COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Reference: Involvement of Indigenous juveniles and young adults in the criminal justice system

THURSDAY, 24 JUNE 2010

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HOUSE OF REPRESENTATIVES STANDING

COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Thursday, 24 June 2010

Members: Mr Debus *(Chair)*, Mr Laming *(Deputy Chair)*, Mr Andrews, Ms Campbell, Ms Rea, Mr Oakeshott, Mr Kelvin Thomson, Mr Trevor, Mr Turnour and Mrs Vale

Members in attendance: Mr Debus, Mr Laming and Mr Kelvin Thomson

Terms of reference for the inquiry:

To inquire into and report on:

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

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;
- Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;
- The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;
- Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;
- The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;
- The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

WITNESSES

Committee met at 12.35 pm

McFARLANE, Ms Katherine, Member, Women's Advisory Council, Corrective Services New South Wales

YOUNG, Ms Mandy, Member, Women's Advisory Council, Corrective Services New South Wales

CHAIR (Mr Debus)—This is, you will gather, a day in this parliament unlike anything possibly since the Dismissal in terms of its instant dramatic effect. We cannot assume that any of my colleagues are going to show up. It is better if we do at least an attenuated version of the presentation and have a discussion which we then have a record of and I will be able to have a committee meeting later on in which we incorporate your evidence into the record. I think we are better off doing that.

Ms Young—The Women's Advisory Council is from Corrective Services New South Wales and I sit on that council in my role as acting director of Victim Services for the Department of Justice and Attorney-General New South Wales. I also sit there in terms of my experience having worked with the Department of Community Services for a number of years as an Aboriginal case worker and then in policy in DOCS. I then moved to the attorney-general's department to manage the Aboriginal Child Sexual Assault Taskforce and the development of that report. I have also done some study in terms of a Churchill Fellowship around healing models for sexual assault in Canada and the US. I have a report on that if you would like to have a look at it. I have done another independent paper recently with the *Australian Feminist Law Journal* on no justice and healing particularly around Aboriginal women in relationship to violence. I then managed the domestic family violence team in the Department of Justice and Attorney-General. That is why I sit on the council and why I am here.

Ms McFarlane—I was appointed to the council as executive officer of the NSW Sentencing Council which not surprisingly advises the Attorney on sentencing issues which Mr Debus set up.

CHAIR—This is pretty embarrassing.

Ms Young—We come back to haunt you!

Ms McFarlane—I am also there in terms of personal experience. I was an official visitor to New South Wales prisons for three years, coordinator of the no new women's prison campaign, which opposed the building of Dillwynia Prison and got the parliamentary inquiry into the prison system. I was also adviser to the shadow minister in New South Wales for both DOCS and Aboriginal affairs for two years. As well as being in the attorney-general's department as the executive officer for the Sentencing Council, I also spent six months as executive officer of the New South Wales Children's Court at Parramatta where my job was to implement the recommendations of the Wood special commission into child protection in New South Wales. There is quite a lot of relevant information as a result of that. I am now a lecturer at Charles Sturt University in Bathurst. All of those things mean that that is why I am on the WAC.

CHAIR—Every institution, Dr McFarlane, is either my creation or in my electorate!

Ms McFarlane—I would like to be Dr McFarlane, but I am not yet. That is a work in progress.

CHAIR—Can I give you an honorary degree as well!

Ms McFarlane—I would gratefully take it. It would save me having to do the real one!

Ms Young—We thought we would take you through the Women's Advisory Council and our role, so you get an understanding of that, and then just through some statistics in terms of New South Wales. Obviously we have a New South Wales perspective. Then Kath is going to take you through some of her study which has shown some of those results and I will talk to you about some of what I have found in terms of justice here and overseas working in the particular areas that I have worked in.

Essentially the role of the Women's Advisory Council is to provide advice and advocacy on relevant issues talking about women in the criminal justice system. We are a very broad bunch of women. I will provide you with a list of who is on that group. Essentially it is government and non-government services in the criminal justice sector. We are chaired by Ann Symonds, who was previously in the legislative council. She was not able to make it today, so she sends her apologies. The other thing we want to say is that we appreciate the short time in terms of coming to hear us, particularly as we have not provided a formal submission. We really do appreciate coming down. Thank you. I will give you that, which is our terms of reference more generally.

