

CONFERENCING FOR ABORIGINAL YOUTH IN THE NORTHERN TERRITORY: PAST, PRESENT AND FUTURE.

RACHEL MCDONALD*

I INTRODUCTION

High incarceration rates for Aboriginal people are not a new phenomenon.¹ High rates of detention for Aboriginal youth in comparison to their non-Aboriginal counterparts in the Northern Territory of Australia ('the Territory') are well documented.² However, Australian governments have fairly recently taken a new approach towards these statistics.³ Restorative justice is now being both recognised and practiced.⁴ Whilst there is no settled definition of restorative justice.⁵ Tony Marshall's definition is commonly accepted.⁶ Tony Marshall defines restorative justice as

a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.⁷

Conferencing is a common form of restorative justice.⁸ Conferencing is used in the Territory.⁹ Conferencing is often a better alternative to traditional court processes for Aboriginal youth in the Territory.¹⁰ This paper will continuously revisit this thesis. This paper aims to do three

¹ Patricia Karvelas, 'Over-imprisonment of Indigenous Peoples a 'National Emergency'', *The Australian* (Online), 18 February 2014 <<http://www.theaustralian.com.au/national-affairs/policy/overimprisonment-of-indigenous-peoples-a-national-emergency/story-fn9hm1pm-1226830247080>>; Zoe Holman, *Australia's Indigenous Disadvantage Problem* (23 February 2014) Aljazeera <<http://www.aljazeera.com/indepth/features/2014/02/australia-indigenous-disadvantage-problem-201422385218552549.html>>.

² Teresa Cunningham, 'Pre-court diversion in the Northern Territory: Impact on Juvenile Reoffending' (Report, No. 339, Australian Institute of Criminology, June 2007) 1; Review of the Northern Territory Youth Justice System Committee, Parliament of the Northern Territory, *Review of the Northern Territory Youth Justice System: Report* (2011).

³ Commissioner Brian Bates, 'A Diverse Approach to Juvenile Offending in the Northern Territory', (Paper presented at the 4th National Outlook Symposium on Crime in Australia, Canberra, 21-22 June 2001) 4.

⁴ Jacqueline Joudo Larsen, 'Restorative justice in the Australian criminal justice system' (Report, Australian Institute of Criminology, No 127, 2014).

⁵ Michael King, 'Restorative justice, therapeutic jurisprudence and the rise of emotionally intelligent justice' [2008] *Melbourne Law Review* 34, 1102.

⁶ Ibid.

⁷ Ibid, quoting Tony F Marshall, 'The Evolution of Restorative Justice in Britain' (1996) 4(4) *European Journal on Criminal Policy and Research* 21, 34-5; see also Larsen, above n 4.

⁸ Larsen, above n 4.

⁹ See *Youth Justice Act 2005* (NT).

¹⁰ There is no direct authority for this claim but all of the sources cited in this paper are used to prove this point.

things. The first is to examine the context of conferencing by exploring how it was introduced in the Territory. The second is to analyse in detail the current state of conferencing in the Territory. The third is to make recommendations on changes that are necessary in order for conferencing to develop into the future.

II PAST

A Introduction

Youth justice conferencing began in the Territory when a new diversionary scheme was introduced. It is now based in different legislation but it is helpful to examine how youth justice conferencing started. This is because past practice informs current practice. This section will therefore begin by illustrating how youth justice conferencing was introduced. From there, issues raised by the new scheme will be noted along with a short description of the positive impacts that it has had.

B Summary

As John Nicholson notes '[t]he punitive paradigm of sentencing and the assumptions underpinning it are a legacy from our common law heritage.'¹¹ Nicholson correctly notes here that punishment is the foundation of our traditional criminal justice system. However, in 2000 it was recognised that this system was not serving juveniles as best it could or should.¹² The Australian Prime Minister and Chief Minister of the Northern Territory realised that change was needed.¹³ They issued a joint statement in April 2000 expressing a need to divert youth away from the traditional system.¹⁴ Following this, \$15.6 million was provided by the Commonwealth Government to the Northern Territory police to establish a diversion scheme.¹⁵ The scheme was based in the *Juvenile Justice Act 1983* (NT). Changes were also made to the *Police Administration Act 1978* (NT).¹⁶ Youth Diversion Units ('YDU') were

¹¹ John Nicholson SC, 'Sentencing – Good, Bad and Indifferent' (2012) 36 *Criminal Law Journal* 205, 205.

¹² Bates above n 3.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Northern Territory Police, Fire and Emergency Services, 'Northern Territory Juvenile Pre-Court Diversion Scheme Remote and Urban Programs' (Internal Document, Northern Territory Police) 1.

¹⁶ Northern Territory Government, 'Questions and Answers - Youth Justice Act' (Fact sheet, Northern Territory Government) 2.

established in Darwin and Alice Springs.¹⁷ Four levels of diversion were created.¹⁸ These included written and verbal warnings, conferences and referrals to programs.¹⁹ A Police General Order was issued that listed excluded offences.²⁰ The excluded offences included armed robberies, sexual assaults and drug trafficking.²¹ The scheme introduced two types of conference; family group conferencing and victim offender conferencing.²² Obviously, the first type of conference involved the youth and their family whilst the second type included the victim. In his work on restorative justice, Groenhuijsen distinguished between three types of restorative practice: integrated, alternative and additional.²³ Integrated practices are part of the traditional system.²⁴ Alternative practices are used in place of the traditional system and additional practices tend to be used after an offender has been through court.²⁵ The conferencing established under this new diversionary scheme can be described as alternative. It is utilised instead of the traditional system.²⁶

In the first nine months of operation, 1059 out of 1302 apprehended youth were referred to diversion.²⁷ That is a total of 81 per cent.²⁸ This shows that a vast majority of cases were referred. It indicates that diversion quickly became the preferred method of dealing with juveniles. Police welcomed the change.²⁹ However, only 241 youths were referred for a family group conference and 57 for a victim offender conference.³⁰ This demonstrates that conferencing was not the main form of diversion used.

Furthermore, part of the Commonwealth funding was reserved for remote communities.³¹ The remote services were designed to have a holistic focus to target youth boredom.³² Loretta and Oxley, reveal

¹⁷ Bates above n 3.

¹⁸ Bates above n 1, 4; Northern Territory Government, above n 16, 2.

¹⁹ Ibid.

²⁰ Bates above n 3, 4.

²¹ Ibid, 9.

²² Northern Territory Government, above n 16, 2.

²³ Hon Justice Brian J Preston, 'The Use of Restorative Justice for Environmental Crime (2011) 35 *Criminal Law Journal* 136, 138.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Bates above n 3.

²⁷ Ibid, 8.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid, 10.

³¹ Northern Territory Police, Fire and Emergency Services, above n 15, 1.

³² Ibid, 2.

[t]he reasons behind the offending behaviour of our Indigenous young people are profound and complex. It relates to the systemic disadvantage resulting from the colonial legacies that continue to impact on the lives of Indigenous people. The effects of these legacies are generational, and with each new generation, are compounded. Understanding Indigenous young offenders' behaviour in this light will give rise to a holistic, multi-dimensional, approach which provides an avenue for the re-empowerment of Indigenous families.³³

The Indigenous context is therefore unique. Conferencing practices must account for this. The Commonwealth Government reserved separate funding for remote Aboriginal communities.³⁴ This suggests that they understand the unique context of these communities. Hence, their approach should be commended. The remote programs are called Community Youth Development Units ('CYDU').³⁵ They were established in seven communities.³⁶ These communities being; Tennant Creek, Wadeye, Tiwi, Groote Eylandt, Galiwinku, Boorooloola and Ikuntji.³⁷ The CDYU in Tiwi has been successful.³⁸ For this reason the Tiwi Youth Development and Diversion Unit ('TYDDU') will be discussed at greater length in this paper. The strengths and weaknesses of the TYDDU will be used to make recommendations on improvements that could be made across the Territory to see Aboriginal youth engaging with the criminal justice system in more positive and empowering ways.

C Evaluation

The new diversion scheme was welcomed by Police³⁹ but that does not mean that it was introduced without issue. Diversion requires the consent of both the youth and a responsible adult.⁴⁰ Hence, youth can decline to participate in a conference. This suggest that conferencing will not always be appropriate. If a youth wishes to contest the case against them they would

³³ Kelly Loretta and Elvina Oxley, 'A Dingo in Sheep's Clothing? The Rhetoric of Youth Justice Conferencing and the Indigenous Reality' [1999] *Indigenous Law Bulletin* 12 <<http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/IndigLawB/1999/12.html?stem=0&synonyms=0&query=youth%20and%20conference>>.

³⁴ Northern Territory Police, Fire and Emergency Services, above n 15, 1.

³⁵ *Ibid.*, 2-3.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Bauman and Pope (eds) 2009 'Solid Work you mob are doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia' (Report, Federal Court of Australia, 2009).

³⁹ Bates above n 3.

⁴⁰ Bates above n 3, 5.

clearly not consent to diversion. Conferencing would not be appropriate in such a case. Therefore it will not always be a more suitable approach than court. Furthermore,

[t]here needs to be active acknowledgement and acceptance by the offender of personal responsibility for the crime and its consequences rather than merely having passive responsibility imposed on the offender by others, such as the police...or court.⁴¹

Youth are therefore held accountable to a higher extent during conferencing than they are in the traditional system. This might deter some youth from engaging in the process.⁴² Youth who deny any involvement in the offence would not be able to engage in the conferencing process. Again, this suggests that conferencing is not always suitable. The traditional system can accommodate both youths who wish to take responsibility for their actions and those who wish to contest their case.⁴³ As highlighted above, conferencing cannot do this. Thus conferencing will never be able to replace the traditional system and can only ever compliment it.⁴⁴

Another weakness of conferencing concerns its nature. Mary Williams has argued that the issues in relation to community courts are not legislative but rather that they are political and social.⁴⁵ The same can be said of conferencing. Legislative provisions in support of conferencing now exist in the Territory but strong political and social support does not.⁴⁶ This issue is inherently political.⁴⁷ Indigenous juvenile crime rates consistently make their way into the media⁴⁸ and 'the search for options to respond to the epidemic is apparently somewhat frantic.'⁴⁹ Conferencing is sadly subject to the whim of politicians.⁵⁰ This point is made strongly

⁴¹ Preston, above n 23, 146.

