PIAC's submission to the Finance and Public Administration Committee inquiry, *Aboriginal and Torres Strait Islander experience of law enforcement and justice services*

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Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the Finance and Public Administration References Committee's inquiry into the experience of Aboriginal and Torres Strait Islander people of law enforcement and justice services.[1] As a community legal centre, PIAC has, for over three decades, provided legal assistance services to vulnerable people across Australia. A large number of our clients are Aboriginal and Torres Strait Islander Australians. PIAC provides legal assistance to Aboriginal clients in relation to civil law claims across a range of areas, from attempts to have stolen wages returned, to discrimination matters to cases of unlawful arrest and detention. The underlying objective of all of PIAC's work is to advocate for systemic change that will address, in the long term, the decades of entrenched intergenerational disadvantage experienced by Aboriginal and Torres Strait Islander people.

In this submission, PIAC provides comment and makes recommendations principally on the basis of evidence from its legal casework, as well as drawing on past policy submissions made to Government and Parliamentary inquiries. As such, PIAC only comments on the Terms of Reference in relation to which it has direct experience.

The Public Interest Advocacy Centre

PIAC is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the (then) NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Trade and Investment NSW for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

The specific disadvantage experienced by Aboriginal and Torres Strait Islander people arises in all areas of PIAC's policy and legal work. In addition to its general legal casework, PIAC has two project areas where Aboriginal and Torres Strait Islander clients are specifically in focus. First, PIAC's Indigenous Justice Project (IJP), set up in 2001, aims to:

- identify public interest issues that impact on Aboriginal and Torres Strait Islander people;
- conduct public interest advocacy, litigation and policy work on behalf of Aboriginal and Torres Strait Islander clients and communities; and
- strengthen the capacity of Aboriginal and Torres Strait Islander people to engage in public policy making and advocacy.

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[1] Senate Finance and Public Administration References Committee, *Inquiry into Access to legal assistance services*, referred on 4 March 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Legal_assistance_services (accessed 29 April 2015).

The IJP has conducted policy and advocacy work in relation to issues such as policing in Aboriginal and Torres Strait Islander communities, the effectiveness of police complaint systems in NSW, the over-representation of young people in detention, improving access to justice, race discrimination and a wide range of other civil matters. The IJP has also acted for family members of Aboriginal inmates who have died in custody.

Secondly, PIAC's Homeless Persons' Legal Service (HPLS) was established in 2004 and assists a number of Aboriginal clients who are experiencing or are at risk of homelessness. It operates 11 legal clinics based at agencies that provide other services to homeless people and provides legal information, referral, advice and, in some cases, on-going casework, in a large range of areas of law. One new HPLS clinic, for example, is being established at The Shed in Mt Druitt of NSW, a centre that provides support for predominantly Aboriginal and Torres Strait Islander men across a range of areas in addition to legal assistance, including mental health, employment and housing. PIAC's HPLS also conducts policy and advocacy work on issues arising from the provision of legal services and its liaison work.

PIAC's work in criminal justice and access to justice for Aboriginal and Torres Strait Islander Australians

Areas of PIAC's law and policy work relevant to this inquiry, and which support this submission, include the following.

Stolen Generations & Stolen Wages

Since 2001, PIAC has advocated for the establishment of repayment and compensation schemes to address the wrongs committed against Aboriginal and Torres Strait Islander people by past governments and to mitigate the intergenerational disadvantage that continues to flow as a result. PIAC, for example, worked closely with Aboriginal communities in relation to the setting up of the Aboriginal Trust Fund Repayment Scheme in NSW, providing legal support and community outreach to assist claimants to apply for their wages withheld from them by previous NSW governments.[2]

Criminal justice

A number of PIAC's clients are Aboriginal and Torres Strait Islanders people and they are predominantly juveniles. PIAC seeks to challenge unlawful practices by police in their interaction with Aboriginal and Torres Strait Islander people and improve the relationship between communities and the NSW Police Force. PIAC is, for example, currently running a class action on behalf of a number of young people who have been unlawfully detained due to inaccurate or out of date information held on the police computer system.[3]

PIAC has also made a number of submissions to government and parliamentary inquiries, at both State and Federal levels, and published stand-alone reports, in relation to: bail reform;[4] the high

2 Further information about PIAC's Stolen Wages project can be found on PIAC's website, at http://www.piac.asn.au/project/returning-stolen-wages.

3 Further information about the class action can be found on PIAC's website, at http://www.piac.asn.au/project/cidnap-unlawful-detention-young-people.

4 See, for example, Bailey, B et al *Review of the Law Of Bail in NSW: submission to the New South Wales Law Reform Commission,* Public Interest Advocacy Centre, 26 July 2011, available at http://www.piac.asn.au/publication/2011/07/review-law-bail-nsw.

incidence of involvement of Aboriginal juveniles in the criminal justice system;[5] justice reinvestment;[6] appropriate diversions from the criminal justice system;[7] and the need for rehabilitation and support after release from prison.[8]

Access to justice

Finally, much of PIAC's legal and policy work seeks to overcome the significant barriers to accessing justice experienced by our clients, all of whom suffer from some form of disadvantage. This includes submissions to government and parliamentary inquiries, based on PIAC's legal service provision, in a number of areas including: obstacles to justice in civil litigation;[9] judicial and merits review;[10] and the funding of legal assistance services.[11]

General principles

Reform led by communities

PIAC believes that any recommendations for reform and any consequent legislative, regulatory and policy changes must be based on consultation and agreement with the Aboriginal and Torres Strait Islander communities that will be affected. As is well demonstrated in Australian history, top-down policy imposition with little or no community ownership has generally failed to alleviate the disadvantage suffered by Aboriginal and Torres Strait Islander Australians.

Involvement of Aboriginal and Torres Strait Islander people accords with a human rights based approach to policy development. The *United Nations Declaration on the Rights of Indigenous Peoples*[12] (the Declaration) protects the right to self-determination[13] and the right of Indigenous

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5 See, for example, Brown, L and Zulumovski, *A better future for Australia's Indigenous young people: Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*, Public Interest Advocacy Centre, 22 December 2009, available at http://www.piac.asn.au/sites/default/files/publications/extras/09.12.22-PIAC-IndigenousYouthSub.pdf.

6 See, for example, Schetzer, L *Value of a Justice Reinvestment approach to criminal justice in Australia, Submission to the Legal and Constitutional Affairs Committee*, Public Interest Advocacy Centre, 18 March 2013, available at http://www.piac.asn.au/publication/2013/04/value-justice-reinvestment-approach-criminal-justice-australia.

