



NACCHO

National Aboriginal Community
Controlled Health Organisation
Aboriginal health in Aboriginal hands

www.naccho.org.au

Youth Justice and Child Wellbeing Reform across Australia

Submission to the
Australian Human Rights
Commission

July 2023

ABOUT NACCHO

NACCHO is the national peak body representing 145 Aboriginal Community Controlled Health Organisations (ACCHOs). We also assist a number of other community-controlled organisations.

The first Aboriginal medical service was established at Redfern in 1971 as a response to the urgent need to provide decent, accessible health services for the largely medically uninsured Aboriginal population of Redfern. The mainstream was not working. So it was, that over fifty years ago, Aboriginal people took control and designed and delivered their own model of health care. Similar Aboriginal medical services quickly sprung up around the country. In 1974, a national representative body was formed to represent these Aboriginal medical services at the national level. This has grown into what NACCHO is today. All this predated Medibank in 1975.

NACCHO liaises with its membership, and the eight state/territory affiliates, governments, and other organisations on Aboriginal and Torres Strait Islander health and wellbeing policy and planning issues and advocacy relating to health service delivery, health information, research, public health, health financing and health programs.

ACCHOs range from large multi-functional services employing several medical practitioners and providing a wide range of services, to small services which rely on Aboriginal health practitioners and/or nurses to provide the bulk of primary health care services. Our 145 members provide services from about 550 clinics. Our sector provides over 3.1 million episodes of care per year for over 410,000 people across Australia, which includes about one million episodes of care in very remote regions.

ACCHOs contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive primary health care, and by integrating and coordinating care and services. Many provide home and site visits; medical, public health and health promotion services; allied health; nursing services; assistance with making appointments and transport; help accessing childcare or dealing with the justice system; drug and alcohol services; and help with income support. Our services build ongoing relationships to give continuity of care so that chronic conditions are managed, and preventative health care is targeted. Through local engagement and a proven service delivery model, our clients 'stick'. Clearly, the cultural safety in which we provide our services is a key factor of our success.

ACCHOs are also closing the employment gap. Collectively, we employ about 7,000 staff – 54 per cent of whom are Aboriginal or Torres Strait Islanders – which makes us the third largest employer of Aboriginal or Torres Strait people in the country.

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Recommendations

1. All Australian Governments take a human rights approach, and drive reform youth justice and related systems in alignment with the *National Agreement on Closing the Gap*:
 - a. Formalise partnerships and shared decision making with Aboriginal and Torres Strait Islander people at all levels, including:
 - i. Maintain and build on the work of the Justice Policy Partnership
 - ii. Encourage state and territory based partnerships across Australia
 - iii. Build and maintain local partnerships to ensure communities are empowered to improve outcomes for Aboriginal and Torres Strait Islander people in detention
 - b. Adequately fund ACCHOs to deliver place-based flexible child, maternal and youth health services, that address social, cultural and commercial determinants of health and ensure our children have the opportunities they need to thrive, including:
 - i. Birthing on Country and Aboriginal-led antenatal care
 - ii. Early years and youth services
 - iii. Improving access to appropriate neurodevelopmental screening and assessment is essential to driving improved health and justice outcomes in the long term
 - c. Eliminate institutional and systemic racial bias and inequity in the youth justice and related systems
 - d. Ensure sharing of data to support locally-appropriate, data-informed, decision making and approaches.
2. Any reform process arising must take into account the priority actions, recommendations and outcomes of all Policy Partnerships established under the National Agreement on Closing the Gap, as they relate to child and youth health and justice.
3. In line with the National Agreement on Closing the Gap, there must be an ongoing, concerted effort to build the capacity of the Aboriginal and Torres Strait Islander community-controlled sector to deliver NDIS services.
4. Increase the age of criminal responsibility to 14 years nationally and in all jurisdictions.
5. Relevant jurisdictions fund ACCHOs to provide care to Aboriginal and Torres Strait Islander people in all youth and adult detention settings.
6. Governments fund and implement the *Aboriginal and Torres Strait Islander Early Childhood Strategy*.
7. Any reforms align and integrate with the *Safe and Supported: The National Framework for Protecting Australia's Children 2021 to 2031* and its Action Plan.

Acknowledgements

NACCHO welcomes the opportunity to provide a submission to Australian Human Rights Commission. NACCHO also supports the submission made by the Victorian Aboriginal Community Controlled Health Organisation to the consultation.

