

Youth Justice Advocacy Project

Final Project Report

February 2008

Background

The Central Australian Youth Justice Committee (CAYJ) was established in 1997. Through the work of this Committee, and particularly resulting from the mandatory sentencing campaign in 1999, it has been identified that a specialist youth legal service should be established in Alice Springs.

Over the years CAYJ and individual youth agencies have pursued a range of strategies to build support and secure funding to establish such a service, these include:

- Pursuing the recommendations of the 1997 Human Rights and Equal Opportunities Commission report 'Seen and Heard: Priority for children in the legal process Report No 84;
- Submission to the Commonwealth Attorney Generals Department;
- Submissions to the NT Law Society;
- Lobbying the NT Attorney Generals department;
- Liaising with the Office of Crime Prevention;
- Submissions from The National Association of Community Legal Centres and the National Children's and Youth Law Centre; and
- ACOSS requesting funding in 2000 for a Youth Legal Service to be established in the NT with two positions. This submission was based on the National Children's and Youth Law Centre submission.

In 2000 the Annual Conference of Community Legal Centre's was held in Alice Springs and resolved that:

The conference acknowledges the complete inadequacy of current specialist resources for young people in CLCs and the significant human rights abuses suffered by young people. The conference calls on NACLCLC to work with the youth network towards the establishment of specialist legal services for young people in each state and territory.

Description of project

In 2006 Alice Springs Youth Accommodation and Support Service (ASYASS) received funding from the NT Law Society to employ a Youth Justice Project Worker (YJP). The objectives of the project were to:

1. Develop and implement, within a community development framework, a community youth justice project which promotes the rights of young people to equity of access to appropriate legal support services.
2. Monitor and evaluate the outcomes of the project.
3. Maintain statistical data on services provided to individuals and groups who access the educational and/or support services of the project.
4. Provide, or facilitate the provision, of individual court support (both at pre court and hearing point) to young people and/ or their family when a young person is before the court.
5. Provide community legal education to young people, their families, other youth service providers and the broader community regarding the rights of young people and legal processes.
6. Initiate and participate in community partnerships, networks and forums to promote and advocate for the rights of young people to access and equity in the legal system.
7. Develop and distribute information via publications regarding the rights of young people.

The YJP commenced in February 2007 when a part time worker was employed for a period of 22.5 hours per week to coordinate the project. The Youth Justice Project is guided by the Central Australian Youth Justice Committee (CAYJ) and the position was operationally responsible to the Manager of ASYASS.

One of the first tasks was to develop strong links with existing Legal Aid providers and Aboriginal Legal Services, which are the primary providers of court-based litigation services, particularly criminal defence work. The YJP was allocated office space at the Alice Springs Court House and CAALAS continue to provide a meeting space for

monthly CAYJ committee meetings. The benefit of having a space at court has enabled the YJP worker to provide on the spot court support to young people in the criminal justice system.

A monthly report was submitted to the committee of CAYJ and the management committee of ASYASS for the duration of the project. CAYJ has a focus on youth justice criminal issues, with a particular concern for addressing the over-representation of young indigenous people in the criminal justice system. CAYJ meets monthly and is comprised of members from a range of organizations in the Northern Territory who work with young people in the criminal justice system – including ASYASS, CAALAS, NT Legal Aid, Tangentyere Council, Hollyoak, NPY Women’s Council, and NTCOSS. CAYJ has also established links with other peak bodies, both within the Territory and nationwide.

The YJP has a primary focus on early intervention through the provision of court support and the implementation of relevant community legal education, liaison and (non-legal) advocacy. Having worked in the youth sector for eight years the YJP worker has been able to draw on her extensive networks in Alice Springs to work with all key stakeholders to develop a shared view and strategies on how best to improve the youth justice system in Alice Springs.

This report provides a critical and practical analysis of how young people are processed in the criminal justice system in Alice Springs and will be submitted to ASYASS, the NT Law Society and CAYJ. It is hoped that key recommendations from this report will be actively pursued by these agencies.

1. The Youth Justice Act

The revised *Northern Territory Youth Justice Act* (the YJ Act) which came into force in December 2006 has a number of provisions that clearly outline how young people should be dealt with in the criminal justice system. Although some provisions of the YJ Act are being adhered to by the court, there are clearly some practices that fall short of meeting the requirements of the YJ Act.

Key observations from this project clearly highlight that some provisions of the YJ Act are not being adhered to in Alice Springs. This section outlines some of these areas.

Firstly, section.48(2) (b) of the YJ Act provides that the Minister must ensure that the places for the Court to sit are, as far as practicable, separate from the places in which proceedings in relation to adults are being held. However, in Alice Springs youth matters are not always heard in a closed court or in a separate space from adult matters, although the court is always closed when the matter involves a young person in the care of the Minister

Secondly, there is a significant issue with respect to young people being detained in the Alice Spring Police holding cells. Section (4)(c) of the YJ Act states that

‘A youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time’.

In addition, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty state that

“The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.” (28)

The following observations demonstrate that more must be done to ensure compliance with both international standards and NT statute.

