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The Hon Bob Debus MP Committee Chair  
House of Representatives Standing  
Committee on Aboriginal and Torres  
Strait Affairs Parliament House Canberra  
ACT 2600

**Report**

Chairman the House Standing Committee on Aboriginal and Torres Strait Islander Affairs. This submission is to provide information to enable the committee to review the lack of criminal diversionary programs for Indigenous Australians within the Australian Capital Territory (ACT). The lack of options is problematic for the judiciary given there are no specifically designed diversionary programs available to the judiciary as a sentencing option. This lack of options is of concern to the Indigenous community it is believed that we are approaching a new and dark period for the Aboriginal people of Australia. This period is being spoken of as the jailed generations. Please find attached a proposal that we the compilers, believe will provide more suitable options other than the incarceration of Indigenous offenders. The program is titled: Circuit Breaker.

## **EXECUTIVE SUMMARY**

### **Purpose**

- To brief you on the continuing increase of young Aboriginal people appearing before the Australian Capital Territory Law Courts.
- This paper will inform you of 'Circuit Breaker' a proposed alternative sentencing option that we propose be incorporated as an adjunct to the traditional judicial process.
- The objective of the Circuit Breaker program is to address the disproportionate numbers of Indigenous offenders entering the judicial and penal systems.
- Circuit Breaker is a proposed diversionary program that aims to modify the behaviour of young Indigenous people that are sentenced by the judiciary or enter the program voluntarily.
- The Circuit Breaker program aims to work with existing programs such as the ACT Restorative Justice program and the Winnunga Nimmityjah Aboriginal Health Service which incorporates a number of programs that can be usefully employed in the proposed Circuit Breaker program.
- The Circuit Breaker program aims to work in association with the Ngambri Circle Court and provide further sentencing options for the Canberra judiciary.

## **Recommendations**

That you:

1. Consider the attached material regarding Circuit Breaker as an alternative sentencing process for young Aboriginal offenders;
2. Approve funding to research the benefits that accrue to Indigenous communities by participation in judicial processes such as 'Circuit Breaker';
3. Establish an inter agency group to involve other agencies (including law enforcement) in the investigation of the proposed Circuit Breaker model;
4. Provide funding to establish a feasibility study and pilot program into the benefits and costing of the Circuit Breaker program.

## **Aboriginal history in the ACT region**

For some 21,000 years the Ngunnawal people have been the inhabitants of the Canberra region. Archaeological evidence of the Ngunnawal people's occupation of the area can be found at Birrigai Rock Shelter at Tidbinbilla Nature Reserve, in Namadgi National Park and in other locations throughout the Australian Capital Territory (ACT). The Gundungurra people lived to the north of Ngunnawal country, with the Ngarigo to the south, Yuin to the east and Wiradjuri to the west. The people generally travelled in small groups but would regularly come together for corroborees and feasts and to utilise seasonal foods, such as the Bogong Moth. <sup>1</sup>

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<sup>1</sup> Australian Bureau of Statistics, Australian Capital Territory in Focus, 2006.  
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/B43FFBFD93BFC572CA2571E600180BCF?opendocument> at 1 September 2009.

(1)

## **Problem**

### **Disconnection with land and Community**

The establishment of Canberra as the Nation's Capital has seen a steady increase of Indigenous people that have moved from other locations into the area. This has had the effect of breaking connections with traditional tribal history and the connection with land for these newcomers. In essence it signifies the passing of the traditional land tribal connection for many Indigenous people once that individual moves off country. It is often postulated that this connection with the land and traditional history and stories can have a detrimental effect on an individual's behaviour. Many in the Indigenous community labour under low self esteem and are considered the "other" in society.

Compounding this is the harsh reality of low socio economic standing, poor health lack of education and shorter than normal life expectancy. Even more problematic is the suicide rates that are massively disproportionate to the remainder of Australian community. Studies have found suicide rates up to ten times the remainder of the Australian community. It has been argued that these rates of suicide may be attributable to the oppression and discrimination of Aboriginal people. The apparent propensity for Aboriginal people to commit suicide by hanging was brought to public attention with the Royal Commission into Aboriginal Deaths in Custody. The suicide problem has parallels with Canada where similar disproportionate figures exist with respect to Aboriginal peoples committing suicide.<sup>2</sup>

#### **1.1**

##### **Disproportionate incarceration figures**

Based on (ABS) figures for June 2006 there were 4282 Indigenous Aboriginal or Torres Strait Islander people living in the ACT, or 1.28% of the population. Nationally, Indigenous Australians represent 2.6% of the population. It was established in 2006 that Indigenous people were 13 times more likely to be incarcerated than non-Indigenous people. Aboriginal

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<sup>2</sup> Ernest, Hunter, Aboriginal and Torres Strait Islander suicide (2001) *University of Queensland*.

juveniles, aged between 10 and 17 years are 28 times more likely to be in detention than non-Indigenous young people<sup>3</sup>. In Queensland, young Indigenous people represent over 55% of those incarcerated in detention centres. Indigenous women are imprisoned at a rate per head of population 20 times that of non-Indigenous women and this rate is increasing far more rapidly than for Indigenous men. Between 2002 and 2006, the imprisonment rate for Indigenous women increased by 34% and Indigenous men increased by over 20%.<sup>4</sup>

### 1.1.1

#### **10 – 18 Year olds coming before the ACT Courts**

Indigenous juvenile crime in the ACT and its effects on community and families continue to cause concern for the Indigenous population. Both Indigenous and non-Indigenous youth crime figures continue to escalate to record levels. Quoting from an article by Lois Andrews titled '*Teen criminals beat path to jail*', (Canberra Times 30 August 2009), 'The ACT has the nation's highest concentration of youth crime'. Statistical analysis shows that in the ACT for the period 2007-08, 41% of these people were younger than 20 years of age with 17 year old boys the predominant offenders.<sup>5</sup> Aboriginal young people are over represented in these figures.

