

**House of Representatives Standing Committee on Aboriginal and Torres Strait  
Islander Affairs**

**Inquiry into the high levels of involvement of Indigenous juveniles and young  
adults in the criminal justice system**

**NSW Government Submission**

**February 2010**

**INTRODUCTION**

Since the Royal Commission into Aboriginal Deaths in Custody, Governments and communities across Australia have sought to address the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system.

The National Aboriginal and Torres Strait Islander Social Survey (NATSISS) identified a number of contributing factors that lead to contact with the criminal justice system, including alcohol and substance misuse and abuse, unemployment, financial stress, welfare dependency, removal from family, intergenerational offending and residence in crime prone areas.

The NSW Government has adopted a cultural, holistic and family based approach to service delivery. Engagement and negotiation with Aboriginal communities is essential to the design and delivery of services. This is the underlying principle of the NSW Government's Aboriginal Affairs Plan: Two Ways Together (TWT).

A number of NSW Government programs have been successful in reducing contact of Indigenous juveniles and young adults with the criminal justice system. For example, NSW operates programs under the Illicit Drug Diversion Initiative including the Youth Drug and Alcohol Court and the Magistrates Early Referral into Treatment Program. These programs involve a significant number of Indigenous participants and have been associated with a significant drop in re-offending, particularly drug-related re-offending. Evaluations of the programs have also demonstrated a range of other benefits including improvements in participants' health, wellbeing and social functioning which are discussed further in this submission.

**The NSW Aboriginal community**

NSW has the largest Aboriginal population in Australia of approximately 148,178 Aboriginal people in 2006, comprising just over 2% of the total NSW population and approximately 29% of the total Aboriginal population in Australia.<sup>1</sup>

Seventy seven per cent of Aboriginal people in NSW live in major cities or inner regional areas, and 53 % live in the corridor encompassing the major cities of Newcastle, Sydney and Wollongong.

Fifty seven per cent of the Aboriginal population of NSW are aged 24 years or younger. The age structure of the Aboriginal population is changing with rapid increases in young and

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<sup>1</sup> Australian Bureau of Statistics, The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples (No 4704). Canberra, 2008

middle adulthood age populations due to increased fertility and lower life expectancy. The Aboriginal population in NSW is projected to increase by 35 % between now and 2021, with an expected median age of 21 years.<sup>2</sup>

### **Juvenile offending and detention in NSW**

As at 30 June 2007, Aboriginal juveniles were 28 times more likely to be detained than non-Aboriginal juveniles.<sup>3</sup> Between 2000/01 and 2007/08 there was a 24% increase in court appearance rates for Aboriginal juveniles and a 71% increase in the daily average number of Aboriginal juveniles in detention in NSW. In 2007/08, 2,363 Aboriginal young people came into detention.

The most common offences for Aboriginal juveniles are, in descending order, break and enter, assault and disorderly conduct.

Significantly, Aboriginal young people are more likely to have their matter go to court than otherwise dealt with. In 2007-08, 48 % of Aboriginal young people apprehended by the NSW Police Force went to court compared with 21 % of non-Aboriginal young people.<sup>4</sup>

### **Bail and remand populations**

There has been an increase in the juvenile remand population in NSW<sup>5</sup> and many of the young people on remand are Aboriginal<sup>6</sup>. Many of those Aboriginal young people refused bail and remanded in custody are also under 15 years of age.<sup>7</sup>

The three most common barriers to bail being granted to Aboriginal juveniles are:

- Lack of a fixed residential address;
- Lack of parental support and;
- An inability to meet monetary and surety requirements.

Recent amendments to s22A of the Bail Act clarify that an accused person, including a child, can make a fresh application for bail if information that has not been previously presented to the court is adduced. This amendment may help arrest or reduce the growth in the remand.

Breaches of bail conditions are also a significant contributing factor to the increase in the juvenile remand population, with the increase in the number of juveniles on remand correlating strongly with the number of juveniles proceeded against for breach of bail.

BOCSAR<sup>8</sup> found that in a study of 102 randomly selected apprehended young people, 50 of these were remanded for not complying with their bail conditions and they were alleged to have committed the following breaches:

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<sup>2</sup> The Health of the people of New South Wales, Report of the Chief Health Officer, NSW Health 2008 [http://www.health.nsw.gov.au/publicHealth/chorep/atsi/atsi\\_pop\\_agesex\\_ati.asp](http://www.health.nsw.gov.au/publicHealth/chorep/atsi/atsi_pop_agesex_ati.asp)

<sup>3</sup> Steering Committee for the Review of Government Service Provision (SCRGSP), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission, 2009

<sup>4</sup> Richards, K, *Juveniles' contact with the criminal justice system in Australia*, Australian Institute of Criminology, 2009 p27, p41

<sup>5</sup> Vignaendra, S., Moffatt, S., Weatherburn, D., and Heller, E., *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, Crime and Justice Bulletin, No. 128, May 2009.

<sup>6</sup> Evaluation of the Aboriginal over-representation Strategy, June 2006, p.9 (CPD).

<sup>7</sup> *ibid.*

- did not comply with curfew (35);
- was not in company of parent (29);
- associated with co-offenders (7);
- found at banned location (5);
- did not report to police station (5);
- did not reside at address as directed (3);
- did not follow directions of parent/guardian (3);
- consumed alcohol (2).

### **Risk factors**

According to research, including that undertaken by the BOCSAR, dynamic risk factors that are predictive of overall juvenile offending include:

- Education, training and employment problems;
- Mental health and intellectual disabilities;
- Alcohol and other drug misuse;
- Accommodation problems;
- Relationship problems including family dysfunction;
- Criminal lifestyles and associates;
- Distorted and irrational thinking including pro-criminal attitudes;
- Lack of structured leisure and recreational pursuits.

BOCSAR studies also show that a number of other factors were also found to be associated with the risk of further offending. These included:

- being under 14 years of age;
- being of Aboriginal or Torres Strait Islander descent;
- not living with both natural parents;
- having experienced some form of trauma;
- having been placed in out-of-home care;
- having been the subject of a confirmed report of neglect or abuse;

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<sup>8</sup> Vignaendra, S., Moffatt, S., Weatherburn, D., and Heller, E., *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, Crime and Justice Bulletin, No. 128, May 2009.

- having one or both parents deceased;
- not attending school at the time of the court appearance;
- having been suspended or expelled from school;
- having been convicted of a theft offence; and
- having had several prior contacts with the justice system.

The primary risk factors are those associated with school attendance/behaviour and past contact with the criminal justice system.<sup>9</sup> These risk factors are disproportionately present in the NSW Aboriginal community, which is reflected in ongoing very high levels of indigenous young persons' contact with the criminal justice system.

A recent comparative study of crime rates in Aboriginal communities in Wilcannia and Menindee identified a range of factors contributing to the higher crime rate in Wilcannia, including amongst others: high-risk drug and alcohol use; lack of appropriate, context specific services; lack of services for children and young people; normalisation of violence; poverty; and a lack of co-ordinated, long term solutions.<sup>10</sup>

Research conducted by BOSCAR in May 2005<sup>11</sup> found that the odds of an Aboriginal juvenile defendant appearing in an adult court within eight years of his or her first court appearance are more than nine times higher than those for a non-Indigenous defendant.

This is consistent with other research into the onset, persistence and desistance of criminal activity that has found that young people are most at risk of entrenchment in the criminal justice system if they enter the system when they are aged between 10 to 14 years. It is therefore important that support and intervention services are available and accessible to this age group.

Aboriginal young people are also disproportionately represented amongst the State's homeless and in the child protection and out of home care systems and have high levels of disability. These are often a precursor or ongoing determinant of a young offender becoming entrenched in the criminal justice system.

## **ROLE OF KEY AGENCIES**

### **Department of Human Services**

Two Ways Together is the NSW Government's 10 year plan (2003-2012) to improve the lives of Aboriginal people and their communities.

Since 2003, the NSW Government has been working with Aboriginal communities and Commonwealth Government agencies to achieve better outcomes for Aboriginal

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<sup>9</sup>Hua, J., Lind, B., & Weatherburn, D., *Contact with the New South Wales court and prison systems: The influence of age, Indigenous status and gender*, Crime and Justice Bulletin 78, August 2003

<sup>10</sup> McCausland, R. and Vivian, A, "Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Wilcannia and Menindee", University of Technology, Sydney, 2009

<sup>11</sup> NSW Bureau of Crime and Statistics Research, *The Transition from juvenile to adult criminal careers*, Shuling Chen, Tania Matruglio, Don Weatherburn and Jiuzhao Hua

people in the areas of health, housing, education, culture and heritage, justice, economic development, families and young people.

Many of the Two Ways Together undertakings are the responsibility of the newly created Department of Human Services (DHS).

The new department is responsible for program areas devoted to the prevention of family and community dysfunction and the consequences of such dysfunction, including the operation of the State's juvenile justice system.

DHS aims to progressively improve the integration of services and the delivery of services to the community by its agencies, which include:

- Aboriginal Affairs;
- Ageing, Disability and Home Care;
- Community Services;
- Housing NSW;
- Juvenile Justice;
- NSW Aboriginal Housing Office.

The new Department's core objective is to improve the welfare and standing of its client group, which includes many of the State's most vulnerable and disadvantaged people, including young Indigenous people who are at risk of contact with the criminal justice system or who have already come to the system's attention.

