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Secretary

Senate Finance and Public Administration Committee

Parliament House

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22 April 2013

## **KALACC Submission to the Senate Inquiry in to Justice Reinvestment**

Dear Ms McDonald

Many thanks for your email of 10 April which reads as follows:

Dear Mr Morris

The committee has received the information you provided to the inquiry into justice reinvestment as correspondence. However, the committee would be very interested to receive a written submission from KALACC for the inquiry.

Please now find on the following pages the KALACC submission to the Inquiry.

You will find that this submission is structured around three themes:

- **Political Will** – there are many existing reports in to justice issues and there are many excellent recommendations not yet enacted. We therefore urge Senators to exercise their minds as to what are the forces which have prevented previous reports from being enacted and which are likely to act against recommendations arising from this Inquiry from being enacted. We would consider this issue to be of fundamental importance. It seems somewhat futile and pointless to simply garner an ever larger number of reports and recommendations which are simply not enacted;

- **Aboriginality and Justice** – Justice reinvestment, especially in a state such as Western Australia and particularly as it pertains to youth, is largely an Aboriginal issue. We would argue that a range of factors consequentially arise from this fact and that key amongst those factors is that Aboriginal people themselves must be empowered to deliver justice outcomes. We refer here to a recommendation from the Law Reform Commission of Western Australia calling for the establishment of Aboriginal owned and controlled youth diversionary schemes and we then illustrate KALACC's endeavours to fulfil this recommendation, albeit with absolutely minimal levels of resourcing.
- **Guiding Principles** – In September 2006 the Law Reform Commission of Western Australia released its *Final Report in to Aboriginal Customary Laws, The interaction of Western Australian law with Aboriginal law and culture*. The Law Reform Commission Report contained Nine Guiding Principles. We consider those principles to be the foundation for appropriate consideration of all justice issues relating to Aboriginal people. We illustrate in this section the ways in which the Yiriman Project, auspiced by KALACC, fulfils each of the Guiding Principles espoused by the Law Reform Commission.

We thank the Senate Finance and Public Administration Committee for providing us with the opportunity of making this submission.

Regards

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## Executive Summary

This submission is structured around three themes. Our main points are as follows:

### Theme # One - Political Will

Given that this is a Senate ie Commonwealth Inquiry, we particularly note the following:

- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs  
June 2011 ***Doing Time - Time for Doing Indigenous youth in the criminal justice system***  
Recommendation 1 - National Partnership Agreement ..... 40

The Committee recommends that the Commonwealth Government develop a National Partnership Agreement dedicated to the Safe Communities Building Block and present this to the Council of Australian Governments by December 2011 for inclusion in the Closing the Gap strategy.

In this section we provide some analysis of the financial investments in the 'Safe and Supportive Communities' COAG Closing the Gap Building Block. We note that given the history of State and Commonwealth inaction in this area, that the first priority for Inquiry by the Senate should be an exploration of why so many existing recommendations have not been enacted. Foremost amongst these is the failure of the Commonwealth to act on the above recommendation.

### Theme # Two - Aboriginality and Justice

We present Recommendation # 50 from the Law Reform Commission of Western Australia September 2006 ***Final Report on Aboriginal Customary Laws*** ie "The Commission's view is that there should be diversion to Aboriginal-owned or Aboriginal-controlled processes." We explore the failure of the Western Australian State Government to implement this recommendation and we outline KALACC's endeavours, with extremely limited resources, to implement this recommendation.

### Theme # Three - Guiding Principles

We return again to the Law Reform Commission of Western Australia September 2006 ***Final Report on Aboriginal Customary Laws*** and we highlight the 9 Guiding Principles espoused by the Commission. We highlight the difference between 'consultation' and 'collaboration' and we then explore notions of 'community ownership' of youth diversionary programs as the fulfilment of the principle of 'Aboriginal empowerment' through reference to the Yiriman Project.

KALACC has no doubt that during the course of its public consultations that the Committee will receive a range of persuasive submissions and arguments. However, by way of analogy, in the United States of America last week the Senate voted down an extremely modest set of proposals to close some anomalies and loop holes in U.S. gun legislation. Having 'right on your side' is often not enough. Aboriginal Justice, especially as it relates to youth diversionary programs, is a sorry tale of Government inaction. The Senate would be well served to explore the reason why this is so.

## Theme # One Political Will –

### 1.1 A Lack of Collective Political Will

There are many existing reports in to justice issues and there are many excellent recommendations not yet enacted. We therefore urge Senators to exercise their minds as to what are the forces which have prevented previous reports from being enacted and which are likely to act against recommendations arising from this Inquiry from being enacted.

KALACC welcomes the Senate's interest in the issue of Justice Reinvestment. However, the single most important line of Inquiry for the Senate to follow is an examination of those forces and factors which have to date prevented justice reform from occurring. Having 'right on one's side' is simply not enough.

By way of analogy, in the United States of America this week the Senate voted down an extremely modest set of proposals to close some anomalies and loop holes in U.S. gun legislation. A majority of Senators voted against this very modest measure despite apparently 90% of Americans being in favour of the very modest set of measures.

We would imagine that in the course of this current Inquiry in to Justice Reinvestment that Senators will be presented with a large number of convincing reasons why Justice Reinvestment should be pursued. But past experience would lead us to believe that meaningful action is not to be easily won and significant reform is exceedingly difficult to achieve.

This would strongly suggest that the single most important line of Inquiry for the Senate to follow would be in relation to issues such as:

- Why State Justice and Corrective Services Agencies are not supportive of Justice Reinvestment ie they have strong vested interests in opposing Justice Reinvestment;
- Why State Politicians from both sides of Politics, both whilst in Government and whilst in Opposition, but particularly at Ministerial level, have not supported Justice Reinvestment;
- Why the Commonwealth Government has failed to take meaningful action in regards to the Safe and Supportive Communities Building Block within the Closing the Gap Agenda [through failure to implement ***Doing Time, Time for Doing*** Recommendations];
- Why the Commonwealth Government has failed to take meaningful action in regards to Aboriginal Youth At Risk Programs [through failure to implement Recommendations from the ***2010 Strategic Review of Indigenous Expenditure***].

## 1.2 Existing Reports and Recommendations That Have Not Been Enacted

Significant Government reports which have not been acted on include the following:

- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs June 2011 ***Doing Time - Time for Doing Indigenous youth in the criminal justice system*** ;
- February 2010 Commonwealth Department of Finance ***Strategic Review of Indigenous Expenditure***;
- 2006 Law Reform Commission of Western Australia **Final Report on Aboriginal Customary Laws**;
- WA Parliament Standing Committee on Education and Health 15 May 2008 ***WAYS FORWARD BEYOND THE BLAME GAME: SOME SUCCESSFUL INITIATIVES IN REMOTE INDIGENOUS COMMUNITIES IN WA***
- WA Parliament Standing Committee on Education and Health 17 March 2011 ***ALCOHOL RESTRICTIONS IN THE KIMBERLEY: A 'WINDOW OF OPPORTUNITY' FOR IMPROVED HEALTH, EDUCATION, HOUSING AND EMPLOYMENT***
- WA Parliament COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE 25 November 2010 ***'MAKING OUR PRISONS WORK' AN INQUIRY INTO THE EFFICIENCY AND EFFECTIVENESS OF PRISONER EDUCATION, TRAINING AND EMPLOYMENT STRATEGIES***

In addition to the above suite of Government reports, we note that there are also significant non Government reports, especially those from the National Indigenous Drug and Alcohol Council. In particular, we note the following:

- ***Bridges and Barriers ADDRESSING INDIGENOUS INCARCERATION AND HEALTH***, Revised Edition 2013;
- ***An economic analysis for Aboriginal and Torres Strait Islander offenders prison vs Residential treatment***, 2013

[KALACC does not have the capacity at this time to provide a commentary on the non Government reports and as such we limit ourselves in these pages to reports from the Commonwealth and State Governments.]

In essence Justice Reinvestment is about taking existing financial commitments in the justice system and reinvesting them in to different programs so as to achieve better social justice and criminal justice outcomes. As will be argued in the second theme in this submission, this agenda is integrally linked with issues of Aboriginal social justice and the Aboriginal experience of the criminal justice system. As such, KALACC will focus its arguments here on expenditures related to Aboriginal persons.

### **1.3 What Do We Know About the Level of Indigenous Related Expenditure in the ‘Safe and Supportive Communities’ Building Block?**

The *COAG 2012 Indigenous Expenditure Report* states as follows.

“Total direct Indigenous expenditure in 2010-11 was estimated to be \$25.4 billion, accounting for 5.6 per cent of total direct general government expenditure. Indigenous Australians make up 2.6 per cent of the population.

– The Australian Government accounted for \$11.5 billion (45 per cent) of direct Indigenous expenditure, with the remaining \$13.9 billion (55 per cent) provided by State and Territory governments.

– Mainstream services accounted for \$19.9 billion (78 per cent) of direct Indigenous expenditure, with the remaining \$5.5 billion (22 per cent) provided through Indigenous specific (targeted) services.

[Page 2 of the overview];

Safe and supportive community services promote an environment in which Indigenous Australians can feel safe from violence, abuse and neglect, and are able to engage in the communities in which they live

– law courts and legal services, including access to justice, is the focus area of expenditure for this chapter.

