Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory

October 2016
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Who we are

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities.

Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference. Jesuit Social Services values all persons and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

We do this by working directly to address disadvantage and by influencing hearts and minds for social change. We strengthen and build respectful, constructive relationships for:

- **Effective services** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice.

The promotion of **education, lifelong learning and capacity building** is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community.

Our service delivery and advocacy focuses on the following key areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment.

Currently our direct services and volunteer programs are located in Victoria, New South Wales and Northern Territory, and include:

- **Brosnan Services**: supporting young people and adults in the justice system, and assisting them to make a successful transition from custody back into the community. Within the suite of services are Perry House, Dillon House and Youth Justice Community Support Services.
- **Jesuit Community College**: increasing opportunities for people constrained by social and economic disadvantage to participate in education, work and community life and reach their full potential.
- **Settlement Programs**: working with newly arrived migrants and refugees across metropolitan Melbourne, including the African Australian and Vietnamese communities.
- **Connexions**: delivering intensive support and counselling for young people with co-occurring mental health, substance and alcohol misuse problems.
- **Artful Dodgers Studios**: providing pathways to education, training and employment for young people with multiple and complex needs associated with mental health, substance abuse and homelessness.
• **The Outdoor Experience**: offering an alternative treatment service through a range of outdoor intervention programs for young people aged 15 – 25 years, who have or have had issues with alcohol and/or other drugs.

• **Support After Suicide**: supporting people bereaved by suicide, including children and young people.

• **Western Sydney Program**: delivering social enterprise and other community building that provide affordable food, training and employment opportunities to people living in the area of Mount Druitt, Western Sydney.

• **Just Leadership**: Working in partnership with community and corporate enterprises to foster leadership for a just society. This includes the African Australian Inclusion Program, a professional bridging program developed in partnership with the National Australia Bank.

• **Capacity building** activities in the Northern Territory and New South Wales with Aboriginal communities to improve their situation and to have more control over their lives.

In the Northern Territory we support the Eastern and Central Arrernte people in a number of ways to better their situation and have more control over their lives. As part of this work, we provide community capacity building support through the Stronger Communities for Children program in the remote communities of Atitere, Bonya, Engawala and Santa Teresa; are involved in a Men’s Behaviour Change program in Alice Springs in partnership with Tangentyere Council and the Alice Springs Women’s Shelter, and are a member the Northern Territory-wide Making Justice Work campaign to promote evidence-based approaches to community safety in order to respond more effectively to crime in the community. We also provide capacity building support in a number of other locations, including Wadeye, and work in a similar way in New South Wales (Mount Druitt and Bourke).

For nearly 40 years, we have accompanied people involved, or at risk of becoming involved, in the criminal justice system. In Victoria we work with people to prevent and divert involvement in the justice system and support people exiting prison and youth justice facilities. This includes the Corrections Victoria Reintegration Program in North and West Metropolitan Melbourne (Reconnect), the African Australian Community Transition program, Next Steps and Perry House residential programs, the Youth Justice Community Support Service, Youth Diversion Pilot Program and Group Conferencing.

Jesuit Social Services also delivers Barreng Moorop in partnership with the Victorian Aboriginal Childcare Agency and the Victorian Aboriginal Legal Service. This program provides intensive support to First Nations children (aged 10–14 years) who are at risk of engagement in the justice system, or are engaged with Victoria Police.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence participants’ lives and improve approaches to address long term social challenges. We do this by working collaboratively with the community sector to build coalitions and alliances around key issues, and building strong relationships with key decision-makers and the community.

Our Learning and Practice Development Unit builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to intervening with participants across our programs.
Our recommendations

We call on the Northern Territory Government to:

1. Put in place appropriate structures, plans and resources targeted to the Territory’s most vulnerable communities to effectively break the web of disadvantage.
2. Allocate Commonwealth Grants Commission funding according to the assessment of need and report transparently on funding allocation.
3. Ensure access to early childhood services for all young children in the Northern Territory by improving the quality of programs and staff as well as locational access to early years services.
4. Expand the reach of the Intensive Family Support Service to more communities.
5. Increase the capacity of Aboriginal and Torres Strait Islander (ATSI) controlled organisations to deliver the Intensive Family Support Service to ATSI families.
6. Implement an active, robust, and culturally safe Family Group Conferencing program across the Northern Territory.
7. Introduce student needs-based funding to ensure that extra resources go directly to the schools with the greatest need and to achieve proportionate universality for all children.
8. Establish a system and support mechanisms for young people reintegrating into school and training pathways.
9. Support early intervention initiatives that use evidence-based research and action to design, pilot and evaluate measures to promote behaviour change and prevent male violence.
10. Support initiatives targeted at early intervention for young fathers who use, or are at risk of using, violence.
11. Provide adequate resources for recreation, after-hours activities and support for young people.
12. Establish a dedicated Northern Territory Commissioner for Aboriginal and Torres Strait Islander Children and Young People to promote the safety and well-being of ATSI children in the Northern Territory.
13. Establish a separate stand-alone youth justice unit within Territory Families, and provide sufficient resources so that the department can effectively administer services and responses which address youth justice proactively and holistically.
14. Fund and support restorative justice programs, including Youth Justice Group Conferencing, across the Northern Territory.
15. Legislate to raise the age of criminal responsibility to 12 years old.
16. Implement a system of restorative justice to address the needs of 10 and 11 year olds who come to the attention of the justice system.
17. Ensure remand is used as a last resort and amend the Bail Act to provide for the needs of children and young people.
18. Increase investment in bail support programs and bail accommodation to prevent vulnerable children from being detained.
19. Establish Children’s Courts in all major regional and metropolitan centres across the Northern Territory.
20. Establish ATSI Children’s Courts in all major regional and metropolitan centres across the Northern Territory.
21. Support vulnerable children with trauma-informed, therapeutic practices that are evidence based, culturally safe, and incorporate a strengths-based framework and specialist care.
22. Ensure clear and well-resourced partnerships with community organisations to effectively implement a through-care model for young people exiting the justice system.
23. Ensure that youth detention officers and other staff in youth detention centres are trained in a trauma-informed youth specific therapeutic practice framework by experienced and qualified instructors as a matter of priority.
24. Continue to reform guidelines governing the use of restraint in youth detention. The guidelines should emphasise pre-emptive and de-escalation measures, provide stronger safety measures when restraint is used, and outline thorough recording and reporting processes.
25. Establish an Independent Custodial Inspector in the Northern Territory as part of a National Preventative Mechanism under the Optional Protocol to the Convention against Torture.

We call on the Australian Government to:

1. Legislate to raise the age of criminal responsibility to 12 years old.
2. Ratify the Optional Protocol to the Convention against Torture and implement an independent and effective National Preventative Mechanism as a matter of priority.
Introduction

Jesuit Social Services welcomes the opportunity to respond to the Royal Commission into the Protection and Detention of Children in the Northern Territory.

Every Australian should have access to the opportunities in life that will enable them to flourish – to complete their education, to get a job, to access safe and affordable housing, to raise their children in safe communities and to see the next generation thrive.

Current approaches to children who display antisocial behaviour often fail to engage with them in ways that are developmentally appropriate, and too often responses are a missed opportunity to address often serious issues contributing to their problematic behaviour, and to avoid their entrenched involvement in the child protection and justice systems.

A renewed approach to the needs of these children and the most effective way to manage their antisocial behaviour is now needed. This approach must recognise that:

- children involved in the child protection and criminal justice systems often come from disadvantaged backgrounds and have complex needs
- children lack developmental maturity in the skills and capacities necessary for criminal responsibility, and this developmental immaturity is often exacerbated in children who have experienced abuse or neglect
- involvement in the criminal justice system at a young age often causes further harm and furthers involvement in the criminal justice system
- engaging in developmentally appropriate restorative justice processes can help children to understand the effects of their behaviour on others and reduce recidivism

In this context, we believe there is a need for service systems in the Northern Territory to more effectively contribute to the positive development of young people. Key principles must emphasise:

- the developmental and welfare needs of young offenders
- engaging children in a way that prevents further harm and that enables them to actively participate in responses to their problematic behaviour
- the importance of restorative justice principles, processes and practice
- a therapeutic approach that responds to the needs of vulnerable children, particularly those in the state care system who come into contact with the justice system
- an understanding of the particular needs of Aboriginal children and young people who are overrepresented in the youth justice system, a fact that is linked to extreme disadvantage experienced in the critical areas of health, education, employment and housing
- the critical role of education as a protective factor, and the need to ensure vulnerable children’s continued engagement in early years services and school.