### 1.1.2

#### **Reasons**

##### **(A) Anomie**

The gradual breakdown of community and dispossession of cultural contact, historical brutality, the stolen generations all continue to cause stress and confusion and eroded a sense of position and self worth for many Aboriginal people. Aboriginal men feel disempowered as women continue to assume positions of dominance in both the family and in the community. Aboriginal men consider that they have no role to play, many continue down a well

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<sup>3</sup> Stephen Lunn, *Police treatment of Juveniles influenced by colour*, (2009) The Australian, <http://www.theaustralian.news.com.au/story/0,24897,26133832-601,00.html> at 13 October 2009.

<sup>4</sup> *Ibid.*

<sup>5</sup> Louis Andrews, *Teen criminals beat path to jail*, *Canberra Times*, 30 August 2009, p.23-24.

trodden path to hotels, conflict, and domestic violence and finally gaol<sup>6</sup>. PhD Aboriginal student Paul Collis posed the following questions at the 2010 Aboriginal New Way Summit at the Australian National University:

- What is community for Aboriginal people today?
- Is it order a sense of place and position in community?
- Do Aboriginal people have a role in the greater society?
- What is the Aboriginal mans role in community today?
- How do these affects play out on community?

The impingement of white mans law has affected the sociological state of the Aboriginal community. The gradual erosion and abandonment of social and moral framework according to Collis may have links to the evolving upsurge in crime figures and gradual abandonment of community. One of the last vestiges of community for Aboriginal people is "**death and funerals**". He points to the fact that death is what brings Indigenous people together along with attacks against our fellows, hence the riots over deaths at the hands of authorities.

**(A)**

### **Causes**

#### **Case study**

As s panel member of the Ngambri Circle Court in Canberra the author has witnessed many offenders with very similar histories pass through the Circle Court. To exemplify the point a case study may assist the committee fully comprehend the problem. Bill (his name has been changed for obvious reasons) is a seventeen year old youth that has been in trouble with the police from a very early age. Bill along with his younger sister Jess, (also a fictional name) lives with a half sister from their mothers' earlier defacto relationship. As children both have lived on the streets not knowing where their next meal will come from. Both were unwanted by there mother from a very early age. The mother is a current alcoholic and a drug user.

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<sup>6</sup> Lucy Snowball and Son Weatherburn Theories of Indigenous violence (2007) NSW Bureau of Crime and Research.

Both children have lived with a succession of uncles and aunts and extended family but until recently neither had known their father. Bill had attempted reconciliation with the father in another city but this proved unsuccessful as it impinged on an already pre-existing relationship. The father has spent many years in and out of jails and is a recovering alcoholic. Bill despite his age has already had a number of convictions for car stealing and break and enters and various other petty crime. Bill is a user of marihuana and alcohol and has at times been treated for a mental condition. Both children due to the dysfunctional childhood have poor numeracy and literacy skills. Bill is very close to his younger sister Jess and claims that she is his only form of stability in his life. Bill has been through the Ngambri Circle Court and as a panel member we found that he has the potential to turn his life around given the opportunity. He and his sister have found stability with a half sister who loves and protects them both. The half sister attended court on their behalf and spoke about how she could assist them in there recovery. Bill and Jess are typical of the young people that come through the Circle Court.

What is problematical is the lack of options that are available to a magistrates' with the Bill and Jess type scenarios' these situations are regularly played out in Canberra. Bill fully understands he must change his ways or incarceration remains the only option. The role of the Ngambri Circle Court is not to go soft on crime. It is essential that individuals are instilled with a sense of responsibility. The Ngambri Circle Court is there to bring home reality to these people and make them cognisant of their responsibilities to the Indigenous community and the wider community. Character building and taking responsibility are part of the strategy for making better communities these young people can be part of a resurgent community. The provision of sentencing options are vital to the process.

## **(AA)**

### **Mental Health issues**

Mental health problems are compounding an already major problem as an appreciable percentage of young Indigenous people suffer from cognitive and intellectual disabilities. This can be attributed to some degree to living in poor

physical and social environments. While some of the mental health issues can be traced to aero-sol spray cans, petrol sniffing, drugs, physical and mental violence, there is a wide range of other issues such as the substandard housing, poor nutrition, all of which are contributing factors toward mental health issues.<sup>7</sup>

### 1.1.5

#### (AAA)

##### **Peer pressure and personal responsibility**

Peer pressure plays a significant role in the development of young Indigenous children's early formative years. Aboriginal kids know that they are different and feel that they are at the bottom of the social structure. Aboriginal children naturally congregate together because of this perceived difference and sense that they are 'the other' in society. The early signs of this development are withdrawal, lack of motivation for school work, and invariably truancy becomes a problem. This progression is common to young Aboriginal people that appear before the courts. Lack of schooling racial profiling all inhibits job prospects and inevitably crime becomes an option. Of further concern is the growing perverted custom among young Indigenous men to be imprisoned as a sort of 'rite of passage'.<sup>8</sup> This is a growing problem as is the state of anomie that pervades young indigenous people. These are issues that challenge Indigenous communities across Australia.

