offender;
  4. Assist in any establishment of Aboriginal courts and provide a suitable panel from which Elders could be chosen to sit with the magistrate;
  5. Be involved in mediation, conciliation and other forms of dispute resolution;
  6. Assist in the development of protocols between the community and Government

<sup>91</sup> See: Cameron Dick, *Funding Boost For Community Justice Groups in South Queensland*, Queensland Government <<http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=71170>>

<sup>92</sup> Department of Justice and Attorney-General, *Annual Report 2009–10*, 40 – 41

<<http://www.justice.qld.gov.au/corporate/general-publications/annual-report/09-10-annual-report>>

<sup>93</sup> Pat Anderson & Rex Wild *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse - AmpeAkelyernemaneMekemekarle ('Little Children are Sacred')* (2007) Recommendations 71 and 73.

departments, agencies and NGOs;

7. Act as a conduit for relevant information and programs coming into the community;
8. Assist government departments, agencies and NGOs in developing and administering culturally appropriate local programs and infrastructure for dealing with social and justice issues, particularly child sexual abuse;
9. Any other role that the group deems necessary to deal with social and justice issues affecting the community providing that role is consistent with Northern Territory law.

(ii) Features of Community Justice Groups

1. Group membership that:
  - a. provides for equal representation of all relevant family, clan or skin groups in the community and equal representation of both men and women from each relevant family, clan or skin group; and
  - b. reflects, as far as possible, the traditional authority of male and female Aboriginal Elders; and
  - c. is subject to screening and a criminal history check.
2. Flexibility to develop its own structures, functions, processes and procedures to deal with social and justice issues provided these allow and encourage input from the rest of the community
3. The ongoing assistance of a government resourced 'cultural broker' to facilitate meetings assist with administration and provide general advice.

**d. The Lajamanu LJG**

NAAJA has been supporting the Lajamanu Community re-establish their LJG. We have been doing this with no external funding. The Lajamanu LJG has predominantly been engaged in pre-court conferencing, preparing sentencing information, and assisting with community legal education.

Pre-court conferencing involves the LJG working through the court list, discussing the respective supports and community involvements of selected defendants, and then preparing a written submission to inform the court of the surrounding family, background, work, contributions to the community, cultural issues for those defendants, as well as providing the community's views on what may be an appropriate punishment. The Elders may also express a view as to whether a matter should be dealt with by Community Court.

In Lajamanu, the presiding magistrate identified domestic violence and traffic matters as frequent types of offences being committed. He has asked the LJG to assist with developing local solutions to these issues, and they are presently embarking on this task.

It is hoped that in the future, the role of the Lajamanu LJG may expand further, for example, to sitting as Elders in Community Courts, formally accepting referrals to mediate local disputes and supervising non-custodial sentences.

Lajamanu Community Elders have participated in mediation training provided by the Community Justice Centre and are on a path towards national accreditation. This would

allow them to undertake local mediation sessions, court-ordered mediation, family group conferences and youth justice conferences.

#### **e. The Future of LJG's in the NT**

There are additional areas where LJG's have not been involved, but could make a significant impact. For example, the Commonwealth Government is currently funding a number of Indigenous Throughcare Projects around Australia. There could be a crucial role for LJG's to assist with the reintegration needs for people recently released from prison to a remote community. Their involvement could include supervision, mentoring, counselling, mediation, and practical supports, such as facilitating employment or training opportunities.

Community-driven solutions such as LJG's must be properly resourced if they are to be successful. It is essential that 'cultural brokers' be employed to support the operations of the LJG's. In NAAJA's experience, this requires someone with legal and/or mediation training to coordinate and advise LJG elders.

Similarly, given the substantial duties to be undertaken by Elders participating in LJG's, it is imperative that elders be paid for their time. In a 2005 evaluation of Queensland's CJG's, it was found that, 'there was almost unanimous support for CJG members being reimbursed for the activities they undertake. Whether this comprises a sitting fee or reimbursement of costs needs to be explored further.'<sup>94</sup>

In terms of ongoing funding for Queensland's CJG's, the evaluation proposed that CJG's be funded across the agencies that utilise them: 'An alternative to the fee for service model is joint funding across the justice agencies that utilise the services of the CJGs. A joint funding agreement would be administratively the easiest and least costly way to proceed.'<sup>95</sup>

It is our view that participation in LJG's should properly be seen as an employment pathway for local community Elders in the justice sector. This is worthy of further consideration in the NT, where LJG's could be utilised across various NT and Commonwealth agencies and departments. NAAJA considers LJG's to be an essential ingredient to addressing law and order issues in remote communities. Communities have the expertise to resolve local justice issues.