• Government direct expenditure on all safe and supportive community services was \$63.9 billion in 2010-11. Direct expenditure on services to Indigenous Australians made up \$6.8 billion (11 per cent) of the total

– State and Territory governments provided \$4.8 billion (71 per cent) of direct Indigenous expenditure — the Australian Government provided the remaining 29 per cent, plus significant indirect payments ‘to’ and ‘through’ the State and Territory governments

– most Indigenous expenditure related to mainstream services (\$5.4 billion, 79 per cent) — but Indigenous specific (targeted) expenditure accounted for \$1.4 billion (21 per cent) of safe and supportive community direct expenditure.

- Government direct expenditure per head of population on safe and supportive community services was \$11 814 per Indigenous person and \$2624 per non-Indigenous person in 2010-11, (a ratio of 4.5 to 1).
- Law courts and legal services accounted for \$5.3 billion (22 per cent) of total and \$736 million (23 per cent) of Indigenous direct expenditure on safe and supportive community services in 2010-11.”

[Page 221]

In summary, total national indigenous related expenditure per annum is \$25.4 billion and of that amount \$6.8 billion [just over one quarter of the total] is spent on safe and supportive communities, mainly through \$4.8 billion of State and Territory Government expenditures.

### **Western Australian State Government Expenditure**

In the state of Western Australia, Government budget figures for the 2012 – 13 Financial Year show as follows:

- Department of Corrective Services \$744 million.
- Department of the Attorney General \$373 million
- Police. \$1.2 billion
- Total combined figure is \$2.317 billion annually.

[Source: Western Australian Government Web site <http://www.ourstatebudget.wa.gov.au/>]

KALACC does not have access to more specific information which would allow for us to calculate the indigenous – related component of that overall expenditure for 2012 - 13. But we do note that the **2012 Indigenous Expenditure Report**, shows that for the 2010 – 2011 Financial Year total Western Australian Government expenditure on Indigenous related public order and safety was \$725 million. [See Chapter 8] On the basis of the figures above, we would guess that the figure for 2012 – 13 would be in the order of not less than \$800million.

Of that sum of \$800 million nearly none of that is currently allocated towards diversion and preventative programs. KALACC is well aware of the \$43 million Youth Justice Services program for the Pilbara and Kimberley regions, provided by the Department of Corrective Services and funded through the Royalties for Regions Program. In the next section Theme Two, Aboriginality and Justice, we explain why we don't regard this as being truly diversionary in nature.

In the state of Western Australia, under successive Liberal and Labor Governments, there has been a complete failure to enact recommendations from Government reports. In September 2006 the Law Reform Commission of Western Australia released its ***Final Report in to Aboriginal Customary Laws***. That report states as follows

“The Commission’s view is that there should be diversion to Aboriginal-owned or Aboriginal-controlled processes.” [Page 203 Heading]

“Recommendation 50

Diversion to a community justice group

1. That the Western Australian government establish a diversionary scheme for young Aboriginal people to be referred by the police to a community justice group. [Page 204]

This recommendation from the Law Reform Commission has certainly not been enacted and there is no evidence of any substantive action within Government which would lead towards this outcome being achieved in the foreseeable future.

We note also two reports from the Education and Health Standing Committee of the Western Australian Parliament and one Report from the Community Development and Justice Standing Committee. Please see Appendix for details. These Parliamentary Reports have included Recommendations along these lines:

- Funding for the Yiriman Project;
- Developing a Justice Reinvestment Trial Program;
- Aboriginal offender programming be strengthened;
- Local partnerships and relationships are considerably enhanced;
- The role for local Aboriginal communities in corrections be developed; and
- Non government agencies that are expected to provide services are properly resourced to do so.

Officers of the Department of Corrective Services provided testimony to the Community Development and Justice Standing Committee and made some truly outrageous and extraordinary claims to members of the committee, claiming that the Department had a productive working relationship with KALACC. Thankfully the report noted as follows “the Committee has since confirmed with DCS that there has in fact been no meaningful communication between the two agencies for two years and that one of the issues is KALACC’s need for some level of financial support for any role it might play.” [page 96]



This conclusion from the Committee serves as some substantive, credible and independent evidence that the kinds of initiatives being recommended by the Law Reform Commission and as contained in three Committee Reports presented to the Western Australian Parliament have not been enacted. It also shines a light on the huge discrepancy between the rhetoric of the Department of Corrective Services in regards to community partnerships and the reality of the situation.

### **Commonwealth Government Expenditure**

We return now to the **2012 Indigenous Expenditure Report**. As before, that report shows a total Indigenous related \$6.8 billion [just over one quarter of the total] is spent on safe and supportive communities, mainly through \$4.8 billion of State and Territory Government expenditures. That leaves a balance of nearly \$2.0 billion spent by the Commonwealth.

The report shows on page 221 that the \$6.8 billion spent on the Safe and Supportive Communities Building Block is broken down as follows:

- Public Order and Safety 47% or \$3.196 billion
- Community Support and Welfare 45.6% or \$3.100 billion
- Recreation and Culture 7.3 % or \$0.496 billion.

As is readily evident, State Governments allocate a lot of resources to Public Order and Safety whereas the Commonwealth allocates a lot of resources to Community Support and Welfare.

From a KALACC perspective, this does not mean that the Commonwealth does not have a role to play in regards to Safe and Supportive Communities beyond its current role in terms of Community Support and Welfare. KALACC provided a submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs and the June 2011 report ***Doing Time - Time for Doing Indigenous youth in the criminal justice system*** reads in part as follows:

2.63

Wes Morris, from the Kimberley Aboriginal Law and Culture Centre (KALACC), claimed that the absence of a National Partnership Agreement linked with the Safe Communities Building Block was an anomaly in the Closing the Gap strategy which limited the capacity of governments and non-government organisations to implement Indigenous justice specific initiatives:

It is almost the perverse irony that most of those building blocks do have national partnership agreements, but of course one does not. The one that does not is the safe communities building block ... it happens to be the one with no national partnership agreement and thus no funding.

Page 23

The ***Doing Time - Time for Doing Indigenous youth in the criminal justice system Report*** also contains the following:

Recommendation 1 - National Partnership Agreement ..... 40

The Committee recommends that the Commonwealth Government develop a National Partnership Agreement dedicated to the Safe Communities Building Block and present this to the Council of Australian Governments by December 2011 for inclusion in the Closing the Gap strategy.

But of course, here we are nearly two years later and there is not the slightest evidence or indication that this recommendation will be enacted by the current Commonwealth Government.

We note also that the full title of the Building Block is the 'Safe and Supportive Communities Building Block'. In the above, we have focused principally on the expenditures in the justice system [ie Safe Communities] and we have not as yet focused on Supportive Communities.

In regards to this nexus between Safe and Supportive Communities we note the words of Western Australian Chief Justice Wayne Martin in a speech which he delivered to a suicide prevention summit held in the Kimberley community of Billard. A media report of that speech reads in part as follows:

“Chief Justice Wayne Martin believes the factors responsible for the over-representation of Aboriginals in the criminal justice system are the same issues that cause them to commit suicide at such high rates.

He said yesterday the strategies used to try to reduce the Aboriginal incarceration rate had failed and it was time to look at alternative approaches and “bottom-up” solutions.

He said it was the same demographic, young men aged between 15 and 30, that clogged up the courts and was over-represented in suicide figures.”

[Article by Jessica Strutt, Reporter with the West Australian newspaper. Article available upon request.]

In regards to these fundamental root causes of Aboriginal youth despair [manifested variously through self harm or through anti social behaviour] there is strong and credible research which shows a statistically inescapable nexus between cultural continuity and personal continuity ie Aboriginal youths who live in communities with strong cultural leadership and cultural governance are highly unlikely to take their own lives. We refer here to the corpus of research undertaken in the Canadian context by Professor Michael J Chandler.

But we also refer to the following March 2013 paper prepared by Chris Holland, with Pat Dudgeon and Helen Milroy, for the National Mental Health Commission: ***The Mental Health and Social and Emotional Wellbeing of Aboriginal and Torres Strait Islander Peoples, Families and Communities Supplementary Paper to A Contributing Life: the 2012 National Report Card on Mental Health and Suicide Prevention***

[[http://www.naccho.org.au/download/aboriginal health/The%20Mental%20Health%20and%20Social%20and%20Emotional%20Wellbeing%20of%20Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples,%20Families%20and%20Communities%20March%202013.pdf](http://www.naccho.org.au/download/aboriginal%20health/The%20Mental%20Health%20and%20Social%20and%20Emotional%20Wellbeing%20of%20Aboriginal%20and%20Torres%20Strait%20Islander%20Peoples,%20Families%20and%20Communities%20March%202013.pdf)]

“Cultural continuity can be understood in broad terms as self-determination and cultural maintenance. In Professor Chandler’s work a range of cultural continuity indicators were identified. These included: self-government; land claims; community controlled services, (including police and fire services, health services, child protection and education services); knowledge of indigenous languages; women in positions of leadership; and facilities dedicated to cultural purposes. The number of indicators present correlated to decreased suicide rates in communities.” [Page 32]

But the reality at present is that we have a whole of Government Indigenous agenda called Closing the Gap. That agenda is translated in to reality through six Building Blocks and through National Partnership Agreements. Culture is not a stand alone Building Block, but is instead shoe - horned in to the Safe and Supportive Communities Building Block. And this Building Block is the only one with no National Partnership Agreement, and thus no funding, and no sign of that changing any time soon.

