

ADCA Submission to the Hours of Representatives Standing Committee on
Aboriginal and Torres Strait Islander Affairs – Inquiry into the high level of
involvement of Indigenous juveniles & young adults in the criminal justice system

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Executive Overview

The Alcohol and other Drugs Council of Australia (ADCA) welcomes the opportunity to respond to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the high level of involvement of indigenous juveniles and young adults in the criminal justice system. As the National peak body for the alcohol and other drugs (AOD) sector, ADCA has focused its response on the significant linkages between Indigenous AOD harms, and interactions with the criminal justice system.

This submission highlights the need for Indigenous-specific data capture, to accurately define the circumstances under which Indigenous juveniles and young adults come into contact with the criminal justice system, and the AOD issues/ underlying causes which may have prompted any interactions. ADCA believes that improving data collection as well as providing increased research funding could enable a greater understanding of Indigenous incarceration issues.

The non-government organisation (NGO) AOD sector has played a significant role in reducing and/ or preventing the harms that arise from substance abuse. In ADCA's opinion, the Inquiry may benefit from exploring the relationships existing between Governments at all levels and NGO providers of AOD treatment and prevention services.

ADCA is aware of a number of programs in both rural/ remote and urban settings which are providing excellent treatment/ rehabilitation/ diversion services for Indigenous people. In our response to ToR 3, ADCA provides examples of what it considers to be successful Indigenous AOD treatment/ prevention/ diversion programs.

ADCA has also included information from a previous ADCA submission to the Productivity Commission's Research into the Contribution of the Not-For-Profit Sector. This aims to aid the Inquiry's understanding of the issues and constraints facing the NGO AOD sector as it attempts to reduce and prevent the harms that arise from both Indigenous and non-Indigenous AOD consumption.

ADCA believes that adoption of the following nine recommendations will help to reduce the impact of Indigenous AOD issues on the criminal justice system:

1. conduct further Indigenous-specific research to develop the evidence-base and provide greater understanding of the nexus between intoxication and indigenous incarceration
2. promote communities to take initiatives at a local level to restrict alcohol sales
3. address the reasons behind the gap in providing justice diversionary facilities to Indigenous juveniles and young adults
4. implement the Justice Reinvestment program ensuring that initiatives addressing the harms caused by substance abuse form a core component of the Australian Justice Reinvestment model
5. provide funding to promote and replicate the success obtained by the Geraldton Alternative Sentencing Regime
6. expand Drug Courts to include licit substance use, especially alcohol and solvents/ inhalants

7. adopt Recommendation 15 from the Senate Community Affairs Committee Inquiry into Petrol Sniffing
8. adopt the recommendations from the report into Sydney Drug and Alcohol Services as noted in response to ToR 2
9. provide funding to investigate the three successful programs mentioned in response to ToR 3, and replicate similar programs in other communities; and
10. investigate and adopt ADCA's recommendations to the Productivity Commission regarding the contribution that not-for-profit AOD organisations make to reducing and preventing Indigenous incarceration.

Who we are and what we do: ADCA and the AOD sector

ADCA is the national peak body for the alcohol and other drugs (AOD) sector, providing an independent voice for people working to reduce the harm caused by alcohol and other drugs.

ADCA is a non-government, not-for-profit organisation which receives approximately 80 per cent of its core funding and major ongoing project funding through the Australian Government Department of Health and Ageing under the Community Sector Support Scheme (CSSS), and the National Drug Strategy Program respectively. Approximately 12 per cent is received through other project grants. The remaining eight per cent is generated through ADCA's membership fees, interest and other sources of income (small one-off projects). ADCA is a company limited by guarantee, a public benevolent institution with income tax and sales tax exemption, and a deductible gift recipient.

As the national peak body, ADCA occupies a key role in advocating for adequate infrastructure support and funding for the delivery of evidence-based AOD initiatives. In this regard, ADCA represents the interests of a broad group of AOD service providers and individuals concerned with prevention, early intervention, treatment, supply reduction, and research.

