

30 June 2023

To the Australian Human Rights Commission,

RE: Inquiry into Youth Justice and Child Wellbeing Reform Across Australia

Please find attached a submission on behalf of *Replanting the Birthing Trees* project team and the SAFeST Start Coalition. We are a collaboration of over 100 Aboriginal and Torres Strait Islander and non-Indigenous academics, practitioners and advocates working across health, child protection, family services, youth and adult justice and mental health systems. Our submission focusses on the intersection of child protection and the youth justice system, and the harms that are caused to Aboriginal and Torres Strait Islander children, families and communities as a result of punitive practices across these two systems. Our submission argues for a public health approach, focussed on therapeutic models of practice and care.

We look forward to hearing about the outcomes of this important inquiry.

Best wishes,



Professor Marcia Langton and Professor Catherine Chamberlain
on behalf of the *Replanting the Birthing Trees* project team and the SAFeST Start Coalition.



Onemda Aboriginal and Torres Strait Islander Health and Wellbeing

Submission to the Australian Human Rights Commission on Youth Justice and Child Wellbeing Reform across Australia

On behalf of the *Replanting the Birthing Trees* project team and SAFeST Start Coalition.

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We acknowledge the Traditional Custodians of the unceded lands on which we live and work across the continent. We value and respect the deep connection that Aboriginal and Torres Strait Islander Peoples have to the lands, seas, waterways and living things - a connection that has survived millennia and continues despite the impacts of colonisation and dispossession. We pay our respect to the Ancestors and to Elders, past and present.

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Executive Summary: Key Recommendations

Our submission addresses systemic failures to recognise and provide therapeutic support to redress the harms and consequences of intergenerational trauma which disproportionately impacts the most vulnerable Aboriginal and Torres Strait Islander children. Rather than care and support in the youth justice system, these children with very poor physical, emotional and social wellbeing are further harmed by punitive and inadequate systems. To redress this catastrophic situation, we recommend:

1. A comprehensive therapeutic public health approach to address this complex issue, of poor child wellbeing exemplified by the youth justice system, including primary, secondary and tertiary prevention. A major focus on child wellbeing is needed, as we have outlined in a submission to the National Early Years Strategy.
2. Major reform of current youth justice system approaches and culture, to move from punitive to a therapeutic approach. This includes the adoption of *intensive* culturally grounded therapeutic care and support for children in the Youth Justice System. These children reflect the catastrophic failure of our society to foster their social, emotional and physical wellbeing. Our most important responsibility as a nation.
3. Population-based measures to reduce the harmful effects of alcohol use and Fetal Alcohol Spectrum Disorder (FASD), including therapeutic treatment, support for addiction, community-led alcohol restrictions and broader national strategies to reduce advertising and marketing.
4. Support from the National Cabinet for Aboriginal youth justice reform.
5. Support at the federal level for raising the age of criminal responsibility to 14 years (at a minimum) and raising the age of incarceration/detention to 16 years old.
6. The enactment of a Federal Human Rights Act that reflects existing international instruments (including the Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous Peoples, and the Convention on the Rights of Persons with Disabilities); **and** that reflects state, territory, and federal commitments under the Closing the Gap agreement.
7. Transparent and demonstrable progress consistent with Australia's international obligations on the implementation of the Optional Protocol Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
8. Full implementation of all recommendations from the Royal Commission into Aboriginal Deaths in Custody. Similarly, implementation of the Australian Law Reform Commission's recommendations to stop the over-representation of Aboriginal and Torres Strait Islander people in custody.
9. Incentivising state and territory governments to invest in community-led trauma-informed early intervention programs and services. This includes early wrap around continuity of carer services in the First 2000 days and beyond.
10. Incentivising state and territory governments to invest in Aboriginal and Torres Strait Islander-led research, programs, services, and models to reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and youth justice systems. This needs to occur alongside a commitment to genuine self-determination where Aboriginal and Torres Strait Islander communities are empowered to work beyond colonial systems. Research priorities include an economic evaluation of the cost of harmful use of alcohol to the communities of the Wyndham-East Kimberley region, culturally adapted developmental and complex trauma screening measures.

Who we are

We are a collaboration of over 100 Aboriginal and Torres Strait Islander and non-Indigenous academics, practitioners and advocates working across health, child protection, family services, youth and adult justice and mental health systems. Our current research programs represent over \$10 million in investment from the Medical Research Future Fund (MRFF), the National Health and Medical Research Council (NHMRC) and other national investments to improve support for Aboriginal and Torres Strait Islander families to transform compounding cycles of intergenerational trauma, that are driving health persistent health inequities, into cycles of nurturing the recovery. This includes a project called *Replanting the Birthing Trees* (see figure 1 for conceptual model).

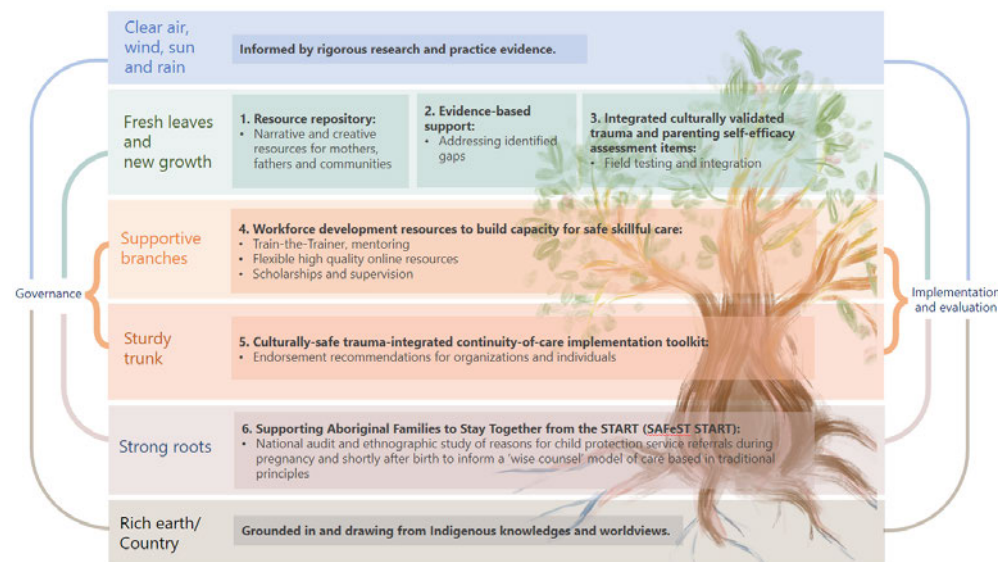


Figure 1: Replanting the Birthing Trees conceptual model

The Replanting the Birthing Trees project is governed by community-controlled peak body representatives and led by Professor Catherine Chamberlain, a Palawa woman of the Trawlwoolway clan of Lutrawita (Tasmania), Professor Rhonda Marriott and Professor Marcia Langton and 44 Chief investigators in partnership with 17 partner organisations. Professor Chamberlain is a perinatal epidemiologist, registered midwife and public health researcher who is leading a large program of research focussed on systemic change to support Aboriginal and Torres Strait Islander parents and babies across the health and child protection systems.

The Supporting Aboriginal Families to Stay Together from the Start (*SAFeST Start*) workstream operates under the SNAICC Family Matters umbrella and is led by Dr Jacynta Krakouer. The coalition aims to address the high rates of children being separated from families shortly after birth. The expertise of this network is particularly relevant for this submission to the Australian Human Rights Commission Inquiry into Youth Justice and Child Wellbeing Reform across Australia.

This submission is a collaboration between researchers, practitioners, and advocates with transdisciplinary expertise. We are united in our commitment to ensuring that the injustices and inequities experienced by the most vulnerable members of our community are addressed, both immediately and systemically.

Introduction

The focus of our submission is on the intersection between the systemic and societal failure to foster the wellbeing of Aboriginal and Torres Strait Islander children child wellbeing at primary, secondary and tertiary levels, and child protection and youth justice systems. These systems fail to provide public health prevention and therapeutic support for our most vulnerable children and continue to criminalise Aboriginal and Torres Strait Islander children at alarming rates. The failures in primary,

secondary and tertiary level prevention are exemplified in intergenerational cycles of trauma, occurring as a direct consequence of colonial violence and harmful policies including the forced removal of children from families the failure to reduce the secondary effects (e.g., mental illness, alcohol and substance use); and failure to provide tertiary prevention to reduce the impact of ongoing injury (e.g., fetal alcohol spectrum disorder). The final outrage is that, rather than offering therapeutic care and support to these children who have been failed at every level, they are being punished in punitive youth justice systems and blamed for the predictable catastrophic outcomes. Urgent reform is needed to rethink this from a public health perspective and develop an effective comprehensive approach.

Aboriginal and Torres Strait Islander people are differentially exposed to, and suffer from, exposure to carceral systems of control. This includes child protection services and criminal legal systems. Any discussion of reform to the youth criminal legal system needs to consider the way that all these systems interact and lead to the over-policing, monitoring and punishment of Aboriginal and Torres Strait Islander children, families, and communities. It also takes a systematic public health approach, that aims to prevent or reduce health issues and social problems in a population by identifying risk and interacting factors, and planning primary (e.g., prevention of trauma, FASD, family disruptions), secondary (e.g., screening and early therapeutic support for children at risk) and tertiary (adequate care and treatment for children involved in youth justice systems) preventive measures.

Response to Inquiry questions

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

As articulated in the Uluru statement:

“Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. **These dimensions of our crisis tell plainly the structural nature of our problem.** This is the torment of our powerlessness.”

One of the key structural factors that contributes to children and young people's contact with the OOHC, and youth criminal legal system is their parents and experience of intergenerational, complex and cumulative trauma and the way statutory systems respond to that trauma. We argue the 'pipeline' of involvement with the justice systems starts with the out-of-home care (OOHC) system. Data from the Australian Institute of Health and Welfare (AIHW, 2023) shows that nationally in 2022 Aboriginal and Torres Strait Islander children were:

- In receipt of child protection services¹ at **12.3** times the rate of non-Indigenous children.
- close to **12** times more likely to be in contact with child protection compared to non-Indigenous infants in the first year of life.
- Placed on care and protection orders at **10.5** times the rate of non-Indigenous children. Western Australia had the highest disproportionality ratio of all states and territories with Aboriginal and Torres Strait Islander children almost **19** times more likely than non-Indigenous children to be on a care and protection order. This was closely followed by Victoria, where Aboriginal and Torres Strait Islander children were placed on care and protection orders at almost **18** times the rate of non-Indigenous children.

¹ 'In receipt of child protection services' includes any type of contact with child protection, from referrals to family services and/ or supports, to removal and placement in Out-of-Home Care.

The disproportionate rate of Aboriginal and Torres Strait Islander children and families involved in child protection systems across Australia stems from a legacy of intergenerational trauma, violence, and ongoing discrimination, which includes the forced removal of over 100,000 Aboriginal children, known as the ‘stolen generation’ (Krakouer et al., 2022; McCallum, 2017). Despite a reduction in the over-representation of Aboriginal and Torres Strait Islander children in OOHC being a key Closing the Gap target, the number of children in OOHC is increasing. This represents a national crisis and urgent need for a significant systemic change (SNAICC, 2022). We have outlined a call for action for urgent reform to OOHC (Chamberlain et al., 2022), which can be found [here](#).

The over-representation of Aboriginal and Torres Strait Islander children in child protection systems is mirrored in the youth criminal legal system. Research shows a high proportion of children that are considered ‘dual system involved’ or ‘cross-over’ – that is, children that are caught in both the child protection and the youth criminal legal systems (Baidawi, 2020; Malvaso et al., 2019). Recent data produced by the AIHW (2022) shows that nationally in 2020-21, Aboriginal and Torres Strait Islander children:

- aged 10-17 years old were **7 times** more likely to be under the supervision of youth justice than non-Indigenous children
- under youth justice supervision were **5.5 times** more likely to have had an interaction with child protection services within the previous five years.

Similarly, a higher proportion of Aboriginal and Torres Strait Islander children on community-based supervision orders had spent time in residential OOHC care settings, compared to their non-Indigenous peers (17.7% vs 13.5%). While these data need to be interpreted with caution, they are consistent with the large body of literature showing that placement in residential OOHC is uniquely traumagenic *and* criminogenic² (see for example Gatwiri et al., 2021).

Both child protection and youth justice are founded on principles of control and punishment. Children (and families) that come into contact with these systems experience further criminalisation and trauma (Allen et al., 2010; Anthony et al., 2021; Funston & Herring, 2016; Robertson et al., 2022)

For example, of the approximately 128 children in the Victorian youth justice system (Department of Justice and Community Safety, 2020):

- 53% had experienced abuse and/or neglect
- 49% had a mental health issue
- 42% had witnessed family violence
- 52% had a history of alcohol and drug use
- 21% lived in unsafe or unstable housing
- 31% presented with cognitive difficulties and/or intellectual disabilities

These data point to the high prevalence of trauma among children in detention. We argue that the following are key causes of this trauma:

Undiagnosed and untreated FASD: has emerged as a significant challenge facing Australia’s youth justice system, contributing to escalating criminal behaviour and incarceration rates among

² The term ‘criminogenic’ is used to refer to factors that are significantly correlated with criminal activity – the term itself means ‘causative of crime’. While much of the research has focussed on internal characteristics (for example, impulsivity), the impact of structural and systemic factors on a person’s ‘propensity’ towards crime cannot be understated. There is a large body of literature that shifts the focus from individual deficit and psychopathology to the structural factors that underlie crime, including (but not limited to) poverty and systemic racism (see for example, Baldry & Cunneen, 2014).

