



28th February 2020

The Chair
Age of Criminal Responsibility Working Group
c/- Strategic Reform Division
Department of Justice
GPO Box F317
PERTH WA 6841

RE: Council of Attorneys-General – Age of Criminal Responsibility Working Group review

The Victorian Aboriginal Child Care Agency (VACCA) welcomes the opportunity to provide input into the Council of Attorneys-General Age of Criminal Responsibility Working Group review. Our submission addresses the distinctive issues and context shaping the over-representation of Aboriginal children and young people in the youth justice system, and advocates for the following systemic changes to be made nationally to the youth justice system – drawing on both national and Victorian policy contexts:

- The crucial need to raise the age of criminal responsibility to the age of 14, should be accompanied by the following systemic changes:
 - Investing in more effective, culturally safe and trauma-informed alternatives to the justice system for Aboriginal children and young people, including: community-based diversionary programs, investment in Aboriginal models of youth justice similar to the Children’s Koori Courts Division in Victoria, and strong investment in ACCOs delivering culturally therapeutic, trauma-informed programs which are focused on working holistically with children and their families and addressing the impacts of trauma and social and emotional wellbeing as key factors preventing offending behaviour and recidivism
 - Additional investment in early intervention and prevention programs particularly in areas of high risk where Aboriginal families are at increased risk of entering the child welfare and youth justice systems
 - Establishment, in Victoria, of a Spent Convictions Scheme
 - Aboriginal self-determination in the justice system, with increased Aboriginal community control, including the transfer of Aboriginal children and young people under the age of 14 who are on custodial sentences to the care of ACCOs
 - Improved cultural safety and cultural competency in the justice system

In making the case for these changes, our submission directly responds to the following questions identified by the Working Group's review of the age of criminal responsibility in Australia:

1. If we consider that the age of criminal responsibility should be increased from 10 years of age, what age do we consider it should be raised to (for example to 12 or higher)? Should the age be raised for all types of offences?
2. Should there be a separate minimum age of detention? If the minimum age of criminal responsibility is raised, should a higher minimum age of detention be introduced?
- 3a. What programs and frameworks (e.g. social diversion and preventative strategies) may be required if the age of criminal responsibility is raised?
- 3b. What agencies or organisations should be involved in their delivery?
- 4a. Are there current programs or approaches that we consider effective in supporting young people under the age of 10 years, or young people over that age who are not charged by police who may be engaging in anti-social or potentially criminal behaviour or are at risk of entering the criminal justice system in the future?
- 4b. Do these approaches include mechanisms to ensure that children take responsibility for their actions?
5. If the age of criminal responsibility is raised, what strategies may be required for children who fall below the higher age threshold and who may then no longer access services through the youth justice system?
6. Are there issues specific to states or territories (e.g. operational issues) that are relevant to considerations of raising the age of criminal responsibility?

About VACCA

VACCA's submission is based on our unique position as a state-wide Aboriginal Community Controlled Organisation (ACCO) and the lead Aboriginal child and family welfare agency in Victoria, with 40 years of experience and expertise in leading and delivering services that meet the needs of Aboriginal and Torres Strait Islander children, young people, families, communities and members of the Stolen Generations, through a framework of self-determination, healing approaches and cultural safety. Our purpose is supporting culturally strong, safe and thriving Aboriginal communities. Fundamental to our work is the commitment to provide programs and deliver services in an Aboriginal way, reflecting the priorities and needs of the community.

VACCA delivers over 50 different programs to vulnerable Aboriginal children, families and communities. We believe in the principle of the right of Aboriginal people to self-determination and

the rights of the child and we commit to upholding Victorian Aboriginal cultural protocols. Our services uphold Aboriginal self-determination and an understanding that the intergenerational trauma experienced by our children, young people and community requires community healing. We bring knowledge and appreciation that this healing occurs in the context of relationships, connection to culture, community, and land.

VACCA is one of the largest providers of justice support and advocacy to Aboriginal young people involved in the justice system in Victoria, both directly through our youth justice programs and as part of our response more broadly to vulnerable young people and families in our other services. This year we are leading the way in rolling out an innovative youth through-care program pilot, funded by the National Indigenous Australians Agency, which aims to reduce recidivism through the provision of intensive case management and holistic wrap-around support to Aboriginal young people, both pre- and post-release from custody.

Context: overrepresentation of Aboriginal children and young people in the justice system and the need for systemic, national change

Aboriginal children and young people are significantly over-represented in youth justice systems across Australia, with the proportion in detention compared to non-Aboriginal youth continuing to grow.¹ The Royal Commission into Aboriginal Deaths in Custody (1991), made a number of policy and practice recommendations in response to over-representation, however despite significant reform, data shows that Aboriginal people are still disproportionately represented in both the youth and adult justice system.² Incarceration rates of Aboriginal adults are disproportionately high, however Aboriginal young people are over-represented in all stages of the youth justice system to a higher degree, particularly in detention.³

What the evidence-base tells us:

- Aboriginal and Torres Strait Islander young people were 16 times more likely to be involved in both the youth and adult justice systems than non-Indigenous young people⁴
- The younger someone enters youth detention the more likely they are to stay in or return to prison. Aboriginal children in out of home care (OOHC) are over-represented in this group. The most recent statistics nationally indicate that Aboriginal children are in out of home care at 11 times the rate of non-Aboriginal children.⁵
- As at December 2018, there were 1,868 Aboriginal children and young people in OOHC in Victoria, and 12.4 per cent of Victorian Aboriginal children and young people (0-17 years of age) are involved with child protection, compared to 0.6 per cent of non-Aboriginal children and young people.
- Aboriginal young people are more likely to be involved in the youth justice system at a younger age.
- High rates of incarceration and detention have a strong correlation with greater risk of ill health, substance abuse, complex health conditions and premature death⁶

- In 2015/2016, compared with the non-Aboriginal population, Aboriginal young people were 17 times as likely to be under supervision, 15 times more likely to be under community-based supervision and 25 times more likely to be in detention.⁷
- Children and young people with cognitive disabilities are also over-represented in the justice system.⁸