Realising these principles requires changes to legislation, programs, and processes. Moreover it requires a focus on the values of the system and how they are realised in day to day practice, and a deeply collaborative approach that engages with the expertise and experience of the community sector. These themes are explored throughout our submission.

As outlined in this submission, we believe there are range of measures that should be adopted by the Northern Territory Government to prevent vulnerable children and young people from being detained in the first place, and to safeguard against inappropriate treatment in detention facilities.
Setting the scene: The background of children in contact with the justice system

Children and young people in contact with the justice system are among the most vulnerable and disadvantaged in the community and generally progress on to have higher rates of offending throughout their lives. The causes of offending in younger children are strongly connected to their environment and its impact on their development.

Jesuit Social Services’ research has identified a strong correlation between child and youth offending and entrenched disadvantage. For example, in Victoria we found that:

- In 2010, 78% per cent of children aged 10 to 12 years with youth justice orders, or who had experienced remand at this age, were known to child protection. Of these, 60 per cent were known before their seventh birthday.\(^2\)
- 25 per cent of children on youth justice orders in 2010 came from 2.6 per cent of Victorian postcodes\(^3\).
- Children 14 years and under at their first encounter with the justice system are more likely to come from areas with higher rates of developmentally vulnerable children on the Australian Early Development Index\(^4\).

Children and young people who offend are also more likely to have experienced environmental and developmental risk factors such as disability, mental illness, drug and alcohol abuse, exposure to crime and violence, homelessness and child abuse and neglect\(^5\).

Early experiences of abuse and neglect have detrimental impacts on a child’s development. Research has identified that hardship early in life can inhibit the development of oral language\(^6\), result in intense and cumulative harm\(^7\), and have long term impacts on health and social outcomes\(^8\). In this context, a child’s ability to develop important emotional, social and cognitive skills is diminished, leading the child to be behind his or her peers in a broad range of competencies, including those necessary for criminal responsibility.

These environmental and developmental factors have a further effect on the health and well-being of children and young people. A study investigating the health of young people in custody identified that 87 per cent had at least one psychological disorder, and nearly three-quarters had two or more psychological disorders\(^9\).

There is also a strong correlation between school performance, truancy and criminal involvement; studies have found that between 60-70 per cent of students skipping school are involved in criminal activity\(^10\)\(^11\). Engagement in school is important for children’s development as well as for value transmission and social awareness. For children in contact with the justice system, the developmental, social and economic vulnerabilities which contribute to youth offending are compounded by disengagement from the education and support systems that facilitate positive development.

The extreme vulnerability and complex needs of children and young people in contact with the justice system indicate a need for more effective welfare responses to childhood disadvantage and appropriate justice responses that recognise the unique needs of vulnerable young people.
Addressing entrenched disadvantage

In 2015, Jesuit Social Services along with Catholic Social Services Australia released the findings of its *Dropping off the Edge* Report (DOTE), which found that complex and entrenched disadvantage continues to be experienced by a persistent number of locations in each state and territory across Australia, including the Northern Territory.

Of particular concern for Jesuit Social Services is the distribution of significant disadvantage across the entire Northern Territory. The patterns of disadvantage vary greatly across the Territory, with some areas showing low levels of disadvantage on certain indicators and high levels of disadvantage on others. Our research found that different areas experience disadvantage in vastly different ways; for example:

- In the Tiwi Islands, disadvantage is felt in the lack of internet access, low family incomes and young adults not engaged in work or study - ranked first on all of these indicators. Economic indicators therefore showed disadvantage while social indicators (criminal convictions, prison admissions) were less prominent.
- East Arnhem ranked second on unemployment and long-term unemployment, young adults not engaged in work or study, unskilled workers, and the level of post-school qualifications. Again, the issue is around income and skills.
- In Katherine, disadvantage is reflected in the rankings for criminal convictions, domestic violence and prison admissions (ranked first on each of these). On the other hand, skills appear to be at a higher level than in many other locations.

While disadvantage is shown in different forms across the Northern Territory, certain localities account for a disproportionate level of disadvantage, with only one Statistical Local Area showing no extreme disadvantage on any indicator. Our research found that 25% of locations accounted for 47% of the highest disadvantage rankings. These findings highlight both the complexity and persistence of locational disadvantage in the Northern Territory.

Jesuit Social Services has consistently argued that public policy must pay greater attention to the role of structural factors and social inequality as key determinants of health and wellbeing, and therefore as drivers of demand for community services.

In addition to addressing structural determinants, government must also tackle disadvantage through the provision of services. Here investment must be forward-looking and preventative. From our experience, we know the best way to reduce crime and the burden on our criminal justice system is to tackle its root causes. In order to do this, effective universal services are needed in education, health and family services, as well as access to safe and affordable housing. We must have the resources to respond to people in our community who fall through the cracks, and provide holistic interventions during times of crisis. And, fundamentally, we need to commit to long-term, local, community-led solutions in areas of deepest disadvantage.

**Stronger communities**

The social fabric of communities can play an influential role in buffering the worst effects of disadvantage, with community factors being shown to influence mental health levels in children, education and levels of safety and crime.

In the Northern Territory, there is an undue reliance on crisis services and the criminal justice system to pick up the pieces, rather than a sustained focus on strengthening communities and intervening as early as possible to tackle the root causes of disadvantage. The emphasis on punitive law and order policies impacts most heavily on the most disadvantaged.
The impacts of trauma (including neglect and exposure to violence) on children are severe and have lasting consequences, with altered brain growth and psychological functioning shown to be linked to trauma. There are long-term social costs associated with this, including mental health issues and other chronic health problems, criminality, homelessness, substance misuse and abuse and intergenerational transmission of abuse. It is estimated that child abuse and neglect in Australia costs almost $5 billion per year, including interventions and the associated long-term human and social costs.

A sustained, whole of community approach

A number of communities in the Northern Territory experience persistent and entrenched disadvantage. A new approach is needed so we don’t continue to fail the communities that bear the greatest burden of disadvantage. A sustained long-term commitment across the government, community and business sectors is urgently required to resolve this complex problem.

Jesuit Social Services calls on the Northern Territory Government, in true partnership with the community, to act immediately to put in place appropriate structures, plans and resources targeted to our most vulnerable communities to effectively break the web of disadvantage.

We need a multi-layered, cooperative and coordinated strategy that is owned and driven by the community. It must involve all layers of government and the business and community sectors, reflecting shared responsibility and joint commitment to resolve this entrenched problem. This strategy must take account of the unique characteristics and circumstances of local communities and be sustained over the long term. It must be:

- **Targeted** – The response must be targeted or concentrated to specific areas that meet the most severe criteria for disadvantage.
- **Tailored** – The policies, programs and approach to dealing with disadvantage in a community must be unique to that community’s needs, tailored to their particular circumstances, based on the unique linkages between indicators in that area and supplemented by informed audits of existing programs in that locality.
- **Integrated and cooperative** – The response needs to acknowledge that disadvantage in one dimension of life (e.g. unemployment) reinforces disadvantage in other areas (e.g. household income). Effective responses to reducing disadvantage must address the multiple and interrelated causes and exacerbating factors that underpin the entrenched nature of disadvantage experienced by communities. Effective responses therefore involve cooperation between government and departmental portfolios, integrated community initiatives and coordination between different levels of government.
- **A long term horizon** – DOTE 2015 demonstrates that not only is entrenched disadvantage persistent across time but that short-term policies do not work in addressing the experience of disadvantage among communities. A long-term, bipartisan commitment is vital to prevent communities from dropping off the edge.
- **Community owned and driven** – Community leaders must be engaged to drive sustained change. A new approach must recognise the strength within communities and work with them to build capacity, generate action, attract external resources and maintain direction and energy. There is a well-documented history of the benefit of ‘aid’, disconnected from the strengthening of specific community capacities, tapering off and disappearing once external inputs cease.
• **Engaged at the individual, community and national levels** – Research into the outcomes people experience in life demonstrates that individuals are affected by their own capabilities and opportunities, their family circumstances, their community, and the broader social and economic environment. Any effective change in the outcomes for individuals must therefore include action across these three domains of life: individual, community and macro environment.

We call on the Northern Territory Government, in true partnership with the community, to act immediately to put in place appropriate structures, plans and resources targeted to the Territory’s most vulnerable communities to effectively break the web of disadvantage.

