



## Tangentyere Council Aboriginal Corporation

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Ms. Ngaree Ah Kit  
Chairperson  
Social Policy Scrutiny Committee  
GPO Box 3721  
Darwin, NT, 0801  
[ngaree.ahkit@nt.gov.au](mailto:ngaree.ahkit@nt.gov.au)

23 April 2019

Dear Ms. Ah Kit,

**RE: Social Policy Scrutiny Committee Inquiry into the Youth Justice and Related Legislation Amendment Bill 2019**

I write to you as CEO of Tangentyere Council Aboriginal Corporation (TCAC) on behalf of TCAC and its Corporate and Individual Members in relation to the Youth Justice and Related Legislation Amendment Bill 2019.

### **1. Background**

Tangentyere Council Aboriginal Corporation (TCAC) is an Aboriginal Community Controlled Organisation (ACCO) delivering Human Services, Health Promotion and Social Enterprise activities for the benefit of Aboriginal people from Alice Springs, its Town Camps and Central Australia. TCAC was first incorporated in 1979. TCAC has 16 Corporate Members, over 600 Individual Members and provides services to in excess of 10,000 people from a region that covers approximately 873,894 km<sup>2</sup>.

The TCAC Board of Directors (BoD) is composed of the elected Presidents of the 11 Town Camp Associations and 5 Aboriginal Corporations. TCAC was a finalist in the 2016 Reconciliation Australia, Indigenous Governance Awards and is the eighth largest Aboriginal Corporation in Australia.

TCAC provides a broad range of services and participatory development activities including: (1) Child Protection; (2) Youth Development; (3) Family Violence Prevention; (4) Community Safety; (5) AOD Harm Minimisation; (6) Tenancy Support; (7) Environmental Health; (8) Employment (CDP); (9) Service

Navigation and Coordination; (10) Community Centers; (11) Aged and Disabled; (12) Chronic Disease Care Coordination; (13) Property Management; (14) Construction; and (15) Applied Social Research.

## **2. Introduction**

TCAC and its BoD representing TCAC, its Corporate and Individual Members welcomes the opportunity to respond to the Social Policy Scrutiny Committee on the Youth Justice and Related Legislation Amendment Bill 2019 (the Bill).

From the perspective of TCAC the Royal Commission into the Protection and Detention of Children in the Northern Territory (Royal Commission); and the Northern Territory (NT) Government response to its recommendations provide a generational opportunity for significant changes to the youth justice system. Reform needs to deliver public policy that is driven by the pursuit of positive outcomes for vulnerable young people. These outcomes need to be sustainable and should reflect a vision for the NT that delivers less youth detention, lower rates of recidivism and better outcomes for young people and families.

TCAC understands that the Bill seeks to amend the Youth Justice Act 2005 and Youth Justice Regulations 2006, the Bail Act 1982 and Bail Regulations 1983 and the Police Administration Act 1978. The proposed amendments have been developed with the stated intention of progressing NT Government commitments to a number of recommendations of the Royal Commission that relate to Youth Justice.

In considering the proposed amends TCAC recognises that whilst the Bill includes several positive amendments that there are some serious omissions.

## **3. Raising the Age of Criminal Responsibility and Minimum Age of Detention**

The TCAC BoD is particularly concerned about the exclusion of measures to address Recommendation 27.1 of the Royal Commission Report, this recommendation is outlined below:

### **Recommendation 27.1**

Section 38(1) of the Criminal Code Act (NT) is amended to provide that the age of criminal responsibility be 12 years.

Section 83 of the Youth Justice Act (NT) be amended to add a qualifying condition to section 83(1) (I) that youth under the age of 14 years may not be ordered to serve a time of detention, other than where the youth: (1) has been convicted of a serious and violent crime against the person; (2) presents a serious risk to the community, and (3) the sentence is approved by the President of the proposed Children's Court.

The TCAC BoD concluded unanimously that the Recommendation 27.1 of the Royal Commission should be included as part of the Bill. Further this recommendation should be strengthened in favour of young people to (1) provide that the age of criminal responsibility be 14 years; and (2) that young people under the age of 16 years may not be ordered to serve a time of detention.