⁴² Kurt Noble 'Youth Justice Conferencing' (Speech delivered at Victim Offender Mediation- Youth Justice Conferencing, Darwin ACICA Room Magistrates Court, 14 March 2014).

⁴³ Legal Aid Western Australia, *Pleading not guilty in the Magistrates Court* (9 November 2012) <<http://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/appearing/Pages/PleadingNotGuilty.aspx>>.

⁴⁴ See generally, Larsen, above n 4.

⁴⁵ Mary Williams, 'Why are there no Adult Community Courts Operating in the Northern Territory of Australia' (2013) 8 *Indigenous Law Bulletin* 4, 7.

⁴⁶ See generally, Caroline Herbert, *Elferink says Boot Camp Scheme More Effective than Youth Outreach Service* (17 April 2014) News ABC <<http://www.abc.net.au/news/2014-04-17/elferink-says-boot-camp-scheme-more-effective-than/5397782>>.

⁴⁷ Ken Buttrum, 'Juvenile Justice: What Works and What Doesn't!' (Paper presented at the Australian Institute of Criminology Conference Juvenile Crime and Juvenile Justice: Toward 2000 and Beyond, Adelaide, 26 & 27 June 1997).

⁴⁸ Ibid.

⁴⁹ Andrew Trotter and Harry Hobbs, 'A Historical Perspective on Juvenile Justice Reform in Queensland' (2014) 38 *Criminal Law Journal* 77, 89.

⁵⁰ Buttrum, above n 47.

by the Queensland example.⁵¹ In 2013 Attorney-General Bleijie abolished Queensland's successful conferencing program.⁵² Mr Bleijie has returned the state to a military-style regime by re-introducing boot camps despite cries from within his own party to provide a cost-benefit analysis to justify the change.⁵³ Conferencing in the Territory might not currently be under as much threat. However, politicians in the Territory continue to subscribe to a 'tough on crime' approach.⁵⁴ Contrastingly, conferencing has been described as a 'soft-option'.⁵⁵ There is also 'a kind of cultural resistance to the restorative approach'.⁵⁶ Therefore, the prospects for the development of conferencing in the Territory can be described as weak, at best. This is a significant issue and the control that the state has over conferencing has been criticised. Cunneen expresses that,

the state and particularly its criminal justice agencies are not seen as legitimate by Indigenous peoples in settler states. A state-sponsored restorative justice program may well be viewed with suspicion and seen as another imposed form of control.⁵⁷

Cunneen further argues that,

the conferencing process may stigmatise Indigenous families as being uncaring, incompetent, failures, etc. He argues that this 'blaming' of Indigenous families may 'reinforce the perceived need for greater forms of bureaucratic surveillance and intervention.' Cunneen's concerns are based on a fear of history repeating itself.⁵⁸

The diversion scheme in the Territory is run by the Police.⁵⁹ It is a state-sponsored program.⁶⁰ If Cunneen is correct in his observations then there are significant issues with diversionary conferencing in the Territory, particularly with regards to Aboriginal youth. This is a complex issue and it would not be easily resolved. It is multifaceted and would require a shift in attitude from both politicians and Aboriginal communities. The final recommendation in this paper

⁵¹ Trotter and Hobbs, above n 49.

⁵² Ibid, 87.

⁵³ Ibid.

⁵⁴ See eg, John Elferink - Attorney-General and Minister for Justice, 'Tougher Penalties for Assault on Workers' (Media Release, 13 February 2013); John Elferink - Attorney-General and Minister for Justice, 'Criminal Property Forfeiture High Court Decision' (Media Release, 10 April 2014).

⁵⁵ King, above n 5, citing Law Reform Commission of Western Australia, *Court Intervention Programs: Consultation Paper*, Project No 96 (2008) 31.

⁵⁶ Larsen, above n 4, quoting Strang H, *Restorative justice programs in Australia: A report to the Criminology Council* (2001) Australian Institute of Criminology <<http://www.criminologyresearchcouncil.gov.au/reports/strang/>>.

⁵⁷ Heather McRae (et al), *Indigenous Legal Issues: Commentary and Materials* (Thomson Reuters, 4th ed, 2009) [10.970].

⁵⁸ Loretta and Oxley, above n 33.

⁵⁹ Youth Diversion Unit, 'Youth Diversion Program' (Brochure, Northern Territory Police).

⁶⁰ Northern Territory Police, Fire and Emergency Services, above n 15.

revolves around this issue. However, for now it is suffice to say that conferencing suffers from significant weaknesses. This does not mean that it has not been successful in other ways.

In 2007 Teresa Cunningham published a study on conferencing in the Territory. The study analysed data taken from the Police Realtime Online Management System ('PROMIS') from 2000 to 2005. This is the period in which conferencing was run under the *Juvenile Justice Act 1983* (NT).⁶¹ Therefore, the study provides an accurate evaluation on diversionary conferencing in its original form. Cunningham found that 39 per cent of youth dealt with in court re-offended within 12 months. This is to be compared with 21 per cent of youths who were dealt with via conferencing.⁶² This is a significant difference and shows that conferencing has a positive impact on recidivism. The results are even better when the data for females alone is examined because diverted females were shown to be 57 per cent less likely to re-offend than those who went to court.⁶³ The study provides evidence-based support for conferencing. If conferencing reduces levels of re-offending then it can be said that it is a better alternative to court.

Nevertheless, the biggest strength of this new scheme was that it transformed the approach taken in the Territory. Prior to this system, any police officer could summons or arrest youths.⁶⁴ Under this new system it became mandatory for officers to seek approval from an authorised officer before charging a youth.⁶⁵ This shows a change in attitude towards juvenile justice in the Territory. The focus was now on diverting youth away from traditional court processes.⁶⁶ This is because it was recognised that courts might not be the best place to deal with juveniles.⁶⁷ The new approach lead to more flexible solutions that are able to address the potential causes of a youths offending behaviour.⁶⁸ As was noted by Commissioner Brian Bates,

⁶¹ Cunningham, above n 2, 2.

⁶² Ibid, 3.

⁶³ Ibid.

⁶⁴ Bates above n 3, 5.

⁶⁵ Authorised officers being a Senior Seargent or above, see, Bates above n 12, 5.

⁶⁶ Ibid.

⁶⁷ Bates above n 3.

⁶⁸ Ibid.

[t]he conferencing process is flexible, particularly in regard to different cultural practices. In consultation with police, families can choose their own procedures, including the time and place of the meeting, and the creation of outcomes[.]⁶⁹

This approach stands in direct contrast to court processes that have a set structure and limited sentencing options.⁷⁰ At court the Magistrate or Judge decides on the outcome with the assistance of the prosecution and defence.⁷¹ Alternatively, during a conference the youth and their family work with Police to devise their own plan.⁷² Therefore, the plan would be better understood by the youth and hence compliance would be higher.⁷³ This is a positive feature of conferencing and highlights why conferencing is often a more appropriate method for dealing with Aboriginal youth.

D Conclusion

In 2000 both the Commonwealth and Territory governments decided that the juvenile justice system in the Territory needed to change. As a result diversion was introduced. The new scheme saw conferencing being used in preference to court. Conferencing is not appropriate for all juvenile matters because juveniles still need the option to contest matters. However, Cunningham's study shows that when conferencing is used it does reduce levels of re-offending. The new approach is good because it enables youth and their families to create an individualised plan with Police that addresses underlying issues. Nevertheless, diversionary conferences are embedded with significant issues. Some of these issues are political and will not be easily resolved.

III PRESENT

A Diversionary Conferences

1 Introduction

The process of diversionary conferences⁷⁴ has virtually continued uninterrupted since it began in 2000. However the source of the power has changed and they are now based in different legislation. It is therefore beneficial to examine the current legislative foundation for

⁶⁹ Ibid, 7.

⁷⁰ See eg, *Sentencing Act* (NT).

⁷¹ Ibid.

⁷² Bates above n 3.

⁷³ Larsen, above n 4.

⁷⁴ Note the legislation refers to these conferences as Youth Justice Conferences but this paper will refer to them as diversionary conferences to avoid confusion between them and the pre-sentencing conferences analysed later on.

diversionary conferences. This section will first do this and then further evaluate the strengths and weaknesses of this type of conference.

2 Summary

The *Youth Justice Act 2005* (NT) ('YJA') was introduced in 2005. It sort to expand upon the existing diversionary scheme.⁷⁵ All diversionary practices in the Territory now find their basis in this legislation. Section 39(2) of the YJA makes it clear that when a police officer believes on reasonable grounds that a youth has committed an offence,⁷⁶

The officer must, [emphasis added] instead of charging the youth with the offence, do one or more of the following as the officer considers appropriate:

- (a) give the youth a verbal warning;
- (b) give the youth a written warning;
- (c) cause a Youth Justice Conference involving the youth to be convened;
- (d) refer the youth to a diversion program.⁷⁷

The four types of diversion therefore remain unchanged from the former system. However, conferences are now the most common form of diversion.⁷⁸ Conferences under this section can also be described as alternative using Groenhuijsen's classification of restorative practices.⁷⁹ They are still designed to be used instead of traditional court processes.⁸⁰ The word must in the section of legislation outlined above highlights the legislative presumption in favour of diversion that now exists. The explanatory statement of the *Youth Justice Bill 2005* (NT) makes this observation expressly.⁸¹ There is also a definition of 'Youth Justice Conference' in the Act. This definition reveals that they include conferences with the victim and conferences with members of the youth's family.⁸² Thus there are still two types of diversionary conference. The consent of the youth and a responsible adult is still needed.⁸³ Diversionary conferences follow a set process.⁸⁴ The process has three stages. It starts with hearing the victims and offenders stories, then moves to looking at the effects of the offence

⁷⁵ Northern Territory, Parliamentary Debates, *Senate* 5 May 2005 (Dr Toyne).

⁷⁶ *Youth Justice Act 2005* (NT) s 39(1).

⁷⁷ *Ibid*, s 39(2).

⁷⁸ Youth Diversion Unit, above n 59.

⁷⁹ Preston, above n 23, 138.

⁸⁰ *Ibid*.

⁸¹ Explanatory Statement, *Youth Justice Bill 2005* (NT) 39.

⁸² *Ibid*, s39(7).

⁸³ *Youth Justice Act 2005* (NT) s 40.