Recently we have witnessed the release of the National Cultural Policy, but this was just yet another missed opportunity. The Policy is full of high blown rhetoric but the fundamental realities have not changed at all. It still remains true that out of a total indigenous related expenditure of \$25.4 billion annually, the Government invests \$7.2 million in to the Office of the Arts Indigenous Culture Support Program. This represents an investment of 0.0002% of Indigenous spending on the maintenance of traditional cultural practices.

In the above, we have shown that there is a failure on the part of the Commonwealth to act meaningfully in terms of significant macro policy area by failing to develop a Safe and Supportive Communities National Partnership Agreement. But we would also argue that the Government has completely failed to act on its own recommendations even at the level of micro policy implementation.

The Commonwealth of Australia, Department of Finance February **2010 Indigenous Expenditure Review Report** states as follows:

“Recommendation # 22: Current Indigenous Youth At Risk Programs should be broad banded and aligned with Commonwealth policy objectives on Indigenous Youth, with supportive sustainable funding arrangements applying. The consolidated program should comprise: ....

- 22.1 the youth diversion elements of the Petrol Sniffing Diversion Project/ Youth Wellbeing program;
- 22.2 the youth diversion elements of the Indigenous Justice Program;
- 22.3 Reducing Substance Use (Petrol Sniffing);
- 22.4 Closing the Gap in the Northern Territory – Youth In Communities.”

[Page 19]

This certainly has not occurred. Far from it, what we see is that the Commonwealth Department of the Attorney General has narrow banded rather than broad banded. The **Indigenous Justice Program Guideline 2013-14** were significantly different from earlier guidelines and funding criteria.

In the most recent Guidelines we read as follows:

“Cultural, sporting, educational, vocational, and recreational projects that merely target Indigenous Australians ‘at risk’ and do not directly address the underlying causes of offending behaviour are not priorities under the Indigenous Justice Program. While these types of projects can prevent offending by Indigenous youth, these projects generally target education, employment and general wellbeing and health outcomes.” [page 2]

In summary, the Commonwealth failed to get the big picture right by failing to develop a National Partnership Agreement for Safe and Supportive Communities [as recommended by the **Doing Time, Time for Doing** report]. And the Commonwealth has failed to get the small picture right by failing to broad band the delivery of Youth At Risk programs funded by the Commonwealth [as recommended by the Government’s own **2010 Strategic Review of Indigenous Expenditure.**]

## **1.4 Why Is It Seemingly Impossible to Get Traction on Justice Reform and Especially for Aboriginal Youth At Risk Programs?**

The answer to the above question is a mixture of the absolutely self evident and the absolutely esoteric and unknown. In the self evident category is the fact that Government agencies themselves have vested interests in not changing. On the previous page we cited the example of the Commonwealth Attorney General's Department deciding to narrow band rather than broad band. The sums of money involved there are quite minor. On a more substantive level, we have State Justice Agencies which have very large budgetary allocations and are deeply wedded to their own practices. As the Western Australian Parliamentary Standing Committee of Community Development and Justice has noted,

“On a more general note, the Committee understands that there is a level of caution on DCS's part in generating strong community links due to the risks that they pose to the security of the community or the safety of the offender.” [page 96]

Beyond the self evident, there is also the esoteric. These factors may not be so esoteric to those inside bureaucracies but to outsiders they are simply unfathomable. One of the obvious and critically important factors is to break down the individual silo portfolio approaches. The Department of Finance recommended the broad banding of Aboriginal Youth At Risk programs. One person with a key responsibility for coordinating such actions is Mr Brian Gleeson, Coordinator General of Remote Indigenous Services. Yet in email correspondence of 23 February 2013 to KALACC Mr Gleeson writes as follows:

“Regrettably, I have not been able to progress some of the issues in my reports and support to youth that I wanted to.”

As noted earlier, justice reinvestment may seem to be a self evident course of policy direction to some. But there are numerous related recommendations dating back at least as far as the 2006 WA Law Reform Commission Report of September 2006 that have not been acted upon. Thus, we would consider that this justice reform inertia is itself the single most important area for the Senate to consider at this time.

## Theme # Two Aboriginality and Justice

### 2.1 Youth Justice In Western Australia – A Predominantly Aboriginal Justice Issue.

Justice reinvestment, especially in a state such as Western Australia and particularly as it pertains to youth, is largely an Aboriginal issue. We would argue that a range of factors consequentially arise from this fact and that key amongst those factors is that Aboriginal people themselves must be empowered to deliver justice outcomes.

KALACC is of course an Aboriginal organisation. And when we refer to Youth Justice Issues in Western Australia this is all too much an Aboriginal specific issue, with youth incarceration rates over the last 10 years ranging from 70% up to 78% being Aboriginal.

On 04 February 2013 Western Australian Chief Justice Wayne Martin wrote a letter of support to KALACC in the context of a funding application which we were submitting at that time for funds for the Yiriman Project. Justice Martin wrote as follows:

“As you will be aware, the over representation of Aboriginal people in the criminal justice system is worse in Western Australia than in any other State or Territory (assessed in terms of percentage of Aboriginal population). Within Western Australia, the extent of that over representation is worse in the Kimberley than in any other area of the State. And as between children and adults, the over representation of Aboriginal children is significantly greater (about double) that of Aboriginal adults.

It follows that Aboriginal youth in the Kimberley are almost certainly over-represented within the criminal justice system to at least as great an extent, and probably a greater extent, than any other group within Australia. The Yiriman project is directed at addressing that over representation.”

At the same time, we note the 08/05/2012 Media Statement from the Kimberley Land Council, which reads in part as follows:

“The rates of suicides in the Kimberley are astonishing in comparison to other Indigenous populations around the country.

- NSW: Indigenous youth suicide rate is one in 100,000

- NT: Indigenous youth suicide rate is 30 in 100,000

- Kimberley: Indigenous youth suicide rate is estimated at one in 1200.

KLC CEO Nolan Hunter said that the epidemic of youth suicide in Indigenous communities had gone on long enough.”

The youth suicide epidemic in the Kimberley is a national emergency. Our young people are dying at disproportionate rates. This must be stopped. We cannot allow it to go on and risk losing an entire generation of young people.

<http://ahha.asn.au/news/suicide-prevention-funding-vital-must-work-existing-community-programs>

As noted earlier, Chief Justice Martin has commented that the underlying causes of these alarming rates of suicide and of youth incarceration are fundamentally the same issues and he has called for bottom up, community developed solutions.

## **2.2 Law Reform Commission Recommendation # 50 – “The Commission’s view is that there should be diversion to Aboriginal-owned or Aboriginal-controlled processes”**

The sentiments of the Chief Justice certainly echo the recommendations contained in the September 2006 Law Reform Commission of Western Australia *Final Report on Aboriginal Customary Laws*. We note in particular Recommendation #50

“The Commission’s view is that there should be diversion to Aboriginal-owned or Aboriginal-controlled processes.” [Page 203]

“Recommendation 50

Diversion to a community justice group

1. That the Western Australian government establish a diversionary scheme for young Aboriginal people to be referred by the police to a community justice group.
2. That the Western Australian government provide adequate resources to community justice groups in order that they may develop and operate diversionary programs.” [Page 204]

In elaborating on that recommendation, the Report comments as follows:

“The Commission’s view is that there should be diversion to Aboriginal-owned or Aboriginal-controlled processes. [page 203] ....

the requirement for procedural safeguards should be balanced against the need to ensure that Aboriginal-controlled processes are not unduly restricted by western legal procedures.

Accordingly, the Commission has included certain procedural safeguards to be followed by the police at the time a decision is made to refer a young person, but not during the actual diversionary process itself. The Commission stresses that its recommendation is to develop a diversionary scheme: the precise details and applicable procedures will need to be determined in consultation with Aboriginal communities and relevant justice agencies, such as the police.’

[page 204]

### 2.3 The Actions of the Western Australian Department of Corrective Services

Rather than implementing the Recommendation of the Law Reform Commission, what the Western Australian Government has done is to access \$43 million from the Royalties for Regions Program and with those funds to establish a Youth Justice Services program for the Kimberley and Pilbara Regions. With these funds the Department was able to roll out an expanded network of Juvenile Justice Team Officers and Youth Justice Officers. The accompanying documentation from the Department states as follows:

- The priority of the Youth Justice Officers (YJO's) when they are in contact with young people, either on an order or in the youth justice system in any way, is to maximise the opportunity that they have to work with the young person and their family.
- Strong links have also been made with government and non-government agencies by each office to assist in diverting young people away from the justice system.

And the same documentation then provides a series of baseline and target Performance Indicators, such as: "85% rate of successful completion of JJT plans" [Source: DCS Powerpoint Presentation]

Two years in to this program, we are told that the Department is satisfied and happy with the program and that youths are being diverted away from the court system.