#### (AAB)

##### **Problem recognised**

Former ACT Magistrate Shane Madden IN 2004 called for the extension of the magistrate's court in the ACT to include young Indigenous people. Fortunately his call has been heeded and current Magistrate Peter Dingwall now presides in these matters. The statistics acknowledge that young

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<sup>7</sup> Australian Department of Health and Ageing, *Ways Forward: National Aboriginal and Torres Strait Islander Mental Health Policy National Consultancy Report*.  
<http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-pubs-w-wayforw-toc~mental-pubs-w-wayforw-lit~mental-pubs-w-wayforw-lit-chi> at 6 February 2010.

<sup>8</sup> Emma Ogilve and Allan Van Zyl, *Young Indigenous males, custody and the rites of passage*, Australian Institute of Criminology.



Aboriginal people are at the forefront of crime in Canberra area.<sup>9</sup> From the Madden document came figures for Aboriginal young people in the former Quamby Youth Detention Centre. Madden claimed that at times, indigenous young people represented up to and sometimes more than 50% of the inmates. Given that the Indigenous people in the ACT represent 1.28% of the population, this is a massive over-representation. The former Quamby facility had a maximum capacity of 28 individuals.<sup>10</sup>

### **(AAC)**

#### **Statistics continue trending upward**

Statistics for 2007 produced of juvenile detention figures 30% higher than it was in 2002. This trend had commenced back in the early 2000s when Indigenous incarceration rates were at their lowest for many years. That trend is now over, and a new upward trend has commenced culminating in the high figures of 2007. Current incarceration rates are at a 15 year high.<sup>19</sup>

### **(AB)**

#### **Young People and Crime Conference**

Professor Chris Cunneen, speaking at the Indigenous Young People Crime and Justice Conference at the Australian Institute of Criminology, 31 August 09 – 1 September 09 suggested that Aboriginal crime is on the increase. He claimed that since 2002 figures show an increase in crime. Post-1980s the trend was going down until 2002. Professor Cunneen says that indigenous juveniles are 28 times more likely to be locked up and detention numbers are rising for the first time in decades. *Professor Cunneen claimed that another generation of young indigenous people could be lost if detention rates are not brought down.* Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, said 'something was seriously wrong when Australia's justice system shows a 27% increase in indigenous juvenile detention rates from 2001 to 2007'. Calma expressed the view that the system appears to be

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<sup>9</sup> Shane Madden, *The Circle Court in the ACT – An overview and its future*, (2007) <http://www.aija.org.au/Ind%20Courts%20Conf%2007/Papers/Madden.pdf> on 1 September 2009.

<sup>10</sup> *Ibid.*

intent on locking up indigenous youth rather than preventing crime in the first place.<sup>11</sup>

**(ABA)**

**Indigenous Population outgrowing non-Indigenous Population**

The Australian Indigenous population is growing faster than the non-Indigenous population. The Aboriginal and Torres Strait Islander population growth rate is estimated at 2.3% as compared to 1.2% for non-indigenous Australians. This will produce even greater challenges on an already under-serviced and under-funded justice system. The delivery of justice for young Indigenous people is already labouring under severe strain. Indigenous males in 2006 represented 46% of the national juvenile detention population. With Indigenous Juvenile females making 57% of the nation's detention centres, this must be seen as problematic for a nation that has a Federal Government mandate to achieve reconciliation with its Indigenous peoples. Reconciliation is sought by Indigenous people but perhaps it is misplaced given the inequity of Indigenous people making up to 50% or more of the inmates in Australian penal institutions.

**(ABB)**

**Racism remains a problem**

Justice continues to be problematic for Indigenous people. The urban Indigenous person has to contend with subtle and open racism on a daily basis. This was exemplified in the over-zealous policing witnessed in the documentary *Cop It Sweet*, depicting policing in the Redfern area of Sydney in relation to Aboriginal people. While it is accepted that this documentary *may be rather dated as evidence* it does expose police racism towards Indigenous citizens and the negative stereotyping of Aboriginal people by police.<sup>12</sup> The injustice toward Indigenous people was clearly exemplified in this documentary. The often snide yet subtle exercise of power by police exacerbates a long history of police injustice to Aboriginal people. The

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<sup>11</sup> Tom Calma, *Stop sending our Indigenous kids to jail*, Paper presented at Criminology conference, Parramatta, 31 August – 1 September 2009.

<sup>12</sup> ABC TV Documentaries, *Cop it sweet*: [Motion picture] Jennie Brockie, J. (Producer/Director), (1991).

documentary makes the point that police relations with Aborigines are tenuous at best. Injustice for Aboriginal people is a daily occurrence in Australia. The exposure of this documentary has brought about change. It is generally acknowledged, that much has been achieved toward better Police Aboriginal relations but the progression must continue.