## **16.4 Cultural Reconnection, Healing and Mentoring**

### **Recommendation 61:**

The NT Government should provide additional funding and resources to cultural reconnection, healing and mentoring programs in the NT.

<sup>94</sup> Chris Cunneen, Neva Collings & Nina Ralph, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement* (November 2005) 141.

<sup>95</sup> *Ibid.*

This submission has noted above that 89% of male participants of the Balanu Foundation program and 95% of females have experienced violence in their upbringing.<sup>96</sup> David Cole's powerful description of the Aboriginal young people he works with is that many 'are hurting, traumatised, confused and angry and have been failed and neglected by family breakdown and a system which fails to see or address the trauma they have endured from an early age.'<sup>97</sup>

### **a. Cultural Reconnection and Healing**

Cultural reconnection and healing programs are an important way of assisting Aboriginal young people. David Cole notes that 'There is a growing recognition of the importance and effectiveness of culturally based healing practices in research worldwide.'<sup>98</sup> This corresponds with the perspectives of prisoners from Darwin Correctional Centre interviewed in the preparation of this submission, such as in the comments of K:

I grew up in the city. My family are city folk. Like a lot of kids in Darwin who are lost and need to get back in touch with their culture. I didn't have the chance to learn culture. I didn't have family members with that knowledge of culture, going out bush. Going there would have given me a link to country and to elders. People like David Cole who can take you under their wing. Learning culture would have made me stronger, less likely to get in trouble.

Cole also refers to international perspectives that point out that most counselling services in Canada and the United States are based almost exclusively on a Western paradigm of mental health that differs from an Indigenous worldview (Gone 2004). He argues that mental health and healing programs will be most effective when they work to re-connect Aboriginal young people with their cultural identity: 'Maintaining cultural identity was a part of maintaining mental health and is what this kind of healing is all about.'<sup>99</sup>

### **b. Mentoring Programs**

There is a need for Aboriginal-specific mentoring and positive role model programs to be developed in the NT. NAAJA endorses the comments of the recently released 'Doing Time - Time for Doing Indigenous youth in the criminal justice system'. The Standing Committee points out that:

Discussions in support of Indigenous mentoring referred to its value in all aspects of life, for example in the arts, sport, music, culture, school, family, community, police force, and government representation. Mentors and role models can assist youth at risk to develop self esteem, self worth, future aspirations and a commitment to community responsibility. They can contribute to rehabilitation and mentor on healthy lifestyles, sport, and education and employment goals.<sup>100</sup>

NAAJA agrees that 'young Indigenous people respond well to the Indigenous mentors who are from their local community'.<sup>101</sup> Priority should be given to establishing a large pool of

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<sup>96</sup> D Cole, *The Social Determinants of Youth at Risk: reflections on the Balanu Healing Program with Darwin Youth* (2009) 41.

<sup>97</sup> Ibid 41.

<sup>98</sup> Ibid 30.

<sup>99</sup> Ibid.

<sup>100</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing Indigenous youth in the criminal justice system* (2011) 61. See:

<<http://www.aph.gov.au/house/committee/atsia/sentencing/report/fullreport.pdf>>

<sup>101</sup> Ibid.

Elders, both male and female and from various communities and regions, who can assist in identifying appropriate mentors for Aboriginal young people in the youth justice system.

## 16.5 Specialist Drug and Alcohol Rehabilitation Services

### **Recommendation 62:**

The NT Government should ensure that appropriate facilities are in place for young people to access substance abuse counselling, rehabilitation and treatment, which are accessible to both regional and remote young people.

There are examples in the NT of culturally relevant, effective alcohol rehabilitation programs. However, most of these services are poorly funded, have huge waiting lists, do not adequately cater for youth, do not cater for people with dual diagnoses (i.e. mental health issues as well as alcohol and or drug related addictions), are not youth specific and are typically only located in the major centres of the NT.

As discussed above, many offenders have a history of victimhood and trauma, which is often inextricably linked with alcohol and substance abuse issues. The NT urgently needs more support for young people seeking to access residential rehabilitation programs.

### **a. Petrol Sniffing in the Nhulunbuy Region and the Lack of Rehabilitation Facilities**

There is presently an epidemic of Aboriginal young people in North East Arnhem Land, predominantly in Elcho Island and Groote Eylandt, who are sniffing volatile substances. Our experience is that when petrol sniffing is rife, there is a strong casual link to a rapid increase in offending behaviour.

