

29 June 2023

Youth Justice and Child Wellbeing Reform Project
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

By email: youthjusticereform@humanrights.gov.au

Submission to the Youth Justice and Child Wellbeing Reform Project

Dear Sir / Madam,

Please accept this as a Submission to the Youth Justice and Child Wellbeing Reform Project on behalf of the Aboriginal Medical Services Alliance Northern Territory (AMSANT).

This letter summarises some of the key points that AMSANT believes should be considered by the Project team. Many of these are described in detail in the accompanying *AMSANT Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*. Although this document was written six years ago, unfortunately due to the lack of progress in the Northern Territory on addressing youth justice and child wellbeing issues, it remains highly relevant today.

Key points

That the Australian Government to establish a formal, independent review of the implementation of the recommendations of the *Royal Commission into the Protection and Detention of Children in the Northern Territory*. In order to be effective, the review will need to be given powers to summon people to give evidence and to provide documents and data.

That the AHRC recommends that addressing the social key social determinants – poverty, inequality, housing, education and literacy – are key to reducing Aboriginal children’s and young people’s involvement in child protection and youth justice systems.

That the AHRC recommends that child protection and youth detention systems be reconfigured with a focus the principles of trauma informed and trauma integrated care; support for community-led solutions; incorporation of Aboriginal worldviews; community/family approaches; and a child-centred focus.

That the AHRC recommends that early childhood programs be recognised as part of comprehensive primary health care delivered through Aboriginal community controlled health service; along with healing-centred approaches to youth justice; and action on the unrestricted supply of alcohol.

That the AHRC recommends that the collaborative processes established under the *National Agreement on Closing the Gap* provide a solid foundation from which to address youth justice and child wellbeing reform as it affects Aboriginal and/or Torres Strait Islander communities. The national Coalition of Peaks should be closely involved in the developing, implementing and monitoring the implementation of reform measures.



About us

AMSANT is the peak body for Aboriginal Community Controlled Health Services (ACCHSs) in the Northern Territory. We represent 12 full member organisations and 13 associate members across all areas of the Territory. We aim to grow a strong Aboriginal community controlled primary health care sector by supporting our Members to deliver culturally safe, high quality comprehensive primary health care that supports action on the social determinants of health; and representing our Members' views and aspirations through advocacy, policy, planning and research.



Review implementation of the recommendations of the *Royal Commission into the Protection and Detention of Children in the Northern Territory*

In July 2016, the Australian Government established a Royal Commission to inquire into the protection and detention of Children in the Northern Territory, in response to shocking revelations on the ABC *Four Corners* program detailing the long-standing abuse of young Aboriginal people held in the Don Dale Juvenile Detention Centre in Darwin. The Royal Commission's report was tabled in the Australian Parliament in November 2017, recommending a large number of reforms including:

1. Closing the Don Dale Youth Detention Centre and High Security Unit
2. Raising the age of criminal responsibility to 12 and only allowing children under 14 years to be detained for serious crimes
3. Developing a 10 year Generational Strategy for Families and Children to address child protection and prevention of harm to children
4. Establishing a network of Family Support Centres to provide place-based services to families across the Northern Territory
5. A paradigm shift in youth justice to increase diversion and therapeutic approaches
6. Developing a new model of bail and secure detention accommodation
7. Increasing engagement with and involvement of Aboriginal Organisations in child protection, youth justice and detention.

There has been progress on some of the recommendations, for example in November 2022, the Northern Territory Government raised the minimum age of criminal responsibility to 12 years (although this change is yet to be put into effect).

However, the overwhelming sense for the Aboriginal community is that nothing has changed. Media reports currently document how numerous Aboriginal children with developmental disabilities, including FASD, are still being held in an inhuman detention system focussed on punishment rather than treatment and rehabilitation¹.

Our community perceptions are powerfully backed up by the published data, which shows that on an average day in 2021-22, 52 young people aged 10 or over were held in detention in the Northern Territory, almost all of whom (95%) were Aboriginal and/or Torres Strait Islander. The situation is rapidly worsening following some years of moderate improvement following the Royal Commission:

the rate of young Aboriginal people in detention is now 44.1 per 10,000 population, higher than at any time in the last decade and 38 times the rate for non-Indigenous young Australians² (Figure 1).

