Does the promotion of sport for Aboriginal youth help reduce the risk of offending behaviour?

by

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Candidate's Declaration

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'I certify that this work does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text'.

Ross Tanimu   Date: 06-01-2010

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Abstract

This thesis will highlight the benefits of using sport both as an early intervention tool and a diversionary mechanism in an attempt to divert Aboriginal youth away from the juvenile justice system and towards providing them, along with their families and communities, with a sense of hope and empowerment for the future. This thesis will draw upon, and respond to, the Social Inclusion Unit's recent recommendations to the State Premier's Office in South Australia which are aimed at 'closing the gaps' between the general population and Aboriginal communities, focusing particularly on Aboriginal youth. The impact of ethnocentric policies upon Aboriginal people will also be considered, along with relevant theories, in an effort to find a solution to the complex problems which are currently being experienced in many Aboriginal communities. Specifically designed government programs tend to have a limited shelf life, therefore when the funding finishes so does the specific program. Community sporting clubs, already established in the wider community, have access to established funding sources and Aboriginal youth and their families could easily be linked into these clubs. This thesis will suggest that there is considerable scope to develop these associations thereby encouraging community involvement, increasing empowerment and instilling a sense of belonging which would benefit Aboriginal youth, their communities and, by extension, the local community.

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I would like to acknowledge the following for their assistance in achieving this educational milestone: I thank my Creator in giving me the opportunity to experience education at this stage of my life. I respectfully acknowledge the Kaurna people, the traditional custodians of this land on which I have written this thesis. My gratitude also goes to the Flinders University Legal Studies Department for their continuous dedication and support through my educational journey, especially Mary McKenna for her invaluable positive and constructive comment. I extend my acknowledgement to Ruth Harris for her valuable time and consideration in editing this thesis. I am dearly grateful for my family, especially my wife, for her support, encouragement and valuable time in proof-reading. Special mention must be made of my fellow Honours students who have walked alongside me on my educational quest and Tui Leleisiuao for his valuable lesson on the importance of having culture and identity.

I respect and acknowledge the significant nature of Australian Aboriginal culture and identity. When making reference to what will be discussed and what has been written. I do not intend to undermine Aboriginal determination in deciding what works for their community, however my intention is to walk alongside the Aboriginal community to assist in formulating a positive and interactive method of using local community organisations in an effort to divert Aboriginal youth from being overrepresented in the juvenile justice system.

' I am Who I am' *- (New King James Bible, Exodus: Ch 3,Vs14 -16)*

Terminology and Acronyms

The terms Aboriginal refers to the original inhabitants of the land we know as Australia, Torres Strait Island and Tasmania.

BOCSAR	Bureau of Crime Statistics and Research
INC	Intensive Neighbourhood Care
NESB	Non English Speaking Background
SII	Social Inclusion Initiatives
SIU	Social Inclusion Unit
SACOSS	South Australian Council of Social Services

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INTRODUCTION

Primarily this thesis will focus on the issue of Aboriginal youth offending, the factors contributing to the offending behaviour and what strategies are currently in place to address the issue of overrepresentation of Aboriginal youth in the criminal justice system. To assist with understanding why offending behaviour is commonplace in Aboriginal society it is important to understand the significant events which have taken place throughout history for Aboriginal Australians. This thesis will analyse and respond, in part, to the South Australian Social Inclusion Unit's recommendations and initiatives in 'closing the gaps' in society for Aboriginal Australians.

This thesis will examine and analyse three important areas which have had significant bearing upon Aboriginal Australians' identity, culture and wellbeing. Brief comparisons will be made with other colonized cultures to further support the view that offending behaviour exhibited by Aboriginal youth today can be linked with past colonialist policies and laws, construction of society and the application of the justice system. The author will investigate and describe how these key structures have contributed to the reasons for offending behaviour by Aboriginal youth and will indicate that offending behaviour is a generational trait, inherited through past policies and practices, which have shaped Aboriginal Australians' culture, identity and socioeconomic condition in society.

This thesis will give a general overview of Australian history and the impact of colonisation on Aboriginal Australians. The significant relationship Aboriginal Australians have with their land and community will be highlighted and I will demonstrate the impact that the severing of these relationships had on both their identity and wellbeing. The significant implication of policies and laws that controlled and managed Aboriginal Australians will be analysed. It will be argued that historical laws and policies have created considerable despair and fragmentation for Aboriginal Australians' cultural identity and how these laws and policies have contributed to aspects of social ills experienced in today's society.

This thesis will then consider the construction of Australian society and investigate the influence of socioeconomic conditions through the structure of colonialist policies and laws which, for many Aboriginal Australians, have created inequality, segregation and social exclusion. A link will be made between colonialist policies and laws and the socioeconomic conditions which have resulted in segregating and isolating many Aboriginal Australians from mainstream society. The author will explore reasons for offending behaviour in disadvantaged social and economic conditions. In examining a number of relevant sociological theories it will be argued that due to the nature of their disadvantage there is a higher probability of Aboriginal Australians resorting to offending behaviour. This will then be linked into an analysis of the reasons for an overrepresentation of Aboriginals in the criminal justice system.

Aboriginal youth overrepresentation in the Australian juvenile justice system continues to increase. Various issues contributing to the cause of this overrepresentation in the criminal justice system will be discussed. In turn, the

South Australian juvenile justice system and its approach to Aboriginal youth offending will be identified. Following this a discussion of the impact of punitive, as opposed to diversionary, approaches to juvenile justice will be considered along with consideration of the outcomes of each approach for Aboriginal youth who have been subjected to the justice system. Positive outcomes, determined by a reduction in recidivism, will be considered with a focus on diversion and preventative approaches.

In light of the encouraging results of diversionary and preventative models it will be argued that for a range of reasons sport is a vehicle that has the ability to produce a meaningful engagement mechanism by promoting social and health wellbeing for Aboriginal youth. Many skills and positive personal attributes can develop out of team spirit. There are encouraging indications locally, nationally and internationally, that introducing sporting activities into a community encourages even the most disadvantaged and disenfranchised people to engage positively in a team environment. Sport has the ability to promote social inclusion through 'grass roots' community engagement. Involvement with sport and the positive impact this involvement can have has a number of significant implications. Importantly, the promotion of sporting activity in a community can minimise the potential for offending behaviour for Aboriginal youth.

This is particularly significant when considering the use of currently existing community sporting clubs to engage Aboriginal youth in an effort to positively impact on their sense of culture, identity and wellbeing. Community sporting clubs with well-developed links to the community on a range of levels, along with access to

established funding arrangements, appears to be a realistic option for assisting Aboriginal youth in developing a sense of empowerment and pride, with a potential overflow to various aspects of their lives. It appears that the use of community sporting clubs to engage Aboriginal youth may be a practical and achievable option to address the overrepresentation of these young people in the juvenile justice system and to assist them to develop a sense of culture, identity and wellbeing in a positive community environment. If these young people can be diverted away from criminal behavior there will be far-reaching benefits for these young people, their families, communities and the broader Australian community. The involvement of community and family support for Aboriginal youth can create a platform for working towards positive outcomes. This, in turn, would give Aboriginal youth a strong sense of self-determination and confidence in their ability to accomplish positive outcomes, presently and in the future.

CHAPTER 1- HISTORY IN CONTEXT

Introduction

In this chapter I will summarise key issues which have transpired since the onset of colonisation and the impact this has had upon Aboriginal Australians. I will describe why offending behaviour for Aboriginal youth has, in part, derived from past historical policies and laws that have governed and changed the cultural identity and landscape for Aboriginal Australians.

1.1 Colonisation – Divide and Conquer

An historical overview of colonisation will not directly show why there is an overrepresentation of Aboriginal youth in the juvenile justice system, nor will it explain the existence of certain offending behaviours by Aboriginal youth in society. It will, however, gives a valid starting point from which to explore how offending behaviour is the outcome of early colonialist laws and policies imposed upon Aboriginal Australians. Colonisation changed many aspects of Aboriginal Australians' identity and culture.[1] The culmination of various policies and laws that have governed Aboriginal Australians through time has shown a culture that has been disempowered, dislocated and isolated on many fronts of society.[2] It has been recognised that certain aspects of offending behaviour has become generational through the manner in which policies managed and controlled Aboriginal Australians

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[1] Access to Justice Advisory Committee (1994), '*Access to Justice: Action Plan'*, AGPS,
Canberra, Overview, pp. Xxiii-xlvii and Ch2,towards Equality Before The Law, pp.27-61
[2] Capobianco, L. , Shaw, M., and Dubuc, S. (2003),'*Crime Prevention and Aboriginal Communities' : Current International Strategise and Programs, Final Report'*, International Centre For The Prevention of Crime,pp.1-50

through history.[3]   For the purpose of this thesis, the terms 'Aboriginal Australians' are defined as those traditional landowners or original custodians of the land we recognise as Australia, Torres Strait Island and Tasmania.

Understanding what colonisation meant to the Aboriginal people is vital in establishing an understanding of how their culture and identity was   fragmented through the imposition forced receipt of historical policies, laws and governance.[4] Colonisation and the various policies and laws that have governed and managed Aboriginals through history, has created the situation in today's society where offending behaviour and hostility is expressed by Aboriginals. Although it is important to recognise policies and legislation that have shaped the affairs of Aboriginal Australians throughout history, I will not discuss the significance of each particular policy in any depth but I will describe the broad implication these policies have had, upon why non-conforming social behaviours are exhibited by Aboriginal youth throughout generations.

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Colonialism is described as 'establishing one's self within a new area with the view of imposing sovereignty and rule upon the land and those who inhabit the land under colonialist governance'.[5] A general portrayal of colonisation shows that In 1770, Lieutenant   James Cook sailed the east coast of Australia and made claim to the land under British Sovereignty.[6] Captain Arthur Phillip arrived on 26th of January, 1788 with the First Fleet and become governor of the first colonialist colony in New

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[3] Cunneen, C., (1997), 'The New Stolen Generation', *Paper Presentation at Australian Institute of Criminology Conference , Juvenile Crime Juvenile Justice: Towards 2000 and Beyond*, 26-27 June, Adelaide,p.12

[4] Gardiner-Garden, J., (1999), *'From Dispossession to Reconciliation', Research Paper* 27 1998-99,Parliament of Australia, Parliamentary Library

[5] Drislane, R., and Parkinson, G., (No Date), *On Line Dictionary of the Social Science*, Athabasca University and ICAAP website, http://bitbucket.icaap.org/dict. as viewed on the 20th November 2009

[6] Dunn, C. , and McCreadie, M. , (No Date), '*The Founders of a Nation, Australia's First Fleet-1788:Early Colonial History',* website http://www.ulladulla.info/historian/ , as viewed on the 12 September 2009

South Wales.[7]The contexts of Australian colonisation and the manner in which Aboriginal people were treated and disenfranchised from their land, have caused considerable ill-feeling, anger and impacted upon the general wellbeing of Aboriginals throughout time.[8] Although there are differences from one geographic location to another, substantial acts of barbarism and degradation were committed by white colonial settlers against Australia Aboriginals.

It has been recognised that conflict between early settlers and Aboriginals was fought with great intensity and brutality.[9] Due to the expansion of settlements and the need to further encroach upon the Australian landscape, It has been argued that the fierce resistance shown by Aboriginals can be justified, as they felt compelled to protect the relationship they have with their land.[10] Such protective actions by Aboriginal Australians has been acknowledged as a justified reaction to the invasion of Europeans and seen as an acceptable universal action by many of those who are territorial.[11]

Aboriginals saw colonisation as much more than someone forcibly taking possession and control of their land. Colonisation enforced the separation of what they see, believe, and understood to be their family identity. High profile Aboriginal Australian and former Aboriginal Person of the Year, Bob Randall, highlights the far-reaching and ongoing impact colonisation has had on Aboriginal people.[12] The

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[7] Australia Day Council of New South Wales, (No Date), '*Australia Day History*', website
http://www.australiaday.com.au, as viewed on the 12 September 2009

[8] Short, D. , (2003), 'Reconciliation, Assimilation and the Aboriginal People of Australia', *International Political Science Review*, Sage Publication, pp.491-513

[9] Reynolds, H.(1982), '*The Other Side of the Frontier*', Penguin Books, Australia

[10] ibid

[11] ibid

[12] '*Kanyini',* (2006), DVD, Film Australia, Producer/Editor, Melanie Hogan

intimate interconnectedness of Aboriginal people with flora, fauna and landscape was fractured when they were forcibly removed from their lands. A traditional landowner of Uluru, Randall comments on how current living conditions for his people are dilapidated and how disenfranchised their community is, far removed from mainstream services and filled with despair, isolation and rife with many social ills.[13]

Early encounters with white settlers in Australia in the early 19th Century resulted in many attempts to make Aboriginal communities more civilised by imposing upon them an alien culture.[14] Non conforming Aboriginals were banished to the extreme outskirts of towns and communities until acceptance of conformities were achieved.[15]. Research has shown that the planned purpose was to, by design; change the cultural identity of the Aboriginal people. The significance of what has been described is fundamentally important in trying to assert the relationship that exists between colonialist laws and policies and offending behaviours being expressed by Aboriginal youth in today's society.