Young people in Alice Springs are often taken into custody in the early hours of the morning. In many cases recorded by the YJP the young people have stated that they were intoxicated. They are then placed in detention in the police holding cells. The mere fact

that police holding cells are also being use as sobering up shelters for young people is, at best, inappropriate.

Young people have often reported that they have spent hours in the police holding cells before any contact has been made with a family or legal representative. It also needs to be stated that although youth are kept separate from adults in the police holding cells, young people can clearly see when highly intoxicated adults are being detained and they are often subjected to the use of inappropriate language from adult detainees.

The YJP has recorded up to seven cases where a young person was held in the police holding cells for between fourteen and sixteen hours. Their court matters were then heard very late in the afternoon which meant they were also detained in the court holding cells for a lengthy period prior to their matter being heard. In these cases it is clear that every effort was not made to meet the relevant standards and to treat each young person detained with respect for their dignity, culture and human rights.

The youth justice worker frequently visited young people who were detained in the Alice Springs court holding cells, whilst awaiting court. The following observations were made:

On the 23rd of April 2007 I was supporting a young woman who was detained in the court holding cells. The young woman was sitting along side six male police personal and one female, four of whom were consuming hot toasted sandwiches, the chair in which the young woman sat was opposite two holding cells which were at full capacity with older men. One man was crying and screaming. I asked the young woman's if this was upsetting her,

she said it was making her very sad as he was crying for his baby, and she was worried for him, she said she felt really shamed sitting with all theses blokes and the men in the cells were looking at her, she also said she was getting hungry looking at the police men eating.

The above observation was promptly relayed to the young person's lawyer, who immediately asked that the young woman be placed in an area that is less visible to the male detainees. Although, the police personnel staff complied with the wishes of the

lawyer by moving the young woman, the task was undertaken reluctantly and there did not seem to be any acknowledgement that it was inappropriate for the young woman to be placed in that position in the first place.

On another occasion a 16 year old man was wearing sun glasses in the holding cell; he was instructed in a very abrupt manner to remove the glasses by a police personnel. The youth justice project worker had to explain to the police personnel that the young man had recently been assaulted and as a result had lost his eye; this was a very sensitive issue for the young man, who stated to the police person

I'm waiting to be flown to Adelaide to have a glass eye put in then I won't have to wear the glasses.

I then had to opportunity to speak to the young man alone, he was visibly upset about the above interaction and was clearly grieving the loss of his eye.

The youth justice project recorded five other occasions when young people were seated in the exact same place i.e. directly opposite holding cells with adult male detainees.

The Northern Territory does not demonstrate any recognition of the special needs and issues relating to young people who come into contact with the criminal justice system. The NT does not have a Youth Justice System; the implication of this is that young people within the criminal justice system in the NT are unable to access the same level of support that is available to young people in other jurisdictions.

Recommendation 1.

That the following points as developed and agreed by the Central Australian Youth Justice Committee (CAYJ) regarding young people in police custody be adopted.

In accordance with the *Youth Justice Act*:

- A youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time” ((4) (c)), taking into account all of the factors under: the Police

Administration Act (138) Determining reasonable period during which person detained, &c., to be brought before justice or court:

- If a young person is being held while an investigation takes place, they must be kept separate from adults while practicable (*Youth Justice Act (26)*)
- A person taken into lawful custody shall be brought before the court as soon as is practicable after being taken into custody, unless he or she is sooner granted bail under the *Bail Act* or is released from custody (*Police Administration Act (137) (1)*)
- The police officer who arrested or charged the youth must take all reasonable steps to ensure that a responsible adult in respect of the youth is notified of the arrest or charge (*Youth Justice Act (23)*)
- A Young Person should be given every practical opportunity to communicate with or attempt to communicate with a friend or relative to inform the friend or relative of the person's whereabouts (*Police Administration Act, (140) (b)*)
- If a youth is charged with an offence and is not released from custody, he or she must be brought before the Court as soon as practicable and in any case within 7 days after the arrest. (*Youth Justice Act (27) (1)*)
- If the youth is not brought before the Court within 7 days after the arrest, the person in whose custody the youth is being held must immediately release the youth (*Youth Justice Act (27) (2)*)

2. Court Support

The principle objective of the YJP was to work with young people in the criminal justice system. The provision of court support and advocacy work dominated the project. Court Support was provided on 78 occasions from February 2007 to February 2008. Due to the YJP being only a part time position there were days when court support could not be provided, so young people who had court matters on these days have not been included in the YJP statistics. The Department of Justice releases comprehensive statistics on all young people processed in the criminal justice system.

As the table below shows, 72 out of the 78 court support services were provided to Aboriginal clients, and the vast majority of clients were young men.

Aboriginal	Non-Aboriginal	Male	Female
72	6	58	20

The following tables provide a breakdown of the number of times court support was provide on more then one occasion to a client, they show that 21 male clients and 8 female clients were supported on more then one occasion. One young person was also supported for six consecutive days including some after hours support services.