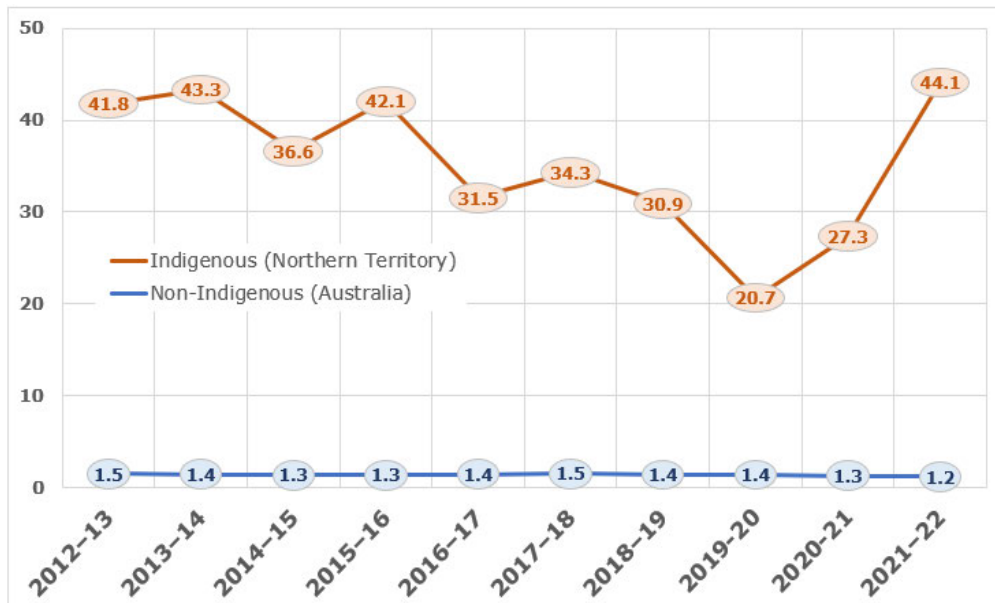


Figure 1: Young people aged 10–17 in detention on an average day, Northern Territory and Australia, 2012–13 to 2021–22 (rate per 10,000 relevant population)

The Royal Commission also focused on child protection and services to support families to ensure their children grown up in safe and nurturing environments. Unfortunately, the facts once again show a situation that has deteriorated. At the time of the Royal Commission in 2016-17, 20% of Aboriginal and/or Torres Strait Islander children in the Northern Territory were involved in some manner in the child protection system; while it fell slightly in the following years, in 2021-22 it had risen to 23%, over ten and a half times the rate for non-Indigenous Australian children³.

These figures, and the experience of Aboriginal children, young people and families that they describe, point to a profound failure of government at both the Territory and national level to implement the policies and recommendations to which they themselves have formally agreed.

We therefore think one of the most important actions that the Australian Human Rights Commission could recommend is for **the Australian Government to establish a formal, independent review of the implementation of the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory**. In order to be effective, the review will need to be given powers to summon people to give evidence and to provide documents and data.



What factors contribute to children’s and young people’s involvement in youth justice systems in Australia?

Children growing up in poverty carry considerably greater risks to their health and wellbeing across their lifetime, including early childhood development and involvement in the criminal justice system. As well as absolute poverty, societies that are more unequal are more prone to violence and have higher rates of children in need of child protection⁴.

In the Northern Territory, on average Aboriginal and Torres Strait Islander household income is only two-thirds that of the non-Indigenous population. Nationally remote Aboriginal and Torres Strait Islander incomes are *falling* in real terms, and the income gap is *widening*⁵.

A similar story can be seen in many other of the vital social determinants of health that determine the social and economic context in which Aboriginal and Torres Strait Islander children grow up. Despite some improvements, housing remains inadequate and overcrowded; educational achievement considerably lower than for the mainstream population; and adult literacy (a key determinant of child health and wellbeing) much worse than for non-Indigenous people.

