



Jesuit Social Services is a social change organisation. We work with the most disadvantaged members of the community, providing services and advocacy in the areas of justice and crime prevention; mental health and well-being; settlement and community building; education, training and employment; gender and ecological justice.

The Chair
Age of Criminal Responsibility Working Group
c/- Strategic Reform Division
WA Department of Justice
via email: LegPolicy@justice.wa.gov.au

26 February 2020

Dear Chair

Jesuit Social Services welcomes the opportunity to contribute to the Council of Attorneys-General Age of Criminal Responsibility Working Group review.

The current minimum age of legal responsibility in Australia at 10 years of age harms children, and in particular Aboriginal and Torres Strait Islander children. It is discriminatory, and out of step with human rights standards and medical science on child development.

The United Nations Committee on the Rights of the Child has called for countries to have a minimum age of legal responsibility set at 14 or higher, and recommends that children under 16 should not be deprived of liberty.

Jesuit Social Services supports the position endorsed by key groups across Australia – including National Aboriginal and Torres Strait Islander Legal Services, Law Council of Australia, Australian Medical Association, Change the Record, Amnesty, HRLC and Royal Australasian College of Physicians – that the laws that dictate the age of legal responsibility in all States, Territories and the Commonwealth need to be reformed in line with the following principles:

- **The minimum age of legal responsibility must be raised to at least 14 years.**
- **There must be no ‘carve outs’ to this legislation, even for serious offences.**
- **Doli incapax fails to safeguard children, is applied inconsistently and results in discriminatory practices. Once the age of legal responsibility is raised to 14 years, doli incapax would cease to be relevant and therefore be redundant.**
- **Prevention, early intervention, and diversionary responses linked to culturally-safe and trauma-responsive services including education, health and community services should be prioritised and expanded.**
- **In Aboriginal and Torres Strait Islander communities, the planning, design and implementation of prevention, early intervention and diversionary responses should be community-led.**

Regarding consultation questions 5, 6,7 and 8, Jesuit Social Services has produced a paper – *Raising the Age of Criminal Responsibility: There is a better way*¹ – which shows there is a better way to respond to the small number of children who cause harm to others. It involves holding children to account for their actions while addressing the underlying causes of those actions. It also involves creating a society in which children are less likely to offend in the first place. The paper offers a guide to the principles, policies and programs that can underpin responses when the age of legal responsibility is raised. Fundamentally, we believe there are a number of reasons to make this change:

- Science shows that a child’s brain is still developing (up until at least the age of 25, in fact).
- Society has an interest in the healthy development of all children.
- Many children in the criminal justice system are highly vulnerable.
- There is a better way to respond.

To supplement the details outlined in this paper, we have attached several case studies to illustrate the vulnerability of the children we are working with in the Northern Territory and the inadequate and ultimately harmful response provided by the youth justice system. They highlight the potential to achieve much better outcomes when we remove the lens of criminal justice and respond instead to the welfare needs of the child or young person and their family (see Attachment 1).

Jesuit Social Services would be pleased to attend and contribute to the Working Group’s targeted and public consultations. We also call for the final report with recommendations to the Council of Attorneys-General to be made public in order to respect and promote the views, knowledge and expertise of stakeholders and individuals who contribute to this critical discussion.

We appreciate you taking these matters into consideration and would welcome further opportunity to inform the Working Group’s deliberations.

Yours sincerely



Sally Parnell
Acting CEO, Jesuit Social Services

¹ Available at <https://jss.org.au/raising-the-age-of-criminal-responsibility-there-is-a-better-way/>

Jesuit Social Services

Northern Territory

Attachment 1: Case Studies

Justice-involved children in the NT



Jesuit Social Services in the Northern Territory

Jesuit Social Services' work in the Northern Territory began over ten years ago at the request of two communities in Central Australia, followed later by work with the Thamarrurr Regional Aboriginal Authority Corporation and Thamarrurr Development Corporation in Wadeye.

Since 2017, we have been delivering the pre-sentence Youth Justice Group Conferencing program in the Greater Darwin and Katherine regions, and in late 2019, commenced as one of the providers of the Northern Territory's new *Back on Track* diversion program in Katherine. We continue to work with young people and families involved with the justice system in the communities of Santa Theresa and Atitjere in Central Australia.

