
The Parliament of the Commonwealth of Australia

Doing Time - Time for Doing

Indigenous youth in the criminal justice system

House of Representatives

Standing Committee on Aboriginal and Torres Strait Islander Affairs

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Canberra

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Foreword

It has been 20 years since the *Royal Commission into Aboriginal Deaths in Custody Report* and yet the incarceration rate of Indigenous Australians, including Indigenous youth, is worse now. Indigenous juveniles are 28 times more likely than non-Indigenous juveniles to be incarcerated, despite Indigenous peoples representing only 2.5 percent of the Australian population. This is a shameful state of affairs.

Indigenous social and economic disadvantage have contributed to the high levels of Indigenous contact with the criminal justice system. Sadly, the Committee found there is intergenerational dysfunction in some Indigenous communities which presents a significant challenge to break the cycle of offending, recidivism and incarceration.

The Committee examined current policy arrangements for overcoming Indigenous disadvantage and found it concerning that the Council of Australian Government's (COAG's) Closing the Gap Strategy did not include a National Partnership Agreement dedicated to the Safe Communities Building Block, nor did it include specific targets relating to justice. The Committee found this concerning in view of the weight of evidence it received during the inquiry that linked unsafe communities to the development of negative social norms and increasingly high rates of juvenile offending.

The Committee has made 40 recommendations to Government and believes that to effect change in the area of Indigenous disadvantage and disproportionate incarceration rates, the following principles must be applied:

- engage and empower Indigenous communities in the development and implementation of policy and programs
- address the needs of Indigenous families and communities as a whole

- integrate and coordinate initiatives by government agencies, non-government agencies, and local individuals and groups
- focus on early intervention and the wellbeing of Indigenous children rather than punitive responses, and
- engage Indigenous leaders and elders in positions of responsibility and respect.

We need to ensure that Indigenous Australians, including Indigenous youth, are given every opportunity to contribute positively not just to their communities but to Australian society as a whole. The Committee recognises the effective and dedicated local Indigenous community organisations and individuals who deliver programs to reduce the high incarceration rate of Indigenous youth.

A wide range of stakeholders contributed to this inquiry, with a variety of views on the overrepresentation of Indigenous juveniles and young adults in the criminal justice system. The Committee would like to thank all of those individuals and organisations who contributed to the inquiry by way of submissions and exhibits, or who had their say at the public hearings and roundtable.

I wish to thank the former Chair, the Hon. Bob Debus, and the Committee of the 42nd Parliament for their contribution to this inquiry, recognising the significant amount of work and time undertaken to collect a large body of evidence for this report.

Too many Indigenous juveniles and youth have done time in our detention centres and prisons. Now it is time to do something about it. It is my hope that this report, *Doing Time – Time for Doing*, will assist in bringing about positive change for Indigenous Australians and that the future will be one of strength and partnership between all Australians.

Mr Shayne Neumann MP
Chair



Membership of the Committee

43rd Parliament

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Deputy Chair The Hon. Dr Sharman Stone MP

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Terms of reference

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

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



List of acronyms

ABS	Australian Bureau of Statistics
AC	Aboriginal Connections
ACCG	Australian Children's Commissioners and Guardians
ACT	Australian Capital Territory
ADAC	Aboriginal Drug and Alcohol Council
ADCA	Alcohol and Other Drugs Council of Australia
ADF	Australian Defence Force
AFL	Australian Football League
AHL	Aboriginal Hostels Limited
AG's	Attorney-General's Department
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health of Welfare
AJA2	The Victorian Aboriginal Justice Agreement Phase 2
ALRM	Australian Legal Rights Movement
ALSWA	Aboriginal Legal Service of Western Australia
ANU	Australian National University

ANTaR	Australians for Native Title and Reconciliation
APY	Anangu, Pitjantjatjara and Yankunytjatjara Lands
ASC	Australian Sports Commission
ASTB	Aboriginal School Based Training
ATSILS	Aboriginal and Torres Strait Islander Legal Services
AVPRSS	Adult Voluntary Post Release Support Service
CAHABPS	Central After Hours Assessment and Bail Placement Service
CAYLUS	Central Australian Youth Link-Up Service
CCC	Communities for Children Committee
CDEP	Community Development Employment Projects
CfC Plus	Communities for Children Plus
COAG	Council of Australian Governments
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
IDDI	National Illicit Drug Diversion Initiative
IEAP	Indigenous Education Action Plan
IFSA	Indigenous Family Safety Agenda
IPROWD	Indigenous Police Recruitment Out West Delivery
IPSS	Indigenous Parenting Support Services
ISP	Intensive Supervision Program
IYMP	Indigenous Youth Mobility Program
MCPEMP	Ministerial Council for Police and Emergency Management – Police
MERIT	Magistrates Early Referral into Treatment
MHATODS	Mental Health Alcohol Tobacco and Other Drugs Service

MSHR	Menzies School of Health Research
NAAJA	North Australian Aboriginal Justice Agency
NAHA	National Affordable Housing Agreement
NAIDOC	National Aborigines and Islanders Day Observance Committee
NAJAC	National Aboriginal Justice Advisory Council
NATSISS	National Aboriginal and Torres Strait Islander Social Survey
NGO	Non-Government Organisation
NIDAC	National Indigenous Drug and Alcohol Committee
PHaMS	Personal Helpers and Mentors
PIAC	Public Interest Advocacy Centre
PRP	Pre-Release Prisoner
PRSP	Post-Release Support Program
QPS	Queensland Police Service
VLA	Victoria Legal Aid
WAACH	Western Australian Aboriginal Child Health
YDAC	Youth Drug and Alcohol Court



List of recommendations

Indigenous youth and the criminal justice system: an overview

Recommendation 1 - National Partnership Agreement 40

The Committee recommends that the Commonwealth Government develop a National Partnership Agreement dedicated to the Safe Communities Building Block and present this to the Council of Australian Governments by December 2011 for inclusion in the Closing the Gap strategy.

Recommendation 2 - Justice targets..... 40

The Committee recommends that the Commonwealth Government endorse justice targets developed by the Standing Committee of Attorneys-General for inclusion in the Council of Australian Governments' Closing the Gap strategy. These targets should then be monitored and reported against.

The role of positive social norms

Recommendation 3 – Positive social norms 60

The Committee recommends the Commonwealth Government continue to fund holistic, intergovernmental services to Indigenous youth and their families and communities, such as Communities for Children Plus, and evaluate their effectiveness in strengthening positive social norms in communities and preventing Indigenous youth engagement with the criminal justice system.

Recommendation 4 - Mentors 64

The Committee recommends the Commonwealth Government support a national program to develop and provide local mentors for Indigenous youth at risk before, during and after custody.

Recommendation 5 – Sport and recreation 72

The Committee recommends the Commonwealth Government:

- work with state and territory governments to support more sporting, music and other recreational activities for Indigenous children and youth outside of school hours, particularly in remote and regional areas
- encourage sporting bodies and sporting celebrities to become more involved in organising sporting engagement for Indigenous children and youth
- ensure continued funding for sports partnership programs and the provision of infrastructure and services to ensure sports participation by Indigenous youth, and
- investigate and address impediments to sports participation for Indigenous young men and women.

Recommendation 6 – Identification documents 74

The Committee recommends the Commonwealth Government:

- investigate options to make the birth registration process more culturally appropriate and accessible in Indigenous communities
- investigate how to raise awareness of the utility and value of the birth certificate document in Indigenous communities
- address reasons for the low rate of birth registrations in Indigenous communities and ensure that Indigenous health services and youth workers are actively working to ensure that births are registered and that all Indigenous children have a birth certificate, and
- liaise with state and territory governments to coordinate assistance to all youth to ensure they have access to their birth certificate and that this is not an impediment to them fully participating in community, travel, education, or employment opportunities.

Recommendation 7 - Accommodation 85

The Committee recommends that the Commonwealth Government commit to ensuring that there exists within all states and territories an expanded number and range of safe and gender-appropriate accommodation options for Indigenous children and youth. These options should include access to coordinated and holistic intensive care services. A housing or accommodation plan needs to have been identified for every youth leaving detention.

The Committee suggests that the range of appropriate accommodation options should include extended family houses, identified safe houses, hostel and school accommodation, foster and respite care, and emergency refuge accommodation.

The link between health and the criminal justice system

Recommendation 8 – Alcohol and substance abuse..... 95

The Committee recommends that, in collaboration with state and territory governments, the Commonwealth Government increase funding for locally based alcohol, anti-smoking and substance abuse programs.

Recommendation 9 – Foetal Alcohol Spectrum Disorder 102

The Committee recommends that the Commonwealth Government urgently addresses the high incidence of Foetal Alcohol Spectrum Disorder in Indigenous communities by:

- developing and implementing Foetal Alcohol Spectrum Disorder diagnostic tools and therapies, with a focus on working in partnership with Indigenous health organisations in remote and regional Australia where there is a recognised prevalence of the disorders, and
- recognising Foetal Alcohol Spectrum Disorder as a registered disability and as a condition eligible for support services in the health and education systems.

The Committee further considers that a comprehensive inquiry into Foetal Alcohol Spectrum Disorder prevalence, diagnosis, intervention and prevention is required and recommends that the Minister for Health and Ageing refer the inquiry to the House of Representatives Standing Committee on Social Policy and Legal Affairs.

Recommendation 10 – Mental health 108

The Committee recommends the Commonwealth Government recognise mental health as a significant issue affecting Indigenous youth and collaborate with the states and territories to direct funding where possible to successful Indigenous community developed and led programs with a focus on healing, culture, emotional wellbeing and reconnection with family.

Recommendation 11 – Hearing tests 112

The Committee recommends that the Commonwealth Government provide all Indigenous children starting pre-school with comprehensive hearing tests with appropriate follow-up support when required.

The Committee further recommends that all Indigenous children between kindergarten and Year 2 be tested as an urgent priority due to the high incidence and impacts of hearing impairments amongst Indigenous children, particularly in rural and remote areas.

Recommendation 12 – Sound amplification systems..... 113

The Committee recommends that the Commonwealth Government allocate funding for sound amplification systems in schools with high Indigenous enrolments throughout Australia, with urgent attention to schools in remote areas.

Recommendation 13 – Police training to identify hearing loss 113

The Committee recommends that the Attorney-General take to the Ministerial Council for Police and Emergency Management – Police (MCPEMP) at its second meeting in 2011, a proposed program of training for police to better identify and respond to individuals with hearing loss, particularly in Indigenous communities.

Recommendation 14 – Pre-natal and anti-natal support 117

The Committee recommends the Commonwealth Government work with state and territory governments to coordinate greater capacity for Indigenous health services to provide further programs to support:

- sexual and reproductive health counselling and services
- pre and anti-natal care and advice for teenage parents
- parenting skills information and assistance
- alcohol risk awareness during pregnancy, and
- support for pregnant women with alcohol dependency or other substance abuse.

Recommendation 15 - Health 119

The Committee recommends that the Commonwealth Government, in collaboration with state and territory governments, ensure all Indigenous youth who enter the criminal justice system are provided with:

- comprehensive health screening, including for Foetal Alcohol Spectrum Disorders
- access to intensive holistic intervention programs which involve family, mentors and Indigenous leaders and include support for mental health, hearing loss and drug and alcohol reform, and
- access to wellbeing programs which involve families and Indigenous leaders, address underlying issues of trauma, low self-esteem and build resilience and the capacity for positive social and workplace engagement.

The Committee recommends that emotional, social and cultural programs should span the length of a youth's time in detention, and continue after release.

Improving education for Indigenous youth

Recommendation 16 – School and community relationships..... 135

The Committee recommends that the Minister for Education work through the Ministerial Council on Education, Employment, Training and Youth Affairs assist schools throughout Australia to deliver better education outcomes for Indigenous students and to foster more connected and positive relationships with their local Indigenous community. The Committee considers that as a minimum schools should be incorporating a range of the following activities within the school:

- hang or fly an Aboriginal Flag and the Torres Strait Islander flag alongside the Australian flag within the school grounds
- learn about Indigenous sites of significance in the local area
- incorporate an acknowledgment of country at the start of significant events as well as at school assemblies
- commission local Indigenous artists to paint a mural, or build or create sculptures within the school grounds
- use local Indigenous languages names for school classrooms or sporting houses/teams

- build an Indigenous garden and invite those with bush tucker knowledge to be involved
- celebrate Mabo day, NAIDOC week, Reconciliation week and Harmony day
- engage Indigenous school mentors for schools with high Indigenous populations, and/or
- engage the local Indigenous community to teach language and culture afterschool and provide extra curricula activities.

Recommendation 17 – School attendance data 146

The Committee recommends that the Minister of Education immediately conduct a review into how daily school attendance and retention rates are measured to ensure that data collected can accurately inform strategies to increase attendance and retention rates and monitor progress in these areas.

Recommendation 18 – School attendance incentive programs 146

The Committee recommends that the Commonwealth Government commit to the provision of funds and administrative assistance to establish and expand across Indigenous communities the number of school attendance incentive programs (such as breakfast and lunch programs, and sporting and cultural activities during and after school).

Recommendation 19 – Teacher development 152

The Committee recommends that the Minister for Education work with the Ministerial Council on Education, Employment, Training and Youth Affairs develop a comprehensive and mandatory teachers' professional development program that:

- provides specialist training on teaching Indigenous children, and where necessary the teaching of English as a second language (ESL)
- recognises poor English language skills and health and hearing issues which may impact on learning
- gives teachers a competency in cultural knowledge and sensitivity to assist in working with Indigenous communities and families
- can be adapted to reflect local Indigenous community needs and culture, and
- trains the teachers to set and achieve high expectations for Indigenous students.

The Committee also recommends that a portion of the 2011-12 Budget funds allocated to reward top performing teachers is directed towards the formal recognition of outstanding performance in the teaching of Indigenous students, where real outcomes in progress can be demonstrated.

Improving the effectiveness of transitioning from education to the workforce

Recommendation 20 - Apprenticeships 177

The Committee recommends that the Department of Education, Employment and Workplace Relations provide greater assistance and incentives to increase the uptake of Indigenous apprentices through:

- providing specific financial incentives for employers to take on Indigenous apprentices
- including Indigeneity as one of the eligibility criteria for the Australian Apprenticeship Access Program, and
- ensuring that the Australian Apprenticeship Access Program contract providers are able to demonstrate the ability to provide culturally appropriate support and successful outcomes for Indigenous job seekers.

Recommendation 21 – Driver licences 187

The Committee recommends that the Minister for Infrastructure and Transport, in partnership with relevant state and territory governments, establish:

- specific learner driver resources in multiple media formats that appropriately meet language and literacy needs of local Indigenous communities, and
- a remote and regional learner driver licensing scheme to assist people in remote and regional areas to obtain learner and provisional licences.

Recommendation 22 – Defence Force recruitment 193

The Committee recommends that the Australian Defence Force:

- include in its training material an acknowledgement of the important contribution Indigenous people have made to the Australian Defence Force in past wars. All staff currently employed by the Australian Defence Force should be made aware of this contribution

- review its recruitment material to ensure it provides strong encouragement for Indigenous people to join, which particular reference to existing role models, for example NorForce
- consider new and innovative strategies for raising its profile with Indigenous people and for recruiting both reserves and permanent members from remote, regional and metropolitan Indigenous communities
- offer work experience for older students in the defence force, and
- increase the provision of school based apprenticeships throughout Australia and target apprenticeships to Indigenous youth in regional and remote areas.

The criminal justice system

Recommendation 23 – Police training and Indigenous employment 205

The Committee recommends that the Commonwealth Government work with the Ministerial Council for the Administration of Justice to address the following priorities at its next meeting:

- The development of a national framework for the provision of comprehensive Indigenous cultural awareness training for all police employees that:
 - ⇒ Promotes better understanding and relations between police and Indigenous communities
 - ⇒ Addresses the specific circumstances of Indigenous youth over-representation in police contact, and
 - ⇒ Outlines the diversionary options that are available, and the positive impact that diversion can have.
- An expanded national network of Indigenous Liaison Officers, with facilities to share information and knowledge across jurisdictions, and
- Incentives to increase the employment of Indigenous police men and women and opportunities for mentoring and police work experience for Indigenous students.

Recommendation 24 – Court interpreter service and hearing assistance 209

The Committee recommends that the Attorney-General present to the Standing Committee of Attorneys-General a revision of criminal justice guidelines to include formal recognition of the requirement to ascertain the need for an interpreter service or hearing assistance when dealing with Indigenous Australians.

Recommendation 25 – National interpreter service 210

The Committee recommends that the Commonwealth Attorney-General's Department, in partnership with state and territory governments, establish and fund a national Indigenous interpreter service that includes a dedicated criminal justice resource and is suitably resourced to service remote areas.

The Committee recommends that initial services are introduced in targeted areas of need by 2012 with full services nationwide by 2015.

Recommendation 26 – Legal services funding 214

The Committee recommends that the Commonwealth Government increase funding for Aboriginal and Torres Strait Islander Legal Services to achieve parity per case load with Legal Aid Commission funding in the 2012-13 Federal Budget, with appropriate loadings to cover additional costs in service delivery to regional and remote areas.

Recommendation 27 – Post-release accommodation 229

The Committee recommends that the Attorney-General take to the Standing Committee of Attorneys-General the proposal to increase funding for appropriate accommodation options for youth who are granted bail, in order to prevent the unnecessary detention of Indigenous youth.

Recommendation 28 – Study on sentencing options 245

The Committee recommends that the Australian Institute of Criminology undertake an analysis of sentencing options and outcomes for Indigenous youth and young adults and the use of available diversionary options to determine whether alternative sentencing options are fully utilised before resorting to incarceration.

Recommendation 29 – Alternative sentencing options 245

The Committee recommends that the Attorney-General evaluate outcomes for alternative sentencing options, such as reduced recidivism and improved positive and independent living, and from this research develop a proposal for a range of Indigenous alternative sentencing

options and present it to the Standing Committee of Attorneys-General for inclusion in the National Indigenous Law and Justice Framework.

Recommendation 30 – Pre-court conferencing..... 246

The Committee recommends that the Attorney-General takes to the Standing Committee of Attorneys-General the proposal for a nationwide program that begins the rehabilitation process of young Indigenous offenders from the point at which they are charged with an offence. The Committee recommends that such a program should include:

- Assigning a community services case worker to an individual immediately after they have been charged to organise a family conference
- A victim contact meeting where the offender hears the consequences and impacts of their unlawful actions on the victim
- Ascertaining, through family conferencing, any underlying problems that are influencing offending behaviour and setting out a plan for behavioural change with clear targets to be achieved prior to attending court. Pre-court plans for the youth could include:
 - ⇒ Regular attendance at drug and alcohol counselling and medical treatment as required
 - ⇒ Regular meetings or counselling sessions with a court approved community or family mentor or elder
 - ⇒ A genuine apology to the victim(s)
 - ⇒ The development of clear goals and aspirations for living a more productive and independent life
 - ⇒ Where appropriate, more regular and constructive family engagement
 - ⇒ A renewed commitment from significant family members to engage with the offender and involve them positively in family life
 - ⇒ Improvement in school attendance or retention in school, and
 - ⇒ Improvement in apprenticeship or training outcomes.

Sentencing of individuals who have engaged with this program should take into account any genuine progress towards meeting these targets for behavioural modification.

Recommendation 31 – Indigenous offender programs 262

The Committee recommends that the Commonwealth Government establish a new pool of adequate and long term funding for young Indigenous offender programs. Organisations and community groups should be able to apply for funding for programs that assist young Indigenous offenders with:

- Post-release or diversionary program accommodation
- reintegrating into the community and positive social engagement through volunteering and team involvement
- reconnecting with culture where possible
- drug, alcohol and other substance abuse rehabilitation
- continued education and training or employment, and
- life and work readiness skills, including literacy and numeracy

The Committee recommends that this fund is geared towards small-scale community-based groups, operating in local areas, and includes a specific stream for programs that address the needs of young Indigenous female offenders. Local employers would be encouraged to mentor and train with a view to employment.

Government policy and coordination

Recommendation 32 – Evaluate Indigenous justice programs..... 272

The Committee recommends that the Commonwealth Government commit further resources to evaluate the effectiveness of Indigenous youth justice and diversion programs and that the findings be published on the Indigenous Justice Clearinghouse and the Closing the Gap Clearinghouse websites.

Recommendation 33 – Mapping offending 276

The Committee recommends that the Commonwealth Government invest in mapping research to identify areas of concentrated youth offending, types of offending and gaps in services, with a focus on Indigenous disadvantage and need.

Recommendation 34 – Expanding data collections 277

The Committee recommends that the Australian Bureau of Statistics expand its collection of data to include:

- offender data disaggregated by all jurisdictions and all categories of offence, including traffic and vehicle related offences
- court appearance data, disaggregated by all jurisdictions by Indigenous status, sex, offence and sentence
- prisoner reception data disaggregated by all jurisdictions, according to Indigenous status, sex, offence, age, sentence length and episodes of prior offending by category of offence, and
- data on the rates of which Indigenous people are victims of crime, disaggregated by all jurisdictions and all categories of offence.

The Committee recommends that the Australian Institute of Health and Welfare expands its collection of data to include:

- detainee receptions and census data disaggregated by jurisdiction, Indigenous status, sex, offence, age, sentence duration and periods of prior offending by category of offence.

The Committee recommends that these expanded data sets are made available by no later than June 2012. This data and any trends it shows should then be annually evaluated and reported on and used to inform future policy or program changes.

Recommendation 35 – Study on the imprisonment of women 278

The Committee recommends that the Australian Institute of Criminology undertakes a study of the reasons for the increasing imprisonment of Indigenous women, with a view to informing policymakers on how best to address the key drivers of offending and imprisonment and the consequences of that imprisonment for women, their children (if any) and their community.

Recommendation 36 – Indigenous Law and Justice Advisory Body 283

The Committee recommends that the Commonwealth Government propose to the National Congress of Australia's First Peoples the establishment of a subcommittee to focus on Indigenous law and justice matters. If the National Congress of Australia's First Peoples does not proceed with an Indigenous law and justice subcommittee, the Committee recommends that the Commonwealth Government establish an Indigenous law and justice advisory body.

The Committee recommends that the Commonwealth Government:

- seeks the subcommittee's or the advisory committee's advice on law and justice matters affecting Indigenous people

- requests that the subcommittee or advisory committee monitor and report on progress under the National Indigenous Law and Justice Framework, and
- seeks the views of the subcommittee or advisory committee on any suggested amendments to the National Indigenous Law and Justice Framework following each annual review.

Recommendation 37 – Parliamentary Indigenous representation..... 285

The Committee recommends that the Commonwealth Government establish an Independent Commission to undertake a series of public consultations and investigate options to increase Indigenous representation in the Parliament, for example, quotas or dedicated seats.

Recommendation 38 – Funding of the Family Responsibilities Commission 301

The Committee recommends that the Australian Government in partnership with the Queensland Government and the Cape York Institute for Policy and Leadership extend the funding of the Family Responsibility Commission until December 2013, pending further evaluation.

Recommendation 39 – Sustained flexible funding..... 321

The Committee recommends that the Commonwealth Government work with state and territory governments to coordinate sustained and flexible funding support for a range of youth justice diversion and rehabilitation services which are developed with and supported by local Indigenous communities.

Recommendation 40 – Justice reinvestment..... 321

The Committee supports the principles of justice reinvestment and recommends that governments focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Australia.

Introduction

- 1.1 April 15, 2011 marked the twenty year anniversary of the release of the final report of the *Royal Commission into Aboriginal Deaths in Custody*. The Commission was established due to public concern that Indigenous Australians were dying too regularly under custodial sentences, and that those deaths were too poorly explained. The Commission's terms of reference enabled it to take into account the various social, cultural and legal factors that contributed to Indigenous deaths in custody, and the final report made 339 recommendations.¹
- 1.2 Twenty years on, Aboriginal and Torres Strait Islander juveniles and young adults are far more likely to come into contact with the criminal justice system, and are more likely to remain in custody. This is a national tragedy, and questions must be raised as to why the situation has worsened so dramatically after the sweeping reforms recommended by the Royal Commission.
- 1.3 Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, is concerned that many of the Royal Commission's main findings were ignored:

There's an over-representation of Aboriginal prisoners, as there was back in 1991, and therefore a greater chance of Aboriginal and Torres Strait Islander people dying in prison...How do we stop Aboriginal people going to jail in the first place? And I think if we look at that as a measure, we've failed miserably in the last 20 years.²

1 Commonwealth of Australia, *Royal Commission into Deaths in Custody*, 1991, <www.austlii.edu.au/au/other/IndigLRes/rciadic/> accessed 1 June 2011.

2 Andrew Geoghegan, *Black deaths in custody continue despite Royal Commission*, ABC AM, <www.abc.net.au/am/content/2011/s3188699.htm> accessed 19 April 2011.

- 1.4 Many of the issues addressed in the report of this Committee reflect the core underlying factors that the Royal Commission identified as explaining the disproportionate number of Indigenous people in custody, including poor relations with police, alcohol and substance abuse, poor education, unemployment, inadequate housing and entrenched poverty. The Committee finds it concerning that these same factors have been identified two decades later, and that the overrepresentation of Indigenous juveniles and young adults in the criminal justice system has increased.
- 1.5 The Committee agrees that this situation is a national disgrace and recognises that all governments, including the Commonwealth, states and territories, have failed to adequately address this problem. The Committee strongly urges all governments and jurisdictions to be rigorous in implementing the recommendations contained in this report.
- 1.6 The Committee recognises that Aboriginal and Torres Strait Islander peoples have diverse languages, cultures and communities and live in urban, rural and remote settings. Throughout this report the use of the word 'Indigenous' respectfully refers to Aboriginal and Torres Strait Islander people of Australia.

Conduct of the inquiry

- 1.7 On 19 November 2009 the Minister for Families, Housing, Community Services and Indigenous Affairs requested the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquire and report into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.
- 1.8 The Inquiry lapsed when the House of Representatives was dissolved on Monday 19 July 2010 for a general election which was held on Saturday 21 August 2010.
- 1.9 On 8 November 2010, the Minister, the Hon. Jenny Macklin MP, re-referred the inquiry to the Committee for completion.
- 1.10 With a particular focus on prevention and early intervention, the Committee was asked to investigate and report on:
- how the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement

- the impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this
 - any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system
 - the effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised
 - best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres
 - the scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system, and
 - the extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional wellbeing of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.
- 1.11 The Committee received 110 submissions and a number of exhibits from a variety of sources, including Commonwealth, state and territory government departments, representatives of the judiciary, police, Indigenous legal services, non-profit organisations, Indigenous rights' advocacy groups, Indigenous representative organisations and academics. A list of submissions received by the Committee is at Appendix A, and a list of exhibits received by the Committee is at Appendix C.
- 1.12 The Committee conducted 18 public hearings in Canberra, Sydney, Adelaide, Cairns, Darwin, Brisbane, Fitzroy Crossing, Perth and Melbourne. A list of public hearings is at Appendix B.
- 1.13 Submissions received and transcripts of evidence can be found on the Committee's website: <<http://www.aph.gov.au/house/committee/atsia/sentencing/index.htm>>
- 1.14 During the inquiry, the Committee visited three detention centres – Juniperina Juvenile Justice Centre (Sydney, New South Wales), Orana Juvenile Justice Centre (Dubbo, New South Wales), and Brisbane Youth

Detention Centre, (Queensland) – and held discussions with staff, youth and visitors.

- 1.15 The Committee attended a delegation to New Zealand and met with a range of people and representatives of organisations aiming to reduce the overrepresentation of Maori youth in the criminal justice system. Observations from this delegation visit have informed some of the Committee responses in this report.

Structure of the report

- 1.16 The Committee heard about the range of factors which contribute to the overrepresentation of Indigenous juveniles and young adults in the criminal justice system. The Committee heard of a range of measures that can be taken to reduce young Indigenous people's contact with the criminal justice system, to improve diversion, to better rehabilitate offenders in returning to their communities, and to reduce recidivism. The Committee concludes that, while this is a serious and complex issue, there are a number of initiatives that would assist in reducing the overrepresentation of young Indigenous people in the criminal justice system.
- 1.17 Chapter 2 provides an overview of the main issues relating to the overrepresentation of Indigenous juveniles and young adults in the criminal justice system. It includes statistics that demonstrate the critical need for early intervention to prevent present and future generations of young Indigenous people from coming into contact with the criminal justice system. The chapter examines Indigenous disadvantage as an underlying cause of overrepresentation, specifically discussing education, health, accommodation, employment, social norms and individual family dysfunction, and connection to culture. The chapter examines the Closing the Gap strategy for overcoming Indigenous disadvantage, and a range of current Commonwealth, state and territory frameworks for reducing the overrepresentation of young Indigenous people in the criminal justice system.
- 1.18 Chapter 3 considers the importance of developing positive social norms and behaviours amongst Indigenous juveniles and young adults, and amongst the communities in which they live. The chapter examines a number of programs that aim to promote positive social engagement, assist individuals and families to change their behaviours, provide positive leadership and become community role models. Emphasis is

given in the chapter to the importance of mentoring, community and cultural connection, sport and the provision of safe accommodation.

- 1.19 Chapter 4 examines the link between poor health and the overrepresentation of young Indigenous people in the criminal justice system. The chapter discusses evidence the Committee received about alcohol and substance abuse, alcohol reforms and the worrying incidence of Foetal Alcohol Spectrum Disorder (FASD) in Indigenous communities. The chapter examines links between mental health and emotional wellbeing with overrepresentation in the criminal justice system, and considers programs that can assist people with healing and reconnecting with culture. The chapter includes a detailed discussion of the high incidence of hearing loss in Indigenous communities and the considerable influence this epidemic has on overrepresentation in the criminal justice system. The chapter emphasises that early intervention and a holistic approach to health are required to address this concerning aspect of Indigenous disadvantage.
- 1.20 Chapter 5 considers how improving education for Indigenous juveniles and young adults can improve justice outcomes for Indigenous people directly. The chapter examines current Commonwealth, state and territory education frameworks and initiatives, and a range of specific programs designed to boost Indigenous community engagement with schools, and improve school readiness and school attendance. The chapter emphasises the importance of programs and initiatives that provide incentives for school attendance, including breakfast and lunch programs, after school activities and sporting programs.
- 1.21 Chapter 6 considers ways that can improve young Indigenous people's transition from education to employment as a method for reducing overrepresentation in the criminal justice system. It examines current Commonwealth, state and territory frameworks and programs, and initiatives that build local capacities in Indigenous communities. The chapter discusses a range of physical and behavioural obstacles that impact on the ability of many young Indigenous people to find and retain employment.
- 1.22 Chapter 7 traces an offender's pathway through the criminal justice system and considers areas that need to be improved in order to reduce the overrepresentation of young Indigenous people in the system. The chapter examines issues relating to police relations, over-policing and diversion by police, and urgent challenges including language barriers and a lack of interpreters, and adequate and appropriate legal representation. The chapter considers a range of issues relating to young

Indigenous people and the court process, including the development and implications of a sentencing culture. The chapter discusses bail laws, the lack of suitable accommodation options for Indigenous youth on bail, and a high incidence of driver licensing offences and fine defaults that ultimately lead to the imprisonment of many young Indigenous people. The chapter considers a range of existing court alternatives and methods to reduce recidivism, including in prison education, post-release education, training, accommodation and support, and transitioning services.

- 1.23 Chapter 8 considers current government policy and coordination frameworks, the service delivery model and issues of program funding and monitoring change. It examines the Closing the Gap policy framework to overcome Indigenous disadvantage and discusses a number of significant gaps that will impede future efforts to reduce Indigenous offending, recidivism and victimisation. The chapter considers a number of data gaps that were identified during the inquiry, and how government accountability can be improved through better program evaluation, monitoring and reporting. Finally, the chapter examines a range of successful initiatives, ways that can boost Indigenous people's involvement in service delivery and programs that can bring about change within communities.

Indigenous youth and the criminal justice system: an overview

- 2.1 The disproportionately high level of Indigenous juveniles (aged between 10 and 17 years) and young adults (aged between 18 and 24 years) in the criminal justice system is a major challenge confronting the Council of Australian Government's (COAG's) commitment to 'Closing the Gap' in Indigenous disadvantage.
- 2.2 Tragically, Indigenous juveniles and young adults are more likely to be incarcerated today than at any other time since the release of the *Royal Commission into Aboriginal Deaths in Custody* final report in 1991. This rise has occurred despite increased funding and the concern and efforts of community members, government officials, non-government organisations and the judiciary around Australia.
- 2.3 Contact with the criminal justice system represents a symptom of the broader social and economic disadvantage faced by many Indigenous people in Australia. We have reached the point of intergenerational family dysfunction in many Indigenous communities, with problems of domestic violence, alcohol and drug abuse, inadequate housing, poor health and school attendance, and a lack of job skills and employment opportunities impacting on the next generation of Indigenous Australians. Additionally, there has been a loss of cultural knowledge in many Indigenous communities, which has disrupted traditional values and norms of appropriate social behaviour from being transferred from one generation to the next.
- 2.4 The overrepresentation of Indigenous youth in the criminal justice system is a national crisis and Commonwealth, state and territory governments must respond rapidly and effectively to prevent current and future generations of young Indigenous people from entering into the criminal justice system. This is a long term challenge that will require sustained

commitment and rigour from all jurisdictions to address the root causes of Indigenous disadvantage, and to rehabilitate young Indigenous people currently in the criminal justice system.

The critical need for early intervention

- 2.5 The detention rate for Indigenous juveniles is 397 per 100 000, which is 28 times higher than the rate for non-Indigenous juveniles (14 per 100 000). In 2007, Indigenous juveniles accounted for 59 percent of the total juvenile detention population.¹
- 2.6 There is a strong link between the disproportionate rates of juvenile detention and the disproportionate rates of adult imprisonment. Although Indigenous Australians make up only approximately 2.5 percent of the population, 25 percent of prisoners in Australia are Indigenous.²
- 2.7 Prisoner census data shows that between 2000 and 2010, the number of both Indigenous men and women in custody has increased markedly:
- Indigenous men by 55 percent, and
 - Indigenous women by 47 percent.³
- 2.8 The Committee finds that the escalation of the number of Indigenous women in detention is disturbing. Indigenous women are critical to the future strength of Indigenous families and communities. They play an important role in the care of children, providing the future generation with a stable upbringing. Continued growth in the number of Indigenous women being imprisoned will have a long lasting and negative impact on the wellbeing of Indigenous families and communities.
- 2.9 Between 2000 and 2009, the imprisonment rate of Indigenous Australians increased 66 percent (from 1 248 to 1 891 per 100 000). Figure 2.1 shows this dramatic increase in the rate of imprisonment for Indigenous people over the last decade, in comparison to a steady imprisonment rate for non-Indigenous Australians. These figures highlight both a concerning pattern
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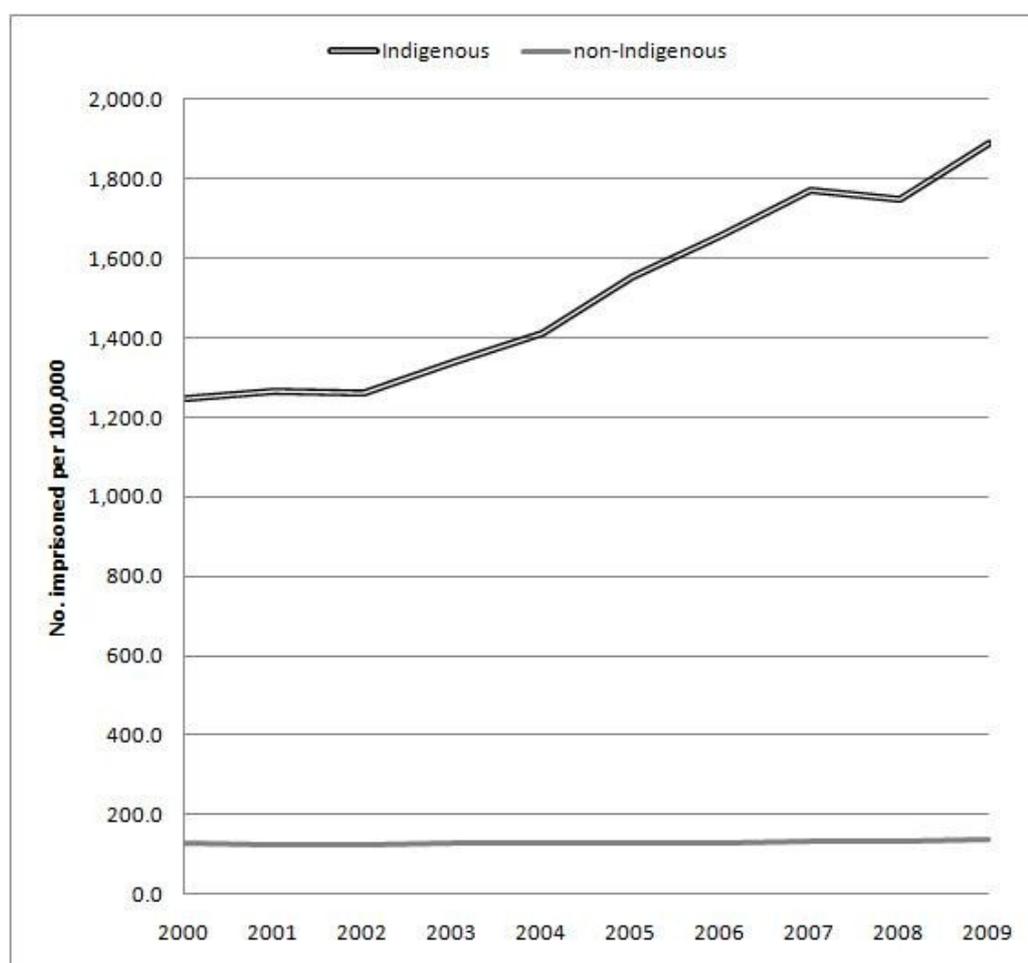
1 Australian Institute of Criminology (AIC), 'Juvenile detention', 30 June 2007, <www.aic.gov.au/statistics/criminaljustice/juveniles_detention.aspx> accessed 24 February 2011.

2 Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Social Survey 2008*, Canberra.

3 Figures derived from total Indigenous prisoner numbers by sex in 2000 and 2010. ABS 2000, *Prisoners in Australia 4517.0*, Canberra, p.11; ABS 2010, *Prisoners in Australia 4517.0*, Canberra, p. 52.

of generational entrenchment for some Indigenous Australians in the criminal justice system over a long period of time, and the critical need for early intervention.⁴

Figure 2.1 Age standardised Indigenous and non-Indigenous imprisonment rates in Australia (2000-09)⁵



Source ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

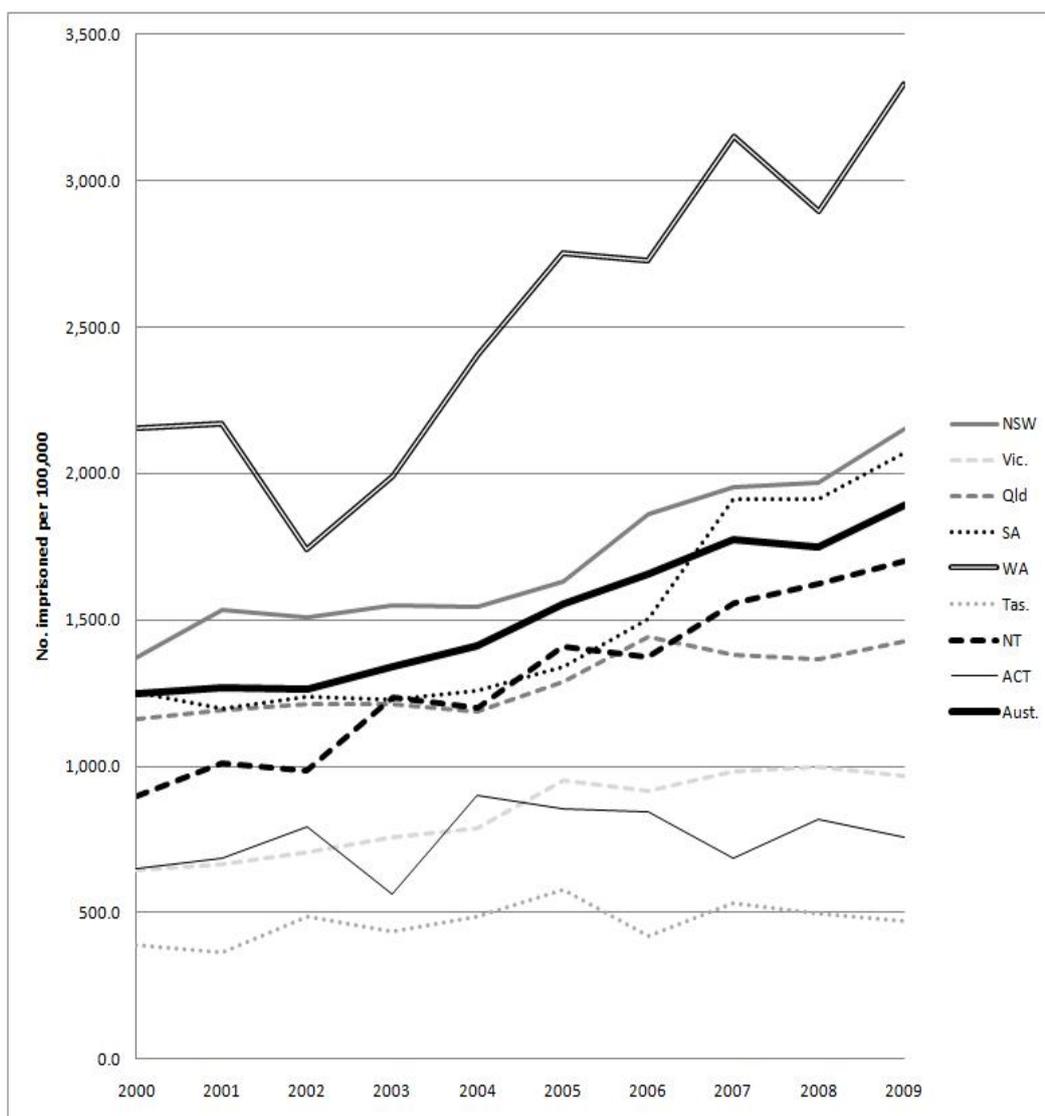
- 2.10 Statistics demonstrate that adult imprisonment rates differ between states and territories (see Figure 2.2).
- 2.11 New South Wales has the highest total number of Indigenous people in prison (2 139), compared with Western Australia (1 552) and Queensland (1 495). However Figure 2.2 shows that Western Australia has the highest number of Indigenous people in prison per capita than any other state or

4 ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

5 Age standardisation is a statistical method used by the ABS that adjusts crude rates to account for age differences between study populations. For more information, see the explanatory notes, paragraphs 34-39, at <www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Explanatory%20Notes12010?OpenDocument> accessed 11 May 2011.

territory, increasing from 2155.7 per 100 000 in 1999 to 3 328.7 per 100 000 in 2009. That figure represents at least three Indigenous people in jail for every 100 Western Australian residents.

Figure 2.2 Age standardised per capita Indigenous imprisonment rates by state and territory, 1999-2009



Source ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

2.12 The steepest increase in Indigenous imprisonment rates in the 2000-09 period was 90 percent for the Northern Territory, while significant increases were recorded in South Australia (65 percent), New South Wales (57 percent), Western Australia (54 percent), Victoria (50 percent), and Queensland (23 percent).⁶

⁶ ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

- 2.13 Indigenous juveniles and young adults are much more likely to come into contact with the police in comparison with their non-Indigenous counterparts. In 2008, over 40 percent of all Indigenous men in Australia reported having been charged formally with an offence by police before they reached the age of 25.⁷
- 2.14 Indigenous juveniles are overrepresented in both community and detention-based supervision. Indigenous juveniles make up 53 percent of all juveniles in detention and 39 percent under community supervision. Indigenous juveniles in detention are younger on average than their non-Indigenous counterparts. Twenty-two percent of Indigenous juveniles in detention were aged 14 years or less, compared with 14 percent of non-Indigenous juveniles.⁸
- 2.15 The overrepresentation of Indigenous juveniles in the criminal justice system varies greatly according to state and territory, offence type and by the type of interaction (including being cautioned, charged or detained). However, data is not presently available to accurately compare types of contact across state and territory jurisdictions. The Australian Institute of Criminology (AIC) found that differing levels of representation can partly be attributed to different counting measures to record contact with the police across jurisdictions. The AIC recognised that data relating to the Indigenous status of juveniles may not adequately capture the extent of Indigenous juveniles' contact with the criminal justice system.⁹
- 2.16 Adverse contact with the criminal justice system is not confined to offenders. Community safety is a vital pre-condition to achieve COAG's targets in health, education and housing. Governments agreed at a 2009 roundtable on Indigenous community safety that if there is not action to address serious problems in community safety, it will not be possible to make improvements in other areas.¹⁰
- 2.17 Indigenous people are more likely to be victims of crime, especially violent crime, than non-Indigenous people.¹¹ Women are more likely to be the victims of crime than men, and most violent offending against Indigenous women is committed by Indigenous men.¹²

7 ABS 2009, *National Aboriginal and Torres Strait Islander Social Survey 2008*, Canberra.

8 AIC, *submission 67*, p. 2.

9 AIC 2007, *Juveniles' contact with the criminal justice system in Australia*. AIC, Canberra p. 1.

10 Communiqué, Indigenous Community Safety Roundtable, Sydney, 6 November 2009.

11 ABS, *Recorded Crime – Victims*, Cat. No. 4510.0, June 2010, pp. 38-9.

12 Jacqueline Fitzgerald & Don Weatherburn, 'Aboriginal Victimisation and Offending: The Picture from Police Records', *Crime and Justice Statistics Bureau Brief*, NSW Bureau of Crime Statistics and Research (BOCSAR), December 2001, p. 2.

- 2.18 Between 2006 and 2007, Indigenous women were 35 times more likely to be hospitalised as a result of spouse or partner violence than non-Indigenous women.¹³
- 2.19 The Committee recognises that Indigenous victimisation rates must be addressed in conjuncture with offending rates, and that both are symptoms of the disadvantage and social dysfunction that pervades many Indigenous communities.
- 2.20 The Committee found that gaps in data collection are impeding government responses to this issue, and that better data is needed to track trends and better identify patterns of offending and victimisation. A discussion of the relevant gaps in data collection is included in chapter 8 of this report.

High rates of offending and disadvantage

- 2.21 Prominent amongst the reasons for the high proportion of Indigenous people in the criminal justice system is the broader social and economic disadvantage faced by many Indigenous people. An analysis of the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) identified a number of economic and social factors that underpin Indigenous contact with the criminal justice system. The analysis demonstrated that respondents to the national survey were far more likely to have been charged with, or imprisoned for, an offence if they left school early or performed poorly at school, were unemployed, or abused drugs or alcohol. The study found that the risk of Indigenous people being charged or imprisoned increased if the respondent was experiencing financial stress, lived in a crowded household, or had been taken away from their natural family.¹⁴
- 2.22 One of the key findings of the 1991 Royal Commission was that:

The more fundamental causes of over-representation of Aboriginal people in custody are not to be found in the criminal justice system but those factors which bring Aboriginal people into conflict with the criminal justice system in the first place ... [and] the most

13 Steering Committee for Review of Government Services (2009), *Overcoming Indigenous Disadvantage: Key Indicators 2009 – Report*, p. 4.131.

14 D Weatherburn, L Snowball & B Hunter, The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey. *Crime and Justice Bulletin*, No. 24.

significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in society - socially, economically and culturally.¹⁵

2.23 This section provides a brief discussion and general overview of the relationship between aspects of disadvantage and the overrepresentation of Indigenous juveniles and young adults in the criminal justice system based on the evidence gathered in this inquiry, including:

- social norms and individual family dysfunction
- connection to community and culture
- health
- education
- employment, and
- accommodation

Social norms and family dysfunction

2.24 FaHCSIA's submission stressed that individual family dysfunction was a significant contributing factor to high rates of juvenile offending and identified the following key concerns:

- The extent of alcohol abuse and consequential problems such as family breakdown, family violence, financial and legal problems, child abuse and neglect and psychological distress among family and friends of the drinker
- There is a strong link between alcohol consumption and drug misuse and the risk of imprisonment
- A further consequence of alcohol misuse is an increase in the risk of Foetal Alcohol Spectrum Disorder (FASD), which itself is linked to a range of long term behavioural problems
- The presence of family violence. This is a strong predictor of child abuse, and partner violence has a damaging effect on children's emotional, behavioural and cognitive development. Family violence is strongly associated with a high risk of clinically significant emotional or behavioural difficulties in Indigenous children, and
- Child neglect and abuse.¹⁶

15 Commonwealth of Australia, *Royal Commission into Deaths in Custody*, 1991, Vol. 1, p. 1.7.1.

16 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *submission 79*, p. 3.

- 2.25 The Courts Administration Authority (CAA) of South Australia reported in its submission that the link between child abuse and neglect, and offending behaviour is now well established. The CAA urged that:

The proven impact of child abuse and neglect on youth offending suggests that prevention strategies and effective intervention in child abuse and neglect should be priority areas for youth crime prevention.¹⁷

- 2.26 Chapter 3 discusses family dysfunction and negative social norms, which are characteristic of the background of many young Indigenous youth who find themselves in contact with the criminal justice system.

Connection to community and culture

- 2.27 Through a variety of historical processes, many young Indigenous people risk becoming disconnected from their families and their elders, language, law and country. This represents a loss of wellbeing, accountability and culture, as norms of appropriate social and cultural behaviour are not transferred from one generation of people to the next. Many young Indigenous people risk being caught between two worlds, as Anthony Watson (a *Yiriman* cultural boss) explained:

It's not having a sense of direction that is such a problem. A lot of young people live in another culture; it's not mainstream, it's not traditional; they are lost in the wind. When they're lost in the wind is when they could end up in jail; they could end up dead, end up not contributing anything to the community, but becoming a lot of trouble.¹⁸

- 2.28 Chapter 3 of this report provides a discussion of the evidence relating to community and family development of positive social norms and positive social engagement, while chapter 7 examines a number of diversion programs that incorporate Indigenous cultural knowledge, norms and values.

Health

- 2.29 The *Overcoming Indigenous Disadvantage Key Indicators 2009 Report* found that:

17 Courts Administration Authority (CAA), *submission 69*, p. 9.

18 Kimberley Aboriginal Law and Culture Centre (KALACC), *exhibit 5*, p. 6.

Indigenous people experience very high rates of a variety of physical and mental illnesses, which contribute to poorer quality of life and higher mortality rates. Physical health outcomes can be related to various factors, including a healthy living environment, access to health services, and lifestyle choices. Health risk behaviours, such as smoking and poor diet, are strongly associated with many aspects of socioeconomic disadvantage. Mental health issues can be related to a complex range of medical issues, historical factors, the stressors associated with entrenched disadvantage and drug and substance misuse.¹⁹

2.30 A range of physical and mental health issues directly relate and contribute to the overrepresentation of Indigenous youth in the criminal justice system. The Committee has heard evidence that these concerns include:

- mental health issues
- alcohol, drug and substance misuse²⁰
- foetal alcohol spectrum disorder (FASD), and
- hearing loss.

2.31 The Royal Australasian College of Physicians informed the Committee that young people in the justice system are much more likely to suffer from mental health disorders than the general population. In addition, the College advised that:

Indigenous Australians are also more likely to have higher hospital admissions for conditions classified as 'mental and behavioural disorders' and have higher rates of suicide and deliberate self injury than non-Indigenous Australians.²¹

2.32 The College further noted that:

- Young people who have a childhood history of social and psychological adversity are more likely to abuse alcohol and illicit drugs; and
- Mental disorders due to psychoactive substance use are reportedly diagnosed in Indigenous Australians at a greater frequency than the general population.²²

19 SCRGSP, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 7.1.

20 Substance misuse refers to a range of harmful activities including petrol sniffing and chroming (inhaling a range of chemical products to produce a high feeling).

21 Royal Australasian College of Physicians, *submission 53*, p. 5.

22 Royal Australasian College of Physicians, *submission 53*, p. 5.

- 2.33 Clearly alcohol, drug and substance abuse contributes to young people coming into adverse contact with the criminal justice system. In New South Wales, a study reported that, on average, detained youth began to use substances for non-medical purposes at 11 years and commenced using illicit drugs about two years later.²³ Related research found that 63 percent of detained youth had engaged in binge drinking in the two weeks prior to being detained, while 56 percent had used amphetamines, 50 percent had used opioids, and 24 percent had injected an illicit drug.²⁴
- 2.34 An analysis of the 2002 NATSISS found that illicit drug use and high risk alcohol consumption were the strongest predictors of both criminal prosecution and imprisonment.²⁵
- 2.35 Alcohol misuse has harmful and often tragic consequences across generations of people. FASD describes a range of permanent birth defects caused by the consumption of alcohol during pregnancy. Primarily, prenatal alcohol exposure causes damage to the central nervous system and is linked to growth deficiencies (low birth weight) and facial abnormalities. The Committee has heard that the incidence of FASD is extremely high in many Indigenous communities and that children who are born with FASD have an increased risk of coming into adverse contact with the justice system.
- 2.36 The Committee has heard that Indigenous Australians are far more likely to experience hearing impairment than non-Indigenous people. The damage caused by persistent ear disease leaves between 40 percent (urban) and 70 percent (remote) of Indigenous adults with hearing loss and auditory processing problems.²⁶ Juveniles with undiagnosed hearing problems have an increased risk of adverse contact with the police.
- 2.37 These health issues that are related to the overrepresentation of Indigenous juveniles and young adults in the justice system are examined in detail in chapter 4 of this report.

23 J Howard, & E Zibert, 1990, 'Curious, bored and waiting to feel good: the drug use of detained young offenders', *Drug and Alcohol Review*, no. 9, pp. 225-31.

24 J Hando, J Howard & E Zibert, 1997, 'Risky drug practices and treatment needs of youth detained in New South Wales Juvenile Justice Centres', *Drug and Alcohol Review*, vol 16, no. 2, pp. 137-45.

25 D Weatherburn, L Snowball, & B Hunter, 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey', *Crime and Justice Bulletin*, no. 24.

26 Damien Howard, *submission 87*, p. 5.

Education

- 2.38 Children who have access to a good quality education and who are supported and directed by their parents to attend school are likely to develop the necessary knowledge, skills and social norms for a productive and rewarding adult life.
- 2.39 The difference in educational attainment between Indigenous and non-Indigenous Australians is a powerful determinant of the overrepresentation of Indigenous youth in the justice system.
- 2.40 Indigenous children are less likely than non-Indigenous children to have access to, or participate in early childhood education. The gap in preschool learning opportunities means that many Indigenous students will be disadvantaged from their very first day at school.
- 2.41 This disadvantage is demonstrated by a substantially lower proportion of Indigenous students across all year levels achieving the national minimum standards for literacy and numeracy in 2008, compared to non-Indigenous students.²⁷
- 2.42 Similarly, year 12 completion rates indicate poor educational outcomes for Indigenous students. In 2006, the proportion of Indigenous 19 year olds who had completed year 12 or equivalent (36 percent) was half that of non-Indigenous 19 year olds (74 percent).²⁸
- 2.43 The New South Wales Department of Education and Training emphasised the link between poor education outcomes and contact with the justice system, noting that 'there is a strong correlation between expulsion from school and incarceration in the juvenile justice system'²⁹. The Department acknowledged that student outcomes were influenced by a range of factors including:
- ... other family members' educational experiences and the capacity of the education system to engage and support students to develop their individual strengths. Poor nutrition and poor health status, complex family issues resulting in violence or abuse, poor housing or overcrowding, poverty and unemployment are all

27 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 4.3.2.

28 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 4.5.0.

29 New South Wales Department of Education and Training, *submission 43*, p. 2.

factors which impact on a student's capacity to engage in and succeed at learning.³⁰

- 2.44 Chapter 5 of this report examines in detail the need to increase both school attendance and school achievement in order to reduce the representation of young Indigenous people in the criminal justice system.

Employment

- 2.45 There is a strong relationship between unemployment and criminal behaviour, particularly when offenders come from low socioeconomic backgrounds. A study of the 2002 NATSISS found that nearly 60 percent of Indigenous people who had been charged with an offence were unemployed.³¹
- 2.46 In 2006, Indigenous youth aged between 15 and 24 years were three times more likely than their non-Indigenous counterparts to be neither employed nor studying. This figure worsened by remoteness: nearly 40 percent of Indigenous youth in remote areas aged between 15 and 24 years were neither employed nor studying, compared with around 25 percent in major cities.³²
- 2.47 Chapter 6 of this report examines in detail the evidence relating to effective transitioning from education to employment, and measures to secure and retain employment.

Accommodation

- 2.48 Inadequate accommodation in many Indigenous communities is a key contributing factor for high rates of juvenile offending. The 2008 NATSISS reported that:
- almost one third of Indigenous children in Australia under the age of 14 lived in overcrowded accommodation
 - in remote areas, this figure increased to 59 percent for children aged 4 -14 years and 54 percent for children aged 0-3 years
 - 39 percent of Indigenous Australians living in remote areas lived in dwellings that had major structural problems, and

30 New South Wales Department of Education and Training (NSWDET), *submission 43*, p. 2.

31 D Weatherburn, L Snowball, & B Hunter, 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey', *Crime and Justice Bulletin*, no. 24.

32 SCRGSP *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 6.32.

- 28 percent of Indigenous Australians living in remote areas lived in dwellings that either lacked or reported problems with basic household facilities. Basic household facilities considered important for a healthy living environment include those that assist in washing people, clothes and bedding; safely removing waste; and enabling the safe storage and cooking of food.³³
- 2.49 The Northern Territory Legal Aid Commission made the following comments in relation to the impact of inadequate housing on children's wellbeing and youth justice:
- Appropriate safe and affordable housing is the cornerstone for all other social functioning including health, education and having children grow up in caring, respectful and thriving communities let alone building towns, jobs, roads and other infrastructure. Adequate housing offers safety and security which impacts on social and physical development, growth and learning.³⁴
- 2.50 High incarceration rates have been linked to youth who have been in out-of-home care. This is discussed further in chapter 3. Inadequate accommodation options for Indigenous youth on bail and after they have been released from detention are discussed in chapter 7.

Overrepresentation and Closing the Gap

- 2.51 While primarily the states and territories are responsible for developing and administering criminal justice policy, a national approach is required to address the causes of young Indigenous people coming into contact with the criminal justice system. Overcoming Indigenous disadvantage is both a national responsibility and a significant national challenge. It requires an ongoing commitment and collaboration between all levels of government working in partnership with Indigenous Australians, the corporate sector and community organisations. Currently this national approach is represented by the Council of Australian Government's (COAG's) Closing the Gap program of generational change.
- 2.52 Closing the Gap requires governments to address decades of ineffective investment in services and infrastructure in ways that are specifically designed to directly benefit Indigenous Australians. FaHCSIA asserts that:

33 ABS 2009, *National Aboriginal and Torres Strait Islander Social Survey 2008*, Canberra.

34 Northern Territory Legal Aid Commission (NTLAC), *submission 45*, p. 3.

This agenda is important in both addressing the underlying causes of much Indigenous juvenile offending and incarceration and also reducing re-offending and improving life prospects after initial contact with the justice system.³⁵

2.53 Understanding the age profile of Australia's Indigenous population is vital to ensure that efforts to overcome Indigenous disadvantage are directed in the most appropriate way. This profile is very different to the rest of Australia's population. Australia's Indigenous population is growing at twice the rate of the total Australian population. Indigenous Australians are, on average, much younger than non-Indigenous people. In 2006 half of all Indigenous Australians were aged 21 years or younger, while half of all non-Indigenous Australians were aged 37 or younger. Children aged less than 15 years comprised 38 percent of the Indigenous population, compared with 19 percent in the non-Indigenous population.³⁶

2.54 Another challenge facing the Closing the Gap commitment is that Australia's Indigenous population is so dispersed geographically across urban, regional and remote areas. The Prime Minister's 2011 report on Closing the Gap stated that:

Almost one third (32 percent) of the Indigenous population live in major cities. 43 percent of Indigenous Australians live in regional areas and some 25 percent in remote Australia. In contrast, 69 percent of non-Indigenous Australians live in major cities and less than 2 percent in remote and very remote Australia.

Over half of Indigenous people live in either New South Wales (30 percent) or Queensland (28 percent). Approximately 14 percent reside in Western Australia and 12 percent in the Northern Territory.

Closing the gap will require that policies and programs focus on both remote areas, where levels of disadvantage are usually higher and major cities and regional areas where the majority of Indigenous Australians live, and which also suffer from significant levels of disadvantage.³⁷

2.55 The targets of the COAG commitment to Closing the Gap are to:

35 FaHCSIA, *submission 79*, p. 7.

36 *Closing the Gap Prime Minister's Report 2011*, p. 10.

37 *Closing the Gap Prime Minister's Report 2011*, p. 11.

- close the gap in life expectancy between Indigenous and non-Indigenous Australians by 2031
- halve the gap in mortality rates for Indigenous children under five by 2018
- ensure access to early childhood education for all Indigenous four year olds in remote communities by 2013
- halve the gap in reading, writing and numeracy achievement for Indigenous children by 2018
- halve the gap in Year 12 or equivalent attainment rates by 2020, and
- halve the gap in employment outcomes between Indigenous and non-Indigenous Australians by 2018.

2.56 These targets are ambitious and serve to focus policy and government activity over the long term. They are interrelated, with progress in one area having a positive influence on others. Ensuring children have a positive start in life and receive a high quality education means they are less likely to come into contact with the criminal justice system, and more likely to be employed and healthy as adults, and are better placed to raise their own families in the future. For that reason, the Closing the Gap targets address Indigenous disadvantage both over an individual's life cycle and across generations of people.³⁸

2.57 COAG has agreed that these targets will only be achieved through a sustained commitment towards improving the following strategic areas or 'Building Blocks':

- Early Childhood
- Schooling
- Health
- Economic Participation
- Healthy Homes
- Safe Communities, and
- Governance and Leadership

2.58 FaHCSIA identified that the main elements of this strategy relevant to reducing juvenile offending are:

38 *Closing the Gap Prime Minister's Report 2011*, p. 9.

- giving children a better start in life through early childhood education and better schools and better housing. On average, Indigenous juvenile offenders commit their first crimes at an earlier age, from ten onwards, than non-Indigenous juveniles, reflecting disengagement from other options. This earlier start translates over time into a longer criminal career which leads to a much greater possibility of incarceration. Reducing overcrowding in housing, which often creates high levels of stress and inability to cope with school or other pressures, is a major element of Closing the Gap
 - creating opportunities for parents through improved employment opportunities and better health outcomes. The consequences of current life expectancy in Indigenous communities is illustrated by one study that showed that just under 12 percent of Indigenous offenders had a parent deceased. Parents debilitated by chronic disease or having substance abuse issues find it difficult to guide and manage teenage behaviours, and
 - improving delivery of services to Indigenous people that may help reduce the risk of offending by young people. There is general recognition that Indigenous people frequently access various services at a lower level than their needs justify. This can be because of geographic isolation or cultural or trust issues. COAG is committed to improving access through the Remote Service Delivery National Partnership Agreement and the agreed Urban Regional Service Delivery Strategy.³⁹
- 2.59 Consequently, COAG has agreed to a range of National Frameworks and National Partnership Agreements, and a National Indigenous Law and Justice Framework.
- 2.60 The Prime Minister's 2011 report on Closing the Gap announced that some progress is being made, however due to data limitations and the sheer length of time required to meet specific targets, it is too early to accurately gauge the success of the commitment.
- 2.61 Progress towards the Closing the Gap targets is expected to lead to improvements in justice outcomes for Indigenous people, however substantial reductions in Indigenous overrepresentation in the criminal justice system are only likely to occur in the long term.

39 FaHCSIA, *submission 79*, p. 8.

The need for justice targets

2.62 While all of the Building Blocks, and any activity under them, is relevant to this inquiry, of most relevance is the Safe Communities Building Block. The Committee finds it striking that none of the Closing the Gap targets address the Safe Communities Building Block.

2.63 Wes Morris, from the Kimberley Aboriginal Law and Culture Centre (KALACC), claimed that the absence of a National Partnership Agreement linked with the Safe Communities Building Block was an anomaly in the Closing the Gap strategy which limited the capacity of governments and non-government organisations to implement Indigenous justice specific initiatives:

It is almost the perverse irony that most of those building blocks do have national partnership agreements, but of course one does not. The one that does not is the safe communities building block ... it happens to be the one with no national partnership agreement and thus no funding.⁴⁰

2.64 Emilie Priday from the Australian Human Rights Commission, called for the inclusion of justice targets in the Closing the Gap strategy to not only address people entangled in the criminal justice system, but to increase the likelihood of meeting the existing targets:

One of the things we have argued for in the last Social Justice Report is that there should be targets around criminal justice as well. Obviously targets around criminal justice and reducing Indigenous imprisonment are going to then support the other targets that have been set in the Closing the Gap agenda as well.⁴¹

2.65 Ms Priday expressed her frustration that criminal justice targets were not incorporated into the broader Closing the Gap commitment:

At the moment, we have Closing the Gap and a whole heap of targets in terms of education, health and employment. Yet we do not have anything around criminal justice targets. When we are looking at the overrepresentation that we have, it seems crazy that we are not including that. It is really important for us to put this forward to the committee as a Closing the Gap issue and also as a human rights issue.

40 Wes Morris, KALACC, *Committee Hansard*, Perth, 30 March 2010, p. 60.

41 Emilie Priday, Australian Human Rights Commission, *Committee Hansard*, Sydney, 4 March 2010, p. 31.

I guess really what that also means is that then we can have some sort of platform for integrating some of these issues into COAG processes. The thing about juvenile justice issues – and I am sure everyone here has mentioned it and I think we would all agree – is that they are quite siloed. The beauty of the Closing the Gap process is that it is bringing together state, territory and Commonwealth levels of government and departments – all the different departments. I think that could be one practical step that we could take in a big picture approach to where we need to be going in terms of overrepresentation.⁴²

2.66 Similarly, the Australian Children’s Commissioners and Guardians emphasised that:

... it will be impossible to meet the ‘closing the gap’ targets around health, education and employment without also addressing the high level of Indigenous imprisonment which compounds individual and community disadvantage.⁴³

2.67 Katherine Jones from the Attorney-General’s Department, advised the Committee that work was underway on the development of justice targets:

... with the intention of including the targets relating to that in any future COAG reform packages. We are working with the states and the territories through the Standing Committee of Attorneys-General Working Group on Indigenous justice to develop the targets. We hope that the targets will be considered by the Standing Committee of Attorneys-General at its next meeting on 23 July [2010].⁴⁴

2.68 While the Standing Committee of Attorneys-General (SCAG) is working on justice targets for possible inclusion in the Closing the Gap strategy, there is no guarantee that COAG will adopt the target(s) that SCAG develops. At the time of tabling this report, the Attorney-General’s Department informed the Committee that no further developments have been made on Indigenous justice targets.

42 Emilie Priday, Human Rights Commission, *Committee Hansard*, Sydney, 28 January 2011, p. 80.

43 Australian Children’s Commissioners and Guardians, *submission 59*, p. 5.

44 Katherine Jones, Attorney-General’s Department, *Committee Hansard*, Canberra, 27 May 2010, p. 2.

- 2.69 Ms Jones advised the Committee that ‘whilst there [had been] some negotiations towards a separate National Partnership Agreement on community safety, there [was] not one being progressed at the moment’.⁴⁵
- 2.70 COAG has agreed previously (in May 2009) that the Safe Communities Building Block, rather than being addressed through a National Partnership Agreement, would instead be addressed through three national policy vehicles, including:
- the National Indigenous Law and Justice Framework 2009-2015
 - the National Council’s Plan to Reduce Violence against Women and their Children 2009–2021, and
 - the National Framework for Protecting Australia’s Children 2009–2020.⁴⁶
- 2.71 These three policy vehicles and a range of state and territory Aboriginal justice agreements or equivalent strategies will be discussed in the following section of this chapter.