As an Aboriginal child and family welfare organisation, over-representation is an issue of extreme concern to VACCA and one that must be addressed. The pathway from OOHC to youth detention and then into the criminal justice system has been well established, with research showing young people with a history of involvement in child protection, OOHC and leaving care are all at greater risk of involvement than those without prior involvement in these systems. This is alarming due to Victoria having the second highest rate of Aboriginal young people in OOHC (16.4 per cent, second to Western Australia with a rate of 17.8 per cent).⁹

For Aboriginal children in OOHC and/or justice system involvement, issues identified in relation to their longer-term life trajectories include:

- the trajectory into the youth justice system
- the poor support offered to children post care
- homelessness and associated contact with the criminal justice system
- unresolved trauma from abuse and its wide-ranging impact
- poor education outcomes
- limited employment opportunities
- poorer health outcomes

However, individual and family risk factors alone cannot explain over-representation. Mainstream approaches to youth justice often emphasize risk and protective factors on an individual level rather than recognising historical and societal factors and how these impact on entire communities. It is important to go beyond existing understandings of these factors, towards recognising the significant role played by historical, social, political and systemic structures in influencing the over-representation of Aboriginal young people in youth justice. There must be consideration of how the ongoing effects of colonisation impacts on families today and contributes to over-representation in the justice system. Structural risk factors shaping the justice system trajectories of Aboriginal children, young people and families include:

- historical policies of forcible child removal and the intergenerational effects on families of the trauma experienced by the Stolen Generations
- dispossession and disconnection from community, culture and Country
- cultural loss and cultural denial
- over-policing of Aboriginal young people relative to non-Aboriginal youth, and the low age of criminal responsibility
- social exclusion
- relationships with the police and criminal justice system
- systemic racism and discrimination

Many Aboriginal children and young people who become involved in the justice system are also products of a failed child and family welfare system. A lack of culturally appropriate and culturally safe early intervention services and supports is a significant factor that drives Aboriginal young people's involvement in the justice system. At the same time, many Aboriginal families do not access mainstream services due to fear of these services, particularly in terms of not feeling culturally safe in these services. Systemic failures in the child and family services system frequently contributes to a situation where a young person only receives supports once they are in a crisis.

These factors intersect in producing an increased risk of involvement with the justice system, reinforced by intergenerational trauma stemming from the ongoing impacts of colonisation. VACCA's practice approaches incorporate understandings of the impact of past policies on families today; understanding how intergenerational trauma, colonisation and racism must be addressed as part of effective responses.

To adequately respond to each risk factor driving the over-representation of Aboriginal young people in the justice system, these risk factors must not be considered in isolation but instead thought of as a complex combination of social, political, historical, family and psychosocial factors that require holistic, wrap around support to reduce the adverse impact on Aboriginal children, young people and their families. A systemic approach is required.

We believe that some of the most crucial policy, legal and systemic changes which are needed to improve outcomes for Aboriginal children and young people are:

- raising the age of criminal responsibility to 14
- strong investment in diversionary programs and therapeutic and cultural healing approaches; and
- Aboriginal self-determination in the justice system.

1. If we consider that the age of criminal responsibility should be increased from 10 years of age, what age do we consider it should be raised to (for example to 12 or higher)? Should the age be raised for all types of offences?

Aboriginal children should grow up in a safe and healthy environment, supported to remain with their families and communities. VACCA's position is that the age of criminal responsibility needs to be increased from 10 to 14 years of age for all types of offences, in line with the United Nations Convention on the Rights of the Child.

Australia sits below the average age of criminal responsibility internationally – which is 14 years of age - and has been repeatedly criticised by the United Nations for failing to change the current minimum age. There is a better solution than locking children up. Both the youth justice system and child protection need to recognise causal drivers for behavioural issues such as trauma or mental health and how they impact on behaviour. Given the overrepresentation of Aboriginal people in the justice system, we believe that raising the age of criminal responsibility to 14 years of age is a crucial

systemic change which is required to reduce Aboriginal justice system involvement and improve outcomes for Aboriginal children and young people.¹⁰

Research has shown that between the ages of 10-14, children are still undergoing critical physical, mental and emotional development. A child under the age of 14 is not sufficiently developed or has the capacity to understand why their actions are wrong and the repercussions of their behaviour. Not only are young people under the age of 14 incapable of understanding the extent of their actions, but evidence has shown the severity of punishment, including the length of incarceration influences offending trajectories of young people. Harsher punishments have been found to be linked to higher levels of reoffending, whilst even short incarceration periods were found to significantly increase subsequent offending. This means that by entering the youth justice system at a younger age, young people are more likely to end up in a life-time cycle of offending. The Sentencing Council of Victoria reported that of children first sentenced aged between 10-14 years of age:

- 1 in 2 were the subject of a child protection report
- 1 in 3 had been in out of home care
- 1 in 4 experienced residential care

The majority of offences committed by this age group in Victoria are property and deception offences.

Most often, it is the most disadvantaged and vulnerable children who come to the attention of the youth justice system at a young age. Given the overrepresentation of Aboriginal and Torres Strait Islander children in child protection, we know these statistics, along with the greater likelihood of recidivism for young offenders identifies a deeply concerning risk for our children and young people in out of home care.

The *'Care not Custody Report'* conducted by Victoria Legal Aid (VLA), identified that one in three young people they support with child protection matters who are placed in OOHC return with assistance for criminal charges and the young people they assist in OOHC are twice as likely to face criminal charges. Whilst some charges are serious offences, the report recognised that others had received criminal charges for minor property damage. This is the result of the criminalization of young people and leads to an extensive criminal record that can create a cycle of re-offending.

Raising the age of criminal responsibility has also been advocated for by the *Royal Commission into the Protection and Detention of Children* in the Northern Territory along with a youth justice inquiry in New South Wales recommending for the NSW Government to conduct a review to examine whether the current age of criminal responsibility, and the age at which a child can be detained, should be increased in NSW. The Atkinson Report on Youth Justice in Queensland also recommended that the Queensland Government support in principle raising the minimum age of criminal responsibility to 12 years subject to: national agreement and implementation by state and

territory governments, a comprehensive impact analysis, and establishment of needs-based programs and diversions for 8 to 11-year old's engaged in offending behaviour.

