



Central Australian  
**Aboriginal Congress**  
ABORIGINAL CORPORATION | ICN 7823

14 April 2019

Secretary to the  
Legislative Assembly of the Northern Territory Social Policy Scrutiny Committee  
GPO Box 3721  
DARWIN NT 0801

By email: [SPSC@nt.gov.au](mailto:SPSC@nt.gov.au)

**Submission to the Committee's inquiry into the  
*Youth Justice and Related Legislation Amendment Bill 2019***

Dear Secretary,

Thank you for the opportunity to make a submission to the Social Policy Scrutiny Committee's inquiry into the *Youth Justice and Related Legislation Amendment Bill 2019*.

As a leading Aboriginal community controlled health service, Congress has developed a comprehensive model of primary health care delivering quality, evidence-informed services and programs on a foundation of cultural responsiveness.

Recognising that poorly designed, punitive approaches have a lifelong and intergenerational effect on health and wellbeing, Congress has advocated for a diversionary and therapeutic approach to youth justice. We set out our position in our *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory* (1 November 2016) which we attach to this letter for the Committee's information.

The Royal Commission's report was damning. It set out in sometimes distressing detail the legislative deficiencies and failures in implementation in the youth justice system in the Northern Territory. It was clear that Aboriginal young people suffer disproportionately from these failures.

While we understand that the Bill aims to implement some of the recommendations of that Royal Commission, it leaves some significant matters unaddressed. We are not able to analyse all these in depth in this letter and will instead focus on two legislative issues which we raised in our original submission.

*1. Minimum age of criminal responsibility*

The Bill does not address the legal situation that in the Northern Territory children as young as 10 years old can be held criminally responsible for their actions, and consequently placed in detention if convicted of offences. This

**Central Australian Aboriginal Congress  
Aboriginal Corporation**

ABN 76 210 591 710 | ICN 7823  
PO Box 1604, Alice Springs NT 0871  
(08) 8951 4400 | [www.caac.org.au](http://www.caac.org.au)

**Aboriginal health  
in Aboriginal hands.**

does not meet the minimum age recommended by the UN Committee on the Rights of the Child (12 years) and is lower than the minimum age adopted by most western democracies.

In failing to address this issue it ignores the scientific evidence around child development which shows that children at this age are not developmentally mature enough to be criminally liable.

It also fails to give effect to the Northern Territory Government's March 2018 in-principle support for the recommendations made by the Royal Commission into the Protection and Detention of Children (specifically Recommendation 27.1).

## 2. *Therapeutic approaches to youth justice*

The emphasis for any youth justice approach must be prevention and diversion, especially so in the Northern Territory where Aboriginal young people carry the burden of the past and continuing effects of colonisation (dispossession from land; suppression of culture; removal from family; the day-to-day experience of racism; the intergenerational experience of trauma including in early childhood; and persistent poverty and exclusion from education and employment).

Unfortunately, the Northern Territory has a history of punitive approaches to youth justice and detention, with the Royal Commission finding that:

*Senior executives and the management and staff at the detention centres implemented and/or maintained and/or tolerated a detention system seemingly intent on 'breaking' rather than 'rehabilitating' the children and young people in their care (Vol 2A, p.330)*

Such punitive approaches to detention are known to be ineffective and expensive. Instead, therapeutic approaches are needed for the small number of young offenders who genuinely need to be detained for their own wellbeing or the protection of the community.

The Northern Territory Legislative Assembly should therefore legislate an explicit commitment to the detention of young people being focussed on therapeutic rehabilitation and not on punishment.

We also urge the Committee to take account of:

- the detailed analysis and recommendations in Congress' *Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory* (1 November 2016); and
- submissions to the Committee from other Aboriginal organisations, including the North Australian Aboriginal Justice Agency (NAAJA), the Aboriginal Peak

Organisations of the Northern Territory (APONT), and Danila Dilba Health Service.

Accordingly, we present the following responses to the terms of reference of the Social Policy Scrutiny Committee.

**a) whether the Assembly should pass the Bill**

It is our view that the Bill's amendments do not go far enough in addressing the serious deficiencies of the youth justice system identified by the Royal Commission into the Protection and Detention of Children in the Northern Territory.

**b) whether the Assembly should amend the Bill**

Amongst other matters, the Bill should be amended to:

- raise the minimum age of criminal responsibility to 12 years in line with recommended international standards; and
- explicitly commit the youth detention system, through the principles and objectives of the *Youth Justice Act 2005*, to a primary aim of therapeutic rehabilitation rather than punishment.

The Committee should take particular account of further amendments proposed by other Aboriginal organisations, in particular the North Australian Aboriginal Justice Agency (NAAJA), the Aboriginal Peak Organisations of the Northern Territory, and Danila Dilba Health Service.

**c) whether the Bill has sufficient regard to the rights and liberties of individuals**

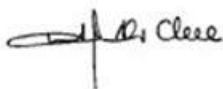
As above, we do not believe that the Bill goes far enough in addressing the serious breaches of the rights and liberties of young Aboriginal people in the youth justice system, as extensively documented by the Royal Commission into the Protection and Detention of Children in the Northern Territory.

**d) whether the Bill has sufficient regard to the institution of Parliament**

Congress has no comment to make on this term of reference.

I thank the Committee for the opportunity to comment on the Bill, and am happy to provide further detail on request.

Yours sincerely



Donna Ah Chee  
**Chief Executive Officer**