A commitment to this strategy must be reflected in the allocation of funding to support services in the most disadvantaged areas of the Northern Territory. The funding the Northern Territory Government receives from the Commonwealth Grants Commission (CGC) is allocated based on an assessment of need. However, there is no obligation to spend the funds in accordance with the CGC’s assessment. While 68 per cent of the $3.4 billion in revenue given to the Northern Territory in the 2015-2016 financial year was assigned due to needs in remote areas and should therefore have been spent on services in those areas, instead, the government allocated only 53 per cent, a difference of $500 million. Resources must flow through to vulnerable communities and should reflect CGC’s assessment of need.

We call on the government to allocate Commonwealth Grants Commission funding according to the assessment of need to ensure that vulnerable communities are appropriately resourced and to report transparently on funding allocation.

**Early childhood, health and education**

Access to early childhood services is crucial in giving young Territorians the best start possible in life. Unfortunately, many young children are missing out on early childhood education and health services.

The Northern Territory has the lowest number of preschool programs delivered by a qualified preschool teacher and the largest gap in attendance rates between Aboriginal and Torres Strait Islander (ATSI) and non-ATSI children. The Northern Territory also has the highest number (23.1 per cent) of developmentally vulnerable young children compared to other states on the Australian Early Development Census.

Investment in high quality services for children and parents during the early years can have positive impacts not only on health and wellbeing but also in reducing the likelihood of contact with the criminal justice system. The graphs below highlight the correlation between low attendance rates in preschool and the likelihood of offending in the future.
Investment in early childhood development and health is the most cost effective strategy for the government to tackle disadvantage. Cost-benefit analysis of early childhood education and care programs shows that they generate more than $7 in benefits for every dollar that is invested.\(^2\) Investment should take place through enhancing maternal and child health services, developing support programs for parents, ensuring that all children attend high quality early learning programs delivered by qualified teachers and keeping trauma-informed therapeutic approaches at the centre of any response.

**We call on the government to ensure access to early childhood services for all young children in the Territory by improving the quality of programs and staff as well as locational access to early years services.**

**Stronger families**

Recognising the role of parents and families in young people’s development, greater support is needed to prevent child protection interventions.

Early intervention programs in parenting are key to diverting families at risk of becoming involved in the child protection system. These programs must be flexible and take a strengths-based approach to meeting the unique needs of each family and child.

The Intensive Family Support Service works with parents whose children are identified as vulnerable or at risk of neglect. The program operates in a select group of communities in the Northern Territory and provides face-to-face and group sessions designed to help them strengthen parenting and household management skills. These services should be made more widely available to communities across the Northern Territory. Additionally, funding ATSI-controlled organisations to deliver these programs will ensure that ATSI families are receiving the most effective support.

**We call on the government to expand the reach of the Intensive Family Support Service to more communities.**

**We call on the government to increase the capacity of ATSI-controlled organisations to deliver the Intensive Family Support Service to ATSI families.**
Similarly, in cases where families come to the attention of Child Protection there must a strong emphasis on restorative responses that recognise the importance of family and extended family to a child’s wellbeing, especially in ATSI communities. Child protection legislation in the Northern Territory makes provision for alternative dispute resolution in the form of court ordered mediation conferences, however these do not currently form an active part of child protection practice. Instead child protection matters are resolved through court proceedings which can be complex, lengthy, hostile and culturally inappropriate, resulting in further negative outcomes for the child. The current response system is ineffective at providing for the wellbeing of young Territorians, particularly ATSI children who are significantly overrepresented in out-of-home care and are at risk of continuing abuse and neglect after being removed from their families.

Family Group Conferencing (FGC) is one way of achieving significantly better outcomes for children and families. Compared to court ordered outcomes, FGC results in higher levels of reunification with family, more kinship placements and better family unity.

FGC is based on ideas of restorative justice and community building and encourages the immediate and extended family to take responsibility for the care and protection of a child who is subject to, or at risk of, abuse or neglect. It involves bringing family and other stakeholders together to develop an appropriate plan of care for the child with the support of appropriate services. While concerns include lack of procedural fairness, confidentiality and failure to recognise power imbalances in families and with stakeholders, appropriate safeguards can successfully overcome these concerns and achieve genuine and positive outcomes.

A FGC pilot program was implemented in Alice Springs in 2011 and an evaluative report from the Menzies School of Health Research suggests that it was successful and received positive feedback from participants. While there is reasonable evidence to suggest that FCG could be implemented successfully, the program was not continued or expanded across the Northern Territory and the Department continues to rely on court proceedings to produce child protection outcomes that perpetuate disadvantage.

We call on the government to implement an active, robust, and culturally safe Family Group Conferencing program across the Northern Territory.

Access to education

Addressing educational disengagement is crucial in tackling disadvantage. Children who attend school in remote or very remote areas of the Northern Territory make up 45.5% of the overall student population and these students are years behind their counterparts in urban areas. Attendance rates in remote locations are significantly lower than urban locations (61.4 per cent compared with 88 per cent in term 2, 2016) and this disproportionately disadvantages Aboriginal young people, who have a significantly greater population in very remote areas, in accessing education. Currently, Northern Territory funding for schools typically favours urban schools over remote schools, further compounding disadvantage.

We call on the government to introduce student needs-based funding to ensure that extra resources go directly to the schools with the greatest need and to achieve proportionate universality for all children.
Engagement in education

Equally, there must be a focus on re-integrating young people into the education system generally, and after they leave detention. This involves not only addressing the systems which are in place for re-integration into education, but also providing support. Enrolment in education and training is only the first step, and for vulnerable young people intensive support is often required to ensure ongoing engagement and success. The role of schools and the wider education system must be clarified here, particularly the question of who has responsibility (Youth Justice or Education departments) for engaging and supporting young people into learning. Too often in the past we have seen youth justice involvement coincide with severance of relationship with school. To address these issues school must be recognised as an important community and young people must be given the opportunity to continue their relationship with their school community while in detention and on return to the community.

We call on the government to establish a system and support mechanisms for young people re-integrating into school and training pathways.

Addressing male violence

In the Northern Territory, 60 per cent of assault offences are associated with domestic and family violence and 82 per cent of victims of these offences are women\(^3\)\(^3\). Furthermore, domestic and family violence in the NT is characterised by higher rates of serious assaults, including the use of weapons capable of inflicting great harm.\(^3\)\(^4\) ATSI women and children are disproportionately affected by this violence.

There are currently established and invaluable organisations that support the victims of men’s violence in the Northern Territory, and a small range of behaviour change programs for perpetrators of violence generally linked to the justice system. The Northern Territory government funds a consortium comprised of Tangentyere Council, the Alice Springs Women’s Shelter and Jesuit Social Services to deliver a Men’s Behaviour Change Program in Alice Springs as one of five components of the Integrated Response to domestic and family violence. Tangentyere, as the lead agency, delivers the behaviour change program; the Women’s Shelter provides support to female partners/ex-partners of men referred to the program and Jesuit Social Services supports implementation of the program through undertaking evaluation. However, there remains a significant gap in understanding and responding to boys and men who use violence or are at risk of doing so. There is an identified need for a broader range of interventions for men who use violence than is currently available, and for innovation and an expanded evidence base about strategies that are effective in stopping male violence.

Despite the cycle of harm played out across generations, not enough is being done to support children and young people’s safety, and to respond early to children and young people at risk of becoming perpetrators themselves. Jesuit Social Services notes that Tangentyere Council has recently been funded by the Northern Territory Government to deliver a Domestic and Family Violence Specialist Children’s Service, to better address violence behaviour perpetrated by young men. It is essential that these types of early intervention programs are adequately resourced with long term funding, and are appropriately evaluated.

The importance of working with men and boys who use violence was noted in the Northern Territory’s *Domestic and family violence reduction strategy 2014-2017*. It acknowledged that lasting attitudinal and behavioural change would come from perpetrators taking responsibility for their own actions, and identified the need for evidence-based perpetrator programs to tackle these changes\(^3\)\(^5\).
To respond to this issue, Jesuit Social Services is working to establish an action-oriented body focused on finding solutions to the problem of male violence.

The body will be a central hub of ideas that will use evidence-based research and action to design, pilot and evaluate interventions to promote behaviour change and prevent male violence. The program will develop early intervention responses, initially targeting boys and young men using violence against family members, and young fathers using violence. These responses will complement existing programs and interventions by drawing on Jesuit Social Services’ experience and expertise working with men and boys in the criminal justice system to develop new models of intervention. Working in partnership with other program providers will be critical to this approach.