⁸⁴ Youth Diversion Unit, above n 59.

and concludes by deciding on ways to repair the harm caused.⁸⁵ The offender always speaks first.⁸⁶ The process focuses on expressing disapproval instead of formal punishment.⁸⁷ Braithwaite suggests that this is a more effective deterrent to crime.⁸⁸ In conferencing the focus is on the victim and the offender discussing the offence and working together towards a solution.⁸⁹ This stands in stark contrast to the role that the parties play in court.⁹⁰ It is one of the biggest differences between conferences and court. Doug Dick SM summarises this point nicely when he states that,

[t]he removal of symbols of western authority has been instrumental in creating a system that allows voices to speak and be heard – voices that are usually silenced.⁹¹

A conference then concludes with any agreement reached being recorded in writing.⁹²

3 Evaluation

This type of conference has continued without much interruption under the new legislation. Hence, the strengths and weaknesses outlined above still apply. Teresa Cunningham has conducted further studies that have confirmed the results of her earlier studies.⁹³ She has concluded that under the new legislation conferences still reduce recidivism.⁹⁴ However, these later studies have not been published and hence it is not possible to compare the data.⁹⁵ Although the evaluation above regarding diversionary conferencing still applies, it is beneficial to make further observations about conferencing under the new legislation.

One noteworthy weakness of the scheme involves the legislative exceptions to the presumption for diversion.⁹⁶ One of these exceptions concerns 'serious offences'.⁹⁷ Serious

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Kathleen Daly (et al) 'Youth Sex Offending, Recidivism and Restorative Justice: Comparing Court and Conference Cases' (2013) *Australian & New Zealand Journal of Criminology* 46
<<http://anj.sagepub.com.ezproxy.cdu.edu.au/content/46/2/241.full.pdf+html>>.

⁸⁸ Ibid.

⁸⁹ Youth Diversion Unit, above n 59.

⁹⁰ See eg, Peter Butt (et al) *Concise Australian Legal Dictionary* (Lexis Nexis Butterworths, 3rd ed, 2004) 15.

⁹¹ McRae, above n 57, [10.980].

⁹² Youth Diversion Unit, above n 59.

⁹³ Email from Jennie Renfree (Senior Program and Policy Officer of Youth Services Northern Territory Police) to Rachel McDonald, 11 April 2014.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ *Youth Justice Act 2005* (NT) s 39(3).

offence is defined in the *Youth Justice Regulations 2005* (NT) and includes murder, robbery, serious harm, kidnapping, riots, perjury and unlawful entry if the place is a dwelling.⁹⁸ Most of these offences appear to be excluded for obvious reasons.⁹⁹ However, there does not appear to be a good reason to exclude unlawful entries of a dwelling.¹⁰⁰ This is a common offence within the Territory.¹⁰¹ Its exclusion suggests that a high number of youths are being unnecessarily excluded from diversion. Nevertheless, a police officer can refer a serious offence for diversion if it is in the interests of justice to do so.¹⁰² Therefore, these serious offences are not entirely excluded from diversion. Traffic offences are.¹⁰³ Diversion does not apply to traffic offences.¹⁰⁴ This is because 'offence' is defined in the relevant part of the *Youth Justice Act 2005* (NT) to exclude traffic offences.¹⁰⁵ Therefore, all traffic matters must go to court.¹⁰⁶ Traffic offences are common amongst youth.¹⁰⁷ Consequently, a vast number of youths would be prevented from accessing diversion. A representative of the Northern Territory Police has expressed that changes are underway in this regard because the Police recognise that court is not the best place to deal with traffic offences.¹⁰⁸ Logically, there is no reason to exclude traffic offences and the fact that they are currently still being excluded highlights one major weakness of diversionary conferences. However, there is another feature of diversionary conferences that broadens their scope.

The YDU state that a diversionary conference 'involves the youth, their family and may includes [sic] victim participation.'¹⁰⁹ This description in combination with the definition in the legislation reveals that victim attendance is not compulsory. This is positive because it would not limit the number of youth who are eligible for diversionary conferencing.¹¹⁰ It would be impractical to require victim participation because then youth would be denied an opportunity

⁹⁷ Ibid.

⁹⁸ *Youth Justice Regulations 2005* (NT); please note other offences are included and the above list simply provides examples.

⁹⁹ See generally, Larsen, above n 4.

¹⁰⁰ Youth Diversion Unit, above n 59.

¹⁰¹ See eg, Jacqueline Stewart (et al) 'Indigenous Youth Justice Programs Evaluation' (Draft Report, Australian Institute of Criminology).

¹⁰² Explanatory Statement, *Youth Justice Bill 2005* (NT) 39.

¹⁰³ See eg, *Youth Justice Act 2005* (NT) s 38.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ See eg, Bauman and Pope (eds), above n 38, 61.

¹⁰⁷ Review of the Northern Territory Youth Justice System Committee, above n 2.

¹⁰⁸ Bauman and Pope (eds), above n 38.

¹⁰⁹ Youth Diversion Unit, above n 59.

¹¹⁰ Noble, above n 42.

to attend a conference through no fault of their own. This broadening of the reach of diversionary conferences is important because there is no value in restricting their use.

John Nicholson states that there is, 'a growing awareness that the individual nature of sentencing may require different outcomes for different persons'.¹¹¹ Conferencing allows for individualised programs to be created.¹¹² The programs created during a conference are designed to address the causes underlying the offending.¹¹³ The focus is on the youth and their well-being.¹¹⁴ This empowers the youth to make positive changes in their life and the ongoing support they receive helps them to achieve this.¹¹⁵ Courts are not in a position to be able to provide the same empowering experience and level of support.¹¹⁶ Their punitive focus and lack of on-going support does not foster behavioural change in the same way that conferencing does.¹¹⁷ This highlights one of the major benefits of conferencing over traditional processes. Aboriginal youth need to be supported by their family and their community in order to change their behavioural patterns.¹¹⁸ For this reason, processes such as conferencing should be promoted.

4 Conclusion

The legislative purpose of diversionary conferences is to divert youths away from traditional processes. This is because it is recognised that youth need additional support to address their criminal behaviour. The process followed during a conference differs dramatically from traditional court processes. The victim and offender get to tell their story and then they find a resolution together. This can be compared to the minimal role that these parties play in court. It can be said that the excluded offences are too vast and this is limiting the number of youth who can access diversionary conferences. Alternatively, not requiring victim participation means that more youth are able to access diversionary conferences. The focus of this type of conference on the youth is fantastic because it creates a space in which youth can address their problematic behaviours and can be supported to change these patterns of behaviour.

¹¹¹ Nicholson, above n 11.

¹¹² Youth Diversion Unit, above n 59.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid, note that the Youth Diversion Units have contracted out this case management work because they do not have the capacity to complete it themselves.

¹¹⁶ Justice Action, *RESTORATIVE JUSTICE, Creating a Safer Society*, (29 June 2012) <<http://www.justiceaction.org.au/cms/prisons/alternatives/restorative-justice>>.

¹¹⁷ Ibid.

¹¹⁸ Nicholson, above n 11.

This is something that courts have not yet been able to do and potentially never will. Hence, conferencing is a more appropriate method for dealing with juveniles in many situations.

B Pre-sentencing Conferences

1 Introduction

The second type of conferencing run in the Territory is referred to as a pre-sentencing conference ('PSC'). It is also governed by the YJA but it is found in a different section of the legislation because it is not a diversionary practice. This section will first summarise the legislative basis for PSCs and will then detail the process followed. From there an evaluation of the strengths and weaknesses of PSCs will be conducted.

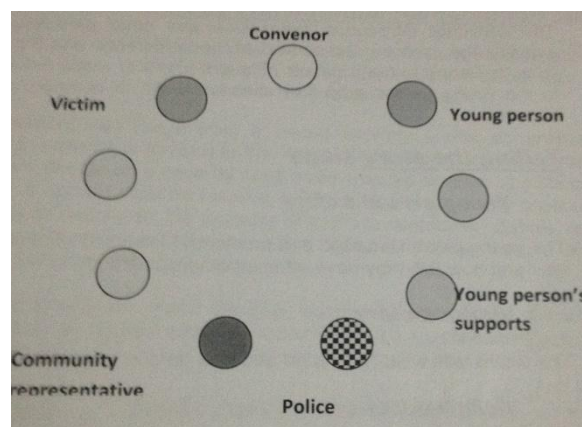
2 Summary

Section 84(1) of the YJA reads,

[t]he Court may, when determining the appropriate sentence for a youth who has been found guilty of an offence, adjourn the proceedings and order the youth to participate in a pre-sentencing conference.¹¹⁹

The Community Justice Centre ('CJC') run all PSCs and they interpret this section to include both youth who have been found guilty and those who have pleaded guilty.¹²⁰ PSCs would be classed by Groenhuijsen as an integrated practice.¹²¹ This is because they operate in conjunction with the traditional system.¹²² The CJC follow a similar process to the YDU.

Firstly, the convenor sets up the room.¹²³ They set up chairs as per the diagram below.¹²⁴



¹¹⁹ *Youth Justice Act 2005* (NT) s 84(1).

¹²⁰ Community Justice Centre, 'Youth Justice Conferencing' (Paper presented at Victim Offender Mediation- Youth Justice Conferencing, Darwin ACICA Room Magistrates Court, 14 March 2014).

¹²¹ Preston, above n 23, 138.

¹²² Ibid.

¹²³ Community Justice Centre, above n 120.

¹²⁴ Diagram sourced from *ibid*.

This set up differs drastically from traditional court rooms which emphasise the Magistrate and their authority.¹²⁵ It has been noted that during a conference, '[t]he physical separation of the traditional court room setting is completely done away with.'¹²⁶ This encourages equality between the participants and enables them to share their thoughts and feelings openly.¹²⁷ This is one of the biggest differences between conferences and court.¹²⁸ At court offenders and victims participate very little.¹²⁹

The next stage involves the Police officer reading the charges and the youth admitting them.¹³⁰ From there everyone speaks about their involvement with the offence and the impact that it has had.¹³¹ In the final stage the participants sign their agreement.¹³² The Magistrate then takes account of the outcome of the PSC in sentencing.¹³³

3. Evaluation

The North Australian Aboriginal Justice Agency ('NAAJA') have noted that PSCs will only be good for Aboriginal people if they are properly resourced.¹³⁴ The CJC is not well resourced¹³⁵ and this explains why only 16 PSCs have been conducted since 2004.¹³⁶ 15 of these being conducted in Darwin and one in Katherine.¹³⁷ This highlights that the problem is worse for youth in remote locations. Underutilisation is a major weakness of PSCs. It is difficult for PSCs to have a strong impact on the community if they are rarely used. PSCs are currently not being

¹²⁵ McRae (et al), above n 57, [10.990] quoting New South Wales Aboriginal Justice Advisory Council, 'Policing Public Order: Offensive Language and Conduct, the Impact on Aboriginal People' (AJAC, Sydney, 1999).

