



Joint Submission by Northern Australian Aboriginal Justice Agency and Aboriginal Peak Organisations Northern Territory

Submission to the National Children's Commissioner on Youth Justice and Child Wellbeing reform across Australia

June 2023

About NAAJA

The North Australian Aboriginal Justice Agency (NAAJA) provides high quality, culturally appropriate legal advice, representation and justice related services to Aboriginal people throughout the Northern Territory. For over 50 years NAAJA has played a leading role in policy and law reform in areas affecting Aboriginal peoples' legal rights and access to justice.

NAAJA's key vision is to achieve True Justice, dignity and respect for Aboriginal people. NAAJA has been instrumental in the establishment and growth of key features of an Aboriginal-led justice system in supporting the growth and development of Law and Justice Groups and Aboriginal mediators, creating a nationally renowned Aboriginal Throughcare service for prisoners and their rehabilitation into the community, forming specialist youth justice and child protection teams and establishing a Custody Notification Service for the safety and wellbeing of Aboriginal people in police custody.

About APO NT

Aboriginal Peak Organisations Northern Territory (APO NT) is an alliance of Aboriginal organisations working to promote and protect the rights of Aboriginal people living in the Northern Territory on areas of mutual concern. The APO NT alliance comprises the Central Land Council (CLC), Northern Land Council (NLC), Tiwi Land Council (TLC), Anindilyakwa Land Council (ALC), NAAJA, Northern Territory Indigenous Business Network (NTIBN), Aboriginal Housing Northern Territory (AHNT) and the Aboriginal Medical Services Alliance of the NT (AMSANT). The member organisations of APO NT are united in their commitment to improving the outcomes of Aboriginal people across broad political, economic, social, and cultural conditions. Since APO NT's establishment in 2010, our members have been working to develop constructive positions and policies on critical issues facing Aboriginal people in the NT, and strive to influence the work of the Australian and NT Governments.

Underlining our collective work is the right to self-determination, which is expressed in the United Nations Declaration of the Rights of Indigenous People. As representatives from peak organisations in the NT, we share the aim of protecting and advancing the wellbeing and rights of Aboriginal people and communities in several key areas. Local involvement, ownership and

control underpins APO NT's work in advocating for practical and sustainable solutions for Aboriginal people. These are then predicated on policy conditions that support Aboriginal self-determination, including commitments to building the Aboriginal community-controlled sector and centring Aboriginal decisions in how national strategies are implemented on the ground.

AMSANT's submission

Separately to this submission, one of APO NT's member organisations, AMSANT, has prepared a submission. As the peak organisation for Aboriginal Health services in the Northern Territory, the AMSANT submission contributes to this discussion from the perspective of Northern Territory children's health and wellbeing. This AMSANT submission has the support of APO NT member organisations. This submission represents the APO NT members' perspectives more broadly and brings a legal focus, led by NAAJA. In addition to its primary submission, AMSANT has also endorsed this submission.

Acknowledgement of Country

APO NT and NAAJA pay our respects to the traditional owners of the lands on which we live and work across the NT. We pay our respects to the Aboriginal Elders, leaders and respected persons, past, present and future and value the immense cultural knowledge of Aboriginal contributors to our submission.

Relevant sources

Whilst we welcome the opportunity to respond to the National Children Commissioner's call for submissions on youth justice and child wellbeing reform, it is clear the systemic issues underpinning these systems are well known and reflected in countless Royal Commissions, inquiries, reviews, submissions and reports. So many of these issues including evidence-based legal and policy reforms remain unaddressed and disproportionately impact the lives, health and wellbeing of Aboriginal children and young people, their families and communities.