National Agreement on Closing the Gap

At the National Cabinet meeting held in early February 2023, First Ministers agreed to renew their commitment to Closing the Gap by re-signing the National Agreement, first signed in July 2020. The reforms and targets outlined in the National Agreement seek to overcome the inequality experienced by Aboriginal and Torres Strait Islander people, and achieve life outcomes equal to all Australians.

This Government's first Closing the Gap Implementation Plan commits to achieving Closing the Gap targets *through implementation of the Priority Reforms*. This represents a shift away from focussing on the Targets, towards the structural changes that the Priority Reforms require, and which are more likely to achieve meaningful outcomes for our people in the long term:

Priority Reform Area 1 – Formal partnerships and shared decision-making

This Priority Reform commits to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap.

Priority Reform Area 2 – Building the community-controlled sector

This Priority Reform commits to building Aboriginal and Torres Strait Islander community-controlled sectors to deliver services to support Closing the Gap. In recognition that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services.

Priority Reform Area 3 – Transformation of mainstream institutions

This Priority Reform commits to systemic and structural transformation of mainstream government organisations to improve to identify and eliminate racism, embed and practice cultural safety, deliver services in partnership with Aboriginal and Torres Strait Islander people, support truth telling about agencies' history with Aboriginal and Torres Strait Islander people, and engage fully and transparently with Aboriginal and Torres Strait Islander people when programs are being changed.

Priority Reform 4 – Sharing data and information to support decision making

This Priority Reform commits to shared access to location-specific data and information (data sovereignty) to inform local-decision making and support Aboriginal and Torres Strait Islander communities and organisations to support the achievement of the first three Priority Reforms.

It is widely acknowledged that changes to youth justice need to be made to improve outcomes across the life course, and ensure our young people can thrive. Wide ranging reforms must align with the four Priority Reforms of the National Agreement if they are to be sustainable and successful.

NACCHO Recommends: All Australian Governments take a human rights approach, and drive reform the youth justice and related systems in alignment with the *National Agreement on Closing the Gap*:

- Formalise partnerships and shared decision making with Aboriginal and Torres Strait Islander people at all levels, including:
 - Maintain and build on the Justice Policy Partnership
 - Ensure state and territory based partnerships across Australia
 - Build and maintain local partnerships to ensure communities are heard and empowered to improve outcomes for Aboriginal and Torres Strait Islander people in detention.
- Adequately fund ACCHOs to deliver place-based flexible child, maternal and youth health services, that address social, cultural and commercial determinants of health and ensure our children have the opportunities they need to thrive, including:
 - birthing on country, and Aboriginal-led antenatal care
 - Early years and youth services
 - improving access to appropriate neurodevelopmental screening and assessment, is essential to driving improved health and justice outcomes in the long term
- Eliminate institutional and systemic racial bias and inequity in the youth justice and related systems
- Ensure sharing of data to support locally-appropriate, data-informed, decision making and approaches.

Consultation Questions

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

Aboriginal and Torres Strait Islander young people are devastatingly overrepresented across justice and protective systems across the country. In 2021-22, our young people were about 19 times more likely to be under youth justice supervision, about 17 times more likely to be under community-based supervision, and 24 times more likely to be in detention. Further, young people from very remote areas were 7 times as likely as those from major cities to be under supervision¹.

About 1 in 17 (19,500) Aboriginal and Torres Strait Islander children were in out-of-home care at 30 June 2021, at a rate of 58 per 1,000.

Overrepresentation is driven by the ongoing impacts of colonisation, including:

- discrimination, and overt and systemic racism, including within the policing, education and child protection systems
- culturally-inappropriate and unsafe social and health service systems
- intergenerational Trauma
- socioeconomic disadvantage and poverty
- early engagement with child protection systems, and removal of children from their families

¹ AIHW Australian Institute of Health and Welfare (2023) *Youth justice in Australia 2021-22*, AIHW, Australian Government, accessed 20 July 2023.

- mistreatment, misdiagnoses or undiagnosed neurodevelopmental disorders, such as Fetal Alcohol Spectrum Disorder (FASD).

Systemic Racism

Systemic racism and the lack of culturally safe mainstream services are significant barriers for Aboriginal and Torres Strait Islander people seeking care, support, treatment and justice services. Barriers to Aboriginal and Torres Strait Islander people seeking support may include: difficulty navigating the system, a lack of service providers which may require a person to move away from family and Country, a lack of culturally appropriate and/or trauma informed provision of care, experiences of systemic and interpersonal racism, and distrust of institutional care as a result of both personal and historical experiences.

