



Jesuit Social Services

Submission on the NT Aboriginal Justice Agreement

April 2020



**Jesuit
Social Services**
Building a Just Society

Contents

Confidential material	2
Introduction	2
Recommendations.....	4
Who we are and what we do	6
Our work in youth justice.....	6
Reflections as a provider of youth justice programs in the NT.....	7
An opportunity for focus, scrutiny and accountability	13
Appendix A – Our work in youth justice	16
1) Youth Justice Group Conferencing	16
2) Back on Track Element 2	18
3) Community Youth Diversion.....	18
4) Place-based outreach support for justice-involved young people and families in Central Australia	19
Appendix B – Case studies	19

Confidential material

Please note that Jesuit Social Services consents to this part of our submission being made publicly available. However, the case studies outlined separately in **Appendix B** are provided to the Aboriginal Justice Unit **in confidence** and should not be published.

Introduction

Jesuit Social Services welcomes the opportunity to provide feedback on the draft Aboriginal Justice Agreement for the Northern Territory. Jesuit Social Services acknowledges and commends the work of the Aboriginal Justice Unit in developing the draft Agreement. As we have previously expressed, the approach taken to the development of the Agreement sets a standard in genuine community consultation that is rarely seen in the development of government policy.

Jesuit Social Services also acknowledges the many voices that have contributed to the development of the draft Agreement. The strategies and actions outlined in the draft Agreement reflect the views and experiences of Aboriginal Territorians who participated in over 120 consultations across the Territory, the majority of which took place in remote communities. We acknowledge the time and expertise offered by all who contributed.

We provide this submission with the awareness that we are a non-Aboriginal organisation, working predominantly with Aboriginal young people and communities in the Northern Territory. The primary intent of our submission is to express our strong support for this process, which has been Aboriginal-led, seeks to embed Aboriginal leadership within the justice system, and seeks to fundamentally transform outcomes for Aboriginal people in the Northern Territory.

While the COVID-19 pandemic is rightly absorbing significant resources (time, energy and money) within government and the community, it is important that the Aboriginal Justice Agreement does not fall by the wayside.

Next year, it will be 20 years since the *Royal Commission into Aboriginal Deaths in Custody*. Since then, nationally, only two thirds of the recommendations have been fully implemented, and the rate of Indigenous incarceration has doubled.¹ Imagine if, 20 years ago, the same accountabilities envisaged now by the Aboriginal Justice Agreement had been taken on by the Northern Territory Government.

The Agreement should set high expectations of all levels of government and of service providers (including ourselves), and provide the resources required to support Aboriginal leadership and engagement at all levels of governance, and across design, implementation and oversight.

Jesuit Social Services has endorsed the comprehensive submission provided by NAAJA and the submission from APO NT. In particular we note and support NAAJA's recommendations in relation to the repeal of mandatory sentencing laws, reintroduction of community courts, expansion of community-based sentencing options, and the establishment of a forensic mental health facility for

¹ Deloitte Access Economics (2018) Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody for the Department of Prime Minister and Cabinet ([online](#))

the treatment of persons subject to Supervision Orders other than at a prison. Government must make every effort to ensure that prison is only ever an option of last resort.

We also strongly support the position articulated in both submissions that the Agreement engage with systemic drivers of Aboriginal overrepresentation in the justice system; this includes advocating for change to Federal Government policies that are keeping people in poverty, and concurrently investing in and working for improved policy outcomes in mental health and wellbeing, housing, education, training and employment, and support for families and young people. As articulated by NAAJA, a change in outcomes in the justice system requires a fundamental reorientation away from prisons and policing, shifting the focus and investment to community-based prevention, early intervention and diversion.

In this submission, drawing on our practice experience, we offer reflections as a non-Aboriginal service provider working with justice-involved young people and families on policy and practice changes needed across government and among service providers to support the vision of the Agreement. We also offer brief recommendations focused on the resourcing and accountabilities required for the Agreement to achieve its vision and aims.