Currently our programs include:

- **Youth Justice Group Conferencing (Top End)**
Court-referred restorative justice program for young people aged 12-17 years.
- **Post-conference support pilot (Top End)** – Additional wrap-around support and cultural mentoring with local elders and community leaders for young people aged 12-17 years.
- **Back on Track (Top End)**
Early intervention and diversion for children aged 8-13 years, focusing on restorative responses.
- **Place-based mobile outreach support pilot (Central Australia)**
Therapeutic and practical support for justice-involved young people and families (all ages).



Case studies – Justice-involved children and young people in the NT

The case studies below illustrate the vulnerability of the children we are working with in the Northern Territory and the inadequate and ultimately harmful response provided by the youth justice system. They highlight the potential to achieve much better outcomes when we remove the lens of criminal justice and respond instead to the welfare needs of the child or young person and their family.

The common threads of the stories of the children with whom we work include histories of trauma, poverty, family separation and 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 and positive role models, mental health issues and alcohol and drug use. Despite these challenges, the children with whom we work are incredibly resilient. But they need support.

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

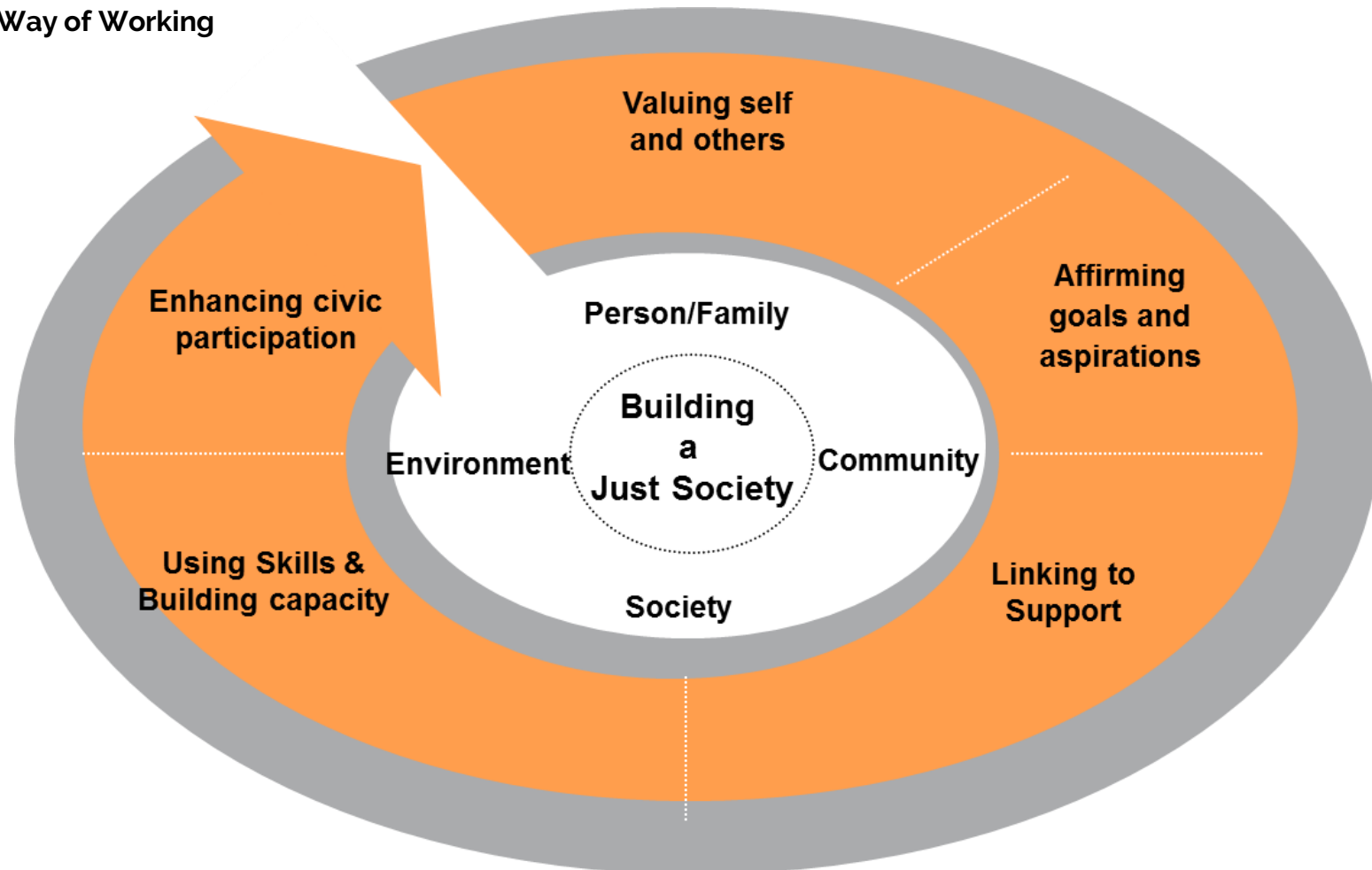
- supporting connection with family, culture and community
- addressing welfare needs, including housing and safety
- facilitating comprehensive assessment and supported referrals to appropriate specialist supports
- access to after hours services
- supporting school engagement
- providing opportunities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