The National Indigenous Law and Justice Framework

- 2.72 In November 2009, the Commonwealth and state and territory governments, through SCAG, endorsed the National Indigenous Law and Justice Framework (the Indigenous Justice Framework). The Indigenous Justice Framework represents the first nationally agreed approach to addressing the issues underpinning adverse contact with the criminal justice system common to many Indigenous people.
- 2.73 The five goals of the Indigenous Justice Framework are:
- improve all Australian justice systems so that they comprehensively deliver on the justice needs of Aboriginal and Torres Strait Islander peoples in a fair and equitable manner
 - reduce over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims in the criminal justice system
 - ensure that Aboriginal and Torres Strait Islander peoples feel safe and are safe within their communities
 - increase safety and reduce offending within Indigenous communities by addressing alcohol and substance abuse, and
 - strengthen Indigenous communities through working in partnership with government and other stakeholders to achieve sustained improvements in justice and community safety.⁴⁷

45 Katherine Jones, Attorney-General’s Department, *Committee Hansard*, Canberra, 27 May 2010, p. 21.

46 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 6.

- 2.74 The Indigenous Justice Framework identifies options for action that address each of these goals to assist government and non-government service providers in the development of Indigenous justice initiatives.
- 2.75 Commonwealth, state and territory governments are not compelled to implement any of the Indigenous Justice Framework's strategies or actions. Instead, governments can choose what to implement according to their priorities and resource capacity.⁴⁸
- 2.76 The Indigenous Justice Framework includes a Good Practice Appendix containing a catalogue of good and promising practice identified by the Commonwealth, state and territory governments. It is expected that the Appendix will be updated annually to reflect positive Indigenous justice program developments.
- 2.77 In August 2009, the Attorney-General, the Hon. Robert McClelland MP announced a \$2 million investment for Indigenous Justice Program Evaluations.⁴⁹ Twenty of the programs identified in the Good Practice Appendix are being evaluated over two years from December 2010 to December 2012.⁵⁰
- 2.78 SCAG's *National Indigenous Law and Justice Framework 2009-2015* stated that reports on progress under the Framework will be provided to SCAG on an annual basis.⁵¹ The Attorney-General's Department advised the Committee that no review of activity under the Framework was undertaken in 2010.⁵²

National Plan to Reduce Violence against Women and their Children

- 2.79 In March 2009, an 11-member National Council released the National Plan for Australia to Reduce Violence against Women and their Children (the National Plan). The National Plan focuses on preventative measures to challenge the values and attitudes that sustain violence in the community. The National Plan emphasises the need to help people develop respectful

47 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 10.

48 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 4.

49 Hon. Robert McClelland MP, 'Indigenous Young People Crime and Justice Conference', August 2009, p. 8.

50 Attorney-General's Department, *Evaluation of Indigenous justice programs in support of the National Indigenous Law and Justice Framework*, <www.ema.gov.au/www/agd/agd.nsf/Page/Indigenous_law_and_native_titleIndigetitl_la_w_programs> accessed 5 May 2011.

51 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 31.

52 The advice was received from the Attorney-General's Department on 28 April 2011.

relationships that are non-violent and based on equality and mutual respect.⁵³

2.80 The six objectives of the National Plan are:

- communities that are safe and free from violence
- relationships that are respectful
- services that meet the needs of women and their children
- responses that are just
- perpetrators who stop their violence, and
- systems that work together effectively.⁵⁴

2.81 Although the National Plan recognises that Indigenous women are more likely to 'report higher levels of physical violence during their lifetime ... [and] experience sexual violence and sustain injury'⁵⁵ than non-Indigenous women, it is not an Indigenous specific plan for action, nor is the issue of violence against Indigenous women addressed through a single outcome area or strategy.

2.82 The National Plan is only a set of recommended strategies and actions, and does not compel the Commonwealth, state or territory government to implement any of the suggested initiatives.

2.83 In April 2009, the Commonwealth Government released its response to the National Plan, outlining 20 priority actions to address each of the six outcome areas, only two of which had an Indigenous specific focus, including:

- an agreement to build on current activities to reduce overcrowding in Aboriginal and Torres Strait Islander communities, and
- an agreement to consult with States and Territories to develop national responses to fund healing centres for Indigenous communities.⁵⁶

53 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021*, March 2009, p. iv.

54 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021*, March 2009, pp. 16-20.

55 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021*, March 2009, p. 9.

56 Commonwealth of Australia, *The National Plan to Reduce Violence Against Women, Immediate Government Actions*, April 2009, p. 15.

National Framework for Protecting Australia's Children

- 2.84 In April 2009, COAG endorsed the National Framework for Protecting Australia's Children 2009-2020 (the Child Protection Framework). The Child Protection Framework seeks to deliver a more integrated response to the issues affecting the safety and wellbeing of children.
- 2.85 The Child Protection Framework does not alter the responsibilities of governments. State and territory governments retain responsibility for statutory child protection and the Commonwealth Government retains responsibility for income support payments.⁵⁷
- 2.86 The six supporting outcomes of the Child Protection Framework are:
- children live in safe and supportive families and communities
 - children and families access adequate support to promote safety and intervene early
 - risk factors for child abuse and neglect are addressed
 - children who have been abused or neglected receive the support and care they need for their safety and wellbeing
 - Indigenous children are supported and safe in their families and communities, and
 - child sexual abuse and exploitation is prevented and survivors receive adequate support.⁵⁸
- 2.87 The Child Protection Framework is 'supported by rolling three year action plans identifying specific actions, responsibilities and timeframes for implementation'.⁵⁹
- 2.88 The Child Protection Framework recognises that Indigenous children are especially disadvantaged and require additional responses to the issues they face in terms of their safety and wellbeing, however it is not an Indigenous specific framework for action.

State and Territory Indigenous justice agreements

- 2.89 Aboriginal justice agreements or equivalent strategic documents exist in New South Wales (New South Wales Aboriginal Justice Plan), the Australian Capital Territory (ACT Aboriginal and Torres Strait Islander Justice Agreement), Victoria (Victorian Aboriginal Justice Agreement),

57 Commonwealth of Australia, *National Framework for Protecting Australia's Children 2009-2020*, p. 9.

58 Commonwealth of Australia, *National Framework for Protecting Australia's Children 2009-2020*, p. 11.

59 Commonwealth of Australia, *National Framework for Protecting Australia's Children 2009-2020*, p. 5.

Western Australia (WA State Justice Plan), and South Australia (Aboriginal Justice Action Plan). Queensland's agreement lapsed in 2010 and a draft of the new agreement has been released for public consultation. These agreements and documents provide strategic plans, at state and territory level, to address community safety and rates of Indigenous offending.

- 2.90 The Committee noted that Tasmania and the Northern Territory do not have Aboriginal justice agreements or equivalent strategic documents.

The Australian Capital Territory

- 2.91 The ACT Aboriginal and Torres Strait Islander Justice Agreement 2010-2013 has five goals, which are to:
- improve community safety and improve access to law and justice service for Aboriginal and Torres Strait Islander people in the ACT
 - reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system as both victims and offenders
 - improve collaboration between stakeholders to improve justice outcomes and service delivery for Aboriginal and Torres Strait Islander people
 - facilitate Aboriginal and Torres Strait Islander people taking a leadership role in addressing their community justice concerns, and
 - reduce inequalities for Aboriginal and Torres Strait Islander people in the justice system.
- 2.92 The agreement was developed by the ACT government in partnership with the ACT Aboriginal and Torres Strait Islander Elected Body and the ACT Aboriginal Justice Centre.
- 2.93 Importantly, the agreement has a reporting framework that is based on a range of performance measures, including:
- the long term reduction of the number of adults in custody
 - the number of staff undertaking cultural awareness and cultural competency training with justice agencies
 - the number of Indigenous staff employed within key justice agencies, and

- a range of data sources that include the number of Indigenous children, young people and adults who come into contact with the criminal justice system and the nature of that contact.

2.94 The agreement requires:

- annual reporting on performance measures by the relevant ACT agencies, which may be subject to the ACT Aboriginal and Torres Strait Islander Elected Body estimate style hearings
- an alignment of territory reporting with national reporting on work towards the broader Closing the Gap targets, and
- the provision of a public report card on the performance measures of each agency after two years.⁶⁰

New South Wales

2.95 Until recently New South Wales had an Aboriginal Justice Plan which set out the following goals:

- reduce the number of Aboriginal people coming into contact with the criminal justice system
- improve the quality of services, and
- develop safer communities.⁶¹

2.96 Under the goals were seven strategic direction areas, each with their respective objectives and actions:

- Aboriginal children
- Aboriginal young people
- community wellbeing
- sustainable economic base
- criminal justice system
- systemic reform, and
- leadership and change.⁶²

60 ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body, *ACT Aboriginal and Torres Strait Islander Justice Agreement 2010-2013*, p.23.

61 NSW Aboriginal Justice Advisory Council, *NSW Aboriginal Justice Plan: Beyond Justice 2004-2014*, p. 8.

62 NSW Aboriginal Justice Advisory Council, *NSW Aboriginal Justice Plan: Beyond Justice 2004-2014*, p. 10.

2.97 However, the New South Wales Aboriginal Justice Advisory Council no longer exists, with the New South Wales Government now 'consulting with the network of 20 Aboriginal Community Justice Groups on law and justice issues affecting Aboriginal people in NSW'.⁶³ The Committee was advised that the New South Wales Department of Aboriginal Affairs are monitoring the implementation of the New South Wales Aboriginal Justice Plan under the Two Ways Together process.

Victoria

2.98 The Victorian Aboriginal Justice Agreement Phase 2 (AJA2) has two aims, which are to:

- minimise Koori over-representation in the criminal justice system by improving accessibility, utilisation and efficacy of justice-related programs and services in partnership with the Koori community, and
- have a Koori community, as part of the broader Victorian community, that has the same access to human, civil and legal rights, living free from racism and discrimination and experiencing the same justice outcomes through the elimination of inequities in the justice system.⁶⁴

2.99 Under the aims there are six objectives with a range of strategies and initiatives, including:

- crime prevention and early intervention
- diversion and stronger alternatives to prison
- reduced re-offending
- reduced victimisation
- responsive and inclusive services, and
- stronger community justice responses.⁶⁵

2.100 Andrew Jackomos from the Department of Justice Victoria, emphasised the issue of partnership between the Victorian Government, the judiciary, and the Victorian Indigenous community as fundamental to the success of the AJA2:

63 New South Wales Government, *Crime Prevention Division*, <www.lawlink.nsw.gov.au/ajac> accessed 13 July 2010.

64 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, p. 19.

65 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, p. 20.

What makes our Aboriginal Justice Agreement work – and I believe it works – is this strong partnership. It is a dynamic partnership that is regularly tested. But it is a continuing partnership, and it brings together a government, judiciary and community ... We have a network of regional Aboriginal justice advisory committees – I think we now have nine across the state – that bring together community and bring together justice agencies at the regional and local level to identify what the issues are and also to identify locally based responses.⁶⁶

2.101 The success of the AJA2 is measured by improvements in the headline indicator which is to reduce the rate of Koori imprisonment and a large number of intermediary indicators. The AJA2 acknowledges that:

Because Koori over-representation is heavily influenced by conditions beyond the control of the justice system, the headline indicator is unlikely to be sensitive enough to measure decreases in over-representation caused by AJA2 initiatives. The intermediary indicators ... are far more able to do this because factors outside the influence of the AJA2 have less impact on them. Further, they all contribute to the performance of the headline indicator.⁶⁷

2.102 The intermediary indicators are worth noting as they reveal how developed the monitoring framework of the AJA2 is. The intermediary indicators include:

- number of times Koori youth are processed by police
- proportion of Kooris cautioned when processed by police
- proportion of Kooris remanded in custody
- proportion of Kooris in maximum security prisons
- proportion of adult Kooris sentenced to prison rather than other orders
- proportion of Koori youth sentenced to juvenile detention rather than other orders
- proportion of Koori prisoners released on parole
- proportion of Koori adults/youth who return to prison/juvenile detention within two years
- proportion of Koori adults/youth who are convicted within two years of their previous conviction

66 Andrew Jackomos, Department of Justice, Victoria, *Committee Hansard*, Melbourne, 3 March 2010, p. 22.

67 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, p. 26.

- proportion of people accessing positive criminal justice system-related services who are Koori
- number of Kooris employed in criminal justice system-related agencies
- number of Kooris on intervention orders
- number of Kooris convicted for violent offences against persons
- number of Kooris who are victims of crime (by offence category)
- number of Koori volunteers involved in programs
- number of community initiated and implemented programs, and
- number of Koori organisations delivering programs.⁶⁸

2.103 Mr Jackomos advised the Committee that following the introduction of the AJA2, there had been sustained improvements in some of the intermediary indicators:

The response from the Victorian Aboriginal Justice Agreement has been a reduction in the rate in which young Kooris come into contact with police, from 75.6 per thousand in 2004-05 down now to 71.6. So our contact is decreasing. There has been an increase in young Kooris in the 10 to 17 age group cautioned when processed by police. This is an initiative that the Victorian Aboriginal Legal Service has led for us in partnership with the Koori communities and Victoria Police. So that is an increase from 27.9 up to 34. We see that we are making improvement. There is a huge way to go but we see that in partnership – and it has to be a strong partnership – we can make a difference.⁶⁹

Western Australia

2.104 Western Australia's State Justice Plan (the Justice Plan) was developed by the State Aboriginal Justice Congress (the State Congress). It is not a government plan, but sets out some 'key priorities for negotiation with Government'.⁷⁰ Those key priorities are:

- reform the criminal justice system to achieve fair treatment for Aboriginal people
- tackle alcohol, drug abuse and mental health issues contributing to crime, and

68 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, pp. 26-27.

69 Andrew Jackomos, *Committee Hansard*, Melbourne, 3 March 2010, p. 22.

70 Government of Western Australia, *State Justice Plan 2009-2014*, p. 7.

- strengthen families and communities to build identity and help prevent violence and other crime.⁷¹
- 2.105 Under each of these priority areas, the State Congress will seek to negotiate specific agreements with State and Commonwealth government agencies, drawing upon identified strategies and actions under each of the priority areas.⁷²
- 2.106 Leza Radcliffe from the State Congress, told the Committee that the strength of the Justice Plan was that it drew on the voices of Aboriginal people:

This is one of the better true representations of the Aboriginal voice with regard to justice issues ... We access a lot of people at a regional level and a local level because the issues are current and relevant to people. In our different areas we have come up with our strategies for our region and they have been combined in that one document. That is a good representation of what we hope to achieve at a state level.⁷³
- 2.107 Review and evaluation of the Justice Plan is expected to occur at two levels. The first focuses on the individual agreements negotiated with State and Commonwealth government agencies, while the second looks at the Justice Plan as a whole. Review of the individual agreements will occur annually, while the review of the Justice Plan will occur either in 2011 or 2012.⁷⁴

South Australia

- 2.108 South Australia's Aboriginal Justice Action Plan 2008-14 (the Action Plan) has five goals, including:
 - to ensure all South Australians have access to democratic, fair and just services
 - to ensure that crime is dealt with effectively
 - to improve public safety through education, prevention and management
 - to contribute towards building sustainable communities, and
 - to excel in service delivery innovation and government efficiency.⁷⁵

71 Government of Western Australia, *State Justice Plan 2009-2014*, p. 8.

72 Government of Western Australia, *State Justice Plan 2009-2014*, p. 8.

73 Leza Radcliffe, State Aboriginal Justice Congress, *Committee Hansard*, Perth, 30 March 2010, p. 55.

74 Government of Western Australia, *State Justice Plan 2009-2014*, 2009, p. 9.

75 Government of South Australia, *Aboriginal Justice Action Plan*, 2009, p. 3.

- 2.109 The priority actions in the plan are drawn from implementation plans from South Australia's Strategic Plan targets.⁷⁶ Each priority action is supported by a lead agency, and identifies key performance indicators, timeframes for action, and contributing agencies.

Queensland

- 2.110 A draft of the new Queensland Aboriginal and Torres Strait Islander Justice Strategy has been released for public consultation (closing 30 May 2011). The *Aboriginal and Torres Strait Islander Justice Strategy 2011-2014* is a three year program that aims to reduce Indigenous offending and re-offending in Queensland.
- 2.111 The key features of the strategy are:
- a place-based approach, focusing on select locations in urban, regional and remote Queensland (these include Cairns, Townsville, Mount Isa, Rockhampton and Brisbane and discrete Aboriginal communities and the Torres Strait Islands)
 - an ongoing assessment of Indigenous justice (and justice-related) programs and services, in consultation with Aboriginal and Torres Strait Islander people and other key stakeholders
 - an annual report to Parliament on progress
 - actions which link with the government's work relating to the Crime and Misconduct Commission report, *Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous communities*, including:
 - ⇒ the commitment to review the Community Justice Group program, local law and order laws, and the use of local Indigenous people in policing roles
 - consistency with the national approach to Indigenous justice and community safety issues agreed under the National Indigenous Law and Justice Framework, and
 - a program of action to make on-the-ground changes that will reduce over-representation and improve community safety for Aboriginal and Torres Strait Islander people.⁷⁷

⁷⁶ Government of South Australia, *Aboriginal Justice Action Plan*, 2009, p. 2.

⁷⁷ Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014 Summary*, p. 1.

2.112 A Queensland Aboriginal and Torres Strait Islander Justice Taskforce will be established to monitor the implementation, direction and progress of the Strategy. The Taskforce will:

... be chaired by an Indigenous community leader and include representatives from Aboriginal and Torres Strait Islander communities (including a representative from Queensland Aboriginal and Torres Strait Islander Advisory Council (QATSIAC) and from community justice groups), State and local governments (including Directors-General of key State Government agencies), the community sector and the private sector.⁷⁸

2.113 The Strategy has been devised to reduce the statistical overrepresentation of Indigenous people in the criminal justice system. It has more immediate targets to be achieved within three years, including a commitment to ensure that:

100 high-risk Indigenous young people, including those who have had contact with the Youth Justice system, will be transitioned to employment after receiving a qualification, mentoring and other assistance in the building of the recreational Active Trail between Kingaroy and Theebine (132 km).⁷⁹

2.114 The Strategy aims to put in place policy measures that will improve outcomes in the longer term to increase early intervention and prevention support, and to improve the treatment and rehabilitation of offenders. These long term targets include ensuring that:

- all parents or carers of young Indigenous people who come into contact with the youth justice and child safety systems will be offered parenting and/or family support
- all Indigenous people in prison or detention who are in need of literacy and numeracy training will receive it, including those on short stays (i.e. less than 12 months), and
- all prisons and detention centres will provide driver education support to assist people to get their licence, or to regain it, including those on short stays (i.e. less than 12 months).⁸⁰

78 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014*, p. 27.

79 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014*, p. 29.

80 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014*, p. 29.

Committee comment

- 2.115 The Committee was disturbed to hear that not only do Indigenous juveniles and young adults continue to be overrepresented in detention centres and prisons, but that levels of incarceration are increasing despite ongoing effort and funding in this area. It is shameful that in 2011 Indigenous people are more likely to be detained or imprisoned than at any other time since the 1991 *Royal Commission into Aboriginal Deaths in Custody* report.
- 2.116 The Committee is concerned deeply that Indigenous people, especially Indigenous women, are at such a high risk of being the victims of violent crime.
- 2.117 The Committee recognises that the overrepresentation of Indigenous juveniles and young adults in the criminal justice system is a consequence of the chronic disadvantage experienced by many Indigenous communities.
- 2.118 The Committee acknowledges the need to provide for and support safe and healthy communities that empower Indigenous youth and their families to be strong and self-determining, and to equip young Indigenous people with a positive sense of identity, educational attainment and the appropriate life skills to make positive choices for their future. The Committee recognises the critical need for early intervention to nurture the next generation of young Indigenous people and prevent them from coming into adverse contact with the criminal justice system.
- 2.119 The Committee notes that the majority of states and territories have Indigenous justice agreements or equivalent strategic documents in place - the exceptions are Tasmania and the Northern Territory. The Committee notes the importance of such agreements and the need for each state and territory to shape agreements appropriate to the issues and communities in their jurisdiction.
- 2.120 While supportive of the variations this will bring to each agreement, the Committee considers there is a need for some states and territories to provide greater detail in their agreements and to ensure appropriate Indigenous involvement in the design and implementation of the agreement.
- 2.121 The Committee considers that such agreements should be viewed as dynamic and elements should be reviewed regularly and updated following monitoring and evaluation of area outcomes. Victoria and Western Australia appear to have a sound Indigenous partnership

approach and Victoria has a well developed system of monitoring. The Committee is encouraged by Queensland's draft strategy approach to including Indigenous representation in its implementation and monitoring framework.

- 2.122 The Committee urges other states and territories to re-evaluate their own agreements and be willing to build on the work of others. In particular, the Committee urges Tasmania and the Northern Territory to develop appropriate justice agreements in partnership with their Indigenous communities.
- 2.123 The Committee is supportive of COAG's Closing the Gap strategy. The existing Closing the Gap targets and the National Partnership Agreements that focus activity on the Building Blocks provide a sound foundation for addressing Indigenous disadvantage.
- 2.124 While the Closing the Gap strategy, in the Committee's view, establishes a sound foundation for addressing Indigenous disadvantage, the Committee is concerned about both the lack of activity under the Safe Communities Building Block and the absence of an Indigenous justice target to complement the existing targets in the areas of health, education and employment.
- 2.125 The Committee commends Commonwealth and state and territory governments on the development and endorsement of the National Indigenous Law and Justice Framework. Insofar as it provides stakeholders with a coherent strategy for pursuing improvements in justice outcomes for Indigenous people, it is a comprehensive document of value to those who choose to use it in this manner.
- 2.126 The Committee is encouraged by the development of the National Plan for Reducing Violence against Women and their Children. The actions in the National Plan that specifically address Indigenous women and children are well considered, and likely to lead to improvements in safety, if implemented.
- 2.127 The Committee commends COAG on the endorsement of the National Framework for Protecting Australia's Children. It is pleasing to see that the issue of Indigenous community safety is being addressed in a specific outcome area.
- 2.128 However, the Committee has some concerns with aspects of the National Indigenous Law and Justice Framework, the National Plan to Reduce Violence against Women and their Children, and the National Framework for Protecting Australia's Children.

- 2.129 Foremost amongst those concerns is that the National Indigenous Law and Justice Framework, while comprehensive in its identification of Indigenous justice issues, does not compel any jurisdiction to implement its strategies and actions, and is unlikely to lead to any coordinated and sustained activity in this area.
- 2.130 Neither the National Plan to Reduce Violence against Women and their Children nor the National Framework for Protecting Australia's Children is Indigenous specific. Where Indigenous issues do receive focused attention, as they do in the National Framework for Protecting Australia's Children, that attention is restricted to issues relating to Indigenous community safety rather than the full spectrum of issues affecting Indigenous people's contact with the criminal justice system.
- 2.131 The Committee does not accept that the Safe Communities Building Block is being well served by these three policy vehicles as suggested by COAG.
- 2.132 The Committee is of the view that Closing the Gap in the identified target areas between Indigenous and non-Indigenous people can only be achieved if the Safe Communities Building Block is addressed in a nationally coordinated and sustained manner with attention focused not only on Indigenous prevention and diversion, but also on rehabilitation.
- 2.133 The Committee does not accept the view that investment in education, health, housing and employment initiatives are sufficient to close the gap in Indigenous justice outcomes. Certainly, initiatives in these areas will have a positive impact on Indigenous imprisonment rates in the long term. However, the idea that initiatives in these areas are all that are needed to be successful fails to recognise intergenerational patterns in which a significant number of Indigenous people are entangled already within the criminal justice system. These people return to their communities upon release, often without improved prospects and with the capacity to negatively influence others in their communities.
- 2.134 Therefore, the Committee considers that the most effective means of focusing activity on the Safe Communities Building Block and for supporting activity under the other Building Blocks is through the development of a National Partnership Agreement dedicated to improving Indigenous justice and community safety outcomes.
- 2.135 Although the Commonwealth Government and state and territory governments will be responsible for developing the details of the National Partnership Agreement, the Committee considers it necessary that prevention, diversion and rehabilitation are equally addressed as part of that agreement.

- 2.136 The Committee considers it vital that justice targets are included in the COAG Closing the Gap strategy. The Committee recommends that the Commonwealth endorse the justice targets developed by SCAG and strongly urges all states and territories to support the inclusion of a Safe Communities Building Block related Partnership Agreement and justice targets in the Closing the Gap strategy.

Recommendation 1 - National Partnership Agreement

- 2.137 **The Committee recommends that the Commonwealth Government develop a National Partnership Agreement dedicated to the Safe Communities Building Block and present this to the Council of Australian Governments by December 2011 for inclusion in the Closing the Gap strategy.**

Recommendation 2 - Justice targets

- 2.138 **The Committee recommends that the Commonwealth Government endorse justice targets developed by the Standing Committee of Attorneys-General for inclusion in the Council of Australian Governments' Closing the Gap strategy. These targets should then be monitored and reported against.**

The role of positive social norms

- 3.1 This chapter considers the importance of developing positive social norms and behaviours amongst Indigenous juveniles and young adults, their families and the communities in which they live. The chapter considers programs that promote positive social engagement, and how individuals and families can be supported to change their behaviours and provide positive leadership and role models for a community.
- 3.2 The chapter considers some of the issues which contribute to establishing social norms around a child, including:
- intergenerational dysfunction
 - community development of social norms and a connection to culture
 - family and community cohesion
 - parenting skills
 - mentors and role models
 - sport and recreation, and
 - safe accommodation.

What are social norms?

- 3.3 Social norms are established by the (positive or negative) values, beliefs, attitudes and behaviours that dominate across a community group. For example, social norms may mean going to school, getting a job, playing sport, respecting elders and others in family and community, and maintaining a safe home environment.

- 3.4 Positive and negative patterns of behaviours are adopted or copied. A group of Aboriginal and Torres Strait Islander Legal Services (ATSILs) commented on how social norms might develop:

It is life experience from early childhood that builds an understanding of what is acceptable behaviour, and what is not. Normative values are essentially learnt from direct, repeated exposure to a child's immediate social environment. They are influenced by the values and the behaviour of parents, peers, immediate community and the wider society. They are shaped by people who are respected and admired and by those who exercise authority.¹

- 3.5 Social norms differ from community to community and family to family. Some are dysfunctional while some are positive. Acting Chief Magistrate of the Darwin Magistrates Court, Sue Oliver commented on different social norms in different communities:

They [young people] do have a social norm. Unfortunately, the social norm is often a household where there is alcohol and substance abuse and where there has not been an engagement with education for a couple of generations. In some communities, it is a social norm where it is acceptable to take up weapons whenever you get upset with anyone and you run around the community threatening people.²

Intergenerational dysfunction

- 3.6 Intergenerational offending is one of the risk factors for offending identified in the National Aboriginal and Torres Strait Islander Social Survey.³ A significant detracting factor in young people's environment is the intergenerational entrenchment of involvement with the criminal justice system among many Indigenous people and communities.
- 3.7 A survey conducted of juvenile justice detainees in New South Wales revealed that '41 percent had a parent who had been in prison at some time during the formative years of that young person in custody. Eleven percent of them had a parent in custody at the same time'.⁴

1 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 5.

2 Sue Oliver, Darwin Magistrates Court, *Committee Hansard*, Sydney, 28 January 2011, p. 18.

3 New South Wales Government, *submission 84*, p. 1.

4 Michael Levy, Australian National University, *Committee Hansard*, Canberra, 4 February 2010, p. 3.

- 3.8 As 'many Indigenous fathers have been or are incarcerated', and 'the trend for Indigenous women incarcerated is also on fast track'⁵, their children are normalising a life spent in contact with the criminal justice system. Peter Collins from the Aboriginal Legal Service of Western Australia (ALSWA) described the situation in Western Australia thus:

...the Aboriginal experience in Western Australia is of imprisonment. There are so many Aboriginal men who start off by serving time in juvenile detention centres who progress to adult jails as young men and then effectively spend a life sentence, by instalments, in and out of jail. They start off with young cousins in custody with them and then go on to being uncles who have young nephews coming through, fathers and brothers.⁶

- 3.9 A representative of New South Wales Corrective Services Women's Advisory Council told the Committee that:

So many of the people in custody or on community based orders are following the footsteps of their parents or grandparents. When I was going to Mulawa prison, it was brought home to me when a woman came up and introduced her mother and her grandmother. They had all been in custody and they are all in Mulawa together, in the women's jail. It was not remarkable to them. It was just what happens. ... The daughter had a baby, the next one.⁷

- 3.10 It is concerning that young offenders 'are often parents as well, and their reintegration is of great significance to the development of their children'.⁸
- 3.11 The impact of incarceration on an offender's family, up or down the generational tree, cannot be underestimated. The consequences can be long term, including 'missed opportunities to develop skills, further education and difficulty in attaining appropriate employment well after the period of imprisonment'.⁹ The consequences can be far-reaching, as they affect the social and economic position of the family and the development of children.¹⁰

5 Libby Carney, *submission 92*, p. 1.

6 Peter Collins, ALSWA, *Committee Hansard*, Perth, 30 March 2010, p. 46.

7 Katherine, New South Wales Corrective Services Women's Advisory Council, *Committee Hansard*, Canberra, 24 June 2010, pp. 6-7.

8 National Justice Chief Executive Officers Group, *Staying Strong on the Outside: Indigenous Young Adults*, September 2009, p. 4.

9 ACTCOSS, *submission 34*, p. 7.

10 UnitingCare Burnside, *submission 4a*, pp. 3-4.

- 3.12 Cheryl Axelby, of the South Australia Youth Justice Aboriginal Advisory Committee, said:

One thing which is really critical is how we address the intergenerational impact of issues which have impacted families for many generations. ... One of the key issues I see is timeliness – how you are expected to work with these very marginalised and disadvantaged families for a short period when the reality is that it is going to take quite some years of intervention and supporting families to get them to a stage where it does not impact as much on children.¹¹

- 3.13 John McKenzie from the Aboriginal Legal Service (NSW/ACT) spoke of representing grandparents of his current clients in the 1980s and asserted it has been a ‘fundamental mistake’ by governments and policy makers to work on issues in a segmented way. Rather, Mr McKenzie maintained that it is essential that treatment for a child be provided in a holistic way and involve the family and community in which they live.¹²

- 3.14 An inquiry in 2010 by the New South Wales Ombudsman into service provision to the Bourke and Brewarrina communities found that for many young offenders¹³, their anti-social behaviour occurs within complex and difficult family environments. A key finding of the inquiry was the need for human services agencies to take an ‘intelligence driven’ approach to the early identification of vulnerable children and young people who are at risk, for the purpose of undertaking integrated case management aimed at supporting them and their families. This should involve holistically assessing individual needs and directly facilitating access to a range of services.¹⁴

- 3.15 Luke Grant from Corrective Services New South Wales referred to the entrenched antisocial thinking and the need for cognitive behavioural therapy:

An important thing that should not be forgotten and that is very clear in the correctional literature is that people do develop

11 Cheryl Axelby, Youth Justice Aboriginal Advisory Committee, *Committee Hansard*, Adelaide, 20 May 2010, p. 6.

12 John McKenzie, Aboriginal Legal Service (NSW/ACT), *Committee Hansard*, Sydney, 28 January 2011, p. 32.

13 Aboriginal children make up over 80 percent of juvenile detainees in Western New South Wales. New South Wales Ombudsman, *Inquiry into the Service Provision to the Bourke and Brewarrina communities*, December 2010, p. III.

14 New South Wales Ombudsman, *Inquiry into the Service Provision to the Bourke and Brewarrina communities*, December 2010, pp. VIII-IX.

entrenched antisocial thinking, and therefore working with the way people think and the effectiveness of cognitive behavioural therapy should not be overstated. It is one thing to give someone vocational skill, but if the person still cannot deal with working with other people and taking instruction and communicating effectively and solving problems then all those vocational skills are a waste of time.¹⁵

- 3.16 The Committee considers the current intergenerational entrenchment of offending has devastating social and economic impacts for all Australians. However, the impact on Indigenous victims of crime is profound, with a large number becoming offenders themselves. The following section discusses the impact of violence in Indigenous families and communities.

Victimisation

- 3.17 Family dysfunction, including family violence, child abuse and neglect, was often identified as important contributory factors in the offending behaviour of many Indigenous juveniles and young adults. Data on crime and victims demonstrates that Indigenous women are more likely to be victims of violence and the Committee has heard that many Indigenous children who offend have a history of family trauma, violence and neglect.
- 3.18 The incidence of violence and assault is higher among Indigenous youth compared to their non-Indigenous counterparts. Indigenous Australians aged 15-24 years are more likely to be hospitalised for assault than other Australians. In the four states which collect mortality data, Indigenous Australians aged 15-24 are more likely to die from assault than non-Indigenous Australians in the same age group.¹⁶
- 3.19 Australian Bureau of Statistics (ABS) data from four jurisdictions¹⁷ makes it apparent that Indigenous people are overrepresented in the criminal justice system as victims of violent crime. For example, they are at least three times more likely to be a victim of assault, and four times more likely to be a victim of sexual assault.¹⁸
- 3.20 In each of these jurisdictions, Indigenous victims of assault were significantly more likely to know the offender than were non-Indigenous

15 Luke Grant, Corrective Services New South Wales, *Committee Hansard*, Sydney, 28 January 2011, p. 22.

16 Department of Health and Ageing, *submission 73*, p. 3.

17 Queensland, Northern Territory, South Australia, New South Wales.

18 ABS, *Recorded Crime – Victims*, Cat. No. 4510.0, June 2010, pp. 61, 64, 67 & 70.

victims of assault.¹⁹ In the Northern Territory, for instance, 44 percent of Indigenous victims of assault were assaulted by their partner, compared with nine percent of non-Indigenous victims of assault.²⁰

- 3.21 Statistics show Indigenous women and children are more likely to experience violence than their non-Indigenous counterparts:
- Indigenous women were more than two-and-a-half times as likely as non-Indigenous women to have been a victim of physical violence
 - in New South Wales, 9.1 percent of sexual assault victims under the age of 18 years were Indigenous, and
 - in New South Wales, 12.6 percent of people under the age of 18 years who were victims of domestic violence were Indigenous.²¹

- 3.22 It is important that the issue of victimisation is not viewed in isolation from the issue of incarceration. It is apparent that there is a link between physical and sexual abuse and future incarceration. A survey of Indigenous women in New South Wales prisons found that there was a strong correlation between a history of abuse, offending behaviour, and incarceration:

... 70 percent of the women surveyed said that they had been sexually assaulted as children and most had also suffered other types of childhood abuse. 78 percent of the women stated that they had been victims of violence as adults and 44 percent said they had been sexually assaulted as adults. 98 percent of the women who were sexually assaulted as children stated that they had a drug problem, [and] most equated their drug problem to their experiences of past violence and their inability to get help with it.²²

- 3.23 The survey found that there was an equally strong correlation between alcohol and substance abuse, offending behaviour and incarceration. This issue is discussed further in chapter 4 of this report, but the survey found:

... 68 percent of the Aboriginal women surveyed stated that they were on drugs at the time of their last offence. 14 percent stated they were under the influence of alcohol and 4 percent said they were under the influence of both drugs and alcohol at the time of their last offence. Only 18 percent said that they were neither drug

19 ABS, *Recorded Crime – Victims*, Cat. No. 4510.0, June 2010, pp. 62-71.

20 ABS, *Recorded Crime – Victims*, Cat. No. 4510.0, June 2010, p. 71.

21 Wurringa Baiya Aboriginal Women's Legal Centre, *submission 64*, pp. 3-4.

22 Aboriginal Justice Advisory Council, *Speak Out, Speak Strong Aboriginal Women in Custody Research Project*, 2003, p. 5.

nor alcohol affected at the time of their offending however one third of them said they were heroin users.²³

- 3.24 Given the higher likelihood of Indigenous people being victims of violent crime and the links between victimisation, alcohol and substance abuse, and incarceration, it is important that policy responses to these issues are holistic in design and do not treat each issue separately from the others. Addressing violence in Indigenous families and communities is critical and the Wirringa Baiya Aboriginal Women's Legal Centre stressed that programs that specifically focus on the needs of victims of violence must be supported and need to be culturally, gender and age appropriate:

Strategies aimed at changing these norms should not be confined to the behaviour of offenders. They must also address the circumstances of the victims. Indigenous women and children need to be provided with the means to respond to such violence. Victims must have access to services, for example help with AVO applications, places of refuge, counselling, and victims compensation. By focusing attention on the right of Indigenous women and children to be free of violence and by providing the services they need, social norms which tolerate and even condone violence are publicly challenged.²⁴

Indigenous Family Safety Agenda

- 3.25 Community safety is a vital pre-condition to achieve the Council of Australian Government's (COAG's) targets in health, education and housing. Governments agreed at a November 2009 roundtable on Indigenous community safety that if there is not action to address serious problems in community safety, it will not be possible to make improvements in other areas.²⁵
- 3.26 To keep children and families safe, the Commonwealth Government manages and funds the Indigenous Family Safety Program, is progressing the National Framework for Protecting Australia's Children 2009-20 with state and territory governments, and is finalising a National Plan to Reduce Violence Against Women and Children. Commonwealth funding contributes to programs such as family support services for vulnerable

23 Aboriginal Justice Advisory Council, *Speak Out, Speak Strong Aboriginal Women in Custody Research Project*, 2003, p. 5.

24 Wirringa Baiya Aboriginal Women's Legal Centre, *submission 64*, p. 7.

25 Communiqué, Indigenous Community Safety Roundtable, Sydney, 6 November 2009.

families, increasing the number of child protection workers, and strengthening alcohol controls in the Northern Territory.

- 3.27 The Indigenous Family Safety Program is providing \$64.4 million over four years, from July 2010, to fund innovative Indigenous family safety community initiatives focused on the Agenda's priority action areas:
- addressing alcohol abuse, with an urgent focus on reducing the supply of alcohol
 - more effective police protection to reduce incidents of violence
 - working with strong local leaders to strengthen social norms against violence by changing attitudes and fostering respectful relationships, and
 - coordinating support services to aid the recovery of people who experience violence, including children who experience or witness violence.²⁶
- 3.28 In 2010-11 the Indigenous Family Safety Program provided \$12.5 million to family safety initiatives such as safe houses, counselling, prevention and early intervention programs, early education and behaviour change programs.²⁷

Committee comment

- 3.29 The Committee is concerned that Indigenous people, especially Indigenous women, are much more likely than non-Indigenous people to be the victims of violent crime. Of great concern is the identification of an intergenerational cycle of abuse and violence. Indigenous juveniles are more likely to witness or experience a greater incidence of violence than non-Indigenous juveniles, and so normalise this behaviour which then increases the risk of them resorting to violence in the future.
- 3.30 Tackling intergenerational disadvantage and dysfunction is critical to improving the outcomes for Indigenous children and their families, and reversing these trends for future generations. Government policies and programs must first and foremost address the widespread violence experienced by Indigenous women and children. The Committee supports the family safety initiatives under the Indigenous Family Safety Agenda.

26 FaHCSIA, *Indigenous Family Safety Agenda*, <www.fahcsia.gov.au/sa/indigenous/pubs/families/Pages/indig_fam_safety_agenda.aspx> accessed 13 April 2011.

27 *Closing the Gap: Prime Minister's Report 2011*, p. 41.

- 3.31 The Committee acknowledges that this is a recent initiative and that measures of success should take into account the challenges of assessing changes to social norms. The Committee notes that the Indigenous Family Safety Program provides funding over four years and expresses its concern regarding the limited life of this funding and the need for sustained programs to effect appropriate social change over time.
- 3.32 However, supporting safe communities is more than just placing a road block across the path that so many young Indigenous men and women are headed down. It must be about opening up new pathways so the intergenerational track of family dysfunction, poor health, poor educational outcomes, and few employment opportunities is not a predestined one. Prevention must be about opening new directions and opportunities that engage, inspire and provide hope and positive choices for young Indigenous people.
- 3.33 In order to successfully address the overrepresentation of young Indigenous people in the criminal justice system, the families and environments in which they are living must be supported. The following sections discuss the importance of strong individuals, families and communities to effectively turn around the entrenched negative social norms and incarceration that is so devastating for Indigenous youth.

Community development of positive social norms

- 3.34 The social norms for many young Indigenous people include negative values and beliefs that do not lead to wellbeing or positive social engagement. Therefore, many witnesses believed there was a need to rebuild positive social norms in communities and to achieve this it is essential to engage local communities and their leaders in the design of local diversion programs.
- 3.35 Danial Kelly, Lecturer in Law at Charles Darwin University, stressed:
- ... the greatest positive contribution the Government can make is to resource and facilitate these senior and respected people to design and implement locally appropriate solutions to lowering juvenile crime.²⁸

28 Danial Kelly, *submission 107*, p. 1.

3.36 There is much evidence to support the development of social norms and behavioural programs in partnership with Aboriginal and Torres Strait Islander people and communities. A local partnership approach helps to ensure the cultural overlay and sensitivities are incorporated from the outset during the developmental stages of program, including the ongoing monitoring and evaluation components.²⁹

3.37 Sam Jeffries, former Co-Chair, National Congress of Australia's First Peoples referred to empowering Indigenous people to develop and support local programs:

When local people are engaged in the design of projects and programs in their communities, they often work better and achieve better outcomes. If it is something that comes in from the outside, it is seen as an imposition. If they are disconnected from the process in the first place, it does not work as well.³⁰

3.38 Shane Phillips, who leads a grassroots diversion program Tribal Warriors, agreed that making a difference is based on capacity building, influence and generation change within communities:

What we are saying is that we are actually in the community, and we are asking for a bottom-up approach here. We are asking for the strengths of our own communities to be the guiding light. Let's take what is there. There are people within the community who can help build a better future for a lot of our kids. They can make it influential. That is the key to it, because if it becomes influential within our communities it is something they want to be part of and that they will share. It is about the ownership. The ownership of this whole belief and moving forward is the key to it. I am an advocate for mentoring, but it is capacity building within communities and families that is so important.³¹

3.39 Many submissions referred to the importance of incorporating cultural awareness and knowledge and how it can be an enriching component of services for juveniles and young adults when establishing positive social norms and behaviours. They asserted that strengthened cultural connections strengthen intergenerational relationships and community building. Submissions noted that culture plays a significant role in

29 Government of South Australia, *submission 82*, p. 3.

30 Sam Jeffries, National Congress of Australia's First Peoples, *Committee Hansard*, Sydney, 28 January 2011, p. 20.

31 Shane Phillips, Tribal Warrior Association, *Committee Hansard*, Sydney, 28 January 2011, p. 22.

Indigenous wellbeing and must be recognised in program and service design and delivery.³²

- 3.40 Professor Bamblett, from the Victorian Aboriginal Child Care Agency Cooperative Ltd, made the point that culture is a critical issue for young Indigenous people:

A lot of kids that are involved in the criminal justice system have no connection with their culture. A lot of them have been placed in non-Aboriginal care, with a history of being in non-Aboriginal care with no connection to culture. They do not know who they are. They did not know who their family are. We know that when children leave care, 80 per cent of them go home. If children have been raised by non-Aboriginal people, who do they go home to? That is why the criminal justice system becomes their home, becomes their family, becomes the only institution that they know.³³

- 3.41 The Committee considers it of paramount importance that Indigenous families and communities have the capacity to lead change and take responsibility for establishing the positive social norms that will foster a new generation of Indigenous children with choices and opportunities for the future. Social change and expectations must come from within communities, however there is a role for governments to provide an interim safe and stable community environment and to assist in developing community leadership and cohesion where needed.
- 3.42 Incorporating Indigenous engagement and representation in intervention and diversion programs is discussed further in chapter 8.

Supporting families and communities

- 3.43 Supporting families is key to opening positive pathways for Indigenous youth at risk and halting the intergenerational entrenchment in the criminal justice system. Leza Radcliffe, Western Australian Justice

32 Western Australian Department of Indigenous Affairs, *submission 83*, p. 2; Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 13; Tasmanian Government, *submission 90*, p. 10.

33 Muriel Bamblett, Victorian Aboriginal Child Care Agency Cooperative Ltd, *Committee Hansard*, Sydney, 28 January 2011, p. 49.

Congress, stated that services for the child and their family as a whole are required:

... without looking at the family and the home life, it is not going to make any difference. You can prop that kid up until they are about 13 or 14, but then you will find them going away from the mainstream, finding a social life, finding a sex life, finding alcohol and drugs if they have not already found them, and you will lose them anyway. If you do not repair whatever is going on in the home, you could have 48 foster families and you will still need more.³⁴

- 3.44 Patricia Mason, Western Australian State Aboriginal Justice Congress, stated that for the entire extended family there must be intense programs and guidance that provide parenting support and mentoring:

I think that we are failing to mentor these youths and families. Mothers – well, you can't inherit a behaviour; it is learnt. They only do things that they learn from the people who are around them, and if they are not getting pulled up for that behaviour they think it is right. ... They have got no guidance. These youths have got nothing. Even the parents have got nothing, because that is the way they were brought up.³⁵

- 3.45 The Committee heard further evidence suggesting that capacity building in communities as a whole provides the best possible support to youth at risk and their families. Shane Phillips, Tribal Warrior Association, referred to capacity building in communities:

We have to build the strengths up. Even if people are not relatives they are part of the same community and network. The simple old saying that it takes a village to raise a child is so important to us. We have to build the capacity.³⁶

- 3.46 Supporting communities from where young offenders come from is an essential part of the early intervention and rehabilitation process. John McKenzie, Aboriginal Legal Service (NSW/ACT), described the

34 Leza Radcliffe, Western Australian Justice Congress, *Committee Hansard*, Sydney, 28 January 2011, p. 50.

35 Patricia Mason, Co-Chair, Western Australian State Aboriginal Justice Congress, *Committee Hansard*, Sydney, 28 January 2011, pp. 51-2.

36 Shane Phillips, Tribal Warrior Association, *Committee Hansard*, Sydney, 28 January 2011, p. 14.

importance of supporting the family and community of a young offender when they are released from custody:

You can do the best rehabilitative effort in the world while you have them in your care in an institution but if they go back to a community and a family that is in despair and does not have resources, in which there is hopelessness and in which there is not due regard for education, health and fitness then that person is more than likely going to fail. All the effort that all of the agencies around this table put in whilst they were in the criminal justice system will have come to naught because the community they go back to is actually reproducing the circumstances in which the person initially got into the offending.³⁷

- 3.47 Transitioning programs and services from detention to communities was seen as an essential part of reducing recidivism and this is discussed further in chapter 7.
- 3.48 Some evidence was received about the importance of maintaining strong family connection while a parent is in custody. Research shows family contact and maintaining family relationships during imprisonment is related to lower levels of recidivism. UnitingCare Burnside referred to the Newpin Inside Parents program which is designed specifically for parents who are incarcerated and offers a combination of therapeutic and education parenting groups. Early indications of a study of a small sample of male prisoners in Western Australia are that Newpin Inside Parents 'was a more effective catalyst for change in increasing participant's parenting competency, wellbeing (particularly lowering depression) and reducing their criminal attitudes...'.³⁸
- 3.49 The Committee notes that some young girls and boys aged 14 and above who are in custody are already parents themselves and need to maintain those family connections. Katherine from the New South Wales Corrective Services Women's Advisory Council claimed there is not enough emphasis on family programs and maintaining family connections while a parent is in custody:

Despite improvements in corrections in this area, there are still not enough telephones or visiting hours. Visits are still a privilege rather than a right. The usual things that have been raised forever still happen. As a result, the connections and family relationships

37 John McKenzie, Aboriginal Legal Service (NSW/ACT), *Committee Hansard*, Sydney, 28 January 2011, p. 33.

38 UnitingCare Burnside, *submission 4a*, pp. 4-6.

that are known to help reduce recidivism occur in spite of the system rather than because the system prioritises that.³⁹

Parenting skills

- 3.50 Poor parenting is a significant predictor of juvenile offending. Higher risks of offending are related to parental neglect, parental attitudes, parental conflict and family disruption.⁴⁰ Professor Bamblett discussed the importance of parenting and its link to children being involved in the criminal justice system:

I think the strongest predictor to young people and children being involved in the criminal justice system is parenting, and there is an absence of this with a lot of our young people, particularly with a history of stolen generations. I think all the evidence in Victoria suggests that young people who are involved in the criminal justice system have issues at home: mental health, drug and alcohol, disability. I think if we do not do something about parents working with parents and families in the home we are not going to stem the flow of children in the system.⁴¹

- 3.51 A study of factors affecting crime rates in the Indigenous communities of Bourke and Lightning Ridge found that support for parents and especially support for young mothers was an area of crucial need. The study found that limited parenting skills were often an intergenerational issue:

It is self-evident that parents love their kids and want to do what is best for them. One reason given for why some people find parenting more difficult than others was because they themselves came from unstable families with many children raised by aunts or grandparents. A number of people referred to young people themselves becoming parents, who want the security of family but "have been brought up without those [parenting] skills."⁴²

- 3.52 Mrs Radcliffe from the Western Australian Justice Congress reminded the Committee that many parents are under the age of 18 and they are raising

39 Katherine McFarlane, New South Wales Corrective Services Women's Advisory Council, *Committee Hansard*, Sydney, 28 January 2011, p. 36.

40 Dr Troy Allard, *Understanding and preventing Indigenous offending*, Indigenous Justice Clearinghouse, Brief 9, December 2010, p. 5.

41 Muriel Bamblett, Victorian Aboriginal Child Care Agency Cooperative Ltd, *Committee Hansard*, Sydney, 28 January 2011, p. 49.

42 Alison Vivian and Eloise Schnierer, Jumbunna Indigenous House of Learning, University of Technology Sydney, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge*, November 2010, pp. 21 & 57.

kids with limited skills.⁴³ Una Champion from New South Wales Health asserted that young people need guidance on how to be parents because they have not learnt the skills from their own parents, with up to 60 percent of those young people in custody having a parent who has been in prison. Ms Champion believed that beginning mentoring support when the mother is in the maternity hospital would assist.⁴⁴

- 3.53 Claire Gaskin, Clinical Director, New South Wales Health agreed that some of the best interventions which have been shown to have a significant impact on antisocial behaviour, are early interventions in parenting. However, Ms Gaskin asserted that such early interventions must be culturally sensitive and funded appropriately for families to access. Effective programs will involve people who understand the parents and the culture within which they are working. Ms Gaskin said there is a need to have Indigenous people being trained and working with the specialists in those fields.⁴⁵
- 3.54 The following sections consider some of the major government initiatives in place directed at building parenting skills through the support of families and communities.

Commonwealth Government programs supporting Indigenous families and communities

- 3.55 Under the Early Childhood Building Block of Closing the Gap, the Commonwealth Government is 'integrating services such as child care, early learning, and parent and family supports so vulnerable children receive a better start to life'.⁴⁶
- 3.56 The Family Support Program, administered by FaHCSIA, is a key element of the Commonwealth Government's investment in supporting families and children. The Commonwealth Government is working to deliver, in collaboration with other levels of government and non-government organisations, better coordinated and more flexible support services for children and families. Community and Family Partnerships is one of three streams under the Family Support Program and it was funded almost \$84 million in 2009-10. Community and Family Partnerships aims to improve

43 Leza Radcliffe, Western Australian Justice Congress, *Committee Hansard*, Sydney, 28 January 2011, p. 48.

44 Una Champion, Director, Adolescent Health, Justice Health, New South Wales Health, *Committee Hansard*, Sydney, 28 January 2011, p. 54.

45 Claire Gaskin, New South Wales Health, *Committee Hansard*, Sydney, 28 January 2011, p. 64.

46 *Closing the Gap: Prime Minister's Report*, p. 23.

child development, safety and family functioning and targets significantly disadvantaged communities and families, especially vulnerable and at risk families and children.⁴⁷

3.57 Three of the programs providing support to Indigenous parents, families and communities under Community and Family Partnerships are:

- **Indigenous Parenting Support Services (IPSS)** targets families with children aged up to twelve years old with a particular focus on children under the age of two. The concept of parenting and caring includes extended families and kinship ties. Where possible and practical IPSS are located in existing Indigenous services and comprise Indigenous workers. IPSS are integrated into existing services with established infrastructure, systems and good working relationships with Indigenous families with young children. These include child care centres, schools, Aboriginal Health Centres and other related services to provide Indigenous families with access to enhanced parenting support.⁴⁸ It was expected that 51 Indigenous Parenting Support Services sites across Australia would be operating by June 2011.⁴⁹
- **Communities for Children Plus (CfC Plus)** funds organisations to develop and facilitate a whole of community approach building on community strengths and the existing infrastructure of organisations, networks and resources, making use of strong evidence of what works in early intervention. Within a site, CfC Plus targets the whole community. Where a need is identified, specific strategies focus on particular target groups. Each CfC Plus site is required to establish and maintain a Communities for Children Committee (CCC). The CCC is a voluntary group of key stakeholders within a site who work in collaboration with the Facilitating Partner to develop, guide and implement the activity.

CfC Plus sites bring together Commonwealth, state and local governments and the non-government sector to plan and deliver targeted services according to local needs. There will be a strong focus on building links with state government child protection services - as well as services primarily targeted at adults - to tackle known parental

47 FaHCSIA, *Family Support Program*, <www.fahcsia.gov.au/sa/families/progserv/Pages/cfp_guidelines.aspx> accessed 6 April 2011.

48 FaHCSIA, *Family Support Program*, <www.fahcsia.gov.au/sa/families/progserv/Pages/cfp_guidelines.aspx> accessed 6 April 2011.

49 *Closing the Gap Prime Minister's Report 2011*, p. 24.

risk factors including mental health, family violence, housing and substance abuse.

Eight CfC Plus sites were identified by the Commonwealth and state governments as being communities where targeted and integrated service delivery, including mental health, drug and alcohol, family violence and housing services, were required to help prevent child abuse and neglect. The eight CfC Plus sites are Launceston (Tasmania), Cardinia (Victoria), Ipswich (Queensland), Kempsey (New South Wales), Midland (Western Australia), Playford (South Australia), East Arnhem (Northern Territory) and Campbelltown (New South Wales). All eight CfC Plus service providers have been selected and are currently at various phases of implementation⁵⁰, and

- **Indigenous Children Program** delivers early intervention and prevention programs targeted at families with children at risk of abuse or neglect. The program provides a range of services including playgroups, parenting programs, counselling, drug and alcohol education and anger management. The program works on the strengths of community members to increase their capacity to be caring parents and positive role models. This program operates in 32 locations in cities and regional centres across Australia.⁵¹

- 3.58 The Commonwealth Government also committed \$6 million over three years from 2010-11 to the Strong Fathers, Strong Families Program which is administered by the Department of Health and Ageing. This program aims to promote the role of Aboriginal and Torres Strait Islander fathers, partners, grandfathers and uncles, and encourage them to actively participate in their children's and families' lives, particularly in the antenatal period and early childhood development years.⁵²

Queensland Family Responsibilities Commission

- 3.59 The Queensland Family Responsibilities Commission (FRC) began operating in four communities (Arukun, Coen, Hopevale and Mossman Gorge) in July 2008. The purpose of the Families Responsibilities Commission (FRC) is 'to support the restoration of socially responsible standards of behaviour and to assist community members to resume and

50 FaHCSIA, *submission 79a*, pp. 10-11

51 *Closing the Gap Prime Minister's Report 2011*, p. 24.

52 *Closing the Gap Prime Minister's Report 2011*, p. 24; Department of Health and Ageing, <http://www.health.gov.au/internet/main/publishing.nsf/Content/oatish-health-QandA_factsheet> accessed 13 April 2011.

maintain primary responsibility for the wellbeing of their community and the individuals and families within their community'.⁵³

3.60 Four obligations for all Indigenous and non-Indigenous adults in relation to child wellbeing, school attendance, lawful behaviour and responsible tenancy are enacted in the FRC legislation as a message of what is expected. The FRC has the legal power to enforce the obligations and direct that individuals who breach them have their welfare income payments managed. Primarily the FRC achieves these objectives by holding conferences with individuals who have breached their obligations. In these conferences, the Commissioner and Local Commissioners sit with the concerned person to talk about the problem and possible solutions.⁵⁴

3.61 Mr David Glasgow, Commissioner, Families Responsibilities Commission explained the FRC's objectives around restoring reasonable social norms and the wellbeing of children:

Our objects and our priorities are: early intervention and the wellbeing of children, to raise local authority in each community, and to help the community re-establish some reasonable social norms – such as, it is the norm to go to school; it is the norm not to drink at home; it is the norm not to have pornography at home, and those kinds of things. Then we assist the community as a whole – we deal with the whole family of those who come before us – to make decisions about their future.⁵⁵

3.62 An independent evaluation of the FRC found indications of positive community-level change around school attendance, alcohol and violence in the two communities of Aurukun and Mossman Gorge. The evaluation also found the FRC appeared to be contributing to restoring Indigenous authority by supporting local and emerging leaders in Local Commissioner roles to make decisions and model positive behaviour. It was noted in the evaluation that although the FRC had been operating for 18 months only, it is strengthening its role within participating communities.⁵⁶ The Families Responsibilities Commission is discussed further in chapters 5 and 8.

53 Families Responsibilities Commission, 'About the Commission', <www.frcq.org.au> accessed 17 March 2011.

54 FaHCSIA, *submission 79*, p. 12.

55 David Glasgow, Commissioner, FRC, *Committee Hansard*, Sydney, 28 January 2011, p. 68.

56 Department of Families, Housing, Community Services and Indigenous Affairs, *Implementation Review of the Family Responsibilities Commission – Final Report*, September 2010, pp. 6-8.

New South Wales Intensive Supervision Program

- 3.63 The Intensive Supervision Program (ISP), which has been operating since May 2008 in two locations in New South Wales, Western Sydney and Newcastle, is based on the multisystemic therapy model, an intervention model that addresses the known, multiple causal pathways to juvenile offending behaviour. These causes include the characteristics of the juvenile, parenting skills, family relations, peer associations, school and vocational performance, neighbourhood characteristics and family-community interactions. A critical aspect of the ISP is working with the young person's family with an emphasis on promoting behavioural change in the young person's family, peer and school environment.
- 3.64 The ISP targets serious repeat juvenile offenders. It is a program that concentrates on identifying in the family the strengths and the processes needed to support the young person in the community. As part of the program, teams of professionals (including three to four clinicians, an Aboriginal Team Advisor and a Clinical Supervisor) go into the homes, schools and communities of these young people, and they are available to young offenders and their families 24 hours a day, seven days a week, for up to six months. These professionals look at the factors associated with juvenile reoffending, including substance abuse, housing needs, community disadvantage, family conflict, negative peer pressure and financial instability. The program develops positive inter-agency links that help families and juveniles access appropriate services.⁵⁷
- 3.65 Eighty-seven New South Wales families have signed up to the program since May 2008, and 90 percent have completed it successfully. Preliminary research has shown a 60 percent drop in offending by young people during the program and 74 percent during the six months after completing the program. Preliminary data collected by the Multisystemic Therapy Institute as of December 2009 shows that 87 percent of caregivers had acquired the appropriate parenting skills necessary to handle future problems; 78 percent had improved family relations; and 70 percent had improved support networks.⁵⁸
- 3.66 The New South Wales Government referred to the benefits of ISP to entire families:

While the primary aim of the ISP is to have an effect on young people already involved in the criminal justice system by reducing

57 New South Wales Department of Juvenile Justice, *Intensive Supervision Program*, Pamphlet, April 2008.

58 Mr Graham West, *NSW Legislative Assembly Hansard*, 19 May 2010, p. 23077.

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.⁵⁹

- 3.67 While the New South Wales Government is supportive of ISP, the Committee notes the Western Australian Government did not continue funding for its Family Intensive Program after four years (2004-2009) because it 'has shown it has not been able to successfully engage with the families of these young people and ultimately has not achieved the results I would expect from such a resource intensive program'. The Western Australian Government redirected its funding to other diversion programs for at risk youth, such as youth bail services and regional youth justice services.⁶⁰

Committee comment

- 3.68 The Committee heard about the pressing need for government and non-government service providers to deliver integrated services, particularly where the problems people face are complex and multifaceted.
- 3.69 The description of the program Communities for Children Plus appears to provide what so many communities require. Likewise, the Families Responsibilities Commission aims to provide a coordinated, cross jurisdictional support and empowerment to parents, families and communities to enable Indigenous children to develop in environments with positive social norms. The Committee supports the continued funding of these programs and the continued monitoring of their effectiveness in developing positive social norms for Indigenous youth and in preventing contact with the criminal justice system.

Recommendation 3 – Positive social norms

- 3.70 **The Committee recommends the Commonwealth Government continue to fund holistic, intergovernmental services to Indigenous youth and their families and communities, such as Communities for Children Plus, and evaluate their effectiveness in strengthening positive social norms in communities and preventing Indigenous youth engagement with the criminal justice system.**

59 New South Wales Government, *submission 84*, p. 13.

60 Christian Porter, Western Australian Treasurer and Attorney-General, *State government to target at-risk youth*, Ministerial Media Statement, 9 September 2010.

- 3.71 The Committee notes with interest the outcomes of the Intensive Supervision Program in New South Wales where offending behaviour by youth on the program has reduced and parenting skills have increased. The Committee urges the Commonwealth Government to consult with state and territory governments on the effectiveness of multisystemic therapy models, such as the Intensive Supervision Program, in establishing positive social norms in families and communities and in reducing the offending behaviour of Indigenous youth.

Mentors and role models

- 3.72 The importance of role models and mentors was raised by many participants at public meetings around the country. The Committee heard that Indigenous mentors and inspirational leaders are helping to make positive changes within communities, and therefore should be supported appropriately.⁶¹
- 3.73 Discussions in support of Indigenous mentoring referred to its value in all aspects of life, for example in the arts, sport, music, culture, school, family, community, police force, and government representation. Mentors and role models can assist youth at risk to develop self esteem, self worth, future aspirations and a commitment to community responsibility. They can contribute to rehabilitation and mentor on healthy lifestyles, sport, and education and employment goals.
- 3.74 Young Indigenous people respond well to the Indigenous mentors who are from their local community. The Committee received very supportive evidence about several successful mentoring schemes. The evidence highlighted the importance of mentoring for children at risk, within a custodial setting and during their reintegration back into community post-release. The Hon. Geoffrey Eames provided the following example of the success of mentoring:

There is a mentoring program, for example, in Warrnambool in Victoria, which appears to have very good prospects of success. It is about trying to grab kids at the very earliest point, when they are just on the fringes of getting involved with the criminal justice system, and giving them a buddy or a mentor, who takes a

61 Ken Zulumovski, Public Interest Advocacy Centre, *Committee Hansard*, Sydney, 4 March 2010, p. 54; Shane Phillips, Tribal Warrior Association, *Committee Hansard*, Sydney, 28 January 2011, p. 12, Youth Justice Advisory Committee, *submission 97*, p. 6.

deliberate and active role in watching that kid's progress and trying to keep the kid out of custody.⁶²

- 3.75 Luke Freudenstein from the New South Wales Police was very supportive of Indigenous mentors, both men and women:

Some of the girls come on board and they are mentors for us. They are helping to speak to the young girls who are getting involved in these fights. So, again, you see the importance of the mentors, ... and I firmly believe that is why we are having so much success at Redfern. ... They are a godsend for us as police, because we get them to do some of the things that we cannot do. They get the message across, and that assists us greatly.⁶³

- 3.76 The New South Wales Bar Association proposed that:

Mentoring of offenders by Elders and suitably qualified people, in cultural issues, for education and training, drugs and alcohol abuse, domestic violence etc, should be available before, during and after custody.⁶⁴

- 3.77 Sometimes mentors themselves have a history of disadvantage or offending behaviour and they are helping youth to turn their lives around. Magistrate Joan Baptie praised the work of mentors, in particular one of the juvenile justice officers who sits in court in Campbelltown:

He is quite generous about indicating his past history but he was in trouble as a kid. He is a marvellous mentor, particularly for those young Aboriginal boys who go through Campbelltown court. He knows all the families and he is able to click with them, talk to them, work them through some of their problems and put them in contact with people who might be able to advance that.⁶⁵

- 3.78 The *meenah mienne* mentoring buddy system in Tasmania has seen some encouraging results from their mentoring and buddy system with three young Aboriginal buddies pursuing employment and further educational opportunities in the first year. The system seeks to divert young Aboriginal people from juvenile detention and crime by supporting intergenerational relationships, targeting community building, role-
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62 The Hon. Geoffrey Eames, *Committee Hansard*, Melbourne, 3 March 2010, p. 6.

63 Luke Freudenstein, New South Wales Police, *Committee Hansard*, Sydney, 28 January 2011, p. 35.

64 New South Wales Bar Association, *Criminal Justice Reform Submission*, December 2010, p. 6. <<http://www.nswbar.asn.au/circulars/2010/nov/cjrs.pdf>> accessed 22 March 2011.

65 Joan Baptie, Magistrate, Children's Court of New South Wales, *Committee Hansard*, Sydney, 28 January 2011, p. 10.

modelling, healing, literacy and skills development. There has been large demand from high risk Indigenous youth to join the buddy system and there is a need to train and support more mentors.⁶⁶

- 3.79 Shane Phillips, from the Tribal Warrior Association in Sydney, described the role of the mentor:

A real mentor enables; they make themselves redundant. ... People do not want a mentor for the rest of their life. They want someone to help them engage in what they need to engage in and take on the responsibility for themselves, and see the milestones behind them and say, 'I've accomplished that.'⁶⁷

- 3.80 Some of the evidence received suggested the biggest obstacle for running mentoring programs was the lack of sufficient on-going funding despite programs demonstrating successful outcomes. The Youth Justice Aboriginal Advisory Committee in South Australia submitted that one of its mentoring programs was receiving reduced funding which limited the capacity of mentors:

The MAYFS Panyappi mentoring program originally funded through Commonwealth Attorney Generals Department and received funding of approximately \$400,000 per annum and received a National Crime Prevention Award. This program became an ongoing initiative under State Government and the funding of this program was significantly reduced to \$190,000 per annum which has significantly reduced the capacity of the program to employ Aboriginal Mentors.⁶⁸

- 3.81 Sam Jeffries, former Co-Chair of the National Congress of Australia's First Peoples, supported further government funding for intensive mentoring programs:

The mentoring that we talk about, I think, needs to be intensive. That might cost a lot of money. We quite often say, 'We can't quite pay for that because it comes too high.' When we talk about mentoring, it might get down to one mentor to two kids or something like that, and that costs a lot of money when you think about that. But we are quite comfortable and relaxed about accepting the cost to society when they are institutionalised.⁶⁹

66 meenah mienne, *submission 16*, p. 1.

67 Shane Phillips, Tribal Warriors Association, *Committee Hansard*, Sydney, 28 January 2011, p. 12.

68 Youth Justice Aboriginal Advisory Committee, South Australia, *submission 97*, p. 4.

69 Sam Jeffries, National Congress of Australia's First Peoples, *Committee Hansard*, Sydney, 28 January 2011, pp. 17-18.

Committee comment

- 3.82 Indigenous mentors to support Indigenous young people at risk of entering the youth justice system is a key initiative to provide resilience and guidance to develop the social norms and behaviours that lead to positive social engagement. Mentors support Indigenous young people in managing the social stresses associated with the criminal justice system and life back in the community.
- 3.83 The Committee recognises that many Indigenous communities are unable to provide the necessary leadership, mentoring and role modelling for youth at risk. The Committee considers it essential that a Commonwealth coordinated mentoring scheme is made available. The Committee notes that any costs associated with the establishment and administration of such a scheme is likely far less than the continued cost of incarceration of Indigenous youth.
- 3.84 The Committee is convinced that mentoring can be very effective at changing the lives of Indigenous youth who are at risk of entering the criminal justice system. Mentors are best sourced at the local community level and further assistance is required to support effective mentoring programs in a more coordinated and sustained manner. The Committee considers that any mentoring scheme should aim to assist those mentoring programs already in place, such as *meenah mienne*, and facilitate a nationwide network of mentoring programs.