**We call on the government to support early intervention initiatives that use evidence-based research and action to design, pilot and evaluate measures to promote behaviour change and prevent male violence.**

**We call on the government to support initiatives targeted at early intervention for young fathers who use, or are at risk of using, violence.**

**Prevention**

It is critical to recognise the important role played by family and community in the development of young people and as protective factors against involvement in criminal justice system. The key to fostering increased family and community connections will be adequate resourcing for initiatives, quality evidence-informed approaches, and coordination between services so that they meet the needs of young people, families, cultural groups and communities.

Building children and young people’s links to community is important to preventing and keeping them out of the criminal justice system.

Preventing children’s involvement in the criminal justice system requires a wider approach for building safe and nurturing communities, and education systems must be part of this. As a practical starting point, we believe that schools and the wider education system should be brought into consultation and governance approaches at all levels of the youth justice system, from local to more formal arrangements.

Safe and nurturing communities where children have the opportunity to develop are less likely to have young people who are involved in the criminal justice system. There are structural factors at play here, which can only be overcome through action to tackle entrenched disadvantage and by providing high quality universal education and health services.

From our experience in Central Australia, a key issue for prevention is the absence of appropriately resourced recreation and after-hours activities and support services for vulnerable young people. This issue has consistently been highlighted by community organisations. The need for these activities is supported by evidence from the Australian Institute of Criminology which has identified that the number of assault and public disorder offences in the Northern Territory increases in the late afternoon and evening and peaks at night.36

A range of early intervention responses based on the needs and risks of young people are required to divert them from further involvement in the justice system.

**We call on the government to provide adequate resources for recreation, after-hours activities and support for young people.**
Commissioner for Aboriginal and Torres Strait Islander children

We support the recommendation of the Central Australian Aboriginal Congress to appoint a Northern Territory Commissioner for Aboriginal and Torres Strait Islander children and young people.

The overrepresentation of ATSI children and young people in youth detention in the Northern Territory highlights the need for better informed policies and practices which meet the culturally specific needs of this group. This requires a holistic approach to all aspects of ATSI children’s experience which cannot be achieved without a dedicated Commissioner. This role has been successfully implemented in Victoria and provides a model for implementation in other states across Australia.

The first Victorian Commissioner for Aboriginal and Torres Strait Islander Children and Young People was appointed in mid-2013. This is the first role of its kind in Australia and sits within the Victorian Commission for Children and Young People alongside the Principal Commissioner. The role is independent of the Victorian Government. The Commissioner was appointed to address the gap between ATSI and non-ATSI children, specifically in terms of incarceration, abuse and neglect.

The Commissioner has articulated that his primary focus is on advocating for the cultural rights of Aboriginal and Torres Strait Islander Children as the enjoyment of these rights directly impact on a child’s ability to meaningfully enjoy every other human right and freedom. Culture is a crucial factor in children’s wellbeing, pride, belonging and resilience and fostering and maintaining cultural and kinship connections is a lifeline for ATSI children. The Commissioner strongly advocates for all Koori children and young people and brings their lived experiences and their voices to the forefront through a number of initiatives including:

- Taskforce 1000, which seeks to improve outcomes for Aboriginal children and young people and inform future planning by reviewing the current circumstances of the approximately 1000 Aboriginal children and young people in out-of-home care, and to identify and address the issues associated with their over representation in out-of-home care.
- The Aboriginal Inclusion Action Plan (2016-2019), which commits to actions addressing Aboriginal inclusiveness, particularly to improve outcomes for vulnerable Aboriginal children and young people.

Responsibility for youth justice

In many Australian jurisdictions, although not all, youth justice is administered by human services departments. This approach is conducive to ensuring that a coordinated continuum of prevention, intervention and rehabilitation services and responses are delivered to young people and the families of young people who are in, or are at risk of entering, the justice system.

The Northern Territory Department of Correctional Services is currently responsible for the administration of Youth Justice. This approach to youth justice administration highlights a punitive and reactive attitude towards young people in contact with the justice system.

The Review of the Northern Territory Youth Justice System report of September 2011 considered that the NT Department of Justice was the best placed to administer youth justice at that time, and also recommended that the government consider transferring the unit to the Department of Children and...
Families (now Territory Families) when the department was more able to absorb that additional responsibility\(^4\). In July 2016, then Leader of the Opposition Michael Gunner responded to the announcement of the Royal Commission and committed to moving youth justice out of the Department of Correctional Services\(^4\).

We welcome the recent change to move the Department of Correctional Services to Territory Families, however note that in order to coordinate a more holistic, proactive and sustainable approach to youth justice, the youth justice unit should be administered as a separate stand-alone unit within Territory Families.

We recommend that the Northern Territory government establish a separate stand-alone youth justice unit within Territory Families, and provides sufficient resources so that the department can effectively administer services and responses which address youth justice proactively and holistically.

**Restorative justice**

In 2014/2015, the Northern Territory had the highest rate of young people in detention, with 96 per 10,000 young people in detention compared to the national average of 18.8\(^4\). The Northern Territory had the fourth highest rate of imprisonment of Aboriginal and Torres Strait Islander people, with this group over-represented in the justice system. In the Northern Territory, Aboriginal and Torres Strait Islander people are 17 times more likely than the non-Aboriginal population to be under supervision on an average day, a fact that is linked to extreme disadvantage experienced in the critical areas of health, education, employment and housing\(^4\).

The undue reliance on detention in criminal justice policy in the Northern Territory is both ineffective and costly. There is little evidence that tougher sentencing policy improves community safety through deterrence or incapacitation.\(^4\) In fact, several studies found that imprisonment increases the likelihood of offending behaviour and has the potential to negatively affect prisoners, particularly younger, lower-risk offenders\(^4\)\(^8\).

Most young offending is episodic, transitory and unlikely to constitute a risk to the safety and welfare of the community. Children need the opportunity to learn from their mistakes and where appropriate, to make amends for behaviour that has harmed others.
The Northern Territory urgently needs a shift away from costly, punitive law-and-order policies towards restorative justice practices.

Restorative practices are more effective in reducing re-offending and making our communities safer. Jesuit Social Services’ work with young people in the justice system in Victoria uses a problem-solving approach to offending that is based on principles of restorative justice, which balances the needs of offenders, victims and the community and aims to help the young person make amends for the harm done. This approach is effective; 80 per cent of restorative justice program participants had not reoffended after two years (compared with over half of the young people who had been in youth detention going on to reoffend).

Restorative justice is more cost-effective than keeping a young person in detention. For every $1 invested on Youth Justice Group Conferencing, for example, the Victorian Government saves at least $1.21 in the short term and this saving is likely to increase in the long term. On every level, it makes more sense to divert young people away from the justice system.

While the Northern Territory Youth Justice Act provides for pre-court and pre-sentence diversion options for young people, to date this has been chronically underutilised and there is scope for significant improvements to diversion pathways in the Northern Territory.

Currently, diversion is not widely or consistently offered and does not necessarily meet young people’s unique needs. ATSI young people are more likely to be denied a diversion option (52 per cent denied diversion) compared with non-ATSI young people (46 per cent denied diversion) and therefore are more likely to be unnecessarily exposed to the court system. Additionally, diversion is not available as an option in most regional and remote areas across the Top End of the Northern Territory due to lack of resources.

A well-implemented system of restorative justice responses is critical to ensuring that young people do not become entrenched in the criminal justice system.

We call on the government to fund and support restorative justice programs, including Youth Justice Group Conferencing, across the Territory.

Positive examples of diversion and restorative justice approaches

Jesuit Social Services is proud to be a part of Victoria’s innovative and effective youth justice system, which outperforms most states and territories in key indicators including youth recidivism and crime rates. This is the result of policies and investment focused on preventing crime, diverting children and young people from the justice system, and supporting restorative justice approaches that foster positive relationships between people who offend, victims and the wider community. Partnerships between government, the courts, public sector agencies and the community sector have been critical to this success.

The following programs offer examples of responses that effectively contribute to the positive development of young people, and, as highlighted earlier, emphasise:

- the importance of restorative justice principles, processes and practice
- a therapeutic approach that responds to the needs of vulnerable children, particularly those in the child protection system who come into contact with the justice system
- an understanding of the particular needs of Aboriginal children and young people who are overrepresented in the youth justice system
- the critical role of education as a protective factor, and the need to ensure vulnerable children’s continued engagement in school.
Recognising the need to divert vulnerable children away from the youth justice system, Jesuit Social Services delivers the Barreng Moorop program in partnership with the Victorian Aboriginal Legal Service (VALS) and the Victorian Aboriginal Child Care Agency (VACCA).