Our Way of Working

Jesuit Social Services' practice framework, **Our Way of Working**, underpins all our work with individuals and communities. The framework speaks to the inherent humanity of each individual and their capacity to envisage and achieve a more positive and engaged future, no matter their current circumstances. It articulates the dynamic interplay of five components (below). At each step in the process we use evidence-based approaches. The participant is always at the centre and relationship-building is central to our work.

Figure 1. Jesuit Social Services' Our Way of Working



Case Study 1 – Crystal, 13 years old

Crystal is a 13 year old girl who identifies as Aboriginal. She lives at home with her mum and younger sister. Crystal was referred to Jesuit Social Services by the Court to participate in a Youth Justice Group Conference following charges of aggravated robbery. Following an afternoon feeling "bored" walking around the local neighborhood, Crystal and her friend Jasmine decided to enter the nearby service station where they stole a number of items.

The preparation for a Group Conference involved a number of meetings between the Jesuit Social Services Convenor and the young person. During these meetings, the Convenor got to know Crystal and understand more about her life and circumstances surrounding her offending. Crystal was attending school, however she frequently acted out and had previously been in contact with the police for lower level trouble. During her meetings with the Convenor, Crystal disclosed historical abuse by her step-father towards her younger sister, which was a source of trauma and anxiety for Crystal – as she explained to the Convenor, so much so that at one point she *"wanted to go to jail really badly because it wasn't safe here at home."*

Her mother's relationship with her step-father put significant strain on Crystal's relationship with her mum. Crystal had begun to distance herself from her mum and spent more time living with her Aunty. During the time that Jesuit Social Services was working with Crystal to prepare for the Conference, there were a number of times when Crystal went missing from home, as she tried to avoid her step-father who had recently been released from prison.

Despite these challenges, Crystal engaged well with the Convenor and worked hard to prepare for her Conference. The Conference itself was attended by Crystal's mum, Aunty, Youth Outreach and Reengagement Officer (YOERO) and lawyer, as well a Victim Support Officer from Victims of Crime NT, representing the manager of the service station. The Conference also involved Crystal's co-offender, Jasmine, and Jasmine's mother.

During the Conference Crystal spoke honestly about her offending and expressed shame for her offending. Crystal spoke of the contrasting feelings of boredom, with the rush from stealing. The Conference was an opportunity for Crystal and Jasmine to hear from a community representative how their actions affected others in the community, and understand that actions that seemed like fun, or a thrill at the time, have an impact on others and can create fear, disharmony and mistrust of young people in the community.

The Conference provided an opportunity for all those present to agree on ways that Crystal could repair the harm caused by her offending, and it was agreed that she and Jasmine would write letters of apology to the manager of the service station. The Conference was also an opportunity to identify what actions Crystal could take and what support she needed to stay out of further trouble. Crystal agreed to getting involved in sport to keep herself engaged and out of trouble. Territory Families committed to working with Crystal and her family to stabilise her living arrangements. Crystal provided a written apology to the owner of the service station which was positively received.

Crystal's story shows how trauma, trouble at home, boredom and the encouragement of peers led to escalating risk-taking behaviour that had the potential to result in serious harm to others and herself. It shows that restorative responses can be appropriate for more serious offending, meeting victims' needs as well as engaging a network of support (including both family and professionals) with responsibility to help that young person to stay on track.

Case Study 2 – Robert, 11 years old

Robert is an 11 year old Aboriginal boy who grew up in a remote community. Robert and his family recently moved to town, where he was living with his mum and younger sister in a motel room.

Robert was attending school regularly but unfamiliar with his new town and struggling to make friends. Living in very cramped quarters with his mum and sister, Robert often wandered the streets to get some space and was frequently coming to the attention of police. On one occasion, Robert came to the attention of police for stealing from a local store and was referred to Jesuit Social Services by the Territory Families' Youth Outreach and Engagement Team (YORET) for an early intervention response.