Aboriginal and Torres Strait Islander youth [10]. Impulsivity is a common symptom of individuals with FASD, as the disorder impairs an individual's ability to learn from their mistakes, thereby leading to increased likelihood of contact with law enforcement [4].

The disproportionate number of individuals with FASD within the youth justice system raises concerns about fairness and equity, starting from an individual's initial contact with the police. A study conducted in the Kimberley region of Western Australia found neurodevelopmental disorder was documented in 34/108 children (314.8 per 1000). Any diagnosis on the FASD spectrum was made in 21/108 (194.4 per 1000) children (95% CI = 131.0–279.0) (See Appendix 1).

Structural and systemic racism: The over-representation of Aboriginal and Torres Strait Islander people in statutory systems, combined with the extensive evidence of higher morbidity and mortality, earlier mortality, higher rates of preventable illnesses, poorer social-emotional and developmental outcomes, higher rates of poverty and financial hardship, higher rates of mental ill health including higher rates of suicide, and increased risk of death due to family and domestic violence (AIHW, 2018) point to the ongoing impacts of structural and systemic racism (Gatwiri et al., 2021).

The injustices that have occurred against Aboriginal and Torres Strait Islander people since colonisation are ongoing. Systems – including the youth criminal legal system - deem Aboriginal and Torres Strait Islander people as inherently criminal and/or dangerous (Cunneen, 2019). These assumptions contribute to 'threatening', punitive and harmful responses that affect not only the individuals concerned but also perpetuate intergenerational trauma and further neglect, over-policing, and criminalisation of Aboriginal and Torres Strait Islander people in an endless feedback loop (see for example, Aboriginal Justice Caucus, 2023; Australian Human Rights Commission, 2017; Davis, 2019; Lowitja Institute, 2022). Structural racism is evident in:

- the lack of action on most of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and the continued deaths and abuse of Aboriginal and Torres Strait Islander people in custody.
- The systematic disregard of recommendations in the Little Children are Sacred Report, which was instead used by the federal government to justify the damaging 2006 'intervention' across NT communities.

The criminalisation of children in the OOHC system: The 'care-to-prison' pipeline is evident in many settler states with a history of oppressing Indigenous peoples. Australian researchers have begun exploring this phenomenon in greater detail, contributing to the growing evidence of the criminogenic impact of removal of children from their families and placement in OOHC (see for example, Baidawi & Ball, 2022; McFarlane, 2018).

For Aboriginal and Torres Strait Islander children, statutory child protection intervention typically involves disconnection from their culture, community, and Country (see for example, Beaufils, 2022; Krakouer et al., 2018). Disconnection from culture leaves Aboriginal and Torres Strait Islander children even more vulnerable to the traumagenic impacts of OOHC, as exemplified by the following quote by Gamilaraay man and therapeutic specialist working to support Indigenous children in OOHC:

If we had done nothing he would have ended up in the correctional system. He was not going to school, his behaviours were through the roof. I guess when we were supporting him, we were looking at, for him he was taken away from Country, he was disconnected from family. So, his relational permanency wasn't there, his sense of belonging wasn't there. So once those connections started, and he was reunited with his family, he started going back to school, he started to be engaged in his culture. He had regular family contact, he stopped

having connection with police and the correctional system. So, for him, his journey and his sense of permanency changed completely. (Corrales, unpublished).

Systemic challenges: There are a range of systemic issues that contribute to the criminalisation of Aboriginal and Torres Strait Islander children, particularly those with a history of child protection involvement and/or OOHC placement. These include:

- Limited availability of culturally appropriate assessments (both developmental and risk assessments) and culturally appropriate health and mental health programs, grounded in Aboriginal and Torres Strait Islander knowledges, and/or validated for use with Aboriginal and Torres Strait Islander populations. This is a significant issue, considering the growing concern over systemic biases built into machine learning and artificial intelligence systems that are increasingly used with ‘at-risk’ populations (see for example, McQuillan, 2022; Keddell, 2014; Krakouer et al., 2021). Anecdotally, members of our coalition have indicated that some jurisdictions have inbuilt processes that automatically categorise children with three or more protective concerns as ‘high risk’. A classification of high risk has been linked to a higher incidence of children being placed on care and protection orders, rather than the families being referred to intensive family supports. There is a differential impact of this process on Aboriginal and Torres Strait children and families given the multiple and intersecting disadvantages they experience. To our knowledge, this issue has not been explored in sufficient detail, and requires additional attention.

The absence of culturally appropriate assessments. This includes a high prevalence of undiagnosed FASD among Aboriginal and Torres Strait Islander children in the child protection and youth justice systems. Undiagnosed and untreated FASD has emerged as a significant challenge facing Australia’s youth justice system, contributing to escalating criminal behaviour and incarceration rates among Aboriginal and Torres Strait Islander youth. Impulsivity is a common symptom of individuals with FASD, as the disorder impairs an individual’s ability to learn from their mistakes, thereby leading to increased likelihood of contact with law enforcement (Hamilton et al., 2021; Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011). **See Appendix 1 for more detail.**

- Insufficient investment/resourcing in Aboriginal and Torres Strait Islander-led initiatives to break the cycle of intergenerational trauma. This includes through programs/services to prevent the removal of Indigenous children from family and community, or to support the reunification of Indigenous children back to family and community; and to address the factors that contribute to contact with criminal legal systems. It also includes insufficient resourcing to promote the health and wellbeing of Indigenous people and communities, particularly during the perinatal period. (Chamberlain et al., 2022) This includes lack of support for dads, further marginalising the important role of fathers and men in caring for children.

- Lack of commitment to genuine reform that shifts the focus from punitive systems to early intervention, trauma-aware and healing-informed and therapeutically grounded approaches within child protection and juvenile justice settings. Despite several reforms that focus on early intervention [for example, the Early Years Strategy to support early childhood education the National Framework for Protecting Australia’s Children 2021-2031 (Department of Social Services, 2021, 2023)], the bulk of investment continues to be directed at the ‘pointy’ end of statutory systems and is often a punitive rather than a therapeutic approach. This includes OOHC and juvenile justice. Further, there is limited evidence of consistent approaches to the implementation of trauma-aware and therapeutic models of care both in OOHC and juvenile justice. The absence of a consistent and well-articulated trauma-aware and therapeutic approach across service systems means that high priority children, with undiagnosed and

untreated health concerns in our society continue to be exposed to harmful practices (see for example, Office of the Advocate for Children and Young People, 2021; Davis, 2019; Commission for Children and Young People, 2019).

- A tendency towards regressive reforms that further entrench disadvantage and that differentially target Aboriginal and Torres Strait Islander people. For example, the Queensland government's *Strengthening Community Safety Act 2023*, has made breach of bail a criminal offence for young people. This 'reform' not only breaches the Queensland Human Rights Act but is also likely to result in children with child protection histories, and Aboriginal and Torres Strait Islander children (regardless of child protection contact) returning to custody. Similarly, the Victorian Government's changes to the *Bail Act 1977* have had a uniquely negative impact on Aboriginal and Torres Strait Islander women (Victorian Aboriginal Legal Service, 2022). The incarceration of women has significant ripple effects on children, broader kinship networks and ultimately communities (Anthony et al., 2020; Anthony et al., 2021), particularly if these spaces are not child friendly to enable ongoing care and connection. And the NT Gov passed controversial youth bail reform laws that contravened recommendations in the Royal Commission into the Protection and Detention of Children in the NT (2021).

2a. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people?

Research on **intergenerational trauma** emphasises the importance of **evidence-based public health responses to support individuals impacted by trauma** – in contrast to incarceration of youth in detention centres such as Banksia Hill in Western Australia and Don Dale in the Northern Territory. Punitive approaches compound harm to the most traumatised with inappropriate institutional responses to what we know is predictable expected behaviour. Incarceration effectively ensures individuals bear the blame and take the focus off the systemic problems and create more 'negatively reinforcing downward cycles' as the Inspector General described recently in relation to youth in the Banksia Hill centre. This seems to be a defining feature of colonial institutions, and similar patterns and evidence are reported from Canada (Cesaroni et al., 2019).

Child protection and youth justice are inherently **punitive systems**. It is difficult to retrofit 'trauma-aware, healing-informed' approaches into either system, as neither is designed to work holistically, therapeutically and in partnership with children and families. Both systems are driven by a focus on risk – risks posed by 'dangerous families' who are unable to care for their children; and 'dangerous children' who pose a risk to community safety. The responses therefore are framed through the lens of risk management. This is counter to the basic principles of trauma-aware and therapeutic approaches, aligned with the 'Power Threat Meaning Framework', which recognise natural responses to threat (especially among children) and other clinical issues such as FASD, and provide appropriate expert therapeutic support. Many emphasise family inclusion, safety (physical, emotional, psychological, and spiritual, both felt and experienced), connection and belonging. We recommend major reform of systems to embed a primary therapeutic approach focussed on effectiveness and positive outcomes.

Public health research on the intersection of child protection and the adult criminal legal system when women are pregnant or have recently given birth and are in custodial settings suggests that *quantity* of programs in statutory systems is prioritised over *quality*. Importantly, the tendency to refer families to multiple services that lack coordination, and at times may not even be relevant to the circumstances of the families – sets them up to fail. Families (particularly women) are expected to meet conditions that are simply unachievable for most people, let alone people who are struggling with multiple and intersecting forms of disadvantage. When children and families are unable to meet

the conditions imposed on them by child protection and youth justice, they are seen to have ‘failed’, and consequently treated even more punitively (see for example Featherstone et al., 2018).

A greater understanding of the prevalence and impacts of FASD, particularly in child protection and youth justice settings. For example, Bower et al., (2018) found that FASD diagnoses were much more prevalent among Aboriginal and Torres Strait Islander children in the Western Australian youth detention system, compared to their non-Indigenous peers (47% vs 8%, respectively). This highlights the impact of historical and social factors on alcohol consumption rates and the inadequacy of alcohol restrictions in mitigating these factors (Bower et al., 2018). The importance of identifying and supporting young people with FASD in the justice system through comprehensive assessments, rehabilitation, and training for youth justice officers is well documented (Hamilton et al., 2021). Additionally, primary prevention efforts to reduce alcohol consumption during pregnancy are crucial in addressing the prevalence of FASD, although these have so far been identified as being inadequate (Langton et al., 2020). **See Appendix 1 for more detail.**

2b. What are the barriers to change, and how can these be overcome?

A recent review by the Office of the Inspector of Custodial Services (2023) in Western Australia into the Banksia Hill detention centre made 10 recommendations to address the crisis within the custodial setting. The first recommendation calls for the ‘design and construction of a second youth custodial facility that meets the complex needs of different cohorts of young people’ (p. viii). While the intention behind this recommendation may appear laudable – the current facility is unsafe for both children and staff - the focus on building more prisons to cage children is the single biggest barrier to reform in this area. As noted by the Office of the Inspector of Custodial Services (2023, p. v)

This recommendation was intended to address the medium to long term needs of youth detention in Western Australia. It is not an immediate fix to any of the current issues. But over time the Banksia Hill population is likely to increase again, and the complexity is unlikely to change. The current and future needs of different cohorts of young people - young women and girls, remand versus sentenced young people, and those with high security needs – have to be considered and addressed. Otherwise, we may well find ourselves stuck in the same situation in the years to come.

The above quote – echoed in similar ways in each state and territory – highlights the challenges with the idea of reforming the youth justice and similar systems. The assumption that the number of children requiring incarceration is simply going to keep growing is an admission of failure. The population of children in custody will only continue to grow if governments continue to criminalise sections of the population that are in most need of support. This is particularly concerning given that 82% of children detained at Banksia Hill during the period of the inspection were Aboriginal children. Addressing this barrier requires an ideological shift at all levels of government. Rather than building more prisons, we need a much stronger commitment to justice reinvestment, putting money and resources into communities and enabling those communities to help address the factors that contribute to statutory system involvement (Deadly Connections, 2020; Lowitja Institute, 2022).

The other significant barrier is the lack of trauma-aware, therapeutic approaches within child protection and youth justice. While both systems claim to be trauma-informed, there is little evidence to support this claim. It is exceedingly difficult to implement true trauma-aware approaches within systems that have been designed to control and punish. Further, there is little widespread implementation of healing approaches, grounded in Aboriginal and Torres Strait Islander traditions and bodies of healing and medicinal knowledge.

This is particularly important within the OOHC, and juvenile justice systems given the well-established research on the way early childhood trauma impacts developmental processes (see for example Farnfield & Onions, 2021; Perry et al. 2018; van der Kolk, 2014). Children in OOHC and youth justice settings require environments and interventions that are grounded in safety and stability, and that promote healing through healthy and reciprocal relationships that convey nurturance and care. Therapeutic approaches that place the child *and* the family at the centre of practice, that view the needs of the child and the family holistically and empathically, and that avoid pathologizing disadvantage, have been shown to lead to improved outcomes (Perlin & Lynch, 2021; Struik, 2017; Young et al., 2020).

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?

There have been several reforms in Australia and internationally that have shown some promise, at least in their early stages of implementation. We provide a more comprehensive list of these reforms in Appendix 2. Below, we describe several reforms that we feel are particularly salient but have not yet been progressed.