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Community Justice Centre, above n 120.

¹³¹ Ibid.

¹³² Community Justice Centre, above n 120.

¹³³ Ibid.

¹³⁴ North Australian Aboriginal Justice Agency, submissions to Standing Committee of Attorneys General, *Inquiry into National Guidelines and Principles for Restorative Justice Programs and Processes for Criminal Matters*, 1 September 2011.

¹³⁵ Noble, above n 42; Renfree above n 93.

¹³⁶ Email from Ippei Okazaki (Director of the Community Justice Centre) to Rachel McDonald, 9 May 2014.

¹³⁷ Ibid.

used in preference to court and this is the case regardless of whether or not they are more appropriate.

Furthermore, it is difficult to evaluate this type of conference because the CJC have not conducted any formal evaluations.¹³⁸ They have recently created an evaluation form to be completed by the participants upon completion of a conference but to date it has only been used once.¹³⁹ It is therefore impossible to evaluate PSCs in any meaningful way. This makes it difficult to justify whether or not they are having a positive impact on the community. This is another key challenge for the CJC.

The process followed by the CJC is similar to the YDU process in that it shifts the roles that the party's play. As Michael King highlights regarding traditional court processes, 'Nils Christie described the state as having stolen the dispute from them [victims' and offenders].'¹⁴⁰ This is an eloquent description of the traditional criminal justice system. Crimes are viewed as being committed against the state and it is the responsibility of the state to punish criminals.¹⁴¹ The state is the primary player in criminal litigation and in some respects controls the entire process.¹⁴² The party's role can be described as passive.¹⁴³ The opposite is true of conferencing.¹⁴⁴ A key theme in conferencing is the participation of the community to resolve disputes between its members.¹⁴⁵ As Brown et al reveal '[c]rime is seen as a violation of people and relationships, creating an obligation to repair or "restore" the social fabric.'¹⁴⁶ The contrast between these two views on crime is obvious. Participation is required during a PSC.¹⁴⁷ Active participation is one of the eleven stated aims of PSCs.¹⁴⁸ This switch from a passive role to an active role for the party's highlights one benefit of conferencing. Conferencing is an empowering experience for the party's¹⁴⁹ whilst court is disempowering.¹⁵⁰

¹³⁸ Noble, above n 42.

¹³⁹ Community Justice Centre, 'Survey 2014' (Paper presented at Victim Offender Mediation- Youth Justice Conferencing, Darwin ACICA Room Magistrates Court, 14 March 2014).

¹⁴⁰ King, above n 5, citing Nils Christie, 'Conflicts as Property' (1977) 17 *British Journal of Criminology* 1, 3-4.

¹⁴¹ McRae (et al), above n 57, 10.970.

¹⁴² King, above n 5.

¹⁴³ Larsen, above n 4, 2.

¹⁴⁴ Preston, above n 23.

¹⁴⁵ Ibid.

¹⁴⁶ McRae, above n 57.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ See eg, Preston, above n 23, 151; Youth Diversion Unit, above n 59; Larsen above n 4, 7.

¹⁵⁰ Gerard Bryant, 'Koori Court, Shepparton Victoria' [2008] *Indigenous Law Bulletin* 30.

Studies also suggest that restorative justice is beneficial for victims.¹⁵¹ These benefits include a reduced desire for revenge and the ability to return to work faster.¹⁵² As his Honour Justice Brian Preston notes, '[e]ffective restorative outcomes can also lead to healing of the harm done to the victims.'¹⁵³ This reveals that the benefits of conferencing extend beyond the offender. Victim participation is another one of the CJC's eleven aims.¹⁵⁴ Therefore, PSCs are designed to benefit people on either side of the dispute. Court processes cannot be described as being this beneficial for victims.¹⁵⁵ This illustrates one more strength of conferencing. It is not just better for Aboriginal youth. It is also better for victims. This is another reason why conferencing should be promoted.

The final CJC aims that will be mentioned are community involvement and cultural appropriateness.¹⁵⁶ This is specifically relevant for Aboriginal youth. The CJC have created an informal and flexible process that enables it to be culturally relevant.¹⁵⁷ For instance, if a youth is Aboriginal the CJC will involve members of their Aboriginal community in the conference.¹⁵⁸ The Commonwealth Government have attempted to make the traditional court system more culturally appropriate, employing methods such as funding an Aboriginal Interpreter Service in the Territory.¹⁵⁹ However, by giving Aboriginal elders a voice in a conference,¹⁶⁰ it can be said that conferencing goes one step further towards embracing cultural diversity. This is a major advantage of PSCs. Linking Aboriginal youth with their communities is crucial.¹⁶¹ If PSCs are able to do this better than courts then they should be used in preference to court.

4. Conclusion

The PSCs run by the CJC have valuable differences to the tradition court system. These include, the active participation of the youth, victim and community. This leads to youth being held

¹⁵¹ King, above n 5, citing Lawrence W Sherman and Heather Strang, *Restorative Justice: The Evidence* (2007) and Heather Strang et al, 'Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis' (2006) 62 *Journal of Social Issues* 281, 285, 295, 298, 300–1.

¹⁵² Ibid.

¹⁵³ Preston, above n 23, 150.

¹⁵⁴ Community Justice Centre, above n 120.

¹⁵⁵ See generally, Larsen, above n 4.

¹⁵⁶ Community Justice Centre, above n 120.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ The Hon Trevor Riley 'Aborigines and the Court: The Northern Territory experience' (2012) 2 *Northern Territory Law Journal* 215, 221.

¹⁶⁰ Community Justice Centre, above n 120.

¹⁶¹ McRae, above n 57, [10.990].

accountable, increased victim satisfaction, and an increased respect for different cultures. However, the CJC is also not well resourced and hence PSCs are underutilised. This is a substantial challenge that must be overcome in order for PSCs to develop successfully in the Territory.

C Tiwi Youth Development and Diversion Unit ('TYDDU')

1 Introduction

Conferences run by the TYDDU were originally run under the *Juvenile Justice Act 1983* (NT) and the *Police Administration Act 1978* (NT) but they are now conducted under section 39 of the *Youth Justice Act 2005* (NT). Hence it would appear as though these types of conferences have already been analysed. However, funding has been specifically allocated to a number of remote communities. Conferencing in these communities has developed in its own unique way. Therefore, it is beneficial to examine one of these communities before drawing conclusions about conferencing in the Territory. The TYDDU is going to be examined because, as has been previously mentioned, it is known to be a successful program. This section will firstly outline TYDDU practices and then evaluate the strengths and weaknesses of the program.

2 Summary

The Tiwi Islands are made up of two smaller islands, Bathurst Island and Melville Island. These islands are located 80 kilometres north of Darwin.¹⁶² Tiwi Islanders are a close-knit group of people comprising of four main skin groups or clans.¹⁶³ These are the sun, the stone, the mullet and the pandanus clans.¹⁶⁴ The TYDDU received their initial grant of \$209, 000 in December 2002.¹⁶⁵ The program is co-ordinated by a man named Kevin Doolen. Kevin is a non-Indigenous man but he is fluent in the Tiwi language.¹⁶⁶ His understanding of the community is invaluable in his role at the TYDDU.¹⁶⁷ The three most common matter types that are referred to the

¹⁶² Stewart, above n 101.

¹⁶³ Australian Broadcasting Corporation, 'Ponki mediation', *Law Report*, 19 July 2011 (Damien Carrick).

¹⁶⁴ Ibid.

¹⁶⁵ Northern Territory Police, Fire and Emergency Services, above n 15, 2.

¹⁶⁶ Australian Broadcasting Corporation, above n 163.

¹⁶⁷ Ibid.

TYDDU for conferencing are unlawful entries, unlawful use of motor vehicles and stealing.¹⁶⁸ They highlight the nature of the crimes that are commonly committed by youths on the Tiwi islands. The TYDDU provide a crucial link between the Police and these youths.¹⁶⁹ The TYDDU use a blend of traditional and western mediation practices.¹⁷⁰ Conferencing brings a deeper level of healing which accords with traditional Indigenous perspectives on conflict management.¹⁷¹ However, Tiwi Mediators have qualifications that are recognised by the formal Western system.¹⁷² This is an excellent example of a community initiative that embraces contemporary society whilst respecting traditional values. It portrays a community that is able to walk in two worlds.¹⁷³ This is perhaps why the TYDDU is hailed as such a success.

3 Evaluation

When compared with the other types of conference the TYDDU has much more data available. However, there is no data on how many youth are or were eligible for TYDDU conferences.¹⁷⁴ Hence, it is impossible to determine whether or not the TYDDU are reaching all eligible youths with their service.¹⁷⁵ This in turn means that it is impossible to determine whether or not there is an unmet demand in Tiwi for conferences. Although there are some issues with TYDDU data the data does show a general trend towards reducing recidivism. The data reveals that of the 65 youth examined only 13 had contact with the police again within 12 months of their TYDDU conference.¹⁷⁶ This means that only 20 per cent of youths re-offended after one year and this is good in comparison to re-offending levels of youths following court processes in the

¹⁶⁸ Stewart, above n 101, 55.

¹⁶⁹ Tiwi Islands Shire Council 'Tiwi Islands Shire Council Annual Report 2012/13' (Annual report, 2013) 9 <<http://www.tiwiislands.nt.gov.au/DOCUMENTS/TISC%20Annual%20Report%202012-13.pdf>>.