Furthermore, at present, if a young person in the care of child protection offends, child protection often walks away from the child or young person, surrendering them to the youth justice system. Flowing on, the justice system is ill-equipped to provide help for those young people with primarily social, cultural or family problems. Aboriginal children and young persons are often abandoned and left to their own resources, sometimes for years.

2. Should there be a separate minimum age of detention? If the minimum age of criminal responsibility is raised, should a higher minimum age of detention be introduced?

VACCA believes that to be consistent and effective in improving outcomes for Aboriginal children and young people, raising the age of criminal responsibility to 14 years needs to be accompanied with raising the minimum age of detention accordingly, that is, to 14 years of age, in line with the United Nations Committee on the Rights of the Child.

3a. What programs and frameworks (e.g. social diversion and preventative strategies) may be required if the age of criminal responsibility is raised?

Raising the age of criminal responsibility to 14 years of age should be done in combination with community and family support to ensure contributing risk factors are addressed. Diversionary programs, early intervention, therapeutic models of care and support, and education and family and health assistance can all be used to help vulnerable children thrive and reach their potential and avoid early contact with the justice system. The following are required;

Access to diversion programs

One of the key policy principles underpinning the youth justice system in Victoria is 'diversion of young people from entry into the youth justice system, or from progressing further into a life of crime'. Diversion helps to avoid further progression into the criminal justice system and reduce any negative consequences. It builds on opportunities to increase protective factors of young people and helps to reduce the likelihood of re-offending or becoming an adult offender. Diversion programs recognise contributing factors leading to offending behaviours including victimisation, homelessness, socio-economic disadvantage, substance abuse and cognitive impairment.

The Youth Justice Review and Strategy report requested for detention to be the last option and for young Aboriginal people to have access to diversion programs. Whilst it has been suggested diversionary processes could reduce Aboriginal over-representation in youth justice, research has found Aboriginal young people to be much less likely to be diverted than non-Aboriginal young people. This results in a missed opportunity to benefit from diversionary programs and consequently more likely to end up in the youth justice system than a non-Aboriginal young people who may have committed the same offence.

In Victoria a number of beneficial diversionary programs are offered including; the Koori Youth Justice Program, Koori Early School Leavers and Youth Employment Program and the Koori Intensive

Support program. However, consistent rates of over-representation reflect an ineffective system. Limited accessibility of diversion programs, in particular in regional and rural areas and the reluctance of some police members to refer Aboriginal children and young people to diversion mean opportunities are missed.

This concern has been highlighted in Phase 4 of the Aboriginal Justice Agreement, Burra Lotjpa Dunguludja (AJA4) outlining a new opportunity to 'deliver community based intensive diversion programs for Aboriginal children and young people who had or are vulnerable to involvement with the criminal justice system to address factors contributing to offending. Diversion programs, specific for Aboriginal children and young people need to be made more accessible to be able to be more effective.

Therapeutic and trauma-informed models of care

Children and young people involved in the youth justice system are a highly vulnerable population group. Many at risk of contact and those already in contact with the justice system have often experienced significant trauma, resulting in complex needs that cannot be addressed in isolation. *The Neither seen nor heard* report examined the legacy of trauma affecting Aboriginal children. It identified that models are needed which attend to the intergenerational effects of colonisation, as well as the more immediate consequences of family violence, sexual abuse, and loss of culture and family.

Trauma-informed care is a strengths-based framework grounded in an understanding of, and responsiveness to, the impact of trauma that emphasises physical, psychological, and emotional safety for everyone, and that creates opportunities for survivors to rebuild a sense of control and empowerment. Trauma-informed care and practice recognises the prevalence of trauma and its impact on the emotional, psychological and social wellbeing of people and communities. The following must be considered when working with Aboriginal youth.

In order to divert young people from the system and to reduce recidivism, it is important to understand how this trauma impacts on a young person's circumstances, decision making and rehabilitation. This is particularly important for Aboriginal young people who are disproportionately exposed to trauma and risk factors as a result of colonisation and legacies of child removal policies. Services must recognise the impact of these experiences on offending behaviours and adopt culturally safe, therapeutic models of care that are appropriate to specific needs. Culture, trauma-informed approaches and self-determination are known to be protective factors for social and emotional wellbeing and mental health for Aboriginal children, young people and families.

Therapeutic models of care are key to providing appropriate and effective treatment and rehabilitation. The Inquiry into Youth Justice Centres in Victoria define therapeutic models of youth justice as 'treatment approaches which frame young offenders as vulnerable and in need of support and rehabilitation. Therapeutic approaches focus on behavioural change and personal development of young people, as compared to an approach focused on fear or punishment'. In recognising a young person's needs as a result of complex trauma, suitable services including alcohol and drug

support, health or education should be incorporated to help support healing and improve justice outcomes.

Whilst therapeutic models vary and must be tailored depending on specific needs of young people involved, common features involved are;

- Teaching how to regulate emotions, particularly impulsiveness and anger
- Increasing social skills
- Addressing drug or alcohol abuse
- Engaging young people in education
- Teaching skills to support employment and offering support
- Teaching life skills necessary to live a healthy life, including cooking, finances

A therapeutic model of care has been widely advocated for not only to address over-representation in the youth justice system, but to improve outcomes in all aspects of Aboriginal people's lives. AJA4 supports this model under Goal 2.4 'Fewer Aboriginal people return to the Criminal Justice System'. AJA4 outlines strategies to 'address underlying causes of offending through healing and trauma-informed approaches that explore the intergenerational experiences of people affected by violence, strengthen protective factors and increase coping strategies.

The recent Ngaga-Dji Report (2019) written by the Koori Youth Council also highlights the demand for early intervention models, calling for support for children 'who are victims of crime with access to justice and early, community-centred services to address trauma resulting from removal, family violence, homelessness and other abuses. Majority of children who have contact with the justice system are victims of crime themselves'. Where children do not receive the support and opportunity to heal there is a likelihood of sustained risk-taking behaviours and increased likelihood of involvement with police and the justice system.

Early intervention

Over-representation of Aboriginal young people in the youth justice system also highlights the need for early intervention programs for at risk children and young people. The purpose of early intervention is to stop initial contact with the system and to provide support to those who may be struggling and facing a difficult phase in their lives. Whilst there is limited research on the effectiveness of early intervention programs at reducing offending amongst Aboriginal young people specifically, early intervention is widely regarded as an effective method to improving justice outcomes amongst the mainstream population.