Addressing the social key social determinants of health for Aboriginal and Torres Strait Islander families and children – poverty, inequality, housing, education and literacy – must therefore be a key focus of reducing Aboriginal children’s and young people’s involvement in youth justice and child protection systems in Australia.



What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

Across Australia, criminal justice and youth detention systems – and frequently the public and political debate – continue to focus on punishment rather than rehabilitation or healing. However, it is clear that that (as well as the other determinants – see above) the drivers of offending and detention in Aboriginal communities include intergenerational trauma resulting from the processes of colonisation. It is therefore essential that child protection and youth detention systems be reconfigured in a way that addresses the underlying trauma. AMSANT has identified a number of principles to inform such a reconfiguration

- Trauma informed and trauma integrated approach
- Support for community-led solutions
- Incorporating Aboriginal worldviews
- Community/family approaches
- Child-centred focus

See accompanying *AMSANT Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory* for details.



Reforms that show evidence of positive outcomes, including reductions in children’s and young people’s involvement in youth justice and child protection systems, in Australia or internationally?

Numerous evidence-based approaches are described in detail in the accompanying *AMSANT Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*. Here we would like to highlight three key areas for action.

1. Early childhood programs as part of comprehensive primary health care through ACCHSs

Evidence-informed programs in early childhood can improve long-term outcomes across the life course in education, employment, health and wellbeing, and involvement in the criminal justice system. These programs have been identified as the most cost-effective way of reducing detention and imprisonment rates amongst young people⁶.

ACCHSs have been leaders in early childhood program development in the Northern Territory, taking evidence-based programs that work in other contexts and thoughtfully adapting them to be

effective in the social and cultural context of the communities they serve. Central Australian Aboriginal Congress in particular has successfully delivered the Australian Nurse Family Partnership Program (ANFPP) including in two remote communities, as well as the Abecedarian enriched learning program for pre-school-age children.

ACCHSs have a number of significant benefits as platforms for delivering early childhood programs for Aboriginal and Torres Strait Islander communities including a holistic approach to service delivery; cultural safety; community engagement and trust; Aboriginal empowerment; an Aboriginal workforce; and high levels of accountability.

For these reasons, the AHRC should recommend the funding of evidence-informed early childhood development programs through Aboriginal community controlled health services as a key strategy for reducing the risks that Aboriginal young people will be involved in the criminal justice system.

2. A healing-centred approach to youth justice

There are a range of programs policies which can be extended to lead to better outcomes in the youth justice for Aboriginal people, including the following (see accompanying *AMSANT Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory*).

- **Specialist and therapeutic courts** which work to reduce recidivism by addressing the issues driving a person's offending behaviours and helping them to address these. Such courts are therapeutically informed and embed cultural understanding through involving local Elders.
- **Assessment and therapy for children and youth with FASD and other cognitive / mental health issues.** A very high proportion of Aboriginal children involved in the child protection system, and young people involved in the criminal justice system, have developmental and cognitive issues, frequently undiagnosed. Comprehensive screening, assessment and early intervention services can support families with children suffering from FASD or other cognitive issues to address these issues before they lead to more serious problems.
- **Culturally appropriate youth diversionary programs.** Diversion programs have been shown to lead to reduced reoffending, especially if programs include culturally appropriate treatment and rehabilitation and Aboriginal and/or Torres Strait Islander community Elders or facilitators⁷.
- **Reorienting youth detention to rehabilitation and treatment.** Even with properly resourced prevention and diversion programs, there will still be some young offenders who need to be detained both for the protection of the community and so they can be engaged in therapeutic interventions. Reorienting youth detention away from punishment and towards rehabilitation and treatment has been shown to be highly effective⁶. In 2019, AMSANT hosted a visit to the Northern Territory of the internationally recognised Diagrama Foundation which focusses on the rehabilitation of young people through secure, therapeutic care and education, preparing them for release and supporting them to gain the skills needed to obtain employment and re-integrate into their community. A report of that visit accompanies this submission.
- **Intensive support post-release to reduce recidivism.** Those in youth detention require long-term, individualised support to address the range of issues contributing to their offending

behaviour and the young person's family and community may also need support to assist them with reintegration into the community⁸.