7 See, for example, Hartley, C *NSW Law Reform Commission – Sentencing Question Papers1-4*, Public Interest Advocacy Centre, 4 June 2012, available at http://www.lawreform.justice.nsw.gov.au/Documents/cref130_se005.pdf.

8 See, for example, Schetzer, L and Streetcare *Beyond the prison gates*, Public Interest Advocacy Centre, 31 July 2013, available at http://www.piac.asn.au/publication/2013/08/beyond-prison-gates.

9 See, for example, Goodstone A et al, *Justice – not a matter of charity: Submission to the Senate Legal and Constitutional Affairs Committee's Inquiry into Access to Justice* (20 May 2009), Public Interest Advocacy Centre, available at http://www.piac.asn.au/publication/2009/05/piac-access-justice-submission.

10 See, for example, Goodstone, A et al *Statutory judicial review – keep it, expand it, Submission to the Administrative Review Council Consultation Paper on Judicial Review in Australia*, 14 July 2011, available at http://www.piac.asn.au/publication/2011/07/statutory-judicial-review-keep-it-expand-it.

11 See, for example, Moor D, Santow E and Roth J *Equal before the law: Submission in response to the Productivity Commission Issues Paper about Access to Justice Arrangements,* Public Interest Advocacy Centre, 4 November 2013, available at http://www.piac.asn.au/publication/2013/11/equal-law; and Goodstone, A and Santow, E *Investing in the community: submission to the NSW Government review of legal assistance services to the NSW community,* Public Interest Advocacy Centre, 28 October 2011, available at http://www.piac.asn.au/sites/default/files/publications/extras/11.10.28_investing_in_the_community_submission_to_the_nsw_government_review_of_legal_assistance.pdf.

12 *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the UN General Assembly in the 107th plenary meeting, 13 September 2007, available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Australia became a signatory in 2009.

13 Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples.*

people to 'participate in decision-making in matters which would affect their rights'.[14] The Declaration also imposes upon signatory states an obligation to 'consult and cooperate in good faith' with Indigenous people in order to obtain their consent 'before adopting and implementing legislative or administrative measures that may affect them'.[15]

PIAC believes that any recommendation seeking to make positive change in the context of access to justice, and indeed in all areas of Aboriginal life, must have the principle of self-determination at its heart.

Addressing multi-faceted disadvantage

The specific problems that Aboriginal and Torres Strait Islander people experience regarding law enforcement and justice services cannot be identified or addressed in isolation. There are clear causative links between the various indicators of Aboriginal disadvantage. Poor socioeconomic factors, such as poor education attainment and consequent unemployment, are strong determinants of Aboriginal offending.[16] There is also a high correlation between involvement in the criminal justice system and experience of being in State care as a child.[17] In PIAC's experience, the legal problems our clients face will often be just one aspect of a range of issues – including, for example, mental health problems, alcohol and drug abuse and homelessness - that need to be resolved. Accordingly, looking at just one element of this matrix, the justice system, without reference to other determinants of disadvantage is unlikely to lead to the significant change that decades of government policy has endeavoured to achieve.

PIAC therefore urges the Committee to recommend long-term changes that:

- involve comprehensive consultation with Aboriginal and Torres Strait Islander communities;
- identify common goals based on co-operation between all State/Territory and Federal governments;
- are bipartisan and which have majority cross-party support; and
- involve consultation and co-operation between all relevant government departments.

A time for action

This current reference to the Committee follows a long line of inquiries, consultations and reviews which have analysed and documented the negative experience of Aboriginal and Torres Strait Islander people with law enforcement and justice authorities. Consequently, there has been a wealth of knowledge generated about the causative factors underlying Aboriginal disadvantage and their disproportionate involvement with the criminal justice system. Just in the past 12 months the Productivity Commission has reported on access to justice, including the provision of legal services to Aboriginal and Torres Strait Islander people;[18] and has published a major report

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14 Article 18 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

15 Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples.*.

16 See National Aboriginal and Torres Strait Islander Social Survey, cited in Biddle, N "Entrenched Disadvantage in Indigenous Communities" in Centre for Economic Development of Australia *Addressing entrenched disadvantage in Australia*, April 2015, available at http://adminpanel.ceda.com.au/FOLDERS/Service/Files/Documents/26005~CEDAAddressingentrencheddisadvantageinAustraliaApril2015.pdf. At page 73.

17 Steering Committee for the Review of Government Service Provision *Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009), 25.

18 Productivity Commission, *Access to Justice, Inquiry Report*, 3 December 2014, available at http://www.pc.gov.au/inquiries/completed/access-justice/report.

on the key indicators of Indigenous disadvantage.[19] The 2014 annual report of the Aboriginal and Torres Strait Islander Social Justice Commissioner set out a range of recommendations to address a number of issues including high rates of Aboriginal incarceration.[20] In 2013, the Senate Legal and Constitutional Affairs References Committee conducted an inquiry into justice reinvestment;[21] and in 2013, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs held an inquiry into Aboriginal youth in the criminal justice system.[22] There have also been numerous reviews recently undertaken at the State level that have addressed the specific experience of Aboriginal and Torres Strait Islander people in the context of access to justice, such as the strategic review of the NSW juvenile justice system in 2010 commissioned by the Minister for Juvenile Justice[23] and the NSW Law Reform Commission inquiry into bail.[24]

The statistics are, sadly, well established and well known. When compared with the non-Aboriginal population, Aboriginal and Torres Strait Islander people will die much earlier as adults; are more likely to suffer from poor nutrition and diseases which infrequently arise in mainstream society; are less likely to transition from school to university; more likely to transition from employment to non-employment; and are far more likely to be in contact with police, be arrested and imprisoned.[25]

The reports from these inquiries and reviews have all reached a similar conclusion: that the entrenched disadvantage experienced by Aboriginal Australians requires immediate and drastic action. It is the same conclusion drawn just over 24 years ago by the landmark Royal Commission into Aboriginal Deaths in Custody. Accordingly, while PIAC certainly welcomes the focus that this Committee's latest inquiry brings, we urge the Committee to build on recommendations made in past reports that have not been taken up by successive governments. The time to formulate a long-term plan of action, which is beyond political dispute, is long overdue.

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19 Productivity Commission, Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014,* 19 November 2014, available at http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014#report.

20 Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice and Native Title Report 2014*, Australian Human Rights Commission, 20 October 2014, available at https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0.

21 Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, 20 June 2013, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index.

22 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing, Indigenous youth in the criminal justice system*, June 2011, available at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=atsia/sentencing/report.htm.