## **(1.2)**

### **Significant Costs**

There is a significant expense to this escalation of juvenile crime. ACT budget forecasts show that to keep just one juvenile at the new Bimberi Youth Justice Centre at Mitchell will cost \$430 per day. The Bimberi facility represents a cost to the taxpayer of \$42.5 million for its construction. With a capacity for 40 individuals this is a significant public cost equating to over \$1 million per prisoner. Bimberi replaces the former Quamby Youth Detention Centre at Symonston.<sup>13</sup> The Stanhope Government has built the Bimberi facility to human rights standards as they have with the new adult jail the Alexander Maconochie Centre. The emphasis is on the rehabilitation of inmates.<sup>14</sup>

### **(1.2.1)**

#### **Aboriginal Legal Service is under-funded**

The cost of legal representation for Indigenous people has become a major concern as Professor Cunneen said at the at the Indigenous Young People Crime and Justice Conference at the Australian Institute of Criminology, 31 August 09 – 1 September 09, he claims that the Aboriginal Legal Service (ALS) lawyers were working an average of 10 hours more a week than lawyers working in the mainstream and were being paid less than legal aid lawyers. The Northern Territory Aboriginal legal service is so chronically under-funded that a mere \$17 dollars is spent on client court costs by comparison with mainstream legal aid, which spends \$762 per client.<sup>15</sup> The

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<sup>13</sup> Louis Andrews, above n3.

<sup>14</sup> *Ibid.*

<sup>15</sup> Chris Cunneen, *Are governments bound to fail Indigenous children and their families and communities*, Criminology conference, Parramatta, 31 August – September 2009.

delivery of legal services to Aboriginal people is consequently of an inferior standard to other Australian citizens.

Chronic under funding it would appear, must impinge on the service attracting high quality lawyer to the (ALS). The potential exists for (ALS) to be jeopardised by this continuing lack of funding. The Canberra office has a higher than normal work load and potentially this may ultimately become problematic in the sense that the 2 current lawyers may not be able to attend to the needs of clients in Canberra, Queanbeyan, Yass, Goulburn and Cooma. This level of work load is denying the client the necessary benefits of the lawyer client relationship. The number of clients and time constraints all seriously impinge on the delivery of service. This author gained an internship with the Canberra (ALS) office and found the lawyers to be *excellent advocates* for Indigenous clients. The observations contained here should not be a reflection on the efforts of the Canberra branch of the (ALS). Clearly time large numbers of clients and funding inequities all cause a serious strain on (ALS) resources.

The ALS is funded by the Attorney-Generals Department via a tendering process which was originally instituted on the 1 July 2005. Initially the Attorney-Generals Department provided this service via a grants-based funding system for contracted legal aid services. The Department had completed the tendering process by June 2006, with contracts for the provision of the Services being established. There are eight network Service Providers throughout the States and Territories. In 2007-08, \$49.25 million in funding was provided. At the present time the ALS, delivers legal services in 84 permanent sites, court circuits and outreach areas across Australia.<sup>16</sup>

It should be obvious that chronic under-funding goes hand in hand with escalating and ever-increasing detention figures. As reported in Lawyers

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16 Australian Government, Attorney Generals Department, *Policy Directions for the Delivery of legal Aid Services to Indigenous Australians*, (2009).

Weekly at 25 June 2004<sup>17</sup> there was concern at the time that Indigenous Australians would face a future with negligible representation at best under the then-proposed tendering out of Aboriginal Torres Strait Islander Legal Services (ATSILS). Both Shadow Attorney-General and the Minister for Reconciliation and Indigenous Affairs claimed that the tendering process was 'fundamentally flawed'. At the time it was reported that both Attorney-General Philip Ruddock and the Minister for Indigenous Affairs, Amanda Vanstone, seemed unconcerned. Perhaps this may help to explain the 83% of the prison population that is indigenous in the Northern Territory. A logical question might be: What does \$17 per person actually provide by way of legal representation? No doubt this to Aboriginal people is an unwanted legacy of Vanstone and Ruddock's *unconcerned attitude*; this must be seen as a major contributing factor in the Northern Territory's 83% incarceration rate and today's burgeoning indigenous imprisonment figures in all states and territories right across Australia.<sup>18</sup>

### (1.2.2)

#### **The remand system**

Another area of the justice system that has become problematic is the Remand System. Here, we find a massive over-representation of Indigenous young people, with figures in Queensland for 2003-04 of almost 84% and correspondingly in New South Wales with 2363 Indigenous young people during 2007-08, with 85% of that number on remand. With respect to Queensland, just 16% of those remanded received a custodial sentence with 62% placed on community orders<sup>18</sup>. Something is seriously wrong with the judicial system when a defendant must be placed in jail on remand. Logic might suggest to an Aboriginal defendant that there is no difference between being imprisoned on remand or jailed for the offence. The result remains the same, jail on remand or jail on conviction. The situation with respect to young Indigenous offenders continues to be problematic in the sense that any

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<sup>17</sup> Lawyers weekly, *Lawyers plan for Aboriginal legal services*, (27 April 2004) lexisNexis, [http://www.lawyersweekly.com.au/blogs/top\\_stories/archive/2004/04/28/lawyers-revile-plans-for-aboriginal-legal-services.aspx](http://www.lawyersweekly.com.au/blogs/top_stories/archive/2004/04/28/lawyers-revile-plans-for-aboriginal-legal-services.aspx) at 27 September 2009.

<sup>18</sup> Robyn Keast, *A profile of Aboriginal and Islander prisoners in North Queensland*, Queensland Corrective Services Commission.

potential deterrent factor is being lost with offenders being placed in jail on remand.