Recommendations

1. That the Northern Territory Government's commitment to fully implement the recommendations of the Royal Commission be included in the Aboriginal Justice Agreement, including the commitment to develop a single Act for children and young people and raise the age of legal* responsibility.
2. That the Northern Territory Government raise the age of legal responsibility to at least 14 years, in line with international human rights standards.
3. That the commitment within the Aboriginal Justice Agreement to expand community-based, Aboriginal-led early intervention and youth diversion programs be in addition to existing funding and initiatives.
4. That, with support from the Federal Government, the Northern Territory Government addresses ongoing service gaps including:
 - cultural support and mentoring
 - targeted specialist supports for children and young people, including mental health and allied health services
 - functional family support that builds parents' capacity to manage challenging behaviours
 - service models that account for Aboriginal young people's mobility between remote communities and regional centres
 - after-hours services
 - place-based alternatives to detention.
5. That the Northern Territory Government ensure that on intake, all young people referred to youth justice diversion programs receive a comprehensive assessment, including screening for FASD.
6. That the Aboriginal Justice Agreement include a commitment by the Northern Territory Government to evidence-based communication in relation to young people that promotes public understanding of and support for therapeutic and restorative youth justice responses.
7. That the Aboriginal Justice Agreement adopt the language of cultural security (inclusive of but broader than cultural competence) in relation to expectations of government and non-government service providers.
8. That the Aboriginal Justice Agreement monitor the number of young people accessing diversion and include mechanisms to embed the expectation that government and non-government service providers tailor their services to meet the age and developmental needs of the cohort with which they are funded to work.
9. That appropriate resources are allocated for the evaluation of initiatives and programs funded under the Agreement, in addition to adequate resourcing being provided for the monitoring and evaluation of the Agreement as a whole.
10. That the Northern Territory Government commit adequate, long-term funding for the ongoing development, coordination, implementation, monitoring and evaluation, and oversight of the Aboriginal Justice Agreement. A fully-funded implementation plan should be developed to accompany the final agreement.
11. That the roles and functions of Aboriginal representatives be adequately resourced, supported and remunerated to ensure their active and meaningful engagement in the governance of the Agreement.

- 12.** That the governance of the Aboriginal Justice Agreement ensures strong whole-of-government accountability for the achievement of the Agreement's objectives.
- 13.** That the final agreement includes mechanisms to ensure Northern Territory Government strategic policy objectives align with the vision and aims of the Aboriginal Justice Agreement.

* Note Jesuit Social Services uses the term legal rather than criminal responsibility with respect to the actions of children and young people.

Who we are and what we do

Jesuit Social Services is a social change organisation. For over 40 years, we have been working with adults and young people involved in the justice system. We have a presence in Victoria, Western Sydney and the Northern Territory.

Our work in the Northern Territory commenced in 2008 at the invitation of the community of Ltyentye Apurte (Santa Teresa). This involved working alongside the Ltyentye Apurte community to establish Atyenhenge Atherre Aboriginal Corporation (AAAC), to restore community-control in the wake of the Shire amalgamations and Northern Territory Emergency Response (the Intervention).

Since then, we have maintained our connection to Ltyentye Apurte, and our work has grown to include the delivery of youth justice programs, including Youth Justice Group Conferencing, alongside community development with the communities of Atitjere and Engawala on the Plenty Highway, support to the Thamarrurr Regional Aboriginal Authority Corporation (TRAAC) and Thamarrurr Development Corporation (TDC) in Wadeye, and practice development and capacity-building support for Aboriginal community-controlled organisations in Alice Springs and Tennant Creek.



As a social change organisation, policy and advocacy underpin all that we do. We work to positively influence the structural factors we see playing out in people's lives on the ground.

Our work in youth justice

The majority of our work in the Northern Territory is focused on supporting children and young people caught up in the youth justice system, through restorative responses, and therapeutic and practical supports that can help divert them from further entrenchment in the justice system. This includes the following programs funded by Territory Families:

- **Pre-sentence Youth Justice Group Conferencing** in the Darwin, Palmerston and Katherine regions since 2017, recently extended to include Alice Springs and Tennant Creek
- Element 2 of the **Back on Track program** in the Katherine region
- **Youth diversion** in Alice Springs in partnership with The Gap Youth and Community Centre.

Jesuit Social Services has also been invited by Territory Families and Northern Territory Police to pilot the delivery of Section 39 (pre-Court) Youth Justice Group Conferences in Katherine.

Since July 2018, Jesuit Social Services has also been working with senior women in the community of Atitjere on the Plenty Highway to develop a model of **place-based outreach support** for children and young people involved with the justice system and their families. This work is funded philanthropically.

Further details of our youth justice work are at **Appendix A**. This is provided to contribute to the picture of the current youth justice service landscape, and to provide context for the reflections below.

Reflections as a provider of youth justice programs in the NT

The majority of young people with whom we work are Aboriginal. These young people walk in two worlds and show incredible resilience in the face of the challenges this brings.

Their pathways into the justice system are forged in the policies and practices, past and present, that perpetuate poverty, trauma, dislocation and dispossession for Aboriginal people. The young people with whom we work are acutely aware of the injustice they see around them, and for many, their offending behaviour can be seen as an act of resistance to a world that does not try to understand or include them.

Appendix B provides a series of case studies of young people with whom we have worked (deidentified, but provided in confidence and not for public release). The case studies illustrate the common threads of the stories of young people who come into contact with the justice system. These include the long term, intergenerational effects of trauma rooted in the past and current impacts of colonisation, poverty, family separation, unstable living arrangements, high rates of Fetal Alcohol Spectrum Disorder (FASD), cognitive impairment and learning difficulties, disengagement from school, boredom through lack of access to structured and meaningful activities, limited support networks, mental health issues and alcohol and drug use. The impact of these combined experiences come out clearly in **Dwayne's story** (case study 1).

