



## North Australian Aboriginal Justice Agency

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### **NAAJA's Position on Youth Justice Reform: A Smarter Approach to Community Safety**

April 2021

NAAJA strongly opposes the youth justice reforms announced by the Northern Territory Government. These reforms focus on greater use of electronic monitoring, stricter bail laws and erosions in access to diversion.

There is little detail on the draft Bill due to be tabled in the May 2021 Parliamentary sittings. The abolition of the Social Policy Scrutiny Committee and lack of consultation with legal stakeholders demonstrates the absence of Government commitment to genuine partnership with Aboriginal communities and organisations to work on ethical and humane reforms. The competition between both the Government and Opposition to be the 'toughest on crime' flies in the face of established evidence about what works to reduce offending and supporting young people to succeed.

NAAJA supports an evidenced based approach to addressing community safety. This can be achieved by investing in measures that reduce youth offending and provide improved access to culturally responsive services.

The Royal Commission into the Protection and Detention of Children in the Northern Territory received more than 480 witness statements, 386 personal stories, and approximately 500 submissions relating to children in care and detention including many from experts and professionals both Australian and international, Government and non-government officials and services providers. The Royal Commission recognized that locking children up is not an effective way of reducing crime. Punitive approaches are proven to not reduce risk of reoffending. Time on remand in detention only compounds existing trauma without providing opportunities for rehabilitation, and is shown to increase risk for future contact with the youth justice system.

NAAJA supports the implementation of laws based on expert opinion. NAAJA does not support laws that are based on sector interests and fundamentally designed to focus on strategies to lock children up. A more effective use of public funds is to continue investing in community based solutions that have succeeded: on country programs that keep children connected to family and culture, diversion and youth justice conferencing.<sup>1</sup> These initiatives should be supported and expanded. This approach can still hold young people accountable, whilst offering an opportunity for learning, healing and repair of relationships. An evidence

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<sup>1</sup> 82 per cent of young people who complete a youth cultural and training camp do not go on to reoffend. 70 per cent of young people who complete a youth justice conference do not go on to reoffend.



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based approach demonstrates that investing in these initiatives provides for a long term solution to reducing offending and addressing community safety.

### **Bail**

NAAJA does not support automatic revocation of bail for ‘serious breaches’ or expanding the list of prescribed offences in the *Bail Act* to which section 7A presumption against bail will apply. These ‘serious breaches’ will encompass a wide range of conduct including ‘failure to complete diversion’ and breaches of curfews that will only see more Aboriginal children locked up in police and prison cells.

The proposed changes to the *Bail Act* roll back key Royal Commission recommendations which were implemented by legislation and commenced on 2 March 2020. That reform was designed to facilitate greater access to bail for young people, such as bail support plans, Aboriginal cultural considerations, access to interpreters. NAAJA supported these reforms, but they have not been implemented sufficiently or resourced adequately.

The majority of children and young people in contact with the youth justice system have complex neuro-disabilities and cognitive impairments such as FASD. This means they do not have the profile of neuro-typical children and cannot (*not will not*) comply with complex conditions of bail or court orders that they do not have the capacity to understand or make sense of. The system needs to better meet the needs of these children and young people and support them to succeed.

### **Electronic monitoring**

NAAJA does not support the expanded use of electronic monitoring (EM) by police. EM is stigmatizing, ineffective and unnecessary for young people. There is little evidence of electronic monitoring being an effective tool in the prevention of breaches of bail, breaches of community orders or further offending. The use of EM must be an option of last resort and not first resort and tailored to the needs and risk of the individual.

NAAJA does not support the expansion of EM to include children on youth diversion programs as it would be counterproductive and only serve to label children as offenders and entrench them within the criminal justice system.

More sustainable and effective methods of supporting young people on bail or other forms of community supervision should be implemented. In particular, priority should be given to ensuring that Aboriginal children in remote communities have access to local wrap around services to support them meet bail requirements.

### **Diversion and restorative processes**

NAAJA does not support the proposed amendments to s 64 or s 64A of the *Youth Justice Act* which would restrict young people’s access to diversion. The focus must be on increasing, rather than reducing, pathways out of the youth justice system. The proposed changes will



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curtail the court's ability to refer matters back for diversion in circumstances where a young person has already been considered for diversion by police.