So, what exactly are juvenile justice teams and in what sense do they serve to divert youths away from the criminal justice system? The Department of Corrective Services answers this as follows:

"Juvenile justice teams are an alternative to the court process for young offenders who have committed minor offences or are in the early stages of offending. The teams are a very real solution to a problem encountered by the justice system for many years - too many young people who have committed minor offences entering the court system at a very young age. The teams ask that young offenders take responsibility for their actions by encouraging them to face up to their problems. They provide the opportunity for the victim, the offender and the offender's family to discuss the best way to deal with the young person and the offence. This is achieved through family group meetings. Young offenders are sent to a JJT by the police or the Children's Court. More serious offences are usually handled by the courts. The teams offer young offenders a choice - they can choose to go through a meeting process and possibly face the victim of their crime or they may choose to have the matter dealt with in court."

<http://www.correctiveservices.wa.gov.au/files/youth-justice/gyjs-jjt-fact-sheet.pdf>



A similar explanation of the work of Juvenile Justice Teams can be found at:  
<http://www.correctiveservices.wa.gov.au/youth-justice/prevention-diversion.aspx>

Undoubtedly, it is good news that youths and their families are being provided with alternatives to the court system and the possibility of incarceration. However, whilst this may technically meet the definition of a 'diversionary program', KALACC would conceive of this as being primarily a restorative justice process, and not in any sense of it a true diversionary program.

## **2.4 Aboriginal Owned and Controlled Alternatives to the Programs of the Department of Corrective Services**

Let's return to the Recommendation from the Law Reform Commission. A central element of this Recommendation was the establishment of a Community Justice Group. Unfortunately, the report is non - specific in regards to the diversionary functions of this Community Justice Group. However, we do believe that central to the concept was the notion that youths at risk be provided with programs which served to foster genuine personal development and attitudinal change.

This view is somewhat corroborated by the 04 February 2013 letter of support from Western Australian Chief Justice Wayne Martin, as cited earlier. That same letter continues on to read as follows, with the Chief Justice referring to KALACC's Yiriman Project:

“There are a number of characteristics of the project which I would commend for your consideration. First, the project has been initiated, designed and delivered by Aboriginal Elders for Aboriginal youth. The engagement of Aboriginal young people with senior and respected Elders has been an essential characteristic of the success of the programme. I expect you will also be aware that Elders within the Fitzroy Valley community have demonstrated their capacity to take responsibility for their community and sponsor programmes such as the alcohol restrictions, which have been of substantial benefit to that community. Their capacity to undertake programmes of this kind has been demonstrated by a creditable record of performance.

The identification of appropriate diversionary programmes for young Aboriginal offenders aimed at behavioural change has been a particular problem for the courts of Western Australia. It is most acute in regional areas of the State, where appropriate programmes are extremely limited. The Yiriman project has provided an invaluable option to magistrates and judges dealing with young offenders in the West Kimberley. The provision of funding to enable the project to continue would be of equally invaluable assistance to the efforts of the various agencies engaged in the attempt to reduce the over representation of Aboriginal people in the criminal justice system of this State.”

In reading the comments of the Chief Justice one immediately notes the references to important factors such as design and delivery by elders, which sounds much like a Community Justice Group, and engagement with young people and programs aimed at behavioural change. These are essential characteristics of a truly diversionary program and they are not evident in the design or implementation of the Department of Corrective Services \$43 million Youth Justice Services for the Kimberley and Pilbara Regions.

As noted above, the September 2006 Law Reform Commission Report is sadly vague and lacking in detail as to what the nature of a truly diversionary program might look like. However, we can deduce some indication of what the Commission had in mind by looking at the subsequent writings of some of the principal authors of that earlier report. One of these key authors was Professor Harry Blagg. On 20 February 2012 Professor Blagg published online in the journal *Theoretical Criminology* a paper entitled ‘Re-imagining youth justice: Cultural contestation in the Kimberley region of Australia since the 1991 Royal Commission into Aboriginal Deaths in Custody’ The online version of this article can be found at: <http://tcr.sagepub.com/content/early/2012/02/20/1362480611436360>

The abstract to that article reads as follows:

“This article adopts a postcolonial stance to examine emerging Aboriginal strategies on youth justice in Western Australia that focus on building forms of Aboriginal ‘cultural capital’ and ‘community owned’ justice mechanisms on Aboriginal country as an alternative to failed strategies of incarceration and ‘community based’ justice. Aboriginal contestation, or what I call, after Edward Said, ‘contrapuntality’ increasingly takes place through subtle ‘inter-cultural’ work in various ‘engagement spaces’ in-between Aboriginal and mainstream cultures. These practices challenge mainstream government to practise what it preaches in relation to its claimed respect for Aboriginal cultural rights. The article reports on Aboriginal owned and controlled cultural processes in the Kimberley region of Western Australia that are contrapuntally challenging established ideas about the meaning of justice for Aboriginal youth.”

[page 1]

At the centre of KALACC's reform agenda was an Aboriginal community owned and controlled initiative, the Yiriman Project, which provided an intensive cultural immersion and 'healing' experience on traditional lands for at-risk young people. The project itself represented only part of KALACC's agenda which focused on developing what it called new 'cultural governance structures' in the Kimberley: intended to ensure that Aboriginal interests were directly represented in all decision-making processes that had an impact on Aboriginal people in the region, on the basis of what Article 18 of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) calls 'free, prior and informed consent'. Aboriginal people in the Kimberley are not simply the passive recipients of government policy. There is an energetic Aboriginal social justice movement involved in challenging government on a diversity of issues, from family violence policies through to liquor licensing

[pages 4 and 5]

The camps focus on preparing young people to become rangers, and participate in the hybrid economy. Returning to country is central to the project. The elders 'share stories around campfires about their skin, their history and heritage, and their country' (Palmer, 2010: 23). Cultural bosses said that 'kids come good' on the camps, they 'learned rain dance, how to make campfire, hunt Kangaroo, make damper'. As a result, one cultural boss said, 'around 40 younger men are taking control of their lives'.

Two intensive cultural camps were undertaken in 2009 and 2010 directly focused on young people in trouble with the law. The first involved 10 young men who had admitted to breaking and entering houses, the second involved six boys involved in a spate of offending: there were also 12 others, including young women, referred by community members because they were believed to be at risk. The sentencing process was run as an 'Aboriginal Court', where cultural elders sit with the magistrate (Marchetti and Daly, 2004). At the request of the elders the youths were referred to Yiriman and sentencing was deferred. Both camps were held at Jilji Bore on remote Wangkajungka country. The magistrate was impressed by the process and by the ways the young men responded; most had greatly reduced sentences. Several had been at risk of being sentenced to periods of detention in Perth, over 2000 km away. [Pages 11, 12]

In Summary, justice reform in Western Australia – especially in regards to youth justice diversion - is largely an Aboriginal issue. An excellent road map was provided in September 2006 by the Law Reform Commission, which recommended the establishment of Aboriginal owned and controlled youth diversion processes. In the interim the Department of Corrective Services has established a \$43 million Youth Justice Services program in the Kimberley and Pilbara but this has a restorative justice focus and in no way resembles what was recommended by the Law Reform Commission.

## Theme # Three - Guiding Principles

### 3.1 The Guiding Principles Espoused by the Law Reform Commission of Western Australia

In September 2006 the Law Reform Commission of Western Australia released its ***Final Report in to Aboriginal Customary Laws, The interaction of Western Australian law with Aboriginal law and culture***. The Law Reform Commission Report contained Nine Guiding Principles. We consider those principles to be the foundation for appropriate consideration of all justice issues relating to Aboriginal people.

The Guiding Principles for Reform espoused by the Commission are as follows:

PRINCIPLE ONE

Improve government service provision to Aboriginal people

PRINCIPLE TWO

Collaboration, cooperation and consultation

PRINCIPLE THREE

Voluntariness and consent

PRINCIPLE FOUR

Local focus and recognition of diversity

PRINCIPLE FIVE

Community-based and community-owned initiatives

PRINCIPLE SIX

Respect and empowerment of Aboriginal people

PRINCIPLE SEVEN

Balanced gender and family, social or skin group representation

PRINCIPLE EIGHT

Adequate and ongoing resourcing

PRINCIPLE NINE

Ongoing monitoring and evaluation

[Page 32, ***Final Report in to Aboriginal Customary Laws***]

In the earlier section (Theme # Two Aboriginality and Justice) we focused on Recommendation # 50 from the Law Reform Commission Report, relating to the establishment of Youth Diversionary programs, and we contrasted the approach of the Western Australian Department of Corrective Services with the approach of KALACC through the Yiriman project.

In providing youth justice diversionary programs, which are also youth resilience and well - being programs, KALACC exemplifies the Guiding Principles espoused by the Law Reform Commission. And through the words of Chief Justice Wayne Martin, in his recent letter of support for Yiriman, there is a validation that this methodology is the appropriate method of providing diversionary services for Aboriginal youth.

It is a common experience that Aboriginal people are consulted to death. But Principle Number two from the Law Reform Commission does not say 'consultation.' What it says is 'Collaboration, cooperation and consultation.' This is a much rarer commodity.

