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22 DEC 2009
BY: SC. ASIA



YOUTH ADVOCACY CENTRE INC

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

Youth Advocacy Centre welcomes the opportunity to make a submission to the House Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.

Youth Advocacy Centre (YAC) is a community legal and welfare centre which offers legal and welfare assistance to young people between the ages of 10 and 17. The geographical area which the Centre services is largely the Brisbane area, with some occasional assistance to young people in other areas of the state. The nature of the Centre's work ranges from legal advice, representation, education, counselling, family mediation, and support for young people around issues such as accommodation, education and income. The Centre also participates in law and policy reform activities.

YAC has a protocol with the Aboriginal and Torres Strait Islander Legal Service (ATSILS) in Queensland, which involves the referral of indigenous clients to its service as a preferred practice. However YAC does provide legal and social welfare services to indigenous young people in circumstances where the young person chooses a mainstream service over ATSILS, where ATSILS has a legal conflict, or in circumstances where YAC is best placed to provide a service in instances of urgency, such as the arrest and detention of a young person.

YAC does not purport to speak representatively of all indigenous young people and their communities and we support Aboriginal and Torres Strait Islander people's right to speak for themselves. In YAC's observation, there are many issues about how the criminal justice system in Queensland treats all young people, which have a more acute affect on indigenous young people, resulting in their over-representation in the criminal justice system. YAC identifies and summarises these system issues as including:

- The treatment of 17 year olds as adults in the Queensland criminal justice system, thereby reducing access to age appropriate community based programs and diversions;
- The absence of more specialist Childrens Court Magistrates who understand the complexity of the jurisdiction and sentence indigenous young people appropriately;
- The criminalising of indigenous young people in care;
- The lack of drug and alcohol services for young indigenous offenders;

- The insufficient recognition of the Elders who sit in the Childrens Murri Court; and
- The poor interface between the youth justice and child protection systems in working towards common goals of the wellbeing of indigenous young people.

Treatment of 17 year olds:

Queensland is the only state or territory in Australia not to recognise 17 year old's fundamental human right to be treated differentially in the criminal justice system in recognition of their vulnerability due to age.

Some of the direct and practical impacts on young people aged 17 years old currently dealt with under the Queensland adult criminal justice system include:

- a young person's parents are not notified, as of right, of their son or daughter's arrest by police;
- there is no requirement for courts to detain a 17 year old as a last resort;
- there is no requirement for police to have a support person present at an interview in order to ensure the subsequent admissibility of a young person's statement in court;
- there is no requirement for a police officer to consider restorative justice processes such as cautioning or conferencing;
- there is no obligation for a police officer to commence proceedings by way of notice, unless the matter is of a serious nature;
- DNA samples may be taken without an application to the court;

- an arrested, charged or convicted 17 year old is held in an adult prison;
- identifying particulars of the young person can be published without leave of the court;
- family visits of a young person in an adult prison are not prioritised, so regular family contact is not guaranteed;
- limited clothing is provided in adult prisons;
- there is no ongoing liaison between the corrective authorities and the young person's family;
- a young person in care is treated as a child in the child protection system, but simultaneously as an adult in the justice system: and
- there are fewer support programs to assist young people transitioning from adult prisons back into the community.

Recommendation:

The change to the law in Queensland about the treatment of 17 year olds in the criminal justice system would have a direct bearing on the rate of incarceration of indigenous young people. The youth justice system provides them with greater opportunities for rehabilitation through community based orders, alongside access to quality community based programs that address the social welfare needs of young people.

An increase in the number of Specialist Childrens Court Magistrates in Queensland

The obvious benefit of specialised Children Courts magistrates for both Criminal and Child Protection proceedings was recognised at the time of

the introduction of the *Children Court Act* in 1992 when the then Minister Anne Warner :-

*"Where a specialist Childrens Court magistrate is available in a major centre like Brisbane, preference is to be given to this magistrate hearing the matter. The reason for this preference is that a Childrens Court magistrate has greater specialist knowledge and expertise in the jurisdiction."*¹

The only specialist Childrens Court magistrate in Queensland is assigned to the Brisbane Childrens Court. With this exception Queensland magistrates exercise the Childrens Court jurisdiction in association with the many other jurisdictions including civil, criminal and domestic violence. As a former Attorney General recently stated

*"The number of matters coming before Queensland's Magistrates courts is increasing and that statistics do not reflect the complexity and diversity of matters coming before Magistrates across the State each and every day."*²

This diversity and responsibility does not permit the competency of a specialised Childrens Court magistrate. YAC is only aware of one successful sentence review from the specialist Childrens Court Magistrate in the last ten years. Some generalist magistrates' courts that exercise children's court jurisdiction as part of the generalist courts have a number

¹ Queensland Parliamentary Debates, Legislative Assembly 19 June 1992, 5929 (AM Warner, Minister for Family Services and Aboriginal and Islander Affairs).