1.2 Comparative Analysis – Other Aboriginal Cultures

It is not just in Australia that we seen the effect of colonisation upon Aboriginal landowners. The original inhabitants of Canada, New Zealand and America share similar experiences that have contributed to the effects of social disharmony, displacement and behaviours in society.[16] Comparing Indigenous cultures indicates

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[13] '*Kanyini',* (2006), DVD, Film Australia, Producer/Editor, Melanie Hogan

[14] Lippmann., (1994), '*Generations of Resistance, Mabo and Justice'*, Addison, Wesley Longman Australia Pty Ltd, South Melbourne, Australia

[15] ibid

[16] Capobianco, L., Shaw, M., and Dubuc, S. (2003),'*Crime Prevention and Aboriginal Communities': Current International Strategies and Programs, Final Report'*.

that general offending behaviours committed by Australian Aboriginal youth are also a common theme experienced with other Indigenous youth cultures whose traditional lands were colonised. Research in this field supports the view that, firstly, colonisation has had a profound impact upon Aboriginal people as a culture and their spiritual and physical connection with their land.[17] Secondly, that there exists a vast array of social repercussions as a result of colonisation.[18] And thirdly, the anti-social behaviours that have outwardly manifested themselves upon society since colonisation are a reflection of socioeconomic conditions derived from colonialist policies and laws. [19]

 Indigenous Canadians share similar colonial policies with those of Australians Aboriginals and share the same pertinent issues for Aboriginal overrepresentation in the criminal justice system.[20] Research shows that colonisation of the Indigenous inhabitants of New Zealand, Australia, Canada and America caused considerable destruction to their wellbeing and cultural identity.[21]Although these Indigenous people have individual cultural identities which separate them, this thesis points out that through the culmination of historical policies associated with being colonised, they all inherited a common experience that has impacted upon their community culture, identity and, more importantly, their wellbeing.[22]

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[17]Capobianco, L., Shaw, M., and Dubuc, S. (2003),'*Crime Prevention and Aboriginal Communities': Current International Strategies and Programs, Final Report'*.

[18] ibid

[19] ibid

[20] Adelson, N. ,(2000), 'Re-Imagining Aboriginality: An Aboriginal Peoples' Response to Social Suffering', *Transcultural Psychiatry*, Vol 37(1), pp.11-34

[21] Capobianco, L. , Shaw, M., and Dubuc, S. (2003),,

[22] Garvey, D., (2008), *'A Review of the Social and Emotional Wellbeing of Aboriginal Australian Peoples – Considerations, Challenges and Opportunities'*, website http://www.healthinfonet.ecu.edu.au/sewb_review, as viewed on the 16 March 2009 - Aboriginal recognize wellbeing to be holistic and to incorporate mental, physical, culture and spiritual health. Their land is the centre piece to their wellbeing.. If there is an imbalance of these relationships, then forms of illness will be prevail.

Colonisation had a critical influence upon the identity and culture of Aboriginal people. Many noted historians and academics have documented the harsh treatment experienced by Aboriginals and the ways in which they were segregated and disfranchised from their land.[23] Research depicts brutal events bestowed upon those who resisted colonisation and the inevitable expansion of colonies may not be fully comprehended by colonialists. For many Aboriginals the requirement to conform to new ideologies was seen as disrespectful and intrusive to their beliefs, understanding and cultural practices.

It is a common belief that attempting to 'tame the savages' by introducing conformity to foreign ideologies was of considerable benefit in lifting of Aboriginals to the equivalent of European settlers. Such ideology has been generally portrayed quite vividly in several early Australian films depicting Aboriginal adults and children as appreciative pets deserving specialised treatment of a European lifestyle and how fortunate they would be in absorbing such a culture. The white settlers had a yearning to convert and educate the Aboriginal to European standards, which they believed was advanced and more superior than Australian Aboriginals.[24] However, this only made things worse and quickly hastened the demise and fragmentation of Aboriginals as a society.[25]

For many Aboriginal people it was not the material possessions, nor the ownership of particular parcels of land, but the significant cultural relationship that Aboriginal

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[23] '*First Australian, The Untold Story of Australia*', (2008) DVD, SBS, Australia, Producers, Dale, D. And Perkins, R.
[24] Gibbs, R, (1974), *The Aborigine's,* Longman Australia , Pty Ltd, Victoria, Australia
[25] ibid

people have with the land.[26] The motherland must be respected and cherished so as to provide survivability and prosperity for future generations.[27] Forced changes disrupt the delicate social and ecological balance between Aboriginals and their relationship with the land.[28] Essentially land is acknowledged to be integral to health, family and community wellbeing; Aboriginal identity is formed through the consecutiveness to the land.[29] This depiction of land relationship is a crucial element in understanding the underlying concept of anger and resentment expressed by many Aboriginal Australians.

Literature has shown that countries such as New Zealand and Canada share similar experiences with Australia, with a high proportion of their Indigenous youth being subjected to the justice system through non-conforming behaviours.[30] The outcomes of these behaviours have been shown to be deeply seated in the context of colonisation.[31] It has been shown that similar parallels also exist in relation to their socioeconomic conditions, poverty and isolation from mainstream society.[32] Although similarities may exist, there is an important difference in which the New Zealand government acknowledges Maori culture and their people's rights to their land,

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[26] '*Kanyini*' , (2006), DVD, Film Australia,
[27] ibid
[28] '*Kanyini*' , (2006), DVD, Film Australia,
[29] Calma, T., (2008), '*Essentials for Social Justice: Land and Culture –Economic Development'*, Speech at the Department of Environment, Water, Heritage and the Arts, NAIDOC Week Celebrations, 7th July, website http://www.hreoc.gov.au/index.htm ,as viewed on the 12 September,2009
[30] Gilbert, R., and Wilson, A., (2009), '*Staying Strong on the Outside: Improving the Post –Release Experience of Aboriginal Young Adults',* website, www.aic.org.au , as viewed on the 30h September 2009.
Smandych, R., Lincoln, R., And Wilson, P., (1993), 'Towards A Cross –Cultural Theory of Aboriginal Crime: A Comparative Study of the Problem of Aboriginal Overrepresentation in the Criminal Justice System of Canada and Australia', *International Criminal Justice Review*, Vol 3.pp.1-20
[31] ibid
[32] ibid

through the Treaty of Waitangi.[33] Australia Aboriginals are not afforded the same recognition.[34]

1.3 Assimilation – Black to White

It is important to consider what impact assimilation polices had upon Aboriginal Australians. The general aim of the assimilation policies was to change the customs and beliefs of Aboriginal people in an effort to force them, as far as possible into conforming to mainstream societal ideals.[35] Assimilation policies and the forced removal of Aboriginal children from their families around the 19th century saw momentum build to change the identity and culture of Aboriginal Australians.[36] Through this period each state further exerted their power and influence by sanctioning the removal of Aboriginal children who were then governed by the district protector, their overseer and legal guardian.[37]

These policies and practices further separated Aboriginals from their culture and identity which, as a consequence of these actions, contributed to some of the anti-social behaviours and cultural dilemmas that Aboriginal people have experienced and still experience in society. It has been suggested that anger and bitterness and outward behaviour expressed by Aboriginals in society can be attributed to the way that assimilation policies endeavoured to change aspects of their culture and

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[33] Joseph, P., (2000), '*Maori and the Market: The Waitangi Tribunal, Race and Class*', website http://rac.sagepub.com , as viewed on the 9th November, 2009. (Controversy has shrouded the Waitangi treaty signing between the British crown and Maori Chiefs of New Zealand. British interpretation suggest that signing the treaty gave sovereignty to the Queen. The Maoris' believe that the treaty assigned them as the governing authority of their land.

[34] Wynn, J., and Harris, A., (2004), 'Youth Research in Australia and New Zealand', *Nordic Journal of Youth Research*, SAGE Publication, London.pp.271-289

[35] Morris. B. (2005), '*A Crises in Identity, Aborigines and Media , the Law and Politics –Civil Disturbance in an Australian Town*', SAGE,pp.59-85

[36] Gardiner-Garden, J. (1999), '*From Disposition to Reconciliation*',

[37] ibid

identity.[38] Consequently offending behaviours expressed by Aboriginal youths are likely to be seen as a form of rebellious behaviour towards losing identity and being culturally displaced throughout history.

The policy of assimilation detracted from its intended purpose of integration for the betterment of Aboriginal Australians by robbing them of their identity.[39] The Commonwealth policy of assimilation was designed to integrate and protect Aboriginals; however, this policy had the opposite effect of actually further oppressing and marginalising Aboriginal Australians.[40] These laws gave the Commonwealth controlling power to exercise the rights over Aboriginal children for removal or transfer, authority over Aboriginal movements, marriage and finances. It was not until 1967 referendum that Aboriginal Australians were officially recognised as citizens of Australia.[41]

Although the purpose of assimilation was to integrate Aboriginals into society, the majority of times Aboriginal community groups were forced to reside in specific allocated areas outside the main social communities. Many Australian Aboriginals are still experiencing the same socioeconomic displacement in society.[42] This is a very important issue as it has been recognised that overrepresentation of young Aboriginal offenders is in part influenced by the socioeconomic position they experience.[43]   Australians Aboriginal should not be defined as the minority group in

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[38] Morris, B. (2005),

[39] Gardiner-Garden, J. (1999)

[40] ibid

[41] ibid

[42] Tyler, W. , (1998), 'Crime and Region : The Social, Spatial Dynamics of Aboriginal Offending', *Journal of Sociology,* vol 34, no 2, SAGE publication, pp. 152-169

[43] Cunneen, C. and White, R., (2002), '*Juvenile Justice: Youth and Crime in Australia'*, Oxford University Press, Melbourne, Ch 6,pp.154-183

society who have been disadvantaged; they should be defined as the traditional custodians of the land whose present socioeconomic position can be traced back to policies and laws imposed upon them from the onset of colonisation.[44]

1.4 More Lost Than Gained

Assimilation policies were intended to benefit Aboriginal Australians, however, more was lost for Aboriginal Australians than was actually gained. It must be recognised that assimilation policies exhibited a strong patriarchal influence which, by its very nature, subjected Aboriginal people to being treated as secondary citizens by controlling every facet of their lives. Many Aboriginal communities were effectively located to specific outlying areas of mainstream societies, instilling a further sense of exclusion further decreasing the likelihood of any possibility of integration with mainstream society. It is acknowledged that there exists a substantial deep-seated exclusion for the Aboriginal community, along with a recognition that considerable effort would be needed to reduce this exclusion.[45]

It is imperative for those in the academic, political and judicial fields to understand why historical policies and practices play a integral part in understanding why resentment and offending behaviour are sometimes exhibited by Aboriginal people. Contrary to their intended purpose of integrating Aboriginal Australians, those policies and laws have in fact shaped social disparity and exclusion for many Aboriginal Australians. Importantly, research has shown that certain aspects of violence are now recognised to be imbedded in the contexts of colonisation;

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[44] ibid

[45] Newman, L.,Biedrzycki, K., Patterson, J., & Baum, F., (2007), '*A Rapid Appraisal Case Study of South Australia's Social Inclusion Initiative'. A report prepared for the Social Exclusion Knowledge Network of the World Health Organisation's Commission on Social Determinants of Health by the Australian Health Inequities Program (Department of Public Health, Flinders University of South Australia) and the Social Inclusion Unit (Department of the Premier and Cabinet, Government of South Australia), Adelaide, Australia.pp.1-79*

expressions of anger relate to being disposed, isolated and disempowered, creating a sense of lost identity and culture[46]

1.5 Determination of Land Ownership

The Royal Commission into Aboriginal Deaths in Custody (1991), highlights the fact that Aboriginal and Torres Strait Islanders were disposed of their land due to the legal determination imposed upon them by early colonialist law.[47] The British Crown used the term *Terra Nullius* as a legal determination to the discovery of uninhibited lands. By applying *Terra Nullius*, it was interpreted that, by European legal definition, the British had insurmountable authority to claim any uninhabited land for its own Empire.[48] Generally speaking the legal determination for *Terra Nullius* ensured that Aboriginals were not recognised as the rightful owners nor claimants of their land. However, Australia was already inhabited and this was recognised as a problem by those early explorers representing the Crown.[49]

To overcome the moral and ethical dilemma in claiming the land of Australia for the Crown, it was proposed that the legal determination be applied through the 17th Century philosophical assertion described by John Locke. When determining the defined boundaries of land ownership, Locke asserts the view that in order to substantiate land ownership one must be acknowledged to be manually working the land, as suggested "mixing soil with labour" (p492).[50] If no presence of people

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[46] Cheers, B., Binell, M., Coleman, H., Gentle, I., Miller, J., and Weetra, C., (2006), 'Family Violence: 'An Australian Aboriginal Community Tells Its Story', *International Social Work*, vol 49, no51, pp. 51-61
[47] Access to Justice Advisory Committee, (1994), ' *Access to Justice : An Action Plan'*, Canberra, AGPS
[48] Short, D., (2003), '*Reconciliation, Assimilation and the Aboriginal Peoples of Australia'*, International Political Science Review,
[49] ibid
[50] ibid,(pp.492)

working the land exists, then the general view would suggest that there is no investment or interest in the soil, thus they have no legitimate claim to land ownership.[51]

Aboriginals losing their land through this legal and somewhat dubious determination brought with it conflict, resultant acts of brutality with considerable bloodshed, as European settlers used this law to expand and establish authority over the Aboriginal people and their land.[52] The ownership of land has been fiercely debated over time and more so now in present political and economic times with considerable emphasis placed upon pastoral leases and mining industry. For many Westerners land is of material wealth and the only connections to the land are of monetary value. As previously outlined, for Aboriginal Australians land is their identity and is significant to their perception of wellbeing.