Recommendation 4 - Mentors

- 3.85 **The Committee recommends the Commonwealth Government support a national program to develop and provide local mentors for Indigenous youth at risk before, during and after custody.**

The role of sport

- 3.86 Positive role modelling and social norms of behaviour can be encouraged through sport and recreation. The Committee heard about the benefits of sport providing Indigenous people with a grass roots level of positive contact with the community. The engagement of Indigenous youth in sport and recreation can promote positive social and health wellbeing and

can help to minimise the potential for offending behaviour for Indigenous youth. The Australian Sports Commission (ASC) submitted:

Sport and recreation are shown to have a positive impact on Indigenous Australians, improving overall health, reducing violence, crime, theft and vandalism, reducing substance abuse and self-harm and improving school attendance. Indigenous sport historian Colin Tatz found that sport contributes to enhanced social cohesion, improved self esteem, reducing suicide risks and improved social support for Aboriginal communities.⁷⁰

- 3.87 There are a number of Commonwealth funded initiatives to promote the engagement of Indigenous youth in sport. For example, the Youth in Communities program supports a range of sport, recreation and educational services for young people in remote communities where options for young people are otherwise very limited. Funding has contributed to the upgrading of sport and recreation infrastructure, equipment and coaching. These programs are intended in part to:
- provide an effective diversion for young Indigenous people from at risk behaviours
 - improve life choices and outcomes for young Indigenous people, through engaging them in positive activities that promote pathways to better health and wellbeing, community capacity building and participation in school, work and social networks, and
 - strengthen and improve the youth services infrastructure, both in the number of youth workers employed and the facilities available for providing youth services and activities.⁷¹
- 3.88 FaHCSIA is managing the following Northern Territory based Australian Football League (AFL)/FaHCSIA sports partnership programs:
- AFL Club Fostership Program - Five participating AFL clubs have established links under this program with selected Indigenous communities, primarily in the Northern Territory, to deliver football-related activities, promote health active lifestyles and encourage increased school attendance
 - AFL Ambassadors for Life Mentoring Program - More than 100 Indigenous youth from around Australia are being mentored under this
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70 ASC, *submission 42*, p. 3.

71 FaHCSIA, *Youth in Communities*, <www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/ctg_monitoring_report_jan_Jul10/Documents/part2/appb.htm> accessed 4 May 2011.

program by 36 listed Indigenous AFL players who have undergone mentoring training. This program aims to build capacity and leadership skills, targeting young Indigenous males (13-14 years of age) at risk of substance abuse and other harmful behaviours

- Wadeye Development Officer -FaHCSIA is providing \$130,000 a year under this partnership agreement over three years, to support Australian Rules activities in Wadeye, NT. This program is managed by NT State Office, with the funding to conclude at 30 June 2010. The funds are being used to appoint a development officer and support local AFL competitions in Wadeye. Advice to date is that the program has had a positive impact on anti-social behaviour in the community, and
- Groote Eylandt Regional Manager - \$70,000 was also earmarked under the partnership agreement in 2008-09 to support the employment of an AFL Regional Manager on Groote Eylandt. This Manager is responsible for establishing junior and local AFL competitions on Groote, as well as providing support for the Fostership program (Groote Eylandt is one of the target communities under this program).⁷²

3.89 Another successful initiative funded by FaHCSIA in partnership with the Queensland Government is the Kids Living Safer Lives project. This program aims to prevent and reduce domestic and family violence in Cape York's Indigenous communities through a range of activities that engage children and young people. Beginning in July 2008, the project coordinates police programs such as Be Strong Be Heard, Violence No Way with the AFL's Kickstart lifestyle program, and other self-esteem building activities. The project has been shown to reduce violence and the fear of violence in the Indigenous communities of Aurukun, Coen, Hope Vale, Kowanyama, Lockhart River, Mossman Gorge and Pormpuraaw.⁷³

3.90 The ASC has managed and administered the Indigenous Sport Program, in financial partnership with other Commonwealth, state and territory agencies and the mainstream sporting industry since 1993. The Indigenous Sports Program was developed to encourage Indigenous people to be more active and to play sport at all levels. The program works to increase opportunities for Indigenous people to learn the skills needed to organise, deliver and manage community-based sport, and to ensure that talented Indigenous sportspeople are able to access the support they need to reach

72 Department of Families and Housing, Community Services and Indigenous Affairs, *submission 79*, p. 19.

73 FaHCSIA, *submission 79*, pp. 16-17.

their sporting goals. The Indigenous Sports Program has a network of Indigenous Sport Development Officers who look at the sporting needs of Indigenous communities and then develop programs, often in partnership with other sporting organisations, to deliver community-based sporting opportunities and services.⁷⁴

- 3.91 The ASC stated that the Commonwealth, state and territory governments collectively committed nearly \$45 million in 2009-10 to sport and recreation activities and programs for Indigenous Australians. However, the ASC asserted that the combination of funding is spread too thinly across government agencies, therefore a 'duplication of activities, limited strategic direction and vision, and limited understanding of the Australian sports industry has resulted in an inefficient, fragmented and under-resourced approach to sport and recreation service delivery for Indigenous Australians'.⁷⁵
- 3.92 The ASC was working to develop a coordinated approach to national funding for Indigenous sporting programs, overcome issues in the area of short term resourcing and differences in delivery, and build sustainability in communities. They explained that:

At its December 2009 meeting, the Sport and Recreation Ministers Council (SRMC) agreed to establish a working party of Australian Government and state and territory departments of sport and recreation as well as cross portfolio representatives to:

- assess the need for a national coordination and partnership model to reduce confusion, overlap and delivery inefficiencies
- map and qualify existing sport and recreation funding for Indigenous Australians across government jurisdictions and non-government sectors; examine the appropriateness and efficacy of existing sport and recreation service delivery models to Indigenous Australians
- examine place and evidence based approaches to sport and recreation participation and community sport capacity building, with a view to longer term sustainability
- identify best practice models for engaging non-government funding sources to augment government support, and
- recommend options for evaluation and improving future service delivery.⁷⁶

74 ASC, *submission 42*, pp. 11-12.

75 ASC, *submission 42*, p. 11.

76 ASC, *submission 42*, p. 3.

- 3.93 The inter-government working party was due to report to the Sport and Recreation Ministers Council by June 2010; however, the Committee understands that this work has stalled.
- 3.94 The lack of structured leisure and recreational pursuits is a well recognised criminogenic risk factor. An Honours thesis by Ross Tanimu reported that:
- A project by the Australian Sports and Health Commission utilised sports to gauge outcomes in Aboriginal communities in the Northern Territory. Results saw considerable benefits for Aboriginal youth in education, physical and emotional wellbeing as well as minimising their contact with the judicial system.⁷⁷
- 3.95 The research thesis found that:
- ... sports participation, with the support of other programs and agencies, has the ability to be used as an effective diversion and prevention program to minimise the risk for offending behaviour and possible onset of recidivism for Aboriginal youth.⁷⁸
- 3.96 Another important aspect of sports participation is the need to conform to regulations. Understanding the rules of various sports and the penalties associated with infringements in sports can assist the understanding of the penalties imposed by crime and offending behaviour.⁷⁹
- 3.97 A report by Monsignor David Cappo, Commissioner for Social Inclusion in South Australia, commented on the importance of sport and recreation based activities for Indigenous people. The report stated:
- Throughout the consultations, Aboriginal young people indicated a strong connection to sport and recreation based activities. Many said that there was a lack of opportunity to participate in sport either due to the absence of sporting facilities within their communities, or through a lack of funds required to access such programs.⁸⁰
- 3.98 Safe and productive activities for young people after school and in the evening are effective at preventing Indigenous youth from participating in
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77 Ross Tanimu, *Does the promotion of sport for Aboriginal youth help reduce the risk of offending behaviour?*, Honours Thesis, Flinders University, p. 63.

78 Ross Tanimu, *Does the promotion of sport for Aboriginal youth help reduce the risk of offending behaviour?*, Honours Thesis, Flinders University, p. 74.

79 Ross Tanimu, *Does the promotion of sport for Aboriginal youth help reduce the risk of offending behaviour?*, Honours Thesis, Flinders University, p. 61.

80 Monsignor David Cappo, Commissioner for Social Inclusion, *To Break the Cycle: Prevention and rehabilitation responses to serious repeat offending by young people*, 2007, p. 37.

anti-social behaviour. However there is often a lack of activities for Indigenous youth at risk. A study of factors affecting crime in two towns in New South Wales found that the Indigenous young people believed there were few activities for them after school – there was little sport, no dance classes and no BMX track or skate park. The high cost of participating in sport was also noted by several people.⁸¹

3.99 The Australian Children’s Commissioners and Guardians submission referred to the issue of boredom in communities:

Another very significant issue for Indigenous children and young people in regional and remote areas is the lack of 'things to do'. This is constantly raised in consultations by ACCG members with children and young people across the country. Children and young people state that boredom and an absence of structured (and affordable) sport and recreation activities have a negative influence on their mental health and increase the risk of them coming into contact with the justice system. Core service agencies, such as the police, local government and community organisations, consistently reinforce this message. It is important, then, to look outside the youth justice system, to other agencies such as sport and recreation, for assistance in crime prevention.⁸²

3.100 Mark Horton from the Dubbo Youth Foundation stated that sport had proven to be the most effective and fastest means of engaging large numbers of Indigenous youth with the wider community and he believed resources do not need to be significant. The Dubbo Youth Foundation addresses a range of impediments to Indigenous youth participation in sport, including:

- A-Administrative support to youth and parents to complete sport registration paperwork (to overcome literacy and numeracy issues) including obtaining birth certificates (see attached documentation).
- B- Administration of the ICC DoHAs indigenous small grants program, that provides small (up to \$200) part funding grants for sport, arts and cultural equipment, registration fees to allow for club membership registration.
- C- Transport subsidisation for those with access issues.
- D- Introduction to mainstream sport, by creating links with and for clubs to disadvantaged youth.

81 Alison Vivian and Eloise Schnierer, Jumbunna Indigenous House of Learning, University of Technology Sydney, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge*, November 2010, p. 21.

82 Australian Children’s Commissioners and Guardians, *submission 59*, p. 10.

- E- Club governance advice and support, club committee and volunteer training facilitation and membership advice support.
 - F- Contracting external NGO community providers to conduct school holiday diversionary and education programs.⁸³
- 3.101 Police citizen youth clubs have provided Indigenous youth with recreational opportunities and have helped to build police relations. A good news story was told about Mornington Island in Queensland where robberies had dramatically reduced. The Queensland Police Commissioner referred to the dedication and long term commitment of the local Sergeant and his wife in developing the police-citizens youth club and other programs working with Indigenous youth, including programs for young women.⁸⁴
- 3.102 Similarly in New South Wales, police are using sporting programs for Indigenous women to help to prevent offending behaviour. In Redfern New South Wales the police sponsor the girls' basketball team and the rugby league team. They have jerseys which recognise the Aboriginal community and police together in sport.⁸⁵
- 3.103 Midnight Basketball Australia is a harm prevention charity that helps to coordinate basketball tournaments across communities throughout Australia. The program is a catalyst for community building and successfully brings together youth services, schools, police, councils, local businesses, voluntary organisations, volunteers and parents. The tournaments run for an eight-week period on Friday or Saturday evenings and participants must attend the life-skills workshops that are held before any games are played. A healthy meal is provided on the night and at the end of the evening a bus takes the players safely home to their front door.
- 3.104 Midnight Basketball has been very successful and continues to expand throughout Australia. By the end of 2010, eighty tournaments had been held throughout Australia. The feedback from the youth involved as well as the local police has been positive. The participants have an activity on a Friday or Saturday night that is fun, safe and healthy. The local police report that there is less crime committed on the nights that Midnight Basketball is held and the local police involved in the tournaments are able to build up a rapport with some of the youth who might otherwise engage in anti-social behaviour.
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83 Mark Horton, Dubbo Youth Foundation, *submission 85*, p. 4.

84 Robert Atkinson, Queensland Police Service, *Committee Hansard*, Sydney, 28 January 2011, p. 7.

85 Luke Freudenstein, New South Wales Police, *Committee Hansard*, Sydney, 28 January 2011, p. 35.

- 3.105 Each Midnight Basketball tournament is evaluated formally by an external independent research body through a variety of mechanisms. These include a detailed demographic survey of participants and tournament attendees; a survey of participant attitudes to the workshops and overall experience; and a survey for the participant service organisations involved.⁸⁶

Committee comment

- 3.106 Sport teaches many social norms such as the benefits of commitment to a team and the consequences of not meeting commitments, healthy living, participation and supporting peers. It provides positive encouragement, role modelling, a sense of achievement and belonging to a community. Community based sport and recreational activities offer a positive alternative to drug and alcohol use and anti-social behaviour. There are positive results emerging from the partnership sports programs administered by FaHCSIA and the work of the Australian Sports Commission in engaging Indigenous youth in sport.
- 3.107 The Committee commends the work of Police and Community Youth Clubs around the country, especially the work of dedicated police officers who are making a positive contribution to the lives of Indigenous youth at risk. The committee visited the Police and Community Youth Club at Dubbo, New South Wales, and observed firsthand the importance of the centre's work and the parenting and mentoring that was being provided to Indigenous youth.
- 3.108 The Committee notes the impressive commitment made by sporting bodies, such as AFL, in particular around Australia to provide leadership and mentoring to young people and to actively engage Indigenous youth in sport. The Committee urges other sporting bodies to demonstrate their social responsibility and actively work in communities to make sport a positive influence in the lives of Indigenous youth. The Committee notes the inspirational work being done by a number of Indigenous sports people, such as Cathy Freeman and others, to engage youth through sport and so open new pathways for youth at risk.
- 3.109 Similarly Midnight Basketball, which is run by volunteers, plays a crucial role in teaching social norms, providing a sense of belonging, and engaging youth in productive and enjoyable activities.

86 Midnight Basketball, *exhibit 19*.

- 3.110 The Committee sees many opportunities for other sporting and community groups to undertake valuable work in this area and urges others to become involved for the rewards it brings to the volunteers and participants. However there is a role for the Commonwealth and for state and territory governments to utilise sport as a means of teaching positive social norms, building self esteem, and establishing a sense of belong to a community with the responsibilities and support that this brings.
- 3.111 The Committee is disturbed to hear that progress has stalled on plans for a coordinated approach to national funding for Indigenous sporting programs. The Committee urges the Minister for Sport, Senator the Hon. Mark Arbib, to take this task of national coordination and best practice service delivery of sport and recreation to Indigenous Australians to the next meeting of the Sports and Recreation Ministers Council and address barriers to the inter-government working party finalising its report.
- 3.112 The Committee recognises that there are often practical impediments which impede the participation of Indigenous youth in sport, such as identification issues which are considered the following section. Other issues include uniform and registration fees, transport, guardian permissions, and health and hearing issues. The Committee recommends that the Commonwealth, in coordination with state and territory governments, investigate ways to overcome these practical impediments in order to maximise the accessibility and benefits of sporting programs.

Recommendation 5 – Sport and recreation

- 3.113 **The Committee recommends the Commonwealth Government:**
- **work with state and territory governments to support more sporting, music and other recreational activities for Indigenous children and youth outside of school hours, particularly in remote and regional areas**
 - **encourage sporting bodies and sporting celebrities to become more involved in organising sporting engagement for Indigenous children and youth**
 - **ensure continued funding for sports partnership programs and the provision of infrastructure and services to ensure sports participation by Indigenous youth, and**
 - **investigate and address impediments to sports participation for Indigenous young men and women.**

Identification issues

- 3.114 The Committee heard that often one of the major impediments to participation by Indigenous youth in organised activities, such as sport, was lack of a formal form of personal identification, such as a birth certificate or a driver licence.
- 3.115 The Committee notes that a significant percentage of Indigenous people do not have a birth certificate and this has implications for participation in community activities, as well as employment opportunities, getting a drivers licence, passport, opening a bank account or applying for a loan.
- 3.116 In Dubbo in 2006, the Aboriginal Birth Certificate Pilot Project was developed after the New South Wales Sport and Recreation team recognised that the lack of definitive identification among Indigenous people was a significant barrier to participation in mainstream community activities. Young Indigenous people could not become involved in sport and recreation, and be covered by insurance, without a birth certificate. The project was a collaborative effort by New South Wales Attorney-General's Department and the Office of Births Deaths and Marriage, Dubbo City Council, New South Wales Sport and Recreation, the Aboriginal Land Council, the Aboriginal Health Service and Community Working Parties, and other local groups. Over a 12 month period, 750 birth registrations were administered in Dubbo. Approximately 500 Indigenous people who previously did not participate in mainstream community sport were able to join sporting activities.
- 3.117 This pilot project in Dubbo has now been completed, however its success indicates the need for such programs in other areas. Several witnesses and submissions have commented on the requirement to assist young people to establish forms of identification, such as birth certificates and Medicare cards.⁸⁷ The Victorian former Minister for Community Services acknowledged difficulties in obtaining birth certificates is a barrier for young people to exit criminal lifestyles and may impede their access to services and support.⁸⁸
- 3.118 When the Committee visited the Brisbane Youth Detention Centre, the Aboriginal and Torres Strait Islander Transition Officer indicated that a significant part of her role was assisting Indigenous youth with identification paperwork.

87 Rosemary Connors, Ipswich Community Justice Group, *Committee Hansard*, Brisbane, 4 May 2010, p. 40; Stephanie Tonkin, *submission 88*, p. 14, Dr Janet Hunt, *submission 22*, p. 4.

88 Minister for Community Services, Victoria, *submission 71*, p. 1.

- 3.119 The Committee notes that, in addition to increasing the capacity of Indigenous people to participate in community activities, proof of identity can bring a range of benefits to the individual and the community, including expanded provision of services by agencies through recognition of resident population numbers.
- 3.120 The Committee considers that currently birth registration and birth certificates are often not valued by Indigenous communities due to their sense of alienation from the wider Australian community. The Committee considers that a more innovative approach is required to encourage birth registrations and to make birth certificates recognised as a valued document that acknowledges a sense of belonging to the Australian community. While beyond the direct terms of reference of this inquiry, the Committee sees Indigenous wellbeing and pride could be enhanced by the option of birth registration processes and birth certificate documents which have a greater relevance to the Indigenous community. As an example, Australian passports have been changed recently to provide colourful images of the diversity of Australian life on each page.
- 3.121 The Committee urges the Commonwealth Government to investigate how states and territories may give the birth certificate value within Indigenous communities and how the birth registration process may be made more culturally appropriate and accessible. Additionally there is a need to ensure that Indigenous youth who do not have birth certificates are assisted to obtain these in order to participate in the range of community and economic opportunities this provides.

Recommendation 6 – Identification documents

- 3.122 **The Committee recommends the Commonwealth Government:**
- **investigate options to make the birth registration process more culturally appropriate and accessible in Indigenous communities**
 - **investigate how to raise awareness of the utility and value of the birth certificate document in Indigenous communities**
 - **address reasons for the low rate of birth registrations in Indigenous communities and ensure that Indigenous health services and youth workers are actively working to ensure that births are registered and that all Indigenous children have a birth certificate, and**

- **liaise with state and territory governments to coordinate assistance to all youth to ensure they have access to their birth certificate and that this is not an impediment to them fully participating in community, travel, education, or employment opportunities.**

Safe accommodation

3.123 A stable, safe and supportive living environment is critical in establishing positive social norms for Indigenous children and youth, and in enabling them to develop a positive sense of wellbeing and aspirations for the future. Regrettably, in many cases home is not a safe and socially stable environment for Indigenous youth. The issue of the lack of appropriate and safe accommodation for youth at risk was raised by many participants in the inquiry. Shane Phillips, of the Tribal Warrior Association, referred to children who are trying to break their pattern of offending but struggling to keep moving forward unless they have appropriate accommodation:

Some of the kids that we have come from some fairly difficult backgrounds. They are trying to do something for themselves. Our whole program is based on taking control of your own destiny. You cannot change where you have come from or where you are at right now but you can change where you are going. When the kids go home that evening, maybe home is not that suitable and they might not get the rest that they need to get up and do what they need to do to change it. So we need accommodation not just for that but also for kids and older people who are coming out of the system. Accommodation is always a problem.⁸⁹

3.124 Limited safe accommodation options for Indigenous youth heighten the risk of young people offending and re-offending. The Committee received much evidence that supports investing in safe accommodation options for Indigenous youth at risk of contact with the criminal justice system. A range of accommodation options, such as out-of-home care, safe houses, and youth hostels, is required to help divert young Indigenous people away from contact with the criminal justice system.

3.125 Joan Baptie, Magistrate of the Children's Court in New South Wales described the issue of accommodation for youth as a recurrent and trans-

89 Shane Phillips, Tribal Warrior Association, *Committee Hansard*, Sydney, 28 January 2011, p. 11.

generational problem which is not being resolved.⁹⁰ When youth appear before court, options for diversionary intervention may not be possible as there is not adequate safe accommodation, so the youth may end up in detention or custodial arrangements instead.

- 3.126 The Australian Human Rights Commission pointed the Committee to evidence demonstrating that Indigenous children were more likely than non-Indigenous children to be the subject of child abuse and neglect:

The rate of substantiated notifications for child abuse and neglect for Indigenous children has been increasing between 1999 to 2008. Indigenous children are six times more likely to have a notification for child abuse or neglect which is found to be substantiated and seven times more likely to be subject to a Care and Protection Order than non-Indigenous children.⁹¹

- 3.127 A University of Technology of Sydney study into factors affecting crime rates in Indigenous communities in New South Wales said an emerging theme was:

... the need to understand the circumstances of young offenders, many of whom experience neglect, or live in unsafe circumstances, moving from house to house, or who might not know where there next meal was coming from.⁹²

- 3.128 Serene Fernando, Indigenous researcher and PhD candidate with the Australian National University, put forward the following premise:

... the majority of Indigenous high risk youth are living independently in their communities (urban, rural and remote) and raising themselves. It is also considered that there are many Indigenous young people that are neglected, homeless and living in environments that are unsuitable and detrimental to their health and well being which exposes them to developing anti-social behaviours.⁹³

- 3.129 Ms Fernando further suggested that youth hostels should be available to provide accommodation and support for young Indigenous people to live independently in their local communities.
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90 Joan Baptie, Children's Court of New South Wales, *Committee Hansard*, Sydney, 28 January 2011, p. 10.

91 Australian Human Rights Commission, *submission 30, attachment A*, p. 5.

92 Alison Vivian and Eloise Schnierer, Jumbunna Indigenous House of Learning, University of Technology Sydney, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge*, November 2010, p. 21.

93 Ms Serene Fernando, *exhibit 12*, p. 1.

- 3.130 A study of Indigenous youth and crime in the towns of Bourke and Lightning Ridge referred to the continuing need for short term and long term accommodation options for Indigenous youth:

Crisis accommodation for young people in Bourke is very limited. Children under the age of 12 may accompany their mother to the Safehouse but there is no facility for unaccompanied children or young people who need safe short-term accommodation. Separately, long-term hostel style accommodation was also identified as beneficial for young people who may need to leave home, which perhaps could be associated with the school. As described in the report, a specific bail address is not always realistic for some young people and a suitably supervised bail house is needed.⁹⁴

Out-of-home care

- 3.131 Out-of-home care services provide care for children and young people aged 0–17 years who are placed away from their parents or family home for reasons of safety or family crisis. State and territory governments fund child protection, out-of-home care, family support and other relevant services. The services may be delivered by the government or the non-government sector.
- 3.132 Out-of-home care places are intended to improve the outcome for the child only when it is not possible to maintain the child within their family. Placement with the wider family or community is sought where possible, particularly in the case of Indigenous children. Nationally, at 30 June 2008, 9070 Indigenous children and 22 096 non-Indigenous children were in out-of-home care. The rate of children placed in out-of-home care per 1000 children was 41.3 for Indigenous children and 4.6 for non-Indigenous children.⁹⁵ These figures indicate the disproportionately high number of Indigenous children in out-of-home care and the consequent increased need for the provision of a greater number of culturally appropriate and supportive accommodation options.
- 3.133 Nationally, at 30 June 2008, 53.3 percent of Indigenous children in out-of-home care were placed with a relative/kin, 20.6 percent placed with other Indigenous carer or Indigenous residential care, and 26.0 percent were not

94 Alison Vivian and Eloise Schnierer, Jumbunna Indigenous House of Learning, University of Technology Sydney, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge*, November 2010, p. 71.

95 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2009, Indigenous Compendium*, p. 233.

placed with relative/kin or with other Indigenous carer or other Indigenous residential care.⁹⁶

- 3.134 The Committee received evidence linking young people who have lived in out-of-home care to future offending behaviour and detention. Up to a third of young people who have grown up in out-of-home care are in the juvenile justice system.⁹⁷ Many Indigenous youth who enter out-of-home care have had their emotional and intellectual development already impaired by trauma, abuse and neglect. There are concerns that group-style residential care can bring a large group of troubled young people together, creating an environment where peer pressure might exacerbate youth offending. It has been found that a number of young people end up in the juvenile justice system because the out-of-home care system cannot cope with their behaviours.⁹⁸
- 3.135 Katherine from the New South Wales Corrective Services Women's Advisory Council believes 'that it is not so much involvement in juvenile delinquency which is a predictor of subsequent adult involvement but that it starts earlier than that with the out-of-home care system'. Ms McFarlane expressed concern that many non-government agencies are taking on out-of-home care services, without necessarily being well equipped and trained to handle the complexities and cultural sensitivities of youth at risk. Tensions between government agencies, such as departments of community services and juvenile justice, over which is responsible for children who have committed offences, was also a concern.⁹⁹
- 3.136 Dr Kerry Chant, Chief Health Officer, New South Wales Health, referred to the care system not improving outcomes for children:

We have to have an out-of-home care system that improves outcomes. It is the same with the criminal justice system: the outcome for children who come out of care is generally that they progress to the adult criminal system. ... So you have to look at the out-of-home care system. You have to look at why so many of our

96 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2009, Indigenous Compendium*, p. 240.

97 Katherine McFarlane, New South Wales Corrective Services Women's Advisory Council, *Committee Hansard*, Sydney, 28 January 2011, pp. 15 & 58.

98 Parliament of Victoria Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People - Final Report*, July 2009, p. 117.

99 Katherine McFarlane, New South Wales Corrective Services Women's Advisory Council, *Committee Hansard*, Canberra, 24 June 2010, pp. 5-9.

young people who are vulnerable and at risk are not able to access treatment or services.¹⁰⁰

- 3.137 Many submissions called for a holistic approach to out-of-home care where different agencies work together to provide services to Indigenous youth at risk and their families. Victoria Legal Aid stated that they represent young people who have been charged with offences such as criminal damage and offensive language whilst they have been in residential care. Victoria Legal Aid suggested that these behaviours may reflect symptoms of a child's distress and dislocation, fear and anxiety, and possibly underlying mental health issues. Therefore, Victoria Legal Aid suggested the introduction of alternative behaviour management responses that include therapeutic responses to control or respond to children and young people who exhibit self destructive or anti social behaviours.¹⁰¹
- 3.138 There are many highly regarded diversionary accommodation programs for young Indigenous people across the country operated by Indigenous organisations. One example is the Tirkandi Inaburra Cultural and Development Centre, which is a property located near Griffith in New South Wales that houses up to 16 boys aged 12-15 on a voluntary basis for between three and six months.
- 3.139 Tirkandi Inaburra aims to teach young people how to make better decisions, develop strategies to deal with their problems and to develop and draw on their own resilience in order to take responsibility for their decisions, and minimise the risk of becoming involved in the criminal justice system. Tirkandi Inaburra relies on a partnership between the Aboriginal community and government with the main recurrent funder being the New South Wales Attorney-General's Department.¹⁰² The New South Wales Government submitted that 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.¹⁰³
- 3.140 The Committee recognises that stable, positive accommodation, whether it be provided in kinship care, foster care or other appropriate forms of out-of-home care can be difficult to achieve. Indigenous operated diversion and accommodation programs are proving to be successful. It is the

100 Kerry Chant, New South Wales Health, *Committee Hansard*, Canberra, 24 June 2010, p. 50.

101 Victoria Legal Aid, *submission 39*, p. 4.

102 Tirkandi Inaburra Cultural and Development Centre <www.tirkandi.org.au/index.html> accessed 14 October 2010.

103 New South Wales Government, *submission 88*, p. 13; Janet Hunt, *submission 22*, p. 4.

Committee's view that carers in these positions must be adequately supported and resourced.

- 3.141 The objective of all Australian governments to protect the safety and welfare of Indigenous children while maintaining the cultural ties and identity of Indigenous children in out-of-home care is defined in the 'Placement in Accordance with the Aboriginal Child Placement Principle'. There are National Standards for out-of-home care as part of a whole of government initiative to apply uniform measures to formal care arrangements including residential care, foster care and kinship care. The National Standards for out of home care have been designed to deliver consistency and drive improvements in the quality of care provided to children and young people. The 13 National Standards focus on the key factors that directly influence better outcomes for those living in out-of-home care. The measurement of and reporting on outcomes is a major feature of the refining and improving of the National Standards over the long term.
- 3.142 The Committee notes Standard number 3 sets out that Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.
- 3.143 Measures will be developed over time to allow for a complete, transparent and comparable public report which will be developed within four years of commencement of the National Standards in July 2011. The views of children and young people in out-of-home care about the difference the National Standards are making to their lives will be captured. The Commonwealth Government will fund an annual, national survey of children and young people in care for this purpose, building off the existing surveys in a number of jurisdictions.¹⁰⁴

Commonwealth Government support for accommodation for Indigenous youth at risk

- 3.144 The National Affordable Housing Agreement (NAHA) is an agreement by COAG and aims to ensure that all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation. Commencing in January 2009, the NAHA provides over the first five years \$6.2 billion in housing assistance to low and middle-income Australians. Data indicates that in 2008-09, 30 percent of all Specialist

104 FaHCSIA, *National Standards for out of home care*
<www.fahcsia.gov.au/sa/families/pubs/nat_std_4_outofhomecare/Pages/default.aspx>
accessed 13 April 2011.

Homelessness Services agencies provided services for youth and the Indigenous population.¹⁰⁵

3.145 The NAHA is supported by three National Partnership Agreements which have been developed to increase construction of social housing and reducing homelessness for all Australians, including Indigenous people living in regional and urban areas. The three agreements are:

- The National Partnership Agreement on Homelessness
- The National Partnership Agreement on Remote Indigenous Housing, and
- The National Partnership Agreement on Social Housing.

3.146 Through the National Partnership Agreement on Homelessness, the Commonwealth, state and territory governments are providing \$1.1 billion over five years from July 2009. The Agreement focuses on three key strategies to reduce homelessness:

- prevention and early intervention to stop people becoming homeless
- breaking the cycle of homelessness, and
- improving and expanding the service response to homelessness.¹⁰⁶

3.147 Under the Homelessness Agreement, the Commonwealth Government has agreed to provide additional funding to the states and territories to reduce homelessness. States and territories have agreed to match the Commonwealth Government funding to deliver services and capital projects that will reduce homelessness. The Agreement recognises that a reduction in homelessness requires targeting key groups, including people escaping violence, especially women and children, children exiting care and protection, Indigenous people, and people exiting social housing, health and mental health institutions, and juvenile or adult prisons. Some of the specific initiatives to assist Indigenous youth to access and sustain safe accommodation are:

- In New South Wales (NSW), the Aboriginal Advocacy and Tenancy Support Service is helping Indigenous people currently using specialist homelessness services in NSW to transition into long term accommodation, and new individual case workers are helping people leaving care, or custody,

105 FaHCSIA, *submission 79a*, p. 6.

106 FaHCSIA, *Australian, State and Territory Governments working together to reduce Indigenous homelessness*, <www.fahcsia.gov.au/sa/housing/progserv/homelessness/national_partnership_agreement/Pages/NPAHomelessness.aspx> accessed 28 July 2010.

transition into accommodation. These new services are in addition to the provision of up to eight new houses being provided to Indigenous women leaving detention in Metropolitan Sydney and Northern NSW.

- In Victoria, new housing support workers including one Indigenous specific housing support worker are being provided at major prisons to provide pre and post release support to assist those exiting prison to access accommodation. New early intervention and response arrangements are also being implemented to support Indigenous Women and Children through culturally appropriate means in the Gippsland and Loddon Mallee regions.
- In South Australia, accommodation through a Common Ground facility in Port Augusta will provide intensive support and opportunities to connect with the community for up to 40 Indigenous families per year. Accommodation and access to essential health and other welfare services are also being provided for 194 transient Indigenous people through the Aboriginal Transitional Accommodation program. In addition, an indigenous employment and workforce development strategy is being implemented to improve opportunities for Indigenous people to find and retain employment.
- In Western Australia, assertive outreach programs are linking 40 Indigenous rough sleepers with long-term housing and health services in remote areas, providing support based on individual needs.
- In the Northern Territory, Youth Development Crisis Accommodation is being established to provide up to eight crisis beds with 24 hour support, such as education, training, alcohol and other drugs services, living skills and counselling. The Youth Development Crisis Accommodation will also provide two houses to assist young people attend school or training, remain engaged with family and receive support to build life skills. This is in addition to an Intervention and Case Management Service that will incorporate a 'Return to Country' program principally aimed at Indigenous people sleeping rough in town areas. The program will assist people to return to their community, provide intervention, referral, identification services, and accommodation for homelessness and itinerant people across the Territory.
- In the Australian Capital Territory, the Building Housing Partnerships program will help break the cycle of homelessness by coordinating and delivering support, assistance and living-skills programs for vulnerable tenants.¹⁰⁷

107 FaHCSIA, *submission 79a*, pp. 7-8.

- 3.148 Under the second agreement, the National Partnership Agreement on Remote Indigenous Housing, the Commonwealth Government is providing \$5.5 billion over 10 years to provide up to 4200 new houses in remote Indigenous communities, upgrades to around 4800 existing houses, as well as housing checks, maintenance, improvements to town camps, and accommodation for people travelling to get work. An example is in far west New South Wales where transitional accommodation is being provided for women and families exiting safe house accommodation. The safe houses are primarily managed by Indigenous community organisations.¹⁰⁸
- 3.149 The third agreement, the National Partnership Agreement on Social Housing, facilitates the Social Housing Growth Fund, in which the Commonwealth Government provided \$200 million in 2008-09 and \$200 million in 2009-10 and contributed to achieving outcomes such as:
- people being able to rent housing that meets their needs
 - people who are homeless or at risk of homelessness achieving sustainable housing and social inclusion, and
 - Indigenous people having improved housing amenity and reduced overcrowding.¹⁰⁹
- 3.150 In the Northern Territory, the Commonwealth Government, in partnership with the Northern Territory Government, is also investing in:
- the Strategic Indigenous Housing and Infrastructure Program to deliver 750 new houses, 230 rebuilds of existing houses and 2500 refurbishments across 73 remote Indigenous communities and a number of community living areas (town camps) in the Northern Territory by 2013,¹¹⁰ and
 - the Alice Springs Transformation Plan to fund enhanced social support services, a Communities for Children site, housing and upgraded

108 FaHCSIA, *submission 79a*, p. 8.

109 FaHCSIA, *National Partnership Agreement on Social Housing* <www.fahcsia.gov.au/sa/housing/progserv/affordability/affordablehousing/Pages/NPASocialHousing.aspx> accessed 6 April 2011.

110 FaHCSIA, *Strategic Indigenous Housing and Infrastructure Program*, <www.fahcsia.gov.au/sa/indigenous/progserv/housing/Pages/sihip.aspx> accessed 6 April 2011.

infrastructure in the town camps, and short-term accommodation to reduce homelessness.¹¹¹

Committee comment

- 3.151 Safe accommodation for Indigenous youth at risk is essential in preventing them from coming into contact with the criminal justice system.
- 3.152 The Committee notes there are a number of successful local initiatives in communities already, where accommodation and other support for Indigenous youth are provided. The Committee wishes to make special mention of those that take on kinship and foster care arrangements and acknowledge the commitment of these individuals and community members assisting to change the lives of Indigenous children and youth. The Committee is aware that across many Indigenous communities, grandparents and aunties have stepped in to take on the raising of children when parents are unable to do so. The Committee acknowledges the enormous commitment of these carers and their contribution in improving the lives of Indigenous children.
- 3.153 The Committee supports the Commonwealth initiatives in place, in particular those to reduce homelessness and increase the provision of remote Indigenous housing. These are important measures to provide stable and better quality housing within communities. However, safe accommodation options for youth remains a concern and appears woefully under-resourced.
- 3.154 In making recommendations to the Commonwealth Government to invest in an expanded number and range of accommodation options for Indigenous children and youth at risk, the Committee makes the following observations:
- where out-of-home care of any sort is provided it necessarily assumes a responsibility for the social nurturing and development of positive social norms for the child. When the State places a child in care arrangements, it assumes a responsibility for a child's social development. Accordingly accommodation alternatives should coordinate with local diversion programs, mentoring opportunities and sporting and community engagement options in order to provide a holistic service that responds to a child's social needs and future development

111 Department of Families, Housing, Community Services and Indigenous Affairs, *Alice Springs Transformation Plan*, <www.fahcsia.gov.au/sa/indigenous/progserv/AS_transformation/Pages/default.aspx> accessed 6 April 2011.

- the range of out of home care services must be culturally appropriate and accessible to Indigenous youth, recognising the particular needs for kin and cultural connections
- professional staff, volunteers and care providers should be given access to appropriate cultural training relevant to working with Indigenous children, and
- where children are not able to safely live with their family, a coordinated counselling approach is required to assist the family or household as a whole to make changes with the aim of being able to return the child to a stable and safe environment - ie while accommodation may be required for the child, assistance is required for the household in order to maximise the future opportunities for all.

Recommendation 7 - Accommodation

3.155 The Committee recommends that the Commonwealth Government commit to ensuring that there exists within all states and territories an expanded number and range of safe and gender-appropriate accommodation options for Indigenous children and youth. These options should include access to coordinated and holistic intensive care services. A housing or accommodation plan needs to have been identified for every youth leaving detention.

The Committee suggests that the range of appropriate accommodation options should include extended family houses, identified safe houses, hostel and school accommodation, foster and respite care, and emergency refuge accommodation.

The link between health and the criminal justice system

- 4.1 Young people in contact with the criminal justice system often have wide-ranging health and welfare needs. For instance a study of young people in custody in New South Wales concluded:

Young people in custody experience multiple health problems, including mental illness and drug and alcohol abuse. Their poorer health and risk-taking behaviours mean that for these young people, there is an increased likelihood of developing chronic diseases.¹

- 4.2 Committee discussions with representatives working in youth detention centres confirmed that the majority of Indigenous youth entering detention have multiple health and social problems. Often these young people are no longer in school and do not seek health care in the community.

- 4.3 The social determinants of health are broad and the Department of Health and Ageing (DoHA) submitted that they contribute to the relatively high level of involvement of Indigenous youth in the criminal justice system:

Social determinants of health are the economic, physical and social conditions that influence the health of individuals, communities and jurisdictions as a whole. Social determinants of health include housing, education, social networks and connections, racism, employment, and law enforcement and the legal and custodial system. The absence or presence of these determinants, and the interaction between them, influence both health outcomes and risk

¹ New South Wales Justice Health and Juvenile Justice, *2009 NSW Young People in Custody Health Survey*, March 2011, p. 15.

behaviours, including those that have a link to offending and involvement in the criminal justice system such as substance use and violence.²

- 4.4 This chapter discusses the key health factors which have been presented to the Committee as contributing to the high occurrence of contact with the criminal justice system by Indigenous youth, including:
- alcohol and substance abuse,
 - foetal alcohol spectrum disorder,
 - mental health and emotional wellbeing, and
 - hearing loss.
- 4.5 The chapter then discusses the importance of early intervention on Indigenous health if closing the gap on outcomes in health are to be achieved and the rate of Indigenous youth being incarcerated is to be reduced over the long term. The chapter closes with a discussion of a holistic approach to health in the criminal justice system and how that holistic approach can be continued following release from incarceration.

Alcohol and substance abuse

- 4.6 Alcohol and substance abuse is a major cause of poor physical and mental health, family violence, poor education outcomes and anti-social behaviour.³ A significant amount of evidence was provided to the Committee about the influence of alcohol and substance abuse on offending behaviour amongst Indigenous people.
- 4.7 Many people argue that underlying issues of racism and discrimination, cultural dispossession, family trauma and identity confusion, contribute to Indigenous alcohol and substance abuse and contact with the criminal justice system.⁴
- 4.8 The Women's Advisory Council advised that strong evidence links drug and alcohol abuse among incarcerated women to physical and sexual

2 Department of Health and Ageing, *submission 73*, p. 3.

3 Troy Allard, *Understanding and preventing Indigenous offending*, Indigenous Justice Clearing House, Brief 9, December 2010, p. 4.

4 Richard Matthews, New South Wales Health, *Committee Hansard*, Sydney, 4 March 2010, p. 16; Australian Children's Commissioners and Guardians, *submission 59*, p. 5; Wirringa Baiya Aboriginal Women's Legal Centre Inc., *submission 64*, p. 9.

abuse in childhood.⁵ The Mental Health Alcohol Tobacco and Other Drugs Service (MHATODS) considers alcohol and substance abuse to be inherently linked with the experiences of family violence, child abuse or neglect. MHATODS noted that young Indigenous people involved, or at risk of being involved, in the juvenile justice system often had a history of multiple traumatic life events:

Experience of abuse, neglect and trauma are commonplace and result in a significant proportion of [Indigenous] young people in the juvenile justice system suffering from ... substance use disorders.⁶

- 4.9 Don Weatherburn, New South Wales Bureau of Crime Statistics and Research (BOCSAR), advised the Committee that alcohol and substance abuse played a major role in determining future contact with the criminal justice system:

... the two factors that stand out as big predictors of whether an Aboriginal person will be arrested or imprisoned are substance abuse and alcohol abuse ... Part of the reason they are important is that they, particularly alcohol, tend to get Aboriginal people involved in violent crime – predominantly family violence of one kind or another. If there is any way of getting yourself into jail, it is certainly by committing a serious assault ... Alcohol and substance abuse have damaging effects on parenting as well not just for Aboriginal people but also for anyone in the community. I think that is another reason that those factors loom so large.⁷

- 4.10 BOCSAR concluded in a recent paper that efforts to reduce Indigenous overrepresentation in the criminal justice system should include focussing on offender rehabilitation, including investment in drug and alcohol treatment.⁸
- 4.11 Some studies indicate that Indigenous prisoners are more likely than other prisoners to report that their offending is associated with alcohol and substance use.⁹ A New South Wales study found that 90 percent of

5 Women's Advisory Council, *submission 106*, p. 2.

6 MHATODS, *submission 7*, p. 3.

7 Don Weatherburn, BOCSAR, *Committee Hansard*, Sydney, 4 March 2010, p. 23.

8 BOCSAR, *Reducing Indigenous contact with the court system*, Issue paper no. 54, December 2010.

9 Robyn Gilbert and Anna Wilson, 'Staying strong on the outside: improving the post-release experience of Indigenous young adults', *Indigenous Justice Clearinghouse Research Brief*, February 2009, p. 6.

Indigenous juveniles in detention tested positive to drugs compared to 40 percent of their fellow non-Indigenous detainees.¹⁰

- 4.12 The National Indigenous Drug and Alcohol Committee (NIDAC), in its 2009 report *Bridges and Barriers: Addressing Indigenous Incarceration and Health*, commented on the strong links between substance abuse and Indigenous incarceration and the need for early intervention programs and diversionary options into education and treatment:

The trauma and suffering that Indigenous people have experienced over generations have contributed to the burden of disease, substance misuse and incarceration. Sadly, many Indigenous Australians in prison are themselves victims of substance abuse or violent crime; as such, they have an indisputable right to access appropriate treatment and rehabilitation to address these underlying issues.

Now more than ever, there is an urgent need to reduce recidivism and the intergenerational effects of Indigenous incarceration by developing a national program that not only uniformly tackles the health inequalities in our correction systems but is also responsive to strengthening the health and cultural wellbeing of Indigenous Australians.¹¹

- 4.13 The Commonwealth Government is providing \$49.3 million from 2008-09 to expand and enhance treatment and rehabilitation services across Australia. This additional investment is funding a total of almost 100 Indigenous treatment and rehabilitation services in a range of locations and settings.¹²

Alcohol reforms

- 4.14 During the inquiry, the Committee visited Fitzroy Crossing in Western Australia to talk with local representatives about justice issues for Indigenous youth in that community. The Committee was impressed by the improvement in community safety following the alcohol restrictions implemented in Fitzroy Crossing in 2008. Since the alcohol reforms there has been:

- a 36 percent reduction in alcohol related presentations to the Fitzroy Crossing Hospital Emergency Department. Hospital staff were more

10 NIDAC, *Bridges and Barriers: Addressing Indigenous Incarceration and Health*, 2009, p. 5.

11 NIDAC, *Bridges and barriers: Addressing Indigenous Incarceration and Health*, 2009, p. 1.

12 *Closing the Gap: Prime Minister's Report 2011*, p. 34.

able to work collaboratively with individuals in treating their general health or in dealing with chronic conditions, such as diabetes and heart disease that were being exasperated by continued alcohol abuse. Staff also noted that they felt safer at work, in the community and were able to get a good sleep at night, which was not possible before the restriction¹³

- a 25 percent reduction in women seeking assistance from the Women's Refuge, and
- a 28 percent reduction in the average number of alcohol related matters attended by police.¹⁴

4.15 The success of the Fitzroy Crossing reforms can be attributed to the commitment of local community members, particularly the women, who developed the reforms to meet the needs of their community. One of the driving forces is June Oscar, Chief Executive Officer, Marninwarntikura Women's Resource Centre, who described the circumstances that led the women to advance alcohol reforms in their community:

There were a number of catalysts. There was the number of deaths by suicide. In 12 months, in 2005-06, this community had attended 50 funerals and was stuck in a rut of grief, despair and trauma. The shock and horror made us as a community become so numb to the degree of violence and despair that it was being viewed as normal. We know that was not normal.

So, after much discussion, over many years, by Aboriginal organisations based here in Fitzroy, with the involvement of people in the mental health services, the health sector and the police, Indigenous people gathered together, here in Fitzroy, to look at what this was doing to this community, to members of the four language groups, and to the survival of Indigenous people here. We needed to take an honest look at where we were at as a community. Discussion happened over that time. There were approaches made here locally to various committees and to the licensees, to help to address this situation. It is fair to say that there were some steps taken by the licensees, but things continued to

13 University of Notre Dame Australia, *Fitzroy Valley Alcohol Restriction Report*, July 2009, pp. 24-5.

14 FaHCSIA, *Indigenous Family Safety Agenda*, p. 3
<www.fahcsia.gov.au/sa/indigenous/pubs/families/Pages/indig_fam_safety_agenda.aspx#action> accessed 14 April 2011.

become worse. So it signalled to this community that we needed to make some serious and hard decisions here.

In our bush meeting in 2007, which is an event we have each year where women spend time out bush being hosted by the different language groups – in this case it was Gooniyandi women who were hosted by the Mingalkala community – it was women who said enough is enough. We cannot continue to live like this. We need to make some decisions so that our children and our families can have a future. Alcohol was killing any chance of us having a future.¹⁵

- 4.16 The Committee notes that community led alcohol reforms are more likely to be successful when they are community driven and supported by the government and other key partners. In Fitzroy Crossing the community is working with police, businesses and government to improve services in their community.
- 4.17 The Commonwealth Government has acknowledged that alcohol restrictions have been particularly successful in some communities, such as Fitzroy Crossing, because they were driven by strong local leaders. A priority under the Commonwealth Government's Indigenous Family Safety Agenda (IFSA) is to support local leadership to act against alcohol abuse and to stem the supply of alcohol into communities.¹⁶
- 4.18 Moreover, one of the action areas of the IFSA is addressing alcohol abuse, and the Commonwealth Government is providing resources to a range of services, including:
- treatment and rehabilitation services for Indigenous people in urban, regional and remote settings across Australia
 - health practitioners to identify and address mental illness and associated substance use issues
 - a National Binge Drinking Strategy to address high levels of binge drinking among young Australians
 - Substance Abuse Intelligence Desks in Marla, Alice Springs and Katherine to stop the trafficking of drugs, alcohol and other illicit substances

15 June Oscar, Marninwarntikura Women's Resource Centre, *Committee Hansard*, Fitzroy Crossing, 31 March 2010, pp. 12-13.

16 FaHCSIA, Indigenous Family Safety Agenda, p. 4
<www.fahcsia.gov.au/sa/indigenous/pubs/families/Pages/indig_fam_safety_agenda.aspx#action> accessed 14 April 2011.

- a study by the Fitzroy Valley community of diagnosis and community education strategies for Foetal Alcohol Spectrum Disorder (FASD)
- alcohol management plans and local liquor accords
- building the leadership and skills of people advocating for alcohol restrictions
- alcohol education activities in remote Indigenous communities
- appropriate treatment, rehabilitation and counselling services, to people with alcohol related issues who present at safe houses and other domestic violence services, and
- the construction of Indigenous specific drug and alcohol residential rehabilitation facilities.¹⁷

4.19 Many witnesses and submissions supported the further establishment of government funded and community led rehabilitation or diversion programs to support alcohol reforms.¹⁸ Rehabilitation and counselling services for substance abuse was seen as an essential service that was lacking in many communities.¹⁹

4.20 The Alcohol and other Drugs Council of Australia called for more government funding to support Indigenous specific and collaborative alcohol and drug treatment agencies and programs which are locally based and take account of local community culture and situations.²⁰ Ms Sue Oliver, Youth Magistrate of the Youth Justice Court in the Northern Territory commented:

Drug and alcohol rehabilitation is a significant issue. I think that there is an insufficient amount of rehabilitation facilities available. The ones that are available are pretty well stretched to the limit and, generally speaking, residential rehabilitation is not available for young people.²¹

17 FaHCSIA, Indigenous Family Safety Agenda, pp. 3-4
<www.fahcsia.gov.au/sa/indigenous/pubs/families/Pages/indig_fam_safety_agenda.aspx#action> accessed 14 April 2011.

18 Wes Morris, KALACC, *Committee Hansard*, Perth, 30 March 2010, p. 59; Queensland Aboriginal and Torres Strait Islander Legal Services, *submission 44*, p. 8; Victoria Legal Aid, *submission 39*, p. 5; Youth Justice Aboriginal Advisory Committee, *submission 97*, p. 6.

19 Ruth McCausland and Alison Vivian, Jumbunna Indigenous House of Learning, University of Technology Sydney, *Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Wilcannia and Menindee*, June 2009, pp. 10-11.

20 Alcohol and other Drugs Council of Australia, *submission 65*, p. 8.

21 Sue Oliver, Youth Magistrate, Youth Justice Court, Northern Territory, *Committee Hansard*, Darwin, 6 May 2010, p. 50.

- 4.21 An example of a well regarded residential rehabilitation facility is the Ilpurla Outstation in the Northern Territory which has a specific focus on addressing alcohol and substance abuse and antisocial or criminal behaviour. The facility predominantly caters to young Aboriginal people, but is open to all. The program is run by an Aboriginal family, based at an outstation. The participants learn about the pastoral industry and are taught specific station skills, including horse and cattle care and management. At the end of the program, the aim is to link young people into further education and employment opportunities.²²

Committee comment

- 4.22 Alcohol and substance abuse is related to offending, arrest and incarceration of Indigenous youth. The Committee considers that any policy effort to reduce alcohol consumption in Indigenous communities, such as through alcohol restrictions, should be supported by local leadership and by the provision of adequate rehabilitation and support services.
- 4.23 Measures which reduce the availability and consumption of alcohol and other substances improve the safety of communities and reduce levels of offending. However in order to effect long term behavioural changes in communities, alcohol and substance restrictions must be owned and driven by the community rather than continuously imposed by government or police forces.
- 4.24 The Committee acknowledges the bravery and commitment to their people of those Indigenous men and women who have led alcohol reforms in their communities.
- 4.25 The Committee urges the Commonwealth to ensure that, through the IFSA, support is given to local leadership to drive change around alcohol and substance abuse, and alcohol restrictions. While the Committee would like to see more widespread introduction of alcohol restrictions, it is aware that, unless there is community support, ownership, and drive for change, this merely introduces a black-market for alcohol or drives people to the fringes of local townships where alcohol can be purchased more easily.
- 4.26 Instead, every support must be given for communities to recognise the damage caused by alcohol and substance abuse, and to initiate their own measures and restrictions to tackle these issues. The Commonwealth and

22 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 13.

states and territories should be active though in educating communities about the personal health and broader social consequences of alcohol and substance abuse in communities, and in ensuring access to rehabilitation services.

- 4.27 Though outside the direct focus of this inquiry, the Committee notes its support for aspects of the BasicsCard system when family members are able to voluntarily choose to have part of a benefit quarantined for food purchases and so not able to be spent on alcohol or cigarettes. The Committee considers that access to this restriction on spending, where it is voluntary, can be an important step in family members recognising the negative social and economic impacts alcohol and substance abuse can have on a family.
- 4.28 The Committee notes that advances made through the Family Responsibilities Commission in communities in Cape York where families reached the point where they felt able to report on those making trips to bring alcohol back into the community.²³ The Committee considers this to be a positive move towards communities taking responsibility to establish appropriate behaviours and social norms.
- 4.29 In order to break the cycle of intergenerational alcohol and substance abuse, Indigenous appropriate rehabilitation services are required. The Committee notes the Commonwealth Government's expansion of Indigenous treatment and rehabilitation services across Australia including in a range of locations and settings. The Committee considers this essential. The Committee recognises the success of locally based indigenous residential programs that have a focus on drug and alcohol use, such as that at Ilpurla Outstation, and recommends that additional funding be made available to support these types of rehabilitation options.

Recommendation 8 – Alcohol and substance abuse

- 4.30 **The Committee recommends that, in collaboration with state and territory governments, the Commonwealth Government increase funding for locally based alcohol, anti-smoking and substance abuse programs.**

23 David Glasgow, Commissioner, Family Responsibilities Commission, *Committee Hansard*, Sydney, 28 January 2011, p. 71.

Foetal Alcohol Spectrum Disorder

- 4.31 Alcohol abuse is a serious issue because it can have a profound impact upon the life chances of people before they are born. The Committee received compelling evidence on the issue of Foetal Alcohol Spectrum Disorder (FASD) and their links with offending behaviour.
- 4.32 FASD is a term that describes a range of physical, mental, behavioural and learning disabilities that are a direct result of alcohol use during pregnancy. People with FASD are 'unable to learn from mistakes, cannot change their behaviour and do not understand the consequences of their actions and are very impulsive'.²⁴

FASD in Australia

- 4.33 Early diagnosis of FASD is essential for both the child and their family to allow for early intervention and appropriate treatment and support. However the diagnosis of FASD is difficult and as yet no diagnostic measures have been developed and implemented in communities across Australia. The DoHA stated it was in the final stages of a procurement process for the development of a diagnostic screening tool to assist clinicians in diagnosing babies and children affected by FASD. The DoHA acknowledged that the incidence of FASD is likely to be unreported because of these issues around data collection, difficulties in early diagnosis, lack of referrals by non-specialists, lack of recognition of FASD indicators and insufficient information on medical records.²⁵
- 4.34 Sue Miers, Spokesperson, National Organisation for Foetal Alcohol Syndrome and Related Disorders, stressed that FASD is not an Indigenous problem; it is emerging as an issue across the Australia population. Ms Miers stated that some Australian studies show that women most likely to drink alcohol during pregnancy are on a higher income. However some Indigenous communities are at a very high risk because of other factors which relate to determinants of health.²⁶
- 4.35 The Committee received some concerning anecdotal evidence regarding the incidence of FASD in Indigenous children. For example, the Child and Adolescent Mental Health Professional in Fitzroy Crossing estimated that

24 Sue Miers, Spokesperson, National Organisation for Foetal Alcohol Syndrome and Related Disorders, *Committee Hansard*, Sydney, 28 January 2011, p. 59.

25 Department of Health and Ageing, *submission 73A*, p. 3.

26 Sue Miers, National Organisation for Foetal Alcohol Syndrome and Related Disorders, *Committee Hansard*, Sydney, 28 January 2011, p. 59.

more than 50 percent of the children in the Fitzroy Valley are affected by FASD or early life trauma.²⁷

- 4.36 Other anecdotal evidence of high numbers of Indigenous children with FASD was received by the Senate Committee on Regional and Remote Communities. A director of a Queensland preschool and kindergarten stated that about 80 per cent of the children at the school were showing symptoms of FASD, such as lack of concentration.²⁸ A Western Australian study estimated that FASD affected 2.97 Indigenous children per 1000 live births.²⁹ However, Professor Marcia Langton wrote in 2008 that the rate was much higher at one in 40 Indigenous children.³⁰

FASD and the criminal justice system

- 4.37 While early diagnosis is difficult, early intervention is important because it can substantially reduce the risk of secondary medical, social, emotional and behavioural problems. These problems may include compromised school experience, mental health problems, unemployment, homelessness, alcohol and drug abuse, and contact with the criminal justice system.³¹
- 4.38 Heather Douglas, Associate Professor, School of Law, University of Queensland, reported an estimate of 60 percent of adolescents with FASD have been in trouble with the law. Associate Professor Douglas described the circumstances when a young person with FASD may come into contact with the criminal justice system:

Impulsive behaviour may lead to stealing things for immediate consumption or use, unplanned offending and offending behaviour precipitated by fright or noise. As a result of their suggestibility, FASD sufferers may engage in secondary participation with more sophisticated offenders. Lack of memory or understanding of cause and effect may lead to breach of court orders; further enmeshing FASD sufferers in the justice system. Impaired adaptive behaviour that results from brain damage is translated into practical problems such as trouble handling money

27 Joanne Wraith, Western Australia Country Health Service, *Committee Hansard*, Fitzroy Crossing, 31 March 2010, p. 20.

28 Sonia Schuh, Napranum Preschool and Kindergarten, Senate Select Committee on Regional and Remote Indigenous Communities, *Committee Hansard*, Weipa, 12 April 2010, p. 82.

29 Senate Select Committee on Regional and Remote Indigenous Communities, *submission 112, attachment*, p. 7.

30 Marcia Langton, 'The end of "big men" politics', *Griffith Review*, edition 22, 2008, p. 11.

31 Sue Miers, National Organisation for Foetal Alcohol Syndrome and Related Disorders, *Committee Hansard*, Sydney, 28 January 2011, p. 59.

and difficulties with day to day living skills. It may be difficult for FASD sufferers to understand or perceive social cues and to tolerate frustration. Inappropriate sexual behaviour is also common amongst FASD sufferers...³²

4.39 The *Equality before the Law Benchbook* of Western Australia discusses the lack of FASD data in Australia and the link between FASD and the criminal justice system:

International research over the past decade has highlighted the link between Foetal Alcohol Spectrum Disorders (FASD) and involvement in the criminal justice system...

- In Australia, FAS is almost certainly under-diagnosed and there is no data on FASD prevalence
- The most at-risk populations for FASD are those which experience high degrees of social deprivation and poverty
- Current birth prevalence data for FAS ranges from 0.06 to 0.68 per 1,000 live births
- The known birth prevalence of FAS for Aboriginal children is higher, being 2.76 per 1,000 live births in Western Australia and 4.7 per 1,000 live births in the Northern Territory
- Current research indicates that a disproportionately large number of youth and adults with FASD are engaged with the legal system
- The complex learning and behavioural difficulties observed in people with FASD increase their risk of undertaking or being guided into criminal behaviour. For example, all youth remanded to a Canadian forensic psychiatric inpatient assessment unit over a one-year period were evaluated for FASD. Of the 287 youth, 67 (23.3%) had an alcohol-related diagnosis – three (1.0%) had a diagnosis of FAS and 64 (22.3%) had a diagnosis within FASD.³³

4.40 The *Equality before the Law Benchbook* also acknowledges that people with FASD may have difficulties in understanding the criminal justice system processes:

Individuals with a FASD who become involved with the criminal justice system may not understand the arrest and court process, will have diminished competency and capacity and will not fully

32 Senate Select Committee on Regional and Remote Indigenous Communities, *submission 112, attachment*, p. 4.

33 Supreme Court of Western Australia, *Equality before the Law Benchbook*, November 2009, pp. 4.1.5-4.1.6 <www.supremecourt.wa.gov.au/publications/pdf/equality_before_the_law_benchbook.pdf> accessed 11 November 2010.

grasp the severity of the situation. Individuals with a FASD may make false confessions without understanding the legal consequences of such an act. Individuals with a FASD can also be victimised in custody.³⁴

FASD Intervention and support

- 4.41 The Committee notes that the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is convening a cross portfolio government working group to consider policy on alcohol related harm, including FASD. The group consists of FaHCSIA, the DoHA, the Attorney-General's Department and the Department of Education, Employment and Workplace Relations (DEEWR).³⁵ The Committee notes that the DoHA is chairing a working group which has been tasked to report to the Australian Health Ministers Advisory Council by December 2010 on a response to FASD in Australia.³⁶ The DoHA advised that the working group is continuing to prepare the report. The Committee will be interested to observe the progress of the interdepartmental working groups in developing strategies on FASD which might lead to a reduction in the level of incarceration of Indigenous offenders, in particular Indigenous youth.
- 4.42 The Committee was alerted to the importance of the careful handling of FASD diagnosis, counselling and information sharing because there are potential adverse stigmas attached to FASD. Unsubstantiated claims of FASD could fuel racism or lead to inappropriate interventions. Culturally appropriate diagnostic and treatment services are required. Ms Oscar stated that FASD is a highly sensitive issue and it is important that governments assist locally-recognised Indigenous people to support FASD sufferers and their families with appropriate programs:

We need collaboration between governments and Aboriginal communities on community based justice for FAS and FASD sufferers as an alternative to imprisonment or detention. We would like the committee to support the recognition of Aboriginal people with nurturing and traditional learning expertise in education, justice, health and early childhood development fields. Answers and solutions cannot be found in Western models. We

34 Supreme Court of Western Australia, *Equality before the Law Benchbook*, November 2009, p. 4.2.7-4.2.8 <www.supremecourt.wa.gov.au/content/news/media/publications.aspx>

35 FaHCSIA, *submission 79a*, p. 1.

36 DoHA, *submission 73a*, p. 2.

need to incorporate Aboriginal ways of healing and managing family members.³⁷

- 4.43 The Commonwealth Government is investing \$1 million in the first study of FASD in an Australian Indigenous community. The study, called *Marulu: The Lililwan Project*, was initiated by the Fitzroy Valley community and will pool the expertise of paediatricians, allied health professionals and social workers from the George Institute for International Health, University of Sydney, and the Nindilingarri Cultural Health Service. It will research the prevalence of FASD, and provide support to affected children and families. The work will help to inform diagnosis and community education strategies which may be used more widely by other communities and governments.³⁸
- 4.44 Paul Jeffries, principal of the Fitzroy Valley District High School, relayed a good news story of a young boy with FASD and early life trauma who, through the interagency work of departments of education, health, and child protection, was able to develop coping mechanisms for his violent post-traumatic stress symptoms and to reintegrate into the classroom. Mr Jeffries claimed that if schools and other agencies are adequately resourced to develop an interagency response, they could help the lives of an estimated 80 other children at the school affected by FASD and early life trauma.
- 4.45 However, Mr Jeffries referred to the difficulty in seeking resources for FASD intervention because it is not on the government list of registered disabilities:

The only catch for me is that to be able to obtain resources I need to have the child diagnosed with post-traumatic stress, which means there needs to be an incident that has taken place and has been documented – usually it is documented by police charge sheets and things like that – so that we can actually prove that this child does have a high need.

FASD is not recognised – FASD is not recognised as a disability – yet paediatricians estimate that a quarter of my school population, at a minimum, is affected. Some say that when you look at the spectrum for FASD early-life trauma, when you look at the trauma

37 June Oscar, Marninwarntikura Women's Resource Centre, *Committee Hansard*, Fitzroy Crossing, 31 March 2010, p. 6.

38 FaHCSIA, Indigenous Family Safety Agenda, p. 4
<www.fahcsia.gov.au/sa/indigenous/pubs/families/Documents/indig_family_safety_agenda.pdf> accessed 21 July 2010.

that a lot of these children have coped with, it could be up to 80 per cent.³⁹

4.46 Professor Robert Somerville, Western Australia Aboriginal Education acknowledged that FASD is a major issue in education and Western Australian schools are 'screaming out for support'.⁴⁰

4.47 Ms Miers called for FASD to be included under the Commonwealth list of registered disabilities so 'families do not have to continually fight for services from the education, health, disability, social services and justice sectors'.⁴¹

Committee comment

4.48 It is clear from the evidence received that FASD is an issue poorly understood by governments. The significance and rate of FASD in youth across Australia is not known.

4.49 It would appear that a significant number of Indigenous people who end up in detention centres and prisons are there partly as a result of the failure of governments to identify FASD as an issue underpinning their offending behaviour. As a result, punitive rather than remedial responses have prevailed.

4.50 The Committee is concerned about the anecdotal evidence it received regarding the potential prevalence of FASD in Indigenous children. The Committee notes the behavioural challenges of children with FASD and is concerned about the potential heightened challenges for those children to their education, employment opportunities, social behaviours and contact with the criminal justice system.

4.51 The Committee notes FASD is a lifetime disability; however the principal of Fitzroy Valley District High School demonstrated that people with FASD can do very well with effective early intervention and support. The Committee believes there is a need for urgent action to develop early diagnostic techniques and intervention.

4.52 Access to accurate and timely assessment and diagnosis of FASD would benefit children, their families and professionals working in the health and

39 Paul Jeffries, Fitzroy Valley District High School, *Committee Hansard*, Fitzroy Crossing, 31 March 2010, pp. 34-5.

40 Robert Somerville, Department of Education, Western Australia, *Committee Hansard*, Sydney, 28 January 2011, pp. 79-80.

41 Sue Miers, National Organisation for Foetal Alcohol Syndrome and Related Disorders, *Committee Hansard*, Sydney, 28 January 2011, p. 61.

criminal justice systems. Early diagnosis would also mitigate the secondary damages associated with FASD. Diagnosis and support for Indigenous youth with FASD already in contact with the criminal justice system is also important. The Committee concludes that diagnostic interventions developed through a collaboration of education, health and justice systems are essential.

- 4.53 The Committee is concerned that although school and health professionals may recognise children who potentially have FASD, there is currently no diagnostic tool available, no recognised category of referral, and no intervention strategies in place to support children and families who are affected by FASD.
- 4.54 The Committee believes that a focus on early intervention and prevention of FASD is crucial and education programs about the dangers of alcohol during pregnancy are needed urgently, especially in communities that are most at risk. The Committee notes that FASD is a serious issue facing Australia. While prevalent in the Indigenous community, it is an issue across all communities and the increases in binge drinking amongst young people suggests that FASD may become a bigger issue in the future.
- 4.55 The Committee considers that a national inquiry into FASD, its prevalence, diagnosis, treatment and measures to reduce its incidence should be undertaken as a priority. During Committee discussions in New Zealand it was revealed that FASD is an emerging issue that is prevalent but not confined to Maori communities. The Committee believes there is a need for a collaborative approach to FASD, diagnostic tools and issues such as alcohol labelling regulations and education campaigns. The Committee considers that these issues should be investigated as part of a parliamentary inquiry into FASD.

Recommendation 9 – Foetal Alcohol Spectrum Disorder

- 4.56 **The Committee recommends that the Commonwealth Government urgently addresses the high incidence of Foetal Alcohol Spectrum Disorder in Indigenous communities by:**
- **developing and implementing Foetal Alcohol Spectrum Disorder diagnostic tools and therapies, with a focus on working in partnership with Indigenous health organisations in remote and regional Australia where there is a recognised prevalence of the disorders, and**

- **recognising Foetal Alcohol Spectrum Disorder as a registered disability and as a condition eligible for support services in the health and education systems.**

The Committee further considers that a comprehensive inquiry into Foetal Alcohol Spectrum Disorder prevalence, diagnosis, intervention and prevention is required and recommends that the Minister for Health and Ageing refer the inquiry to the House of Representatives Standing Committee on Social Policy and Legal Affairs.