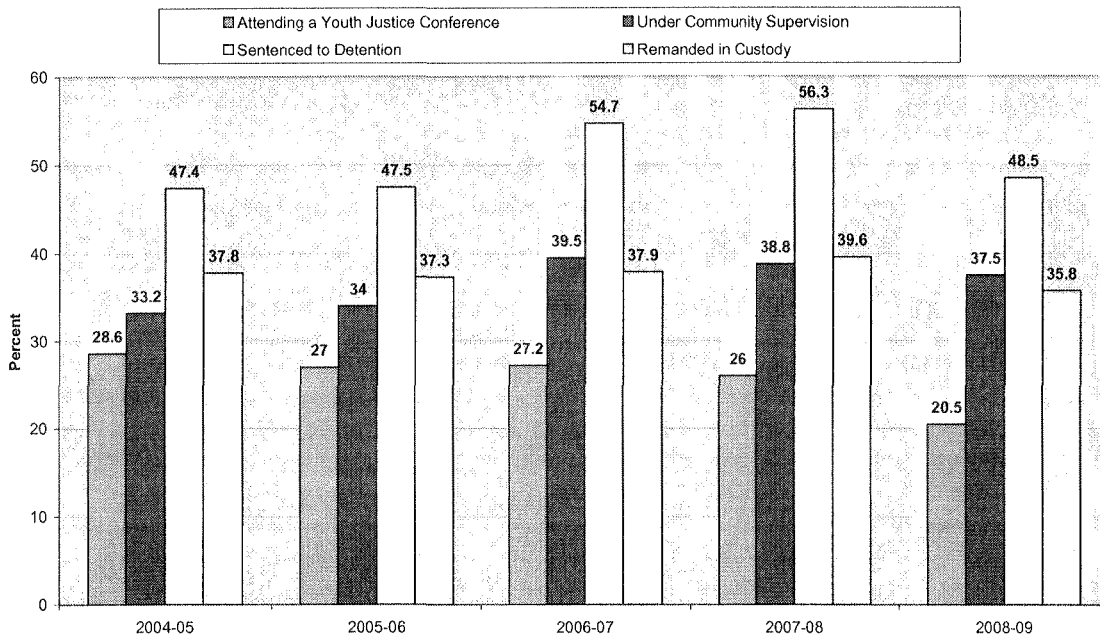
### ***Juvenile Justice***

Juvenile Justice (JJ) works with young offenders, the majority of whom are between 10 and 17 years old, who have admitted, been charged with, or been found guilty of, criminal offences. These young people include those who are referred and accepted for youth justice conferences, those who are remanded in custody pending appearance at court and those sentenced by a court to community based supervision or to a period in custody in a JJ centre. (Approximately 90 per cent of young people under JJ supervision are not in custody but dealt with in the community.)

The services provided by JJ aim to reduce the risk of young people reoffending, and to assist them in addressing the underlying issues and behaviours that contribute to reoffending.

The following chart shows the proportion of those Aboriginal young people attending a youth justice conference or undertaking court ordered supervision by JJ during the years 2004-05 to 2008-09. It can be seen that while Aboriginal over-representation is highest in the sentenced to detention population, Aboriginal offenders are over represented in all of the agency's service streams.

Proportion of admissions of Aboriginal and Torres Strait Islander young people to Juvenile Justice



## NSW Health

NSW Health addresses Aboriginal health issues through both mainstream and targeted programs and services. 'Mainstream' means the program is available to Aboriginal and non-Aboriginal people and 'targeted' means the program is specifically targeted to Aboriginal people or communities.

## Department of Justice and Attorney General

The new Department of Justice and Attorney General combines the former Attorney General's Department and the Department of Corrective Services.

### Crime Prevention Division

The Crime Prevention Division (CPD) leads the development of evidence-based policies and programs to prevent crime and reduce re-offending in NSW. CPD works in partnership with communities, government agencies, business and other service providers. CPD's programs are implemented through targeted programs, with an emphasis on the criminal justice system.

As well as running a number of programs targeted at Aboriginal youths including the Safe Aboriginal Youth Program, CPD undertakes substantial consultation with Aboriginal communities on a range of criminal and civil justice issues through 20 Aboriginal Community Justice Groups, with a combined membership of approximately 600 Aboriginal community members.

### Corrective Services

Corrective Services NSW (CSNSW) provides custodial and community-based services for the management of offenders and the administration of sentences and remand orders delivered by courts. Whilst primarily recognised for operating 33 correctional centres, two transitional centres and seven periodic detention centres (and overseeing 2 privately managed correctional centres), CSNSW in fact manages almost twice as many community-

based offenders serving sentences of parole, home detention, community-based supervision and community service orders, compared with custodial inmates. CSNSW also manages a number of residential facilities for community-based offenders: five Community Offender Support Program Centres (COSPs), the Balund-a Residential Facility at Tabulam and Biyani Cottage for dually-diagnosed women (ie, diagnosed with co-existent mental illness and drug/alcohol addiction).

Of the 35 correctional centres in NSW, only one (Kariong Juvenile Correctional Centre) is a juvenile correctional centre, incarcerating juvenile inmates. A juvenile inmate is an inmate who is under the age of 21 years, who may be held in a juvenile correctional centre or an adult correctional centre. A number of juveniles aged between 16 and 18 years are transferred to a juvenile correctional centre from a juvenile detention centre (operated by JJ NSW, Department of Human Services) under section 28 of the Children (Detention Centres) Act 1987. For this to occur a juvenile must be on remand for a serious offence, or be of bad behaviour, or have previously been transferred to the juvenile detention centre they are in from a juvenile correctional centre.

Program provision is an integral part of CSNSW's service delivery, both in a custodial setting and for community-based offenders. Under the CSNSW ThroughCare model, inmates may progress from a custodial-based program to a related program in the community upon their release from custody.

Indigenous offenders represent nearly 22% of offenders in custody and over 18% of community-based offenders.<sup>12</sup> A number of correctional centres and the Balund-a residential facility predominantly cater for Indigenous offenders, whilst a number of community-based offender programs also predominantly cater for Indigenous offenders. Other programs are available to all offenders regardless of culture, but are particularly directed towards Indigenous offenders.

## TACKLING OVER-REPRESENTATION

Research over the years has consistently indicated that entrenched socio-economic disadvantage are the persistent drivers of the over representation.<sup>13</sup> Addressing the over representation of Aboriginal young people in the justice system requires a national commitment and action by governments at all levels to reduce the socio-economic disadvantage of Aboriginal people.

It is noted that current Council of Australian Government agreements under the *National Indigenous Reform Agreement - Closing the Gap* and Commonwealth social inclusion priorities are far-reaching and include programs and initiatives to close the gap for Indigenous Australians with respect to life expectancy, child mortality, access to early childhood education, educational achievement and employment outcomes.

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<sup>12</sup> Of the 10,336 inmates in custody on 29 November 2009, 2,232 (21.8%) identified as Indigenous, comprising 2,009 males (21.2%) and 223 females (29.9%). No corresponding Indigenous figures for community-based offenders on 29 November 2009 are available, though the CSNSW Community Offender Services Census 2008 showed that on 30 June 2008, 3,283 (18.4%) of a total of 17,884 community-based offenders identified as ATSI while 14 (0.1% of the total number) were aged under 18 and 4,497 (25.1% of the total number) were aged 18-24 inclusive.

<sup>13</sup> Baker, J., *The scope for reducing Indigenous imprisonment rates*, NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin, Number 55, March 2001

Effective interventions for young people require targeted and well coordinated multi-agency responses and the ongoing provision of services to children and young people and their families. Key NSW programs that support this approach include:

- early intervention and support programs for parents
- support aimed at reducing homelessness
- housing and support aimed at reducing re-offending
- drug and alcohol support programs

## RESPONSES TO TERMS OF REFERENCE

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

#### 1.1 The need for early intervention

Developing an environment for positive social engagement that will reduce Aboriginal young people's contact with the criminal justice system requires the implementation of interventions that target risk factors known to contribute to the risk of offending.

The creation of positive family and community environments are key to addressing the primary risk factors for Aboriginal young people coming into contact with the criminal justice system.

Many Aboriginal parents have a greater need of parenting support. In NSW there is a high proportion of Aboriginal families with children ranging from 0-18 years. The parenting skills of Aboriginal families are likely to have been impacted through removals in past generations, the effects of direct and indirect disadvantage and intergenerational involvement in the child protection and criminal justice systems. As a consequence a significant proportion of Aboriginal parents have had little in the way of positive parenting role models and therefore have limited capacity for the 'inter-generational transmission of positive parenting skills'.<sup>14</sup>

The *NSW Young People in Custody Health Survey*<sup>15</sup> and the *Young People on Community Orders Health Survey*<sup>16</sup> found that of those young people surveyed 28% of males and 39% of females in detention reported having a history of out-of-homecare.

The surveys also demonstrate the generational impact of the normalisation of crime and imprisonment within families, with 27% of community clients and 42% of detainees surveyed having a history of parental or step-parental imprisonment.

Emerging research indicates that intensive (in home) work with younger offenders and their families is required to effectively address the risk factors associated with offending. These early intervention services reinforce positive family relationships, increase resilience, promote healthy child development and prevent child abuse and neglect.

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<sup>14</sup> Burns, Burns and Menzies, 1999

<sup>15</sup> Department of Juvenile Justice, Justice Health & University of Sydney, *NSW Young People on Community Orders Health Survey 2003- 2006: Key Findings Report*, 2006

<sup>16</sup> *ibid*



This type of intervention uses a multi agency approach to address a range of issues including substance abuse, reengagement in education or vocational pursuits, health and welfare issues, housing needs, family conflict and negative peer pressure.