1.6 Exclusion

Through the processes associated with colonisation we see set in place policies and laws that subject Aboriginal people to a myriad of restrictions. There appears to be no effort to compromise ideologies, only to steer Aboriginal people and their culture towards a strange custom with foreign practices and beliefs. However, as much as the colonialists needed to domesticate Aboriginals to European lifestyles, distinct lines were seen to be drawn as to how far Aboriginals would be freely accepted as equals. More apparent was their restricted ability to freely integrate and be associated with mainstream colonial societies. Through these transitions it was envisioned that equality would be seen as obliging between races; however equality

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[51] ibid

[52] Access to Justice Advisory Committee, (1994), '*Access to Justice : An Action Plan'*

was not forthcoming, as many still believed that Aboriginals should not be accepted nor be treat as equal.[53]

Aboriginal media identity and actor Ernie Dingo highlights early Aboriginal settlement and colonisation in the ABC's Australian Today series, *Aboriginal Australians.* In this documentary, Dingo explains that through colonisation Aboriginal people were confined to certain communities where they were deprived of their normal cultural practices and were expected to rely strictly on basic commodities rationed monthly by station masters. Consequently, a form of dependency has been created through time as a form of survival. Furthermore, Aboriginals were denied the ability to make conscious choices for themselves, which inevitably caused friction within their own kinship group. [54] As a consequence of the manner in which colonialist policies and laws were constructed, authorities maintained their controlling influences on Aboriginal people and oversaw their segregation to outlying areas of society.[55]

Exclusion from mainstream society has considerable bearing on the reason why particular antisocial and criminal behaviours are being experienced in today's society. Considerable correlation exists between troublesome socioeconomic areas and the participation in crime by youth.[56] One can easily understand why there is a strong sense of despair and unwillingness to conform to mainstream ideals and order and generally speaking it could well be argued that nothing has significantly changed for Aboriginal Australians throughout the years.

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[53] Johns. G., (2003), '*The Gulf Between Aboriginal Policies and Aboriginal People in Australia*', Libertad y Desarrollo Institute, Santiago, Chile, pp. 1-17
[54] Access to Justice Advisory Committee, (1994)
[55] ibid
[56] Weatherburn, D., and Lind, B., (1998), 'Poverty, Parenting, Peers and Crime-Prone Neighbourhoods', *Trends and Issues in Crime and Criminal Justice*, website http://www.aic.gov.au ,as viewed on the 3rd November, 2006

1.7 Identity

Identity for Aboriginal Australians is more than just a word that describes their colour or physical features. Identity is born out of the connectedness they have to their land. Through assimilation, Aboriginals were experiencing a transition that further separated their identity and connectedness to who they are. This, I suggest, relates back to the common question 'who am I?'. For many Australian Aboriginals this would suggest that their distinctiveness and culture is born from the land which is their identity; their land is taken from them and are made to reside on the outer of a constructed society; they are not accepted in society and their connectedness has been severed from the motherland; their need for dependency for survival from government has become an accepted normality, as their natural and cultural instincts for existence from the land has been taken from them.

Through my engagement with Aboriginal youth and their immediate and extended families, I have, heard many make reference to their community identity being aligned not so much to their traditional land but to particular mission locations in South Australia.[57] Many would state that their family, or what they commonly refer to as 'mob', are from particular missions such as Raukkan or Point Pierce. The intended purpose for the above comment is not to represent a subjective view, however, but to highlight, through observation, the significant fact that through colonialist policies and laws, Australians Aboriginal were purposely convened at particular locations for the intended purpose of management and control. By doing

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[57] (the Author works in the capacity of Social Worker in Adelaide) -The Author works with predominantly Aboriginal students at High schools, their families and networks with Aboriginal communities and agencies in metropolitan Adelaide.

so, it could well be argued that their identity to particular land association caused further fragmented as they were moved away from their family place of origin, to areas unknown.

The grouping of Aboriginal Australians into missions for the sole purpose of management and control caused cultural imbalance for many Aboriginal groups. Many who were congregated were not identified as local inhabitants to the area. The Lutheran Koonibba Mission had a considerable congregation of different Aboriginal groups, some from as far away as 2000 kilometres, who were made to live and reside within the confines of the mission.[58] Patriarchal policy ensures that Aboriginal Australians are controlled and managed in such a way that disadvantages Aboriginals both as an identity as well as a community.

Summary

Chapter one has described the impact of colonisation on Aboriginal Australians. This chapter also described how historical policies have changed the identity and culture of Aboriginal Australians and in doing so this chapter has identified areas which have impacted upon how Aboriginals were generally treated. This chapter has shown that policies and laws governing Aboriginals disadvantaged their wellbeing through segregation and a destiny of socioeconomic conditions. The author has submitted a brief comparative analysis of other colonised Aboriginal cultures and reflected upon the similarities they experience upon their identity, culture and wellbeing. This chapter has demonstrated that colonialist policies have had a considerable influence upon the socioeconomic conditions currently experienced in today's society

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[58] Cheers, B., et al (2006), 'Family Violence: An Australian Aboriginal Community Tells Its Story',

CHAPTER 2 – SOCIETY

Introduction

Chapter two will highlight that socioeconomic conditions experienced by Aboriginal Australians are derived from colonialist policies. This chapter will draw a link between past policies, socioeconomic conditions and discuss why offending behaviour exists. This will be followed by examining sociological theories that describe why offending is shaped by socioeconomic conditions.

2.1 Social Exclusion

Social exclusion for Aboriginals is inherited through the construction of colonial laws and policies which have governed and managed Aboriginal people. Aboriginal groups tend to live on the margins of mainstream society and are undoubtedly disadvantaged.[59] It has been suggested that Aboriginals are subjected to poverty and low socioeconomic conditions because of the infrastructural policies and organisational dominance of Australian society.[60] The high rate of poverty, inequality and exclusion existing for such a cultural group cannot be solely blamed as such on individual failure, but is an indictment of Australian society.[61]

What has happened through colonisation is a deliberate fragmentation and controlled displacement of Aboriginal people, in particular to the outskirts of mainstream society and isolated communities. It has been recognised that Aboriginal

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[59] Aberdeen, L., 'The Politics of Settlement' in Kellehear, A. (edit), (1996) *Social Self, Global Culture: An Introduction to Sociological Ideas*, Oxford University Press, Melbourne, Ch 17, pp. 189-199
[60] ibid
[61] ibid

people in general are the most marginalised and disadvantaged group of people within Australian society.[62] The Royal Commission into Aboriginal Deaths in Custody (1991) concluded that it is crucial to understand the social disadvantage that the Aboriginal community experience in order to begin to determine why offending is exhibited by Aboriginal youth.[63]

There is the need to understand that crucial factors, including poverty and low socioeconomic conditions, contribute to the likelihood of Aboriginal offending.[64] Improving the socioeconomic condition of Aboriginal people will likely lower the contact of Aboriginal people in the criminal justice system.[65] However, while it may be relatively simple to identify the key issues that contribute to the problems, devising strategies to address these problems is not so easy.[66]Reducing economic disadvantage would be seen as one way of addressing the issues surrounding the overrepresentation of Aboriginal Australians in the criminal justice system.

This means that, in practice, government and Aboriginal communities should be working together towards specific outcomes. However, if programs designed to benefit Aboriginal communities do not include input from Aboriginal people, then there is a strong likelihood that problems will arise and outcomes aimed at enhancing Aboriginal communities will fail.[67] Achieving self-determination for Aboriginal Australians has been made difficult since the onset of colonisation.

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[62] O'Conner, I., and Cameron, M., 'Juvenile Justice in Australia', in Graycar, A. and Grabosky, P.(eds),(2002),,*The Cambridge Handbook of Australia Criminology*, Cambridge University Press ,Cambridge, pp.211-234
[63] ibid
[64] Weatherburn, D., Snowball, I., and Hunter, B., (2006), 'The Economic and Social Factors Underpinning Aboriginal Contact With the Justice System: Results From The 2002 NATSISS Survey', *Crime and Justice Bulletin*, no104, NSW Bureau of Crime Statistics and Research,pp.1-13
[65] ibid
[66] ibid
[67]ibid

Although self determination has also been recognised as an important factor towards achieving a positive and holistic approach to Aboriginal Australians' wellbeing and development in society, historically Aboriginal Australians are often dependent upon government support with accommodation, housing and food. This dependency inhibited the ability for Aboriginal Australians to make informed decisions about themselves, their communities and limited their ability to attain self-determination in society.[68]

2.2 Socioeconomic Conditioning of Crime

The high imprisonment rate of Aboriginal offenders could be addressed by a concerted effort to increase the socioeconomic circumstances of the communities.[69]There is no doubt that a high proportion of Aboriginal children will be born into a life of disadvantage. They will experience disparity in health and education which will limit their opportunities in society.[70] This impacts on self esteem, resulting in alcohol and drug consumption, which has a tendency to lead to violent behaviour. The culmination of these factors tends to draw unwanted judicial attention, resulting in higher probability for incarceration.[71]On the other hand, it has be argued that the rate of Aboriginal imprisonment is no different from any other cultural group which shares the same low socioeconomic conditions.[72] These groups should not be separated culturally for specific attention but more broadly as a community group in a designated demographic location sharing the same

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[68] Access to Justice Advisory Committee, (1994),

[69] Walker. J., and McDonald, D., (1995), 'The Overrepresentation of Aboriginal People in Custody in Australia', *Trends &Issues in Crime and Criminal Justice*, no 41, Australian Institute of Criminology, Canberra,pp.2-6

[70] Hedger, A. , (2002), 'Aboriginal Justice', *Paper Presented at the Crime Prevention Conference Convened by the Australian Institute of Criminology and the Crime Prevention Branch*, Commonwealth Attorney Generals Department , Sydney, 12-13 September

[71] ibid

[72] Walker. J., and McDonald, D., (1995), 'The Overrepresentation of Aboriginal People in Custody in Australia', *Trends &Issues in Crime and Criminal Justice*,

socioeconomic conditions.[73]However in general, research highlights the fact that Aboriginal overrepresentation in the criminal justice system is higher per capita than those of mainstream Australians and other minority groups, regardless of socioeconomic circumstances.

Aboriginal communities being socially disadvantaged inherits other problems that further distance them from society. Due to cultural identity and being associated with low socioeconomic conditions, society has the tendency to predisposition Aboriginals as a troublesome cultural group. For these reasons, opportunities such as employment become limited and dependency from government becomes a way of life. The Australian Aboriginal population in general are shown to dwell in more isolated and remote areas where there is minimal infrastructure, services and opportunities compared with the majority population of Australians.[74]The result of low socioeconomic conditions gives rise to the lack of opportunities in employment and financial wages. Offending behaviour may be seen as substituting for those financial shortfalls. Offenders often do not have any form of community connection as a whole and are limited in their ability to achieve any chance in attaining the basic opportunities with employment and housing.[75]

For those residing in isolated areas and country towns, offending becomes more problematic as opportunities and basic infrastructure is limited. Youth imprisonment

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[73] Walker. J., and McDonald, D., (1995), 'The Overrepresentation of Aboriginal People in Custody in Australia'

[74] Cunningham, J., and Beneforti, M., (2005), 'Investigating Indicators for Measuring the Health and Social Impact of Sports and Recreation Programs in Australia', *International Review for the Sociology of Sports*, SAGE, London, , vol 40, no1, pp 89-98

[75] Walker. J., and McDonald, D., (1995).

is also considerably higher in areas of remote isolation.[76] Not having the opportunity to engage within society impacts upon wellbeing and despair, increasing the probability that the consumption of alcohol and drugs by these young are an attempt to compensate for the anguish and isolation they experience. Indicators suggest that due to the lack of opportunities in society, idle time become apparent and this heightens the probability for offending behaviours.[77] Therefore the conclusion can be drawn to suggest that within in these demographic areas considerable disadvantage prevails.

High unemployment, family dysfunction and violence influenced by high alcohol and drug consumption contribute greatly towards anti-social and offending behaviours.[78] Constant exposure to such community conditions inhibits self esteem, respect and positive determination for many.[79] There is a sense of hopelessness and for many the connectedness to past traditions practices that gave strength to deal with issues was lost through colonisation.[80] While this is not an exclusive 'Aboriginal' problem, per capita of population, Aboriginals and Torres Strait Islanders are more likely to suffer disadvantage.

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Social and economic disadvantage has been recognised by the South Australian Social Exclusion Unit as playing a significant role in why non-conforming behaviours

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[76] Tyler W. (1998), 'Race, Crime and Region: The Socio-Spatial Dynamics of Aboriginal Offending',
[77] Cunningham, J., and Beneforti, M., (2005), 'Investigating Indicators for Measuring the Health and Social Impact of Sports and Recreation Programs in Australia'
[78] Cheers, B., et al, (2006), 'Family Violence: An Australian Aboriginal Community Tells Its Story'
[79] ibid
[80] ibid

are exhibited by Aboriginal youth.[81] Socioeconomic conditions have particular relevance as it describes the overall conditions experienced by the general population of Aboriginal Australians in society. Exclusion has considerable barriers which limit a person's lack of social, financial and personal opportunities.[82] This causes considerable tension and turmoil, fracturing family wellbeing and functionality, causing despair and hopelessness.[83]More particularly, economic exclusion results in a clear disparity of income, living conditions, infrastructure and opportunities for mainstream society compared with those from marginalised groups within the same society. [84]

2.3 Theories and Offending

While numerous criminological and sociological theories exist, some appear to be more useful than others to help explain Aboriginal juvenile offending. Theories represent proposed ideas and thoughts that best explain why things happen based on observation, ideas and knowledge.[85] For this purpose, theories proposed for Aboriginal youth offending can help explain why Aboriginal Australians are overrepresented in the criminal justice system.