Ms McFarlane—It has also got the membership of the consultative committee. There are sort of two layers. There is an advisory committee which is mainly policymakers and then there are people from mainly the non-government sector who are the ones who actually do the delivery of services—so NCOSS and a number of agencies like that are represented. It is a mixture.

Ms Young—Also attached to that is a report that the chair wrote for the *Judicial Officers' Bulletin* around women and babies. We thought you might be interested in that so we have attached it. Essentially our objectives are pretty plain and simple—sharing information among agencies, linking Corrective Services to other government departments so that we can improve service deliveries and policies and a mechanism to draw attention to issues significant to women in the criminal justice system, which we spend a fair bit of time doing.

We thought we would quickly give you some recent statistics for New South Wales. None of them will surprise you. We were writing them out earlier and thinking, 'Are they ever going to change?' It is quite depressing. On 25 October 2009, there were 744 women in custody. We will talk to you generally about women today, but obviously the other information we have relates to both men and women. We just thought, given that we are the Women's Advisory Council, we would give you the female stats. It is expected to rise. Women are approximately six per cent of the overall New South Wales prison population, so it is quite small. Indigenous women are 29 per cent of those in custody at the moment.

Ms McFarlane—That is a slight difference to what you may have been told previously. These are recent Corrections figures which we were only given today. I think the official figures, the last published ones, show that women are about 18 per cent, which we thought was too low anyway. This is probably much more accurate.

Ms Young—Between 1992 and 2009 the proportion of Indigenous compared to non-Indigenous prisoners increased from nine to 22 per cent, which is quite significant, and the proportion of sentenced Indigenous juveniles increased from 45.1 per cent in 2003 to 56 per cent in 2008, which is huge. In 2008-09 the daily average of women on community orders was 2,798. We think that is important because they often get forgotten in terms of the justice questions. We always think about prisoners but we do not think about those that are on community based orders. This is 15.4 per cent of all offenders supervised by Corrective Services, and that has been fairly steady. There are the statistics there of what Indigenous women are comprised of in terms of age, to give you some sense of that.

This is probably the more damning information. I do not know if you guys have had an opportunity to look at the inmate health survey done by Justice Health in New South Wales. It was released last year. These statistics are related to Aboriginal women. What you find in the brackets at the end is against other women in the system, just so that you can have a bit of a comparison. So 15 per cent were in unsettled accommodation prior to coming into custody. Essentially this survey surveyed a thousand people and they targeted Aboriginal people within that context.

Ms McFarlane—It is the third survey. The first one was released in 2001 by then Corrections Health and Corrective Services. It was pretty much the first one in Australia that actually did proper surveys of the prison population and a fairly decent sample.

CHAIR—That seems already to be confirming evidence that we had from the Bureau of Crime Statistics suggesting that actually the most effective way to reduce the rate of imprisonment is to reduce the rate of recidivism.

Ms McFarlane—Yes.

Ms Young—Yes, that is exactly right.

CHAIR—Can we get a hard copy version of all this? That would be good.

Ms Young—I have scribbled on this one—

CHAIR—We do not care.

Ms Young—but I am happy to email a copy to you as well.

CHAIR—We think it would be beneficial, and we will treat it as an exhibit. We are just taking as an exhibit the inmate health survey trends.

Ms Young—That is a presentation that Justice Health provided to the Women's Advisory Council late last year—

Ms McFarlane—Late last year, yes.

Ms Young—before the results were published. But they have actually been published now, so you can access them publicly. We tried to pull some of the statistics that would interest you guys.

Fifty per cent have issues with accommodation on release, 87 per cent were not working prior to custody and 93 per cent of those people were on government benefits before coming in. I think that is in one of your terms of reference—that is, education and work. Thirty-four per cent had been in juvenile detention at some stage, 34 per cent were parents—so they had children—and 60 per cent had been previously incarcerated. So you can see in a lot of those statistics that the figures are much higher for the Aboriginal population than for the non-Aboriginal population of women.

Ms McFarlane—We will not read them all out, obviously; they are there. But the particular issues around mental health that come up quite clearly and the connections between drug use, alcohol use, mental health and very poor relationships mean that altogether it is a very vulnerable population.

CHAIR—How would you make a general characterisation of their circumstances? They are deeply underprivileged.