1) Comprehensive community-led continuity of carer in the first 2000 days have shown substantial reductions in the number of children removed into OOHC. These include the Birthing in our Community study (Brisbane), Bagarook Project in Victoria, Boodjari Yorgas program in WA, and Corca Bubs in South Australia.

2) Australian Law Reform Commission's (ALRC) *Pathway to Justice* inquiry (2017, pg. 13) called for the development of an independent justice re-investment body at the commonwealth and state/territory levels to "promote the reinvestment of resources from the criminal justice system to community-led, placed-based initiatives that address the drivers of crime and incarceration." To our knowledge, work on this recommendation has not progressed at the federal or state/territory levels. However, this is an important area of reform that should be prioritised.

The ALRC also called for law reform that compels decision-makers (judges, magistrates) to take a person's Aboriginality – including the fundamental importance of connection to culture and Country, family and kinship ties, and *cultural obligations* – into consideration when making bail decisions. This is an important area of reform, which again, to our knowledge has not progressed. While the High Court decision in *Bugmy v R* (2013) 302 ALR 192 compels decision-makers to consider the pervasive impacts of 'profound childhood deprivation'³, particularly for Aboriginal and Torres Strait people, our research indicates that removal from family and placement in OOHC are not necessarily viewed as uniquely traumatic factors (Corrales et al., unpublished). In our work with judges, magistrates, and lawyers we have found that OOHC is typically viewed as just another element of 'childhood deprivation', with limited consideration for the trauma associated with being separated from family and/or the inherent instability (and lack of safety) associated with OOHC.

³ The Bugmy decision by the High Court of Australia applies in all states and territories and across the child and adult criminal jurisdictions. In essence, *Bugmy* makes it clear that childhood adversity – including poverty, parental incarceration, abuse/maltreatment/neglect – is a significant mitigating factor. Further, the Bugmy principles establish that the impacts of profound childhood deprivation do not wane over time, and therefore need to be considered every time a person comes before the courts for sentencing. However, mitigating potential of childhood adversity needs to be weighed against the severity of the crime, the risk to the public, and the accused's prospects for rehabilitation.

There is limited information, however, on how the Bugmy principle is applied in practice, whether it is given due consideration and whether it represents an intersectional understanding of childhood adversity. That is, it is not clear whether judicial decision-makers adequately factor the compounding impacts of colonisation and dispossession when applying the Bugmy principles to Indigenous people at sentencing. We note, however, that Deadly Connections Community and Justice Services are currently undertaking the **Bugmy Justice Project** to improve the sentencing processes and outcomes for Indigenous people.

Appendix 2 provides additional information about Koori/ Murri Courts and similar approaches in the youth justice setting, as well as a summary of a program in Canada that is relevant.

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.

There are several benefits to a national approach to youth justice and child wellbeing reform. However, we also note that child protection and criminal justice systems are state and territory-based, and therefore a national approach may be difficult to translate in practice. We also note the importance of community-led initiatives and strategies that are consistent with the reform pillars of the Closing the Gap agreement, including embedding community-control. This constraint notwithstanding, we believe the following would be beneficial:

- 1) Support from the National Cabinet for Aboriginal youth justice reform.
- 2) Support at the federal level for raising the age of criminal responsibility to 14 years (at a minimum) and raising the age of incarceration/ detention to 16 years old. The evidence on adolescent brain development is indisputable, as is the evidence on the harmful impacts of incarceration and detention on young people's life trajectories.
- 3) The enactment of a Federal Human Rights Act that reflects existing international instruments (including the Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous Peoples, and the Convention on the Rights of Persons with Disabilities); **and** that reflects state, territory, and federal commitments under the Closing the Gap strategy.
- 4) Transparent and demonstrable progress consistent with Australia's international obligations on the implementation of the Optional Protocol Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- 5) Full implementation of all recommendations from the Royal Commission into Aboriginal Deaths in Custody. Similarly, implementation of the Australian Law Reform Commission's recommendations to stop the over-representation of Aboriginal and Torres Strait Islander people in custody.
- 6) Incentivising state and territory governments to invest in trauma-informed early intervention programs and services. Annual recurrent expenditure by all states and territories on child protection and youth justice services far exceeds expenditure on early intervention and family preservation services and supports (see for example, SNAICC, 2022). Families in crisis across Australia are struggling to access homelessness/ housing support, mental health, drug and alcohol and family violence services (to name a few). There needs to be much higher investment in services and programs that can work holistically, over longer periods of time, and across systems to support families who are struggling.
- 7) Incentivising state and territory governments to invest in Aboriginal and Torres Strait Islander-led research, programs, services, and models to reduce the over-representation of Aboriginal and Torres

Strait Islander children in child protection and youth justice systems. This needs to occur alongside a commitment to genuine self-determination where Aboriginal and Torres Strait Islander communities are empowered to work beyond colonial systems.

A national approach has the potential to provide consistency and efficiency; enable the development of creative and holistic solutions grounded in research and evaluation. Further, a national approach can contribute to advocacy and awareness on a larger scale, by unifying diverse stakeholders (including government, non-profit organisations, and community groups) around a common agenda. Finally, a national approach can lead to long-term impact and systemic change. To effect this change, however, requires a commitment to moving beyond threatening and punitive approaches towards trauma aware, healing informed approaches that foster parent and child social, emotional, and physical wellbeing. Change will only come when the systemic and structural factors that contribute to the over-policing and criminalisation of Aboriginal and Torres Strait Islander People are addressed, and vulnerable families and children are given genuine and culturally safe opportunities to heal. This is a fundamental foundation for Closing the Gap so that Aboriginal and Torres Strait Islander children can, once again, grow up happy healthy and strong in this abundant land we now share.

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Appendix 1: Foetal Alcohol Spectrum Disorder and the Australian Youth Justice System

Undiagnosed and untreated FASD has emerged as a significant challenge facing Australia's youth justice system, contributing to escalating criminal behaviour and incarceration rates among Aboriginal and Torres Strait Islander youth [10]. Impulsivity is a common symptom of individuals with FASD, as the disorder impairs an individual's ability to learn from their mistakes, thereby leading to increased likelihood of contact with law enforcement [4].

The disproportionate number of individuals with FASD within the youth justice system raises concerns about fairness and equity, starting from an individual's initial contact with the police. For example, individuals with FASD may struggle to understand investigative procedures and with providing testimony on their own behalf. Indeed, court proceedings can become challenging for individuals with FASD, as these youth often have language disorders and poor communication skills which can lead to difficulty comprehending legal processes [3]. Individuals with FASD may have a diminished capacity to stand trial, as the effects of FASD lead to reduced reliability of their testimonies [11]. Once incarcerated, youth offenders with FASD are consistently interacting with people who are likely unaware of their specific needs, leading to an increased risk of negative interactions with custodial and non-custodial personnel as well as an increased risk of bullying and coercion at the hands of other inmates [12].

Considering the intricate and cognitively demanding nature of legal proceedings and the increased vulnerability of incarcerated youth with FASD, it is crucial to adapt processes at all stages of engagement with the criminal justice system to adequately address the needs of these individuals. In the case of Aboriginal and Torres Strait Islander peoples, these needs are further compounded by intergenerational trauma resulting from past colonial policies, linguistic diversity, and distinct cultural perspectives [13]. To support these individuals, it is recommended to implement community-led diversionary programs specifically designed for justice-involved individuals with FASD [14].

It has been shown that the most successful interventions for Aboriginal and Torres Strait Islander communities are those which are led by these communities themselves. To facilitate this, it is suggested that federal and state governments assist local Aboriginal and Torres Strait Islander communities to develop community-driven strategies for the prevention and management of FASD. In remote areas where resources and clinicians with expertise in the diagnosis of FASD are lacking, investment in the creation of a culturally appropriate screening tool developed in conjunction with community leaders should be undertaken [4].

When evaluating the prevalence of a diagnosis of FASD amongst those engaged in the juvenile justice system, Aboriginal youth were diagnosed at much higher rates (47%) compared to non-Aboriginal youth (8%). This highlights the impact of historical and social factors on alcohol consumption rates and the inadequacy of alcohol restrictions in mitigating these factors [3]. The importance of identifying and supporting young people with FASD in the justice system through comprehensive assessments, rehabilitation, and training for youth justice officers is well documented [4]. Additionally, primary prevention efforts to reduce alcohol consumption during pregnancy are crucial in addressing the prevalence of FASD, although these have so far been identified as being inadequate [1].

Researchers in Western Australia have identified that 89% of children and young people at the Banksia Hill facility had at least one form of severe developmental impairment; 36% were diagnosed with Foetal Alcohol Spectrum Disorder; 34 of the 36 diagnosed with Foetal Alcohol Spectrum Disorder were Aboriginal [2].

Table 1 summarises available research on the prevalence of Fetal Alcohol Syndrome (FAS) and FASD among Aboriginal and Torres Strait Islander peoples across different states and

settings [4]. Estimates in the table may vary due to different methods, periods of ascertainment, populations, and diagnostic criteria [2], however under-reporting is also acknowledged in studies with retrospective reviews and those based on register data.

Table 1.

Table. Prevalence of FAS/FASD among Aboriginal and Torres Strait Islander people		
Location and publication	Ascertainment method	Prevalence
Western Australia [5]	Population register, multiple sources; up to 6 years of age; births 1980-2004	2.76 per 1,000 births (FAS)
Western Australia [6]	Population register, multiple sources; up to 6 years of age; births 1980-2010	4.08 per 1,000 births (FASD)
Top End, Northern Territory [7]	Medical record review Royal Darwin Hospital; 1990-2000	4.7 per 1,000 live births (FASD)
Far North Queensland [8]	Outreach paediatric clinics; 2001-2006	15 per 1,000 Aboriginal children <18 years (FASD) 2 per 1000 Torres Strait Islander children < 18 years (FASD)
National [9]	Active reporting by paediatricians through Australian Paediatric Surveillance Unit; 2001- 2004	1.5 per 1,000 children <5 years at diagnosis (FAS) 0.81 per 1000 children <15 years at diagnosis (FAS)
Western Australian remote communities [2]	Comprehensive, active assessment of all children in communities born 2002-2003	194 per 1,000 children (FASD)
Western Australian youth detention [3]	Comprehensive, active assessment of all young people (10-17 years of age) sentenced to detention 2015-2016	466 per 1,000 young people assessed in detention (FASD)

Table adapted from: Hamilton, S., Doyle, M., & Bower, C. (2021). Review of Fetal Alcohol Spectrum Disorder (FASD) among Aboriginal and Torres Strait Islander people. *Australian Indigenous Health Bulletin*, 2(1).

Alcohol-related harms are significant among the Aboriginal population in the East Kimberley region; they include social, cultural, health, and legal problems. This harm includes high rates of alcohol consumption, accidents, injuries, violence, sexual assault, family violence and child abuse, which have in turn eroded cultural practices and caused severe community dysfunction [1]. The region has experienced a rise in alcohol-related crime and particularly assaults, along with a high incidence of alcohol-related conditions including Acquired Brain Injuries (ABIs) including Fetal Alcohol Spectrum Disorder (FASD) [2].

Alcohol restrictions required to reduce FAS and FASD occurrence and reduce violence

Inadequate alcohol restrictions including relaxed takeaway limits and illegal sale of alcohol have enabled stockpiling and excessive consumption and have led to violence and community dysfunction.

Alcohol consumption among pregnant women is the causal factor resulting in FAS and FASD. As a result, children are more often trapped in cycles of under-education, poverty, abuse, and trauma whilst insufficient services and support in the region have exacerbated these challenges faced by the community [1].

Langton, Smith, Bawden, Rose and Clinch (2020) (*see Appendix 3*) conducted a study in the Wyndham-East Kimberley region and found that extent and severity of alcohol-related harm and consumption in the is extreme by any measure and has increased rapidly over the past decade. The detrimental impact on the Aboriginal and Torres Strait Islander population of the region is broad-ranging, including high rates of alcohol-related criminalisation, preventable accidents and illness, and ongoing community trauma. The ineffectiveness of the alcohol reforms that have been put in place indicate that further, stricter reforms are required, including further reductions on the supply of alcohol. However, supply limits alone are not adequate to address the harms experienced within the community. Greater and more secure resources are urgently required to provide appropriate wrap-around support for chronic and high-risk drinkers and for those who are impacted by their drinking. Additional services are required for key areas including mental health and wellbeing, children and young people, and education, training, and employment.

They recommended:

1. Further restrictions on takeaway alcohol limits that align more closely to the Australian health guidelines

The Australian guidelines to reduce the health risks of drinking alcohol recommend no more than four standard drinks on any one occasion to reduce accidents and no more than two standard drinks per day. Current restrictions in the region allow up to 56 standard drinks per person per day.

2. Alignment of alcohol supply restrictions across the Kimberley

The 'patchwork' of supply limits across the vast region drive sly-grogging and ongoing alcohol-related harm (e.g., road accidents) due to increased mobility to access alcohol.

3. An economic evaluation of the cost of harmful use of alcohol to the communities of the Wyndham-East Kimberley region

This evaluation should include a gap analysis of related services in the health, social, legal and education sectors to provide a realistic assessment of the needs of the region and enable resources to be directed to appropriate areas and organisations.

4. More secure and effective wrap-around support services

Although there are many alcohol-related support services provided within the region, there are clear gaps in some areas and replication in others. Further, there is not enough information provided to the most vulnerable members of the community of the services available, requiring more regular and effective communication strategies.