² Media release Attorney-General and Minister for Justice and Minister assisting the Premier in Western Queensland, Hon Kerry Shine, Thursday August 23 2007 "Extra support for busy SE Queensland courts".

of decisions reviewed and overturned in one day³. The appointment of further specialised Childrens Court magistrates may reduce the number of sentence reviews in the Children Court of Queensland.

Queensland, the third most populace state in Australia, has one specialist Children Court magistrate. In 2007 this is less than any other state in mainland Australia. New South Wales currently has 13 Children's Magistrates presiding in 7 specialist Childrens Courts (5 in the Sydney metropolitan area and 1 each in the Newcastle and Wollongong areas), Victoria has 7 magistrates, Western Australia four full-time and casual magistrate~~two part time~~ and South Australia at least two magistrates.

The Charter of Principles of the *Juvenile Justice Act* specifically refers to timely decisions. Despite this Queensland lags behind the national average in the disposal of Childrens Court matters in the summary jurisdiction⁴ and is 5% slower than the Queensland adult magistrates' courts in finalising matters in less than six months⁵. A specialised magistracy permits familiarity with the jurisdiction and allows speedy and competent resolution of matters. This avoids lengthy remand periods.

A specialised court also accentuates the importance of the jurisdiction to the legal profession. Anecdotally, fewer members of the private legal profession in Queensland, particularly in the South East corner, are practising regularly in the Childrens Court leaving the work to Legal Aid lawyers, community legal centres and aboriginal legal services. This

³ For example, on 6th August 2007 five reviews were heard and upheld from the Beenleigh Childrens Court and in April five matters were heard and upheld from Charleville Childrens Court.

⁴ Magistrates Court Annual Report 2005-2006.

⁵ Magistrates Court Annual Report 2005-2006.

deprives this jurisdiction of a broader range of legal thinking (arguably at a more sophisticated level) and places greater workloads upon those public lawyers undertaking the work. Nearly ten years ago the then President of the Children's Court highlighted the correlation between specialist courts and a specialised legal profession.

*'There has been a growing recognition of the need to have lawyers in this area who are trained specialists in the jurisdiction. A credible specialist court encourages this development'*⁶

A specialised magistracy also allows innovation and implementation in children's matters. For example, the implementation of youth Murri courts in the Brisbane Childrens Court was the initiative of the former Childrens Court Magistrate Mr Pascoe SM. Despite claims by other states this Queensland initiative was the first permanent aboriginal Childrens Court in Australia. This initiative has now been adopted across many other generalist courts when convening the Childrens Court.

Recommendation:

The terms of reference speak to 'clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision...'. In order to provide better responses to the indigenous young people affected by the justice system, an increase in the number of specialist Childrens Court magistrates, who understand the complexities involved with this jurisdiction, is required.

⁶ Childrens Court of Queensland Sixth Annual Report 1998-1999, p9.

The criminalising of indigenous young people in care

In YAC's observation there has been an increasing trend of workers in the child protection system resorting to the criminal justice system when the behaviour of a young person becomes unmanageable. A typical example involves a young person who has been placed in a residential setting, usually after a series of placements in a short period and where the worker is ill-equipped to deal with challenging behaviours.

The Snapshot 2009 report by the Queensland Commission for Children and Young People and Child Guardian (CCYPCG) notes the concern that:

*'Aboriginal and Torres Strait Islander children and young people continue to be over-represented in the child protection system. In 2007-2008 there was a 19.2% increase in the number of Indigenous children in departmentally-funded alternative care. Indigenous children are in alternative care at a rate more than six times that of non-Indigenous children in Queensland.'*⁷

The risk of indigenous children being criminalised through the care system is high, and will become higher considering the increasing over-representation rates.

