

Level 5, 183 North Quay Brisbane Qld 4000
PO Box 13035, George Street Brisbane Qld 4003
T: 07 3025 3888 | F: 07 3025 3800
Freecall: 1800 012 255

Re: Inquiry into the high level of involvement of Indigenous juveniles and young adults

in the criminal justice system

Queensland Submission

"That those with power dispense the law upon those without"

Anonymous

RECEIVED
19 JAN 2010
BY: ATSLA

Introduction

Thank you for the opportunity to provide comment to the House 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.*'

It is hoped that our submission is of assistance in an area which continues to have a disproportionate impact upon Aboriginal and Torres Strait Islander peoples. It is imperative to recognise that there are a number of pragmatic considerations that a high level of involvement of Aboriginal and Torres Strait Islander youth and young adults in the criminal justice system are linked with. Although "the causes of crime are complex, any examination of Indigenous disadvantage will show an obvious preponderance of risk factors for the involvement of crime; this is particularly true in Queensland's Indigenous communities".¹

Further concern is that the age of Aboriginal and Torres Strait Islander youth coming into contact with police is getting younger, and in Queensland the criminal age for being charged as an adult is 17 not 18 as in all other Australian States and Territories. On 30 June 2008 there were thirty-eight 17 year olds in adult prisons in Queensland. Queensland is the only state in Australia that allows 17 year olds to be detained in prisons and treated as adults. This is contrary to the United Nations Convention on the Rights of the Child. The above situation in Queensland combined with the legal issues that continue to stem from complex social considerations surrounding education, health and financial issues. This consistently perpetuates the systemic cycle of involvement in the criminal justice system, and the continued social exclusion for Aboriginal and Torres Strait Islander people.

¹ Crime and Misconduct Commission Queensland, '*Restoring Order – Crime prevention, policing and local justice in Queensland's Indigenous communities*' November 2009, Brisbane, p. 65.

Preliminary Point: Background to our Organisation's capacity for meaningful comment:

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ("ATSILS") provides legal services to Aborigines and Torres Strait Islanders throughout mainland Queensland. Our primary role is to provide criminal, civil and family law representation.

We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which for a number of decades has practiced at the coalface of the criminal justice arena and which in the last five years has also established a State-wide civil and family law practice, we believe we are well placed to comment upon this particular Inquiry. Not only from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences and engagement with Aboriginal and Torres Strait Islander peoples in the criminal justice arena. We hope that our submission is of assistance in an area which we would respectfully submit is overdue for consultation and reform.

This submission will address the 7 identification points identified in the Terms of Reference of the inquiry². COAG and the Standing Committee on Aboriginal and Torres Strait Islander affairs must apply a holistic long term approach to closing the gap between Aboriginal and Torres Strait Islander peoples and non-Aboriginal and Torres Strait Islander peoples. Action must involve positive and competent participation and co-operation between communities and government across all facets of urban, rural and remote communities. Competent cultural recognition must be given to Aboriginal and Torres Strait Islander community controlled organisations when those organisations are engaged. Secondly the Commonwealth Government must recognise that Aboriginal and Torres Strait Islander organisations are in the best position to discuss and implement particular programs in relation to Aboriginal and Torres Strait Islander peoples.

In order to address the issues, a collaborative approach and positive action should complement the COAG 'closing the gap' strategies;

- Addressing the multitude of issues that result in a high incarceration rate for Aboriginal and Torres Strait Islander youth particularly in Queensland, including raising the age from 17 to 18 for adult criminal responsibility;
- The retention of students in State and Territory education systems;

² Parliament of Australia, House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system, 25 November 2009.

- The integration of Aboriginal and Torres Strait Islander youth into ongoing, engaging and meaningful employment;
- Proactive and culturally competent health education programs across a lifespan from pre-school age groups to elderly members of the community;
- Victim support especially for women and children when that support is required as a result of domestic violence, including providing women's shelters that are functional and appropriate in every rural and remote community;
- Effectively addressing the multitude of issues surrounding child protection, including providing preventive and positive education for parents on the raising of children from pregnancy through to adolescents;
- Addressing related factors such as alcohol and substance abuse across all age groups.

The Standing Committee must also;

- Address the entrenched racial and historical issues that exist between State and Territory Police and Aboriginal and Torres Strait Islander peoples;
- Enact a set of culturally competent and recognised key performance indicators for encouraging police officers to engage positively and proactively with Aboriginal and Torres Strait Islander youth in urban, rural and remote communities;
- Address what the objective of policing is in Aboriginal and Torres Strait Islander communities; and determine how positive action can flow into communities as suggested by the Crime and Misconduct Commission Queensland Report³.

Terms of Reference

The Committee shall inquire into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system. With a particular focus on prevention and early intervention, the Committee will identify:

1. How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;
2. The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;
3. Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;
4. The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;

³ Crime and Misconduct Commission Queensland, *Restoring Order – Crime prevention, policing and local justice in Queensland's Indigenous communities* November 2009, Brisbane, p. 65.

5. Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;
6. The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;
7. The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

1. How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement

The overall social norms and behaviours that develop for Aboriginal and Torres Strait Islander juveniles and young adults are predetermined from an early age and do “vary for each individual”⁴. However the social attitudes that manifest with regard to Police are influenced over a lifespan of a child by policing attitudes that are encountered in relation to Aboriginal and Torres Strait Islander people. Any positive or negative engagement by Police with children in communities, the community expectations and opinions of Police and the criminal justice system in general will influence the overall outcome. For example; the segregation of non-Aboriginal and Torres Strait Islander service providers in Mornington Island, North Queensland from the remainder of the community. All service providers live in residences that are located behind high fenced perimeters that are rimmed with barbed wire. Whilst the comment has been made that this is for the benefit and safety of the service providers, the question must be asked why the situation has been allowed to disintegrate to this point, where service providers are fearful for their own safety. ATSIJS submits that there is a significant problem between the “us and them” dichotomy that exists in remote communities and which in turn contributes to the development of negative social norms.

What is also important is the morale within families and the overall morale and expectation of success of individuals that exists within urban, rural and remote communities. These are to name just a few of the number of aspects that are involved in influencing a child’s development of social norms and behaviours. Therefore it is imperative to begin education at pre-school age in a child’s development to transform any negative social norms that the child may have already developed and that may already exist within family, community, peer

⁴ Australian Institute of Criminology, *‘What works in reducing young people’s involvement in crime? Review of current literature on youth crime prevention,’* Canberra 2003, p. 13
http://www.cmd.act.gov.au/data/assets/pdf_file/0016/1843/ACT_juv_justice_web.pdf Accessed: 9 December 2009.

groups or society in general. This transformation is essential if there is to be any systemic change in the long term outcome of developing healthy and proactive social norms which will lead to positive social engagement.

There have been various social reforms that have been implemented in an attempt to curb juvenile delinquent behaviour in Australia. However all of the reforms that have been trialled have ignored the underlying personal and social issues that Aboriginal and Torres Strait Islander young people face. It is essential that interventions are directed to a number of areas of influence – family, school, peers and not just one individual area. This is due to the fact that bonds to family, community, school and work create informal social control and pressures to conform that have little to do with the threat of punishment and more to do with shame.⁵ What is also important in developing social norms that are conducive to positive social engagement is the increase in parenting programs that are specific to Aboriginal and Torres Strait Islander peoples.

Juvenile and young adult offenders have been found to be “impulsive, have poor reasoning, planning and problem solving skills have fixed thinking and are unable to see other people’s perspectives”.⁶ Positive and culturally competent parenting programs which involve social competence skills of self control, perspective-taking, moral reasoning and problem solving are required. This will not only build a society of better parents but it is anticipated that it will be inter-generational and will benefit children in developing the ability to empathise and develop a social conscience, and hence develop appropriate social norms. The rationale for including reasoning processes in parenting programs and interventions is that these biases and deficiencies in cognition appear to contribute to the development and maintenance of criminal behaviour.⁷ This behaviour and lack of social norms begins to manifest from a pre-school age and steadily develops through adolescence and into adulthood.

In an attempt to reduce involvement in the criminal justice system, behavioural and interpersonal skills programs have been introduced and have yielded approximately a 40% reduction in recidivism.⁸ Programs may include specific social competence training which integrates new methods of communication and teaches youth and young adults new behaviours and thinking skills. This may involve modelling through positive role modelling which demonstrates desired social norm behaviours to the young person, role playing -

⁵ Australian Institute of Criminology, *‘What works in reducing young people’s involvement in crime? Review of current literature on youth crime prevention,’* Canberra 2003, p. 13
http://www.cmd.act.gov.au/data/assets/pdf_file/0016/1843/ACT_juv_justice_web.pdf Accessed: 9 December 2009.

⁶ Ibid, at p. 14.

⁷ Ibid.

⁸ Ibid.

participant's play out new skills or behaviours and get feedback on their ability, or cognitive restructuring in which offenders learn to alter the way that they think in a logical and realistic way in order to become more rational⁹. It is anticipated this will lead to positive social engagement and a reduced number of juveniles and young adults being involved in the criminal justice system.

2. The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this.

Alcohol and substance abuse is a significant factor contributing to the incidence of violence and other crime in many Aboriginal and Torres Strait Islander communities. There are a number of risk factors that contribute to juvenile and young adult alcohol and substance abuse including; genetic predisposition, gender, attitudes and personality, family structure and environment, traumatic life events, ethnicity, socio-economic status, mental health, disability, peer influences, age of first use.¹⁰ These compounding risk factors combined with broader issues of disadvantage and social exclusion, including homelessness and a lack of adequate housing that Aboriginal and Torres Strait Islander juveniles and young adults face "act as a snowball effect".¹¹ The higher the number of risk factors the greater the chance that children and adolescents may subsequently progress to harmful alcohol or substance abuse or involvement in crime or other antisocial behaviour.¹²