In October 2012 the Yiriman Project, auspiced by KALACC, took out first place in Category B of Reconciliation Australia's Indigenous Governance Awards. A profile and case study of Yiriman is now included in Reconciliation Australia's Indigenous Governance Toolkit, available at

<http://governance.reconciliation.org.au/case-studies/the-yiriman-project>

2012 Indigenous Governance Awards – Winner of outstanding example of Indigenous Governance in a non-incorporated initiative or project. Part of what is said on the web page is as follows:

“The Yiriman Project was conceived and developed by the elders of four Kimberly language groups; Nyikina, Mangala, Karajarri and Walmajarri. The elders were concerned about their young people and issues of self-harm and substance abuse and saw the need for a place where youth could separate themselves from negative influences, and reconnect with their culture in a remote and culturally significant place.

Yiriman has two aspects to its governance and management processes. The management processes are undertaken by the Kimberley Aboriginal Law and Culture Centre (KALACC). KALACC auspices the Yiriman project and attend to issues of financial management, staff employment, reporting and acquittals however Yiriman retains its own project governance structure which is independent from that of KALACC.

Yiriman is a cultural program which operates on a cultural governance model... cultural bosses make the decisions about the projects, unlike a Board of Directors who requires the approval of members; their decisions are based purely on community and cultural knowledge and discussions between elders and cultural bosses. It also means that the elders and cultural bosses can focus on helping their young people, without worrying about the logistics of the project.”

Again we highlight that the Law Reform Commission Guidelines include the following:

PRINCIPLE FIVE

Community-based and community-owned initiatives

PRINCIPLE SIX

Respect and empowerment of Aboriginal people

These characteristics of Yirimán were clearly evident to the judges of the Reconciliation Australia Indigenous Governance Awards. One of those judges was Mr Gary Banks, who at the time was Chair of the Productivity Commission of Australia. As head of the Productivity Commission, Mr Banks was responsible for the production of the ***Overcoming Indigenous Disadvantage Reports*** and the 2010 and 2012 ***Indigenous Expenditure Reports***. The December 2012 edition of ***Reconciliation News*** [[http://www.reconciliation.org.au/getfile?id=81&file=RAnews\\_issue25\\_final\\_web.pdf](http://www.reconciliation.org.au/getfile?id=81&file=RAnews_issue25_final_web.pdf)] contains an article by Mr Banks and part of what he had to say was as follows:

“Both Yirimán and the other category winner, NPY Women’s Council, are led by senior Aboriginal people who are determined to make life better for their people and in particular for their children.

Both organisations share the hallmarks of good corporate governance, but with that something extra that distinguishes them from most mainstream companies and organisations—something that might best be summed up as ‘cultural fit’. When an organisation reflects the values of its members, those members naturally buy into it and invest in its success. Without this core attribute, organisations struggle to succeed.

However, Yirimán has struggled to attract sustained financial support. Government funding agencies in particular seemingly find it difficult to fit the Project’s culturally- based model into any of their boxes. Meanwhile substantial funds are directed to mainstream mental health services which arguably are not addressing the deeper needs of the young.

What has made both Yirimán and NPY successful is that the solutions they have devised and implemented involve their communities and families. They are grounded in an understanding both of the local problems and the likely solutions, something that is hard to achieve from Canberra or the capitals. Really the only challenge these organisations should present for public policy is how to harness and propagate them.”

Let us pause and reflect for a moment on the fact that the man who wrote those words was for many years and was at the time of writing the Chair of the Productivity Commission of Australia. And let us remind ourselves that the Productivity Commission is the agency which produces the ***Overcoming Indigenous Disadvantage Reports*** and the ***Indigenous Expenditure Reports***.

What conclusions did the Chair of the Productivity Commission reach? What he said was:

- Good governance is fundamental;
- Yiriman exemplified good governance through the leadership of the elders;
- Yiriman has very limited financial resources;
- Government invests huge resources in to mainstream mental health services but struggles to fit culturally based programs like Yiriman in to any of its boxes;
- Yiriman and NPY are both successful because the solutions they have devised and implemented involve their communities and families;
- Really the only challenge these organisations should present for public policy is how to harness and propagate them.

So in terms of the Guiding Principles of the Law Reform Commission, a program like Yiriman entirely exemplifies characteristics such as 'community-based and community-owned initiatives' and the 'respect and empowerment of Aboriginal people.' And the comments from Mr Banks also serve to highlight the need for 'Adequate and ongoing resourcing.' The reality at present is that the Department of Corrective Services Kimberley Youth Justice services is largely a restorative justice initiative funded to the tune of \$43 million of Royalties for Regions money. And Yiriman currently receives nil, that is zero, funding from the State Government for its operations. [The State has funded a review and evaluation of Yiriman]. And from the Commonwealth, in terms of Justice program funding, Yiriman currently receives \$85, 000 annually from the Commonwealth Department of the Attorney General. And with that little funding that we do receive, we strive to offer programs that are genuinely diversionary in nature and which do fully exemplify the Nine Guidelines espoused by the Law Reform Commission.

We note, further, that PRINCIPLE # NINE is 'Ongoing monitoring and evaluation.' As mentioned above, the State through the Department of Indigenous Affairs has provided funds to KALACC to engage the services of Murdoch University to undertake a three Year External Review and Evaluation of Yiriman. KALACC anticipates receiving the final Year Three Report from Murdoch University no later than August 2013. In Appendix Two to this submission, we provide the reader with a copy of an excerpt from the Year Two Report. [A full copy of the Year Two evaluation report is available upon request] in writing the Year Two Report, Dr Dave Palmer of Murdoch University has provided some 20 individual case studies or short profiles of project participants and has examined the impacts on their lives as a result of participation in Yiriman. He has also evaluated Yiriman by examining the Performance Indicators contained in Yiriman's funding agreements and independently assessing Yiriman on the basis of the extent to which it fulfils those objectives which it is funded to provide.

In evaluating Yiriman against the Performance Indicators contained in the Funding Agreement with the Commonwealth Attorney General's Office, what Dr Palmer of Murdoch Uni has concluded is as follows:

AGD Funding Agreement Performance Indicator	Evaluation Comments Relating to Performance Indicators
Advocacy and support	<p>Following court, Yiriman staff often liaised with a range of people including the Yiriman Reference Group, Youth Justice Workers and the local school to:</p> <ul style="list-style-type: none"> <li>• support young people to attend school regularly;</li> <li>• assist young people to comply with their court orders (e.g. contacting their Youth Justice Worker on set days by phone);</li> <li>• provide young people with culturally appropriate diversionary activities.</li> </ul>
Build stronger relationships with individuals and family groups	<p>During 2011 Yiriman maintained a strong involvement of community people. As mentioned previously, this is strongest during the on-country trips where senior people, the middle-aged and young people maximise the direction they give to Yiriman activities.</p>
Foster networks and relationships with organisations and groups that work with young people and focus on mental health and alcohol and drug abuse	<p>As has previously been discussed, there is good evidence that Yiriman has continued building solid working relationships with the following groups:</p> <ul style="list-style-type: none"> <li>• Kinway Standby Suicide Response</li> <li>• Kimberley Aboriginal Medical Services Council (KAMSC)</li> <li>• Nindilingarri Cultural Health and Drug, Alcohol and Mental Health Unit</li> <li>• Corrective Services and Juvenile Justice Broome</li> <li>• Fitzroy Crossing Police Department</li> <li>• Department of Child Protection</li> <li>• Fitzroy Crossing, Wangkajungka, Jarlmadangah; Bidyidanga schools</li> <li>• Karayilli Adult Education</li> <li>• Marninwarantikura Women Resource Centre</li> <li>• Fitzroy Valley Men's Group</li> <li>• Mangkatja Arts Centre</li> <li>• Kimberley TAFE</li> <li>• Garnduwa</li> <li>• Ngurrura Rangers</li> <li>• Karajarri Rangers</li> <li>• Goonyandi/Tjilijan Rangers</li> <li>• Aboriginal Legal Service</li> </ul>



<p>Planning for bush trips</p>	<p>Yirimán planning might best be described as occurring through a broad mix of everyday consultation and direction, meetings of the Reference Group, at least one formal planning meeting before each trip, daily meetings while on-country and constant dialogue and checking between staff and cultural bosses while on a trip. The depth and intensity of direct from ‘bosses’ is at its most active while ‘on country’. This kind of ‘planning’ is necessary given the cultural context in which Yirimán emerged and the many contingencies impacted on decisions.</p>
<p>On-country trips</p>	<p>This work is both the main objective and the principal strategy for Yirimán bosses. During 2011 the Yirimán Project hosted a range of bush trips, ranging in duration from 4 to 8 days.... All of these trips offered a safe healthy space for all (young and old) to share their experiences, support each other and reflect. The sentiments shared demonstrate how impressed people are with the opportunity to reconnect with their country and undertake cultural responsibilities. One of the impressive elements of trips is that different generations came together in a relevant cultural context both strengthening individuals and community bonds.</p>
<p>People at risk of Incarceration provided with prevention and diversion.</p>	<p>During the reporting period the Yirimán Project claims to have provide prevention and diversion services to 62 people.</p>
<p>Supporting different ‘service sites’ and locations</p>	<p>The area Yirimán serves is enormous. Indeed, the Kimberley is approximately twice the size of Victoria, three times the size of England or 3/5 the size of Texas. Although a large geographical mass, it has a relatively small population with just over 30,000.</p> <p>Yirimán works with a ‘culture block’ consisting of four language groups: Nyikina, Mangala, Walmatjarri and Karajarri. The ‘culture block area’ stretches from (200 km) south of Broome across to communities half way between Fitzroy Crossing and to Halls Creek. This represents a distance by road of over 700 kms. The number of sites visited and supported during this reporting period included at least 15</p>

It is entirely clear and evident in the observations from Dr Palmer that Yirimán is providing a rich diversionary experience for youths at risk in the Kimberley. Unfortunately, as noted earlier, the Commonwealth Attorney General’s Department has recently revised its Indigenous Justice Program guidelines so as to narrow down the kinds of programs that it funds.