Mental health and emotional wellbeing

4.57 Mental health and emotional wellbeing and their links to offending behaviour featured significantly in the evidence provided to the Committee. The New South Wales Government's submission outlined the typical pathway to offending behaviour and potential incarceration that results from the failure to recognise and treat individuals with mental health issues:

An Indigenous young person with ... [a] 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.⁴²

4.58 The links between mental health, offending behaviour, and alcohol and substance abuse were acknowledged by many who provided evidence to the Committee. The Mental Health Alcohol Tobacco and Other Drugs Service (MHATODS) advised the Committee of 'the significant co-morbidity between substance misuse and mental health problems',⁴³ noting that within the Brisbane Youth Detention Centre:

... the majority of Indigenous young people ... screen positive for mental health problems, with high rates of depression, anxiety, suicidal thoughts and somatic complaints ... [and up] to 90% are

42 New South Wales Government, *submission 84*, p. 21.

43 MHATODS, *submission 7*, p. 8.

reported to use substances at dangerous levels or have a substance dependency.⁴⁴

- 4.59 Similarly, the 2009 New South Wales study of health of young people in custody found that the majority (87 percent) of young people were found to have at least one psychological disorder and nearly three-quarters (73 percent) were found to have two or more psychological disorders. Indigenous young people were significantly more likely than non-Indigenous young people to have an attention or behavioural disorder (75 percent versus 65 percent) or an alcohol or substance use disorder (69 percent versus 58 percent).⁴⁵
- 4.60 Some witnesses to the inquiry spoke of the need for greater resources and qualified professionals to work with correctional centres to support mental health, social and emotional wellbeing and drug and alcohol programs. Evidence suggested that the availability and access to counselling and health professionals in prison and detention is limited, particularly in regional areas.⁴⁶ The Aboriginal Family Violence Prevention and Legal Service Victoria stated that the prison environment often compounds and adds layers to existing trauma, and therefore, access to culturally appropriate support is required.⁴⁷

Healing and culture

- 4.61 The Committee notes the importance of healing and culture as a part of the services and programs that support the mental health and social and emotional wellbeing of Indigenous youth. Trauma affects many young Indigenous offenders who often require extended counselling and treatment from early intervention, throughout their period of contact with the criminal justice system and post-release.
- 4.62 Consultations with Indigenous groups indicated to the New South Wales Ombudsman's office that the impact of violence, trauma and dislocation from family and culture is linked to high rates of offending behaviour and can only be effectively addressed through access to healing programs.⁴⁸
- Results from the New South Wales Young People in Custody Health

44 MHATODS, *submission 7*, p. 3.

45 New South Wales Justice Health and Juvenile Justice, *2009 Young People in Custody Health Survey*, March 2011, p. 15.

46 Law Reform Commission of WA, *Aboriginal Customary Laws, Project 94, Background Papers*, 2006, pp. 250, 304, 314; Mandy Young, Women's Advisory Council, *Committee Hansard*, Canberra, 24 June 2010, p. 12.

47 Aboriginal Family Violence Prevention and Legal Service Victoria, *submission 86*, p. 15.

48 New South Wales Ombudsman, *submission 56*, p. 16.

Survey indicated that Indigenous youth in custody are likely to be victims of crime themselves. A high proportion of all young women in custody had been physically (61 percent) or sexually abused (39 percent).⁴⁹ Claire Gaskin, New South Wales Health commented:

... kids that are in contact with the criminal justice system not only are traumatised early in their lives but are repeatedly traumatised throughout their lives into adolescence. Young people who are in contact with the criminal justice system are much likely to be assaulted by other young people. Not only are they assaulting other people; they are being assaulted themselves.⁵⁰

- 4.63 Ken Zulumovski, Director, Gamarada Men's Self Healing Program, spoke of the importance of healing in any early intervention, diversion or rehabilitation strategy:

So within any program I believe there must be a component of healing, because we are talking about, essentially, people who are largely unwell coming into the system. There are juveniles who are yet to be diagnosed in psychiatric terms but they present with all manner of behavioural issues. Some of them are labelled with emotional conduct disorder; some of them are labelled with oppositional defiance disorder. By and large, there are young fellows that have been exposed to domestic violence, neglect and a whole list of other issues. Healing programs allow for those problems to be addressed in a culturally appropriate and safe setting.⁵¹

- 4.64 The Committee was informed of some Indigenous run programs which have a strong focus on healing and culture, such as Red Dust Healing, Yiriman, Balunu and Rekindling the Spirit.⁵² These programs are often offered to Indigenous youth who are at risk of offending behaviour. The programs help to build social cohesion in communities by strengthening self esteem and developing social norms and behaviours in Indigenous juveniles and young adults.

49 New South Wales Justice Health and Juvenile Justice, *2009 Young People in Custody Health Survey*, March 2011, p. 15.

50 Claire Gaskin, New South Wales Health, *Committee Hansard*, Sydney, 28 January 2011, p. 64.

51 Ken Zulumovski, Public Interest Advocacy Centre, *Committee Hansard*, Sydney, 4 March 2010, p. 27.

52 Shane Duffy, Aboriginal and Torres Strait Islander Legal Service (Queensland) Ltd, *Committee Hansard*, Sydney, 4 March 2010, p. 29; New South Wales Ombudsman, *submission 56*, pp. 16-17; Australian Children's Commissioners and Guardians, *submission 59*, p. 18; Menzies School of Health Research, *submission 3*, p. 3; Australians for Native Title and Reconciliation, *submission 109a, Attachment A*, p. 14.

4.65 Many submissions referred to the importance of having diversionary programs which are designed and operated by local respected Indigenous people. The Northern Australian Aboriginal Justice Agency (NAAJA) referred to the Balunu Foundation which helps Indigenous youth in the Darwin region through preventative health and wellbeing programs and stated:

Every Aboriginal community in the Northern Territory needs diversionary programs operated by local people who understand the local socio-cultural fabric such that effective diversion occurs. These diversionary programs need to be properly resourced and support by government if there is to be serious attempt to divert Indigenous youths from the criminal justice system.⁵³

4.66 The New South Wales Chief Health Officer, Dr Kerry Chant stated that the key to offering mental health services is to have a stronger Indigenous workforce and to work in partnership with the community.⁵⁴

4.67 The Committee heard about the Community Holistic Circle Healing Program in Hollow Water, a small community of about 600 people in Canada. The aim of this program is to restore balance to the community through a healing process involving victims, offenders, and their families. It makes people accountable at the local community level. The outcomes of the program in Hollow Water have been extremely positive with only two people (about 2 percent) reoffending. The model has been rolled out to other indigenous communities in Canada.⁵⁵

4.68 The Commonwealth Government supported the incorporation on 30 October 2009 of the Aboriginal and Torres Strait Islander Healing Foundation Ltd (Healing Foundation). The Healing Foundation is a national, Indigenous-controlled, not-for-profit organisation established to support community-based healing initiatives. The Government has committed \$26.6 million over four years to the Foundation, which announced its first round of funding to assist community healing programs around the nation on 7 May 2010. The approach of the Healing Foundation is a holistic one that encompasses spirit, culture and people.

53 NAAJA, *submission 15*, p. 9.

54 Kerry Chant, New South Wales Health, *Committee Hansard*, Sydney, 28 January 2011, p. 62.

55 Mick Gooda, Australian Human Rights Commission, *Committee Hansard*, Sydney, 4 March 2010, p. 40; Mandy Young, Women's Advisory Council, *Committee Hansard*, Canberra, 24 June 2010, p. 11.

- 4.69 The role of the Healing Foundation is to facilitate this healing process, by:
- ... providing opportunities and resources for healing initiatives, promoting awareness of healing issues and needs, and by fostering a supportive public environment. While the Foundation acknowledges that responsibility for healing rests primarily with the individual, it also recognises the importance and inter-relatedness of the community in this process through relationships of mutual care, reciprocity and responsibility.⁵⁶

Committee comment

- 4.70 The Committee recognises that mental, physical and/or sexual abuse can underpin further drug and other substance abuse. There is a substantial number of Indigenous youth entering detention who have suffered trauma and have social and emotional health issues. Dealing with trauma is a significant issue for Indigenous youth at risk of entering the criminal justice system.
- 4.71 Recommendation 4 in chapter 3 calls for further support for mentors who provide the important assistance to Indigenous youth who are dealing with trauma and emotion and social health issues.
- 4.72 The Committee notes the 2011-12 Australian Government Budget provides an expansion of funding to deliver mental health services under the Access to Allied Psychological Services program to around 18 000 Indigenous Australians. The Budget provides an expansion of funding to the Personal Helpers and Mentors Program for additional personal helpers, mentors and respite services.⁵⁷
- 4.73 The Committee endorses these mental health initiatives and considers that the Commonwealth Government should direct funding to locally led and developed programs, such as such as Red Dust Healing, Yiriman, Balunu and Rekindling the Spirit, which help young people at risk of criminal behaviour and have a strong focus on healing and culture.

56 Aboriginal and Torres Strait Islander Healing Foundation Ltd < healingfoundation.org.au > accessed 4 August 2010.

57 *Budget: Investing to Close the Gap between Indigenous and non-Indigenous Australians*, Statement by the Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 10 May 2011, p. 10.

Recommendation 10 – Mental health

- 4.74 **The Committee recommends the Commonwealth Government recognise mental health as a significant issue affecting Indigenous youth and collaborate with the states and territories to direct funding where possible to successful Indigenous community developed and led programs with a focus on healing, culture, emotional wellbeing and reconnection with family.**

Hearing loss

- 4.75 The Committee received much evidence that hearing loss affects a large number of Indigenous youth and has the potential to have a negative impact on their contact with police, the courts and the corrections system.
- 4.76 Rates of middle ear disease are disproportionately high for Indigenous children. Indigenous children experienced middle-ear disease and associated hearing loss or impairment ‘at an earlier age, more often and for longer periods’ than non-Indigenous children.⁵⁸ Health officials at the detention centres the Committee visited indicated that Indigenous youth coming in to detention have high rates of hearing loss.⁵⁹
- 4.77 The Telethon Speech and Hearing Centre for Children, Western Australia, claimed that the rate of hearing loss amongst Indigenous children was ‘significantly above what the World Health Organisation regards as a massive public health problem’.⁶⁰
- 4.78 Damien Howard, Phoenix Consulting, advised the Committee that hearing impaired Indigenous children often lacked access to remedial assistance, and were especially likely to exhibit ‘learning and behavioural problems at school’.⁶¹ Disengagement from education demonstrated through truancy or poor results at school can be the result of hearing loss.
- 4.79 This combination is part of a long term cycle where poor hearing can lead to poor education, with subsequent poorer employment and income prospects, lower living conditions, and poorer health, including

58 Damien Howard, Phoenix Consulting, *submission 87*, p. 5.

59 The three detention centres visited were Juniperina Juvenile Justice Centre, Orana Juvenile Justice Centre and Brisbane Youth Detention Centre. See also Claire Gaskin, New South Wales Health, *Committee Hansard*, Sydney, 28 January 2011, p. 83.

60 Telethon Speech and Hearing Centre for Children WA, *submission 17*, p. 2.

61 Damien Howard, Phoenix Consulting, *submission 87*, p. 6.

unaddressed hearing problems. Hearing loss and its impact on education outcomes exacerbate the disadvantages generally faced by Indigenous people and increase their risk of coming into contact with the criminal justice system.⁶²

4.80 It is possible to break this cycle by ensuring good hearing health in schools, despite the existence of hearing loss. Dr Howard informed the Committee of the necessary technology – namely acoustic absorption and a sound-field amplification system (a low-power public address system with a wireless microphone) – to enable all children to hear better in the classroom. He commented that ‘the system provides proven educational benefits, even in classrooms where there is not a high prevalence of hearing loss.’⁶³

4.81 DEEWR discussed with the Committee a pilot program being run in the Kimberley region about understanding the impact that those sorts of support mechanisms around sound amplification may have on improving learning outcomes. Glen Hansen noted that:

The other part of the study is also to understand how you best support teachers to deliver a lesson in that environment. It is not just about having the equipment but also the way that the teacher operates and works. That is the premise of the Kimberley sound amplification project that we are currently funding.⁶⁴

4.82 Once Indigenous hearing impaired people come into conflict with the criminal justice system, there are a number of issues that then place them at increased risk of continued adverse contact with the system, including:

- difficulties in explaining themselves to the police, with the result that they are more likely to be arrested and charged
- problems giving instructions to solicitors or being credible witnesses in court
- management difficulties for corrections staff, and
- problems coping, both socially and emotionally, in correctional settings.⁶⁵

4.83 Indigenous hearing impaired people face a number of difficulties communicating with police, which can result in them being more likely to be arrested and charged. Hearing impaired people can often speak too

62 Ear Info Net Review of Ear Health and Hearing

63 Australian Hearing, *submission 5*, p. 4.

64 Glen Hansen, Department of Education, Employment and Workplace Relations, *Committee Hansard*, Canberra, 17 June 2010, pp. 19-20.

65 Damien Howard, Phoenix Consulting, *submission 87*, p. 1.

loudly, which can be perceived by others as aggressive behaviour, despite the person speaking having no aggressive intention. Hearing impaired people can also speak too softly. Dr Howard noted that it was not uncommon for such encounters to escalate into an argument, an altercation and ultimately an arrest.⁶⁶

- 4.84 Given the relatively high levels of hearing loss and impairment in Indigenous communities as well as the high levels of contact police have with Indigenous people, it is evident that much could be gained from additional training to enable police to better recognise the communicative characteristics peculiar to Indigenous hearing impaired people. Dr Howard, however, told the Committee that police had indicated that they did not view training to better recognise and respond to Indigenous hearing impaired people as necessary:

I made contact with the training section of the Police Force in one of the states that has a huge Indigenous prison population. I suggested that they may wish to include, in their training schedule, information on hearing loss and its impact on communication. I received the reply that 'the issue was not relevant for their training'. This response demonstrates that the police do 'not know what they don't know'.⁶⁷

- 4.85 Indigenous people, in general, face particular linguistic and cultural difficulties in courts. Hearing loss and its associated obstacles to communication add another layer of complexity, leading many Indigenous hearing impaired people to be viewed as unreliable witnesses and for the evidence they provide, in many cases, to be disregarded.
- 4.86 Australian Hearing submitted that hearing loss and impairment amongst detainees and prisoners leads not only to difficulties communicating with other inmates and staff, but can affect negatively a 'person's participation in, and benefit gained from, a rehabilitation program'.⁶⁸
- 4.87 The Commonwealth Government, through the Closing the Gap in the Northern Territory National Partnership Agreement, has committed funding of \$4.5 million in 2009-10 to provide ear, nose and throat (ENT) specialist services arising from valid ENT referrals from child health checks.⁶⁹

66 Damien Howard, *Committee Hansard*, Darwin, 6 May 2010, p. 16.

67 Damien Howard, Phoenix Consulting, *submission 87*, p. 12.

68 Australian Hearing, *submission 5*, p. 5.

69 DoHA, *submission 73a*, p. 5.

- 4.88 DoHA advised the Committee that the Improving Eye and Ear Health Services for Indigenous Australians for Better Education and Employment Outcomes initiative, which provides \$58.3 million over four years from 2009-10, includes a number of key components that specifically address hearing loss, including:
- training of health workers for ear health and hearing screening
 - maintenance and purchase of medical equipment for ear and hearing screening
 - additional ear and eye surgery, particularly for remote Indigenous clients, and
 - ear and hearing health promotion activities.⁷⁰
- 4.89 DoHA advised the Committee that the Commonwealth Government is responsible for the Hearing Services Program, which ‘provides free hearing rehabilitation services and devices to eligible people who have been screened and identified as having a hearing loss requiring aids’.⁷¹
- 4.90 However, Australian Hearing, the sole Commonwealth Government service provider of hearing services to children under the Hearing Services Program, told the Committee that while children with hearing loss have free access to their service, ‘the Hearing Services Program does not extend to people in juvenile detention centres’.⁷²

Committee comment

- 4.91 The inability of schools to identify and respond to hearing loss amongst Indigenous children significantly increases the likelihood of future incarceration for these children. Children with poor educational outcomes are more likely to be unemployed, placing them at higher risk of coming into conflict with the criminal justice system.
- 4.92 The Committee recognises that hearing loss is a significant contributing factor for Indigenous children’s disengagement with the education system. Prevention and intervention strategies are critical in keeping children engaged with the education system and therefore the Committee believes all Indigenous children should be given comprehensive hearing tests with appropriate follow-up support if required. Due to the high costs of servicing remote communities in this specialty field, more funding may be required for those areas.

70 DoHA, *submission 73a*, p. 4.

71 DoHA, *submission 73a*, p. 5.

72 Australian Hearing, *submission 5*, p. 5.

4.93 The Committee is aware of the recommendations contained in the Senate report tabled in May 2010 entitled *Hear Us: Inquiry into Hearing Health in Australia*. The Committee strongly endorses Recommendation 8 of this report, which calls for:

... the Council of Australian Governments extends its commitment for universal newborn hearing screening to include a hearing screening of all children on commencement of their first year of compulsory schooling. Given the crisis in ear health among Indigenous Australians, the committee believes urgent priority should be given to hearing screenings and follow up for all Indigenous children from remote communities on commencement of school.⁷³

Recommendation 11 – Hearing tests

4.94 **The Committee recommends that the Commonwealth Government provide all Indigenous children starting pre-school with comprehensive hearing tests with appropriate follow-up support when required.**

The Committee further recommends that all Indigenous children between kindergarten and Year 2 be tested as an urgent priority due to the high incidence and impacts of hearing impairments amongst Indigenous children, particularly in rural and remote areas.

4.95 The Committee strongly supports the need for the funding of sound amplification systems in schools with high Indigenous enrolments, particularly in remote areas. This is an area of high need which will lead to better learning outcomes and higher retention rates in education for Indigenous Australians. Pro-active support and early intervention for possible hearing loss will have a positive flow-on effect and ultimately can contribute towards lowering the high rate of Indigenous youth involved in the criminal justice system.

73 Senate Community Affairs References Committee, *Hear Us: Inquiry into Hearing Health in Australia*, May 2010, p. 96.

Recommendation 12 – Sound amplification systems

- 4.96 **The Committee recommends that the Commonwealth Government allocate funding for sound amplification systems in schools with high Indigenous enrolments throughout Australia, with urgent attention to schools in remote areas.**
- 4.97 The Committee considers it essential that Indigenous youth have access to government hearing assessments and services after they enter the criminal justice system. Later in this chapter, the Committee makes a number of recommendations regarding the services and programs which should be made available to Indigenous youth in custody.
- 4.98 Police are often the first point of contact with the justice system for Indigenous youth. Therefore, the Committee considers it is important that police are trained to recognise and respond to hearing loss difficulties, particularly in Indigenous communities. The Committee suggests that consideration be given to similar training for court officials to better respond to individuals with hearing loss.

Recommendation 13 – Police training to identify hearing loss

- 4.99 **The Committee recommends that the Attorney-General take to the Ministerial Council for Police and Emergency Management – Police (MCPEMP) at its second meeting in 2011, a proposed program of training for police to better identify and respond to individuals with hearing loss, particularly in Indigenous communities.**

Early intervention on health

- 4.100 One of the targets under Closing the Gap is ‘halving the gap in mortality rates for Indigenous children under five within a decade (2018)’. Indigenous children are twice as likely to die before their fifth birthday. This gap has been closing due to improvements in sanitation and public health conditions, better neonatal intensive care, the development of immunisations programs and family and community engagement in rearing healthy children. However, the Prime Minister reported:

Maintaining this positive trend requires the continued expansion of preventive care and child and maternal health services, in

particular, antenatal care, as well as continued efforts to address broader social factors such as socio-economic deprivation, maternal education, smoking and other behavioural risk factors.⁷⁴

- 4.101 The Prime Minister recognised the importance of Indigenous health professionals in contributing to the Early Childhood and Health Building Blocks under Closing the Gap. Funding support has been provided to Indigenous health services to provide an extra 337 new positions in the Indigenous health workforce, build best practice and quality standards, and to provide 3564 follow-up services in the 12 months to June 2010 (an increase of 611 percent from 2008-09).⁷⁵
- 4.102 Many witnesses referred to early intervention in health as the most effective way to reduce health impacts on Indigenous youth over the long term. In its submission, the New South Wales Government observed that 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. In New South Wales integration teams have been funded in various areas. Clinicians work with young people for up to six months to assist with all health services, such as getting to appointments, accessing medication, and receiving psychiatry or mental health services. The New South Wales Government suggested options for expanding early intervention services including:
- 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

74 *Closing the Gap: Prime Minister's Report 2011*, p. 13.

75 *Closing the Gap: Prime Minister's Report 2011*, p. 33.

people who have experienced physical, sexual or emotional abuse, or other ongoing trauma.⁷⁶

- 4.103 As discussed in the previous chapter, attachments and relationships between children and their parents and families is extremely important to long term health. Michelle Scott, the Western Australian Commissioner for Children and Young People spoke about some good early childhood programs:

It is all about early intervention, prior to women becoming pregnant, from conception onwards. It is about what the mother needs but also what the child needs. Kerry was talking about home-visiting programs. South Australia has an excellent home-visiting program for Aboriginal and other vulnerable families, with 34 home visits in the first two years of your life. That is the kind of program we need in many communities, for Aboriginal families but also for non-Aboriginal families that are vulnerable.⁷⁷

- 4.104 Claire Gaskin, Clinical Director, New South Wales Health spoke about the importance of early intervention because most mental health disorders have their onset in early childhood:

... most disorders have their onset in childhood, not in adolescence; that substance use is a significant and major issue in most of the problems that we are talking about today; and that preventing the entry into substance abuse is about early intervention, not about intervention at 14, because most of these kids are exposed to substances from a very early age, not only in utero but also in childhood.⁷⁸

- 4.105 In 2008, Indigenous women had more babies and had those at younger ages than did non-Indigenous women - teenagers had one-fifth of the babies born to Indigenous women, compared with only four percent of those born to non-Indigenous mothers. The median age of Indigenous mothers was 24.7 years, compared with 30.7 years for all women. The fertility of teenage Indigenous women (75 babies per 1,000 women) was more than four times that of all teenage women (17 babies per 1,000).
- 4.106 The average birth weight of babies born to Indigenous mothers in 2007 was 3,182 grams, almost 200 grams less than the average for babies born to non-Indigenous mothers (3,381 grams). Babies born to Indigenous women

76 New South Wales Government, *submission 84*, p. 20.

77 Michelle Scott, Western Australian Commissioner for Children and Young People, *Committee Hansard*, Sydney, 28 January 2011, p. 63.

78 Claire Gaskin, New South Wales Health, *Committee Hansard*, Sydney, 28 January 2011, p. 63.

in 2007 were twice as likely to be of low birth weight (12.5%) than were those born to non-Indigenous women (5.9%).⁷⁹ Risk factors for low birth weight include socioeconomic disadvantage, the size and age of the mother, the number of babies previously born, the mother's nutritional status, illness during pregnancy, and duration of the pregnancy. A mother's alcohol consumption and use of tobacco and other drugs during pregnancy also impacts on the size of her baby.⁸⁰

- 4.107 Early initiation to sex is common amongst young people in detention, with some 95 percent of young people in New South Wales detention having had sex. Indigenous young people in detention were more likely to have a child of their own than non-Indigenous young people (12 percent versus 5 percent).⁸¹

Committee comment

- 4.108 As evidence has made clear, there are a number of health conditions which increase the likelihood of an Indigenous juvenile or young adult coming into contact with the criminal justice system. Many submitters called for a more holistic response to these interrelated factors.
- 4.109 Early intervention on health issues is the most effective long term strategies for Indigenous youth and their families. The Committee considers that the best chance for closing the gap on good physical health starts in communities with families, before a child is born. Early initiation to sex is common among young Indigenous people, resulting in many Indigenous youth having children themselves. The Committee recommends appropriate counselling, information and support services be available in Indigenous communities for young people who are entering their sexually active years and for young Indigenous parents.
- 4.110 If Indigenous young people have not had good parenting themselves, then despite their best intentions they will not have the resources and skills to enable good parenting of their own children. Issues such as nutrition, anger management and infant health should be addressed. These programs should incorporate information about birth registrations.

79 Low birth weight, defined as a birthweight of less than 2,500 grams, increases the risk of death in infancy and other health problems.

80 Australian Indigenous Healthinfonet, *Birth and pregnancy outcome*, <www.healthinfonet.ecu.edu.au/health-facts/overviews/births-and-pregnancy-outcome>accessed 23 March 2011.

81 New South Wales Justice Health and Juvenile Justice, *2009 Young People in Custody Health Survey*, March 2011, p. 14.

4.111 In terms of the delivery of these types of programs and services, the Committee observed some useful innovations when visiting New Zealand. The integrated service delivery approach implemented in New Zealand has brought together service areas such as welfare payments, with support programs such as parenting and anger management. They are co-located so those seeking welfare payments can 'drop in' to participate in other programs. The Committee suggests that, particularly for regional and remote communities, consideration is given to this type of integrated approach to encourage Indigenous youth and families to access services.

Recommendation 14 – Pre-natal and anti-natal support

4.112 **The Committee recommends the Commonwealth Government work with state and territory governments to coordinate greater capacity for Indigenous health services to provide further programs to support:**

- **sexual and reproductive health counselling and services**
- **pre and anti-natal care and advice for teenage parents**
- **parenting skills information and assistance**
- **alcohol risk awareness during pregnancy, and**
- **support for pregnant women with alcohol dependency or other substance abuse.**

Holistic health care in detention and post-release

4.113 The Committee visited three detention centres and observed some of the programs offered to detainees.⁸² These programs include health, educational, vocational, recreation and spiritual services. The centres employ alcohol and other drug counsellors and psychologists to assist the detainees in dealing with their drug and alcohol problems and provide assessment, counselling and group work. As required, registered nurses provide general healthcare and arrange visits from local general practitioners and treatment consultant psychiatrists for professional assessment and treatment of young people.

4.114 Life and family skills and Indigenous cultural programs are offered and are well developed in some centres. However there are limitations in the

82 The three detention centres visited were Juniperina Juvenile Justice Centre, Orana Juvenile Justice Centre and Brisbane Youth Detention Centre.

processes offered to prepare Indigenous youth to reintegrate with communities.

- 4.115 Gino Vambuca from NIDAC commented on the need for continuing support services within the criminal justice system:

You have got to try and reduce the number of Indigenous people going in, but there will be a proportion who end up in prison, so you have to have programs that are appropriate for those people who are in prison now and who are going to come through regardless of what programs come into play between now and the next 10 or 20 years.⁸³

- 4.116 NIDAC made the following recommendation to reduce the high level of incarceration and to improve health, wellbeing and re-integration of Indigenous youth in contact with the criminal justice system:

Improve the level of health services available to all Indigenous prisoners and juvenile detainees by:

- Providing comprehensive health screening on reception
- Encouraging the take up of treatment recommended after health screening
- Providing a continuum of health care and referral both within and beyond the corrections system by allowing Indigenous health and medical services access to prisoners and detainees
- Ensuring access to a full range of effective drug and alcohol treatments, as well as mental health services, which are well suited to treating Indigenous offenders (and their families), as are available to the wider community.⁸⁴

Committee comment

- 4.117 The Committee asserts it is important that health issues are addressed the entire way through the criminal justice system, from youth at risk or in contact with police, to the courts, those in detention and post-release. Chapter 7 of this report refers to evidence that reducing recidivism would substantially reduce the number of Indigenous people in incarceration. Moreover, it is important to make sure that, when an Indigenous young person is leaving detention, there is a comprehensive package coordinated across government departments to assist them in moving back to communities.

83 Gino Vambuca, NIDAC, *Committee Hansard*, Canberra, 25 February 2010, p. 14.

84 NIDAC, *Bridges and barriers: Addressing Indigenous Incarceration and Health*, 2009, p. 11.

- 4.118 Given that detention periods range from six months to one year or more, the government has a responsibility to provide adequate rehabilitative care and guidance during that time, and to prepare the transition back to communities. Transitioning of services from detention to family and community is discussed further in chapter 7.
- 4.119 The Committee notes there is a need for more holistic programs to deal with the high likelihood of a history of trauma, abuse or mental health issues among those Indigenous youth who have come into contact with the criminal justice system. It is imperative that inter-agency approaches and multidisciplinary teams diagnose, provide and refer services for young people to address their various needs. These may include: alcohol and other drug treatment; programs to address offending behaviour; accommodation needs; and cultural, educational and vocational courses. A family approach to these issues has also been found to assist to break down intergenerational difficulties.
- 4.120 The Committee recommends all Indigenous youth who enter the criminal justice system or are serving a custodial sentence have access to holistic programs which include support for mental health, social and emotion wellbeing, trauma, hearing loss, and drug and alcohol reform.

Recommendation 15 - Health

- 4.121 **The Committee recommends that the Commonwealth Government, in collaboration with state and territory governments, ensure all Indigenous youth who enter the criminal justice system are provided with:**
- **comprehensive health screening, including for Foetal Alcohol Spectrum Disorders**
 - **access to intensive holistic intervention programs which involve family, mentors and Indigenous leaders and include support for mental health, hearing loss and drug and alcohol reform, and**
 - **access to wellbeing programs which involve families and Indigenous leaders, address underlying issues of trauma, low self-esteem and build resilience and the capacity for positive social and workplace engagement.**

The Committee recommends that emotional, social and cultural programs should span the length of a youth's time in detention, and continue after release.

Improving education for Indigenous youth

5.1 Different aspects of disadvantage are often interrelated and there are well recognised links between poor health and accommodation and poor educational outcomes for Indigenous Australians. In addition, data shows there is a strong link between Indigenous people involved in the criminal justice system and low levels of educational attainment.

5.2 Associate Professor Somerville, Department of Education Western Australia told the Committee:

With regard to education, there is no doubt that there is an absolute correlation between a child failing at school and a child entering the justice system.¹

5.3 The New South Wales Government submission highlighted this issue with New South Wales statistics which reflects a national trend for juvenile offenders:

Three quarters of NSW juvenile detainees surveyed in 2003 and 2006 left school before finishing Year 9, and over 90 per cent had been suspended at one time or another.²

5.4 As noted in *The Report of the Review of Aboriginal Education* 'Higher levels of education make a person less likely to be involved in risk-taking behaviours such as crime (partially by increasing income and reducing the incentive to commit crime)'.³

5.5 The Australian Government recognises there is a great need to improve educational outcomes for Indigenous Australians. The Closing the Gap

1 Robert Somerville, Department of Education Western Australia, *Committee Hansard*, Sydney, 28 January 2011, p. 77.

2 New South Wales Government, *submission 84*, p. 21.

3 New South Wales Department of Education and Training, *submission 4*, p. 28.

strategy has three out of the six targets that focus on education in order to close the gap on Indigenous disadvantage.

5.6 These three targets are:

- ensuring all Indigenous four years olds in remote communities have access to early childhood education within five years
- halving the gap for Indigenous students in reading, writing and numeracy within a decade, and
- halving the gap for Indigenous students in Year 12 attainment or equivalent attainment rates by 2020.⁴

5.7 The Prime Minister's Report 2011 *Closing the Gap* outlined the progress that had been made on the above three targets. The first of the above targets was highlighted as one of two targets being most achievable within the given timeframes. The Prime Minister stressed the importance of supporting children and their families to ensure more regular preschool attendance.⁵

5.8 This chapter discusses the findings from the inquiry looking specifically at ways to more effectively engage Indigenous Australians in the education system. The focus on early intervention in terms of school readiness and attendance for Indigenous students and engagement with the education system for children, parents and communities is discussed. The chapter highlights successful programs being carried out that encourage Indigenous community engagement and higher rates of student attendance for Indigenous youth.

5.9 The Committee is aware that there is not a one-size-fits-all solution to Indigenous education and encourages schools to work with their Indigenous community to find a solution to help engage Indigenous Australians in the education system.

Funding for Indigenous education

5.10 State and territory governments and non-government school authorities are responsible for providing education services in Australia. In addition the Commonwealth Government provides supplementary funds in the form of general recurrent and capital grants, and plays a central role in achieving cooperation in the national education system, largely through

4 FaHCSIA, *submission 79*, p. 7.

5 *Closing the Gap Prime Minister's Report 2011*, p. 14.

the Ministerial Council for Education, Employment, Training and Youth Affairs (MCEETYA).

- 5.11 The Department of Education Employment and Workplace Relations (DEEWR) in its submission to the inquiry outlined its policies and programs that provide opportunities for all people to build rewarding social and economic lives. The aim of these policies and programs work 'towards overcoming disadvantage, removing barriers to participation, increasing opportunities, building capacity and ensuring that services are accessible and provide effective support for all Australians'.⁶
- 5.12 DEEWR has five main initiatives to increase the engagement of young people in education and training, one of which is Indigenous specific:
- Compact with Young Australians
 - Indigenous Education Action Plan
 - National Youth Participation Requirement (NYPR)
 - Youth Allowance, and
 - Support for Low Socio-economic Status Students.
- 5.13 The Committee was informed that 'whilst some of these are mainstream initiatives, Indigenous young people will also benefit from these initiatives'.⁷

Indigenous Education Action Plan

- 5.14 The purpose of the Indigenous Education Action Plan (IEAP) is to guide the national effort towards closing the gaps in early childhood and school education outcomes for Indigenous Australians. It includes a range of actions to bring about both systemic and local-level improvements across six domains of activity that evidence has shown will make the most impact on closing the gap between non-Indigenous and Indigenous educational outcomes. These are:
- readiness for school
 - engagement and connections
 - attendance
 - leadership, quality teaching and workforce development

6 DEEWR, *submission 63*, p. 1.

7 DEEWR, *submission 63*, p. 3.

- literacy and numeracy, and
 - pathways to real post-school options.
- 5.15 The IEAP is intended to bring together reforms included in national agreements and national partnerships agreed between governments, and will also enhance collaboration between governments, non-government providers and Indigenous communities.⁸
- 5.16 During a public hearing in Melbourne, Alf Bamblett of the Victorian Aboriginal Community Services Association raised concerns about the length of time it takes for bureaucracies to implement policies such as the above IEAP. He commented:
- There is a thing like a partnership in education that produces an education policy that says every Aboriginal child, by whatever year it is, should have an education plan. Terrific, but the policy has been there two or three years, and now we are starting to see some rollout of that. So, in the two or three years, you wonder about the further damage that has gone on in the community.⁹
- 5.17 At a public hearing DEEWR outlined the inception of the IEAP:
- On 16 December 2009, Australia's Education Ministers released a draft Indigenous Education Action Plan for public consultation. A revised draft was then endorsed by the Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA), and is ready for final endorsement at the next COAG meeting.¹⁰
- 5.18 The Council of Australian Governments (COAG) meeting on 13 February 2011 did not endorse the IEAP however it was decided that the Prime Minister would write to all state and territory leaders and seek a written endorsement from them rather than waiting for endorsement at the next COAG meeting.
- 5.19 The Committee has been advised that the IEAP was agreed to in an out-of-session process, with COAG members writing to the Prime Minister, in her capacity as Chair of COAG, to record their agreement to the Plan.

8 Department of Education, Employment and Workplace Relations, *submission 63*, pp. 3-4.

9 Alf Bamblett, Victorian Aboriginal Community Services Association, *Committee Hansard*, Melbourne, 3 March 2010, p. 24.

10 Glen Hansen, Department of Education, Employment and Workplace Relations, *Committee Hansard*, Canberra, 17 June 2010, p. 3.

- 5.20 Associate Professor Somerville, Director of Aboriginal Education, Department of Education in Western Australia made the following comments to the Committee regarding poor outcomes for Aboriginal students and a new national effort by way of the IEAP to focus on early childhood education.

We recognise as a system that the overrepresentation of Aboriginal children in the justice system is directly correlated to their student outcomes. Poor student outcomes equals a very good chance that those children are going to be in the justice system. Western Australia has been leading a national effort to write a new Indigenous education action plan on behalf of the Australian government and the nation to look at the Closing the Gap priorities.

What we have found from looking at the data nationally is quite clear: there is about a two-year lag between the outcomes of Aboriginal children and the outcomes of the rest of the population, particularly when we look at the National Assessment Program – Literacy and Numeracy, NAPLAN. In fact, in Western Australia, if we look at the NAPLAN results for year 5 for Aboriginal children, they overlay with year 3; year 7 overlays with year 5 for the rest of the population; and year 9 overlays with year 7. So we have a significant issue with regard to student outcomes.

To be able to turn that around, we believe that we have to put significant effort into the early childhood area – in other words, into getting Aboriginal children more ready for school.¹¹

Committee comment

- 5.21 The Committee is concerned that in spite of the whole of government commitment to Closing the Gap there has been a significant time lag for the IEAP to receive endorsement from COAG. Since the Department of Education, Employment and Workplace Relations spoke to the Committee the IEAP has been awaiting endorsement from COAG for nearly 12 months.
- 5.22 The Committee believes a specific focus on Indigenous education, such as the IEAP, is critical if progress is to be made in terms of a higher attendance and retention rate of Indigenous Australians in the education system. This in turn will assist in reducing the amount of contact

11 Robert Somerville, Department of Education Western Australia, *Committee Hansard*, 30 March 2010, p. 23.

Indigenous people have in general with the criminal justice system and will contribute towards a greater sense of wellbeing.

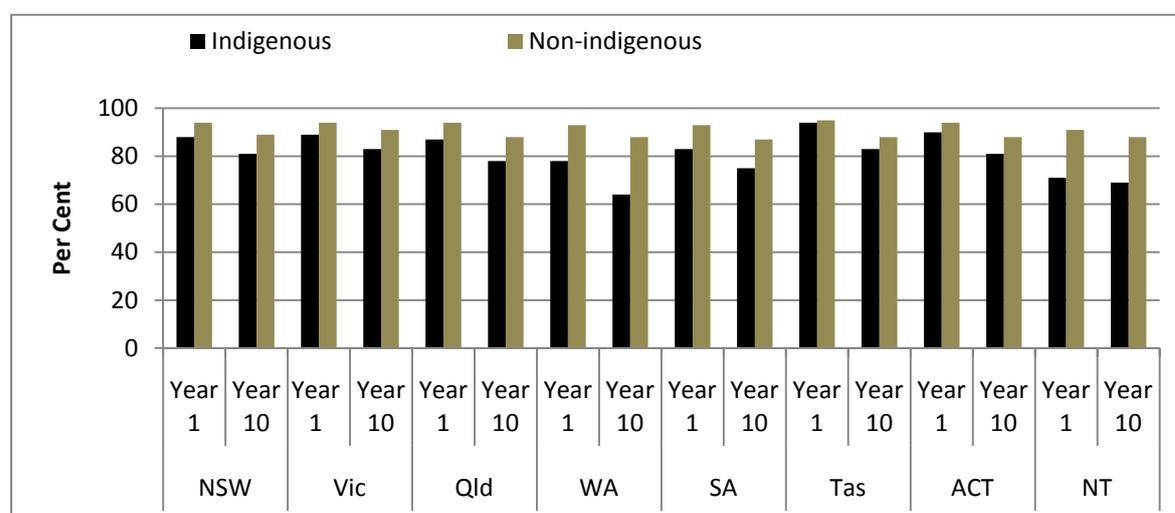
- 5.23 The Committee was informed in May 2011 that all jurisdictions had signed off on the endorsement of the IEAP. The Committee believes that in future the agenda for COAG should be mindful of the length of time some issues await consideration and endorsement, and the on-going damage that results from these delays.

Indigenous Australians and the education system

- 5.24 The Committee's evidence collected throughout the inquiry suggested there is a sense of urgency to continue to do more to positively engage Indigenous Australians with the education system. The statistics of attendance rates for Indigenous students continue to be lower than for non-Indigenous students.
- 5.25 The correlation between lower attendance levels and lower educational attainment levels between Indigenous and non-Indigenous students are well documented. Current data from 2007 shows that the attendance rates for Indigenous students in government schools for years 1-10 in all states and territories were lower than for non-Indigenous students.¹² Attendance rates declined from year 1 to year 10 for both Indigenous and non-Indigenous, however the extent of the decline in attendance was greater for Indigenous students. Figure 5.1 highlights the differences in attendance rates between Indigenous and non-Indigenous students in year 1 and in year 10. These differences are most pronounced in the Northern Territory and Western Australia.

12 *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission: Canberra, 2009, p. 6.3.

Figure 5.1 Students' attendance in government schools by state and Indigenous status, 2007



Source: *Overcoming Indigenous Disadvantage Key Indicators 2009 Report, Figure 6.1.1*

- 5.26 Educational retention levels are lower for Indigenous students compared with non-Indigenous students. A much higher proportion of Indigenous people aged 15 years and older reported year 9 or below as their highest level of schooling in every age group in 2006.¹³
- 5.27 Access to early childhood education in remote areas for all Indigenous Australians is an area currently being addressed by one of the six Closing the Gap targets. Providing access to early childhood education will help establish a connection for parents/carers and children with the education system and the Commonwealth Government hopes that in time it will lead to stronger educational outcomes including higher attendance rates for Indigenous children at the start of their education.
- 5.28 Current research suggests that children's experiences in their early years affect their development and influence lifelong learning, behaviour and health. Early childhood education programs are associated with increased levels of school completion and enhanced literacy and social skills. The provision of services to children during their early years may provide an opportunity for early intervention to address developmental problems.
- 5.29 Another reason to focus attention and resourcing for Indigenous children around early childhood education such as at the preschool level is that 'investment in early childhood education, particularly for disadvantaged children is more effective than intervention at later stages'.¹⁴

13 *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission: Canberra, 2009, p. 6.15.

14 SCRGSP, *Overcoming Indigenous Disadvantage Key Indicators 2009 Report*, p. 4.25

- 5.30 The Committee received evidence that some parents had not been actively engaged in the education system when they were growing up and therefore did not prioritise education for their own children. Others found the education system was not always culturally inclusive for Indigenous Australians. Mark Horton noted that:

In many communities education delivery is seen as a waste of time to parents and youth alike, with some communities have only 45% school attendance. The curriculum is aligned and delivered in and to an environment that appears alien to these youth, particularly Aboriginal youth and particularly in remote communities.¹⁵

- 5.31 Alcohol and substance abuse is another significant factor found to be contributing to low attendance rates for Indigenous students. Acting Chief Magistrate Sue Oliver, Darwin Magistrates court made the following statement:

Unfortunately, the social norm is often a household where there is alcohol and substance abuse and where there has not been an engagement with education for a couple of generations.¹⁶

Strategies for Engagement - Both Ways/Two Ways

- 5.32 The Committee received evidence regarding various state and territory strategies that are targeting and supporting the engagement of Indigenous communities in the education system. These jurisdictions emphasise the need for the education system to work together with local Indigenous communities in relation to improving school attendance and ultimately school retention for Indigenous students.
- 5.33 In its submission, the Victorian Aboriginal Legal Service (VALS) commented that Indigenous educators have been advocating a 'Both Ways' education concept for decades whereby partnerships are formed with Indigenous parents and the education system and it builds a learning culture that has to go both ways. As an example of this, the Victoria Government's *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People: Final Report (2009)* made some strong recommendations that recognised the 'both ways' concept for early intervention strategies to support engagement and improve educational outcomes. One of the recommendations stated:

15 Mark Horton, *submission 85*, p. 3.

16 Sue Oliver, *Committee Hansard*, Sydney, 28 January 2011, p. 18.

The State Government expedite the implementation of the recently released Student Engagement Policy Guidelines. This would require supporting schools to provide a range of prevention and early intervention strategies to support engagement and improved educational outcomes, including: programs to support parental involvement with schools, including effective parenting programs; transition support programs for children moving from primary to secondary school, and for students nearing the compulsory school leaving age; strategies for identifying at-risk students (including those in out-of-home care) and linking them to appropriate specialist support services (for example, youth workers or counsellors); the introduction of restorative justice practices in schools; training for teachers in the delivery of emotional well-being curriculum materials, and in strategies for working with vulnerable and 'difficult' students.¹⁷

- 5.34 The Department of Education, Western Australia has developed the *Better Attendance: Brighter Futures* strategy which provides a comprehensive and integrated approach to the provision of services to schools, families and the community to improve attendance. The submission noted that, 'improving the attendance and engagement of students is a key to reducing involvement in the criminal justice system'.¹⁸
- 5.35 The *Better Attendance: Brighter Futures* strategy includes a significant focus on Aboriginal students. Targeted funding is provided for schools and clusters of schools with low attendance rates and high numbers of Aboriginal students at risk to assist them to prioritise attendance, set targets and develop local solutions. The strategy includes:
- individual case management, mentoring and strengthening links with other agencies
 - connecting Aboriginal students and their families to the range of services in their community to address the barriers to attendance and engagement, and
 - supporting schools to create learning environments that meet the needs of Aboriginal students, whilst being safe, culturally inclusive and conducive to high attendance.¹⁹

17 Victorian Aboriginal Legal Service, *submission 40*, pp. 28-29.

18 Department of Education, Western Australia, *submission 81*, p. 8.

19 Department of Education, Western Australia, *submission 81*, p. 8.

- 5.36 In 2009, the Northern Territory Department of Education employed five regional school attendance officers, in addition to 43 Aboriginal and Torres Strait Islander Education Workers and 30 Home Liaison Officers, providing schools with additional resources to improve student attendance. The School Attendance Team provides program support and strategic advice dedicated to improving enrolment and attendance, particularly for children at risk of poor school attendance.²⁰
- 5.37 The New South Wales Government recognised that adopting a whole-of-government approach was the most effective way to address Aboriginal disadvantage. This approach is embodied in *Two Ways Together*, the New South Wales Aboriginal Affairs Plan, 2003-2012. The New South Wales Department of Education and Training (DET) contributes to this approach through the work currently being progressed in New South Wales under the New South Wales State Plan and the *Two Ways Together* and *Keep them Safe* frameworks.²¹
- 5.38 *Two Ways Together* takes a long-term view by making a ten year commitment to change. This approach is similar to the Both Ways concept as the plan requires government agencies to work together with Aboriginal people to ensure that services are accessible and culturally appropriate. The plan recognises that services need to work in partnership.²²
- 5.39 The New South Wales DET in its submission stated that 'programs are being targeted to communities where there is particular potential to improve school retention and completion rates and for those that experience early school disengagement and poor school outcomes for Aboriginal students. Programs such as the *Schools in Partnership* initiative, and the *Norta Norta* Program focus on improving engagement, attendance, retention, and literacy and numeracy achievement with the view to achieving educational success for Aboriginal students.'²³
- 5.40 The Queensland Government is working with Indigenous leaders to implement innovative models of education that are suited to the needs of particular communities. More recently, the *Bound for Success* education strategies for Cape York and the Torres Strait are a response to the educational outcomes for Indigenous students in these regions, which are on average lower than for other Queensland students. These strategies

20 Northern Territory Government, *submission 89*, p. 24.

21 New South Wales Department of Education and Training, *submission 43*, p. 3.

22 New South Wales Government, *Aboriginal Affairs, Two Ways Together* <www.daa.nsw.gov.au/policies/policy.html> accessed 30 March 2011.

23 New South Wales Department of Education and Training, *submission 43*, p. 9.

focus on community and government working in partnership and stimulating high aspirations and expectations. The Queensland Department of Education and Training, working with Cape York Partnerships has commenced a three year pilot at the Aurukun and Coen campuses of the Western Cape College incorporating club and culture elements in the education program, and strengthening governance arrangements to ensure that the community has a greater engagement.²⁴

Indigenous community engagement

- 5.41 Indigenous community engagement is a critical factor for schools that have low attendance rates for Indigenous students.
- 5.42 A strong message that came through the inquiry was the need for a 'Two Way' engagement in the education sector between schools and the Indigenous community in order to improve the effectiveness of education for Indigenous students. It was evident that the most successful programs are those initiated and run by Indigenous people in collaboration with government and the non-government sector.
- 5.43 The Department of Education, Western Australia made the following comment in relation to the importance of schools connecting and maintaining a relationship with its school community:
- Schools that work together with communities and encourage participation in the school and at home enable students to learn and meet expectations. Evidence suggests that school connectedness and supportive social relationships have been associated with lower levels of absenteeism, delinquency, aggression, substance use and sexual risk behaviour, and higher levels of academic achievement and self-esteem amongst children.²⁵
- 5.44 John McKenzie from ATSIL NSW/ACT, commented that it is important to see improving the effectiveness of education as a holistic approach. 'We have to be treating not only the child as a whole individual but also the family and the community within which they live.'²⁶
- 5.45 The need to engage Indigenous parents more in the education system was also emphasised by Associate Professor Somerville from the Department of Indigenous Affairs, Western Australia:

24 Queensland Government, *submission 91*, p. 13.

25 Department of Education, Western Australia, *submission 81*, p. 10.

26 John McKenzie, *Committee Hansard*, Sydney, 28 January 2011, p. 32.

The other thing that we are not doing is engaging Aboriginal parents in the educative process. That does not mean going to a school council; that means getting their children to school, being involved in literacy and numeracy, reading and so on. We are not ensuring that those Aboriginal parents are involved in the cultural aspects of being Aboriginal. Noel Pearson and a number of people in Queensland have come out with the Stronger Smarter philosophy, about being stronger in your culture and smarter at school.²⁷

- 5.46 Professor Foley and Professor Lovat from the University of Newcastle provided some good examples of how schools could engage with their Indigenous communities.

If a school has Indigenous Australian students, teachers should assume a leadership role seeking to become actively involved in supporting and promoting Indigenous student success. To achieve this, they will need to look beyond the school for sources of support. These may include parents, Indigenous support staff, community members and Indigenous funding programs. Teachers need to be proactive rather than reluctant participants. They need to be given the tools and motivation to research, interact and network.²⁸

- 5.47 In addition they suggested that:

Teachers in rural schools also need to find out who is the chair of the local Aboriginal Council, make an appointment to meet with that person and determine ways in which the Council might assist in dealing with the matters outlined above.²⁹

- 5.48 The Australian Children's Commissioners and Guardians submission emphasised the importance of engaging the support of the Indigenous community when running Indigenous specific programs. The submission stated:

Any culturally appropriate school programs, sporting activities, or diversionary programs will not be effective if they are not seen by the children and young people to be valued and supported by

27 Robert Somerville, Department of Education Western Australia, *Committee Hansard*, Sydney, 28 January 2011, p. 22.

28 Dennis Foley and Terry Lovat, University of Newcastle, *submission 28*, p. 16.

29 Dennis Foley and Terry Lovat, University of Newcastle, *submission 28*, p. 16.

Indigenous families and communities, or if there are no expectations that they are to attend or participate.³⁰

- 5.49 In addition, the point was made that 'parents and communities may need support to strengthen their roles around parenting, activities and school attendance as an effective point of intervention, to ensure optimum development of children and young people.'³¹
- 5.50 Associate Professor Somerville outlined a successful program involving the Indigenous community, parents and high expectation for students that over 10 years has demonstrated outstanding outcomes. He explained:

Follow the Dream: Partnerships for Success, is a program that Rio Tinto is involved in with us, along with the Polly Farmer Foundation. So there are a number of very large philanthropic and industry groups. The program looks at supporting Aboriginal children from year 8 through to year 12 to ensure they get a TER. We have turned that around in 10 years. In 2002, two Aboriginal children got a TER that got them to university. Now we are averaging 30 Aboriginal children with TERs who move to university – and with TERs over 90, which will get you straight into medicine. So there is an enormous switch that we have seen over the time. Nearly 300 Aboriginal children are getting a Western Australian certificate of education due to those programs, and the programs are successful because they involve the Aboriginal community. Parents are completely involved in it. They have very high expectations, so children are expected to finish and do very well. We ensure that teachers understand and the cultural aspects are set into place.³²

Committee comment

- 5.51 The Commonwealth has committed to providing better access to early childhood education in remote areas for Indigenous Australians as it understands that participation, attendance and retention is critical in order to improve educational outcomes for Indigenous students.
- 5.52 The Committee recognises that there has been a significant shift in the way that Commonwealth, state and territory governments are developing policies on Indigenous engagement and the education system.

30 Australian Children's Commissioners and Guardians, *submission 59*, p. 12.

31 Australian Children's Commissioners and Guardians, *submission 59*, p. 12.

32 Associate Professor Somerville, Department of Education Western Australia, *Committee Hansard*, Sydney, 28 January 2011, p. 78.

- 5.53 The Committee commends Victoria and New South Wales for committing to a Both Ways/Two Ways Together strategy to address Indigenous disadvantage issues. The Committee is encouraged by the focus on early intervention in states and territories throughout Australia in relation to Indigenous education.
- 5.54 The Committee commends the Western Australia Follow your Dream: Partnerships for Success program which has successfully engaged Indigenous communities, industry, the philanthropic sector and government. The program has demonstrated a remarkable increase in the number of Indigenous students achieving TER scores and most impressively, high TER scores.
- 5.55 The Committee believes the continuing development of effective partnerships between local Indigenous communities and education systems across Australia is essential in increasing attendance and retention rates for Indigenous students in the long term.
- 5.56 Each school needs to work alongside the Indigenous parents/carers of school-aged children to create a partnership which will result in the parents/carers seeing value in sending their children to school each day.
- 5.57 The Committee encourages school communities and local Indigenous communities to engage more actively with each other in order to foster positive relationships between parents and carers of Indigenous children and the education system. The Committee believes there is room for further innovation in this area.
- 5.58 The Committee encourages school communities throughout Australia to adopt the 'Both Ways', 'Two Ways' strategy that has been discussed in this chapter.
- 5.59 The Committee is aware that many schools throughout Australia are already fostering positive relationships with their local Indigenous communities. However, as a broad recommendation the Committee sees value for all schools in incorporating and giving greater recognition to Indigenous culture.
- 5.60 The Committee recommends that the Minister for Education works through the MCEETYA and the IEAP to implement greater Indigenous recognition in schools.

Recommendation 16 – School and community relationships

- 5.61 **The Committee recommends that the Minister for Education work through the Ministerial Council on Education, Employment, Training and Youth Affairs assist schools throughout Australia to deliver better education outcomes for Indigenous students and to foster more connected and positive relationships with their local Indigenous community. The Committee considers that as a minimum schools should be incorporating a range of the following activities within the school:**
- **hang or fly an Aboriginal Flag and the Torres Strait Islander flag alongside the Australian flag within the school grounds**
 - **learn about Indigenous sites of significance in the local area**
 - **incorporate an acknowledgment of country at the start of significant events as well as at school assemblies**
 - **commission local Indigenous artists to paint a mural, or build or create sculptures within the school grounds**
 - **use local Indigenous languages names for school classrooms or sporting houses/teams**
 - **build an Indigenous garden and invite those with bush tucker knowledge to be involved**
 - **celebrate Mabo day, NAIDOC week, Reconciliation week and Harmony day**
 - **engage Indigenous school mentors for schools with high Indigenous populations, and/or**
 - **engage the local Indigenous community to teach language and culture afterschool and provide extra curricula activities.**

School readiness

- 5.62 School readiness has been recognised as an area requiring more attention to give children the best start in education. Ensuring children are healthy and have a supportive and safe environment to live in is a vital starting point for school readiness. Early childhood education at the preschool level focuses on teaching children how to interact and learn in a social environment, preparing them for the future years of learning.

- 5.63 School readiness takes into consideration a certain degree of language development, in order for the teacher and the child to communicate; physical well-being or an awareness of limitations that need to be considered; motor coordination and skills, concentration and emotional adjustment, and a certain degree of independence.³³
- 5.64 In its submission, VALS discussed risk factors for Indigenous people that contribute to their offending behaviour. One of several of the contributory factors linked to offending was the recognition that often low birth weight leads to a lack of school readiness and low academic achievement. VALS commented that 'low birth weight is a risk factor with a long reaching impact on school readiness, transition and academic achievement.'³⁴
- 5.65 This issue of healthy pregnancies and risk factors for low birth weights for Indigenous women is discussed in chapter 4. Once again the Committee is aware of the interconnectedness of the contributing factors towards Indigenous disadvantage in the area of health and education.
- 5.66 The New South Wales Department of Education and Training highlighted this point in its submissions' introductory statement:
- The NSW Department of Education and Training recognises that improving the educational outcomes of Aboriginal children and young people cannot be achieved in isolation from the work being undertaken in other key human service delivery areas such as health, housing, juvenile and criminal justice, employment and economic development.³⁵
- 5.67 The Committee heard from the Director of Aboriginal Education from the Department of Education, Western Australia that a significant number of Aboriginal children are not school ready for year 1:
- I will use the Western Australian experience – we find that about 50 to 60 per cent of the Aboriginal children are not ready for year 1. It is interesting that around 50 to 60 per cent of Aboriginal children are not ready for high school – year 8 – as we see through the NAPLAN results.³⁶

33 Royal Children's Hospital Melbourne, *Community Paediatric Review*, <www.rch.org.au/emplibrary/ccch/CPR_Vol14No3_PS_SchlRead.pdf> accessed 9 March 2011.

34 VALS, *submission 40*, p. 3.

35 New South Wales Department of Education and Training, *submission 43*, p. 2.

36 Robert Somerville, Department of Education Western Australia, *Committee Hansard*, Sydney, 28 January 2011, p. 77.

- 5.68 The Queensland Department of Education and Training has an early intervention strategy to assist Indigenous children engage successfully in the education system, focussing on improving the understanding of the English language in pre-prep programs. During a public hearing in Brisbane the Committee was informed:

We have also implemented 35 pre-prep programs in discrete Indigenous communities to help kids as young as age 3 to 3½ to get a better understanding of the English language because the language of school is standard Australian English. We are looking at getting these children prepared to move into prep and getting them to understand the English language better so they can achieve better outcomes. Evidence shows that our Indigenous students tend to be two years behind other students by the time they reach grade 3 and after that they continue to stay two years behind. They are learning at the same rate and so we need to close that gap in the early years. Therefore, that is a big focus for our Indigenous students.³⁷

- 5.69 A lack of school readiness from the outset can result in on-going negative consequences throughout the child's education and may lead to low school attendance rates.

School attendance

- 5.70 The Committee received an overwhelming amount of evidence that highlighted the correlation between low school attendance rates for Indigenous students and low levels of educational attainment for years 10 and above.
- 5.71 The Director of Aboriginal Education, Western Australia, Professor Somerville reiterated this view at a roundtable public hearing in Sydney. He stated:

Aboriginal children across Australia do not achieve in literacy and numeracy – one might say it is because they do not attend school – and also are not retained to year 12 in the same numbers as non-Aboriginal children.³⁸

37 Angela Leitch, Department of Education and Training, Queensland, *Committee Hansard*, Brisbane, 4 May 2010, p. 13.

38 Robert Somerville, Department of Education Western Australia, *Committee Hansard*, Sydney, 28 January 2011, p. 78.

5.72 The Committee noted that a lack of school attendance has a detrimental impact on the child's educational and social development. The Western Australia Department of Education stated that:

Absenteeism from school has adverse effects on a child's educational and social development. They miss critical stages of development with their peers and are less likely to achieve academic progress. Absenteeism can exacerbate issues of low self esteem and social isolation. Improving school attendance is a key strategy in improving the life outcomes for young Aboriginal people.³⁹

5.73 In a submission from two professors from the University of Newcastle, they commented on low Kindergarten attendance rates for Indigenous children which obviously had a negative flow on effect and set the children back from those children who had attended a full year of kindergarten. Several reasons were suggested for why this was occurring:

Indigenous children statistically have very low records of kindergarten attendance. This is for various reasons, including a lack of access, lack of funds, lack of available places, lack of transport, or a combination of factors. In many situations, while children may have had a nurturing family upbringing, their non-attendance at kindergarten results in school commencement without the early educational training that establishes the essential building blocks for their educational future.⁴⁰

5.74 The New South Wales Ombudsman informed the Committee that from its work it had become concerned about the apparently high rates of non-attendance by Aboriginal children in particular locations. The Ombudsman stated that:

This problem often emerges late in primary school, as children are making a transition from childhood to adolescence. The issue is of particular significance to young people because they are not only being deprived of a fundamental right relating to their development but they also lose the social support network and structure that the school community can provide.⁴¹

5.75 In relation to the issue of attendance, the Director of Aboriginal Education in Western Australia raised a concern about understanding the real school attendance rates. He commented that whilst the attendance rates often

39 Department of Education Western Australia, *submission 81*, p. 3.

40 Dennis Foley and Terry Lovat, University of Newcastle, *submission 28*, pp. 13-14.

41 New South Wales Ombudsman, *submission 56*, p. 4.

collected by the education departments reflect the attendance rates for role call in the morning it was well understood that these rates did not reflect regular full day attendance. It was suggested that the regular attendance rates for Indigenous students in Western Australia were more likely to be 35 per cent:

In Western Australia, 35 per cent of Aboriginal children attend school regularly. So there is a significant issue for us, and that is the same across all jurisdictions. We have taken our eye off the ball.⁴²

- 5.76 During a public hearing in Cairns, the Commissioner for the Family Responsibility Commission (FRC), David Glasgow also raised a concern regarding the accuracy of attendance level data that was collected from schools. He commented that the role was often taken in the morning and by the afternoon several of the children were no longer at school.

We get figures from the Education Department. I have been a bit suspicious of their figures because I have seen people marked as attending school when some seem to have the afternoon off.⁴³

- 5.77 Commissioner Glasgow discussed some of the challenges faced by families with Indigenous children who are brought to the attention of the Commission in relation to school attendance levels.

We are finding out what is happening to some of these children, so we have to be careful to find out whether the kids are suffering from some sort of disability. I am not there to punish the parent; I am there to find out what is happening to the children. So we are now working very closely with the school case managers, who will go out to the household and find out, basically, what is happening in that household.⁴⁴

- 5.78 Throughout the inquiry the Committee heard about a number of initiatives that are being implemented that are working towards increasing school attendance levels for Indigenous students.

42 Robert Somerville, Department of Education Western Australia, *Committee Hansard*, Sydney, 28 January 2011, p. 78.

43 David Glasgow, Families Responsibilities Commission, *Committee Hansard*, Cairns, 7 May 2009, p. 3.

44 David Glasgow, Families Responsibilities Commission, *Committee Hansard*, Sydney, 28 January 2011, p. 76.

Initiatives to increase school attendance

Breakfast and lunch programs

- 5.79 Breakfast and lunch programs have proven to be an effective way of increasing school attendance rates. These programs have multifaceted benefits including increasing attendance rates, providing a nutritional start to the day to assist with learning and concentration as well as potential business spin offs.
- 5.80 The Department of Indigenous Affairs, Western Australia discussed a successful school breakfast program that was carried out on the Ngaanyatjarra Lands School in Western Australia. The program was a successful attendance incentive and in turn assisted the women running the breakfast program to start off a small catering service:

A group of four Warburton grandmothers decided to take action to get children in their community to attend school by starting a small school breakfast program. With the assistance of donations from the charitable organisation, Foodbank, the women have been preparing breakfast for local school children for the past 18-months. The program has been credited for increasing attendance at the school by 60 per cent.

The program has not only increased children participation in the class room but has also increased momentum within the community with up to 25 young mothers and community members actively involved in preparing breakfast meals daily. The success of the program has enabled the women to commence a small catering service.⁴⁵

- 5.81 Many people raised the importance and success of breakfast programs.⁴⁶ The Committee was also told that 'a long term breakfast program would do more for education of young Aborigines than many other, more elaborate proposals.'⁴⁷

After school activities

- 5.82 After school activities have proven to be a successful and cost effective way of getting children to attend school. They have a flow on benefit in
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45 Department of Indigenous Affairs, Western Australia, *submission 83*, p. 9.

46 Harry Blagg, *Committee Hansard*, Sydney, 28 January 2011, p. 26; Commissioner Atkinson, *Committee Hansard*, Sydney, 28 January 2011, p. 29; Indigenous Community Volunteers, *submission 18*, p. 4.

47 Rosemary O'Grady, *submission 77*, p. 10.

that the children are in a supervised environment during the after school activity which decreases boredom and opportunities for them to come into contact with the criminal justice system.

- 5.83 Many schools in remote Indigenous communities have a 'no school no pool' policy that appears to be a successful incentive to encourage students to go to school. In its submission the Australian Youth Affairs Commission commented on the success of the 'no school, no pool' policy in reducing truancy:

It is even through simple strategies that school engagement can be increased with both the Northern Territory and the Western Australian Government introducing 'No School, No Pool' policies in regional communities where young people can only access community recreation facilities if they attend classes. 'No School, No Pool' has resulted in an up to 75% reduction in truancy in some communities.⁴⁸

- 5.84 The South Australian Courts Administration Authority raised the 'critical importance of responding to students' non-attendance at school through both the role of Education Officers responsible for truancy, and individual school policies such as 'no school - no pool', and 'no school - no football', which are currently operating in various South Australian schools.'⁴⁹

- 5.85 Another successful initiative was discussed with the Committee during the Roundtable public hearing held in Sydney. Andrew Cummings from the Australian Youth Affairs Coalition stated:

I was in the Northern Territory a few weeks ago and I met a young youth worker from a remote community who is working for the YMCA there. She was telling us how on one day a week she goes into a local community school. The usual attendance rate there is around 60 per cent. On the one day a week that she goes in, it goes up to over 90 per cent. All she does is things like go in and talk to the young people, put on barbecues, have games in the pool after school and that kind of thing. The rule is that if the kids do not turn up at school they do not get to take part in the program. I do not know how much that costs, but I cannot imagine that it is more than a few thousand dollars a year.⁵⁰

48 Australian Youth Affairs Coalition, *submission 61*, p. 8.

49 Courts Administration Authority, *submission 69*, p. 2.

50 Andrew Cummings, Australian Youth Affairs Coalition, *Committee Hansard*, Sydney, 28 January 2011, p. 56.

Sporting programs

- 5.86 Sport can have a positive impact on higher school attendance in a direct way such as ensuring that children attend school in order to participate in a sporting program. The benefits of sport and education are well documented in terms of having a positive impact on learning and education in an indirect way, such as children being more attentive in school after participating in physical education.
- 5.87 In addition the engagement of Indigenous youth in sport can promote positive social and health wellbeing, minimise the potential for offending behaviour for Indigenous youth and provide an incentive for school attendance.
- 5.88 In its submission the Australia Sports Commission stated that:
- Sport and recreation are shown to have a positive impact on Indigenous Australians, improving overall health, reducing violence, crime, theft and vandalism, reducing substance abuse and self-harm and improving school attendance.⁵¹
- 5.89 DEEWR highlighted the Government's recognition of the important role that sport has to play in education and outlined the Sporting Chance Program (SCP) to the Committee:
- This program is an Australian Government initiative that uses sport and recreation as a vehicle to increase the level of engagement of Indigenous students in their schooling to improve their education, training and employment outcomes. The SCP has been implemented through providers working together with schools, education authorities, sporting bodies, businesses and community groups.
- The SCP has two elements: school-based sports academies for secondary school students and education engagement strategies for primary and secondary students. Across Australia in 2010, there will be 54 sports academies and five education engagement strategies. In 2010, through Australian Government funding of over \$10 million, some 10,000 Indigenous students will be supported through this program.⁵²
- 5.90 An example of a successful Indigenous sporting initiative operating in Geraldton, Western Australia, is where netball is used as a way to re-

51 Australian Sports Commission, *submission 42*, p. 3.

52 DEEWR, *submission 63*, p. 7.

engage Indigenous females with the education system. Leza Radcliffe, Representative of the Western Australian Justice Congress commented:

Just looking at some of the other programs in Geraldton, we have our midwest netball academy looking at sport being a positive grab to get kids back into school. That is a female academy. We offer netball and basketball. It is the only academy of its kind in the country that is managed and operated by an Aboriginal organisation. The important thing is leadership and education attendance. When the program initially started, the average attendance for years 8 and 9 was around 35 per cent to 37 per cent. Our stats last year reflect a turnaround of almost 60 per cent, with 92 per cent being the average classroom attendance and active participation.⁵³

- 5.91 Sporting programs provide an avenue for engaging in education Aboriginal students, who may otherwise have been at risk of leaving school early. The Department of Indigenous Affairs Western Australia outlined the purpose of the Clontarf Foundation's Aboriginal Football Academy:

It provides an education program for Aboriginal students in partnership with selected secondary schools and colleges. The football academies are helping to improve the participation, attendance and retention rates of Aboriginal students. There are eight Clontarf football academies and two annexes in public schools across the State.⁵⁴

- 5.92 The Department of Education, Western Australia commented on the success of the 'Clontarf model' in re-engaging Indigenous students. It stated:

The Clontarf model has proven to be a catalyst for a number of other schools to establish Aboriginal programs utilising different sports to cater for disengaged Aboriginal youth.⁵⁵

Queensland Family Responsibilities Commission

- 5.93 The Family Responsibilities Commission (FRC), which began operation in July 2008 has the objective of restoring social norms in Indigenous

53 Leza Radcliffe, Western Australian Justice Congress, *Committee Hansard*, Sydney, 28 January 2011, p. 74.

54 Department of Indigenous Affairs, Western Australia, *submission 83*, p. 10.

55 Department of Education, Western Australia, *submission 81*, p. 9.

communities, with a strong focus on education and improving school attendance.

5.94 The FRC applies to Aboriginal and non-Aboriginal community members who are welfare recipients who reside or have lived in one of the four CYWR trial communities (Arukun, Coen, Hopevale and Mossman Gorge) for three months since 1 July 2008.