Ms McFarlane—Yes, absolutely. But what I find most surprising is that they are all specific targets of government, state or Commonwealth, or non-government agency intervention and programs. There are agencies and policies that exist to help people like this, yet the net result—whether these people are the most affected of all the people who are coming to the services or whether the service link-up is not working—is that the jail population demographics have not really changed. What has changed is that we know more about the conditions that the women, and the men as well, are experiencing.

Ms Young—I will just note that the same statistics are in that document there, for you, for men. Probably the most interesting one of those, which Kath will probably talk about later, is that the statistic around Aboriginal women previously in juvenile detention is 34 per cent, but it is 62 per cent for men. So that link is exceedingly high. I guess that is just to give you a bit of an idea and an update of what is in New South Wales at the moment. I will hand over to you, Kath.

Ms McFarlane—The main issue that I have decided to focus on is the connection between out-of-home state care: foster care; kinship care, where you have a placement with relatives; institutions; group homes; welfare—those types of things. As reflected in the parliament's apology to the stolen generations and the forgotten Australians just recently, they are people who have come from those backgrounds of deprivation and, effectively, child removal. These are people who may have spent some time in out-of-home care for whatever reason and however long—it varies, obviously, depending on the person.

There has not been very much research done at all about the connections between delinquency and growing up in care, but there is some research coming out, particularly overseas, which has established that there are links. And there is some which is struggling to catch up in New South Wales, which is picking up on those connections.

We know that overwhelmingly most young people do not go on to commit further offences and if they do they are fairly minor one-off type of crimes. However, out-of-home care placement in an institution et cetera has been associated with juvenile re-offending. What is striking about that is that are not any programs which actually target the development of delinquency in care. That is what my PhD research is trying to examine by looking at current

children's court files and also looking at the prison population statistics to see how many people have come from that background and whether there are any differences between people from a stolen generations Indigenous background or a forgotten Australians background compared to other people in custody. As you just saw, people in custody are completely disadvantaged on a lot of levels. Being a member or a descendent of the stolen generations has also been associated with involvement in the criminal justice system.

Focusing on New South Wales, a whole series of government inquiries have found that state wards—the old name for kids in care—are likely to be overrepresented in the justice system. As one example, in 1992, there was an inquiry into juvenile justice and it found that female state wards were 40 times more likely to be in custody than non-wards. They also found that they were unable to meet their bail conditions—they either did not have support services or anywhere to go to in terms of accommodation. They were also being remanded in custody for what are basically welfare related reasons—poverty, homelessness and the risk of abuse at home.

This is very consistent that studies that have been done previously finding that a lot of people had been remanded in custody as children for being at risk of moral danger or exposure to abuse. In the old system, you could be detained in custody for those reasons. A lot of the prisoners who have been in the New South Wales system came through the care background. My thesis or my theory is that it is not so much involvement in juvenile delinquency which is a predictor of subsequent adult involvement but that it starts earlier than that with the out-of-home care system.

In 1996, the Wood royal commission again found that wards were overrepresented not just in criminal activity but as victims of paedophilia and prostitution. He warned that no community with any real concern for the safety and wellbeing of its children can tolerate a system under which there is an inevitable or even a substantial drift of wards to juvenile detention, with its increased risk of progression to adult imprisonment. That led to quite a flurry of government pronouncements about the overrepresentation of wards and apparently the institution of some departmental procedures that were meant to identify wards.

Unfortunately, the situation has not changed. In 2010, the strategic review of the New South Wales juvenile justice system, which was commissioned by the then minister, who has just resigned over government inaction in response to the report, recommended that addressing the risk factors of out-of-home care and the links to JJ would be a sound policy platform. What is quite striking is that the New South Wales government response does not acknowledge that in any particular way. There are no plans to deal with this overrepresentation. It is quite a usual response, unfortunately.

What are the statistics about the prison population relevant to this inquiry? Is it the inmate health survey of 2001, the forerunner of the one that Mandy mentioned? It found that 33 per cent of Aboriginal women in custody had been removed as children. This is the first time that these sorts of questions had been asked in a study of this magnitude. Thirty-one per cent said that there parents had been forcibly removed as children. But in the 2008 study, that figure went up to 45 per cent. It is not clear whether that is due to the sampling, more people being open to reporting it or more younger people suddenly entering the system. For men, there were 32 per cent in 2001, with 21 per cent saying that their parents had been removed. That went up to 48 per cent in 2008, a significant increase.