We urge you to reflect on this body of work, including the tireless advocacy of our organisations seeking to effect change across these systems, and acknowledging that the ongoing legacy of colonisation remains within their foundations. In particular, we remind you of the sentinel work of Aboriginal led advocacy and reform efforts encapsulated in the following:

1. [The Royal Commission into the Protection and Detention of Children in the Northern Territory](#) (Don Dale Royal Commission);
2. [The Royal Commission into Institutional Responses to Child Sexual Abuse](#), and with attention to the sections relating to the treatment of Aboriginal and Torres Strait Islander children;
3. [The APONT and NAAJA report to the United Nations Committee on the Rights of the Child](#);
4. The [Northern Territory Aboriginal Justice Agreement](#), and [NAAJA's submission to inform the development of this Agreement](#);
5. The [NAAJA Submission to the Inquiry into Murdered and Not Missing First Nations Women and Children](#);
6. The [National Agreement on Closing the Gap](#) and the associated National and State/Territory level Implementation Plans;

7. The report of the [Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse](#) 2007;
8. The Victorian Commission for Children and Young People systemic inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system: "[Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system](#)", and
9. The Victorian "[Wirkara Kulpa - Aboriginal Youth Justice Strategy 2022-2032](#)". Wirkara Kulpa is written for and by Aboriginal children and young people and captures the aspirations and changes Aboriginal children and young people, their families and communities want to see.

NAAJA has also provided the following comprehensive submissions to the Royal Commission into the Protection and Detention of Children in the Northern Territory (the Royal Commission) in relation to the child protection and youth justice systems:

- [Submission on Care and Protection](#)
- [Submission on Detention](#)
- [Submission on Pre- and Post- Detention](#)

These submissions provide a detailed analysis of the factors that contribute to the overrepresentation of Aboriginal children and young people in the child protection and youth justice systems of the NT and systemic failures in the operation and administration of these systems. Tragically the issues articulated therein and what needs to change remain relevant today. This is because the Northern Government has either failed to act on key recommendations or reneged on promises to transform these systems in line with the evidence of what works. These transgressions have led to a significant increase in youth offending and the stigmatisation and demonisation of Aboriginal children and families and blow out in youth prison numbers. At the core of the problem is continuing poverty, disadvantage and homelessness in Aboriginal communities as well as a 'tough on crime' response by authorities.

It is not an absence of inquiries, evidence, submissions or recommendations that has caused the early criminalisation, overrepresentation, harm, stigmatisation and endangerment of young Aboriginal people in the Northern Territory. Instead, the need for this project by the Human Rights Commission comes from the failure of governments at all levels to accept and commit to genuine implementation of recommendations and to fund the evidence-based reforms that we know will better protect and support our young people.

Introduction

Our organisations and our member organisations work with the young people who are falling through the gaps. In working with these young people, we can see that Australian governments are often in breach of both international law and statutory obligations under Australian law. For Aboriginal children in the Northern Territory, these failures contribute to broken lives. We are a long way from Closing the Gap.

We recognise there are many government representatives from diverse backgrounds, values and political organisations who want to see a brighter and stronger future for the country's children. For this reason, we present the following submission in good faith. We would welcome the opportunity to meet with you to supplement this submission with summaries of relevant case studies and regional insights as it relates Aboriginal children and young people and their families in the Northern Territory.

The Northern Territory Government has walked away from its commitment to implement the recommendations contained in the Don Dale Royal Commission. Furthermore, it has reinforced or fortified punitive aspects of the youth justice system that funnel vulnerable and disadvantaged children into police cells, courts and prison, causing them harm. This includes [changes to the Youth Justice Act and Bail Act](#) which has led to a rise of [30% in the numbers in detention over the last five years with Aboriginal children faring the worst](#). Aboriginal children account for 95% of the youth prison population, although they make up 43% of the total NT youth population. The majority, around 4 in 5 (78%) young people detained in youth prisons are on remand awaiting the outcome of their court matter, including trial or sentence, many of which are not handed a sentence of detention when their matter is heard. These statistics reveal a system that is geared to incarcerating children rather than investing in youth specific and culturally relevant supports and services, bail programs, accommodation options and rehabilitative alternatives. Many of these youths are also either in the care of the Minister or well known to the Child Protection system.

Presently there is no gazetted supported bail accommodation available for females in Darwin. This is a potential discrimination issue based on gender. Further, the Territory is contravening recommendation 25.21: that bail support services for children and young people be provided in Darwin, Alice Springs, Tennant Creek, Katherine and Nhulunbuy. To date, there is only bail support accommodation in Darwin and Alice Springs. We are however, encouraged by the works being done in Tennant Creek for a supported bail accommodation to be built, as part of the Barkly Regional Deal.

