

THE AUSTRALIAN LAW REFORM COMMISSION

**Inquiry into the Incarceration Rates of Aboriginal and
Torres Strait Islander Peoples**

A submission by Australians for Native Title and Reconciliation (ANTaR) Qld

2 September, 2017

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INTRODUCTION

The lens ...

This submission is *entirely* concerned with the Youth Justice system of Queensland: its impacts on First Peoples offenders, their families and communities. It is based upon the logical assumption that major advances in crime prevention and offender management in the juvenile population will have a major *upstream* impact over time, in the subsequent adult sphere.

For over 20 years, ANTaR Qld (www.antarqld.org.au) has engaged positively with a broad, deep and ever-expanding circle of Aboriginal and Torres Strait Peoples (First Peoples) of Queensland. These include several groups of Traditional Owners, Elders, younger professional leaders, community leaders and students. Until about 10 years ago, such connections were predominantly in the South East of the state. More recently, our friendships and connections have extended to several other regions in Central and Northern Queensland.

The writer is a retired minister of the Uniting Church; a semi-retired clinical psychologist, researcher and company director, having served predominantly in clinical practice, applied research and executive leadership with community mental health agencies, mainly with marginalized communities involving cross-cultural challenges, especially with Aboriginal adolescents and families. He has served in three states and on exchange with the United Methodist Church in the USA, yet 70% of his professional and vocational work has been done in regional Queensland and metro Brisbane.

Since 2007, he has led significant *pro bono* work with churches and NFP organisations in the research and development priorities for productive engagement with Murri young people and their families, mainly in their access to education and skills training and in primary care and community mental health services. The writer is a professional member of the Australian College of Health Service Management, the Public Health Association of Australia and a graduate member of the Australian Institute of Company Directors. He is currently a policy contributor to the Balanced Justice Network, a civil society campaign to reform the Youth Justice system of Queensland.

PREAMBLE

+ This begins as a view *from the trenches* – one person's journey through 40 years; mostly engaging; sometimes observing; some detached analysis and critique with the statistics, performance trends and outcomes pertinent to the journeys of disadvantaged young people in Queensland; increasingly concentrated in the life chances and choices of younger Murri people, particularly in rural/regional/remote parts of the state. The perspective then expands – to consider various collaborations and partnerships which have operated at different times with a wide range of human service, community development, education,

community mental health and primary care health agencies. Appalling tragedies and astonishing triumphs have been viewed, some at close range; others on larger scale.

+ The writer is broadly informed on the Youth Justice data profiles of recent years, as provided by the Department of Justice and Attorney General (1); Department of Communities; the Queensland Police Service and Education Queensland. Detailed submissions within the frame of these respective data sets are being made by colleagues and associates. While views advanced here have been informed and assisted by those key statutory agencies, they are entirely my own.

THE GLASS IS HALF FULL ... THE CHALLENGE AND OPPORTUNITY OF AUTHENTIC GOVERNMENT AND COMMUNITY PARTNERSHIP

The Queensland community is entitled to the best available insight, commitment and resourcefulness from those who seek to lead and manage its Youth Justice system. For this reason, it is a pressing necessity to inquire where these qualities are best found. It is clear that such qualities are not lacking among those who give leadership in the Department of Justice and Attorney General (DJAG). Looking beyond this however, we have seen in recent years a disturbingly populist approach by politicians to garner cheap votes in the community by appealing to the retributive and punitive instincts of the wider community to the near-total exclusion of any semblance of prevention or early intervention. It might have been Queensland in 2012 but, in the Youth Justice sphere, it felt like Mississippi 1954. It failed comprehensively, largely because those who shaped the policy and its legislation refused to communicate with a broad range of people and organizations in the wider community who offered the instincts and insights of civil society - as well as the seasoned, well-grounded experience hard won from a broad range of evidence bases and professional practice.