I know that this is beyond the terms of reference, but for comparison non-Aboriginal care status is also an issue. Twenty-three per cent of non-Aboriginal women and 21 per cent of non-Aboriginal men also report a history of out-of-home care. When you put the Indigenous people and non-Indigenous people together, pretty much over half of your jail population is made up of people who have come from a similar shared background. What is striking about that is that this is not a demographical statistic that corrections collect and there are no programs addressing either Stolen Generation issues separately to other Indigenous issues or non-Indigenous care status.

For juveniles, the situation is unfortunately even worse. It would be tempting to think that this was the result of previously poor policies and a failure to distinguish between welfare and justice, but that does not appear to be the case. Thirty-six per cent of females and 21 per cent of males in 2003 being from an out-of-home care background, with the figures being fairly similar whether we are talking about being in custody or on community orders. So that is fairly consistent. In 2008, the girls have dropped slightly to 34 per cent. But boys are of real concern, with 62 per cent of Aboriginal males in the juvenile detention population having been or currently being in care. That is really striking in terms of what is going to happen when they hit the adult prison system. Although the figures are substantially lower, they are still quite high for non-Aboriginal people.

Why does it matter? Stolen generations have different physical and mental health outcomes than other non-removed Indigenous offenders. I think that is quite significant given that there are no policies or programs that really acknowledge this. So there has been research that has shown that, compared to Indigenous people who were not removed, adult Aboriginal prisoners have worse mental health outcomes, they are more likely to be jailed as repeat offenders, they are more likely to have experienced child sexual assault and they are more likely to have attempted suicide. The Royal Commission into Aboriginal Deaths in Custody found that almost half of the deaths that they examined had people who had come from that background.

The situation now is that those young people in care on community orders have got a raft of social disadvantage indicators even beyond the rest of their cohort—the rest of those kids in juvenile justice. They are more likely to have physical injury, they are more likely to have had unwanted sex, they are more likely to be living in unsettled accommodation and they are more likely to be unemployed and to be in receipt of government benefits.

From the criminality side, I think what is really significant is that kids in care are more likely to have received a caution or conviction than people who are not in care. There is also evidence that they start their criminal career early—earlier even than other children. There is some evidence—it is a bit sketchy because mainly people have not been asking about the care background—that they are over-represented as serious or violent offenders. So if you look at the background of the serious sex offenders and at the background of a lot of the never-to-be-released prisoners in New South Wales, you will see that they have come up through that same system. I think that is quite striking in terms of the potential rehabilitation of people.

Again, why does this matter other than just out of interest? There is evidence that involvement in the criminal justice system is intergenerational. So many of the people in custody or on community based orders are following the footsteps of their parents or grandparents. When I was going to Mulawa prison, it was brought home to me when a woman came up and introduced her

mother and her grandmother. They had all been in custody and they are all in Mulawa together, in the women's jail. It was not remarkable to them. It was just what happens. They were Indigenous but they had also all been through the care system. The daughter had a baby, the next one.

What is significant from a government policy point of view is that many of these children were removed from their families as a result of government policies. So, as recognised in the recent apologies, those policies resulted in some systematic and long-lasting disadvantage. That disadvantage was then often used to justify the removal of a subsequent generation. Probably the most obvious example is that having no visible means of support was justification in the New South Wales welfare system for removal of children. Parents could not show that they supported them. Yet often that poverty was the result of misappropriation by government and agencies of trust fund money; people in care were sent out and given domestic allowances. There have been inquiries and acknowledgement that a lot of that money was misappropriated—stolen. What has happened is that some of the states, like New South Wales and Queensland, have established reparation schemes for trust funds, but there has not been any connection between the fact that a lot of those people who not only had their wages stolen subsequently had their children removed. There has been no connection between that. I think that is quite significant because, apart from the economic issues, the resentment that the people feel is quite intense.

Historically, people who have been in care make up less than 0.2 per cent of the New South Wales population. The number is increasing dramatically. It is estimated there will be 20,000 children in care in New South Wales alone in the next five years. As the number increases it is likely that the impact on the criminal justice system is also going to increase because there is no sign—

CHAIR—And because there is a disproportionate number of Aboriginal kids, there will continue to be a disproportionate rate of incarceration for Aboriginal juveniles.

