



Children's Court  
New South Wales

# NSW Aboriginal Child and Family Conference

The role of the Children's Court in responding to risk.

Strengthening families and communities to keep children safe.

*The NSW Children's Court acknowledges the Gadigal People of the Eora Nation and their continuing connection to land, sea and community.*

*We pay our respects to elders past and present and to the future leaders who we will walk beside in improving outcomes for Aboriginal children, families and communities.*

**Judge Nell Skinner**  
Children's Court of New South Wales

13 June 2023





## Your worksheet

What do you need: A pen and paper or the notes app on your phone.

What do you have to do: Answer the questions on the coloured slides.

Then what: Give me your answers at the end or email them to me.

Nell Skinner

[judge.skinner@courts.nsw.gov.au](mailto:judge.skinner@courts.nsw.gov.au)

# Children's Court jurisdiction (The tools!)



## Criminal

- Crime (under 18)
- Parole

## Apprehended Violence Orders

## Care

- Parent capacity orders
- Child removal
- Restoration
- Guardianship

## Education

- Compulsory Schooling Conferences
- Compulsory Schooling Orders



**PRENATAL**



1

5

10

14

18



**POLICE**



ROSH

Removal

Witness or victim of crime

Misbehaviour begins

Teenagers...

**DCJ\***



ROSH

Family preservation

Removal

OOHC – Foster care,  
Guardianship, Adoption

Residential care

After Care

**HEALTH**



ROSH

Early diagnosis and treatment

Family supports

Mental Health

AOD

**EDUCATION**



ROSH

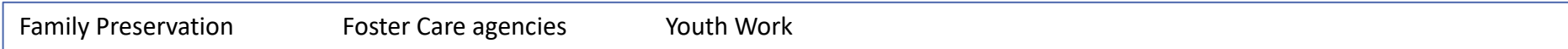
Cognitive assessment

DFV

Neglect

Absence (Suspension?)