There are no residential rehabilitation facilities in the Nhulunbuy region for young people with volatile substance abuse issues. Several young people from North East Arnhem Land have had to travel to Central Australia to attend a residential facility to assist them with their petrol sniffing issues.

Simply sending offenders to jail does not change behaviour, or meaningfully address substance abuse issues. The NT Government needs to fund a variety of culturally relevant counselling and rehabilitation services across the NT.

### **b. The Strong Bala Example**

#### **Recommendation 63:**

The NT Government should give additional funding to best practice examples, such as the Strong Bala Men's Program in Katherine, to ensure their long-term viability, and used as a model for the development of other programs.

The Strong Bala Men's program in Katherine is a good example of community-driven responses to local issues. Strong Bala is a community initiated program which empowers

men to take action over their own wellbeing. It provides a culturally relevant space for Aboriginal men to deal with issues impacting their lives, such as the prevalence of domestic violence in their communities, alcohol abuse and skills development.

Strong Bala's ongoing funding and viability is not assured. This has major impacts on their current service delivery (such as in relation to staff retention), as well as their ability to plan for the future. NAAJA recommends that culturally relevant, community-driven responses to community safety that address the holistic needs of individuals, be supported.

## 16.6 Youth Camps

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### **Recommendation 64:**

The NT Government should provide additional resources to programs across the NT that provide best-practice, safe and culturally relevant youth camps.

NAAJA strongly supports the increased use of youth camps as a sentencing and bail option for young people in the youth justice system. We are mindful of the perspectives of prisoners from Darwin Correctional Centre interviewed in the preparation of this submission who consistently spoke of the importance of investing in youth camps. There is significant benefit in removing young people from their peers and environment, and engaging them in constructive, culturally relevant and pro-social activities.

The NSW Review considered Maori Community Initiatives for Youth-at-Risk of Offending (MCIYRO). The Review referred to the positive results achieved for program participants and noted that MCIYRO included 'a range of therapeutic activities such as outdoor experiences, mentoring, building self-esteem, education, life skills and *tikanga* (culture, customs and traditions), personal development and *whanau* (family support). In addition, *rangatahi* (teenagers) are removed from opportunities for using alcohol, cigarettes and other drugs as well as from other risk situations and opportunities to commit offences.'<sup>102</sup>

## 16.7 Role of Family and Part 6A Family Responsibility Agreements

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### **Recommendation 65:**

Family Responsibility Agreements should either be abolished, or reframed to be therapeutic rather than punitive in nature.

The NT Government describes Family Responsibility Agreements as a process of 'intensive case management of young people and their families and the provision of services to assist young people and their families make a change in their lives and move away from anti-social behaviour.'<sup>103</sup> NAAJA is not opposed to this process. However, we are concerned about the

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<sup>102</sup> Noetic Solutions, Review of Effective Practice in Juvenile Justice (Report for the Minister of Juvenile Justice, NSW, January 2010) 64.

<sup>103</sup> This is how the NT Government prefaces its description of Family Responsibility Orders and Agreements – see <[http://www.safeterritory.nt.gov.au/combating\\_juvenile\\_crime/family\\_responsibility\\_orders\\_agreements.html](http://www.safeterritory.nt.gov.au/combating_juvenile_crime/family_responsibility_orders_agreements.html)>

punitive aspects of Family Responsibility Agreements and Orders, and the potential they have to further alienate and disadvantage Aboriginal families.

Section 4 of the *Youth Justice Act* provides that the following principles are to be taken into account in the administration of youth justice:

(h) family relationships between a youth and members of his or her family should, where appropriate, be preserved and strengthened.

(l) a responsible adult in respect of a youth should be encouraged to fulfil his or her responsibility for the care and supervision of the youth.

However, in order to do this, Family Responsibility Agreements must be designed with therapeutic and not punitive outcomes in mind. They must also be culturally enriching rather than culturally alienating. NAAJA considers that the punitive aspects of Family Responsibility Orders should be abolished. This includes the penalty provisions, and the allowance to confiscate property.

It is crucial that therapeutic interventions involving Aboriginal young people facilitate and encourage involvement of family. NAAJA considers that Family Responsibility type Agreements can play an important role in strengthening family, and supporting a young person's family to more effectively deal with their offending, if they are designed and implemented within a non-punitive, therapeutic framework.

## **Part C: Views of Past Young Offenders**

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With the cooperation of NT Correctional Services, NAAJA undertook informal interviews with current serving Aboriginal male prisoners at Darwin Correctional Centre. All had recently been through the youth justice system. Interviewees were selected on the basis that they were known to have served a term of detention at the Don Dale Juvenile Detention Centre and were between the ages of 18-24 years of age. Some interviewees were from urban centers, and others from remote communities.