Further and an issue that must be addressed in particular by Health authorities is the empirical research conducted by Professor Fiona Stanley (2008). Professor Stanley's research identifies a number of specific pathways to crime, which are common in Indigenous communities that commence in pregnancy. This research clearly indicates that cyclical factors are present from a child's conception and compound throughout childhood, whether or not those factors are further complicated by other broader issues of disadvantage and social exclusion. For example; Professor Stanley's research has shown that maternal exposure to alcohol in pregnancy results in irreversible brain damage in the infant, leading to behavioural problems/mental retardation as the child progresses through childhood, leading to poor school performance, resulting in delinquency/precocious sexual behaviour, substance abuse,

⁹ Australian Institute of Criminology, *'What works in reducing young people's involvement in crime? Review of current literature on youth crime prevention,'* Canberra 2003, p. 14
http://www.cmd.act.gov.au/_data/assets/pdf_file/0016/1843/ACT_juv_justice_web.pdf Accessed: 9 December 2009.

¹⁰ *Ibid*, at p. 99.

¹¹ Parliament of Victoria, Drugs and Crime Prevention Committee, *'Inquiry into Strategies to Prevent High Volume Offending by Young People'* Discussion Paper, August 2008, Melbourne, p. 27.
http://www.parliament.vic.gov.au/dcpc/current_inquiries/High_volume_crime/Discussion_Paper.pdf
Access date: 9 December 2009.

¹² *Ibid*.

incarceration, suicide etc. This research is pivotal in identifying the necessary steps that need to be taken in order to prevent future generations of Aboriginal and Torres Strait Islander children being susceptible by definition of race to the involvement in crime and anti-social behaviour.¹³

Conversely however, if health and justice interventions are implemented to reduce or eradicate one or a number of risk factors, this may prevent the acceleration or accumulation of consequent problems of alcohol or drug abuse or involvement in the criminal justice system. One such way that interventions may be implemented for Aboriginal youth in particular in rural or remote communities, is the concerted effort to return Aboriginal youth to traditional ways and reintroduce those youth to the land. This particular idea is relevant to Doomadgee, Queensland where elders and senior members¹⁴ of the community are pressing for youth and young adults to become involved in established programs of cattle stations run by the community and supported by Government.

One example that is underway in the Northern Territory (“NT”) and is anticipated will boost the number of Aboriginal people working and running cattle stations, with 12 trainees recently graduating from a pastoral program at Waliburru Station, 500 kilometres south-east of Darwin, NT. The trainees are from the nearby community of Miniyeri, and their training is being run by the Indigenous Land Corporation (“ILC”), which was established by the Commonwealth to boost economic development on Aboriginal land. The program is seen as more than just finding Aboriginal people employment, it is establishing traineeships and enabling trainees to graduate through various certificates in agriculture specialising in beef production. There is also an element of reviving the tradition of cattle work, cattle stations and culture that Aboriginal people have been associated with for over 100 years.¹⁵

Importantly there is considerable scope for both Indigenous and non-Indigenous health authorities to be involved from a young age in educating Aboriginal and Torres Strait Islander children and communities on the importance of healthy attitudes and eating and the need to refrain from alcohol consumption and substance abuse. Investment in “prevention activities should aim to maintain a coordinated set of activities through childhood and adolescence which are tied to community priorities indicated by developmental levels of risk and

¹³ Crime and Misconduct Commission Queensland, *Restoring Order – Crime prevention, policing and local justice in Queensland’s Indigenous communities* November 2009, Brisbane, p. 62.

¹⁴ Fiona Vaughan’s (ATSILS Law Reform Solicitor) conversation with Tony Chong – Community Justice Group member – Doomadgee, Queensland, 3 December 2009 on the importance of returning Aboriginal youth and young people to traditional ways.

¹⁵ ABC News Online, Sara Everingham, *Indigenous stockmen return to fold*, 18 November 2009, <http://www.abc.net.au/news/stories/2009/11/18/2745831.htm> Access date: 14 December 2009.

protective factors”.¹⁶ Involving communities in early intervention and awareness raising initiatives aimed at increasing understanding of alcohol and substance abuse, community safety and prevention and harm minimisation is in line with the National Law and Justice Framework 2009 – 2015.¹⁷ It is anticipated if early intervention and awareness raising initiatives can be successfully implemented; there will be sustained reductions over the long term in alcohol and substance abuse. This will in turn reduce rates of offending behaviour and arrest and will consequently have a positive impact on family stability, health, employment and education.

From a combined health and justice perspective there are significant advantages to be gained in implementing early intervention strategies and programs which need to be creatively integrated and co-orientated across time. Programs must target more than one risk factor and co-ordinate health and justice intervention activities across different developmental periods of a child’s lifespan. If targeted programs are implemented there is a significant likelihood of a reduction in criminal activity and the establishment of social norms in communities. However there must be a holistic protection and risk reduction approach by both Commonwealth and State and Territory Governments and one which acknowledges the cumulative impact of multiple risk and protective factors.