Under new governance arrangements, the ADCA Board is elected by the ADCA membership and consists of a total of nine Board Directors. The ADCA Federal Council comprising one representative per State/ Territory peak plus the ADCA Board, has been established as a key mechanism for coordination and cooperation with State/ Territory peaks. The ADCA Policy Forum comprises the ADCA Board, the State/ Territory AOD peaks, and the Chairs of the ADCA Working Groups, and establishes an advisory forum on key policy issues for the AOD sector. Both the ADCA Federal Council and the ADCA Policy Forum meet on a regular basis.

At 1 January 2010, ADCA's membership totaled 384, comprising 166 organisational members, 55 associate organisational members, 152 individual members, and 11 life members. These include AOD services, agencies, and individual professionals and practitioners engaged in AOD services throughout Australia, as well as major university research centres, tertiary institutions offering courses in addiction studies and other programs for alcohol and other drugs workers, officers of law enforcement and criminal justice systems, policy analysts, and administration.

ADCA's strategic communication, policy, and advocacy on key issues is developed in close liaison with its broad and diverse membership base across all jurisdictions, the State and Territory peak bodies, as well as other AOD and non-government organisation (NGO) stakeholders.

Response by ADCA to relevant Terms-of-Reference (ToRs)

ADCA has identified four relevant Terms-of-Reference (ToRs) to address and discuss AOD implications – each of which has been indented, italicised and bolded for ease of reference.

ToR 1: The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this.

The impact and prevalence of illicit drug use appears to be greater amongst Indigenous populations than non-Indigenous. The 2007 National Drug Strategy Household Survey reports that Indigenous respondents were almost twice as likely to report recent drug use as non-Indigenous (24 to 12 per cent respectively). Similarly, Indigenous respondents were over one and a half times more likely to consume alcohol at levels which risk short-term harm (27 to 20 per cent), and slightly more likely to consume alcohol at levels which risk long-term harm (12 to 10 per cent) (Australian Institute of Health and Welfare, 2008).

Distance and remoteness of many communities may also be a factor in higher than average illicit drug consumption, with the 2007 National Drug Strategy Household Survey reporting that a greater proportion of respondents from remote or very remote regions had used illicit substances (12 per cent), than compared with other respondents living elsewhere.

Data from the 2007 Drug Use Monitoring in Australia (DUMA) project indicated that over 68 per cent of Indigenous adults in police custody tested positive for a range of drugs. Of these, 63.8 per cent self-reported that they had consumed alcohol within the 48 hours prior to their arrest. For juvenile detainees, these figures appear to be higher, with almost 90 per cent of Indigenous juvenile detainees testing positive to drugs compared to 40 per cent of non-Indigenous juvenile detainees in New South Wales. The DUMA project didn't conduct juvenile research in other States/ Territories in 2007 (Australian Institute of Criminology 2008).

Although a causal link between substance use and criminal offences has not been conclusively proven, there is a correlation between the two. There is also a great deal of evidence to suggest that alcohol plays a major role in offences committed by Indigenous people. For example, the Australian Institute of Health and Welfare reports Indigenous people were three and a half times more likely to have been affected by alcohol/ drug problems and/ or abuse/ violent crime (the Australian Bureau of Statistics, and the Australian Institute of Health and Welfare, 2008).

However, the differing classifications of juveniles creates a confounding factor in accurately assessing the appropriate levels of Indigenous juvenile involvement in the

criminal system. In 2005-06, Indigenous young people were under juvenile justice supervision at a rate of 44 per 1000, compared to a two in 1000 rate for the non-Indigenous population. It should be noted that both the Indigenous and non-Indigenous rates of juvenile justice supervision trended downwards from 2003-04 to 2005-06 (the Australian Bureau of Statistics, and the Australian Institute of Health and Welfare, 2008).

The 2007 DUMA project showed that inmates in Alice Springs (76 per cent) were most likely to report drinking, followed by those in Darwin (69 per cent). However, Darwin inmates consumed the greatest quantity of alcohol in the 24 hours leading up to arrest. It was also found that young detainees were more likely to drink excessively than older detainees (Australian Institute of Criminology 2008).