Some of the clear messages from the interviews included:

1. The need for culturally relevant interventions at early stages of offending

D: I started getting in trouble for assaults when I was 15. That was when my grandfather passed away. I went off the rails

KT: 'It needs to be harder before you get to Don Dale.' Make it harder for young fellas – more supervision. Someone who's always going to be there. In Adelaide I was in a mentoring program called MATE. A mentor was assigned to me and my brother as well as 3-4 other kids. He'd make sure we went to school, gave us lunch. He was full on, always around us. Every fortnight he'd take us to the Flinders Ranges.

JN: I didn't do any treatment programs when I was a youth. It might have made a big difference. They need more mentoring programs like MATE. Take people off the streets, help kids get a drivers licence, take you to the cinema, school. You didn't have to pay, just had to turn up. 'More focus on the positive.'

BR: All my offending was linked to alcohol and drugs. I did one course at Don Dale, but never on the outside.

## 2. Community Court

E: Community Courts are better than normal court. Elders talking is good way, not shaming kid in front of their parents, but strong. Aboriginal kids will listen more. And the other thing is that Aboriginal kids don't speak much English. They'll understand more than if a whitefella is telling them because the language whitefellas use is too hard.

## 3. Role of Elders in Sentencing Process

D: Elders weren't part of the sentencing process. The court should have put me under the supervision of elders.

K: Elders need to be the right elders. It's no use if they're not your mob.

R: It would have been useful to have had elders involved, to tell me what to do. I would have listened.

B: It would be good if elders were more involved in court. I have great respect for elders. The message from elders would get through more.

KT: Elders should be more part of the court process. Aboriginal kids would listen more to elders than a magistrate.

JN: It would be good to have elders involved. Uncles and older people. As you grow up you realize that you end up treading the same path.

## 4. Time at Don Dale

J: There needs to be more drug and alcohol programs in Don Dale. I didn't get to do any drug and alcohol courses. I needed to.

Anger management would also have been important. I was an angry person. When I got out, I was just the same.

R: My offending was linked to drugs. When I left Don Dale the first time, I went straight back to drugs and back to stealing to support my habit. I didn't do any drug programs while I was in Don Dale.

## 5. Throughcare

J: After I got out of Don Dale, it was like things hadn't even changed. When I was in Queensland, I had a caseworker who got me back in school, playing rugby, in work. There was nothing like that here.

K: When you get out, you need support. 'No one didn't care.' Need someone to take you to different activities, sports. Give structure.

B: It would have been good to have had support after getting released. 'Just need someone to encourage me. When I get out, I want to stay out of town and stay by myself. I'm not really good at reading. I want to go back to school, and go every day and then maybe be a teacher. My father was a teacher. I want to help other young fellas get back to school. I also want to help family in the Long Grass get out of town. Too much fighting.

## 6. Youth Camps

R: Courts should send kids out bush. Programs like Brahminy. Get them out of town, away from their peers. Get them hunting, fishing and get their minds off alcohol and drugs. Get them working and keep them busy.

E: Places like Brahminy are good though. They keep kids off the streets, stop them fighting every night. They need this in Arnhem Land – somewhere with schooling, culture, painting and arts, sorts and activities.

KT: There needs to be more programs like Balanu and Brahminy. Real strict, taking kids out bush, camping.

7. Cultural Reconnection

K: I grew up in the city. My family are city folk. Like a lot of kids in Darwin who are lost and need to get back in touch with their culture. I didn't have the chance to learn culture. I didn't have family members with that knowledge of culture, going out bush. Going there would have given me a link to country and to elders. People like David Cole who can take you under their wing. Learning culture would have made me stronger, less likely to get in trouble.

8. Sport as a Motivating Post-Release Factor:

D: When I was at Don Dale, I didn't have the chance to play competitive sports. This would have been good, for discipline, being part of a team, and motivation on the outside. When I was on the outside, I didn't have much motivation.

B: I like playing sports. It would have been good to have played competitive sports like AFL and rugby. To be part of a team.

9. Positive Male Role Models

K: Kids look up to David (Cole). Everyone has elders like him who they don't back answer. They brought elders into Don Dale once in a blue moon. Youth Beat had a program that broke down the gangs. Michael McLean, Anthony Mundine had BBQ's and sports comps. Everyone would listen to them. Even if you were in different gangs, everyone got on during those sessions.