The Youth Justice Review and Strategy Report into the Victoria's Youth Justice System in 2017 found that after Aboriginal children and young people enter the youth justice system, they are significantly more likely to return as repeat offenders. This is because it becomes significantly more challenging to alter their trajectory once their 'direction' has been reasonably determined by a number of risk factors that can no longer be effectively addressed by one single service or government agency.

What this shows us is the need for risk factors contributing to offending behaviour to be addressed prior to developing offending attitudes and prior to first contact with the system.

The aim of early intervention programs is to strengthen protective factors and reduce risk factors that may be contributing to the child or young person participating in offending behaviours. When protective factors are strengthened, they help to overcome adverse life events and build resilience. In literature and in practice, protective factors identified include connection to culture, community, Country and kinship. Being connected to culture creates a sense of connection with the past and assists in creating a strong sense of identity. When connection to culture is broken, families and communities are weakened, and Aboriginal people are at threat of being lost not only to their culture but also to themselves. Having the opportunity to be immersed in one's culture equips people with the confidence and knowledge to develop and function within their culture; drawing strength and contributing to the survival and development of their history and culture. For Aboriginal children separated from their family and culture, the opportunity to participate in local cultural events and learn of their culture by being immersed within it, is a critical step in their lifelong cultural development.

Aboriginal Youth Through-Care justice support models: preventing recidivism

Another form of early intervention in the youth justice system is the through-care model. Aboriginal children are over-represented in the youth justice system and are younger at first contact and have more extensive subsequent appearances in the criminal justice system than non-Aboriginal children. Research suggests that recidivism actively contributes to these high rates of detention for Aboriginal young people.

Using an appropriate model to reduce reoffending can contribute to a reduction in these rates. Through-care is one such model, which supports young people, ideally, beginning with their initial contact with correctional services and continuing until the young person has successfully reintegrated into the community. Studies have shown that the through-care model for reducing recidivism is considered to be 'best practice' both within Australia, and internationally. However, demonstrating effective through-care outcomes for young Aboriginal peoples has been more challenging for a number of reasons, including:

- There are no universally agreed approaches for a dedicated youth through-care model for young Aboriginal people
- Young Aboriginal people are typically on remand or in detention for shorter periods, meaning pre-release planning and post-release support is less available; and
- Rigorous data collection and evaluation methods have been inconsistent across existing throughcare programs.

Currently, VACCA, the North Australian Aboriginal Justice Agency (NAAJA) (Northern Territory) and Aboriginal and Torres Strait Islander Legal Service (ATSILS) (Queensland) are delivering an Australian-first program pilot of Aboriginal youth through-care (YTC) justice support. Funded by the National Indigenous Australians Agency, this new pilot program of YTC aims to address the underlying factors

contributing to re-offending behaviours and better support Aboriginal and young people, their families and Communities to reduce recidivism rates. The YTC Program is an intensive, client-centred, holistic, culturally appropriate, trauma-informed program, with a solid connection to country and family that supports Aboriginal and Torres Strait Islander young peoples aged 10-17 who are exiting detention. Intensive case management is provided to children and up young people for up to two years post-detention.

YTC case workers deliver a range of services to assist young people to achieve their post release goals, and coordinate referrals and support pathways to other relevant effective, age appropriate and culturally safe services. The ultimate goal of YTC is to reduce recidivism (i.e. repetitious criminal activity or reoffending). International benchmarks suggest improving these statistics is particularly challenging. To achieve positive outcomes, it is important to also consider a reduction in the severity of offending, and a potential increase in the time between offences.

The following key principles provided the basis for delivery of the YTC program. We believe these principles are crucial to prevention and early intervention for Aboriginal children involved in, or at risk of involvement in, the justice system:

- Building trusting relationships based on respect for human rights: Service delivery must respect and prioritise the rights and interests of children and young people impacted by the child protection and justice systems, consistent with Australia's obligations under the United Nations Conventions on the Rights of the Child.
- Promoting a positive childhood experience: Children and young people impacted by the child protection and justice systems have a right to all aspects of a successful, happy and trauma-free childhood.
- Promoting participation in decision making: Children and young people impacted by the child protection and justice systems must be afforded the right to participate, in whatever capacity, in decisions that impact on their lives both pre- and post-release.
- Building on strengths and protective factors: Know the young person, their history, their unique individual strengths and aspirations for the future. Identify the primary sources of support will assist with building their internal capability to positively participate in the community during the post-release period.
- Being flexible: Be responsive and flexible to the changing needs of children and young people impacted by the child protection and justice systems. Regular reviews of the frequency and intensity of support must be conducted. Referrals to other agencies are required where the provision of support is not available within the YTC service provider organisation.
- Culturally safe service delivery: Cultural competency must be embedded and promoted within all aspects of organisational culture and service delivery.
- Solid connection to country, culture and family: It is important that all staff implementing the YTC model consider a young people's connection to country, culture and family. These

considerations are important and can enhance the case management approach when working with Aboriginal and Torres Strait Islander peoples.

- Trauma-informed service delivery: Trauma-informed care and practice recognises the prevalence of trauma and its impact on the emotional, psychological and social wellbeing of young Aboriginal and Torres Strait Islander peoples.

Family-centred program approaches to family services and justice support services

Family-centred approaches are crucial to improving outcomes for Aboriginal young people and reducing the risk of involvement in the justice system. Our approach to family services and justice support services is trauma-informed, recognising that working with and strengthening vulnerable families as a whole directly benefits children and young people, by reducing family risk factors such as homelessness, family violence, drug and alcohol misuse and mental health issues.

3b. What agencies or organisations should be involved in the delivery of programs and frameworks that may be required if the age of criminal responsibility is raised?

We believe that Aboriginal Community Controlled Organisations (ACCOs) should be the primary agencies involved in the delivery of these programs and frameworks, to ensure self-determination, cultural safety and appropriateness, and the best possible outcomes for Aboriginal children, young people and their families. This can be achieved through increased Aboriginal community control, justice reinvestment and the transfer of responsibility of Aboriginal Children and Young people to ACCOs.