23 Noetic Solutions Pty Ltd, *A Strategic Review of the New South Wales Juvenile Justice System, Report for the Minister for Juvenile Justice,* April 2010, available at http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Review%20Report%20FINAL.pdf.

24 NSW Law Reform Commission *Bail, Report 133,* 8 April 2012, available at http://www.lawreform.lawlink.nsw.gov.au/agdbasev7wr/lrc/documents/pdf/r133.pdf.

25 Productivity Commission, above note 19.

a. Extent to which Aboriginal and Torres Strait Islander Australians have access to legal assistance services

PIAC provides a niche legal service to Aboriginal and Torres Strait Islander people, enabling us to assist a relatively small number of clients but with an objective of achieving systemic change that will affect many. PIAC aims to address Aboriginal disadvantage by improving access to justice and encouraging accountability and a more responsive approach by the Commonwealth, State and Territory governments to addressing unmet legal needs. Accordingly, as a legal service provider, PIAC is acutely aware of the barriers our Aboriginal and Torres Strait Islander clients (as well as those people we do not have the resources to assist) face in attempting to access legal assistance services. PIAC is also aware that there is a significant gap between the legal services Aboriginal and Torres Strait Islander people need and what is provided by the various sources of legal assistance from government, community legal centres, legal aid commissions and private legal practitioners acting in a pro bono capacity.

Legal services required

The legal needs of Aboriginal and Torres Strait Islander people are diverse, influenced by socio-economic disadvantage and a range of other social factors. They range from legal assistance with criminal, family and civil law matters to assistance with native title, wills, tenancy issues and intellectual property among others.[26]

There are a number of free legal services available to Aboriginal people through specific and mainstream legal aid service providers. The key legal aid service providers are the Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention Legal Services (FVPLS), Legal Aid Commissions (LACs) and Community Legal Centres (of which PIAC is one).

ATSILS are the specialist legal aid service providers for Aboriginal and Torres Strait Islander people nationwide. Established in the 1970s in response to the over-representation of Aboriginal and Torres Strait Islander defendants in the criminal justice system, ATSILS remain the legal aid service provider for most Aboriginal and Torres Strait Islander people.[27] In 1991, Commonwealth funding for legal services specifically for Aboriginal people increased dramatically following the report of the Royal Commission into Aboriginal Deaths in Custody, which highlighted the continuing and critical need for criminal law services for Indigenous people. As discussed in further detail below, ATSILS struggle to adequately meet the demands for their service as a consequence of inadequate funding arrangements and uncertainty about future funds.

Meeting legal need

In recent years, the increasing demand for criminal law services and the inadequacy of funding has resulted in ATSILS focusing the majority of their limited resources on criminal law services. Priority is given to criminal matters where the accused is at risk of incarceration.[28] As a result,

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26 Schetzer L, Mullins, J and Buonamano, R *Access to justice and legal needs, a project to identify legal needs, pathways and barriers for disadvantaged people in NSW background paper,* 2002, Law and Justice Foundation of NSW, available at http://www.lawfoundation.net.au/report/background

27 Australian National Audit Office, *Administration of the Indigenous Legal Assistance Program, Attorney-General's Department, ANAO Report No. 22 2014-15,* 12 February 2015, at page 16. Available at http://www.anao.gov.au/Publications/Audit-Reports/2014-2015/Administration-of-the-Indigenous-Legal-Assistance-Programme.

28 Above, note 27, at page 14.

gaps exist in the provision of other essential legal services such as family law, child-care and protection and civil law services. Such services are not offered by ATSILS to the same extent as criminal law services, if at all. In 2012-13, around 83% of all ATSILS matters related to criminal law; and over 90% of casework and duty matters were in criminal law.[29]

The Aboriginal Legal Service (NSW/ACT) (the ALS) does not offer civil law services due to funding constraints. While it has Aboriginal Field Officers assisting Aboriginal people with civil law problems, those requiring legal advice are referred to Legal Aid NSW. The reduction in funding to the ALS has created clear gaps in the provision of vital legal services for Aboriginal people in NSW. Typically this need is left to be met by mainstream legal aid service providers such as LACs and CLCs.

PIAC often receives enquiries from Aboriginal and Torres Strait Islander people seeking assistance in civil law matters and civil law cases make up the majority of the on-going casework handled by PIAC's IJP. Much of PIAC's work representing Aboriginal and Torres Strait Islander people and communities involves addressing the legal needs of those who have suffered discrimination and the consequences of unjust, unsafe or deficient laws, practices and policies. Our resources, however, are limited. As such, the scope of matters in which PIAC provides assistance is restricted and PIAC frequently has to refer Aboriginal people seeking legal assistance to other legal services. With funding cuts across CLCs, there is an increasing pool of Aboriginal and Torres Strait Islanders who will simply not be able to access legal assistance services. This is despite an evident need, that has emerged in recent years, for increasing access to civil law services for all Aboriginal and Torres Strait Islanders.

Barriers to access

While there are limited legal services available, there are also considerable obstacles that prevent many Aboriginal and Torres Strait Islander people from accessing the legal assistance they need. The Productivity Commission concluded Indigenous people face a number of barriers to accessing justice, including:

- a lack of awareness of family and civil law, both in recognising there is a legal issue and awareness of what remedies may be available;
- communication barriers, both due to language and situational factors such as not wishing to challenge an authority figure;
- socioeconomic disadvantage caused by the cumulative impact of poorer outcomes, when compared to the non-Indigenous population, in education, income, health and housing; and
- mistrust of the Western justice system and favouring traditional law.[30]

Geographic remoteness also presents a significant barrier to accessing legal services. In 2011, 43% of Aboriginal and Torres Strait Islander people were living in outer regional, remote and very remote areas.[31] These remote communities are also disproportionately made up of Aboriginal people and Torres Strait Islanders: while making up only 3% of the total population, Aboriginal people account for 16% of the total population in remote areas, and 45% in very remote areas.[32] In these areas legal services are either not available or difficult to access due to infrequent

29 Productivity Commission, above note 18, at page 679.
30 Productivity Commission, above note 19, see section 22.1, at pages 762 to 766.
31 Productivity Commission, above note 19, see figure 3.4.1, at page 3.12.
32 Productivity Commission, above note 19, see figure 3.4.1, at page 3.12

service delivery or distance. There is also little capacity for the private sector to expand its pro bono services to regional and remote communities.[33]

Accordingly the need for well-resourced specialist services for Aboriginal legal services is critical and should be a key priority for governments both at the state/territorial level and at the federal level. There is a need to address the systemic issues that create barriers to accessing justice such as addressing long-term funding problems and ensuring legal services operating in regional and remote areas are well supported and adequately resourced to cater for the needs of their clients.