There should be no limitation on the availability of youth diversion for children. Children often need multiple chances before they can be successfully diverted from the criminal justice system and these further opportunities should be made available. There should be a case-by-case assessment of the appropriateness of a particular matter and a particular young person for diversion. Children and young people should have access to effective restorative approaches such as Youth Justice Group Conferencing as a diversionary measure that also provides victims impacted by harm with the opportunity to meet with the young person to explain how they have been impacted. These are approaches that hold young people accountable, whilst offering an opportunity for learning, healing and repair of relationships.

In order for diversion to work more effectively in the NT, current barriers to accessing diversion need to be addressed:

- Assessing children and young people with neuro-disabilities and cognitive impairments as unsuitable for diversion based on the child being unable to meet conditions of diversion due to their abilities and functioning
- Lengthy delays in diversion assessments, commencement and completion
- Lack of coordination between agencies to support young people
- Lack of access to community-led diversion in remote communities
- Unwillingness of police to utilise diversion (data indicates that diversion rates have decreased since 2019)

The current diversion regime (even without erosions to section 64) provided by police and Back on Track is unable to meet the needs of Aboriginal children and young people who have the most complex needs and trauma profile, resulting in these young people being entrenched within the youth justice system. The current diversion regime focuses on police-led approaches that do not adequately address the needs of young people experiencing the most complexity, which includes the absence of comprehensive assessments and tailored case plans that are child led instead of police led.

Children and young people with complex needs including those who have neuro-disabilities must have access to diversion at every possible opportunity, yet these are the children who are routinely funneled into the youth justice system after being assessed as unsuitable for diversionary programs. This is a failure of diversion in its current form. Diversion must be seen as a basic human right, and effective diversionary responses place the child at the centre of the approach harnessing their strengths and abilities, and focus on scaffolding a network of child focused supports.

NAAJA advocates for an independent review of the current system of diversion, and advocates for investment in a court based, community led youth diversion program that will



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allow the court to refer young people directly to community based youth diversion providers who employ qualified and skilled practitioners that can undertake assessments at court and connect young people quickly to the supports they need to keep out of trouble.

### **NAAJA calls for:**

#### **Systemic reforms**

- The Northern Territory Government to honour the commitment to build genuine partnerships with Aboriginal communities and organisations
- The Northern Territory Government invest in community designed and led community based sentencing options for Aboriginal children and young people, grounded in local decision making, cultural authority and expertise of local Elders
- The Northern Territory Government as a matter of urgency raise the age of legal responsibility from 10 to 14 years to bring the Northern Territory's current laws in to line with international best practice and extensive research advice, and based on original Government commitment made to this reform in 2017
- The Northern Territory Government as a matter of urgency commit to and invest in therapeutic alternatives to detention in recognition that the current youth detention facilities are not fit for purpose
- The Northern Territory Government invest in a workforce development strategy to ensure highly skilled and trained professionals are employed across youth justice, child protection and disability services to support young people with complex needs
- The Northern Territory Police work with Aboriginal leaders and organisations to develop community policing models to address safety concerns at the local level
- All political parties move their policy focus, public narrative/communications and discussion to evidence based messaging focused on the reasons young people are coming into contact with the criminal justice system: housing, food security, mental health and disability, lack of culturally appropriate educational opportunities

#### **Strengthening diversionary responses**

- The Northern Territory Government maintain the diversion reforms to the *Youth Justice Act* which commenced in March 2020
- The Northern Territory Government invest in an independent review and evaluation of the current diversion regime and make the findings of the review available to the public
- Increased use and expansion of diversion programs for young people and funding for Aboriginal community controlled service providers, especially in remote communities with a focus on place based approaches that are community designed and led
- The Northern Territory Government resource and implement a new, court based and community-led diversion program that will allow the court to refer young people to diversion (i.e. no police assessment) based on successful models in other jurisdictions.



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This should include partnership with Aboriginal communities and organizations to fully re-design the current model of youth diversion

### **Bail reform**

- The Northern Territory Government maintain the bail reforms which commenced in March 2020
- Increased use and expansion of bail support programs for young people and funding for Aboriginal community controlled service providers, especially in remote communities with a focus on place based approaches that are community designed and led
- The Northern Territory Government and Department of the Attorney-General and Justice alongside key stakeholders co-design a decision-making tool that will become a mandatory step in all decisions regarding young people and grants of bail