



Central Australian Youth Justice

April 26, 2019

The Central Australian Youth Justice Committee (CAYJ) welcomes the opportunity to comment on the Youth Justice and Related Legislation Amendment Bill 2019. This response draws on our experience working with children and young people in Central Australia, many of whom are involved in the youth justice system.

CAYJ advocates for the rights of young people, both legal and social, in the Central Australian youth justice system. Membership of the Committee includes Alice Springs Youth Accommodation Support Service, Anglicare NT, Bush Mob, Central Australian Aboriginal Congress, Create, Jesuit Social Services (JSS), North Australian Aboriginal Justice Agency (NAAJA), NT Council of Social Service (NTCOSS), NT Legal Aid Commission (NTLAC), Red Cross, Relationships Australia, Saltbush and Tangentyere Council.

CAYJ acknowledges and generally supports submissions to the Committee by member organisations, JSS, NAAJA, NTCOSS and NTLAC, and the Human Rights Law Centre. To avoid repetition, this submission focuses on key areas with particular relevance to the Central Australian context.

CAYJ recognises the progress this Bill makes towards implementing reforms as set out by the Royal Commission into the Protection and Detention of Children in the Northern Territory (the Royal Commission), in relation to youth justice. Furthermore, several CAYJ members were involved in consultations with the Northern Territory Government in the development of this Bill, and we commend the Government on the co-design process.

The Royal Commission laid out a comprehensive roadmap to reshape the broken youth justice system in the Northern Territory, however CAYJ is concerned that several amendments in this Bill depart from the Royal Commission's recommendations. While it is recognised that a phased approach to implementation must take place, it is imperative that the reform process be hastened. Young people continue to be held in overcrowded conditions in the Alice Springs Youth Detention Centre, or are sent away from family and community to Don Dale. With no definite plans for the development of an alternative site, there is an urgency to stemming the number of young people who end up in the court and custodial end of the system.

While supporting the majority of the amendments in this Bill, CAYJ is concerned that it omits an amendment to raise the age of criminal responsibility, as per Recommendation 27.1 of the Royal Commission report, and omits a provision to ensure that children under the age of 14 may not be incarcerated except in limited circumstances, as per Recommendation 27.1 of the Royal Commission report. These provisions are central to the reform process and would have a profound impact on the wellbeing of vulnerable children, their families and communities in the Northern Territory.

FEEDBACK ON SPECIFIC ELEMENTS OF THE YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT BILL

CAYJ supports the proposed amendment to section 37B of the *Bail Act*, to remove breach of a bail condition as a criminal offence for young people. However, it is concerning that breach of a bail undertaking remains a criminal offence. This is inconsistent with the Royal

Commission's recommendation 'to exclude children and young people from the operation of section 37B (offence to breach bail)'¹, and is unnecessary, given that police would retain the power to arrest where a failure to attend court occurs.

The introduction of the offence of breach of bail in 2011 has led to a significant increase in the number of young people being arrested and remanded in custody, particularly Aboriginal young people.² This has led to the incarceration of young people who would not otherwise have been detained. In the experience of CAYJ members, the active policing of breach of bail continues to be of concern, which is borne out by the disproportionately high number of young people from Central Australia held on remand in both the Alice Springs Youth Detention Centre and Don Dale.

CAYJ does not support the proposed amendment to section 137 of the *Police Administration Act* in its current form, as it is inconsistent with the Royal Commission recommendation of providing necessary safeguards for young people held in police custody. The Royal Commission recommended that a young person may only be held in police custody without charge for no longer than four hours and that any further extensions of time may only be granted by a Judge.³ The proposed amendment authorises police to hold young people for up to 24 hours, without the recommended safeguard limitation of 4 hours before seeking judicial approval.

The proposed Bill does not address the Royal Commission's concerns that young people are being held in police cells for unreasonably long periods of time. The Royal Commission heard that at times, children were held in the Alice Springs police cells for 30 hours⁴, and CAYJ is concerned that young people continue to be held in the Alice Springs police cells for excessive periods. It is of particular concern that sufficient safeguards have not been built into this Bill, as NAAJA and NTLAC are in the process of withdrawing services to attend the police cells due to funding constraints, thereby reducing the potential for oversight by external agencies. Furthermore, there has been a decrease in calls to other frontline services to provide support to young people held in the police cells.

CAYJ supports proposed amendment to section 16 of the *Youth Justice Act* that arrest is to be used as a measure of last resort.

CAYJ supports proposed amendment to sections 49 and 50 of the *Youth Justice Act*, that proceedings are to be held in a closed court. This is in keeping with findings by the Royal Commission, with the United Conventions on the Rights of the Child that a young person has their privacy fully respected at all stages of proceedings⁵, and with evidence on the vulnerability and developmental needs of young people.

¹ Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, November 2017

² p.293 Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, November 2017, Vol. 2B

³ Recommendation 25.3, Report of the Royal Commission and Board in Inquiry into the Protection and Detention of Children in the Northern Territory' November 2017, Findings and Recommendations

⁴ p.237 Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, November 2017, Vol. 2B

⁵ Article 40, 1989 United Nations Human Rights, Convention on the Rights of the Child
Established to "campaign and lobby for an appropriate