The *Royal Commission into the Protection and Detention of Children in the Northern Territory* sought to reorient the youth justice system towards one that focus on and promotes the wellbeing of children and their families – a system that helps, rather than harms.

We commend the Northern Territory Government on the significant work it has done to progress the reforms recommended by the Royal Commission, putting a greater focus on early intervention and diversion, and therapeutic and restorative, rather than punitive responses. However, there is still a long way to go.

A key area for further work is the development of the single Act for children and young people and raising the age of legal responsibility – reforms that will help enshrine for successive governments systems and practices built around the therapeutic needs of vulnerable children and their families.

To provide sustained scrutiny of reform progress, Jesuit Social Services recommends that the Northern Territory Government's commitment to fully implement the recommendations of the Royal Commission be included in the Aboriginal Justice Agreement.

Recommendation 1: That the Northern Territory Government's commitment to fully implement the recommendations of the Royal Commission be included in the Aboriginal Justice Agreement, including the commitment to develop a single Act for children and young people and raise the age of legal responsibility.

In relation to the age of legal responsibility, Jesuit Social Services submits that the Northern Territory Government can and should go further than the recommendations of the Royal Commission and raise the age to at least 14 years, leading the way nationally and bringing the Northern Territory into line with international human rights standards.²

As **Elliot's story** shows (case study 2), the behaviour of children is not the answer. It fails to address the circumstances contributing to their behaviour and instead traps them in a harmful system that perpetuates a cycle of disadvantage and reoffending.

Raising the age of legal responsibility opens the door for a different approach: stepping in early at the first signs of trouble, to help build a web of support that enables a young person to thrive, connected to their family, culture and country.

Recommendation 2: That the Northern Territory Government raise the age of legal responsibility to at least 14 years, in line with international human rights standards.

The foundation of our response for vulnerable children and young people should be a robust, culturally grounded system of place-based child and family support services, prioritising primary prevention and early intervention. The elements of an effective alternative response to children who come to the attention of police must include:

- supporting connection with family, culture and community
- addressing basic needs, including housing and safety
- facilitating comprehensive assessment and supported referrals to appropriate specialist supports
- access to after-hours services
- supporting school engagement
- providing opportunities to develop life skills and engage with meaningful, structured activities
- practical support, including transport
- facilitating restorative responses that provide the child with the opportunity to repair any harm caused and engage a network of supports to help that young person.

Workforce capacity and capability directly impacts outcomes for children and families accessing services. Integral to effective service delivery is the recruitment and retention of appropriately trained and qualified practitioners, who are skilled in trauma-informed relational practice, are well supported, and who have access to ongoing supervision and professional development.

In contrast to Elliot's experience, **Jordan's story** (case study 3) highlights the potential to change a young person's trajectory when we remove the lens of criminal justice, and step in earlier with sustained therapeutic and practical support for a young person and their family.

² The Royal Commission recommended raising the age to 12, however the United Nations Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years or older.

A strong system of early intervention and diversion must be the foundation of our youth justice system, providing appropriate responses at the earliest signs of trouble to create pathways out of the system, and back to connection to self, family, culture, community and education.

The Northern Territory Government has made important investments in recent years to expand earlier intervention and diversion options.³ Yet, as heard in the consultation for the Aboriginal Justice Agreement⁴, the reality is that these options remain thin on the ground – and especially so for young people in remote communities.

Too often, families must wait until a young person gets in trouble with the police and courts before they can get the support they need:

“I’m a little bit disappointed in the system. I’ve cried out for help for the last five years. And we’ve had to come to this point where people get hurt before we get assistance. I’ve taken Jason to counselling, I’ve talked to police, I’ve talked to health and family services. But I didn’t seem to get a lot of assistance until now.”

Mother – Youth Justice Group Conference, April 2020

As **Brianna’s story** shows (case study 4), some young people are falling through the cracks – with no service stepping in until a young person is in crisis, and even then, failing to provide an adequate response. And while access to diversion is promoted in legislation, there is persistent inequity of access to appropriate responses depending on where a young person lives.⁵

As **Anthony’s experience** demonstrates (case study 5), when done poorly, diversion can perversely result in a young person becoming further entrenched in the system: for example, a young person is not given adequate support to complete their diversion plan, consequently ‘fails’ diversion and ends up in court. This situation could be avoided if that young person had been given more sustained, intensive, wrap-around that works over the longer term to address their often multiple and complex needs. Given we know that the earlier a young person has contact with the justice system the more likely they are to reoffend and become entrenched in the just system, we should be doing everything we can at the earliest possible stage to support them on a pathway out. In short, we need to be offering young people significantly more and better support than what we are now.

