



Social Policy Scrutiny Committee
GPO Box 3721
DARWIN NT 0801
Email SPSC@nt.gov.au

1 May 2019

Dear Chair and Committee Members,

Re: Children's Ground Submission to the Youth Justice and Related Legislation Amendment Bill 2019

Children's Ground (CG) welcomes the opportunity to make a submission to Social Policy Scrutiny Committee on the Youth Justice and Related Legislation Amendment Bill 2019 (the Bill).

Introduction

Children's Ground is an approach designed to respond to communities experiencing intergenerational inequity. It was born out of the deep injustice and the hope of Aboriginal people living in the unacceptable economic poverty and inequity. It is designed with and led by First Nations people.

Children's Ground recognises it is the conditions within which children are born and raised that will determine their opportunity and choices and will ultimately enable or prevent generational change. Most importantly, we recognise that systems and services must respond to the people for whom they are intended, and therefore the design, implementation, monitoring and evaluation must be held by the people.

Children's Ground works intensively with children, families and communities from a platform of holistic prevention and early intervention – responding to the social and cultural determinants of health and wellbeing recognised by the World Health Organisation as underpinning all key areas of life and wellbeing.

The CG Approach is a system of prevention. It is designed to prevent the levels of child incarceration, child protection and child trauma experienced by First Nations families and to create opportunities for lifetime wellbeing for children. It is designed to achieve equity so that all children can grow to adulthood and enjoy opportunity, express their talents and be included and contribute to society – and so that all children can grow with a sense of identity and place for themselves and others, with access to quality health, wellbeing, education and economic independence. Underpinning change in each of the social and cultural determinants across whole communities are the dual principles of self-determination and human rights.

Successive inquiries and reports over many decades have outlined key recommendations to improve the justice and life outcomes for First Nations people - and in turn would prevent youth incarceration. It is critical to confront the reality facing children and families and begin to act on these recommendations.

The experiences of young people in the Don Dale Detention Centre, juvenile justice and Child Protection systems can be directly linked to failures in our social, educational, employment and health systems. Each of the key systems are failing First Nations people in the Northern Territory.

We need to reorient the system to invest in a community led, generational approach (at least 25 years), starting from early childhood, investing in prevention as a core focus and engaging whole of community. We need to support cultural, social, economic and political wellbeing and rights for all First Nations people.

This includes rebuilding the child protection and juvenile justice services towards care and therapeutic based systems. This system should align with and strengthen social and cultural capital within communities and be prevention weighted. It also includes reform of the education system to ensure children succeed in both their first culture and in Western knowledge and skills so that they can build the foundations for economic independence.

We encourage the Youth Justice system to recognise two systems of law, knowledge and practice:

- a. First Nations Cultural systems e.g. kinship care; customary law
- b. Global leading practice in youth justice including therapeutic jurisprudence and justice reinvestment

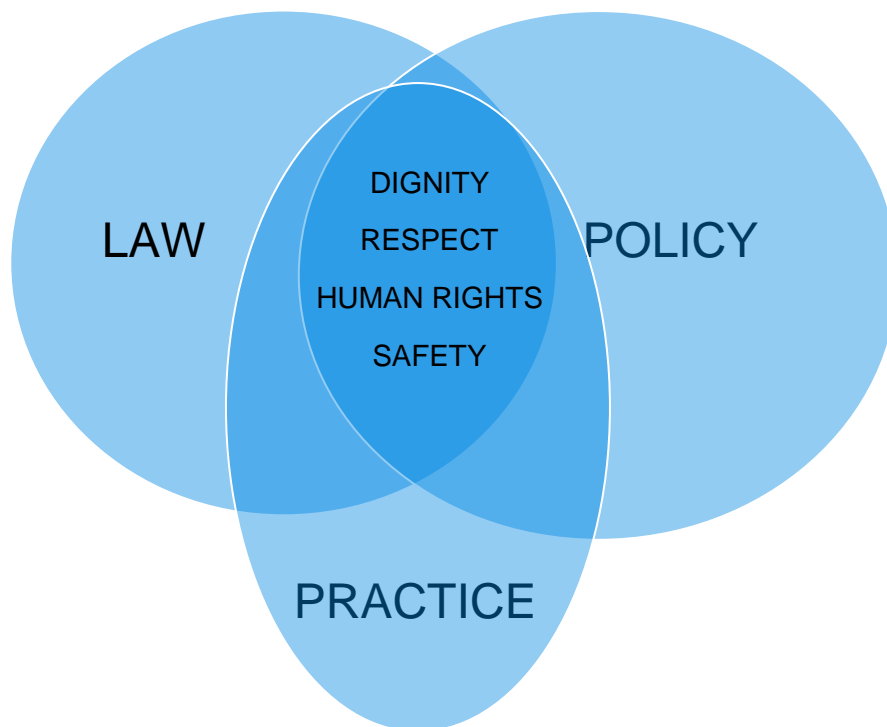
“Social justice must always be considered from a perspective which is grounded in the daily lives of Indigenous Australians. Social justice is what faces you when you get up in the morning. It is awakening in a house with an adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to school where their education not only equips them for employment but reinforces their knowledge and appreciation of their cultural inheritance. It is the prospect of genuine employment and good health: a life of choices and opportunity, free from discrimination.”