Sociological and criminological theories have been frequently invoked to help describe Aboriginal offending. It has been argued that a sociological perspective gives a better understanding of why offending occurs by looking at the way society

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[81] Newman, L., Biedrzycki, K., Patterson, J., and Baum, F., (2007), *A Rapid Appraisal Case Study of South Australia's Social Inclusion Initiative.*
[82] Daly, A., and Smith, D., (2005), 'Indicators of Risk to the Wellbeing of Australian Aboriginal Children', *Australian Review of Public Affairs,* vol 6, no 1, School of Economic and Political Science, The University of Sydney.pp.40-54
[83] ibid
[84] ibid
[85] Gwynn, M. (ed), (2005), '*Australian Oxford Dictionary'*, Third Edition, University Press, Australia

shapes behaviours.[86] It is important to understand why offending happens, so as to better resolve these behaviours. There are, however a number of different types of sociological theories that can be drawn upon. Conflict, functional and postmodern theoretical perspectives can be used. Conflict theory explains violent behaviours expressed by Aboriginals as contributed to by the effects of dispossession, alienation and marginalisation in society.[87] Functionalist views examine the aspects associated with a dysfunctional society of the urban poor, where there exists considerable abuse, crime and alcohol and drug dependency. The postmodernist approach describes the changing aspects of community and society that influences aspects of offending behaviour. Postmodernism is an unforseen transformation that changes the contours of society which in turn changes the social and economic landscape in which people reside.[88]

These theories highlight that socioeconomic conditions plays a significant part that shapes and influences how behaviour comes into existence for many Aboriginals who are subjected to living in these conditions. To understand the nature and cause of why crime comes into existent in society, it must be important to look at how society is constructed, as these constructions influences and shapes behaviours in society.[89] With constant exposure to such conditions, social ills become apparent, for many, it would seem difficult to break the cycle of poverty and despair. It has been shown that alcohol and drug consumption becomes an outlet for escape from the conditions they experience.[90] The outcome of behaviours from alcohol and drug

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[86]Cunneen, C., and White, R., (2002),' *Juvenile Justice: Youth Sand Crime in Australia',* Ch 2,pp. 33-59
[87] Tyler, W. (1998), 'Race, Crime and Region: The Socio-Spatial Dynamics of Aboriginal Offending'
[88] ibid
[89] Cunneen, C., and White, R., (2002) , Ch 2,pp. 33 - 59
[90] Cheers, B., et al (2006), 'Family Violence: An Australian Aboriginal Community Tells Its Story'

consumption are seen as an expression of resentment and anger to what they are experiencing in society and what they have lost since being colonised. [91]

As shown above, various theories can be useful in explaining why certain behaviours come into existence. For example, conflict and functionalist theories generally stereotype and label Aboriginal Australians as being commonly associated with poverty and offending behaviour. Both these theories support the view that low socioeconomic position, poverty and marginalisation heightens the probability for offending behaviour. In doing so this draws attention from political and judicial institutions.

Although theories are a means to better understanding why offending may occur for Aboriginal youth, it also collectively predispositions and labels Aboriginal youth in society. Labelling theory shows that certain groups are seen to be stigmatised through the process of society implanting negative views that attach themselves.[92] Labels generally stigmatises many Australian Aboriginal and more so with Aboriginal youth .Recent media coverage of the activities of the alleged gang of 49 in South Australia, has generally labelled Aboriginal youths in group settings as being associated with crime or offending behaviour.[93] A negative label that is associated with crime, tarnishes those who may be associated with those who are labelled, this influences how society treats all those people.[94] With the media coverage of the gang of 49 It is argued that certain labels ensure that Aboriginal

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[91] Cheers, B., et al (2006),
[92] Cunneen, C., and White, R., (2002), Ch 2, pp. 33-59
[93] The 'Gang of 49',is referred to by South Australian Police as an alleged group of offenders who have committed series of offences in South Australia. Some group members are of Aboriginal appearance
[94] Cunneen, C., and White, R., (2002), Ch 2,

youth will come to the attention of the justice system more frequently. By doing so many Aboriginal youth will experience the judicial system more frequently.[95]

Summary

Chapter two has shown that early historical policies and laws that have governed and managed Aboriginal Australians has influenced why social exclusion and low socioeconomic conditions exist for many Aboriginal Australians and have done throughout time. This chapter has shown that such conditions heighten the probability of the existence of offensive and antisocial behaviour. This chapter has briefly discussed, through various theories, that offending behaviour exhibited by Aboriginals is shaped by influences imposed by society's construction.

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[95] Wundersitz, J., Bailey-Harris, R., and Gale, F., (1990), 'Aboriginal Youth and Juvenile Justice System in South Australia', *Aboriginal Law Bulletin*, website http://austlii.edu.au, as viewed on 10 April, 2009

CHAPTER 3 - LAW AND ORDER

Introduction

Chapter three will discuss how law and order is applied to Aboriginal Australians in general. This chapter will discuss particular features of the judicial system that disadvantage Aboriginal Australians in receiving and accessing justice and suggest that the application of the judicial system contributes in part to the reasons why Aboriginal Australians are being overrepresented in the criminal justice system. This chapter will then generally analysis and discuss the South Australian Social Inclusion Initiatives in 'closing the gaps' for those disadvantaged groups in society as well as the Social Inclusion Initiatives approach to addressing the issue of young and serious repeat offenders.

3.1 Juvenile Justice System-In Brief

In South Australia, as in any other Australian judiciary, Aboriginal youth comprise a large percentage of serious and repeat offenders. The juvenile justice system in South Australia tends to disadvantage Aboriginal youth for range of reasons. The South Australian government recognised the problem and through the Social Inclusion Board, commissioned a report on 'young offenders - breaking the cycle'.[96] By collecting data and evidence from judicial institutions and having consultations with community groups, the SIB recognises that Aboriginal and Torres Strait Islander youth are disadvantaged on many fronts and are disproportionately overrepresented in the juvenile justice system. In general the Premier, Mike Rann, drew advice from the SIB report on ways to minimise and prevent criminal activities and recidivism for young people. Despite a range of types of recommendation the South Australian

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[96] Department of the Premier and Cabinet,(2004), 'Young Offenders- Breaking The Cycle', Social Inclusion Initiative, *Preliminary Issue Paper*, pp.4-16

government has tended to focus on harsh responses which are having the effect of incarcerating more Aboriginal youth. Evidence suggests that there exist alternative methods, other than punitive measures that have shown positive outcomes for diverting Aboriginal youths coming in contact with the justice system.

The South Australian Juvenile justice system, under the Young Offenders Act 1993, was seen as a multi-level diversionary approach to addressing juveniles entering the justice system. The intended purpose was to consider the extent and severity for offences and to divert young offenders through appropriate judicial levels. Part of the objective for the South Australian juvenile justice system was to keep young offenders out of the judicial system as long as possible.[97] However no matter how innovative the changes to the juvenile justice system are Aboriginal youth coming in contact with the juvenile justice system continues to grow.[98]

Under the South Australian Young Offenders Act 1993, diversionary processes play a significant role in providing an alternative, non-impacting judicial procedure and by doing so diverts young offenders from entering the mainstream judicial system. Having various levels the procedure enables youth to be processed in accordance to severity of offence and the prior convictions of the offender.[99] What eventuates is that for menial offences considerable emphasis is placed upon rehabilitation of youth back into society; for more serious and repeat offences there is a provision of the Youth Court to administer harsher penalties.

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[97] Wundersitz, J., and Hunter, N., (2005), 'Juvenile Justice in South Australia :Where are we now?' *Information Bulletin No40*, Office of Crime Statistic and Research, pp. 1-19
[98] ibid
[99] Wundersitz, J., (2005), 'Juvenile Justice in South Australia: 2004 Update', *Information Bulletin* No 47,Office of Crime Statistics and Research, Adelaide, website http://www.ocsar.sa.gov.au, as viewed on the 12 September 2009

The very nature of Aboriginal youth being continually present within the system causes considerable debate by political, social and judicial institutions as to what can be best utilised in addressing Aboriginal youth being overrepresented in the juvenile justice system. Research indicates that the issue of overrepresentation for Aboriginal youth still remains a national dilemma and that there is a serious need to address these issues as Aboriginal incarceration continues to grow in Australia.[100]Generally speaking the national imprisonment rate of Aboriginal Australians is thirteen times more likely than non-Aboriginal Australians.[101] It appears that the emphasis placed on punitive type approaches have not stemmed the rate of Aboriginal Australians coming into contact with the justice system. However, it has also been recognised that other diversionary initiatives, such as the Nunga Court and Drug Diversion programs, as an alternative measures are not having the desired outcomes.[102]

The fact that diversionary mechanisms in the juvenile justice system is also failing to divert Aboriginal youth raises some very serious questions. Evidence suggests that although some diversionary programs facilitate cultural involvement for Aboriginal youth, they have not been given full cultural support or consideration by judicial powers to achieve the best outcomes.[103]

There is supporting evidence that the power of discretion afforded to judicial authorities still disadvantages Aboriginal youth from receiving appropriate

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[100] No Author, (2009), 'Jail Rate Concern', *The Advertiser*, 25 June , Adelaide
[101] ibid
[102] ibid
[103] Cunneen, C., and White, R., (2002), '*Juvenile Justice: Youth and Crime in Australia'*, Ch 6,pp.154-183

diversionary opportunities.[104] What has been acknowledged is that due to Aboriginal youth exposure to the justice system on a frequent basis there is less likelihood of police cautions or family conferencing than the offender being directed to the youth courts.[105] Due to the deterrence philosophy, the Act endeavours to minimise the extent by which youth are exposed to the juvenile justice system. However, literature suggests that many Aboriginal youth are processed at the higher end of judicial system on initial entry, incurring harsher punishment.[106] Since the inception of the Young Offenders Act 1993 in South Australia, overrepresentation for Aboriginal youth continues to exist.[107]

Holistically this thesis would argue that any diversionary model used to address offending behaviours by Aboriginal youth must in its approach deviate, where possible, from punitive type measures as the first point of addressing offending behaviour. This view is well supported by the South Australian Council of Social Service which is critical of the South Australian Government's get tough policy on juvenile justice for repeat offenders. What SACOSS argues is that just increasing sanction-type approaches for youth does not truly address the sociological aspects of criminality.[108] What it reflects is a short term political measure which tends to lend support towards enhancing government profile and does not effectively address why

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[104] Doherty, J., (1999), 'Aboriginal People and the Criminal Justice System: Report 2,
 Comparison of Aboriginal and Non –Aboriginal Contact with the South Australian Juvenile Justice System', *A Report Prepared in Association With the South Australian Aboriginal Justice AdvocacyCommittee1997,*Office of Crime Statistics, South Australia, Attorney-General's Department, pp.15-115
[105] ibid
[106] Snowball. L., (2008), 'Diversion of Aboriginal Juvenile Offenders', *Trends and Issues in Crime and Criminal Justice* , No 355, Australian Institute of Criminology, pp. 1-6
[107] ibid
[108] South Australian Council of Social Services, (No Date), 'Community Consultation of Young
Repeat Offenders', *SACOSS*, Adelaide website, http://www.socialinclusion.sa.gov.au as viewed on 6thApril, 2009

offending occurs.[109] The fact that there is a lack of meaningful rehabilitation processes in place can be a factor in youth continuing to have a continual involvement with the juvenile justice system.[110]

Although many would agree that any punitive measures are a fitting solution in addressing offending behaviours, the fact remains that such a judicial approach, as a stand-alone measure, has shown limited success in diverting offending behaviour and has not decreased recidivism. Conversely, this would suggest that punitive measures have not successfully solved, in its entirety, the prolonged effect of offending or recidivism by Aboriginal youth, nor played a significant role in rehabilitating offenders towards the possibility of reintegrating positively back into society. It is argued that a diversionary program that has cultural input and uses physical activities has a better result in engaging Aboriginal youth towards positive outcomes.

3.2 Disparity

Through history, law and order policies controlled many aspects of Aboriginal lives and through these experiences hesitation and mistrust prevails Law and order still dominates the lives of many Aboriginal people who have been subjected to the judicial system and this association often begins at a young age. There is the general agreement that Aboriginal youth are overrepresented in the juvenile justice system.[111] Additionally Aboriginal imprisonment Rates are disproportionately high.

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[109] South Australian Council of Social Services, (No Date), 'Community Consultation of Young Repeat Offenders'
[110] ibid
[111] Wundersitz, J., Bailey-Harris. R., and Gale, F., (1990),), 'Aboriginal Youth and Juvenile Justice System in South Australia'

Nationally, there has been a dramatic rise in Aboriginal imprisonment since 2001.[112] There is some evidence that racism may be a factor with disproportionately severe judicial sanction imposed on Indigenous offenders.[113] Data highlights overrepresentation but this does not consider the diverse and complex reasons why these patterns of offending behaviour occur.