¹⁷⁰ Letter from Priscilla Collins (Chief Executive Officer, NAAJA) to Natalie Marsic (Executive Officer of the Secretariat of the Standing Committee of Attorney's General) 1 September 2011 <<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CD0QFjAB&url=http%3A%2F%2Fwww.naaja.org.au%2Findex.php%2Fcomponent%2Fattachments%2Fdownload%2F34.html&ei=QykuU9-ZEsWOkAXcroDIAw&usg=AFQjCNFbfNVQKwlv4FataKH9aSOg1ybzOQ&bvm=bv.62922401,d.dGI>>; Australian Broadcasting Corporation, above n 163.

¹⁷¹ Bauman and Pope (eds), above n 38, xiii.

¹⁷² Australian Institute of Criminology, *Australian Crime and Violence Prevention Awards* (19 November 2013) <http://www.aic.gov.au/media_library/aic/acvpa/2013/ACVPA_2013_winners%20brochure.pdf>.

¹⁷³ See eg, Standing Committee on Aboriginal and Torres Strait Islander Affairs, The Parliament of the Commonwealth of Australia, *Doing Time - Time for Doing Indigenous youth in the criminal justice system* (2011).

¹⁷⁴ Jacqueline Stewart, above n 101, 61.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid, 65.

Territory and other jurisdictions.¹⁷⁷ It suggests that TYDDU conferencing is having a positive impact on the rate of re-offending in Tiwi. This again shows that conferencing is a valuable alternative for Aboriginal youth on remote communities.

However, another notable weakness with TYDDU conferencing is linked to the general problems with diversionary conferences in that the offences that are eligible for conferencing are limited. Upon examination of TYDDU statistics, the effects of this limitation are evident. Between 2000 and 2011, 646 offences were recorded by police as having been committed by youths.¹⁷⁸ However, the TYDDU only received 66 referrals between 2003 and 2011.¹⁷⁹ Although these time periods are not the same, these figures suggest that referred matters still only make up just over 10 per cent of all offences committed. This is not a very large percentage. These statistics reveal that a large number of youths miss out on conferencing. It suggests that the eligible offences need to be broadened. This is especially true for traffic matters.¹⁸⁰ If matters eligible for conferencing are restricted then conferencing will never become a truly viable alternative to court.

The final weakness of TYDDU conferencing that should be mentioned is the lack of resources that the TYDDU have.¹⁸¹ This is similar to the point made above in regards to the CJC. A report commissioned by the AIC concluded,

[a]ll programs seemed to struggle with the resources available, which is not surprising given that many social service agencies and programs face funding constraints in the face of significant demand.¹⁸²

This struggle for resources is felt by the TYDDU who can only afford to hire two staff.¹⁸³ They are forced to hire a female worker through Community Development Employment Projects. ('CDEP') in order to cater for the genders and skin groups of their clientele.¹⁸⁴ There are then a number of staff from different organisations who volunteer with the TYDDU.¹⁸⁵ From there, the TYDDU must rely on additional support from organisations such as NAAJA and the CJC.¹⁸⁶

¹⁷⁷ Ibid.

¹⁷⁸ Ibid, 55.

¹⁷⁹ Ibid, 57

¹⁸⁰ See comments made above and see eg, *Youth Justice Act 2005* (NT) s 38.

¹⁸¹ See generally, Stewart, above n 101.

¹⁸² Ibid, 9.

¹⁸³ Ibid, 49.

¹⁸⁴ Ibid, 59.

¹⁸⁵ Ibid.

¹⁸⁶ Letter from Priscilla Collins (Chief Executive Officer, NAAJA) to Legcon sen (Committee Secretary

This situation is not ideal and impacts on the work that the TYDDU do. As Loretta and Oxley express,

[i]n mainstream western societies, those considered to have knowledge and experience in these social classifications are usually social workers, psychologists and sociologists. These experts are rewarded for their time with consultancy fees or salaries. Unlike the largely non-Indigenous professionals, grass-roots community members are expected to *volunteer* their services to youth justice conferencing ... These people have the most knowledge and experience of Indigenous issues and can address our problems with discernment and wisdom. Yet their expertise is often ignored or rejected, or is appropriated without acknowledgment or payment.¹⁸⁷

This passage is confronting but it is entirely true. If Western professionals are paid for the work that they do regarding conferencing then there should not be an expectation that Indigenous elders should volunteer their time. Loretta and Oxley correctly note that the elder's expertise is being used without acknowledgment of the invaluable role that it plays within conferencing for Aboriginal youth. The same observation can be made for the TYDDU.¹⁸⁸ All TYDDU mediators should be paid for the work that they do. The Commonwealth and Territory Governments should formally recognise the work of the TYDDU by providing them with more funding to continue with their successful diversionary program.

The best aspect of the TYDDU is that they are community owned. This ownership goes further than the community involvement in PSCs.¹⁸⁹ The Police consulted with the community in Tiwi and got them to develop the TYDDU.¹⁹⁰ The TYDDU ensure that they have mediators from all four Tiwi skin groups.¹⁹¹ This means that they can have the right people present at a conference as the elders that attend have kinship obligations towards the youth.¹⁹² The TYDDU operates in Tiwi language and incorporates Tiwi law.¹⁹³ As was noted in the Solid Work you Mob are Doing Report,

Senate Legal and Constitutional Affairs Committee) 15 March 2013
<<https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0CFAQFjAE&url=https%3A%2F%2Fsenate.aph.gov.au%2Fsubmissions%2Fcomittees%2Fviewdocument.aspx%3Ffid%3D761b5f7d-9385-4f8e-aff2-f55c9413c50b&ei=QykuU9-ZEsWOkAXcroDIAw&usg=AFQjCNEh6k4hCox03TV8vLcU0R1WcgX93w&bvm=bv.62922401,d.dGI>>.

¹⁸⁷ Loretta and Oxley, above n 33.

¹⁸⁸ Stewart, above n 101.

¹⁸⁹ See comments in section above.

¹⁹⁰ Rhiân Williams and Ian Castillon, 'No Stick No Stone – the Work of the Tiwi Youth Diversion and Development Unit in Managing Family and Community Conflicts' in Bauman and Pope (eds) 2009 'Solid Work you mob are doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia' (Report, Federal Court of Australia, 2009), 60.

¹⁹¹ Collins (2011) above n 170.

¹⁹² Stewart, above n 101, 62.

¹⁹³ Williams and Castillon, above n 190, 64.

[c]onducting interventions in the Tiwi language means that Tiwi, and others, see Tiwi managing and taking control of their own business. This reinforces not only Tiwi authority, but also that Tiwi people are not dependent on non-Indigenous people to 'fix them' or 'fix things for them.'¹⁹⁴

This ownership is hugely beneficial. It makes the processes used culturally appropriate and empowers the community to resolve their own issues.¹⁹⁵ The foreign fly in fly out court system does not have the same sense of legitimacy in Tiwi.¹⁹⁶ Since colonisation judges have noted issues regarding the comprehension levels of Aboriginal defendants subject to the western criminal justice system.¹⁹⁷ Two judges who made significant comment on this issue are Justice Dashwood and Justice Kriewaldt.¹⁹⁸ They noted that for many reasons Aboriginal defendants do not appear to understand crucial evidentiary issues.¹⁹⁹ As recently, as 2012 the current Chief Justice of the Supreme Court of the Northern Territory noted that these issues remain a concern.²⁰⁰ If there is a high level of concern regarding the level of understanding Aboriginal defendants have during western criminal proceedings it is a mystery as to why that they are still being subjected to them. This is especially true in communities such as Tiwi where there are better systems in place such as the TYDDU. Systems that the community have ownership over. Systems that are seen to be legitimate ways to resolve conflict and crime.²⁰¹

Kevin Doolen has seen the way that the TYDDU '... empower[s] Tiwi in the Balanda [white] system.'²⁰² The author submits that this respect and empowerment has contributed to the success of the TYDDU. The TYDDU shows what can happen when an Aboriginal community is trusted to organise their own programs. Academics have articulated this point by expressing that when an offender is punished by their own community the punishment is seen to be more relevant.²⁰³ Justice Blokland makes this point in relation to her involvement as a Magistrate with the Nhulunbuy Community Court.²⁰⁴ Justice Blokland reveals

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ McRae, above n 57, [10.970].

¹⁹⁷ Riley, above n 159.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ McRae, above n 57, [10.970].

²⁰² Stewart, above n 101, 58.

²⁰³ McRae, above n 57, [10.990].

²⁰⁴ Jenny Blokland, 'Northern territory: Where Two Worlds Collide' [2006] *Alternative Law Journal* 24.

[m]y own observation is that defendants in the Community Court are much more engaged with the remarks made by respected community members than with my own sentencing reasons (even if those reasons are interpreted).²⁰⁵

The same point has been made of the TYDDU. A community representative noted that 'when community members growl it has a bigger impact, they [Tiwi youth] do listen.'²⁰⁶ Therefore, not only is TYDDU conferencing seen as a legitimate practice by the community but it is also respected by the youth in the community. This means that it has the ability to impact upon the behaviour of youth in a much more powerful way than the current fly in fly out court system in Tiwi.

The TYDDU conduct extensive assessments prior to a conference and this enables them to identify any underlying issues that may have contributed to the offending.²⁰⁷ The holistic nature of the TYDDU's approach means that they support Tiwi youth comprehensively. Police acknowledge that the informal, background work that the TYDDU do is crucial.²⁰⁸ It can also be attributed to the success of the program as a whole. The TYDDU has had a real and positive impact in the Tiwi community.²⁰⁹ This is recognised by the Police, the community and even the youths themselves.

4 Conclusion

The TYDDU started with funds from the Commonwealth Government but the program was developed and is run by the Tiwi community. The co-ordinator, Kevin Doolen is an asset to the program with his ability to operate in both the traditional and western worlds. There are issues with the program such as the way that eligible offences are limited. The TYDDU also faces significant challenges in regards to resources. Despite these issues and challenges the TYDDU has been successful. Data reveals that the TYDDU has reduced re-offending amongst Tiwi youth. The program is respected by the community. It operates in Tiwi language with an understanding of Tiwi laws and provides a high level of support to Tiwi youth who have gone astray. The fly in fly out courts simply do not have the capacity to support youths in the same way. This is what makes the TYDDU a better alternative to court for Tiwi youth. It highlights

²⁰⁵ Stewart, above n 101.

²⁰⁶ Ibid.

²⁰⁷ Ibid, 62.

²⁰⁸ Ibid, 63.

²⁰⁹ See eg, Bauman and Pope (eds), above n 38.

why the TYDDU is an invaluable program that needs to continue and should be replicated in other remote communities.