## (2)

### **Detention**

According to Professor Cunneen speaking at the Indigenous Young People Crime and Justice Conference at the Australian Institute of Criminology, the low detention rates of the 1980s and gradual decline of Indigenous detention numbers was over by 2002. Over the last 7 years the figures have trended upward. According to Professor Cunneen we have seen the end of the long-term decline in detention numbers. Moreover, there has been an increase over the last 7 years of 30%, and the incarceration rates today are much the same as they were in the early 1990s. The levels of over-representation are higher than they have been anytime over the last 15 years.

## (2.1)

### **Need for other options**

Incarceration of Aboriginal people has been the preferred option for infringing the law. *For many Indigenous children contact with police starts at an early age, often as young as ten years of age or even younger.* In a large percentage of cases this invariably leads to incarceration and a life of continued contact with the law. Recidivism is a major problem in Aboriginal communities.<sup>19</sup> Indigenous anger in relation to authority, particularly the police, has its basis in governments using police to carry out their mandate. Aboriginal people view violence as synonymous with police. Massacres, deaths in custody and the Stolen Generations are all deeply ingrained in the Aboriginal psyche.<sup>20</sup>

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<sup>19</sup> Chris, Cunneen, Riot resistance and moral panic: Demonising the colonial other (2008) *University of New South Wales*, 29, 1-12.  
<http://law.bepress.com/cgi/viewcontent.cgi?article=1104&context=unswwps> at 3 September 2009.

<sup>20</sup> *Ibid.*

This is one of many reasons why Aboriginal people fear and distrust authority particularly the police. Over-zealous policing continues to be recognised as a contributing factor to the breakdown in police-indigenous relations.<sup>21</sup>

### **(2.1.1)**

#### **Current Programs**

A report by the NSW Department of Corrective Services was submitted to an inquiry by a Senate Select Committee on Regional and Remote Indigenous Communities. The report informed the Committee as to the programs available to Indigenous and non-Indigenous offenders in urban and remote areas of NSW. It was dated February 2009. The programs essentially targeted high-risk offenders, those most likely to re-offend and those who potentially could benefit most from interventions and those who posed the greatest risk to communities.

2 The Department of Corrective Services take the view that Indigenous offenders respond best to culturally-appropriate interventions and Indigenous communities have a high acceptance of culturally appropriate practices. The Department has built a large knowledge base with respect to Indigenous communities on how best to implement culturally-sympathetic programs. The Department gives particular emphasis to the following:

- projects that involve community 'ownership' of projects including intellectual property,
- long-term projects rather than short-term pilots,
- programs that add to existing programs rather than develop independently,
- programs that account for changes within communities,
- programs which are built on Aboriginal knowledge, experience and terms of reference.

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<sup>21</sup> Carrie Chan and Chris Cunneen, 'Evaluation of the implementation of N.S.W. police service and Aboriginal service plan' (2000) Institute of Criminology, University of Sydney. Commissioned by the N.S.W. Ombudsman.

### **(2.1.2)**

#### **Custodial Programs**

The Department of Corrective Services runs many programs, which cannot be reviewed here in detail. However the examples below are consistent with similar programs conducted by the Department. The (Yetta Dhinnakkal) Centre at Brewarrina and the (Warakkirri) Centre at Ivanhoe are rural-based settings that teach Aboriginal offenders building skills, motor maintenance, and enhanced literacy and numeracy skills. Aboriginal elders teach culture and heritage. Other programs target problematic behaviour, such as substance abuse, anger management, and family violence.

Additionally there are a number of programs that are conducted within the maximum security prison system but are not considered here as these programs are for incarcerated prisoners.

### **(2.1.3)**

#### **Community-based Programs**

##### **Tabulam**

'Balunda-a' is a facility near Tabulam (near Casino) and is included here because it is a prison farm on the North Coast of NSW, the area is part of the Bundjalung Aboriginal nation. The centre has a capacity for 70 offenders (50 male, 20 female). The centre was opened in 2008 and it aims to break the cycle of offending by:

- Restoring cultural links for young offenders with the land and history;
- Providing programs that target offending behaviour thereby contributing to safer communities;
- Developing educational, vocational and employment skills;
- Involving offender families to facilitate change in offender behaviour;
- Forging ongoing relationships with Aboriginal communities thereby developing sustainable partnerships with community organisations enhancing offenders re-entry into the communities;



Undertaking enterprises and activities that make use of the property's natural resources within their limits which enhance the property's environmental, pastoral and asset value; and this model focuses on breaking the offending cycle. The program is an alternative to full-time custody.

#### **(2.1.4)**

##### **Current Programs may be infective and too few**

Currently there are two youth programs in the ACT. Winnunga Nimmityjah Aboriginal Health Service operates a youth Diversion Program. The program provides an accredited pre-apprenticeship course which offers a Certificate II, an automotive course that prepares the student for an apprenticeship in the automotive industry. The program is open to both Indigenous and non-Indigenous youth. The program is staffed by just one person, the convenor who is a qualified automotive mechanic. The program has been highly successful winning a National Excellence Award in Aboriginal and Torres Strait Islander Health in 2007 in the category of Excellence and Innovation in Service Delivery. The convenor was awarded in 2006 for outstanding service to young people in the ACT.