Whilst the introduction of Alcohol Management Plans (“AMP’s”) may assist excessive alcohol consumption in any given community – such does not go to the true root of the underlying causes as to why people consume excessive amounts of alcohol in the first place. ATSILS continues to remain supportive of AMP’s provided that those plans are not unilaterally imposed by governments (which we conclude is a discriminatory practice) but rather with the consent of the community elders and members concerned via their elected representatives. If policies of recognition and early intervention can be successfully and appropriately implemented there is the potential to reduce the long term involvement of Aboriginal and Torres Strait Islander youth in the criminal justice system.

¹⁶ Parliament of Victoria, Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending by Young People* Discussion Paper, August 2008, Melbourne, p. 28.
http://www.parliament.vic.gov.au/dcpc/current_inquiries/High_volume_crime/Discussion_Paper.pdf
Access date: 9 December 2009.

¹⁷ Standing Committee of Attorneys-General Working Group on Indigenous Justice, *National Indigenous Law and Justice Framework 2009-2015*, 2009,
[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(3A6790B96C927794AF1031D9395C5C20\)~NILJF+-+National+Indigenous+Law+and+Justice+Framework.DOC/\\$file/NILJF+-+National+Indigenous+Law+and+Justice+Framework.DOC](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(3A6790B96C927794AF1031D9395C5C20)~NILJF+-+National+Indigenous+Law+and+Justice+Framework.DOC/$file/NILJF+-+National+Indigenous+Law+and+Justice+Framework.DOC) Access date: 14 December 2009.

3. Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system

As discussed, a number of factors have been raised as contributing to or explaining criminal behaviour. However there are also independent causes of offending including; economic disadvantage, including unemployment, family background, including domestic violence and sexual abuse, schooling and education factors.¹⁸ These issues are often inter-connected and increase the complexity of Aboriginal and Torres Strait Islander need. For example, economic disadvantage may cause tensions in the lives of families which may affect educational performance of children and adolescents and subsequently leads to offending and long term involvement in the criminal justice system.

A key factor which has been consistently shown to impact on child development and has a strong influence on youth offending is schooling, positive experiences of being at school and particularly retention or non-retention in schools. Experiences at school can have a lasting effect on life trajectories and adolescents who are attached to school and perform well are less likely to be attracted to antisocial behaviour, criminogenic behaviour and/or substance abuse.¹⁹ “COAG has identified student attendance as one of the performance indicators to measure progress against the Closing the Gap strategy of halving the gap for Indigenous students in year 12 attainment or equivalent attainment rates by 2020”.²⁰

One suggested initiative currently being considered by the law reform staff of the Aboriginal and Torres Strait Islander Legal Service Queensland (“ATSILS”) is the involvement of justice education programs in primary schools in Normanton, a remote community in the Gulf region of North Queensland. These sessional programs would involve community legal education programs to be conducted in conjunction with the teachers of the primary school, ATSILS staff and with the support of the community justice group co-coordinator. It is hoped that this initiative will introduce children to knowing their rights in relation to Police, being more aware of positive social behaviours and the importance of being socially and responsibly engaged in communities.

¹⁸ Parliament of Victoria, Drugs and Crime Prevention Committee, *'Inquiry into Strategies to Prevent High Volume Offending by Young People'* Discussion Paper, August 2008, Melbourne, p. 29, http://www.parliament.vic.gov.au/dcpc/current_inquiries/High_volume_crime/Discussion_Paper.pdf Access date: 9 December 2009.

¹⁹ Ibid, at p. 35.

²⁰ Commonwealth of Australia, Steering Committee for the Review of Government Service Provision, *'Overcoming Indigenous Disadvantage Key Indicators 2009'* Melbourne, 2009, http://www.pc.gov.au/data/assets/pdf_file/0003/90129/key-indicators-2009.pdf Access date: 12 December 2009.

From a crime prevention perspective there is clearly a great impetus to intervene early in a young person's life to counteract compounding negative experiences associated with school and education. There is also a need to highlight the importance of education services and strategies generally, services that build young people's skills, confidence and strengths that support families – such as initiatives to support the development of parenting skills and which in turn will enhance young people's connectedness to their local community.²¹ As previously discussed a holistic approach is necessary in retaining children in schools, this would involve educating parents on the importance of education to ensure children attend, achieve at school and have positive outcomes associated with school. Social competence training programs which have had positive outcomes in all settings, and rewarding pro-social behaviour in school has also been effective in reducing truancy and discipline problems in schools.²²

Further incentives to remain engaged in the education system are likely to result in positive outcomes. For example; significant advantages can be gained from the recruitment of Aboriginal and Torres Strait Islander juveniles and young adults into the Australian Defence Force (“ADF”). The author notes that juveniles in Aboriginal communities in Queensland express significant interest in joining the ADF, however the recruitment of juveniles in rural and remote communities is not occurring. Given that the separation rate of members of the ADF is increasing, there is a significant probability that recruiting Aboriginal and Torres Strait Islander youth would result in improving the image of the Commonwealth and generating genuine results. It is likely that such recruiting programs will result in improved community and individual moral and image, and retention in the education system when there is the positive outcome of employment in sight.