³ Including the introduction of pre-sentence Youth Justice Group Conferencing, the new Back on Track program and the reconfigured Community Youth Diversion Program.

⁴ The lack of community-based diversion options was a key theme of the consultations, references on page 51 of *Pathways to the Northern Territory Aboriginal Justice Agreement*.

⁵ While referral of a young person to a pre-sentence Youth Justice Group Conference has been available to the Courts under section 84 of the Youth Justice Act for many years, it was only in March this year that dedicated funding was provided to a service (Jesuit Social Services), to deliver these conferences in Alice Springs and Tennant Creek. From 2017 until this point, the program was only funded to deliver conferences in the Darwin, Palmerston and Katherine regions. In practice, this mean inequitable access to diversion for young people in Central Australia and the Top End, despite the option being available in the legislation. The Northern Territory Government has committed to expanding Group Conferencing to remote regions but has not provided timeframes for this.

Jesuit Social Services strongly supports the commitment within the Aboriginal Justice Agreement to expand community-based, Aboriginal-led early intervention and youth diversion programs. Echoing NAAJA's submission, we submit that this should be in addition to existing funding and initiatives committed by the Northern Territory Government.

Recommendation 3: That the commitment within the Aboriginal Justice Agreement to expand community-based, Aboriginal-led early intervention and youth diversion programs be in addition to existing funding and initiatives.

In building a strong system of early intervention and diversion, specific attention needs to be paid to ongoing service gaps. Specific gaps that we have observed in our work with justice-involved children and young people include:

- Cultural support and mentoring
- Targeted specialist supports, including mental health and allied health services
- Functional family support that builds parents' capacity to manage challenging behaviours
- Service models that account for Aboriginal young people's mobility between remote communities and regional centres (see **Dwayne's story**, case study 5)
- After-hours services
- Place-based alternatives to detention.

For further details, see Jesuit Social Services' [Northern Territory Pre-Budget Submission 2020-21](#).

Recommendation 4: That, with support from the Federal Government, the Northern Territory Government address ongoing service gaps including:

- cultural support and mentoring
- targeted specialist supports for children and young people, including mental health and allied health services
- functional family support that builds parents' capacity to manage challenging behaviours
- service models that account for Aboriginal young people's mobility between remote communities and regional centres
- after-hours services
- place-based alternatives to detention.

Of particular concern to Jesuit Social Services in our work with young people in contact with the youth justice system are the extremely high rates of FASD (diagnosed and undiagnosed with hallmarks). Young people with FASD are more likely to come into contact with the youth justice system, receive

adverse outcomes through the criminal justice process, and suffer secondary disabilities caused by further enmeshment with the criminal justice system.⁶

In the context of efforts to decolonise the criminal justice system, this must be addressed as a priority: the prevalence of FASD cannot be uncoupled from the history of colonial settlement and multiple traumas resulting from dispossession.⁷

Jesuit Social Services notes the commitment of the Northern Territory Government to improving assessment and supports for children and young people with FASD. The Northern Territory Government strategy *Addressing FASD in the Northern Territory (2018-2024)* indicates the government will be prioritising targeted assessments of youth in juvenile justice settings.

However, a stronger preventative approach is needed: early assessments and earlier intervention are needed to support effective diversion responses, helping to avoid a young person's progression through the system, including to detention. Comprehensive assessments that include FASD assessments at intake to diversion programs (including *Back on Track*) should be standard.

Recommendation 5: That the Northern Territory Government ensure that on intake, all young people referred to youth justice diversion programs receive a comprehensive assessment, including screening for FASD.

Language matters. The dominant rhetoric of “consequences” for children and young people who get into trouble with the law is working against the positive elements of the Northern Territory Government's current reform agenda.

When a child or young person causes harm, our responses should be restorative: that is, seeking to repair the relationships that have been broken – between the young person and the victim of that particular offence, the young person and their family, and the young person and their wider community.

However, in doing so, we recognise that if a young person comes into contact with the justice system, this is, in effect, a “consequence” of our failure as a community to provide an environment where that young person feels valued, connected and hopeful for their future.

Restorative responses provide a space for young people to understand the hurt and harm they have caused. But they also provide a space for us to understand that young person better, and as a community (that includes the professionals working with the young person, community leaders and family members), build a web of support around the young person that affirms their worth, gives them the support they need to address the challenges in their life, and give them hope for the future.