5.95 In regards to improving educational outcomes and school attendance the FRC will be notified if:

- a person's child is absent from school 3 times in a school term, without reasonable excuse, and
- a person has a child of school age who is not enrolled in school without lawful excuse.

5.96 Commissioner of the FRC, David Glasgow explained that encouraging children to go to school is a fundamental element of breaking the cycle of disadvantage, offending and social dysfunction:

If school becomes a matter of interest for children, and they continue to be there, they are not somewhere else where they could cause mischief. If they are busy, and there are activities for them during the evening, they are not on the street causing mischief. If the parents are convinced that there is an advantage out of education and there are job opportunities subsequently, then there is a good reason to continue.⁵⁶

5.97 The FRC sends out a school attendance case manager to the houses of children who are not turning up on time for school. The Commissioner outlined that the case managers speak with the families and knock on doors when required to encourage parents to get their children to school on time:

If your children do not turn up today, they will be around to your house and they will knock on the door, wake you up – that happens in Aurukun; people do sleep in – get the kids and get them to school. Those percentages are fairly firm. You have to have your child there by 8.30. If you turn up at nine o'clock, you are late and you are marked late. It is not only getting them to school but also getting them to school on time.⁵⁷

56 David Glasgow, Family Responsibilities Commission, *Committee Hansard*, Cairns, 7 May 2010, p. 5.

57 David Glasgow, Family Responsibilities Commission, *Committee Hansard*, Cairns, 7 May 2010, p. 13.

5.98 FRC case managers have been effective in increasing school attendance levels. Part of their success is the capacity to work with the household to address the range of issues impacting on the child. If a child is not attending school regularly then usually that reflects a household that does not value education, or does not have the capacity to organise itself, maintain routines or provide transport to school. Often the behaviour of the child is a symptom of a household dysfunction and both must be addressed if school attendance and attainment are to be achieved. The FRC commented that case managers assisted in increasing the school attendance rates in Aurukun to nearly 70 per cent.⁵⁸

Committee comment

5.99 The Committee is aware of the need to improve preschool attendance rates for Indigenous children as this provides many of the skills and habits of learning that ensures success within the school system. In addition it is less daunting for families to be engaged at this level especially if they themselves have not had positive experiences of schooling. Evidence has shown that the numeracy and literacy gaps that exist at this level between Indigenous and non Indigenous children often persist throughout their education. This lag can contribute to lower self esteem in Indigenous students and predispose them to disengage from education.

5.100 The Committee commends the work of all governments in improving school readiness through preschool attendance and subsequent school attendance rates. Closing this gap will take time, and the Committee stresses the importance of a collaborative approach from schools, governments and communities. A number of attendance incentive programs are operating around Australia, from breakfast and lunch programs, to participation in recreation and extra curricula activities after school which are having a positive impact on school attendance rates.

5.101 Key to tracking progress is accurate data on attendance rates and the Committee is concerned to note the deficiencies in how comparable national data is currently collected. While full day attendance rates are crucial to assess improvements in attendance and direct attendance incentives to areas required, the Committee notes that data on morning versus afternoon attendance rates may have value in assessing the best strategies to achieve full day attendance.

58 David Glasgow, Family Responsibilities Commission, *Committee Hansard*, Cairns, 7 May 2010, p. 13.

Recommendation 17 – School attendance data

- 5.102 **The Committee recommends that the Minister of Education immediately conduct a review into how daily school attendance and retention rates are measured to ensure that data collected can accurately inform strategies to increase attendance and retention rates and monitor progress in these areas.**
- 5.103 The Committee notes the success of a number of programs in increasing school attendance. The Committee urges the Commonwealth Government to ensure that funds and assistance are available to support NGOs and communities where they are operating incentive attendance schemes.
- 5.104 The Committee urges the Commonwealth Government to move to a more integrated and holistic approach to Indigenous change where initiatives such as school breakfast programs, or after school sporting activities may be recognised as having health, social and educational benefits and so be able to be funded and implemented by a cross agency (flexible funding) approach.
- 5.105 Common to many of these successful incentive schemes is a cooperative approach that engages the community and is able to address more holistically the impediments to school attendance. In particular the Committee notes the benefits of the case manager approach, to increasing school attendance, whereby assistance is directed to households and communities and Indigenous leaders are involved in driving change and holding community members to account. The Committee discusses the need for more holistic and integrated cross agency approaches, such as that by the FRC, in chapter 8 and makes recommendations regarding for changes to traditional service delivery practices.

Recommendation 18 – School attendance incentive programs

- 5.106 **The Committee recommends that the Commonwealth Government commit to the provision of funds and administrative assistance to establish and expand across Indigenous communities the number of school attendance incentive programs (such as breakfast and lunch programs, and sporting and cultural activities during and after school).**

Teaching

- 5.107 The need to encourage more Indigenous people into the teaching profession was raised with the Committee. An increase in the number of Indigenous teachers would assist in forming positive relationships between Indigenous communities and the school.
- 5.108 In his submission Dr Damien Howard highlighted this point when he stated that ‘one important strategy to create success for Indigenous students is to have more Indigenous teachers.’⁵⁹
- 5.109 In its submission the Department of Education and Training, Northern Territory (DET), discussed its ‘DET More Indigenous Teachers program’. DET offers three types of programs that provide financial support for full-time studies:
- Cadetships (20) - linked with the DEEWR national cadetship support program (Indigenous Cadetship Support)
 - Scholarships (14) - two of which are specifically allocated for people from remote locations under the Wesley Lanhapuy scholarships
 - Fellowships (6) - offered to current DET employees.⁶⁰
- 5.110 In addition the submission commented that ‘internally through close networking between Remote Workforce Development and the CDEP transition program there is monitoring and support of Indigenous learners who are studying at certificate level, for example, an assistant teacher completing a Certificate III in Classroom Support. This has meant that for the first time in many years there is a clear pathway from certificate level teaching studies to higher education level and becoming a qualified teacher.’⁶¹
- 5.111 New South Wales DET emphasised the importance of Aboriginal mentors and role models in the education workforce:
- Employing more Aboriginal people in schools, TAFE Institutes and regional and state offices provides a greater diversity of role models for young Aboriginal students. The visibility of such role models encourages young Aboriginal students to see and hear the value of learning and achievement from Aboriginal people and the life opportunities available to them. Greater Aboriginal representation in the teaching workforce contributes to the

59 Damien Howard, *submission 87*, p. 30.

60 Department of Education and Training, Northern Territory, *submission 104*, p. 2.

61 Department of Education and Training, Northern Territory, *submission 104*, p. 2.

development of teaching and learning practices that recognise and meet the needs of Aboriginal students.⁶²

- 5.112 Teaching methods was another issue raised during the course of the inquiry in relation to improving the effectiveness of the education system for Indigenous Australians.
- 5.113 The submission from the University of Newcastle emphasised the need for homogenous teacher training covering kindergarten through to year 12 across all higher education teaching institutions.⁶³ The submission pointed out that in 2007 'staff in Australian Schools Survey revealed that thirty one percent of early career primary teachers said their pre-service training was of no help in assisting them in teaching Indigenous students.'⁶⁴
- 5.114 Knowing that children may be coming from a background where English is not their first language or where in kindergarten it may be their first introduction to learning in a social setting away from parents is important for teachers when developing class plans. Hearing loss stemming from recurrent ear infections (discussed in chapter 4) is another significant issue for many Indigenous children and requires specialised teacher awareness.
- 5.115 Certain school and classroom structures can enable suitably skilled teachers to create educational success for Indigenous students. Unfortunately, there is little formal training that equips teachers with these skills and Dr Howard suggested that there is 'institutional resistance to schools changing any of their methods of operation to assist Indigenous students to succeed'.⁶⁵
- 5.116 In its submission VALS argued that there was a need for teachers to have 'an appreciation of the cultural, social, environmental and economic factors that can seriously impair the academic potential of Aboriginal children'.⁶⁶
- 5.117 The need for teachers and schools to adopt high ambitions for Indigenous students was emphasised many times throughout the inquiry. Associate Professor Somerville noted that 'high expectations do make a difference when young people are expected to move through the system'.⁶⁷

62 New South Wales Department of Education and Training, *submission 43*, p. 10.

63 Dennis Foley and Terry Lovat, University of Newcastle, *submission 28*, p. 14.

64 Dennis Foley and Terry Lovat, University of Newcastle, *submission 28*, p. 13.

65 Damien Howard, *submission 87*, p. 28.

66 Victorian Aboriginal Legal Service, *submission 40*, p. 28.

67 Robert Somerville, Department of Education Western Australia, *Committee Hansard*, Sydney, 28 January 2011, p. 79.

5.118 Similarly, the Australian Children's Commissioners and Guardians said that 'it is important that parents, schools and communities have high expectations of Indigenous children, and expect them to succeed'.⁶⁸

5.119 Dr Howard commented that:

It is critical that positive relationships are combined with high expectations. Positive social relationships cannot be at the expense of high educational expectations. The research is clear that both positive relationships and high expectations are needed.⁶⁹

5.120 A review of MCEETYA's *Australian Directions in Indigenous Education 2005-2008* strategy concluded that improvements could be achieved over time with continued commitment and resources. The Chief Investigator, Professor Peter Buckskin stressed that improvements in teacher training and school leadership were crucial:

We need to change the way pre-service teachers are being trained in terms of attitudes and expectations around Aboriginal people and stereotypes need to be confronted to prevent graduate teachers from entering classrooms with low expectations of Aboriginal and Torres Strait Islander students. Professor Buckskin states that students are quick to pick up on low expectations and their response was often to meet these low expectations.⁷⁰

5.121 The importance of establishing positive and supportive school environments based upon high expectations of Indigenous children was highlighted by several witnesses. Both DEEWR and the Australian Children's Commissioner quoted the successes of Dr Chris Sarra.

Dr Chris Sarra, a leading figure in Indigenous school reform, claims that an underlying philosophy of high expectations for success is crucial to achieving better outcomes for children and young people. His "Strong and Smart" program at Cherbourg State School in Queensland, where he was principal, led to a 94% cut in absenteeism and significant improvements in literacy and numeracy.⁷¹

68 Australian Children's Commissioners and Guardians, *submission 59*, p. 12.

69 Damien Howard, *submission 87*, p. 31.

70 Victorian Aboriginal Legal Service, *submission 40*, p. 27.

71 Australian Children's Commissioners and Guardians, *submission 59*, pp. 11-12; DEEWR, *Committee Hansard*, Canberra, 17 June 2010, p. 18.

- 5.122 In line with better cultural training for teachers and holding high expectations for Indigenous students, the Department of Education, Western Australia stated it had:

...designed and implemented programs that encourage effective teaching to better meet individual student needs; increase support to school leaders; train staff to be more culturally competent; and encourage staff to hold high expectations of Aboriginal students.⁷²

- 5.123 Queensland Police Commissioner Atkinson gave an example of a positive teaching approach in Aurukun whereby the school had employed a local Indigenous woman as a teacher's aide to provide support in the classroom. He told the Committee that:

One class that we sat in on had about 12 children, two teachers and a local Indigenous woman who was a teacher's aide – so three adults with 12 children, a very, very respectful appreciation of Indigenous culture.⁷³

Committee comment

- 5.124 The Committee considers there are numerous benefits stemming from an increase in the number of Indigenous teachers working in the profession. Employing more Indigenous teachers will create positive role models for students and communities and assist in bridging the gap between school environments and Indigenous communities. A greater number of Indigenous teachers will assist in incorporating Indigenous culture and practices into the classroom with the flow on effect of increasing the engagement and attendance rates of Indigenous students.
- 5.125 The Committee is of the view that positive Indigenous role models play a critical role in providing aspirations for Indigenous children and closing the gap on Indigenous disadvantage. By encouraging Indigenous Australians to be teachers it highlights the importance of education and attainment for Indigenous Australians. The Committee encourages all states and territories to increase the support provided to Indigenous students who are studying to become teachers.
- 5.126 The Committee acknowledges the value of Indigenous teacher's aides in the classroom and encourages state and territories to similarly provide additional support to recruit and train Indigenous people for these positions.

72 Department of Education Western Australia, *submission 81*, p. 8.

73 Robert Atkinson, *Committee Hansard*, Sydney, 28 January 2011, p. 29.

- 5.127 From the evidence received the Committee believes further work should be done on teacher training to enhance the understanding of Indigenous social, cultural and economic issues. This is critical as it is often graduate teachers who are appointed to regional schools in the first few years out of university.
- 5.128 Equipping teachers with specific teaching strategies for Indigenous students will assist in engaging Indigenous students and will have a beneficial impact on increasing school attendance rates for Indigenous students.
- 5.129 As part of the teaching strategies the Committee endorses the high expectations strategy for teaching Indigenous students. The Committee understands that students will often meet the expectations of those around them whether these are high or low. The results achieved through innovative partnership programs demonstrates that with the right environment and teaching strategies Indigenous students can excel in education attainment.
- 5.130 The Committee recommends that the principle of setting high expectations for Indigenous students should be incorporated into teacher training curricula throughout Australia. The Committee suggests that all states and territories should improve cultural training for teachers and hold high expectations for all Indigenous students.
- 5.131 During its visit to New Zealand the Committee observed how changes in teaching practices and the approach to schooling can dramatically improve education outcomes, confidence and future choices of Maori students. At Opotiki College, a regional township in the North Island of New Zealand with a majority of Maori students who are from a lower socio economic background, students entering year 8 were significantly below national average rates for literacy and numeracy.
- 5.132 Within just two years the change to the teaching approach produced a dramatic turn-around in the student results. Students are now performing at the average and in their final years students are surpassing the national average. Retention rates for students have increased and the students that the Committee spoke with were positive about their futures, could identify a career path, and had made a choice not to engage with drugs or other criminal behaviour.
- 5.133 Central to the philosophy of the school was a culture of high expectations for all students, Maori included, and all teachers were required to undertake specialised training to adapt their teaching methods to this philosophy. Teachers were expected to be conversant in Maori culture

(though not necessarily speak the language) in order to understand the background of students and be better able to engage and build positive relationships with students, their families and the wider community.

- 5.134 In both Australia and New Zealand there is clear evidence of the success of this approach and there is a need for teachers to be better equipped when it comes to engaging Indigenous students in education. The Committee recommends a comprehensive and mandatory professional development program aimed at better equipping teachers to meet the needs of Indigenous students and assist Indigenous students to excel.
- 5.135 In addition, the Committee notes that the 2011-2012 Australian Government Budget allocated \$425 million over four years to reward top performing teachers through the National Rewards for Great Teachers Program.⁷⁴ The Committee recommends that some of this \$425 million be directed towards the formal recognition of outstanding performance in the teaching of Indigenous students.

Recommendation 19 – Teacher development

- 5.136 **The Committee recommends that the Minister for Education work with the Ministerial Council on Education, Employment, Training and Youth Affairs develop a comprehensive and mandatory teachers' professional development program that:**
- **provides specialist training on teaching Indigenous children, and where necessary the teaching of English as a second language (ESL)**
 - **recognises poor English language skills and health and hearing issues which may impact on learning**
 - **gives teachers a competency in cultural knowledge and sensitivity to assist in working with Indigenous communities and families**
 - **can be adapted to reflect local Indigenous community needs and culture, and**
 - **trains the teachers to set and achieve high expectations for Indigenous students.**

The Committee also recommends that a portion of the 2011-12 Budget

⁷⁴ *Investing in Australia's Regions*, Australian Government Budget 2011-2011, p. 11

funds allocated to reward top performing teachers is directed towards the formal recognition of outstanding performance in the teaching of Indigenous students, where real outcomes in progress can be demonstrated.

Improving the effectiveness of transitioning from education to the workforce

- 6.1 The positive effect that education has on an individual's economic outcomes, particularly employment and income, has been well established. Results from the 2006 Census show that Indigenous peoples aged 15 years and over with higher levels of schooling were more likely than those with lower levels of school attainment to be in full-time employment.¹
- 6.2 This report has discussed in earlier chapters the extent to which many areas of Indigenous disadvantage are interrelated. Statistics indicate that Indigenous Australians have higher levels of unemployment compared to non-Indigenous Australians.
- 6.3 More specifically, a large gap is evident in labour force participation rates for people aged 15-64 is evident when comparing Indigenous and non-Indigenous rates. In 2006, 57 percent of the Indigenous population in this age group was participating in the labour force compared with 76 percent of the non-Indigenous population. In addition, labour force participation rates for Indigenous peoples declines with remoteness, with a 57percent participation rate in major cities compared with 46 percent in very remote areas.²
- 6.4 The data collected from the Australian Bureau of Statistics reveals that the high offending levels in Indigenous communities correlate with high unemployment rates.

1 Appendix 2, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia*, p. 299.

2 Appendix 2, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia*, p. 297.

The Australian Bureau of Statistics (ABS) National Aboriginal and Torres Strait Islander Social Survey 2002 data reveals that Indigenous people who had been charged with an offence were around twice as likely to be unemployed as the rest of the Indigenous population.³

- 6.5 The North Australian Aboriginal Justice Agency (NAAJA) was critical of the lack of support available to Indigenous youth transitioning from education to work. In its submission NAAJA commented:

Increased employment opportunities in Aboriginal communities could assist in developing social norms and behaviours that lead to positive social engagement. The lack of genuine employment opportunities for Aboriginal people generally, and young people in particular, is manifest. There are no clear pathways to post-school employment in Northern Territory Aboriginal communities.⁴

- 6.6 This chapter discusses the current Commonwealth and State and Territory Government strategies that are in place to assist Indigenous Australians to transition more effectively from education and training to the workforce. It also examines some of the community enterprises and non-government organisations (NGO) which are working to provide employment opportunities for Indigenous youth. However Indigenous youth face a number of obstacles when transitioning from education to employment and the chapter concludes with a discussion of education needs, work readiness skills, driver licences and the availability of employment in local areas.

Government initiatives

- 6.7 Through Closing the Gap the Commonwealth Government funds a number of initiatives to assist Indigenous youth to transition into employment. Some transition programs are administered through the Department of Education, Employment and Workplace Relations (DEEWR) or the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), while others provide funding to local community enterprises to deliver services.

3 DEEWR, *submission 63*, p. 1.

4 NAAJA, *submission 15*, p. 6.

Commonwealth Government and COAG

6.8 The Council of Australian Governments (COAG) has identified employment as one of its targets for Closing the Gap. The target is to 'Halve the gap in employment outcomes between Indigenous and non-Indigenous Australians by 2018.'⁵

6.9 The *Prime Ministers Report on Closing the Gap 2011* stated that there was some progress being made in relation to increasing the percentage of Indigenous Australians employed in the 15-64 age group:

In 2008, 53.8 per cent of Indigenous Australians aged 15-64 were employed compared to 75 per cent of non-Indigenous Australians in the same age group. While this gap is relatively wide there are some positive developments in this field. For example, between 2002 and 2008 the proportion of Indigenous Australians aged 15-64 with a job rose from 48.2 per cent to 53.8 per cent and the unemployment rate for Indigenous Australians aged 15-64 decreased from 23 per cent to 16.6 per cent.⁶

6.10 DEEWR has direct responsibility for four of the six Closing the Gap targets and informed the Committee of the need to increase the number of Indigenous enrolments and commencements with higher education in order to improve the transition of Indigenous people from education to employment.

Indigenous students are significantly under-represented in higher education and face distinct challenges. The statistics show that despite comprising 2.5 per cent of the total resident Australian population, Aboriginal and Torres Strait Islander higher education students comprised less than one per cent of all enrolments in 2008 and 1 per cent of commencements.⁷

6.11 The National Partnership on Youth Attainment and Transitions is an intergovernmental agreement that aims to increase participation of young people in education and training, assist young people make a successful transition from school to further education, training or full-time employment, and increase attainment of Year 12 or equivalent qualifications of young people aged 15-24, including Indigenous young people.⁸

5 FaHCSIA, *submission 79*, p. 7.

6 *Closing the Gap: Prime Minister's Report 2011*, p. 17.

7 DEEWR, *submission 63*, pp. 4-5.

8 DEEWR, *submission 63*, p. 5.

- 6.12 DEEWR is supporting the Commonwealth Government's contribution to the National Partnership through two new programs, Youth Connections and School Business Community Partnership Brokers to be delivered across 113 designated service regions over a four year period.⁹
- 6.13 The Youth Connections program provides an improved safety net for young people who have disengaged from education through the provision of individually tailored case management and support to help young people re-connect with education and training.¹⁰
- 6.14 The School Business Community Partnerships Brokers objective is to facilitate stakeholder engagement, build community capacity and infrastructure and drive the Commonwealth Government's education reform and social inclusion agendas to improve education and transition outcomes for all young people.¹¹
- 6.15 DEEWR commented it was aware that it had to work 'closely with state and territory governments to implement these programs, including reducing overlap and duplication between programs and assistance, and making it easier for young people to access the assistance they need.'¹²
- 6.16 In February 2010 the Commonwealth Government hosted a Business Leaders Forum to share ideas on Indigenous employment strategies. In a media release the Minister for Employment Participation Senator Arbib commented:
- This event provides an excellent forum for business leaders to come together to network, share ideas and knowledge, and show their commitment to increasing employment opportunities for Indigenous Australians. Representatives from Indigenous businesses, major banks, top law firms, major retailers, large mining and resource companies, transport organisations and media and communications companies will join government to share their ideas and successes.¹³
- 6.17 DEEWR administers a number of programs that assist Indigenous young people exiting the criminal justice system with initiatives to help maximise employment opportunities. In the Northern Territory, a Job Services

9 DEEWR, *submission 63*, p. 5.

10 DEEWR, *submission 63*, p. 5.

11 DEEWR, *submission 63*, p. 5.

12 DEEWR, *submission 63*, p. 6.

13 Ministers' Media Centre, Senator the Hon. Mark Arbib, Media Release, 23 February 2011 <www.deewr.gov.au/Ministers/Arbib/Media/Releases/Pages/Article_100223_110807.aspx> accessed 14 April 2011.

Australia provider works closely with the local high school and also the Alice Springs Correctional Centre. The provider has engaged with local high school principals to identify and work with young people who are either at risk of dropping out of school or leaving school without a further education or employment option.

- 6.18 In addition the provider has engaged with Northern Territory Families and Community Services (FACS) to discuss how together they can provide support to young people returning to Alice Springs after they have served their custodial period in the Don Dale Juvenile Centre in Darwin.¹⁴
- 6.19 Another initiative administered by DEEWR is the National Green Jobs Core program. DEEWR stated that:
- The Government will invest up to \$82.5 million in National Green Jobs Corps. Commencing on 1 January 2010 and finishing on 31 December 2011, National Green Jobs Corps will offer 10,000 places for unemployed Australians aged 17 to 24 years to gain a combination of environmental work experience, skills development and accredited training. National Green Jobs Corps will help equip young Australians with the skills to fill employment opportunities in emerging green and climate change related industries. The program will provide additional participation opportunities for young people who struggle to engage with and remain in education or training.¹⁵
- 6.20 DEEWR is responsible for the Innovation Fund Projects. The Innovation Fund is a competitive grants program designed to address the needs of the most disadvantaged job seekers through funding projects that will foster innovative solutions to overcome barriers to employment which these job seekers face.
- 6.21 The objective of the Innovation Fund is to fund innovative place-based solutions to address barriers to employment for groups of the most disadvantaged job seekers. Round One of the Innovation Fund has two projects which are directed specifically at ex-offenders, while Round Two of the Innovation Fund has one project directed at ex-offenders.¹⁶
- 6.22 Remote Service Delivery National Partnership is supported by FaHCSIA. One of the five aims of the Partnership is to 'increase economic and social

14 DEEWR, *submission 63*, p. 7.

15 DEEWR, *submission 63*, p. 9.

16 DEEWR, *submission 63*, p. 9.

participation wherever possible, and promote personal responsibility, engagement and behaviours consistent with positive social norms.¹⁷

- 6.23 FaHCSIA supports the Infrastructure and Youth Programs in Central Australia. This component aims to provide learning and recreational activities and infrastructure to support young people, while building community capacity through training and employment opportunities. Approximately \$6.5 million was spent on 15 projects across communities in the Northern Territory over 2008-09.¹⁸

State and Territory governments

- 6.24 The Committee received submissions from a majority of state and territory governments that outlined policy and program initiatives that aim to improve the effectiveness of arrangements for transitioning from education to work.

Queensland

- 6.25 In 2006 the Queensland Government introduced a 'compulsory participation' requirement meaning that all young people must participate in 'learning or earning':
- for two years after they complete compulsory schooling (i.e. completed year 10 or turned 16 years of age) or
 - until they turn 17 years of age or
 - until they complete a Queensland Certificate of Education (or Queensland Certificate of Individual Achievement), Senior Statement or a Certificate III or IV vocational qualification.
- 6.26 These changes are based on national and international evidence that young people who complete 12 years of education have greater opportunities for further education and sustainable employment. Queensland Government agencies have also implemented several initiatives to address barriers to access and improve outcomes for young people, including Indigenous young people, transitioning from education to work. Programs operate to address specific educational need of Indigenous young people depending on the needs of the region. Examples of programs are provided below:

17 FaHCSIA, *submission 79*, p. 11.

18 FaHCSIA, *submission 79*, p. 18.

- The Taking Big Steps program is a culturally specific and inclusive transition program developed primarily for young Aboriginal and Torres Strait Islander peoples living in North Queensland which seeks to increase young people's awareness and understanding of issues associated with moving from a rural and remote community to regional or urban areas for secondary education.
- Student learning pathways, which include vocational education and training, school-based apprenticeships, traineeships and work-readiness programs.
- The Aboriginal and Torres Strait Islander Education Toward Employment Scholarship Scheme which encourages Aboriginal and Torres Strait Islander students to complete Years 10, 11 and 12 or alternate school-based training and provide scholarship recipients with financial support for expenses related to education and training.
- The Get Set for Work Project to address young people's learning needs for those who leave or are at risk of leaving school early.
- Western Cape College Work-Readiness Program to help Indigenous students prepare for an employment pathway through hands-on activities that utilise skills in the areas of building and construction, landscaping and maintenance and hospitality.
- The Palm Island Senior Phase Program which provides a vocationally oriented curriculum, focusing particularly on literacy and numeracy, for the young people of Palm Island.
- The Aboriginal Centre for the Performing Arts provides training to aspiring Indigenous performing artists and assists them in establishing their careers.
- Indigenous Vocational Education and Training Initiatives which have funded two Indigenous registered training organisations to provide training in the areas of alcohol (and other addictions) management, community services and community development.
- The Justice Entry Program which provides pathways for Aboriginal and Torres Strait Islander community members wishing to pursue careers in the criminal justice system.¹⁹

6.27 The recently released Queensland Government's *Positive Dreaming, Solid Futures - Indigenous Employment and Training Strategy 2008-2011*, provides a new framework for the delivery of employment and training services to

19 Queensland Government, *submission 91*, p. 14.

Indigenous people in the state. The strategy is designed to address a number of priorities aimed at improving outcomes for Indigenous Queenslanders in the area of vocational education and training.

New South Wales

- 6.28 The New South Wales Government submission outlined what the state was doing to support economic development and employment for Indigenous Australians. Its comments were prefaced with statistics showing that New South Wales has the highest number of Indigenous Australians out of all the states and territories.
- 6.29 While approximately 32 percent of the New South Wales Aboriginal population lives in Sydney, it is clear that many New South Wales regional towns are experiencing significant immigration of Aboriginal people (Taree, Armidale, Lithgow, Griffith, Dubbo, Wagga Wagga and Broken Hill particularly) drawn mainly from western and northern areas of New South Wales.
- 6.30 Many of these regional towns are characterised by low levels of Aboriginal employment, low education outcomes, poor health outcomes and higher levels of engagement with the criminal justice system.
- 6.31 Addressing Aboriginal economic development is one of the seven priority areas identified under the New South Wales Aboriginal Affairs Plan, Two Ways Together and New South Wales agencies are developing a New South Wales Aboriginal Economic Development Policy.²⁰
- 6.32 The New South Wales Department of Education and Training's has identified key strategies relating to the improvement of economic opportunities for Aboriginal people. These include:
- offering a broader range of quality education and training options for students in the senior years
 - providing more school based apprenticeships and traineeships, and
 - targeting specific population groups for increased participation and implement workforce re-entry initiatives.²¹

20 New South Wales Department of Education and Training, *submission 43*, p. 24.

21 New South Wales Department of Education and Training, *submission 43*, p. 26.

Victoria

- 6.33 The Victorian Koori Early School leavers and Youth Employment program aims to divert young Aboriginal people from the Youth Justice System. It addresses the key risk factors for young offenders, focussing on the lack of engagement in school or other learning opportunities. This program aims to divert young Koories aged 10-20 from the youth justice system once they have entered it, by supporting and re engaging young Koori people into vocational education or employment.²²
- 6.34 The Frontline Youth Initiatives Grant Program aims to engage Koori children and youth at risk of contact with the criminal justice system in socially and physically healthy alternatives to offending. Projects considered for funding under Frontline are primarily community based initiatives that promote healthy and pro-social lifestyles for children and youth, thereby reducing contact with the criminal justice system.
- 6.35 Since inception approximately 670 young Koories have been involved in the Frontline program, with more than 1,000 community members involved in associated activities. A 2008 survey sample of 283 participants engaged in nine projects indicated that Frontline delivered positive impacts for participants, including:
- one in four returned to education or training programs
 - eight per cent secured new ongoing employment
 - of 31 young people with prior negative contact with the criminal justice system, only five had further contact, and
 - none of the 'at-risk' youth participants had negative contact with the criminal justice system during their engagement with Frontline projects.²³

Western Australia

- 6.36 At the time of the Western Australian Aboriginal Child Health (WAACH) Survey, school attendance in Western Australia was compulsory through to the end of the school year in which children turned 15 years of age. The school leaving age in Western Australia has since changed and young people are now required to be engaged in school, employment,

22 Department of Attorney-General, Victoria, *submission 75*, p. 3.

23 Department of Attorney-General, Victoria, *submission 75*, p. 5.

apprenticeships or traineeships, or another approved option until the end of the year they turn 17.²⁴

- 6.37 The Western Australia Aboriginal School Based Training (ASBT) Program provides Aboriginal students in Years 10-12 with opportunities to start training in school to access practical work experience, gain a qualification, and go on to further education, training or employment. Certificate I preparatory programs are followed by an assessment of students' work readiness at the end of Year 10.
- 6.38 Students are then offered school-based traineeships or apprenticeships, or full-time traineeships or apprenticeships. Group training organisations are contracted to coordinate Year 10 Certificate 1 programs, employ students entering into apprenticeships or traineeships, and arrange mentoring and other support for the participants.²⁵

South Australia

- 6.39 Within South Australia's Department of Education and Children's Services (DECS), the Aboriginal Education and Employment Services has taken the lead role in developing an integrated pathways program that links DECS secondary transition programs to Aboriginal specific projects to support post secondary training, higher education and pathways leading to employment. The work plan identifies a special project trial during 2009 in Port Augusta and the Northern Suburbs of Adelaide centred on a model known as the 'WORKABOUT Centre'.
- 6.40 The Centre aims to engage Aboriginal community in educational and employment pathways, building relationships between education, industry, organisations, and Aboriginal communities to create a culture of sustainable employment and retention in the work force. The Centre implements mentoring, counselling, tutoring and work-readiness strategies that provides intensive culturally inclusive support to Aboriginal young people from the commencement of secondary schooling into post school pathways.
- 6.41 'Playing the Job Game' is an Aboriginal secondary education work-readiness program, which develops individual skill sets and career aspirations for Aboriginal secondary students focusing on local economic development and industry skill shortage areas.²⁶

24 Department of Education Western Australia, *submission 81*, p. 7.

25 Department of Education Western Australia, *submission 81*, p. 8.

26 South Australian Government, *submission 82*, pp. 9-10.

Tasmania

- 6.42 The Tasmanian Government's submission outlines a project that is part of the Youth at Risk Strategy. Project U-Turn is a diversionary program for young people aged 15-20 years with a history of motor vehicle theft, or who are at risk of becoming involved in motor vehicle theft. The core component of the program is a structured ten-week automotive training course in car maintenance and body work, delivered in a workshop environment. Other components of the program include: case management and personal development; links to employment and further education; recreational activities; literacy and numeracy education; road safety education and post-course support. Project U-turn is not specifically for Indigenous young offenders, however a number of participants report Aboriginality.²⁷
- 6.43 The Justice Mentoring Service is a pre and post release program that aims to assist Aboriginal prisoners with their reintegration. Mentors typically begin working with participants around their housing, employment and general support needs three months before their release and this continues for six months post release.²⁸

Northern Territory

- 6.44 The Department of Education and Training (DET) offers VET (Vocational Education and Training) in The Middle program to middle year students, to provide entry into Certificate 1 Qualifications.
- 6.45 DET offers the Get VET get a future program, to provide training from Certificate 1 to Certificate 3 qualifications to students in Urban, Remote and Regional areas. In 2010 DET expanded the successful Work Ready program to three remote communities. DET coordinate a cross-sectoral team of industry engagement and participation officers and managers to facilitate work placement for students in all Territory schools.²⁹
- 6.46 The Northern Territory Government also supports TRY (training for remote youth) whereby funding applications are sought from communities for specific programs for disengaged youth. The program funds both accredited and non-accredited training.
- 6.47 FRF (flexible response funding) applications are sought from communities for specific programs. The program funds both accredited and non-

27 Department of Premier and Cabinet, Tasmania, *submission 90*, p. 8.

28 Department of Premier and Cabinet, Tasmania, *submission 90*, p. 10.

29 Department of Education, Northern Territory, *submission 104*, p. 1.

accredited training. Pre Employment/Pre-apprenticeship program. This training is specifically targeted at direct employment pathways .The program funds both accredited and non-accredited training.³⁰

Local and NGO employment initiatives

- 6.48 The connection between unemployment and a heightened risk of offending is well established and the real challenge is to work out how to make employment opportunities accessible to Indigenous Australians.
- 6.49 The Committee received evidence from several witnesses who either had innovative solutions in place or were in the process of developing Indigenous run businesses that would provide positive employment opportunities for Indigenous Australians.
- 6.50 A Tasmanian example of successful local employment initiative is the meenah mienne (which means 'my dream') mentoring program which builds supportive local networks by fostering mentoring relationships between disadvantaged young Aboriginal people, who are already - or are at high risk of being - in juvenile detention, and Aboriginal mentors and cultural practitioners in Northern Tasmania. The project is part funded by FaHCSIA under an agreement between two tiers of government and the Tasmanian Aboriginal community.
- 6.51 The program offers young Indigenous people opportunities to reconnect and engage with members of their community as well as offering the chance to 'discover alternative pathways into education and employment.'³¹
- 6.52 The meenah mienne submission stated that the preliminary results of this approach have been encouraging. Since becoming operational less than a year ago, three young Aboriginal 'buddies' have pursued employment and further educational opportunities. Further, more than 20 young Aboriginal people referred from local schools (high-risk students) and the Ashley Youth Detention Centre are voluntarily and actively participating in the program.³²
- 6.53 Demand for the meenah mienne mentoring program from high risk juvenile Aboriginals has far outstripped mentor capacity at this early stage

30 Department of Education, Northern Territory, *submission 104*, p. 2.

31 FaHCSIA, *submission 79*, p. 20.

32 Meenah Mienne, *submission 16*, p. 2.

in the program. The meenah mienne submission stated that 'Additional mentors are currently being trained.'³³

- 6.54 The Youth Justice Aboriginal Advisory Committee, South Australia, also supported the contribution that Aboriginal mentors can play in addressing and supporting complex needs within families. This can also provide business and employment opportunities for Indigenous people.

We have an example, which is the MAYFS Taikurtinna Maltorendi program, a holistic family case management service; prioritising the employment of Aboriginal mentors for one-on-one support for young people, and also family mentors.³⁴

- 6.55 The Inala Men's Shed program being run by the Queensland Police Service is a 'mentoring program that aims to link young people with a group of volunteer men who are retired tradespeople who can act as role models around life and work skills.'³⁵
- 6.56 Banbai Business Enterprises (BBE) management of the Wattleridge³⁶ Indigenous Protected Area is an example of how local land management can generate employment and provide economic independence.
- 6.57 The Wattleridge Indigenous Protected Area has at least 15 rare or endangered plant species and 12 rare or threatened fauna. It is managed by the traditional owners, who are undertaking major pest management and fire management strategies, and managing the cultural heritage sites on it. The community is also developing a native plant propagation nursery, training people in horticulture, and establishing seed banks and restoring degraded land through revegetation.³⁷
- 6.58 The owners of Wattleridge are aiming to make the property educationally and financially viable, and are developing small businesses to help promote culturally significant employment and generate additional funds for conservation. They are upgrading cabins, building walking tracks, viewing platforms, and developing interpretation signage to foster eco-

33 Meenah Mienne, *submission 16*, p. 5.

34 Sharen Letton, Youth Justice Aboriginal Advisory Committee, South Australia, *Committee Hansard*, Adelaide, 20 May 2010, p. 4.

35 Queensland Police Service, *exhibit 24*, p. 1.

36 Wattleridge is a botanically diverse bushland with high biodiversity values on outcropping granite country on the New South Wales Northern Tablelands near the small town of Guyra (between Armidale and Glen Innes).

37 Janet Hunt, *submission 22*, p. 2.

tourism. They plan for this tourism venture to grow and provide income, employment and further infrastructure development.³⁸

- 6.59 The Guyra Central School allows two of its Aboriginal students, one in Year 11 and the other in Year 9, to spend time each week with BBE doing the Conservation and Land Management Certificate IV course as an incentive to stay at school and complete Year 12 and Year 10 respectively. This cooperative approach between school, TAFE and community enterprise is having multiple benefits for the area.
- 6.60 As a result of Banbai Business Enterprises:
... crime rates have dropped, drug and alcohol use has reduced and young people "at risk" are being given opportunities to contribute, learn and gain longer-term opportunities for further education or employment.³⁹
- 6.61 A review of the people who have worked with Banbai Business Enterprises since its inception reveals that the organisation has employed 43 people over the ten year period. Only one was non-Indigenous.⁴⁰
- 6.62 Another example of a successful employment initiative is Aboriginal Connections (AC) which was created as an independent company in 2003, wholly owned by Guri Wa Ngundagar Aboriginal Corporation (GWNAC). AC is a registered business in New South Wales and is overseen by a Board of Directors. Two of the three board members are Indigenous Australians and of the 47 employees, 76% are Indigenous.
- 6.63 AC has operated for the past six years specialising in the construction of public housing, schools and other state and federal government capital works projects. AC also builds for the private sector market. The company is strongly focused on providing training and employment for Indigenous Australians. AC's mission is to unite effective quality training outcomes with the construction of quality housing for both the Indigenous and mainstream building markets. AC is currently looking at expanding its operations in order to create new employment opportunities for Indigenous Australians in New South Wales.⁴¹
- 6.64 The Committee heard from three organisations who called themselves the Partners and have significant experience in working with young Indigenous offenders. The Partners have agreed to collaborate and offer a

38 Janet Hunt, *submission 22*, p. 3.

39 Janet Hunt, *submission 22*, p. 2.

40 Janet Hunt, *submission 22*, p. 3.

41 Aboriginal Connections, *submission 49*, p. 3.

potential solution to the growing issue of Indigenous people remaining in the criminal justice system. Ultimately, the aim of the program would be to demonstrate that there are better ways forward in life that individuals are capable of achieving, and that there are career opportunities available to them.⁴²

- 6.65 Under the program, the Partners would recruit and train eligible young Indigenous offenders to undertake contact centre work on behalf of participating business-to-business (B2B) clients while serving their prison or detention term, with a view to offering them permanent employment and a structured career path upon their release.⁴³
- 6.66 The Partners believe their 'proposed initiatives will significantly grow employment opportunities to reduce young Indigenous people's involvement with the criminal justice system; and support the diversion of these Indigenous people from re-offending'.⁴⁴
- 6.67 Training and employment programs were discussed at a public hearing in Fitzroy Crossing that focussed on jobs in the Kimberly region. One example was provided in relation to a junior ranger program:
- ... we work with young people and then we work with our sister organisation, the Kimberley Land Council, and try to get those young people employed in productive work such as Indigenous ranger employment. So we have the two-week program that we run and then, looking at that longer term relationship, our ongoing intervention into that young person's life. We have done that for eight or nine years.⁴⁵
- 6.68 The Central Australian Youth Link-Up Service (CAYLUS) informed the Committee about the Central Land Council Ranger program which provides employment opportunities for local Indigenous people. Ranger programs use traditional and modern land management practices to restore and protect important ecosystems. CAYLUS highlighted the fact that this type of work is often suited to Indigenous people living in remote areas as the 'work undertaken by Rangers involves living and working in Indigenous areas, and understanding local ecological and environmental factors.'⁴⁶ Recently, CAYLUS assisted the Central Land Council in

42 Execlior, Message Stick, Nallawilli, *submission 70*, p. 3.

43 Execlior, Message Stick, Nallawilli, *submission 70*, p. 3.

44 Execlior, Message Stick, Nallawilli, *submission 70*, p. 3.

45 Wes Morris, Kimberley Aboriginal Law and Culture Centre, *Committee Hansard*, Perth, 30 March 2010, p. 61.

46 Central Australian Youth Link-Up Services, *submission 27*, p. 8.

community negotiations to implement a ranger program in the Papunya community in 2010.⁴⁷

- 6.69 The Central Land Council (CLC) received \$5.1 million from the Aboriginals Benefit Account⁴⁸ to improve and expand an Aboriginal ranger program which has successfully developed and established ranger groups in seven remote locations across Central Australia over the past five years.
- 6.70 The success of this ranger program has generated further employment opportunities as the CLC ranger groups have also undertaken contracts with the Northern Territory Parks and Wildlife Service and the mining industry for work including track maintenance, fencing and camp-ground development.⁴⁹

Committee comment

- 6.71 The Committee is encouraged by the recognition throughout Australia of the value of mentoring programs for Indigenous people. Mentoring programs are proving to be an effective way of facilitating change. The Committee believes that Indigenous mentors will provide part of the solution to improving both education and employment outcomes for Indigenous people.
- 6.72 The evidence regarding the Indigenous employment initiatives that the Committee received was encouraging. The success of these local enterprises demonstrates the commitment of individuals and communities often working at the local level and able to achieve positive change for Indigenous youth.
- 6.73 The Committee was impressed with the successful education and employment outcomes of the Banbai Enterprises as it encouraged Indigenous students to stay in education for longer and it developed Indigenous employment in a regional part of Australia. The Committee recognises the hard work and leadership undertaken by Banbai

47 Central Australian Youth Link-Up Services, *submission 27*, p. 9.

48 ABA grants are awarded to projects to open up new opportunities for Aboriginal people in the Northern Territory by providing the funding essential to getting new initiatives off the ground and backing established ventures to expand and develop. The ABA receives financial compensation from the Australian Government equal to the value of the royalties generated from mining on Aboriginal land in the Northern Territory. It was established under the *Aboriginal Land Rights (Northern Territory) Act 1976*.

49 The Hon. Jenny Macklin and the Hon. Warren Snowdon, joint media release, 2 July 2010, <www.jennymacklin.fahcsia.gov.au/mediareleases/2010/pages/central_oz_5mboost_2july2010.aspx> accessed 31 May 2011.

Enterprises to make this work by developing partnerships with the local school and TAFE.

- 6.74 The Committee encourages all new and developing Indigenous initiatives that support employment opportunities for Indigenous youth to develop strong partnerships with stakeholders in order to provide the additional support that will be required to achieve success.
- 6.75 Indigenous Ranger programs are another successful employment example of local employment initiatives that capitalise on Indigenous cultural knowledge. Often these programs are carried out in regional and remote areas, where employment opportunities are limited. The Committee was encouraged to learn that the Central Land Councils Ranger Program had lead to further employment opportunities with the Northern Territory Government.
- 6.76 The Committee notes that the Commonwealth Government have funded \$245.5 million until 2013 for the Working on Country program with the Department of Sustainability, Environment, Water Population and Communities. Working on Country supports the Indigenous ranger programs.

Obstacles to employment

- 6.77 While there is substantial investment from Commonwealth and State and Territory governments in employment and transition to employment programs, Indigenous workforce participation rates remain low. There remain substantial obstacles to placing Indigenous youth in employment, and to assisting them to retain jobs in the long term.
- 6.78 The following section examines some of these significant obstacles, such as educational attainment, work readiness skills, holding a driver licence, and the availability of types of employment.

Education

- 6.79 Statistically Indigenous Australians have lower education attainment levels than non-Indigenous Australians. The correlation between education and employment is well understood demonstrating that the higher the level of education achieved by an individual the more likely they are to obtain employment.

- 6.80 The Committee received substantial evidence that low educational attainment is an obstacle to gaining employment. The need to improve educational outcomes for Indigenous Australians was discussed in chapter 5 of this report.
- 6.81 While the participation rates of Indigenous people in the labour force have demonstrated a gradual increase over the past twenty years, the rates remain well below the non-Indigenous participation rates.

Apprenticeships and Traineeships

- 6.82 The Committee was advised that Apprenticeships and Traineeship Programs specifically targeted to Indigenous youth are being delivered by most states and territories around Australia. Some of these apprenticeship programs are school based which has proven successful in keeping young people engaged in school whilst at the same time teaching young people a trade under the guidance of an apprenticeship program.
- 6.83 Project Murra is funded by the Commonwealth Government and is being conducted in the Illawarra region of New South Wales. It encourages Aboriginal and Torres Strait Islander youth who are entering the last two years of secondary school to enter a traineeship which, when successfully completed, offers them the chance of employment in either the New South Wales Police Service or the New South Wales Ambulance Service.
- 6.84 The Aboriginal Legal Service NSW/ACT highlighted Project Murra as an example of a successful Indigenous apprenticeship and training program, and also an important partnership between the police and the Indigenous community.

The program is expressly about 'school retention, keeping Aboriginal students at school to complete their HSC, it's about careers, it's about helping Aboriginal students move from school into a career and it's also about building linkages between the police and the Aboriginal community.'⁵⁰

- 6.85 The tangible benefits of such a program are many and the intangible benefits, such as improved self-esteem, connections established in the workforce and the work experience itself, are equally important:

At the completion of the traineeship students will have gained a Higher School Certificate, a University Academic Index needed to gain entry to university, and a Certificate three in vocational and study pathways from TAFE NSW. They will also have obtained

50 Aboriginal Legal Service NSW/ACT, *submission 66*, pp. 14-15.

one hundred days paid employment with the NSW Police Service over the two year period.⁵¹

- 6.86 There are a number of other states and territories programs aimed at increased school retention rates for Indigenous youth, and providing practical employment skills. The New South Wales Department of Education and Training have identified key strategies relating to the improvement of economic opportunities for Aboriginal people including providing more school based apprenticeships and traineeships.⁵² The New South Wales Board of Vocational Education and Training (BVET) also indicated that further support was required to improve retention outcomes for these Indigenous Apprenticeship and Training Programs. The New South Wales BVET supported The Way Ahead program involving 27 Aboriginal mentors who support Aboriginal trainees and apprentices throughout New South Wales.⁵³
- 6.87 The Western Australian DET have The Aboriginal School Based Training (ASBT) Program that provides Aboriginal students in Years 10-12 with opportunities to start training in school to access practical work experience, gain a qualification, and go on to further education, training or employment.⁵⁴
- 6.88 The Commonwealth Government also has an Indigenous Youth Mobility Program (IYMP) which supports Indigenous young people, aged 16-24 primarily from remote areas, who wish to relocate to one of seventeen IYMP host locations to undertake postsecondary education and training options to gain the qualifications needed for sustainable employment, in their home community or elsewhere. IYMP provides safe and supported accommodation, mentoring and other practical support to help young Indigenous people access and complete university or vocational education and training, including apprenticeships.⁵⁵
- 6.89 The Committee notes the value of apprenticeships as a mechanism to assist transition youth from education to employment and to provide entry to the workforce in an environment that incorporates mentoring as well as work training. Many states and territories provide school-based apprenticeships and training programs in order to facilitate the transition from education into work for Indigenous young people.

51 Aboriginal Legal Service NSW/ACT, *submission 66*, p. 14.

52 New South Wales Department of Education and Training, *submission 43*, p. 26.

53 New South Wales Department of Education and Training, *submission 43*, pp. 23-24.

54 Western Australia Department of Education and Training, *submission 89*, p. 9.

55 DEEWR, *submission 63*, p. 8.

- 6.90 The Commonwealth Government funds the Australian Apprenticeships Access Program that provides vulnerable job seekers who experience barriers to entering skilled employment with nationally recognised pre-vocational training, support and assistance. The Access Program is delivered locally by brokers and providers who work closely with employers to deliver training that meets industry needs. The program is provided at no cost to participants and assists them to find and keep an Australian apprenticeship, or to enter employment or further education or training.⁵⁶
- 6.91 To be eligible to participate in the Access Program, a person must be a registered job seeker who meets a number of conditions, including being an early school leaver, a person with a disability or a sole parent. While the program is not specifically aimed at young Indigenous people, an additional eligibility requirement is the referral of a person to the program by a Community Development Employment Project (CDEP) officer.
- 6.92 As part of the Australian Apprenticeships scheme, DEEWR also provides a *Making Indigenous Australian Apprenticeships your business resource kit*. The resource kit has:
- been designed to provide a range of practical resources to assist Indigenous employment and training service providers in improving access of Indigenous people to Australian Apprenticeships. It is also relevant to service providers who support Indigenous Australians in other employment and training situations.⁵⁷
- 6.93 The kit provides extensive information to potential employers about a range of matters, including the importance of developing cultural awareness, engaging with Indigenous communities through networking and partnerships, and the value of mentoring Indigenous trainees to enhance retention.

56 DEEWR, *Apprenticeships Access Program*
<www.deewr.gov.au/Skills/Programs/PreVoc/AAAP/Pages/default.aspx> accessed 5 May 2011.

57 Employment and Training Outcomes Pty Ltd, *Making Indigenous Australian Apprenticeships your business*
<www.australianapprenticeships.gov.au/documents/IndigenousAABusinessKit.pdf>
accessed 6 May 2011.

Committee comment

- 6.94 The Committee is encouraged by the current focus that states have on school-based apprenticeships and training and encourages the continuation of funding for these programs into the future. However the Committee urges more collaboration between schools, TAFE and industry to engage Indigenous youth in apprenticeships and training in order to assist with a smoother transition from education into work.
- 6.95 The Committee sees value in the Australian Apprenticeships Access Program as it provides vulnerable job seekers with additional training and support, but is disappointed that the program lacks a focus on engaging with young Indigenous people. The Committee recommends that the Australian Apprenticeship Access Program should provide specialised assistance for Indigenous youth seeking an apprenticeship, and specialised financial incentives for potential employers. The Committee notes that additional financial incentives are currently provided to employers who take an adult apprentices or apprentices with a disability.
- 6.96 Additionally, the Committee recommends DEEWR stipulate that successful bidding for Access Program contracts is dependent on businesses being able to demonstrate the ability to provide culturally appropriate support for Indigenous job seekers.
- 6.97 The Committee is encouraged by the *Making Indigenous Australian Apprenticeships your business resource kit* as it provides information to potential employers about how they can develop culturally appropriate support for Indigenous apprentices. However the Committee is concerned that the kit will have little impact, unless accompanied by specific financial incentives for taking on Indigenous apprentices.
- 6.98 The Committee notes the commitment in the 2011-12 Australian Government Budget to improve the effectiveness of apprenticeships, through a National Trade Cadetship available to school students and mentoring assistance for eligible apprentices.⁵⁸ This mentoring support is important to ensure apprentices stay motivated to complete their training, and can deal with the challenges of transitioning into the workforce. Further funding has been allocated to maintain the Apprenticeships Access Program.⁵⁹

58 *Building Australia's Future Workforce: trained up and ready for work* Australian Government Budget 2011-2011, pp. 14-15.

59 *Building Australia's Future Workforce: trained up and ready for work* Australian Government Budget 2011-2011, p. 17.

- 6.99 The Committee considers these initiatives will be of particular benefit to Indigenous apprentices, provided the mentors are appropriately selected and trained. However, greater early assistance is needed to increase the uptake of apprenticeships by Indigenous students, and the uptake of Indigenous apprentices by employers.

Recommendation 20 - Apprenticeships

- 6.100 **The Committee recommends that the Department of Education, Employment and Workplace Relations provide greater assistance and incentives to increase the uptake of Indigenous apprentices through:**
- **providing specific financial incentives for employers to take on Indigenous apprentices**
 - **including Indigeneity as one of the eligibility criteria for the Australian Apprenticeship Access Program, and**
 - **ensuring that the Australian Apprenticeship Access Program contract providers are able to demonstrate the ability to provide culturally appropriate support and successful outcomes for Indigenous job seekers.**
- 6.101 The Committee supports the suggestion of funding Aboriginal specific positions within job service agencies throughout Australia. The Committee believes there is value in qualified Indigenous people working for job service providers to engage with schools and promote apprenticeships and employment opportunities for Indigenous students.
- 6.102 The Committee agrees that extra support is required for some Indigenous students to transition into work. Initiatives such as the promotion of school based apprenticeships and traineeships are important and can assist with the transition from education to work by inspiring, engaging and connecting Indigenous students with the workforce before they leave school.

Work readiness and practical training

- 6.103 Work readiness programs assist people to prepare for employment. This may include accessing birth certificates, tax file numbers and setting up bank accounts. It may include mentoring in workplace standards and expectations, and social skills. In Indigenous communities, work readiness

programs can be particularly beneficial for youth who are not familiar with the workforce and who have not had family members engaged with the workforce.

- 6.104 The Youth Drug and Alcohol Court, New South Wales, highlighted the importance of providing work readiness support for Indigenous people trying to find work or re-engage with the education system. In its submission it commented:

It is quite often the case that Aboriginal young people involved in the criminal justice system come from an entrenched background of reliance on welfare. Telling a young person to 'get a job' is pointless when it's a foreign concept. By actually having an individual caseworker who can help the young person look for work, take them to the interview, explain to them the basics of having a tax file number and bank account details can make an enormous amount of difference. The caseworker also gives them the support if any problems should arise with the employer.⁶⁰

- 6.105 The Australian Children's Commissioners and Guardians referred to the need for practical supports, including employment skills, to assist Indigenous youth in their transition from detention to the community.

Therapeutic supports such as interpersonal skills and counselling programs and multi-systemic interventions are considered the most effective ways of reducing the risk of reoffending among chronic young offenders, yet findings from the Queensland Commission's research show that Indigenous young people are more likely to view practical supports (for example, employment and training, sporting activities and mentoring) as helpful in their transition to the community than therapeutic supports (for example, counselling and drug and alcohol support). This finding suggests that Indigenous young people may engage in therapeutic post-release programs more readily if those programs also include a significant practical component such as sporting, employment and training programs and mentorship activities.⁶¹

- 6.106 The Courts Administration Authority (CAA), South Australia supported the need for practical training that leads to employment opportunities.

... it is evident to the CAA through the experience of dealing with young defendants in the Youth Court and in the juvenile detention

60 Youth Drug and Alcohol Court, New South Wales, *submission 2*, p. 2.

61 Australian Children's Commissioners and Guardians, *submission 59*, p. 23.

centres, that there is a real need for these young people to receive practical training that leads directly to employment and/or apprenticeships such as welding, brick-laying, forklift driving. The benefits of acquiring trade skills leading to employment, a stable income and lifestyle, greater self esteem and social inclusion, are self evident.⁶²

- 6.107 The Committee notes that many of the local and NGO employment initiatives discussed earlier in this chapter include a strong focus on mentoring and providing practical experience in developing work routines and appropriate workplace behaviours.
- 6.108 While a number of organisations and businesses do conduct work readiness or employment transition type programs, BoysTown and Rio Tinto have been particularly successful in their community initiatives to assist Indigenous youth secure employment.

BoysTown

- 6.109 BoysTown discussed the success they are experiencing using the social enterprises model that is assisting Indigenous young people to develop the skills required to transition into long term employment. The BoysTown submission urges the Government to consider expanding social enterprise programs to assist Indigenous youth to gain employment in a supported environment.

In our submission we have highlighted the success we are experiencing with social enterprises, which is an intermediate labour market strategy that we believe is effective in assisting Indigenous young people to transition to employment. In terms of Indigenous youth unemployment, figures that we access show that in 2008 about 22.5 per cent of Indigenous young people were unemployed compared to 10.2 per cent for all youth and six per cent for all-age unemployment.

Those figures indicate that there is a considerable need to expand social enterprise-type programs and intermediate labour market programs in general through partnerships of government-corporate organisations to make these programs more accessible to Indigenous young people.⁶³

62 Courts Administration Authority, *submission 69*, p. 3.

63 John Dalgleish, *Boystown, Committee Hansard*, Brisbane, 4 May 2010, pp. 65-66.

- 6.110 BoysTown explained that this social enterprise model is based on an emerging trend in the UK and Europe. The model aims to provide long term unemployed and marginalised people with a transitional period of paid employment in a genuine work environment, combined with supervision, coaching and mentoring to assist them in making a successful transition to the mainstream labour market.⁶⁴
- 6.111 BoysTown described to the Committee the biggest obstacle that arises for a number of employment programs is that the programs are often not long enough to facilitate positive change.
- So the issue in dealing with young people is that you have these time-limited programs where we know that to get the change to prepare a young person who has had a range of abusive experiences for open employment takes much longer than what these programs are funded to do.⁶⁵
- 6.112 By being a Job Services Australia provider, BoysTown is able to get the Job Services placement officers to meet with young people as soon as they come into the programs and work with them to get an understanding of what the young person is like and then move them into their own sustainable employment.⁶⁶
- 6.113 BoysTown commented that 'that the government should really be a collaborative partner with the sector and with the community in terms of researching and evaluating initiatives that may have an impact, because there is no one answer.'⁶⁷

Rio Tinto

- 6.114 Rio Tinto Iron Ore (Rio Tinto) outlined to the Committee the work readiness programs it runs in the Pilbara in Western Australia. Rio Tinto commented that :

Work readiness programs have been run or supported since 2008 in several Pilbara communities including Paraburdoo, Tom Price, Nullagine, Onslow, Roebourne, Karratha and South Hedland. Programs are also run in Broome / Dampier Peninsula. Last year programs were run or supported in Karratha, Roebourne, Tom

64 Boystown, *submission 6*, p. 10.

65 John Dalgleish, Boystown, *Committee Hansard*, Brisbane, 4 May 2010, p. 68.

66 John Dalgleish, Boystown, *Committee Hansard*, Brisbane, 4 May 2010, p. 70.

67 John Dalgleish, Boystown, *Committee Hansard*, Brisbane, 4 May 2010, p. 76.

Price, Broome / Dampier Peninsula and Perth. This year the list includes Carnarvon.⁶⁸

6.115 Rio Tinto explained that '[t]he work readiness programs are usually run in collaboration with the Pilbara (or other) TAFE, as well as other stakeholders such as potential employers, Job Service Providers and CDEP or organisations acting on their behalf.'⁶⁹ They typically last for three to four months, and are conducted once or twice per year at a particular location. They are designed to equip unemployed Aboriginal people with a set of basic vocational skills, life coping skills, and workplace coping skills.

6.116 Rio Tinto considers it important to mentor the people enrolled in its Work Readiness Program and, in parallel with the coursework, teach workplace and life coping skills.

... I am talking about issues like driving licences, overcoming drug and alcohol problems, teamwork, giving people the opportunity to develop their self-esteem, and basic financial management and financial planning.⁷⁰

6.117 Where possible Rio Tinto feeds the work readiness program graduates into so-called "Rotation" programs that run at some of the operational sites. The programs at Dampier and Cape Lambert are the most developed. Work readiness program graduates are taken into these programs on a probationary 6 month contract. This provides them with the opportunity to work in a number of entry level roles in order to build up work experience and develop the related coping skills. It gives them time to get an understanding of potential longer term career opportunities in the mining industry and decide whether they want to continue working for Rio Tinto in the long term.⁷¹

6.118 Rio Tinto commented on the success of its work readiness programs:

Approximately 210 work readiness program trainees have graduated (or exited work readiness programs early to take up employment) and 150 have entered employment.⁷²

68 Rio Tinto Iron Ore, *submission 110*, p. 1.

69 Rio Tinto Iron Ore, *submission 110*, pp. 1-2.

70 Andrew Burrow, Rio Tinto, *Committee Hansard*, Perth, 30 March 2010, p. 63.

71 Rio Tinto Iron Ore, *submission 110*, pp. 1-2.

72 Rio Tinto Iron Ore, *submission 110*, p. 2.

Driver licences

- 6.119 Failure to meet minimum driver licence requirements of potential employers was the most significant contributor to work readiness program graduates not getting employed, particularly in the early years.⁷³ This suggests that the lack of a driver license, or an accumulation of fines relating to driving without a licence, is a significant obstacle for Indigenous youth when seeking employment.
- 6.120 For many Indigenous people in remote or regional areas, a number of factors make obtaining a driver's licence a difficult process. These factors include lower levels of literacy, unpaid fines, limited access to driving mentors, and limited road and transport infrastructure.
- 6.121 In general, literacy levels for Indigenous people decrease as remoteness increases. The percentage of Year 9 Indigenous students in very remote locations who do not achieve the national minimum reading standard ranges from 61.2 percent in Queensland to 88.3 percent in the Northern Territory.⁷⁴ Norman Clarke, of the Queensland Indigenous Licensing Program, told the Committee that due to literacy and numeracy issues, some of his Indigenous clients 'cannot understand the test paper when they do it'.⁷⁵
- 6.122 To obtain a learner driver's licence, individuals need to demonstrate a sufficient understanding of the road rules, which is gained usually by reading the road user's handbook relevant to their jurisdiction. A number of jurisdictions make the handbook available in languages other than English to assist people from non-English speaking backgrounds. To date however, no jurisdiction has developed a road user's handbook in an Indigenous language.
- 6.123 In Western Australia, individuals seeking to obtain a learner driver's licence who may have difficulties reading English are able to listen to audio recordings of the Handbook for Western Australian Road Users.⁷⁶ However, the audio recording is only in English and listeners require access to the internet and the capability to download large files.

73 Rio Tinto Iron Ore, *submission 110*, p. 2.

74 Ministerial Council for Education, Early Childhood Development and Youth Affairs *National Assessment Program Literacy and Numeracy (NAPLAN) 2009*, Table 9.R6, <www.mceecdya.edu.au/verve/_resources/NAPLAN2009-GeoIndig-Reading.pdf> accessed 2 September 2010.

75 Norman Clarke, *Committee Hansard*, Brisbane, 4 May 2010, p. 27.

76 Western Australia Department of Transport, *Drive Safe Guide* <www.transport.wa.gov.au/licensing/20425.asp> accessed 29 July 2010.

- 6.124 A similar resource is available in South Australia where individuals can download the Driver's Handbook⁷⁷ in a LexiFlow⁷⁸ format, increasing access to people with literacy support needs. Again, access is limited by computer and internet use.
- 6.125 In some areas of Queensland and Northern Territory, a bilingual interactive computer game is available that has customised video footage of local roads and local Indigenous-language audio recording accompanying the English recording.⁷⁹
- 6.126 Another disadvantage for Indigenous people is the high level of driving offence fines that Indigenous youth are more likely to have accumulated, and not been able to pay. Outstanding traffic fines impact on decisions to award licenses, which means that many 'Aboriginal people have no chance of gaining a licence, and so they do not even apply'.⁸⁰ This creates 'a vicious circle'⁸¹ whereby driver licences remain out of reach for many Indigenous youth and is a clear obstacle to gaining employment.
- 6.127 The Noetic Review noted that:
- Fines and infringement notices are the most commonly used response to regulatory offences committed by children and young people. ...The accumulation of fines can follow a young person into adulthood and prevent them being able to register vehicles and obtain driving licenses.⁸²
- 6.128 Largely in response to broader community concern about the number of road-related fatalities, most jurisdictions now require learner drivers to complete a minimum number of log-booked hours prior to obtaining their provisional licence.⁸³ However, Indigenous community members are often

77 South Australian Department of Education and Children's Services, Special Education Resource Unit, *Driver's Handbook*, <web.seru.sa.edu.au/Visual%20Tools.htm> accessed 28 May 2010.

78 LexiFlow software converts materials saved in PDF format into an electronic 'talking Flash' presentation.

79 *Driving our Future*, <www.drivingourfuture.com.au/> accessed 3 November 2010; 'The Centre for Indigenous Literacy', *The Australian Literacy and Numeracy Foundation*, <www.alnf.org/programs/indigenous-literacy.php> accessed 3 November 2010.

80 New South Wales Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices: Interim Report 2006*, p. 25.

81 Catholic Bishops of Broome and Darwin, *submission 8*, p. 13.

82 Noetic Solutions Pty Ltd, *A Strategic Review of the New South Wales Juvenile Justice System*, 2010, pp. 111-112.

83 This number is different in each jurisdiction where such a requirement exists: in New South Wales, 125 supervised hours must be log-booked; in Victoria, learner drivers under the age of 21 must gain 120 log-booked hours; in Queensland, 120 supervised hours must be log-booked;

unable to meet the requisite log hours due to a lack of qualified driving companions or mentors, and the limited road infrastructure that is available in some communities.

- 6.129 Magistrate Tonkin of Townsville advised the Committee that the lack of driving mentors was limiting young Indigenous people's capacity to gain their driver's licence.⁸⁴
- 6.130 In New South Wales, the Road Transport Authority has developed a resource for individuals or groups interested in establishing driver mentor programs, *Guidelines for Community-based Learner Driver Mentor Programs*.⁸⁵ While the Guidelines are comprehensive, they do not identify appropriate funding sources, nor does the New South Wales Government specifically provide any funding for driver mentor programs.
- 6.131 The Committee heard that in some remote communities there is simply insufficient road infrastructure to enable a learner driver to fulfil the requisite log-book hours. A Queensland magistrate noted the impossibility of achieving 100 log-book hours on an island that contains merely 200 metres of road.⁸⁶ In some areas of the country, such as Aurukun, roads are completely inaccessible for parts of the year.⁸⁷
- 6.132 A number of witnesses offered their support for a 'limited' or 'remote' licence that would be easier to obtain than a 'full' licence and permit people to drive in regional and remote locations.⁸⁸
- 6.133 This view was echoed by Andrew Burrow, Rio Tinto, who stated that he endorsed the concept of 'a regional driver's licence ... applicable for people working in rural areas where you do not have the complications of driving in a major city'.⁸⁹
- 6.134 Serene Fernando raised concerns about lack of available transport options in some parts of Australia inhibits the accessibility to employment.

in South Australia, 50 hours must be log-booked; while in Western Australia, 25 log-booked hours are needed.

84 Stephanie Tonkin, *Committee Hansard*, Brisbane, 4 May 2010.

85 Road Transport Authority, *Guidelines for community based learner driver mentor programs*, <www.rta.nsw.gov.au/roadsafety/downloads/mentorprogram.pdf> accessed 24 May 2010.

86 Stephanie Tonkin, *Committee Hansard*, Brisbane, 4 May 2010, p. 23.

87 David Glasgow, Family Responsibilities Commission, *Committee Hansard*, Cairns, 7 May 2010, p. 16.

88 Denis Reynolds, *Committee Hansard*, Perth, 30 March 2010, pp. 7-8; Andrew Burrow, Rio Tinto, *Committee Hansard*, Perth, 30 March 2010, p. 64; Stephanie Tonkin, *Committee Hansard*, Brisbane, 4 May 2010, p. 23.

89 Andrew Burrow, Rio Tinto, *Committee Hansard*, Perth, 30 March 2010, p. 64

An issue such as travel to the nearest town where employment is when they have no transport options restricts them from entering the workforce.⁹⁰

- 6.135 There was concern, however, that a remote area licence was not an acceptable solution:

I do not agree ... about getting a licence just to run around your own area sort of thing. Once they get a licence they should drive the same as you and I – into town to do shopping and whatever. ... You will run into more strife because a licence to just drive around the place is a licence to give them permission to go into town, wherever.⁹¹

- 6.136 Driver licenses may be required either to access work, particularly in regional n remote locations, and it is also a prerequisite of many of the types of employment in these areas.

- 6.137 Rio Tinto highlighted the importance of having a driver’s licence in order to get work in the mining sector.

