

## All Roads Lead to Alice (via Tennant)

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### Speaking Notes

#### Introduction

As front-line workers in the youth justice space in Alice Springs, this presentation will only focus on the issues experienced and faced by youth from Central Australia and the Barkly Region. We are not suggesting that youth from the Top End are not vulnerable or affected. We wish to bring to light the current state of the youth justice space in Central Australia.

In particular, we want to examine what the reality is and has been over the past year and a half for youth in Central Australia since the publication of the Royal Commission's report.

#### Outline

- Facilities – Alice Springs and Don Dale
- Location
- Bail and Remand
- FASD
- Where to from here?

#### The problem

Our concern is that in remedying the system, the approach adopted is Darwin-centric – the focus in the media will forever be Don Dale and not surprisingly the majority of resources are allocated to the Top End.

Why does this matter?

- ❖ **Numbers:** The majority of youth in detention in the NT are from Central Australia and the Barkly Region. Yet, the majority of youth in detention in the NT are housed in Darwin. For example:
  - Today, 30 children are in detention in the NT. 10 of those children are in the Alice Springs Youth Detention Centre and 20 are in Don Dale. However, of those 20 children in Darwin, 10 are from Central Australia, meaning 70% of the children currently in detention in the NT are from Central Australia or the Barkly Region.
    - ❖ There is currently no plan to rectify this problem.

ASYDC	DDYDC
10 males 3 females	26 bed facility
1 classroom (max 16 students)	Multiple classrooms
1 recreation room (also the dining area) with 2 picnic tables and a bench	Multiple recreation spaces (pool table, playstation)
1 outside area with a basketball net and 2 picnic tables	Large outdoor space (horses)
Few programs	More programs

We are not suggesting that Don Dale is fit for purpose; far from it. We are simply highlighting the differences between the two in relation to resources.

- ❖ **Court Statistics:** Alice Springs has seen an increase in court listings compared to Darwin over the past few years.
  - In 2017-2018, there were 769 Youth Justice Court lodgments in Darwin and 830 in Alice Springs
  - For 2018-2019 (until end of May 2019), there were 682 Youth Justice Court lodgments in Darwin and 1003 in Alice Springs.
    - ❖ In terms of listings, that equates to 4,699 listings in Darwin and 7,050 listings in Alice Springs.
  - The Alice Springs Local Court house is currently being renovated and it's understood there will be a designated court room for youth matters in the building (the layout will be similar to the Children's Court in Darwin with a round table).
    - ❖ However, there is no plan for a designated youth court Judge, and there is no plan to match the sitting dates of our Northern counterparts.
    - ❖ Currently the youth court in Alice Springs officially sits 2 days a week whereas Darwin sits 4 days a week.
      - This is a concern when we look at adjournment time periods and corresponding remand rates. Again, an issue we will come back to.

### **(1) Facilities**

Don Dale was addressed heavily in the Royal Commission's Report and it made two specific recommendations in relation to the Centre:

- Immediately close the High Security Unit; and
- Close Don Dale and report to the Children's Commissioner with a plan to do so.

Somewhat surprisingly to Central Australian practitioners, there were no recommendations made to close the Alice Springs Youth Detention Centre.

We were surprised in part, due to the high numbers of Central Australian youth in detention, but also due to the history behind the Four Corners documentary – and that was Aranda House. Dylan Voller was not just sent to Don Dale where he suffered at the hands of Darwin Officers; his story commenced 1500 km south in his town of Alice Springs where he was first detained at the age of 11 at Aranda House (the former holding facility for youth in Alice Springs).

It wasn't until after the Royal Commission's report was published that ASYDC began to receive media coverage on par with their Northern neighbor.

- ❖ In June 2018, 7 months after the Royal Commission's report was published, the Alice Springs Youth Detention Centre was evacuated. Two youth justice officers were injured and the centre was damaged. 17 young people were taken to the Alice Springs watch house; 3 were arrested and held under the custody of Police in relation to the incident and 14 remained at the watch house overnight until the centre was re-opened the next afternoon.
- ❖ A month later, in July 2018, the Official Visitor (appointed by the NT Government) found the Alice Springs Youth Detention Centre was at "crisis point" due to over crowding and appalling conditions and advised the Government the Centre should not be in operation.

**Case Study – AH (To give context into this time period)**

AH spent approximately 4.5 months in detention on remand before being sentenced. He was at ASYDC when the Official Visitor attended.

During this time, the school in the Alice Springs Youth Detention Centre, Owen Springs, was closed on 12 school days due to understaffing by Territory Families.