In summary, the Law Reform Commission of Western Australia espouses some Nine Guiding Principles in relation to interaction with Aboriginal communities. The Yiriman Project entirely exemplifies the operationalization of these Nine Principles and this is variously attested to by comments and observations from the Western Australian Chief Justice, by Mr Gary Banks [until December 2012 the Chair of the Productivity Commission] and by Dr Dave Palmer of Murdoch University. And Yiriman has received national recognition in the form of winning first place in Category B of the Indigenous Governance Awards.

However, none of the above translates in to increased levels of support from Government.

The Government of Western Australia provides no financial support for Yiriman's operations.

The Commonwealth provides and has historically provided some funding to Yiriman, sourced from FaHCSIA, DOHA and from the Attorney General's Department. But, as noted earlier, the Commonwealth Attorney General's has recently revised its Indigenous Justice Program guidelines so as to narrow down the kinds of programs that it funds. On 03 January 2013 FaHCSIA Minister Jenny Macklin wrote to KALACC to congratulate Yiriman on winning Category B of the Indigenous Governance Awards. She wrote as follows:

"This award is testament to the quality of the Yiriman Project's commitment to young people, in strengthening culture and resilience and building positive stories.

The Kimberley Aboriginal Law and Culture Centre's expertise and experience is valued by the Australian Government and I wish you all the best for your ongoing work."

We are pleased to receive this kind of letter from the Minister. However, as noted above, the Commonwealth has not enacted important recommendations from the ***Doing Time, Time for Doing*** report and from the ***2010 Strategic Review of Indigenous Expenditure***. And until it does so, KALACC remains with the constant sense that we always have of us not fitting at all in to any of what Gary Banks refers to as Government's boxes.

Thus we conclude, by stating yet again, that the single most important act that this Senate Inquiry could take would be to investigate reasons why so many excellent existing recommendations for Justice reform have not been enacted by Government.

# Appendix One – Excerpts from Various Government Reports With Recommendations That Have Not Been Acted On

# 2010 Commonwealth Department of Finance Indigenous Expenditure Review

Commonwealth of Australia, February **2010 Indigenous Expenditure Report** states as follows:

“Recommendation # 22: Current Indigenous Youth At Risk Programs should be broad banded and aligned with Commonwealth policy objectives on Indigenous Youth, with supportive sustainable funding arrangements applying. The consolidated program should comprise: ....

- 22.1 the youth diversion elements of the Petrol Sniffing Diversion Project/ Youth Wellbeing program;
- 22.2 the youth diversion elements of the Indigenous Justice Program;
- 22.3 Reducing Substance Use (Petrol Sniffing0;
- 22.4 Closing the Gap in the Northern Territory – Youth In Communities.”

[Page 19]

KALACC Correspondence of 22 February 2013 to 1. the Minister for Finance and 2. the Assistant Treasurer

Senator The Hon Penny Wong Minister for Finance and Deregulation  
The Hon David Bradbury MP  
Minister Assisting for Deregulation

22 February 2013

Dear Senator Wong,

I write to you in order to ask what is the status of the Recommendations contained in the **2010 Strategic Review of Indigenous Expenditure?**

It seems to me that the recommendations contained in that document, as attached, and particularly in regards to Indigenous Youth Programs, make remarkable good sense.

The document is, of course, stamped Cabinet In Confidence and was released by Government under Freedom of Information provisions. And copyright is listed as residing with the Department of Finance and Deregulation.

As above, this document – from your Department – contains a lot of very good sense and a number of very good recommendations.

A small Aboriginal NGO such as KALACC is obviously not privy to any of the Cabinet processes that led to the creation of this document or to any of the subsequent consideration of the recommendations.

But given that there are very worthwhile recommendations in the review, it does seem to be a great pity that three years after the release of the review, these recommendations have still not been enacted.

And it is entirely clear from the actions of agencies such as the Commonwealth Attorney General's Department that little if any action has taken place in response to the recommendations pertaining to broadbanding of Indigenous Youth at Risk programs.

In this context, we share with you, below, correspondence of 23 February from Mr Brian Gleeson, Coordinator General of Remote Indigenous Services.

In that correspondence, Mr Gleeson frankly and openly acknowledges that he has not been able to progress some of the issues in his reports – including support for Aboriginal youth.

Mr Gleeson does refer to some successful lessons which may be derived from the South Australian experience. KALACC has written to Mr Gleeson indicating that we would be keen to learn of how the people of Amata overcame barriers which seem to us to be utterly insurmountable.

The example from Amata seems to be very much a bottom up approach. We can only assume that the people of Amata hit the same roadblocks, barriers and obstacles that KALACC constantly encounters in regards to whole of government approaches for Kimberley youth projects and the deeply, deeply ingrained single silo Portfolio approaches of a number of government agencies and their deeply rooted aversions to entering in to whole of government processes.

But, coming at this from another perspective, we would like to ask what is happening from a top down approach?

What action, if any, has the Department of Finance and De- Regulation taken to follow up on the recommendations in the **2010 Strategic Review of Indigenous Expenditure**? In particular, what action has been taken to follow up on Recommendation Number 22?

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Wes

Thanks for the email and sorry for the delay in getting back to you – a lot of travelling of late, including to Broome last week.

My latest report came out in October 2012 and it on my website – [cgris.gov.au](http://cgris.gov.au).

Regrettably, I have not been able to progress some of the issues in my reports and support to youth that I wanted to. I was in Adelaide this week and I was told about a successful coordinated and linked up youth program in Amata. I am pursuing this to see if there are some lessons learnt from funding to services that might be worth sharing. I hope to catch up with the WA mob in Alice Springs next week so I hope to get some updates on things then.

All the best  
Brian Gleeson  
Coordinator General  
Remote Service Delivery

# September 2006 Law Reform Commission of Western Australia Final Report on Aboriginal Customary Laws

Page 203 Heading:

“The Commission’s view is that there should be diversion to Aboriginal-owned or Aboriginal-controlled processes.”

Page 204:

“Recommendation 50

Diversion to a community justice group

1. That the Western Australian government establish a diversionary scheme for young Aboriginal people to be referred by the police to a community justice group.
2. That the Western Australian government provide adequate resources to community justice groups in order that they may develop and operate diversionary programs.
3. That the diversionary scheme be flexible and allow different communities to develop their own processes and procedures.
4. That the police fully explain to the young person (and responsible adult) the nature of the alleged offence and, that the young person has the right to seek legal advice before agreeing to participate in the diversionary scheme.
5. That the police ensure that the young person fully understands his or her options, if necessary by providing the services of an interpreter.
6. That any admissions made by the young person during the diversionary process cannot be used as evidence against the young person.
7. That a young person and an appropriate responsible adult must consent to any referral by the police to a diversionary scheme operated by a community justice group.
8. That, if the young person does not consent to be referred to a community justice group, if the community justice group does not agree to deal with the matter, or if the community justice group is not satisfied with the outcome, the matter can be referred back to police to be dealt with in the normal manner.
9. That the diversionary scheme provide that a referral to a community justice group does not count as a conviction against the young person and can only be referred to in a court for the purpose of considering whether the young person should again be referred to a community justice group or to determine if the young person has previously been given adequate opportunities for diversion and/or rehabilitation.”

WA Parliament Standing Committee on Education and Health 15 May 2008  
WAYS FORWARD BEYOND THE BLAME GAME: SOME SUCCESSFUL  
INITIATIVES IN REMOTE INDIGENOUS COMMUNITIES IN WA

Page 115

Finding 10

The Yiriman Project is a successful project in the west Kimberley region and has brought together various state and local government as well as academic and Indigenous organisations. It has provided a unique mix of positive social and economic outcomes.

Page 115

Recommendation 13

The Yiriman Project should be supported by government and used as a model for similar projects in Indigenous communities in other remote regions of Western Australia

# WA Parliament Standing Committee on Education and Health 17 March 2011 ALCOHOL RESTRICTIONS IN THE KIMBERLEY: A 'WINDOW OF OPPORTUNITY' FOR IMPROVED HEALTH, EDUCATION, HOUSING AND EMPLOYMENT

Page 57

Finding 5

The Yiriman program was recommended by the Education and Health Standing Committee in the previous Parliament as one that should receive additional support and be used as a model for other regions as over a number of years it had shown itself to be effective. This recommendation was accepted by the previous government, but no commitment for funding was provided as the Government went into care-taker mode, and the program remains under-resourced.

The Senate's Community Affairs References Committee's 2010 report *The Hidden Toll: Suicide in Australia* highlighted the successful outcomes of the Kimberley Aboriginal Law and Cultural Centre's Yiriman program.