**NGOs / ACCOs**



**COURTS**



Removal

Restoration

*Doli incapax*

Diversion

Supervision

Control

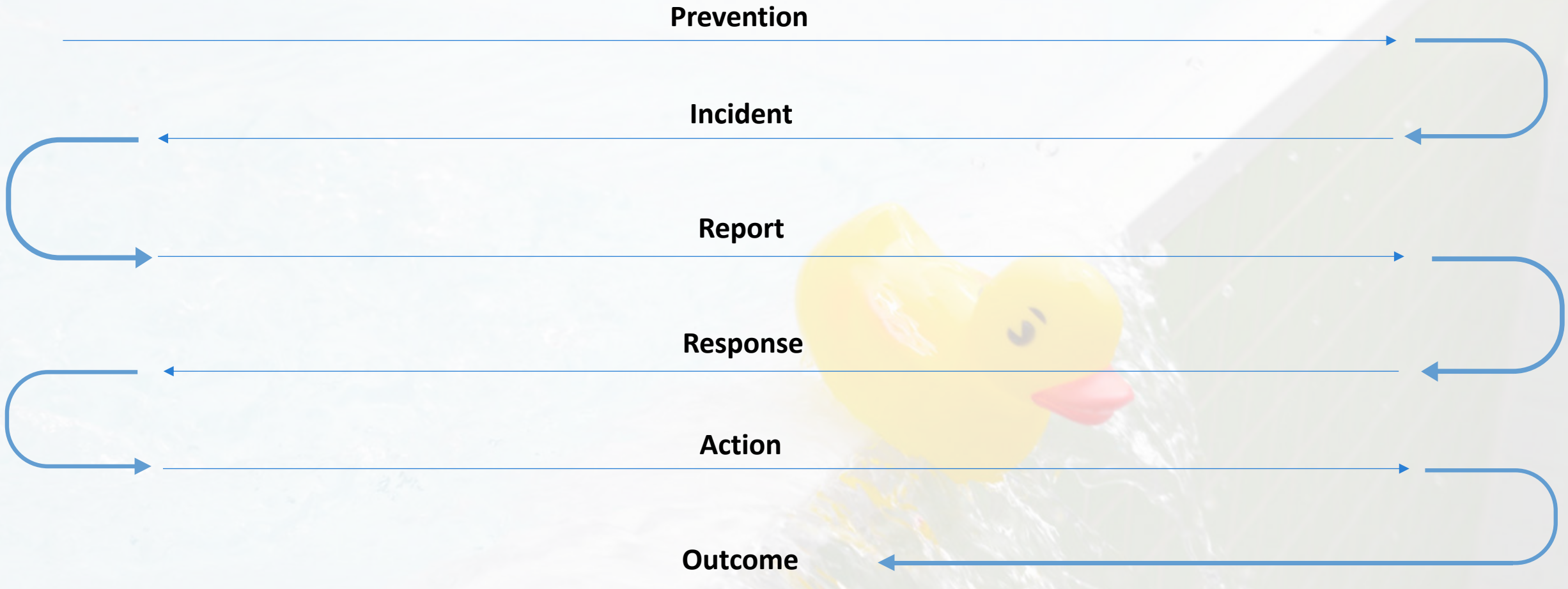
**\* Community Services & Housing**



**What motivated you to work in this sector?**

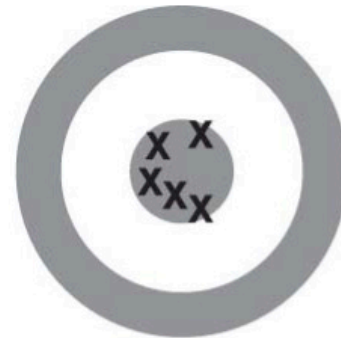
**(What's your purpose?)**

# The risk management system

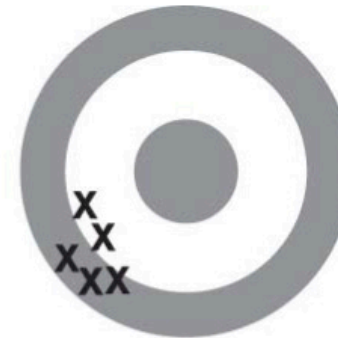




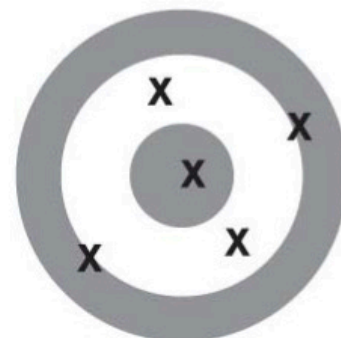