IV FUTURE

A Introduction

Now that the origins of conferencing have been discussed along with their current status it is valuable to highlight how things could or should progress in the future. Four basic recommendations will be made in this regard. Two weaknesses stand out above the others mentioned. These are the lack of data to evaluate conferencing and the lack of resources to facilitate it. These weaknesses form the first two recommendations. One strength of the TYDDU is very relevant for Aboriginal youth and this is the way that the TYDDU is community owned. The third recommendation is that conferencing programs on remote communities should follow the TYDDU's approach. Finally, a general recommendation is made in relation to a change of attitude that is necessary in order for any progress to be made. This is the fourth and final recommendation made.

B Recommendation 1

There is an absence of data on PSCs and this makes it almost impossible to evaluate their effect.²¹⁰ The TYDDU has had some of its data evaluated but there are issues determining how effectively the TYDDU reach all potential clients.²¹¹ At the TYDDU, program implementation has been prioritised above the collection of data.²¹² Whilst this prioritisation is understandable, it reveals an issue that is prominent across all services involved in conferencing in the Territory.²¹³ This appears to be an international phenomenon.²¹⁴ As was noted in a study conducted by the Commonwealth Attorney-General's Department,

²¹⁰ See comments in section above and see eg, Kurt Noble, above n 42.

²¹¹ See comments in section above and see eg, Stewart, above n 101, 61.

²¹² Ibid, 63.

²¹³ Review of the Northern Territory Youth Justice System Committee, above n 2.

²¹⁴ Professor Kenneth Polk (et al) 'Early Intervention: Diversion and Youth Conferencing' (Report, Australian Government Attorney-General's Department, 2003) <
http://www.crimeprevention.gov.au/Publications/EarlyIntervention/Documents/Diversion_Report.htm
>.

[u]nfortunately there is insufficient research available nationally or internationally for any evidence-based assessment of either cautioning or conferencing in relation to the issue of the prevention of further offending.²¹⁵

Teresa Cunningham has conducted evaluations on the effect of diversionary conferencing on re-offending but she notes the limitations of her studies because their focus is purely on recidivism.²¹⁶ Cunningham suggests that further research is needed to examine other aspects contributing to juvenile crime rates.²¹⁷ This is because restorative practices and conferencing are not solely focused on recidivism.²¹⁸ Hence, even though Cunningham has conducted studies on diversionary conferencing there is still a lack of holistic data on this conference type. This means that there are no comprehensive evaluations of conferencing in the Territory. There are in fact no solid evaluations of any youth justice program.²¹⁹ For this reason the forth recommendation in the Northern Territory Youth Justice Review of 2011 ('the 2011 review') was for resources to be provided to enhance the collection and interpretation of data.²²⁰ This is because all policies should be evidence-based.²²¹ Organisations should be able to prove that their programs are working and they should be able to measure how well they are working.²²² As was noted in the 2011 review '[e]vidence based decision making is critical where results must be accountable and withstand public evaluation.'²²³ If conferencing is to withstand public criticism and be promoted as a better alternative to courts then there must be evidence in support of it. Currently in the Territory all forms of conferencing do not have enough supportive data²²⁴ and thus the process is not truly evidence-based. It is imperative for this to change.²²⁵ In the absence of supportive data it is difficult to persuasively argue that conferencing is a better alternative to the court system. Research is crucial.²²⁶ It is the first step towards gaining support for conferencing and in justifying it as a better process for Aboriginal youth. For this reason the first recommendation to be made is for data collection and evaluative processes to be improved.

²¹⁵ Ibid.

²¹⁶ Cunningham, above n 2, 6.

²¹⁷ Ibid.

²¹⁸ Larsen, above n 4, vii.

²¹⁹ Review of the Northern Territory Youth Justice System Committee, above n 2.

²²⁰ Ibid, viii.

²²¹ Ibid, 26.

²²² See generally, *ibid*.

²²³ Ibid.

²²⁴ See arguments in sections above and see eg, Noble, above n 42; Stewart, above n 101, 61.

²²⁵ Review of the Northern Territory Youth Justice System Committee, above n 2.

²²⁶ Ibid.

C Recommendation 2

Diversory conferences appear to be well resourced but they are the only form of conferencing in the Territory that are.²²⁷ The TYDDU and the CJC are under resourced and this significantly limits their work.²²⁸ This lack of resources extends beyond Tiwi as it has been noted that there is a lack of remote programs.²²⁹ This suggests that many Aboriginal youth do not have access to conferencing. It means that their understanding of the criminal justice system would be limited to the fly in fly out courts that they witness on their community. This is despite the fact that in 2000 the Commonwealth and Northern Territory Governments sort to change their approach to juvenile justice.²³⁰ Diversion may have been introduced in 2000 but it is yet to reach its full potential.²³¹ This is especially true in remote communities.²³² The 2011 review on youth justice recommended that further resources be provided for diversion but it also noted that results will not be immediate.²³³ This suggests that it is important for funds to be provided on a long-term basis.²³⁴ Academics have noted that long-term approaches are needed.²³⁵ Therefore, any funding or resources provided to community organisations needs to be continuous.²³⁶ The TYDDU's funding might be minimal but it has been continuous.²³⁷ Although the TYDDU are under resourced they have been successful and it is therefore a model that could be followed in other communities. If programs like the TYDDU were developed in other communities they could have similar results. This would be an important step forward in the way of criminal justice strategies for Aboriginal youth in the Territory. However, communities cannot make this progress on their own. They need financial support and such support is most likely to come from government. This is how the issue takes on a political nature. The politics of the issue will be addressed further in recommendation 4. For now it is suffice to say that YDU funding should continue, CJC and TYDDU funding should increase and further funding should be allocated to remote communities. If conferencing is to develop as a more appropriate method for Aboriginal youth then it must be well resourced.

²²⁷ Northern Territory Police, Fire and Emergency Services, above n 15.

²²⁸ Noble, above n 42; Renfree above n 93; Jacqueline Stewart, above n 101.

²²⁹ Cunningham, above n 2; Northern Territory Police, 'Northern Territory Police Youth Diversion Scheme and Remote Community Based Programs' (Internal Document, Northern Territory Police).

²³⁰ Bates above n 3.

²³¹ See generally, Larsen, above n 4.

²³² Ibid.

²³³ Review of the Northern Territory Youth Justice System Committee, above n 2, v.

²³⁴ Nicholson, above n 11.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Jacqueline Stewart, above n 101.

D Recommendation 3

One of biggest strengths highlighted in this paper is the community ownership of the TYDDU. The Tiwi community were consulted when the TYDDU was established and they run the program.²³⁸ This community ownership can be attributed to the TYDDU's success.²³⁹ Any other programs developed in remote communities must have the same community support.²⁴⁰ This is not only noticeable through the TYDDU example but it has also been advocated for by stakeholders such as NAAJA. As NAAJA's Chief Executive Officer, Priscilla Collins, conveys

[i]t is time that we genuinely take on board the primary message of report after report. That is, if we want to address the causes of Aboriginal over-incarceration, Aboriginal people must be front and centre when it comes to developing and implementing solutions...Aboriginal people in the Northern Territory must be in the driver's seat when it comes to designing and implementing these strategies and policies.²⁴¹

However, it is not only stakeholders acting on behalf of Aboriginal people who have expressed such opinions. The Northern Territory Police have recognised that community owned solutions work better.²⁴² Loretta and Oxley firmly support this approach by expressing that,

[p]ractical, grass-roots programs need to be put in place to ensure that the measures for dealing with young offenders are 'culturally appropriate'. These programs must be developed, 'owned,' and controlled by Indigenous people.²⁴³

International research has confirmed this approach.²⁴⁴ International research shows that outcomes are better for Indigenous people when their own leaders have control.²⁴⁵ This research should be followed. Hence, the third recommendation is for remote communities to be given control over conferencing processes. If conferencing is going to be a legitimate option for Aboriginal youth it must be run by their communities.²⁴⁶ This means that the programs cannot be identical because no Aboriginal community is identical.²⁴⁷ A 'one size fits all' model

²³⁸ Williams and Castillon, above n 190, 64, 60.

²³⁹ Ibid.

²⁴⁰ Loretta and Oxley, above n 33.

²⁴¹ Collins (2013) above n 186.

²⁴² Northern Territory Police, above n 229.

²⁴³ Loretta and Oxley, above n 33.

²⁴⁴ Review of the Northern Territory Youth Justice System Committee, above n 2, 40.

²⁴⁵ Ibid, 40.

²⁴⁶ Loretta and Oxley, above n 33.

²⁴⁷ Ibid.

would therefore not be appropriate.²⁴⁸ In this regard it has been noted that the TYDDU had an easier task than some other communities because they are united by one language.²⁴⁹ Naturally it would be more complex for a community to develop conferencing if it needs to be facilitated in multiple languages. However, this additional challenge would not make it impossible to facilitate conferencing.²⁵⁰ Community Courts were held in Nhulunbuy and they were successfully run in multiple Yolngu Matha languages.²⁵¹ Another issue involves different cultural values such as payback.²⁵² It has been suggested that the TYDDU has been effective because payback is not a strong concept in Tiwi culture whilst it is a strong traditional practice in communities such as Wadeye.²⁵³ The issues with this are obvious but again, it does not render conferencing impossible. These issues are complex. However, they are best addressed by the communities themselves because community members have greater cultural understanding.²⁵⁴ It should be noted that other communities in the Territory are currently involved in negotiations to gain greater control over criminal justice strategies.²⁵⁵ In 2012 Maningrida elders signed a memorandum of understanding with Charles Darwin University staff regarding collaborative work on mediation and diversion.²⁵⁶ The aims of these elders would, if achieved, create a program similar to the TYDDU.²⁵⁷ A program that gives power to the elders to resolve disputes in a culturally appropriate manner.²⁵⁸ However, the Maningrida elders are still in the process of negotiations and are therefore much further behind Tiwi.²⁵⁹ It should be noted that Maningrida was not one of the seven communities to receive funding from the Commonwealth Government to establish a diversionary program.²⁶⁰ Therefore, their delayed progress cannot be attributed to the elders themselves. It ultimately falls on government.²⁶¹ This highlights the links between the recommendations made in this paper. They must all be addressed in order for any real progress to be made.