Ms McFarlane—That is right. So unless there is an intervention or some understanding of the pathways from out-of-home care, there is not much else that can really happen. I can briefly talk about what I am looking at at the moment, if you like. I am trying to find out whether a history of out-of-home care is a primary risk factor itself in the development of criminal behaviour and, if it is, whether it leads to increased involvement with the juvenile justice and adult corrections system. I think it is fairly obvious that it does, but there have not been any studies into this. There is not much.

One of the ways I have done this is that I have examined 111 Children's Court criminal files from the last six months of 2009. There will be a lot more but that is all I have got through at the moment. I found that over one third of those files had been for children who were in care. That was verified by an actual document from DOCS which said that. There were another 23 per cent who the court thought were extremely likely to have been in care on the basis of a juvenile justice report, but there was no official DOCS documentation.

So, if we ignore that 23 per cent, it means that one third of the files—one third of the children—showed that kids in care were 68 more times more likely to be before the court than other children, which is really dramatic when you appreciate that there are not any real programs or ownership by DOCS or JJ. They are constantly in a battle as to who is responsible for

providing services and some sort of respite for the children—some response. Care status was not usually identified by the fact that there was a support person there from DOCS, or some sort of report, but by a Department of Juvenile Justice person who ferreted out the information.

Young women who I looked at were about one quarter of the sample, which is a little bit higher than young women in the court generally, but nothing significant. Sixty per cent of them were Aboriginal or Torres Strait Islander, and that is twice the rate of the non-care Indigenous girls who were in the sample—so twice as many. Regardless of whether they were Indigenous or not, there were common backgrounds of homelessness. They all seemed to have spent time in refuges, group homes and on the streets.

Many of the offences were pretty minor; and a lot of the usual trifecta of resisting arrest, offensive language and assaulting police. A lot of those matters then get tossed out by the courts and you only end up with an offensive language charge; but by that time a lot of the girls have already spent time in custody, at least two or three nights. They also had a lot of breach of curfew conditions which were bringing them back—breach of probation or some of the bail conditions—often because they go visiting their parents or family—aunts and uncles—back home when they are in the DOCS care and they are not meant to be going into that geographical area, or they have non-association orders with siblings who may have been co-offenders. The kids do not understand that or do not care, so they just kept going back and then coming back in.

It looks like the police were not referring or using cautions as often as they perhaps could, and they were not going to youth conferencing very much. Again, that is a common finding: Indigenous young people not being referred to conferencing. Mostly they offended in company, and what I found was interesting is that there is a lot of offending amongst residents in the group homes. They get put somewhere for particular behavioural issues, into agencies which boast that they have great skill in handling adolescents' difficult psychological and mental health conditions, but within a couple of weeks those kids are before the court on criminal charges.

Almost half the girls have been charged with malicious damage, and all of those instances have been committed in foster care or in the group homes where they lived. What is really disappointing to me in looking at this in 2010 is that there was a study done in 1993 and the government response was that this was appalling and that they would institute all these practices to stop police being used essentially as behavioural control or modification. But it seems like it is still happening. Police are constantly getting called out for things where a child will kick a door into a wall and mark the wall, or throw something at the wall or will kick a chair over. That is the level of severity and you have got people being charged with malicious damage and then refused bail after that. What is also striking is that of the non-care kids, no-one was charged with those sorts of offences; so parents are not reacting by calling the police. It is the homes that are doing that.

A lot of the girls are refused bail or they have conditions imposed upon them which they cannot meet, so there is a lot of spending time in juvenile detention. Sometimes this was because they were to reside as DOCS directs, and DOCS not only did not direct it did not come, or did not respond to the court whatsoever. That is a real problem with the connection between the court, JJ and DOCS. When they were allowed bail they were often remanded back to the care of the same home, and often to the same worker who had laid the charge in the first place. There did not seem to be any kind of preparation or understanding of how the two parties were going to

get on after that. Inevitably, what happened was that the kid would be back, sometimes the next day or sometimes the next week. The files are 300 pages of constantly being back before the court for what looks like annoying and ongoing, but fairly minor, individual instances.