# Assessing risk is a judgment



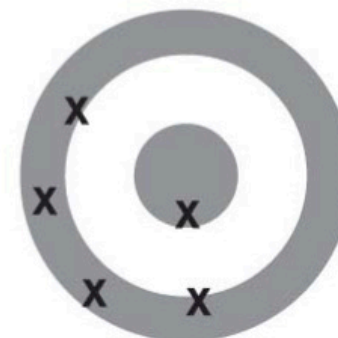
TEAM A



TEAM B

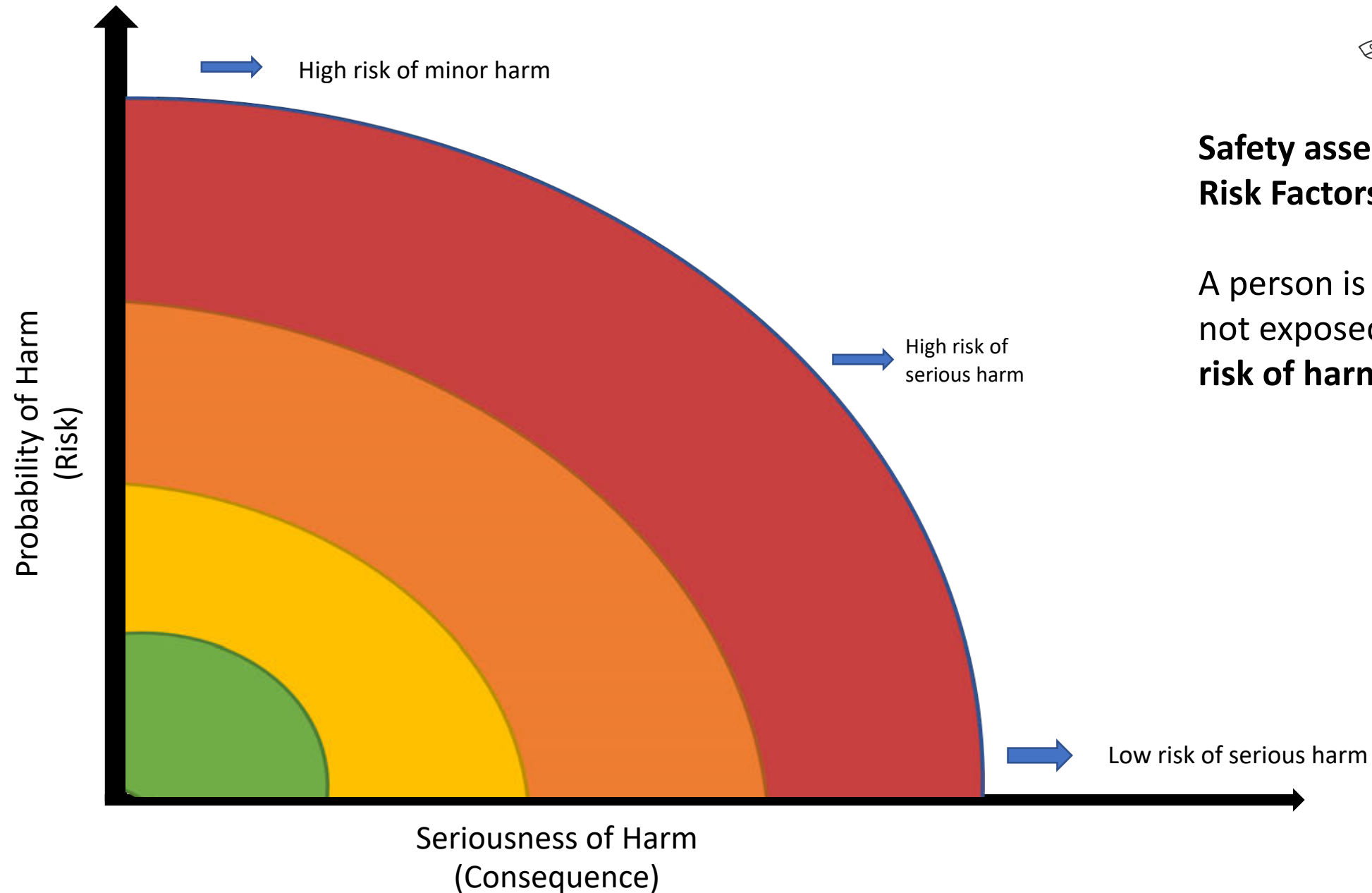


TEAM C



TEAM D

'NOISE – A Flaw in Human Judgment' by Daniel Kahneman, Olivier Sibony, Cass R Sunstein 2021



**Safety assessment =  
Risk Factors – Protective factors**

A person is “safe” when they are not exposed to an **unacceptable risk of harm.**



# The Care and Protection jurisdiction?

Risk assessment tools (process)

Cultural values (bias)