The second program is controlled by the Gugan Gulwan Youth Aboriginal Corporation. There are two separate parts to this program. One covers art for therapy and the other music for therapy. The programs are staffed by one person, the convenor, an accomplished artist in music and the visual arts.

Currently there are no programs being offered in the ACT which are structured for the rehabilitation of offenders. Both programs afford just one staff person (the convenor) to each program. Both convenors are Aboriginal and have an excellent rapport with the clients. However, neither program is specifically designed as a rehabilitation program with a diversionary purpose. However, both programs are excellent examples of what can be achieved and would be useful additions for the proposed Circuit Breaker program.

(3)

### **Importance of Indigenous leadership**

Self-determination in respect of Indigenous programs has continued to be problematic. The best example of near autonomy was the establishment in 1989 of the Aboriginal and Torres Strait Islander Commission (ATSIC). ATSIC approached near self determination in the sense that Indigenous people had some conduct in the affairs of other Indigenous people. Sadly it was underfunded and became the centre of personal attacks against certain individuals within the organisation.

The eventual demise of ATSIC under the Howard Government came in 2004. ATSIC has been replaced by the Rudd Government by an appointed Advisory Board, unlike the ATSIC Board whose members were elected by Indigenous communities. The Advisory Board is the culmination of a number of failed experiments, starting with the Whitlam Government creating the National Aboriginal Consultative Committee (NACC) in 1973. Then came the National Aboriginal Conference (NAC) under the Fraser Government in 1977 but again this was abolished by the Hawke Government and replaced by the now-abolished ATSIC<sup>23</sup>.

It is vitally important to Indigenous people to have full participation in these programs, particularly if they have serious effects on Indigenous people. The over-representation of Indigenous people in the penal system demands new strategies. The roll back of this ever-increasing problem must involve Indigenous people. Sadly Australia has a long history of failures with respect to Indigenous people. The ethnocentric, we know what is best attitude of the authorities continues to fail Indigenous people. Indigenous people are affected by the escalating incarceration figures almost every Aboriginal person would know somebody affected by this epidemic. Aboriginal people speak from a position of knowledge. This is the horrors of a lived experience for hundreds of Aboriginal families.

The Royal Commission into Deaths in Custody in 1987-1991 brought to prominence a list of 339 recommendations but today a mere handful of those recommendations have been implemented. Aboriginal deaths in custody

continue unabated with increasing figures. At the time of the Royal Commission into Deaths in Custody, Indigenous people were over-represented with 14% within the penal system. Nearly two decades on the situation has deteriorated to such an extent that the figure is now 26%. What makes this all the more astounding is the fact that Indigenous people represent just 2.6% of the population.

### **(3.1)**

#### **Successful Self-Determination Model**

The ACT has a working model of self-determination that provides health and medical services to hundreds of indigenous clients in the Canberra Queanbeyan region, the 'Winnunga Nimmityjah Aboriginal Health Service'. The organisation provides a culturally-safe, comprehensive, holistic health service for Aboriginal and Torres Strait Islander people in the ACT and surrounding regions and is governed, managed and controlled by the local Indigenous community. The Winnunga service provides clinical services including general practitioners, practice nurses, midwives, a dentist, a visiting psychiatrist and a visiting psychotherapist. An extensive Social Health Team provides counselling, advocacy, social and emotional wellbeing support and health education. Winnunga runs a diabetes clinic, a smoking cessation program, a parenting group and men's and women's groups. There is also a needle and syringe exchange program, and an opiate nurse. Outreach prison visits have occurred for many years both within the ACT and to Goulburn and Cooma jails.<sup>24</sup>

The Winnunga Nimmityjah Aboriginal Health Service operates programs in the following areas that would be useful as an adjunct to the proposed program Circuit Breaker program.

- Bringing Them Home, grief and loss, substance misuse, and social and emotional wellbeing counselling;
- Dual diagnosis;
- Youth detox;
- Child and adolescent mental health;
- Carer support;

- Alcohol and other drug use support;
- No More Bundah courses (A Bundah is a cigarette);
- Indigenous Drug Action Week activities;
- Needle syringe program;
- Women's Gathering;
- Parenting program;
- Anger management;
- Medical student education program;
- Home maintenance and
- Oz tag touch football and Black Chick netball club.

#### **(4)**

### **CIRCUIT BREAKER**

**The Circuit Breaker program is a strategy to break the cycle of continued offending by Aboriginal people.**

There are many ways and individual may enter the Circuit Breaker Program. The program is designed to modify antisocial behaviours and the perpetration of crime. A person appearing before the courts may be sentenced to the program or enter the program voluntarily. People coming to the attention of the authorities may benefit from the program.

The Circuit Breaker program has 5 modules that each offender will be required to complete. Upon the completion of all modules a report will be provided to the Ngambri Circle Court.

#### **(4.1)**

##### **Eligibility**

- All clients will be volunteers in the process provided that they are found suitable, the person will become and a client within the program.

How it operates:

- At the commencement a report will be compiled on each client as to his/her goals of attainment objectives.
- Each client will receive a record of attainment for each module achieved.
- Each person will be required to document their journey through the program.
- Given the known educational difficulties some client's experience each client will conduct their own photographic record to document their progression through the program. It is expected that benefits will flow to the Aboriginal community by the participation in the process. Society in generally will benefit by reducing the impact of crime within the wider community.