Programs such as ADF recruiting and school based apprenticeships that do reward positive social behaviour and involvement rather than just punishing anti-social behaviour²³ are increasingly likely to have the greatest impact in improving the effectiveness of the education system. This will in turn contribute to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system.

²¹ Parliament of Victoria, Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending by Young People* Final Report, July 2009, Melbourne, p. 121, http://www.parliament.vic.gov.au/dcpc/Current_Inquiries/High_volume_crime/DCPC-Report_HighVolumeCrime_2009-07-22.pdf Access date: 14 December 2009.

²² Australian Institute of Criminology, *What works in reducing young people's involvement in crime? Review of current literature on youth crime prevention*, Canberra 2003, p. 17 http://www.cmd.act.gov.au/_data/assets/pdf_file/0016/1843/ACT_juv_justice_web.pdf Accessed: 9 December 2009.

²³ Parliament of Victoria, Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending by Young People* Discussion Paper, August 2008, Melbourne, p. 37, http://www.parliament.vic.gov.au/dcpc/current_inquiries/High_volume_crime/Discussion_Paper.pdf Access date: 9 December 2009.

4. The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised

As has been illustrated the influence of schools and education on children and youth and the levels of education attained by a young person are key factors that may contribute as either protective factors or risk factors with regard to involvement in youth and young adult offending.²⁴ For Aboriginal and Torres Strait Islander youth and young adults that do stay at school and complete Year 12, go on to further training or study at university, there must be ongoing supportive initiatives and incentives from both Government and community to ensure that all youth and young adults find full time engaging employment.

A new example currently underway to support initiatives of transitioning from education to work in New South Wales ("NSW") is Project Murra. Project Murra is funded by the Commonwealth government and is being conducted in the Illawarra region of NSW in joint partnership between TAFE NSW - Illawarra Institute, the Department of Employment and Workplace Relations, Community Development Employment Programs, the Department of Education and Training and the NSW Police and Ambulance Service. Project Murra has been established to encourage Aboriginal and Torres Strait Islander youth who are entering the last 2 years of secondary education to participate in a traineeship which if successfully completed will offer students the opportunity of employment in either the NSW Police Service or the NSW Ambulance Service.

Students involved in the program spend one day per week at a local police station working alongside police officers and undertake a Senior First Aid course, a two-day crime prevention program, participate in a road-safety program and work at police community youth clubs, the crime management unit and with police volunteers. The students work closely with the community paying special attention to crime prevention. The police trainees are also seen as excellent role models by younger members of the community. The program conveners acknowledge that it is about "school retention, keeping Aboriginal students at school to complete their HSC, it's about careers, it's about helping Aboriginal students move from school into a career and it's also about building linkages between the police and the Aboriginal community."²⁵ At the completion of the traineeship the trainees will have gained a Higher School Certificate, a University Academic Index needed to gain entry to university, a Certificate three in vocational and study pathways attained from TAFE NSW and they will also have obtained one hundred days paid employment with the NSW Police Service over the two year period.²⁶

²⁴ Ibid, at p. 36.

²⁵ SBS Online, Kris Flanders, '*Blue Ambition – Project Murra*', 28 May 2009, http://news.sbs.com.au/livingblack/blue_ambition_547740 Access date: 12 December 2009.

²⁶ Ibid.

Program Murra is evidence of successful partnerships, joint initiatives and a holistic approach undertaken by Commonwealth, State and education facilities to establish effective pathways for transitioning from education to work for Aboriginal and Torres Strait Islander youth. Joint initiative programs such as Project Murra will maximise the effectiveness of the 'learn or earn' concept.

5. Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres

The focus on 'programs' that support diversion of Aboriginal and Torres Strait Islander juveniles from detention and crime is timely given that there are significant increases in the prison population in Queensland. In June 2008 there were 27, 615 prisoners in Australia, 24% of the population was Indigenous, despite the overall Indigenous population making up 2.2% of the Australian population. Aboriginal and Torres Strait Islander people in general are 13 times more likely to be imprisoned than non-Indigenous people. A significant proportion of Indigenous prisoners in custody in June 2008 were young adults, 26.85 were aged between 18-24 years. Queensland had the highest percentage of Indigenous prisoners in the 18 – 24 age group accounting for 30.2%.²⁷

The 2007 Queensland youth detention rate for those aged 10–17 was 32.3 per 100,000 population, in comparison with 29.9 per 100,000 for the previous year. Three-quarters (75.7%) of the 10–17 year olds in detention (115) at 30 June 2007 were remanded in custody awaiting trial/sentencing, whereas only 37 were serving sentences.²⁸ These statistics highlight the need for alternatives to youth detention, especially considering that Aboriginal and Torres Strait Islander youth are 25 times more likely to be incarcerated than non-Aboriginal and Torres Strait Islander youth.²⁹

Whilst it is recognised that a minimal interventionist approach is needed with regard to youth and young adults,³⁰ at present that is not the approach in Queensland. As reflected in the

²⁷ National Justice Chief Executive Officers Group, *'Staying Strong on the Outside: Indigenous Young Adults'*, September 2009, p. 6 <http://www.indigenousjustice.gov.au/stayingstrong.pdf> Access date: 9 December 2009.