Statistical data does not reveal the underlying issues of why offending rate exists. Understanding the historical and sociological contexts is important. The Social Inclusion Initiative's recommendations on the 'Young Offenders Breaking the Cycle' report has resulted in stronger punitive measures to resolve offending behaviour.[114].Acting on advice from the report, the Government made legislative changes that saw the recent amendments to the Criminal Law Consolidation Act 1935 and the Criminal Law Sentencing Act 1988.The amended legislation enables the judiciary to change how certain words can be interpreted for judicial purpose. One example is the way the word 'aggression' is used in reports as this now draws a more severe penalty for youth offenders.[115] Amendments to the Youth Offenders Act 1993, gives the Director of Public Prosecution the power to refer youth straight to the Magistrates Court to be tried as an adult. [116]Arguably this type of punitive approach makes Aboriginal youth more vulnerable to entering the justice system which could contribute to the perception of Aboriginal youth being overrepresented in the criminal justice system.

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[112] Fitzgerald, J. (2009), 'Why are Aboriginal Imprisonment Rates Rising, Crime and Justice Statistics', *Issue Paper,* No 41,website http://www.bocsar.nsw.gov.au , as viewed on 08th October, 2009
[113] ibid
[114] Government of South Australia,(2007), '*Tough New Laws Sand Rehabilitation on Youth Offending'*, website http://www.ministes.sa.gov.au/news. as viewed on the 19th ,January 2009
[115] Government of South Australia, (2007), '*Government Puts Jam on Youth Crime Revolving Door'*, website, http://www.ministers.sa.gov.au/news., as viewed on the 19th January, 2009
[116] ibid

Generally speaking, any form of group behaviour exhibited by Aboriginal Australians inevitably brings a more focused attention from the judicial authorities. Without directly committing an offence, Aboriginal youth in group settings raise considerable suspicion from police.[117] The use of public space for gatherings by Aboriginal youth inevitably raises suspicion and are often seen by police as people who are troublesome, hence over-policing in such environments becomes common practice.[118] The1993 Australian International Amnesty report describes that over-policing had created provocation and tension between Police and Aboriginal communities' relations.[119]

There are a range of viewpoints expressed in relation to policing and Aboriginal youth. It could be argued that overrepresentation is a direct response to actual offending behaviour and such responses are just and in accordance with judicial procedure in maintaining a well-ordered society. However, it has also been suggested that the exposure of Aboriginal youth to the criminal justice system is less favourable than those of non- Aboriginals.[120] The judicial system, in its application, has shown to be discriminatory and indications are that some diversionary systems have failed in their application to understanding the culturally appropriate requirements in addressing offending behaviours of Aboriginal Australians.[121] For

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[117] Graham, K. (1999), 'Aboriginal Marginalisation and Racism in the Juvenile Justice System', *Paper presented at the Children and Crime: Victims and Offenders Conference* Convened by the Australian Institute of Criminology and held in Brisbane,17-18 June, pp. 2-18
[118] ibid
[119] ibid
[120] ibid
[121] Dunn, R., (No Date), '*Aboriginal Youth and Offending, Adolescent Services, Young Offenders Program*', Department of Community Welfare ,South Australia, pp. 185-189

Aboriginal people the existence of inequality and bias within society ensures that it is unlikely that justice will be forthcoming.[122]

There is considerable debate about why Aboriginal youth are significantly over represented in the juvenile justice system. It has been suggested that there exists a sense of inequality and bias towards Aboriginal groups, who are more likely to be subjected to arrest than cautionary measures.[123] It has been shown that through the application of police discretional powers, Aboriginal youth are more likely to be arrested that Non- Aboriginal youth.[124] These powers initially predetermine who is and who is not likely to proceed through the criminal justice system. In the majority of cases, police are seen as the first line in the criminal justice system. Police have been described as the 'gate keepers' of the criminal justice system, primarily because of their discretionary powers.[125] It has been further acknowledged that there is a stronger inclination to upgrade menial offences to more severe offences for Aboriginal youth than those of non Aboriginals.[126]These actions increase the imbalance seen in the overrepresentation of Aboriginal youth in the judicial system.

Upgrading of charges inevitably means that Aboriginal youth become more embedded in the criminal justice system than if they were otherwise cautioned without charge. It seems apparent that police discretional powers heighten the probability for youth to be caught up in the judicial system. Aboriginal youth exposure

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[122] Hedger, A., (2002), '*Aboriginal Justice'*, National Crime Prevention, Paper Presented at the Crime Prevention Conference convened by the Australian Institute of Criminology and the Crime Prevention Branch ,

[123] Dunn, R. , (No Date), ' *Aboriginal Youth and Offending, Adolescent Services, Young Offenders Program'*

[124] Wundersitz, J., et al, (1990), 'Aboriginal Youth and Juvenile Justice System in South Australia',

[125] Cunneen, C., (2001), '*Conflict, Politics and Crime – Aboriginal Communities and the Police',* Allen & Unwin, Sydney

[126]Wundersitz, J., et al (1990), 'Aboriginal Youth and Juvenile Justice System in South Australia',

to the law begins at an early age and by the time they are adults they have become familiar to judicial authorities and the judicial system.[127] Arguably, the process of the judicial system needs further inquiry to draw attention to the actual detrimental impact discretionary powers have on Aboriginal youth being overrepresented in the criminal justice system.

Research highlights the significant relationship that exists between offending behaviour and the historical context of colonisation. The structural context of colonisation impacts upon wellbeing, identity and denotes self- determination and certain offending behaviour is an outward expression of these views and feelings. Some elements of offending behaviour and specific types of offences by Aboriginal youth are statements which represent defiance and resistance towards patriarchal dominance imposed upon them from past historical governance.[128] It has been further argued that hostility expressed by Aboriginal youths is directly linked to being overtly policed. [129]

3.3 Access To Justice - To Who's Advantage?

There is a common acceptance that the general mechanism of the criminal justice system is to maintain a disciplinary function within society. As well as having this as its defined role, the justice system in its construction must also be accessible to every member of society without being biased. This 'access to justice' is defined as the judicial system of the state, made available and equally accessible to, any

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[127] ibid

[128] Cunneen, C., and White, R., (2002), '*Juvenile Justice: Youth and Crime in Australia*', Ch ,6, pp. 154-183

[129] Graham, K., (1999), 'Aboriginal Marginalisation and Racism in the Juvenile Justice System'

member within society.[130] To this end, the outcome of such results must be seen as just and fair for all those involved, including the general viewing public within society.[131] However, the reality remains that the criminal justice system for many minority and Aboriginal groups are complex and intricate in its judicial application. This makes it extremely vulnerable for many Aboriginal Australians to be exposed to the judicial system.

The principal mechanism of the judicial system is to be recognised as impartial in its application and just in its outcomes. However, closer scrutiny would indicate considerable disparity exists on many fronts of judicial proceedings, which drastically impact upon Aboriginal people. Due to the very nature of legal representation and the complexity and financial burden associated with judicial proceedings, some parts of society are unable to access, understand, or receive appropriate legal representation in legal matters The primary concern with socially disadvantaged members of society accessing the legal system lies in the understanding of the legal procedures and formats.[132] There are some disadvantaged groups within society who have experienced unfair and prejudicial responses in relation to accessing legal representation.[133]

There is an imbalance in the Australian Justice system in accessing justice for disadvantaged social groups like Aboriginals and this has reflected upon the

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[130] Cappelletti, M., and Garth, B.. (eds) (1978/9), 'A World Survey', *Access To Justice, vol 1*, book 1, Alphen aan den Rijn; Milan: Sijthoff and Guiffre. *General Report* pp.1-21
[131] ibid
[132] Cody, A., (1998), 'Accessing the System', *Reform Issue* 73,website http://www.austlii.edu.au/au/other , as viewed 03 April, 2009
[133] Access to Justice Advisory Committee, (1994)

inequality experienced by marginalised members of society.[134] Furthermore, Bird refers to Castle, who suggests that the majority of Australian institutions are predominantly based on the British and American models, in that the structural organisational practice tends to disadvantage members of society who reflect different appearances, language and values to those who control the power in society.[135] Until recently, Australia paid little attention to the Australian Aboriginal laws and customs and very little attention to the needs of minorities in their approach to the legal system.[136]

3.4 Judicial Barriers

The general ideology of equality, fairness and accessibility for legal representation in society is seen to deliver justice without having prejudice towards race, gender and class within a multicultural society. The terminology of 'access to justice' is a powerful and convincing message that "implicates an ideal and that ideal is considered attainable".[137] Contrary to such ideological assumptions, advocating such notions are sometimes not achievable. In 1975 the Australian government's intention was to ensure that access to justice was brought into conformity to ensure every Australian's accessibility to the justice system.[138] However, the reality is that the term 'Access to Justice' is far from certain. The process and construction of the system is inadequate and unable to fill its obligations for all members of society.[139]

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[134] Bird, G., (1995), 'Multiculturalism and the Law, Power , Politics and the Location of "The Other"', *Multicultural Australia*, website, http://www.aic.gov.au , as viewed 3 April 2007
[135] ibid
[136] Evatt, E., (1995), 'Multiculturalism and the Law', *Multiculturalism and Criminal Law: The Work of the Law Reform Commission*, website, http://www.aic.gov.au as viewed 5 March, 2007
[137] Sackville, R., (2004), 'Some Thoughts about Access to Justice', *New Zealand Journal Of Public & International Law,* vol 2, no1, pp 85-111
[138] Sackville, R., (1995), 'From Law and Poverty to Access to Justice', *Alternative Law Journal*, vol 20, no 5, pp.212-215
[139] ibid

Two predominant social groups who share similar dispositions in society are Aboriginals and people of Non-English Speaking Backgrounds (NESB). Both groups have been academically recognised as disadvantaged social groups within society, and that there are limitations imposed on them in accessing the legal system. One of the many barriers, other than costs, in accessing the legal system are barriers associated with language.[140] It is suggested that language difficulties hinder people from Aboriginal and non-English speaking backgrounds to fully comprehend and understand the implications of the law as well as their rights in resolving issues.[141]

The understanding of the English language has been acknowledged by some in the academic field as a crucial barrier to not receiving adequate access to justice. The major objectives of providing accessible and equal police services in a multicultural society, is the police agency's adaptability to overcome language barriers.[142] It is important that those people in the community who have limited English comprehension and are involved in the criminal justice system be allocated interpreters.[143] The use of interpreters would, it seems, be substantially more beneficial for individuals who are from NESB or Aboriginal Australians within the initial contact frame of the justice system.

As previously mentioned, the overrepresentation of Aboriginal people in the justice system could allude to the given facts that language barriers hinder the fairness of accessing justice. Due to cultural and language barriers with Aboriginal people in

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[140] Sackville, R., (2003), 'Assumptions and Reality Checks', *Access to Justice Roundtable: Proceedings of a Workshop*, July 2002, pp 19-31
[141] ibid
[142] Chan, J., (1995), 'Multiculturalism and the Law, Police Accountability In a Multicultural Society', website, http://www.aic.gov.au as viewed on 5 March 2007
[143] Access to Justice Advisory Committee, (1994), 'Access to Justice: An Action Plan',

court, understanding the English language creates problems in understanding legal complexities and this is made more difficult when giving evidence and being cross-examined.[144] Compounding the difficulties associated with accessing justice for minority groups in society, it has been noted that some aspects of policing compromise the efficiency of workload to the legitimate aspect of their duty.[145] Policing practices do not facilitate interpreters in interviews because of the excessive costs incurred.[146]

Barriers such as poverty, culture and language has somewhat excluded many parts of society in receiving equality in the justice system and protecting rights[147]. Furthermore, reports have suggested that the legal system in its function has alienated and discriminated against general members of society who are of Aboriginal appearance, disabled, or NESB, and their ability to access services in the legal system has been difficult to achieve.[148] Many academics have written about disadvantaged social groups in society suggest that the justice system in its application does not take into consideration cultural differences and sensitivity within a multicultural society.

3.5 Cultural Appropriateness

In accessing justice there is a need to facilitate cultural diversity in society; otherwise, the term 'equality' may be seen as theory and not as an application. There needs to be far more sensitivity by the courts, judges and police in dealing

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[144] Access to Justice Advisory Committee, (1994),
[145] ibid
[146] Chan, J., (1995), *'Multiculturalism and the Law, Police Accountability In a Multicultural Society',*
[147] Access to Justice Advisory Committee, (1994),
[148] ibid

with cultural and language diversity within a multicultural society.[149] It has been acknowledged that Aboriginal Australian cultural customs associated with marriage and adoption are not recognised or taken into consideration in the judicial system. [150]

The Indigenous Law Resource states that using Aboriginal workers would benefit the ability to address offending issues through cultural understanding.[151] The Royal Commission into Aboriginal Deaths in Custody (1991) mentions the importance of using Aboriginal people, as this builds self-determination to resolve issues within their community.[152] The use of Aboriginal workers enables support to be given in developing self esteem, pride, self-determination and in achieving interaction into the wider communities through employment, sport and outdoor activities.[153] Conclusions could be drawn that by using Aboriginal people to assist in various processes of engagement with Aboriginal youth, better outcome will be achieved.