Repeated court support (CS) provided to young men

23 x 1 CS	12 x 2 CS	4 x 3 CS	1 x 4 CS	3 x 5 CS	1 x 6 CS
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Repeated court support (CS) provided to young women

6 x 1 CS	3 x 2 CS	1 x 3 CS	1 x 4 CS	1 x 5 CS	2 x 6 CS
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It would appear that youth criminal activity in Alice Springs is cyclical, that is, during the first half of the year statistics indicated that the number of young people being detained was higher then in the second half of the year. Evidence suggests that the weather has an impact on young people and criminal activity. For example March 2007 saw a huge increase in young people being detained for long periods at the Alice Springs watch house. By contrast, the winter period is known to be quiet.

The YJP also provide transport to young people and family members. On a number of occasions the YJP was in a position to locate a young person, when all other attempts had failed. The YJP at all times encourage an immediate or extended family member to participate in the court process with the young family member.

The provision of court support for the duration of the YJP was very time consuming. Under the current system at the Alice Springs Court it is very difficult to provide a best practice service to young people due to external factors. One of the major factors is the delay

experienced by young people and their families in having their matters dealt with by the court. Concerns with the current system were presented by the YJP worker to the Alice Springs Court Users forum in March 2007.

From my observations the following barriers have seriously affected how young people are processed in court:

- Young people are not prioritized and are left waiting all day. This also impacts upon their families or guardians who also have to wait all day. This is inconvenient and unnecessary, and is especially difficult for families who have come from bush. At the end of a long day of waiting the matter is often adjourned or a young person is bailed to reside in a remote community or Tennant Creek. This makes it very difficult for the court support worker or the Corrections Officer to organise travel. It is sometimes impossible to arrange travel for the same day.
- Young people in detention, who attend court, are required to be kept in cells while they wait for court. A young person cannot be kept in the same cell as an adult and having just one young person in a cell can lead to overcrowding of adults in the other cells at court.
- Shortages of lawyers or lawyers being at bush court can result in a young person having to deal with a different lawyer every time their matter is brought before the court. The lack of continuity of representation often results in multiple adjournments due to the new lawyer not having enough time to discuss the previous instruction with their colleagues.
- Young people in custody are not prioritised over adults
- Court lists are too long for the time allotted for each court day

These factors have resulted in some youth matters not being heard until very late in the afternoon. On seven occasions when court support was provided to young people as part of this project their matters were not heard until after 5pm. This has led to the YJP worker having to provide stress management intervention to three young men and two mothers.

Case example NM 1

- *NM has been to court three times in six months for the same matter. On each occasion he had a different lawyer, and this meant that he had to tell his story of the alleged incident three times. Due to the lack of consistent legal supports NM and his mother became very confused and frustrated with the court process. On all court appearances NM and his mother were present and waited at court for lengthy periods. The last two court appearance lead to NM's mother abusing the Magistrate and storming out of court. NM became very distressed and emotional, fearing that he was now going to be sent to Don Dale. The offences that NM was charged with were minor. Prior to NM's court matters NM had spent a period of 16 hours in the police holding cells. He was detained at 4.30am. The YJP worker visited NM at 3.15pm the following day. NM had not been interviewed nor had any responsible adult been contacted to participate in a record of interview. The YJP worker asked the CIB inspector in charge if any one had contacted NM's mother. She was told that the CIB were very busy and hadn't got around to it. NM's mother was finally contacted at 4.30pm; she was extremely distressed and worried for her son. She sought advice from the CAAALAS duty solicitor who advised her that NM should wait to speak to a lawyer and not to discuss any of the alleged offence on tape. NM was released at 8pm with no charges against him.*

The above is just one example; however, there are others that could be cited where the time a young person has waited for court has been excessive – and does not comply with the NT Youth Justice Act s. (4) (c) – see page 4 above.

3. Improving the provision of youth court support

Prior to the YJP, court support was provided to young people on a very ad-hoc basis from existing youth agencies in Alice Springs. Due to agency workloads it is not always possible to send someone to court and some agencies are not funded to provide this service. It is also evident that staff are not entirely sure what their role is when providing court support.

As it currently stands in Alice Springs, young people turn up for court and usually sit in the main foyer of the court. This space is also used for adults, court practitioners, media representatives, police, jurors and FACS employees who are involved in family care matters. There are times when the foyer is completely overcrowded. It is not surprising that a group of young people in the court foyer find it difficult to focus on what is going on at court. The experience may also be incredibly intimidating, particularly for a young person who is alone.

CAALAS and NT Legal Aid have a couple of spaces that they can access to interview young people, but again these spaces are usually in high demand for adult clients. There is no dedicated area for young people.

The lack of a specialist Youth Justice system, a dedicated court and specialist court support schemes for young people makes the court experience less meaningful and more alienating than is desirable for young people.

The rationale and benefits for improving the current way in which young people attend court in Alice Springs are as follows.