Intergenerational Trauma, Socioeconomic Disadvantage and Poverty

Pre-birth and the first years of a child's life are critical periods, during which a child's development and lifelong health and wellbeing are shaped by the interrelation of physiological, genetic, socio-economic and environmental conditions. Aboriginal and Torres Strait Islander children are also impacted by Australia's history of dispossession, marginalisation, intergenerational trauma, disconnection from culture, racism and the impact of Government policies since colonisation. These prevailing impacts result in profound inequity for Aboriginal and Torres Strait Islander families and communities across generations. Disproportionately high rates of poverty among Aboriginal and Torres Strait Islander people take place against a background of structural impediments to full participation in Australian society and are evidenced across multiple drivers and measures of inequality.

Child Protection

Removal of Aboriginal and Torres Strait Islander children is correlated with poorer health and wellbeing that continue across the life course without meaningful, targeted and culturally responsive support. The Australian Institute of Health and Welfare has highlighted the poorer outcomes of the Stolen Generations and their descendants well into adult life.² The removal of Aboriginal and Torres Strait Islander children has become entrenched and cyclical, given the 'history of trauma and stressors that have impacted on parents, parenting skills and communities'.³

Mis- and underdiagnoses

Developmental delay has a significant impact on Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander children aged 0-14 years are more than twice as likely as non-Indigenous children to have a disability. Addressing the physical, cognitive, social and psychological impacts of childhood developmental delay and disability can have life-long consequences including

² *Aboriginal and Torres Strait Islander Stolen Generations and descendants: numbers, demographic characteristics and selected outcomes*, AIHW, 2018, <https://www.aihw.gov.au/getmedia/a6c077c3-e1af-40de-847f-e8a3e3456c44/aihw-ihw-195.pdf.aspx?inline=true>

³ *Aboriginal and Torres Strait Islander Health Performance Framework*, 2.12, Child Protection, <https://www.indigenoushpf.gov.au/measures/2-12-child-protection>

better health, ability to learn, pro-social behaviour, engagement with the education system and more productive and fulfilling participation in society.

Whilst most Aboriginal and Torres Strait Islander children are developing typically, Aboriginal and Torres Strait Islander children are at higher risk of developmental and behavioural problems. In the Australian population overall, about 20% of children start school without the necessary developmental skills for success. This figure is estimated at 40% for Aboriginal and Torres Strait Islander children, recognising there are higher rates of disability, and undiagnosed disability, but also the lack of access to screening and assessment, early support and appropriate services delays or denies opportunities for improved and life-changing outcomes.

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?

Youth justice cannot be considered in isolation. All custodial settings must be reformed to address the disproportionately high rates of incarceration of Aboriginal and Torres Strait Islander people. This must be done through policy and legislative reform, and investment in early years, early support, justice health and diversionary and rehabilitation programs in alignment with the National Agreement on Closing the Gap.

Early Investment and Centrality of Culture

Aboriginal and Torres Strait Islander culture and self-determination are powerful protective factors. Of critical importance, is investment (in alignment with Priority Reform 2 of the National Agreement) to Aboriginal community-controlled health services. This investment should also include bolstering funds for child and maternal health and early support that recognise culture as foundational. This is in alignment with the National Aboriginal and Torres Strait Islander Health Plan 2021-31⁴.

Birthing on Country (BoC) is an international social justice movement to redress the negative impact of colonisation and return childbirth services to First Nations communities and First Nations control. BoC Services are rights-based, support continuity of care, strong social and emotional wellbeing and strong child and maternal health. They allow for incorporation of cultural practice; involve a connection with land and country; are holistic and value Aboriginal and Torres Strait Islander ways of doing, knowing, being and learning.

The Molly Wardaguga Research Centre's Caring for Mum on Country Program⁵ is an excellent example of BoC Programs in the Aboriginal and Torres Strait Islander context.

The Community Controlled Sector must be adequately funded to deliver of place-based flexible child and maternal health services, including birthing on country, and Aboriginal-led antenatal care, and improving access to appropriate neurodevelopmental screening and assessment, is essential to driving improved health and justice outcomes in the long term.