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Appendix 2: Programs and initiatives that show evidence of improvements for young people in contact with the law

National programs and initiatives

1. Koori and Murri Courts

The introduction of Koori (Victoria and New South Wales) and Murri Courts (Queensland) also represent a reform that has potential to diminish the impacts of criminal justice system involvement for First Nations People. As highlighted by Radke and Douglas (2020, pg. 391) “Indigenous sentencing courts have both a therapeutic and transformative role in the criminal justice system. This suggests that the role of these courts incorporates healing and promoting change after a defendant has been sentenced”. In the Queensland context, Radke and Douglas (2022) identified that the healing potential of Murri Courts was grounded in an understanding of the intergenerational impacts of child protection policies and practices on Indigenous people, a commitment to work towards the reunification of families, and a response to the trauma of removal grounded in Indigenous healing and cultural traditions and bodies of knowledge and practice.

However, there is a need for more research and evaluation of this model to ensure that it is adequately funded and extended. In NSW for example, the implementation of the Youth Koori Courts is still in the pilot phase, and to date, only three locations have been established (Parramatta, Surry Hills, and Dubbo). A preliminary evaluation conducted by the NSW Bureau of Crime Statistics and Research (Ooi & Rhaman, 2022) indicates that participation in the Youth Koori Court (Parramatta and Surry Hills locations only) was associated with a 40% reduction in the risk of a custodial sentence. There were also reductions in the risk of recidivism and of serving a custodial sentence for a new offence (Ooi & Rhaman, 2022).

2. The Victorian Aboriginal Justice Agreement

The Victorian Aboriginal Justice Agreement (Wirkara Kulpa) was first developed in 2020 and is now in its fourth phase. It forms part of the Victorian Government’s Youth Justice Strategic Plan 2020-2023, which identified four key areas for reform: improving diversion and early intervention programs for young people in contact with the law, more tailored and individualised approaches to rehabilitation, developing greater integration and collaboration across sectors that can support young people in contact with the law, and improving career support for the youth justice workforce, with a view to improvements in attracting and retaining staff (Department of Justice and Community Safety, 2020).

The first phase of the Victorian Aboriginal Justice Agreement was launched in 2000 with the aim of reducing the ongoing representation of Aboriginal and Torres Strait Islander children in contact with all levels of the youth justice system, improving access to justice-related services and “promote greater awareness in the Aboriginal community of their civil, legal and political rights” (Victorian Department of Justice, 2000, p. 5). The most recent iteration of the Agreement – Burra Lotjpa Dunguludja (The Aboriginal Justice Agreement Phase 4) has been developed in recognition of the continued over-representation of Aboriginal and Torres Strait Islander people in the Victorian criminal legal system. The focus of this stage of the Agreement is on self-determination. The aim is to reduce the average daily number of Aboriginal and Torres Strait Islander children and adults in detention and under the supervision of corrections through community-based orders by 2023. The targets outlined in the Burra Lotjpa Dunguludja align with Closing the Gap targets to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system. It is anticipated that these reductions will occur through early intervention and prevention programs and services, increased use of diversion and improved rehabilitation to reduce recidivism.

There is currently no published information on how the implementation of this Agreement is tracking, or what specific steps the Victorian government intends to take to improve access to early intervention and prevention supports, diversion programs, or to improve the quality and cultural safety of existing rehabilitation programs.

3. The Aldara Yenera Mentoring Program in Yorta Yorta Country

The Aldara Yenera Mentoring Program in Yorta Yorta Country also represents an important program that is facilitating change for Aboriginal and Torres Strait Islander young people. The mentoring program is grounded in Aboriginal and Torres Strait Islander values and beliefs (McMahon et al., 2022) and aims to provide young people with “safe places that enable a sense of belonging, supporting young Aboriginal people to explore their culture and identity” (McMahon et al., 2022, pg. 7). The program is based on Aboriginal and Torres Strait Islander concepts of health and healing. On Country experiences become a therapeutic vehicle, not just through connection to country, but also through connection to and learning from community leaders and Elders. Further, both the program and the evaluation highlighted differences in western and First Nations’ conceptual understanding of youth. All Aboriginal and Torres Strait Islander youth are viewed as young leaders. In recognition of the place of young people in Aboriginal and Torres Strait Islander cultures, deficit-based language (like ‘at-risk youth’) is not utilised as part of the program or the evaluation. Instead, the focus is on interventions (cultural, therapeutic and health) that strengthen Aboriginal and Torres Strait Islander culture and enables healing so that Aboriginal youth can grow into their natural leadership roles.

Promoting connection to culture and identity is a key protective factor in Indigenous health and wellbeing, with the potential to ameliorate the impacts of systemic, structural, and individual-level trauma (Hunter et al., 2021). An evaluation of the Aldara Yenera Mentoring program found that young people felt that being on Country was a healing experience, enabling them to spend time with “strong Black people and spent time on Country and learn about their Ancestors” (McMahon & Modderman, 2022, pg. 7). Further, a young person’s current lived experience – whether living at home, homeless, or incarcerated – was perceived as irrelevant to their status as young leaders. Another key finding of the evaluation was that mentoring under this model cannot be seen as a one-off experience or a short-term relationship. Rather, there is a need to invest in the long-term development and nurturing of Aboriginal and Torres Strait Islander children – in their connection to their culture and their identity. Programs such as these have the potential to transform outcomes for these children caught up in the OOHC and youth justice system.

International programs and initiatives

1. The Huu-ay-aht First Nations Social Service Project (Canada)

Internationally, we are aware of systemic reform in Vancouver, Canada led by the Huu-ay-aht Nation. The Huu-ay-aht First Nations Social Services project is an Indigenous-led approach to reducing state intervention in Huu-ay-aht communities, thereby limiting the number of children who are removed and placed in OOHC. The Social Services project was developed following an inquiry commissioned by the Huu-ay-at First Nation Government to ensure that Huu-ay-at children, families, and citizens were ‘safe, healthy and connected’ (pg. 5). The Social Services project is the culmination of years of work, commencing in 2011 when the Huu-ay-aht Treaty came into effect. In 2020, Huu-ay-aht advised the Canadian government of their intention to ‘draw down jurisdiction in child and family services’ enabling self-determination in the areas of child and family welfare (ref). In line with the principles of self-determination, the Huu-ay-aht First Nations Social Services project has been working toward reducing the number of Huu-ay-aht children in foster care. There is emerging, albeit still limited, evidence that the Huu-ay-aht First Nations Social Service is helping Huu-ay-aht families feel safer and more connected and is contributing to reductions in the number of children being placed in foster care. Additional information on the work of the Huu-ay-aht Social Services project can be found [here](#).

2) Legislative reform (Canada)

In an overview of Canadian criminal justice system, specifically focussing on the over-representation of Aboriginal youth, Jackson (2015, p. 932) explains how the Canadian Supreme Court clarified that section 718.2(e) of the *Youth Criminal Justice Act* necessitates judges to consider the enduring impact of colonialism on Aboriginal offenders including unique systemic or background factors, and the type of sentencing procedures and sanctions appropriate for the circumstances for the offender. This clarification has since been called the *Gladue* principle and has been applied in Canada mostly during the later stage of sentencing.

Jackson (2015) explains that this principle needs to be applied at earlier stages of the justice system to reduce overrepresentation of Aboriginal youth. As the first point of contact the police need to implement this principle when applying extrajudicial measures, so instead of implementing charges the youth is referred to a community, health, or wellbeing culturally informed programs. Next Jackson (2015) states that if an Aboriginal youth does proceed to court, then the Gladue principle could again be applied to divert the youth from sentencing. Rather, extrajudicial sanctions should be applied, meaning the Aboriginal youth is ordered to receive community based, and or health / mental health interventions.

The *Gladue* principle is similar to the *Bugmy* principle detailed in the main body of our submission. As indicated, there is little evidence of how the *Bugmy* principle is applied in practice, particularly with Aboriginal and Torres Strait Islander people. Unlike the *Gladue* principle, *Bugmy* considerations are only activated at the point of sentencing – that is, there is limited scope within the High Court ruling to employ the *Bugmy* principles at earlier stages of the criminal legal process. However, considering the continuing impact of colonialism, lack of access to appropriate housing and culturally safe health and wellbeing services, and prevalence of FASD and cognitive injury in Aboriginal youth in Australia, there is an urgent need to explore what legislative and policy reforms can be implemented at all stages of the criminal legal system to enable Aboriginal youth to receive the health and medical interventions they require. The evidence is now unequivocal – punitive responses, including incarceration, are not only costly and ineffective, but they also compound and entrench the harm that Aboriginal and Torres Strait Islander people have experienced since colonisation.

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ALCOHOL & VIOLENCE IN THE EAST KIMBERLEY

Alcohol management in northern Indigenous Australia

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RESEARCH SUMMARY

AIMS AND RESEARCH DESIGN

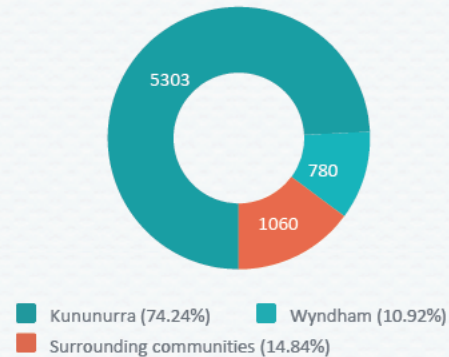
Alcohol is a major cause of social, legal and health concerns for Indigenous Australians. This has led to significant political involvement in the regulation of alcohol in communities where Australian Indigenous people live. Alcohol management plans have most recently been used as a central device for reducing alcohol-related harms, particularly in regional and remote areas. Using mixed-methods, this research aimed to build on understandings of how to respond to the harms of alcohol misuse more effectively, ensuring that alcohol is managed in ways that are relevant and useful to communities in a wide range of contexts.

The research has been undertaken in Pormpuraaw, Cape York, Qld; Alice Springs, NT; Darwin, NT; Katherine, NT; Jilkminggan, NT, and the Wyndham-East Kimberley region, WA. This *Summary of Findings* refers to the project case study area of the East Kimberley region, conducted within the Wyndham - East Kimberley LGA.

Qualitative data: The qualitative data for this case study site was collected primarily in Kununurra but also included Wyndham and multiple Aboriginal communities within a 100km radius of the two towns. The ethnographic interview and participant observation data were collected during four fieldwork trips between November 2018 and May 2019. There were 66 participants interviewed, with some repeat interviews conducted during different trips. Participants included: Aboriginal and Torres Strait Islander community members, Aboriginal community-controlled service providers, health and allied healthcare providers, education and legal sector professionals, local government and workers from the justice sector.

Quantitative data: The quantitative data analysed for the project was sourced from Western Australia police (2009-2019) for the Wyndham-East Kimberley district and the Kununurra Crisis Accommodation Centre (2017-18). Other secondary data was drawn from the ABS and other reporting agencies. All quantitative data referenced (cited or in figures) refers to the whole of the Wyndham-East Kimberley community (Aboriginal & Torres Strait Islander and non-Indigenous) unless explicitly stated otherwise.

WYNDHAM-EAST KIMBERLEY REGION, WA



Source: ABS 2016

RESEARCH ETHICS

This project received the following research ethics approvals: Kimberley Aboriginal Health Planning Forum (KAHPF); Western Australian Aboriginal Health Ethics Committee (WAHEC); University of Melbourne Health Ethics (ID:1647232). The data used in this report has been de-identified. All quotes or persons referenced are referred to by pseudonyms to protect the confidentiality of the participants.

RESEARCH SUPPORT FROM LOCAL ORGANISATIONS

The research received formal support and endorsement from the following groups of the East Kimberley:

- The Wunan Foundation
- BBY – Empowered Communities
- MG Corporation
- Kununurra Waringarri Aboriginal Corporation (KWAC)
- The Ord Valley Aboriginal Health Service (OVAHS)

Many other local organisations in the Shire of Wyndham - East Kimberley also participated in the research.

Local Aboriginal research assistants were recruited with the assistance of MG Corporation, and worked with the research team during the fieldwork to collect the qualitative data.

Extent and patterns of alcohol use & distribution

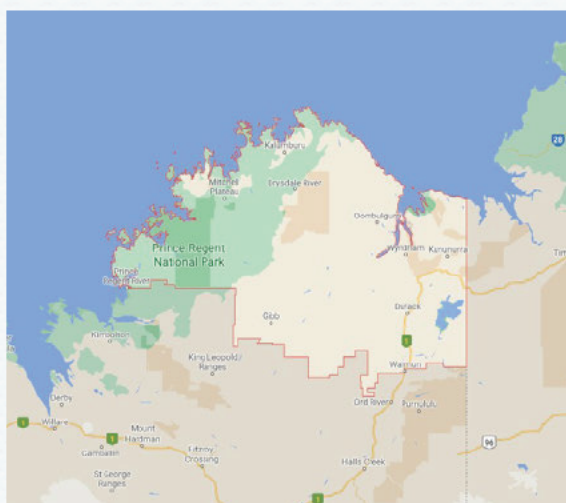
The extent and patterns of alcohol use were documented by the research team via qualitative methods including interviews and participant observation.

The acute need for disruptive intervention in the context of the extreme alcohol-related harms and alcohol misuse in the Kimberley are validated by a wide range of datasets, including indicators reporting on alcohol consumption, alcohol-related offences and alcohol-related hospitalisations.

Further, community attitudes to drinking, particularly with regard to volume and frequency, indicate that risky and harmful drinking practices are normalised within different sectors of the population, both Indigenous and non-Indigenous, and that shifting these attitudes are of high importance to reduce the high level of harm experienced.