Overall, the overrepresentation of either Stolen Generations or Forgotten Australians in the criminal justice system has not been acknowledged very widely by government at all. It is not information that is collected routinely in statistics, so corrections cannot tell you how many people are there. There are few government policies or programs which specifically acknowledge or cater for juvenile offenders who have experienced out of home care, and yet with the difference in outcomes as well as the difference in the way that they respond, participation rates in youth justice conferencing and other alternatives to custody are something that we think should be looked at.

CHAIR—What does all that suggest to you, however, about what would actually be an appropriate policy response? DOCS does have some programs that seem to be promising and that our committee has looked at. We went to a centre called Juniperina, and there were some young women there who, on common-sense observation, were responding extremely well to some intensive programs. We were also given a pretty impressive presentation by groups of people who were involved in a kind of family therapy—intensive family counselling programs.

Ms McFarlane—Some of that intensive supervision and those family support programs have had some tentatively good results. From my perspective, one of the real problems is that you have to be in custody to get access to some of the programs. Also, with the family support services, there is a whole bunch of kids who are considered too behaviourally challenged or difficult or who have mental health issues. They are placed in welfare homes, because there is a big push in New South Wales now for placement in non-government agencies, so the non-government sectors are pretty much going to be taking over the out-of-home care sector. The concern is that a lot of those agencies are not equipped to handle adolescents, yet they take them. What happens is that you get untrained carers or unskilled people who are effectively in charge of quite difficult children. There is also the issue of the connections between the agencies. There is a constant battle between DOCS and Juvenile Justice over who is responsible for children in ministerial parental responsibility who have committed offences. That is a historical tension.

Ms Young—I think that is also evident in the way the agencies respond. They respond in their own little silos. DOCS will deal with parenting issues and Juvenile Justice will deal with offending behaviour, but they do not work together in looking at the family as a whole. The kids are going to go back to that family, whether they are juveniles in detention or whether they are young adults who will go back to their communities and their families. Unless you look at them in the context of the whole and all the issues that are going on for them—the issues of the person who is doing the offending or the parenting issues of the family—then we are not going to get anywhere.

CHAIR—I should introduce my colleague Andrew Laming, the member for Bowman in Queensland, who has just arrived. Kath McFarlane and Mandy Young are both associated with the Women's Advisory Council of the Department of Corrective Services in New South Wales. The core of their evidence concerns the astonishing statistics that accompany the rate of involvement in the criminal justice system by kids who have been in the care of the state. At one level, there is nothing new about this—in common-sense terms, everybody has known for

generations that that was true—but Kath is doing research which is making the phenomenon much more precisely understood. The statistics are astonishing. I think you said that a young Indigenous woman or girl who has been in care is 68 times more likely than—

Ms McFarlane—A male—an Indigenous male is 68 times more likely than a non-Indigenous male to be involved. For the girls it is a little bit lower but still appalling given how few there are.

Mr LAMING—So it is being both Indigenous and having been in care—the two points?

Ms McFarlane—Yes. If you take Indigenous out and you just having being in care, the figures are dramatic, but if you add Indigenous in, then it is particularly pronounced.

Mr LAMING—It is another order of magnitude.

Ms McFarlane—Yes. And that is probably also the fact there is—

Mr LAMING—Have you put in a submission here?

Ms McFarlane—I have not put in the submission.

CHAIR—But we are going to get a copy of that—

Ms McFarlane—Yes, I will give you the PowerPoint and we have some figures.

CHAIR—and there is a survey here too, Andrew, which is public. The most important thing, then, is to ask you to speculate upon the kinds of policies that might most fruitfully be involved. You have talked in essence about operational issues, about getting departments to work together better, which is important but is the kind of issue that constantly afflicts these sorts of problems. More broadly and strategically, what do you think?

Ms Young—From my experience and perspective, I think we need to look at the healing options in terms of both therapeutically and practically addressing people's issues and their previous traumas. Being removed from care is a trauma in itself, but you might be being removed for physical or sexual abuse so there is another trauma on top of that. I think it has even been acknowledged that institutions and juvenile justice detention centres do not deal with that. They deal with offending behaviour. They do not actually deal with what may have led them to offend. So if we were to look more strategically—

CHAIR—It is interesting because they do know about it.

