



9 March 2017

The Secretary
Legal and Social Issues Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Peter O'Brien,

Re: Inquiry into Youth Justice Centres in Victoria

The National Aboriginal and Torres Strait Islander Legal Service (NATSILS) welcomes the opportunity to provide a brief submission to the Standing Committee on Legal and Social Issues' *Inquiry into Youth Justice Centres in Victoria* ('the Inquiry').

The NATSILS is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. The ATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples. NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

Our brief submission to the Inquiry relates to NATSILS concern regarding recent reports of alleged mistreatment of youth in both Parkville and Malmsbury Youth Detention Centres and more broadly to the high imprisonment rate of Aboriginal and Torres Strait Islander young people in Victoria.

This brief submission does not endeavour to respond in detail to all of the Terms of Reference for the Inquiry. Instead, this submission seeks to make broader comments in relation to the high imprisonment rate of Aboriginal and Torres Strait Islander young people and the shortcomings of procedures and safeguards presently available to address growing rates of imprisonment and mistreatment of Aboriginal and Torres Strait Islander young people in Victorian Detention Centres.

Background

NATSILS expresses deep concern regarding the direction of youth justice practices in the State of Victoria. In February this year, NATSILS received news that the Victorian Government had endorsed punitive measures, including the use of capsicum spray and extendable batons, to control and maintain order at Parkville and Malmsbury Youth Detention Centres. This was an alarming decision made by the Victorian Government that appeared to neglect the principle of the best interests of the child.

The Victorian Youth Parole's Annual Report of 2015-16 found that 16 per cent of the total number of children who received youth residential and youth justice orders from 2015-16 were Aboriginal. This figure coupled with the Australian Institute of Health and Welfare's December 2015 report on Youth Detention, that found 54 per cent of juvenile detainees between the ages of 10-17 in Australia were Aboriginal or Torres Strait Islander, reflects concerning trends regarding the overrepresentation of Aboriginal and Torres Strait Islander young people in detention. These statistics must be considered in light of recent Close the Gap findings that identified Aboriginal and Torres Strait Islander people to be disproportionately affected by inequalities surrounding education, employment, mental illness and life expectancy.

Close the Gap findings and current statistics relating to the overrepresentation of Aboriginal and Torres Strait Islander young people provide substantiated reasons as to why the Victorian Government should take immediate steps toward ensuring Youth Detention Centres adopt therapeutic rather than punitive approaches to youth justice. Punitive approaches to youth justice, such as the use of capsicum spray and extendable batons recently endorsed by the Victorian Government earlier this year, have irreparable effects on a young person's mental health, self-esteem and opportunity to rehabilitate. Such measures further complicate and exacerbate the impact existing inequalities have upon Aboriginal and Torres Strait Islander young people in detention. As such, NATSILS considers it pertinent that the Victorian Government commit to taking immediate steps to improve protections and safeguards available to young Aboriginal and Torres Strait Islander people in detention, including first adhering to s.10 (1) of the Children, Youth and Families Act that stipulates the requirement for Government procedure and action to consider the best interests of the child.

Recommendations

In response to the Standing Committee on Legal and Social Issues Inquiry, NATSILS recommends:

1. That there be increased transparency in the management of Youth Justice Centres so as to ensure that system failures such as mismanagement and mistreatment of young Aboriginal and Torres Strait Islander people in detention are able to be identified, addressed and if necessary supported by NATSILS legal assistance;
 - a. NATSILS recommends that the Victorian Government implement independent oversight mechanisms that ensure Youth Detention Centres operate under the



provisions and guidelines stipulated in the Optional Protocol to the Convention Against Torture (OPCAT), which the Federal Government have recently ratified.


2. That the Victorian Government facilitate a shift toward Youth Detention Centres adopting a therapeutic rather than punitive approach to youth justice; and
 - a. That Youth Justice Staff be trained in Therapeutic Crisis Intervention (TCI) that can better assist Youth Justice Staff in responding to the misconduct of young people in detention and;
3. That young Aboriginal and Torres Strait Islander people be provided with access to culturally appropriate support mechanisms and programs; and
 - a. That Victorian Youth Detention Centres place greater emphasis on the importance of young Aboriginal and Torres Strait Islander people maintaining a connection with culture. NATSILS recommends that culturally specific activities and resources be made available to Aboriginal and Torres Strait Islander young people in detention. This extends to the provision of culturally specific reading materials and programs.
 - b. That when young Aboriginal and Torres Strait Islander people participate in rehabilitative support programs, they have access to support programs led and controlled by Aboriginal Organisations that facilitate mentorship, cultural assistance and essential wellbeing services.
4. That the Victorian Government ensure safeguards exist to prevent young people being transferred from Youth Detention Centres to Adult Prison Facilities;
5. That the Victorian Government have specific regard to sections 23 and sections 19 of the Victorian Charter of Rights and Responsibilities when creating and enforcing policies that effect young Aboriginal and Torres Strait Islander children in detention; and
 - a. NATSILS recommend the Victorian Government have sufficient regard to cultural rights and implications of any youth justice program and/or procedure that effects Aboriginal and Torres Strait Islander young people. In regards to the practice of lockdowns and isolation within Detention Centres, NATSILS warns that such practices are against Aboriginal and Torres Strait Islander cultural practices and as a result have additional negative impacts upon Aboriginal and Torres Strait Islander young people.
6. That where matters of bail concern young Aboriginal and Torres Strait Islander people, remand be considered a measure of last resort, reflective of Article 37(b) of the UN Convention on the Rights of the Child;
7. That the Victorian Government place an emphasis on culturally appropriate early intervention measures to prevent growing incarceration rates of Aboriginal and Torres Strait Islander children;

- a. NATSILS supports the implementation of community based legal education for Aboriginal and Torres Strait Islander young people to deter the likelihood of offending in the first instance and to ensure young people are empowered and aware of their rights whilst detained. The eight ATSILS provide Community Legal Education (CLE) as part of their legal assistance services. CLE involves the provision of information and education to individuals or groups regarding a person's rights and responsibilities in relation to the law and legal processes. CLE is particularly relevant for young children as a preventative measure to ensure they do not enter a cycle of imprisonment.
 - b. Further, NATSILS supports Justice Reinvestment. Justice Reinvestment proposes that the escalating costs – both social and economic – of imprisoning many offenders can be reduced by reallocating a portion of the expenditure on programs and services to support the diversion of an offender, in appropriate cases, from imprisonment and to address the causes of their offending.
8. That the Victorian Government place emphasis on the importance of preventing contact between young Aboriginal and Torres Strait Islander people and the criminal justice system. NATSILS highlights the importance of essential support services, such as Victoria Police, Government agencies, Disability Services, Substance Abuse Services and Mental Health Services developing a more coordinated effort to ensure Aboriginal and Torres Strait Islander young people do not continue to be overrepresented in Youth Detention Centres.

Further, NATSILS endorses the recommendations contained in the Submission to the Inquiry made by the Victorian Aboriginal Legal Service (VALS).

Please do not hesitate to contact NATSILS Executive Officer, Karly Warner on 0423 610 587 or via email at kwarn@vals.org.au should you require any further information or clarification.

Yours faithfully,



Mr Wayne Muir
Co-Chair NATSILS