



Youth Justice and Child Wellbeing Reform across Australia – submission

Background

The National Children’s Commissioner is conducting a project that investigates opportunities for reform of youth justice and related systems across Australia, based on evidence and the protection of human rights. The project will explore ways to reduce children’s involvement in crime, including through prevention and early intervention.

While Australia has made some reforms to youth justice systems, there remain laws, policies and practices that impact negatively on the rights and well-being of children and young people and fail to serve the wider public interest. Official inspections have repeatedly reported on the maltreatment of children in youth detention in some jurisdictions. Children from disadvantaged backgrounds with complex needs and disabilities, including Aboriginal and Torres Strait Islander children, are overrepresented in child protection and youth justice statistics across the country.

Research has pointed to problems with service systems intended to provide support for children and families, including health, mental health, education, and social services. The poor design and inaccessibility of support services lead to pressures on child protection and youth justice systems.

Children's Rights

All children in Australia, including children who commit criminal offences, are entitled to have their human rights protected. These rights are set out in international human rights treaties, in particular the UN Convention on the Rights of the Child (CRC). They include children’s rights to have their best interests as a primary consideration, to be treated fairly and without discrimination, to be kept safe and healthy, to engage in education, and to have their views taken into account in decisions that affect them.

The UN Committee on the Rights of the Child calls on nations to implement comprehensive child justice policies that protect children’s rights.

Project Overview

This project will gather information through a range of processes, including a review of existing literature and research, submissions from experts and organisations, and a series of stakeholder interviews and roundtables across Australia.

We will also hold targeted consultations with children and young people, including those in contact with youth justice systems across the country. Their voices will be at the centre of what is proposed. Children and young people involved in consultations will also be invited to make individual submissions, with parent/guardian consent.

The project’s findings and recommendations will be reported to the Commonwealth Attorney-General through a National Children’s Commissioner’s Statutory Report under section 46MB of the Australian Human Rights Commission Act 1986 (Cth).

Submissions are limited to a total of **3000 words**. Attachments or links to previously published work may be included in the submission, for example research papers.

The Kimberley Aboriginal Law and Culture Centre (KALACC) is one of the four peak regional Indigenous representative bodies in the Kimberley of far-north of Western Australia. Established in 1985 "to assist and promote the ceremonies, songs and dance of Kimberley Aboriginal people, to encourage and strengthen their social, cultural and legal values and ensure their traditions a place in Australian society", KALACC fulfils this vision through numerous programs and projects. Key objectives include ceremony, law and repatriation; intergenerational programs; festivals and tours; employment of Aboriginal staff; and advocacy and awareness raising.

KALACC have long been active in the juvenile justice space and have previously called for holistic improvements to the justice system. This has increased since the development and implementing the Yiriman Project in 2000, as an Aboriginal community-response to supporting young people. This key culturally-based Aboriginal Youth initiative of more than two decades, Yiriman is recognized as national best practice intergenerational youth project based on the concept of elders teaching cultural knowledge and respect through building familial links and working closely with traditional lands and country. This project will be discussed further below in relation to point 3, however it is also important to note that our work in this area has increased exponentially since that time, with the pressing need for community-driven change identified in our 2013 KALACC Juvenile Justice Diversion Strategy Scoping Study and more recently our involvement in consultation relating to the Kimberley Juvenile Justice Strategy (KJJS) from 2019-2021.

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

In the context of the remote Kimberley in WA, there are multiple and complex factors that contribute to the involvement of young people in the justice system whereby the overwhelming majority are Aboriginal. The impact that colonisation has had and continues to have on families is immense, with poverty and low socio-economic factors alongside issues of intergenerational trauma, foetal alcohol syndrome and other health issues, low outcomes from educational institutions, as well as overcrowding in inadequate housing due to limited housing stock and homelessness, alongside the limited options available to families to holistically support their young people. The impact of these factors cannot be overstated, however most critically, the loss of cultural identity and connection to homelands alongside the racism, negative attitudes and disrespect young people are subject to from a young age have significant ramifications that play out in the towns across the region. For the majority of those young people who find themselves in contact with the justice system, they are not inherently bad but are directionless and have limited resilience to meet the complex challenges and issues they face daily.

2. 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?