Kununurra is also understood to be an alcohol distribution hub for many people living in smaller towns and communities in the surrounding regions, counteracting the varied limits that are in place in different areas across the Kimberley.

Wyndham-East Kimberley Map



Australian guidelines to reduce the health risks of drinking alcohol



Source: NHMRC 2009

The Australian guidelines to reduce the health risks of drinking alcohol include consuming no more than two standard drinks a day to reduce lifetime harms, and no more than four drinks on any occasion to reduce the risk of injury. It is of great concern that many people discussed 'stockpiling' takeaway alcohol at the daily limits within the LGA, leading to the greater likelihood of more frequent drinking at levels that exceed lifetime and risk of injury recommendations.

Further, the high daily limits enable 'sly-grogging' practices, which are evident in the region. Our findings show that some family groups, including non-drinkers also 'stockpile' alcohol to sell on illegally to community members, particularly chronic drinkers, at highly inflated prices.

These factors combined indicate the need for urgent action to disrupt practices and community attitudes to the extent and patterns of alcohol use to reduce alcohol-related harms in the region and beyond.

This section addresses three key areas:

- High levels of risky & chronic drinking
- Underage drinking
- Sale & distribution of alcohol

High levels of risky & chronic drinking

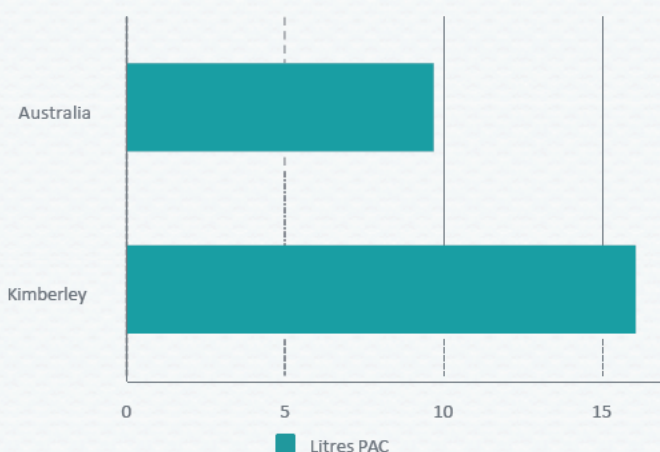
High risk and chronic drinking lead to a wide range of social, health and economic problems for individuals and communities, including preventable accidents and long-term health issues.

In the focus groups, interviews and informal discussions with community members and service providers, participants identified a high prevalence of both risky and chronic drinking in the region. There was also a clear recognition that these harmful forms of drinking have become normalised within the community.

Harmful drinking patterns often develop when alcohol is relied on to manage underlying trauma and stress, including community-wide intergenerational trauma.

Although there is no alcohol consumption or sales data available specifically for the Wyndham-East Kimberley region, across the Kimberley, the estimated per capita consumption of pure alcohol (16.10 litres) for the entire community is far higher than the national annual average (9.71 litres) (Smith, 2017).

Annual alcohol consumption per capita
(litres of pure alcohol)



80 percent of the local people are binge drinkers. They're not, they don't monitor and have one beer, they drink, like my clients would come in unassisted but you know they'll share a box of 30 a family and then another box of 30.

(Peter, mental health, November 2018)

Because my brother he is an alcoholic.

He gets his [Centrelink] money at midnight ...And what he does is, he go buy grog. Sly grogging, because he's got friends. You know one week or this day he'll get paid. He's got his other little gang there. 'Oh your turn today, righto' they'll go hang with him when he get his money he'll go and get the grog. By six o'clock he's drunk. In the morning. He never even do shopping for feed.

(Deborah, community member, February 2019)

She's also living in domestic violence.

She put a restraining order. She was staying at the women's refuge. It made no difference even, she gave up. She just gave up, and that's what people do, they give up and they do, they just turn to alcohol because it's one way to help them not worry about what's actually really going on in their lives and whatnot....That's why they drink. Some people drink to hide their pain.

(Tanya, community member, February 2019).



Underage drinking

The Australian Guidelines state that for children and young people under the age of 18 years, "not drinking alcohol is the safest option" due to the likelihood of increased risky behaviours and the adverse effects on brain development which can lead to other alcohol-related problems across the life course (NHMRC 2009, p.4). The updated Australian Guidelines draft further states that there is "no clear 'safe' or 'no-risk' level of alcohol consumption for children and young people." (NHMRC 2019, p.39)

Community members identified that some Aboriginal & Torres Strait Islander children in the region first start drinking alcohol from the age of ten, and that alcohol is often obtained for them by family members.

As was noted in the Inquiry into the deaths of 13 young people in the Kimberley, seven of the young people were drinking excessively in the lead up to their deaths and in two cases "they were able to buy large quantities of "take away" alcohol during the day and night of their deaths."(Fogliani 2019, p.10)

Many community members identified that the groups of children, particularly in Kununurra, who consume alcohol regularly often do not attend school and are more likely to be engaged with the criminal justice system.

Health and legal service providers also noted that a large proportion of the children engaged with the criminal justice system had, or were likely to have, fetal alcohol syndrome disorder (FASD).

This aligns with findings from the study on the Banksia Hill Detention Centre (Bower et al. 2018), which found that nine in ten of the children had, severe neurodevelopmental impairment and that over one third had FASD. The Banksia Detention Centre in Perth is one of the primary locations that children and young people from the WEK region are sent to if sentenced to juvenile detention.



You get kids from 10 to 12. They get bored, there's no money around so when they see parents drink and if their parents help them or they left town and things like that, the children start to drink. So you've got a generation of kids start to drink pretty young.

(Megan, community member, February 2019)

They don't go to school. They just all get their education there for alcohol and drugs and whatnot.

(Mary, community member, February 2019)

You don't have not much local people working in these organisation around here. I've got a daughter there who's qualified. There are a lot of young girls around here that can work – her daughter, or mine, and that will get them off the grog. The ones you're talking about, the party girl. My niece...These girls can work but no-one's giving them the opportunity.

(Narelle, community member, interview February 2019)

So you've got the courts here, these kids are coming up to such with a reputation, you've got maybe 28 to 32 kids that do the main offending. So the courts are sick of these repetitive behaviours, they've sent away juveniles to get FASD referrals.

(Melissa, health provider, November 2018)



The sale & distribution of alcohol

Many community members from Kununurra viewed the town as an alcohol distribution hub for other communities and towns of the East Kimberley, with people travelling long distances to purchase alcohol from the takeaway outlets.

This is indicative of the less restrictive takeaway limits imposed in the WEK region (as compared to some other surrounding locations in the East Kimberley). In particular, it was identified that some residents of Fitzroy Crossing, Halls Creek and Warmun regularly travel to Kununurra to purchase alcohol, or request those from Kununurra travelling to each location to purchase and bring alcohol with them.

This form of alcohol-related mobility serves to undermine and frustrate the supply mechanisms that are being used to curb alcohol-related harms undertaken in other regions. For example, in Warmun (a small Aboriginal community approximately 200km south of Kununurra) alcohol is prohibited. However, multiple research participants discussed how people from Warmun regularly travel to Kununurra to access liquor.

Other participants noted that the alcohol-related mobility patterns due to differing alcohol limits imposed at different locations merely serve to relocate problem drinkers from one location to another. In the locations with looser restrictions, such as Kununurra, it is perceived that this compounds issues such as overcrowded housing conditions.

“ [Warmun] is a dry community but they throw more parties than Kununurra do...people come to Kununurra and pick up their alcohol and take it back. Some people are sly grogging, too. But it's more that people actually make the effort to travel here. They'll catch the Greyhound bus into Kununurra and buy their alcohol. Sometimes some of them take the Greyhound bus back because it's only \$28 to catch the bus both ways.

(Tania, community member, February 2019)

...Broome do, Fitzroy. And like Halls Creek and Fitzroy they're, that's the main like when they it's only light beer there in Halls Creek and Fitzroy and the people got to travel from there to here they'll get grog, take it back there. Or Fitzroy to Derby, buy grog take it back and they have accident along the road.

(Glen, community member, February 2019)

Also you find people coming from outside the area ...because they can't get, their communities are dry, so they'll cause overcrowding, but they'll also go out drinking and that's their main aim for coming in to Kununurra or Halls Creek. At Halls Creek, they've got stricter alcohol restrictions than Warmun and Fitzroy.

(Noah, ACCO, December 2018)





The sale & distribution of alcohol: Sly grog

It was reported to the researchers that there are up to ten residential locations in and around Kununurra that serve as illegal take-away outlets. These outlets rotate in timings and operate on an ad-hoc basis through kinship/familial ties to illegally supply alcohol to community members in order to bypass the local restrictions.

Many stakeholders and community participants noted that the cost of purchasing 'sly grog' is approximately three times the retail price. For example, a carton of beer from the local takeaway outlet retailing for \$50 is sold for \$150 by sly-groggers. Similarly, a bottle of wine with a retail price of \$10 is sold for between \$25 - \$50 or a \$50 bottle of spirits is \$150.

Most respondents perceive the stricter takeaway alcohol restrictions introduced in 2016 as the driver of the sly-grog market. This indicates a need for greater unification of alcohol restrictions across the region to counter the sly-grog market by decreasing the intra-regional mobilisation of legally purchased alcohol for illegal trade (see pp. 18-19 for more detail).

“ They don't give a rat's arse who you are, drunk or sober. If you've got the cash, you take the grog. See, the policemen can't put a big hammer on this too because when they catch these people with grog in their possession, guess what these people have been telling policemen? "You don't take this grog off me. When I got drunk, I left it at my niece's house and I've just went and gone to pick it up and now I'm going home with my grog. I never bought this grog. I bought this grog early on.”

(Ava, community member, interview February 2019).

“ I do know that the liquor restrictions have increased black market sales, so just driven it underground. And making a fortune for people who are smart enough to get a carton on a Saturday before the Bottle-O closes, and he can sell it on a Sunday for \$300. (Carolyn, ACCO, December 2018)

So they'll go and spend \$200.00 on food and get \$100.00 grog which is only \$20.00 worth of grog. On the black market. (William, ACCO, November 2018)

Alcohol-related harms: extent and impact

Alcohol misuse can be understood as both a consequence and a driver of many social, cultural, health and legal problems faced by Aboriginal and Torres Strait Islander peoples. This research has found that the community in Kununurra is experiencing extreme levels of alcohol-related harm, contributing to severe community dysfunction, including strong associations between

Health harms include high levels of alcoholism, accidents and injuries due to high-risk drinking practices. Other health consequences that are more difficult to quantify due to diagnoses barriers, such as rates of FASD and Acquired Brain Injury, are also likely to be prevalent in the region. Social harms include high levels of violence, sexual assault, family violence, child sexual abuse and child prostitution, and low levels of engagement in education and employment, much of which is normalised

Cultural practices have also been eroded in the local Indigenous population during the past two to three generations, a factor that is lamented by elders and leaders of the community and explained as both an underlying contributor and potential solution to the community's problems if restored.

Alcohol-related crime has significantly increased for the whole community in the Wyndham-East Kimberley region in the decade between 2009 and 2019, alongside offences with a domestic relationship between the parties. In particular, offences against the person have a strong association with alcohol, with alcohol involved or present at the scene of 68.4% of offences.

Hospital data from Kununurra also indicates that the incidence of all alcohol-related conditions occur at a rate that is more than four times that of the rate of the rest of Western Australia, and account for at least 75 per cent of all treatment episodes (Smith 2017).

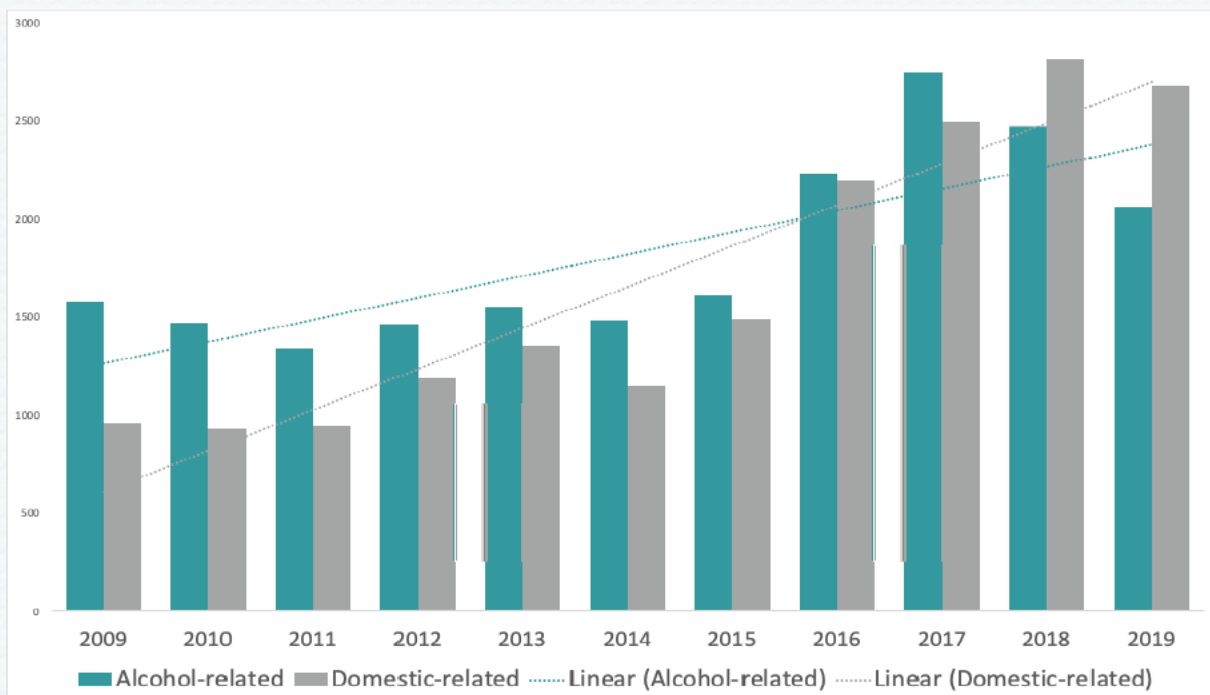


There's all these social issues that do impact the drinking, and the drinking impacts the social issues. So it's not just alcohol, there's a lot of strings that are connected.