⁴ [National Aboriginal and Torres Strait Islander Health Plan 2021–2031 | Australian Government Department of Health and Aged Care](#)

⁵ [Birthing on Country | Projects | Caring for Mum on Country](#)

Further, Aboriginal and Torres Strait Islander people currently do not access the NDIS at a level that is commensurate with their need. Concurrently, plans written for those on the NDIS are chronically underutilised. This is compounded in jurisdictions with remote and very remote communities. In part, this is due to known barriers that prevent or discourage Aboriginal and Torres Strait Islander people from accessing disability services, particularly in remote and very remote locations. These include:

- geographic size
- thin or no markets
- difficulty navigating the system
- a lack of service providers
- a lack of culturally appropriate and/or trauma informed provision of care
- experiences of racism
- distrust of institutional care because of both personal and historical experiences.

In line with the National Agreement on Closing the Gap, there must be ongoing investment in the Aboriginal and Torres Strait Islander community-controlled sector to improve access to developmental screening and assessment, and support, coordination and delivery of NDIS services.

NACCHO Recommends: In line with the National Agreement on Closing the Gap, there must be an ongoing, concerted effort to build the capacity of the Aboriginal and Torres Strait Islander community-controlled sector to deliver NDIS services.

Raising the Age of criminality

Under the Crimes Act 1914 (C'wlth), the minimum age of criminal responsibility for Commonwealth offences is 10 years of age.

In May 2023, the ACT Government became the first jurisdiction to introduce a bill to raise the minimum age of criminal responsibility to 12 years on commencement, and to 14 years by 1 July 2025⁶. This change aims to make a significant positive impact on the long-term wellbeing of at-risk children and young people, their families and community, and reduce the cycle of children and young people engaging in the justice system.

NACCHO Recommends: Increase the age of criminal responsibility to 14 years nationally and in all jurisdictions.

Justice health

The availability and resourcing of appropriate Aboriginal-led culturally-safe, trauma-informed youth justice health and early childhood education and care services for Aboriginal and Torres Strait Islander youth and families are key to meeting the youth justice and child protection targets under the National Agreement on Closing the Gap.

Given the high proportion of Aboriginal and Torres Strait Islander young people in juvenile detention, it is essential that health services in juvenile facilities take into account the unique needs of young Aboriginal and Torres Strait Islander people. Consideration must also be given to the increasing prevalence of young people being detained in adult prison facilities.

⁶ [The ACT is raising the minimum age of criminal responsibility to 14 - Chief Minister, Treasury and Economic Development Directorate](#)

ACCHOs contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive primary health care, and by integrating and coordinating care and services. Many provide home and site visits; medical, public health and health promotion services; allied health; nursing services; assistance with making appointments and transport; help accessing childcare or dealing with the justice system; drug and alcohol services; and help with income support.

ACCHOs are best-placed to provide the care that Aboriginal and Torres Strait Islander people need, and should be funded universally to provide care to our people in all custodial settings.

Some ACCHOs are already providing social and emotional wellbeing services and/or health services in adult or youth detention centres, ensuring Aboriginal and Torres Strait Islander detainees are being provided with culturally-safe care. For example, Winnunga Nimmityjah Aboriginal Health and Community Services successfully provides care in the Alexander Maconochie Centre in the ACT⁷. Youth detention facilities in Darwin and Alice Springs, are also serviced by ACCHOs, Danila Dilba and the Central Australian Aboriginal Congress respectively.

NACCHO Recommends: ACCHOs are funded to provide care to Aboriginal and Torres Strait Islander people in all youth and adult detention settings.

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?

While, Aboriginal and Torres Strait Islander people are severely overrepresented in the justice system, only a small number of ACCHOs have formalised programs within correctional centres. Additionally, where ACCHOs have justice health programs, the impacts on families and children are profound. An independent evaluation of Wuchopperen’s Health Justice Partnership found:

- all clients improved their health and wellbeing
- most clients were helped with 3 or more legal issues, simultaneously improving their health and wellbeing, housing, income and legal rights
- 281 wellbeing outcomes were achieved, including: improved financial resilience, reduced family conflict, increased ability to exercise rights, prevention of homelessness and support for victims of crime and historic injustice⁸

Health justice partnerships are an initiative that can support populations that are at-risk of poor health and unmet legal need. They connect health services with legal assistance to give health clients immediate access to help for their legal problems.