In addition to the lack of relevant skills, workplace experience and adequate education (particularly beyond year ten), the lack of driving licences is a serious obstacle to young Indigenous people trying to get into the mining industry workplace. Although the minimum driving licence requirements have started to be relaxed for specific roles at certain of Rio Tinto’s operating sites, the majority of the available jobs (particularly at its inland mine sites) still require at least a C Class and preferably a HR licence.

The obstacles facing youngsters from socio-economically disadvantaged backgrounds to getting a full C Class licence are significant and include:

- High cost
- Lack of access to licensed driving instructors and roadworthy vehicles, and
- Long licensing process timeframe (typically 3 years in WA, depending on individual circumstances).⁹²

- 6.138 Rio Tinto outlined how difficulties obtaining a driver license impact on employment opportunities, and can contribute to offending rates.

90 Serene Fernando, *exhibit 12*, p. 3.

91 Barry Abbott, Ilpurla Aboriginal Corporation, *Committee Hansard*, Darwin, 6 May 2010, p. 86.

92 Rio Tinto Iron Ore, *submission 110*, p. 2.

Many young people can't get a job because they haven't got a drivers licence. Because they haven't got a job they can't afford to get a licence particularly if their family is unable to pay the practical tuition costs and / or provide the access to a suitable vehicle and supervising driver. Boredom and peer pressure inevitably lead many youngsters down a path of anti-social behaviour (including driving and licensing related infringements) that can lead to incarceration. We understand from our contacts at the Roebourne Regional Prison that in the order of 60% of the inmates have driving and/or licensing related convictions.⁹³

6.139 Consequently a significant component of the Rio Tinto work readiness programs includes assistance with:

- driver theory training
- practical driving instruction, and
- resolving licence suspensions and unpaid fines issues.

6.140 The Committee noted the awareness in some state jurisdictions of the lack of driver licenses as a contributing to risk factors for offending. Kylie O'Connor from the Department of Attorney-Generals, South Australia stated:

... it is one of the key protective factors for a community – the number of people who have drivers licences and who therefore can facilitate and move people around within that community. Drivers licences help facilitate employment and a whole range of other outcomes, as we know. Also, driving offences can lead to not being able to acquire your licence for some time. We have some young people who cannot acquire their licence because of traffic offences and driving offences but would possibly benefit if they could acquire a licence and maintain it.⁹⁴

6.141 Ms O'Connor stated that driver licences was an area that was being investigated into by state and Commonwealth agencies:

It is a policy area that we are working on with the Commonwealth government, with DEEWR, at the moment and with the employment services. I am aware that a number of the

93 Rio Tinto Iron Ore, *submission 110*, p. 3.

94 Kylie O'Connell, Attorney-General's Department, South Australia, *Committee Hansard*, Adelaide, 20 May 2010, p. 25.

employment services have also cited this as a major problem – as a barrier along the pathway to gaining employment.⁹⁵

Committee comment

- 6.142 The Committee recognises the importance of the driver's licence component of the Work Readiness program. Assisting Indigenous people to obtain driver's licences is critical in relation to improving Indigenous disadvantage. Once one family member has obtain their licence and are employed the flow on effect can be very positive for other family members.
- 6.143 Gaining a driver's licence can open doors to new prospects such as access to continuing education and employment opportunities. This is important in regional and remote Australia where education and employment opportunities are dispersed and public transportation may not exist or may be very limited.
- 6.144 The Committee is of the view that state and territory governments have the capacity to increase the opportunity for Indigenous people to obtain driver licences in the short term, which will increase their employment options. An immediate effort should be devoted to achieving this by developing jurisdictionally-specific handbooks produced in multiple media forms with due consideration to the literacy needs of Indigenous communities.
- 6.145 In addition, the Committee considers that the introduction of regional and remote driver licenses would greatly assist Indigenous youth in continuing their education and training, and in securing employment in local areas. It would go some way to addressing the contributory impact of traffic offences and unpaid fines on Indigenous youth incarceration rates (this is discussed further in chapter 7).

95 Kylie O'Connell, Attorney-General's Department, South Australia, *Committee Hansard*, Adelaide, 20 May 2010, p. 25.

Recommendation 21 – Driver licences

6.146 **The Committee recommends that the Minister for Infrastructure and Transport, in partnership with relevant state and territory governments, establish:**

- **specific learner driver resources in multiple media formats that appropriately meet language and literacy needs of local Indigenous communities, and**
- **a remote and regional learner driver licensing scheme to assist people in remote and regional areas to obtain learner and provisional licences.**

Availability of employment

6.147 The Committee understands the complexities around improving employment prospects for Indigenous Australians, particularly for regional and remote communities. Indigenous people's participation in the labour force is often affected by the limited employment opportunities available to Indigenous people in some regional and remote areas.

6.148 Over time, the Closing the Gap focus on education attainment will have a positive flow on effect which will lead to increased employment opportunities for Indigenous Australians. However the availability of work in regional and remote areas where there is a high Indigenous population remains a challenging issue.

6.149 Serene Fernando, an academic from ANU commented that building local capacity for mainstream employment for young Indigenous people should be an important priority for the Commonwealth Government. She commented that the Government should:

Provide the landscape for these high risk Indigenous youth to obtain legitimate employment rather than transitional employment programs such as the work for the dole schemes which often subjects participants to menial tasks, such as mowing the lawn and picking up rubbish around the community that rarely has proven to move participants into real mainstream employment.⁹⁶

6.150 The Queensland Police Commissioner explained concerns about the types of employment available in remote communities.

⁹⁶ Serene Fernando, *exhibit 12*, p. 3.

For the isolated communities, I think the elephant in the room is the economic future. Most of the employment is government funded. Do we keep doing that year after year after year? Clearly there are links to other issues and that has been stated many times – the links between the criminal justice system, health, education and all of those other things.⁹⁷

- 6.151 In March 2011, Australia's unemployment rate had decreased to 4.9 percent⁹⁸ which presents a difficult environment for Indigenous job seekers who face a range of obstacles when transitioning to employment. However there are certain industry sectors, such as mining and tourism, which are well placed to invest in Indigenous transition and work readiness training in order to recruit and meet their own workforce needs.
- 6.152 The inquiry has revealed a number of workforce areas where greater Indigenous representation and leadership is sought – namely in police services, the Australian Defence Force (ADF), education and other government service sectors.
- 6.153 Under the 2011-12 Commonwealth Government Budget, the Language Literacy and Numeracy Program, which is available to assist job seekers attain basic skills, has been expanded.⁹⁹ In addition, six month wage subsidies can be provided to employers who take on the long term unemployed.¹⁰⁰ These initiatives are part of a \$227.9 million package over four years to provide incentives for employers and support participation in training for the long-term unemployed, of which around 17 percent are Indigenous people. A further \$6.1 million over four years is being provided for Jobs Services Australia to pilot the provision of culturally appropriate mentoring support for Indigenous job seekers when they commence work.¹⁰¹
- 6.154 The Committee urges mining and tourism sectors in particular, to take advantage of these services and, as a measure of their social responsibility, to invest in Indigenous transition programs and employment training.

97 Robert Atkinson, Queensland Government, *Committee Hansard*, Brisbane, 4 May 2010, p. 9.

98 ABS 6202.0 - Labour Force, Australia, March 2011
<www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0> accessed 6 May 2011.

99 Building Australia's Future Workforce: trained up and ready for work Australian Government Budget 2011-2011, p.17.

100 Building Australia's Future Workforce: trained up and ready for work Australian Government Budget 2011-2011, p.26

101 Budget: Investing to Close the Gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 10 May 2011.

Mining and tourism sectors

- 6.155 The report has earlier mentioned both Rio Tinto and BHP Billiton for their work readiness and employment transition programs. The Committee is aware that there are a number of other industries who are committed to addressing Indigenous disadvantage and who make a substantial investment in local Indigenous communities through transition and training assistance.
- 6.156 The Committee considers that both the mining and the tourism sectors are well placed to provide these greater employment opportunities to Indigenous youth as the workplace is close to regional or remote Indigenous communities. At times these are also industry sectors which face challenges attracting a workforce due to their location.
- 6.157 The Committee urges mining and tourism sectors, in particular, as a measure of their social responsibility, to invest in Indigenous transition programs and employment training.

Education and Government service sectors

- 6.158 Previously the report has discussed the important role of Indigenous education workers and the need to increase the Indigenous representation in teaching, early childhood and teacher's aide roles. There is a critical need for more Indigenous health workers able to work with local communities. In addition, government agencies suffer from a lack of Indigenous representation in key policy and service delivery areas.
- 6.159 The Committee is aware that many government agencies offer Indigenous cadetships and, as part of the cadetship, transition assistance and support is available. The Committee encourages the expansion of these cadetship positions across states and territories as well as Commonwealth agencies.
- 6.160 The Committee considers that every jurisdiction should be conducting intensive campaigns targeting Indigenous recruitment in the areas of health and education. Indigenous workers in these areas provide vital mentoring and leadership roles to other Indigenous young people, and warrant a substantial commitment and investment in transition assistance to facilitate entry to and completion of training.

Police services

- 6.161 Police services already conduct some targeted training and recruitment programs for Indigenous people. For example the Queensland Police Service (QPS) has Indigenous traineeships as part of its Justice Entry

Program. It is a six month timeframe full time program during which trainees receive an allowance equal to that of a police recruit.¹⁰²

- 6.162 Queensland Police Commissioner Atkinson commented that the program focuses on developing a pathway for Indigenous people into employment in the police service. From a policing perspective, he commented that 'it is really important that Indigenous people gain employment in police departments.'¹⁰³
- 6.163 Similarly, New South Wales have an Indigenous Police Recruitment Out West Delivery (IPROWD) Project. In April 2008, a partnership was established between TAFE New South Wales and New South Wales Police to develop a bridging course that would provide Aboriginal students from western New South Wales with the academic prerequisites to enrol as student police. The IPROWD project enrolled 13 Aboriginal students in the course and all graduated in December 2008.¹⁰⁴
- 6.164 This New South Wales Indigenous Police recruitment project has relied on strong partnerships between the Police, TAFE and the Indigenous community to help provide support as required.

Six students went on to study at the Police College, Goulburn, three of whom remain. The remaining three have deferred their studies. The majority of IPROWD students have found employment. A second IPROWD course commenced at Dubbo in April 2009. IPROWD was due to commence at Tamworth in July 2009. The mentoring of students is an integral element of this program and involves community members, teaching staff and Aboriginal staff in TAFE NSW Institutes.¹⁰⁵

- 6.165 The Committee considers there is scope for police recruitment campaigns to target Indigenous youth. The range of Indigenous entry assistance programs provided are commendable; however a survey of police recruitment websites across different jurisdictions suggests that there often lacks an active focus on Indigenous recruitment.
- 6.166 The Committee considers that the diversity and cultural awareness of the police service across jurisdictions could be enhanced by recruitment campaigns targeted to Indigenous people. Further, Indigenous recruitment campaigns should be culturally appropriate and emphasise

102 Queensland Police Service, *exhibit 23*, p. 2.

103 Robert Atkinson, Queensland Government, *Committee Hansard*, Brisbane, 4 May 2010, p. 10.

104 New South Wales Department of Education and Training, *submission 43*, p. 23.

105 New South Wales Department of Education and Training, *submission 43*, p. 23.

the positive leadership and community benefits of joining the police service.

Australian Defence Force

- 6.167 The Australian Defence Force (ADF) is well placed to provide training and employment to young Indigenous people. First, the ADF offers training in leadership and workplace-specific skills that has benefits both for Indigenous recruits and their communities beyond their career in the service. Second, the ADF is in need of new recruits, while (as this report has shown) young Indigenous people are in need of workplace training, support and employment.
- 6.168 In its recruitment material, the ADF emphasises that Indigenous recruits make positive role models for other young community members. It also has a range of programs intended to support Indigenous recruits and to acknowledge significant Indigenous cultural events. The recruitment material acknowledges the significant contribution of Indigenous Australians to protecting the nation's interests for over a century.
- 6.169 In addition, the Aboriginal Legal Service for ACT/NSW in its submission called for the ADF to increase the provision of school-based apprenticeships and target these to Indigenous youth living in regional and remote areas:

Young people in Aboriginal communities in Queensland express significant interest in joining the Australian Defence Force (ADF). However, recruitment in rural and remote communities is not occurring. The provision of school based ADF apprenticeships would create real incentive to remain in the education system and provide continuity with attractive employment.

Given that the separation rate of members of the ADF is increasing, there is a match between its needs and those of Aboriginal and Torres Strait Islander youth to find employment. Significant advantages could be gained from the recruitment of Aboriginal and Torres Strait Islander juveniles and young adults into the Australian Defence Force.¹⁰⁶

106 Aboriginal Legal Service NSW/ACT, *submission 66*, p. 15.

Committee comment

- 6.170 The Committee acknowledges the significant contribution that Indigenous Australians have made to the Australian Defence Force. The Committee understands that this is a sensitive issue as the commitment and sacrifice made by Indigenous people involved in Australia's Defence Force in the past went unrecognised for some period of time.
- 6.171 The Committee considers that the ADF has a social responsibility to support Indigenous Australians, given the historical neglect of Indigenous servicemen and women, and the important contribution they have made in past wars.
- 6.172 The Committee considers it important for the Australian Defence Force to raise its profile with Indigenous Australians and form innovative partnerships with Indigenous people, particularly in regional and remote areas, who are interested in joining the Australian Defence Force.
- 6.173 The Committee is concerned that current Australian Defence Force recruitment material is targeted at a narrow demographic. The Committee recommends that the Australian Defence Force redesign its recruitment material to provide more incentives for Australian citizens from diverse backgrounds (including Aboriginal and Torres Strait Islander people), and women to join.
- 6.174 The Committee notes that the Australian Defence Force has an Indigenous Recruitment Strategy that aims to recruit people from remote, regional and urban settings. However the Committee considers it opportune for the Australian Defence Force to look at strategic ways to recruit from regional and remote areas throughout Australia. The Committee suggests that the Australian Defence Force consider new initiatives for its Indigenous recruitment strategy such as a recruitment project modelled on the New South Wales Indigenous Police Recruitment Out West project.
- 6.175 The Committee notes the potential benefits of a school based Australian Defence Force apprenticeship scheme in regional and remote areas throughout Australia. A school based apprenticeship scheme would provide a mentoring role which could support Indigenous students both socially and academically. This would be beneficial in supporting Indigenous students to complete year 12 and would provide a clear and supported pathway through to employment.

Recommendation 22 – Defence Force recruitment

6.176 The Committee recommends that the Australian Defence Force:

- include in its training material an acknowledgement of the important contribution Indigenous people have made to the Australian Defence Force in past wars. All staff currently employed by the Australian Defence Force should be made aware of this contribution
- review its recruitment material to ensure it provides strong encouragement for Indigenous people to join, which particular reference to existing role models, for example NorForce
- consider new and innovative strategies for raising its profile with Indigenous people and for recruiting both reserves and permanent members from remote, regional and metropolitan Indigenous communities
- offer work experience for older students in the defence force, and
- increase the provision of school based apprenticeships throughout Australia and target apprenticeships to Indigenous youth in regional and remote areas.

The criminal justice system

- 7.1 The Committee has heard evidence that there are many ways that Indigenous juveniles and young adults can be diverted from the criminal justice system. Research suggests that diversionary alternatives can be effective both in keeping young Indigenous people out of detention, and as a process that reduces reoffending.¹ However, research shows that young Indigenous offenders are less likely than their non-Indigenous counterparts to receive a police caution and more likely to be referred to court.²
- 7.2 This chapter traces an offender's pathway through the criminal justice system and discusses areas that need to be improved in order to reduce the overrepresentation of Indigenous juveniles and young adults in detention. Topics covered in the first section of this chapter include police relations, over-policing, diversion by police, language barriers and legal representation.
- 7.3 The second section examines young Indigenous people and the courts, with a discussion of accommodation options for Indigenous youth on bail and the implications of a sentencing culture that has developed in Australian courts. The section discusses court alternatives, including conferencing, Indigenous sentencing courts, and drug and alcohol courts.
- 7.4 The third section examines Indigenous youth in detention and a range of factors that influence recidivism, including a lack of post-release accommodation and support. The section examines in-custody and post-release education and training, and programs that can assist offenders to transition effectively back into their communities.

1 G Luke and B Lind, Reducing Juvenile Crime: Conferencing Versus Court, *Crime and Justice Bulletin* no. 69, April 2002.

2 L. Snowball, 'Diversion of Indigenous juvenile offenders', *Trends and Issues in Crime and Criminal Justice*, no. 355, June 2008.

The point of first contact

- 7.5 An effective police presence is critical to securing safe, stable and resilient communities. The relationships and interactions between the police and Indigenous youth are of great significance to this inquiry as the police are generally the first point of contact an Indigenous youth has with the criminal justice system.
- 7.6 Some Indigenous communities and local police have forged strong positive relationships and work collaboratively to build safe and strong communities. Unfortunately, other examples of Indigenous-police relations are marred by attitudes of distrust, suspicion and fear. This negatively influences the potential outcomes of young Indigenous people's contact with the police. This section discusses the effects of these poor relations, as well as over-policing and access to diversionary schemes. The section includes a discussion of language barriers that negatively impact on Indigenous youths' contact with the justice system and challenges relating to young Indigenous people obtaining adequate legal representation.

Police relations

- 7.7 Numerous studies point to a history of poor relations between Indigenous people and the police.³ During the process of colonisation, the police have often played a damaging role in the implementation of government policy, including:
- ... enforcing work relations and prohibiting movement, in controlling day-to-day lives of Indigenous people, [and] in the removal of children in some parts of Australia.⁴
- 7.8 Contemporary relations between Indigenous people and police cannot be viewed in isolation from the past. Several Aboriginal and Torres Strait Islander Legal Services (ATSILS) noted that 'there remains a legacy of

3 Commonwealth of Australia, *Royal Commission into Deaths in Custody*, 1991; M Finnane, *Police and Government: Histories of Policing in Australia*, Oxford University Press, Melbourne, 1994; J Chan, *Changing Police Culture: Policing in a Multicultural Society*, Cambridge University Press, Melbourne, 1997; C Cunneen, 'Policing in Indigenous communities', in M Mitchell and J Casey (eds), *Police Leadership and Management*, Federation Press, Sydney, 2007.

4 C Cunneen, 'Policing in Indigenous communities', in M Mitchell and J Casey (eds), *Police Leadership and Management*, Federation Press, Sydney, 2007, p. 233.

profound distrust towards the police, welfare and other government agencies ... flowing from past practices'.⁵

- 7.9 It is not within the scope of this report to explore fully the issue of distrust between Indigenous people, particularly youth, and the police. Numerous studies have addressed this issue in detail.⁶
- 7.10 The Committee recognises that in recent years significant effort has been made by police in all jurisdictions to address the issue of distrust between Indigenous people and police. However, the Committee remains concerned that police relations with young Indigenous people continue to be compromised in many instances by a lack of cultural awareness. Good will on the part of police is important, but it is not enough. The 1991 *Royal Commission into Aboriginal Deaths in Custody*, and subsequent reports have drawn attention to the need for more adequate cultural training for police working in Indigenous communities.⁷
- 7.11 A submission to a Victorian inquiry into youth and the criminal justice system maintained that 'comprehensive police training and education in the area of juvenile justice and welfare is absolutely crucial' when dealing with Indigenous and other ethnic minority youth.⁸
- 7.12 Unfortunately, police recruits receive minimal Indigenous specific cultural awareness instruction in their academy training. Northern Territory police recruits receive only two days of cultural awareness training and 'for most police officers, this is all the cultural awareness training that is received throughout the course of their careers'.⁹
- 7.13 A survey conducted by Northern Territory Aboriginal Legal Aid Services found that a lack of cultural training and awareness was a common complaint at the new police stations set up under the Northern Territory

5 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 5.

6 For example: Report of the *Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, 2002; Report of the *Children of State Care Commission of Inquiry*, 2008; *Cape York Justice Study Report*, 2001; *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, 1999.

7 *Royal Commission into Deaths in Custody*, Commonwealth of Australia, 1991; Queensland Crime and Misconduct Commission, *Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous Communities 2009*, pp. 183-184.

8 Parliament of Victoria Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People July 2009*, p. 220.

9 Allen Consulting Group, 'Independent Review of Policing in Remote Indigenous Communities in the Northern Territory', 2010, p. 82, <www.allenconsult.com.au/publications/download.php?id=342&type=pdf&file=1> accessed 2 July 2010.

Emergency Response (NTER) intervention.¹⁰ This is not surprising given that interstate police officers deployed under the NTER received only two or three hours of cultural training prior to their posting.¹¹ Given the extensive and expert training provided to police officers in other areas, it is essential that sufficient cultural training is included in order that they may appropriately perform the expert job they have been trained to do.

7.14 The Association for Prevention and Harm Reduction Programs called for a national approach to be taken in terms of education and training of police in relation to cultural awareness and safety.¹²

7.15 More positively, the Committee was informed about a mentoring program operating in Victoria with police and Indigenous youth. At a public hearing in Melbourne, the Committee heard about a positive change that was occurring between Indigenous youth and police as a result of mentoring programs:

A lot of young kids do not have parental support in those circumstances and so might need a mentor who comes from somewhere else. One interesting change that has taken place, certainly in Victoria, is that there is, I think, a much better relationship with police than there was 10 or 15 years ago. Therefore, police are much more involved in some of these programs, especially in these mentoring programs. I think that is proving to be a helpful thing. It is breaking down some attitudes as well as giving some sort of positive support.¹³

7.16 The Committee heard further evidence regarding efforts being made by the Victorian Indigenous Youth Advisory Council to engage more positively with Victoria Police. A community spirit police award is presented to 'police members who are doing great work with Aboriginal young people'.¹⁴

10 See J Pilkington, 'Aboriginal Communities and the Police's Taskforce Themis: Case Studies in Remote Aboriginal Community Policing in the Northern Territory', October 2009, <www.naaja.org.au/documents/Themis%20Report.pdf> accessed 2 July 2010.

11 Allen Consulting Group, 'Independent Review of Policing in Remote Indigenous Communities in the Northern Territory', 2010, p. 82, <www.allenconsult.com.au/publications/download.php?id=342&type=pdf&file=1> accessed 2 July 2010.

12 Elizabeth Sutton, Association for Prevention and Harm Reduction Programs, *Committee Hansard*, Melbourne, 3 March 2010, p. 46.

13 Geoffrey Eames, *Committee Hansard*, Melbourne, 3 March 2010, p. 9.

14 Tim Kanoa, Victorian Indigenous Youth Advisory Council, *Committee Hansard*, Melbourne, 3 March 2010, p. 24.

- 7.17 Other positive stories include Redfern, where the number of Aboriginal youth committing robberies reduced by 80 percent in one year. The New South Wales Police Local Area Commander in Redfern put this success down to the interaction he had with the Aboriginal leaders on a daily basis and the forums and programs they had been running in unison.¹⁵
- 7.18 Good connections with local Indigenous communities are vital. In addition, the recruitment of Indigenous police, as sworn officers or liaison officers, can vastly improve relations between law enforcement and Indigenous Australians. Indigenous police can diminish the mistrust and build positive relationships between police and communities by legitimising law enforcement, acting as good role models for young Indigenous people, and interpreting cultural issues to police and legal processes to offenders.¹⁶
- 7.19 The National Indigenous Law and Justice Framework Good Practice Appendix identified several Indigenous Liaison Officer programs as 'good' or 'promising', including:
- Police Liaison Officers in the Queensland Police Service, who are mostly of Indigenous background, promote trust and understanding between their respective culturally-specific communities and the police
 - A network of Aboriginal Liaison Officers that exists in all police districts in Tasmania
 - Victoria Police's Cultural Respect Training Officer who is responsible for developing training courses in consultation with the Koori community, Aboriginal Community Liaison Officers and the Aboriginal Community Justice Panels, and Police Aboriginal Liaison Officers who promote trust and understanding
 - Aboriginal Community Liaison Officers who provide cultural support to New South Wales police, and
 - South Australia Police trial of Police Aboriginal Liaison Officers in the Anangu, Pitjantjatjara and Yankunytjatjara (APY) Lands.¹⁷
- 7.20 The New South Wales Department of Education and Training noted two programs established by New South Wales TAFE and New South Wales

15 Superintendent Freudenstein, New South Wales Police, *Committee Hansard*, Sydney, 28 January 2011, p. 6.

16 Queensland Crime and Misconduct Commission, *Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous Communities 2009*, p. 143.

17 Standing Committee of Attorneys-General Working Group on Justice, *National Indigenous Law and Justice Framework: Good Practice Appendix*, 2010.

Police that support Indigenous students on a career path into the police force.¹⁸

- 7.21 The Committee notes, however, that increasing Indigenous employment in law enforcement does not negate the need for comprehensive cultural training among non-Indigenous police.

Over-policing

- 7.22 The Committee is concerned about evidence suggesting that over-policing of Indigenous communities continues to be an issue affecting not only relations between Indigenous people and the police, but also the rate at which Indigenous people come into contact with the criminal justice system.

- 7.23 Over-policing, through increasing police numbers or patrols and surveillance, results in higher contact between the police and community members, which potentially leads to greater opportunities for cautions or arrests. Some of these arrests can be made for very trivial matters.

- 7.24 Chris Charles of the Australian Legal Rights Movement (ALRM) told the Committee:

I spoke to my colleague who services the youth court this morning. His estimation is that per week two or three, and up to four, Aboriginal cases before the youth court in Adelaide are deliberately sent back by the judges because the subject matter of the charge is not worthy of the attention of the court.¹⁹

- 7.25 There have been several high-profile instances in the Australian media referring to excessive utilisation of police power in relation to minor offences committed by Indigenous juveniles.

- 7.26 One such case identified by the ALSWA was of a 12 year old Aboriginal boy who was charged with receiving stolen goods after he was given a chocolate bar that was allegedly stolen by his friend. After missing his first court appearance due to a misunderstanding about court dates, the boy was taken into custody by police and detained for several hours.²⁰

18 New South Wales Department of Education and Training, *submission 43*, p. 23.

19 Chris Charles, Australian Legal Rights Movement (ALRM), *Committee Hansard*, Adelaide, 20 May 2010, p. 32.

20 ALSWA, *submission 19*, p. 3.

Western Australian Police initially defended their actions before the charges were withdrawn.²¹

- 7.27 ALSWA identified over-policing practices as one of the main factors contributing to the high level of contact Indigenous people had with the criminal justice system. Its submission provided details of other cases to support their claim, including:
- a 15 year old boy charged with attempting to steal an ice cream and ultimately spending 10 days in custody before having his matter dealt with in the Perth Children's Court
 - a 16 year old boy charged with criminal damage after he unsuccessfully attempted to commit suicide by throwing himself in front of a moving vehicle, and
 - an 11 year old girl, with no prior contact with the justice system, charged with threats to harm following an incident at her primary school where she allegedly threatened her teachers whilst holding plastic scissors. The girl was arrested by police at her school, sprayed with capsicum spray, hosed down with cold water in the yard of her school after the capsicum spray was administered and then transported in police custody, without notifying her family, to a Perth police station.²²
- 7.28 ALRM in South Australia told the Committee that 'the majority of the participation of Aboriginal people in the justice system is a result of targeting'.²³ The ALRM gave the examples of an Aboriginal youth who was arrested for the theft of a lemon from a tree overhanging a fence,²⁴ and an Aboriginal youth was arrested for breach of curfew when the teenager was unaware that the end of daylight savings had brought the time forward by an hour.²⁵

21 T Clarke, 'Freddo Frog Meltdown: Police Chief Wants Charge Withdrawn against Boy, 12', *Sydney Morning Herald*, 17 November 2009.

22 ALSWA, *submission 19*, p. 8.

23 Neil Gillespie, Aboriginal Legal Rights Movement, *Committee Hansard*, Adelaide, 20 May 2010, p. 33.

24 Neil Gillespie, *Committee Hansard*, Adelaide, 20 May 2010, p. 31.

25 Aboriginal Legal Rights Movement, *submission 98*, p. 5.

Diversion by police

- 7.29 The nature and consequences of police contact experienced by Indigenous youth directly influence their subsequent involvement with other areas of the criminal justice system, such as remand and the courts.
- 7.30 In this sense, the police are in a position of 'gate-keepers' to the criminal justice system. The perceived over-policing of Indigenous communities is further exacerbated by the use, or lack thereof, by police of their discretionary power to divert youth from the criminal justice system. In fact, 'these powers initially predetermine who is and who is not likely to proceed through the criminal justice system'.²⁶
- 7.31 Current legislation governing diversionary schemes allows police significant discretion in determining whether an individual should be charged and then referred to court or to a conference, or whether they should simply be cautioned.²⁷
- 7.32 Commenting on the use of diversionary options by New South Wales Police, the Public Interest Advocacy Centre submission noted a 'significant discrepancy in the use of diversionary options amongst individual police and command areas ... [and] regular misuses of police discretion that disadvantage Indigenous juveniles'.²⁸
- 7.33 This view was echoed by a number of Aboriginal and Torres Strait Islander Legal Services (ATSILS). The combined ATSILS submission noted that 'the entire issue of front-end entry to the criminal justice system as the result of decisions made by police at the point of first contact with Indigenous youth is a deep systemic problem'.²⁹ The Victorian Aboriginal Legal Service submission stated a 'need for procedures that overcome police bias in the use of diversion options for Aboriginal and Torres Strait Islanders'.³⁰ The Central Australian Aboriginal Legal Aid Service (CAALAS) submitted that 'despite this commendable intention [of the *Youth Justice Act* (Northern Territory) which encourages diversion by police], our experience is that many young people are not being diverted,

26 R Tanimu, *Does the Promotion of Sport for Aboriginal Youth Help Reduce the Risk of Offending Behaviour?*, Unpublished Honours Thesis, Flinders University, 2010, p. 43.

27 L Snowball, 'Diversion of Indigenous juvenile offenders', *Trends and Issues in Crime and Criminal Justice*, No. 355, June 2008, p. 5.

28 Public Interest Advocacy Centre, *submission 23*, p. 5.

29 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 18.

30 Victorian Aboriginal Legal Service (VALS), *submission 40*, p. 37.

as the investigating officer does not consider them an appropriate candidate'.³¹

- 7.34 An Australian Institute of Criminology (AIC) study of youth diversion in Western Australia, New South Wales and South Australia found that Indigenous juveniles were 'significantly more likely' to be referred to court than non-Indigenous youth, who are more likely to receive just a caution.³² In Queensland, the rate of arrest for Indigenous juveniles who come into contact with the police is twice that of non-Indigenous juveniles; the latter are more likely to receive a caution or be diverted than Indigenous juveniles.³³

Committee comment

- 7.35 The Committee acknowledges that there are many stories of inspirational police officers working with Indigenous communities and elders to develop positive relationships between communities and the police force. However, when this is not the case, the outcomes for Indigenous youth can be extremely serious, and can lead to negative consequences for whole communities.
- 7.36 The Committee understands the particular difficulties in attracting police to rural or remote communities and recognises that positive relationships require sustained effort and investment. The Police Federation of Australia acknowledged that more could be done to improve relations between Indigenous communities and police and the need for 'dedicated police services in each community [to] allow for trusting relationships to be formed'.³⁴
- 7.37 Unfortunately the police are not successful always in this respect. For example, the Queensland Police Service rotates junior officers into Indigenous communities for six months at a time, without any community induction, which is insufficient to develop significant rapport with, or

31 Central Australian Aboriginal Legal Aid Service (CAALAS), *submission 26*, p. 10.

32 L Snowball, *Diversion of Indigenous Juvenile Offenders*, Australian Institute of Criminology, Canberra, 2008, p. 3.

33 Law Council of Australia (LCA), *submission 46*, p. 4.

34 Police Federation of Australia, *submission 14*, p. 5.

knowledge of, the community.³⁵ The police taskforce set up under the NTER also has a high turnover of personnel.³⁶

- 7.38 The Committee considers Indigenous cultural awareness training to be integral to effective policing in communities with high Indigenous populations and is not assured by the minimalist nature of cultural training that is currently provided to police who are expected to work closely in and with Indigenous communities. The Committee considers that this current situation is potentially detrimental to the community and to the police officers who should never be placed in situations for which they have not had appropriate training.
- 7.39 The Committee agrees that police personnel in Indigenous communities should be stationed for long-term periods in order for trust and positive relations to develop with community members. In addition, police careers, as sworn police officers or Indigenous Liaison Officers, should be encouraged further among Indigenous people, particularly youth. Recruitment of Indigenous police officers was discussed in the previous chapter.
- 7.40 While the Committee does not suggest that over-policing of Indigenous communities is common practice, the Committee believes that every effort should be made to eradicate over-policing where it exists in Indigenous communities. The Committee notes the damaging effects of media reports of over-policing on police-community relations everywhere.
- 7.41 The Committee further supports the National Indigenous Law and Justice Framework objective to 'eliminate discriminatory attitudes, practices and impacts where they exist within police ... agencies'.³⁷
- 7.42 The Committee recognises that there may be some underlying factors behind the statistical discrepancy in the utilisation of diversion between Indigenous and non-Indigenous youth, such as the greater chance of an Indigenous offender having a longer history of offending or a higher probability of violent offences. However, the Committee is convinced that more work is needed to ensure that Indigenous youth are dealt with by the criminal justice system only as a last resort.

35 Queensland Crime and Misconduct Commission, *Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous Communities 2009*, p. 183.

36 J Pilkington, 'Aboriginal Communities and the Police's Taskforce Themis: Case Studies in Remote Aboriginal Community Policing in the Northern Territory', October 2009, p. 188, <www.naaja.org.au/documents/Themis%20Report.pdf> accessed 2 July 2010.

37 Standing Committee of Attorneys-General Working Group on Indigenous Justice, *National Indigenous Law and Justice Framework 2009-2015*, p. 13.

7.43 The Committee is of the view that more extensive training is required for police personnel regarding young Indigenous people in terms of risk factors for offending behaviour and the impact that an early entry into the criminal justice system can have on an Indigenous person's criminal trajectory. The Committee considers that better training on the available forms of diversion and on best methods for caution or referral, rather than arrest, are essential.

Recommendation 23 – Police training and Indigenous employment

7.44 The Committee recommends that the Commonwealth Government work with the Ministerial Council for the Administration of Justice to address the following priorities at its next meeting:

- **The development of a national framework for the provision of comprehensive Indigenous cultural awareness training for all police employees that:**
 - ⇒ **Promotes better understanding and relations between police and Indigenous communities**
 - ⇒ **Addresses the specific circumstances of Indigenous youth over-representation in police contact, and**
 - ⇒ **Outlines the diversionary options that are available, and the positive impact that diversion can have.**
- **An expanded national network of Indigenous Liaison Officers, with facilities to share information and knowledge across jurisdictions, and**
- **Incentives to increase the employment of Indigenous police men and women and opportunities for mentoring and police work experience for Indigenous students.**

Language barriers

7.45 According to the Australian Bureau of Statistics (ABS) 2006 census, more than 50 000 Indigenous people speak an Indigenous language, almost 10 000 of whom indicated they speak English 'not well' or 'not at all'.³⁸ Indigenous people in the Northern Territory and Western Australia are less likely to speak English as a first language than their national cohort. In the Northern Territory, where there are many remote communities, as

38 Australian Bureau of Statistics (ABS), *Census of Population and Housing 2006*, cat. no. 2068.0.

many as 60 percent of Indigenous people do not have proficient English language skills.³⁹

- 7.46 Although many Indigenous people with limited English language skills can get by in everyday social situations, the misunderstandings and confusion that can occur in communicating with police or justice officials has the potential for serious consequences.
- 7.47 Language barriers need to be addressed not only in courts, but throughout all areas of the justice system. However, often little attention is paid to the linguistic needs of Indigenous youth (including victims of crime) in dealings with the police, legal services, or correctional and rehabilitation staff. A 2002 study revealed that Aboriginal and Torres Strait Islander Legal Services staff had difficulty communicating with over half of their clients.⁴⁰
- 7.48 The Committee did not receive firm evidence on the numbers of Indigenous people who come in contact with the police that need interpreting services but anecdotal evidence suggests that this need is not met on a regular basis. In the Northern Territory, police officers generally resort to communicating in a form of Pidgin English rather than seek an interpreter.⁴¹ ALSWA submitted that 'young people are routinely dealt with by police and appear in court without the assistance of an interpreter'.⁴²
- 7.49 It is in the courts, however, where the lack of adequate interpreting services is most visible. The Australian Broadcasting Commission (ABC) reported that South Australian Magistrate Clive Kitchin believed the unreliable availability of casually-employed interpreters in his Port Augusta court was denying Indigenous defendants fair hearings and prolonging their time in detention.⁴³
- 7.50 Accessing interpreters in remote areas is even more difficult. For example, the Northern Territory is home to a high diversity of Indigenous languages, inaccessible geography and a scarcity of qualified

39 C Heske, 'Interpreting Aboriginal Justice in the Territory', *Alternative Law Journal*, vol. 33, no. 1, March 2008, p. 5.

40 C Cunneen and M Schwartz, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access', *Criminal Law Journal*, vol. 38, no. 1, 2008, pp. 41-42.

41 C Heske, 'Interpreting Aboriginal Justice in the Territory', *Alternative Law Journal*, vol. 33, no. 1, March 2008, p. 6.

42 ALSWA, *submission 19*, p. 14.

43 'Magistrate Calls for Full-time Aboriginal Interpreters', 28 January 2010, ABC News, <www.abc.net.au/news/stories/2010/01/28/2803375.htm> accessed 9 March 2010.

interpreters.⁴⁴ In Western Australia, the only specific Indigenous interpreter service is in the Kimberley.⁴⁵

- 7.51 The Director of the ALSWA, Peter Collins, noted his state ‘desperately’ requires an Aboriginal interpreter service:

It is a scandalous state of affairs that an Aboriginal person who does not speak English as their first language will go to every court in Western Australia and not have an interpreter available to them. We have to go to the NT to get interpreters to come to this state to interpret so we can take instructions from our clients. It should not happen in 2010 – in a state as affluent as Mr Chair has observed Western Australia is – when people from other countries will have, appropriately so, access to an interpreter at the end of a phone call.⁴⁶

- 7.52 Another obstacle to fair hearings in the court system is the likelihood of Indigenous interpreters having kinship ties with the defendant.⁴⁷ Northern Territory Assistant Commissioner Mark McAdie explained to the Committee:

You firstly need a person who is fluent in the two languages that are involved in the translation: the Aboriginal language that the person speaks and English. The second quality, which is actually the more problematic one, is that the person must be a disinterested party. Again, some Aboriginal languages are spoken by a relatively small number of people. The primary language that an Aboriginal person might speak might be spoken by only 100 or 200 people. It is pretty hard to find a disinterested player in that circumstance.⁴⁸

- 7.53 There do not appear to be standards of court protocol governing the use of interpreters for Indigenous defendants. Chantelle Bala, a solicitor with North Australian Aboriginal Justice Agency (NAAJA), related to the Committee that:

44 C Heske, ‘Interpreting Aboriginal Justice in the Territory’, *Alternative Law Journal*, vol. 33, no. 1, March 2008, p. 6.

45 Western Australia Police, ‘Indigenous Communities’, <www.police.wa.gov.au/Ourservices/Indigenouscommunities/tabid/995/Default.aspx> accessed 28 June 2010.

46 Peter Collins, ALSWA, *Committee Hansard*, Perth, 30 March 2010, p. 47.

47 ‘Family Ties a Barrier to Indigenous Justice: Interpreter’, 15 April 2010, ABC News, <www.abc.net.au/news/stories/2010/04/15/2873534.htm> accessed 9 March 2010.

48 Mark McAdie, Northern Territory Police, *Committee Hansard*, Darwin, 6 May 2010, p. 7.

As far as my experience of the Northern Territory courts goes, the responsibility of finding interpreters falls upon me if my client requires that. The court does not seem to take any proactive role in facilitating that, whether we are sitting in Darwin or in, say, a community court in a remote community. It would certainly assist your client's understanding. ... [W]e are very much hamstrung, in the sense that it is sometimes difficult to find interpreters and they are not readily accessible. There are often delays because of it.⁴⁹

- 7.54 The lack of effective interpreter services and protocols for their use is characteristic of other interactions between Indigenous communities and government administrators and service providers. Cath Halbert from the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) acknowledged that 'it is not necessarily built into government business that they will always use an interpreter and we are very conscious that that needs to be much more automatic where they are required'.⁵⁰
- 7.55 There is now Commonwealth Government funding for Indigenous language interpreting and translating services under the Closing the Gap initiative. In addition to providing funding to strengthen these services in the 29 Remote Service Delivery National Partnership priority locations, the Commonwealth has committed to establishing a 'national framework for the effective supply and use of Indigenous language interpreters and translators'.⁵¹
- 7.56 FaHCSIA told the Committee that 'states and territories will be the ones delivering the actual interpreter services, but we will be looking at accreditation [and] training'.⁵² The National Approach to Indigenous Languages has also identified support for Indigenous languages as one its objectives, although explicit funding programs have not been specified.⁵³

Committee comment

- 7.57 The Committee supports the plans for a national framework for Indigenous language interpreters and translators. However, the

49 Chantelle Bala, North Australian Aboriginal Justice Agency (NAAJA), *Committee Hansard*, Darwin, 6 May 2010, p. 60.

50 Cath Halbert, FaHCSIA, *Committee Hansard*, Canberra, 27 May 2010, p. 18.

51 Department of the Environment, Water, Heritage and the Arts, 'Indigenous Languages - A National Approach' <www.arts.gov.au/indigenous/languages_policy> accessed 21 June 2010.

52 Cath Halbert, FaHCSIA, *Committee Hansard*, Canberra, 27 May 2010, p. 18.

53 Department of the Environment, Water, Heritage and the Arts, 'Indigenous Languages - A National Approach' <www.arts.gov.au/indigenous/languages_policy> accessed 21 June 2010.

Committee does not believe that such a framework is sufficient to uphold the principles of procedural fairness in the criminal justice system.

- 7.58 The Committee is of the firm view that access to interpreter services for Indigenous people at any stage of the criminal justice system is a fundamental right. Just as a defendant from a non-English speaking background is entitled to interpreter assistance, an Indigenous defendant for whom English is not a first language should have a qualified interpreter present when being questioned or cautioned by police, or subject to court proceedings. The Committee is concerned by the evidence it received indicating that in many cases qualified interpreters are not available to Indigenous youth who come into contact with the criminal justice system.
- 7.59 The Committee concludes that a national Indigenous interpreter service is of great importance, not only in terms of cultural identity and linguistic diversity, but especially so within a criminal justice system that deals with such a high proportion of Indigenous people. An effective interpreter service would ensure Indigenous people have sufficient access to justice and that justice systems are able to fulfil the principles of procedural fairness.
- 7.60 The Committee further concludes that all criminal justice system guidelines, including police protocols, should include formal recognition of the need to ensure timely access to interpreters when required in order for current practices to change.

Recommendation 24 – Court interpreter service and hearing assistance

- 7.61 **The Committee recommends that the Attorney-General present to the Standing Committee of Attorneys-General a revision of criminal justice guidelines to include formal recognition of the requirement to ascertain the need for an interpreter service or hearing assistance when dealing with Indigenous Australians.**

Recommendation 25 – National interpreter service

7.62 **The Committee recommends that the Commonwealth Attorney-General's Department, in partnership with state and territory governments, establish and fund a national Indigenous interpreter service that includes a dedicated criminal justice resource and is suitably resourced to service remote areas.**

The Committee recommends that initial services are introduced in targeted areas of need by 2012 with full services nationwide by 2015.

Legal representation

- 7.63 Indigenous specific legal services play a critical role in the experience of Indigenous Australians in the criminal justice system. ATSILS provide culturally appropriate services and advice to victims, offenders and their families.
- 7.64 The Law Council of Australia acknowledged that 'there needs to be an improvement in the understanding of the importance and value of ATSILS to Indigenous Australians'.⁵⁴
- 7.65 A joint submission from three ATSILS (Aboriginal Legal Service (NSW/ACT), NAAJA and Queensland Aboriginal and Torres Strait Islander Legal Service) noted that 'we are part of the communities that we serve. We not only have deep local knowledge of needs, we act as a trusted broker to link up our people with the services and facilities of government and non-government agencies'.⁵⁵
- 7.66 An ATSILS solicitor explained to the Committee that:
- When you are presented with a youth in detention, very often you are the only resource available to that youth when they have hit that stage where they are at the court, and it is then up to the NAAJA lawyer to take on the role of social worker, to liaise with schools, to see that they are in the good care of the department, to liaise with [Family and Community Services] and to try to implement all these strategies into a young child's life.⁵⁶

54 Law Council of Australia (LCA), *submission 46*, p. 10.

55 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 30.

56 Chantelle Bala, NAAJA, *Committee Hansard*, Darwin, 6 May 2010, p. 60.

7.67 Victoria Legal Aid (VLA) recognises the importance of Indigenous run legal services for Indigenous Australians:

In VLA's view, the complexity of legal need experienced by indigenous young people and young adults requires a wrap around, integrated service for the person that considers all their civil, family and criminal law needs alongside preventative community based models - pre and post incarceration that actively involves indigenous people in all aspects of their design and delivery.⁵⁷

7.68 Furthermore, ATSILS have been found to be more effective than mainstream legal services, which are often avoided by Indigenous people.⁵⁸ VLA noted and supported:

...the consistent findings that indigenous people experience a greater and more successful engagement with indigenous specific services provided by indigenous people. And conversely, the lack of indigenous specific programs has been consistently identified as a major barrier to indigenous participation and successful reintegration from prison.⁵⁹

7.69 The Commonwealth Government, through the Attorney-General's Department, administers the Legal Aid for Indigenous Australians program which aims to promote culturally-sensitive legal services that enable Indigenous Australians to access their full legal rights.⁶⁰ This program funds eight Indigenous-controlled legal aid organisations across Australia:⁶¹

- New South Wales (including the Australian Capital Territory and Jervis Bay Territory) - Aboriginal Legal Service (NSW/ACT) Limited
- Victoria - Victorian Aboriginal Legal Service Co-operative Limited
- Queensland North and South Zone - Aboriginal and Torres Strait Islander Legal Services (Qld) Limited
- Western Australia - Aboriginal Legal Service of Western Australia Incorporated

57 Victorian Legal Aid, *submission 39*, p. 3.

58 LCA, *Legal Aid and Access to Justice Funding: 2009-2010 Federal Budget*, p. 6.

59 Victorian Legal Aid, *submission 39*, p. 3.

60 Attorney-General's Department, *Policy Directions for the Delivery of Legal Aid Services to Indigenous Australians July 2008*, p. 1.

61 Peter Arnaudo, Attorney-General's Department, *Committee Hansard*, Canberra, 27 May 2010, p. 13.

- South Australia – Aboriginal Legal Rights Movement Incorporated
- Tasmania – Tasmanian Aboriginal Centre Incorporated
- Northern Territory North Zone – North Australian Aboriginal Justice Agency Limited, and
- Northern Territory South Zone – Central Australian Aboriginal Legal Aid Service Incorporated.

7.70 It has been argued that mainstream Legal Aid Commissions are underfunded.⁶² However, Aboriginal legal aid services are even less resourced and more over-stretched. Funding for ATSILS has remained constant – becoming reduced in real terms – for more than ten years while funding for mainstream legal services has more than doubled during the same period.⁶³ Between 2005 and 2010, funding for legal aid programs increased by around 50 percent, whereas funding for legal aid for Indigenous Australians programs increased by less than 10 percent.⁶⁴ At the same time, the number of court cases involving Indigenous people has grown.⁶⁵

7.71 As a consequence, access by Indigenous Australians to ATSILS is diminished. Neil Gillespie from ALRM told the Committee that:

One consequence of the underfunding is that, historically, ALRM has never had sufficient resources to provide adequate representation in the youth court jurisdiction. In fact, historically, ALRM has only ever had one dedicated Adelaide Youth Court solicitor, whereas mainstream legal aid have had three – and yet we generally cover about 60 per cent of those appearing in the courts.⁶⁶

7.72 Moreover, static funding levels have led to some ATSILS no longer being able to provide some services to their clients. For example, Aboriginal Legal Service (NSW/ACT) recently closed both its civil and family law services due to the lack of increase in Commonwealth funding.⁶⁷

62 ACT Council of Social Services (ACTCOSS), *submission 34*, page 19; Law Council of Australia, *submission 46*, p. 10.

63 Australian Legal Rights Movement, *submission 98*, p. 16; Victoria Legal Aid, *submission 39*, p. 3; Law Council of Australia, *Legal Aid and Access to Justice Funding: 2009-2010 Federal Budget*, p. 6.

64 Senate Legal and Constitutional Affairs Committee, *Access to Justice*, 2009, p. 145.

65 Australian Human Rights Commission, *submission 30*, p. 7.

66 Neil Gillespie, Australian Legal Rights Movement, *Committee Hansard*, Adelaide, 20 May 2010, p. 30.

67 Australian Human Rights Commission, *submission 30*, p. 7; Aboriginal Legal Service (NSW/ACT), <www.alsnswact.org.au/> accessed 29 June 2010.

- 7.73 In addition to lower funding levels compared to mainstream legal aid commissions, ATSILS practitioners have higher workloads than their mainstream counterparts.⁶⁸
- 7.74 To compound the problems of underfunding for ATSILS, providing legal aid to Indigenous Australians is, on average, more costly than for non-Indigenous Australians, particularly in Queensland, Northern Territory and Western Australia where there are significant Indigenous populations in remote or regional areas.⁶⁹
- 7.75 This chronic underfunding has serious ramifications for the effectiveness of ATSILS. The capacity of ATSILS to provide quality services is hindered by the lack of resources to recruit and retain staff. A joint submission from several ATSILS noted that ‘we cannot match the salaries and conditions of government agencies. Our ability to respond adequately to the high level of demand is constantly stretched’.⁷⁰ The Law Council of Australia identified the gap between ATSILS salaries and Legal Aid Commission salaries as ‘perhaps the single most important issue’ for attracting and retaining legal practitioners.⁷¹
- 7.76 ALRM argued that there has been ‘an exodus of experienced lawyers from Aboriginal legal aid due to static remuneration’.⁷² The resulting situation of widespread ‘practitioner inexperience has been a cause for concern among clients and magistrates alike’.⁷³

Committee comment

- 7.77 The Committee finds the lack of adequately staffed legal aid resources available to Indigenous people involved in the criminal justice system situation a cause for concern. The new National Partnership Agreement on Legal Assistance Services may improve the funding conditions for legal

68 C Cunneen and M Schwartz, ‘Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access’, *Criminal Law Journal*, vol. 38, no. 1, 2008, p. 50.

69 C Cunneen and M Schwartz, ‘Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access’, *Criminal Law Journal*, vol. 38, no. 1, 2008, p. 48; Peter Arnaudo, AGD, *Committee Hansard*, Canberra, 27 May 2010, p. 17; Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 32.

70 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 32.

71 Law Council of Australia, *Legal Aid and Access to Justice Funding: 2009-2010 Federal Budget*, p. 6.

72 Australian Legal Rights Movement, *submission 98*, p. 16.

73 C Cunneen and M Schwartz, ‘Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access’, *Criminal Law Journal*, vol. 38, no. 1, 2008, p. 49.

services, especially in the area of early intervention.⁷⁴ However, the Committee supports the view of many ATSILS that Indigenous specific legal services are essential for the provision of equitable legal access to Indigenous people.

7.78 The Committee is of the opinion that Indigenous Australians have the right to enjoy the same legal representation as non-Indigenous Australians and that the Commonwealth Government must demonstrate its commitment to this principle through the provision of adequate and equitable funding for legal aid services, including those dedicated to Indigenous Australians.

7.79 The Committee supports the Law Council of Australia's recommendation that ATSILS funding be increased at least to that of Legal Aid Commission funding.⁷⁵ The Committee further reiterates the Senate Legal and Constitutional Affairs Committee's recommendation for the 2009 *Access to Justice* report that funding for Indigenous legal services be increased to a sufficient level that 'meets the needs of Indigenous peoples, including appropriate loadings for extra service delivery'.⁷⁶

Recommendation 26 – Legal services funding

7.80 **The Committee recommends that the Commonwealth Government increase funding for Aboriginal and Torres Strait Islander Legal Services to achieve parity per case load with Legal Aid Commission funding in the 2012-13 Federal Budget, with appropriate loadings to cover additional costs in service delivery to regional and remote areas.**

Indigenous youth and the courts

7.81 The combination of the higher rate of contact with the police and the lower rate of diversion experienced by Indigenous youth translates to a higher rate of contact with the judicial system. This, in turn, contributes to the

74 Attorney-General for Australia, 'National Partnership Agreement on Legal Assistance Services', 2 July 2010, <www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_ThirdQuarter_2July2010-NationalPartnershipAgreementonLegalAssistanceServices> accessed 5 August 2010.

75 Law Council of Australia, *submission 46*, p. 11.

76 Senate Legal and Constitutional Affairs Committee, *Access to Justice*, 2009, p. 147.

higher rate of detention and imprisonment of Indigenous youth compared to non-Indigenous youth.

- 7.82 This section will outline evidence about sentencing trends for Indigenous youth, as well as the criminal legislation that disadvantages young Indigenous people. National patterns for juveniles are difficult to identify because not all children's courts record information on the Indigenous status of defendants.⁷⁷ This is yet another area where consistent and broader data needs to be collected so that informed policies can be devised. However, the data and research available point to differences in the experiences of Indigenous young people compared to their non-Indigenous counterparts.

Sentencing culture

- 7.83 Magistrates who gave evidence to the Committee painted similar pictures of the profile of Indigenous youth who appeared before them. Former Northern Territory Chief Magistrate Jenny Blokland stated that:

...our Courts are very familiar with the profile of Indigenous young people who appear as defendants. If they are repeat offenders from the major regional centres, they have often had involvement or interaction from family services due to neglect or to violence in the home; parental drug and/or alcohol abuse; lack of school attendance or encouragement to attend school; alcohol and drug use themselves; mental illness and homelessness. On the more remote communities ... young offenders may well be subject to the same exposures to violence and drugs and alcohol - there may also be kinship and cultural obligations that are relevant.⁷⁸

- 7.84 Northern Territory Magistrate Sue Oliver told the Committee that 'many of the young people or young adults who appear in the criminal justice system come from backgrounds of dysfunction'⁷⁹ and Victorian Magistrate Edwin Batt said that 'one hundred percent of the young people that come before me who are Aboriginal offenders in the juvenile area are not going to school'.⁸⁰
- 7.85 The Committee noted in previous chapters that in general, juveniles who have adverse contact with the criminal justice system are more likely to

77 K Richards, *Juveniles' Contact with the Criminal Justice System in Australia*, Australian Institute of Criminology, 2009, p. 86.

78 Jenny Blokland, *submission 41*, p. 2.

79 Sue Oliver, *Committee Hansard*, Darwin, 6 May 2010, p. 41.

80 Edwin Batt, *Committee Hansard*, Melbourne, 3 March 2010, p. 14.

have backgrounds of family dysfunction, negative social norms, drug and alcohol problems, poor health and poor education. However, Indigenous youth face additional misrepresentation issues in court proceedings.

- 7.86 In South Australia, where juveniles are recorded as Aboriginal or non-Aboriginal according to appearance, juveniles of 'Aboriginal appearance' come into contact with courts at an earlier age than their 'non-Aboriginal appearance' counterparts.⁸¹ In Western Australia, Indigenous juveniles who appear before courts are also younger than the overall average.⁸²
- 7.87 According to the Australian Bureau of Statistics and Australian Institute of Health and Welfare:
- Most young people under juvenile justice supervision during 2005–06 were aged 16 years or over (64%). However, 14% of Indigenous young people under supervision were aged 13 years or less, compared with only 6% of non-Indigenous young people. There are also differences in the age at which young people were first placed under juvenile justice supervision. Of those under juvenile justice supervision in 2005–06, Aboriginal and Torres Strait Islander young people were younger, on average, at the time of first ever supervision than non-Indigenous young people. Just over half (56%) of Indigenous young people were aged 14 years or less during their initial supervision, compared with 30% of non-Indigenous young people.⁸³
- 7.88 Western Australian statistics show that the rate of conviction for Indigenous juveniles, especially females, was much higher compared to non-Indigenous juveniles.⁸⁴ Furthermore, Indigenous juveniles before Western Australian courts were more likely to receive custodial sentences than their non-Indigenous peers,⁸⁵ a trend that the Law Council of Australia corroborated in their submission.⁸⁶

81 K Richards, *Juveniles' Contact with the Criminal Justice System in Australia*, Australian Institute of Criminology, 2009, p. 87.

82 K Richards, *Juveniles' Contact with the Criminal Justice System in Australia*, Australian Institute of Criminology, 2009, p. 89.

83 ABS/ Australian Institute of Health and Welfare (AIHW), *Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, 2008, pp. 230-231.

84 K Richards, *Juveniles' Contact with the Criminal Justice System in Australia*, Australian Institute of Criminology, 2009, p. 90.

85 K Richards, *Juveniles' Contact with the Criminal Justice System in Australia*, Australian Institute of Criminology, 2009, p. 91.

86 Law Council of Australia, *submission 46*, p. 4.

- 7.89 The types of offences for which Indigenous people appear before courts also differ significantly from non-Indigenous people. A study of Indigenous youth in New South Wales found that their rate of court appearances for public order offences was more than 10 times the rate for non-Indigenous youth.⁸⁷ Furthermore, as the New South Wales Ombudsman noted, since 'Aboriginal defendants are more likely to be dealt with by arrest, they are more likely to face a bail determination and the possibility of being unable to meet bail conditions, breaching bail conditions or being refused bail'.⁸⁸
- 7.90 There is a variety of reasons behind these different patterns, but the fact remains that Indigenous juveniles' contact with courts is more likely to occur at a younger age than average and result in a custodial sentence.
- 7.91 The current National Indigenous Law and Justice Framework incorporates the principle for 'police training to promote the use of caution with arrest as a sanction of last resort where appropriate'.⁸⁹ However Australians for Native Title and Reconciliation (ANTaR) are concerned 'that this basic principle is still not being consistently implemented in many instances across most states and territories'.⁹⁰
- 7.92 The New South Wales Bar Association urges that 'the time has come for radical action to address this current sentencing reality'.⁹¹ Among a number of recommendations, the association proposes that:
- Statutory provisions be introduced in respect of Aboriginal people (subject to appropriate definition of relevant persons, the character of the offending and relevant subjective matters) which displace the existing requirements to approach sentencing from the perspective of 'punitive' purposes as statutorily defined, unless there are special or 'appropriate' circumstances for so doing, and
 - In relation to provisions such as s 5 of the Crimes (Sentencing Procedure) Act 1999 (NSW) (and similar provisions elsewhere in the Commonwealth), which purports to identify 'imprisonment' as an option of 'last resort', there should be express reference to the sentencing of Aboriginal people in this context and express promotion of alternatives to imprisonment which will address both restoration of the offender and

87 C Cunneen, *The Impact of Crime Prevention on Aboriginal Communities*, Australian Institute of Criminology, 2001, p. 37.

88 New South Wales Ombudsman, *submission 56*, p. 10.

89 Standing Committee of Attorneys General, *National Indigenous Law and Justice Framework 2009-2015*, p. 18.

90 Australians for Native Title and Reconciliation (ANTaR), *submission 109*, p. 5.

91 New South Wales Bar Association, *Criminal Justice Reform Submission*, 2010, p. 4.

restoration of the offenders community where that can be addressed in the sentencing context.⁹²

- 7.93 A number of issues have been brought to the Committee's attention regarding the different types of offences that Indigenous people tend to be charged with, as well as the issues impacting on whether Indigenous people receive custodial sentences or not. These include bail laws and the lack of accommodation for youth on bail, driving offences, and incarceration for fine defaults.

Implications of sentencing culture

- 7.94 The consequences of the sentencing culture that Indigenous youth experience, coupled with the accruing nature of the offences that are frequently committed, are that Indigenous juveniles are highly likely to appear in court. This, in turn, means that as young adults, they are highly likely to appear subsequently in an adult court. A study of juveniles in Queensland found that:

... young people whose first offence contact resulted in a court appearance were more likely to have re-contact, and to do so sooner, than those who were cautioned at their first contact. Additional analyses revealed that of young people who had re-contact, those who were cautioned had re-contact less frequently than those whose first contact resulted in a court appearance.⁹³

- 7.95 As Indigenous juveniles are more likely to have contact with a court at a younger age than non-Indigenous juveniles, their risk of appearing in court as an adult is also higher, as it increases inversely with the age of first appearance in a children's court.⁹⁴
- 7.96 Furthermore, the higher likelihood that an Indigenous youth will receive a custodial sentence means that their rate of recidivism is likely to be higher. And once again, the younger average age at which Indigenous juveniles experience a custodial sentence increases the chance that 'an offender will reoffend and enter a cycle of recidivism'.⁹⁵

92 New South Wales Bar Association, *Criminal Justice Reform Submission*, 2010, pp. 4-5.

93 S Dennison et al, *Police Cautioning in Queensland: the Impact on Juvenile Offending Pathways*, Trends & Issues no. 306, Institute of Criminology, February 2006, p. 5.

94 S Chen et al, *The Transition from Juvenile to Adult Criminal Careers*, Crime and Justice Bulletin no. 86, NSW Bureau of Crime Statistics and Research, May 2005.

95 Law Council of Australia, *submission 46*, p. 5.

- 7.97 One part of the solution to the escalating effect of exposure to the criminal justice system is to disrupt and delay contact with the courts, thereby reducing recidivism rates. The question, however, is how this can be done.
- 7.98 The Committee heard, as a common refrain, that there are not enough sentencing alternatives available to judges even in cases where incarceration is evidently not the best means of achieving justice. This is especially the case in rural and remote areas where a larger proportion of offenders are Indigenous. The Law Council of Australia notes that:
- ... there may be limited sentencing options available to the courts, particularly in regional and remote areas, due to the lack of infrastructure or local public administration to carry out or monitor alternative sentences. This may contribute to the number of young Aboriginal people sentenced in a court rather than diverted to other remedial or therapeutic options.⁹⁶

Bail laws

- 7.99 Despite the stated intentions of every state and territory government to reduce juvenile incarceration rates, particularly among the Indigenous population, young offenders continue to be remanded in custody at high rates. Even more disturbingly, a large proportion of the juveniles on remand have not been and will not be sentenced to custodial penalties, but are in detention due to their inability to meet increasingly strict bail conditions. In Western Australia, 45 percent of Indigenous juveniles in custody were not sentenced.⁹⁷ According to a recent paper from New South Wales, the rate of juveniles on remand who will not receive a custodial sentence is 84 percent.⁹⁸
- 7.100 Table 7.1 provides data on the percentage of young Indigenous people who are on remand in detention during 2007-08 (figures do not include those from New South Wales).
- 7.101 About half of those Indigenous young people in detention on an average day were on remand. The AIHW reports that nearly 60 percent of young people on remand on an average day were Aboriginal and Torres Strait Islander young people, who were particularly over-represented in the younger age groups. Of all young people on remand on an average day, 72 percent of those aged 10-13 years, 56 percent of those aged 14-17 years

96 Law Council of Australia, *submission 46*, p. 7.

97 Peter Collins, ALSWA, *Committee Hansard*, Perth, 30 March 2010, p. 42.

98 UnitingCare Burnside, *submission 4a*, p. 5.

and 29 percent of those aged 18 years or older were Aboriginal and Torres Strait Islander young people.⁹⁹

Table 7.1: Number of Indigenous young people in detention and the number of those young people on remand on an average day by jurisdiction during 2007-08.

Jurisdiction	Vic	Qld	WA	SA	Tas	ACT	NT	Aust./ excl. NSW
Total in Detention	22	89	122	31	14	7	32	317
No. on Remand	6	66	64	13	7	5	21	182
Percentage	27%	74%	52%	42%	50%	71%	66%	57%

Source AIHW, *Juvenile Justice in Australia 2007-08*, p. 59 and p. 104.

- 7.102 The New South Wales Juvenile Justice Department reports that in 2007-08, the average daily number of young people in custody was 390 and the average daily number of young people remanded in custody was 210 (53.8 percent).¹⁰⁰ The New South Wales Auditor-General reported that 38.8 percent of all young people on remand during 2007-08 were Aboriginal or Torres Strait Islander.¹⁰¹
- 7.103 Research suggests that the increase in Indigenous imprisonment rates is due to the severity in bail decisions. The Bureau of Crime Statistics and research (BOCSAR) found that one quarter of the increase in the New South Wales Indigenous imprisonment rate between 2001 and 2008 was the result of a greater proportion of Indigenous offenders being refused bail and an increase in the time spent on remand.¹⁰²
- 7.104 BOCSAR found no significant effect on the likelihood of re-offending for juveniles given a custodial penalty compared to a non-custodial penalty. The study recommended custodial penalties ought to be used very sparingly with juvenile offenders.¹⁰³
- 7.105 The Committee heard from a large number of witnesses that the denial of bail to Indigenous juveniles and young adults was common to all jurisdictions. On the weight of the evidence received by the Committee, it

99 AIHW, *Juvenile Justice in Australia 2007-08*, p. 71.

100 New South Wales Juvenile Justice, *Annual Report 2008-09*, p. 51.

101 New South Wales Auditor-General, *Auditor-General's Report: Financial Reports*, vol. 5, 2008, p. 197.

102 Jacqueline Fitzgerald, *Why are Indigenous Imprisonment Rates Rising?*, Issue Paper no. 41, BOCSAR, August 2009, p. 1.

103 D Weatherburn, S Vignaendra & A McGrath, *The specific deterrent effect of custodial penalties on juvenile re-offending*, Crime and Justice Bulletin no. 132, BOCSAR, July 2009.

does appear, however, that it is an especially acute issue in New South Wales.

- 7.106 Recent changes in legislation have contributed to the increased numbers of Indigenous youth in remand, particularly in New South Wales where a 2007 amendment to the *Bail Act 1978* (New South Wales) resulted in soaring detention rates among young Indigenous people. Further changes in 2007 to the *Bail Act 1978* may have contributed to a significant rise in detainee numbers in New South Wales juvenile detention centres. The Public Interest Advocacy Centre (PIAC) highlighted amendments made in 2007 as a primary driver of increases in the number of Indigenous juveniles detained, pointing specifically to section 22A:

This section provides that children and young people can only apply once for bail, unless special circumstances exist, such as the lack of legal representation during the first bail application, or the court is satisfied that new facts or circumstances have arisen since the first application. This section has led to a direct increase in the number of children placed on remand until their charges are finalised, when previously they might have only been on remand for a few days until they had mounted a successful bail application. Although section 22A was initially aimed at eliminating repeated bail applications in relation to more serious offences in adults, it has unfortunately been equally and consistently applied to young people, without consideration of its effects on this more vulnerable group. Further, it has had a far more serious effect on young people than on adult offenders.¹⁰⁴

- 7.107 The New South Wales Ombudsman drew the Committee's attention to a recent paper by BOCSAR,¹⁰⁵ noting a number of its key findings relating to the application of bail in New South Wales, including:

- police activity in relation to breach of bail putting upward pressure on the juvenile remand population
- the introduction of section 22A of the *Bail Act* putting upward pressure on the juvenile remand population by increasing the average length of stay on remand, and
- among those juveniles remanded solely for not meeting bail conditions, the most common bail conditions that were breached were failure to

104 Public Interest Advocacy Centre, *submission 23*, pp. 5-6.

105 New South Wales Bureau of Crime Statistics and Research (BOCSAR), 'Recent Trends in Legal Proceedings for Breach of Bail, Juvenile Remand and Crime', *Crime and Justice Bulletin*, No. 128, 2009.

adhere to curfew conditions and not being in the company of a parent.¹⁰⁶

7.108 Due to the disproportionate numbers of Indigenous people involved in the criminal justice system, 'whenever the justice system gets tougher, as it has in New South Wales and other states, it always has a bigger impact on Aboriginal people than it does on non-Aboriginal people'.¹⁰⁷ Young people are a more vulnerable group than adult offenders, and are therefore more seriously affected by the toughening of bail laws.¹⁰⁸

7.109 The Commonwealth Attorney-General's Department acknowledged that:

One of the biggest growth rates in relation to detention for Indigenous juveniles is in remand. These are not children who have actually been convicted of anything but, because they are unable to meet bail conditions, often because they do not have functional homes to go to, they either breach their bail or do not get bail in the first place.¹⁰⁹

7.110 The single biggest factor in being unable to comply with bail conditions is the lack of appropriate accommodation available to young offenders whilst they are awaiting sentencing.