The need for a co-ordinated approach to service provision

While the Terms of Reference for this inquiry focus on the provision of *legal* services, it is important to recognise that Aboriginal and Torres Strait Islander people will often face a cluster of inter-related legal and non-legal problems. In PIAC's experience, the assistance our Aboriginal clients require is not only advice regarding their complaint against the police, for example, but they may also be facing an adverse public housing decision or be unemployed, often with physical and/or mental health complaints. PIAC accordingly believes there are significant advantages of multidisciplinary models to meet the legal and other needs of vulnerable and disadvantaged groups, especially those with complex needs that go beyond the professional expertise of any one service provider.

It is also important to recognise that changes to the justice system to better address Aboriginal needs may also necessitate changes to services that fall within the remit of other departments. A magistrate looking to release a young Aboriginal person on bail, for example, must be assured that the young person has safe accommodation to return to, otherwise that young person will likely be placed in custodial remand, exposed to the criminogenic effect of detention, thereby continuing the cycle of imprisonment and disadvantage.

b. Adequacy of resources provided to Aboriginal legal assistance services by state, territory and Commonwealth governments

In PIAC's experience, it is clear that quality legal service provision that is comprehensive and accessible is vital if Aboriginal disadvantage is to be effectively addressed. However, particularly in recent years and looking towards an uncertain future, there is a paucity of resources provided to Aboriginal legal services which will only further entrench that disadvantage and transmit it from one generation to the next.

Limited and uncertain

The funding arrangements for legal service provision to Aboriginal and Torres Strait Islander people is precarious, and has been for many years. In 2004, the Senate Legal and Constitutional Affairs Committee concluded that CLCs are a crucial part of providing access to justice for all Australians but noted that CLCs appeared to be facing a funding crisis.[34] Just over a decade

[33] For a detailed analysis of the provision of pro bono legal services see, PIAC submission to the Senate Legal and Constitutional Affairs Inquiry into Access to Justice, above note 9, at page 15.

[34] Senate Legal and Constitutional Affairs Committee, *Legal Aid and Access to Justice, Final Report*, 2004, at page 218.

later, successive cuts to funding and uncertainty regarding future funding arrangements remain a significant challenge across the legal services sector.

It is clear that demand for legal services by Aboriginal and Torres Strait Islander people outstrips supply, leading the Productivity Commission to recommend an increase in funding of $200 million to address urgent unmet need rather than the funding cuts to which, until recently, the Commonwealth Government had been committed.[35] The recent reversal to the cuts to ATSILS in March was indeed welcome.[36] Had cuts proposed in the 2014 budget to the Indigenous Legal Aid and Policy Reform Program gone ahead, ATSILS would have closed a number of remote and regional offices, greatly reduced the provision of legal assistance in criminal and civil law matters and ceased providing assistance to Parole Boards. [37]

Even despite this reversal, there are still significant gaps in the provision of legal assistance services to Aboriginal people and much uncertainty, which leads to no services being offered or services stopping and starting in accordance with unreasonably short funding cycles. The NSW Aboriginal Legal Service, for example, closed down its family law practice at the end of June 2008 as a result of there being no increase in its Commonwealth funding arrangements. Following a one off grant by the former Labor government which saw the service run again, the ALS has recently announced that as the service will not receive a further funding grant it will once again begin to close over the next six to nine months. In the past 18 months of its operation the ALS Family Law Practice has helped approximately 1600 Aboriginal men and women, involving over 2100 Aboriginal children, seeking to keep families together and improve the safety of women and children.[38]

Adequate resourcing makes good economic sense

Providing legal services to assist Aboriginal and Torres Strait Islander people from the earliest stages of a legal problem makes good economic sense. In its report on access to justice the Productivity Commission concluded, in relation to the whole population:

> Not providing legal assistance for civil matters can be a false economy where the costs of unresolved problems are shifted to other areas of government spending such as health care, housing and child protection.[39]

In relation to Aboriginal and Torres Strait Islander people, the Productivity Commission concluded that unmet legal need 'can have severe consequences', triggering 'larger and more complex legal problems' which 'place unnecessary pressure on the civil justice system, particularly at the more formal (and costly) end of the system'.[40]

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35 Productivity Commission, above note 18, at pages 801-802.

36 Attorney-General, Senator the Hon George Brandis QC and Minister Assisting the Prime Minister for Women, Senator the Hon Michaelia Cash, *Joint Media Release: Legal aid funding assured to support the most vulnerable in the community*, 26 March 2015, available at http://www.attorneygeneral.gov.au/Mediareleases/Pages/2015/FirstQuarter/26-March-2015-Legal-aid-funding-assured-to-support-the-most-vulnerable-in-our-community.aspx.

37 Productivity Commission, above note 18, at page 737.

38 NSW Aboriginal Legal Service, 'ALS Family Law Practice set to close as grant money comes to an end', 22 April 2015, available at http://www.alsnswact.org.au/news_items/167.

39 Productivity Commission, above note 18, at page 759.

40 Productivity Commission, above note 18, at page 781.

Restricting advocacy

Recent funding restrictions to limit or remove the ability of ATSILS, LACs and CLCs to undertake advocacy and law reform activities has had a detrimental impact on the provision of legal assistance services to Aboriginal and Torres Strait Islander communities.[41] Removing the capacity to advocate for systemic change means that the benefit achieved in one client's case is unlikely to be replicated for similar individuals. With such limited resources in the legal services sector, this can mean that the problem of unmet legal need is simply compounded. This was noted by the Productivity Commission, which considered that

> in many cases, strategic advocacy and law reform can reduce demand for legal assistance services and so be an efficient use of limited resources.[42]

The Commission also concluded that

> strategic advocacy and law reform that seeks to identify and remedy systemic issues, and so reduce the need for frontline services, should be a core activity of LACs and CLCs (particularly peak bodies and the larger CLCs).[43]

The establishment in NSW of a system of 'Work and Development Orders' (WDOs) is a good example of how advocacy for systemic change can lead to better results for vulnerable individuals and significant savings to government. In 2006, PIAC released a report based on the increasing number of individuals presenting to PIAC's homeless persons' legal clinics with mounting problems due to unpaid fines. On the spot fines for minor offending, such as fare evasion, were leading to major problems for PIAC's clients, many of whom were in receipt of Centrelink benefits and unlikely to ever be able to repay debts that the State Debt Recovery Office was spending a huge amount of resources attempting to recoup. The aim of PIAC's report, prepared in consultation with 29 community-based agencies, was to present a range of options to improve the fines system in NSW. Following the release of the report, PIAC worked closely with the NSW Department of Justice and other key government agencies to identify solutions and to reform the system. One element of this reform was the introduction of WDOs, which allow certain individuals to pay off their debt in ways other than paying money, such as participation in an approved mental health treatment program or through voluntary work.[44] It was only by engaging in systemic advocacy and working collaboratively with government agencies, based on the evidence of its legal case work, that PIAC was able to achieve such a result.