Alcohol has caused untold damage and caused incredible destruction to our community. There is not a single Aboriginal person in the Kimberley's who's not affected by alcohol and its overuse.



All alcohol and domestic-related offences in the Wyndham-East Kimberley region (2009-2019)



ALCOHOL-RELATED CRIME IN THE WYNDHAM-EAST KIMBERLEY REGION



2009-2019



Offences against the person

69% of offences against the person had alcohol involved or present



Breaches of violence orders

Alcohol was involved or present for 65% of breaches of violence orders



Serious family assaults

Alcohol was present or involved in 85% of serious family assaults



Assaults

Alcohol was present or involved in 73% of all assaults.



Assault rate

The rate of alcohol-related assaults was 1.9x higher in 2019 compared to 2009



Victims of alcohol-related offences

71% of the victims of alcohol-related crimes were Aboriginal

*This data refers to all offences committed in the region.

Alcohol-related harms: extent and impact



Australian guidelines to reduce lifetime risk

No more than 2 standard drinks per day



Australian guidelines to reduce risk of injury

No more than 4 standard drinks on any one occasion



Wyndham-East Kimberley takeaway alcohol restrictions

Up to 56 standard drinks per person per day*



To reduce the lifetime risk of alcohol-related harm, the Australian Guidelines note that nobody should consume more than two standard drinks per day. The Guidelines also note, that no more than four standard drinks should be consumed on any one occasion. Given that it is possible to purchase up to 56 standard drinks per person per day in the WEK region, it is greatly concerning that many research participants discussed how these limits can serve to encourage residents to purchase and drink more alcohol than they regularly would.



So if you go to buy a bottle of wine and the restriction's three, you're gonna buy three... The same as if you're gonna buy 30 cans. You know, you're not gonna go and buy six cans, you're gonna buy a slab...you tend to stockpile and of course, this encourages you to drink more. (Elena, ACCO, December 2018)



Further, it has already been noted that the high access to alcohol enabled by the relaxed takeaway limits has contributed to sly-grogging in the WEK region. However, if the restrictions were in closer alignment to the Australian Guidelines, stockpiling would be far more difficult, thus reduce increased individual consumption and ability to illegally sell alcohol on for profit.

* Represents the maximum standard drinks allowed for purchase: 56.1 units is the equivalent of the combination of 1 carton of full-strength beer and 3 bottles of wine.

Alcohol-related violence

The shocking extent, gravity and normalisation of violence for the Aboriginal and Torres Strait Islander communities of the EKW region was revealed in this research in both the qualitative and quantitative data. Alcohol was a recurrent and ever-present factor, exacerbating and contributing to violence in its many forms.

The majority of participants in the study discussed the extremely negative impact of alcohol and, in particular, family violence in the region. Although most noted that alcohol was not necessarily a driver of violence in and of itself, it was regularly identified as - at a minimum - a contributing factor that exacerbated much of the dysfunction experienced by the Aboriginal and Torres Strait Islanders communities of the WEK region.



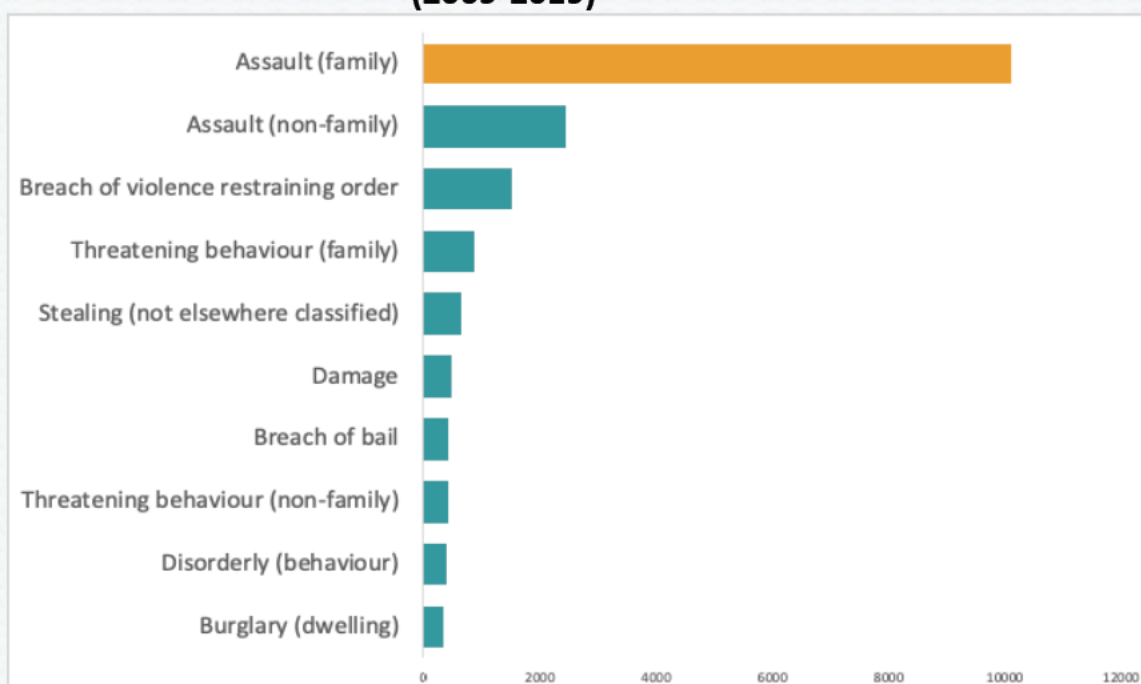
I think family violence and alcohol are the biggest community

destroyers going on at the moment...it's directly linked to sexual assaults, domestic violence, poverty, hospitalisations for different injuries other than assault as well. So you're talking about physical, liver and kidneys, dialysis, diabetes, FASD. It's historically linked to suicides, it's directly linked to suicides, the alcohol and the alcohol abuse (Gary, ACCO, August 2019)



During the decade of 2009 to 2019, the most frequently committed offence involving alcohol was assault against a family member. In fact, this offence was committed at over four times the rate of the next most prevalent alcohol-related offence (assault against a non-family member). Notably, assaults (family and non-family) made up 64 per cent of all alcohol-related offences.

Most frequent offences with alcohol or present in the Wyndham- East Kimberley region (2009-2019)



*The data represented in the chart above refers to all offences in the WEK region

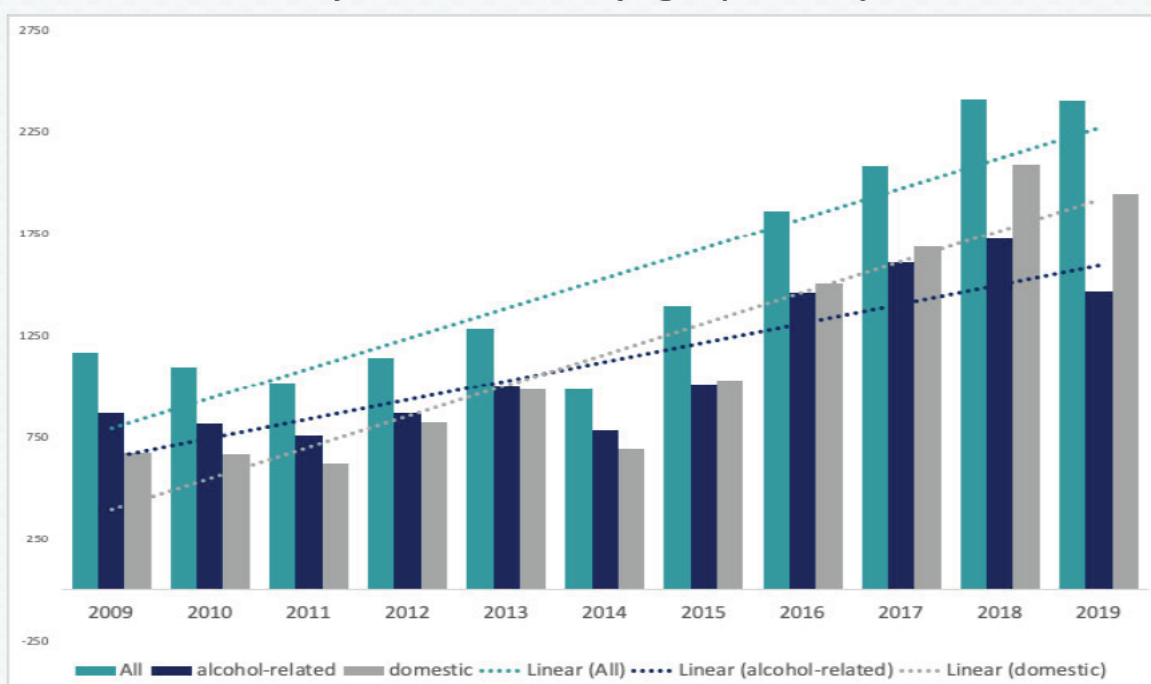
Alcohol-related violence: assaults

Assault rates in Western Australia and the Wyndham-East Kimberley region, 2009-2018 (per 100,000 population)*



Assault rates for the entire Wyndham-East Kimberley region are extraordinarily high and have increased significantly between 2009 and 2019. In 2019, the WEK assault rate had increased by 56% from 2009 (from 17,647 per 100,000 people in 2009 to 33,659.8 per 100,000 in 2019). The assault rates in the WEK region dwarf those of the rest of the state of Western Australia. In 2018, the WEK assault rate (33,659.8 per 100,000 people) was 28 times higher than the rest of Western Australia (1,183.6 per 100,000 people).

All assaults in the Wyndham-East Kimberley region (2009-2018)

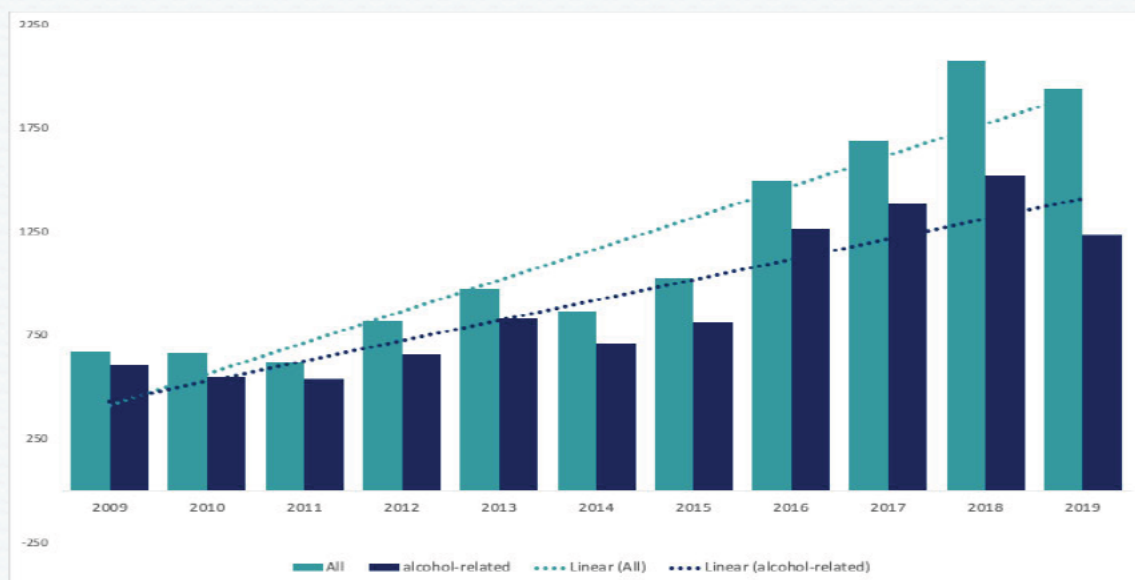


Further, the relationship between alcohol and assault in the WEK region is significant. Alcohol-related assault rates in the WEK region have nearly doubled between 2009 and 2019 (1.84 times higher in 2019). Domestic assaults are also increasing at disturbing rates, more than tripling in the time period (3.15 times).