²⁸ Commission for Children and Young People and Child Guardian, *'Snapshot 2009: Children and Young People in Queensland'* 2009, p. 103, http://www.ccygpcg.qld.gov.au/pdf/publications/reports/snapshot2009/Snapshot2009_12-Crime-and-justice.pdf Access date: 18 December 2009.

²⁹ Ibid, at p. 98.

³⁰ Australian Institute of Criminology, *'What works in reducing young people's involvement in crime? Review of current literature on youth crime prevention,'* Canberra 2003, p. 17 http://www.cmd.act.gov.au/data/assets/pdf_file/0016/1843/ACT_juv_justice_web.pdf Accessed: 9 December 2009.

statistical evidence, Aboriginal and Torres Strait Islander youth and young adults require more than what is presently on offer in Queensland to prevent the statistics from rising further.

Whilst the Snapshot Report³¹ (“the Report”) indicates that cautions and youth justice conferencing is working. Rates of incarceration for both genders were still higher than a decade earlier,³² suggesting that more needs to be done to keep children and young people safe from crime and close the gap on community safety as in line with the COAG’s agenda.

The Report indicates that cautions were issued for many of the offences committed by youths. Particularly for other theft (52.1% were cautioned), property damage (41.0%) and drug offences (38.7%). Approximately two in five youths committing assaults (35.1%) and sexual offences (43.0%) were issued with cautions. Youth Justice Conferences were introduced in Queensland in 1996, offering an alternative to court proceedings by allowing the victim and the offender to discuss the offence and negotiate an agreement. This process is in-line with the principles of restorative justice and offender-victim mediation.

In 2007–08 there were 2207 community conferences, an increase of 8.3% from 2006–07. Police diversionary referrals made up almost one-half (45.7%) of community conferences in 2007–08, with the balance being referred from the courts. Three-quarters (76%) of all referrals were for male offenders. Almost one-third of referrals during the year were for Indigenous young people (31%). In 2007–08, seven Indigenous Conference Support Officer positions were recurrently funded after a successful trial. These officers help youth justice conferencing staff to engage with Indigenous young people, victims, families and communities in a culturally competent manner to improve conference outcomes for Indigenous clients. An agreement was reached between the parties in 98% of Youth Justice Conferences in 2007–08.

The vast majority of conference attendees believed that the process is fair (99%), they were satisfied with the agreement made (98.6%), and 97.6% would recommend conferencing to a friend in the same situation.³³ However the statistics reveal that there is a climb in the incarceration rates of Aboriginal and Torres Strait Islander youth and young adults. Currently there is an urgent need for a Juvenile Bail Hostel in Northern Queensland. This is due to the

³¹ Commission for Children and Young People and Child Guardian, *‘Snapshot 2009: Children and Young People in Queensland’* 2009, http://www.cycpcg.qld.gov.au/pdf/publications/reports/snapshot2009/Snapshot2009_12-Crime-and-justice.pdf Access date: 18 December 2009.

³² Ibid, at p. 98-103.

³³ Ibid.

requirements of section 15 of the *Bail Act* 1980 (Queensland) needing to be stringently met in order to grant bail to Aboriginal and Torres Strait Islander offenders.

On the refusal of bail Aboriginal and Torres Strait Islander youth are instead being remanded in Cleveland Youth Detention Centre (“CYDC”). A Bail Hostel for under 18 years of age is likely to be a cheaper alternative to detention in CYDC. If ATSILS were funded to manage a Bail Hostel, it would give further community creditability to the process of rehabilitation, through mandatory intervention and diversion programs, that are currently being delivered by Elders and Therapists in partnership. ATSILS respectfully submits that there are significant problems with the continuation of the current non-Indigenous approach currently underway in detention centres. A process that requires Traditional, remote community boys (initiated men) to interact with young non-Indigenous women and discuss (behavioural & sexual) issues; this is culturally inappropriate.

The Townsville Women’s Correctional Centre is the only correctional centre outside of Brisbane and creates an additional problem for Aboriginal and Torres Strait Islander women who are more likely to have infant children in their care. As a direct result of this situation and one that requires attention is the forcible removal of Aboriginal and Torres Strait Islander children by the Department of Child Safety. This situation occurs when young mothers are initially incarcerated on remand for up to a year before sentencing. Children under 4 years of age are allowed to be in the Townsville Women’s Correctional Centre with their mothers however the initial assessment / approval process, may take several months. This is simply not appropriate or good enough, this process prevents a consistent and customary ‘Mother – Child’ attachment developing and creates long term emotional & psychological damage for both the mother and child. This forced removal can contribute to a lifetime of behavioural dysfunction, conflict with teachers & police, which often results in social sanctions in the form of Court Orders and eventual incarceration of the child. The antiquated process of placing Aboriginal and Torres Strait Islander youth on remand, rather than bail in their own community, becomes a ‘self-fulfilling prophecy’, whereby Aboriginal and Torres Strait Islander youth are continually disempowered and come to believe that “custody” is an acceptable and indeed expected way of life.