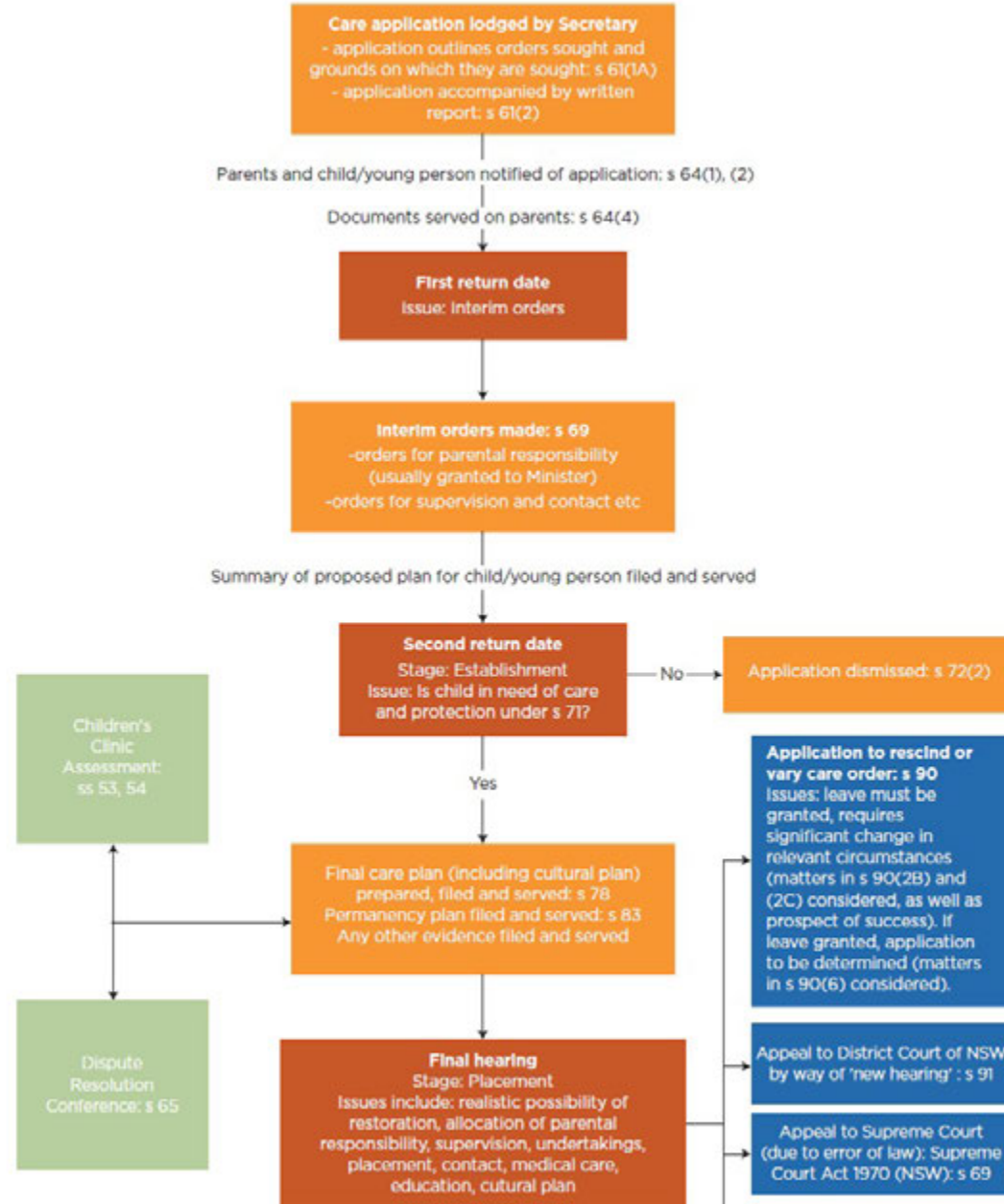
Seeing snakes

Sharing info (confidentiality)

Evidence based decision-making (data)

Discretionary decisions

## CARE AND PROTECTION PROCEEDINGS FLOWCHART



# Population rates of Aboriginal children and young people in the NSW child protection system



**213**

per 1,000\*

Rate of Aboriginal children and young people involved in risk of significant harm (ROSH) reports, NSW, 2021-22



**89**

per 1,000\*

Rate of Aboriginal children and young people involved in ROSH reports who were seen by DCJ caseworkers, NSW, 2021-22



**8**

per 1,000\*

Rate of Aboriginal children and young people entering OOHC NSW, 2021-22

Aboriginal children and young people are

4x more likely

to be involved in ROSH reports than non-Aboriginal children and young people

Aboriginal children and young people involved in ROSH reports are

7x more likely

to be seen by DCJ caseworkers than non-Aboriginal children and young people

Aboriginal children and young people are

12x more likely

to enter OOHC than non-Aboriginal children and young people



## FAMILY IS CULTURE

REVIEW REPORT | 2019

INDEPENDENT REVIEW OF ABORIGINAL  
CHILDREN AND YOUNG PEOPLE IN OOHC



- Recommendation 12:** Publication of Judgments
- Recommendation 12:** Publication of statistics
- Recommendation 14:** Publication of an annual review
- Recommendation 55 :** Prior alternative actions that were considered.
- Recommendation 65:** Attendance of care provider in criminal proceedings
- Recommendation 80 :** Judicial Commission to develop educational materials for magistrates about de/identification of Aboriginal children in proceedings
- Recommendation 82:** Ongoing Judicial Education regarding the Aboriginal Child Placement Principles
- Recommendation 112:** Court should have more active role in restoration as preferred placement (amend s.83)
- Recommendation 113:** If NRPOR Court should consider placement with relative or kin (amend s.83)
- Recommendation 114:** Judicial Commission and Aboriginal educators to teach impact of intergenerational trauma, effects of colonisation, DV, poverty, substance abuse and mental health issues impact on parents' interaction with Court
- Recommendation 115 :** Direction of service provision in restoration cases. Practice Note 17
- Recommendation 124:** New magistrates to help Children's Court hear all care matters in NSW
- Recommendation 125 :** Dedicated Care List for Aboriginal families, Dubbo pilot



**What are three obstacles to positive change for Aboriginal children?**



# The welfare system



## Prevention

- stable and safe housing
- mental health support
- AOD support
- family violence counselling / trauma counselling
- parenting programs
- social welfare assistance
- respite (including in home support) and additional supports for parents with impairments.
- Connection to community (visibility) and culture

30 000  
ROSH  
p/a

## Report

Police  
Teachers  
Health professionals  
Family  
Community

## Response

No response  
Service referral  
Case management (Safety planning?)  
Court intervention

Contracts between welfare agency and parents.

Temporary care arrangements

Court ordered interventions (PCO)

s 61 – with / without removal

s 38 Care plan

# The welfare system



Children's Court  
New South Wales

## Outcome

2000  
Filings  
p/a

Restoration  
PR Parent  
PR Guardian  
PR Minister  
Adoption

## Responsibilities

Residence  
Culture  
Contact  
Health (Therapy to break the cycle?)  
Education

## Future options?

Role of community in family preservation and reunification  
Shared power – removal, placement and Parental responsibility  
Peer programs

## After final orders?

**When we walk away how do we leave them?**

**Permanent placement** means a long-term placement following the removal of a child or young person from the care of a parent or parents pursuant to this Act that provides a safe, nurturing, stable and secure environment for the child or young person.