The Jesuit Social Services case worker has been working with Robert, his family and other service providers to provide a wrap-around response. Robert is wary of new people in his life, particularly men, a protective behaviour that is connected to witnessing his mum's experiences of domestic violence as he has grown up. The focus of the Jesuit Social Services worker in these early stages of working with Robert has been to build trust and rapport. The worker is engaging Robert in activities he enjoys, like basketball and fishing.

The Jesuit Social Services worker has also worked with other services to find suitable accommodation for the family, and Robert, his mum and sister are now living in a two-bedroom unit. Our worker, other services and Robert's school have observed that since Robert's living situation has improved, so too has his behaviour: in the two weeks since Robert has had a home and space to call his own, he has not come to the attention of police.

Restorative practice is embedded in our engagement with Robert: understanding the circumstances of his offending, Robert's attitudes towards his actions, how he feels about what he did, his understanding of the impact of his actions and willingness to make amends. As our worker's relationship with Robert develops, and now that Robert's family living situation has stabilised, we are working to develop an appropriate restorative response that can give Robert the opportunity to make amends, meet the needs of those affected (for example, the store owner), and establish responsibilities for service providers and other adults supporting Robert.

Robert's story demonstrates again an instance of a young person coming to the attention of police as a result of circumstances that are ultimately beyond his control: that is, not having appropriate stable housing, and an inadequate social safety net that left his mother struggling to make ends meet. It also illustrates how meeting these basic welfare needs (i.e. housing) can address circumstances that lead to a young person's offending.

Robert's story highlights the importance of services being able to work in a flexible way, for a sustained period with the whole family, and coordinated with other services, in order to provide the kind of wrap-around response that can address the interrelated issues in a young person's life. It highlights the importance of trauma-informed practice and practice that is built on a relationship with trust and rapport with the young person and their family.

Case Study 3 – Elliot, 17 years old

Elliot is a 17 year old Aboriginal boy who grew up in Central Australia. After Elliot's father died, he went to live with his one of his grandmothers in the Top End. Elliot was referred by the Court to Jesuit Social Services to participate in a Youth Justice Group Conference after he was charged with a driving offence.

Elliot has spent much of his life in and out of care and detention. During the preparation for the Group Conference, he explained to the Jesuit Social Services Convenor: *"I've been controlled by other people most of my life."* Throughout his life, Elliot has seen many workers come and go, but has rarely had the kind of sustained support he needs to address his challenges. Elliot expressed fatigue at the cycle of workers in his life and the need to tell his story over and over.

Elliot experienced a lot of instability during his childhood due to a fractious relationship between his parents. Despite disruption and upheaval in his life, Elliot stayed engaged in education up until year 10, but after that, dropped out of school. He indicated that his cycle of offending and detention made it difficult to set goals for the future, but he remained motivated and, after leaving school, started a stockman's course. Elliot spoke about feeling *"free and good"* when working outdoors.

His referral to Jesuit Social Services was the first time Elliot had had an opportunity to participate in a restorative process. Supporting Elliot's cultural identity and connection to country, Jesuit Social Services engaged an Elder from his home community to participate in the Conference. The Conference was attended by a community representative who spoke to Elliot about the consequences of risky driving and the danger in which he had placed himself and others. The Conference gave Elliot the opportunity to hear from people in his life who care about his wellbeing – including his grandmother, the Elder, and support workers. The Conference required Elliot to take responsibility for his actions and hear how these actions had affected people around him and the potential to impact others in the community. It also provided him with an opportunity to hear about the many positive qualities that others saw in him and their hopes for his future.

The Conference required Elliot to identify how he could repair the harm he had caused, but also to identify goals that would help him chart a course away from a cycle of offending and onto a path towards the life he wanted. The family and professionals who attended the Conference were engaged as a network to provide support and oversight for Elliot, with responsibility for helping him meet these goals. Elliot left the Conference with a clear understanding from his family and the local Elder of what they expected from him, and a commitment to working towards being a leader and role model for his younger siblings and other young people in his community.

Elliot's story highlights how the youth justice system too often fails to provide vulnerable young people with a pathway out of trouble, instead trapping them in a cycle of offending and supervision. The youth justice system has provided little support to Elliot to address the factors contributing to his behaviour and circumstances. Despite this, Elliot has remained resilient and determined to put himself on a better path. Had the system responded with welfare-focused, restorative responses to Elliot's early offending, his story might have been very different, and potentially changing Elliot's trajectory for the better from a much younger age.