*WA rates calculated from WA Police Annual Crime Statistics releases (2006-07 to 2017-18)

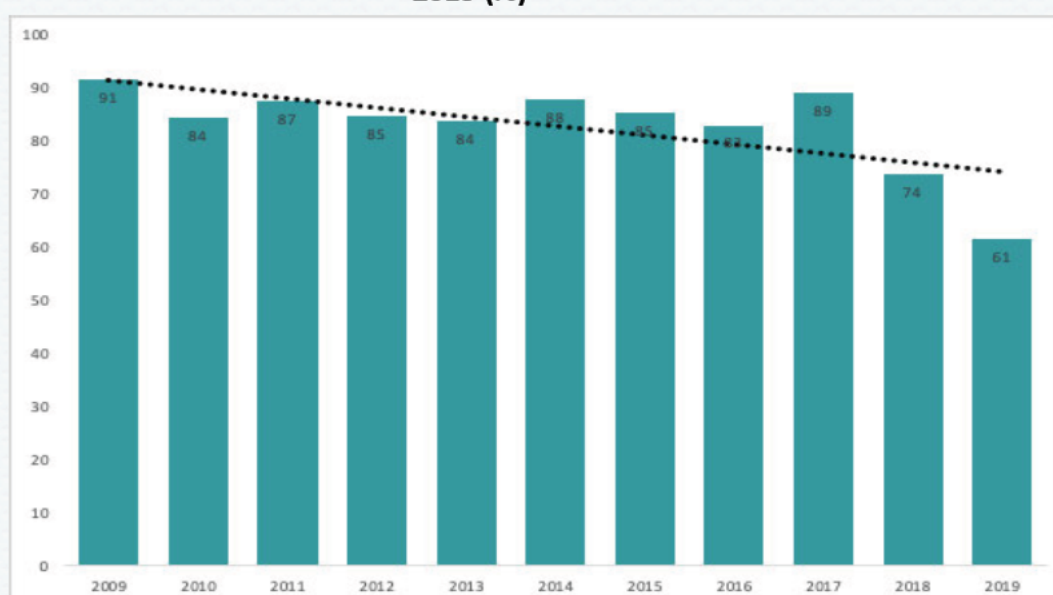
Alcohol-related violence: family assaults

All family assaults in the Wyndham-East Kimberley region, 2009-2019



Alcohol was involved or present at the scene for approximately four out of five assaults against family members (78.8%) in the Wyndham-East Kimberley region between 2009 and 2019. Of the assaults against a family member committed by an Aboriginal offender, alcohol was involved or present in 83% of offences. Further, 94% of the victims of assault against a family member in the WEK region were Aboriginal.

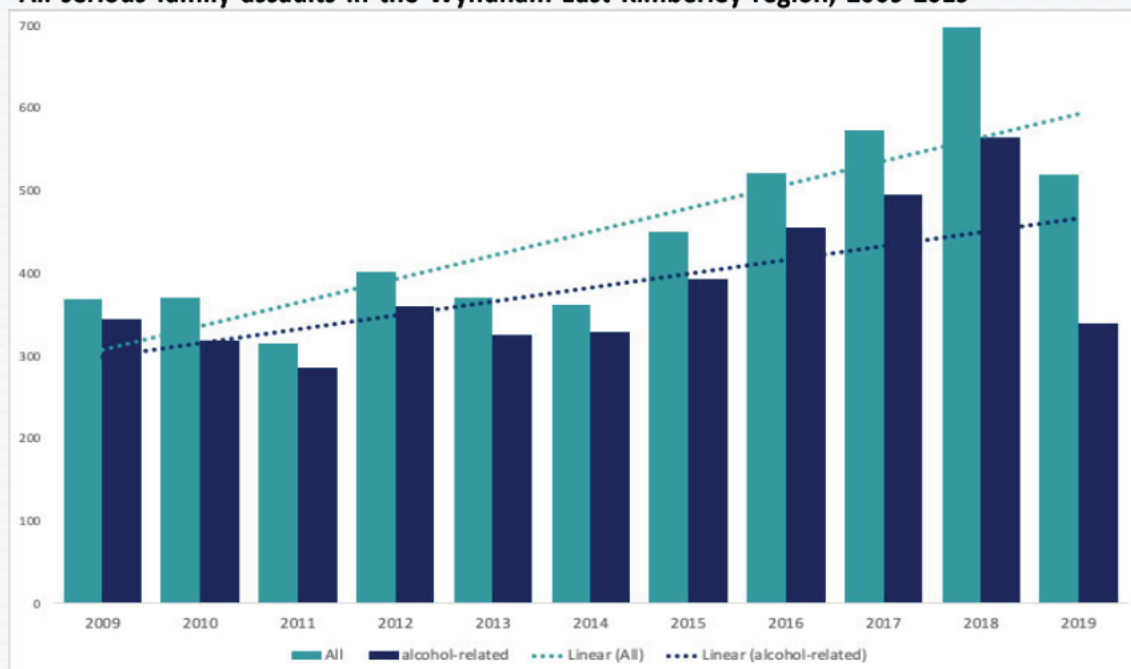
Alcohol-related family assaults committed by Aboriginal people in the Wyndham-East Kimberley region, 2009-2019 (%)



Of the assaults against a family member committed by an Aboriginal offender between 2009 and 2019 in the Wyndham-East Kimberley region, 83% had alcohol involved or present at the scene. However, the relationship between family assault and alcohol gradually decreased for Aboriginal offenders over the time period, particularly after 2017, dropping to 74% in 2018 and again to 61% in 2019.

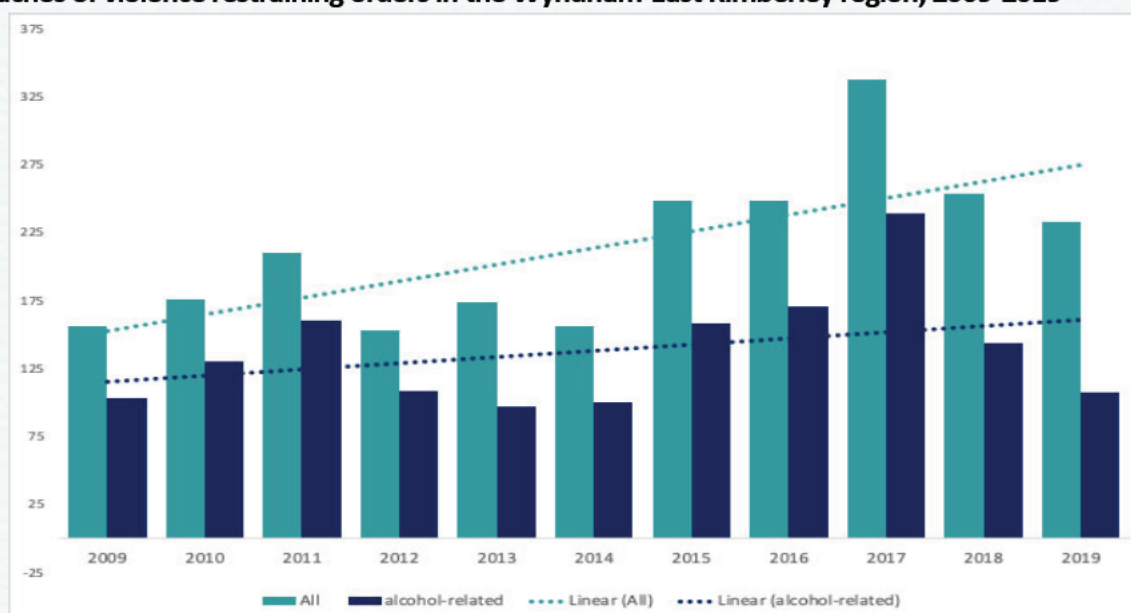
Alcohol-related violence: other

All serious family assaults in the Wyndham-East Kimberley region, 2009-2019



The association between serious assaults committed against family members in the Wyndham-East Kimberley region between 2009 and 2019 is disturbingly clear. During this period 85% of all serious family assaults had alcohol present or involved in the incident. Further, the rates of serious family assaults increased from 5, 594 (per 100,000 people) in 2009 to 7,261 (per 100,000 people) in 2019.

All breaches of violence restraining orders in the Wyndham-East Kimberley region, 2009-2019



Alcohol was involved or present at the scene for over two thirds (65%) of all breaches of violence restraining orders from 2009 to 2019 in the Wyndham-East Kimberley region. Further, when alcohol was a factor in the breach, in 96.8% of cases there was also a domestic relationship between the parties. However, both the number of offences and the relationship to alcohol has declined since 2017, which also coincides with the introduction of the more stringent takeaway alcohol restrictions in the LGA put in place under section 64 of the Liquor Act.

Family violence

Instability of accommodation and homelessness

Women living in insecure housing are placed in financial precarity due to family violence-related issues including partner damage to current housing, financial abuse or other controlling behaviours, which places them at risk of homelessness.

Particularly with tenancy because we have a lot of people with large tenancy debts who are in court and the court wants to see some arrangement in place. And that's where often family violence will come in, and it will either be family violence because the partner is refusing to contribute to household bills because he feels that his money is his, or it'll be because there's been significant damage to the house which is either being reported or not reported to the police. (Jennifer, legal service, November 2018)

Severity of violence

The severity of family violence in the region is extreme. This is supported by the crime data and the qualitative data that details the sometimes elongated and torturous violence enacted, often with the use of weapons.

Well, we can start with breach of a police order, all the way up to grievous bodily harm. I'm finding that the allegations up here are far more serious than in Perth, the injuries are more severe and it's a more prolonged assault than it would be in Perth. (Maria, legal service, December 2018)

Because the fact is, we've got women getting stabbed and bashed and raped and that's, you've got children getting raped and bashed and starving and it's directly because of the alcohol, you know. (Gary, ACCO, August 2019)

Women left without protection from violence

Delays often arise between violence occurring, obtaining an Apprehended Violence Order and serving the order, which can leave women (and their children) unprotected for extended periods of time. Also, police do not always attend the incident when callouts are requested.

So here they have to serve [the AVO], so the court will make it and then they'll have to go and serve it and that can take time...so we always suggest that she goes to the refuge, or, you know, we come up with a safety plan...often police won't have attended the incident. (Amanda, legal service, November 2018)

Supporting the violence of perpetrators

Perpetrators are often supported by their extended families. This is particularly dangerous for women when they are living with his extended family group.

You're up against his family. It doesn't matter what he does, they do not tell that person it's wrong, you can't do that, it's not okay. So they're fighting with, that's who they're up against..It's a whole family thing and then you've got two big families fighting (Lisa, social service, December 2018)

Alcohol-related harms for children and young people

There is very little safety for young people (no safe house, no safety at home, no protection from external family).

There are insufficient or ineffective services for the children and youth who escape the violence at home and stay out on the streets at night. Community residents reported widespread dissatisfaction with the Save the Children service; their programs are seen as ineffective and contributing to worsening behaviour amongst children because they break the cultural protocols in their on-country and other programs. The community residents reported hunger and malnutrition amongst many children, some of whom steal to obtain food.

Many children and young people are trapped in what are now devastating transgenerational cycles of under-education, underemployment, poverty, drug and alcohol misuse, physical and sexual abuse, trauma and disability, with few pathways of escape. Service providers explained how some young people repetitively commit offences to escape their circumstances.

Rape, sexual violence and prostitution

Many community members and service providers disclosed incidences of rape, sexual abuse and child prostitution in Kununurra. It was also reported that these types of incidents have increased in recent years and regularly go unreported and undisclosed.

Education

Many children in the community are not regularly attending school, either primary or secondary. A participant explained that in one area, of the 100 plus children, only approximately 10 were attending school on a regular basis. As a consequence, many children and young people have low levels of literacy and educational attainment.

ASSAULTS AGAINST FAMILY MEMBERS

Alcohol was involved or present at the scene of nearly half (**48.4%**) of the family assaults committed by children & young people between 2009-2019



VICTIMS OF CRIME



Assault by a family member was the most common offence committed against children & young people and alcohol was involved or present at **52%** of all incidents between 2009-2019

GENDER, AGE & CRIME

Three out of five young offenders between 2009-2019 were male, and their average age was **14 years**



HOMELESSNESS

40% of people accessing the crisis shelter in Kununurra were under the age of 18 years (2018-19)



*These data are not Aboriginal-specific, they represent all data from the region (or in the case of the Kununurra crisis shelter, all admissions).

Alcohol-related harms for children and young people

Alcohol and sexual assault

More than half (54%) of all sexual assaults in the WEK region between 2009-2019 were committed against children and young people aged 17 or under, 73% of whom were Aboriginal and Torres Strait Islander girls and young women.

...in the case of sexual assault and incestual rape or assault, so typically it would be quite often adult men around young girls and there's drinking involved and, you know, I probably, think I saw three cases of abuse in one morning so, you know, it's severe. (Peter, mental health, November 2018)

Contact with the criminal justice system

45% of all offences in the WEK region between 2009-2019 were committed by children and young people aged 18 years or under, 76.5% of whom were Aboriginal or Torres Strait Islander children and young people.

...so they have criminal charges, but their lives are just so... they just live in, they are products of poverty.

They're not bad kids, they're so lovely. And a lot of them have mental health issues or cognitive problems... and they've seen a lot of violence obviously, they've seen a lot for such young kids. (Maria, legal service, December 2018)

Self harm & suicide

The WEK region has the highest rate of self-harm incidents attended by police in the Kimberley (33/1,000). Young people between the ages of 15-19 have the highest ED admissions for self-harm in the Kimberley(74.3 per 1,000)(UWA 2020).

When I first started there was a whole lot of girls, a big group of them that were about 13 or 14 years old and their names kept coming up on the self-harming reports that were getting sent to me every day, a couple of times a week these girls names would keep coming up (Lisa, social service, December 2018)

Mental health & trauma

The vast majority of study participants identified issues of mental health and trauma as the key drivers of alcohol-related harm in the Wyndham-East Kimberley region.