While the Northern Territory Government committed to raise the age of criminal responsibility, this reform is not expected to take effect until at least the third quarter of this year. At present, children as young as 10 continue to be arrested, charged, hauled through courts and locked up in youth prisons. NAAJA regularly sees 10- and 11-year-old Aboriginal children alternating between court, community and custody pending assessments and contested hearings/trials to determine their capacity. In 2021-2022, 48 Aboriginal children aged 10 to 13 years were in youth prisons over the course of that year. The low age of criminal responsibility directly contributes to the over-imprisonment of Aboriginal children and young people. On average, [Aboriginal children enter the youth justice system at a younger age than non-Aboriginal young people](#). Nationally more than a third (36%, or 1,518) of

Aboriginal children under supervision in 2021–22 were first supervised when aged 10–13 compared with about 1 in 7 (14%, or 634) non-Aboriginal young people.

There are extensive waitlists for programs that could assist children and young people to access rehabilitative and therapeutic services and supports, including intensive case management. For example, the Northern Territory Government funded the Back on Track program, which provides various elements, including Element 1 specialised case management. NAAJA have referred nine clients, some as far back as April 2022, who have not been picked up, due to waitlists and capacity issues with the service providers.

Another primary recommendation of the Royal Commission was to close Don Dale Youth Detention centre. Some six years after the Royal Commission, this centre remains open and has undergone renovations to expand its capacity. Over-crowding and understaffing in youth prisons continue to result in the systematic use of extended lockdowns, in some cases amounting to solitary confinement, impacting the safety, mental health and wellbeing of children locked away. We hear ongoing reports of children and young people experiencing very poor mental health, including [instances of self-harm](#) and suicidal ideation. [Children with profound cognitive disabilities](#) (diagnosed and undiagnosed) and poor mental health continue to be held in facilities where there is failing infrastructure, inadequate staffing and critically underfunded and overwhelmed health care and specialist services.

For children with cognitive difficulties, the high bar set by behaviour management programs in place such as 'Centre Cycle' make it nearly impossible for children to meet compliance obligations. Children in prison with disabilities such as Foetal Alcohol Spectrum Disorder (FASD) are commonly deprived of privileges, and are placed in situations whereby, as a result of dysregulation related to their disability, become emotionally heightened and may act out. Rather than implement individualised and therapeutic behavioural support plans, custodial staff too readily resort to the use of force and restraint techniques.

We have ongoing significant concerns with the inappropriate and discriminatory transfers of children with extensive family connections in Alice Springs to the Don Dale Youth Detention centre in Darwin. NAAJA considers that many of these transfers of children from Alice Springs to Darwin contravene recommendation 19.01 of the Royal Commission, as they take place against the advice of medical professionals, and result in children being removed from family, culture and country in central Australia, as well as from pre-existing medical and legal support. We expect this issue of inappropriate transfers will soon become more pronounced, as the Alice Springs Youth Detention Centre is set to be closed for an undetermined period of time for refurbishment.

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?

The genuine commitment to and full implementation of evidenced-based recommendations of the Royal Commission and the adequate funding of Aboriginal-led initiatives, services and programs remain crucial to transforming the youth justice system. Over and above law and policy reforms there is a dire need for Governments to work with, share resources and decision making power with Aboriginal peoples and Aboriginal Community Controlled Organisations in the true exercise of self-determination.

Decades of racist policies flowing from the Intervention and abolition of Aboriginal Community Councils have fractured Aboriginal communities and further undermined the cultural authority of Aboriginal elders. The last decade of broken promises and paternalistic governance have led to the ongoing neglect of remote communities, and an overall reduction in investment and services in remote Australia. As a consequence, there has been a significant increase in anti-social issues across the NT.

The failure to address the rise in homelessness and overcrowding across regional and remote NT is a key driver of poor mental health, physical and emotional wellbeing and has contributed to the decline in economic and social outcomes. We call for genuine commitment by the NT and Federal Governments to a new National Partnership Agreement on urban and remote housing and homelands that accelerates the reduction in overcrowding (over the life of the past agreement overcrowding has only decreased by 3%).