Barreng Moorop works with 10-14 year old children, their siblings and their families residing in the North and West metropolitan regions of Melbourne who intersect the criminal justice system. The program provides culturally responsive trauma-informed services to divert young Aboriginal people away from the criminal justice system. Since its inception in 2015, Barreng Moorop has assisted 35 Aboriginal children and their families.

Barreng Moorop works with the whole family and community (where appropriate) to provide a wrap-around response, understanding the composition of Aboriginal families, in which the extended family plays an active role. The responsibility of child care and rearing is shared amongst a range of family members with, in many cases, a multi-generational core of kin providing primary care.

In response, Barreng Moorop works with, and provides support to, family members with the focus of using family, community and culture as a protective factor to divert young people away from the criminal justice system in a manner which is sustainable and genuine.

Barreng Moorop uses trauma informed practice which acknowledges past trauma Aboriginal people have experienced throughout history due to colonisation, loss of culture and connection to land and the removal of children from their families. We note that these factors and the impact of transgenerational trauma plays out in the daily life of many of the Aboriginal children and families we work with.

**Case study: Barreng Moorop**

JK has just turned 15. He is enrolled at the Pavilion School in Preston, however his school attendance is low. He is currently in the care of his mother and resides with her and his sister in a private rental.

The relationship between him and his mother is strained, with JK often making judgements about her parenting. He often makes reference to his mother’s AOD use and history of involvement in the criminal justice system. It is reported that his mother has bipolar disorder.

JK openly states that he uses cannabis, smokes cigarettes and occasionally drinks alcohol. He is currently sleeping a lot during the day and staying up late at night which is impacting on his routine and diet. JK’s father resides in Melbourne however their contact is sporadic. JK has stated that he has little knowledge or interest in his cultural background.

He is facing multiple charges in front of the courts, these include arson, threats to kill and criminal damage. All matters have been adjourned to a later date. As part of JK’s bail conditions he must reside with his mother, abide by a 10pm curfew, and not have contact with two particular males.

Barreng Moorop is addressing these issues by:

- Providing a phone with an alarm to assist him to get up and get ready for school.
- Working collaboratively with a Koorie Education Support Officer to improve school attendance.
- Assisting with transport to and from school.
- Assisting with legal and court support, transport and emotional support.
- Liaising and assisting his lawyer where possible.
- Writing court support letters.
Case study: Barreng Moorop (continued)

• Advocating for JK to access a diversion program.
• Engaging him in pro-social activities.
• Encouraging him to participate in cultural activities such as NAIDOC week celebrations.
• Linking him to the Victorian Aboriginal Health Service (VAHS).
• Providing education about AOD use.
• Supporting him to stop smoking cigarettes.
• Assisting JK to develop a routine and improve his physical health, including through gym and Muay Thai classes.
• Improving his diet and general health; he has an appointment booked at VAHS.

Youth Diversion Pilot Program


A young person appearing in the Children’s Court for the first or second time for a low level offence can be referred to the diversion program by the Magistrate. If the young person successfully meets the requirements of the Diversion Plan then a criminal conviction will not be recorded. This has many positive benefits, including enhanced prospects for engaging in future employment.

Key outcomes

Over 90 per cent of participants have successfully completed the diversion program and had their matter dismissed. Common positive outcomes include:

• young people demonstrating a better understanding of the impact of their offending
• improved family and community relationships
• re-engagement with education
• improved mental health.

The program has received consistently positive feedback from Victoria Legal Aid, police prosecutors and the broader court network.

Selected case studies: Youth Diversion Pilot Program

Male aged 17 (Theft, Trespass and Obtain Property by Deception charges)

The young man has an intellectual disability and severe language delay. His plan was to work more on reading and writing, and have further restorative justice discussions around the offences. He participated well in everything and was assisted in writing a letter of apology. The young man is also now receiving one-on-one support two days a week with his education and the school is researching and trying different programs with him to improve his literacy. He reported that things have been ‘heaps better’ with his school.

Female aged 16 (Possess Cannabis, Possess Controlled Weapon, Possess Prescribed Graffiti Implement, Possess Liquor under Age 18 charges)

This young woman had been disengaged from school for several years and experienced daily cannabis use and anxiety/depression due to grief and loss issues. She was supported to re-engage with education, and linked with drug and alcohol support and ongoing support through the Youth Support Service.
Responses to the question “What has been the most significant change for you since coming to the Youth Diversion Pilot Program”? (taken from exit interviews conducted with participants)

- I have more motivation to do things, get a job and go to the gym. I have goals now.
- Not getting in trouble, keeping clean.
- Getting back into school.
- Studying more, don’t have to go to court.
- More positive outlook on life.
- Able to talk about future and mum trusts me.
- Staying off the streets and keeping out of trouble.
- I stopped doing drugs.
- I haven’t been in trouble since and have changed who I hang around. I now just do the right thing.

**Youth Justice Group Conferencing**

The Jesuit Social Services Youth Justice Group Conferencing program enables dialogue between young people who have offended, their victims and the wider community. The program is grounded in principles of restorative justice, which emphasise reparation and restoration, and aims to:

- raise the young person’s understanding of the impact of their offending on the victim, their family and/or significant others and the community
- reduce the frequency and seriousness of re-offending by the young person completing the program
- improve the young person’s connection to family/significant others and their integration into the community
- negotiate an outcome plan that sets out what the young person will do to make amends for their offending
- increase victim satisfaction with the criminal justice process
- divert the young person from a more intensive sentence.

Youth Justice Group Conferencing is a problem-solving approach to offending that emphasises the offender’s personal accountability, encourages an inclusive decision-making process that encourages participation, and aims to right the harm caused by an offence.

Jesuit Social Services delivers Youth Justice Group Conferencing throughout metropolitan Melbourne.

**Key outcomes**

A 2010 KPMG independent evaluation of young people who completed a Youth Justice Group Conference between 2007 and 2009 found that more than 80% of participants had not reoffended two years later – this compared to 57% for the comparison group (i.e. young people who had been placed on Probation or on a Youth Supervision Order).

**Navigator**

Recognising the importance of school engagement as a protective factor against involvement in the criminal justice system, Jesuit Social Services is delivering casework and support to disadvantaged young learners as part of the Victorian Government’s Navigator initiative. Navigator works with disengaged learners aged between 12 and 17 to engage with them and their support networks to return them to education or training.
Re-engaging vulnerable young people in educational, learning and employment pathways gives them the foundational skills and opportunities they need to flourish. The Navigator pilot program will operate in a number of areas in Victoria that experience significant disadvantage including higher rates of long-term unemployment and family violence. The program’s work will include the development of individualised learning and cultural plans and restorative practice including therapeutic and practical support.

The age of criminal responsibility

A small number of vulnerable children enter the criminal justice system at a very young age. According to the Department of Correctional Services, 65 children under 15 years of age were held in youth detention in the Northern Territory in 2014-15. We know this group is among the most vulnerable in our community and that children first detained between the ages of 10 and 14 are more likely, compared to those first supervised at older ages, to have sustained and frequent contact with the criminal justice system throughout their life.

Child offending experts, psychologists and criminologists agree that younger children have rarely developed the social, emotional and intellectual maturity necessary for criminal responsibility before the age of 14 years and also lack the capacity to properly engage in the justice system. Consequently, procedural fairness cannot be assured and criminal justice proceedings fail to guarantee a just response to children’s behaviour. The most effective approach to prevent these children’s trajectories into the justice system is to address the issues driving their vulnerability such as family dysfunction, trauma, abuse and neglect.

In line with international standards embodied in the United Nations Convention on the Rights of the Child and enacted in many overseas jurisdictions, we recommend raising the age of criminal responsibility to the age of 12 (as a minimum). According to an international study of 90 countries, 68 per cent had a minimum criminal age of 12 or higher, with the most common age being 14 years.

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We recommend putting in place evidence-based approaches to supporting vulnerable children who are below this age. This should include less formal methods of holding them to account, such as restorative justice and family centred approaches as well as preventative measures which target the social and economic factors which lead to anti-social behaviour.