WA Police data of offences committed in the Wyndham-East Kimberley region indicate high levels of interconnection between those involved in criminal activities, and that alcohol is a regular feature in criminal activities (Aboriginal and non-Indigenous). Within the period of 2009 to 2019, there were 3,037 offenders, with over 40% (n=1,265) of whom were also victims of crime at some point during this time. Of all offenders, 54% committed at least one alcohol-related offence during the period, and 45% offended in a violent, alcohol-related incident at one time or another.

Health, mental health and social workers explained the normalisation of trauma in their clients. They also noted that a large proportion of the Aboriginal and Torres Strait Islander population in the region live in cycles of crisis, only seeking help and support when it reaches extreme levels.

Many service providers noted that issues of intergenerational trauma impacted on the high levels of alcohol misuse and dependence in Kununurra. However, community members more frequently pointed to direct traumas in their lifetime or that of other members of the community, noting widespread, high levels of childhood sexual assault, neglect and child removal, normalised ongoing experiences of sexual and family violence (both sustained and extreme), high levels of chronic alcoholism, widespread incarceration, suicides and murders.



People live in a perpetual state of crisis.

They've lived in crisis for so long, they don't even know it's abnormal. They just think it's normal to feel this panic and stress all the time. That's how they live.

(Elena, ACCO, December 2018)

It's everybody that needs to tell their story and get professional help for them before they damage their next generation. And we've got children committing suicide today and we all know what it's all about. It's about the environment that they lived in and the abuse that they've suffered as a child. By the time they're 15 or 16, they don't want to be here with us anymore because there haven't been enough people that've opened their doors and looked after these child abused kids.

(Ava, community member, February 2019)

So families are broken because alcohol is like the number one priority. Poverty. The lack in the family home, it's being spent on grog.

Disabilities, loss of...loss of destiny. You know every person has destiny on them, you know, and everyone... when they're born, they have all those talents. But very sad when you see people can't fulfil them because they fall into a trap of alcohol abuse to escape the realities of their life and we don't have enough healing centres locally to help people just regroup... just reassess their identity and their place in the world and in society and their purpose. (Elena, ACCO, December 2018)

There's not a lot of premeditation in suicides here. And it's a real threat. And it's also a reason why people won't leave their partners, because of threats of suicide.



Impact of alcohol-related measures and restrictions

In 2009, the first alcohol reform was introduced to the Wyndham-East Kimberley region via a broader measure enacted across the entire Kimberley, banning the sales of cask wine and alcohol in containers larger than one litre of liquor with an alcohol content of 6% or more.

However, the first region specific alcohol reform was introduced in February 2011, restricting the quantity of takeaway alcohol allowed to be sold and reducing the hours during which it could be purchased. Several minor adjustments were then made in 2012 related to the hours of sale. It was not until December 2015, nearly four years after the original restrictions were implemented, when a takeaway alcohol management system was put in place to enable the liquor licencess to enforce the limits.

Soon after, in April 2016, the Cashless Debit Card trial was introduced, with the aim of reducing alcohol, drugs and gambling in the community.

Then in December 2017, further restrictions were placed on the quantity of takeaway alcohol allowed, halving the amount permitted under the 2011 reform.

There are mixed views within the WEK community regarding the effectiveness and the fairness of alcohol restrictions and other related measures such as the Cashless Debit Card (CDC) trial. Some participants thought that the restrictions and related measures had gradually reduced serious crime in the town over time and that there was, in general, less alcohol circulating in the community.

“ It definitely has had an impact on [reducing] higher level violence. So murder, really serious aggravated assaults and using weapons particularly, I think. We have seen a decrease in those types of offences. And probably street drinking and that kind of thing as well, it has reduced. (Kylie, legal service, November 2018)

Others believed the measures had brought about both positive and negative impacts for the communities of the WEK region.



“ So the grog restriction, it brought the alcohol down but what they did was look for the more potent one, where it gets them more. (William, ACCO, November 2018)

I can see pros and cons for what we've had.

And that's again with the [cashless debit] card, there's pros and cons to it. There is a lot less humbug out there because there's not quite so much alcohol around. But the things that people are doing to access alcohol now are not good. (Melissa, ACCO, November 2018)

Impact of alcohol-related measures and restrictions

Much of the opposition voiced was related to the association made between the alcohol-related measures and the rise of 'sly grogging'. Community members repeatedly identified that both the CDC and the 2017 supply restrictions have increased the market and trade in illegal alcohol sales.

Further, some respondents expressed that the wide variance of alcohol restrictions across the Kimberley enabled this black market of alcohol trade to flourish.

So sly grogging is an issue, the patchwork volumetric restrictions across the Kimberley are an issue. That piecemeal policy approach is thought to be problematic because it does drive sly grogging. (Elena, ACCO, December 2018)

Participants also identified that many community members have devised means to avoid both the alcohol supply restrictions and the cashless debit card (CDC) restrictions using a variety of different means. For example, a community member may use their CDC to buy someone else's food for a set amount, in exchange for alcohol. However, this generally means that they pay highly inflated 'sly grog' prices for alcohol, with people receiving Income Support Payments in the region generally spending more, not less, on alcohol. This is one of the reasons that has led to the perception that the CDC has compounded the poverty experienced in the community.

So a really hard time to have gone from people in poverty to really know what poverty is. Can't get your hands on or they haven't got cash and that sort of thing. So we've seen pretty much the worst of community members in the last 18 months. It's really got extreme. (Melissa, ACCO, November 2018)

CDC trial participants receive exactly the same payment as all other non-trial recipients of their respective social security benefit. The primary difference is that only 20 per cent of the payment is able to be withdrawn in cash. The other 80 per cent is paid onto a cashless debit ATM card, locally known as the "white" or "Indue" card. The CDC card cannot be used to withdraw cash and cannot be used to pay for alcohol or gambling products, but can be used for all other debit card transactions. However, the rapid shifts driven by the CDC trial from what was primarily a local cash-based economy to a cashless economy, for a population with low levels of financial literacy alongside an inflated 'sly-grog' market, has led to further entrenchment of poverty for many people.

There were also many varied opinions about the prospects of further alcohol restrictions, with most people highlighting the need for improved 'wrap-around' services that are more accessible for Aboriginal and Torres Strait Islander community members that need them most. Some people believed the restrictions in the region were already too tight, whilst others contended that they do not go anywhere near far enough.

If you've got six people in a car and six IDs that's six cartons and, what, 18 bottles of wine. (Tanya, community member, February 2019)

...alcohol is a very difficult one because people are very unreasonable when it comes to alcohol. Australia has a very, very bad culture concerning alcohol. Very bad culture... the restrictions wasn't even a restriction. It went from two cartons a day down to one carton a day. Plus, I think, two bottles...that is not a restriction, that's a joke. If people are getting upset about that, you have to honestly ask yourself, what the hell is going on. (Elena, ACCO, December 2018)

Impact of harmful use of alcohol on service providers

The extremely negative economic consequences of alcohol problems are highlighted by the costs accrued within the community-controlled, health, social and justice service sectors in the Wyndham-East Kimberley region. Some of the key issues identified by service providers and Aboriginal and Torres Strait Islander people in the region include:

- Services are reactive and only have the capacity to deal with cases of high-level crises; there is very little capacity to undertake preventative work.
- There is a significantly higher demand for outreach services than are provided within the region.
- Many Aboriginal community members reported that they have little or no knowledge of the support services available to them and that most services fail to communicate effectively with community residents.
- Some key services are severely under-resourced, whilst there is replication in others.

Aboriginal Community Controlled Sector

The ACCO sector in the Wyndham-East Kimberley region provides the majority of alcohol-related services to their communities. Many of these services are highly effective, yet due to their funding models are frequently under-resourced and often operate in competition with one another to attract resources.

Service demand higher than supply

The majority of the service providers interviewed for this research reported that the demand for many of their services was much higher than what they are able to provide. This included a particularly high demand for counselling (including alcohol and drug), mental health and healing, housing services, and crisis accommodation.



Structural conditions fostering unhealthy competition service providers

Many service providers, both in the mainstream and ACCO sector expressed their frustration regarding what they perceived as the ad hoc, short-term, competitive nature of service based funding. Many services are siloed due to funding regimes creating what is seen as an unhealthy and inefficient competitive environment – with duplicated service provision in some areas and major gaps in other essential areas.

Unavailability of services

Many services identified that they often provide services that community members need that are outside of the scope of their funding and resources. For example, it was identified that the Sobering Up Shelter was often used as a longer-term solution for homeless chronic drinkers, due to a lack of safe and viable housing available.

GAPS IN ALCOHOL-RELATED SERVICES

HOMELESSNESS

Overcrowding's a big thing too in Kununurra. Not much housing, or some people apparently are not eligible, or it's a big wait list, and overcrowding is not seen as a priority. Apparently as one of the ladies said at Homeswest, "Isn't it normal for Indigenous people to live like that?" (Tanya, community member, focus group February 2019)

MENTAL HEALTH

There's no help there. I don't go and see a shrink, they wanted me to because I done something wrong about three weeks ago but I said, "I don't want to go to them". Because I don't get nowhere with them. It's like just talking to a brick wall. You need the support from people who know the proper way of dealing with it and it needs to be done in the direct way but in slow way because you do it in a fast way it's going to work either. Do you know I see where everything's all just starting to 'kunawunda' here? See, if we had more facilities where people can get the help, we'll be right. (Megan, community member, February 2019)

HEALING PROGRAMS

I think there's lack of a proper, authentic and deep response to the trauma affected people, and that's where it begins. So the trauma can be physical, emotional, sexual, whatever the violence is. There's no response. There's not an adequate appropriate response that touches at a deep level in the community. (Helen, social services, December 2018)

WIDER, UPDATED COMMUNICATION ABOUT SERVICES

And being introduced to, do you know, if you ask the average Aboriginal person out in the street what services are available, I'm telling you now, they won't have a clue. They won't be able to name, they won't even be able to name a quarter of them. (Elena, Aboriginal community-controlled organisation, interview December 2018)

POST-REHABILITATION & INCARCERATION SERVICES

The one in Wyndham, the rehab, and the one in Broome and guess what? There's no follow-up with them when they come back. So you see? So they're back in that in that deep hole again, because no-one's assessing them after they come back out from these "dry-out centres" they call them. (Anna, community member, February 2020)

FASD DIAGNOSES & SUPPORT

[Patches] do, they've been up probably four times in the last couple of years, and then last time they ask for one client, or one person, when I've got possibly 30 for them to look at. And it's an expensive procedure, you need seven clinicians and at least ½ day of their time together diagnostic for one child. (Melissa, health service provider, interview November 2018)

QUALIFIED LONG-TERM STAFFING SOLUTIONS

This town is, has an incredibly high turnover of staff in every single place, so one place will go from having four lawyers down to one lawyer because two will leave, one will be on leave. (Maria, legal service, December 2018)

SUSTAINABLE FUNDING MECHANISMS

The typical frustration is the stop-start nature of the funding cycles. So, long-term efforts are what's needed, so that people can plan, organisations can plan, people can put down roots in a place, they can skill their staff up appropriately, and they can become expert in doing what we were talking about before, of being able to knit together practice from a western therapeutic angle, with a deep cultural practice, which is what, ultimately, will support wider engagement of people with the service. (Interview December

2019, ACCO provider C, Kununurra)

Recommendations

This study has found that extent and severity of alcohol-related harm and consumption in the Wyndham-East Kimberley region is extreme by any measure and has increased rapidly over the past decade. The detrimental impact on the Aboriginal and Torres Strait Islander population of the region is broad ranging, including high rates of alcohol-related criminalisation, preventable accidents and illness, and ongoing community trauma. The ineffectiveness of the alcohol reforms that have been put in place indicate that further, stricter reforms are required, including further reductions on the supply of alcohol. However, supply limits alone are not adequate enough to address the harms experienced within the community. Greater and more secure resources are urgently required to provide appropriate wrap-around support for chronic and high risk drinkers and for those who are impacted by their drinking. Additional services are required for key areas including mental health and wellbeing, children and young people, and education, training and employment.

Key recommendations

01 Further restrictions on takeaway alcohol limits that align more closely to the Australian health guidelines

The Australian guidelines to reduce the health risks of drinking alcohol recommend no more than four standard drinks on any one occasion to reduce accidents and no more than two standard drinks per day. Current restrictions in the region allow up to 56 standard drinks per person per day.

02 Alignment of alcohol supply restrictions across the Kimberley

The 'patchwork' of supply limits across the vast region drive sly-grogging and ongoing alcohol-related harm (e.g. road accidents) due to increased mobility to access alcohol.

03 An economic evaluation of the cost of harmful use of alcohol to the communities of the Wyndham-East Kimberley region

This evaluation should include a gap analysis of related services in the health, social, legal and education sectors to provide a realistic assessment of the needs of the region and enable resources to be directed to appropriate areas and organisations.

04 More secure and effective wrap-around support services

Although there are many alcohol-related support services provided within the region, there are clear gaps in some areas and replication in others. Further, there is not enough information provided to the most vulnerable members of the community of the services available, requiring more regular and effective communication strategies.



....what we're contending with here is excessive alcohol consumption on a daily basis that is deeply affecting our families and our culture and our future.

It's a very, very serious issue. It should never be underestimated. The government knows very well what's going on because they have access to police reports, they've got access to the hospitals, they've got access to the ambulance records, they know exactly what's going on and if they choose to, they could make some big changes here in regard to alcohol reform.



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