AH shared a room with 1 to 4 other boys and he regularly slept on a mattress on the floor.

The solution of overcrowding 1 year ago was to transfer youth to Don Dale. This continues to be the current practice and as we will discuss creates a host of other problems including putting more pressure on service provision by NTLAC and NAAJA.

However, some of these issues remain. In the monitoring report tabled in Parliament last week from the Office of the Children's Commissioner it was found that between 18 February and 15 March 2019 for 6 school days the students were split into 2 groups to manage tensions in the Centre. Speaking to clients during this time period, group 1 would attend school in the morning while group 2 was in extended lock down. They would switch for the afternoon. The report found "a significant number of lessons were not delivered due to security or operational reasons.

## (2) Location

The Royal Commission recommended a youth be housed in a detention facility nearest their family and consultation occur prior to transfer in a fair and transparent manner with the primary factor being the wellbeing and interests of the young person (recommendation 11.2).

Don Dale Youth Detention Centre is located in Darwin, 1500 km north of Alice Springs; 1500 km away from family and 1500 km away from country. Transferring youth from Alice Springs to Don Dale has negative impacts on young people including:

- ❖ Family **cannot** visit the facility which causes loneliness and alienation. This also causes concerns for the young person's wellbeing as this experience can re-traumatise.

### Case Study: LM

- 1<sup>st</sup> call: He said he's bored and sad. Asked who else is there, he mentioned a couple of other names. I said you can yarn with them mob? He said yeah but not really because they quiet and don't want to talk because they missing family too, like me.

- 2<sup>nd</sup> call: Elanor, LM wanted to know how much money you made? He said imagine if you made \$1000 an hour, and you worked 20 hours in one day. Then you would get \$20,000 a day. I asked LM what he would buy. He said a flash car. I said you can buy a whole plane. He said, yeah a private jet and then he said who would be the pilot. I said Elanor and he said yeah and Jodi, Taranjeet and Karen would be up the front of the plane with Elanor and I would be down the back relaxing.

- LM then said "I still don't know what's my future." I said you right, you just gotta sit quiet for a little bit longer and then you can go in a different section there at Don Dale.

- He said, No I mean when I get older. I said it's OK you don't have to know yet. He said but I'm nearly big man. 17. I said it's okay LM you don't have to hurry to know what you going to do. I said just be easy and take every day one by one and don't put too much pressure on yourself then. I said I'm older and I still don't know what I'm gonna do. So just take it easy and don't rush to know these things it's OK.

- Then we played some more tunes.

- ❖ Key support services including social workers, youth outreach officers and other support services are unable to visit. This can affect the success of post-release plans where the local service providers have been unable to use time when the youth is easily accessible to establish a relationship of trust and rapport.
- ❖ Lawyers cannot visit to discuss court matters and take instructions in person (Taking instructions on video is difficult. Many clients have hearing issues, attention problems (diagnosed ADHD) and language barriers). In these instances, lawyers have to rely 100% on verbal communication. We're not able to employ other communication techniques like for example the use of visual aids to draw out the offending, or the use of flash cards to discuss the criminal justice system or proposed conditions. We can't bring in items to help break the ice and create a safe environment (like kinetic sand, paper and markers).

- ❖ If a youth has a matter in court in Alice Springs and they are in Don Dale, the young person often travels down the day of court on a 7am, 2 hour flight which causes fatigue and stress. This is especially difficult when a young person has a hearing and is required to give evidence.

#### **Case Study – WH**

- WH was flown to Alice Springs on the 7am flight from Darwin. He was woken up before 5am to catch the flight.
- He arrived at court just before 10am. His hearing took all day. He was required to give evidence. During his cross-examination, questions were put to him about what other witnesses had said in their evidence. He could not remember. It was put to him that one of the reasons he couldn't remember was because he simply did not care to pay attention. Although this line of questioning did not affect the outcome of the matter, it affected the young person. It caused frustration and anger.

#### **Case Study – CW**

CW is 17 years old.

CW was transferred to Don Dale.

He opposed the transfer. His family opposed the transfer. His YOREO opposed the transfer. His lawyer had not been consulted.

CW was notified of the transfer the morning of his flight. His family were not informed.

I visited CW the day he was flying out. CW was crying. CW asked if I could help.

CW had never been on a plane or away from his family. CW expressed, "it was scary, I was holding the guards hands when the plane was lifting off".

1 week after being transferred, a riot broke out in Don Dale and CW, along with all other youth were taken to the Darwin watch house for 5 days. They were in their cells the whole time. They did not see sunlight. The lights were on 24/7. There was NO access to family.