The National Indigenous Drug and Alcohol Committee's (NIDAC) report *Bridges and Barriers: Addressing Indigenous Incarceration and Health* highlights the lack of Indigenous-specific empirical data available on the AOD burden of Indigenous involvement in the criminal Justice system. While a number of inferences can be made, as shown above, the lack of rigorous, national, quantitative data hampers statistical analysis and understanding of the totality of this issue (Australian National Council on Drugs, 2009).

In light of the known Indigenous connection between intoxication and incarceration, ADCA agrees with NIDAC's recommendation that research funding be provided to develop the evidence base in order to understand the nexus between intoxication and Indigenous justice issues.

ADCA notes that The Australian Human Rights Commission (AHRC) has endorsed a United States (US) model aimed at reduction in the rates of recidivism known as Justice Reinvestment. AHRC has explained the concept and its brief history as follows:

The concept of justice reinvestment originated in the United States. It was initially developed by the Open Society Institute in 2003, but has since been taken up in 10 States in the US (Arizona, Oregon, Connecticut, Kansas, Michigan, Nevada, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin).

Justice reinvestment is a criminal justice policy approach that diverts a portion of the funds spent on imprisonment to the local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these communities. It is not just about tinkering around the edges of the justice system – it is about trying to prevent people from getting there in the first place.

Justice reinvestment retains detention as a measure of last resort for dangerous and serious offenders, but actively shifts the culture away from imprisonment (AHRC, 2009).

The results of Justice Reinvestment programs in the US show that the approach is particularly effective with juvenile offenders. In Oregon there was a 72 per cent decrease in the number of young people in detention (Calma, 2009).

AHRC Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Tom Calma, has suggested that the Justice Reinvestment program would be particularly effective in Indigenous communities in Australia as it involves analysis of the systemic issues that lead to incarceration and thus can be culturally appropriate to Indigenous offenders (Calma, 2009).

Calma has highlighted 14 “High stakes Indigenous juvenile justice communities” across Australia that would be well-suited to the Justice Reinvestment model – including Dubbo (NSW), Alice Springs (NT), Ceduna (SA), and Broome (WA) (Calma, 2009).

Of particular interest to ADCA is the funding allocated towards substance abuse treatment under the Justice Reinvestment program as this funding can be used to enhance current programs such as those endorsed in this submission as well as supporting new initiatives.

ADCA endorses the Justice Reinvestment program and recommends that it is trialed in the identified communities across Australia. Furthermore, ADCA recommends that programs addressing the harms caused by substance abuse form a core component of the Australian Justice Reinvestment model.

ToR 2: Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system

As noted in response to ToR 1, significantly higher proportions of Indigenous offenders are intoxicated when committing crimes than non-Indigenous offenders. In ADCA's opinion, this problem may be alleviated by providing locale and culturally-specific drug and alcohol counseling/ rehabilitation or prevention/ diversion services.

For example, the Geraldton Alternative Sentencing Regime reports that 40 per cent of appearances identified as being Indigenous. Reasons for the high Indigenous participation rate were seen as being related to the:

- involvement of Indigenous people in the design and planning of the program
- inclusion of all licit and illicit substance users, and
- inclusion of both serious and non-serious offences.

The independent review found that this Court program provided a healing experience for Indigenous participants (King, M 2006).

As discussed earlier in response to ToR 1, a review of Queensland's diversionary programs found that while Indigenous offenders were less likely to be referred by police to diversionary processes, diversionary processes such as conferencing were successful in reducing re-offending rates (Cunneen et al, 2005).

As noted by King in his 2006 paper, most Drug Courts are only available for people with illicit drug issues. However, there is a high proportion of Indigenous people whose substance problem is not illicit, but rather licit substance abuse – for example, alcohol or solvents/ inhalants abuse. ADCA recommends that, as in the Geraldton program, all Juvenile Drug Courts be opened for Indigenous people who experience illicit or licit substance abuse (King, M 2006).

However, while Drug Courts and Indigenous-specific justice strategies may be effective strategies after an offence has been committed, they can't by themselves reduce Indigenous over-representation within the justice system. With regard to AOD-related crime, ADCA believes that more Government funding needs to support Indigenous-specific and collaborative AOD treatment agencies, programs and projects. Further, these schemes need to be locally based and take account of local community culture and situations.