•  
**(4.1.1)**

**Module 1:**

**The building of bridges and pathways toward reconciliation between the victim and offender.**

Restorative justice works for the community. Victim participation and input is important for closure. In the projected model the often forgotten victim has a chance to participate. The victim will have a chance to see justice done and ask important questions of the offender.

Victims expect the offender to:

- Take responsibility for their action and not minimise their offending;
- Be seen to express remorse and genuinely mean it; and
- Take part in rehabilitation programs and work toward personal improvement.

**(4.1.2)**

**Module 2:**

**Cultural awareness; building for the future by connecting with the past.**

Cultural awareness is an important part of life to Indigenous people. The judicial process in the past has paid little attention to this important aspect of Indigenous life.

- Each offender will be given an opportunity to connect with their culture;
- Each offender will be taught Indigenous Australian history;
- Each offender will be taught what it means to be Indigenous with respect to traditional beliefs and customs and
- Each offender will be taught something of their nations/tribal history.

#### **(4.1.3)**

##### **Module 3:**

##### **Empowerment through education**

Literacy levels among Indigenous people are not consistent with the general population. It is envisaged that a short program of literacy would improve the self-worth and esteem of educationally-challenged offenders.

- The offender will be introduced to the Scaffolding learning program;
- Maximum attention will be on teaching the offender to read as reading is requisite to learning. A basic level of reading will enable the offender to progress to a stage where he/she may choose to continue the learning process outside the program.

#### **(4.1.4)**

##### **Module 4:**

##### **Self awareness and Life Skills**

Many of the offenders who come before the courts have limited life skills. Simple things that are taken for granted in the general community are lacking in many offenders such as cooking and balancing a budget. While these may be considered trifling things, they are important to people who, for various reasons, have spent much of their life in broken homes, on the streets or in institutions.

- Each offender will be taught how to prepare and cook basic food;
- Be taught how to shop for groceries and minimise expenditure and
- Be taught how to budget for food and other daily needs.

#### (4.1.5)

##### **Module 5:**

##### **Offender family histories**

The 1997 Bringing Them Home Report into the Stolen Generations exemplified the importance of the loss of traditions, rights; family history and culture are to Aboriginal and Torres Strait Islander people. While the Circuit Breaker proposal aims to work with juvenile offenders it take's account of the fact that connections with family histories are for various reasons often broken (parents being members of Stolen Generations, dysfunctional families and the like). Given the importance to Indigenous people of culture and family history, it is envisaged that instruction in genealogical research be provided to enable offenders to research their own family histories to make personal connections with the past.

#### (5)

##### **Restorative Justice in the ACT**

The ACT Department of Justice & Community Service operate a Restorative Justice Unit in the Canberra region. The unit has been operating under a phased approach since the 31<sup>st</sup> of January 2005. The unit caters for young offenders between the ages of 10 and 18 years that are considered to have committed less serious offences. Phase 2 will commence at a date to be fixed and will cater to adult offenders and serious offences including domestic violence and sexual assault.

The unit can cater to offenders at any stage in the justice system, prior to attending court; as well as attending court and after-court sentencing. The unit has had 904 non-Indigenous participants, 687 males and 217 females. Indigenous participants total 120, with 89 males and 31 females. Victim participation for non-Indigenous is 755 male and 575 female participants. Indigenous victim participation is much lower in this category with **just 8 male and 8 female participants**. This may relate to lack of Indigenous involvement in the process or the lack of protection for the victim after giving evidence. It is envisaged that by negotiation between the Circuit Breaker program and the Restorative Justice Unit, better uptake rates of Aboriginal people can be

achieved. It can be postulated with some certainty that the lack of involvement of Indigenous people in the organisational process is an inhibiting factor to the use of the program. The Circuit Breaker unit would be better placed to select suitable clients for participation in this process, as Indigenous people must be counselled by Indigenous people as to how the process works and their responsibilities and obligations in the process.

## **(5.1)**

### **Conferencing participation**

For non-Indigenous participants, 416 conferences were held involving 581 offenders. Indigenous participants accounted for 57 conferences with 58 offenders. The compliance rate for Indigenous agreements was 88.5%, the rate for non-Indigenous standing at 93.6%.<sup>26</sup>

## **(6)**

### **Breaking the cycle culturally**

The Circuit Breaker program will restore cultural links for young Indigenous offenders with the land and history. The program will achieve this objective in several ways:

- Aboriginal academically-qualified lecturers in Indigenous studies;
- Aboriginal legally-qualified lectures in law'
- Aboriginal lecturer qualified in social science and justice studies;
- Aboriginal elders conversant with cultural heritage;
- Guest speakers and Aboriginal elders including elders from the Ngambra Circle Court;
- Field trips to culturally-important locations in the ACT including: historically important sites in Namadgi National Park;
- Field trips to equate the clients with the use of facilities at the Institute of Aboriginal and Islander Studies and
- Field trips to prominent art and cultural centres of excellence.



**(6.1)**

**Breaking the cycle of crime**

- Provide programs that target offending behaviour thereby contributing to safer communities;

**(6.1.1)**

**Breaking the cycle through education**

- Offenders will undergo intensive studies in the 'Scaffolding Learning for Life Program'. It is hoped participants will seek further studies upon completion.

**(6.1.2)**

**Breaking the cycle through family participation**

- Family participation in certain facets of offender rehabilitation will be encouraged. An holistic approach must include families.