In addition the Report indicates that police and court diversion programs introduced in recent years in Queensland aim to address underlying drug problems for offenders who have committed minor offences. With suitable offenders who admit guilt being offered a drug rehabilitation program as an alternative to being charged for the offences. The program is offered in the court setting before sentencing, and the sentence takes into account successful

completion of the program.³⁴ Interestingly there are at present no drug & alcohol rehabilitation centres for Aboriginal and Torres Strait Islander youth once released from detention centres in Queensland. This adds further complexity to the lack of diversion programs for Aboriginal and Torres Strait Islander youth and young adults in Queensland to not return to detention.

Another complicating factor that is relevant to the discussion is the current views and actions of the Department of Child Safety to view detention as a safe placement, when they are unable to place an Aboriginal or Torres Strait Islander juvenile with a carer. This causes youth to remain on long periods of remand in detention centres. For example; there is at the time of writing an 11 year old Torres Strait Islander boy in CYDC on remand, he has been in detention for the last two weeks, due to the inability of the Department of Child Safety to find an appropriate carer for this child. The current charges against this child do not require the child being placed on remand.

In consideration of best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, this office is having difficulty in locating successful holistic programs that are run by government with continual success. Concern within the Brisbane ATSILS office has been raised and it is considered that what is needed is careful attention by government to what constitutes a holistic approach in relation to diversion of youth and young adults from the criminal justice system.

6. The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system

There is considerable scope for clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provisions. One example of a better co-ordinated approach is through the development of clearer definitions of 'holistic approaches' by government and what that approach involves. In the experience of ATSILS staff what often occurs is that 'well intentioned approaches' often result in different departments competing for resources, and the creation of mini empires of conflict arising between bureaucratic levels of government of which department is going to succeed. This often results in professional siloing of interventions and the rapid undermining of activities of one department by another and the overall failing of the initial service provision. This

³⁴ Commission for Children and Young People and Child Guardian, '*Snapshot 2009: Children and Young People in Queensland*' 2009, p. 103, http://www.ccypcg.qld.gov.au/pdf/publications/reports/snapshot2009/Snapshot2009_12-Crime-and-justice.pdf Access date: 18 December 2009.

combined with the rapid frustration of initial common intents, and the inevitable rapid run-out of resources both financial and human, resulting in the co-ordinated provision failing.

It is respectfully submitted that a holistic approach by government and non-government agencies must retain a central focus upon the client and not be subverted by the processes described above. Every program be it health, alcohol minimisation, juvenile justice, parenting, education, policing, economic employment capacity building in communities must always have a client focus at its core and remain the focus through the planning, resourcing, activating and evaluating stages of any project.

If the target is creating diversion programs as a service provision from the criminal justice system for juveniles and young adults, all community members/sectors must be engaged. This includes the juvenile or young adult, families, community elders/persons of formal and informal influence, police, education and employment sectors. The interests, needs and capacities of all community members and sectors to respond, participate and ensure the success of the program, must be incorporated to address any deficits that might exist and might jeopardise the success of the program. Further when Aboriginal community controlled organisations are engaged, those organisations are in the best position to discuss and implement particular programs.

Consideration of any proposed diversion programs needs to include a number of facets for long term success in rural and remote communities. Including; employing workers who specifically target systemic engagement, workers of cultural competence, having an awareness of the systemic interconnectedness of people. Possessing skills to observe and recognize within particular communities competing needs, the capacity to engage community individuals and leaders as well as professionals, authorisation to design and apply resources to disaffected individuals and groups within the community who may not be the current target group. Such persons would have a level of authority equal to that of the most senior specific program operator on the ground and recognised by any of the funding entities engaged in the project.

This proposal leads into training initiatives of having frontline facilitators and program directors to carry out successful diversion programs such as an Institute which can develop rapidly out of the expertise gained whilst working in communities and determining what programs are successful. For example; Batchelor College Northern Territory, Indigenous units in South Australia , Tranby College NSW, Deakin Uni Koori Studies Geelong Vic, Koori Studies at UNE Armidale NSW, Lismore, UQ Indigenous Studies Unit. All of the above units have Aboriginal and Torres Strait Islander personnel and programs of relevance.

Indigenous Private Enterprise Groups are currently emerging in business and educational sectors which could be further utilised and expanded as a means of diversion for Aboriginal and Torres Strait Islander youth and young adults from the criminal justice system.