An example is the Red Dust Healing program which aims to provide Indigenous adults and young males with an understanding of identity so as to equip them with self-evaluation skills. The aim is to develop the adults as future role models and the young males as fathers, while restoring family relationships. This program is active in Queensland and New South Wales and is teaching Indigenous men how to connect with culture and land, and is providing them with stronger life-skills and foundations, which will help to avoid both AOD harms and legal issues (Cull, S 2009).

A number of Indigenous and non-Indigenous figures have argued that substance abuse is a predicator for Indigenous crime. Weatherburn noted in his 2008 paper on the role of drug and alcohol policy in Indigenous crime that supply side interventions, such as restricting alcohol sale hours, may be an effective means to reduce the rates of Indigenous offending (Weatherburn, D 2008).

This report is in keeping with ADCA's long-standing position on liquor licensing. ADCA firmly believes that reducing the hours of trade and numbers of alcohol licensees will reduce the harms arising from alcohol, including incarceration, in both Indigenous and non-Indigenous population groups. Further, ADCA believes that the current inconsistencies generated by different licensing regimes in each State/ Territory would best be resolved through the Council Of Australian Governments (COAG).

ADCA notes that developing a nationally consistent alcohol licensing regime is one of the Preventative Health Taskforce's Key Action Items on Alcohol (Commonwealth of Australia 2009). ADCA has strongly supported the Preventative Health Taskforce's Key Action Items in various Submissions, through the media, and at other Parliamentary Hearings.

A research report has been conducted on the effectiveness of mainstream AOD services for a metropolitan Indigenous population. Conducted in Sydney, it found there were some aspects that could improve the acceptability of mainstream AOD services. These included:

- increasing cultural appropriateness of mainstream AOD treatment services
- providing more coordinated care, ranging across both physical and mental comorbidities
- designing culturally appropriate prevention programs
- building partnerships with other Indigenous service organisations and establishing paths of referral; and
- addressing remaining barriers to treatment (Teesdale, C et al 2008).

ADCA agrees with the areas identified for improvement, and believes that increasing capacity in these areas would help to reduce AOD harms that fall on Indigenous communities, including AOD-related imprisonment and AOD-related crime.

ToR 3: Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres

ADCA is aware of a variety of Indigenous-specific programs that have proved successful in supporting Indigenous communities. However, ADCA firmly believes that simply identifying “best practice” initiatives and disseminating them in different settings, without being cognisant of the culturally-specific requirements, will not achieve success.

ADCA is of the opinion that best-practice examples should be studied and then assessed as to how they can be adapted to best enhance other Indigenous practices. It should be noted that Indigenous AOD issues were discussed during the Senate Community Affairs Committee’s Inquiry into Petrol Sniffing. ADCA recommends the adoption of Recommendation 15 from that Inquiry:

5.62 The Committee recognises that there are some elements of that are critical to the success of community programs and recommends that:

- Government funded programs must provide for these critical elements, including community ownership, the involvement of families and youth in their development and combined with the provision of essential support and expertise;*
- The Commonwealth identify, evaluate and provide ongoing support to allow the continuation of and further development of those community-based programs that have proven particularly successful; and*
- The Commonwealth develop and implement a communications strategy that facilitates information sharing and the development of such programs in other communities. (Commonwealth of Australia, 2006).*

The Mt Theo organisation in the Northern Territory, including the Mt Theo outstation and Jaru Pijjridu, has been effective in reducing Indigenous substance abuse, particularly petrol sniffing in the community of Yuendumu.

Its continued success over the past 15 years has reduced petrol sniffing and other AOD harms significantly. Crucially, the Mt Theo program has adapted to meet new challenges, such as increasing cannabis use that have arisen over the lifetime of the project (Mt Theo 2010). Recommendation 16 of the Senate Community Affairs Committee’s Inquiry into Petrol Sniffing strongly supported the Mt Theo program, noting that the Commonwealth should provide funding to encourage the long-term support of Mt Theo, and support other interested communities to develop similar programs to fit their needs (Commonwealth of Australia, 2006).