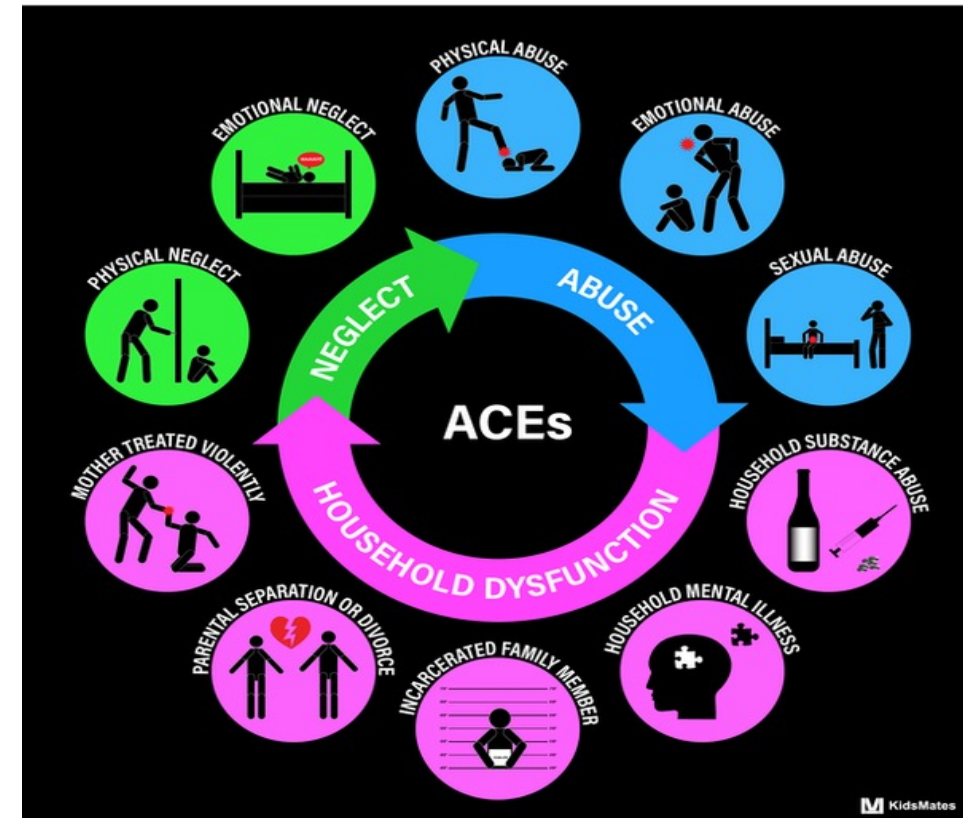




# Care and Protection jurisdiction

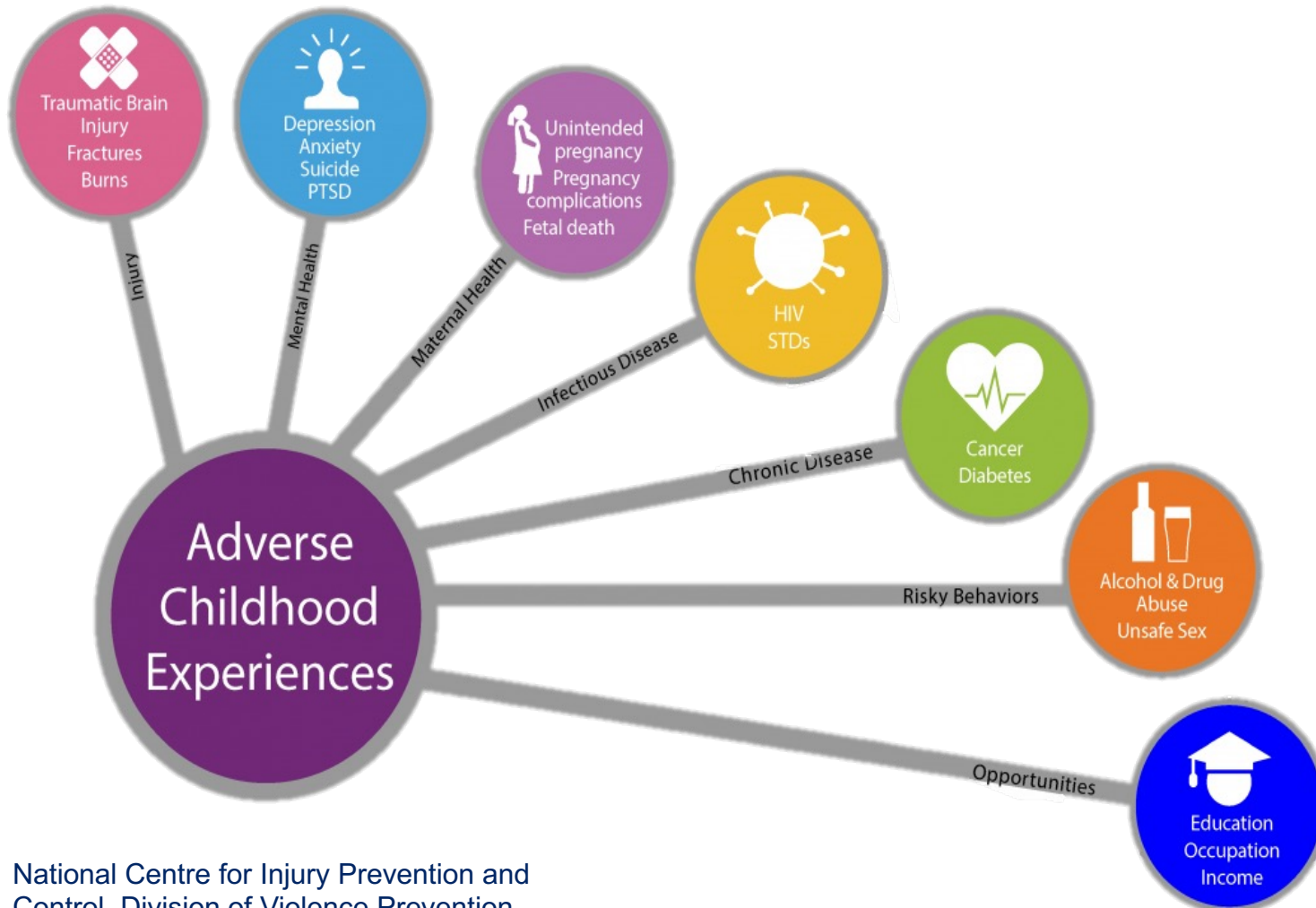
## s 71 Children and Young Persons (Care and Protection) Act 1998