- Having young people processed in a timely manner would ensure that young people and families would not be required to wait around at court for such long periods, thus reducing the incidence of young people absconding from court
- Young people would feel less alienated from the justice system because their questions could be answered and their anxieties dealt with.
- Advocacy will have a focus on identifying “causal factors’ of offending behaviours and will work with relevant agencies to address the clients needs.
- Court support workers can compile detailed court reports that will enable the judiciary to make informed and relevant decisions relating to sentencing options for young people.
- Cohesion between young offenders and their parents would be increased through the informal conflict resolution and counseling the scheme would provide to young people and their families
- Introducing a young person to their lawyer prior to court assists with continuity of support throughout the legal process. Liaison with the lawyer also provides the court support worker with the information needed to assist clients in more fully

understanding the consequences of actions and decisions or penalties of court and the effects of the criminal justice system.

- Young people and families would have the opportunity to get to know their lawyer and the lawyer would have the benefit of getting to know the family and young person's history
- Compliance with court orders is likely to increase through greater understanding of the effects of orders and the consequences of breaches.
- Young people's offending behavior would be addressed through referral to appropriate programs in the community.
- Young people would be held in cells for shorter periods of time, thus freeing up cell space more quickly – and reducing the likelihood of overcrowding in the other cells.
- Dedicated Youth Justice Court days would enable the provision of court support or other support workers to be present to assist the young person and family.

The following proposal is aimed at improving and enhancing the capacity of court support at the Alice Springs Court House. This proposal would only be viable if YJC matters were listed on set days as recommended.

Recommendation 2.

That the following measures be adopted to improve the provision of court support for young people in Alice Springs:

- That a dedicated Youth Justice Court be established in Alice Springs as it is in Darwin. Any barriers to the establishment of a dedicated court need to be identified and addressed by all relevant stakeholders.
- That Alice Springs court administrators establish fixed days for youth justice matters as is the practice in Darwin.
- That the issue of young people being processed in a more timely manner at court, be a matter of priority for the next Alice Springs court user's forum.
- That training be provided to youth workers to ensure they can provide effective court support. It is recommended that youth workers should participate in specialist Children's Court Assistance Scheme training using the Macquarie Legal Centre Court Support Training Manual as a resource.

- That funding is sourced to employ a full time coordinator to implement all objectives as set out in the NT Law Society Submission. The position would ideally be based within an existing legal service. The rationale for the position being based within a legal service is :
 - The statistics clearly highlight the over representation of Aboriginal young people in the criminal justice system.
 - The young people would have the opportunity to have better and more consistent relationships with the lawyers
 - The legal services hold a respected place in the community and could provide a positive central role which could lead to better collaboration between youth services.

The proposal to base the YJP within an existing legal service should be further discussed with existing legal service and other members of CAYJ.

The YJP would offer a real opportunity to increase the effectiveness of the youth justice system in rehabilitation and crime prevention. The YJP is aware that there will be certain barriers in relation to improving the current system of how young people are processed in the Alice Springs court, however, if the system is improved the benefit to the young people who are the court users, as well as to the community as a whole will be significant. The proposed youth justice service would aim to inform young people of their rights and responsibilities within the legal system. This will occur through everyday interactions in addition to the provision of appropriate and relevant workshops. It is suggested that the following could be undertaken:

- provision of education programs to young people e.g. *Cop This*,
- public interest cases pertaining to youth justice issues in collaboration with CAYJ,
- referral processes,
- engaging families in meaningful workshops re how to support young family members in the criminal justice system.
- pre and post court referral process,
- Front line training to youth worker on how to provide court support

Obviously the Macquarie Legal manual would need to be adapted to suit the conditions and context of Central Australia. Youth services would then designate a worker to provide court support to young people and families as per a court support roster. The proposed system ensures that young people don't slip through the court process without proper support and referral processes being implemented by the court support worker pre and post court matters. The court support should then establish the link between the young person and the services which can assist them in dealing with their underlying problems

4. Legal representation

For many young people, their first contact with a lawyer occurs at the courthouse. There are times when lawyers at the Alice Springs court are under immense pressure due to the high volume of work. In order to progress the court list lawyers will often decide to deal adults in custody first, and then, if time permits, assist a young person. It has been noted that young people's matters are often subject to numerous adjournments before the matter is finally settled.

Lawyers rarely have the opportunity to engage in meaningful dialogue with young people regarding their background and the circumstances that have had an impact on how and why the young person has entered into the criminal justice system. On many occasions lawyers concede that they have not had the opportunity to speak to their client or obtain full instructions from their client, which may result in the matter being adjourned. Some matters carry on for months because of workloads at court and the lack of opportunity for lawyers to spend sufficient time with the young person at the initial court appearances.

There are no specialist youth lawyers currently employed in Alice Springs. Rule 22 of the Beijing Rules provides that lawyers working in the area of youth justice need specialist training. In the absence of specialist lawyers, a specialist training program or regular seminars should be run for all lawyers doing youth legal work. Despite there being no specialist lawyers or legal services for young people, CAALAS and NT Legal Aid do have a strong commitment to the rights of young people and work with due respect for their dignity.