3. Action on the supply of alcohol

Alcohol abuse is highly linked to offending. Alcohol use at the time of conception and during pregnancy can lead to Foetal Alcohol Spectrum Disorder (FASD) which is associated with a greater risk of contact with the criminal justice system. Reducing the prevalence of FASD should focus on broad-based public health measures to reduce alcohol consumption amongst the whole population, including women and men of child-bearing age⁹.

In addition, young Aboriginal people in detention are highly likely to have had issues with alcohol themselves, including having been under the influence of alcohol at the time of the offence. Strategies to reduce the involvement of young Aboriginal people in the criminal justice system should therefore include effective measures to reduce the availability and use of alcohol.

Events of the last year in Alice Springs provide key evidence in this regard. The expiry of the Stronger Futures 'dry areas' provisions in July 2022 led to an exponential increase in violence and property damage in Alice Springs. Reimposition of these measures in February 2023, along with restrictions on the availability of takeaway alcohol in January 2023, led to a fall of 37% in domestic violence assaults and 25% in property offences¹⁰.



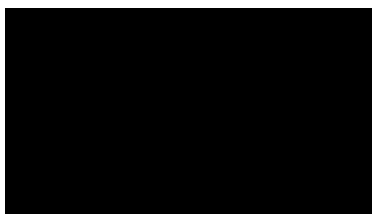
Benefits in taking a national approach to youth justice and child wellbeing reform in Australia. What are the next steps?

The comprehensive collaborative processes established under the *National Agreement on Closing the Gap*¹¹ provide a solid foundation from which to address youth justice and child wellbeing reform as it affects Aboriginal and/or Torres Strait Islander communities.

The national Coalition of Peaks comprises over fifty Aboriginal and Torres Strait Islander peak organisations, was formed for the purpose of negotiating with governments to develop the National Agreement, and should be closely involved in the developing, implementing and monitoring the implementation of reform measures.

Thank you for your attention to these important matters and please feel free to get in contact should you require more information.

Yours sincerely,



Donna Ah Chee
Ag Chief Executive Officer
Aboriginal Medical Services Alliance Northern Territory



NOTES

¹ <https://www.theguardian.com/australia-news/2023/jun/22/don-dale-the-children-with-profound-disability-held-behind-bars-in-the-nt>

² <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/data>

³ <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data>

⁴ Wilkinson R and Pickett K (2009). Violence: Gaining Respect. The Spirit Level: Why More Equal Societies Almost Always Do Better. London, Allen Lane

⁵ Markham F and Biddle N, *Income, poverty and inequality*. 2018, Centre for Aboriginal Economic Policy Research.; Canberra.

⁶ McGinness A and McDermott T (2010). Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice. Manuka, ACT, Noetic Solutions Pty Limited

⁷ Closing the Gap Clearinghouse (AIHW & AIFS) (2013). Diverting Indigenous offenders from the criminal justice system. Produced for the Closing the Gap Clearinghouse. Resource sheet no. 24. Canberra / Melbourne, Australian Institute of Health and Welfare / Australian Institute of Family Studies

⁸ Jones C and Guthrie J (2016). Efficacy, accessibility and adequacy of prison rehabilitation programs for Indigenous offenders across Australia. Melbourne, The Australasian Institute of Judicial Administration

⁹ National Indigenous Drug and Alcohol Committee (2012). Addressing fetal alcohol spectrum disorder in Australia. Canberra, Australian National Council on Drugs

¹⁰ <https://pfes.nt.gov.au/police/community-safety/nt-crime-statistics>

¹¹ Australian Government. *National Agreement on Closing the Gap (July 2020)*. 2020; Available from: <https://www.closingthegap.gov.au/national-agreement-closing-gap-glance>