Following on from this view, using Aboriginal Elders, facilitators and mentors to address Aboriginal youth issues could reduce some of the disparity experienced by Aboriginal youth being overrepresented in the justice system. It has been generally depicted that understanding the complexity, implications and terminology associated with judicial proceedings puts many Aboriginal youth at the perils of procedural laws, which creates mistrust and apprehension. Generally speaking, the current mainstream judicial system seems to have little impact or deterrence in curbing

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[149] Access to Justice Advisory Committee, (1994),

[150] Funder, K., (1995), 'Some Salient Issues in Family Law, Australian Institute of Family Studies' *Family Matters Journal* No 42,pp.4-5

[151] Indigenous Law Resources (No Date), '*National Report Volume 4 – Role of Aboriginal Organisations',* website, http://www.austlii.edu.au/cgi-bin/,as viewed on the 16 September 2009

[152] Cunneen, C., and McDonald, D., (1997), 'Keeping Aboriginal and Torres Straight Islanders Out of Custody', *Best Practice Case Studies*, pt 2, Ch 5, website http://www.austlii.edu.au/cgi-bin/ , as viewed on the 16 September 2009

[153] Dunn, R., (No Date), 'Aboriginal Youth and Offending',

offending behaviour or recidivism for many Aboriginal youth. Supporting this, the NSW Bureau of Crime Statistics and Research (BOCSAR), recognised that exposure of Aboriginal Australians to the low social and economic conditions plays a significant role in their coming into contact with the criminal justice system.[154]

With the myriad of issues that have been recognised as disadvantaging Aboriginal Australians in the judicial system, consideration must be given to applying culturally appropriate mechanisms to address the issue of Aboriginal youth being overrepresented. There have been various recommendations about the constructive relevance of using Aboriginal people to resolve issues around offending behaviour by Aboriginal youth. [155] The Australian Institute of Criminology research report on sports, recreation and juvenile crime examines Aboriginal communities around Australia and describes the constructive method of utilising Aboriginal youth workers in the community to better resolve offending issues by youth.[156] It has been highlighted that using Aboriginal staff in the judicial system has proven to be successful through their ability to culturally engage.[157] To be able to constructively address the issue of crime within, and by, Aboriginal offenders, Aboriginal people should be actively involved with the process and policy of the judicial procedure.[158]

Political arguments from then former Attorney General Philip Ruddock, suggests that no input of cultural beliefs should be used as mitigation or defence before the law for

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[154] Healey, J., (ed) (2007), 'Aboriginal Australians and the Law', *Issues in Society*, Vol 248, Spinney Press, Australia

[155] Indigenous Law Resources (No Date), '*National Report Volume 4 – Sport, Recreation and Entertainment'*

[156] ibid

[157] Australian Human Rights Commission, (2008), 'Human Rights and Crime Prevention in Aboriginal Communities', paper presented by Tom Calma; Aboriginal and Torres Strait Island Social Justice Commissioner, Federal *Criminal Justice Forum-Position Paper*

[158] ibid

crimes committed.[159] It was argued that Australian laws need uniformity so the laws can be applied with regularity for all those living in Australia, however, the argument suggests that Aboriginal Australians would have a better understanding of the consequences imposed by customary laws than the present judicial system. Conversely, the Australian Human Rights Commission website, in highlighting the significant application of Aboriginal Australian customary laws, mentions that there exist crises in the judicial system for Aboriginal Australians as a whole.[160] To this, evidence suggests that family violence and breakdown has been the result of the deterioration of traditional customary laws that regulate behaviour and order.[161]

Although the idea of applying customary laws for offences committed by Aboriginal Australians seems culturally appropriate, difficulties would arise in administering both laws uniformly within society. However, the Australian Human Rights Commission suggest that governments should consider that some parts of the Aboriginal community still maintain traditional living and practices, such as those in Northern Territory.[162] Having some integration of customary laws to address offences would help support and maintain community function. This would also enhance Aboriginal self-determination by addressing issues through cultural specific mechanisms which would be culturally understood.[163] Without delving too deeply into the specific political and cultural correctness of law and order, it could well be argued that having some form of cultural involvement and participation would be beneficial for those addressing the issue of Aboriginal overrepresentation in the criminal justice system

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[159] Healey, J.,(edit), (2007), 'Aboriginal Australians and the Law',

[160] Australian Human Rights Commission (2003), 'Issue 3: Recognising Aboriginal Customary Law and Developments in Community Justice Mechanisms', *Submission to the Expert Seminar on Aboriginal People and the Administration of Justice* , Madrid , Spain, 12-14 November, 2003

[161] ibid

[162] ibid

[163] ibid

3.6 South Australian Response

In an attempt to address the problem of exclusion for many disadvantaged groups in South Australia, the Social Inclusion Initiative (SII) was commissioned in 2002 to address South Australia's disadvantaged groups' complex social issues.[164] This initiative was based on Britain's Social Exclusion model which, through partnership and innovation, was successful in addressing social inequalities for marginalised groups in Britain.[165] Unlike the British model, the South Australian model is an independent body recognised as the social inclusion unit, chaired by Monsignor David Cappo. In his capacity, Monsignor Cappo works with various community agencies in collating information about social issues and forwards these recommendations to the Premier's Department for consideration and action.[166]

The intended purpose of the SII is to address social inequalities experienced by marginalised members of society. This initiative has acknowledged that throughout history Aboriginals in South Australia have been the most marginalised culture group and have experienced considerable disadvantages and because of this there exist considerable exclusion on many fronts. [167] One of the major issues of concern is youth offending and issues surrounding recidivism and high rates of Aboriginal youth coming into contact with the juvenile justice system. Monsignor Cappo held various

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[164] Government of South Australia, (2009), 'People and Community at the Heart of Systems and Bureaucracy', *South Australia's Social Inclusion Initiative*, website http://www.socialinclusion.sa.gov.au ,as viewed on the 12th September 2009
[165] Newman, L. et al., (2007), 'A Rapid Appraisal Case Study of South Australia's Social Inclusion Initiatives'
[166] ibid
[167] ibid

consultations with the Aboriginal communities in South Australia to discuss, in length, the issue of serious youth reoffending, causes and possible solutions.[168]

As a result of these consultations, recommendations for legislative change were forwarded to the Premier's Department. A result of these recommendations was a stronger punitive approach when dealing with serious juvenile offending and repeat offenders and those adults who are seen to be in collaboration with young offenders.[169] This strong approach was in light of the seriousness and repeat offending associated with the so called 'Gang of 49'. This group of offenders has been recognised as predominantly young Aboriginal men and youth linked to serious repeat offending and were referred by police task group under 'Operation Mandrake'[170]

3.7 Initiatives - Breaking or Making the Cycle

For the South Australian Government, the recommendation passed on from the Social Inclusion Unit (SIU), has been the catalyst for government resolve to address serious offending behaviour and recidivism, in particular for Aboriginal youth. Forty-six recommendations were tabled by the SIU to address serious youth offending.[171] The SA premier, Mike Rann, following a philosophy of' law and order' and 'tough on crime' has announced that tougher laws will be implemented and that hard core youth offenders will be tried as adults instead of the normal non-effective revolving

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[168] Government of South Australia (2008), '*To Break The Cycle Report*', website
http://www.socialinclusion.sa.gov.au/files/breakthe cycle2007 , as viewed on the 12th September 2009
[169] Government of South Australia, (2007), '*Tough New Laws and Rehabilitation on Youth Offending*',
website http://www.ministers.sa.gov.au/news. as viewed on the 19th January 2009
[170]ibid
[171] ibid

door of the youth courts.[172] Rann implies that society has had enough of slow action by the courts and as his duty is to take into consideration the safety of society first and foremost.[173]

However, a number of the recommendations from the 'Breaking the Cycle' report have been fiercely debated by government, non-government and community organisations expressing concern that implementing the recommendations will not actually curtail offending behaviour or recidivism. It is the general census that the harshness by the State Government to 'get tough' on crime is a strict punitive measure and that community type prevention and rehabilitation programs, placing an emphasis on diversion, would be of greater value in reducing offending and repeat offending by Aboriginal youth.[174] It has also been acknowledged by prominent Aboriginal spokespeople that community-based rehabilitation programs are more effective and productive towards reducing offending practices than custodial incarceration, which has little impact upon the process of rehabilitation for Aboriginal youth .[175]

The Social Inclusion Initiatives are based upon the notion of reducing exclusion for disadvantaged and minority members of society, including Aboriginal Australians.[176]

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[172]Government of South Australia, (2007), '*Tough New Laws and Rehabilitation on Youth Offending'*
[173] ibid
[174] Gillespie, N., (2007), '*Your Review of the Juvenile Justice System'* , Aboriginal Legal Rights Movement Inc. - Office for Youth, (No Date), '*Community Consultation on Young Repeat Offenders Written Submission*, website, http://www.socialinclusion..sa.gov.au as viewed on the 6th April, 2009'-Minister for Youth Council, (No Date), '*Community Consultation on Young Offenders Written Submission'*, website, http://www.socialinclusion..sa.gov.au as viewed on the 6th April, 2009 -The Law Society of South Australia,(no date), '*The Law Society of South Australia response of the Law and the Children, Young Repeat Offenders'*, website, http://www.socialinclusion..sa.gov.au as viewed on the 6th April, 2009
[175] Australian Human Rights Commission, (2008), '*Human Rights and Crime Prevention in Aboriginal Communities'*,
[176] Government of South Australia, (2009),, 'People and Community at the Heart of Systems and Bureaucracy' *South Australia's Social Inclusion Initiative*,

However, the response from the South Australians Premier's department, the recommendation, does little to build cultural cohesiveness between police and the Aboriginal community. It may be suggested that the philosophy of inclusion by the SII may in fact produce exclusion from the implementation of these legislations. Imposing punitive measures, to address offending behaviour by youth, does not address the reason why offending occurs[177].Thus the issues of recidivism will continue to burden the judicial and political system and add financial burden to government budgets.

The South Australian government has allocated $11.5m over five years to reduce youth involvement in crime by putting in place strategies for breaking the cycle for youth offending.[178] While the majority of funding has been allocated to the judicial system of youth case management a portion has been allocated to diversionary programs.[179] It is these diversionary programs in general and the sports programs in particular that will be examined in the following chapter.

Summary

Chapter three has shown that the general population of Aboriginal Australians is disadvantaged on many fronts and levels in the judicial system. It has been shown that although the overrepresentation of Aboriginal Australians has been noted as a judicial concern, the overall process of judicial proceedings and applications have in

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[177] The Youth Affairs Council of South Australia, (2008), '*Community Consultation on Young Repeat Offenders Written Submission',* website, http://www.socialinclusion..sa.gov.au as viewed on the 6th April, 2009
[178] South Australian Government , (2008), '*11.5 Million to Break the Cycle of Youth Offending'*, website http://www.ministera.sa.gov.au , as viewed on 12 March, 2009
[179] ibid

part contributed to why overrepresentation exits for Aboriginal Australians. The Social Inclusion Initiatives has been shown to deliver services to marginalised members of the community. It has been shown that recommendations to address offending behaviour by Aboriginal youth have drawn criticism due to its punitive approach.

CHAPTER 4 – DIVERSION AND PREVENTION

Introduction

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Chapter four will identify the importance of diversion and prevention programs as being more appropriate than punitive measures in minimising the risk for offending behaviours. In particular sports participation will be explored as a diversionary and preventative mechanism to enhance wellbeing and as a positive move towards enhancing self-determination and inclusiveness in the community.

4.1 Alternatives

Considerable literature has been written about Aboriginal youth and crime prevention and extensive debate arises from all sides of the political, social and judicial spectrum. There are advocates who believe in the harsh punitive measures approach, opposed to those seeking alternative diversionary engagement to deal with offending behaviour and recidivism.[180] This justice versus welfare approach has caused debate as some see immediate punitive measures as appropriate action while others see the importance of time taken to nurture and rehabilitate offenders. Although both arguments have points to consider, general research in this area has shown that diversionary and prevention models offer better outcomes for Aboriginal youth caught up in the justice system.[181]

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[180] Alder, C., and Wundersitz, J., (1994) (eds) '*Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism'?*, Australian Institute of Criminology, Canberra,pp.1-17

[181] Hedger, A. , (2002), '*Aboriginal Justice* ',

Alternative divisionary and preventative measures are discussed more specifically as a different approach for addressing the risk for offending behaviours. Applying alternative prevention methods, as opposed to a punitive approach, can produce positive outcomes.[182] The overall primary objective for diverting Aboriginal youth from offending behaviours is to reduce as far as possible the overrepresentation of Aboriginal youth coming in contact with the criminal justice system.[183] Diversionary and preventative programs exhibit considerable engagement mechanisms that enable youth to develop a range of skills and this has been acknowledged by Aboriginal communities as valuable and positive for Aboriginal youth development.[184]

An alternative to punitive response to juvenile offending is to consider a different approach to the problem. The main purpose of preventative-type models is to formulate a positive integration and pathway into society for offending youth which enhances personal growth and development as part of the rehabilitation process.[185] Offending behaviour can be changed through such an approach and could result in the positive outcomes of reducing the overrepresentation of Indigenous youth in the criminal justice system. Additionally, community-based support programs have the ability to make constructive and positive impacts on reducing offending behaviour.