Russell Goldflam, the Principal Legal Officer of NT Legal Aid Commission has stated:
“Juveniles who come into the criminal justice system in Alice Springs, in contrast to their counterparts in larger population centres, do not have access to specialist youth legal services. There are no criminal lawyers in Alice Springs who are designated as advocates specifically for juveniles, and there is no courtroom set aside specifically for that purpose. Accordingly, young people who appear in Alice Springs criminal courts routinely do so alongside adult defendants, and are represented by lawyers (including myself) who primarily deal with adult clients”

Patricia Miller AO Director of CAALAS and Acting Principal Legal Officer, Derek Schild has stated:

As there is in the Northern Territory no dedicated and separate Juvenile Court, juveniles, represented by our service or other legal practitioners, appear amongst adults in a court environment which is arguably more alienating than in other jurisdictions throughout Australia. The provision of appropriate community legal education to juveniles would in all likelihood have a positive impact on the involvement of youth in the criminal justice system and would also assist youth in exercising their rights and understanding their responsibilities in housing, employment, and other areas of the law which affect them on a day- to-day basis.

Anecdotally, the impact on young people of having to deal with multiple lawyers or lawyers offering a mediocre level of representation or advocacy to young people is significant and causes a great deal of distress. From observation there needs to be systemic changes in all departments dealing with young people in the criminal justice system in Alice Springs.

Recommendation 4.

- That NT legal Aid and CAALAS play a more proactive and collaborative role in advocating for the establishment of a specific Youth Justice system in Central Australia.
- That a collaborative approach be attempted by CAALAS, NT Legal Aid, Department of Prosecutions and Department of Corrections to make a

commitment to reviewing compliance with international standards in relation to juveniles deprived of their liberty.

5. Police Collaboration

It is interesting to note that the UN Committee on the Rights of the Child¹ identify standards of practice in dealing with young people and police relationships. For example:

- **Rule 12** of the Beijing Rules provides that in order to best fulfill their functions, police officers who deal with young people or who are primarily engaged in the prevention of youth crime should be specially instructed and trained. Given that the police are the young person's first point of contact with the youth justice system it is important that they act in an informed and appropriate manner.

The Commentary to the Rules recognises the need to ensure accountability of any such discretion and requires that those who exercise it be 'specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates'. Professional qualifications and expert training are specifically mentioned in this context. Given that the police are often the first point of contact with the youth justice system it is important that police act in an informed and culturally appropriate manner. In particular Rule 10.3 requires that contacts between the police and young offenders be managed in such a way as to respect the legal status of the juvenile, promote his/her wellbeing and avoid harm to him/her. This is extremely important in Alice Springs as negative experiences with police can really impact on the young people's attitude towards the whole community.

During the course of the YJP young people and some family members were asked if they felt they were treated fairly by police. On a number of occasions all parties stated that they did not have a positive relationship with police. Three young people disclosed that when they were being apprehended by police they were treated 'really rough'. I referred these young people to CAALAS to enquire about making a formal complaint. The YJP

¹ *The Committee on the Rights of the Child 'General Discussion Day on Juvenile Justice' reported at UN Doc CRC/C/37

worker also made a formal complaint in relation to being verbally abused by a policeman on duty in the police holding cells.

It is clear that the relationship between young people and police is currently largely dysfunctional. One of the recommendations made by CAALAS was for the YJP worker to contact the police watch house on a daily basis to establish if there are juveniles in custody. This was done. The aim is to ascertain what court supports could be provided to the young person, police, NT legal aid and CAALAS which would be beneficial in processing the young persons in a more expedient manner.

The committee of CAYJ invited Sergeant Sean Parnell to a meeting to explore if the extra police personnel being deployed to Alice Springs in 2007 would include a youth liaison officer, and if not how CAYJ could assist with addressing this on a formal level with the Alice Springs Police. The YJP also discussed ways of improving how young people are processed when held in detention at Alice Spring police station. The YJP made several attempts via phone calls and emails to police to establish if Alice Springs police could assist with co-facilitating the *Cop This Know Your Rights* workshop, as practiced in Darwin. This course was developed in conjunction with Darwin Police and NT Legal Aid Commission. Unfortunately to date the YJP has received no formal feedback in relation to police assisting with *Cop This*.

Recommendation 5.

- That the Alice Springs Police review its current practice in relation to dealing with alleged young offenders.
- That all efforts are made to secure a police youth liaison officer position in Alice Springs
- That the Alice Springs police make more efforts to engage in collaborative efforts with youth service providers, including participation in workshop programs like '*Cop This*'.

6. Community Corrections

Young people who are placed on Good Behavior Bonds (GBB) to be supervised by the Department of Community Corrections are basically treated the same as adults. There is

currently no separate system for supervising young people who have been placed on Community Corrections orders. Although, I note that the assessment process is slightly different for young people as compared to adults because different questions are asked.

The current focus in the Department of Corrections is one of basically trying to ensure that young people do not breach the conditions of their bonds. This is done in the form of the young person reporting to corrections, phone or written correspondence, or in person visits to the young person residence. The issue is that given the transient nature of the Aboriginal families and the fact that literacy is often of issues for young people in the criminal justice system, young people are often breached for simply not fully understanding their conditions.