Increased Aboriginal community control

A key message from the Royal Commission into Aboriginal Deaths in Custody (1991) is that to eliminate disadvantage and improve justice outcomes, there needs to be an end to domination and the empowerment of Aboriginal people through returning control of their lives and their communities to Aboriginal hands. The distressing loss of cultural and spiritual identity has been identified as a core cause of many problems in Aboriginal communities including the dissemination of communities. Placing control back with community has the potential to counteract this problem in a number of ways, in particular by enabling the community to be strong enough to have control of justice initiatives. Milward argues that 'calls for greater Aboriginal control over justice are motivated in large degree by a desire for autonomy to develop community-based alternatives to incarcerations'

An example of this practice is the Koori Courts Division, offered at a number of locations across Victoria. The purpose of the courts is to ensure greater involvement of the Aboriginal community in the sentencing process of Aboriginal community members. This is done through the role of the magistrates Court being fulfilled by an Aboriginal Elder or respected person and others. Similar models also exist in New Zealand with the Pasifika Youth Court and the Rangatahi Courts established in response to the over-representation of Pacific youth becoming involved in the youth justice system.

Children's Koori Court Division: Aboriginal self-determination in the justice system

A key example of increased Aboriginal community control in the youth justice system, drawing on the Victorian context, is The Koori Division of Victoria's Magistrates' Court (Koori Court). Operating since 2005, The Children's Koori Court arose out of the Victorian Aboriginal Justice Agreement (VAJA) and the Victorian Government's commitment to meeting the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It was set up because of the large numbers of Aboriginal children and young people in the criminal justice system in Victoria. The aim in setting up this Court was to create a more culturally appropriate justice process that involves Elders and other respected persons from Community. This was done in the hope of reducing the number of young Koori people being sentenced in detention. As prescribed by the Children and Young Persons (Koori Court) Bill 2004, the Children's Koori Court:

"...is an alternative way of administering sentences so that court processes are more culturally accessible as well as acceptable and comprehensible to the indigenous (Koori) community. The key emphasis is on creating an informal atmosphere which allows for greater participation by the Koori community through the Aboriginal elder or respected person, the Koori court officer, indigenous (Koori) defendants and their families in the court and sentencing process. It aims to reduce perceptions of intimidation and cultural alienation experienced by indigenous (Koori) defendants."¹¹

The Koori Court aims to:

- Involve the child's family and community to talk about the offences in question
- Make it easier for the child/young person to come to court and have their say
- Make the child/young person think more deeply about their choices to become a more active and positive influence within their community
- Reduce the number of young Koori people going to prison

The Koori Court is less formal than the mainstream Children's Court. In the Koori Court, the Community Elder or respected person, the child/young person's family member, the Koori Court Officer or any other person within the courtroom can also have their say with regards to the matter at hand. This is done so the Court can find the best solution to support the child. In a mainstream court, the Judge or Magistrate will sit behind a large bench at the front, the lawyers will sit at the bar table and the accused child/young person will sit either in the dock or in the public seating area behind their lawyer. In the Koori Court things are different. Everyone sits around a large oval table. This is done to encourage the child/young person to speak for themselves and to also have the Elders and respected Community members have their say. This is done to support the child/young person in finding the best solution for their particular situation and to create a less threatening environment.

We believe that similar alternative courts for Aboriginal children and young people across other jurisdictions in Australia could support improved outcomes, culturally safe justice processes, improved Aboriginal community control and self-determination, and reductions in the number of Aboriginal children sentenced to youth detention and subsequent recidivism.

Justice reinvestment

An example of placing control back into the community is through justice reinvestment. Justice reinvestment is a promising practice approach that originated in the US in response to the significant growth in imprisonment rates. It involves redirecting money that would be used in prisons to fund community services, rebuild human resources and physical infrastructure in an area with high rates of incarceration. Rather than incarceration, justice reinvestment works to reduce criminality through investment in social justice.

The first example of this in Australia has been the 'Maranguka Justice Reinvestment Project' in Bourke NSW. The project emerged as community were concerned with the number of Aboriginal families experiencing significant social disadvantage and rising crime. Since 2013, Just Reinvest NSW have been working in partnership with community groups in Bourke to redirect resources back into the community to address underlying causes of imprisonment and to support vulnerable families.

Maranguka adopts a model of Indigenous self-governance that places power back into the community to manage the appropriate mix and timing of services through an Aboriginal community-owned and led team, working in partnership with the necessary government and non-government organisations. Community leaders are able to make decisions about what needs to happen based on community input and informed data and research.

Transfer of responsibility of Aboriginal children and young people to ACCOs

At present, if a young person in the care of child protection offends, child protection often walks away from the child or young person, surrendering them to the youth justice system. Following on, the justice system is ill-equipped to provide help for those young people with primarily social, cultural or family problems. Aboriginal children and young people are often abandoned and left to their own resources, sometimes for years. When presenting to the justice system, our current response is to respond in a narrow, legalistic fashion, resulting in social dysfunction and further progression into the criminal justice system. Alternatively, a child welfare approach should be adopted, recognising their vulnerability as a child or young person.

Early intervention and prevention services for Aboriginal children and young people often focus primarily on the parents. Better referral pathways to ACCO's could work with the young person on the issues leading to their offending and could divert children and young people from the justice system through police and courts. When such cases must be dealt with in court, youth justice court judges should involve family service agencies where their services might be more appropriate than the correctional ones.

As the lead Aboriginal child and family welfare service, it is disheartening to see a justice system trying to deal with what are essentially problems of families and communities in crisis often with much of these issues stemming from poverty, family disfunction and weak cultural links.

Whilst VACCA is not in a position to deliver Aboriginal parole services, there should be a plan to build and transfer oversight to Aboriginal control. The move to a justice system predominantly child

protection, we understand as undesirable, but the current criminal approach is inappropriate. We need to have coordinated and cooperative approaches to the problems of our Aboriginal children and young people with the sharing of information. We should be working together, not in silos. Our children and young people should be receiving services from both sectors.

VACCA has been working for a number of years and are well accepted by the Aboriginal community. We believe that our mandate in Victoria could include working with Aboriginal children and young people and their probation, particularly 10-14-year old's. We also believe we have the capacity to work with the police to accept referrals and offer after hours supports. We believe this to be the case for ACCOs across Australia, but they too will need additional resources, and these should be provided. ACCOs are in the best position to bring about the change in philosophy and approach that we think necessary.