Accordingly, PIAC welcomes the Productivity Commission's conclusion that the Australian, State and Territory Governments should 'provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services'.[45] As a legal assistance provider taking on cases with the aim of triggering systemic change, PIAC welcomed this conclusion and urges the Committee to consider the significance of the Productivity Commission's evidentiary findings.

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41 Productivity Commission, above note 18, at pages 6, 709.
42 Productivity Commission, above note 18, at page 709.
43 Productivity Commission, above note 18, at page 710.
44 Santow, E *The NSW Work and Development Order Scheme: A Therapeutic Response to an Infringement System that Oppresses People Experiencing Homelessness*, 1 November 2014, available at http://www.piac.asn.au/publication/2014/11/nsw-work-and-development-order-scheme.
45 Productivity Commission, above note 18, at page 713.

e. Reasons for the high incarceration rates for Aboriginal and Torres Strait Islander men, women and juveniles

In his 2014 annual report, the Aboriginal and Torres Strait Islander Social Justice Commissioner stated the overrepresentation of Aboriginal and Torres Strait Islander Australians in the criminal justice system is 'one of the most urgent human rights issues facing Australia'.[46] There is no simple answer to reducing the highly disproportionate rates of Aboriginal imprisonment. On the basis of PIAC's legal casework experience in NSW, however, there are a number of areas where PIAC believes reform would assist in beginning to address this national crisis.

Bail in NSW

PIAC's legal casework has in recent years focused on the impact and role that bail laws play in the unlawful and unnecessary detention of young people and, in particular, Aboriginal and Torres Strait Islander juveniles. The operation of bail laws and the manner in which bail conditions are policed have created a situation where being held in police detention or on remand in a Corrective Services facility is a common outcome and few steps are taken to avoid it. This damaging trend is problematic for a number of reasons, not least of which is the criminogenic effect of imprisonment and negative interactions with police officers.

The operation of bail laws is particularly significant as it is likely to be one of the first interactions a young person has with the criminal justice system. In addition, the evidence shows that once a young person has come into contact with the criminal justice system, the chances of exiting that system are few.[47] At these preliminary stages there is already a bias emerging: Aboriginal young people are far more likely to be held in custodial remand than their non-Aboriginal counterparts – in 2011, this was to a factor of 20.[48]

It is essential that bail laws do not have any unnecessarilyy negative impact on Aboriginal young people and are not punitive or used as a substitute for effective housing, child protection arrangements or to address other social problems. In PIAC's experience, which is reflected in in depth research across all Australian jurisdictions, the operation of bail laws and policing of bail conditions has had a detrimental impact on our young Aboriginal clients and, in particular, has provided a direct path into the criminal justice system.

Difficulty complying with bail conditions

In PIAC's experience, bail conditions imposed by a court or police officer are often extremely difficult for alleged offenders to satisfy. This is a particular problem for young Aboriginal people. Typical bail conditions often require compliance in areas where Aboriginal people are already struggling, such as requiring stable accommodation or attendance at education or employment. In a study of bail conditions imposed on young people across all Australian jurisdictions, the Australian Institute of Criminology found that bail conditions were unduly onerous, difficult for young people to adhere to and often appear 'arbitrary and unrelated to the young person's offending'.[49]

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46 Aboriginal and Torres Strait Islander Social Justice Commissioner, above note 20, at page 100.

47 Australian Institute of Criminology, *Bail and remand for young people in Australia: A national research project*, November 2013, at page 63. Available at http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp125.html.

48 Australian Institute of Criminology, above note 47, at page 17.

49 Australian Institute of Criminology, above note 47, at page 76.

Stringent bail conditions and overzealous policing of those conditions (discussed further below) has arguably led to an increase in the number of Aboriginal people being incarcerated. The Senate Legal and Constitutional Affairs Committee Inquiry into Justice Reinvestment concluded that more stringent bail conditions have been a driver of increased incarceration rates.[50] Similarly the NSW Law Reform Commission found that strict bail orders with numerous conditions that are difficult to comply with may contribute to higher numbers of youth breaches of bail and therefore more youths in custodial remand.[51] At the same time, research has shown that there is a very low risk that a child or young person will not turn up to their court date. In 2006-07, less than 2% of children and young people failed to appear at court or had an arrest warrant issued.[52]

Policing of bail conditions

PIAC believes that changes made to policing practices in recent years has contributed to the increasing contact Aboriginal and Torres Strait Islander people are having with the criminal justice system.

In 2006, the former Labor Government released a *NSW State Plan* (State Plan), that aimed to reduce re-offending by 10 per cent by 2016 through 'proactive policing of compliance with bail conditions' and 'extended community monitoring of those at high risk of re-offending, through more random home visits and electronic monitoring'.[53] In its submission to the NSW Law Reform Commission's Bail Inquiry the NSW Police Force submitted that it had increased bail compliance checks by approximately 400% between January 2007 and September 2010.[54] The Australian Institute of Criminology, conducting an in depth review of bail, young people and remand (the AIC Study)[55] concluded that one reason for this increase is the existence of Key Performance Indicators for the NSW Police Force.[56] While the language of proactive policing has been removed from the current NSW State Plan, *NSW 2021*, the enquiries made to PIAC related to the policing of bail conditions continue unabated.

Many of PIAC's clients have sought legal advice after being detained for 'technical breaches' of bail, a term which refers to the circumstances where a person is arrested for breach of a bail condition which in itself is not a new offence, and does not harm the young person, another person or the community. Examples of technical breaches including being five minutes late for curfew or being with a different family member other than the person specified in the bail condition. PIAC's clients are frequently reporting a level of policing of their bail conditions that is out of step with the severity of the alleged offence, such as incessant checking of curfews throughout the night several nights per week. Excessive monitoring of bail conditions was also reported to the AIC, which found an Australia-wide practice of 'overzealous policing of young people's bail compliance and in some cases, a 'zero tolerance' approach to bail breaches'.[57]

50 Legal and Constitutional Affairs References Committee, above note 21, at para 2.29.
51 NSW Law Reform Commission, above note 24.
52 Noetic Report, above note 23, at page 64.
53 NSW Premier's Department, *State Plan: A New Direction for NSW* (Sydney: Crown Copyright, 2006).
54 Australian Institute of Criminology, above note 47, at page 80.
55 Australian Institute of Criminology, above note 47, at page 16.
56 Australian Institute of Criminology, above note 47, at page 81.
57 Australian Institute of Criminology, above note 47, at page 81.