The failure to address the rise in homelessness and overcrowding across regional and remote NT is a key driver of poor mental health, physical and emotional wellbeing and has contributed to the decline in economic and social outcomes. We call for genuine commitment by the NT and Federal Governments to a new National Partnership Agreement on Remote Housing that will accelerate the reduction in overcrowding for remote communities and homelands. Over the life of the past agreement overcrowding has only decreased by 3%. Regionally, through the Social Housing Accelerator Funds (NT - \$50M), we call for a commitment to develop a suite of measures to grow and build the Aboriginal Community Controlled Housing and Homelands sector. Funding should include an allocation for Aboriginal Community Controlled Organisations to deliver services to Aboriginal families.

While the Federal Government has committed to replacing CDP with a new program that creates real jobs, so far the reform process has left Aboriginal organisations on the sidelines. The APO NT [*Fair Work and Strong Communities*](#) proposal – widely endorsed by more than 30 Aboriginal and non-Aboriginal organisations nationally – provides a blueprint for a new approach to remote employment that puts local people at the centre of deciding what jobs are needed and wanted in their communities.

Rates of incarceration of Aboriginal young people and their wellbeing will not be improved unless action is taken to address the deepening poverty in remote Australia. Aboriginal people living in remote communities in the Northern Territory are subject to levels of government neglect not seen (and which would certainly not be accepted) in most other parts of the

country. Deficits in remote infrastructure and services in the NT are enormous and reflect ongoing neglect, particularly over the past decade. This includes deficits in housing, water and sewerage, reliable power, decent roads, green space and health, education and social services that support appropriate first-world living conditions.

We refer the Commission to the two submissions by APO NT and also APO NT's member organisation, the Central Land Council, to the Senate *Inquiry into the nature and extent of poverty in Australia* and support the recommendations in the context of this review.

Recommendations

1. Provide long-term funding to support early intervention and culturally strengthening and locally based alternative responses including diversion and restorative justice programs for Aboriginal children and young people.
2. Invest in and expand the development of Aboriginal diversion programs designed and delivered by Aboriginal organisations. These programs should embed Aboriginal cultural values and connection, support child and family centred approaches, be trauma informed and amplify Aboriginal children and young people's voices and perspectives. Positive examples include Aboriginal led and place based initiatives, such as [Kings Narrative](#), and [Arrente Community Boxing Program](#), [Brother to Another- Our community, our mob, our solutions](#) and [Grassroots Youth Engagement](#), Palmerston, and [Aunty's Safe Space](#).
3. Repeal the 2021 amendments to the Bail Act and Youth Justice Act (NT) including Part 1 and Part 2 of the [Youth Justice Legislation Amendment Act 2021](#) (NT) that have increased remand numbers and further entrenched children and young people in the formal youth justice system. In addition, amend the Bail Act (NT) to adopt similar provisions to those in the Bail Act 1977 (Vic), including a standalone provision that requires bail authorities to consider any 'issues that arise due to the person's Aboriginality', including cultural background, ties to family and place, and cultural obligations.
4. Once before the Court. Similar to community led diversion, expand the opportunity for Aboriginal mechanisms to inform court and judicial decision making and support alternative justice solutions including empowerment of Aboriginal mediators, restorative justice practitioners and peace makers, re-establishment of Aboriginal community courts and Law and Justice Groups, increase the availability of healing and social and emotional wellbeing and health programs and culturally relevant drug and alcohol programs.
5. When bail is granted to a young person, introduce a tailored approach that allows full consideration of factors that may inhibit compliance with bail conditions, including housing/homelessness, disability and cognitive issues.
6. Establish and fund a system of Aboriginal mentorship for children and young people at risk or involved in the youth justice system that engages Aboriginal Elders.
7. In the establishment of Community Courts, authorise, support and resource members of Law and Justice Groups including Elders and Respected Persons to inform sentencing outcomes.
8. Promote therapeutic interventions and initiatives that will address the casual factors related to offending, assist rehabilitation and healing for the offender, victim and broader community. Courts and Corrections should work with Aboriginal organisations to provide the necessary programs and supports to facilitate the successful completion of community based sanctions.