Improving cultural safety and cultural competency of the justice system

When working with Aboriginal children, young people and families, it is critical for response models and services to be culturally appropriate, underpinned by culture, connection and healing. The impacts of colonisation and dispossession, a legacy of assimilation policies and systemic disadvantage have resulted in Aboriginal communities being rightfully suspicious of mainstream and government attempts to address their needs. Too often, Aboriginal peoples are forced to access services that are racist or culturally unsafe. This can be retraumatising and a missed opportunity for support and intervention to reduce over-representation.

A combination of both culturally specific and culturally safe services are key to providing respectful, effective and efficient services to Aboriginal peoples. It is critical that all services are client driven and promote self-determination, recognising cultural factors and individual experiences that lead to risk taking behaviours and involvement in the youth justice system. The system could be more culturally appropriate by implementing the following;

Mandatory cultural competency training

In order to provide beneficial and appropriate services to Aboriginal children and families, it is important for all community service organisations to be able to apply a cultural lens. Cultural competence involves 'a set of congruent behaviours, attitudes and policies that come together in a system, agency, or among professionals that enable them to work effectively in cross cultural situations.' Organisations need to have an understanding of cultural competence that goes beyond a checklist approach to one that is respectful to the unique identity of every child. Having mandatory cultural competency training would mean Aboriginal children and their families are given respect and honour as First Peoples and enable the broader community to understand the resilience of Aboriginal communities. A history of child removal policies across Australia has created an understandable distrust within Aboriginal communities and families, with many community service organisations today having been involved in past removal policies and therefore need to be accountable in rebuilding trust.

Offering culturally specific programs

Research on the social and emotional wellbeing of Indigenous people across Australia and internationally, have long identified the benefits of maintaining connection to Country, culture and community. Strengthening connections create protective factors that help to overcome adverse life events and build resilience. When Aboriginal people are immersed in their family, culture and community, they feel supported and able to thrive in their identity. A study conducted in Victorian Prisons in 2017 found Aboriginal people who are encouraged and supported to participate in cultural activities while in detention are less likely to reoffend upon release. This was explained as the result of having a strong cultural identity and being immersed in culture enhancing self-esteem, encouraging resilience, supporting positive social and emotional wellbeing as well as enhancing pro-social coping styles. When these connections are weakened, young people become vulnerable and traditions and norms of appropriate social and cultural behaviour can become unclear.

Being connected to culture is not only a protective factor but also a human right, set out in both the United Nations Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples. The United Nations ‘enshrines and upholds the right of self-determination for different cultures, and identifies, as a survival and development right, the right of children to learn about and practice their own culture, language and religion’.

4a. Are there current programs or approaches that we consider effective in supporting young people under the age of 10 years, or young people over that age who are not charged by police who may be engaging in anti-social or potentially criminal behaviour or are at risk of entering the criminal justice system in the future?

Drawing from our experience with the Victorian Aboriginal community and our service footprint, there are a number of programs and approaches that are working well in Victoria to help reduce youth justice involvement for Aboriginal young people who are under the age of 10 years, or at risk of entering the youth justice system. We believe the common elements of these programs and approaches are adaptable, with local Aboriginal community control and consultation, to other jurisdictions across Australia and draw on similar model’s interstate. We detail these approaches and examples of promising and effective programs below:

Therapeutic models of care

An example of a therapeutic model of care that is family oriented and trauma informed is VACCA’s Aboriginal Children’s Healing Team (AHT). The AHT was funded in 2012 and involves a multi-disciplinary team of Therapeutic Practitioners experienced in working with traumatised children and their families. It is the central point for the development across VACCA of an integrated culturally grounded, trauma-informed and healing-driven approach to working with Aboriginal children and families. This approach acknowledges colonisation practices and how they have impacted on Aboriginal people. Theories of trauma, neurobiology, attachment and resilience underpin the work of the AHT as they facilitate understanding and appropriate responses to Aboriginal children’s trauma.

A sophisticated understanding of the trauma of dispossession and loss of culture & Country is central to the philosophy of ACHT. The Aboriginal Children's Healing Team operates from a basis that acknowledges the long-term traumatic impacts of colonisation, genocide and dispossession as well as the strength and resilience of the Aboriginal peoples.

There are four components to the work of the ACHT:

- a) To undertake trauma-informed biopsychosocial assessments of identified children that the programs are responsible for and, from these, to develop a tailored therapeutic intervention plan for carers and other professionals to follow;
- b) To promote trauma-informed approaches to understanding the needs of Aboriginal children in VACCA's care broadly across programs;
- c) To undertake theoretical development work to integrate culturally appropriate Aboriginal Healing ways and existing theory regarding complex trauma and its developmental impacts;
- d) To provide training to VACCA staff regarding culturally and trauma & attachment informed approaches and related theoretical understandings

By creating the ACHT, VACCA has entered a new arena of practice where biopsychosocial, clinically oriented assessments are undertaken, therapeutic interventions are devised and implemented, and their success or otherwise reviewed and monitored. Underpinned by a framework of biology, psychology and socio-environmental factors, the ACHT applies an integrated culturally grounded, trauma-informed and healing-driven approach to working with Aboriginal children and families. This means that culture provides the foundation for the clinical work that we do. The ACHT acknowledges that cultural identity represents who we are and where we have come from, and that connection to people and to Country is central to Aboriginal culture.

Barreng Moorop

An example of an early intervention program that provides wrap around support with the aim to strengthen protective factors and reduce risk factors is our youth justice program, Barreng Moorop. VACCA is currently in partnership with the Jesuit Social Services and the Victorian Aboriginal Legal Service (VALS) to deliver the Aboriginal Children Family Justice Program (ACFJP), Barreng Moorop. The program provides integrated and intensive case management support to Aboriginal children, aged 10-14 years of age who are vulnerable or at risk of being involved with the justice system. Aboriginal children may have no criminal charges but placed at risk due to circumstances such as having a parent or sibling in prison, a history of family violence or are disengaging from school.