The NSW Government offers a significant number of both Aboriginal specific and mainstream family based early intervention programs, described in the next section.

## **1.2 Early Intervention Family-based Programs**

NSW Government programs that aim to foster positive social engagement through early interventions at the level of the family include the following:

- Brighter Futures Program;
- Parent Management Training;
- Intensive Family Based Services;
- Initiatives under the Aboriginal Family Health Strategy;
- Juvenile Justice pilot of the Intensive Supervision Program.

### **Brighter Futures**

The Brighter Futures program provides targeted support to vulnerable families to prevent them from entering or escalating into the child protection system. Aboriginal families account for approximately 25% of families receiving assistance under the program.

The program is designed for families who have children aged eight years or younger or who are expecting a child and who face specific problems, which might include

- Domestic violence;
- Parental drug and alcohol misuse;
- Parental mental health issues;
- Lack of extended family or social support;
- Parents with significant learning difficulties and/or intellectual disabilities;
- Child behaviour management problems;
- Lack of parenting skills/adequate supervision.

Priority of access is given to families with children less than three years of age.

The program aims to:

- reduce child abuse and neglect through reducing the likelihood of family problems escalating into crisis within the child protection system;
- achieve long term benefits for children through improving intellectual development, educational outcomes and employment chances;
- improve parent-child relationships and the capacity of parents to build positive relationships and raise stronger, healthier children;

- break inter-generational cycles of disadvantage;
- reduce demand for services that otherwise might be needed down the track such as child protection, corrective or mental health services.

It complements existing service networks in communities to support families showing early signs of child protection issues.

Families in the Brighter Futures program receive ongoing case management support and at least two of the following DoCS funded service options:

- home visiting;
- parenting programs;
- quality children's services.

Brighter Futures uses a strengths-based approach. It recognises that parents already have skills and expertise when it comes to understanding what works for their family. As a result, services and support will vary according to each family's needs and will be provided for an average time of 18 months to two years to have a lasting effect.

*The Brighter Futures program has a strong evidence base. Key international and national research findings which underpin the rationale and design of the program include:*

- early intervention programs that use multiple interventions work better than those using a single intervention strategy;
- quality early intervention programs enable the most vulnerable children to make significant development gains;
- home visiting can achieve gains for parents, particularly first time mothers and positive effects on children's development;
- parenting programs reduce child behaviour problems and parental stress;
- one-off interventions at a particular development stage are unlikely to have a lasting effect in protecting high risk individuals whereas sustained support is more likely to deliver long term outcomes.

The Brighter Futures program is currently being evaluated. Evaluation information in relation to this program is available at:

[http://www.community.nsw.gov.au/for\\_agencies\\_that\\_work\\_with\\_us/early\\_intervention\\_services.html](http://www.community.nsw.gov.au/for_agencies_that_work_with_us/early_intervention_services.html).

### **Parent Management Training**

The Parent Management Training (PMT) model involves educating and coaching parents to change their child's problem behaviours using principles of learning theory and behaviour modification.

PMT focuses on enhancing parenting skills. The PMT therapist coaches parents in applying strategies in rewarding positive behaviour, and responding to negative behaviour by removing rewards or enforcing punishments.

PMT is one of the most extensively studied therapies for children and has been shown to be effective in decreasing oppositional, aggressive, and antisocial behaviour.<sup>17</sup> Randomised controlled trials have found that PMT is more effective in changing antisocial behaviour and promoting pro-social behaviour than many other treatments (e.g. relationship, play therapy, family therapies, varied community services). There is evidence that gains are maintained both 1 and 3 years after treatment has ended, with one research team finding that children with early behavioural problems treated through PMT were functioning as well as non-clinic individuals approximately 14 years later.<sup>18</sup>

An essential part of any successful parenting model will be for Aboriginal families to have some control over and input into how family services are provided.

The DHS believes the parenting programs most likely to be effective with Aboriginal communities are those which:

- Target parenting skills and parent-child relations and interactions. These have been identified as more effective than generic family support;
- Start early during pregnancy;
- Are designed and implemented in collaboration with the Aboriginal community in which they will be used; and
- Build on existing family parenting strengths. Programs work better when they are positive and preventative in approach rather than remedial.<sup>19</sup>

### **Intensive Family Based Services**

NSW Community Services' *Intensive Family Based Services* (IFBS) provide an intensive, time-limited, home-based program for eligible Aboriginal families in crisis (including extended family). Eligible families are those at risk of having their children removed, or those needing intensive intervention to facilitate reunification and the safe return of children from out-of-home care to their families. This model uses family group conferencing as a strategy to engage the family in decision-making about family and child-raising matters and to implement the principles of Aboriginal self-determination and participation.

IFBS caseworkers work with families to improve life skills, parenting capacities, coping abilities and problem solving. Families are also linked up with appropriate community and service supports both during and after the intervention. Evaluation information in relation to this program is available at:

<http://www.aes.asn.au/conferences/2008/presentations/Sue%20Leahy%20080910%20IFBS.pdf>

The service is based on the premise which underpins the *Homebuilders USA* model: that it is best for children to grow up in their own families, and where there is child abuse and/or neglect skilled professionals can assist families to learn more appropriate ways to care for their children.

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<sup>17</sup> Dumas, 1989; Forehand & Long, 1988; Kazdin, 1985; Miller & Prinz, 1990; Moreland, Schwebel, Beck, & Wells, 1982

<sup>18</sup> Feldman, J. & Kazdin, A. E. (1995). "Parent management training for oppositional and conduct problem children", *The Clinical Psychologist*, 48(4), 3-5.

<sup>19</sup> Department of Community Services, *Aboriginal Communities Submission to the Special Commission of Inquiry into Child Protection Services in NSW*

## **Aboriginal Family Health Strategy**

Prevention and early intervention are key approaches used in developing initiatives under the Aboriginal Family Health Strategy. The aims of the Strategy are:

- To reduce the incidence and impact of family violence in Aboriginal communities.
- To build the capacity and strength of individuals and communities to respond to, and recover from, family violence.
- To nurture the spirit and cultural identity that builds Aboriginal families.

Amongst other strategies, the Aboriginal Family Health Strategy funds Aboriginal Family Health Workers who provide support to individuals and families that may include initial crisis support, advocacy and referral to other services. They also perform broader community development and education strategies, with a focus on prevention and early intervention.

## **Intensive Supervision Program**

Juvenile Justice is currently piloting an *Intensive Supervision Program (ISP)*, based on the Multi Systemic Therapy (MST) model of family intervention. MST is an intensive family and community based treatment model designed to make positive changes in the various social systems (home, school, community, peer relations) that contribute to serious anti-social behaviour in juveniles.

Operating in Newcastle and Western Sydney, the ISP is an evidence-based, multi agency program specifically aimed at juveniles who commit serious and/or repeat offences or whose severe anti-social behaviour increases their likelihood of offending. The program addresses some of the factors associated with juvenile re-offending including substance abuse, financial problems, housing needs, family conflict and negative peer pressure. ISP seeks to promote responsible behaviour and decrease antisocial behaviour amongst juvenile offenders.

The program also seeks to promote behavioural change in the young person's family, peer and school environment by reaching into the homes, schools and local communities of serious young offenders to tackle underlying family problems and disadvantage within the wider community.

While not exclusively targeting Aboriginal young people, the program is designed to be responsive to the needs of Aboriginal families with each pilot site having an Aboriginal liaison officer attached to its operation. The pilots are being independently evaluated by BOCSAR, and early indications are that the reoffending rates for those young people participating in the ISPs have dropped significantly.

Initial review indicates the following *overall* outcomes;

- Offending rates dropped by 60% while families received ISP services;
- Offending dropped further, by 74%, 6 months after families terminated services with ISP.

So far, 17 Aboriginal families have participated in the ISP. Of these:

- Offending dropped by 55% while families were receiving ISP services ;

- Offending dropped further, to 67%, 6 months after families terminated services with ISP.

While the primary aim of the ISP is to have an effect on young people already involved in the criminal justice system by reducing their risk of further re-offending, international research strongly indicates that these types of family interventions may have a preventative effect on younger siblings in a family as parents learn the skills to parent more effectively.

### **1.3 Individual development programs**

In addition to the above family based services, NSW also invests in broadly based programs for individuals aimed at fostering critical interpersonal and life skills for at-risk Aboriginal youth, such as the program offered by the Tirkandi Inaburra Cultural and Development Centre.

Tirkandi Inaburra offers a program aimed at empowering Aboriginal young people through providing intensive educational support and the tools and skills to develop and draw on their own resilience. The program is available to Aboriginal boys (12 –15 yrs) at risk of contact with the criminal justice system.

The Centre houses up to 16 Aboriginal boys aged 12 to 15 years, who stay at the Centre on a voluntary basis for three to six months. The Centre is managed by the local Aboriginal community and funded by the NSW Government. The Centre is located on a 780 hectares rural property between the townships of Coleambally and Darlington Point in the Riverina district of south-west NSW.

There is a strong focus on critical interpersonal and life skills including taking responsibility for and considering the consequences of actions, communicating needs and resolving conflict in a non-aggressive manner. The program includes educational, sport, recreational and cultural activities, which have all been designed to incrementally develop each participant's skills and abilities. Schooling is provided on site by the NSW Department of Education and Training. The program also emphasises cultural education and aims to strengthen participants' cultural identity. All graduates are supported through an exit plan and mentoring programs on return to their communities.