Page 57

Recommendation 9

The Government provide additional funding to allow the Yiriman program to extend their operations across the Kimberley.



# WA Parliament COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE 25 November 2010 'MAKING OUR PRISONS WORK' AN INQUIRY INTO THE EFFICIENCY AND EFFECTIVENESS OF PRISONER EDUCATION, TRAINING AND EMPLOYMENT STRATEGIES

Page 96

"The Committee has since confirmed with DCS that there has in fact been no meaningful communication between the two agencies for two years and that one of the issues is KALACC's need for some level of financial support for any role it might play.

On a more general note, the Committee understands that there is a level of caution on DCS's part in generating strong community links due to the risks that they pose to the security of the community or the safety of the offender.

Finding 30

The value of community linkages in any successful post release strategy for offenders is broadly recognised within the Department of Corrective Services yet currently the West Kimberley facility has no identifiable strategy in place.

Page 97

Recommendation 21

The Committee strongly recommends that the Department of Corrective Services designs and implements a strategy for the new West Kimberley facility located at Derby that includes four major objectives as follows:

- Aboriginal offender programming be strengthened;
- local partnerships and relationships are considerably enhanced;
- the role for local Aboriginal communities in corrections be developed; and
- non government agencies that are expected to provide services are properly resourced to do so.

Page 109

Recommendation 22

The Committee recommends that as part of the implementation of the justice reinvestment strategies a mapping exercise be undertaken to identify those communities currently delivering the highest percentage of population to the prison system.

# House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs June 2011 Doing Time - Time for Doing Indigenous youth in the criminal justice system

Page 23

2.63

Wes Morris, from the Kimberley Aboriginal Law and Culture Centre (KALACC), claimed that the absence of a National Partnership Agreement linked with the Safe Communities Building Block was an anomaly in the Closing the Gap strategy which limited the capacity of governments and non-government organisations to implement Indigenous justice specific initiatives:

It is almost the perverse irony that most of those building blocks do have national partnership agreements, but of course one does not. The one that does not is the safe communities building block ... it happens to be the one with no national partnership agreement and thus no funding.

Pages 305- 306

8.165

The Committee received evidence about an Aboriginal owned and led justice diversion program, the Yiriman Youth Program, targeting at risk young people aged between 14 and 25 years in the Fitzroy Crossing area. The program received support and commendation from representatives of the local communities at the Committee hearing.<sup>97</sup> The Yiriman Business Plan 2011-14 was developed and the Kimberley Aboriginal Law and Culture Centre (KALACC) seeks coordinated and sustained investment from the Commonwealth and Western Australian governments

Recommendation 1 - National Partnership Agreement ..... 40

The Committee recommends that the Commonwealth Government develop a National Partnership Agreement dedicated to the Safe Communities Building Block and present this to the Council of Australian Governments by December 2011 for inclusion in the Closing the Gap strategy.

Recommendation 10 – Mental health ..... 108

The Committee recommends the Commonwealth Government recognise mental health as a significant issue affecting Indigenous youth and collaborate with the states and territories to direct funding where possible to successful Indigenous community developed and led programs with a focus on healing, culture, emotional wellbeing and reconnection with family.

Recommendation 31 – Indigenous offender programs ..... 262

The Committee recommends that the Commonwealth Government establish a new pool of adequate and long term funding for young Indigenous offender programs. Organisations and community groups should be able to apply for funding for programs that assist young Indigenous offenders with:

- Post-release or diversionary program accommodation
- reintegrating into the community and positive social engagement through volunteering and team involvement
- reconnecting with culture where possible
- drug, alcohol and other substance abuse rehabilitation
- continued education and training or employment, and
- life and work readiness skills, including literacy and numeracy

The Committee recommends that this fund is geared towards small-scale community-based groups, operating in local areas, and includes a specific stream for programs that address the needs of young Indigenous female offenders. Local employers would be encouraged to mentor and train with a view to employment.

Recommendation 40 – Justice reinvestment ..... 321

The Committee supports the principles of justice reinvestment and recommends that governments focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Australia.

## Appendix Two

# Excerpts from Murdoch University Year Two Evaluation of Yiriman Project

## Funded contract 4: Indigenous Justice Program (Commonwealth Attorney General's Department)

During the review period the Yiriman Project received funding support from the Attorney General's Department to carry out work to respond to the 'challenge of the accelerating rate of Indigenous offending and incarceration, and to support the realisation of safer communities.' Much of the focus of this work has been achieved through the strategy of arranging on-country trips for young people. As mentioned previously this work is conducted in association with senior men and women, middle-aged men and women and younger men and women who act as mentors and role models. Often other adults including representatives from partner organisations, trainers and Ranger teams join the trips. This being the case, much of the review in relation to the previous funded contract (Commonwealth Department of Health and Ageing) stands for this funded contract.

**Table 7: Performance in relation to Justice (Attorney General's Department)**

Intervention	Performance	Evidence	Rating
<b>Advocacy and support</b>	<p>Both while on-country and in town a range of young people, family members, service providers and key cultural bosses approached Yiriman staff to act on behalf of young people who have contact with the justice system, pursuing employment opportunities, other assistance and 'counselling' in relation to depression and mental health problems. Indeed there is good evidence that this happens on a daily basis. As mentioned, on-country trips produce an environment that often creates strong bonds between young people and project staff. This also offers a very conducive environment for safe and deep conversations to occur. Indeed, this is one of the most important environments for young people to 'open up' and confront some of their problems (with young people being free from 'town-based distractions', peer influences, alcohol and drugs, violence and criminal involvement). Yiriman staff are able to follow up on many of these concerns such as breeches in justice reporting requirements, loss of identification and banking details, difficulties communicating with various organisations, attending (juvenile) court to support young people and their families. Following court, Yiriman staff often liaised with a range of people including the Yiriman Reference Group, Youth Justice Workers and the local school to:</p> <ul style="list-style-type: none"> <li>• support young people to attend school regularly;</li> <li>• assist young people to comply with their court orders (e.g. contacting their Youth Justice Worker on set days by phone);</li> <li>• provide young people with culturally appropriate diversionary activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Photo archive from all trips demonstrates participation of a number of 'outsiders' from other organisations.</li> <li>• Worker reports from all the trips document the follow up work.</li> <li>• Evaluator participated in two Karajarri trips and joined young people in intense cultural experience and saw first hand evidence of young people seeking support from staff and others.</li> <li>• People cited examples of support in evaluator interviews with participants in Ngarintjadu and two Karajarri trips.</li> <li>• The evaluator has himself joined in on many important discussions with young people and elders talking openly about matters of importance. Often this happens at night, around fire and a relaxed environment.</li> <li>• Film footage from the trips records some of these discussions, often carried out in Kriol or language.</li> <li>• The evaluator had many opportunities to spend time in the Yiriman office environment and see the regularity with which young people visited for support. He has also 'tagged along' with Yiriman staff as they go about 'post' trip follow-up work. It is clearly the case that the Yiriman office is a critical place where young people from Fitzroy Crossing feel they can get assistance.</li> </ul>	Strong
<b>Build stronger relationships with individuals and family groups</b>	<p>During 2011 Yiriman maintained a strong involvement of community people. As mentioned previously, this is strongest during the on-country trips where senior people, the middle-aged and young people maximise the direction they give to Yiriman activities. It is also strong in and around Fitzroy Crossing where 'cultural bosses' have the</p>	<ul style="list-style-type: none"> <li>• Interviews with participants confirm their relationships with others in their community are profoundly strengthened during Yiriman trips.</li> <li>• The evaluator has himself joined in on many important discussions with young people and elders talking openly about</li> </ul>	Strong

