

Aboriginal Peak Organisations Northern Territory

An alliance of the CLC, NLC, CAALAS, NAAJA and AMSANT

NT Royal Commission Response Background Paper

3.6 The need for a specialist Children's Court

In the NT, the specific needs of young people are being overlooked in a criminal justice system that caters predominantly for adult offenders. Whilst a specialist Youth Justice Court has been established in Darwin, in Central Australia, the Barkly and other remote regions there is no specialist Youth Justice Court to ensure that the unique needs and vulnerabilities of children in the justice system are being met.

Aside from young people appearing before the Youth Justice Court in Darwin, youth matters are interspersed with adult matters which often involve domestic violence related offending, heard by the same Local Court Judge. Young people and their families have nowhere separate and private to sit and wait for their matter to be heard. Youth matters are often delayed due to large adult court lists, resulting in young people spending significant periods in the cells.

The current Youth Justice Court model in Darwin focuses on criminal matters.

Young people, their families and stakeholders continue to see poor outcomes for young people appearing before the Court. Issues with the current approach include:

- Young people and their families feeling intimidated and alienated by the Court environment, and being unable to follow court proceedings due to technical language and jargon;
- The lack of participation of young people means that young people are not encouraged or supported by the system to meaningfully reflect upon and be accountable for their behavior;
- The principles of the Youth Justice Act, which emphasise diversionary options and detention as an option of last resort, are often not followed in Court;
- The current approach is not culturally appropriate and lacks meaning for Aboriginal youth, who are the primary users of the youth justice system;
- A lack of specialist professional development and training for judges, court staff, prosecutors and lawyers involved in youth matters before the court. Specialist training should include child and adolescent development, neurodisability, trauma and cross-cultural competency;
- Underlying causes of offending are often not addressed, leaving open the risk of recidivism;
- Even though the underlying causes of offending often amount to protective concerns, decisions about criminal matters are made in a silo and without information that may

already be available about the young person in the separate care and protection jurisdiction; and

- Youth justice proceedings are conducted in open court and can be reported on by the media. The public nature of proceedings is counterproductive to rehabilitation.

What would a specialist Children's Court look like?

A specialist Children's Court with jurisdiction to hear both criminal and care and protection matters would improve outcomes for young people and the broader community. Specially trained Judges would hear matters before the Children's Court. A position of President of the Children's Court of the NT would be created to oversee the operation of the court.

The Children's Court would be located in a separate physical location to courts hearing adult matters, and be appropriately resourced to provide wrap-around services to young people appearing before it. Such resourcing would support the undertaking of cognitive and psychological assessments where needed. The Court would be based on therapeutic jurisprudence and diversionary principles.

As part of this specialist Children's Court, a Youth Justice and Care and Protection cross-over list should be established which would apply to young people with criminal matters and concurrent involvement in the care and protection system. This approach would ensure that relevant, up to date information about the young person's background and circumstances is available to the court to better inform decisions.

The underlying reasons for a young person's offending are overwhelmingly connected with protective concerns. Viewing youth offending through a child protection lens will enable underlying causes to be addressed in a holistic way, which will more effectively reduce the risk of reoffending.

A specialist Children's Court will be better equipped and better informed to make bail and sentencing decisions that are most appropriate to the specific needs and circumstances of children who come into contact with the criminal justice system, and this is likely to result in less young people being detained. The Children's Court should have jurisdiction to deal with matters relating to the revocation or granting of parole for young people subject to sentences imposed by the Children's Court. Court proceedings in the Children's Court would be closed to the public, and the publication of the name or identity of children appearing at court prohibited.

Benefits of a specialist approach

The Royal Commission heard extensive evidence about the benefits of Children's Courts in other jurisdictions. Judge Peter Johnstone, President of the Children's Court of NSW, gave evidence that the benefits of the specialist Children's Court include a reduction in youth crime in NSW, the

development of sophisticated and therapeutic approaches to the policing of young people, and a reduction in the number of young people in detention.¹

Judge Johnstone reported a 38% decrease in the number of youth in custody in NSW from June 2011 – December 2016, and indicated that during this time 3 detention centres closed due to the falling number of young people in detention.²

In NZ, significant successes have been enjoyed through the Youth Court model, premised upon the diversionary principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter. In NZ, roughly 80% of young offenders never come before the Court, and are instead dealt with by Police Youth Aid, the specialist youth division of police. It is estimated that 83% of children dealt with by alternative action through Police Youth Aid never reoffend.³

¹ Evidence of Judge Peter Johnstone to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 8 May 2017, 3460

² Presentation by Judge Johnstone to the 6th Annual Juvenile Justice Summit, Sydney, 5 May 2017: “Early intervention, diversion and rehabilitation from the perspective of the Children’s Court of NSW”, p13, accessible at <https://childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence8may/Exh-337-068.pdf>

³ Judge C J Harding and Judge A J Becroft, ‘10 Characteristics of a Good Youth Justice System’, a paper for the Pacific Judicial Development Programme, Family Violence and Youth Justice Workshop, 2013 Port Vila, Vanuatu