A further initiative that has been enacted to ensure the coordination of clearer responsibilities within and between government jurisdictions is the *Law and Justice (Cross Border and other Amendments) Act 2009 (Cth)* (“the Act”). This Act was enacted as a result of the *Law and Justice (Cross Border and other Amendments) Bill 2009 (Cth)* (“the Bill”). The Bill arose out of the Cross Border Justice Project which was established to address and improve the safety and security issues of Aboriginal peoples living in the Central Desert – Ngaanyatjarra Pitjantjatjara Yankunytjatjara (“NPY”) regions of Australia. The traditional areas involved have regard to the cross-border regions of the Northern Territory, Western Australia and South Australia.³⁵

The concept was initially modelled on the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council (“NPYWC”), a non-Government organisation who provide support and advocacy services for Aboriginal women in the NPY region. The Council operated as one organisation under a tri-State model.³⁶ This model has now been adopted under the Act, and substantially supports ATSILS position that when Aboriginal community controlled organisations are engaged, those organisations are in the best position to discuss and implement particular programs. New programs initiated by Aboriginal and Torres Strait Islander communities may if given Government recognition and support result in new legislation being enacted for the benefit of Aboriginal and Torres Strait Islander communities. It is likely that new legislation will then create a legislative and administrative framework that will allow the justice systems to operate much more freely and effectively, importantly with community support. In this case across the borders of the Northern Territory, South Australia and Western Australia.

ATSILS submits that there is also a need for cross border legislation which incorporates Queensland and the Northern Territory. ATSILS maintains that the need to address the lack of legislation for Queensland and the Northern Territory further perpetuates the difficulty of the justice system to operate effectively when people are attempting to evade police and the justice system, as justice services operate individually in each State. The lack of cross border legislation for Queensland and the Northern Territory undermines the safety of the Aboriginal

³⁵ Northern Territory Parliament, Cross-Border Justice Bill 2008 Second Reading Speech, http://www.austlii.edu.au/au/legis/nt/bill_srs/cjb2008236/srs.html Access date: 12 January 2010.

³⁶ Parliament of Australia Parliamentary Library, Law and Justice (Cross Border and Other Amendments) Bill 2009, Bills Digest no. 120 2008-09, <http://www.aph.gov.au/library/pubs/BD/2008-09/09bd120.htm> Access date: 12 January 2010.

community living on the Queensland/Northern Territory border. It also adds further complexities to COAG's goal of achieving a collaborative approach and positive action initiatives across Australia including the 'closing the gap' strategies by 2014 as discussed above.

7. The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

A number of problems presently exist with aligning current preventative programs with common goals of improvement across Commonwealth and State jurisdictions in Australia. The initiative of improvement is essential and the Commonwealth and State governments' holistic attempt at improvement is well overdue, however what is missing is a long term practical improvement plan for all Aboriginal and Torres Strait Islander peoples regardless of urban, rural or remote residential status.

Whilst the COAG and Department of Families, Housing, Community Services and Indigenous Affairs ("FaHCSIA") strategies (for example; the rural and remote service delivery strategy) have established the goals for improvement, what is fundamental to success is the implementation of the strategies at the ground level. What is of further relevance is the un-packing of the existent dichotomy of "us and them" between Aboriginal and Torres Strait Islander peoples and non-Aboriginal and Torres Strait Islander service providers. The existence of the dichotomy directly contributes to the duplication in effort and the gaps in the service delivery system. Without concurrent policies of achievement, change in attitude and key performance indicators for non-Aboriginal and Torres Strait Islander service providers, future initiatives will simply result in further failed attempts to reduce the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.

The gaps in the system are in our experience the inability of government to identify where allocated funds are being distributed in communities. This is particularly apparent in relation to non-governmental agencies receiving funds from Commonwealth and State Departments or both. It is imperative for all Commonwealth, State and non-governmental agencies in urban, rural and remote locations to know who provides what service, whether or not there is any collaboration between agencies and Departments and what strategies and outcomes are to be achieved and more importantly measurements of these achievements.

Non-Aboriginal and Torres Strait Islander service providers are in many instances not consistently engaging with Aboriginal and Torres Strait Islander peoples in communities and

furthermore are unaware of the current knowledge or initiatives within the communities that are working. In order for preventative and early intervention programs to be successful Commonwealth and State Governments must engage successful culturally competent entities to negotiate change. When Aboriginal community controlled organisations are engaged, those organisations are in the best position to discuss and implement particular programs and introduce holistic change for that particular community. A proactive and realistic approach to preventative programs with a particular focus on early intervention programs for education, health, justice, child protection and housing in urban, rural and remote areas is essential. This will positively contribute to the health and emotional well being of communities on a larger scale.

Re-engineering of the social fabric that currently exists across Aboriginal and Torres Strait Islander communities is crucial if any of the COAG and FACHSIA strategies are to be achieved. It is only when systemic holistic change is implemented and successful and substantial long term results are being demonstrated that the flow of Aboriginal and Torres Strait Islander juveniles and young adults into the criminal justice system will end.