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31 MAY 2010

Submission No 100

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BY: ATSIA



youth affairs network qld

**Submission to the Standing Committee
on Aboriginal and Torres Strait
Islander Affairs**

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

May 2010

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About YANQ

The Youth Affairs Network of Queensland Inc. (YANQ) is the peak community youth affairs organisation in Queensland. YANQ represents young people and youth organisations across the State of Queensland. YANQ advocates on behalf of young people in Queensland, especially disadvantaged young people, to government and the community. The interests and well being of young people across the state are promoted by YANQ in the following ways:

- disseminating information to members, the youth sector, and the broader community
- undertaking campaigns and lobbying
- making representations to government and other influential bodies
- resourcing regional and issues-based networks
- consulting and liaising with members and the field
- linking with key state and national bodies
- initiating projects
- hosting forums and conferences
- input into policy development
- enhancing the professional development of the youth sector

YANQ believes that the primary culture of Australia is Aboriginal.

We recognise that Aboriginal, Torres Strait Islander and South Sea Islander people are 3 separate cultures. We recognise Aboriginal people as the permanent custodians of mainland Australia and Torres Strait Islanders as permanent custodians of the Torres Strait Islands that are an integral part of Australia, including those areas of land and sea whose owners have been wiped out as a result of racist politics and acts. We use the term custodianship in the context of protection and care for the land. YANQ is committed to respecting individuals, Murri and Islander communities. We seek to understand their responses to policies and issues affecting them. We are committed to learning about their understandings of the impact of decisions on them. YANQ apologises for the past and present social mistreatments of Murri and Islander people created by colonisation, and is committed to supporting the healing process.

SUMMARY

YANQ welcomes the present Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system. As an organisation that believes in the universality of human rights, YANQ advocates strongly for governments to do more to ensure the basic rights of all human beings are met in a modern society where inequalities are still prevalent. While the intentions of the present Inquiry are admirable, YANQ believes the limited terms of reference restricts the debate to the promotion of options that preserve the current system of working within a crisis response model as opposed to a genuine effort and shift to more preventative strategies. It is for this reason that YANQ has ignored the undue restrictions imposed by the terms of reference and has submitted a proposal that addresses the Human Rights of Aboriginal and Torres Strait Islander young people in Australia.

Key recommendations:

1. Federal Government to instigate a National Inquiry into the failure of the State and Federal Governments in implementing recommendations outlined in various previous Inquiries including the *Bringing Them Home* report, the Royal Commission into Aboriginal Deaths in Custody and the Queensland Justice Agreement;
2. Federal Government to instigate a National Inquiry into the reasons why Aboriginal and Torres Strait Islander young people in Australia are more likely than non-Indigenous young people to come in contact with and encounter the more punitive aspects of the justice system;
3. Federal Government to take steps to initiate amendments to the Commonwealth Constitution to recognise the sovereign rights of Indigenous peoples to address past injustices and encourage reconciliation, which is a necessary first step towards effectively protecting human rights to provide justice to the original inhabitants of this country.
4. All States and Territories to introduce legislation to prohibit the use of remand in custody on the basis of social rather than criminal criteria;
5. The Queensland Government immediately legislate to ensure that the age at which a child reaches adulthood for the purposes of criminal law in Queensland be 18 years.
6. YANQ recommends the establishment of a National Plan supported by the States and Territories with targets and benchmarks and time-frames and an independent monitoring regime, to ensure the goal of reducing the number of Aboriginal and Torres Strait Islander young people in the Criminal Justice System.

What we already know

Across Australia, Aboriginal and Torres Strait Islander young people are over-represented in every area of the criminal justice system. In Queensland, Indigenous youths are placed in detention at a rate 15 times that of non-Indigenous youths. The statistics are well known. But despite several such Inquiries, few positive changes can be seen. And what is more, according to many indicators, things have become *worse*. The period from 2001 to 2007, for example, saw a 27 per cent *increase* in Indigenous juvenile detention rates.