As stated in the YJ Act

Division 1 – Principles

- (p) Programs and services established under this Act for youth should –
 - (i) be culturally appropriate; and
 - (ii) promote their health and self-respect; and
 - (iii) foster their sense of responsibility; and
 - (iv) encourage attitudes and the development of skills that will help them to develop their potential as members of society;

The YJP has supported approximately six young men who have ongoing criminal justice matters, all of the accused were intoxicated or stoned when the offences were committed. All of the youth were placed on Good Behavior Bonds (GBB) with a condition to not engage in any form of substance misuse. In all cases none of the young men have ever participated in any form of drug and alcohol treatment or counseling. To date three of the young men have breached their GBB by either being intoxicated when Corrections have conducted a random visit or through urine samples.

The YJP has highlighted, either to the Magistrate or the young person's lawyer, that the young person's in question have a long history of substance misuse and in most cases had

experienced family breakdown. It is apparent that young people often don't fully understand the implications of consuming alcohol or marijuana when on a GBB and as a result often end up in breach of their bail conditions.

One young man stated the following:

"What, not smoke bongs, I cant just stop smoking bongs that's what I do with my mates, I pull at least 25 bongs a day how can I stop on my own they won't let me."

In relation to another young man who had an extensive history of breaking and entering into the same liquor outlet, the court ordered a pre-sentencing report. The young man was remanded at Don Dale and the assessment was conducted by phone. The young man received a very negative report from the Corrections supervisor. The report stated that the young man would not engage with the process, and that when released from Don Dale he was going to drink and smoke ganja.

On reading the report the young man's lawyer sought advice from the YJP. The YJP worker was able to highlight to the Magistrate that two days prior to the phone conversation with the Corrections supervisor, the young man's father was tragically murdered. As a result the young man had been placed in isolation at Don Dale for fear he would harm himself. The Magistrate dismissed the Corrections report.

This case example can clearly demonstrate that there was an obvious breakdown in communication between the young man and his Corrections supervisor. However, had the issues of the young man's grief and frame of mind not been presented to the court the young man's sentencing would have been based on the final pre-sentencing report and would have been a lot harsher. Intervention from the YJP resulted in a more positive outcome and the young man was released to reside with family out bush.

By comparison in NSW when a young person has committed a crime and it's established that there are substance misuse issues, they can be referred to the Youth Drug and Alcohol Court (YDAC). This program can run for up to 12 months. YDAC has been described as intensive court supervision or "Therapeutic Jurisprudence". It only works if there are intensive resources in the community to support the young person in a range of

areas. If accepted on to the program they are referred to the drug and alcohol support program which is made up of a multi case management team comprising of

- Drug and Alcohol supports
- Education and training supports
- Department of Children's Services
- Health
- Accommodation supports

A full joint case management plan is then implemented to support the young person for a period of one year. The young person then receives a variety of intense holistic supports to assist the young person through the detoxification and rehabilitation stages of their treatment.

It needs to be stated that the YDAC is a costly process, however, in relation to young people who present before the courts on a regular basis, with the same pattern of offending, the long term cost of implementing meaningful supports to the young person far out weighs the cost. In contrast young people in Alice Springs, some of whom present with multiple issues, of which substance misuse is a contributing factor to their offending, have not been afforded such a service. The Department of Community Corrections are not equipped to organize joint case management meetings with relevant stakeholders to ensure appropriate support plans are being implemented for young people on GBB.

The YJP recorded up to eight cases of young people who have been in the criminal justice system from the age of 11 and have all had multiple breaches whilst on GBB. These young people are now between 17 and 18 years of age. Three have recently been remanded in adult jail for breaching their corrections orders and all have substance misuse issues.

However, the YJP did also record four cases where the Community Correction parole officers' were invited to participate in a joint case planning meeting for mutual clients. The parole officer was extremely helpful in terms of participating in joint case management plans which was extremely beneficial for the young person.

Recommendation 6.

- That the Northern Territory Government establish and fund a youth specific branch within the Department of Corrections, and ensure that Corrections parole officers are appropriately trained to work with youth in the justice system.

7. Young offenders in the care of the minister.

The YJP provided court support to nine young people who repeatedly entered into the criminal justice system. The young people who have re-entered the system have the following in common:

- Have on going substance misuse issues;
- Have high levels of sexually transmitted infections;
- Have experienced long term family breakdown;
- Have not accessed any form of treatment or rehabilitation;
- Have not accessed any form of formal or alternative education programs; and
- Have not had appropriate care and protection case management structures implemented.

This group of young people have, according to their records, been presenting to the courts for three and four years. It has been well established that they are a particularly high need group, who would need specialist supports to ensure long term rehabilitation and integration into community.

