



Royal Commission into Aboriginal Deaths in Custody Recommendation

241. Children's Aid Panels or Screening Panels

The Commission notes that in some jurisdictions (in particular South Australia and Western Australia) Children's Aid Panels or Screening Panels apply. These panels provide an option lying between police cautions, on the one hand, and appearances in children's courts, on the other hand. The Commission is unable to recommend that such panels be established in places where they do not presently exist, nor that panels be abolished in places where they do exist. The Commission, however, draws attention to evidence suggesting that the potential benefits which may flow from the provision of such panels are not fully realised in the case of Aboriginal juveniles. The Commission draws attention to the desirability of studies being done on a wide scale to determine the efficacy of such initiatives. The Commission recommends that for South Australia and Western Australia the following matters should be made clear by legislation, standing orders or administrative directions so as to provide:

- a. That the fact of arrest is not to be taken into account in determining whether a child is referred to a Children's Court as opposed to being referred to an alternative body such as a Children's Aid Panel;*
- b. That the decision to proceed by way of summons or attendance notice rather than by cautioning a juvenile should not be influenced by the existence of such panels;*
- c. That there should be adequate representation of Aboriginal people on the list of panel members;*
- d. That the panels should be so constituted that there be adequate representation of Aboriginal members of the panel on any occasion in which an Aboriginal juvenile's case is being considered;*
- e. That in no case should there be consideration of the case of an Aboriginal juvenile unless one member, at least, of the panel is an Aboriginal person; and*
- f. That an Aboriginal juvenile should not be denied consideration by a Children's Aid Panel by virtue of the juvenile's inability, on financial grounds, to make restitution for property lost, stolen or damaged.¹*

Background²

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) reviewed Children's Aid Panels in South Australia and Western Australia, finding they failed to reduce Aboriginal youth involvement in the justice system and may have worsened outcomes. Access to panel benefits required an admission of guilt, often under coercive circumstances, as referral depended on a screening panel. The RCIADIC underlined that this process disproportionately affected Aboriginal youth, who were more likely to be arrested rather than cautioned or summonsed. In contrast, Queensland and New South Wales—without such panels—were generally more progressive in prioritising cautioning over arrests. However, the Commission noted that comprehensive data on Aboriginal youth was lacking. Despite the panels' flaws, RCIADIC recommended reform rather than abolition, emphasising reduced arrests and increased use of alternatives like cautioning.

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 4, 184 ('RCIADIC').

² Ibid vol 4, 174.

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Intent	Where Children's Aid Panels or Screening Panels exist, they should be accessible; should not lead to increased summons over cautions; should have Aboriginal people as panel members, and financial means should not be a barrier for young people in accessing the panels.
Responsibility	South Australian and Western Australian governments.
Key action taken	
2005 Review³	Recommendation 241 was assessed by Victoria Police as being not relevant to Victoria, however Victoria Police supported proactive measures such as Family Group Conferences in the Children's Court.
2018 Review⁴	Deloitte considered Recommendation 241 not relevant to Victoria.
Since then	<p>At the time of the RCIADIC Children's Aid Panels or Screening Panels provided an option on the 'justice continuum' between police cautions and appearances in children's courts. They did not operate in Victoria and this recommendation was not directed to the Victorian Government.</p> <p>Aboriginal Youth Cautioning Program⁵</p> <p>Since that time, significant work has been undertaken in Victoria to increase cautioning of Aboriginal young people via the Aboriginal Youth Cautioning Program. Eligible Aboriginal young people in contact with police are referred to an Aboriginal-led community cautioning panel. The cautioning panel works with the young person and their family to identify suitable supports to address factors underlying their offending.</p> <p>Children's Koori Court⁶</p> <p>The Children's Koori Court was established in 2005 to address the over-representation of young Aboriginal people in the criminal justice system. By involving the Aboriginal community in the court process through the participation of Elders and Respected Persons the Koori Court aims to reduce offending behaviour and reduce the number of young Aboriginal people being sentenced to a period of detention. In the Children's Koori Court, it is the role of the Elders or Respected Persons to give cultural advice to the Judge or Magistrate in relation to the young person's situation. The Elders or Respected Persons may talk to the young person about their circumstances and why they are in court. It is not the role of the Elders or Respected Persons to decide on the outcome of the case. Only the Judge or Magistrate makes the sentencing decision.</p>

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005) vol 1, 360 ('2005 Review').

⁴ Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018) 485-6 ('2018 Review').

⁵ 'Aboriginal Youth Cautioning Program (AYCP)', *Victoria Police* (Web Page, 3 July 2023) <<https://www.police.vic.gov.au/aboriginal-youth-cautioning-program-aycp>> ('Aboriginal Youth Cautioning Program (AYCP)').

⁶ 'Koori Court', *Children's Court of Victoria* (Web Page, 2021) <<https://www.childrenscourt.vic.gov.au/criminal-division/koori-court>> ('Koori Court').

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Group Conferencing Program⁷

The Group Conferencing Program operates as a pre-sentence option in the Children's Court of Victoria. Group Conferencing is based on restorative justice principles and aims to help the young person avoid further or more serious offending. The group conferencing process attempts to strengthen the young person's family and community supports and identifies ways of restoring the harm associated with the offending behaviour.