Authentic **government and community partnership**, as I understand it, implies the following:

1. Clear recognition that the *rule of law* vests overall responsibility for the criminal justice and youth justice systems in the statutory realm (separation of powers between the legislature, judiciary and executive); that ultimate authority and responsibility for the effectiveness of the justice system comes from the legislative vision and capacity of the incumbent government.
2. Recognition within government and from across the broader community that there are many bodies of insight, experience, resource and deep social commitment from whom appropriate types of participation may be drawn by the Youth Justice system in order to deliver a service with best outcomes. In this vein, the Youth Conferencing Service is a prime example. Typically, in such a process, there is truth-

telling from the victim-impact perspective; support for both the victim and the offender to hear each other; potential for restitution where relevant; opportunity for the offender to obtain self-insight and positive support for new behaviour. This type of resource is but one example of a YJ system fit for purpose in 2017 and beyond.(2)

3. **Justice Reinvestment** is timely and directly relevant to the YJ system of Queensland. Although variously defined, it is essentially founded in the social value commitment of a government to elevate **prevention, early intervention, diversion and rehabilitation** in its justice system – above the place of **punishment and retribution**. This is implemented by the progressive diversion of resources and budgets away from the traditional custodial practices, towards the types of targeted practices which can intervene early, constructively and often developmentally in the lives of young people at risk of offending – and, critically, offer timely social supports to their families. There are encouraging examples in the UK and in some states of the USA of the effectiveness of such a systemic shift.(3) Need it be said that a government which is unresolved about its social value stance (and pursues Justice Reinvestment for its desired budget savings) might be sorely tempted to short-change the threshold and transition costs of Justice Reinvestment? Disaster looms.

EARLY PRIORITIES FOR A TRANSITION TO JUSTICE REINVESTMENT IN THE YOUTH JUSTICE SYSTEM OF QUEENSLAND

1. A major pressure point in the system as indicated by the yearly YJ statistics appears to be the high proportion of detainees at any given time who are **detained on remand** from Children's Courts across the state – because magistrates could not be confident of the adequacy or viability of alternative bail arrangements. Yet, the capacity of the Cleveland Youth Detention Centre at Townsville has been expanded in recent years - in order to relieve the pressure of increasing numbers of detainees overall. For this observer the detaining of remandees in a detention centre (however great the care taken) is unacceptable for many reasons (legal, social value-human rights, financial cost of transporting minors to Brisbane or Townsville under suitable escort etc).
2. The heavy and persistent **over-representation of Aboriginal children** in the broader YJ system but particularly in detention(4) is an indescribable indictment on our society in so many obvious ways. While positive ways to address and overcome this have been attempted by many capable and committed people and organizations, there need to be fresh preventative approaches to this

predicament – which uphold the autonomy, dignity and self-responsibility of Aboriginal people as fellow citizens – and genuine partners in addressing the issues of poverty, unemployment, lack of access to education and health services.

3. Further, the over-representation of **care-leavers, foster children and wards of the state** is clearly a disproportionately large component of young offenders. With the de-institutionalisation of harmful or inadequate institutions of earlier generations, it is all too apparent that our society has tolerated criminal and YJ detention as the default place or end-of-the-line depository for those who are at the bottom of the social ladder and surplus to everyone else's requirements.(5)

Clearly, the YJ system cannot be, in and of itself, held responsible for finding **total** solutions for cumulative major deficits in the lives of people who belong to one or more of the above 3 groups. This challenges our legislators and all who work with young offenders to work with greater social imagination as we build the best possible mix of **preventative** and **diversionary** resources. Following is a pointer to **early priority** examples which, if enacted, would be early achievers in the **preventative, diversionary and rehabilitation** pathway for Youth Justice.