7.111 The Western Australia Corrective Services submission stated that:

Young people are required to be bailed into the care of a responsible adult. However, there are ongoing issues where a responsible adult cannot be located, or is unwilling to sign the bail undertaking.¹¹⁰

7.112 In such situations, there are limited options to custody, and young offenders are then remanded in detention.¹¹¹ This is more likely to occur in rural and remote areas where accommodation and treatment services are lacking. The Law Society of New South Wales notes that 'there are negligible services to assist those who come before the court with a mental health issue in rural NSW, and there is little in the way of treatment programs available'.¹¹²

106 New South Wales Ombudsman, *submission 56*, pp. 10-11.

107 Don Weatherburn, BOCSAR, *Committee Hansard*, Sydney, 4 March 2010, p. 18.

108 Public Interest Advocacy Centre, *submission 23*, p. 5.

109 Kym Duggan, Attorney-General's Department, *Committee Hansard*, Canberra, 26 November, p. 3.

110 Western Australia Corrective Services, *submission 54*, p. 5.

111 Western Australia Police, *submission 78*, p. 9.

112 Law Society of New South Wales, *submission 29*, p. 11.

- 7.113 The impact on family members in rural and remote areas is also greater. As the Committee heard in Cairns, 'any child in our part of the world that is remanded in custody goes to Townsville so family are not able to maintain ... connection'.¹¹³
- 7.114 Stringent bail conditions on juveniles who are not remanded in custody are also compounding the rising numbers of juveniles in detention. PIAC submits that 70 percent of juveniles in detention are remanded for bail breaches, usually of a minor or technical nature.¹¹⁴ Technical breaches are described as 'circumstances in which a young person is arrested for a breach of a bail condition which in itself is not a new offence, and does not harm the young person, another person or the community'.¹¹⁵
- 7.115 As example of this, a recent media report highlighted the case of a 13 year old boy who spent three nights in the Kalgoorlie police cells after being denied bail for allegedly breaching bail conditions and giving a false name to police. The boy was denied bail by a Justice of the Peace on a Friday and was remanded into custody until he appeared in court on Monday. While Kalgoorlie has a regional youth justice service and a bail hostel to support young people who cannot be safely bailed with family members, in this case those support services were not used and the 13 year old spent the weekend in a secure adult facility.¹¹⁶
- 7.116 The Law Society of New South Wales claims that 'punitive attitudes towards children and young people, including the refusal of bail or the imposition of onerous conditions have become commonplace, particularly for Indigenous children and young people'.¹¹⁷ The Australian Children's Commissioners and Guardians (ACCG) submission suggests that these 'onerous bail conditions imposed on young people are cycling some young people back into the justice system unnecessarily'.¹¹⁸
- 7.117 Some of these inflexible bail conditions do not take into account the 'mobile lifestyle' of some Indigenous people in remote areas.¹¹⁹ Moreover, some conditions can in fact impede the development of positive social norms and behaviours that reduce offending risk factors; 'for example, a

113 Lynda Coon, ACT for Kids, *Committee Hansard*, Cairns, 7 May 2010, p. 25.

114 Public Interest Advocacy Centre, *submission 23*, p. 8.

115 Public Interest Advocacy Centre, *submission 23*, p. 8.

116 ABC News, 'Answers demanded over boy's lock-up', 11 May 2011 <http://www.abc.net.au/news/stories/2011/05/11/3213459.htm>> accessed 11 May 2011.

117 Law Society of New South Wales, *submission 29*, p. 11.

118 Australian Children's Commissioners and Guardians (ACCG), *submission 59*, p. 20.

119 Denis Reynolds, *submission 36*, p. 4.

young person may not be allowed to attend a Blue Light Disco, or go to football or other sport training because it is outside of curfew hours'.¹²⁰

7.118 A 2003 report for the Attorney-General recommended that:

... one of the most direct ways of reducing the numbers of young offenders in detention is to find non-custodial alternatives for those who do not seem to warrant pre-trial detention. ... It is worth noting that even small gains here can have the direct consequence of reducing significantly the numbers of juveniles in detention.¹²¹

Accommodation options for Indigenous youth on bail

7.119 Joan Baptie, a Magistrate from the Children's Court of New South Wales, spoke about the issue of lack of accommodation for youth on bail:

... in the Children's Court considerations of bail can be as fundamental as: who is going to be responsible for this child's accommodation? That often cannot be resolved, and you have government departments that say, 'That's fine. Just lock them up. That will solve the problem of accommodation'. And it sure does, but it is not in those young persons' best interests, one would think, because ultimately, at some stage, they are going to be released back into the community and they are going to be angrier and less able to integrate for their very important futures.¹²²

7.120 Katherine McFarlane from New South Wales Corrective Services Women's Advisory Council was similarly concerned about this situation:

One of the problems is that in the Children's Court a lot of the time DOCS advocates for a child to remain in custody – despite, often, the parents or grandparents or other relatives – because the accommodation is not deemed suitable and they do not have a placement. So you get a not unusual situation where a state agency that is responsible for the care and protection of children – an agency where the child's best interest is the prime concern – comes

120 Central Australian Aboriginal Legal Aid Service (CAALAS), *submission 26*, p. 5.

121 K Polk et al, *Early Intervention: Diversion and Youth Conferencing – A National Profile and Review of Current Approaches to Diverting Juveniles from the Criminal Justice System*, Attorney-General's Department, Canberra, 2003, p. 53.

122 Joan Baptie, Magistrate, Children's Court of the New South Wales, *Committee Hansard*, Sydney, 28 January 2011, p. 10.

to court and says, 'Put them in jail; at least we know they are going to be safe'.¹²³

7.121 Accommodation for Indigenous youth on bail is an issue which was frequently brought to the attention of the Committee during the inquiry. Bail laws attempt to strike the right balance between not infringing upon the liberty of an accused person who is entitled to the presumption of innocence, and ensuring that an accused person will attend court and will not interfere with witnesses or commit other offences.

7.122 Indigenous youth spend a significant amount of time in detention on remand. The AIHW reports the average length of time Indigenous youth spent on remand during 2007-08 and across all jurisdictions except New South Wales was 52 days.¹²⁴

7.123 Some research indicates that a high number of Indigenous youth on remand do not receive a custodial sentence. Figures published by New South Wales Juvenile Justice show that in 2008-09, only 22 per cent of young people with a remand episode received a sentence of detention within 12 months.¹²⁵ In October 2009, a coalition of 12 non-government organisations released a paper noting only one out of every seven remandees in New South Wales will receive a custodial order at sentencing. The paper commented on the effect of this high rate of remand:

... thousands of children are being unnecessarily exposed to an environment that can have a detrimental effect on their future life chances, and a higher number of young people are at risk of cycling through the prison system.¹²⁶

7.124 Several witnesses and submissions attributed the lack of suitable accommodation options for young people who would otherwise be released on bail to the increase in the number of juveniles on remand.¹²⁷ The ACCG expressed their concern to the Committee about the tendency for children to be remanded in custody, even when eligible for bail, due to a lack of safe accommodation options:

It appears that remand is viewed and used as an accommodation option for a child if a responsible adult cannot be found or if

123 Katherine McFarlane, New South Wales Corrective Services Women's Advisory Council, *Committee Hansard*, Sydney, 28 January 2011, p.15.

124 AIHW, *Juvenile Justice in Australia 2007-08*, p. 107.

125 New South Wales Juvenile Justice, *Annual Report 2008-09*, p. 54.

126 Uniting Care Burnside, *submission 4a*, p. 3.

127 Uniting Care Burnside, *submission 4a*, p. 3.

authorities are concerned for the child's safety. The ACCG strongly rejects this position. It is an extraordinary act of public policy that would see children and young people who are eligible for bail and not yet convicted of any crime being placed in detention simply because they have nowhere else to go.¹²⁸

- 7.125 The Law Society of New South Wales advised the Committee of possible breaches of the United Nations Convention on the Rights of the Child when children were held on remand as a result of not being able to provide them with safe accommodation:

Bail may be made conditional on the provision of appropriate supervised accommodation. 'Reside as directed by [Department of Juvenile Justice]' is a condition frequently imposed on homeless young people. A 'reside as directed' condition often means that juveniles are held in detention until accommodation is found. While the motivation of Magistrates may be that they prefer juveniles to be in a detention rather than homeless, this use of bail rules is contrary to the principles in the UN Convention on the Rights of the Child (CROC) and the intention of Parliament in 1987 when it separated the children's criminal and children's care and protection jurisdictions (see *Children's (Criminal Proceeding) Act 1987*) ... Detention should be a last resort as a criminal sanction, not as a 'placement'.¹²⁹

- 7.126 A joint ATSILs submission stated that secure accommodation or a space in a rehabilitation program, rather than detention, is critical to diversion from criminal activity:

Detention is a criminal sanction: not a 'placement' for children in need of care. Responsibility for such detention - its inherent unfairness, stress and negative engagement with criminal justice system - lies squarely with the Australian governments. It is clear and predictable that young people at risk of entry to the criminal justice system will come from homes where it is unsafe for them to be. The need to provide accommodation, other than police cells or detention centres, is chronic.¹³⁰

128 ACCG, *submission 59*, p. 19; Central Australian Youth Justice Committee (CAYJ), *submission 50*, p. 9; ALSWA, *submission 19*, pp. 11-14.

129 Law Society of New South Wales, *submission 29*, p. 8.

130 Aboriginal Legal Service (NSW/ACT), NAAJA, Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, pp. 17-18.

7.127 The adverse consequences to Indigenous youth on remand were referred to in many submissions. The 2008 Special Commission of Inquiry into Child Protection Services in New South Wales stated:

In the absence of dedicated bail facilities for young people, many have been held remanded in detention for significant periods, with potentially adverse consequences for their prospects and rehabilitation.¹³¹

7.128 Some states have created supervised bail programs to divert young people from incarceration whilst awaiting trial. These programs may take the form of relatively simple accommodation facilities such as bail hostels or more sophisticated programs that aim to offer the young person a suite of options to address their individual needs.

7.129 The Victorian Drugs and Crime Prevention Committee recommended that the Department of Justice identify the issues pertaining to a young person being granted bail in the Children's Court. In particular, matters relating to accommodation and material support and the establishment of a formal bail support program should be considered with the express aim that no child or young person should be held in remanded custody unnecessarily.¹³²

7.130 Two of the strategic actions of the New South Wales Government in its Aboriginal Justice Plan 2004–14 are to ensure Aboriginal defendants have full access to bail and to reduce the overrepresentation of Aboriginal young people in the criminal justice system. Part of these strategic actions include examining options for developing family and community based bail support and accommodation mechanisms and programs, and reviewing bail legislation and administrative processes to ensure Aboriginal defendants have full access to bail.¹³³

7.131 There have been proposals to set up 'bail houses' to accommodate young people released on bail. Such initiatives would give the Court an option other than detaining a person in a juvenile justice centre where the Court is of the view that the person does not have a stable home to go to, or a

131 The Hon. James Wood AO QC, *Special Commission of Inquiry into Child Protection Services in New South Wales*, November 2008, vol. 2, p. 558.

132 Parliament of Victoria Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People – Final Report*, July 2009, p. 247.

133 New South Wales Aboriginal Advisory Justice Advisory Council, *NSW Aboriginal Justice Plan: Beyond Justice 2004–2014*, pp. 15, 20.

sufficient support network to ensure their appearance at their court hearing.¹³⁴

7.132 The Committee notes that there are some programs aimed at assisting young people with accommodation and support needs while on bail, including:

- the Central After Hours Assessment and Bail Placement Service (CAHABPS) in Victoria, which is an after-hours program that aims to be a single point of contact for police in matters where police and/or a bail justice are considering remanding a young person outside business hours. A CAHABPS worker employed by the Department of Human Services conducts an assessment of a young person's suitability for bail placement and acts as a facilitator for that placement. This role may include advice in addition to referrals to other youth and family support services
- the Youth Bail Accommodation Support Service in Queensland targets young people who are homeless or at risk of homelessness, and provides referrals and financial support for the young person to secure appropriate accommodation. Queensland also has a Youth Opportunities Program which assists young people charged with offences to establish and maintain stable accommodation in order to comply with bail conditions¹³⁵
- the Intensive Bail Support Program in New South Wales provides intensive support for young offenders aged 10 to 14 years including Indigenous youth.
- the Bail Options Project in Tasmania refers young people who are homeless to accommodation and other support services,¹³⁶ and
- the Youth Bail Service in Western Australia provides for an after-hours seven-day-a-week bail service to help police identify responsible adults to provide bail for young people and provide limited short-term bail accommodation as a last resort for young people who are granted bail but do not have anywhere suitable to stay before their court appearance.¹³⁷

134 Noetic Solutions Pty Ltd, *A Strategic Review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice*, April 2010, p. 73.

135 Queensland Government, *submission 91*, p. 17.

136 Gabrielle Denning-Cotter, *Bail support in Australia*, Indigenous Justice Clearinghouse, Research Brief 2, April 2008, pp. 4-5.

137 Western Australian Department of Indigenous Affairs, *submission 83*, p. 11.

Committee comment

- 7.133 The Committee is concerned about the large amount of evidence it has received indicating that bail laws are having a serious impact on the incarceration of young people, especially Indigenous young people, despite no legislative intention in this regard.
- 7.134 The Committee is concerned that inadequate accommodation is sufficient to result in a refusal of bail in cases where Indigenous youth are not in other respects at risk to themselves or the community.
- 7.135 One of the most significant deficiencies in bail support programs for young people throughout all states and territories is the lack of available and appropriate accommodation for young Indigenous people.
- 7.136 The Committee notes the need to provide accommodation options in urban and regional areas, not just remote areas. The Committee's recommendation in chapter 8 to invest in justice reinvestment mapping to identify areas of concentrated offending and gaps in services, would assist in understanding where the gaps are in accommodation services for Indigenous youth.
- 7.137 The Committee recognises the need to address the lack of suitable bail accommodation for Indigenous youth. This is an area where governments could significantly contribute to reducing the high rates of Indigenous youth in detention and consequently reduce recidivism.

Recommendation 27 – Post-release accommodation

- 7.138 **The Committee recommends that the Attorney-General take to the Standing Committee of Attorneys-General the proposal to increase funding for appropriate accommodation options for youth who are granted bail, in order to prevent the unnecessary detention of Indigenous youth.**

Driver licensing offences

- 7.139 It is difficult to determine how many Indigenous young adults are imprisoned for driver licensing offences, for two reasons. First, no published data exists that identifies the number of prisoner receptions in by Indigenous status, nor by category of offence. Second, the number of people imprisoned for driver licensing offences is not specifically

published by the ABS. Anecdotal evidence suggests that Indigenous youth are no more likely than non-Indigenous youth to be detained for driver licensing offences. Figures provided by the Western Australia Attorney-General indicate that 'Indigenous kids are not highly represented, despite what a lot of people think, in traffic offences – only around 16 percent'.¹³⁸

- 7.140 The Committee was told by Dr Kelly Richards from the AIC that the tendency for Indigenous people to drive without a licence 'is a problem but ... in relation more to adults than to young people. Our data shows that Indigenous young people tend not to be overrepresented among ... traffic offences'.¹³⁹
- 7.141 However the Committee heard from a significant number of judicial officials, including Judge Rod Madgwick (New South Wales),¹⁴⁰ Magistrate Margaret Quinn (New South Wales),¹⁴¹ Magistrate Stephanie Tonkin (Qld)¹⁴² and Chief Magistrate Jenny Blokland (NT)¹⁴³ who identified driver licensing offences as one of the main categories of offence for which Indigenous people are incarcerated.
- 7.142 In addressing the issue of driver licensing offences in Queensland, Magistrate Stephanie Tonkin commented that young offenders 'come before the courts regularly for offences of this nature'.¹⁴⁴
- 7.143 Magistrate Stephanie Tonkin observed that despite the *Juvenile Justice Act 1992* (Qld) providing sentencing courts with the discretion not to disqualify young people who committed driver licensing offences, magistrates more commonly ordered licence disqualification than did the higher courts when called upon to review original sentencing decisions.¹⁴⁵
- 7.144 The issue of disqualification is especially important because it is often the pathway that leads to detention, as explained by the Law Society of New South Wales:

Often a person's licence is suspended or cancelled for fine default, the person is subsequently charged for driving whilst unlicensed,

138 Andrew Marshall, Western Australia Department of the Attorney-General, *Committee Hansard*, 30 March 2010, p. 27.

139 Dr Kelly Richards, Australian Institute of Criminology (AIC), *Committee Hansard*, Canberra, 11 February 2010, p. 4.

140 Rod Madgwick QC, *submission 72*, p. 2.

141 Margaret Quinn, *Committee Hansard*, Sydney, 4 March 2010, pp. 5-7.

142 Stephanie Tonkin, *submission 88*, p. 4.

143 Jenny Blokland, *submission 41*, p. 17.

144 Stephanie Tonkin, *submission 88*, p. 4.

145 Stephanie Tonkin, *submission 88*, p. 7.

this often snowballs into a driving whilst disqualified conviction and can result in a prison term.¹⁴⁶

- 7.145 As such, although it is not intended in legislation that driver licensing offences result in custodial sentences, these offences can still have the delayed effect of leading to a custodial sentence. The review of the New South Wales juvenile justice system by Noetic Solutions (Noetic Review) noted that even where youth do not serve terms of detention for driver licensing offences, they are particularly susceptible to being incarcerated once they become adults as a result of their previous offending in this area.¹⁴⁷
- 7.146 Individuals imprisoned for driver licensing offences are included within the category of Traffic and Vehicle Regulatory Offences. This category is a sum of the number of people imprisoned not only for driving licensing offences, but also for vehicle registration and road worthiness offences, regulatory driving offences, and pedestrian offences.
- 7.147 In regional and remote communities, where there is either very little or no public transport available at all, Indigenous people are more likely to drive without licences. As outlined in the submission by Magistrate Tonkin, 'it is almost normal for [Indigenous people] to accept that driving illegally is part of life for them and getting caught is merely an expected consequence of doing something they have to do.'¹⁴⁸
- 7.148 *The Australian* reported that in a remote prison in Western Australia, where more than 90 percent of the inmates are Indigenous, approximately 60 percent are remanded for unlicensed driving.¹⁴⁹
- 7.149 The high rate of driver licensing offences among Indigenous people dovetails into the high rate of incarceration for minor justice breaches such as fine default. Due to the difficulties discussed in chapter 6 that some Indigenous youth face in obtaining a driver licence, driving unlicensed is a common offence. This leads to the imposition of fines, which go unpaid, the inability subsequently to attain a driver licence, resulting in more driving unlicensed offences and fines, and the eventual likelihood of receiving a custodial sentence for fine default.

¹⁴⁶ Law Society of New South Wales, *submission 29*, p. 10.

¹⁴⁷ Noetic Solutions Pty Ltd, *A Strategic Review of the New South Wales Juvenile Justice System*, 2010, pp. 111-112.

¹⁴⁸ Stephanie Tonkin, *submission 88*, p. 12.

¹⁴⁹ N Perpetch, 'Rio Helps Indigenous Convicts Back to Work', *The Australian*, 20 July 2010, p. 8.

- 7.150 A report on the effectiveness of fines discussed ‘the inevitable relationship between a young person’s inability to obtain a drivers licence as a result of fines accumulated as a child, together with the subsequent likelihood of secondary offending and possible imprisonment’.¹⁵⁰ The report included evidence from a Dubbo Local Court magistrate who said that ‘youth ... are coming before court primarily because of unpaid fines’.¹⁵¹
- 7.151 The National Aboriginal Law and Justice Framework acknowledges that while:
- ... it is always important that serious offences be dealt with by the criminal justice system in a proportionate manner ..., Aboriginal and Torres Strait Islander peoples are sometimes incarcerated for relatively minor matters such as fine default.¹⁵²
- 7.152 A Children’s Court of Western Australia judge submits that ‘fines which are so obviously beyond the financial capacity of [A]boriginal people can contribute to a sense of hopelessness and lead [A]boriginal people to disregard them and eventually lead to imprisonment’.¹⁵³ Thus the use of excessive fines as a sentencing option ‘simply opens the door to excessive interaction with the criminal justice system’.¹⁵⁴
- 7.153 Even minor fines may be defaulted due to lack of a fixed address or low levels of literacy. If a young Indigenous person is ‘unable to read the penalty notice, unlikely to seek legal or financial advice or assistance, and lacking the means to pay, the matters invariably accumulate until fine default licence sanctions apply’.¹⁵⁵

Committee comment

- 7.154 The Committee is concerned that driving licensing offences appear to constitute a significant part of the normative sentencing culture for Indigenous youth. The Committee understands that driving without a driver’s licence is an offence however it is of the view that the

150 New South Wales Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices: Interim Report 2006*, p. 23.

151 New South Wales Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices: Interim Report 2006*, p. 23.

152 Standing Committee of Attorneys-General Working Group on Indigenous Justice, *National Indigenous Law and Justice Framework 2009-2015*, p. 16.

153 Denis Reynolds, *submission 36*, p. 4.

154 New South Wales Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices: Interim Report 2006*, p. 20.

155 New South Wales Sentencing Council, *The Effectiveness of Fines as a Sentencing Option: Court-imposed Fines and Penalty Notices: Interim Report 2006*, p. 27.

Commonwealth Government is in a position to provide some assistance to encourage Indigenous people in rural and remote areas to obtain driver's licences. There is a Commonwealth responsibility to provide intervention in this area, particularly given that driver licensing offences can be a pathway to fine accumulation, further offending and incarceration.

- 7.155 The issue of driver licensing offences, particularly in remote areas, is of particular concern, and while precise numbers are difficult to determine, the Committee is of the view that the number of people in prison for driver licensing offences is higher than it should be and that all jurisdictions should take immediate steps to address the difficulties Indigenous people face in obtaining a licence.
- 7.156 As discussed in the previous chapter, a person's employment options can be seriously impeded by not having a driving licence and this problem is exacerbated by the incidence of driving offences and accumulated fines in Indigenous communities. The Committee reiterates the urgent need to put in place a remote and regional driver licensing program and to provide driver education training resources in appropriate formats to assist Indigenous learner drivers.

Court alternatives

- 7.157 Academics who spoke to the Committee expressed concern at the lengthy lapse of time between the offence and the sentence that often results in mainstream court proceedings.
- 7.158 Kelly Richards, of the AIC, noted that:
- If a young person who commits an offence goes to court in three months or six months, which is very often the case, it is an eternity in a young person's life. So there is not therefore in their mind a clear and timely response to their offending. It would be better – and the evidence clearly shows – to provide a response to a young person very quickly, so that in their mind there is a clear link between what they have done wrong and the consequence. Even if that consequence is quite minor – an apology to the victim, for example – those two things should be clearly linked.¹⁵⁶
- 7.159 Teresa Cunningham, of the Menzies School of Health Research, explained that the court system 'does not actually deal with the problem when it is

156 Kelly Richards, AIC, *Committee Hansard*, Canberra, 11 February 2010, p. 6.

happening. It happens months after something has occurred. There is no link between an offence and any punishment'.¹⁵⁷

7.160 The Law Council of Australia submitted that:

Aboriginal sentencing courts, youth courts, drug and alcohol courts and other 'therapeutic' or restorative justice mechanisms have been demonstrated to have a greater impact on recidivism, particularly among young people.¹⁵⁸

7.161 The Committee firmly acknowledges that there needs to be alternatives to the regular court process, especially for Indigenous youth. Some alternative models to court that have been used in Australia include conferencing, Aboriginal courts, and specialist courts (such as Drug and Alcohol courts).

Conferencing

7.162 Conferencing – referred to across Australia variously as restorative justice conferencing, youth conferencing or family conferencing – involves bringing together a young offender with family members, the victim(s), police and community leaders to discuss the impact of the crime and agree to a plan for the offender to make amends and avoid reoffending. Conferencing is a common feature of juvenile justice systems in Australia.

7.163 Through this process, young offenders can make the connection between their actions and the consequences to the victim as well as themselves through the agreed punishment. They are able to avoid a criminal record. However, admission of guilt is a prerequisite for a conferencing referral.

7.164 There are opportunities for young adults to bypass court through conferences, such as forum sentencing in New South Wales which is for 18-24 year olds.¹⁵⁹ However, a recent study of forum sentencing found little evidence of its effectiveness, perhaps due to the older age of the participants.¹⁶⁰

7.165 There have been several studies conducted in New South Wales on the reoffending rates of youth who have been referred to conferencing and youth who have gone through the traditional court process,

157 Teresa Cunningham, Menzies School of Health Research, *Committee Hansard*, Darwin, 6 May 2010, p. 27.

158 Law Council of Australia, *submission 46*, p. 9.

159 Graeme Henson, *submission 74*, p.11.

160 C Jones, Does Forum Sentencing Reduce Re-offending?, *Crime and Justice Bulletin*, no. 129, June 2009.

demonstrating that youth who have had the option of conferencing are less likely, or are slower, to reoffend.¹⁶¹

- 7.166 Dr Cunningham, from the Menzies School of Health Research, told the Committee about her study:

I did a five-year evaluation of the youth diversion program for the Northern Territory Police. It was to do with reoffending, obviously. It was one of the major outcomes of it. But I came from the area of restorative justice, and I was looking at the way in which diversions and conferences actually helped kids to get back on track – which they seemed to, whereas the court system had a negative impact on reoffending. In other words, kids who went through the court system tended to reoffend more quickly and also to reoffend more often than those juveniles who had gone through diversions and conferences.¹⁶²

- 7.167 In addition to the statistical success in reducing recidivism rates, conferencing provides young offenders with an opportunity not only to realise immediately the consequences of their actions, but to address the factors in their lives which may have led to them committing the offence.

In many respects, the major goals of conferencing are concerned with a widening of the social participants in the process of dealing with youth offending to include both victims and more effective involvement of the family of the offender and to increase the role of police in the determination of outcomes within the criminal justice process.¹⁶³

- 7.168 Rosanne McInnes, a magistrate from regional South Australia, points out that ‘conferences are effective because more time can be spent on trying to address risk of reoffending factors at an earlier stage in the offending cycle than is available in court’.¹⁶⁴

- 7.169 Magistrate McInnes suggests that conferences, which do not require the presence of a judge, work well in regional or remote areas where circuit

161 See for example, S Vignaendra and J Fitzgerald, *Reoffending Among Young People Cautioned by Police or Who Participated in a Youth Justice Conference*, Crime and Justice Bulletin no. 103, NSW Bureau of Crime Statistics and Research, October 2006, and G Luke and B Lind, *Reducing Juvenile Crime: Conferencing Versus Court*, Crime and Justice Bulletin no. 69, NSW Bureau of Crime Statistics and Research, April 2002.

162 Teresa Cunningham, Menzies School of Health Research, *Committee Hansard*, Darwin, 6 May 2010, p. 26.

163 K Polk et al, *Early Intervention: Diversion and Youth Conferencing – A national profile and review of current approaches to diverting juveniles from the criminal justice system*, Attorney-General’s Department, Canberra, 2003, p. 53.

164 Rosanne McInnes, *submission 103*, p. 2.

courts are infrequent: 'Youth Courts are too far away for [Anangu, Pitjantjatjara & Yankunytjatjara Lands] juveniles, who can't afford public transport if it exists; and a judge is only required if the charge is contested'.¹⁶⁵

Indigenous Sentencing Courts

- 7.170 Circle sentencing is an alternative Indigenous court system which incorporates the participation of respected community elders. Indigenous sentencing courts exist in all states and territories, with the exception of Tasmania, under various names: Circle Courts in New South Wales and the Australian Capital Territory, Nunga Courts in South Australia, Koori Courts in Victoria, Murri Courts in Queensland, and Community Courts in Northern Territory and Western Australia.¹⁶⁶ Victoria and Queensland also have children's versions of Koori and Murri courts, respectively.
- 7.171 Most of these courts are based on one of two models: the Nunga Court, which modifies a mainstream courtroom, and the Circle Court, where participants are seated around a circle in a place of cultural significance.¹⁶⁷
- 7.172 The Committee appreciates that there is a range of opinions regarding the success and effectiveness of Indigenous courts. A recent study conducted by BOCSAR found that circle sentencing in New South Wales did not have a short-term impact on the levels of reoffending among its clients compared to those who went through a mainstream court.¹⁶⁸ However, other evaluations have noted success in reducing recidivism rates.¹⁶⁹ Furthermore, an evaluation of Nunga courts in South Australia found that the Port Adelaide Aboriginal Court 'frequently achieves a participation rate of over 80 percent for Aboriginal offenders, compared to a less than 50 percent rate for general Magistrates' Courts'.¹⁷⁰

165 Rosanne McInnes, *submission 103*, p. 2.

166 E Marchetti, *Indigenous Sentencing Courts*, Indigenous Justice Clearinghouse, Brief 5, December 2009, pp. 5-6.

167 K Daly and G Proietti-Scifoni, *Defendants in the Circle: Nowra Circle Court, the Presence and Impact of Elders, and Re-Offending*, School of Criminology and Criminal Justice, Griffith University, Brisbane, 2009, pp. 5-6.

168 J Fitzgerald, *Does Circle Sentencing Reduce Aboriginal Offending?*, Crime and Justice Bulletin no. 115, NSW Bureau of Crime Statistics and Research, May 2008, p. 7.

169 LCA, *submission 46*, p. 9; ATSILS, *Minimum Standards for Aboriginal and Torres Strait Islander Courts in Western Australia, South Australia, Victoria, Queensland and Northern Territory (North) 2007-2010*, p. 3.

170 J Tomaino, *Aboriginal (Nunga) Courts*, Information Bulletin #39, Office of Crime Statistics and Research, South Australia, p. 4.

7.173 The BOCSAR report recognised that, regardless of the impact on recidivism, circle sentencing can have other positive impacts on Indigenous communities that are not easily quantifiable.¹⁷¹ A New South Wales Chief Magistrate has noted that circle sentencing ‘generally received positive feedback from participants’,¹⁷² and the South Australian Attorney-General’s Department acknowledged that participants of Nunga courts have productive experiences of the Indigenous court process.¹⁷³

7.174 Western Australian Chief Magistrate Wayne Martin told the Committee that:

If we involve the Aboriginal people in the sentencing process, the sentencing process becomes a much more collegiate, constructive, cooperative, positive and collaborative process than merely the imposition of punishment – punishments that in the case of Aboriginal people are often irrelevant because they impose a fine that they cannot afford to pay or they go to prison yet again. It is a way of encouraging and facilitating the notion that this is an Aboriginal problem that needs to be addressed by Aboriginal people. They need to take ownership and control of the responsibility for addressing those problems. ... The trouble is that these courts are measured in terms of their impact on recidivism rates, which is a very short-term, blinkered and narrow way of assessing their efficacy. In Kalgoorlie we know qualitatively that the process has formed a bridge between the Aboriginal community and the court process.¹⁷⁴

7.175 Community as well as individual impacts should be considered when assessing the value of conferencing and alternative sentencing courts. Importantly, Indigenous sentencing courts provide an opportunity for increased Indigenous input into the criminal justice system in which Indigenous people are overrepresented.

A consistently reported benefit of the Aboriginal courts has been the re-empowerment of Aboriginal elders who participate in the programs. The increased authority of Aboriginal elders is considered to increase social cohesion and order within

171 J Fitzgerald, *Does Circle Sentencing Reduce Aboriginal Offending?*, Crime and Justice Bulletin no. 115, NSW Bureau of Crime Statistics and Research, May 2008, p. 7.

172 Graeme Henson, *submission 74*, p. 4.

173 Kylie O’Connell, South Australia Department of Attorney-General, *Committee Hansard*, Adelaide, 20 May 2010, p. 24.

174 Wayne Martin, Supreme Court of Western Australia, *Committee Hansard*, Perth, 30 March 2010, p. 14.

communities which participate in Aboriginal sentencing courts. Aboriginal sentencing courts have also been said [to] break down cultural barriers between Indigenous offenders and the court system, by allowing community members to communicate with the offender throughout the proceedings. This is attributed with improving understanding between judicial officers and offenders about the offence and the circumstances in which it was committed, which can assist in developing an appropriate response.¹⁷⁵

7.176 There has been some discussion regarding recognising the input of Indigenous elders in Indigenous courts through proper remuneration. The Minimum Standards for Aboriginal and Torres Strait Islander Courts states that Elders should be paid for their contribution just as magistrates, court staff and correctional officers are paid, most likely as casual employees.¹⁷⁶ Payment to elders varies across jurisdictions: there is no fee paid in addition to the provision of transport and meals in New South Wales; \$36.50 meal allowance in Queensland; \$100 per day in South Australia and the Australian Capital Territory; and \$325 per day in Victoria.¹⁷⁷

7.177 The Youth Advocacy Centre submitted that:

This monetary undervaluing of this process has a significant impact on the value of the work of the Elders in the court. It is also indicative of the lack of system recognition and building of justice infrastructure around the administering of justice to indigenous young people in a culturally appropriate way.¹⁷⁸

7.178 There is a need to fund more Indigenous sentencing courts in Australia, including outside metropolitan areas. The Aboriginal Legal Rights Movement in South Australia informed the Committee that Indigenous people living in 'regional and country areas ... do not have access to the Nunga Courts which operate within Adelaide'.¹⁷⁹

175 Law Council of Australia, *submission 46*, p. 10.

176 Australia's Aboriginal and Torres Strait Islander legal services of Western Australia, South Australia, Victoria, Queensland and Northern Territory (North), *Minimum Standards for Aboriginal and Torres Strait Islander Courts in Western Australia, South Australia, Victoria, Queensland and Northern Territory (North) 2007-2010*, p. 36; Youth Advocacy Centre, *submission 21*, p. 10.

177 K Daly and G Proietti-Scifoni, *Defendants in the Circle: Nowra Circle Court, the Presence and Impact of Elders, and Re-Offending*, Griffith University School of Criminology and Criminal Justice, Brisbane, p. 7.

178 Youth Advocacy Centre, *submission 21*, p. 10.

179 Michael Wanganen, ALRM, *Committee Hansard*, Adelaide, 20 May 2010, p. 12.

- 7.179 The Law Council of Australia recommended that ‘greater resources be allocated toward the expansion of Aboriginal court programs, in particular to enable the courts to sit more often in regional and remote areas’.¹⁸⁰ This is important ‘to ensure that there is equity in access to the law delivered in this manner to all Indigenous people who wish to participate in such processes’.¹⁸¹
- 7.180 However, the success of Indigenous sentencing courts as a better alternative to mainstream sentencing requires the existence of programs that assist clients in fulfilling their sentences and contribute to their rehabilitation. As the Queensland Department of Justice and Attorney-General noted, ‘just having a court with a special process is not necessarily helpful if you do not back it up with programs, like employment programs or education programs, that give people meaningful lifestyles away from the court’.¹⁸²
- 7.181 Ken Zulumovski, from the PIAC believes Indigenous sentencing courts have the capacity to delay or divert young people from being incarcerated, but notes that there is a lack of appropriate services to refer to, such as drug and alcohol services.¹⁸³
- 7.182 Wayne Applebee and Paul Collis noted in their submission that ‘currently there are no programs being offered in the ACT which are structured for the rehabilitation of offenders’.¹⁸⁴ Mr Applebee, as a panel member of the Australian Capital Territory Circle Court, further commented that ‘we have got a Circle Court which works effectively – and everything works fine – but we are still limited in the options that we have got for sentencing’.¹⁸⁵
- 7.183 A recent evaluation of the Children’s Koori Court of Victoria (CKC) found that while the recidivism rate was still relatively high, the participation rate of young Indigenous defendants appearing before the CKC was overwhelmingly positive. The evaluation interpreted this low failure to appear rate as evidence that the Koori community was felt connected to

180 LCA, *submission 46*, p. 10.

181 A Hennessy, *Indigenous Sentencing in Queensland Magistrates Court*, speech given at Law Council of Australia Rule of Law Conference, Brisbane, 31 August 2007, p. 11, <www.lawcouncil.asn.au/fms/speeches/Rule%20of%20Law/Session%205%20Annette%20Hennessy.pdf> accessed 9 July 2010.

182 Terry Ryan, Queensland Department of Justice and Attorney-General, *Committee Hansard*, Brisbane, 4 May 2010, p. 8.

183 Ken Zulumovski, PIAC, *Committee Hansard*, Sydney, 4 March 2010, pp. 28-9.

184 Wayne Applebee and Paul Collis, *submission 94*, p. 17.

185 Wayne Applebee, *Committee Hansard*, Canberra, 13 May 2010, p. 11.

the sentencing processes and had a sense of ownership of the CKC. The evaluation found that:

... the CKC is an important vehicle for satisfying the demands by Indigenous people for a more effective legal system through, among other things, including a significant role for ERP's [Elders and/or Respected Persons] in sentencing decisions.¹⁸⁶

- 7.184 Dr Weatherburn from BOCSAR made similar remarks about Circle Sentencing in New South Wales:

The thing to remember about Circle Sentencing is it may not have any immediate effect on reoffending but it certainly does not make things worse and if you had to choose between that and a classic court format and your concern was capacity building and strengthening Aboriginal communities, it would be better to go down that Circle Sentencing track. It is good to think about diversion programs not just in terms of the narrow focus on getting the imprisonment rate down now, or getting the reoffending rate down now, but looking to the medium to longer term.¹⁸⁷

Drug and Alcohol Courts

- 7.185 Drug and alcohol courts link offenders with appropriate services and programs that address the underlying factors contributing to offending behaviour.

- 7.186 Scott Wilson, Aboriginal Drug and Alcohol Council (ADAC), explained that when offenders with drug or alcohol problems appear in court:

...the problem is that the magistrate there really has no alternative but eventually to give that sort of client a good behaviour bond, a fine or incarceration, so we need these alternatives – a treatment centre or something like that – that they could refer them to.¹⁸⁸

- 7.187 Michael Levy, a professor at the Australian National University, acknowledged that 'the courts struggle. Magistrates want alternatives'.¹⁸⁹

186 Borowski, A. 2009. *Courtroom 7: An Evaluation of the Children's Koori Court of Victoria*. Latrobe University, Bundoora, p. 48.

187 Don Weatherburn, *Committee Hansard*, Sydney, 4 March 2010, p. 28.

188 Scott Wilson, Aboriginal Drug and Alcohol Court, *Committee Hansard*, Adelaide, 20 May 2010, p. 50.

189 Michael Levy, Australian National University, *Committee Hansard*, Canberra, 4 February 2010, p. 8.

An evaluation of drug court initiatives in rural and remote areas found that:

Magistrates involved in [rural and remote] court diversion programs often noted that the very availability of *any* programs to divert offenders towards drug treatment, rather than a punitive sanction, was a positive. ... Magistrates' support for diversion appeared to be based on their frustration with traditional sanctions, such as fines, custodial or noncustodial sentences, as mechanisms for dealing with drug-related offenders.¹⁹⁰

- 7.188 It is evident that incarceration will not address or cure alcohol or drug addictions, and yet, as substance abuse plays a significant role in Indigenous youth offending, this is precisely what is required to reduce offending behaviour. Northern Territory Magistrate Oliver told the Committee:

I often see reports of people who are now in their 20s, 30s or 40s who have a history of having started high-level alcohol and drug abuse at the age of 12 or 13. That it takes to 40 to address that issue and get someone into rehabilitation is a tragedy.¹⁹¹

- 7.189 A solution to this wide-spread problem is the establishment of drug and alcohol courts, especially for youth, where offenders receive rehabilitation and treatment as part of their sentence. The objective is to remove substance abuse as a risk factor for reoffending, thereby improving the offender's chances of avoiding further contact with the criminal justice system. Drug courts operate across Australia under the National Illicit Drug Diversion Initiative (IDDI).

- 7.190 It is increasingly recognised that these initiatives are also necessary for juveniles. Western Australia has a Drug Court in both the Magistrate's and Children's Courts of Perth.¹⁹² South Australia offers a Youth Court Assessment and Referral Drug Scheme for youth to receive alcohol or drug treatment as part of their sentence or conferencing agreement.¹⁹³ In Tasmania, the Court Mandated Diversion of Drug Offenders program operates for both adult and juvenile offenders.¹⁹⁴

190 Australian Institute of Health and Welfare, *The Effectiveness of the Illicit Drug Diversion Initiative in Rural and Remote Australia*, April 2008, p. 97.

191 Sue Oliver, *Committee Hansard*, Darwin, 6 May 2010, p. 50.

192 Aboriginal Legal Service Western Australia, *submission 19*, p. 23.

193 South Australia Government, *submission 82*, p. 5.

194 Tasmanian Government, *submission 90*, p. 9

- 7.191 New South Wales has a specific court for youth between the ages of 14 and 18 that deals with both alcohol and drugs, the Youth Drug and Alcohol Court (YDAC). Its aim is 'to divert young offenders from further drug use and reoffending by providing specialist assistance in a number of areas'.¹⁹⁵ YDAC also addresses related issues that may contribute to offenders' criminal behaviour, such as homelessness, poor health or lack of education.¹⁹⁶ Although the court has been in operation for 10 years, it is still a pilot program.¹⁹⁷
- 7.192 Several ATSILS view drug and alcohol courts favourably:
- The integration of alcohol and drug rehabilitation programs with diversionary justice programs has the twin benefits of reducing the incarceration of offenders while utilizing courts to intensively supervise and enhance compliance with health programs of rehabilitation. They are, in effect, symbiotic.¹⁹⁸
- 7.193 The Law Society of New South Wales supports drug courts:
- The lesson to be learnt from evaluations of the Drug Court is that the intensive use of justice system resources in the community, and the evaluation and monitoring of an offender who gets treatment for drug dependency, is effective in changing lives and is evidence based.¹⁹⁹
- 7.194 Unfortunately, consistent with low Indigenous participation rates for other diversionary measures, Indigenous people are less likely to be referred to drug courts than non-Indigenous people, and those who do participate are less likely to complete a drug program successfully.²⁰⁰ Indigenous offenders, who are more likely to abuse alcohol or petrol than illicit drugs, and more likely to be involved in violent offences, tend to be considered ineligible for many drug diversion programs.²⁰¹

195 New South Wales Department of Education and Training, *submission 43*, p. 13.

196 Children's Court of New South Wales, *submission 55*, p. 1.

197 Hilary Hannam, *Committee Hansard*, Sydney, 4 March 2010, p. 32.

198 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 11.

199 Law Society of New South Wales, *submission 29*, p. 3.

200 Western Australia Department of Indigenous Affairs, *submission 83*, p. 6; Australian Institute of Health and Welfare, *The Effectiveness of the Illicit Drug Diversion Initiative in Rural and Remote Australia*, April 2008, p. 20.

201 Western Australia Department of Indigenous Affairs, *submission 83*, p. 6; Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, January 2006, p. 308; Australian Institute of Health and Welfare, *The Effectiveness of the Illicit Drug Diversion Initiative in Rural and Remote Australia*, April 2008, p. xii.

- 7.195 Mental health problems can disqualify people from drug courts, despite the strong link between substance abuse and mental illness. Rosemary Connors of the Ipswich Community Justice Group expressed her frustration that:
- ...even though they have drug and alcohol issues, they cannot meet the criteria for drug court because they have mental health issues and the drug court will not take them.²⁰²
- 7.196 The Alcohol and Other Drugs Council of Australia recommends that eligibility criteria for youth drug courts be expanded to include licit substances, such as solvents and inhalants.²⁰³
- 7.197 YDAC is one such youth court that accepts individuals regardless of the type of substance abuse. Another significant aspect of YDAC is that, unlike many drug courts under the Illicit Drug Diversion Initiative, people who have committed violent offences are not excluded. New South Wales Children's Magistrate Hilary Hannam explained to the Committee:
- I think one of the features in particular that makes it a good program for Indigenous young people is that, unlike other drug courts in Australia and around the world, we do not screen out violent offenders. ... Historically, these kinds of programs screen out the most difficult offenders and the ones who need it most.²⁰⁴
- 7.198 YDAC's inclusion of alcohol dependency issues and violent offences – two factors that feature highly in Indigenous offending patterns – may explain how the court 'has proved very effective for Indigenous young people' even though it is not an Indigenous-specific court.'²⁰⁵
- 7.199 Recently the New South Wales Government announced that its Magistrates Early Referral into Treatment (MERIT) program for offenders with drug issues would be expanded to include alcohol abuse treatment in a bid to further reduce recidivism.²⁰⁶
- 7.200 However, despite the success of drug courts in reducing drug-related criminal behaviour, they are not available to all Australians, particularly those who live in rural or regional areas. Many drug courts, including YDAC, do not operate outside urban areas.

202 Rosemary Connors, Ipswich Community Justice Group, *Committee Hansard*, Brisbane, 4 May 2010, p. 47.

203 Alcohol and Other Drugs Council of Australia, *submission 65*, p. 7.

204 Hilary Hannam, *Committee Hansard*, Sydney, 4 March 2010, p. 33.

205 Sarah Crellin, *submission 2*, p. 1.

206 B Robins, 'Court Program to Treat Alcoholics', *Sydney Morning Herald*, 26 July 2010, p. 5.

- 7.201 One of the limiting factors for drug and alcohol courts to work effectively in remote and regional Australia is the dearth of adequate treatment services and resources. A lack of local supporting infrastructure for drug and alcohol treatment simply brings magistrates back to the original bind of handing down ineffectual sentences. Recommendation 8 in chapter 4 calls for further support for alcohol and drug use services in Indigenous communities.

Committee comment

- 7.202 The Committee supports Indigenous sentencing courts for their cultural and social benefits to Indigenous communities and their long-term impacts on Indigenous involvement in the criminal justice system. The Committee acknowledges the progressive work of magistrates and court officials in forging the relationship with community elders and trialling new practices.
- 7.203 The Committee further commends the involvement of dedicated Indigenous elders and respected community members in Indigenous specific courts and their commitment to improving Indigenous youth contact with the criminal justice system. The Committee supports adequate remuneration, or similar recognition of the value of the work, for elders so that their role is acknowledged as a vital part of an effective court process rather than as an auxiliary bonus.
- 7.204 The Committee is concerned that the interconnectedness of drug and alcohol abuse and criminal behaviour is not being addressed adequately in efforts to reduce Indigenous involvement with the criminal justice system.
- 7.205 The Committee supports the role that drug and alcohol courts and Indigenous sentencing courts play in seeking to tackle the underlying factors behind criminal activity. However, the Committee understands that the success of these different courts requires the presence of social, education and health infrastructure that can support Indigenous offenders in avoiding the cycle of substance abuse and crime.
- 7.206 The Committee is concerned that, in many regional and remote areas where offending rates are high, alternative sentencing options are either sporadic or non-existent. In particular, the Committee strongly urges the Northern Territory Government to extend its alternative sentencing model to make it fully available to young Indigenous people in centres with high offending and incarceration rates.

Recommendation 28 – Study on sentencing options

- 7.207 **The Committee recommends that the Australian Institute of Criminology undertake an analysis of sentencing options and outcomes for Indigenous youth and young adults and the use of available diversionary options to determine whether alternative sentencing options are fully utilised before resorting to incarceration.**

Recommendation 29 – Alternative sentencing options

- 7.208 **The Committee recommends that the Attorney-General evaluate outcomes for alternative sentencing options, such as reduced recidivism and improved positive and independent living, and from this research develop a proposal for a range of Indigenous alternative sentencing options and present it to the Standing Committee of Attorneys-General for inclusion in the National Indigenous Law and Justice Framework.**
- 7.209 The Committee is concerned at the significant amount of time that elapses between a young Indigenous offender being charged by the police and their appearance in court. The Committee acknowledges that this period can lead to young offenders becoming disassociated with the consequences of their actions.
- 7.210 The Committee is of the view that diversion would be most effective if it began at the earliest stage of a young Indigenous person's involvement with the criminal justice system. The Committee observed a Marae Court (Te Kooti Rangatahi) in New Zealand which involves a process of family conferencing and behaviour modification that takes place prior to a young Maori person's day in court. In this context, the day in court marks an individual's and family's success in making behavioural changes, including improvements in school attendance. While acknowledging that New Zealand approaches to alternative sentencing and diversion are not directly transferable to the Australian context and that data is not available on the impact of the Marae Courts, the Committee was impressed by the conferencing process and the focus on behavioural change.

Recommendation 30 – Pre-court conferencing

7.211 The Committee recommends that the Attorney-General takes to the Standing Committee of Attorneys-General the proposal for a nationwide program that begins the rehabilitation process of young Indigenous offenders from the point at which they are charged with an offence. The Committee recommends that such a program should include:

- Assigning a community services case worker to an individual immediately after they have been charged to organise a family conference
- A victim contact meeting where the offender hears the consequences and impacts of their unlawful actions on the victim
- Ascertaining, through family conferencing, any underlying problems that are influencing offending behaviour and setting out a plan for behavioural change with clear targets to be achieved prior to attending court. Pre-court plans for the youth could include:
 - ⇒ Regular attendance at drug and alcohol counselling and medical treatment as required
 - ⇒ Regular meetings or counselling sessions with a court approved community or family mentor or elder
 - ⇒ A genuine apology to the victim(s)
 - ⇒ The development of clear goals and aspirations for living a more productive and independent life
 - ⇒ Where appropriate, more regular and constructive family engagement
 - ⇒ A renewed commitment from significant family members to engage with the offender and involve them positively in family life
 - ⇒ Improvement in school attendance or retention in school, and
 - ⇒ Improvement in apprenticeship or training outcomes.

Sentencing of individuals who have engaged with this program should take into account any genuine progress towards meeting these targets for behavioural modification.

Indigenous youth in custody

7.212 In most cases, Indigenous youth first come into contact with the criminal justice system through local policing. Continued appearances and sentencing often represents the next step in the progression of contact. Unfortunately, far too many Indigenous juveniles and young adults further progress into custody, either in juvenile detention centres or in adult correctional facilities. Furthermore, far too many young Indigenous people also cycle back into the criminal justice system upon finishing their custodial sentences. This section examines the critical link between rehabilitation and reducing recidivism, both through the provision of services and programs to Indigenous youth while they are in custody, and continuing that rehabilitation once they return to their communities.

Recidivism and rehabilitation

7.213 The exit point in the criminal justice system occurs when an offender completes his or her sentence. Unfortunately, many young offenders re-enter the system shortly after their release. This trend is even more marked for Indigenous youth, resulting in the exit point becoming instead a 'revolving door' of recidivism that takes them back into contact with the police, courts or prisons. Jurisdictions have a responsibility to ensure that young Indigenous offenders are provided with appropriate rehabilitation and support while they are in custody in order to reduce recidivism.

7.214 A Victorian magistrate stated that 'the detention of young persons in the prison system as we know it is not going to rehabilitate them and practically guarantees that they will be serving sentences in adult prison'.²⁰⁷

7.215 Dr Don Weatherburn from BOCSAR stressed to the Committee that reducing recidivism through rehabilitation is fundamental for reducing the overrepresentation of Indigenous people in the criminal justice system:

It is important to know, though, that the population of any group in jail is far more sensitive to the rate at which people come back than to the rate at which they go there for the first time. One of the reasons the Aboriginal imprisonment rate is so high is not so much the differential in the rate of arrival for the first time as the huge differential in the rate at which they come back. For reasons that only a mathematician would care about, tiny changes in the rate of

207 Edwin Batt, *Committee Hansard*, Melbourne, 3 March 2010, p. 14.

return to prison make big differences to the number of people in prison. So, if you are looking for a short- to medium-term strategy for reducing Aboriginal imprisonment, there could be no better place to start than rehabilitation strategies for reducing the proportion of Aboriginal people who, after release from prison, come back to prison.²⁰⁸

7.216 The evidence shows that incarceration in itself is not an effective deterrent to criminal behaviour because it does not address the underlying economic, social, psychological and physiological factors that increase the risk of offending behaviour. Furthermore, acute and repeated contact with the criminal justice system and exposure to custodial sentences are in fact risk factors for criminal activity. Again, because Indigenous people are more likely to come into contact with the front end of the criminal justice system, Indigenous people are also more likely to have higher recidivism rates.

7.217 Recidivism rates are difficult to identify, as is the definition of success in reducing recidivism. The AIC told the Committee that recidivism:

...is very difficult to measure in a comparable way across the jurisdictions in Australia. The AIC is currently involved in a national research project to develop national counting rules that will allow us to more effectively measure recidivism and to break that down by Indigenous status.²⁰⁹

7.218 Also, there are different ways of viewing successful programs that combat recidivism. Some would consider a mere lessening of reappearance in the criminal justice system an achievement, whereas others would only consider the complete elimination of future criminal behaviour a success. There are other less tangible impacts on recidivist behaviour that are impossible to measure and not incompatible with continued criminal activity: recognition of unhelpful underlying conditions; better educational outcomes which enable a better future for one's children; and, improved engagement with the community.

7.219 Researchers and program managers point out that there are other benefits to addressing offending risk factors than reducing offending in the short-term. A journal article on the New South Wales Post Release Support Program (PRSP) noted that 'one of the interesting points to the [PRSP] was that, while the statistical results on re-offending were not conclusive, the

208 Don Weatherburn, *Committee Hansard*, Sydney, 4 March 2010, p. 18.

209 Kelly Richards, AIC, *Committee Hansard*, Canberra, 11 February 2010, p. 15.

qualitative interviews among staff and offenders were overwhelmingly positive about the program'.²¹⁰

- 7.220 The Committee encountered similar attitudes among program providers, who generally found diversion programs to be invaluable for enabling youths to gain insight into their behaviour through meeting face-to-face with their victims and admitting their errors to their community.
- 7.221 Nevertheless, young people in detention often return to detention later in life, and the younger they are on their first contact, the more times they are likely to return. Indigenous youth are overrepresented in rates of reappearance in court and in detention.
- 7.222 An eight year study found that the rate of reappearance in court for Indigenous juveniles who had first encountered the New South Wales Children's Court was significantly higher compared to non-Indigenous juveniles.²¹¹ From this same cohort, 90 percent of the male Indigenous population were destined to appear in an adult court, compared to 60 percent of their non-Indigenous counterparts.²¹²
- 7.223 Data from Queensland corroborates this trend, with almost 90 percent of Indigenous youth who complete their sentence subsequently being arrested.²¹³ In Western Australia, the recidivism rate for Indigenous juveniles was 8 in 10 for males, and 6.5 in 10 for females.²¹⁴ At Roeburn Regional Prison in Western Australia, 'many of the same prisoners returned, mostly for the same offences'.²¹⁵
- 7.224 Indigenous young adults are quicker to reoffend than their non-Indigenous counterparts:
- ...61 per cent of younger Aboriginal adults, who we categorise as people under the age of 26, return to custody within two years, whereas 48 per cent of younger non-Aboriginal adults return to custody within two years.²¹⁶

210 C Cunneen and G Luke, 'Recidivism and the Effectiveness of Criminal Justice Interventions: Juvenile Offenders and Post Release Support', *Current Issues in Criminal Justice*, vol. 19, November 2007, p. 198.

211 J Wundersitz, *Indigenous perpetrators of violence: Prevalence and Risk Factors for Offending*, AIC Report 105, 2010, p. 26.

212 J Wundersitz, *Indigenous perpetrators of violence: Prevalence and Risk Factors for Offending*, AIC Report 105, 2010, p. 26.

213 Queensland Government, *submission 91*, p. 16.

214 Wayne Martin, *Committee Hansard*, Perth, 30 March, 2010, p. 3.

215 N Perpitch, 'Rio Helps Indigenous Convicts Back to Work', *Australian*, 20 July 2010, p. 8.

216 Luke Grant, Corrective Services New South Wales, *Committee Hansard*, Sydney, 4 March 2010, p. 20.

- 7.225 These figures demonstrate the acute need for effective rehabilitation programs for young Indigenous offenders in custody as a means of reducing recidivism, and therefore reducing the overrepresentation of Indigenous juveniles and young adults in the criminal justice system.
- 7.226 The Committee has heard evidence of Indigenous specific diversionary programs in correctional facilities that are designed to rehabilitate young offenders. One example from New South Wales is Balund-a, which is a:
- ...residential diversionary program located near the Clarence River in northern NSW. It is available to Indigenous people aged between 18 and 35 who are referred by a Magistrate, whether upon conviction or prior to sentence. The program, which officially opened in August 2009, can accommodate about 50 people.²¹⁷
- 7.227 The Balund-a program:
- ...includes offending behaviour programs based on cognitive therapy; a wide range of educational and vocational courses; relationship and family programs; cultural programs run by local Elders; practical farm and community work experience for offenders; and employment assistance.²¹⁸
- 7.228 The New South Wales Ombudsman describes the program as having support from Indigenous communities because it offers a 'holistic, culturally appropriate approach...to the rehabilitation of Aboriginal offenders'.²¹⁹
- 7.229 When in New Zealand, the Committee visited Te Whare Wakaahuru, which is a total immersion Maori focus unit in the Rimutaka Prison near Wellington. The unit works with Maori and non-Maori prisoners to change their behaviours through learning language and culture, and instilling a sense of community responsibility. Unfortunately, in Australia Indigenous focussed rehabilitation programs of this type are the exception rather than the rule in correctional facilities.
- 7.230 The Committee has heard that young Indigenous women have difficulty accessing gender specific support and rehabilitation services while they are in detention. The Australian Women's Coalition noted that 'because of their relatively smaller numbers compared to young men and boys, young

217 Chief Magistrate of the Local Court New South Wales, *submission 74*, p. 4

218 New South Wales Ombudsman, *submission 56*, p. 15.

219 New South Wales Ombudsman, *submission 56*, p. 15.

women and girls are sadly often over-looked as a distinct group with distinct risks and needs'.²²⁰

In-custody education and training

- 7.231 In-custody education and training is a key aspect of opening new pathways for offenders, building self esteem, and developing study and workplace skills. The opportunity for young offenders in custody to re-engage with 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.
- 7.232 The Commonwealth and state and territory governments have implemented a variety of programs to assist youth at risk with education and training. Some are targeted specifically at those currently involved in the criminal justice system, while others are targeted more generally at disadvantaged youth but are also accessible to juvenile offenders.
- 7.233 The Department of Education, Employment and Workplace Relations (DEEWR) administers a number of programs and initiatives to foster positive aspirations, increase engagement, and improve education, training and employment outcomes for Indigenous young people. In addition the Department provides services that offer support and assistance to young people caught up in the criminal justice system by addressing their individual needs and helping them enter productive pathways.²²¹
- 7.234 The South Australia Department of Correctional Service commented that:
- We have recently formed a partnership with BHP Billiton and accessed some Commonwealth funding for training of offenders in preparation for their release and giving them skills that will qualify them to work in mining operations connected to Roxby Downs and the BHP operation there. BHP owns a whole range of pastoral set-ups, farms, which need to be tended and looked after. The groups of offenders, predominantly Aboriginal offenders, go and learn a whole range of skills and at the same time look after some of these farming operations. It is too early to talk about a sustained success. However, out of the first group of 12

220 Australian Women's Coalition, *submission 76*, p. 1.

221 Department of Education, Employment and Workplace Relations, *submission 63*, p. 6.

participants, as soon as their sentence finished or they were granted parole, six of them were offered employment and have transitioned into employment with BHP Billiton. It is a very tangible example, albeit a small one at this stage, of enhancing the successful reintegration of Aboriginal people and other offenders as well into the community by providing some very tangible work opportunities.²²²

- 7.235 In the Northern Territory, a Job Services Australia provider has a highly productive working relationship with the Alice Springs Correctional Centre. The provider has also established strong working relationships with key employers in Alice Springs so that work experience and employment opportunities can be secured for pre-release prison activities.
- 7.236 The provider works closely with prisoners to develop their individual Employment Pathway Plan, identify potential training and employment options and discuss available assistance to address barriers which may prevent an individual from being able to easily transition back into the mainstream environment. Due to various work experience activities and employment placements undertaken during the prison period, several of these prisoners have moved immediately into employment upon release.
- 7.237 In addition, the provider has engaged with local high school principals to identify and work with young people who are either at risk of dropping out of school or leaving school without a further education or employment option. Together they are developing a network of support groups who can assist including the local youth focused programs called 'Bush Mob'.²²³
- 7.238 In New South Wales, 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 New South Wales. In the 2009 school year (up until the end of June), there were 1 311 detainees 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. Difficulties remain, however, with

²²² Peter Severin, Department of Correctional Services, South Australia, *Committee Hansard*, 20 May 2010, p. 24.

²²³ Department of Education, Employment and Workplace Relations, *submission 63*, p. 7.

facilitating the re-admission of offenders into the mainstream schooling system when they are released from custody, and

- 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.²²⁴

7.239 DEEWR discussed the support that is available to people in custody in relation to education and training. David Pattie from DEEWR made the following comment:

Once a person is in custody, they cease to receive the other Abstudy payments but the lawful custody allowance is available to them. That allows for essential course costs on approved courses, and the prison or wherever they are held can apply to have that funding for that individual to do courses that can contribute to either their apprenticeship or their student studies and things like that. There is no limit on that funding; it just has to be an approved and appropriate course at an approved location.²²⁵

7.240 The Department of Human Services raised a concern with the Committee that there is a low take up rate of this payment. In its submission it stated:

There is a low take up rate of this payment. Program responsibility for this payment rests with the Department of Education, Employment and Workplace Relations (DEEWR). Centrelink has raised this with DEEWR previously and will continue to work with DEEWR to explore opportunities to improve take up rates.²²⁶

7.241 Peter Muir, Chief Executive, Juvenile Justice for the Department of Human Services, New South Wales, commented that levels of education can improve in custody due in part to the support provided and the regular attendance of detainees:

I have seen figures from the Department of Education and Training of young people entering custody with reading ages of

224 New South Wales Government, *submission 84*, p. 21.

225 David Pattie, Department of Education, Employment and Workplace Relations, *Committee Hansard*, Canberra, 17 June 2010, p. 21.

226 Department of Human Services, *submission 35*, p. 1.

six and seven and leaving with reading ages of 14 or 15. So we actually do see significant increases in literacy and numeracy.²²⁷

Transitioning needs and post-release support

7.242 The Committee has heard many calls for greater access to accommodation, adequate rehabilitation programs including alcohol and substance abuse, appropriate links to educational programs and qualifications, transitions to employment and other services to be provided to young Indigenous offenders following their release from custody.

7.243 Evidence given to the inquiry emphasises how important it is for young people to be prepared for life outside detention well before they end their sentence or are reviewed for parole. This applies equally to learning opportunities (education, training programs), material assistance (employment, apprenticeships, accommodation) and emotional and psychological support (counselling, drug rehabilitation).

7.244 Terry Ryan from the Queensland Department of Justice and Attorney-General, noted that court alternatives for Indigenous offenders are only effective if they are complemented by post-release support:

We have had evaluations done on the Murri Court and the Queensland Indigenous Alcohol Diversion Program, which are currently under consideration by the government. The evaluations demonstrate that just having a court with a special process is not necessarily helpful if you do not back it up with programs, like employment programs or education programs that give people meaningful lifestyles away from the court.²²⁸

7.245 The importance of post-release programs was emphasised by the Children's Magistrate of the New South Wales Youth Drug and Alcohol Court at a public hearing in Sydney:

We have recently done some analysis of our data...what it showed for Aboriginal men, in particular, was that the best correlates of the likelihood of reoffending were inadequately addressing education, employment, and alcohol and other drug issues.²²⁹

227 Department of Human Services, New South Wales, *Committee Hansard*, Sydney, 4 March 2010, p. 21.

228 Terry Ryan, Queensland Department of Justice and Attorney-General, *Committee Hansard*, Brisbane, 4 May 2010, p. 8.

229 Hilary Hannam, Children's Magistrate, *Committee Hansard*, Sydney, 4 March 2010, p. 52.

- 7.246 Research on the post-release experience of young Indigenous adults has found that ‘the four most important factors contributing to successful re-entry [into society] are accommodation, education and employment, treatment programs, and social networks’.²³⁰ These same factors play positive roles in keeping Indigenous youth out of the criminal justice system in the first place. Unfortunately, these areas of importance to building resilience and buffering against criminal behaviour are of a poor standard for Indigenous Australians exiting custody.
- 7.247 The lack of adequate post-release support is considered to be one of the reasons that recidivist behaviour is inevitable. The ACT for Kids submission stated that ‘research indicates that young people are at high risk of re-offending immediately following release from detention, it is therefore critical that supports are in place to reduce this risk’.²³¹
- 7.248 The Queensland Government reports that nearly nine in ten Indigenous young people leaving youth supervision or detention will be arrested by police after completing their order or period in custody. In response, the Government has developed and is implementing a range of innovative programs to offer support for young people exiting detention, such as:
- youth Justice Workers who supervise young people involved in the youth justice system to address factors contributing to their offending and encourage young people to build positive connections in their communities
 - the Transitions Program which aims to resolve potential post-release barriers by bringing community agencies into correctional centres to work with offenders, and
 - the Youth Housing and Reintegration Service is a support service to assist young people aged 12 to 20 years who are homeless or at risk of homelessness, to transition to greater independence and stability by providing access to a range of accommodation options appropriate to clients' housing needs.²³²
- 7.249 In 2008, the Western Australian Departments of Education and Corrective Services signed a Memorandum of Understanding which outlines the responsibilities of each agency in the management of young people involved in the justice system. The memorandum supports the case

230 R Gilbert and A Wilson, *Staying Strong on the Outside: Improving the Post-Release Experience of Indigenous Young Adults*, Indigenous Justice Clearinghouse Research Brief, February 2009, p. 6.

231 ACT for Kids, *submission 51*, p. 4.

232 Queensland Government, *submission 91*, p. 16-23.

management of young people entering and exiting remand and detention and for those with court orders.²³³

7.250 Effective transitioning from detention back into the community is essential, albeit challenging. Transitioning requires case planning between custody and community, and the ability for young people to have access to similar programs in the community that will continue their rehabilitation. There may be a need for community specific individualised mental health, drug and alcohol, disability, grief and trauma support. Effective cultural, family and community links and supports may also need to be part of an effective transition plan.

7.251 A study by the AIC argued that effective transitioning had to be accompanied by overcoming disadvantage in Indigenous communities:

Correctional approaches must involve throughcare principles and engage family, community members and respected persons like elders, within the context of much broader improvements to relieve social disadvantage, if lasting change is to be realised.²³⁴

7.252 In addition to social needs, homelessness and the availability of safe accommodation have been identified as a significant risk factor for reoffending. A 2006 study of 194 prisoners in New South Wales and Victoria (16 percent of whom were Indigenous) found that 18 percent were homeless prior to imprisonment and 21 percent were homeless post-release. Half the Indigenous participants were still homeless nine months after their release.²³⁵

7.253 The Australian Women's Coalition (AWC) urged that improvements in post-release support services are needed to reduce recidivism rates amongst young Indigenous women. The AWC noted that the lack of post-release accommodation is potentially a more significant issue for young Indigenous women:

Homelessness is an area where girls are further disadvantaged by the fact there is no consistent national approach to their accommodation needs. Housing and homelessness issues are central to poorer outcomes for women and girls, many of whom

233 Department of Education, Western Australia, *submission 81*, p. 16.

234 M. Willis, Reintegration of Indigenous prisoners: key findings. *Trends and Issues in crime and criminal justice*, No. 364, 2008, p. 6.

235 Robyn Gilbert and Anna Wilson, Written for the Indigenous Justice Clearinghouse, *Staying strong on the outside: improving the post-release experience of Indigenous young adults*, February 2009.

have had disrupted accommodation due to histories of neglect and abuse.²³⁶

7.254 The Australian Human Rights Commission identified a range of areas for improvement in relation to Indigenous women's needs following their release from prison, including:

... the importance of housing and emergency accommodation options for Indigenous women when released from prison; the importance of being able to access a broad range of programs upon release, including healing; and the lack of coordination of existing government and community services, which has the result of limiting the accessibility of services to Indigenous women. Anecdotal evidence suggests that Indigenous women have difficulty in accessing support programs upon their release and are left to fend for themselves, sometimes leading them to homelessness, returning to abusive relationships or reoffending.²³⁷

7.255 Continued education and employment training or placement is also a critical factor in establishing new pathways for young offenders. The Committee heard about a number of programs that assist young Indigenous people in obtaining employment following their release from custody. The evidence suggests that it is imperative to assist young offenders in either continuing education or finding employment as a way to reduce recidivism, increase social engagement and equip ex-offenders with the skills to live productive lives.