- There's no parent (death / prison / relinquished care)
- Parents acknowledge serious difficulties caring for the child.
- Child has been physically or sexually abused.
- Basic physical, psychological or education needs not met.
- Child suffering harm in their home.
- Child under 14 exhibited sexually harmful behaviours and order is necessary.

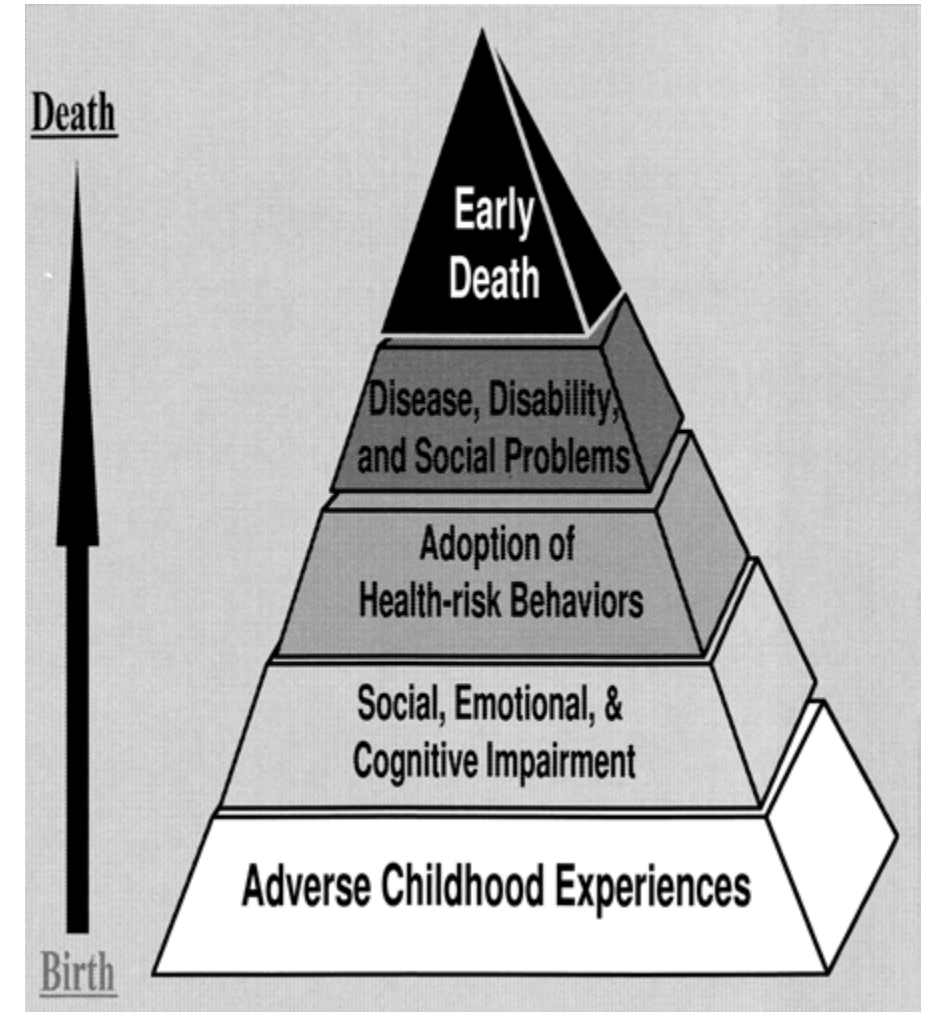




# Potential outcomes after adverse childhood experiences



National Centre for Injury Prevention and Control, Division of Violence Prevention



# Benevolent Childhood Experiences



Benevolent Childhood Experiences represent the **positive experiences before 18 years**, which do not depend on higher socioeconomic status in the family of origin.