Ms Young—Yes, they know about it.

CHAIR—If you went to Mulawa Prison in the past, I know from direct experience, almost the first thing the staff would tell you is that this or that inmate was three times abused, in the sense that they were sexually abused but they had themselves abused drugs and they had been victims of violence. It was almost horrifying, it was almost normal.

Ms Young—And it is so cyclic. I am speaking with a background as a counsellor. They have a trauma that they cannot deal with—they cannot deal with the triggers and how it affects them—so they start drinking and taking drugs and then they start stealing to support their habit, so there is a cycle.

CHAIR—So, in common-sense terms, you are saying that there are some measures that may be taken to try and keep families together, but then there are healing interventions you want to talk about.

Ms Young—Yes, for want of a better term. There is talk about healing. It is trying to look at things in a broader sense, so looking at more than just the offending behaviour. It is about looking at all of the other issues that surround that. For example, in Canada they do that quite well in some areas.

CHAIR—Would you remind Andrew of the name of that program that you have studied.

Ms Young—Hollow Water. There is actually a better example now—someone has taken Hollow Water and made it better. It is at Mnjikaning, which is near Rama in Ontario. They have a casino there, so I think that is why they have been able to fund it a bit better. Essentially, it looks at a community as a whole. It deals mostly with family violence and sexual assault based offences, but they are expanding now to deal with all sorts of offences. It is a court directed program, so almost diversionary but not necessarily—they would not like to see it as diversionary. Essentially the offender is directed to the program, and the program works with the offender, works with the victim and works with the family, because they are generally always related, always in the same community. The offender may or may not be released to that community—it might be there or it might be somewhere else. They work with them around dealing with the issues of why the offences are happening, how to protect their kids, how to protect any other victims in terms of the violence, how to deal with those issues and how to deal with their past issues as well. There are a variety of programs that they link in—drug and alcohol workers, mental health workers—and they all work together. A lot of them have a healing lodge on location so they are able to go in and do that sort of in-depth work with them around what it is that is making them behave in the way that they are. And that is built into the justice system as well.

They do a number of these programs and then they go back for sentencing. Their whole community, or those relevant people who want to be there, attend that sentencing where the victim gets to have a say about the impact on them, where the offender gets to apologise and actually talk about the offence and why they might have done that, and where the family members can talk about the impact it has had on the family. It recognises that people are offending, that people are becoming victims and it has an impact on the entire community. It is about that recognition within the justice system, so that it happens in the justice system. The outcomes of those have been really positive. Reoffending rates are pretty much nonexistent. In Hollow Water it has been going for 20 or nearly 30 years and they have had only two people reoffend.

CHAIR—You might just say again the name of the second area.

Ms Young—Mnjikaning. I can forward those details to you.

Ms McFarlane—Just to add to what Mandy said, the New South Wales Sentencing Council was charged with an extensive report to the Attorney looking at sexual offending and penalties for sexual assault. We looked at the Aboriginal Child Sexual Assault Taskforce and international programs to see whether there were things that were operating internationally that should be adopted here. In the third volume of that report, which is public now—it is a very long report—we had a look at all the programs that are relevant to Indigenous offending and particularly looked at Hollow Water. The recommendation of the council was that the eligibility restrictions that operate in New South Wales should be lifted, because at the moment, if you are a sexual offender or violent offender you cannot get access to some of the programs which are based on the Canadian experience. The recommendation was that the results of Hollow Water and some of the other programs were so impressive that it was an arbitrary restriction; it should be based on the individual offender. Unfortunately, the government rejected that recommendation.

Ms Young—I think that hits on the other offshoot of that. Offenders, who may be in custody or community, have real trouble accessing the programs and services that they need. There is a disparity on who provides those programs. Health will provide sexual assault programs but they will not provide them in prisons. It is quite hard for people to access the programs that they need because of the recognition. My view is that the Commonwealth could really take a lead in pushing people to talk to each other and to be able to access those services. The other option is that, because some of these things are a bit left field, agencies are reluctant to take them on.

Ms McFarlane—And the clients are difficult because they encapsulate all of the disadvantage. Instead of only having a mental health issue, they have got mental health issues and they are criminals and they are drug addicts.

CHAIR—Yet, when it comes down to it, they are actually still quite a small number of people.