In Queensland, Goori House has been operating for almost 10 years and has provided Indigenous men with residential withdrawal facilities. Clients are referred to Goori House

through a variety of means, including detention centres, and the Aboriginal and Torres Strait Islander Legal Service. Its services have been based on the Galangoor therapy program which was first developed for Indigenous men dealing with AOD issues in correctional institutions (Goori House, 2010).

The Lyndon Community in New South Wales, while not Indigenous specific, has successfully managed Indigenous programs such as the Murdi Paaki Drug and Alcohol Network, which provide outreach services to regional and remote Western New South Wales (Lyndon Community 2010).

ADCA recommends that these examples be further investigated, with a view to providing long-term support to replicate the successes obtained by these programs within other communities.

ToR 4: The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system.

While aware of the need for clear responsibilities between Government jurisdictions to better coordinate and target Indigenous issues within the justice system, this ToR fails to account for the significant contribution that the not-for-profit sector provides to reduce social disadvantages experienced by Indigenous juveniles and young adults.

In ADCA's opinion, the Inquiry should also consider ways in which the interaction between Government and not-for-profit organisations might be improved to better serve the needs of Indigenous juveniles and young adults to both prevent the underlying causes that result in Indigenous incarceration, and to provide appropriate pathways to support Indigenous juveniles and young adults to reduce the risk of recidivism.

ADCA believes that there is significant scope for improved coordination and targeted service provision across the AOD NGO spectrum, including Indigenous-specific services. As noted in the response to ToR 1, there appears to be significant linkages between intoxication and Indigenous incarceration. However, Indigenous AOD issues cannot be addressed singly without addressing the wider causes of social dislocation, such as poverty, unemployment, housing and other social/ economic issues.

On behalf of the AOD NGO sector, ADCA in 2009 presented a Submission to the Productivity Commission's Contribution of the Not-For-Profit Sector. This Submission dealt with the contribution of the AOD NGO sector and highlighted barriers that hinder the effectiveness of the AOD NGO and other not-for-profit enterprises to reduce social dislocation and other issues. ADCA's full Submission can be viewed at <http://www.adca.org.au/images/publications/adca%20submission%20to%20the%20productivity%20commission.pdf> and the recommendations to the Commission are reproduced below:

ADCA recommends:

- **Government funding arrangements for not-for-profit organisations to be designed on a longer-term basis to provide security and opportunities for longer-term financial and operational planning**

Many not-for-profit organisations are currently faced with short-term funding arrangements that present serious impediments to not-for-profit organisations as they generate uncertainty, inhibit innovation, make it difficult to retain staff, render longer-term financial planning and proper investment extremely difficult, and stop organisations from pursuing more holistic strategic and organisational goals. ADCA considers a consistent and secure funding stream is vital for ensuring the effectiveness and sustainability of not-for-profit organisations' services and operations, and recommends that all funding agreements be designed on at least a three-year basis as this would enable longer-term approaches and outcomes.

- **A new accounting framework which would allow not-for-profit organisations to conduct single annual reporting to all governments and their different departments for management and acquittal of public funds**

This would decrease the regulatory burden imposed on not-for-profit organisations and eliminate the duplication caused by not-for-profit organisations having to report back to multiple funding bodies under different reporting requirements. Standardisation of reporting requirements and establishment of efficiency benchmarks would furthermore allow comparing different not-for-profit organisations' performance and expenditure patterns. ADCA considers the ability to assess and compare not-for-profit organisations' performance against the available funds to be of crucial importance for evaluating the efficiency and effective of their operations.

- **The establishment of a separate authority that monitors the acquittal and management of reporting on behalf of all government departments**

Ideally, instead of reporting back to a number of different funding bodies, each utilising different reporting requirements, not-for-profit organisations should on an annual basis report back to one central authority, using a template that accounts for all grants received by one not-for-profit organisation. This would enable the application of consistency and standardisation to reporting requirements, and provide an opportunity to substantially decrease the amount of red tape that not-for-profit organisations are currently facing and hence increase NGO capacity.