During the course of the youth justice project, five court support letters were submitted to the presiding magistrate highlighting facts that needed to be disclosed in relation to the care and protection of young people before the courts. The facts contained in the court support letters were never contested by the young person, family, legal representative or Magistrate. The youth justice project in two cases was clearly able to demonstrate how some young people in the care of the minister are often not adequately supported by their legal guardian, FACS. In relation to one young woman, the following is a brief copy of the transcript of 27th of July 2007

>Magistrate Birch asked "What is the minister doing about this as she is her guardian",

> Ms Ingles stated that she was at a loss as it was very unsatisfactory and it was totally inappropriate to keep some one in custody for their own welfare”

>Magistrate Birch stated it was inappropriate and totally defeated the whole sentencing process

Magistrate Birch then made remarks to the youth team leader of FACS clearly outlining his disappointment in relation to FACS not adhering to both the Youth Justice Act and the Care and Protection of Children and Young Person’s Act. In the above case the young person’s matters had been adjourned on a number of occasions due to FACS not having a comprehensive post release plan or court reports as ordered by the court.

The YJP has also noted that on a number of occasions Magistrates and lawyers have expressed concerns in relation to how some young people in the care of the Minister do not appear to be engaged in mainstream schooling, or are permitted to only spasmodically attend alternative learning programs.

The provision of court ordered appropriate psychological and intellectual disability assessments for young people in care is also problematic, with a number of young people in the care of the minister before the court with suspected intellectual disability, or ADHD. These reports are consistently promised, however, lengthy delays are often experienced by the courts in terms of the reports being submitted as evidence.

In relation to one young woman, FACS was given a time frame of three months to conduct the following tasks:

- To identify an appropriate treatment service to address YW substance misuse
- To conduct a family assessment at Papunya
- A court ordered psychologist report

None of the above tasks were completed, and as a result, the senior case worker at Don Dale, the young woman’s lawyer and Magistrate Liddle all raised concerns regarding the length of time this young woman was spending in custody, due to the lack of written court support from FACS. The YJP submitted a written court support letter to assist with the young woman’s sentencing. Again, the magistrate stated that Don Dale was not a

holding option for FACS in relation to young people in care.

In relation to FACS providing safe accommodation the YJP observed that of the nine young people supported, three of them, whilst in care, were left to live with family in overcrowded situations at town camps in Alice Springs, without much monitoring. Of the more urbanised young people in care there is often a lot of shifting around, staying in hotels at times. Magistrates have also commented on the inappropriateness of having young people living in hotels for extended periods.

On three occasions FACS have requested that young people's matters be adjourned and for the young person to be remanded in custody at Don Dale. On these occasions the Magistrate has clearly stated that detention is not an alternative accommodation option for these young people, whilst FACS get a plan together. Generally speaking, there is a real focus on 'crisis management' with the young people in care of the Minister that come before the courts

As one lawyer noted;

The Lack of engagement with FACS and other service providers is noticeable – as there are services around that could be accessed by FACS. For example, one young person was supported who had offending linked directly to break down in arrangements between FACS (sole carer) and his parent regarding his contact with the parent – he was talking about serious psychological distress and he was NOT in counselling (despite those counselling services being available, through Congress or Holyoake for e.g.). He was put into counselling as a result of CAALAS advising FACS to do so.

There appears to be both structural and cultural impediments to FACS providing proper care to some young people in the criminal justice system. In some cases the YJP observed that if a plan was implemented in collaboration with FACS and the plan for whatever reason fell down, there were not necessarily any further efforts made by FACS to re-group and discuss an alternative plan with the young person, family or support workers.

For example in the following cases best practice was clearly not adhered to:

- Two male FACS youth workers were sent to take a reasonably traditional Aboriginal female out bush. The young woman absconded because she had requested that her mum or other family member come with her and she did not want to travel with two males.
- A young person was sent inter-state to school but without appropriate family support for the introduction period. She then chose to leave, after only one week, and no further joint case management plans were conducted to provide supports to this young woman to attend school.

Young offenders in care are a particularly vulnerable group of young people. They are often confused and do not fully understand why they are in the care of the Minister. This is due to their lives not having undergone any significant changes whilst they are in care. It clearly states in the Care and Protection of Young Person's Act that the Minister must provide a safe and alternative environment for a young person in care. In my view, FACS has frequently failed to provide a safe environment or provide appropriate support to a young person engaged in the criminal justice system for which the minister is the legal guardian.

I am aware that Chief Magistrate Blockland is also paying particular attention to young people who are before the courts and who are in the care of the Minister. The YJP will submit two case studies to the Department of Family and Children's Service Advisory Committee on this matter.

Recommendation 7.

- That the FACS address the problem of getting appropriately qualified people to conduct appropriate psychological and intellectual disability assessments for young people in care in a timely fashion.
- That a protocol be developed between FACS, legal representatives and court support workers outlining the roles and responsibilities of all parties involved in supporting young people in care who have criminal justice matters.

7. Youth Diversion Unit (YDU)

The main interactions the YJP had with YDU was to assist some family members to understand what activity a young person was doing whilst on diversion. The YJP also informed YDU workers that some young person and their families were at times confused about why it took so long to be assessed by YDU or to complete a diversion program. The following issues were also observed by the YJP

- YDU workers stating that they could not locate the young person,
- Family stating that no one from YDU had come to see them, and
- Lawyers and Magistrates expressing frustration that some matters that were before the court clearly should have been directed to YDU.

These observations have been raised with the YDU and it was highlighted that better collaboration need to be established between YDU and existing youth service.