The purpose of this support is to address the issues that may lead to criminal activity. These may include however not limited to; family dysfunction and breakdown, mental health issues, trans-generational trauma, attachment difficulties, intellectual disabilities, experiences of violence and abuse, poverty, disengagement with the education system and lack of social and cultural connection.

A formal evaluation has not been conducted of Barreng Moorop however a case story is used to highlight the program model;

'The three Smith children, Taneisha (14), Nikita (12) and Richard (11) were referred to Barreng Moorop in March 2018.

The issues and concerns facing the family included:

- Abandonment
- Neglect
- Likelihood of physical harm and significant emotional abuse to children.
- Parents were struggling with drug misuse.
- Family violence
- Criminal activity and inability to keep up with day to day duties for kids including getting ready for school and routines.
- Eldest brother in prison for armed robbery

Barreng Moorop completed a Case Plan with each of the children where they set their own goals across education; wellbeing; cultural connections and practice and physical health. The caseworker began by establishing a morning routine to get the children to school, as the attendance for all three was poor and was impacting on their learning. Mum had trouble organizing the mornings and so a timetable was created, and alarm clocks were purchased to wake everyone up in time.

Early on the children also shared that they didn't like Mum and dad swearing at them all the time. The caseworker started talking to the parents about communication and how it could change. Mum and children agreed to try and limit swearing, and house rules were established.

The CW organized cooking classes for Mum and the two girls which helped nurture and develop their relationship with each other. It also assisted budgeting and taught the girls an important life skill and they continue to help mum at home by cooking dinner one night a week.

Richard joined the Barreng Moorop didgeridoo making program which ran for 8 weeks and was mentored and guided by Uncle Ron Murray. The program connected him to other Koorie boys from the community and positive male role models guiding the process.

Due to the chaos in the home extra-curricular activities had never been considered. Richard really wanted to play soccer. The CW helped the parents register Richard into the local soccer club and for the first 6 weeks supported them in taking him to training once a week. When the games first started the whole family would go along! A few weeks into the season Richard scored his first goal and everyone was so proud! The Dad now takes Richard to training twice a week and gets him to his games and a positive relationship has developed between them both.

The girls showed an interest in the VACCA cultural programs and Taneisha has joined the VACCA Art Mentoring Program which runs for 8 months and culminates with the young people creating a body of work to showcase at the end of program exhibition. Nikita has joined the VACCA Koorie Tiddas choir where they are learning songs in traditional languages and have opportunities for performances. The girls are mentored by Aboriginal singers and songwriters and mentored by Elders supporting them to translate their songs into language.

Mum identified she was stressed by the constant arrival of visitors and people staying at their house. The case worker assisted Mum to minimize this by placing boundaries with visitors. A timetable was developed which assisted Mum and Dad with day to day duties and the children started commenting that “mum and dad are doing really well!”

Dad participated in a rehabilitation program and completed it successfully. He identified how he could support the family and started to feel more involved in raising the kids and being involved in decision making.

We have seen positive changes and a willingness from all family members to get on board with the changes and come up with strategies as a family to resolve issues and concerns.

The family have become each other’s greatest supports and are thriving with the new boundaries in place that best support the family’s needs.

At the VACCA whole agency in-service in July this year, Mum got on stage in front of 400 people and introduced the music film clip her three children had been involved in creating. She spoke from the heart and talked of the pride she had in her children and the changes she has seen since their involvement in Barreng Moorop. It was a huge achievement and highlighted to all of us how far she had come.’

This case story demonstrates how a holistic response is created by bringing together the child, family and a number of service providers to provide wrap-around support. Case plans are created for each young person and practice is determined by goals that are set by the young person and their family/carer. A strength of this model is that it recognises the importance of an approach that engages with all members of the family including siblings, parents, carers, and Elders. Family members and the young person identify the support they require and are linked in with appropriate services. Through the program, young people and their families access relevant welfare, housing, family and education services, and are supported to engage in cultural practices and attend community events. Having a model that is Aboriginal led creates a culturally safe service that is reflective of the right to self-determination. Where opportunities for early intervention are missed, there is a likelihood that involvement in the justice system and related challenges will carry through into adulthood.

Family-centered program approaches

We consider connection to Culture and Community as crucial to healing from intergenerational trauma and building the strengths of families. This approach creates positive outcomes in terms of reducing risk of justice system involvement and recidivism within families. Examples of our family centred programs include:

Koorie FACES (Families and young fellas Connecting & Sharing) program

VACCA has delivered the Koorie FACES parenting program to Aboriginal men and women across Victorian prisons including Dame Phyllis Frost. Koorie FACES is a 5-week group program that builds confidence and strengthens the relationship between parents and families of Aboriginal children

focuses on understanding of self, grief, loss and trauma and strengthening Aboriginal culture & parenting practices to build resilience against drug and alcohol misuse in children.

Aboriginal Family Led Decision Making Program (AFLDM)

Aboriginal Family Led Decision Making (AFLDM) provides a culturally safe decision-making and planning process for children and families involved with the Child Protection system that:

- builds on the strengths in family and kinship networks to meet the safety, stability and developmental needs of children
- empowers families to make good decisions and plans in relation to the safety and wellbeing of their children
- is guided by and respectful of the family's culture
- actively involves the child's family, Elders and other significant people in the child's life.

The AFLDM program is conducted jointly by convenors employed by DHHS and community convenors employed by VACCA. Both convenors work in partnership to ensure a culturally safe and respectful process for Aboriginal children and families.

Integrated Family Services (IFS)

Integrated Family Services is a voluntary program that provides in-home support to vulnerable Aboriginal children and families to address issues and improve their quality of life. The program focuses on the strengths of the individual and family, supporting them to identify goals and work towards achieving these. Caseworkers draw on culture as a strength and protective factor in their support of families. Individuals and families in contact with the service generally have between 1 to 6 hours of contact with their caseworker per week. The type and level of contact with the individual and family varies and is determined through the caseworker's assessment.

IFS is delivered as a casework service that includes comprehensive needs assessment; child and family care planning; referral, information and advocacy support, practical assistance, outreach as well as community engagement.

Aboriginal Stronger Families

This placement prevention and reunification program provides intensive in-home support for up to 12 months (with varying levels of intensity depending on the child and family's needs) and on-call support, for families where children are at risk of entering out-home care or have been placed in out-of-home care for the first time.