We recommend that the Northern Territory Government implement a system of restorative justice to address the needs of 10 and 11 year olds who come to the attention of the justice system.
Bail and remand

The use of remand in the Northern Territory is often unnecessary and far too common to be considered a last resort. On an average day in 2014/15, the vast majority (78%) of young people in detention facilities in the Northern Territory were unsentenced.\textsuperscript{61} This is significantly higher than other jurisdictions, such as New South Wales (48%), Western Australia (41%) and Victoria (37%), and is above the national average (54%).\textsuperscript{62}

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\caption{Young people in detention: unsentenced vs. sentenced}
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Additionally, Aboriginal and Torres Strait Islander children and young people are significantly overrepresented in detention in the Northern Territory. While ATSI children constitute 45% of the total population aged 10-17 in the Northern Territory, they constitute 95% of 10-17 years old in detention.

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\caption{Population comparison: 10-17 yr olds in NT}
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The disproportionate number of young people on remand in the Northern Territory makes it clear that the principle of custody as an option of last resort is not routinely applied. Evidence shows that early contact with detention leads to higher likelihood of reoffending down the track. Children first supervised at 10 – 14 years old spent longer periods under supervision at older ages - half returned to supervision and spent 18 months or more there compared to only 15% of those first supervised between 15 – 17 years.\(^6\)

Bail legislation must ensure that children and young people are not unnecessarily remanded, and this should be reinforced by a culture of practice and support among decision makers so that children and young people are diverted from custody and into the community. The Bail Act (NT) does not include adequate provisions for young people. The Act is unnecessarily restrictive and punitive and often impacts upon young people, who find it more difficult to obtain bail. In order to achieve appropriate outcomes, specific provisions must be introduced which take into account young people’s particular concerns and needs.

Central Australian Aboriginal Legal Aid (CAALAS) and the Northern Australia Aboriginal Justice Agency (NAAJA) have made comprehensive recommendations for review and amendment of the Bail Act, which we commend to the Commission. Of particular note is NAAJA’s *Submission to the Review of the Bail Act (NT)* of March 2013 which outlines additional criteria further to Section 24 of the Act which must be considered in making decisions relating to young people\(^6\). These include taking the following into account:

a) That young people have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard and a right to participate in the processes that lead to decisions that affect them

b) Family relationships between a young person and members of his or her family should be preserved and strengthened wherever possible

c) The education or employment of a young person should proceed without interruption wherever possible

d) A young person’s sense of racial, ethnic or cultural identity should be acknowledged and a young person should be able to maintain their racial, ethnic or cultural identity

e) The detention or imprisonment of a young person is to be used only as a last resort, only if there is no appropriate alternative and only for the shortest appropriate period of time

f) Conditions imposed on young people must be limited to those that are necessary and proportionate to an objective consistent with this Act and comply with s28 (see proposed amendment to s28 in Recommendation 5)

g) In imposing any conditions upon a young person, the court must take into account the young person’s ability to understand and to comply with those conditions

h) The age and maturity of the youth, including their capacity for complex decision making, planning and the inhibition of impulsive behaviours.

We fully support implementation of these recommendations.

We call on the Northern Territory government to ensure remand is used as a last resort and amend the Bail Act to provide for the needs of children and young people.
Underpinning this, the ability for all young people to access bail support programs and bail accommodation is crucial in reducing the number of young people on remand. Investing in programs which provide a viable and targeted alternative to detaining unsentenced children and young people ensures that they are prevented from becoming entrenched in the justice system. Opportunities are being missed to reduce criminal behaviour, divert vulnerable children and young people from the criminal justice system and provide them with pathways so that they can become productive members of the community.

The Northern Territory Government must support bail support programs which partner with courts, police, families and communities to deliver holistic youth focussed outcomes. Bail support programs that have been implemented in Queensland and Victoria involve community agencies in delivering services to reduce the risk of breaches. These programs ensure that young people are not unnecessarily remanded and increases their chances of integrating back into their communities without the disruption of time in detention.

We recommend that the government provide increased investment in bail support programs and bail accommodation to prevent vulnerable children from being detained.

Specialist courts

The Courts system is a crucial element of youth justice and impacts on the effectiveness of the system to deliver appropriate outcomes for children and young people. The needs of children are distinct from those of adults and this must be reflected in the court processes they are engaged in. Similarly, ATSI children and young people must be met with culturally appropriate practices in order to effectively achieve appropriate justice outcomes.

Establishing distinct and specialised Children’s Courts in Alice Springs and other major regional centres should be a high priority. Experience in other jurisdictions shows the benefits of specialist children’s courts dedicated to hearing criminal matters where young people are involved, with the capacity to tailor processes, decision making and supports to hold young people to account while addressing wider needs that underlie their offending. We believe that the process of developing a comprehensive Children’s Court system which is accessible across the Northern Territory is critical. Specialised Children’s Courts must consider the provision of facilities for children and young people which are separate from facilities for adults as well as the need for specialist youth legal practitioners. There must also be adequate links to services at court, including interpreters, as unavailability of interpreters in court can lead to delays and unnecessary periods in custody. The government should support the efforts of Aboriginal Legal Services to cover this gap.

We call on the Northern Territory Government to establish Children’s Courts in all major regional and metropolitan centres across the Northern Territory.

Further to this, there is significant need to establish a court which integrates culturally appropriate processes for Aboriginal communities and involves these communities in the justice process. Experience in Victoria with the Children’s Koori Court shows the benefits of a court dedicated to hearing criminal matters where young ATSI people are involved and provides a readily applicable model in Northern Territory jurisdictions.
The Children’s Koori Court, established in 2005, operates in nine locations across Victoria and aims to address the over-representation of young Koori people in the criminal justice system. The Court deals with young Koori people who have been found guilty of committing a criminal offence. The sentencing outcomes in Koori Court are the same as in mainstream criminal cases but the court process is different. By involving the Koori community in the court process through the participation of Elders and Respected Persons, the Koori Court aims to reduce offending behaviour and reduce the number of young Koori people being sentenced to a period of detention.

Koori courts across Victoria have been successful in reducing reoffending and reconnecting ATSI people with their communities. Many people say it is the first time they felt they were treated with respect by the justice system.

Access to this system ensures that ATSI young people in Victoria have access to culturally appropriate justice mechanisms that address the underlying issues contributing to their offending. The system also provides tailored decisions which divert young people from detention and strengthens community ties, thereby reducing their chances of reoffending.

Establishing a Children’s ATSI Court system in the Northern Territory which is accessible in all major regional and metropolitan centres is critical to reducing overrepresentation of ATSI young people in youth detention and diverting them to more constructive justice alternatives.

We call on the Northern Territory Government to establish ATSI Children’s Courts in all major regional and metropolitan centres across the Northern Territory.

Trauma informed care and through-care model

The vast majority of young people in youth detention in the Northern Territory are ATSI. Children and young people in contact with the justice system are among the most vulnerable and disadvantaged in the community and generally progress on to have higher rates of offending throughout their lives. The causes of offending in younger children are strongly connected to their environment and its impact on their development.

For ATSI young people in youth detention, they have the added complexity of the impact of intergenerational trauma, grief, loss and locational disadvantage. Colonisation and discriminatory government policies have seen generations of Aboriginal people experience racism, dispossession, early deaths of family and community members and the forced removal of children.

Recognising the unique but highly complex vulnerability of young people in youth detention, and the impact that trauma has played in their offending behaviour, it is critical that custodial settings adopt a trauma-informed approach, where possible, to prevent them re-entering the justice system.

There is a strong need for youth justice custodial environments to provide cultural safety, health and mental health services, alcohol and drug services, disability support, and responses to young people’s experience of trauma. What is needed is a holistic and therapeutic approach that is integrated into a wider through-care model.

Through a commitment to embracing trauma informed care and practice, the Northern Territory Government will not only create opportunities for survivors of trauma to heal, but will also work towards breaking the cycle of disadvantage and intergenerational trauma and reduce crime and recidivism.
A commitment to staff development and training must incorporate a focus on trauma: its impacts, prevalence and potential for re-traumatisation across multiple services and agencies including health care, education, criminal justice, child welfare and other social service systems\(^7\).

**Given the strong link between trauma and criminal behaviour, the government must support vulnerable children with trauma-informed, therapeutic practices. These must be evidence based, culturally safe and inclusive, and incorporate a strengths-based framework and specialist care.**

**Through-care model**

There is a need for greater clarity regarding the role and relationship of community sector organisations to a through-care model. We believe that ongoing, coordinated, youth-focused practice can produce better outcomes. Resourcing for the wider needs of young people on orders should be provided, and this support should be delivered by community organisations in the Northern Territory.

The Victorian Youth Justice Community Support Service provides an example of this approach. In this model, government Youth Justice Workers are responsible for supervising young people on community based orders, while community organisations provide case management support with housing, education, mental health, and alcohol and drug needs. The community consortia are funded by government to deliver services under formal partnership arrangements. A 2013 evaluation of the program found that it delivered an effective form of support and had improved outcomes for young people in the system\(^7\).