From KALACC's perspective, the most significant barrier to change, certainly in our jurisdiction, is currently government processes *specifically policy and program stasis*. As noted by the Productivity Commission:

Progress in implementing the Agreement's Priority Reforms has, for the most part, been weak and reflects a business as usual approach to implementing policies and programs that affect the lives of Aboriginal and Torres Strait Islander people. Current implementation raises questions about whether governments have fully grasped the scale of change required to their systems, operations and ways of working to deliver the unprecedented shift they have committed to.

*It is too easy to find examples of government decisions that contradict commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. **This is particularly obvious in youth justice systems.***

Without stronger accountability for its implementation across all government organisations, the Agreement risks becoming another broken promise to Aboriginal and Torres Strait Islander people.

[Review of the National Agreement on Closing the Gap Draft report Executive summary, pages 2, the yellow highlight is my own ie the highlighting is not to be found in in the report.]

This is irrespective of the Closing the Gap priority areas of #1 Formal Partnerships and Shared Decision Making and #2 Building the Community-Controlled Sector.

Continuing challenges with the judicial process itself including sentencing options for young people has been the subject or on the periphery of countless inquiries and reports including

- The Law Reform Commission's 2006 **Final Report on Customary Law**.
- The Aboriginal Justice Agreements which were developed for each town.
- **Yiriman Business Plan** 2010.
- **KALACC Juvenile Justice Framework** 2013.
- Josie Farrer's Report - **Improving the Current Juvenile Justice System Framework** (2014).
- "Learnings from the message stick: The report of the Inquiry into Aboriginal youth suicide in remote areas" (Report of the Message Stick Inquiry <https://www.wa.gov.au/system/files/2019-05/Report%20of%20the%20Message%20Stick%20Inquiry.pdf>)
- Recommendations of the "Inquest into the 13 Deaths of Children and Young Persons in the Kimberley Region" (Inquest into the 13 Deaths of Children and Young Persons in the Kimberley Region (<https://www.coronerscourt.wa.gov.au/files/inquest-2019/13-Children-and-Young-Persons-in-the-Kimberley-Region-Finding.pdf>))
- Dept of Justice Review of the Royalties for Region's funded Regional Youth Justice Services.
- Various youth justice processes run by the Children's Commissioner and by the Youth Affairs Council of WA.
- The many references to youth issues and justice issues which are contained with in the COAG RSD documents, the Empowered Communities documents, the Close the Gap Refresh documents and of course throughout the many SEWB and Aboriginal youth wellbeing processes.

Within KALACC's advocacy for improvements in the youth justice space and as shared through our experience from the Kimberley Aboriginal community as part of the consultation process on the KJJS, we assert that there are two critical shifts that are required to incorporate:

- **Throughcare Support Model:** An Integrated, Coordinated, Dynamic Strategy for implementing throughcare models of intervention and support for young people in the Kimberley
- **Upstream Preventative Programs:** In line with the *Aboriginal Empowerment Strategy*, there needs to be investments in to culturally based youth diversionary programs, such as Yiriman

If we consider first a **Throughcare Support Model**, we know that an integrated approach to youth wellbeing is what works. There has been a lot of information available for many, many years about a Collective Impact Model and Governance as it relates to juvenile justice. This includes the following **KPMG Report on the Bourke Justice Reinvestment model** (<https://www.justreinvest.org.au/impact-of-maranguka-justice-reinvestment/>).

Appendix One to this present document is a collaborative approach to the development and implementation of such a model in the Kimberley context: **A Throughcare Wrap Around Youth Justice Support Model as Proposed by the WA Police, in Conjunction with the Yiriman Project, auspiced by KALACC**. Noting that this is a work in progress, this exemplifies what a dynamic model of intervention and support looks like whilst evidencing that systemic change can be addressed.

When considering **Upstream Preventative Programs**, a social recovery and social reconstruction process can only occur if it is based on putting culture first and based around a strengths-based agenda. As the **Aboriginal Empowerment Strategy** notes, we must shift the focus away from tertiary crisis responses and towards much, much needed upstream preventative and resilience-based programs centred around Aboriginal culture and identity.

In the context of the above, we note once again that the **Policy Guide to the Aboriginal Empowerment Strategy** calls for increased investments in to the 'Primary, Preventative, Universal, Resilience' domain. The Strategy states that such programs will 'support wellbeing, foundational needs and capacities, inclusion, and protective factors, before issues arise.' And amongst the kinds of programs listed in this domain are 'cultural programs and healing.'

