

Ms Kathrina Lo
Director
Review of the Young Offenders Act and
the CCPA
Legislation, Policy and Criminal Law Review
Department of Attorney General and Justice
DX 1227 SYDNEY

Dear Ms Lo

**Review of the
Young Offenders Act 1997 and the
Children (Criminal Proceedings) Act 1987**

The Aboriginal Legal Service (NSW/ACT) Limited (ALS) welcomes this review of the *Young Offenders Act 1997 (NSW)* (YOA) and the *Children (Criminal Proceedings) Act 1987 (NSW)* (CCPA).

The ALS has reviewed the Consultation Paper and has had the opportunity to participate in the preparation of the submission by the Law Society's Juvenile Justice Committee (Committee) and is in general support of the observations and recommendations that it makes.

In addition, the ALS makes the following recommendations in respect of Questions 21(a) and Question 22 (b) of the Consultation Paper relating to Aboriginal and Torres Strait Islander children and young people in the criminal justice system

Question 21 (a) Equal access by Aboriginal and Torres Strait Islander children to diversionary interventions under the YOA

The ALS shares the concerns raised by the Law Society Committee on this issue regarding the operation of the YOA and agrees that there remains a need for increased police awareness and training in relation to diversionary options and the principles underpinning the YOA.

The ALS recommends the introduction of improved training for police in the appropriate use of YOA and working with Aboriginal people and young people, together with accountability measures of that use.

In addition, the ALS also proposes the following strategies to improve the operation of the YOA that could result in an especial benefit to Aboriginal and Torres Strait Islander young people and promote their diversion from the criminal justice system:

Criminal responsibility

The age of criminal responsibility should be raised from 10 to 13 years.

Admissions under the YOA

Admissions should be treated in the manner of either the New Zealand system (where the child or young person does not deny the offence) or by way of a brief acknowledgement in the notebook that the child or young person admits each element of the offence.

Commencement of criminal proceedings

All criminal proceedings should not be commenced against a child or young person other than by way of court attendance notice.

'Cooling-off' periods

Despite a stated policy regarding 'tag and release', it is not always implemented. (ALS lawyers on its telephone Custody Notification Service have reported incidents of a first time young offender being refused a cooling off period to enable the young person the opportunity to speak with a lawyer face to face.)

Consideration should be given to:

- the mandatory release of any young person who may be eligible for YOA diversion, with a referral to a juvenile justice officer, to enable an effective consultation between juvenile justice officer, lawyer, family member and young person.
- whether cautions and warnings should be counted under the legislation if given to a young person under the age of 14 (due to issue of capacity)

Magistrate's discretion

There should be a wide discretion for Magistrates when dealing with breaches of suspended control orders, with options available other than the decision to not revoke the order.

MERIT program

There should be an extension of the MERIT scheme to Children's Courts across NSW, as well as the continuation and further extension of the Youth Drug Court. (It is to be stressed that the MERIT program should be maintained in addition to the Drug Court, and not provided as an alternative measure.)

Traffic offences

All traffic offences concerning young people should be dealt with by the Children's Court

Separate legislation

The ALS would further recommend that the YOA and CCPA should be maintained as separate legislation.

Question 21 (b) the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system

The ALS, together with the Law Society Committee, stresses the worsening crisis of overrepresentation of Aboriginal and Torres Strait Islander children and young people in the criminal justice system and their underrepresentation in diversionary interventions.

The ALS agrees that improved compliance with the YOA by police, in particular when dealing with Aboriginal and Torres Strait Islander children and young people, is required and should be subject to ongoing monitoring, review and report to Parliament.

The ALS also agrees that criminal justice responses are not sufficient to address this crisis and require an effective whole of government plan -and commitment- taking into account existing research (such as the Doing Time – Time for Doing and Noetic reports), supported by adequate and meaningful consultation with Aboriginal communities and agencies.