How is this possible? Surely there is the fact that the framework and recommendations outlined in the *Bringing Them Home* report and the Royal Commission into Aboriginal Deaths in Custody, as well as the Queensland Justice Agreement, and the persistent calls from Aboriginal and Torres Strait communities and organisations themselves, have not been pursued, or pursued piecemeal. It is for this reason that we are, at the same time, sceptical about *yet another* Inquiry.

Repeated studies have indicated that contact with the criminal justice system resulting in detention habitually leads to individuals re-offending, as well as further disadvantage and marginalisation; and that, the *younger* a person is when they are first detained in custody, the *greater* the likelihood that they will go onto re-offend and end up in adult prison. But Aboriginal and Torres Strait Islander young people continue to be locked up in record numbers.

It is this negligence by State and Federal authorities which has brought YANQ to the conclusion that **what is needed is an Inquiry into why this advice has been continuously ignored by governments (Recommendation 1).**

It is alarming to note as well that Aboriginal and Torres Strait Islander young people are more likely than non-Indigenous young people to encounter the more punitive aspects of the justice system. Statistics suggest that Aboriginal and Torres Strait Islander juveniles and young adults are more likely to be remanded into custody and serve a period in detention; at the same time, they are less likely to have their remand result in bail or receive community supervision as their sentence, and are under-represented when it comes to the more 'restorative' options such as conferencing or cautions. **This disturbing trend must also be examined (Recommendation 2).**

Forecast documents by the Queensland Corrective Services Department in 2005 (obtained by YANQ under Freedom of Information) state that "without any significant change in policy, prisoner numbers are anticipated to grow by 85 percent".

It seems that governments are effectively 'planning for failure' through the *increasing* expenditure on detention centres, as demonstrated, for example, in the last Queensland State Budget. International experience shows that 'capacity drives utilisation'. Investing in detention centres leads to policies and practices oriented towards using these spaces. And, given that this investment diverts money from alternative services which are both *more cost effective* and *more successful*, we must seriously ask why this is the case. Diversionary measures such as conferencing and other community-based alternatives are repeatedly shown to have a positive impact. But these are the exception, not the rule.

Where more 'progressive' changes *have* been legislated, they 'have been restricted in form, content and applicability' (Cuneen, 1998). Tough new legislation and 'tough on crime rhetoric' tends to single out young people *already* disadvantaged.

The wider picture: addressing the fundamental problems

It is our view that **the primary causes of Aboriginal and Torres Strait Islander young people's over-representation in the criminal justice system are a direct result of past and continued policies regarding Aboriginal and Torres Strait Island people and culture.** Whilst YANQ unreservedly supports programs which divert young people, especially disadvantaged young people, from crime and alcohol and substance abuse, and which lead to better educational and employment outcomes, we believe that an excessive focus on these measures can only fix things 'on the margins'. The present woeful situation of Aboriginal and Torres Strait Islander young people and their high level of involvement in the criminal justice system, as such, represent a failure to address the basic and underlying issues. It is for this reason that YANQ believes the terms of reference of this Inquiry are too narrow. What is needed is a concerted effort toward addressing the underlying problems.

As an urgent and overriding priority, then, YANQ calls on the Parliament to **increase its efforts towards Reconciliation.** This should include enacting legislation to put in place **a treaty process in Australia which fully respects the right to self-determination by, and recognises the sovereignty of Aboriginal and Torres Strait Islander peoples and addresses past injustices (Recommendation 3).**

Secondly, YANQ views the issue of Indigenous 'criminology' as one of social justice, not of 'pathology'; and we believe that the discussion should move more from the issue of 'needs' to that of 'rights'. At present, **the rights of Aboriginal and Torres Strait Islander young people are not being met by governments across all jurisdictions in Australia.** The *UN Convention on the Rights of the Child* clearly articulates the role of the government:

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other

opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their

Article 37(b)

...arrest, detention or imprisonment of a child... shall be used only as a measure of last resort and for the shortest appropriate period of time.