At a practical level, the narrow focus on “consequences” places the onus firmly on the young person for the achievement of outcomes, without reference to the supports available to help them achieve

⁶ See Blagg, H., Tulich, T. and May, S. (2019) ‘Aboriginal youth with Foetal Alcohol Spectrum Disorder and enmeshment in the Australian justice system: can an intercultural form of restorative justice make a difference?’ *Contemporary Justice Review*, 22(2):105-121

⁷ See Blagg, H. and Tulich, T. (2018) *Diversionary pathways for Aboriginal youth with Fetal Alcohol Spectrum Disorder*, Australian Institute of Criminology ([online](#))

those outcomes. Reflecting earlier observations of persistent service gaps, too often the supports they require are not available, have lengthy waitlists or fail to provide an adequate or appropriate service.

Moreover, a narrow focus on the “consequences” that a young person faces for a specific instance of offending obscures the wider story of the obligation of the community (including government) to create a society in which all young people can thrive. It also closes off the truth-telling that needs to occur across the community to understand why Aboriginal young people are so grossly overrepresented in our justice system, and what healing needs to occur for this to change.

Recommendation 6: That the Aboriginal Justice Agreement include a commitment by the Northern Territory Government to evidence-based communication in relation to young people that promotes public understanding of and support for therapeutic and restorative youth justice responses.

As the draft Agreement points out, it is not enough for services to be available – there is significant work to be done to improve the quality and appropriateness of services provided to Aboriginal people.

Aboriginal organisations and Aboriginal people are best placed to provide services to Aboriginal children, young people and families. However, where a non-Aboriginal organisation, such as ours, is working with Aboriginal children and young people, those organisations should be doing everything they can to ensure the cultural security of their services – that is, that their policies and practices ensure all interactions adequately meet the cultural needs of the young people.⁸

The draft Agreement includes a commitment to improve cultural competence in service delivery (strategy 17, under Aim 2 of the draft Agreement to *Improve justice responses to Aboriginal Territorians*). We suggest that the language of cultural security, a stronger and broader obligation than demonstrating cultural competence, be considered for final Agreement, and that the Agreement include mechanisms to embed this expectation.

Recommendation 7: That the Aboriginal Justice Agreement adopt the language of cultural security (inclusive of but broader than cultural competence) in relation to expectations of government and non-government service providers.

It is the responsibility of government and non-government service providers to not only ensure services meet a young person’s cultural needs, but that they are age and developmentally appropriate. It is not the responsibility of the young person to fit the program, rather it is the responsibility of the program to meet the young person where they are at.

Young people with poor oral language skills, cognitive disabilities or developmental disabilities are too often denied access to diversion (pre-court or pre-sentence) because it is assumed they would not be able to meet the requirements of the program; as a result, the most vulnerable young people are, perversely, funnelled deeper into the justice system. Similarly, as highlighted above, inadequate support provided to a young person who is on diversion can also perversely result in that young person

⁸ We are defining cultural security (in comparison to cultural competence and cultural safety) in line with the definition articulated in the Australian Human Rights Commission (AHRC) Social Justice Report 2011, Chapter 4: Cultural safety and security: Tools to address lateral violence – Social Justice Report 2011 ([online](#)).

becoming further entrenched in the system. In both cases, the system has failed the most vulnerable young people.

Consideration should be given to how the Aboriginal Justice Agreement embed the expectation that government and non-government service providers tailor their services to meet the age and developmental needs of the cohort with which they are funded to work.

Recommendation 8: That the Aboriginal Justice Agreement monitor the number of young people accessing diversion and include mechanisms to embed the expectation that government and non-government service providers tailor their services to meet the age and developmental needs of the cohort with which they are funded to work.

Monitoring and evaluation is critical to effective service delivery. While all strategic plans of government refer to its importance, rarely is dedicated funding allocated within a service agreement to facilitate the evaluation of a program. This makes it difficult to build the evidence base on “what works” in keeping Aboriginal children and young people out of the justice system, and improving their outcomes. Consistent with the focus on monitoring and evaluation within the Aboriginal Justice Agreement, the Agreement should include the expectation that the Northern Territory Government funds the evaluation of Northern Territory Government-funded programs.

Recommendation 9: That appropriate resources are allocated for the evaluation of initiatives and programs funded under the Agreement, in addition to adequate resourcing being provided for the monitoring and evaluation of the Agreement as a whole.

Jesuit Social Services notes that, based on observations of the use of targets for Aboriginal Justice Agreements in other Australian jurisdictions, it is proposed in *Pathways to the Northern Territory Aboriginal Justice Agreement* that targets not be set until Stage 2 of the Agreement. Jesuit Social Services supports this approach, particularly given – as raised in the *Pathways* document – in the Northern Territory, much of the necessary data has not been comprehensively collected, recorded, validated and analysed. Our experience evaluating the Youth Justice Group Conferencing program is that data infrastructure to monitor outcomes for young people through the youth justice system is not in place. We hope that will be improved with the development of a Territory Families’ data warehouse and business intelligence function.

The development of the necessary baseline data and data infrastructure should be adequately resourced in stage one as part of a comprehensive monitoring and evaluation framework. We note the data published in the draft Agreement is extremely useful to government and the sector to inform policy and program responses, and it is hope the Agreement will continue to be vehicle for improved transparency in system performance.