In regards to the need to invest much more in cultural programs and healing KALACC notes that to this day Yiriman receives no support whatsoever from the WA Government despite countless recommendations including the aforementioned Letters from the Message Stick and both the Hope (2007) and Fogliani (2019) coronial inquiries:

- 2010 – *Yiriman Business Case*
- 2016 – *Yiriman Justice Business Case*
- 2019 – *Yiriman Consolidation Plan*
- 2020 – *Kimberley Statement* from the Aboriginal Regional Governance Group (ARGG) listed Yiriman as being one of the five Priority Projects for immediate funding by the WA Government
- 2021 – The ARGG reconfirmed that Yiriman was one of the key priority projects requiring immediate funding by the WA Government.

Considering the voice of the Kimberley community as shared in the published Kimberley Juvenile Justice Strategy Community Consultation Report (2021), the following critical outcomes are required for successful change:

Culture is the building block from which co-designed justice solutions are developed.

Re-investing in culturally-based solutions at the earliest point of contact with the justice system is to be achieved through working with local, remote communities, their elders and community representatives. Culture must be the focal point of the KJJS:

- Valuing elders and traditional knowledge, supporting them with a role in young people’s lives.
- Providing cultural camps for young people to connect to land, language, community, culture.
- Opportunities to teach culture and promote cultural identity in young people
- Healing places and centres for young people to gather, connect and heal based on culture.
- Cultural activities and community gatherings.

Young people and their families require support and access to culturally appropriate services

There was agreement that youth and family wellbeing were intrinsically linked. The family has to be involved in the wellbeing of a young person and play a role in reducing the risk of them coming into contact with the justice system. Recognised unmet needs in the community in relation to prevention, family support and on country alternatives to detention included:

- A need for youth workers and cultural maintenance officers.
- Supporting young people with life skills, leadership and mentorship programs.
- Food insecurity - the need to have healthy and affordable food in community stores.
- Providing access to sport and recreational programs.
- Availability of structured activities to avoid boredom.
- Re-engaging young people into educational pathways.

Supporting young people to access engaging activities outside business hours and during school holidays. Family and parenting support initiatives are required to:

- Enable parents to be more engaged
- Build the capacity of parents and grandparents to support young people.
- Improve access to family counselling and therapy services.
- Support young people and families with FASD and reducing its prevalence
- Provide access to young people and their families to relevant wraparound services.

On Country alternatives to detention are needed to:

- Keep young people on Country where they have access to family support and culturally appropriate services to address their offending behaviour.
- Support young people to address alcohol and other drugs and violent behaviour.
- Support young people returning from detention to re-integrate into community and access relevant support services.

Self-determination and empowerment of the community is needed

The need for communities and people to be empowered and in control of their own lives was clear. The community have stated that the path to self-determination was to transition funds and resources to communities through community organisations not external agencies nor NGOs. This aligns with the Department of Communities 'Aboriginal Community Controlled Organisations Strategy to 2022', which advocates for all non-ACCO service providers to ensure transition to ACCO delivery within five years of receipt of respective funding. Aligning with this, issues raised included:

- Locally run and coordinated approach with the required resources (programs & infrastructure), including training, mentoring for services to be delivered.
- Insecure funding, whereby ACCOs were continually required to compete with each other, was raised as impeding self-determination.
- Longer term funding for ACCOs to provide stability and allow for long term planning.
- The need to build capacity of people and communities should be prioritise.

Improved access to housing facilities for is required

While overcrowding and housing issues is not new, the discussion around ensuring that young people have access to adequate housing particularly to support education, training and employment was a key point shared repeatedly across the region. This needs to include:

- Safe and culturally appropriate housing for young people, in towns and remote areas.
- Dedicated accommodation for young people during short periods.

Vocational training and employment is a high priority for young people

Young people require support when they complete school or are re-engaging with alternative educational pathways to

- Access vocational training opportunities and facilities.
- Secure and maintain employment.
- Access independent housing to travel from communities to larger towns for traineeships/employment.
- Create traineeships within communities for young people so that they do not need to go to larger towns if they do not want to.
- Foster pathways for young people to transition between full-time education and employment. Importantly, this needs to include community-based options for those who do not wish to transition to larger towns, reducing boredom and providing much-needed pathways.