I spoke with CW two weeks later when he was released on bail in Alice Springs and the only words he could find to describe the experience was "really scared".

Recommendation 11.2 is, in part, being followed. Before a young person is transferred to Don Dale, the relevant parties involved are consulted, including: the young person, family, lawyer, and YOREO as in the case of CW.

However, if all these parties oppose the transfer it does not result in the young person remaining in Alice Springs. In our opinion, the well being and interests of the young person are not being considered as the primary factor in determining transfer applications, but rather the management and operation of the centre appear to be the priority. This is evident in the case of CW.

### **(3) Bail and Remand**

Not only are the majority of youth in detention from Central Australia, but the majority of youth in detention are on remand.

Clem mentioned this in his presentation explaining that between 2017 and 2018 over 80% of youth in detention in the NT were on remand.

Today, of the 25 youth from Central Australia and the Barkly Region, 18 are on remand.

The Royal Commission acknowledged this issue and made 12 recommendations relating to bail. This is an area where there have been positive developments post Royal Commission. Bail support accommodation has been opened in Darwin and Alice Springs and there has recently been an increase in the use of these facilities.

However, it's noted youth must reside in or travel to either Alice Springs or Darwin to access these services.

Despite the existence of bail support accommodation, there is still a high number of youth on remand, of which many youth are on remand for breaching bail.

When bail is granted, it is often accompanied by stringent conditions.

The most difficult condition for young people in Central Australia to follow is a curfew. The condition is regularly accompanied by the requirement to present to the door when requested by Police.

#### **Case Study – AH**

AH is a 15 year old on bail. He has a curfew between 8pm and 7am. Police attended AH's residence for a bail check at 11:30pm. No one was present at the residence. 5 days later, Police attended AH's residence at 7:30am and arrested him for breaching his bail 5 days earlier.

It can be challenging for youth to understand the relationship between behavior and consequence, therefore arresting a youth 5 days after the behavior, the youth is left confused.

- Right thing = trouble
- Wrong thing = trouble

#### **Case study – KM**

KM is a 12 year old on bail. He has a curfew between 7pm and 7am. One Friday evening, he attended a school holiday program at a local youth centre. He was arrested by Police at 7:40pm for breaching his curfew (by 40 minutes). He was taken to the watch house and processed into custody. He remained in the watch house overnight and was granted bail by the on-call Judge the next afternoon.

The arrest took place whilst the young person was engaging in pro-social behavior. What message does this send?

What is clear from the cases of AH and KM, and our experience in this area, is that arrest is being used in Alice Springs as a first resort to deal with young people rather than a last resort. Again, this issue was addressed in Clem's presentation in relation to the increase in arrests (of 10-14 year olds).

- Again, this is an issue that is experienced more in Alice Springs. For the first half of 2019 (until the end of May), there were 77 breach of bail offences lodged in the Darwin Children's Court compared to 279 in Alice Springs.

As we all know, arrest is *supposed* to be used as a last resort when dealing with youth specifically.

Progress is being made in this area and a bill has been drafted that would see conditional breaches of bail (like breach of curfew) removed as an offence for young people.

Until that happens, we think the existence of section 22 of the YJA, in conjunction with Government support for these recommendations should translate into a change in policing. Youth should not be arrested as a first resort for breaching a condition of their bail 5 days earlier or be arrested playing basketball at a local youth centre 40 minutes after their curfew.

In many instances breaches stem from not understanding the conditions, forgetting the conditions or not being properly supported to comply with the conditions.

#### **(4) FASD**

FASD is a severe neurodevelopmental impairment that results from brain damage caused by alcohol exposure before birth.

Why do we want to know if a young person has FASD?

- It can assist in sentencing. For example, formulating an appropriate order.
- As Clem mentioned, it plays a part in determining the moral culpability of a young person aged 10-14.

We are concerned the players within the youth justice space are not aware of FASD and what it means and are not properly trained to address what is referred to as the invisible disability.

- YOREOs do not properly address FASD in their pre-sentence reports.
- In our experience, Police do not consider that a young person may have FASD and where they have been told of a diagnosis it does not result in varied treatment.
- ASYDC officers do not adapt their communication with young people in detention to reflect their understanding and capacity.

One of the most comprehensive global studies of a youth detainee population and an Australian first has indicated that the prevalence of FASD in youth detention in Western Australia is 36 percent of detainees, and the presence of severe neurodevelopmental impairment is as high as 89 percent; rates, as noted by the researchers to be the highest in the world.

Again Clem touched on this in his presentation.