CONCRETE EXAMPLES FOR EARLY IMPLEMENTATION

- 1 For those **charged and remanded in custody**, there has already been significant demonstration of a viable and cost-effective supported accommodation option to custody in detention. The Y-BASS service offered by the Youth Advocacy Centre in the south-eastern corner of Queensland appears to offer the safe, secure, engaging, well-managed service of the future for young people remanded on bail within the lower range of offences. In recent years, there have been comparable, smaller scale services operating in a few regional cities with variable results. The potential for success and the urgency of the overload on detention centres suggest that the following could succeed:

- + Identify from the JAG statistics the regional cities with proximity to larger flows of remanded in custody offenders – where there are NFP service providers who can be interested in offering secure, safe, suitably staffed, remand accommodation as required by DJAG.

- + Such service providers should be retained on purchaser-provider contracts, containing disclosure and collaboration clauses which require them to be progressively engaged in collegial learning endeavour with **both** their counterpart providers and with the relevant DJAG staff. It is intended that this structure will bring continuous improvement to such services. Likely cities for such services would probably include Toowoomba, Maryborough-Hervey Bay, Rockhampton, Mackay, Cairns, Mount Isa.(6)

2. Review independently the total operation of the **Police Cautioning System** and the related QPS Youth Conference Service. Relate this to an independent review of the 57 **Community Justice Groups** statewide. Much will be learned about local factors in the viability, effectiveness, preventative and rehabilitative value of these two systems, especially if they become more synergistically related in their routine functioning. It is also likely that, for locally appropriate reasons, these resources could function effectively in a close working relationship with the remand accommodation services, providing a critical mass of high value YJ hubs in relevant regions.

3. Considering the **heavy over-representation of Aboriginal offenders** throughout the YJ system, this remains as an indictment on our society. It seems clear that some ways of addressing this in the pre-2012 era need to be reviewed, reinstated and better resourced. Examples of these are the involvement of suitable Elders in the sentencing circle and mentoring sphere. Yet, much more is possible. Examples include the testing and assessment of young offenders in their learning capacities; clarity of identity and aspiration; aptitude for pre-vocational or pre-trade training or mainstream academic work. Such assessments should also give clarity to the young person and family as to whether the secondary school mainstream or an alternative learning system will be more effective. It should also be considered that young Murri people need to be supported insightfully in determining whether their future is more likely to be urban or rural. The outcomes of such inquiry should always be seen as provisional, yet the conclusions reached by the young person in question are of critical value. Those with a more rural orientation will then benefit by staying on – beyond the cultural healing process led by Elders *on country* - to be engaged by rurally oriented work skills and pre-vocational courses conducted by others at the same location. The significance of ongoing mentoring in this context is high – to be addressed later.

a. **Completion of relevant forms of secondary education** by young offenders is universally supported. There are of course several alternative pathways for achieving this.(7) It appears that **early intervention** practices with young people at risk of

offending can be more insightful than it has been – in relation to the engagement of such young people and their families concerning education. There are current and contentious aspects to this. Firstly, the prevailing regime of suspension and expulsion of troublesome students by secondary schools presents major challenges. It is entirely believable that many such students cannot function productively in a conventional secondary school environment for reasons related to health status or intellectual incapacity or personality – any of which can easily result in disruptive behaviour. When such matters are thoroughly and skilfully assessed and it is clear that a student should not remain in a mainstream school, any decisions made at that time become crucial – for the life chances of that student. What options are there? Education Queensland has developed its own informal learning experiences and these are often well commended by people who are well informed on their performance and progress. Alongside these however are the Flexi-Schools of Edmund Rice Education, now achieving strongly in areas of marked socio-economic disadvantage across Australia and, in particular, in Queensland. Similar models are operated by the Shaftesbury Centre. Can DJAG and Education Queensland work more pro-actively and collaboratively with these two bodies – to bring them more closely into the strategic development tent and to ensure that they are resourced appropriately?