9. Cultural Authorities, Law and Justice groups, Elder groups, or groups with their own names specific to communities, need to be resourced appropriately and integrated across the justice system. A network of outstations and place-based alternatives to prison can link in relevant programs and Aboriginal people can be resourced to provide a level of oversight and accountability in programs.
10. Establish and fund alternative custodial services and facilities that are place-based within Aboriginal Communities, including remand houses that are culturally strengthening and place based, therapeutic, trauma informed and responsive and child and adolescent appropriate.

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?

There is a deep body of domestic and international evidence to demonstrate what works to reduce youth contact and further involvement in the youth justice and child protection systems. The principles underpinning this evidence that applies to the Northern Territory context include adopting community-led initiatives that build on pre-existing community strengths, including culture, family and lore. Programs that connect Aboriginal young people to culture and country are critical.

Prevention and early-intervention approaches are most effective in breaking the cycle of poverty, and children coming into contact with the youth justice system. Many of our members and member organisations operate programs that contribute to improved outcomes in our communities. We are available to discuss these programs with you in more detail.

Case Study from the Groote Archipelago

We have seen a recent success from one of our member organisations, Anindilyakwa Land Council, where the establishment of various locally-led justice and youth programs have led to a significant decline in the rates of youth incarceration and offending on the Groote Archipelago. This area had previously been known for some of the highest incarceration rates of young people in Australia.

One of the youth programs, GEBIE Gang, supports young people who have come into contact with the justice system, but it also provides mentoring support for young people and practical support and activities, such as support for young people to get their drivers’ licenses, as well as cooking, health, fitness, spear-making and short courses.

One of the local justice programs is the Anindilyakwa Peacemakers, which sees an experienced group of local leaders mediate and de-escalate disputes among community members. The early intervention by Peacemakers is designed to mitigate the potential for violence and serious injury. Another is the Spotters, which supports youth and their families in a bid to stamp out anti-social behaviour and contribute to a more cohesive community.

Since the establishment of the new programs in 2018, police data has shown a dramatic decline in crimes committed by young people aged 8-17. From a peak of 60 cases of youth offenders in 2013 on the Groote Archipelago, and an average of around 50 offenders per year from 2014-2019, NT Police data has since recorded a sharp decline to 20 cases of youth offenders in 2021. Furthermore, the number of people in youth detention has fallen from a high of 12 in the 2012/13 financial year to 1 in the 2021/22 financial year.

See [this report](#) for more information.

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?

Where a national approach may assist to generate momentum in policy implementation of evidence-based reforms, and to identify and prevent the duplication of efforts and investment between Commonwealth and State/Territory jurisdictions, we would support this initiative.

The Commonwealth Department of Social Services recently produced the “Safe and Supported: the National Framework for Protecting Australia’s Children 2021-2031” as well as two associated action plans. We recommend that any national approach to youth justice and child wellbeing reform be developed in close alignment with the work areas implementing this framework, which will contain many links, crossovers and common goals.

We also recommend that any national approach be developed, where it relates to Aboriginal Australians, to give effect and strengthen the four priority reforms identified in the [Closing the Gap National Agreement](#). These priority reforms are:

- (i) formal partnerships and shared decision making with Aboriginal people;
- (ii) building of the Aboriginal community controlled sector in recognition that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people and achieve better results;
- (iii) systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people; and
- (iv) shared access to data and information at a regional level.

The value of a national approach to implementing youth justice reforms would be in bringing accountability and transparency to commitments made by the Northern Territory government in line with a national strategy. Through APO NT’s role on the Northern Territory Executive Council on Aboriginal Affairs, which develops and progresses Northern Territory implementation plans under the National Agreement on Closing the Gap, we experience difficulty in gaining access to data, and generating traction on existing commitments made by the Northern Territory Government. For the NT context, a national approach would bring greater oversight to the weak institutions operated by the Northern Territory Government.

Finally we note that if the Referendum for the Voice succeeds this year, then we anticipate that a National Voice for Aboriginal and Torres Strait Islander peoples would become an important stakeholder for consultations regarding reform on youth justice and child wellbeing.