Similarly, *UN Standard Rules for the Administration of Juvenile Justice* (the 'Beijing Rules'), for example, states:

Involvement in juvenile justice processes in itself can be "harmful" to juveniles... This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society.

In light of this, and alongside the repeated finding that contact with the criminal justice system at a young age very often leads to future re-offending (and even though similar legislation already exists in Queensland¹) it is alarming to note that, for example, 74 per cent of the young people in custody in Queensland Youth Detention Centres on 30 June 2006 were on remand – that is, they were being held in custody *before a finding of guilt had been made or before their sentence had been finalised*, and frequently for first-time, alleged, minor offences.

YANQ has fought for a long time to end inappropriate remand (see <http://www.yanq.org.au/cair>). We are particularly concerned that it criminalises disadvantage by detaining young people who, for example, fail to make Court appearances for social welfare reasons. Therefore we recommend that **All States and Territories to introduce legislation to prohibit the use of remand in custody on the basis of social rather than criminal criteria. (Recommendation 4) Provisions should disallow detention:**

- **For alleged summary and other minor offences.**
- **As a substitute for addressing social needs.**
- **As a response to bail violation.**

We also draw your attention once again to the treatment of seventeen year olds in Queensland as adults in the criminal justice system and their subjection to the adult detention system (against Article 37 of the *UN Convention on the Rights of the Child* which discusses the separation of the child and adult detention systems). Therefore we recommend that **the Queensland Government immediately legislate to ensure that the age at which a child reaches adulthood for the purposes of criminal law in Queensland be 18 years. (Recommendation 5).**

Again, we stress that non-custodial options must be more widely pursued, including conferencing and other community-based sentencing options such as community services programs, as a matter of human rights. YANQ also recommends that Australia should follow Canada's example of creating legislation aimed at reducing the correlation between social welfare and juvenile remand and detention. Similarly, it should be noted that in Sweden, for example the Swedish Government views imprisonment as the most inhumane form of punishment, and has sought to drastically reduce

¹ The 'Charter of Juvenile Principles' attached to the *Juvenile Justice Act* (1992) states: If a child commits an offence, the child should be treated in a way that diverts the child from the courts criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started. And: 'A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.'

its use with children and young people.

In Sweden, the age of criminal responsibility is 15 years old. Behaviours that would be considered a crime if the young person was 15 years old, are viewed in Sweden as a social welfare issue not a criminalisation issue. If a child commits a crime under the age of 15, then the Social Welfare Board is mainly responsible for responding. Decisions about appropriate measures are based on the child's social situation. There are severe restrictions on the ability of the social services to use coercive measures, and the vast majority of under 15 year olds receive fully voluntary social care. Any application of coercive measures requires support from both local social welfare boards and county administrative court, and appeal to a higher court is available.

For 15 - 17 year olds, responsibility for addressing crime is shared between the social services and judicial authorities.

Finally, it is imperative that **Aboriginal and Torres Strait Islander communities and non-government originations are empowered to deliver justice and diversionary programs**. Indeed, as Chris Cunneen (1998) notes, "Some communities or regions may see the transfer of jurisdiction over juvenile justice matters as essential to the exercise of self-determination".

Conclusion

The juvenile justice system is, we believe, in many ways the 'frontline' in the continuing war against Aboriginal and Torres Strait Island people and culture, insofar as it *criminalises poverty and disadvantage* and further *discriminates* against young people who are often already struggling with everyday life, and denies the continuing injustice inflicted on Aboriginal and Torres Strait Islander people in the process of colonisation and assimilation attempts. We remind the Committee that a significant part of the *Bringing them home* report focused on the *continuing* separation of children and young people through State and Territory justice systems and over policing. As we have already observed, these systems have not improved, and in many instances, have demonstrably led to *further* disadvantage.

Therefore, YANQ recommends the **establishment of a National Plan supported by the States and Territories with targets and benchmarks and time-frames and an independent monitoring regime, to ensure the goal of reducing the number of Aboriginal and Torres Strait Islander young people in the criminal Justice System. (Recommendation 6).**