Group conferencing is for young people referred by the Children's Court who have: pleaded guilty or been found guilty of offences that do not include homicide, manslaughter or sex offences; committed offences serious enough to warrant a supervisory order (probation/youth supervision order/youth attendance order) or a period of detention (youth residential centre/youth justice centre) to be considered by the court; consented to participate; and been assessed as suitable by a Youth Justice officer.

Yallum Yallum Elders and Respected Persons Council

In terms of responses that may operate between cautions and court, the Grampians Regional Aboriginal Justice Advisory Committee (RAJAC) established the Yallum Yallum Elders and Respected Persons Council to provide:

*An independent and self-determining justice model that promotes cultural healing, social and emotional wellbeing and a stronger role in culture and community, to divert people away from and address overrepresentation of Aboriginal people in the justice system.*⁸

Evidence of impact

Authorising documents

Cautioning

Refer to Recommendation 239. Victoria Police Manual (Cautions)⁹ and Section 345 of the *Children, Youth and Families Act 2005*¹⁰.

Yallum Yallum Elders and Respected Persons Council¹¹

The operating model was documented by the Centre for Innovative Justice in the 2022 Yallum Yallum Elders and Respected Persons Council report.

Children's Koori Court¹²

Children and Young Persons (Koori Court) Act 2004 (Vic.)

Group Conferencing

Section 415 of the *Children, Youth and Families Act 2005* (Vic.)¹³.

⁷ 'Youth Justice Group Conferencing', *Department of Justice and Community Safety*, 2022) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-group-conferencing>> ('Youth Justice Group Conferencing').

⁸ Centre for Innovative Justice, *Yallum Yallum Elders and Respected Persons Council* (Report, September 2022) 5 ('Yallum Yallum Elders and Respected Persons Council').

⁹ Victoria Police, *Victoria Police Manual - Cautions* (Guidelines, rev ed, April 2024, ('VPMG - Cautions')).

¹⁰ *Children, Youth and Families Act 2005* (Vic) ('*Children, Youth and Families Act*').

¹¹ *Yallum Yallum Elders and Respected Persons Council*

¹² *Children and Young Persons (Koori Court) Act 2004* (Victoria) ('*Children and Young Persons (Koori Court) Act*').

¹³ *Children, Youth and Families Act*.

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Outputs	None identified.
Outcomes	None identified.
Community views	<p>A case study on the Yallum Yallum Elders and Respected Persons Council was included in the Aboriginal Justice Caucus' Nuther-mooyoop to the Yoorrook Justice Commission on systemic injustice in the criminal justice and child protection systems.</p> <p>Case Study: Yallum Yallum Elders and Respected Persons Council¹⁴</p> <p><i>The RAJAC sought to engage the Centre for Innovative Justice to progress this initiative through researching existing Aboriginal-led justice models; developing and carrying out a co-design process with the RAJAC, Aboriginal Community members, organisations, and other stakeholders; and drafting a model and recommendations for implementation.</i></p> <p><i>The initiative is a process for referring willing community members of any age to a Council of Elders and Respected Persons known as Yallum Yallum for support and referral. Council members engage with participants over time with the aim of building relationships, and fostering development, growth and increased connection to culture, Community and Country.</i></p> <p><i>It is hoped that participation in Yallum Yallum will promote cultural healing, enhance social and emotional wellbeing and encourage participants to fulfil cultural roles and obligations to Community.</i></p>

Related recommendations

2005 Review¹⁵	<p>Recommendation 153</p> <p>That the Departments of Justice (Court Services) and Human Services (Juvenile Justice):</p> <ul style="list-style-type: none"> (a) consider the establishment of a Children's Koori Court as a matter of priority, (b) undertake an evaluation of the Children's Koori Court, (c) pending the results of the evaluation and in consultation with the Aboriginal community, consider the roll-out of the Children's Koori Court, (d) provide a report to the Aboriginal Justice forum on (a)-(c); and <p>That the Victorian Government continue to implement and monitor recommendation 241 through any monitoring process established as a consequence of this Review.</p>
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Assessment summary

The Aboriginal Justice Caucus confirmed that Recommendation 241 is not relevant to Victoria.

¹⁴ Aboriginal Justice Caucus, Nuther-mooyoop (NUT.0001.0074.0004) to Yoorrook Justice Commission (12 January 2023) ('AJC Nuther-mooyoop to Inquiry into Systemic Injustice in the Criminal Justice and Child Protection Systems (Yoorrook Justice Commission)').

¹⁵ 2005 Review.

Bibliography

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- 'Aboriginal Youth Cautioning Program (AYCP)', *Victoria Police* (Web Page, 3 July 2023) <<https://www.police.vic.gov.au/aboriginal-youth-cautioning-program-aycp>>
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- Children and Young Persons (Koori Court) Act 2004* (Victoria)
- Children, Youth and Families Act 2005* (Vic)
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- Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991)
- Victoria Police, *Victoria Police Manual - Cautions* (Guidelines)rev ed, April 2024
- 'Youth Justice Group Conferencing', *Department of Justice and Community Safety*, 2022) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-group-conferencing>>