Unfortunately, anecdotal evidence suggests that this is not always the case.

Recommendation 8.

- That the timeframe in which a young person is processed by YDU be addressed.
- That structured joint case management meetings be established by YDU to better support young people on diversion programs.
- That the Alice Springs Police use their discretionary powers in relation to referring young people to YDU.

8. Youth Justice Act Advisory Committee

The Youth Justice Advisory Committee (YJAC) is yet to be established despite the fact that it is provided for in part 13 of the Youth Justice Act 2006.

The Act has now been in force for over twelve months, and in order to comply with section 211 of the Act, two meetings should have been held in this time. The YJAC will play a crucial role in ensuring that implementation of the Youth Justice Act is monitored and evaluated to ensure the Act is being adhered to by all practitioners, and achieving the desired outcomes.

In order to ensure that Alice Springs issues are high on the YJAC agenda, the committee of CAYJ wrote to Minister Stirling and then Minister Burns to recommend that the YJAC

be immediately established and that the Alice Springs youth justice project worker be included on the Committee.

To a limited degree the YJP has been monitoring and evaluating the implementation of the Youth Justice Act, however, with limited resources and no formal mandate to undertake this work, the observations has been limited to the contents of this report.

Recommendation 8.

- That the YJAC be established as a matter of priority by the Department of Justice

9. Educational Material and Programs

Two of the project objectives relate to the provision of legal education to young people and their families, and the publication of appropriate materials regarding the rights of young people. The YJP worker spent some time networking with other agencies and programs both in the NT and interstate to establish the availability of such materials. It would appear that there are adequate materials already available for use in Alice Springs, the more critical issue is establishing the collaborative arrangements, with schools, other educational institutions, youth agencies and programs to allow for an effective roll-out of an educational program.

Observations from this project would indicate that:

- at this stage resources should not be directed towards the development of general ‘youth legal rights’ publications
- existing materials, including the ‘Cop This’ program should be systematically rolled-out and evaluated.

In reality, any future YJP program will continue to have a problem with the amount of time taken up by direct court support work. If the recommendations from this paper were progressed, particularly the identification of specific days and times for youth matters at the Alice Springs court and the training of youth workers in court support skills, a future project would be able to achieve a better balance between coordinating direct court support and the implementation of community education programs.

Recommendation 9.

That existing community education materials are trialed and evaluated before any new resources are directed towards the publication of new youth specific legal rights materials.

10. Fostering a Collaborative Approach

Central to the success of the YJP was the focus on building collaborative processes with other agencies and service providers. The YJP aimed to ensure that all relevant service providers gained a greater understanding of how young people are processed in the criminal justice system. The project worked with the following agencies:

- Central Australian Aboriginal Legal Service
- Northern Territory Legal Aid Commission
- ASYASS
- Tangentyere Youth Service
- Reconnect Youth Service
- Congress Youth Outreach Team
- Northern Territory Youth Affairs Network
- Alice Spring Court User Forum
- Police via phone calls and emails
- Department of Community Corrections
- Northern Territory CREDIT Program
- Department of Family and Children's Services
- Aboriginal Interpreter Services
- Bush Mob
- Alcohol and Other Service
- Alice Springs Youth Holding Centre
- Don Dale Corrections facility

While some of these relationships were at times difficult, the YJP did raise the profile of youth justice issues and highlight problems inherent in the current system. Some feedback from key agencies about the success of the YJP is attached to this report.

Conclusions and Recommendations

It is clear that young people do not in many cases understand what is going on in the youth justice system. This is largely due to the approach of Magistrates, lawyers and the fact that young people are frequently marginalized from their court process. The provision of court support for young offenders is crucial. As stated by NTCOSS, “In particular court support for young offenders has led to reduced recidivism rates in offenders. The benefits of the programs – e.g. the extensive amount of family work and outreach provided, basic family mediation, assisting young people into appropriate housing, assisting the young person to reconnect with family members interstate and sourcing funding to assist with transport back to community. Without such programs which provide this court support, the youth court system could grind to a halt, as the law requires an adult to be present in court with a young person in order for a young person to deal with them”²

Detailed recommendations have been made through out the report, and can be summarised as follows.

- A dedicated Youth Justice Court should be established in Alice Springs as it is in Darwin. Any barriers to the establishment of a dedicated court need to be identified and addressed by all relevant stakeholders.
- That the Northern Territory Youth Justice Act 2006 should be implemented and resourced in full as a matter of urgency, including the establishment of the Youth Justice Advisory Committee.
- That Northern Territory police, NT Legal Aid Commission, CAALAS and Department of Prosecutions support staff who work with young people to avail of relevant training and specialization in the area of youth justice.
- That the NT Government establish a funded program for youth justice support in Alice Springs – to enable the current Youth Justice Program to be permanently funded.
- That a genuine effort is made at the Alice Springs Court Users Forum to address ways of improving how young people are currently processed as recommended in this report.

² NTCOSS budget submission 2008

The YJP would like to thank the above service for their support and for always respecting the role of the YJP, in relation to providing legal advocacy to young people.

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