Tirkandi Inaburra accepted the first participants in January 2006. Reports from Tirkandi Inaburra indicate that the program has a significant impact on the lives of participants, with the vast majority re-engaging in education, training or employment upon graduation from the program.

### **1.4 Education programs**

NSW also invests in other programs aimed at reinforcing social norms through education and awareness raising activities. Some of these programs are outlined below.

#### **Aboriginal Family Health Strategy**

The Aboriginal Family Health Strategy (discussed above) also engages in broader community development, education and awareness raising activities that work to change attitudes to family violence, sexual assault and child abuse. These initiatives include workshops and forums that bring communities together to discuss and work on local anti-violence and abuse solutions. The initiatives aim to respond to local needs and contexts, actively engage local communities, including elders and other community leaders and relevant government agencies, and incorporate healing and promotion of Aboriginal independence and empowerment.

## LOVE BITES

LOVE BITES is a mainstream school-based early intervention and prevention program that focuses on sexual assault and domestic and family violence.<sup>20</sup> The program is aimed at young people aged between 14 and 18 and was developed collaboratively by the Area Health Services' Women's Health Educator, Community Services Regional Strategies Office as well as local family violence services and educators.

The program delivers educational workshops on sexual assault and domestic violence as well as interactive workshops to consolidate core teachings through creative outlets (for example, facilitators working alongside students to write, perform and record a hip hop song and develop posters and other resources around the issues of domestic violence and sexual assault). The program contributes to local community campaigns including 16 days of Activism to Stop Violence Against Women, White Ribbon Day and Reclaim the Night. Participants from local high schools contribute their artwork and resources to the campaigns and perform their songs and drama at these events. Students also take the lead in engaging local media on these campaigns.

### 1.5 Sporting and Recreational Programs

Sporting and recreational programs for at-risk youth are also an important tool in encouraging positive social engagement in older age groups.

Lack of structured leisure and recreational pursuits is a well recognised criminogenic risk factor. Community based sport and recreational activities offer a positive alternative to drug and alcohol use and anti-social behaviour. Research suggests that sport and recreational programs have the capacity to reduce anti-social and criminal behaviour among young people if delivered with programs that address other criminogenic risk factors, and that young people who participate in sports commit fewer petty offences and fewer serious offences than those who do not participate in sport.<sup>21</sup>

The provision of social supports, such as safe places to congregate and supervised community activities, is also essential to help young offenders integrate into society after periods in detention and to provide positive alternatives to offending. Structured community activities and programs can allow young people to establish significant pro-social relationships with adults and their peers, and provide a forum for the development and practice of new skills and behaviours.

A range of programs and approaches that can impact positively on the health, wellbeing and resilience of children and young people in the middle years (age 9-14) are discussed in the recent report of the NSW Parliamentary Joint Committee on Children and Young People: *Children and Young People Aged 9-14 years in NSW – The Missing Middle*. The Committee found that well-designed sport and recreational activities conducted outside of school hours can assist in the social, emotional and skills development of 9-14 year olds; reduce the risks associated with lack of adult supervision; contribute to improved health and wellbeing; and in some circumstances support parents/carers to participate in the workforce. The Committee made several recommendations for the expansion of after school and vacation programs particularly in disadvantaged communities.

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<sup>20</sup> For further information see the program website at <http://napcan.profero.com.au/programs/love-bites>. A paper summarising the program can be found at [www.archi.net.au/e-library/awards/awards07/partnerships/love-bites](http://www.archi.net.au/e-library/awards/awards07/partnerships/love-bites)

<sup>21</sup> Mason, G & Wilson, P, *Sport, Recreation and Juvenile Crime*, Australian Institute of Criminology, Canberra, 1988 p8,41, pp 114-115, p132

The development of recreation-based strategies requires the involvement and cooperation of local government, the community and service agencies in specific locations. In NSW, Police play a key role in diverting eligible young people into positive alternatives to offending behaviour. Juvenile Justice works in close partnership with Police and Community Youth Clubs (PCYCs), which provide a range of sporting, recreational and other programs to disadvantaged young people involved in the juvenile justice system.

PCYC is introducing a pilot program targeting Aboriginal young people in the Mt Druitt area and its surrounds. The program will provide structured recreational activities along with a homework assistance program. If successful, the program may be introduced into other areas with significant Aboriginal populations.

### **1.6 Post-offence Programs**

Programs encouraging positive social engagement are also targeted to juveniles and young adults who have already come into contact with the justice system, both in a custodial setting and for community-based offenders, in programs provided by Corrective Services NSW (CSNSW).

CSNSW has found that programs for Indigenous offenders are more effective at reducing re-offending and reintegrating offenders back into the community where they endeavour to address underlying socio-economic disadvantages and are conducted in the context of Aboriginal culture and community. Such programs are successful when they are based on localised and long-term co-operative relationships built with target communities and focus on the well-being of the entire community. In particular, the development and implementation of effective programs to address offending behaviour within Indigenous communities requires:

- projects which involve the community and community “ownership” of the project, including ownership of intellectual property,
- projects run over the longer term rather than short-term projects or pilot projects,
- programs which add to existing programs rather than being developed independently,
- project development that is fluid so as to fit the needs of the community in which it is occurring, and which enables the capture of new knowledge, and
- programs which are built on Indigenous knowledge, experience and terms of reference.

Good examples of such programs include those offered at:

- The Balund-a Residential Facility, Tabulam and
- The Brewarrina (Yetta Dhinnakkal) Centre and Ivanhoe (Warakkirri) Centre.

#### **Balund-a Residential Facility, Tabulam**

Balund-a is a residential facility located near Tabulam (near Casino) on the North Coast of NSW within the Bundjalung Aboriginal nation. The Centre opened in late 2008 and accommodates up to 70 offenders (50 male and 20 female). The Centre is an alternative to full time custody. Offenders generally reside at the Centre as a condition of their bail or

sentence or as a condition of a Section 11 Good Behaviour Bond<sup>22</sup>, with the length of stay ranging from 3 to 12 months.

The centre aims to break the cycle of offending through:

- Recognising, restoring and valuing cultural links of young adult offenders with their land and history;
- Providing a range of programs that target issues relating to offending behaviour, thus contributing to safer communities;
- Developing activities and programs that increase educational, vocational and employability skills;
- Involving the community and family as well as the offender in facilitating change;
- Forging ongoing relationships with Aboriginal communities and developing sustainable partnerships with community organisations to support the re-entry of offenders into the community;
- Undertaking enterprises and activities that utilise the property's natural resources within their limits which enhance the property's environmental, pastoral and asset value; and
- Developing sustainable partnerships with community organisations in order to support the re-integration process.

Programs are delivered, as far as possible, by community-based groups and their content and delivery reflect the needs of the predominantly Aboriginal clientele. Contracts have been entered into with community groups to provide selected programs at Balund-a. An emphasis has been placed on Aboriginal-specific programs, or adapted programs presented by Aboriginal facilitators. Balund-a has a high proportion of Aboriginal staff and can provide culturally appropriate support to Aboriginal offenders.

### **Brewarrina (Yetta Dhinnakkal) Centre and Ivanhoe (Warakirri) Centre**

The Brewarrina (Yetta Dhinnakkal) Centre and Ivanhoe (Warakirri) Centre are correctional centres located in rural settings which, whilst not exclusively Indigenous, both provide a culturally appropriate and holistic approach to reducing re-offending.

These centres give young ATSI offenders the opportunity to learn a range of practical work skills, including motor maintenance, building skills, and land management. These work skills are combined with educational programs that primarily focus on enhancing literacy and numeracy skills. Respected Aboriginal Elders also instruct offenders on Aboriginal heritage and culture and offenders attend therapeutic programs that target problematic behaviour, such as substance abuse, anger management, and family violence.

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<sup>22</sup> Also known as a "Griffiths Remand".



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

### **2.1 Impacts of alcohol and other substance abuse**

Alcohol and other drug use is one of many factors influencing juvenile crime. Alcohol and illicit drug abuse among young people involved in the criminal justice system has been found to be very high, independent of Aboriginality. Young people with drug, alcohol and mental health problems have a high risk of recidivism. Research into adolescent offending and drug use has found that alcohol abuse is a more significant issue than that of illicit drug use and this may be particularly so in the case of Aboriginal young people, resulting from the impact of alcohol use in the family home and in Aboriginal communities.<sup>23</sup>

High rates of alcohol and substance use by parents are also a concern. Alcohol or substance abuse may lead to parental absence or neglect (including through imprisonment for alcohol or substance related crime), thereby contributing to transgenerational disadvantage. Maternal alcohol exposure in pregnancy also results in a range of disabilities such as Foetal Alcohol Syndrome (FAS). FAS can cause irreversible brain damage leading to behavioural problems and mental retardation resulting in poor school performance. If untreated, the child has a higher risk of delinquency, precocious sexual behaviour, substance abuse, incarceration and suicide. Prevention strategies need to focus on education and early intervention, and not only involve health professionals but link clearly with education, housing, justice and other community services.

In 2009 Justice Health interviewed 312 young people in custody, of whom 149 identified as Aboriginal.<sup>24</sup> The survey found high rates of drug and alcohol use, mental illness and parental imprisonment among juveniles in custody, with some differences between the Aboriginal and non-Aboriginal populations. Major findings are summarised below. Daily cannabis use was associated with younger detainees (15 and under), committing crime to get drugs or alcohol and being on drugs at time of offence.