**The Northern Territory government should ensure clear and well-resourced partnerships with community organisations to effectively implement a through-care model for young people exiting the justice system.**

**Staff training**

Youth detention officers and staff within youth detention centres set the tone for young people’s experience of detention. The influence that these officers’ behaviour has on young people in their care is significant.

The needs of young people in detention vary greatly from those of adults. Consequently the practice framework in youth detention centres should reflect this and it is critical that staff in youth detention centres are not adult corrections officers with no youth specific training.

Staff must be trained in youth specific practice frameworks and frequently update their skills. This training must be comprehensive and delivered by instructors who have adequate experience and qualifications in therapeutic approaches to youth justice. Principles of a youth specific framework could include training around understanding trauma, child brain development, impulsive adolescent behaviours, alcohol and other drug issues, and the impact of family violence on young people.

A therapeutic and trauma informed approach to youth detention will significantly reduce the acute stress which young people experience while detained, and has the potential to greatly improve outcomes for young people leaving detention.

**We call on the government to ensure that youth detention officers and other staff in youth detention centres are trained in a trauma-informed youth specific therapeutic practice framework by experienced and qualified instructors as a matter of priority.**
Restraint

The *Youth Justice Amendment Bill 2016*, which passed through the Northern Territory Parliament earlier this year, lifted the prohibition on using restraints to maintain discipline in youth detention centres in specified situations. The amendments are of considerable concern due to the negative long term psychological effects of restraining children, particularly considering their unique developmental needs. The current *Youth Justice Act* is inadequate to ensure that restraint is not used inappropriately on children and fails to acknowledge the weight of a decision to restrain a young person.

Many health and social care organisations across the globe have developed guidelines for the use of restraint on young people in their specific areas of practice, and much of the advice they provide is applicable in a youth detention setting. The guidelines for use of restraint in youth detention centres in the Northern Territory fall considerably short of meeting adequate policy and practice standards, informed by outdated attitudes towards children and overreliance on reactive crisis management.

We welcome the introduction of the *Youth Justice Legislation Amendment Act 2016* to the Northern Territory Parliament on 25 October 2016 as an urgent measure to prevent further inappropriate use of restraint. We commend the government’s plan to re-draft the *Youth Justice Act* following an inquiry and broad consultation and the commitment to establishing best practice in youth detention centres. We recommend that the government take into account the following when drafting new guidelines in order to ensure best practice is implemented.

The Northern Territory Government must develop strong guidelines for use of restraint on young people, including training requirements for staff, establish an independent body with responsibility for monitoring the use of restraints in youth detention, and address the environmental factors which are contributing to situations where restraint may be necessary.

New guidelines must fully commit to the use of restraint as a last resort when all other pre-emptive and de-escalation strategies have been implemented. A system of pre-emptive and de-escalation mechanisms must be adopted to ensure that physical restraint of a young person is avoided wherever possible. These strategies must address both the factors which contribute to escalating situations in youth detention centres and the de-escalation processes in place for situations which arise.

**Pre-emptive actions**

Several factors contribute to escalating situations in youth detention centres. The particular needs of young people, staff management practices and the physical environment of youth detention centres all contribute to creating situations where young people become violent and threaten the safety of others or themselves. By addressing these factors pre-emptively, escalating situations can be diverted.

**Meeting young people’s needs**

Young people in detention require a very different approach to adults in the justice system due to their developmental vulnerability. Additionally, they may experience behavioural issues and present with multiple and complex needs. Meeting the needs of young people must be a priority within youth detention. This requires:

- staff who are suitably qualified and receive thorough ongoing training to support the unique needs of young people
- improved case management and access to mental health services while in detention
- improving specialist training so that staff adopt a restorative approach to young people rather than a punitive approach
- ensuring consistency in managing adolescents with trauma and mental health issues
Escalating situations can be pre-emptively diverted by adopting a therapeutic approach to the needs of young people in youth detention.

**Listening to young people’s voices**
Management practices in youth detention also present opportunities for improvement and pre-emptive de-escalation. Young people must be treated with respect and dignity by staff in order to develop trusting relationships with young people. Article 12 of the *United Nations Convention on the Rights of the Child* states that children’s views must be considered and taken into account in all matters concerning them and should be accorded weight dependent on the age and maturity of the individual child.

Accordingly, it is important that staff acknowledge young people’s voices and discuss and address their concerns and frustrations. Where young people are not able to express their concerns about matters which affect them while in youth detention, the situation can escalate and result in unconstructive expression of frustration on the part of the young person. Management practices must ensure that staff provide a safe and constructive environment where young people can express their concerns and where these concerns are then respectfully addressed.

**Physical environment**
The design of correctional facilities should embody principles of restorative justice. The loss of freedom and experience of isolation in detention can directly contribute to manifestations of violence, aggression, anxiety, distress and suicide. In other social care settings, such as hospitals, a therapeutic approach to design is widely accepted and aims to increase people’s sense of freedom and community. This therapeutic approach is becoming more widely accepted in a corrections context, and these principles are all the more important for young people, as their ability to cope with intense deprivation is far lower than adults.

The following are features of design which have been identified as contributing to a more therapeutic environment for young people in social care settings:

- Facilities should be secure and comfortable, with maintenance of an ambient temperature and access to daylight and fresh air.
- Privacy should be available wherever possible, and young people’s dignity should be preserved.
- Activities should be made available wherever possible to constructively engage young people.
- Noise and overcrowding should be minimised.

**De-escalating**
Restraint has been identified as a major cause of distress for children and young people. To this effect, situations where a young person may cause serious physical harm to themselves or others, and therefore require restraint, must be avoided.

Early identification of an escalating situation and immediate restorative intervention is key to reducing the need for restraint. Staff must be trained in a restorative approach, handling escalating situations as well as identifying indicators of distress and frustration which may build up into a violent outbreak.

Restraint should only be used in a situation where a young person can be reasonably expected to cause serious physical harm to themselves or others and where other de-escalation interventions have not been effective. Restraint is not an appropriate intervention in any other context involving violence, aggression or discipline. Maintaining the ‘good order’ of a detention centre, as stipulated in the *Youth Justice Act*, is not in itself an adequate reason for employing restraint against a young person. In de-escalating situations where physical harm to self or others is not a concern, staff cannot rely on restraint as a solution and must employ restorative interventions.
Using restraint

The use of restraint poses significant risks to young people. However, it is widely accepted that in situations where a young person may cause serious physical harm to themselves or others that restraint may be in the best interests of that person. In this context restraint must be used in a way which poses as little risk as possible to the wellbeing of the young person. The *Youth Justice Act* amendment outlining the appropriate use of approved restraints still does not provide adequate protection for young people and falls below best practice standards in other social care settings across Australia.

The following outlines principles for restraining young people which reduce the risks of serious physical and psychological harm or death resulting from inappropriate use of restraints and are applicable to youth detention settings:

- The suitability of using restraint must be assessed on an individual basis and take into account the potential or actual physical harm and psychological impact of restraining that particular young person. If there are any feasible alternatives to restraint, these should be employed rather than restraint.
- If the use of restraint is required, then the method should be appropriate to the age, size, physical condition, and sex of the young person. The minimum amount of force should be applied, for the shortest possible duration. Adequate numbers of staff should be rapidly moved to the scene of the incident, if they are not already present. The presence of adequate numbers of experienced staff in a situation in which restraint is necessary is likely to reduce the amount of force required and the likelihood of injury to young people or staff. Other young people and staff whose assistance is not required should be removed from the scene.
- It is of the utmost importance that staff receive comprehensive, regular training in restraint techniques that are appropriate in a youth specific context from an experienced and qualified instructor. Any staff member who has not received recent training is absolutely unqualified to restrain a young person and places the young person and themselves at significant risk. Additionally, young people should have the restraint process thoroughly explained and demonstrated to them on arriving at the youth detention centre. This increases their understanding of the process and reduces the risk of harm in the case that restraint is used against them.

The following have been identified as factors associated with fatalities during restraint: neck holds, obstruction of nose and/or mouth, mechanical restraints, (e.g. garments or straps), prone tying, hobble tying, hyperflexion, obesity, general ill health, and exhaustion.

The restraint techniques identified in this list should be avoided when restraining young people. The list of approved restraints in the *Youth Justice Act* must reflect the risks associated with these techniques. Adequate safeguards must be put in place to ensure young people’s safety, including regular assessments of the ongoing need for restraint as well as the health of the young person being restrained.