Ms McFarlane—That is right. We should be able to do something about it.

CHAIR—The total numbers are still quite small.

Ms McFarlane—I guess that was also the reasoning for the recommendation of the New South Wales Sentencing Council some years ago for the abolition of sentences of six months or less. You would be familiar with the issues there. They had a look at the sentencing options that were available in New South Wales and whether people were being adequately diverted from imprisonment for relatively minor offences and whether they were ending up in custody when there should have been other options that might be accessible. Basically the tenor of a whole lot of reports has been that this keeps happening. We have community options which women and particularly Indigenous women just do not get on to. Even if those options are designed for those women, the complications of having children or having to care for partners mean that women are effectively excluded from those types of programs. The council said that custodial sentences of six months or less should not be imposed, and there was a recommendation to look at what was done in WA to see if it worked. The council recommended that if this was to be adopted—

CHAIR—In WA, they did not think it worked. That was the problem.

Ms McFarlane—That is right.

CHAIR—That is what got in the road of—

Ms McFarlane—The recommendation.

Mr LAMING—It did not work because of what?

Ms McFarlane—I think it was—

CHAIR—It just did not—

Mr LAMING—Recidivism and not many services?

Ms McFarlane—It was also that they tended to increase the sentences. The judges would say, 'You are getting six months and a day'—which you could prohibit them from doing. It is not that hard. I thought it was interesting that the group that the council identified as being most in need of this was Indigenous women because of the relatively small numbers but high over-representation rates and the potential for change if you did something like that.

Ms Young—I think we will need to add to that and—

CHAIR—Sorry to interrupt you, but we will have to stop in just a few minutes. We have one more colleague coming so that we can form a quorum and make this official. I wonder: what is your absolute key message to us? I can sort of guess, but I would like you to say it.

Ms Young—I think the key message, possibly from both our points of view, is to deal with things in a more holistic way—to look at things in relation to each other rather than separately and to have policy which does that. The other thing I would add to that, being an Aboriginal woman, is that policy should be driven by Aboriginal community, and that is not hard to do. People are ready to take action; they just need the support to do that. It would be great if policy could be delivered that really pushes people to work together, to address all of the issues, to stop looking at things in isolation, to stop looking at just offending behaviour, to look at it in terms of the experience that has led them to that point and to deal with those events and those traumas.

Ms McFarlane—To add some specific points, with Indigenous involvement in the justice system, one of the issues is the nonpayment of fines. It leads to the suspension of drivers licences.

CHAIR—We are on to that one.

Ms McFarlane—There were recommendations in the Sentencing Council report of restricted licences in certain geographical areas.

CHAIR—Would you be good enough to give our secretariat reference to the Sentencing Council report?

Ms McFarlane—Yes. The report also looks specifically at secondary offending. So, even though in New South Wales you cannot technically go to jail for nonpayment of fines, the question was: can you get there in another way associated with the nonpayment of fines? And

the answer is yes. Mostly it is through driving while disqualified or suspended, and Indigenous people are vastly overrepresented.

CHAIR—What is the report called?

Ms McFarlane—*The effectiveness of fines as a sentencing option*—a catchy title. I can give you a summary. I have extracted information relevant to Indigenous offenders in a whole series of reports that might be of use to you, so I can send that. The issue of fines is a big one, especially for Indigenous juveniles.

CHAIR—We are on to fines.

Ms McFarlane—The other one is community based options—

CHAIR—We understand it is a really difficult issue. You will remember that it was more than a decade ago in New South Wales when we tried to stop that and somehow or other it seeped back through the cracks.

Ms McFarlane—The good news, I guess, is that the government did agree to a recommendation for the introduction of what is called a work and development order. The idea is that, if the person does not have the capacity to pay or is unlikely to pay given their previous history, the court can order that they do what is effectively community service. It has been established to quarantine them from the community service that propels them into the justice system if they do not meet those conditions.

CHAIR—That series of reports will be of interest. Thank you both very much for taking the trouble to attend. I point out that you arrived on one of the most dramatic days since 11 November 1975! I ask committee members to move a motion that the committee take as evidence the informal discussions that have just been held between Mr Laming and me.

Mr LAMING—So moved.

CHAIR—I declare our meeting closed.

Resolved (on motion by **Mr Laming**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 1.24 pm