The Aboriginal Stronger Families program is based on a whole of family response with access to specialist support services, including therapeutic services. Flexible support funds are used to purchase additional services to meet the child and family's needs.

Caseworkers support parents to address the issues that place their children at imminent risk of being removed, or that have resulted in their children being placed in care, and to build their capacity to safely care for their children.

Youth programs

Another approach to reducing over-representation is through youth programs. Youth programs provide the opportunity for Aboriginal young people to engage and participate in activities, helping to build positive relationships and renew ties to Aboriginal culture and community. These programs can act as protective factors in order to avoid future contact with the justice system.

4b. Do these approaches include mechanisms to ensure that children take responsibility for their actions?

Yes. A promising component of therapeutic models of care, early intervention and Aboriginal specific justice processes (such as the Children's Koori Court in Victoria) is to build on protective factors such as connection to family and community and strengthening these networks to support young people to take responsibility for their actions, from a place of self-determination and responsibility to, and connection with, Aboriginal community. The family network dominates community and family life, governing social interactions. Aboriginal people are connected through kinship, possessing a shared sense of identity, care, responsibility and control. and community response to early intervention models as well as rehabilitation and diversion programs.

5. If the age of criminal responsibility is raised, what strategies may be required for children who fall below the higher age threshold and who may then no longer access services through the youth justice system?

The service system must take into account the impact of trauma on Aboriginal children and their families and must also consider the extent to which basic needs for safety, security, accommodation and care are met. Access to needed services should not be dependent on entry into the child protection or youth justice systems. The child and family welfare system must take the necessary action to collaboratively address these factors with Aboriginal organisations. Aboriginal self-determination, trauma-informed approaches, and connection to culture and community are now recognised as central to any approach to working with Aboriginal children, young people and their families. We know that providing Aboriginal services for the Aboriginal community is what works.

6. Are there issues specific to states or territories (e.g. operational issues) that are relevant to considerations of raising the age of criminal responsibility?

In the Victorian context, there is an unfortunate lack of cohesion between family service agencies, the youth justice service system, the police and the youth justice court system. Aboriginal children and young people involved in crime are often simply in need of additional and appropriate support services from Aboriginal community-controlled welfare services. There are currently few Aboriginal specific programs available to address and reduce offending behaviour in Victoria and also an absence of effective supervision for community corrections in rural and remote communities. Consequently, Aboriginal young people have fewer opportunities for rehabilitation, contributing to higher recidivism rates. Rehabilitation programs that are available, are not specifically tailored to the needs of Aboriginal young people. Effective rehabilitative programs need to incorporate traditional

principles of healing and culture and be adequately resourced to provide ongoing assistance to avoid future offending.

Establishment of a Spent Convictions Scheme

Victoria is the only state or territory not to have a legislated spent convictions scheme, nor does it protect against discrimination on this basis. We are deeply concerned that the ramifications of not having a legislated spent convictions scheme, nor protection against discrimination on this basis is unfairly affecting the opportunity of those affected in the Victorian Aboriginal community, particularly our children and young people, and is contributing to over-representation. Not having a spent convictions scheme makes it extremely challenging to reintegrate into society after incarceration, and to effectively rehabilitate due to discrimination on the basis of their criminal record.

We are also concerned that with the introduction of mandatory Working with Children Checks (WWCC) for all kinship carers, that having a criminal record, without a spent convictions scheme, will negatively impact and deter potential community members from becoming kinship carers. There should be a mechanism for review, or appeal rights included in any spent conviction's legislation for this purpose. As raised above, the safety of our children and young people remains our paramount concern. However, where someone has a criminal record for committing an unrelated minor criminal offence, we do not want to further impede their ability to care for their family in a safe and nurturing home. We are aware that someone with a criminal record can become a kinship carer, unless the nature and timing of the criminal offence indicates that there may be a risk to a child's safety. As this must be assessed before a person can be approved as a carer, some Aboriginal people do not feel safe to put themselves forward. Whilst VACCA can support Aboriginal people with historical criminal records through this process, implementing an appropriate spent convictions scheme would further support those potentially affected.

Having a spent convictions scheme and protections against discrimination on this basis would have a significant affect in addressing the over-representation of Aboriginal children and young people in the youth justice system. These reforms would ensure that the state of Victoria is meeting its international human rights obligations, particularly the United Nations Convention on the Rights of the Child, the United Nations Declaration of the Rights of Indigenous Peoples as well as the rights detailed in the Charter of Human Rights and Responsibilities Act 2006 (Vic).

Recommendations

VACCA recommends the following:

- Raise the age of criminal responsibility from 10 to 14 years of age
- Transfer of responsibility of children and young people up to the age of 14 to Aboriginal agencies similar to Aboriginal Children in Aboriginal Care and the Aboriginal Child Placement Principle

- For funding of the role of Aboriginal children and family welfare services be expanded to provide services to Aboriginal children and young people at risk or in juvenile justice
- Aboriginal child welfare and youth justice services to be fully integrated and coordinated so that all services are available to both young people at risk of offending and those charged with offences
- Increase investment and funding for diversionary programs, investment in Aboriginal models of youth justice similar to the Children’s Koori Courts Division in Victoria, and strong investment in ACCOs delivering culturally therapeutic, trauma-informed programs which address the causes and risk factors underlying offending behaviour and recidivism
- Additional investment in early intervention and prevention programs particularly in areas of high risk where Aboriginal families are at increased risk of entering the child welfare and youth justice systems
- Mandatory training in “implicit bias” and culturally safe ways of working for workers who may work with Aboriginal families, and the justice system as a whole
- Undertake more research on the connection between child welfare and juvenile justice
- Evaluation of existing programs and justice support services
- For investment to be provided to ACCOs to develop and implement community programs directed to Aboriginal children and young people at risk of entering the youth justice system
- Implement a justice reinvestment model
- Long term support (e.g. through care models) for young people leaving custodial sentences.

VACCA looks forward to being informed of the outcomes of this Inquiry.

For any further information please contact Dr Pauline McLoughlin, Senior Policy Officer, Client Services Practice and Development paulinem@vacca.org or 03 9287 8800.

Yours sincerely,

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CEO

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