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Teachers  
that care

Predictable  
home  
routine

Feeling  
safe with  
carer

Having at  
least one  
good friend

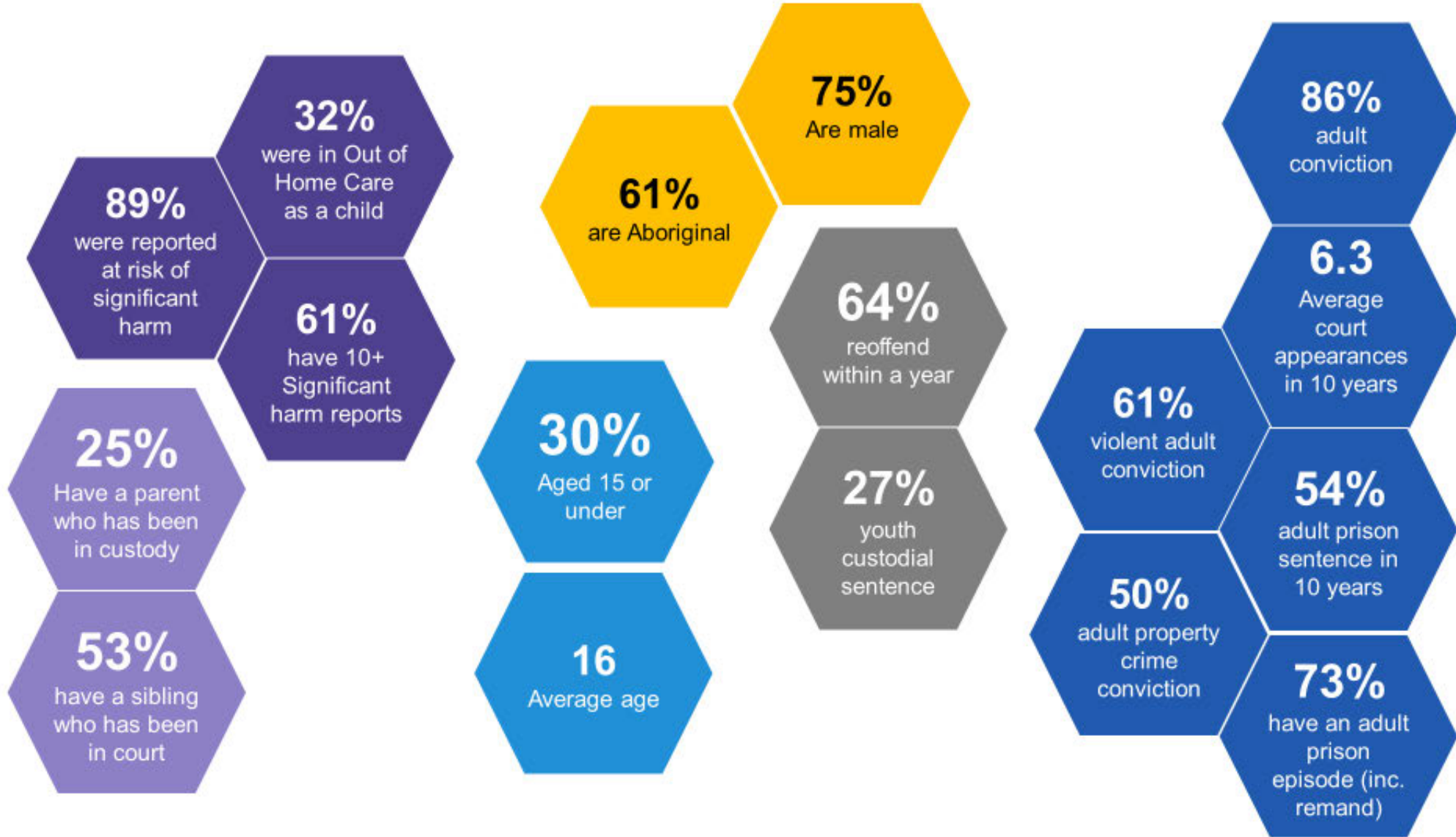
Comforting  
beliefs

Good  
neighbours

Comfortable  
in one's self

Opportunities  
for fun

# Young people with 2 or more court appearances





**What are three actions that might achieve positive change for Aboriginal children?**

# What tools do we have to motivate change?



## What message do these actions give?

- Safety planning
- Parent Responsibility Contract
- Parent Capacity Order
- Removal of children
- School suspension
- Expulsion
- STMP
- Arrest
- Bail conditions
- Refusing bail
- Sentencing
- Restraining Orders

## What will motivate positive change?

- Access to services
- Help without judgement.
- Control over information.
- Family and cultural connection.
- Community involvement.
- Consistent relationships
- Role models
- Opportunities to develop