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<sup>23</sup> Hunter, B., *Factors underlying Indigenous arrest rates*, Centre for Aboriginal Economic Policy Research, Australian National University, 2001

<sup>24</sup> Justice Health, NSW Health, and Juvenile Justice, *Young people in custody Health Survey 2009*, Unpublished

## Young people in custody Health Survey 2009

	Aboriginal	Non-Aboriginal
<b>Alcohol and substance use</b>		
One or more parents with an alcohol or drug problem	40%	26%
Drank alcohol at risky levels prior to imprisonment	81%	67%
Reported alcohol had caused problems in the last year	70%	51%
Reported committing crime to get alcohol or drugs	72%	58%
Reported using drugs at least once a week in past year	82%	74%
Reported being drunk at the time of offence	60%	49%
Reported daily cannabis use	70%	64%
Reported being under the influence of drugs at time of offence	54%	45%
Reported drugs causing problems in the last year	56%	47%
<b>Mental illness</b>		
Found to have high or very high levels of psychological distress	26%	29%
Reported ever self-harming	18%	15%
Reported ever attempting suicide	11%	8%
<b>Parental imprisonment</b>		
Had a parent who had been in prison	61%	29%

A study of young people on Community Orders in NSW in 2006 found the majority wanting to or had attempted to give up substance abuse in the past year.<sup>25</sup> However, there are few opportunities for young people to access support to do this and fewer culturally sensitive options. A lack of community based youth specific services is a barrier to treatment. NSW has one Aboriginal specific drug treatment service and only two youth specific services.

### 2.2 How health and justice authorities can work together to address the impact of alcohol and substance abuse

Much contact with the criminal justice system by Aboriginal young people could be prevented by addressing the social and health causes surrounding criminal behaviour, including alcohol use and substance abuse.

Drug treatment programs can reduce re-offending and combining drug treatment with cognitive behavioural interventions can increase the impact of such programs.

Current models of treatment for juveniles with alcohol or substance abuse problems generally focus on interventions with individuals after they have already become involved in the criminal justice system. A number of these are described below:

#### Existing NSW programs

In NSW, Juvenile Justice has developed a number of alcohol and other drug strategies to work with juvenile offenders, both in custody and in community based settings.

When in custody detainees are provided with a comprehensive range of health services including nursing, general medical, psychiatric, dental and optometry. Every person entering custody undergoes a comprehensive health assessment and this is very often the first time that young people are properly medically assessed and problems diagnosed.

<sup>25</sup> Justice Health, NSW Health, and University of Sydney, Evaluation of the Connections program, Unpublished, 2009

## **The Nepean Youth Drug & Alcohol Service (NYDAS)**

NYDAS in Western Sydney is the only youth drug and alcohol treatment service in NSW that is separate from the juvenile justice system. It is a specialist service that works flexibly to meet the access needs of young people. NYDAS is well regarded by both young people and health professionals and works within a holistic model of care to address a range of issues for young people related to their alcohol and other drug use. The Service includes counselling, case-management, rehabilitation and withdrawal, general information, education and referrals in collaboration with other health and community service providers.

## **The Ted Noffs Foundation**

The Foundation provides essential services for young people and their families who are experiencing drug and alcohol problems and related trauma. The Program for Adolescent Life Management (PALM) is a residential program of up to three months for young people with serious alcohol and substance use problems, which is offered in five locations in Australia. The Dubbo facility in Western NSW incorporates cultural learning through Aboriginal elders and Aboriginal staff to ensure cultural sensitivity and program retention.

## **Alcohol and Other Drug Program**

The Alcohol and Other Drug (AOD) Program, run by Juvenile Justice, is a specialist program that aims to address the needs of young offenders whose pattern of alcohol and other drug use is related to their offending behaviour.

It is delivered in community and custodial environments and provides young offenders with strategies and assistance to reduce harm associated with alcohol and other drug use, thereby benefiting the young person and the community. This specialist counselling program is part of a holistic approach that considers all aspects of the young person's life.

The program assists young offenders to increase their understanding of why they use drugs and the consequences of drug use. It also helps them to formulate alternative strategies, behaviours and coping skills. The program is based on a philosophy of harm reduction and empowering young offenders to take responsibility for the choices they make.

## **AOD Counsellors**

Juvenile Justice has a network of 33 alcohol and drug (AOD) counsellor positions located in a range of metropolitan and regional localities. Five of the counsellors are attached to the NSW Youth Drug and Alcohol Court (further details below). AOD counsellors provide specialist AOD counselling services to young offenders who are on community based orders under the supervision of Juvenile Justice. Fifteen generalist counsellors also provide AOD counselling where appropriate to young offenders in the community and in custody.

## **Dthina Yuwali**

*Dthina Yuwali* is an Aboriginal drug and alcohol group-work program developed by Aboriginal staff of NSW Juvenile Justice. Using culturally appropriate methodology the program aims to address the links between alcohol and drug use and offending behaviour. It includes the participation of Aboriginal elders and can be used both in community and custodial environments. The program uses a three-staged approach and is based on cultural learning.

This program has been piloted, positively evaluated and is currently being prepared for state-wide implementation.

## Justice Health Programs

In addition to the programs outlined above, Justice Health has commenced Adolescent Health and Community Team (ACCT) and Community Integration Team programs. ACCT focuses on diverting Aboriginal young people from detention and into health services. It provides community based assessments, court liaison and diversion, discharge planning for those in custody or occupying a mental health inpatient bed, and case management. Community Integration Team (discussed more fully at 5.2 'Post-release support programs') is aimed at improving continuity of care for drug and alcohol, mental health, and general health upon release from custody.

**Note:** Further drug and alcohol initiatives are discussed at 5.1 'Diversion'.

### Options for expanding early intervention services

Increasingly, it is recognised that early intervention services are important tools to address the impact that alcohol use and substance abuse have on criminal behaviour. Factors that are recognised as important to address these issues are:

- the importance of early intervention to assist development of positive social connections and self esteem;
- the importance of interventions including family and community, rather than just the individual youth;
- the recognition that mental health problems may contribute to or co-exist with substance abuse issues, and that each of these are linked to social determinants of health such as poor maternal health and overcrowding and occur in association with disability, including intellectual disability, and with physical ill health.

It is important that health and justice authorities work together to identify young people who are showing disturbed behaviour and ensure early intervention services reach those people. Options for expanding early intervention services include:

- Implementing targeted prevention and early intervention programs for children and their families through partnerships between mental health, maternal and child health services, schools and other related organisations;
- Expanding the level and range of support for families and carers of people with mental illness and mental health problems, including children of parents with a mental illness;
- Developing tailored mental health care responses for highly vulnerable children and young people;
- Expanding community based youth mental health services which are accessible and holistic, combining access to primary health care, mental health and alcohol and other drug services with opportunities to learn skills and confidence;
- Implementing evidence based and cost effective models of intervention for early psychosis in young people; and
- Expanding services which include young people who are or at risk of involvement in the criminal justice system, as well as people who have experienced physical, sexual or emotional abuse, or other ongoing trauma.

Under the NSW Implementation Plan for the National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes, ACCT and Community Integration Team services discussed above are being expanded.

Further useful information can be found in the National Indigenous Drug & Alcohol Committee's Report "Bridges and Barriers: Addressing Indigenous Incarceration and Health. The recommendations of the report are consistent with the aims of the current inquiry.

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

Poor school attendance and / or behaviour are some of the primary risk factors for juvenile offending and education levels for young people in detention are commonly low. Three-quarters of NSW juvenile detainees surveyed in 2003 and 2006 left school before finishing Year 9, and over 90% had been suspended at one time or another.<sup>26</sup>

Young people's difficulties at school are often compounded by mental health issues or intellectual disability. Rates of intellectual disability among juveniles surveyed in 2003 and 2006 were as high as 17% among detainees and 15% among community clients. The Australian Human Rights and Equal Opportunity Commission observed in 2008:

*An Indigenous young person with either a cognitive disability or mental health problem slips through all the nets of early detection and assessment. They struggle at school and act up in class. Their presentation is simply attributed to bad behaviour. Rather than address the cause of the problem, the education system deals with the young person through punishment and exclusion. Not surprisingly, the young person drifts out of the education and into poor peer relationships, boredom and offending behaviour.<sup>27</sup>*

The opportunity for young offenders in custody to re-engage in the education system is crucial to continued education and training pursuits once they leave custody. Education and training helps to reduce re-offending by providing a sense of purpose through which detainees may prepare to reintegrate with the community in a positive way.

In NSW a number of educational initiatives are run through Juvenile Justice, with the aim of facilitating ongoing educational opportunities for Indigenous juveniles in the criminal justice system. These include:

- Education and Training Units (ETUs): These are run in each of the eight detention centres around NSW. In the 2009 school year (up until the end of June), 1,311 detainees were enrolled in ETUs and 633 enrolled in TAFE. 140 detainees enrolled in School Certificate Courses, 56 were enrolled to do their higher school certificate and 94 to complete their school certificate.<sup>28</sup> Difficulties remain, however, with facilitating the re-admission of offenders into the mainstream schooling system when they are released from custody;

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<sup>26</sup> 2003 and 2006 NSW Health Surveys

<sup>27</sup> Australian Human Rights Commission, *Preventing Crime and Promoting Rights of Indigenous Young People with Cognitive Disabilities and Mental Health Issues*, 2008

<sup>28</sup> Juvenile Justice Annual Report 2008-2009

- Budda Jitja: This is a culturally appropriate 12 week employment and mentoring program that provides Aboriginal young offenders with the opportunity to develop a greater understanding of their culture, obtain TAFE qualifications and connect with potential employers. The program links Aboriginal young offenders with Commonwealth funded job providers to better connect offenders with work and training opportunities.