An opportunity for focus, scrutiny and accountability

The development of an Aboriginal Justice Agreement is historic. It is a mechanism to achieve the focus, scrutiny and whole-of-government participation and accountability required fundamentally change the relationships between Aboriginal people and the justice system: reducing the overrepresentation of Aboriginal people in the justice system, engaging and supporting Aboriginal leadership, and improving justice responses and services to Aboriginal Territorians.

Considering the significance of the Agreement for directing the Northern Territory’s future approach to justice policy and improving outcomes for Aboriginal Territorians, it is surprising that there is no indication in the draft Agreement as to the funding committed to the Agreement’s implementation,

ongoing coordination and monitoring and evaluation. The transformative potential of the Agreement will only be realised with adequate and ongoing resourcing.

Jesuit Social Services echoes APO NT in recommending that a fully-funded implementation plan be developed. The Northern Territory Government must commit adequate, long-term funding for the ongoing development, coordination, implementation, monitoring and evaluation, and oversight of the Aboriginal Justice Agreement.

Recommendation 10: That the Northern Territory Government commit adequate, long-term funding for the ongoing development, coordination, implementation, monitoring and evaluation, and oversight of the Aboriginal Justice Agreement. A fully-funded implementation plan should be developed to accompany the final agreement.

As acknowledged in the document *Pathways to the Northern Territory Aboriginal Justice Agreement*, central to the purpose of the Agreement is the goal of placing Aboriginal people at the centre of decision making about Aboriginal Territorians; decolonising the justice system that has to date, harmed rather than served Aboriginal people.

We note that the proposed governance arrangements for the Agreement seek to embed Aboriginal leadership and participation at all levels, including through the establishment of an Aboriginal Social Justice Commissioner, Law and Justice Groups and Aboriginal representatives on the NTAJA Governance Committee. These roles and functions must be adequately resourced to enable active and meaningful engagement in governance and decision-making processes.

Recommendation 11: That the roles and functions of Aboriginal representatives be adequately resourced, supported and remunerated to ensure their active and meaningful engagement in the governance of the Agreement.

To address the drivers of the overrepresentation of Aboriginal people in the justice system, all parts of government must have skin in the game. Strong accountability mechanisms must be in place for Ministers and senior bureaucrats across central agencies, justice, police, child and family services, education, housing, health, infrastructure and planning for the achievement of the Agreement's objectives. While we defer to Aboriginal organisations on the details of the governance of the Agreement, Jesuit Social Services supports in principle the broad representation at a senior level proposed through the role of the Aboriginal Affairs Sub-Committee of Cabinet and in the composition of the proposed NTAJA Governance Committee.⁹

Recommendation 12: That the governance of the NTAJA ensure strong whole-of-government accountability for the achievement of the Agreement's objectives.

As noted in the *Pathways to the Northern Territory Aboriginal Justice Agreement*, most jurisdictions that have developed Aboriginal Justice Agreements have also formulated an overarching whole-of-government Aboriginal strategic policy, an approach found to impact the overall

⁹ Pathways to the Northern Territory Aboriginal Justice Agreement, p.106

effectiveness of an Agreement.¹⁰ Jesuit Social Services supports mechanisms to ensure Northern Territory Government strategic policy objectives align with the vision and aims of the Aboriginal Justice Agreement. The introduction of Aboriginal Impact Statements for Cabinet Submissions proposed in the draft Agreement is one mechanism to support this (Strategy 20), but others should be considered, including through the role of the proposed Aboriginal Social Justice Commissioner.

Recommendation 13: That the final agreement include mechanisms to ensure Northern Territory Government strategic policy objectives align with the vision and aims of the Aboriginal Justice Agreement.

We commend once again the work of the Aboriginal Justice Unit in the development of this historic agreement and look forward to its finalisation and implementation.

For further information about this submission, please contact **John Adams**, NT General Manager, Jesuit Social Services at john.adams@jss.org.au or on 0477 657 338.

¹⁰ Pathways to the Northern Territory Aboriginal Justice Agreement, p.15

Appendix A – Our work in youth justice

1) Youth Justice Group Conferencing

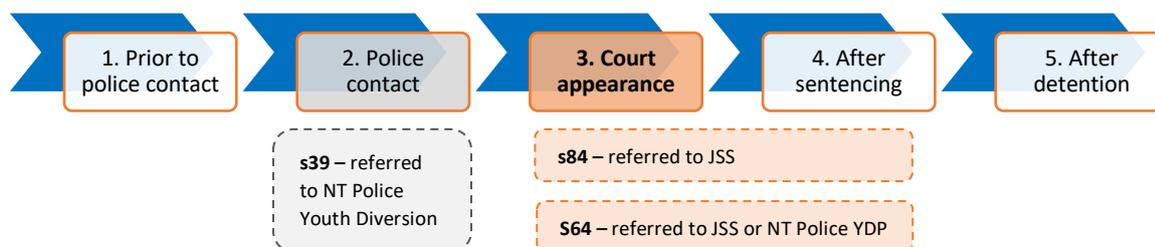
Pre-sentence Youth Justice Group Conferencing (Sections 84 and 64 of Youth Justice Act)