Aboriginal and Torres Strait Islander Social Justice Commissioner, 1995, First Report, p. 10

We believe that laws must be created and defined to benefit the whole of society. A social and cultural equity test must apply to all laws to ensure their impact on First Nations people does not discriminate and cause more harm.

We encourage the youth justice system to apply the following as a risk assessment to guide legal, policy and practice reform. If, for example, Juvenile Justice reform is undertaken through this lens, all law, policy, procedures and practice would apply a dignity, respect, rights and cultural safety test. If each area relating to Juvenile Justice can meet this test, then the resultant system will meet the needs of the child and community and the safety of the broader society.

Diagram 1: Assessment lens for law, policy and practice development, Jane Vadiveloo



Youth Justice and Related Legislation Amendment Bill 2019

Children's Ground commends the NT Government's commitment to the reforms recommended by the Royal Commission into the Protection and Detention of Children in the Northern Territory (the Royal Commission), in relation to youth justice.

It is critical that the Government, sector and community work in partnership to redress the devastating life experiences of young people who find themselves intersecting with the criminal justice system. The damaging impact of this system is compounded and creating trauma; we have a duty of care as a system to redress this situation.

Children's Ground supports the key recommendations presented by NTCOSS in their submission.

While there are positive amendments in the proposed bill, Children's Ground is deeply concerned that the Bill excludes the critical reforms of:

- Raising the age of criminal responsibility (as per Recommendation 27.1 of the Royal Commission report)
- A qualifying condition that young people under the age of 14 years may not be incarcerated (as per Recommendation 27.1 of the Royal Commission report)

Children's Ground recommends that the criminal age of responsibility be raised to 14 years as a minimum.

We note that the Bill fails to comply with the Royal Commission recommendation that children and young people be excluded from the full operation of offence to breach bail.

We believe that not complying with this recommendation will lead to avoidable engagement of children with the criminal justice system and that engagement with the criminal justice system will have a disproportionate impact on First Nations children.

Children's Ground believes that all matters relating to children intersecting with the criminal justice system should be approached from a therapeutic jurisprudence approach. The state has the responsibilities for the duty of care of all children. The care and protection of children should prevail in all matters.

At all times, legislation should be aimed to minimise the criminalisation of children and promote their long-term wellbeing. This, in turn, is in the interest of society. Early intervention and therapeutic approaches for children have the greatest impact on the long-term protection to society and for the future wellbeing, development and life opportunities for the child.

Children's Ground supports the commitment in the *Youth Justice Act* that arrest is to be used as a measure of last resort. As recommended by NTCOSS we also recommend that reform be made in the *Police Administration Act*.

The Royal Commission recommended children and young people not be held in custody without charge for longer than four hours, and that any extension may only be granted by a Judge. As noted by NTCOSS "The proposed amendments to section 137 of the *Police Administration Act*, in its current form, contravenes this recommendation. It permits police to allow children and young people to be held up to 24 hours with review by a Senior Sergeant, and without requiring review by a Judge". Furthermore, as noted by NTCOSS, "in combination with proposed amendment under Clause 27, section 27 of the *Youth Justice Act*, this will result in no maximum time limit that a young person can be held in police cells prior to being charged."

This fails the principle of detention as a last resort and contravenes the rights of the child. It fails to address the recommendations by the Royal Commission.

Children's Ground fully supports the provision that all court proceedings under the *Youth Justice Act* be held in a closed Court. This has long been advocated in the Northern Territory and is a fundamental protection to children.

Children's Ground recommends the act be inclusive of offences eligible for diversion. Where ever possible diversionary programs that support the social, emotional, cultural and physical wellbeing of the child should be sought. Principles of therapeutic jurisprudence should apply to all young people under the age of 16 years of age.

Children's Ground believes that cultural standards, principles and safety practices should be designed with First Nations communities and applied across the Youth Justice System.

Children's Ground recognises that First Nations communities have systems of justice that should be recognised and included in the Youth Justice System according to the leadership of First Nations peoples.

Children's Ground believes that cultural standards, principles and safety practices should be designed with First Nations communities and applied across the Youth Justice System.

Children's Ground supports the key priorities identified within the sector that under the Youth Justice Bill:

- The law should no longer punish children under the age of 12.
- Children under the age of 14 should not go to detention and be removed from their families and community.
- Services and programs for bail and youth diversion should work with the child, parents, family and community.
- The crime of Breaching Bail should not be allowed for children.
- Children who are in police cells must be held there for the smallest possible amount of time and be safe from harm. It is necessary that Judges must check on the safety of children every four hours.
- Children should be arrested only as a last resort.
- Aboriginal children should always have access to an interpreter in their own language to understand.
- Children should not be named and shamed by the media and their privacy should be protected by a closed court.

We thank the Social Policy Scrutiny Committee from considering our submission.