**(6.1.3)**

**Breaking the cycle through community participation**

As an Aboriginal-inspired, driven and managed initiative:

- Relationship-building with Aboriginal communities is to be encouraged and maintained;
- Community building and empowerment at local level is to be supported;
- Development of sustainable partnerships with community organisations to assist offenders to re-enter communities is to be encouraged
- As has been outlined the Canberra Indigenous community has the 'Winnunga Nimmityjah Aboriginal Health Service' which has many services that the Circuit Breaker program can utilise for clients that exhibit violence, drug and alcohol and substance abuse issues.
- Finally clients will be counselled about career-pathing, re-skilling, and attainment of qualifications and further education.

(7)

### **Selection Process**

The Circuit Breaker program is designed to accommodate not only offending clients but also clients that will be nominated as suitable to enter the program by other routes such as police, parents and the Department of Community Services.

The Ngambri Circle Court will be the main entry point as the Court permits only those offenders that plead guilty to the charges. If an offender is assessed as suitable by the Ngambri Circle Court, that client will then enter the Circuit Breaker program and no further assessment as to eligibility is required. Other Courts in the judicial system may sentence an offender into the program; however, it is incumbent on the client to enter the program as a volunteer. The client will then be assessed as to what attainment goals they expect and what the Circuit Breaker staff expects from each client while in the program.

(7.1)

### **Infractions and Breaches of Protocol**

Given that the Circuit Breaker program is a behaviour modification program it is essential that discipline and order be maintained while clients participate in the program. Failure in these areas may jeopardise the progression of other clients within the program. Infractions of discipline may result in termination of a client's participation in the program. In cases where a client has been sentenced by the courts, and that client exhibits behaviours that may be detrimental to the program safety of staff or other clients that person will be terminated from the program and a written report submitted to the courts in relation to the termination and the breach incurred.

### **(7.1.1)**

#### **System Requirements**

The Circuit Breaker program will require suitable premises to preform module 4 of the program, the Self Awareness and Life Skills component of the program. This will necessitate a kitchen area suitable for the preparation of food. Seating tables and chairs and the culinary utensils that are required for the preparation of food. The conduct of lectures and studies will require suitable premises to accommodate 10 persons at one sitting. It is envisaged that a

small office space with the previously mentioned food preparation area would prove suitable.

The movement of clients from a central pickup area to where that day's program is situated will necessitate a suitable vehicle such as a light bus with a seating capacity for 10 persons. It is envisaged that a bus could be leased for the period of the program.

### **(7.1.2)**

#### **Feasibility study**

There will need to be a pilot program conducted over 4 weeks to gather relevant information and to test the viability for each unit of the program. It is envisaged that a joint venture between the Government and the staff of the Circuit Breaker program be instituted to gathering all relevant information from the pilot program.

### **(7.1.3)**

#### **Staff of the Circuit Breaker program**

The staff will include 2 academically trained professionals in the following areas:

PhD, Mature aged Aboriginal student Paul Collis: communications, qualified teacher in Indigenous cultural Studies.

Wayne Applebee: Mature aged Aboriginal student currently studying for Bachelor of Social Science in Justice Studies, Bachelor of Laws also qualified in Indigenous cultural studies and Aboriginals and the Law.

There will be 2 other Aboriginal staff members included in the program. One a female staff member to cater for female clients this person is a qualified social worker experienced in this area.

And the final staff member is a male that will be the go to person for general day to day requirements driving the bus, provisioning and the like. He will take an active part in all facets of the program as he is also a qualified social worker and is a contemporary artist and musician who is culturally conversant in Aboriginal men's issues.

There have been an initial costing for the Circuit Breaker program but these figures will be discussed on negotiations moving forward. The figures compare favourably with current incarceration rates per day for inmates.

## **Conclusion**

While the ACT has a recognised restorative justice program it does not cater for offender rehabilitation. The victim-offender relationship is vitally important but it is not the only consideration. Rehabilitation of the young person is a major consideration. Severing the cycle of re-offending at the earliest opportunity ought to be the priority for the judicial system. Breaking the cycle of offending at the earliest opportunity is the object of the Circuit Breaker program. It is too late once the offender becomes an adult. Life's opportunities are virtually nonexistent for an Aboriginal person with a criminal record. Being Indigenous ought not to mean that somehow you or your children will stand a one in three chance of being arrested! This program unlike many other is inspired by and will be controlled by Indigenous people. It is designed to be culturally appropriate for Aboriginal and Torres Strait Islander People. It will garner the support of the Indigenous community in a holistic way. As can be evidenced by the Ngambri Circle Court, the Indigenous community is prepared to participate in all facets of the process. The lack of sentencing options has somewhat hindered the potential for even better outcomes from the already high achieving Ngambri Circle Court.

Indigenous people understand that a crime must be punished, what remains problematic is the Indigenous community has a massive over representation that threatens the existence of community. The gulf that exists between authorities and the Aboriginal community only widens with the gaoling of Aboriginal people. The socio economic impact of a gaoling may be the bread winner or the mother to a family. Children may lose a father or mother. Are we on the verge of another lost generation? It is time to heal the wounds; perhaps then reconciliation can be a reality.

***'How would I feel if it was done to me?'***

**Prime Minister Paul Keating. Redfern address. Sydney, 1992**