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[182] Australian Institute of Criminology, (2002), '*What Works in Reducing Young People's Involvement in Crime; Review of Current Literature on Youth Crime Prevention'*, website http://www.aic.gov.au , as viewed on the 12th, September, 2009
Halstead, B.,(1991),(ed), '*Youth Crime Prevention'*, website http://www.aic.gov.au as viewed on the 12th September, 2009
[183] Veld, M., and Taylor, N., (2005), '*Statistics on Juvenile Detention in Australia, 1981-2004'*, website http://www.aic.gov.au, as viewed on the 8th November 2009. (Aboriginal youth overrepresentation remains high with young people being 25.6 times more likely than non-Aboriginal young people to be in detention as of 30th June 2004, pp.14) - Australian Institute of Health and Welfare (2009). '*Juvenile justice in Australia 2007–08'*. Juvenile justice series no. 5. Cat. no. JUV 5. Canberra: AIHW. (shows detention for Aboriginal youth between 10-17 yrs of age is 30 times more likely than non Aboriginals, pp vii.)
[184] Sansbury, T., (2007), '*Final Report on Consultation with Aboriginal Communities: Serious Repeat Young Offenders Consultation'*. Website http://.socialnclusion.sa.gov.au/files as viewed on the 12 September 2009
[185] Government of South Australia, (No Date), '*To Break The Cycle, Social Inclusion Initiatives'*, website, http://www.socialinclusion.sa.gov.au ,as viewed on the 2nd August, 2009

Community–based support programs are more cost effective. They also have the ability to make constructive and positive impacts on reducing offending behaviour.[186]

It is considered important, in attempting to deal with a longstanding and intractable problem such as Aboriginal youth offending, that the reasons for the offending are considered. Legislative changes that promote harsher punishment as a remedy for youth offending do not address the core issues of why offending behaviour occurs.[187] More emphasis needs to be placed on diverting those involved with offending behaviours towards engaging in constructive activities which, in turn, will lead towards positive pathways.[188]However, society has a tendency to put considerable resources into punitive measures and very little funding and thought applied to prevention models.[189]

Prevention and diversion models for Aboriginal youth, as described in this thesis, implies alternative programs that engage and interact youth in ways that divert the risks for offending behaviours. There are various prevention and diversion programs that provide a range of positive engagement processes for those at risk or those already subjected to the justice system.[190]Prevention programs incorporate positive interactive engagement in turn encouraging and supporting self determination. It has been strongly suggested that cultural input within these programs also plays a significant and valuable role towards enhancing positive wellbeing.[191]

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[186]Government of South Australia, (No Date), '*To Break The Cycle, Social Inclusion Initiatives*',

[187] Government of South Australia, (No Date), '*To Break The Cycle, Social Inclusion Initiatives*',

[188] ibid

[189] Calma, T., (2009), 'Juvenile Justice Continues to Focus on Locking Up Kids Rather Than Providing Services That Curb Crime', *The Advertiser,*18th September, Adelaide, p.18

[190] Dunn, R., (No Date)

[191] ibid

There are range of ways these programs can be effective. Cultural input is imperative. It enables a more constructive and holistic approach to both addressing cultural inclusiveness and addressing Aboriginal youth offending behaviours.[192] Involving Aboriginal people in running programs enables better relationships between young offenders and those supervising programs. Getting the community involved has been shown to be crucial to the success of programs. Examples, such as the Intensive Neighbourhood Care program (INC), has shown that placing offending youth with stable and established Aboriginal families in the community changes behaviours due to the positive and stable home environment.[193]Another diversionary program is the *Aboriginal Youth Team* program, this uses Aboriginal mentors to teach aspects of Aboriginal culture to youth as well as incorporating outdoor activities in group settings; this approach builds pride through cultural awareness.[194]

Due to the connection with the community and culture, Aboriginal workers are likely to have a better way of building rapport for developing better program outcomes.[195] Approaches such as this ensure that Aboriginal youth can achieve pride and self-belief in a positive and cultural appropriate way.[196] If programs have these basic foundations then Individual youth will realise their full potential to succeed in a positive and constructive manner, thus minimising the potential to be involved in the criminal justice system.[197]

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[192]Dunn, R., (No Date)

[193] ibid

[194] ibid

[195] Calma, T., (2008), '*Human Rights and Crime Prevention in Aboriginal Communities'*, Human Rights Commission, website http://www.ag.gov.au ,as viewed on the 10 September 2009

[196] Dunn, R., (No Date)

[197] ibid

Participation in group sports is one type of activity that has considerable promise for 'breaking the cycle' of Aboriginal youth offending. Prevention and diversion programs using sports or physical activities has considerably more potential than punitive measures in addressing youth at risk of offending.[198] Furthermore, using group sports activities as part of the prevention and diversion models for Aboriginal youth at risk of offending has in its capacity the ability to impact positively on group dynamics. More importantly, using group sport participation enhances unity within the Aboriginal youth community and by working together positively, there is tremendous potential to self regulate as a group within the boundaries of sport rules. Using sports in diversion programs gives substantial value and understanding towards self development and understanding of the importance for conformity to rules.

4.2 Sports as a Positive Vehicle

For diversion programs to be successful offenders need to understand the impact of their offending, which must be explained in a way that is meaningful to the young person..[199] An important aspect of sports participation is the need to conform to regulations. Understanding the rules of various sorts and the penalties associated with infringements in sports can assists the understanding of the penalties imposed by crime and offending behaviour.[200] Understanding the rules in the judicial system is complex and hard to comprehend for many, however many would understand the

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[198] Cameron, M., and MacDougall, C.,(2000), 'Crime Prevention Through Sport and Physical Activity', Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice, no 165*,website http://www.aic.gov.au , as viewed on 28th September 2009

[199] Australian Institute of Criminology, (2002), '*What Works in Reducing Young People's Involvement in Crime',*

[200] The Author has applied these principles whilst working with Aboriginal youth and uses 'life skills' incorporated through sports application.

consequences of breaking rules in sports as this would be seen as detrimental for team achieving success.

Sport, as an instrument, has shown to develop and enhance individual and group social skills, which minimises the tendency to be involved with offending and antisocial behaviour.[201]Sports and activity-based programs as diversion and prevention mechanisms build positive outcomes for youth. In Australia sport is acknowledged as an influential mechanism within Aboriginal communities.[202] The 1991 Royal Commission into Aboriginal Deaths in Custody describes that sports and recreational activities have the potential to engage Aboriginal youth in a constructive manner which reduces the possibility for them to be subjected to the juvenile justice system.[203]

There are a number of examples of sport being used to develop Indigenous Identity and self esteem. Aboriginal Initiatives such as the Lloyd McDermott National Rugby Development Team program (LMRDT), uses sports to engage Aboriginal youth in a positive and supportive framework that encourages the importance aspect of identity and unity.[204] A project by the Australian Sports and Health Commission utilised sports to gauge outcomes in Aboriginal communities in the Northern Territory.

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[201] Australian Institute of Criminology, (2003), 'Sports and Antisocial Behaviour in Youth', *Crimes Fact Info*, No 51,website http://www.aic.gov.au/publication/ , as viewed on the 10 February 2009
[202] Johnston, E., (1991), '*Royal Commission into Aboriginal Deaths in Custody , National Report'*, Canberra, Australian Government Printing
[203] ibid
[204] Hedger, A., (2002), '*Aboriginal Justice'*,– (Lloyd McDermott was the first Aboriginal Rugby Union player to represent Australia in 1962, he then pursued a career in law and became the first Aboriginal Legal Barrister in Australia.)

Results saw considerable benefits for Aboriginal youth in education, physical and emotional wellbeing as well as minimising their contact with the judicial system.[205]

In general, sport has been acknowledged to show positive characteristics generally acknowledged as beneficial for health and wellbeing. Sport introduces conformity, self discipline and enhances self determination when applied to attaining specific objectives. Some have argued that negative aspects of sport, such as cheating, not playing to rules and winning at all cost, can also influence aspects of social life. In contrast, this thesis would argue that many aspects of sport are regulated by defined rules and set disciplinary actions are constructed to ensure appropriate actions are taken against those that do not adhere to the rules in sports, as would be normally seen and experienced in the breaching of society's laws. It has been suggested that conforming values and behaviours that are observed in society can also be observed within the boundaries of sports participation.[206] Therefore sport can be seen as a positive education tool for learning and understanding about rules and the consequences associated with breaching rules.

It is unreasonable to suggest that sport by itself can reduce the amount of crime committed by youth.[207] However, what is acknowledged is that sport has the ability to minimise the probability for offending.[208] Additionally it has been determined that in Aboriginal communities using sport as a diversionary and prevention program has

[205] Cairnduff, S., (2001), *Sports and Recreation for Aboriginal Youth in Northern Territory: Scoping Research Priorities for Health and Social Outcomes*, Darwin: Cooperative Research Centre for Aboriginal and Tropical Health and Australian Sports Commission. pp. 20-52

[206] Hyde, B.,(2009), *It's More Than Just Footy*, The Advertiser, 29th August, p.112

[207] Carmichael, D., (2008), '*Youth Sports vs. Youth Crime, Evidence That Youth Engaged in Organised Sport are Not Likely to Participate in Criminal Activities'?'* ,website, http://www.isrm.co.uk/news/docs/ , as viewed on the 10th September 2009

[208] Cameron, M., and MacDougall, C., (2000), 'Crime Prevention Through Sports and Physical Activity', *Trends &Issues in Crime and Criminal Justice*,

better outcomes with the involvement of Aboriginal facilitators ,mentors ,community and recreational officers. A holistic supportive community approach, is considered most appropriate to support at-risk youth better develop skills and build self esteem. It has been recognised academically that community and family support is integral part of Aboriginal culture.[209]

Sporting engagement has the capacity to engage Aboriginal youth towards minimising the risk associated with offending behaviours.[210] In recognition of this some funding from the SIU has been made available for sporting programs for Aboriginal youth.[211] One of these programs, the Aboriginal Power Cup, has been hailed as particularly successful for engaging Aboriginal youth .The Aboriginal Power Cup aims to engage Aboriginal youth at schools to be empowered, seek determination and establish self worth through a healthy competition.[212] This is considered as a positive engagement mechanism for Aboriginal students at high schools.[213] Gavin Wanganeen, a high profile, Aboriginal Australian Rules player, states that "it's not only about footy, it's about teaching the importance of finishing school, healthy lifestyle, teamwork, leadership and life skills"(p112).[214]

A complementary sporting program, using rugby rather than Australian rules football is also funded under the SIU. Sports participation enables the ability for students and mentors to engage through sharing in a common interest. Part of this program

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[209] Cunningham, J., and Beneforti, M., (2005), 'Investigating Indicators for Measuring the Health and Social Impact of Sports and Recreation Programs in Australia',

[210] Quantum Consultation Australia Pty Ltd (In Conjunction with Nyaaria Project), (2008), '*Aboriginal Sports and Culture Plan', pp*. 4-23

[211] Government of South Australia (2009), '*Community at the Heart of System and Bureaucracy'*,

[212] Government of South Australia,(2008), '*Empowering Aboriginal Youth to Break the Cycle'*, website http://www.ministers.sa.gov.au ,as viewed on the 19th January, 2009

[213] ibid

[214] Hyde, B.,(2009), '*It's More Than Just Footy'*,

organises sporting events at high school and out in the wider community. The program actively encourages community businesses, institutions, community clubs and Aboriginal agencies to support Aboriginal students to engage and participate in the wider community. Part of this approach advocates that through community shareholders contributing the community helps build inclusiveness and participation for Aboriginal youth. [215]

4.3 Community Sports Clubs - Closing the Gaps

Social Inclusion initiatives make available funding for service providers to offer services to address social and health concerns experienced by marginalised groups in society. The recipients of this funding are identified through a 'joined-up responce' with various government ,non-government and business agencies and funding programs working to provide specific services and programs to address these needs.[216] One of the primary objectives is to provide prevention and early intervention strategies to address issues that inhibit the scope for inclusiveness in society.[217].

Funding allocations by the government needs to demonstrate outcomes of programs. Objectives must have been met in accordance with set funding criteria.[218] However, programs are given considerable amounts of money and when the money runs out, so does the capacity of the program.[219] This is an important issue as building rapport and being accepted and trusted in the family and Aboriginal

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[215] The author and work college work in a social service program for 'at-risk' students and use sports as an engagement tool for Aboriginal students. Part of this methodology is to encourage community involvement and support in building inclusiveness through sporting activities in the community .

[216] Government of South Australia (2009), '*Community at the Heart of System and Bureaucracy*',

[217] ibid

[218] Newman, L., et al, (2007), '*A Rapid Appraisal Case Study of South Australia's Social Inclusion Initiative*'

[219] ibid

community takes time. This becomes problematic when service providers running successful programs have to apply for funding and if not successful, existing programs are phased out.

4.4 Community Sports Clubs – A Service Provider

An alternative option to address the possibility of non-renewal of funding is to direct the funding to organisations already in existence and often of longstanding in the community .Local community sporting clubs are a service provider in the local communities and could quite cheaply be utilised to operate on an ongoing basis. Currently these local community clubs do not receive ongoing substantial funding by SII or government bodies to conduct programs. Local community sporting clubs are often 'grass roots' organisations with facilities in local communities. These organisations facilitate physical and interactive activities that are either played within the organisation or in a competitive type competition against other community clubs. A large portion of community sporting clubs, irrespective of the type of sport, have developed over time an often strong tradition of sense of identity among members. They have often largely managed to stay in existence through the dedication and support of volunteers.[220]

The use of community groups is an important feature expressed by the Social Inclusion unit as helping close the gaps in society.[221] With this in mind, Community-based sporting organisations and clubs are an important social place for interaction through sports participation. It is important to recognise that the issue of Aboriginal

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[220] Department of Sports and Recreation, (No Date), '*Building Stronger Communities: Clubs in Sports and Recreation',* website http://www.dsr.wa.gov.au, as viewed on the 09th November 2009
[221] Newman, L., et al, (2007), '*A Rapid Appraisal Case Study of South Australia's Social Inclusion Initiative'*

youth being overrepresented in the juvenile justice system is not just a political, judicial or Aboriginal concern; it is also a community concern. It has been seen that the onus has been placed upon these institutions to find the solutions to youth offending, however, all generally mention in their reports and inquiries that the need for community-based involvement and participation is important.