It is noted that the NSW Department of Education and Training has separately provided a submission to this inquiry that refers to matters relevant to this term of reference.

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

### **5.1 Diversion**

Diversion programs allow a juvenile offender to be disciplined without the necessity of interaction with traditional court processes. This section describes a number of best practice examples of general and Aboriginal-specific diversionary programs in NSW as well as a number of more recently established diversionary schemes.

#### **The Young Offenders Act 1997 and Youth Justice Conferences**

In NSW the primary legislative diversion tool is the *Young Offenders Act 1997* (YOA), which provides a graduated scheme of diversionary options including formal warnings, cautions and youth justice conferences.

There are various principles that guide the operation of the Act including:

- Criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter;
- Where appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties;
- Over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system should be addressed by the use of youth justice conferences, cautions and warnings.

Youth justice conferences are an alternative to court for juvenile offenders who have committed certain kinds of crime. Youth justice conferences bring young offenders, their families and supporters together, face-to-face, with victims and their support people, police, and others who have been harmed by the offence or who can contribute to the formulation of a realistic and achievable outcome. Together they must agree on a suitable outcome that can include an apology, reasonable reparation to victims and steps to link the young person back into the community. Youth justice conferencing is designed to:

- Encourage young offenders to accept responsibility for their behaviour;
- Strengthen their families;

- Provide developmental and support services; and
- Enhance the rights and interests of victims of crime.

Evaluations of the scheme indicate that Youth justice conferencing is both viewed positively by participants and has a significant impact on recidivism.

In a survey of 329 conferences held across NSW in 1999, BOCSAR found a high level of satisfaction with both the process and the outcomes.<sup>29</sup> At least 89 % of the subjects believed that they had received procedural justice and had been treated fairly during the conference proceedings. Subjects understood the conference process and perceived that the conference was fair to both the offender and the victim involved. Furthermore, they believed that they had been treated with respect, could express their own views and could influence the decisions made about what should be done in their case. Victims and offenders also believed that the conference respected their rights.<sup>30</sup>

Other research by BOCSAR supports a connection between conferencing and reduced recidivism. A 2006 BOCSAR study found that the likelihood, frequency and occurrences of re-offending within 5 years of a caution or conference were lower than the corresponding rates for offenders who had appeared before the court.<sup>31</sup> A 2009 BOCSAR study of the re-offending patterns of young people who had participated in youth justice conferences in its first year of operation found that (when the effects of other factors are controlled for) both the risk of reoffending and the rate of reappearances per year in the follow-up period (between 27 and 39 months) were about 15 to 20 % lower for those who had a conference than for those who went to court.<sup>32</sup>

The 2009 BOCSAR study also reviewed empirical research of restorative justice schemes in other jurisdictions. Much of this research has questioned whether direct correlations can be drawn between participation in a conference and future offending, given that many young offenders who are dealt with by way of a conference have chaotic and unsupported lives. However, the literature does indicate that conferences that do not shame young offenders or their families, that result in young people accessing services to help them to deal with the problems they are facing and provide them with reliable adult support, are more likely to result in diminished or no future offending, than those that shame an offender or do not provide for adequate and appropriate services following the conference.

### **Participation in diversionary schemes under the Young Offenders Act 1997**

Despite the success of youth conferencing outlined above, issues remain in relation to participation by Aboriginal young people in the diversionary measures provided for under the YOA.

Youth justice conferencing is under-utilised for both Aboriginal and non-Aboriginal youth, with less than 5% of matters for Aboriginal and non-Aboriginal juveniles participating in conferencing as an outcome. Some of the barriers to participation of Aboriginal young offenders in judicial diversionary programs include having a prior criminal history, the degree of violence associated with an offence and the necessity for an admission of responsibility

<sup>29</sup> Snowball L, *Juvenile diversion and Indigenous offenders: a study examining juvenile offenders in Western Australia, South Australia and New South Wales*, Canberra: Criminology Research Council, 2008

<sup>30</sup> *The Health of the people of New South Wales*, Report of the Chief Health Officer, NSW Health 2008, [http://www.health.nsw.gov.au/publichealth/chorep/atsi/atsi\\_pop\\_agesex\\_atasi.asp](http://www.health.nsw.gov.au/publichealth/chorep/atsi/atsi_pop_agesex_atasi.asp)

<sup>31</sup> Vignaendra, S., & Fitzgerald, J., "Re-offending by young people for cautioned and conferenced", *Crime and Research Bulletin* No.103, October 2006

<sup>32</sup> NSW Bureau of Crime Statistics and Research, *Evaluation of Forum Sentencing*, 2009

for the crime, without which a young offender is not eligible to be admitted to diversionary programs.

In response to these issues, the NSW Attorney General has approved the formation of a Working Group to develop strategies to improve access to diversion options for Aboriginal juveniles, while concurrently identifying areas of the juvenile justice criminal justice system where Aboriginal Elders and respected community members can become involved in decisions and providing advice to courts.

### **Youth Conduct Orders**

The Youth Conduct Orders (YCO) Pilot is an intensive, diversionary program, aimed at reducing a young person's anti-social and offending behaviour by addressing its underlying causes through integrated case management.

A \$1.4 million trial of the YCO Program commenced on 1 July 2009 in the Campbelltown, New England and Mount Druitt Police Local Area Commands. The trial will run for two years and will be independently evaluated to measure its success in reducing re-offending amongst young people.

Under the trial, young offenders charged with lower level anti-social offences can be placed on a YCO for up to 12 months. The scheme is novel in that young people can participate in the scheme whether they have pleaded not guilty, pleaded guilty or been found guilty, as long as they consent. An inter-agency case coordination panel then assesses the juvenile and recommends to the Court an appropriate case management plan. Orders can include strict limitations on a juvenile's movement and behaviour to ensure they are not exposed to antisocial influences. These may include curfews, school attendance requirements and non-association orders. Offenders also undergo intensive case management with their families, requiring them to confront issues such as drug and alcohol dependence and may be referred to treatment for mental health problems, while their families may be given help with parenting support and housing. When the YCO expires, the young person will reappear before the court and their conduct during the program may be taken into account in sentencing.

The aim of the program is to get young offenders to work with their families in addressing the causes of their anti-social behaviour before they graduate into career criminals.

### **Anti Social Behaviour Pilot Project**

The Anti Social Behaviour Pilot Project has been rolled out in the same three pilot locations as the YCO program. This program is also based on an integrated case management model. However, participation in this scheme does not require that the child or young person first be charged with a criminal offence. The Department of Premier and Cabinet is the lead agency for this initiative.

An intended advantage of these pilot programs running in the same areas is that families can be looked at holistically. For example, if during the course of a young person's participation in the YCO scheme, siblings are identified as being at risk to themselves and/or the community, but have not yet progressed down the criminal spectrum to the stage of warranting a Youth Conduct Order, or indeed may be too young to be held criminally liable, they can also receive the benefits of an intervention program and integrated case management.

### **The Illicit Drug Diversion Initiative (IDDI)**



The Illicit Drug Diversion Initiative (IDDI) was a COAG initiative that commenced in 1999 to divert minor drug-related offenders from the criminal justice system into treatment for their drug problems with the aim of reducing recidivism.

NSW operates a number of programs under the initiative to divert both juvenile and young adult offenders from the criminal justice system into treatment for their drug and/or alcohol problems. These programs include:

- Youth Drug and Alcohol Court;
- Magistrates' Early Referral into Treatment (MERIT);<sup>33</sup>
- Rural and Regional Alcohol and other Drug Counsellors;
- Rural Residential Rehabilitation Units;
- Cannabis Cautioning Scheme;

In 2008/09, Indigenous participation in these programs was reported as:

MERIT	18.47%
Youth Drug and Alcohol Court	21% (33% since program inception)
Young Offenders Rural and Regional Counselling	56%
Young Offenders Residential Rehabilitation Units	37% Coffs Harbour 64% Dubbo
Cannabis Cautioning Scheme	2.90%
Rural Alcohol Diversion (RAD)	36%

These programs are described further below.

### **Youth Drug and Alcohol Court**

Young people may be referred to the Youth Drug and Alcohol Court (YDAC) by a Children's Magistrate if they are between 14 and 18 years old, plead guilty to an offence, have a serious drug or alcohol problem, would otherwise face a custodial sentence and are willing to participate in the program while on bail.

The YDAC provides individual case management to such juveniles. The aim of the court is to reduce re-offending by young people who have become entrenched in the criminal justice system by helping them overcome their drug or alcohol problem.

YDAC is a 6 – 12 month program which offers broad intervention based on an in-depth, holistic assessment of their needs. Each participant is assigned a Juvenile Justice AOD counsellor and is provided with health services, accommodation assistance and education

<sup>33</sup> 74% of total Commonwealth funds allocated to the local court-based MERIT program in 2008/09.

and training opportunities. At the end of the program, the young person is sentenced, taking into account the efforts during the YDAC program.

YDAC is jointly funded by the NSW and Commonwealth Governments and has been operating since 2000. From July 2000 - June 2009, 32.7% of YDAC participants were Aboriginal or Torres Strait Islander.