Unlawful arrests and detention due to administrative errors

Through its Children in Detention Advocacy Project (CIDnAP), PIAC has identified a large number of young people being arrested not only for 'technical breaches' of bail, but for breach of bail conditions that are out of date or have been removed. This was supported by findings of research undertaken by the Youth Justice Coalition, which found that a number of young people were being arrested for breach of bail conditions in circumstances where there were no cases pending or bail conditions; that is, children were being arrested and detained where their matter had been finalised or the conditions changed.[58] In 2011, PIAC launched a legal class action representing a number of young people who were allegedly unlawfully detained on the basis of incorrect or out of date bail conditions remaining on the NSW police database, (known as COPS).[59]

The case of Jenny,[60] a young Aboriginal girl who was arrested for breaching a bail condition that no longer existed, illustrates the negative consequences that flows from a seemingly innocuous mistake. Jenny had been on bail on conditions that included being with her mother at all times. Jenny was then sentenced to a youth justice conference that finalised her matter and removed all bail conditions. Approximately two weeks later, Jenny was in the city with her friends in the afternoon and was arrested by police for not being with her mother. She informed them that her bail conditions were no longer in force, but the police officers did not believe her as their computer system showed that her conditions still applied. Her mother rang the police station, offering to fax over the order that showed the bail conditions were no longer applicable, but was told that if she had been wrongly arrested it was the court's fault for not updating the system. Her mother tried calling the juvenile detention centre where Jenny had been taken, and was told that she would have to wait until morning to sort it out. When the young girl appeared before the magistrate early the next morning, after spending the night in a juvenile detention centre, the prosecutor told the magistrate that the computer system had not been updated, and that the girl was not subject to any bail conditions. Jenny was therefore released without further penalty.

This case study highlights that deficiencies in systems such as computer records, compounded by an inflexible approach to breaches of bail by police, can unnecessarily increase the contact that juveniles have with the criminal justice system. If Jenny had been given a warning or a caution, or been brought to court by a summons or a court attendance notice, the mistaken situation could have been resolved without her spending an unnecessary and possibly unlawful night in custody. PIAC has been seeking through its class action the eradication of these errors and this approach.

Consideration of the particular needs of Aboriginal and Torres Strait Islander young people

As with adults, a primary purpose of bail is to ensure a young person's attendance at court. However, particularly when considering Aboriginal and Torres Strait Islander young people, bail laws should also promote rehabilitation and reintegration into society.

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58 Wong K, Bailey B and Kenny D *Bail Me Out: NSW Young Offenders and Bail*, Youth Justice Coalition, 15 September 2009, available at http://www.piac.asn.au/publication/2012/02/bail-me-out-research-report.

59 For information on the class action see PIAC's website, at http://www.piac.asn.au/project/cidnap-unlawful-detention-young-people.

60 Names have been changed to protect the privacy of the individuals.

PIAC believes that bail legislation across the country should be amended to recognise the disadvantages facing Aboriginal and Torres Strait Islander young people in bail determinations. PIAC recommends that, before refusing bail to an Aboriginal or Torres Strait Islander young person, the court should consider the social disadvantages that impact on Aboriginal and Torres Strait Islander people generally and assess the specific impact on the individual in question. These might include issues such as dislocation from family and culture, educational and employment disadvantages and substance abuse.

A good model for this approach is the Gladue (Aboriginal Persons) Court in Toronto, Canada, which was established in response to the overrepresentation of Canadian Aboriginal people in the criminal justice system.[61] The Gladue principles require a court to take into account specific considerations in relation to Aboriginal offenders at bail hearings and sentence proceedings, including discrimination, institutional or personal abuse, dislocation from culture or family and substance abuse among other factors. The court is also able to request a bail report addressing those factors if the information is not readily available at the bail hearing in order to consider alternative options to remand.

While in NSW the *Bail Act 2013* (NSW) does require a court to take into account whether a person is Aboriginal or Torres Strait Islander in a bail determination, it does not prescribe what issues the court must take into account. PIAC believes a list of relevant factors should be included in bail legislation or regulation that would direct a court's attention to the specific needs of Aboriginal people who are the subject of bail proceedings. This would accord with recognition in other areas of the criminal law of the relevance of Aboriginal disadvantage; specifically, this includes the recent guidance provided by the High Court in relation to taking into account the historic experiences of an Aboriginal offender when being sentenced for a criminal offence.[62]

Policing practices and criminal legislation

PIAC believes that if the disproportionate representation of Aboriginal and Torres Strait Islander people in the criminal justice system is to be addressed, there should be a focus on the initial interaction between Aboriginal and Torres Strait Islander people and the police. Based on PIAC's casework, current policing practices in NSW elevates the chances of arrest and detention of Aboriginal and Torres Strait Islander people and perpetuate negative relationships with police officers.

As noted above in relation to checking bail conditions, PIAC's concern is that the move over the past decade to 'proactive policing' by the NSW Police Force has disproportionately impacted on PIAC's vulnerable clients, including Aboriginal and Torres Strait Islander people and particularly young Aboriginal and Torres Strait Islander people. The formalisation of 'proactive policing' in the former Labor Government's *NSW State Plan*,[63] has been followed by legislative reform which incorporates the principle, not only in bail law but also by legislation rushed through in 2013 by the NSW Parliament that provided for the power of arrest without warrant.[64] While disrupting

61 Judge of the Ontario Court of Justice, Knazan, B *Sentencing Aboriginal Offenders in a Large City – The Toronto Gladue (Aboriginal Persons) Court,* National Judicial Institute Aboriginal Law Seminar, Calgary, January 2003.

62 *Bugmy v The Queen* [2013] HCA 37.