Locations: Darwin, Palmerston and Katherine (since January 2017); Alice Springs and Tennant Creek (since March 2020)

Since January 2017, Jesuit Social Services has been delivering the pre-sentence Youth Justice Group Conferencing Program in the Darwin, Katherine and Palmerston regions of the Top End. The program was initiated by Jesuit Social Services with the support of a range of agencies in response to a need identified by Aboriginal legal services for more restorative responses to young people’s offending. The program has been funded as a pilot program by Territory Families since August 2017.

Young people can be referred by the Court to participate in a group conference under sections 84 and 64 of the *Youth Justice Act*. It runs separately to, and practice is quite distinct from, the police-referred diversion conferences undertaken under section 39 of the Act (see below).¹¹

Figure 1: The diversion continuum



Since the program commenced, 98 referrals have been received and 80 conferences delivered. Reflecting the demographics of young people who come before the courts, the vast majority (close to 90 per cent) of the young people referred to the program are Aboriginal and male (approximately 85 per cent).

Funding was not provided by Territory Families for an evaluation of the pilot program, however Jesuit Social Services allocated internal resources to undertake an evaluation of the first two years of the program. This report can be provided to the Aboriginal Justice Unit if requested.

The evaluation report provides a detailed program description, including the policy context, legislative mechanisms and practice principles, alongside analysis of key program achievements and strengths, as well as challenges and limitations, based on participant outcomes and feedback from young people, victims and other stakeholders (including the Courts and lawyers). The evaluation has directly informed program improvements.

¹¹ Key differences include the time allocated to preparation (Jesuit Social Services allocates up to 30 hours for each conference) and the length of the conference itself (two to three hours for most conferences that we run, compared to as short as 20 minutes for some section 39 conferences).

Post-conference support

A key finding of the evaluation, and consistent with Jesuit Social Services' reflections on our practice, was the need to continue to strengthen the program's cultural security, by ensuring the involvement of Elders and other Strong Role Models and community leaders at all stages of the conferencing process, and in ongoing program development. In addition, unlike police diversion, post-conference case management is not funded as part of pre-sentence Youth Justice Group Conferencing.

Through advocacy to Territory Families, in late 2019, Jesuit Social Services was funded to pilot a **post-Conference cultural support program** for the Palmerston area, working in partnership with a local Elder to develop a model of wrap-around cultural support and authority for young people throughout the conferencing process. There is a particular focus on providing support and mentoring to the young person in the weeks and months following the conference to help them sustain the positive insights gained during the conferencing process and to achieve the goals identified in their outcome plans.

This model of wrap-around cultural support is embedded in our delivery of Element 2 of the *Back on Track* program in the Katherine region (see below).

Additional locations

In its response to the *Royal Commission into the Protection and Detention of Children in the Northern Territory*, the Northern Territory Government has committed to expanding Youth Justice Group Conferencing across the Northern Territory, which will provide greater equity of access to pre-sentence diversion.

In March this year, Territory Families gave approval for Jesuit Social Services to **expand our delivery of pre-sentence group conferencing to Alice Springs and Tennant Creek**. While under the *Youth Justice Act* the option had been available to the Alice Springs Courts to refer a young person to a group conference, until this point, no dedicated funding had been provided to an agency to deliver pre-sentence conferences in Central Australia. Jesuit Social Services convened our first conference for a young person in Alice Springs in late March. Jesuit Social Services also now has the capacity to convene conferences for *Back on Track* program participants in Darwin, Palmerston, Katherine, Tennant Creek and Alice Springs.

Jesuit Social Services has delivered a small number of group conferences in rural and remote locations, including Ngukurr, the Shire of Litchfield and Groote Eylandt. These conferences were co-convened with local Elders, and used videoconferencing to assist with pre-conference preparation. The Northern Territory Government has committed to expanding the provision of Youth Justice Group Conferencing to remote locations but Jesuit Social Services is unaware of the timeframes for this.

Pre-court Youth Justice Group Conferencing (Section 39 of Youth Justice Act)

Pre-court group conferencing has been undertaken as part of the Northern Territory Police's Youth Diversion Program since the early 1990s. Under Section 39 of the *Youth Justice Act*, young people who have committed a non-serious offence may be eligible for diversion to a pre-court group conference as part of the Northern Territory Police's Youth Diversion Program. As noted above, section 39 group conferences operate quite differently to the group conferences delivered by Jesuit Social Services under section 84 and section 64 (for discussion, see Jesuit Social Services Youth Justice Group Conferencing Year 2 Evaluation Report).