# The human side

## 'Warm Room'

Autonomy (free, self-determining, volitional)

Competence (worthy, confident, effective, valued)

Relatedness (Belonging, inclusion, connectedness)

## 'Cold Room'

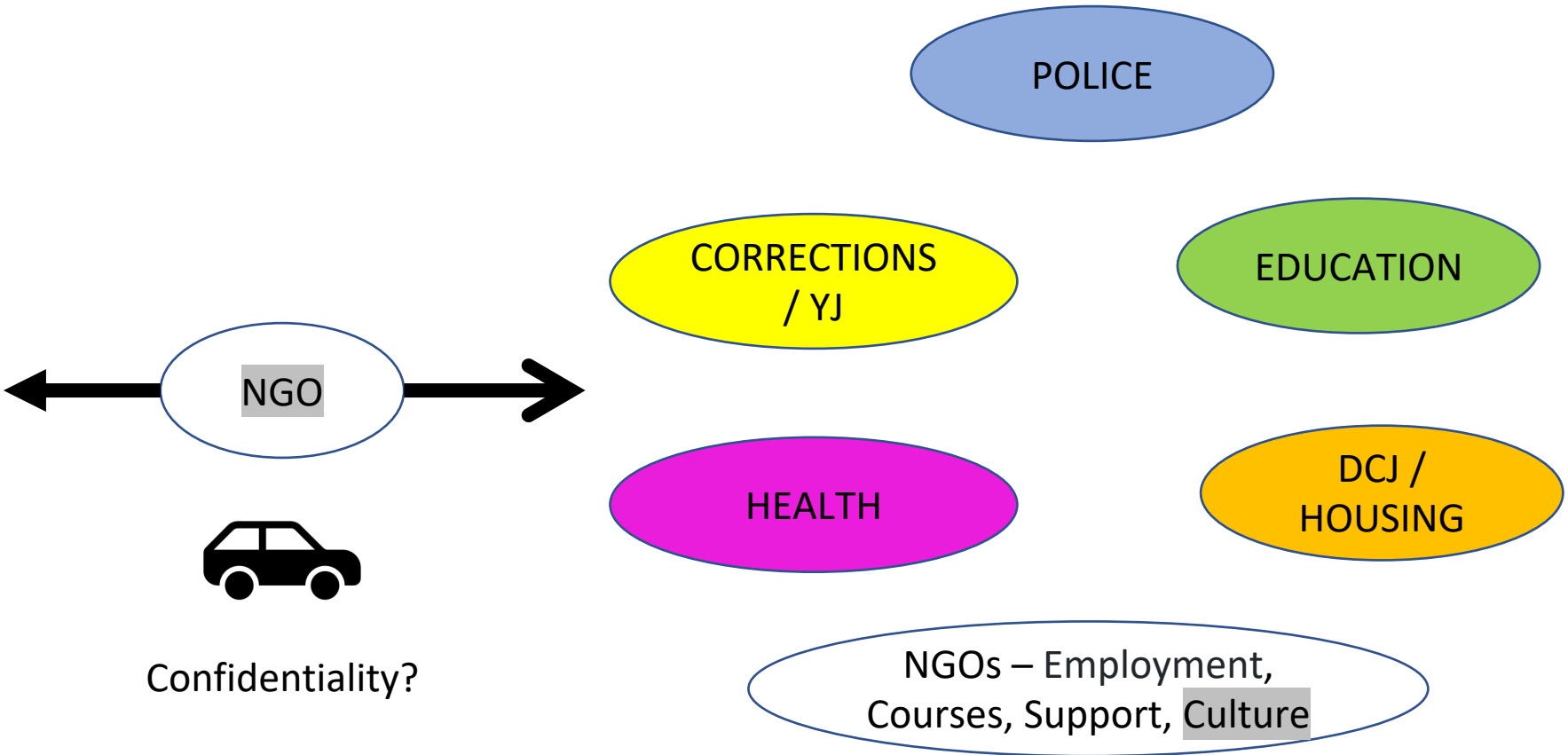
Trapped, Coerced, Pressured.

Self-doubting, inept, ill-equipped, purposeless.

Social exclusion, Isolation



# A whole system response?





# Five critical elements to building thriving communities



Genuine and inclusive co-design of initiatives with community partnership

Utilising community strengths and acknowledging its capacity

Fostering safe and effective spaces

Minimising and acknowledging discrimination and marginalisation

A whole system approach to interconnect families and services



What can you do to help?  
(And who do you need?)

# MOTIVATIONAL LAST SLIDE!

Curiosity  
Empathy  
Conscience

AN IDEA

ENERGY

GENEROSITY

PATIENCE

HELPFULNESS

FLEXIBILITY

RESILIENCE

HOPE

SERVE, DON'T TRANSACT.  
LOOK AFTER EACH OTHER AND LOOK AFTER YOURSELF.