63 NSW Premier's Department, *State Plan: A New Direction for NSW* (Sydney: Crown Copyright, 2006).

64 Section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002* was amended by the *Law Enforcement (Powers and Responsibilities) Amendment (Arrest Without Warrant) Act 2013.*

criminal activity is a laudable aim and important for community safety, the concern was always that

> Formalising the goals of 'proactive policing' in arrest law may exacerbate the overpolicing and incarceration of Indigenous people and marginalised groups'.[65]

In late 2014, the head of the NSW Bureau of Crime Statistics and Research concluded that the significant rise in the NSW prison population, despite overall crime going down, could be attributed to 'Much more aggressive policing activity'.[66]

In PIAC's experience, this shift to a proactive policing model has had a largely detrimental impact on Aboriginal and Torres Strait Islander people, drawing them into the criminal justice system when it is unnecessary, leading to largely irreversible and adverse consequences for the individual, his or her family and indeed whole communities. It has also continued to cement the precarious relationship between Aboriginal young people and adults with the police officers in their communities. Aboriginal Australians report a high level of discrimination across a range of settings, with one of the highest occurrences being when interacting with police, security people, lawyers or in a court of law.[67] The very perception of discrimination has an impact on Aboriginal and Torres Strait Islander people's well being; research has shown that just a perception can lead to changes in job seeking behaviour or dropping out of the work force. Discrimination can also be linked to negative health outcomes.[68]

NSW is of course far from alone in failing to reduce the opportunity of Aboriginal people coming into contact with the criminal justice system. A recent example is the *Police Administration Amendment Act 2014* (NT) recently passed in the Northern Territory, which already has the highest rates of incarceration of Aboriginal people in Australia.[69] The Act gives police new powers to detain an individual for four hours if the officer reasonably believes the person has committed or is about to commit an 'infringement notice offence'. The large range of offences captured by the legislation are minor, such as singing an obscene song, using profane language or undue noise. The Act reverses a fundamental presumption of our justice system that police should only detain people who have been arrested, and in certain cases there will be no judicial oversight, which removes an important check on police power. The Act is yet another example of legislation that will disproportionately impact on Aboriginal people and greatly increase the chances of them becoming enmeshed in the criminal justice system.

Looking at the whole picture

As noted above in relation to the provision of legal assistance services, the disproportionate involvement of Aboriginal and Torres Strait Islander people with the criminal justice system

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65 Sentas, V and McMahon, R (2014) 'Changes to Police Powers of Arrest in New South Wales' *Current Issues in Criminal Justice*, Volume 25, Number 3, March 2014, at page 786.

66 Hall, L (2014) "'Aggressive policing' creating court delays, crime statistics boss says' *Sydney Morning Herald Online,* 11 June, 2014, available at http://www.smh.com.au/nsw/aggressive-policing-creating-court-delays-crime-statistics-boss-says-20140611-zs3vs.html.

67 Biddle, N, above note 16, at page 73.

68 Biddle, N, above note 16, at page 73.

69 The North Australian Aboriginal Justice Agency and the Human Rights Law Centre have lodged a legal action to challenge the Act in the High Court of Australia. See Human Rights Law Centre *High Court case against NT Government: Background Information*, 27 March 2015, available at http://hrlc.org.au/wp-content/uploads/2015/03/Background_NTHighCourt_case_March2015.pdf.

cannot be viewed in isolation. There is a need for a cohesive and comprehensive approach that brings together different government departments to identify how the operation of one government policy will negatively impact on the individual. For example, a high correlation has been established between the interaction of Aboriginal and Torres Strait Islander children in the care and protection system and those in the criminal justice system.[70] Aboriginal and Torres Strait Islander children also continue to have disproportionate contact with the child-care and protection system compared with non-Aboriginal children.[71] A review of high incarceration rates, therefore, must also look at the impact of child protection policy.

There are other linked areas of disadvantage that have been established. The Productivity Commission, for example, identified that while 'adequate housing is a key foundation of individual wellbeing', housing and tenancy issues are one of the acute areas of unmet legal need.[72] The Commission noted that '(o)ne of the more serious ramifications of unaddressed civil law needs', in areas such as housing, child protection and debt, is 'the potential for it to escalate into criminal behaviours'.[73] The Commission accordingly recommended that all federal and state governments

> implement cost-effective strategies to proactively engage with at-risk Aboriginal and Torres Strait Islander Australians to reduce their likelihood of needing legal assistance to resolve disputes with government agencies, especially in areas such as child protection, housing and tenancy, and social security.[74]

g. Cost, availability and effectiveness of alternatives to imprisonment for Aboriginal and Torres Strait Islander Australians, including prevention, early intervention, diversionary and rehabilitation measures

PIAC believes that an approach to criminal offending by Aboriginal and Torre Strait Islander Australians that involves elements of diversion and deferral is of immense value. PIAC is a member of the Just Reinvest NSW coalition, an incorporated association that promotes the diversion of Aboriginal and Torres Strait Islander young people away from the criminal and juvenile justice systems.[75] PIAC is a strong supporter of justice reinvestment to create alternatives to imprisonment and divert Aboriginal people away from incarceration.

According to the Aboriginal and Torres Strait Islander Social Justice Commissioner, once incarceration rates reach a certain level in a community, there is a 'tipping point' where imprisonment fails to reduce offending and instead causes it.[76] When large numbers of a community are in prison, imprisonment becomes part of the socialisation process and is

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70 The Hon James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume 2, (2009), 556.

71 Steering Committee for the Review of Government Service Provision *Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009), 25.

72 Productivity Commission, above note 18, at page 782.

73 Productivity Commission, above note 18, at page 782.

74 Productivity Commission, above note 18, Recommendation 22.1, at page 786.

75 See Just Reinvest, *Submission to the Senate Inquiry 'The value of a justice reinvestment approach to criminal justice in Australia,* March 2013, available at http://justreinvest.org.au/wp-content/uploads/2012/04/Just-Reinvest-NSW-submission.pdf.

76 Gooda, M 'The necessity of justice reinvestment' (Speech delivered at the Koori Prison Transition Forum, Preston, 29 June 2012).

'normalised'. The prospect of prison loses much of its deterrent effect.[77] PIAC firmly believes that it is apparent that the traditional model of criminal justice is serving only to entrench disadvantage and is failing to fulfil the number of functions a criminal justice system should serve, including deterrence, punishment and rehabilitation. A change of approach is certainly needed.