#### **4. Youth Specific Bail Considerations**

Recommendation 25.19 of the Royal Commission recommended that the Bail Act (NT) be amended to deliver the following outcomes:

##### Recommendation 25.19

- 1) To provide that a youth should not be denied bail unless:
  - a) charged with a serious offence and a sentence of detention is probable if convicted
  - b) they present a serious risk to public safety
  - c) there is a serious risk of the youth committing a serious offence while on bail, or
  - d) they have previously failed to appear without a reasonable excuse
- 2) To require that when imposing bail conditions the police and courts take into consideration:
  - a) the age, maturity and circumstances of the young person, including their home environment, and
  - b) the capacity of the young person to comply with the conditions
- 3) To require that at the time bail is granted to a young person, each bail condition and the consequences of breach of that condition be explained to the young person, taking steps to ensure their understanding, using interpreters or modified means of communication if necessary
- 4) To exclude children and young people from the operation of section 37B (offence to breach bail), and
- 5) To give police the power to:
  - a) Issue an informal or formal written warning to a young person believed to have breached any bail condition, or
  - b) Where a breach has occurred more than once, issue a summons to a young person who has breached bail requiring them to come before the court to determine the consequences of any breach.

TCAC supports the introduction of youth-specific bail considerations under the Bail Act that create a presumption in favour of granting bail for young people. TCAC supports the removal of breach of a bail condition as a criminal offence for young people. However, it is concerning that breach of a bail undertaking has not been included in this exemption. TCAC considers that retaining breach of a bail undertaking as a criminal offence will continue to have a disproportionate impact Aboriginal young people and that it will continue to see large numbers of young people being held on remand and penalised. Criminalising breach of bail is inconsistent with the principle of detention as a last resort for young people.

## **5. Arrest and Police Custody**

TCAC supports the proposed confirmation of arrest as a measure of last resort and the promotion of therapeutic interventions as a priority in addressing youth specific issues.

TCAC supports proposed amendments aligned with Recommendation 25.3 of the Royal Commission, this recommendation is outlined below:

### Recommendation 25.3

- 1) The Northern Territory Government ensure all police cells are made suitable for detaining children.
- 2) Provision be made in either the Police Administration Act (NT) or the Youth Justice Act (NT) that children and young people may be held in custody without charge for no longer than four hours. Any extension up to a further four hours may only be granted by a Judge.

TCAC recommends that the amendments taken in their entirety across the Youth Justice Act 2005 and Youth Justice Regulations 2006, the Bail Act 1982 and Bail Regulations 1983 and the Police Administration Act 1978 must ensure that Recommendation 25.3 is implemented with fidelity and without exception. There is no room for ambiguity.

## **6. Youth Diversion**

TCAC supports amendments to the Youth Justice Act to improve access to diversion programs for young people, by removing legislative barriers to its use. In considering youth diversion the TCAC BoD identified the need for youth diversion to be strongly aligned with (1) Local Decision Making; and (2) Evidence Based Policy and Practice. As a general principle TCAC holds that young people should be supported to access diversionary services earlier to alleviate risk of (re)offending and that such diversionary services could and should encompass a much broader range of services and pathway options for YP as per other jurisdictions

The TCAC BoD identified that elements of successful youth diversion included (1) Family and Community; (2) Respect; (3) Cultural Transmission; (4) Language; (5) Country; (6) Behaviour Change and (7) Participatory Development. These elements can best be delivered by appropriately resourced Aboriginal Community Controlled Organisations in collaboration with families and communities.

## **7. Closed Court**

TCAC supports the proposed provision that all court proceedings under the Youth Justice Act be held in a closed Court. TCAC recommends that this be strengthened further through the implementation of a specialist Youth Court presided over by a judge specialising in youth matters. This is consistent with Royal Commission recommendations. TCAC has ongoing concerns about the potential and actual

impacts of stigmatization of young people and other vulnerable groups through unwarranted and unnecessary media reporting.

## **8. Conclusion**

The Youth Justice and Related Legislation Amendment Bill 2019 as a mechanism for reform needs to be strengthened and should include the following:

- The adoption of Recommendation 27.1 of the Royal Commission Report with respect to the minimum age of criminal responsibility and minimum age of detention;
- The adoption of Recommendation 25.19 of the Royal Commission Report (in entirety) with respect to youth specific bail conditions;
- The adoption of mechanisms across the Youth Justice Act 2005 and Youth Justice Regulations 2006, the Bail Act 1982 and Bail Regulations 1983 and the Police Administration Act 1978 to ensure that arrest remains the measure of last resort;
- The adoption of Recommendation 25.3 of the Royal Commission Report (in entirety) with respect to young people being held in police custody

TCAC also recommends that opportunities for linkages between this reform processes and Local Decision Making be emphasized where possible.

Please contact Michael Klerck on 0438891722 should you have any comments or queries.

Thanks for your assistance.

Yours,



Walter Shaw  
Chief Executive Officer