²⁴⁸ Ibid.

²⁴⁹ Williams and Castillon, above n 190, 64.

²⁵⁰ Blokland, above n 204.

²⁵¹ Ibid.

²⁵² Williams and Castillon, above n 190, 64.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Maningrida Elders and Charles Darwin University, 'Maningrida Justice Collaboration Agreement' (Memorandum of Understanding, 2012) 4 < <http://customarylawsproject.yolasite.com/selected-customary-law-resources.php>>.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Northern Territory Police, above n 2, 1.

²⁶¹ See generally, Bates above n 3.

E Recommendation 4

Earlier a point was made about the political context of conferencing within the Territory. It was noted that across the nation conferencing has been a political issue.²⁶² The recent abolition of conferencing in Queensland was used to illustrate this point. The ‘tough-on-crime’ approach taken in the Territory was highlighted along with the control that Cunneen believes the state has over conferencing. However, Cunneen’s views are not supported by the TYDDU example. The TYDDU is not subject to high levels of state control and there has not been any further stigmatisation of Tiwi families.²⁶³ Nevertheless, and considering the political landscape, it is surprising that conferencing has been so successful in the Territory.²⁶⁴ If a government takes a punitive approach over a therapeutic approach they are not likely to support conferencing.²⁶⁵ This issue is largely avoided in the Territory because whilst the Territory government take a punitive approach the diversionary program has been funded by the Commonwealth Government.²⁶⁶ However, if conferencing is to develop in the Territory, support is needed from local government. The 2011 youth justice review reflected that a change in attitude is needed.²⁶⁷ The review suggested that it is time for Territory Politicians to start doing what is right instead of what is popular.²⁶⁸ The review highlighted that this

requires a level of political courage because it involves challenging public perceptions about the nature and extent of youth crime, and why some approaches and interventions are better than others.²⁶⁹

It would require a shift in attitude from being tough on crime to being smart about crime.²⁷⁰ This would certainly require political courage.²⁷¹ Nevertheless, the final recommendation to be made is that political support for conferencing needs to be fostered in an ideological sense in order to generate practical support. This recommendation extends beyond political support

²⁶² Buttrum, above n 47.

²⁶³ See generally, Bauman and Pope (eds), above n 38.

²⁶⁴ Review of the Northern Territory Youth Justice System Committee, above n 2.

²⁶⁵ Larsen, above n 4, 29.

²⁶⁶ Northern Territory Police, Fire and Emergency Services, above n 15.

²⁶⁷ Review of the Northern Territory Youth Justice System Committee, above n 2, v.

²⁶⁸ *Ibid*, v.

²⁶⁹ *Ibid*, 42.

²⁷⁰ See eg, Elferink above n 54.

²⁷⁰ King, above n 5, citing Law Reform Commission of Western Australia, *Court Intervention Programs: Consultation Paper*, Project No 96 (2008) 31.

²⁷¹ Review of the Northern Territory Youth Justice System Committee, above n 2.

because support is also needed from within the judiciary.²⁷² Any changes of attitude within the judiciary are not likely to be swift.²⁷³ Significant developments within the legal system rarely are.²⁷⁴ John Nicholson makes this point rather strongly when he observes that

[t]he legal profession should cringe as it considers its brilliant legal minds of the past have accomplished so little by comparison with other professions in their approach to the criminal law and in particular to sentencing. The doctrine of precedent has much to answer for – it demands hindsight, and being bound by the past, when other professions are looking to make changes for and adapting to the future. The legal profession has survived on constancy and consistency. An offender from the 18th century England would have little difficulty recognising a criminal courtroom, the judge, the robes and ... harshness of jail architecture and jail life.²⁷⁵

Whilst the legal system is predicated on consistency, changes have been made when and where they are necessary.²⁷⁶ In 2000 both the Commonwealth and Territory Government's recognised the need for change in regards to the approach taken towards juvenile justice strategies.²⁷⁷ Successful changes have been made in this regard.²⁷⁸ Conferencing has produced positive results.²⁷⁹ However, in order to continue to be a viable alternative to court for Aboriginal youth the entire legal community needs to reassess their attitude towards the practice.²⁸⁰

F Conclusion

The recommendations made above arise directly from the evaluations made on the types of conferencing used in the Territory. There is a lack of data supporting conferencing across the Territory and therefore the first recommendation is that this be addressed. Accurate data is needed in order to promote conferencing as a better alternative to court for Aboriginal youth. There is also a general lack of resources to facilitate conferencing and this must also be addressed. This suggestion forms the second recommendation. The third recommendation stems from the success of the TYDDU. It is a culturally appropriate program with strong community support and it is recommended that any conferencing programs in other

²⁷² See eg, *R v Gladue* [1999] 1 S.C.R.688 a case that lead to the introduction of the Gladue court in Canada for Aboriginal people. This example shows how important support from the judiciary can be.

²⁷³ Nicholson, above n 11, 206.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ See eg, the introduction of the *Youth Justice Act 2005* (NT); see also, *Mabo and Others v Queensland* (No. 2) (1992) 175 CLR 1.

²⁷⁷ Bates above n 3.

²⁷⁸ See eg, Cunningham, above n 2.

²⁷⁹ Ibid.

²⁸⁰ See eg, Larsen, above n 4.

communities be similar in this respect. The final recommendation is more abstract and encompasses a change that must occur for the previous three recommendations to be achieved. In order for conferencing to develop, there needs to be strong governmental support. Recommendation four suggests that before this support becomes practical there must first be a shift in attitude towards restorative practices. This shift in attitude is needed both within the political sphere and the judicial sphere.

V CONCLUSION

In 2000 conferencing was formally introduced in the Territory. This new diversion scheme significantly altered the juvenile justice system. It was generally well accepted by the Police. Positive results were noticed because levels of re-offending were reduced. However, conferencing is not appropriate in all cases because it cannot be utilised unless the youth is willing to be held accountable for their actions. It also conflicts with the general approach taken towards criminal justice in the Territory. Conferencing can be viewed as a softer option to court and therefore it conflicts with the political approach usually taken in the Territory. Nevertheless, the positive aspects of conferencing have outweighed these issues.

For this reason conferencing continued under the YJA. In 2005 the YJA brought conferencing together into one piece of legislation. In practice it remained very much the same. There are still two types of conferencing and the youths consent is still required. The process requires active participation but victim attendance is not compulsory. This means that youth are not excluded from attending a conference because the victim is not interested. The number of eligible offences are however limited. This means that there is potentially a reduction in the number of youth who can access diversionary conferences. Nevertheless, once youth attend a conference they are supported to change their patterns of behaviour. Courts do not provide the same level of support. This is a clear strength of the conferencing process, proving that, fourteen years on, diversionary conferencing is still a valuable alternative to court for many youth.

PSCs are similar to diversionary conferences. They are also based in the YJA and require consent. Active participation is one of the CJs aims. This is a major difference between conferencing and court and has been shown to have positive results. PSCs are also beneficial for victims and people from diverse cultural backgrounds. However, PSCs face substantial

challenges. Some of these challenges are outside the CJs control such as a severe lack of resources. Other issues such as poor data collection can be attributed to the CJC. Both of these issues need to be addressed.

The TYDDU provide a fantastic example of how a CYDU can work. Their work has contributed to a reduction in re-offending. The program is also respected and used by community members. The TYDDU program is a great alternative to the fly in fly out court system for Tiwi youth. Nonetheless, the TYDDU also suffer from a severe lack of resources and this challenge is not something that they can change without external support. Another challenge that is out of the TYDDUs control is the number and type of offences that are eligible for conferencing. This effects the number of formal referrals that the TYDDU can receive. These issues should be addressed. However, the TYDDU make such a valuable contribution to the Tiwi community that ideally they should continue their work even if these issues cannot be addressed in the near future.

Most of the weaknesses outlined in this paper are actually challenges that need to be overcome. They in no way suggest that conferencing is not an appropriate process for dealing with juvenile offenders. The strengths of all types of conferencing reveal that it is an appropriate process. In many ways it is more appropriate than court. Active participation from the parties promotes restoration. When youth take responsibility for their actions and are supported to address their behavioural problems they can start to make changes. Conferencing also assists victims to deal with their emotional issues and to move on. Therefore, conferencing should be promoted, funded and developed so that it can reach its full potential in the Territory, especially in relation to Aboriginal youth.

However, if conferencing is going to be promoted the challenges faced need to be addressed. A number of challenges were mentioned in this paper but only four recommendations were made. This is because these recommendations are seen to be the first necessary steps.

Firstly, conferencing must be an evidence-based process. All forms of conferencing in the Territory suffer from a lack of adequate supporting data. To effectively promote conferencing and for it to develop appropriately it must be founded on evidence. Hence, data collection must improve and this is the first change that needs to occur.

There is also a significant need for more resources. Conferencing cannot be successful without funding. The government therefore need to increase their financial support. The TYDDU have proven that community owned conferencing works for Aboriginal youth but they need more money to increase the valuable work that they do. Other communities need funding to create similar programs and until they receive funding, very little progress can be made.

Additionally, we can learn from the TYDDU's positive example. Community consultation and ownership is imperative. Governments need to trust Aboriginal communities to run programs that will get better results.

Finally and before these changes can occur political courage is needed. Territory politicians need to step away from their conservative 'tough on crime' approach and educate their electorates on better restorative practices. Additionally, the judiciary need to relax their grip on consistency and the past in order to properly embrace this new approach.

Unfortunately the political nature of the issue makes it unlikely for change to occur in the near future. With liberal governments cutting funding to the entire sector it is not likely that conferencing will gain theoretical or practical support. This suggests that conferencing might have reached a stalemate in the Territory. It highlights the sad reality of the industry. Aboriginal communities can do very little to address the issues that they feel are important without financial support. Indigenous affairs are inherently political. However, that does not mean that we should place conferencing into the 'too hard basket'. Countless individuals working on the ground have the foresight to persevere with conferencing. These individuals are not just individuals with Aboriginal clients. These people will never let politician's forget that there are alternative ways of doing things. They will persevere until the day that a Politician is elected in the Territory with enough courage to shift our focus entirely. Therefore, all is not lost. Politics might create significant hurdles for Aboriginal communities but that does not mean that all is lost.