Territory Families and NT Police have also requested that Jesuit Social Services pilot the delivery of some section 39 conferences in the Katherine region.

2) Back on Track Element 2

Location: Katherine (program commenced in July 2019)

Relative to other jurisdictions, the Northern Territory has had very few diversion options for young people at any stage of the justice continuum, but particularly for children and young people who are most at risk and who may have committed multiple and/or serious offences.

The introduction of Youth Justice Group Conferencing at the pre-sentence stage has provided a much-needed court-referred diversion option that can help young people avoid heavier sentencing, including detention. More recently, the Northern Territory Government's introduction of the *Back on Track* program has provided much needed community-based support options for the most at-risk young people. There are multiple referral pathways to the program, including through the Courts, police and government and non-government service providers. Children as young as eight are eligible for the program, enabling support for this younger cohort at the first signs of trouble.

The *Back on Track* program looks different in each location (a positive reflection of the place-based approach to the implementation of the program). While the program is in its very early stages, some of the positive aspects of the program shared across locations are that it has increased referral options for the courts, provides long-term support, and has been designed to take a holistic approach to addressing the needs of young people, including family and cultural connection, health and wellbeing, educational engagement and restorative responses.

Jesuit Social Services is the provider of Element 2 of the new *Back on Track* program in the Katherine region, focused on providing individualised restorative responses. While this program is in its early stages, we have received a number of referrals for very young children – as young as 10 and 11 years old. The program provides the opportunity to step in early at the first signs of trouble, with tailored, restorative responses that work closely with a young person's family and community.

Territory Families has committed to evaluating *Back on Track*, however funding to individual providers does not include resources for monitoring and evaluation, and we do not have the details of Territory Families' proposed whole-of-program evaluation.

3) Community Youth Diversion

Location: Alice Springs (commenced February 2020)

In partnership with The Gap Youth and Community Centre, Jesuit Social Services commenced as the non-government provider of Community Youth Diversion in Alice Springs in February 2020. The program coordinator position currently sits with Jesuit Social Services, and two case workers are employed by The Gap.

Jesuit Social Services' role is to assist with program establishment, and provide technical expertise and supervision and mentoring for The Gap staff in youth justice and restorative practice/Group Conferencing. The program, including the program coordinator role, will transition to The Gap after two years, with the option for Jesuit Social Services to continue providing capacity building support to The Gap if required and requested after this time.

The program works with young people referred by police for youth diversion. The program includes support for children and young people participating in police-run diversion conferencing and assertive outreach support delivered post-conference to help young people to complete their diversion plan goals. The program also has the capacity to facilitate community and family group conferences where

appropriate (separate to the police-run diversion conference), and to provide restorative education responses to support a young person's reengagement with school.

4) Place-based outreach support for justice-involved young people and families in Central Australia

Location: Atitjere and Alice Springs (since July 2018)

For a number of years, Jesuit Social Services has worked with the community of Atitjere on the Plenty Highway north-east of Alice Springs. At the invitation of senior women in the community, in July 2018, Jesuit Social Services started to develop a model of place-based family-centred outreach support for young people from Atitjere in contact with the youth justice system, which Jesuit Social Services has resourced through philanthropic funding.

Responding to current gaps in support, a primary focus of this work has been to provide support that acknowledges and supports the mobility of young people and their families. The program puts grandmothers at the centre of the work, recognising their role in growing up children.

Working intensively with a small number of young people and their families, the Jesuit Social Services case worker:

- works holistically with both the young person and their family, working from a family-centred, strengths-based perspective that incorporates input from the young person, their family and other significant role models and senior members of community
- is flexible in their approach, underpinned by a model of assertive outreach that is responsive to the young person and the family's changing circumstances
- provides a mobile service delivery model that follows the young person between their homes in town and community
- provides consistent support, building trust and providing continuity and stability for the young person and their family
- provides a combination of both accompaniment and practical support (e.g. transport, accommodation)
- uses a restorative practice approach (e.g. facilitating reconnection and repair of relationships with family)
- actively supports access to therapeutic, mental health and other services
- takes a multi-disciplinary care-team approach, linking with other professionals who are working with the young person and their family.

Working in this way, we have been able to fill a gap in consistent, mobile, wrap-around support for justice-involved young people and families in Central Australia. The support we have provided has been acknowledged by the Courts. A case study illustrating the support provided to one young person and his family is provided at Appendix B (case study 5).

Appendix B – Case studies

The case studies outlined in **Appendix B** as part of Jesuit Social Services' submission on the Northern Territory Aboriginal Justice Agreement are provided separately, **in confidence, and are not for publication.**