- **The establishment of efficiency benchmarks of similar activities performed by different not-for-profit organisations that are to be evaluated against not-for-profit organisations' financial situation as part of a new accounting framework**

These benchmarks would assess the performance of not-for-profit organisations and their outcomes and function as an evaluation tool of not-for-profit organisations' efficiency and capability to function as major providers of social services.

- **A community benefit assessment section to be part of the new accounting framework that enables not-for-profit organisations to**

report in a consistent manner on the contribution they make to the Australian community

This section could be utilised by the proposed authority to assess and compare the performance of different not-for-profit organisations, taking their funding arrangements into account. Funding allocation and increases could be based on evaluation of the different sections of the new accounting framework. ADCA strongly believes that data which truly measures performance, and enables comparability between service providers will assist in building capacity in the not-for-profit sector.

- **The establishment of a representative body that serves as an independent voice of the not-for-profit sector to government, business, and media**

A body such as the National Roundtable of Non-profit Organisations or a steering committee as envisaged by the Non-profit Sector Forum in December 2008 would be a way to address the size and diversity of the Australian not-for-profit sector and would establish a mechanism of representation and advocacy on behalf of the not-for-profit sector.

- **Investment in the provision of career incentives and skills development opportunities for employees of not-for-profit organisations**

The not-for-profit sector needs to strengthen its own training provision in order to attract staff, improve staff qualifications as well as providing them with career development opportunities. Additionally gained qualifications need to be formally recognised and reflected in increased remuneration. Portability of long service leave and qualifications when moving from employment in the public sector to the non-government sector as well as appropriate training and skills development opportunities could attract people to join the NGO workforce.

- **Equal remuneration of not-for-profit sector employees and public sector employees doing similar work**

ADCA welcomes a decision the Queensland Industrial Relations Commission (QIRC, A/2008/5) made in May 2009 on pay parity for community workers in non-government organisations and hopes that it will function as a trigger for similar rulings in other jurisdictions. Community workers employed by the government and their counterparts employed by non-government organisations should be remunerated according to the principle of “equal remuneration for work of equal value” as defined in the Workplace Relations Act 1996. If this principle is not realised, then it is inevitable that the not-for-profit sector’s problem of attracting and retaining qualified staff will become even more apparent.

- **A move away from competitive tendering processes**

For many small to medium-sized not-for-profit organisations, moving key personnel off-line to complete complex funding applications and enter highly competitive tendering processes lies outside their capacities. Competitive tendering processes should be substantially reduced so that service providers can solely focus on delivering their services efficiently

and effectively, and grants should be given to service providers based on a qualitative assessment of their service provision. (ADCA, 2009).

ADCA recommends that the Inquiry consider adopting these recommendations and further investigate the role that AOD NGO can play in both preventing and reducing AOD-related Indigenous interactions with the criminal justice system.

Conclusion

ADCA notes that while AOD issues form a significant proportion of Indigenous contact with the justice system, addressing AOD issues in exclusion from other indicators of social dislocation are not likely to provide a complete solution. As a result ADCA recommends:

1. conduct further Indigenous-specific research to develop the evidence-base and provide greater understanding of the nexus between intoxication and indigenous incarceration
2. promote communities to take initiatives at a local level to restrict alcohol sales
3. address the reasons behind the gap in providing justice diversionary facilities to Indigenous juveniles and young adults
4. implement the Justice Reinvestment program ensuring that initiatives addressing the harms caused by substance abuse form a core component of the Australian Justice Reinvestment model
5. provide funding to promote and replicate the success obtained by the Geraldton Alternative Sentencing Regime
6. expand Drug Courts to include licit substance use, especially alcohol and solvents/ inhalants
7. adopt Recommendation 15 from the Senate Community Affairs Committee Inquiry into Petrol Sniffing
8. adopt the recommendations from the report into Sydney Drug and Alcohol Services as noted in response to ToR 2
9. provide funding to investigate the three successful programs mentioned in response to ToR 3, and replicate similar programs in other communities; and
10. investigate and adopt ADCA's recommendations to the Productivity Commission regarding the contribution that not-for-profit AOD organisations make to reducing and preventing Indigenous incarceration.

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