- A 2012 report from the Australian Early Development Index found “59.2% of indigenous children in the NT were deemed to be developmentally vulnerable in at least 1 of the 5 domains” examined in FASD assessments.
- It’s important to remember that statistic in a context where 100% of youth in detention are aboriginal.

#### **MYTH BUSTING**

FASD affects young people in various ways and manifests differently.

We often hear children being labelled **non-compliant**, getting charged for the same types of offences, and Judges expressing their increased frustration at the revolving door of particular youth returning again and again. The following table identifies the misinterpretations of behavior of youth who have FASD.



Common Misinterpretations of Behaviour		
What we see	What we think	What's REALLY going on
Noncompliance	Doing it purposely and maliciously	<ul style="list-style-type: none"> <li>• Difficulties translating verbal directions into action</li> <li>• Doesn't understand</li> <li>• Memory problems</li> </ul>
Repeatedly making same mistakes	Doing it on purpose, manipulative	<ul style="list-style-type: none"> <li>• Cannot link cause to effect</li> <li>• Cannot see similarities</li> <li>• Difficulty generalising from one event to another</li> </ul>
Often late or doesn't attend appointments	Lazy, slow, doing it on purpose	<ul style="list-style-type: none"> <li>• Cannot understand the abstract concept of time</li> <li>• Needs assistance getting organised</li> <li>• Needs ongoing support and reminders</li> </ul>
Poor social judgement	Poor parenting Doing it on purpose	<ul style="list-style-type: none"> <li>• Not able to interpret social cues from peers</li> <li>• Does not know what to do in social settings</li> <li>• Can't control impulses</li> </ul>
Stealing	doing it on purpose	<ul style="list-style-type: none"> <li>• Not understanding right from wrong</li> <li>• Can't generalise to other contexts</li> <li>• Led by peers</li> <li>• Can't control impulses</li> </ul>

Adapted from Debra L. Evenson 1994

For example:

- (1) LM responds to questions with giggles and one word answers. This was interpreted in his PSR as displaying a lack of remorse.
- (2) KR is 14 years old, is diagnosed with FASD and a cognitive impairment. He has the intellectual capacity of a 4-7 year old. He is too "high needs" for YORET support and was found unsuitable for supervision due to his inability to comprehend conditions. He is currently at Don Dale.

**Case Study: KM**

KM is a 13 years old on remand at ASYDC. He has been diagnosed with FASD. He has difficulty with memory and requires information be repeated regularly in multiple different ways.

KM's matter was adjourned. I explained everything to him, many times, in many different ways. But KM forgot. A few days later, at ASYDC he asked an officer what happened and when he was going home. They didn't know. He got upset and jumped onto the roof. A code white was called – "at-tempted escape."

KM got off the roof after he was told I was there to speak with him and answer his questions.

What was clear from the situation with KM was that no one at ASYDC knew he had FASD and no one was trained to properly communicate with him.

ASYDC do not have an on-site psychologist or case management team although they are recruiting for a single case manager and currently send a Darwinite down on rotation. Irrespective, we are now emailing through a few bullet points on our clients matters to the centre so when officers are asked (and they are) they can answer properly and hopefully avoid these types of incidents.

Our advice is to refer all clients for an assessment, given the staggering statistics. You can refer directly to Congress or Patches or you can ask the court to order an assessment. In our experience, if the court orders an assessment it's completed faster. However, waiting for a report to be ordered upon sentence is not ideal. Therefore, be creative, and get it ordered at the earliest opportunity. Before a plea is even entered. You can do so under s 67 of the YJA.

#### **Conclusion - Where to from here?**

What can practitioners (legal and social) do to address some of the limitations of the current system including our high remand rates?

#### **BE CREATIVE and BE COLLABORATIVE**

1. Refer for a neurodevelopmental assessment as early as possible
2. FOI applications
  - a. Information on conditions including lock down times, school closures for use for bail applications and in mitigation on sentencing
  - b. Applications take quite some time to process. Some of the information can be gathered through other sources (like the Department of Education regarding school closures).
3. Case conferences
  - a. Information sharing
    - i. – Are there any diagnoses? What are the recommendations in terms of communication?
  - b. Young person's voice
    - i. – Ensure they are part of the process. Why? Because if a young person has some agency and control over their future and decision making, they are less likely to re-offend (anecdotally but also it's common sense).
4. On the ground assistance
  - a. Include someone who can assist on the ground. For example: our social worker in Darwin assists with clients transferred to Don Dale.
  - b. For example: referral to NAAJA's Throughcare Team
5. Refer to civil
  - a. Ask the right questions (ie arrest, conditions in detention); don't assume anything
6. Refer, refer, refer