BIBLIOGRAPHY

A. Articles/ Books/ Reports

Bauman and Pope (eds) 2009 'Solid Work you mob are doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia' (Report, Federal Court of Australia, 2009)

Blokland, Jenny, 'Northern territory: Where Two Worlds Collide' [2006] *Alternative Law Journal* 24

Bryant, Gerard, 'Koori Court, Shepparton Victoria' [2008] *Indigenous Law Bulletin* 30

Butt, Peter, (et al) *Concise Australian Legal Dictionary* (Lexis Nexis Butterworths, 3rd ed, 2004) 15

Condliffe, Peter, 'The Challenge of Conferencing: Moving the Goal Posts for Offenders, Victims and Litigants', 9 *Australian Dispute Resolution Journal* 139

Cunningham, Teresa, 'Pre-court diversion in the Northern Territory: Impact on Juvenile Reoffending' (Report, No. 339, Australian Institute of Criminology, June 2007) 1; Review of the Northern Territory Youth Justice System Committee, Parliament of the Northern Territory, *Review of the Northern Territory Youth Justice System: Report* (2011)

Daly, Kathleen, (et al) 'Youth Sex Offending, Recidivism and Restorative Justice: Comparing Court and Conference Cases' (2013) *Australian & New Zealand Journal of Criminology* 46 <<http://anj.sagepub.com.ezproxy.cdu.edu.au/content/46/2/241.full.pdf+html>>

Karvelas, Patricia, 'Abbott Government to Consider Targets on Reducing Indigenous Incarceration', *The Australian* (Online) 14 February 2014 <<http://www.theaustralian.com.au/national-affairs/policy/abbott-government-to-consider-targets-on-reducing-indigenous-incarceration/story-fn9hm1pm-1226827108550>>

Karvelas, Patricia, 'Over-imprisonment of indigenous peoples a 'national emergency'', *The Australian* (Online) 18 February 2014 <<http://www.theaustralian.com.au/national-affairs/policy/overimprisonment-of-indigenous-peoples-a-national-emergency/story-fn9hm1pm-1226830247080>>

Karvelas, Patricia, 'Closing Gap is 'not the only way'', *The Australian* (Online) 26 February 2014 <<http://www.theaustralian.com.au/national-affairs/policy/closing-gap-is-not-the-only-way/story-fn9hm1pm-1226837610927#>>

King, Michael, 'Restorative justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' [2008] *Melbourne Law Review* 34

Larsen, Jacqueline, 'Restorative justice in the Australian criminal justice system' (Report, Australian Institute of Criminology, No 127, 2014)

Loretta, Kelly and Oxley, Elvina, 'A Dingo in Sheep's Clothing? The Rhetoric of Youth Justice Conferencing and the Indigenous Reality' [1999] *Indigenous Law Bulletin* 12

<<http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/IndigLawB/1999/12.html?stem=0&synonyms=0&query=youth%20and%20conference>>

McRae, Heather, (et al), *Indigenous Legal Issues: Commentary and Materials* (Thomson Reuters, 4th ed, 2009)

Nicholson, John, 'Sentencing – Good, Bad and Indifferent' (2012) 36 *Criminal Law Journal* 205

Polk, Kenneth (et al) 'Early Intervention: Diversion and Youth Conferencing' (Report, Australian Government Attorney-General's Department, 2003) <http://www.crimeprevention.gov.au/Publications/EarlyIntervention/Documents/Diversion_Report.htm>

Preston, Brian (The Hon) 'The Use of Restorative Justice for Environmental Crime (2011) 35 *Criminal Law Journal* 136

Riley, Trevor (The Hon), 'Aborigines and the Court: The Northern Territory experience' (2012) 2 *Northern Territory Law Journal* 215

Standing Committee on Aboriginal and Torres Strait Islander Affairs, The Parliament of the Commonwealth of Australia, *Doing Time - Time for Doing Indigenous youth in the criminal justice system* (2011)

Tiwi Islands Shire Council 'Tiwi Islands Shire Council Annual Report 2012/13' (Annual report, 2013) 9 <<http://www.tiwiislands.nt.gov.au/DOCUMENTS/TISC%20Annual%20Report%202012-13.pdf>>

Trotter, Andrew and Hobbs, Harry, 'A Historical Perspective on Juvenile Justice Reform in Queensland (2014) 38 *Criminal Law Journal* 77

Williams, Mary, 'Why are there no Adult Community Courts Operating in the Northern Territory of Australia' (2013) 8 *Indigenous Law Bulletin* 4,

Williams, Rhiân and Castillon, Ian, 'No Stick No Stone – the Work of the Tiwi Youth Diversion and Development Unit in Managing Family and Community Conflicts' in Bauman and Pope (eds) 2009 'Solid Work you mob are doing: Case Studies in Indigenous Dispute Resolution & Conflict Management in Australia' (Report, Federal Court of Australia, 2009)

B. Cases

Mabo and Others v Queensland (No. 2) (1992) 175 CLR 1

R v Gladue [1999] 1 S.C.R.688

C. Legislation

Explanatory Statement, Youth Justice Bill (No. 2) 2005 (NT)

Sentencing Act (NT)

Youth Justice Act 2005 (NT)

Youth Justice Regulations 2005 (NT)

D. Other

Australian Broadcasting Corporation, 'Ponki mediation', *Law Report*, 19 July 2011 (Damien Carrick)

Australian Bureau of Statistics, 'Law and Justice: Contact with the Law and Justice System' (23 May 2012)

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4725.0Chapter940Apr%202011>>

Australian Bureau of Statistics, 'Youth Offenders Decrease by 6 per cent', (27 February 2014)
<<http://www.abs.gov.au/ausstats/abs@.nsf/mediareleasesbyCatalogue/C566514524326A35CA257C8B00143E20?Opendocument>>

Australian Bureau of Statistics, Recorded Crime – Offenders (27 February 2014)
<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4519.0main+features52012-13>>

Australian Institute of Criminology, *Australian Crime and Violence Prevention Awards* (19 November 2013)
<http://www.aic.gov.au/media_library/aic/acvpa/2013/ACVPA_2013_winners%20brochure.pdf>

Bates, Brian (Commissioner) 'A Diverse Approach to Juvenile Offending In the Northern Territory', (Paper presented at the 4th National Outlook Symposium on Crime in Australia, Canberra, 21-22 June 2001)

Buttrum, Ken, 'Juvenile Justice: What Works and What Doesn't!' (Paper presented at the Australian Institute of Criminology Conference Juvenile Crime and Juvenile Justice: Toward 2000 and Beyond, Adelaide, 26 & 27 June 1997)

Community Justice Centre, 'Survey 2014' (Paper presented at Victim Offender Mediation- Youth Justice Conferencing, Darwin ACICA Room Magistrates Court, 14 March 2014)

Community Justice Centre, 'Youth Justice Conferencing' (Paper presented at Victim Offender Mediation- Youth Justice Conferencing, Darwin ACICA Room Magistrates Court, 14 March 2014)

Elferink, John - Attorney-General and Minister for Justice, 'Criminal Property Forfeiture High Court Decision' (Media Release, 10 April 2014)

Elferink, John - Attorney-General and Minister for Justice, 'Tougher Penalties for Assault on Workers' (Media Release, 13 February 2013)

Email from Ippei Okazaki (Director of the Community Justice Centre) to Rachel McDonald, 9 May 2014

Email from Jennie Renfree (Senior Program and Policy Officer of Youth Services Northern Territory Police) to Rachel McDonald, 11 April 2014

Holman, Zoe, *Australia's Indigenous Disadvantage Problem* (23 February 2014) Aljazeera <<http://www.aljazeera.com/indepth/features/2014/02/australia-indigenous-disadvantage-problem-201422385218552549.html>>

Herbert, Caroline, *Elferink says Boot Camp Scheme More Effective than Youth Outreach Service* (17 April 2014) News ABC <<http://www.abc.net.au/news/2014-04-17/elferink-says-boot-camp-scheme-more-effective-than/5397782>>

Justice Action, *RESTORATIVE JUSTICE, Creating a Safer Society*, (29 June 2012) <<http://www.justiceaction.org.au/cms/prisons/alternatives/restorative-justice>>

Legal Aid Western Australia, *Pleading not guilty in the Magistrates Court* (9 November 2012) <<http://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/appearing/Pages/PleadingNotGuilty.aspx>>

Letter from Priscilla Collins (Chief Executive Officer at the North Australian Aboriginal Justice Agency) to the Executive Officer of the Secretariat of the Standing Committee of Attorney's General (Natalie Marsic), 1 September 2011

Letter from Priscilla Collins (Chief Executive Officer at the North Australian Aboriginal Justice Agency) to the Committee Secretary of the Senate Legal and Constitutional Affairs Committee (Legcon Sen), 15 March 2013

Maningrida Elders and Charles Darwin University, 'Maningrida Justice Collaboration Agreement' (Memorandum of Understanding, 2012) 4 <<http://customarylproject.yolasite.com/selected-customary-law-resources.php>>

Kurt Noble 'Youth Justice Conferencing' (Speech delivered at Victim Offender Mediation-Youth Justice Conferencing, Darwin ACICA Room Magistrates Court, 14 March 2014)

North Australian Aboriginal Justice Agency, submissions to Standing Committee of Attorneys General, *Inquiry into National Guidelines and Principles for Restorative Justice Programs and Processes for Criminal Matters*, 1 September 2011

Northern Territory, *Parliamentary Debates*, Senate 5 May 2005, (Peter Toyne)

Northern Territory Government, 'Questions and Answers - Youth Justice Act' (Fact sheet, Northern Territory Government)

Northern Territory Police, Fire and Emergency Services, 'Northern Territory Juvenile Pre-Court Diversion Scheme Remote and Urban Programs' (Internal Document, Northern Territory Police)

Northern Territory Police, 'Northern Territory Police Youth Diversion Scheme and Remote Community Based Programs' (Internal Document, Northern Territory Police)

Polk, Kenneth, 'Juvenile Diversion in Australia: a National Review' (Paper presented at Juvenile Justice: From Lessons of the Past to a Road Map for the Future Conference, Sydney, 1-2 December 2003)

Stewart, Jacqueline, (et al) 'Indigenous Youth Justice Programs Evaluation' (Draft Report, Australian Institute of Criminology)

Youth Diversion Unit, 'Youth Diversion Program' (Brochure, Northern Territory Police)