The issues that need to be addressed in ensuring that the care system does not become the conduit to the youth justice system include:

- adequately trained child protection workers who clearly understand the rights of young people in care;
- a commitment to the appropriate long-term placement of young people in care;

⁷ 'Snapshot 2009' report, Commission for Children and Young People and Child Guardian, pg 65

- the provision of specialised and culturally appropriate supports to young people in care who require assistance to work through challenging situations;
- a clear understanding at the service delivery level that the criminal justice system is not the appropriate forum through which troubled young people develop coping strategies: and
- cultural training for child protection workers who have indigenous young people in their care

Recommendation:

One of the terms of reference regards the extent to which 'current preventative programs across government jurisdictions are allied against common goals to improve the health and emotional well-being of indigenous adolescents...'. The way in which the child protection system deals with indigenous young people with challenging behaviours must be dealt with at policy and service delivery levels.

The lack of drug and alcohol services available to indigenous young people
There are limited drug and alcohol services available to indigenous young people in South East Queensland. There is no residential rehabilitation service for young people under the age of 18 years, nor a specific indigenous counselling service. There is a mainstream 10 day residential detox program and limited services that provide counselling in a non-residential setting.

In the last 5 years the Queensland government has attempted to apply a law and order approach to moving on young people who are intoxicated. This has merely dispersed young people to the outer suburbs of the city, rather than addressed the chronic needs for services that assist young people to deal with the underlying issues of addiction.

Recommendation:

There needs to be significant financial commitment to providing effective and long term drug and alcohol services to indigenous young people across the Queensland. These services need to be specific, in order to recognise and address the special circumstances that indigenous young people face in relation to substance abuse.

Insufficient recognition of Elders that sit on the Childrens Murri Court

There is insufficient recognition and valuing of indigenous Elder's contributions to the administering of culturally appropriate justice in the community. Currently Elders who sit on the Childrens Murri Court in Brisbane receive a meal allowance of \$36.50 and no other form of remuneration.

This monetary undervaluing of this process has a significant impact on the value of the work of the Elders in the court. It is also indicative of the lack of system recognition and building of justice infrastructure around the administering of justice to indigenous young people in a culturally appropriate way.

Recommendation:

The Childrens Murri Court has been a key government initiative in working to improve the justice system for indigenous youth. The Elders continue to play an essential role in developing culturally appropriate outcomes for indigenous young people. **A real commitment to the process and the importance of the role of the Elders must involve greater financial support.** YAC believes that this is gap in the program, and must be addressed for the benefit of indigenous people involved in the justice system.

Poor interface between the child protection and youth justice systems

A distinctly vulnerable group are young people who are involved in both child protection and justice systems. The over-representation of indigenous young people in both systems means that the problems faced will be more acute.

There is a need for young people involved in the criminal justice system to be able to access legal advice and direct legal representation. There is no commitment in the child protection system to afford this to the young people in its care, which will have a great impact on the outcomes for the young person within the criminal justice system.

There are blurred distinctions in the involvement of the child protection workers in the administration of a young person's youth justice matters. For example, child protection workers can share information about 'actions taken by the child that appear to be inconsistent with the requirements of

their youth justice order or program.⁸ This essentially means that both systems have the responsibility of monitoring the young person, and this often results in excessive scrutiny and a higher burden on the young person. There must be clear and unambiguous roles and responsibilities for departmental caseworkers. These roles and responsibilities must also be explained to each young person, so that their right to be informed about the processes and decisions that affect them is maintained.

Recommendation:

The terms of reference speak to the need for 'clear responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision...' **A review of the interface between the child protection and justice systems must be undertaken, with a view protecting the fundamental rights of the young people involved in these systems.** Indigenous young people will be greatly advantaged by increased support and information from these systems where they interact.

Conclusion

The systematic addressing of the over-representation of indigenous young people in the criminal justice system is long overdue. Currently the criminal justice system is the default system in which many indigenous young people are caught because their broader social, welfare, health and educational needs are not met. The criminal justice system can be better equipped to ensure that any indigenous young person coming into contact

⁸ 'Child Safety Practice Manual', Queensland Child Safety Services, pg 89

with it has a reduced risk of ongoing, lifelong involvement in the criminal justice system.