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Enhancing opportunities through local community sporting clubs society has the ability to contribute to the crucial step of closing the gaps through the equal acceptance of sporting ability and performance, irrespective of cultural disposition. What this means for Aboriginal youth is very substantial as they will be recognised within the wider community for their positive contribution through their natural abilities and talents. What also appears to come through is that Aboriginal youth feel empowered in an area that they understand, feel comfortable with and believe they can compete with the rest of society on equal terms.

 Community sporting clubs frequently operate largely as the result of membership fees and small local government grants. Such clubs predominantly rely upon volunteers, mostly parents, players or associated family members who coach, run sporting programs, cook, facilitate for club board meetings as well as maintain the general upkeep and administration of facilities.[222] Funds raised by community sporting clubs by holding social and fundraising events and through various sponsorships, all of which are on a voluntary basis and out of normal working hours for many parents.[223] Through my involvement and experience in a local community

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[222] Department of Sports and Recreation, (No Date), '*Building Stronger Communities: Clubs in Sports and Recreation'*,- Authors also speaks of personal experience and involvement with local sporting club
[223] The Author speaks through 10 years experience working with youth at the local Rugby club and through communication with other parents in other sport clubs in the local community.

sporting club, we have a tendency to refer to our club as an extension of our family within the community.[224] Within these parameters we support, give advice and regulate the behaviours of youth through sports training. All parents and coaches understand the importance of giving positive affirmation and direction for the youth for the future direction.

Having been involved with community based sporting clubs I have witnessed considerable time spent on youth development and for many coaches it is a realisation that time and effort spent with youth is important for their future personal and sporting growth and development.[225] Although many accredited coaches from sporting clubs may not be employed in the social services field as social workers, their ability to engage and work with youth through life skills plays a significant role in building rapport, engagement and determination to succeed. Coaches place considerable emphasis on skills associated with responsibility, time management and understanding the rules and regulations of the games; all these play a significant role towards youth development and growth.[226]

What these training outcomes achieve for youth is a better way of understanding and translating what is required to achieve their goals and objectives in life, whether in the sporting arena or in their career aspirations. Because of historical circumstaces many Australians Aboriginal are marginalised in society. Community sporting clubs

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[224] Authors personal views are shared with other community sports club members in the local community.

[225] The author is an accredited level 1 Rugby coach at the Onkaparinga Rugby Union club, South Australia, has held the position of Youth Development Officer (volunteer) for 3 years. The author has been a state coach and been involved with the Lloyd McDermott National Aboriginal Development Team. The author has been the assistant Ball Boy co-ordinator for the International Rugby 7's competition. All positions held intvolve working with youth from various cultural, demographic and socioeconomic environments.

[226] Generally speaking from authors experience, rugby governing body requires coaches to have some form of rugby coaching accreditation . It is generally recognised that coaching staff submit to policed clearance checks when working with youth in sports.

encourage inclusive participation and recognise that it is the community member's participation that makes the club viable and successful. A key strength of community sporting clubs is their inclusivity.

A sense of belonging is important aspect of community club., Community sporting participation can achieve a great deal to enhancing inclusiveness in society.[227] The goal of achieving inclusiveness is a paramount feature for the South Australian Government's Social Inclusion Unit Initiatives for 'closing the gaps' in society.[228] Comparatively speaking, the methodology of sport enhancing inclusiveness is well documented in Canada, which supports the view that sport enhances social inclusion.[229] The trustees of the J.W. McConnell Family Foundation supports the view that community sports participation brings together people from diverse backgrounds towards obtaining healthy interaction, especially those who are Aboriginal landowners and minority groups in society.[230] Through sports, barriers are eventually overcome by those minority groups and Aboriginal landowners who have the opportunity can participate in community recreation and sporting programs.[231]

An important step towards inclusiveness is the development of a sense of wellbeing and community spirit in young Aboriginal offenders. Many Aboriginal youth do not have a strong sense of wellbeing and generations have experienced dislocation and social isolation. Sport has the potential to redevelop important social values in these

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[227] Department of Sports and Recreation, (No Date), '*Building Stronger Communities*',

[228] Government of South Australia, (2009), 'Peoples *Community at the Heart of Systems and Bureaucracy'*

[229] The J.W. McConnell Family Foundation (2006), '*Sports and Social Inclusion, Can Participation in Sport and Recreation Activities Foster Healthy Lifestyles, Volunteer Commitment and Social Networks in Vulnerable Communities'*. Website http://www.mcconnellfoundation.ca , as viewed on the 25 November 2008

[230] Ibid – (The J.W. McConnell family foundation trustees consist of family members who regulate policies to ensure this private foundation funding program caters for social inclusion initiatives in the Canadian community. The organisation is a private philanthropic organisation.)

[231] ibid

young people and help them to develop a sense of community, wellbeing and belonging. While it might not be the entire answer there have, to date, been a number of encouraging signs and this is worth pursuing further and community clubs that are already in existence are well placed to take on a mentoring role.

4.5 Anecdotal Evidence – A Case Study Supporting the Argument

There is currently a pilot program running in Adelaide, which is one of numerous programs funded by the Social inclusion Unit. From this program a specific Aboriginal component was designed to work with Aboriginal youth in secondary schools. An integral part of this component is to use sports for group engagement and participation within the community. Initial anecdotal evidence from this program suggests that, given the right conditions, it is possible to develop community engagement for Aboriginal youth using local community sporting clubs.

It is, considered, important that adequate consultation is initiated to reach a consensus on what sort of program might be successful. Community alternatives must work in partnership with Aboriginal communities and official agencies to achieve best outcomes for Aboriginal youth.[232] Too often in the past inadequate or inappropriate consultation has resulted in unsuccessful implementation of programs.[233]

The author has been actively involved with youth from multicultural backgrounds with sports and development over ten years, working in the social services organisation with predominantly Aboriginal youth, their families and community. The author's

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[232] McDonald, D., (1996), '*Aboriginal Deaths In Custody and Aboriginal Incarceration: Looking Back and Looking Forward'*, Australian Institute of Criminology, Canberra, pp. 1-16
[233] Quantum Consultation Australia Pty Ltd (In Conjunction with Nyaaria Project), (2008)*, pp*. 4-23

involvement to support Aboriginal youth participation in local community sports clubs has always been in open consultation and with consent from Aboriginal youths and their families before any process of engagement.

The author and his work colleague, in working with Aboriginal youth clients, have found that these young people have been warmly encouraged and motivated by their local sporting community. The young people tend to have some 'natural' sporting ability and athleticism and a willingness to participate in the clubs team. Through observation we have witnessed also the growing support and involvement of their immediate family who also become a part of the local sporting club. Through observation, there appears to have been a strong youth connection with other team players and families. Peer group pressure is documented as a powerful influential factor which has contributed to youth offending.[234] Being involved with sports and recreational activities in group participation builds positive peer support and socialisation.[235] However, it is acknowledged that this area requires further research to measure specific outcomes. Such outcomes would determine if inclusiveness was felt by Aboriginal participants and family members, if self esteem and empowerment was gained and whether community sports club engagement influenced behaviour.

It must also be recognised that time, effort and support is needed through this process of engaging Aboriginal youth into local community sporting clubs. Assistance is needed for financial support for club fees, uniforms and transport to and from training and games and this assistance is essential to ensure that Aboriginal youth can participate on equal terms as a team and community

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[234] Australian Institute of Criminology (2003), '*AIC Crime Reduction Matters: The Role of Sports and Physical Activity Program in Crime Prevention'*, website http://www.aic.gov.au , as viewed on the 10 February 2009
[235] ibid

member.[236] We have found that using therapeutic models of engagement in our working capacity as social workers, assists in working through clients' social issues and concerns and then, using sports participation, the client rediscovers some positive aspects about themselves and their abilities through their sports participation. It has been shown that through our presence and support and coaching influence, we become male role models.[237] Observation suggests that constant interactive weekly engagement through training and game days ensures that regular positive interaction is experienced by Aboriginal youth through sports participation in the community.[238]

Community-based recreational programs for youth have been documented to portray positive outcomes and lower recidivism and antisocial behaviour has been recorded and more positiveness in individual self-esteem and self-worth has been displayed.[239]   Therefore, it is recommended that sports participation can be a positive prevention mechanism or diversionary mechanism for youth who are at risk of offending or those already in the criminal justice system, rehabilitation is possible.

Community based sports clubs present an opportunity for both Indigenous and mainstream society to engage and unite for the common purpose of achieving success on the field. Holistically, sports involvement on a community-based level has the potential to improve upon those predisposition views placed upon Aboriginal

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[236] Author and his work colleague's personal experience and observation with Aboriginal youth clients and local community sporting club

[237] ibid - Dunn, R., (No Date), '*Aboriginal Youth and Offending, Adolescent Services, Young Offenders Program*', Department of Community Welfare, South Australia, pp.185-189 – :"Due to experiencing racism and a dysfunctional family environment, many Aboriginal youth at a early age lack role models to bridge to gap into mainstream society". p. 186

[238] Author and his work colleague's personal experience and observation with Aboriginal youth and local community sporting club

[239] Australian Institute of Criminology, (2003) '*AIC Crime Reduction Matters, The Role of Sports and Physical Activity Program in Crime Prevention*'

youth and communities that generally seem to exclude many of them from engaging with mainstream society. Aboriginal communities, although fragmented and dispersed into certain demographic areas at times, are still a part of the wider community sector where community-based sporting clubs exist.

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Opportunities exist for Aboriginal youth and their families to be involved in local community sporting clubs. With adequate consultation, discussion could focus on working out how community sporting clubs could deliver programs for disadvantaged Aboriginal youth to encourage inclusiveness through positive engagement. There is huge potential to expand the scope of clubs already in existence to include these young people and their families. This may also result in minimising the risk of offending behaviour through positive sporting and social engagement.[240]

The opportunity to discuss community sports clubs as being constructive is based on personal experience and observation. The author's argument of using of sports as an alternative prevention and pre-diversionary means for minimising the possible risk for offending behaviour has been well supported by various authors and research literature from Aboriginal communities, the justice institution and academics. It is important to acknowledge that the involvement of the Aboriginal community, social services and government support is needed to add to the holistic approach in enhancing inclusiveness and development of a diversionary program to minimise the risk for offending behaviours for those Aboriginal youth at risk.

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[240] These potential benefits are also transferable to other disadvantaged and minority groups in society.

Summary

Chapter four has described how constructive and practical diversion and prevention programs can be used in diverting offending behaviours for Aboriginal youth, as opposed to punitive measures. It has highlighted that sports participation, with the support of other programs and agencies, has the ability to be used as an effective diversion and prevention program to minimise the risk for offending behaviour and possible onset of recidivism for Aboriginal youth and, by doing so, enhance the possibility for inclusiveness in the community.

CONCLUSION

This thesis has demonstrated that Aboriginal youth has been influenced by specific events that have impacted upon these young people's identity, culture and wellbeing through history. This thesis has described how historical policies have segregated and isolated many Aboriginal people from mainstream society through the manner in which these policies controlled and managed their lives. A general overview focused on three specific areas that have had a major bearing on the way Aboriginal people see themselves and others against the social, political and judicial landscape in Australia.

Since the onset of colonisation various policies and laws have controlled and managed Aboriginal Australians' identity, culture, movement and location. Management and control has caused dislocation and isolation for many Aboriginals who have responded by exhibiting anger and resentment through non-conforming behaviour in society. However, offending behaviour by Aboriginal Australians can frequently be closely linked to past practices and policies associated with colonisation.

Social exclusion has occurred for many Aboriginal Australians with resultant poor living conditions and health problems and minimal opportunities to prosper, causing considerable despair and social ills. The outcome of such low socioeconomic conditions for Aboriginal Australians causes underlying despair and resentment which has been shown to heighten the probability for offending behaviour. In highlighting low socioeconomic conditions for Aboriginal Australians and how this

contributed to offending behaviour, this thesis has begun the process of analysing and responding to the recommendations passed to the South Australian Premiers Department by the Social Inclusion Unit Initiatives in 'Closing the Gaps' for disadvantaged members of society.

A punitive-type approach to addressing offending behaviour by Aboriginal youth has, in many cases, exacerbated the problem of Aboriginal youth being overrepresented in the criminal justice system. Instead of a punitive approach to Indigenous youth offending it is recommended, based on the experiences of the author and supported by academic literature, that diversionary approaches are likely to be more effective. Diversionary programs encompassing sporting activities have been used as an example of the ability of team activities to minimise the possibility of offending behaviour by Aboriginal youth. In particular it is considered that participation within existing sporting clubs is likely to be an effective way to proceed. Utilising existing community organisations is cost-effective and ongoing, unlike specifically targeted programs with strict time limits to funding. Social inclusiveness can be achieved as well as implementing social and life skills that enhance determination to achieve positive outcomes. While it is not the only answer to Aboriginal youth offending it has been shown throughout this thesis that sport has the ability to minimise the risk for offending behaviour by Aboriginal youth and by doing so enhance aspects of social inclusion through local community sports clubs.

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