	<p>most direct access to Yiriman staff and resources. In this way, Yiriman has become a critical part of the overall strategy for family groups involved to maintain and build their internal connections. However, there is a view that emerged from time to time that the cultural blocks living some distance from Fitzroy Crossing (Nyikina Mangala and Karajarri families) are not receiving the extent of support that Walmatjarri enjoy. During the second half of 2011 Yiriman staff responded to these concerns by 1) taking the Yiriman remote office (a large in-built trailer office) to Jarlmadangah and Bidyidanga for two week periods and 2) supporting the Women's Healing trip to Karajarri country and the camel trapping trip to Nyikina/Mangala country.</p>	<p>matters of importance. He has seen first hand the development of deep and close relationships between those involved.</p> <ul style="list-style-type: none"> <li>• Film footage from the trips demonstrate the depth of closeness between different generations and show acute sense of care that senior people have for young people.</li> <li>• Often interviews and public statements from senior people include stunning expressions of care and love towards their young.</li> </ul>	
<p><b>Foster networks and relationships with organisations and groups that work with young people and focus on mental health and alcohol and drug abuse</b></p>	<p>As has previously been discussed, there is good evidence that Yiriman has continued building solid working relationships with the following groups:</p> <ul style="list-style-type: none"> <li>• Kinway Standby Suicide Response</li> <li>• Kimberley Aboriginal Medical Services Council (KAMSC)</li> <li>• North West Mental Health</li> <li>• Nindilingarri Cultural Health and Drug, Alcohol and Mental Health Unit</li> <li>• Corrective Services and Juvenile Justice Broome</li> <li>• Fitzroy Crossing Police Department</li> <li>• Department of Child Protection</li> <li>• Fitzroy Crossing, Wangkajungka, Jarlmadangah and Bidyidanga schools</li> <li>• Karayilli Adult Education</li> <li>• Marninwarntikura Women Resource Centre</li> <li>• Fitzroy Valley Men's Group</li> <li>• Mangkatja Arts Centre</li> <li>• Kimberley TAFE</li> <li>• Garduwa</li> <li>• Ngurrura Rangers</li> <li>• Karajarri Rangers</li> <li>• Goonyandi/Tjilijan Rangers</li> <li>• Aboriginal Legal Service</li> </ul> <p>This contact work supports young people in two ways: 1) by introducing young people to these organisations so they can gain direct assistance and 2) by supporting other organisations with their various mandates to contact and service young people at risk.</p>	<ul style="list-style-type: none"> <li>• The evaluator has carried out interviews with representatives from over a dozen of the organisations who have worked in conjunction with the Yiriman Project. Without exception these individuals have spoken highly of the work.</li> <li>• The evaluator has sighted records and reports from other organisations that demonstrate the positive outcomes of this collaborative work.</li> <li>• Film and photo footage are full of evidence of the active involvement of others in all of the 2011 Yiriman trips.</li> <li>• The evaluator had many opportunities to spend time in the Yiriman office environment and see first hand staff working in conjunction with other organisations.</li> <li>• Records from all of the trips now document the attendance and involvement of 'partners'.</li> </ul>	<p>Good</p>
<p><b>Planning for bush trips</b></p>	<p>A range of activities always shapes Yiriman trip plans, attendance and direction. Indeed, Yiriman planning might best be described as occurring through a broad mix of everyday consultation and direction, meetings of the Reference Group, at least one formal planning meeting before each trip, daily meetings while on-country and constant dialogue and checking between staff and cultural bosses while on a trip. The depth and intensity of direct from 'bosses' is at it most active while 'on-country'. This kind of 'planning' is necessary given the cultural context in which Yiriman emerged and the many contingencies impacted on decisions. Some may claim that the key planning forums are</p>	<ul style="list-style-type: none"> <li>• The evaluator has participated in a series of meetings designed to help staff work in conjunction with bosses to plan trips with Nyikina/Mangala and Walmatjarri bosses. He has also directly participated in 'on-country' planning meetings.</li> <li>• The evaluator attended one Reference Group meeting during 2011.</li> <li>• The evaluator has sighted minutes and other records of planning meetings.</li> <li>• Film and photo footage contain strong evidence of active participation in planning meetings.</li> <li>• The evaluator had many opportunities to spend time in the Yiriman office</li> </ul>	<p>Varied but 1<sup>st</sup> class while on-country</p>

	<p>the annual Yiriman governance event and the Reference Group meetings. However, 'on-country' governance is the strongest planning domain.</p> <p>Maintaining combined levels of planning is costly and time consuming, particularly given the vast distances covered by Yiriman. However, maintaining a commitment to this element of the work is an essential investment and an important outcome of the Yiriman Project.</p> <p>In these meetings often the voice of young people is sought out, respected and listened to. Particularly during the on-country planning, their input, control and direction are essential in shaping the project. Their involvement reinforces their own importance and capabilities and is an essential element in senior people's obligation to transmit culture, language and leadership.</p>	<p>environment and see first hand staff consulting with bosses both in person and on the phone. Indeed this is something that happens almost on a daily basis.</p> <ul style="list-style-type: none"> <li>Records from all of the trips now document the various planning meetings during the trips.</li> </ul>	
<b>On-country trips</b>	<p>This work is both the main objective and the principal strategy for Yiriman bosses. During 2011 the Yiriman Project hosted a range of bush trips, ranging in duration from 4 to 8 days. Trips included:</p> <ul style="list-style-type: none"> <li>Karajarri Jilla Healing Trip (December 2010) – 47 participants</li> <li>Jilji Bore Trip (May) – 11 participants</li> <li>9 Mile Trip (May) – 26 participants</li> <li>Yakanarra Culture Training – 22 participants</li> <li>Ngarantjadu Trip (June) – 82 participants</li> <li>Ranger Forum – Middle lagoon, Yiriman and StandBy Suicide Response delivered 'Suicide Awareness Workshops. – 68 participants</li> <li>Karajarri family trip (August) – 12 participants</li> <li>Karajarri Women's Healing Trip (September) – 27 participants</li> <li>Nyikina Camel trip (October) – 17 participants</li> <li>Goonyandi trip (November)</li> </ul> <p>All of these trips offered a safe healthy space for all (young and old) to share their experiences, support each other and reflect. The sentiments shared demonstrate how impressed people are with the opportunity to reconnect with their country and undertake cultural responsibilities. One of the impressive elements of trips is that different generations came together in a relevant cultural context both strengthening individuals and community bonds. In these settings, challenges that are often avoided 'in town' are dealt with on-country. While on-country, people feel strong, direct activities, reconnect with 'country' (singing songs, telling stories, dancing) and often openly enter into discussions about important elements of town life. These conversations are often followed up after trips.</p>	<ul style="list-style-type: none"> <li>The evaluator has participated in two on-country trips. Both were well planned, attended by a variety of generations, included an array of activities exposed participants to a combination of talking, doing and sharing activities, and used new technologies and traditional practice.</li> <li>The evaluator interviewed people after two other trips. The feedback from participants was excellent.</li> <li>Interviews were carried out with 'outsiders' attending the Goonyandi, Karajarri, and Walmatjarri trips.</li> <li>The evaluator has sighted minutes and other records of the trips.</li> <li>Film and photo footage contain strong evidence of active participation in all trips by all present.</li> <li>Records from all of the trips now provide details of various elements of the trips including participation, use of vehicles, activities, meetings, daily movements and any follow up that needs to occur. The evaluator has sighted these records.</li> <li>A digital photo book report and/or movie has been drafted for the Karajarri Jila, Jilji Bore, Ngarantjadu, Ranger Forum, Karajarri Women's Healing, Nyikina, Goonyandi trips. These provide solid evidence of the breadth of good outcomes.</li> </ul>	1 <sup>st</sup> class

<p><b>People at risk of incarceration provided with prevention and diversion.</b></p>	<p>During the reporting period the Yiriman Project claims to have provide prevention and diversion services to 62 people.</p>	<p>It is unclear how this figure has been calculated. However, this seems too small an estimate given the high numbers of people participating in Yiriman activities, the high 'risk' factors associated with groups involved in Yiriman and evidence from elsewhere of the correlation between justice outcomes and on-country visits.</p>	<p>Unclear</p>
<p><b>Supporting different 'service sites' and locations</b></p>	<p>The area Yiriman serves is enormous. Indeed, the Kimberley is approximately twice the size of Victoria, three times the size of England or 3/5 the size of Texas. Although a large geographical mass, it has a relatively small population with just over 30,000.</p> <p>Yiriman works with a 'culture block' consisting of four language groups: Nyikina, Mangala, Walmatjarri and Karajarri. The 'culture block area' stretches from (200 km) south of Broome across to communities half way between Fitzroy Crossing and to Halls Creek. This represents a distance by road of over 700 kms.</p> <p>The number of sites visited and supported during this reporting period included at least 15. These were:</p> <ul style="list-style-type: none"> <li>• Broome</li> <li>• Fitzroy Crossing (400 km east of Broome)</li> <li>• Wangkatjungka Community (510 km east of Broome)</li> <li>• Ngumban Community (500 km east of Broome)</li> <li>• Bayulu Community (525 km east of Broome)</li> <li>• Ngalingkadji Community (460 km east of Broome)</li> <li>• Djugerari Community (500 km south-east of Broome)</li> <li>• Kupartiya (530 km east of Broome)</li> <li>• Jarlmadangah Community (340 km east of Broome)</li> <li>• One Mile Community (1.6 km north of Broome)</li> <li>• Bidyidanga Community (180 km south of Broome)</li> <li>• Mijilamia (185 km south of Broome)</li> <li>• Kitty Well (200 km south of Broome)</li> <li>• Yilyi Community (600 km east of Broome)</li> <li>• Yakanarra Community (430 km south-east of Broome)</li> </ul>	<ul style="list-style-type: none"> <li>• The geographic breadth of the trips reaches across the region. This represents one of the most impressive years of on-country work across the region.</li> <li>• There is digital photo, sound and film evidence of work across the region.</li> <li>• Reference Group membership comprises of people from Walmatjarri, Nyikina, Mangala and Karajarri people.</li> <li>• Staff have been keeping detailed records of vehicle use. These demonstrate enormous coverage of the region.</li> <li>• The evaluator has joined staff during trips to the following places: <ul style="list-style-type: none"> <li>- Broome</li> <li>- Fitzroy Crossing</li> <li>- Wangkatjungka</li> <li>- Ngumban</li> <li>- Bayulu</li> <li>- Djugerari</li> <li>- Jarlmadangah</li> <li>- Bidyidanga</li> <li>- Mijilamia</li> <li>- Kitty Well</li> <li>- Mulan</li> </ul> </li> </ul>	<p>Varies across the region. 1<sup>st</sup> class in Fitzroy</p>