Following any use of restraint it is vital to report and record the incident in detail, including length of time for which the restraint was used, and we welcome the provision for this in the *Youth Justice Legislation Amendment Bill*. Additionally, the reporting process must include details and assessments of any physical or psychological health concerns arising during or after restraint.
It is also important to debrief with both staff and the young person involved and other young people affected by the incident. Reflection should enable the identification of precipitating factors, facilitate their minimisation in the future and improve future practice.

We welcome the government’s plan to reform guidelines governing the use of restraint in youth detention. The guidelines should emphasise pre-emptive and de-escalation measures, provide stronger safety measures when restraint is used, and outline thorough recording and reporting processes.

Oversight

Australia ratified the *United Nations Convention Against Torture (UNCAT)* on August 8th 1989 and has since been commended by the UN Committee against Torture for its legislative and implementation practices during periodic reporting to the Committee. Australia’s laws prohibit all forms of torture and other cruel, inhuman or degrading treatment and continue to strengthen Australia’s commitment to the rights and protections enshrined in the *UNCAT*. However, these protections have not been upheld in the Northern Territory’s youth detention system, despite awareness of young people’s treatment by public officials. In order to provide accountability and effective protection an independent National Preventative Mechanism (NPM) should be established under the *Optional Protocol to the Convention against Torture (OPCAT)*.

Under Article 16 of *UNCAT* the Australian Government undertakes to prevent any other acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by or at the instigation of or with the consent of a public official or other person acting in an official capacity.

We note that:

- The conditions and treatment of young people in detention were brought to the attention of the Northern Territory Minister for Children and Families by the Northern Territory Children’s Commissioner in the *Report of the Office of the Children’s Commissioner of the Northern Territory about services at the Don Dale Youth Detention Centre of August 2015*. The investigation responded to concerns about inhumane conditions at Don Dale youth detention centre and detailed the practices and incidents which had led to these concerns. The Commissioner raised concerns that the treatment of young people was inconsistent with international obligations under *UNCAT*. The report also indicated that surveillance tapes depicting inappropriate and unsafe use of restraints in a youth detention centre were shown to senior staff at the Northern Territory Department of Justice in 2012.

- The *Review of the Northern Territory Youth Detention System Report of January 2015* was completed with the support of the Northern Territory Department of Correctional Services, Commissioners Office and the Youth Justice branch. The report detailed systemic factors that had contributed to an environment of instability and crisis in the youth detention system and referred to several major incidents where staff and young people had been put at risk due to poor practice.

- The cruel and degrading treatment revealed in the *Four Corners* report in July 2016 is entirely consistent with previous reports brought to the attention of public officials since 2012, and continued with their knowledge. We conclude from the footage shown on *Four Corners* that young people in Don Dale youth detention centre were and may continue to be exposed to degrading punishment which is inconsistent with Australia’s commitments under *UNCAT*.
It was the responsibility of the Australian Government, under Article 10, to ensure that staff administering Don Dale youth detention centre were educated and informed regarding these commitments and, under Article 11, that the rules and practices in Don Dale were reviewed to prevent this treatment occurring\(^\text{87}\).

Oversight is inadequate within the existing structures of the Northern Territory’s Youth Justice system and has failed to provide accountability and protect young people in detention from experiencing treatment inconsistent with Australia’s strong commitment to \textit{UNCAT}. A joint review by NAAJA, CAALAS and NTLAC into the Northern Territory youth detention system identified dangerous inadequacies in oversight mechanisms. Concerns included that:

- current internal and external complaints systems are poorly implemented, under-resourced, and when complaints are raised they provide little effective action and rarely address systemic issues\(^\text{88}\).
- the system is underutilised because the role and function of the complaints processes are inadequately communicated and few detainees are aware of how to make a complaint or what to expect from the process, thereby reducing their ability to exercise their rights\(^\text{89}\).
- there are circumstances in which young people are unable to articulate their concerns, do not feel it is safe to raise a complaint, and are unaware of their right to do so without fear of repercussions\(^\text{90}\).

The report recommended the establishment of an independent statutory body with “specific responsibility to ensure correctional services meet minimum standards and adequately safeguard the rights of detainees and inmates”\(^\text{91}\). The Western Australia Inspector of Custodial Services was recommended as a possible model. This Inspector focuses on institutional and systemic issues rather than individual complaints, inspects and reviews custodial services and has comprehensive powers to obtain and use relevant information. Since the establishment of this role in Western Australia and a similar role in New South Wales there have been measurable improvements in accountability and transparency in the operation of correctional facilities in these states\(^\text{92}\). However, the Northern Territory Government did not implement the recommendations of this review, thereby neglecting to ensure the safety of young people in its care.

Given the lack of oversight, transparency and accountability in youth detention operations which has led to continued abuse in these facilities, we strongly recommend that Australia ratify \textit{OPCAT} as a matter of priority.

Australia signed the \textit{OPCAT} on 19 May 2009, however has not yet ratified this agreement. Ratification of \textit{OPCAT} would operationalise \textit{UNCAT}. Whilst Australia already prohibits all forms of torture, ratification of \textit{OPCAT} presents a valuable opportunity to strengthen the oversight measures already in place, and recognise Australia’s commitment to these protections. These protections under \textit{OPCAT} and \textit{UNCAT} would be applied more broadly, in particular to the independent monitoring of the treatment of children and young people in detention in Australia.

There are a range of contexts in which young people and children are detained. This includes children and young people placed within Youth Justice Centres and adult prisons, but also other areas in which young people may be restricted, such as residential care services, schools, psychiatric facilities, police cells, and immigration detention. The ratification of \textit{OPCAT} provides a valuable opportunity to improve oversight mechanisms, and ensure that practices in youth detention facilities meet UN standards of treatment and are thoroughly investigated. This would include assessing the use of solitary confinement which can have a lasting detrimental impact on the mental health of the young person, who are particularly vulnerable due to their developmental age. The ratification of \textit{OPCAT} would mean these types of practices, including the use of restraints and spit hoods, would be subject to
investigation by an independent monitoring body, which would strengthen accountability, and improve outcomes for detainees.

There is extensive support from a diverse body of stakeholders for the ratification of OPCAT. Both the Australian Human Rights Council (AHRC) and the Law Council of Australia (LCA) have recommended the ratifying of OPCAT, and in 2014, in a letter to Attorney-General George Brandis, 64 bodies argued for the ratification of OPCAT. Jesuit Social Services supports the ratification of this agreement, as it presents a clear opportunity to drive more holistic and therapeutic practices within youth justice. It would also provide young people within these environments, many who are often disadvantaged in multiple and complex ways, a voice.

If Australia does ratify OPCAT, it must establish a National Preventative Mechanism (NPM). The NPM must be independent, and have the powers to regularly examine the treatment and conditions of detainees, freely gain access to all places of detention, detainees, and information on their treatment. Current oversight mechanisms in the Northern Territory are demonstrably inadequate in ensuring that protections for young people in detention are upheld, and do not hit the benchmark of a NPM.

Therefore, we support the call by NAAJA, CALAAS and NTLAC for the establishment of an Independent Custodial Inspector in the Northern Territory. We recommend that this role form a part of an effective and independent NPM framework committed to safeguarding the values and standards of UNCAT. Establishing a Northern Territory Inspector of Custodial Services within the framework of a NPM would have broad benefits for young people in youth detention, as it would ensure that legislative protections for children and young people detained are upheld. Under UNCAT, the treatment of these young people, and the conditions within these places, would be regularly independently monitored.

This Royal Commission presents a clear opportunity for Australia to strengthen and safeguard human rights, and for the youth detention system to strengthen accountability to vulnerable children and young people in their care through implementing an effective oversight mechanism.

We call on the Australian Government to ratify OPCAT and implement an independent and effective National Preventative Mechanism as a matter of priority.

We support the call by NAAJA, CAALAS and NTLAC for the establishment of an Independent Custodial Inspector in the Northern Territory and recommend that this role form part of the National Preventative Mechanism framework.


Vinson & Rawsthorne (2013).


Ibid.


Ibid., p. 171.


Ibid.


KPMG (2010).


Ibid.


Ibid.


Ibid.


Ibid.

Ibid.


Ibid., p. 3.

Ibid., pp. 35, 44.

Ibid., p. 29.


Ibid., pp. 10-11.


Ibid.

Ibid.

Ibid.

Ibid.