A BOCSAR evaluation of the NSW Drug Court showed that it is more cost-effective than prison in reducing the rate of re-offending among offenders whose crime is drug related. The study found that the Drug Court group were 37 per cent less likely to be reconvicted of any offence and 58 per cent less likely to be reconvicted of a drug offence.<sup>34</sup>

YDAC is a prime example of a successful diversionary program based on interagency responses to the criminogenic needs of young offenders.

### **MERIT and RAD**

This is a court-based, pre-plea diversion program under which defendants with illicit drug use problems may be bailed to undertake treatment and rehabilitation for up to three months. Hearings and final sentencing are deferred while the defendant completes the program. While on the program, defendants are subject to ongoing judicial management.

The Rural Alcohol Diversion pilot (RAD) trialled an expansion of the MERIT program to include defendants with a primary alcohol problem appearing in court charged with alcohol-related offences. It has been expanded to Broken Hill, Wilcannia and Wellington, with a trial in metropolitan locations expected to commence this year.

The NSW Audit office recently examined Aboriginal participation in the MERIT program and considered ways to meet the needs of Aboriginal defendants and better enable them to access MERIT. The report found the MERIT Program to be a highly appropriate intervention program for Aboriginal defendants, demonstrating both improved health and justice outcomes for many participants.

### **Young Offenders Rural and Regional Counsellors**

This program provides individual counselling, group work, brief interventions, community alcohol and drug education and referrals to health and other services. The program consists of seventeen rural AOD Counsellors and one coordinator. The counsellors travel extensively each month to provide treatment services to substance-using young people (aged 12-18 yrs) in the criminal justice system in rural and remote areas.

### **Young Offenders Residential Rehabilitation Units**

This consists of two residential based drug rehabilitation programs for young people who are either clients of Juvenile Justice or at risk of entering the juvenile justice system as a result of their drug and alcohol misuse.

These medium term residential drug and alcohol services have been established in Coffs Harbour and Dubbo, accommodating up to 8 young people aged 14-18 years, for a period of 8-12 weeks in each unit. A three month aftercare component is also provided, which is aimed at supporting integration of its participants back into the community.

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<sup>34</sup> NSW Bureau of Crime Statistics and Research. "The Costs of NSW Drug Court: A re-evaluation of its effectiveness", *Crime and Justice Bulletin* No. 121

## **Cannabis Cautioning Scheme**

This scheme gives police the discretion to caution rather than charge minor cannabis offenders allowing offenders to consider the legal and health consequences of their cannabis use and seek treatment and support. Offenders issued a first caution are encouraged to contact the Alcohol and Drug Information Service (ADIS). A second caution requires offenders to contact ADIS for a mandatory telephone health education session. Only two cautions can be issued.

If offenders continue to use cannabis and are caught by police, they are charged and have to attend court. People with a history of violent, sexual or drug offences cannot be cautioned.

## **Evaluated Effectiveness of the Illicit Drug Diversion Initiative (IDDI)**

Consistent with the NSW Government's evidence based approach to drug policy, the IDDI programs have been evaluated for effectiveness, with this informing the ongoing operation and development of what are now well established programs.

NSW diversion programs have been evaluated favourably and identified as good or best practice, including under national evaluations commissioned by the Commonwealth.<sup>35</sup>

Evaluations have demonstrated a range of positive benefits from various programs including:

- High level of acceptance by participants and stakeholders such as the judiciary<sup>36</sup>;
- Reductions in recidivism<sup>37</sup>;
- Improvements in participants' health, well being and social functioning<sup>38</sup>;
- Reduced levels of illicit drug and alcohol use<sup>39</sup>; and
- Savings in court and police time and resources<sup>40</sup>.

Mainstream court diversion programs such as MERIT have the potential to impact on a large number of Aboriginal defendants. For example, one study shows that for Aboriginal defendants who entered MERIT before 31 December 2006, 77% who completed the

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<sup>35</sup> See for example, Australian Institute of Health and Welfare, "The Effectiveness of the Illicit Drug Diversion Initiative in rural and remote Australia" 2008, <http://www.aic.gov.au/publications/current>, and Australian Institute of Criminology, "Police Drug Diversion: A Study of Criminal Offending Outcomes" 2007, <http://www.aic.gov.au>.

<sup>36</sup> Judicial Commission of New South Wales, "Merit: A Survey of Magistrates" 2004, <http://www.shop.nsw.gov.au>.

<sup>37</sup> Northern Rivers University Department of Rural Health, "Evaluation of the Lismore MERIT Pilot Program" 2003, <http://www.ncahs.nsw.gov.au>.

<sup>38</sup> *ibid.* and NSW Health, "The Magistrates Early Referral Into Treatment (MERIT) Program: health outcomes" 2007, [www.health.nsw.gov.au](http://www.health.nsw.gov.au).

<sup>39</sup> NSW Health, "The Magistrates Early Referral Into Treatment (MERIT) Program: health outcomes" 2007, [www.health.nsw.gov.au](http://www.health.nsw.gov.au).

<sup>40</sup> NSW Bureau of Crime Statistics and Research, *Three Years On: An Implementation and Outcome Evaluation*, 2004.

program had not committed another crime within 6 months of program entry. This compares to a rate of 50% for those who did not complete the program.<sup>41</sup>

### **Diversionsary programs and bail**

As described in the introduction to this submission, there has been an unprecedented growth in the juvenile remand population in NSW in recent years. Consequently, programs aimed at ensuring that young persons can be bailed are important in reducing their involvement in the criminal justice system. Current initiatives in this respect include:

- *Bail Assistance Line* - NSW is currently establishing an after hours Bail Assistance Line (BAL) to assist young people to avoid remand at the point of arrest by assisting NSW Police and courts to find placements for young people in safe and secure accommodation.
- *Integrated Case Management of High Risk Adolescents - Parramatta Children's Court* - This program is a two year pilot program due to commence in 2010. It will concentrate on young people who have conditional bail but no suitable accommodation. The project is designed to provide integrated case management services across agencies. Whilst not specifically targeted at Indigenous youth the program has the capacity to work with Indigenous youth and it is likely that they will be referred for services given the over-representation of Indigenous youth in justice systems.

### **5.2 Post-release support programs**

A significant challenge for repeat Aboriginal and non-Aboriginal juvenile offenders is that following the conclusion of a juvenile justice court ordered mandate, many young people either remain in or return to environments that do not support the consolidation of positive attitudinal and behavioural changes fostered while under Juvenile Justice supervision.

Reviews of Australian and international literature identify that the four most important factors contributing to successful re-integration into the community upon release are accommodation, education and employment and social networks.<sup>42</sup>

These findings are reflected in the 2008-09 *Staying Strong on the Outside – Indigenous Young Adults*,<sup>43</sup> a research report on factors contributing to positive outcomes for young Indigenous adults (aged 18-25) released from custody, which found that the four most important factors that contribute to reduced recidivism are accommodation, education and employment, treatment programs and social networks. Its specific findings included that:

- Accommodation is the most immediate problem facing the offender post-release and is a significant risk factor for reoffending;
- Indigenous people tend not to participate in mainstream programs, or are more likely to drop out than other participants, due to the lack of Indigenous specific programs and services;

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<sup>41</sup> NSW Auditor General, "Report Performance Audit: Helping Aboriginal Defendants through MERIT" August 2009, <http://www.audit.nsw.gov.au/performance>.

<sup>42</sup> Wilson, A, *Successful prisoner re-entry: an analysis of the most important variables*, 2008

<sup>43</sup> prepared by Secretariat for the Health, Ageing, Community and Disability Services Ministerial Conference (HCDSMC)

- Substance abuse programs post-release should incorporate families and communities, as substance abuse is a wide problem that cannot be addressed successfully on an individual basis.

The NSW experience has shown also that interventions should start prior to release and carry through into the transition and post-release periods. A case-management model has also been shown to be effective in delivering the services needed by an individual prisoner.<sup>44</sup>

In NSW a number of government and NGO run programs provide best practice pre and post release support services to young people, including Aboriginal young people, on release from custody.

### **Dedicated pre-release unit**

In NSW case planning for all young people in the care of Juvenile Justice involves pre and post-release planning. To enhance this process, a dedicated pre-release unit is to be established at Reiby Juvenile Justice Centre to transition suitable young people nearing the end of their period in custody back into the community. Further units will also be established as resources and appropriate accommodation become available.

### **Community Integration Team**

In 2008 the NSW Government established a Community Integration Team (CIT) to coordinate the transition of health care for young people in custody with a mental illness and/or problematic drug and alcohol issues when released from detention and re-integrate into the community.

CIT coordinates care for young people in custody prior to and during the critical post release period by making links to appropriate specialist and generalist community services. The CIT currently operates in Gosford (Central Coast), Wagga Wagga (Riverina) and Dubbo (Orana), with expansion to metropolitan Sydney underway.

The lack of Aboriginal specific programs has been identified as a major barrier to Aboriginal participation and successful reintegration from prison.<sup>45</sup> The CIT attempts to overcome some of these issues by employing Aboriginal staff and, where possible, linking young people to culturally appropriate services such as Aboriginal Community Controlled Health Services.

Between 2008 and 2009, 366 young people were referred to CIT of which 93% (341) were found suitable. This included 53% (193) Aboriginal young people. Of the 341 young people participating in the program over a one year period 16% (59) had a drug and/or alcohol problem, 34% (124) had mental health issues and 50% (183) had both drug and/or alcohol and mental health issues. During this period 42 (13%) returned to custody.