⁷ Tongs, J., Chatfield, H. & Arabena, K. 2007, *The Winnunga Nimmityjah Aboriginal Health Service Holistic Health Care for Prison Model*, Aboriginal & Islander Health Worker Journal, vol. 31(6).

⁸ <https://www.lawright.org.au/wp-content/uploads/2020/11/LR-overview-of-WHS-HJP-evaluation.pdf>

Aboriginal leadership in justice

There are good examples of increasing the involvement of Aboriginal and Torres Strait Islander leadership in the administration of Aboriginal juvenile justice.

The Koori Court has been established as part of the Magistrates Court in Victoria. The language of the Court is more conversational and participatory, ensuring respondents are aware of the justice process and understand the implications of their choices. The Court enables Aboriginal Elders or respected persons to give cultural advice to help the magistrate make a judgment that is both culturally appropriate and helps reduce the likelihood of reoffending.⁹

International examples

Under the *Maine Indian Claims Settlement Act (1980)*, § 6210, the Passamaquoddy Tribal Court, Penobscot Nation Tribal Court and Houlton Band of Maliseet Indians Tribal Court exercise exclusive jurisdiction over:

- certain criminal offences
- juvenile crimes
- civil actions between tribes
- Indian child custody proceedings
- domestic relations matters.

Further, the Tribes may also appoint their own Law Enforcement Officers who have exclusive authority to enforce ordinances made by the Tribe within the Indian territory as well as the criminal, juvenile, civil and domestic relations laws discussed above.¹⁰

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?

While there are tremendous benefits in adopting a system of rights-based principles, the “protective” vital systems related to youth justice, child protection, education and tertiary health are state based. There is often misalignment across jurisdictions, and these systems are at their core punitive with pervasive systemic and overt racism and racial biases.

All custodial, protective and related systems need to be joined up to reduce duplication, and to mitigate young people falling through the cracks.

⁹ Tran, T., Stone, M., Lilli Ireland, L. & Murray, K., *Comprehensive Settlement: Heads of Agreement*, AIATSIS, August 2021, p.27, https://aiatsis.gov.au/sites/default/files/research_pub/AIATSIS%20-%20Comprehensive%20Settlement%20-%20Heads%20of%20Agreement.pdf

¹⁰ Tran, T., Stone, M., Lilli Ireland, L. & Murray, K., *Comprehensive Settlement: Heads of Agreement*, AIATSIS, August 2021, p.27, https://aiatsis.gov.au/sites/default/files/research_pub/AIATSIS%20-%20Comprehensive%20Settlement%20-%20Heads%20of%20Agreement.pdf

Implementation and funding of existing policy frameworks and partnerships

Under the National Agreement on Closing the Gap, Priority Reform One¹¹ established 5 policy partnerships, including: justice (adult and youth incarceration); social and emotional wellbeing; housing; early childhood care and development; and Aboriginal and Torres Strait Islander languages.

Membership of these partnerships includes representation from Aboriginal and Torres Strait Islander leadership and individual experts, and Commonwealth and state and territory Governments.

NACCHO Recommends: Any reform process arising must take into account the priority actions, recommendations and outcomes of all Policy Partnerships established under the National Agreement on Closing the Gap, as they relate to child and youth health and justice.

All governments have a responsibility to improve Aboriginal and Torres Strait Islander children and families outcomes. All governments have committed to working collaboratively to reduce the factors causing the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

*The Aboriginal and Torres Strait Islander Early Childhood Strategy*¹² builds on existing commitments to support community-controlled social service provision, support community-led actions to address overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home-care, and work to redesign service models to work best for our families.

*Safe and Supported: National Framework for Protecting Australia's Children 2021 – 2031*¹³ sets out how we can work together to ensure that children and young people in Australia reach their full potential by growing up safe and supported, free from harm and neglect.

NACCHO Recommends: Governments fund and implement the *Aboriginal and Torres Strait Islander Early Childhood Strategy*.

NACCHO Recommends: Any reforms align and integrate with the *Safe and Supported: The National Framework for Protecting Australia's Children 2021 to 2031* and its Action Plan.

¹¹ [6. Priority Reform One - Formal partnerships and shared decision-making | Closing the Gap](#)

¹² niaa.gov.au/sites/default/files/publications/niaa-early-years-strategy-5.pdf

¹³ [Safe & Supported: the National Framework for Protecting Australia's Children 2021–2031 \(dss.gov.au\)](#)