Principles of a child-centred approach for children in the NT

Effective practice with Aboriginal children takes into account the way in which they navigate the two worlds surrounding them – one grounded in the longest living culture in the world and the other that continues to perpetuate the impacts of colonisation in the modern day.

Programs and service system responses must place children at the centre, respect the roles and obligations that Aboriginal children have first and foremost to their culture, and recognise that families and communities are best placed to make decisions about their children.

1. Self-determination

Families and communities govern decisions about effective responses to children and young people.

2. Co-design

Programs and service models are driven by the community, for the community.

3. Operating within two worlds

Recognition, respect and acknowledgement of the deeply complex systems that Aboriginal people navigate on a daily basis.



The Northern Territory reform context

The *Royal Commission into the Protection and Detention of Children in the Northern Territory* provided a roadmap to reorient the Northern Territory's youth justice system towards the wellbeing and therapeutic needs of children and families.

Through extensive consultation with children and families, service providers, police, the Northern Territory Government, courts, legal and other experts, and individuals and communities affected by crime, the Commission heard that the old system was not working: neither for the children caught up in the system, nor for individuals and communities who have experienced crime.

The Royal Commission called for a paradigm shift in the way we think about youth justice in the Northern Territory, shifting our focus to supporting children and families early, to prevent contact with the youth justice system, and stepping in with therapeutic and restorative responses when young people get into trouble with the law.

The recommendations acknowledged that, overwhelmingly, the root issues that lead to young people's contact with the youth justice system stem from experiences of trauma and complex social disadvantage. The Royal Commission also made clear the need to place Aboriginal people and communities at the centre of all levels of decision-making: recognising that, overwhelmingly, it is Aboriginal children who are trapped by the youth justice system.

Raising the age of legal responsibility

A key recommendation of the Royal Commission to raise the age of legal responsibility to 12 years. The Northern Territory Government has accepted this recommendation and planned for the reform to take place in Phase 2 of its reform program (to be completed by 2020), as part of the development of a Single Act for vulnerable children and young people.¹

Jesuit Social Services has commended the Northern Territory Government for its commitment to this reform. However, we believe the Northern Territory, along with all other Australian jurisdictions, can and should go further to raise the age to at least 14 years, to bring us into line with the evidence and international human rights standards.² We also believe that this reform must happen sooner rather than later to protect vulnerable children from the harms of involvement with the youth justice system.

Improving responses for vulnerable children and young people in the NT

To better meet the needs of vulnerable children in the Northern Territory we recommend, as a priority, **raising the age of legal responsibility from 10 to at least 14 years old.**

This reform should be accompanied by:

- Continued government investment in early intervention services, building on the investments that the Northern Territory Government has made to date, including maternal and child health services, early childhood services and other family services.
- Further investment in building a strong system of place-based, culturally grounded, therapeutic diversion programs that provide sustained support for young people, building on the work to date through the establishment of the new *Back on Track program*, and recommissioned Youth Diversion Programs through the Northern Territory Government's Local Decision-Making Framework.
- A focus on appropriately resourced programs and services for children and families in remote communities, with service models that account for Aboriginal mobility.
- Further investment and improved access to specialist services, including functional family support and targeted specialist supports for the young person, including mental health, allied health and alcohol and drug services.

A joint approach between the Northern Territory and Federal Government is crucial, given overlapping areas of responsibility for funding and service delivery.

References

¹Northern Territory Government (2018) Safe, Thriving and Connected: Generational Change for Children and Families (2018-2023), p.27

²The 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. See Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, 44th session, UN Doc CRC/C/GC/10 (25 April 2007), paragraphs 32–33.

¹There is extensive evidence to show that the earlier a child has contact with the youth justice system, the more likely they are to continue to offend into adolescence and beyond. See for example, Royal Commission into the Protection and Detention of Children in the Northern Territory (2017), Exh.3954.001, 10 characteristics of a good youth justice system, by Judge Harding and Becroft, 12 February 2013, tendered 12 May 2017, p.3; Holman, B. and Ziedenberg, J. (2006) The dangers of detention: the impact of incarcerating youth in detention and other secure facilities, A Justice Policy Institute Report, p.6; and Sentencing Advisory Council (2016) Reoffending by Children and Young People in Victoria (online).