Anecdotally the major reason reported for returning to custody was a breach of bail conditions consistent with non compliance with supervision orders. Anecdotal reports from program staff also cite a lack of specialist youth services and chronic health needs of some young people beyond the jurisdiction of the program as barriers to further progress.

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<sup>44</sup> Borzycki, 2005, pp.21-23

<sup>45</sup> Cunneen C, "Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: some conceptual and explanatory issues", *Current issues in criminal justice*, 2006, 17(3): 329-346

## **South Sydney Youth Services – Post Release Support program**

South Sydney Youth Services' (SSYS) runs a number of programs supporting Aboriginal young offenders referred by Juvenile Justice, including a Post Release Support Program and a Local Offender Program which are aimed at assisting with re-integration and reducing recidivism.

The Post Release Support Program engages with a young person six weeks prior to release from custody when an assessment is made identifying a wide range of practical and therapeutic issues. Upon release, intensive support is tailored to the individual and may include developing strategies to assist in the development of life skills and practical assistance such as accommodation, income support, education and health.

SSYS worked with 39 young people in 2007/08, of which 67 per cent were referred to the service by Juvenile Justice under the Post Release Support Program and 33 per cent under the Local Offender Program. Over 70 per cent of the young people referred were long-term clients (12 weeks and over) needing intensive support. Of the young people referred to these programs, 75% have not re-offended.

## **Housing Assistance Programs**

Suitable and stable housing is a key element of reintegration post-release from custody and is a key factor in reducing re-offending. Access to stable accommodation assists people with multiple and complex needs to access mainstream and specialist services as well as reconnect with family and their community.

### **Joint Tenancy Assistance Program**

While not exclusively targeting this group, existing housing assistance programs form an important part of the support services for Aboriginal youth upon release from detention. Such existing programs include the NSW Joint Tenancy Assistance Program (JTAP) a long-standing partnership between Juvenile Justice, Housing NSW, Community Housing providers BridgeHousing and CatholicCare. This program offers housing support for young offenders between 16 to 18 years old over a 12 month period or more.

JTAP consists of an initial intensive joint case management phase by Juvenile Justice and CatholicCare and ongoing support by all four partners for the length of the young person's engagement with the program. The program places young people into accommodation and supports them to live independently and take responsibility for their accommodation needs. The program provides support with lease arrangements, ongoing advice on budgeting, meeting commitments and maintaining a household.

By addressing the needs of young people who are homeless, or at risk of being homeless, the program has helped stabilise their lives and significantly reduce their risk of reoffending. Significantly, 93% of the young people in the program did not re-offend while on the program and achieved a range of other education and employment outcomes.

In addition to existing housing programs, a number of new initiatives commenced in late 2009 that target provision of housing and support to offenders and ex-prisoners, with the aim of reducing re-offending and homelessness. These include:

- Targeted housing and support: this project will assist people exiting custody and resettling in Greater Western Sydney and may capture Indigenous people under 25.

- Discharge Planning Project: this project will aim to develop multi-agency service delivery discharge plans for people leaving care, custody or health facilities. This will benefit people exiting adult and juvenile custody as well as people exiting health facilities.
- Sustaining tenancies for ex-prisoners in Far West NSW: this project will focus on people at risk of homelessness exiting Broken Hill, Ivanhoe Correctional or Wellington Correctional Centres who intend to live in the Broken Hill, Wilcannia and surrounding areas, with a focus on Aboriginal people. It may capture young adults.
- South West Sydney Youth Hub: This project focuses on assisting young people with low to high needs through either campus-based supported accommodation or supported independent living. There is a particular emphasis on supporting young people to achieve their education and employment goals. A key target group for this initiative are young people exiting juvenile detention who are at risk of homelessness. It is expected that a number of Aboriginal young people will be assisted under this initiative.

## **6. The scope for 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**

### **Coordinating access to effective services**

Aboriginal youth in the justice system typically have multiple sources of disadvantage and require support from a number of different agencies. Clearly, coordinated action and partnerships within and between government service agencies is central to providing effective interventions for Aboriginal youth.

However, research reveals that coordination across services can continue to be improved. In particular, a recent NSW Justice Health investigation into high rates of Aboriginal incarceration in Central Western NSW showed significant barriers to mainstream services for Aboriginal people, particularly mental health and drug and alcohol services.<sup>46</sup> Services were found to be 'service focused' as opposed to 'client focused' and Aboriginal clients had difficulties in accessing services.

An alternative approach to coordinating service provision to Aboriginal communities has been tried in the recent Murdi Paaki COAG Trial, one of eight trials being carried out across Australia, with the aim of improving coordination of government services for Indigenous people based on priorities agreed with the community.

In the Murdi Paaki region Community Working Parties (CWPs) identified community priorities through extensive community consultation and developed Community Action Plans. Action Teams were then established, comprising Australian and NSW Government agency representatives, to engage with the CWPs to implement the Community Action Plans.

The evaluation of the trial found that the key lesson from the trial was the need to build strong relationships both between government and communities and across government agencies, but suggested that more work needs to be done to maintain a flexible, whole of government approach to improve service delivery.<sup>47</sup> Nevertheless the trial successfully

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<sup>46</sup> Aboriginal Court Diversion Project, 2009, Unpublished

<sup>47</sup> Evaluation of the Murdi Paaki COAG Trial, Urbis Keys Young 2006

demonstrates that the government can work with communities to build trust and partnerships in developing frameworks for responsive service delivery.

At the more general planning level it is recognised that issues with the administration and funding of services can reduce the effectiveness of outcomes for Aboriginal young people at risk or involved in the justice system. These include:

- The complexities of state and federal responsibility and funding, which often create inefficiencies.
- Lack of accountability of funding for Aboriginal programs. Much targeted funding does not reach Aboriginal people with little transparency or opportunity for appeal.
- Short funding cycles. Many evidenced based programs take some time to develop and implement. Short term funding creates difficulties in retaining a quality workforce (including community links and corporate knowledge), program improvements and efficiencies.

The Commonwealth and states are collaborating on a number of partnerships to reduce Indigenous disadvantage under the National Indigenous Reform Agreement (NIRA). These are expected to establish specific justice related targets, indicators or agreements under the NIRA framework. There is scope through this process to strategically align and dedicate funding specifically toward programs to reduce contact with the criminal justice system, particularly as children enter adolescence.

There are also opportunities to further use existing COAG and Ministerial Council processes to improve government service delivery, including by:

- Utilising the planned National Indigenous Law and Justice Advisory Body;
- Ensuring implementation and accountability for the National Strategic Framework for Aboriginal and Torres Strait Islander Health, including the expansion of Aboriginal Community Controlled Health Services and adherence to a social improvement agenda;
- Developing jurisdictional priorities that reflect the recently endorsed National Indigenous Law and Justice Framework.

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

The focus of much of NSW prevention and early intervention programs is on 0-5 year olds and their parents. These programs are based upon the recognition that improvements in health and emotional well-being at an early developmental stage are crucial to later outcomes for at-risk youth. Many of these programs have been discussed above in relation to the first term of reference.

However, there remains a significant need to develop prevention and early intervention programs for young people in the 9 to 14 years age group. This was identified in the 2008 Special Commission of Inquiry into Child Protection in NSW, in which Justice Wood commented that some NSW programs targeted at young people have been unable to provide sufficient interventions for young people with at risk behaviours or high support needs.<sup>48</sup>

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<sup>48</sup>Special Commission of Inquiry into Child Protection, 2008, p.830



The Report of the NSW Parliamentary Committee on Children and Young People, *Children and Young People aged 9-14 years in NSW: the Missing Middle*, identified that developments in prevention research suggest that a single well-designed intervention strategy targeting risk factors and strengthening protective factors will significantly reduce the prevalence of a number of negative outcomes for young people, particularly if they can be addressed earlier in adolescent development, such as the transition to high school.

In response to the Wood Inquiry, the NSW Government released a five year plan to re-shape child protection services in NSW called *Keep them Safe*. Community services has commenced consultation and scoping for the development of a "Brighter Futures" style early intervention service (as discussed in relation to the first term of reference above) for vulnerable 9-14 year olds which would give priority of access to Aboriginal children and families. This project will be influenced by the Government response to the *Missing Middle* report.

## CONCLUSION

NSW has made significant efforts over the past decade to address the over-representation of Aboriginal young people in the juvenile justice system and to try to ensure that the services and programs provided to Aboriginal young people are responsive to their needs. However, a sustained effort is required in the context of the proportion of Aboriginal young people aged 7-18 growing and, the lack of family structures to support their development.

This submission has discussed a number of strategies that encompass the NSW Government's approach to assisting Aboriginal young offenders to develop positive behaviours, build their resilience and increase their capacity to participate in their communities without offending. Key elements of these strategies include:

- Strengthening families and parenting abilities by providing co-ordinated multi-agency services over a sustained period;
- Increased focus on building the evidence base to inform the development of effective services and programs for Aboriginal young offenders;
- Enhanced service delivery and investment in programs across jurisdictions for 9-14 year olds with high complex needs;
- A recommitment to working in partnership with local Aboriginal communities and Aboriginal Peak Bodies to develop approaches to deal with law and justice issues within their communities.
- An increased focus on education and employment training to build skills and independence, focused on supporting young people aged 10-18 years, to reduce primary risk factors for offending.