b. Comprehensive Health Screening of young offenders has critical value. In general terms, such screening should include chronic conditions in general health; intellectual capacity; FASD symptoms and the full range of mental health indicators.(8) Its preventative value for individuals (and those close to them) and downstream economic cost savings to governments and individuals is beyond dispute. What is the current practice in this realm in the Children’s Courts and the YJ system statewide? Is there a consistent, suitably staffed, well resourced forensic (or other) screening system operating on a statewide basis? It is tragically well understood that these and other forensic services lost significant capacity from government cost cutting in the 2012-15 period – and that the restoration or replacement of the earlier capacity is difficult on all fronts. This is why the government must make the case for such expenditure in the public arena – to remove the mystery - explain the challenge and the benefit – bring the public into the discussion.

c. Children who have experienced out-of-home-care, fostering or ward status remain as an unacceptably large component of those in the YJ system overall, detention in particular. Again, all too clearly, the YJ system is the end-state *too hard basket* for such children because of the manifest system failure of the child protection system.(9) Noting that this system has been comprehensively reviewed in recent years, it must be said that the overall

burden of care and nurture for such children is too difficult for any government to carry alone. For instance, the chronic workforce instability and service provider discontinuity in the relevant government departments can all too easily mirror the fragmented and episodic experiences of children in care as they move from household to household in their formative years. The theme is insecurity, nurture deprivation and identity confusion. Clearly, this topic is better engaged with statutory and other bodies who are in a position to bring about the big systemic changes in the care of such children. I strongly commend those in leadership with the YJ system for their insight and courage in articulating their knowledge and concern where it matters.

4. Conduct substantial, well designed **Justice Reinvestment** projects on a whole-of-community basis, benefiting from the learnings of the Bourke and Cowra projects in NSW. In Queensland, the first pair of communities for such projects could be Townsville and Logan. The next pair could be Gladstone and Mt Isa. The crime prevention learnings from each of these pairings would be highly productive – as long as DJAG practises a whole-of-government and whole-of-community model.

CONCLUSION

The Youth Justice system of Queensland has opportunities to become a more future oriented system as it embraces more comprehensively the values and practices of prevention, early intervention, diversion and rehabilitation. It is most timely for the ALRC, the Queensland Attorney General and her colleagues (in relevant portfolios and in executive leadership) to conduct a substantial conference to which a wide range of relevant contributors (inside and outside the government) would be invited. This would, if done appropriately, herald a new era of government and community partnership in the realm of Youth Justice. Without being inappropriately prescriptive, I support the types of proposals for such a conference which have also been proposed by colleagues in the Balanced Justice network.(10) Essentially, it should be planned by a relevantly diverse mix of stakeholders working closely with departmental officers. The following objectives might be a starting point:

1. Consider and prioritize the major, early priorities for renewal of the YJ system of Queensland.
2. Draw freely from the perspectives of a broad range of stakeholders directly relevant to YJ, including national and international best practice achievement. (11)
3. Formulate action priorities for pilot initiatives for pilot projects and demonstration projects in the case of major new initiatives. (12)
4. Consider the purpose and mandate for the formation of a Youth Justice Advisory Council as a statutory body linked to the Attorney General and reporting to cabinet;

to oversee the implementation of new policy; to review YJ policy direction overall; to commission new YJ policy research; to oversee all independent progressive and occasional evaluation of YJ operations and programs.

5. Form a wide-ranging constituency of organizations and individuals who are highly relevant and committed to best practice by the YJ system, able to do ongoing engagement with government and the wider community as appropriate on YJ policy and practice.

In summary, I can but re-emphasize two things which have flavoured this entire submission:

+ The *gold standard* in all YJ service development is scrupulous engagement with the best available **evidence base** (local and international) – coupled with courageous exposure of the knee-jerk enthusiasms of vested interests who are at best irrelevant to the quality and integrity of a progressive YJ system and, at worst, deeply mired in populist partisanship.

+ As a statutory agency seeking to achieve best practice in its **preventative, early intervention, diversionary and rehabilitative** work with young offenders, DJAG has available a rich and highly relevant range of partners and collaborators not only in the obvious academic and professional ranks but, more widely in the civil society of Queensland.

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