Working in partnership with Government to address the needs of young people

Unsurprisingly there was a great deal of conversation at all meetings relating to the failings of previous programs, or the cessation of successful community-led initiatives when government funding cycles impeded access to continuing resources. Many discussed the short-comings of externally-developed programs outside the region, that did not fit well within this cultural landscape:

- Communities felt strongly that past and current approaches were not working, resulting in significant unmet needs. In particular, multiple agencies working in silos was seen as a major concern with decisions made from Perth or Canberra.
- The ability to access a range of services required by young people could be improved through better collaboration between government agencies and service providers.
- Improving the relationship with Police was important as they are usually the first point of contact with the justice system.

From our experience, the continuing barriers to change that need to be addressed are:

- **Government inaction and Business as Usual:** Government will delay and obstruct wherever possible [as per the recent Productivity Commission Report]
- **Justice Policy Partnership:** Currently this process has failed to deliver anything of substance and is unlikely to do so within the current frame of government business as usual
- **Content:** WA in particular desperately needs to develop an Aboriginal Youth Justice Strategy
- **Case Study of an ACCO:** WA Dept Premier and Cabinet is funding KALACC to develop a *Yiriman Youth Justice Business Case*. This will go to the Expenditure Review Committee by Christmas is an exemplar of building an ACCO Justice entity
- **Content:** The five domains within the *Wirkara Kulpa Aboriginal Youth Justice Strategy* are areas that should be developed in other jurisdictions, including WA.

3. Can you identify reforms that show evidence of positive outcomes, including reductions in children’s and young people’s involvement in youth justice and child protection systems, either in Australia or internationally?

KALACC have been directly involved in locally-based community driven initiatives within our region that have made a positive impact in the reduction of young people’s involvement in youth justice as evidenced through the Yiriman Project. For more than twenty-years and multiple funding cycles, we have delivered this dedicated program that put culture at the centre to address the multitude of challenges young people face in contemporary society that may lead them into contact with the justice system in particular. Through building cultural identity and resilience through strengths-based programs, there are numerous reports and publications that speak to the value of our program so much so that Yiriman has been referenced in multiple coronial inquiries and national-interest programs:

References:

- <https://www.indigenousjustice.gov.au/publications/the-yiriman-project-in-the-west-kimberley-an-example-of-justice-reinvestment/>
- [https://www.parliament.wa.gov.au/Parliament/commit.nsf/luInquiryPublicSubmissions/18BADD07003862AC48257893002239D1/\\$file/68739109.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/luInquiryPublicSubmissions/18BADD07003862AC48257893002239D1/$file/68739109.pdf)
- https://www.researchgate.net/publication/274316053_Going_Back_to_Country_with_Bosses_The_Yiriman_Project_Youth_Participation_and_Walking_along_with_Elders

Media:

- <https://www.abc.net.au/news/2022-08-05/yiriman-project-celebrates-21-years-but-needs-more-funding/101295506>
- <https://thewest.com.au/news/indigenous-australians/yiriman-project-takes-kids-off-the-beaten-tracks-to-keep-them-on-the-straight-and-narrow-ng-b88695126z>
- <https://www.sbs.com.au/nitv/article/the-yiriman-project-how-the-bush-is-preserving-culture/44fo0ke9t>

These examples speak to the value of Yiriman however this is not something that has come easily. We are still limited by funding cycles and irrespective of advocacy from high-level individuals and inquests, there is little to no direct investment in the program from the WA government. Rather ad hoc 12-36 month grants that are limited in scope and need to be applied for/delivered/acquitted impacts on the broader outcomes that would be possible if the investment was strategic and overarching.

In addition to our own impactful program, there are other local community-driven initiatives on a smaller scale that deliver place-based responses such as Robert Watson & Sam Duinker (Balginjirr Community) on the Fitzroy River; Koonji Community (Halls Creek); Kimberley Land Council youth diversion program; Aarnja youth leadership program; and the Yirra Malay Studio School near Fitzroy Crossing. Throughout KALACC’s work undertaking the consultation for the KJJS in 2019-2020, multiple community-driven localised primarily culturally-driven programs were identified that contribute to supporting young people at all three tiers within a youth justice framework:

- **universal** programs for all who may come into contact with the justice system;
- **targeted** programs for those who have come into contact with the justice system for minor offences and efforts are made here to reduce recidivism;
- **specialised** for repeat offenders who are at high risk of recidivism and programs are developed to specifically address issues that contribute to the continued engagement with youth justice

In addition to our own local and regional context, through our research we have been impressed with a number of additional programs nationally:

- Bourke (<https://www.smh.com.au/national/nsw/how-nsw-town-labelled-most-dangerous-in-world-changed-its-destiny-20190527-p51ri6.html>)
- Tirkandi Inaburra - <http://www.tirkandi.org.au>
- Armadale youth intervention program – <https://www.youthpartnershipproject.org.au/>
- North Queensland on Country programs - <https://www.sbs.com.au/nitv/article/2020/07/02/country-program-will-see-culture-combat-youth-crime>; <https://www.youthjustice.qld.gov.au/aboriginal-torres-strait-islander-young-people/country-programs>;

International and domestic literature suggests that Aboriginal and Torres Strait Islander designed and led justice programs consistently outperform those that are externally developed, significantly reducing the rate of offending. On Country programs aim to:

- reduce rates of offending and reoffending
- strengthen young people’s cultural and spiritual connections to land, sea and sky – Country – through the active efforts and participation of local community leaders, Elders and Traditional Owners
- strengthen family relationships and connections with the community while promoting positive self-identity
- re-engage young people with education, training and employment
- refer young people and families to other support services in the local community.

We encourage the National Children’s Commission to consider the role that government plays in minimising the impact that culturally-driven place based initiatives have in responding to positively support young people <https://theconversation.com/a-new-inquiry-into-indigenous-policy-must-address-the-root-causes-of-failure-122389>

Advancing investment in formal partnerships and shared decision (CtG #1) and building capacity of ACCOs (CtG#2) in relation to youth justice as evidenced by the Victorian government’s **Wirkara Kulpa Aboriginal Youth Justice Strategy**. <https://www.aboriginaljustice.vic.gov.au/Aboriginal-youth-justice-strategy> would also benefit those of us in other jurisdictions as framed by:

- Domain 1 Empowering Aboriginal Children And Young People and Families, to Uphold Change 39
- Domain 2 Protecting Cultural Rights and Increasing Connection to Family, Community and Culture 41
- Domain 3 Diverting Young People and Addressing Over-Representation 45
- Domain 4 Working Towards Aboriginal-Led Justice Responses 49
- Domain 5 Creating a Fair and Equitable System for Aboriginal Children and Young People

As we continue to advocate for improvements in this space, we are now working with the WA DoJ on a **Yiriman Youth Justice Business Case**. Our approach to this is that we are not developing a business case for a project but one for the development of a Justice ACCO operating within KALACC.

4. From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

If we again consider the information provided above as one of the most significant barriers to change being the WA government itself, then taking a national approach to youth justice issues and child wellbeing reforms in Australia would significantly address the challenges our young people face. The systemic change required for significant change is of such a magnitude that not only does it inhibit attempts at co-design but it is completely counter to the basic principles. It would require not only the Justice Department to monumentally undergo substantial systemic change, rather the whole of government would be required to – no amount of empowerment or procurement

policies will address the siloed structure that requires an interconnected approach that is contrary and counter-intuitive to the current system. Therefore we conclude this submission with the six key recommendations that were identified as part of the attempted co-design of the Kimberley Juvenile Justice Strategy:

- 1. Commit to Co Design:** An ongoing commitment to a regionally-led co-design process from both the WA State Government, their representatives and the Kimberley community.
- 2. Culture, Country and Language:** Embed culture, country and language as fundamental elements underpinning all components of the KJJS.
- 3. ACCO-Led Service Delivery:** Commit to a transition process which has as its goal service delivery of all elements of the KJJS via ACCO-led processes within 10 years. This service delivery can be fulfilled in partnership with government and other non-government organisations where required and as determined by the ACCO and community in relation to capacity building and the like; however, all delivery is to ultimately be delivered from the local and regional communities ACCOs directly.
- 4. Accountability and Joint Decision Making Around Program Investments:** Commit to an Accountability mechanism linked to a Joint Decision Making (JDM) process around Program Investments into Juvenile Justice Diversion and the broader suite of Government-funded youth programs in the Kimberley. This would operate along the lines of the JDM processes already commenced in the East Kimberley specific to Commonwealth investments.
- 5. Cultural Governance:** Commit to incorporating cultural governance into the KJJS and employing one model of cultural governance to govern the strategy in its entirety, so as to reduce duplication and consultation fatigue.
- 6. Long Term Resourcing of the KJJS Processes:** The WA Government commits to providing the resources required to co-design, develop, implement, evaluate and integrate subsequent learnings for the long-term.

Draft Process 2