Justice reinvestment and problem-solving justice

The term "Justice Reinvestment" refers to a variety of approaches to criminal justice policy reforms. It involves the development of an evidence-based, data-driven strategy to reduce the burden of imprisonment on society by reducing the number of people entering the criminal justice system in the first place, as well as lowering the numbers returning to custody via breaches of parole or reoffending.[78] It seeks to reverse what many have argued to be a failure of social policy: prisons becoming a stand-in health and welfare system for people with problems that society in general, and their local services in particular, have failed to deal with.[79]

Justice reinvestment essentially involves diverting funds away from the criminal justice system and towards measures that prevent people from offending. While the term can refer to re-direction of public resources away from the criminal justice and corrections system, towards areas such as education, housing and welfare, it has also come to embrace notions of therapeutic jurisprudence and 'problem-solving justice', which utilise court initiatives to divert certain vulnerable groups of people away from the criminal justice system, and to link them with appropriate services and supports when they do come in contact with the criminal justice system. 'Problem-solving justice' similarly requires redirection of public resources away from custodial responses towards criminal offending, and directing such resources to effective services and support options, including housing, job-training, education, treatment, etc. The overall aim is to reduce recidivism through early intervention and the provision of targeted support. The key feature of 'problem-solving justice' is that it operates predominantly within the framework of the criminal justice system.

Justice reinvestment programs for Aboriginal and Torres Strait Islander people

There is a clear public interest in reducing recidivism among Aboriginal and Torres Strait Islander people by adopting 'justice reinvestment' approaches that will move funds away from more expensive, end-of-process crime control options, such as incarceration, towards programs that target the factors that cause offenders to commit crime.

Victoria's Cautioning and Diversion Project is an example of an attempt to reduce the over-representation of Aboriginal youth in the criminal justice system.[80] From July 2000 to June 2001, research indicated that police cautions given to Aboriginal young offenders were under-utilised; Aboriginal young offenders received 10-15 per cent fewer cautions in most crime categories than non-Aboriginal young offenders.[81] This was a concern, given that cautioning is a means of

77 Hudson, S (2013) *Panacea to Prison? Justice Reinvestment in Indigenous Communities* (The Centre for Independent Studies, 2013).

78 Allen, F 'Justice Reinvestment: A new approach to crime and justice?' *Prison Service Journal*, Issue 176, pp 2-9.

79 Hudson, S, above note 77.

80 Victorian Aboriginal Legal Service, Submission to the Drugs and Crime Prevention Committee in response to the 'Inquiry into Strategies to prevent high volume offending by young people', 23 September 2008.

81 Victorian Aboriginal Legal Service (2003) *Police cautioning of Indigenous Juvenile Offenders in Victoria* (2003).

diverting children away from the justice system. Studies have shown there is a higher chance of reoffending amongst court-processed juveniles than those who received a caution.[82]

The Police Cautioning and Youth Diversion Program was implemented, which requires a caution to be given whenever appropriate, accompanied with a follow-up procedure after the caution is issued.[83] A follow-up meeting is held with the offender, police representative, family or community member, Koori Educator and any other individual involved. The purpose of this meeting is to monitor the progress of the offender since receiving the caution. Follow-ups can continue for up to three months.

An evaluation of the program found a significant increase of cautioning rates for both first-time offenders and those with prior contact with the police. Ninety-four per cent of individuals did not re-offend after completing the follow-up program.[84] The pilot commenced in March 2007 and was deemed successful; it has since been rolled out to six other locations.

An approach that makes sense

It is clear that adequate resourcing at the 'front end' of the criminal justice system will result in far greater savings. The Senate Legal and Constitutional Affairs Committee inquiry into justice reinvestment noted the huge direct costs of the justice system, such as expenditure on running prisons, and indirect costs, including the disruption caused to employment and schooling by incarceration. In recommending a justice reinvestment approach to crime across all Australian jurisdictions, the Committee noted that the long term economic and social costs of imprisonment, recidivism and development of intergenerational offending are quickly leading to an unsustainable justice system.[85]

PIAC agrees with the conclusions drawn by the Committee, and strongly supports programs and policies both within and external to the criminal justice system that rely on justice reinvestment theory. However, it should also be borne in mind that it is imperative that community service organisations, which generally are the core service providers of such programs, are adequately resourced.[86]

h. Benefits of, and challenges to, implementing a system of 'justice targets'

PIAC believes that 'justice targets' must be included in the list of targets, which were established by the Council of Australian Governments in 2008. The current targets in the Closing the Gap framework relate to life expectancy, child mortality, education and employment. The exclusion of justice targets ignores an important indicator of improvement in the current target areas. It also ignores the fact that the disadvantage experienced by Aboriginal and Torres Strait Islander

82 Challenger, D (1981) 'Comparison of official warnings and court appearances for young offenders' 14 *Australian and New Zealand Journal of Criminology* (1981) 165-169,

83 Victorian Aboriginal Legal Service (2007) 'The Indigenous Australian Community' (Presentation at Victoria University, October 2007).

84 Victorian Council of Social Service, 'Divert young people from the justice system' *State Budget Submission 2013-14* (2013).

85 Legal and Constitutional Affairs References Committee (2013) *Value of a justice reinvestment approach to criminal justice in Australia*, at para 3.31.

86 See PIAC's submission to the Senate Legal and Constitutional Affairs Reference Committee on the value of justice reinvestment, above note 6.

people is multi-layered. For example, for an Aboriginal or Torres Strait Islander young person, reaching a higher level of education, which will impact on whether that young person undertakes university studies and employment, both of which are factors which have been shown to reduce the likelihood he will end up in the criminal justice system. Excluding justice targets is to leave out a significant chunk of policy that must relate to and interact with other policies seeking to address Aboriginal disadvantage.

There have been calls for justice targets to address the problem of Aboriginal involvement in the criminal justice system from a number of government, parliamentary and independent bodies. The National Congress of Australia's First Peoples, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs and the Aboriginal and Torres Strait Islander Social Justice Commissioner have all called for justice targets to be implemented.[87] PIAC believes justice targets set a measurable goal that ensures accountability of successive governments and has the potential to positively impact the legislative and policy development processes.

PIAC accordingly urges the Committee to recommend that the current position taken by the Australian Government, rejecting the need for justice targets, [88] be reassessed in light of overwhelming support for their inclusion in the Closing the Gap strategy.

87 National Congress of Australia's First Peoples, *National Justice Policy*, February 2013, at page 11; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing,* above, note 22, at page 22; Aboriginal and Torres Strait Islander Social Justice Commissioner Annual Report, above note 20, at page 117;

88 See Gordon, M "Indigenous Affairs Minister Nigel Scullion Rejects justice targets for Indigenous Affairs", 19 November 2014, *Sydney Morning Herald Online*, available at http://www.smh.com.au/federal-politics/political-news/indigenous-affairs-minister-nigel-scullion-rejects-justice-targets-for-indigenous-people-20141119-11pykc.html.