7.256 In the Narrogin region of Western Australia, the Department for Corrective Services provides 20 hours per week mentor support for juveniles released from detention centres to support successful reintegration to school. This is supported by school psychologists and school based student services teams. Department for Corrective Services officers liaise with teachers of children who have been in detention and request the educational program so schools can plan for students return to school. Similar programs are replicated in other areas of Western Australia.²³⁸

7.257 As mentioned in chapter 6, Rio Tinto is running a Work Readiness Program in Western Australia that provides opportunities for employment in the mining industry once prisoners have completed their sentences. Other companies and industry bodies are urged to similarly

236 Australian Women's Coalition, *submission 76*, p. 4.

237 Human Rights and Equal Opportunity Commission, *Social Justice Report 2004*, p. 8.

238 Department of Education, Western Australia, *submission 81*, p. 15.

address workforce needs through investing in local Indigenous communities and custodial centres with appropriate work readiness programs.

- 7.258 The Queensland Government's *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014* aims to transition 100 high risk young Indigenous people, including those who have had contact with the criminal justice system, into employment following the Active Trail project. The Strategy also plans to transition 200 adult Indigenous offenders each year into traineeships or employment through a range of initiatives and programs.²³⁹
- 7.259 At a public hearing, DEEWR informed the Committee that, in relation to collaborative arrangements between departments for day work release and licence work release, the following employment services are funded in Western Australia, South Australia, New South Wales and Victoria:
- ...the Job Services Australia providers are working with young people pre-release and with Centrelink to coordinate support as they make that transition. That goes to helping them plan what happens after their release and ensuring they get the right kind of support to make a transition to employment.²⁴⁰
- 7.260 The pre-release prisoner (PRP) initiative aims to maximise employment opportunities for people leaving prison and reduce their reliance on welfare by improving job search skills and building connections with employers at the earliest opportunity. The PRP initiative is available to prisoners aged 15-20 who are not in full-time education or training and are fully eligible under Jobs Services Australia (JSA) and adult prisoners who are fully eligible under JSA. Participation in the PRP initiative is for prisoners who are in the final 12 months of their sentence and are considered likely to be available for work on partial or full day release. PRP participants have access to the full range of employment services.
- 7.261 In addition to the PRP initiative, there are a number of JSA providers who specialise in at-risk youth or Indigenous employment. These JSA providers can deliver specialist assistance to Indigenous young people who may be transitioning from detention or who have a criminal record.²⁴¹

239 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014*, p. 29

240 Jo Wood, Department of Education, Employment and Workplace Relations, *Committee Hansard*, Canberra, 17 June 2010, p. 21.

241 Department of Education, Employment and Workplace Relations, *submission 63*, p. 9.

7.262 DEEWR noted that though the following projects do not specifically target, they do include support for young Indigenous offenders:

- Adult Voluntary Post Release Support Service (AVPRSS) - Job Futures. Through-care transition support for adult ex-prisoners returning to the Wollongong community, particularly from Silverwater and Parklea Prisons. The project will support people being released from detention centres, by assessing and addressing their barriers to community re integration
- Kitchen Social Enterprise - Jesuit Social Services - The project will be conducted in Abbotsford, Victoria, to provide accredited training and work readiness opportunities targeting ex-offender job seekers and those with complex needs, and
- Stay Connected - Outcare Incorporated - This project will initiate early intervention and prevention into the job loss faced by prisoners who are remanded in custody pending court appearances. Outcare will provide assessment and triage of risk factors to prisoners' employment, contact employers to maintain and re-secure prisoners' employment and provide quick response case management within a prisoner's first week at Hakea, Canning Vale, in Western Australia.²⁴²

7.263 While some positive transition initiatives do exist, the Committee heard evidence that post-release support is inadequate and inequitably accessed. The Queensland Government submission observed that the 'importance of developing integrated and structured arrangements for young people exiting detention is a consistent theme in the literature regarding what works to address youth offending and reoffending'.²⁴³

7.264 Mission Australia explained to the Committee that the post-release transition in New South Wales is 'done in a very patchy, piecemeal way' and provided for a maximum of 24 weeks, which 'is relatively short ... for the sort of work that needs to be done on an ongoing basis'.²⁴⁴ A study of the South Australian juvenile justice system concluded that 'transitional planning for young people exiting secure care to better equip them to return to the community and not re-offend is poor'.²⁴⁵

242 Department of Education, Employment and Workplace Relations, *submission 63*, pp. 9-10.

243 Queensland Government, *submission 91*, p. 16.

244 Anne Hampshire, Mission Australia, *Committee Hansard*, Sydney, 3 March 2010, p. 35.

245 Monsignor David Cappo, 'To Break the Cycle: Prevention and Rehabilitation Responses to Serious Repeat Offending by Young People', 2007, p. 26, <www.socialinclusion.sa.gov.au/files/breakthecycle2007.pdf> accessed 20 July 2010.

- 7.265 Indigenous offenders do not have equal access to post-release programs, as there is a 'general lack of culturally appropriate services for Indigenous children and young people'.²⁴⁶ An evaluation of the New South Wales Post Release Support Program found that although Indigenous young people benefited from the program, they were under-represented in participation rates.²⁴⁷
- 7.266 A justice advocate noted that people in prison have structure and routine in their lives that they do not have when they return home.²⁴⁸ Often there are also environmental risk factors that contribute to offending behaviour, so when youth are released from custody and returned to their original environment, any rehabilitative influences in custody are negated. This is even more striking for Indigenous youth who live in remote communities. The ACCG submission notes that:

... some children and young people (as young as 10) have to be transported the 3,000km to Perth to be held on remand, and after a stay in custody they are sent back to the community where they face the same issues with no supports for change. Without investments in culturally appropriate programs and follow-up services in these communities, there is little hope that the 'revolving door' of the justice system will cease for these children and young people.²⁴⁹

Committee comment

- 7.267 The Committee is of the view that, due to the nature of Indigenous offending trends, an emphasis on reducing recidivism through rehabilitation would have a significant impact on reducing Indigenous youth involvement in the criminal justice system. The Committee views adequate in-custody rehabilitation and transition assistance as an essential component of the states and territories' duty of care to young Indigenous people who have been removed from their communities, often for significant lengths of time, to serve custodial sentences.
- 7.268 The Committee considers that current rehabilitation during custody, through the provision of psychological support, education and training is of critical importance. The states and territories' responsibility for

246 Australian Children's Commissioners and Guardians, *submission 59*, p. 22.

247 C Cunneen et al, *Evaluation of the Aboriginal Overrepresentation Strategy*, Sydney Institute of Criminology, 2006, p. 10.

248 Lenore Ketchup, Ngooderi Mabuntha Justice Committee, *submission 1*, p. 1.

249 Australian Children's Commissioners and Guardians, *submission 59*, p. 23.

rehabilitating young offenders must also extend beyond the confines of custody and involve the delivery of practical services that provide safe accommodation, education and training and pathways to employment. In addition, there is a critical need for support for addictions and behavioural problems in order to socially and culturally reengage young Indigenous people with their communities once they have served out their sentences.

- 7.269 The Committee has heard of a number of transitioning and post-release support programs and services that are helping young Indigenous offenders return to life outside of custody. The Committee is concerned that these programs are often too short in duration to have any real impact on reducing recidivism through rehabilitation and support.
- 7.270 The Committee is concerned about the lack of appropriate post-release accommodation options for young Indigenous people. The Committee notes the importance of having safe accommodation to return to for young Indigenous people leaving custody, and recognises that young Indigenous women are vulnerable in this respect. The Committee advocates for more funding to be provided to address the issue of homelessness and inadequate safe accommodation for young Indigenous people leaving custody, particularly young women.
- 7.271 The Committee has heard that young Indigenous women have specific risks and needs, and strongly urges all jurisdictions to develop gender-specific programs of rehabilitation and post-release support.
- 7.272 The Committee notes that employment and training services specifically targeted at Indigenous youth already involved in the criminal justice system could assist in reducing high recidivism levels. Chapter 6 discussed specific problems relating to the transition from education to employment for Indigenous youth, and made recommendations for more support services to be provided. Upon release from custody, the Committee notes that young Indigenous offenders need similar support in transitioning into employment.
- 7.273 The Committee encourages the Department of Human Services and DEEWR to continue to work together to formulate a strategy to improve the take up rates of the Abstudy Lawful Custody Allowance for Indigenous people in lawful custody for more than 2 weeks.
- 7.274 The Committee commends the work being carried out by the Jobs Services Australia provider in conjunction with the Alice Springs Correctional Centre in the support and services they provide to youth, both in prison and post-release from the correctional centre. Assisting to place people in

either employment or training plays an important role in reducing recidivism.

- 7.275 The Committee commends those companies, such as Rio Tinto and BHP Billiton, who work in collaboration with correctional facilities to provide training and employment for young Indigenous offenders.
- 7.276 The Committee recognises that without adequate post-release support, offenders will return to the same environments in which they first offended. Often it is these very environments that contribute to offending behaviour, and as such they need to be addressed to counter recidivist behaviour.
- 7.277 The Committee commends the good work being done by many small, community-based programs and organisations to assist young Indigenous offenders to positively reengage with their communities on their return from custody. The Committee is concerned that, in many cases, such groups are operating without adequate funding.
- 7.278 The Committee recommends that an expansion of post-release programs – specifically targeting Indigenous youth and young adults in the areas of accommodation, education and employment, treatment programs, and social networks – is required to reduce recidivism rates among young Indigenous people.

Recommendation 31 – Indigenous offender programs

- 7.279 **The Committee recommends that the Commonwealth Government establish a new pool of adequate and long term funding for young Indigenous offender programs. Organisations and community groups should be able to apply for funding for programs that assist young Indigenous offenders with:**
- **Post-release or diversionary program accommodation**
 - **reintegrating into the community and positive social engagement through volunteering and team involvement**
 - **reconnecting with culture where possible**
 - **drug, alcohol and other substance abuse rehabilitation**
 - **continued education and training or employment, and**
 - **life and work readiness skills, including literacy and numeracy**

The Committee recommends that this fund is geared towards small-scale community-based groups, operating in local areas, and includes a specific stream for programs that address the needs of young Indigenous female offenders. Local employers would be encouraged to mentor and train with a view to employment.

Government policy and coordination

- 8.1 Previous chapters have examined many of the key drivers of disadvantage across Indigenous communities. A number of recommendations have been made to introduce or improve early intervention and prevention strategies which will reduce the incidence of Indigenous youth and juveniles who come in contact with the criminal justice system.
- 8.2 This chapter covers two key areas: the Government policy framework which has gaps in Indigenous representation and in the provision of comprehensive data to inform and monitor change; and the service delivery model, which requires greater integration and coordination.
- 8.3 The chapter begins by reviewing the Closing the Gap policy framework to address Indigenous disadvantage across a range of portfolio areas and jurisdictions. The chapter notes the Government expenditure and progress achieved, as well as commenting on significant gaps that exist in the Closing the Gap framework that will impede future efforts to reduce Indigenous offending, recidivism and victimisation.
- 8.4 The chapter then considers the process to support and monitor progress towards reducing Indigenous disadvantage. Program evaluation, and monitoring and reporting on outcomes are an essential part of ensuring effective expenditure and Government accountability. However the Committee heard some criticism regarding evaluation procedures for programs and the reporting requirements which unrealistically expect short term miracles rather than taking a visionary approach of assessing long term changes. A number of data gaps were identified which impact on the capacity of agencies to appropriately target program support to localities and appropriately track over time local trends in Indigenous offending, recidivism and victimisation.
- 8.5 A great deal of evidence commented on the short funding cycle for intervention and prevention programs and the failure of some successful

pilot programs to secure ongoing funding. In particular grassroots and Indigenous organisations were impacted by precarious levels of funding which had implications for staff training and turnover, as well as the capacity to follow through with intervention initiatives for youth at risk.

- 8.6 Finally, how the Closing the Gap policy framework and objectives are translated into service delivery is critical in determining the progress of better outcomes for Indigenous peoples. There have been a number of successful intervention initiatives and this section outlines some of those successes and the key factors driving their success.
- 8.7 While the Committee heard from many inspiring and dedicated individuals, there was also substantial criticism at the lack of support for Indigenous grassroots organisations to deliver programs, and the lack of coordination across government agencies and jurisdictions. The section considers the dual necessity of coordinating the work of government agencies, and enabling Indigenous people to be the agents of change within their communities.

Policy framework – targeting the gaps

- 8.8 While Closing the Gap is part of the Commonwealth Government's agenda, it is also a commitment by all Australian governments to work towards a better future for Aboriginal and Torres Strait Islander people. The Council of Australian Governments (COAG) has agreed a national Closing the Gap strategy, incorporating targets, priority action areas (or 'building blocks'), national partnership agreements, extra funding and more rigorous government accountability. The National Indigenous Reform Agreement provides a framework for this strategy.
- 8.9 As outlined earlier, the seven agreed building blocks cover the following areas:
- Early childhood
 - Schooling
 - Health
 - Healthy homes
 - Safe communities
 - Economic participation, and

- Governance and Leadership.
- 8.10 Closing the Gap also sets out a partnership approach of:
- all levels of government working in partnership with Indigenous Australians
 - Indigenous people taking responsibility to lead change and promote positive norms and social behaviours in their communities, and
 - the Australian Government working with the corporate and community sector across the agreed building blocks.

Expenditure and progress

- 8.11 Each year the Prime Minister is required to report on progress on Closing the Gap targets. In February 2011, the Prime Minister the Hon. Julia Gillard MP made a statement in the House of Representatives outlining progress against the seven building blocks and released the *Closing the Gap: Prime Minister's Report 2011*.
- 8.12 In short, the Prime Minister reported that some targets were on track, while others require further improvements.

We can be confident of meeting two of the six targets: to halve the gap in infant mortality rates for Indigenous children under five by 2018 and to ensure access to early childhood education for all Indigenous four-year-olds in remote communities by 2013. We should be confident that these two targets are on track.

We see improvement in three of the six targets and with faster improvement over time we believe that these can be reached: to halve the gap in reading, writing and numeracy achievements for children by 2018; to halve the gap for Indigenous students in year 12 or equivalent attainment rates by 2020; and to halve the gap in employment outcomes between Indigenous and non- Indigenous Australians by 2018.

The final target is the most challenging of all: closing the life-expectancy gap within a generation – that is, by 2031. This means the life expectancy of Indigenous men will need to increase by over 20 years and the life expectancy of Indigenous women will need to increase by over 16 years by 2031. This is a 30-year target. No-one thinks it can be achieved sooner. Indeed it will be extremely challenging. I know we could never say mission accomplished three years into a 30-year process. But the message

of this report is clear. Together, we can do this. Together, we have a plan for progress. We do see change for the better. And we know where we want to change to continue.¹

- 8.13 The first Indigenous expenditure review was released on 28 February 2011. It contains estimates of the levels and patterns of government expenditure on services relating to Indigenous Australians in 2008-09. In 2008-09 expenditure related to Indigenous Australians was estimated to be \$21.9 billion (5.3 per cent) of total expenditure (\$411 billion).²
- 8.14 Since 2008, the Australian Government and the States and Territories have together committed an additional \$4.6 billion under the new partnership approach to Closing the Gap agreed through the Council of Australian Governments (COAG).³
- 8.15 The Committee notes this is a significant expenditure and it commends the long term financial commitment of the Government to address the breadth of issues. The Committee also notes that it has taken decades to reach this level of Indigenous disadvantage and it may take some decades to redress all areas of disadvantage. However it is the role of the Commonwealth Government to take the lead in reversing the trend and bettering outcomes for all Indigenous peoples.
- 8.16 While acknowledging that the targets set under Closing the Gap are ambitious and challenging, it remains disappointing that progress is not on track in all areas. The Committee considers this an opportunity to evaluate gaps in the policy framework which may be contributing to slower progress and to consider how to enhance the coordination and delivery of services to achieve better outcomes from the government expenditure.

Monitoring and evaluation

- 8.17 Care must be taken in interpreting data, particularly where there are short term figures that may not appropriately measure change in the community. For example, Mr Glasgow spoke of 'spikes' in reporting once a community felt able to report on behaviours:

1 *Closing the Gap: Prime Minister's Report 2011*

2 2010 Indigenous Expenditure Report, Overview, p. 7. (www.pc.gov.au/ier/publications/ier-2010). Accessed 27 April 2011.

3 Closing the Gap – Building Momentum, Ministerial Statement, the Hon. Jenny Macklin, Minister for Families Housing Community Services and Indigenous Affairs, May 11 2010, p. 1.

Initially the Magistrates Court convictions increased, so I went to find out why, and we found out that people were dobbing people in. My commissioners were ringing up and saying, 'This car's going to Weipa to bring the grog in.' The other thing is that child safety notices increased, because the child safety people came on board and worked very comfortably with the commissioners, and they used to get the feedback. They would be saying, 'You really need to remove this child, but let's see if we can find someone in the communities.' We work actively to try and reunite children when we can. Commissioners will say: 'These two are misbehaving. They had their children taken off them six months. They're on the grog. They're on the ganja. We need to bring them in and get them started on a rehabilitation program.'⁴

8.18 Rigorous evaluation of Indigenous justice programs in the past has been neglected by government and non-government service providers alike. However, throughout the inquiry the Committee noted a renewed vigour and recognition in the value of evaluating such programs. Yet, it was recognised that thorough evaluations of programs can be costly.

8.19 Adam Tomison from the Australian Institute of Criminology (AIC), confirmed that evaluation of programs was not considered to be a priority for many service providers and that this was the result of both inadequate program budgets and a prevailing organisational culture which encouraged a focus on securing access to new funding streams rather than developing and improving existing programs:

... programs often have limited budgets with limited evaluation moneys. So you have circumstances where something is put in place, it works for a bit if they are lucky, and then people move on to something else because that is how you get more funding.⁵

8.20 The inability to identify what works and why it works not only leads to the inefficient expenditure of public monies, but also as the Menzies School of Health Research (MSHR) suggested to the Committee, an erosion of the relationship between government and non-government service providers and Indigenous communities. MSHR stated:

... there is a paucity of research on ... elements essential for the design of successful interventions ... Interventions are often short term, sporadic, lacking in rigorous evaluation, lacking in corporate

4 David Glasgow, Commissioner, Family Responsibilities Commission, *Committee Hansard*, Sydney, 28 January 2011, p. 71.

5 Adam Tomison, AIC, *Committee Hansard*, Canberra, 11 February 2010, pp. 7-8.

memory and hence the ability to learn from past successes and failures ... Each program failure then feeds into the downward spiral of increased feelings of powerlessness and cynicism amongst the affected individuals and communities.⁶

- 8.21 Peter Murphy, from Noetic Solutions, who conducted a whole-of-government review of juvenile justice for the New South Wales Government, asserted that evaluation of programs and policies is lacking:

I think if we went into every block at the moment we could spend an awful lot of money and get very poor results. I think I alluded to this at the beginning this discussion: the amount of evidence about what works is not substantial. We need to put things in place for a period of time to make sure that they work and to properly evaluate what we are doing. One of my pet concerns is that in government we spend an awful lot of money doing pilot projects which we seldom evaluate or evaluate effectively.⁷

- 8.22 An issue that arose repeatedly throughout the inquiry was an obvious deficit in the way that information on Indigenous justice programs and evaluations is disseminated. The Senate Select Committee on Regional and Remote Indigenous Communities made similar findings and recommended greater use of the Indigenous Closing the Gap Clearinghouse website:

The dissemination of collected data could also be improved through greater use of the Closing the Gap Clearinghouse, which should become a central repository for all national data relevant to the development of policies and programs. A strong evidence base is important to provide a clear picture of best practice and an outline of what has worked in the past.⁸

- 8.23 Emilie Friday, representing the Australian Human Rights Commission, commented on the need for further funding from Government in relation to supporting research and evaluation in the field of Indigenous healing programs:

One of the barriers to establishing some healing programs – not withstanding some of the great things that New South Wales Juvenile Justice are doing in terms of developing some healing programs – is that there is not that sort of robust evidence that a

6 Menzies School of Health Research, *submission 3*, p. 2.

7 Peter Murphy, Noetic Solutions Pty, *Committee Hansard*, Canberra, 18 March 2010, pp. 6-7.

8 Senate Select Committee on Regional and Remote Indigenous Communities, *Final Report*, September 2010, p. 10.

lot of government departments need for getting some things off the ground. That is one of the things that we like to advocate for.⁹

Committee comment

- 8.24 The Committee believes that the evaluation of Indigenous youth justice and diversion programs is of critical importance to the long term effectiveness of Commonwealth Government investment in such programs.
- 8.25 The Committee notes that Commonwealth Government has funded \$2 million to evaluate the effectiveness of twenty Indigenous justice programs to build the evidence base to support the National Indigenous Law and Justice Framework. The evaluations will review a range of programs designed to reduce Indigenous rates of offending, incarceration and recidivism – particularly amongst Indigenous youth and perpetrators of violent crime. The evaluation projects are being conducted over two years from December 2010 to December 2012.¹⁰
- 8.26 The findings of the evaluations will provide vital information for the Standing Committee of Attorneys-General as it considers future whole-of-government Indigenous justice initiatives, and to Commonwealth, state and territory governments as they plan and implement programs and policies to reduce the level of Indigenous interactions with the criminal justice system.
- 8.27 The Committee considers that evaluations of other Indigenous youth justice and diversion programs should be funded by the Commonwealth with the findings published on the Indigenous Justice Clearinghouse website and the Closing the Gap Clearinghouse website.

9 Emilie Priday, Australian Human Rights Commission, *Committee Hansard*, Sydney, 4 March 2010, p. 31.

10 Attorney-General's Department, *Evaluation of Indigenous justice programs in support of the National Indigenous Law and Justice Framework*, <www.ema.gov.au/www/agd/agd.nsf/Page/Indigenous_law_and_native_titleIndigetitl_la_w_programs> accessed 5 May 2011.

Recommendation 32 – Evaluate Indigenous justice programs

- 8.28 **The Committee recommends that the Commonwealth Government commit further resources to evaluate the effectiveness of Indigenous youth justice and diversion programs and that the findings be published on the Indigenous Justice Clearinghouse and the Closing the Gap Clearinghouse websites.**

Mapping offending and data gaps

- 8.29 As highlighted in chapter 2, there are many gaps in the information available that can assist in coordinating strategies to reduce Indigenous youth offending and contact with the criminal justice system. An area that would benefit from further study and collection of data is a geospatial comparison of offending and offenders correlated with the state of community services and resources.

- 8.30 It has been suggested that raising low socio-economic conditions would lead to lower crime rates given the ‘long established relationship [that] exists between social disadvantage and high rates of imprisonment’,¹¹:

While sustained effort will be required, evidence on drivers of offending suggest that improvements in housing, education retention, early interventions for children, substance abuse prevention, rebuilding social norms in troubled communities, and other similar programs, will have a positive impact on juvenile offending.¹²

- 8.31 At a public hearing the Committee heard that:

Some of the common social factors that might produce children and young people who are exposed to the criminal justice system – whether they are Aboriginal or non-Aboriginal – are pretty common: drunken parents; parents on drugs; homeless children; ill-educated children; parents who, through illiteracy or some other factor simply cannot support the children at school; undernourished children, and so on.¹³

11 T Vinson, *Dropping off the Edge: the Distribution of Disadvantage in Australia*, Jesuit Social Services/Catholic Social Services Australia, 2007, p. 19.

12 Department of Families, Housing, Community Services and Indigenous Affairs, *submission 79*, p. 21.

13 Rod Madgwick, *Committee Hansard*, Sydney, 4 March 2010, p. 8.

8.32 The AIC explained that ‘one of the arguments ... has been that in communities that are suffering from a whole range of disadvantages you are going to get a higher crime rate’.¹⁴ The focus on communities is justified by the tendency for social disadvantage, in all its forms, to become concentrated and isolated:

A disabling social climate can develop that is more than the sum of individual and household disadvantages and the prospect is increased of disadvantage being passed from one generation to the next.¹⁵

8.33 The Ministerial Council for Aboriginal and Torres Strait Islander Affairs has identified the improvement of Indigenous demographic data collection across all jurisdictions as critical for measuring Closing the Gap targets.¹⁶

8.34 In Australia, socio-economic disadvantage is measured across postcodes, statistical local areas or local government areas. However, Australia’s vast geography means that remote areas cover large expanses of land but few communities, which can result in unnoticed variations. For example, a study of violence among Indigenous people found that ‘the link between geographic location and the risk of violence is far more complex than a simple remote/non-remote dichotomisation’.¹⁷

8.35 The 2009 Australian Human Rights Commission Social Justice Report discusses the correlation between areas of social disadvantage and high rates of offending and found that ‘the communities with high Indigenous prisoner concentrations do not come as a surprise. They are the same communities that have been identified as disadvantaged for some time now’.¹⁸

8.36 A review of the New South Wales juvenile justice system came to similar conclusions:

14 Adam Tomison, Australian Institute of Criminology, *Committee Hansard*, Canberra, 11 February 2010, p. 4.

15 T Vinson, *Dropping off the Edge: the Distribution of Disadvantage in Australia*, Jesuit Social Services/Catholic Social Services Australia, 2007, p. ix.

16 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, 15 July 2008 Communique <www.mcatsia.gov.au/cproot/784/261/MCATSIA%20-%20Communique.pdf> accessed 30 July 2010.

17 J Wundersitz, *Indigenous Perpetrators of Violence: Prevalence and Risk Factors for Offending*, Australian Institute of Criminology, Canberra, 2010, p. 70.

18 Aboriginal and Torres Strait Islander Social Justice Commissioner, *2009 Social Justice Report*, p. 41.

Interestingly, in some of the analysis we did we found that maps of where offenders come from and maps of disadvantage in any jurisdiction are almost identical. The fact is that middle-class kids might get into trouble but they do not stay in trouble. It is primarily people from disadvantaged backgrounds where this occurs.¹⁹

8.37 However, further work needs to be done in this area. The AIC warns that 'the institute is exploring at the moment ... geospatial analysis of crimes to see where crime is occurring and the range of crimes occurring across the country. There are issues with the quality of data around that'.²⁰ The former Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, noted in the 2009 Social Justice Report that 'there is currently no comprehensive, published offender mapping research in Australia'.²¹

8.38 Mapping areas of social disadvantage and high offending rates would be beneficial to many government departments, allowing them to pinpoint specific areas of poor health, low education, and high unemployment or homelessness, and target services and strategies effectively.

8.39 The Aboriginal Drug and Alcohol Council told the Committee that many projects initially receive Commonwealth funding, only for that funding to devolve to the state government which then restructures and changes the original intent of the program. Furthermore:

It is imperative for all Federal, State and non-governmental agencies in urban, rural and remote locations to know who provides what service, whether or not there is any collaboration between agencies and Departments and what strategies and outcomes are to be achieved and more importantly measurements of these achievements. It is a critical issue of accountability, leading to enhanced, coordinated service delivery.²²

8.40 Several Aboriginal and Torres Strait Islander Legal Services (ATSILS) submitted that it is difficult to ascertain a coordinated approach to the distribution of funding:

In our experience, a critical flaw in the current system is the inability of government to actually identify where allocated funds

19 Peter Murphy, Noetic Solutions Pty Ltd, *Committee Hansard*, Canberra, 18 March 2010, p. 2.

20 A Tomison, AIC, *Committee Hansard*, Canberra, 11 February 2010, p. 6.

21 Aboriginal and Torres Strait Islander Social Justice Commissioner, *2009 Social Justice Report*, p. 34.

22 Scott Wilson, Aboriginal Drug and Alcohol Council, *Committee Hansard*, Adelaide, 20 May 2010, p. 50.

are being distributed in communities. This is particularly apparent in relation to non-governmental agencies receiving funds Federal and State Departments or both.²³

- 8.41 The Royal Australasian College of Physicians supported the need for mapping of services to allow for coordinated funding:

The College repeatedly promotes local responsibility for service delivery; at the same time there must be some level of regional and national coordination for dispersed programmes in health (including drug and alcohol treatment) for Indigenous young people. This coordination should allow mapping that identifies success and problem areas, where to target funding and capacity building and, importantly, data collection.²⁴

- 8.42 The Commonwealth Government has already begun identifying areas of disadvantage in remote areas through the Remote Service Delivery National Partnership. The National Partnership Agreement on Low-Socio-Economic Schools has a specific focus on schools with high Indigenous populations.²⁵ However, the identification of gaps in services and Indigenous populations has not yet been linked to mapping of geographic offending patterns.

Committee comment

- 8.43 The Committee supports comprehensive mapping of disadvantage across Australia and, more specifically, mapping of concentrations of offending identifying Indigenous and non-Indigenous status. This information could better guide the Commonwealth Government and state and territory governments in the coordinated delivery of cross portfolio services. This data would assist in targeting capacity building resources to Indigenous organisations involved in youth diversion and rehabilitation programs in order that they may then be competitive in seeking state and Commonwealth funding.

23 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 28.

24 Royal Australasian College of Physicians, *submission 53*, p. 12.

25 Jo Wood, Department of Education, Employment and Workplace Relations, *Committee Hansard*, Canberra, 17 June 2010, p. 10.

Recommendation 33 – Mapping offending

- 8.44 **The Committee recommends that the Commonwealth Government invest in mapping research to identify areas of concentrated youth offending, types of offending and gaps in services, with a focus on Indigenous disadvantage and need.**
- 8.45 The Committee considers that addressing the overrepresentation of Indigenous people in the criminal justice system relies on the expansion of data sets to record the flow of Indigenous juveniles and adults through the system. Understanding patterns of offending, pathways to more serious offending, detention and diversionary rates is critical to targeting appropriate intervention responses.
- 8.46 The Committee recognises there will be a cost involved in collating and publishing further data. However, it is important that trends are tracked and available to jurisdictions to inform policy decisions.
- 8.47 The Committee considers it crucial that policy makers are able to determine not only how many people enter juvenile detention centres and prisons during the course of the year and for what category of offence, but also whether each detainee or prisoner has previously been detained or imprisoned and for what category of previous offence.
- 8.48 The Committee is of the view that recidivism needs to be better understood by policy makers to ensure efficiency of policy and program direction and ultimately to reduce the number of Indigenous people entering and re-entering juvenile detention centres and prisons.
- 8.49 The current method of recording prison numbers encourages policy makers to view incidences of imprisonment as singular events. Data sets which recognise the flow of prisoners during the course of a year would allow policy makers to more capably target the propensity for many prisoners, especially Indigenous prisoners, to return to detention and prison.
- 8.50 The Committee believes that data sets for juveniles in detention should mirror those which it recommends for adults in prison. This would enable a broader analysis and deeper understanding of the links between juvenile and adult offending and incarceration.
- 8.51 The Committee is concerned that Indigenous people, especially Indigenous women, are much more likely to be the victims of violent crime. The Committee reiterates its view about the importance of comprehensive and jurisdictionally comparable data collections. Without

a systematic and nationally consistent measurement of outcomes, it is impossible for governments to determine first, whether policies and programs aimed at reducing the number of Indigenous victims are effective, and second, when modification of policy direction and program design is required.

- 8.52 It is acknowledged that victim data is likely to be heavily influenced by the willingness of victims to report crime, and that this will present particular difficulties to policy makers trying to make sense of trends over time.
- 8.53 Nonetheless, it is crucial that significant effort be dedicated to improving existing data collections relating to victimisation. This will require the development of sophisticated data collection tools that can take into account all of the impediments that make it difficult to obtain an accurate picture of victimisation, particularly in Indigenous communities.

Recommendation 34 – Expanding data collections

- 8.54 **The Committee recommends that the Australian Bureau of Statistics expand its collection of data to include:**
- **offender data disaggregated by all jurisdictions and all categories of offence, including traffic and vehicle related offences**
 - **court appearance data, disaggregated by all jurisdictions by Indigenous status, sex, offence and sentence**
 - **prisoner reception data disaggregated by all jurisdictions, according to Indigenous status, sex, offence, age, sentence length and episodes of prior offending by category of offence, and**
 - **data on the rates of which Indigenous people are victims of crime, disaggregated by all jurisdictions and all categories of offence.**

The Committee recommends that the Australian Institute of Health and Welfare expands its collection of data to include:

- **detainee receptions and census data disaggregated by jurisdiction, Indigenous status, sex, offence, age, sentence duration and periods of prior offending by category of offence.**

The Committee recommends that these expanded data sets are made available by no later than June 2012. This data and any trends it shows should then be annually evaluated and reported on and used to inform future policy or program changes.

- 8.55 While Indigenous boys and men make up the majority of the Indigenous detainee and prison population, the Committee is troubled by the marked growth in the number of Indigenous women in prison in the last decade.
- 8.56 Indigenous women are critical to the future strength of Indigenous families and communities. They play an especially important role in the care of children, providing the future generation with a stable upbringing. Continued growth in the number of Indigenous women being imprisoned will have a long lasting and profoundly negative impact on the wellbeing of Indigenous families and communities.

Recommendation 35 – Study on the imprisonment of women

- 8.57 **The Committee recommends that the Australian Institute of Criminology undertakes a study of the reasons for the increasing imprisonment of Indigenous women, with a view to informing policymakers on how best to address the key drivers of offending and imprisonment and the consequences of that imprisonment for women, their children (if any) and their community.**

Policy gaps

- 8.58 The Closing the Gap framework is comprehensive in the areas of disadvantage that it identifies and the building blocks and partnership approach it sets out. However some witnesses highlighted gaps in the policy, notably the identification of justice targets and specific measures to address Indigenous offending and victimisation rates.

Justice targets and a National Partnership Agreement

- 8.59 Generations of Indigenous children have grown up with many family and community members incarcerated, and they now view juvenile detention and later incarceration as inevitable in their own lives. If we are to improve Indigenous wellbeing, then we must also close the gap on Indigenous offending and victimisation.

- 8.60 As discussed in chapter 2, the Committee considers that the lack of justice targets and the lack of a National Partnership Agreement dedicated to the Safe Communities Building Block are two serious deficiencies in the current policy.
- 8.61 Indigenous rates of offending, incarceration, recidivism and victimisation are alarming. It is essential that reducing these rates is realised as a national target, and that the appropriate agreement is in place to direct coordination across levels of government to most effectively target intervention strategies. The Committee urges the Australian Government to act expediently on these policy 'gaps' in line with the recommendations made earlier.
- 8.62 While the policy addresses Indigenous disadvantage, it also lacks positive avenues to increase Indigenous representation and participation in Government policy decision making. It is apparent that many Indigenous communities, as a result of disadvantage, feel disconnected from Australia's democratic processes. Indigenous representation and engagement in community and national decision making opportunities are essential.

Indigenous engagement and representation

- 8.63 A further 'gap' identified in the Closing the Gap policy relates to the need for high level Indigenous engagement and representation. A consequence of the disadvantage experienced by Indigenous people in Australia is the additional challenges they face in securing high level representational positions and consequently having the capacity to advise on appropriate law and justice issues for Indigenous peoples. Hence a concerning 'gap' in the current framework is the absence of an Indigenous law and justice advisory body.
- 8.64 In conducting its investigations, and during the Committee's delegation visit to New Zealand in March 2011, the Committee became aware acutely of the lack of Indigenous presence in Australian federal politics and the potential impact of this in terms of Indigenous aspiration, engagement in political decision-making, and sense of inclusion in national decision-making.
- 8.65 The lack of opportunity for Indigenous engagement and representation means that too often governments are seen as 'doing things for' Indigenous people, to fix the problem rather than working with Indigenous people to develop solutions.

Indigenous law and justice advisory body

8.66 Researchers Fiona Allison and Chris Cunneen, in a Sydney Law Review paper, have reported on the positive impact of Indigenous representative bodies in negotiating state and territory Indigenous justice agreements and improving justice service delivery.²⁶ They note that not all jurisdictions have Indigenous Justice Agreements, however a significant finding of the research shows:

... the connection between the presence of Justice Agreements and the existence of an independent, community based Indigenous representative advisory body. Given the abolition of the national representative body ATSIC in March 2005, and only a limited number of State and Territory Indigenous representative bodies in place, negotiation and consultation with Indigenous people in initiating policy has varied greatly. It is important to note the significant impact that this variation may have upon strategic policy development and, ultimately, upon the ability of government and communities to work together to address issues relating to Indigenous overrepresentation.²⁷

8.67 Allison and Cunneen conclude that Indigenous Justice Agreements:

... have made a difference to Indigenous people in their contact with the justice system ... Justice Agreements have effectively progressed Indigenous community engagement, self management, and ownership where they have set up effective and well-coordinated community-based justice structures and/or led to the development of localised strategic planning, as well as through encouraging initiatives that embody such ideals.²⁸

8.68 While their research is based on state and territory agreements and the presence of Indigenous advisory bodies at that level, there are obvious parallels with Commonwealth policy settings. They suggest that the dismantling of national Indigenous representative/advisory bodies has impeded justice outcomes. There is a need for Indigenous representation and engagement in the planning, design, delivering and monitoring of justice outcomes, and 'independent representation for Indigenous

26 Exhibit 15, Fiona Alison and Chris Cunneen *The role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous People*, p. 23.

27 Exhibit 15, Fiona Alison and Chris Cunneen *The role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous People*, p.23.

28 Exhibit 15, Fiona Alison and Chris Cunneen *The role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous People*, p.55.

communities is a crucial component of any further development of strategic [justice] policy.²⁹

- 8.69 In 2008, there were efforts to address this gap, with the release by the Attorney-General's (AG's) Department of an issues paper expressing its intention to establish a national Indigenous law and justice advisory body.³⁰
- 8.70 The AG's Department acknowledged the positive role previously played by the National Aboriginal Justice Advisory Council (NAJAC), which had been established by the Standing Committee of Attorneys-General in the wake of the Royal Commission into Aboriginal Deaths in Custody to provide advice on criminal justice matters affecting Indigenous people.
- 8.71 However, the AG's Department, went on to suggest that changes to the way state and territory governments sought advice on Indigenous justice matters as well as more 'significant administrative changes in the broader Indigenous affairs environment' necessitated the development of a 'different type of expert advisory group to support the most effective way forward for Indigenous law and justice'.³¹
- 8.72 The AG's Department envisaged that membership of the body would be drawn from 'Indigenous non-government service providers in the justice sector, academia, key justice sectors (courts, police, corrections, legal services), and other service providers (health, education and housing)'.³²
- 8.73 In 2010, the Attorney-General decided not to proceed with the establishment of a national Indigenous law and justice advisory body due to concerns about duplicating work of the National Congress of Australia's First Peoples.³³
- 8.74 The National Congress was established in 2010 to provide a central mechanism for promoting the national voice of Indigenous peoples, and has the following roles:
- formulate advice to ensure that Aboriginal and Torres Strait Islander people contribute to and play a lead role in policy and program

29 *Exhibit 15, Fiona Alison and Chris Cunneen The role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous People, p.56.*

30 Attorney-General's Department, *Issues Paper: National Indigenous Law and Justice Advisory Body, 2008, p. 1.*

31 Attorney-General's Department, *Issues Paper: National Indigenous Law and Justice Advisory Body, 2008, p. 4.*

32 Attorney-General's Department, *Issues Paper: National Indigenous Law and Justice Advisory Body, 2008, p. 5.*

33 Attorney-General's Department, correspondence received 7 July 2010.

development on issues that affect them, and that an Indigenous perspective is provided on issues across government

- advocate and lobby as a national conduit for communication between Aboriginal and Torres Strait Islander peoples and the government, corporate and non-government sectors, and
- ensure the presence of, and contribute to, mechanisms to monitor and evaluate government performance in relation to Aboriginal and Torres Strait Islander peoples.

8.75 The Department advised the Committee that the Attorney-General had asked the National Congress to consider establishing a subcommittee to focus on Indigenous law and justice matters to help address the Commonwealth Government's ongoing need for advice on such matters.³⁴

Committee comment

8.76 The Committee is concerned about the Commonwealth Government's decision to abandon financial support for NAJAC without having ensured the establishment of an alternative body capable of providing advice to governments on the law and justice matters affecting Indigenous people.

8.77 The result has been the passage of some years without an established framework for national Indigenous representation and policy engagement on law and justice issues. This is not acceptable and can only further the divide many communities perceive between government agencies' service planning and delivery, and the needs of communities to drive and be the agents of their own change. Further, it reinforces the perception of governments 'doing for' rather than 'working with' Indigenous communities.

8.78 It is recognised widely that effective policy on Indigenous matters requires the involvement of Indigenous people in direction setting and decision making processes, and yet two years have passed without there being an effective mechanism for the Commonwealth Government to obtain advice on Indigenous law and justice matters.

8.79 The Committee supports the recent decision by the Commonwealth Government to request that the National Congress of Australia's First Peoples establish a subcommittee to focus on Indigenous law and justice matters. However, the decision to establish such a subcommittee remains with the National Congress and should they decide not to do so, the

34 Attorney-General's Department, correspondence received 7 July 2010.

Committee urges the Commonwealth Government to reconsider its decision not to establish an Indigenous law and justice advisory body.

- 8.80 Should the National Congress establish such a subcommittee, the Committee is of the view that the Commonwealth Government should seek the support of the subcommittee in setting directions and priorities under the National Indigenous Law and Justice Framework.
- 8.81 In keeping with the lessons learned in the development of the Victorian Aboriginal Justice Agreement, the Committee also considers that the Commonwealth Government should seek the views of the subcommittee, if established, on any suggested amendments to the National Indigenous Law and Justice Framework following each annual review.

Recommendation 36 – Indigenous Law and Justice Advisory Body

- 8.82 **The Committee recommends that the Commonwealth Government propose to the National Congress of Australia’s First Peoples the establishment of a subcommittee to focus on Indigenous law and justice matters. If the National Congress of Australia’s First Peoples does not proceed with an Indigenous law and justice subcommittee, the Committee recommends that the Commonwealth Government establish an Indigenous law and justice advisory body.**

The Committee recommends that the Commonwealth Government:

- **seeks the subcommittee’s or the advisory committee’s advice on law and justice matters affecting Indigenous people**
- **requests that the subcommittee or advisory committee monitor and report on progress under the National Indigenous Law and Justice Framework, and**
- **seeks the views of the subcommittee or advisory committee on any suggested amendments to the National Indigenous Law and Justice Framework following each annual review.**

Indigenous representation in the Parliament

- 8.83 While Indigenous under-representation in the federal Parliament is not directly an issue impacting on Indigenous overrepresentation in the criminal justice system, the two issues are related. Both are indicative of Indigenous disadvantage, the lack of positive role models, limited capacity

to access opportunities, and a generally lower sense of self-worth and aspiration.

- 8.84 In order to improve Indigenous wellbeing and Indigenous capacity to engage in decision-making, then parliamentary representation is also a key issue to consider.
- 8.85 Over the last decade the federal Parliament has witnessed a greater diversity in its elected Members of Parliament and Senators. Women now represent 29 per cent of members and senators and hold several key cabinet positions. Within the Parliament there are also a range of migrant backgrounds as well as religious faiths represented.
- 8.86 Mr Ken Wyatt MP the Member for Hasluck in Western Australia, is the first Indigenous person to be elected to be a Member of the House of Representatives. Prior to Mr Wyatt's election in 2010, there have been two Indigenous Senators - Liberal Senator Neville Bonner (1971-1983) and Australian Democrat Senator Aden Ridgeway (1999-2005). The Committee does note that there have been relatively high numbers of Indigenous members in recent state and territory parliaments.
- 8.87 Given that those who identify as Indigenous now make up approximately 2.5 percent of Australia's population, if the federal Parliament were to reflect this then there would need to be at least four Indigenous representatives across the upper and lower houses of Parliament.
- 8.88 A number of countries have introduced mechanisms to ensure Indigenous or minority representation in their parliament. These mechanisms include:
- designated seats for Indigenous people
 - separate Indigenous parliaments
 - electoral reform that provides for greater minority representation
 - positive discrimination processes in the pre-selection of electoral candidates, and
 - broader education programs to raise awareness of Indigenous issues and provide mentoring opportunities.
- 8.89 The Committee observed the impact of some of these mechanisms in New Zealand where dedicated Maori seats and an electoral system of Mixed Member Proportional Representation have resulted in around 19 per cent of MPs identifying as Maori (the percentage of the population identifying as Maori is around 15 percent).

Committee comment

- 8.90 The Committee is not advocating any of the above mechanisms for application in Australia, but cites them as strategies that have been employed elsewhere to increase Indigenous representation. The Committee also notes that this is not a new issue and a number of reports have previously been written on the importance of increasing Indigenous leadership, engagement and representation in Australian federal politics, and mechanisms to achieve this.
- 8.91 The Committee does note that, while policies address Closing the Gap on Indigenous disadvantage, it is also important to set a target of increasing Indigenous wellbeing, aspiration and national participation. In this context, and in the context of ensuring the Australian Parliament is representative of Indigenous peoples, the Committee recommends an investigation into options to raise the level of Indigenous representation in federal Parliament.

Recommendation 37 – Parliamentary Indigenous representation

- 8.92 **The Committee recommends that the Commonwealth Government establish an Independent Commission to undertake a series of public consultations and investigate options to increase Indigenous representation in the Parliament, for example, quotas or dedicated seats.**

Service delivery model

- 8.93 During the inquiry the Committee received volumes of evidence citing poor coordination across levels of government and agencies, and the need for greater Indigenous engagement in service design and delivery. These two issues were recurrent themes through the inquiry.
- 8.94 In contrast to this, a number of witnesses drew attention to examples of what can be achieved when there is appropriate coordination, consideration of issues from a holistic perspective, and Indigenous people leading change from within communities. A number of these positive examples were outlined to the Committee, ranging from changes to court systems such as the New South Wales Drug and Alcohol Court, community interventions such as the Family Responsibilities Commission,

a number of interagency coordinated responses, and a range of community initiatives.

- 8.95 From the criticisms of agency silos and the examples of positive coordinated initiatives, the Committee draws a number of conclusions regarding the role of the Commonwealth Government in improving coordination and engagement. The following section discusses trial models for Indigenous service delivery around Australia and the Committee sets out a model for a coordinated, collaborative and integrated approach to Indigenous service/program design and delivery.

Criticism of government agency silos

- 8.96 The lack of government coordination - both between Commonwealth and state and territory governments, and within state and territory governments - was seen by many to impede the very programs that agencies are tasked to implement. The Committee heard that government agencies tend to operate in 'silos' rather than sharing information and working cooperatively toward shared goals with other agencies.
- 8.97 Alfred Bamblett, from the Victorian Aboriginal Justice Advisory Committee, suggested that whole-of-government practice is yet to catch up with the political rhetoric of whole of government administration. He questioned:

Is it a case of the right arm not knowing what the left arm is doing? Sometimes you think that is the way it is. There needs to be a coming together in a way that says we are here for the benefit and to improve the lot of the people that we are funded to provide a service for ... There is a lot of talk about whole-of-government; terrific, let us see something in action.³⁵

- 8.98 The Royal Australasian College of Physicians commented in its submission that:

Australia is in many ways beleaguered by its federated system of government. The negative consequences are perhaps most acute in essential services like health, education and justice where complexities of state and federal responsibility and funding make coordination and efficiency seemingly unattainable at times.³⁶

35 Alfred Bamblett, Victorian Aboriginal Justice Advisory Committee, *Committee Hansard*, Melbourne, 3 March 2010, p. 44.

36 Royal Australasian College of Physicians, *submission 53*, p. 11.

- 8.99 A number of ATSILS identified funding competition as a contributing factor to the isolation of government agencies:

Individual programs and services tend to be 'owned' by separate departments, resulting in lack of coordination, duplication, or – more frequently – gaps in services. ... [Constant funding and governance conflicts] results in horizontal competition, the professional siloing of interventions and the undermining of – or indifference towards – the activities of other departments. Within government departments and agencies there is also vertical tension between various levels of the bureaucracy. Central control competes with local management.³⁷

- 8.100 Poor agency coordination can result in the duplication of services in some areas and a lack of services in other areas. Katherine Jones, from the AG's Department, noted that 'there is also the issue that there is a need for ownership and cooperation not only between Commonwealth and state but also within the states across corrections, police and justice'.³⁸

- 8.101 For example, given the strong link between foetal alcohol spectrum disorder (FASD) and Indigenous youth offending, strategies are required to address the intersection of these two health and justice issues. However, often neither the health nor the justice department wants to take responsibility for the role they each believe the other should be playing. As Damien Howard observed in his submission, 'a shared issue easily becomes an avoided issue'.³⁹

- 8.102 Dr Howard, in discussing hearing loss in Indigenous communities, provided the Committee with an example of where cross-portfolio responsibilities all too easily lead to no agency being willing to accept responsibility for the issue:

I first started to try and raise this issue with some colleagues in the early nineties, and have consistently had the response, when trying to raise this, that it is a health issue, not a criminal justice issue, whereas the health department says it is a criminal justice issue, not a health issue. So when there is this dual responsibility –

37 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 26.

38 Katherine Jones, Attorney-General's Department, *Committee Hansard*, Canberra, 27 May 2010, p. 23.

39 Damien Howard, *submission 87*, p. 20.

in fact, there is a multiplicity of responsibility – it is very easy for it to become no-one’s responsibility.⁴⁰

- 8.103 Superintendent Emmanuel from the Western Australia Police Force commented that from his experience the term ‘core business’ often used by government agencies is a term that is used to pass the buck. He stated:

A child not at school is the education department’s problem; a child with hearing or other health problems is the health department’s problem. In my view and the view of many others I have spoken to, that attitude places these children and their families at risk, and at-risk children and at-risk families are the core business of every government agency. That is how we need to see this so that we do not pass the buck – and we should not pass the buck.⁴¹

- 8.104 Associate Professor Somerville, of the Western Australia Department of Education, acknowledged that:

The reality is that everybody has to take the step forward and take responsibility rather than blame each other – and we do it as government departments. The police blame child protection; we blame the police for not doing their job. It has to be a collaborative effort if we are going to turn this around.⁴²

- 8.105 The New South Wales Ombudsman revealed that reviews of cross-agency cases involving at-risk children and adolescents found that:

... there has been involvement by a range of agencies without any or minimal joint planning taking place. Furthermore, the problems in many of these situations are quite complex and require the involved agencies that are providing support to be alert to a range of information to assist them to make informed decisions about the nature of support required. Without the agencies coming together to consider these matters, there is a real risk that significant resources will be expended in an inefficient and ineffective manner.⁴³

- 8.106 The lack of collaboration between agencies and the justice system can lead to the lengthening of an Indigenous youth’s involvement in the courts, for

40 Damien Howard, *Committee Hansard*, Darwin, 6 May 2010, p. 14.

41 Michael Emmanuel, *Committee Hansard*, Sydney, 28 January 2011, p. 31.

42 Robert Somerville, Western Australia Department of Education, *Committee Hansard*, Perth, 30 March 2010, p. 24.

43 New South Wales Ombudsman, *submission 56, attachment C*, p. 5.

example, even in situations where prompt responses are necessary for at-risk individuals. Magistrate Sue Oliver told the Committee at a public hearing in Darwin that:

We were told almost two years ago that the community corrections officers who would deal with young people would essentially be amalgamated with Children's Services so that there could be a better coordinated approach to young people, many of whom have been abused and neglected and have care issues. But that still has not happened. It creates delay in the court because we are dealing with separate agencies when, in my view, there should be a much better coordinated approach to identifying the issues with the young person, identifying the issues with the family, and putting into place the things which are necessary to support the young person.⁴⁴

8.107 Others who are involved in addressing the risk factors or consequences of Indigenous youth offending on-the-ground are also frustrated by the lack of government coordination. Several ATSILS submitted that:

In our view, one of the primary reasons for [the over-representation of Indigenous youth in detention] is an institutional failure on behalf of all Australian governments to maintain a holistic perspective and effectively co-ordinate the design and delivery of programs addressing wider social and economic issues - with explicit linkage and coordination of their impact on the operation of the criminal justice system.⁴⁵

8.108 Lynda Coon, from the charity ACT for Kids, explained to the Committee the importance of an overarching authority:

... it is not just about more supports but also about better coordination and communication between agencies. I think that in this field there is always going to be the involvement of a statutory body, so that interface between statutory agencies and non-government organisations is a really key one that needs to be looked at.⁴⁶

44 Sue Oliver, *Committee Hansard*, Darwin, 6 May 2010, p. 51.

45 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 3.

46 Lynda Coon, ACT for Kids, *Committee Hansard*, Cairns, 7 May 2010, pp. 29-30.

8.109 Anne Hampshire from Mission Australia agreed:

We can have fantastic people working on the ground in collaboration but unless there is the framework that actually supports them, ultimately we rely on people's goodwill at the local level to work collaboratively together. They actually need the frameworks that support them to do that.⁴⁷

8.110 Criticism of the lack of coordinated approaches among all governments pointed to the tendency for agencies to work in silos as the main cause. Moreover, the need to resolve this separation of responsibilities is not a new revelation. Western Australia Chief Justice Wayne Martin acknowledged that 'the problems of a fragmented, silo approach have been known and have been being talked about for many years, but nothing much has been done to overcome the issues and break down the silos'.⁴⁸ His colleague added:

Although the word 'collaboration' is often used the fact of the matter is that, whilst there is some collaborative effort, the extent of it is nowhere near what it needs to be. If government agencies get together and the problem becomes too difficult then, more often than not, they go back into their bunkers and become very siloed, with the net result that nothing is actually delivered.⁴⁹

8.111 In Victoria, 'evidence given to [an inquiry into strategies to prevent high volume offending and recidivism by young people] has lamented the fact that policy in this area is indeed siloed, disconnected and fragmented'.⁵⁰ The 2009 Social Justice Report reflected that:

Currently, more than any other portfolio, the justice needs of Indigenous Australians are siloed. There is poor interagency collaboration between the 'front end' (prevention and support services before offending) and 'back end' (corrections and juvenile justice) departments dealing with Indigenous over-representation. Indigenous over-representation is not only the responsibility of corrections and justice departments but also requires substantial input in terms of health, housing, education, employment and child protection to name just a few.⁵¹

47 Anne Hampshire, Mission Australia, *Committee Hansard*, Melbourne, 3 March 2010, p. 33.

48 The Hon. Wayne Martin, *Committee Hansard*, Perth, 30 March 2010, p. 2.

49 Denis Reynolds, *Committee Hansard*, Perth, 30 March 2010, p. 5.

50 Parliament of Victoria Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People 2009*, p. 11.

51 Aboriginal and Torres Strait Islander Social Justice Commissioner, *2009 Social Justice Report*, p. 54.

- 8.112 President of the Children's Court of Western Australia, Denis Reynolds, suggested the following as a solution:

... what I would do is set up within the Department of the Premier and Cabinet a high-level policy group charged with dealing with these problems in the Aboriginal area. They would have overarching authority over each of the agencies. They would identify ultimate objectives. They would then, with the various agencies, identify what role each of those agencies needed to play to achieve that ultimate objective. They would then, on an ongoing basis, require the agencies to do what each of them needed to do to fulfil that ultimate objective and, on a regular basis, get together and put each of the agencies to account to show that they had done what they had been required to do in order for that ultimate objective to be achieved.⁵²

The need for coordination

- 8.113 The Commonwealth recognises that state and territory governments have responsibility for police, courts, corrective services, education, employment, and health – the main arenas in which the complex issue of Indigenous youth overrepresentation in the criminal justice system intersects. As Katherine Jones, of the Attorney-General's Department, stated:

In terms of, broadly, community safety and law and order, the Commonwealth's view is that that is primarily state and territory responsibility, and appropriately so. ... We certainly see that any activity that the Commonwealth does in this space very much has to be complementary to the states and territories and to work with them.⁵³

- 8.114 During a public hearing held in Brisbane the Committee heard the view that it was time for the Commonwealth to take the lead nationally in this area of Indigenous justice issues. Queensland Police Commissioner, Robert Atkinson, explained to the Committee:

I do believe that we have to have a long-term approach. I personally think it is going to be three generations, and only the Commonwealth can take the lead on that because local and state governments cannot take the lead nationally. I believe that there

52 Denis Reynolds, *Committee Hansard*, Perth, 30 March 2010, p. 15.

53 Katherine Jones, Attorney-General's Department, *Committee Hansard*, Canberra, 27 May 2010, p. 5.

has to be a coordinated, long-term bipartisan approach and recognition that there is no silver bullet and no single and simple solution.⁵⁴

- 8.115 Commissioner Atkinson continued to emphasise the need for the Commonwealth to streamline the process for Indigenous service delivery:

The continuation of government silos, of federal versus state policy and of political point scoring between the political factions must be overcome. ... Indigenous service delivery requires federal intervention to streamline processes, increase efficiency ensuring a delivery of product that is tangible and measurable.⁵⁵

- 8.116 The Committee acknowledges that the National Indigenous Law and Justice Framework is a step in the right direction, but it does not have any powers of compulsion and is only a guide agreed to by the Standing Committee of Attorneys-General that has obtained consensus with state and territory justice departments.

- 8.117 Sarah Crellin, a children's solicitor, told the Committee that:

Aboriginal Affairs falls under the Commonwealth power, despite the very pressing issues for Aboriginal People being issues that fall under State jurisdiction i.e. access to proper health care, lack of education, overrepresentation in the criminal justice systems. If the 'gap' is ever going to be closed, there needs to be greater understanding between the Commonwealth and State governments about what is being done. All governments maintain they have the same goal, but to achieve that goal, the decisions and programs that are designed need to consider what funding is available.⁵⁶

- 8.118 Recognising the need for improvement in intra- and inter-governmental coordination, the Commonwealth Government has instigated some measures to:

... connect better across the silos. Within the Australian government there is the Secretaries' Group on Indigenous Affairs and there is another layer under that which actually does a lot of the business connecting up across government. DEEWR,

54 Robert Atkinson, Queensland Police Service, *Committee Hansard*, Brisbane, 4 May 2010, p. 18.

55 Dennis Foley and Terry Lovatt, *submission 28*, p. 22.

56 Sarah Crellin, *submission 2*, pp. 4-5.

FaHCSIA, Health and Ageing, Attorney-Generals' and DEWHA⁵⁷ are represented in those forums. The Executive Coordination Forum on Indigenous Affairs, which sits below that secretaries' group has a joint work plan and the intention is that it joins up what we are doing. It also has a coordinated approach to Indigenous measures for the budget process.⁵⁸

- 8.119 The Secretaries' Group on Indigenous Affairs, which comprises secretaries from relevant government departments and meets monthly, plays the lead coordinating role between government departments, assists the Strategic Policy and Budget Committee of Cabinet, and provides advice to the Ministerial Taskforce on Indigenous Affairs.⁵⁹
- 8.120 The Ministerial Taskforce on Indigenous Affairs is responsible for developing a 'whole-of-government' budget for Indigenous Affairs, and focuses on three priority areas of early childhood intervention, safe communities, and building Indigenous wealth and employment.⁶⁰
- 8.121 The Committee notes the recurrent criticisms regarding the lack of coordination across jurisdictions and agencies, and the resulting duplications, inefficiencies and gaps in services. For progress to be made in the area of Indigenous offending, high policy objectives are not sufficient. Governments must ensure that service delivery is effective, appropriate, coordinated and comprehensive.

Collaborative approaches

- 8.122 The Committee recognises that despite the criticism received about the lack of government coordinated Indigenous justice services, there have been many examples of successful inter-government cooperation. A report by Greg Andrews noted that:

The Australian and NT governments' agreement to share the costs of building and establishing a police post in Mutitjulu provides a

57 DEEWR: Department of Education, Employment and Workplace Relations; FaHCSIA: Department of Families, Housing, Community Services and Indigenous Affairs; DEWHA: Department of Environment, Water, Heritage and the Arts.

58 Jo Wood, Department of Education, Employment and Workplace Relations, *Committee Hansard*, Canberra, 17 June, p. 8.

59 FaHCSIA, 'Indigenous Australians', <www.fahcsia.gov.au/sa/indigenous/pubs/evaluation/archive_perform_eval/Pages/ia_wog_research_eval_2008_11.aspx> accessed 19 November 2010; Agreements, Treaties and Negotiated Settlements Project, <www.atns.net.au/agreement.asp?EntityID=2566> accessed 30 July 2010.

60 Agreements, Treaties and Negotiated Settlements Project, <www.atns.net.au/agreement.asp?EntityID=2330> accessed 30 July 2010.

good example of the benefits of 'working together'. Without inter-governmental collaboration, improved law and order would have been difficult to secure. The Australian and NT governments' announcement in September 2005 of a regional approach to address petrol sniffing through the provision of un-sniffable fuel, increased youth diversion activities, and a crack-down on drug and petrol trafficking provides another positive example.⁶¹

- 8.123 The Principal of the school in Fitzroy Crossing in Western Australia described a whole-of-child approach which has helped at least one child, and could help more children, heavily affected by FASD and early-life trauma 'to turn around their lives':

It is not only an interagency approach which involves various agencies within the town, such as education, health and [Department for Child Protection]; the school is also funded or resourced in a way that we can support that child with a special-needs education assistant. Essentially, they are a social trainer. They are there to provide the quiet sort of knowledge and the patience so that they can develop the coping strategies in the child.⁶²

- 8.124 Recently the governments of the Northern Territory, Western Australia and South Australia jointly established a Cross Border Justice Scheme. Several ATSILS describe the umbrella *Law and Justice (Cross Border and other Amendments) Act 2009 (Cth)* as 'a welcome example of a legislative initiative to ensure the coordination and definition of clearer responsibilities within and between government jurisdictions.'⁶³ Each government enacted its own relevant legislation to give justice officers from the three jurisdictions joint authority for offences committed in the prescribed cross-border area. The Northern Territory Department of Justice submission stated that:

The legislation seeks to recognise the common cultural and social bonds and mobility of Indigenous residents (and others) and overcomes the difficulties in providing services to such a remote region through greater collaboration and sharing of facilities, services and programs across the three jurisdictions.⁶⁴

61 Indigenous Community Volunteers, *submission 18, attachment C*, p. 14.

62 Paul Jefferies, Fitzroy Valley District High School, *Committee Hansard*, Perth, 31 March 2010, p. 36.

63 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 27.

64 Northern Territory Department of Justice, *submission 102*, p. 2.

- 8.125 A national non-governmental organisation, BoysTown, identified 'the need to have ... a political broker for each community at a senior level in government to ... act as an advocate for the community'.⁶⁵ The Queensland Government has set up such a model:

Every Chief Executive Officer of a Queensland Government agency is appointed as a Government Champion for 1 or more of the following communities ... Government Champions partner with these communities to harness combined agency resources to deliver better targeted and more integrated services. Each champion has the authority and the capacity to cut through 'red tape'. This helps to overcome administrative barriers that impede constructive responses to community needs.⁶⁶

- 8.126 The Western Australian State Justice Plan 2009-2014 (the Plan) is a partnership between the Western Australian Government and Aboriginal communities to work together at state, regional and local levels to improve justice outcomes for Aboriginal people. The Plan is unique: it is generated and owned by Aboriginal people and supported by the Western Australian Government. The Plan will result in one State Justice Congress, 10 Regional Justice Forums and more than 40 Local Justice Forums. Each Local Justice Forum will create a Local Justice Agreement to identify and address priority justice issues of its area. This work is supported by locally-based Regional Coordinators.⁶⁷

New South Wales Drug Court

- 8.127 One example of a program that involves a multi-agency and community coordinated approach is the Youth Drug and Alcohol Court (YDAC) which seeks to address the underlying issues behind offending behaviour, predominantly around drug and alcohol abuse, but also other related issues such as access to housing, health services and education.
- 8.128 The Children's Court of New South Wales, which runs YDAC, explains that:

As YDAC adopts a holistic approach to dealing with young offenders' needs and problems, and in particular focuses on their offending, general welfare, education and health, it relies upon a number of government and non-government agencies in order to

65 John Dalglish, BoysTown, *Committee Hansard*, Brisbane, 4 May 2010, p. 69.

66 Queensland Government, <www.atsip.qld.gov.au/government/networks/champions/> accessed 2 August 2010.

67 Western Australian State Aboriginal Justice Congress, *exhibit 6*, p. 1.

successfully deliver the program. As far as the government agencies are concerned, the Children's Court, the Departments of Human Services, Education and Training, and Health, all play a vital role in the delivery of services.⁶⁸

- 8.129 The Law Society of New South Wales considers YDAC to be 'world standard in evaluation and success':

The NSW Drug Court is an example of the justice system providing an interagency response to a major health problem in Western Sydney that has led to a reduction in criminal activity by drug dependent offenders. ... The interaction of probation and parole, Police, the NSW [Director of Public Prosecutions], Legal Aid NSW and Corrections Health as a team monitoring, supporting, and sanctioning where necessary, is the most striking example of successful intervention in NSW.⁶⁹

- 8.130 Various ATSILS endorse the coordination of services with the justice system inherent in YDAC: 'The common objective centres on the marshalling of all relevant resources in support of the individual's rehabilitation'.⁷⁰ Although YDAC is not Indigenous-specific, it works well for young Indigenous people because:

It is no secret that the majority of Aboriginal People have poorer health than non-Indigenous Australians, a lack of education and are over-represented in the Criminal Justice system. By combining all the Departments that deal with those issues, a solution can be found.⁷¹

Family Responsibilities Commission

- 8.131 The Family Responsibilities Commission (FRC) that was discussed in chapters 3 and 5 is a good example of Commonwealth and state government agencies working together with a non government organisation and local Indigenous communities.
- 8.132 The FRC's main objectives are to restore individual and family responsibility for child safety, school attendance, lawful behaviour and responsible tenancy. The FRC Commissioner, David Glasgow pointed out how the FRC approach differentiates itself from other justice strategies:

68 Children's Court of New South Wales, *submission 55*, p. 3.

69 Law Society of New South Wales, *submission 29*, p. 3.

70 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 25.

71 Sue Crellin, *submission 2*, p. 1.

The FRC approach, however, is different to other justice strategies in that its focus is socially orientated with conferencing, case management, and support for the community in nurturing, protecting and educating the future generation. The FRC methodology is aimed at being proactive and collaborative.⁷²

8.133 In addition to the Family Responsibilities Commissioner, 24 Indigenous elders have been appointed as Local Commissioners in their four communities, which strengthens their community authority.⁷³ The Commissioner advised the Committee that 'we are trying as part of our terms of reference to re-establish some norms in the community. ... The second objective is to enhance the Indigenous authority in those communities'.⁷⁴

8.134 Key to the FRC effectiveness is the scope of their responsibilities which allows them to work with a household and community on a range of issues. Commissioner Glasgow explained:

We sit as a result of any trigger notices. There are four trigger notices. If a person has a child in their care and the child has not attended school for three days without a proper reason we get a notice. If a person is the subject of a child safety notice we receive a notice. If a person has a defect notice in housing, rent or of misbehaving in a house we receive a notice. And if a person has been convicted of a Magistrate's Court offence we receive a notice. Each of those people receives a notice to attend if they fall within the jurisdiction and they sit before a commission of three people: me and two Indigenous commissioners. There are six commissioners in each community. One of those Indigenous commissioners chairs the meeting. In Aurukun it is all conducted in Wik-Mungkan and they translate for me where necessary. They make the decisions. The decisions have to be majority decisions. If they are not majority decisions the response has to be recorded.⁷⁵

8.135 The FRC is an example of effective government collaboration with local Indigenous communities. Commissioner Glasgow ultimately attributes the success of the FRC to:

72 Family Responsibilities Commission, <www.frcq.org.au/> accessed 4 August 2010.

73 Queensland Government, <www.atsip.qld.gov.au/government/families-responsibilities-commission/> accessed 4 August 2010.

74 David Glasgow, Family Responsibilities Commission, *Committee Hansard*, Cairns, 7 May 2010, p. 2.

75 Commissioner Glasgow, *Committee Hansard*, Sydney, 28 January 2011, p. 68.

... the strength of the people who sit with me – the Indigenous people, my colleagues who live in the community and have to wear the decision when I leave.... I think that respect that they have built up in the community is one of the reasons why people keep turning up.⁷⁶

8.136 Commissioner Glasgow reiterated this point at a further hearing saying:

I find my colleagues, the Indigenous commissioners, to be amazing. They are mainly women, I have to say. ...The women are determined to use this opportunity for change. They are resolute. They have stood up to enormous problems in the community, including being assaulted. They have been forthright in bringing their own families forward first.⁷⁷

8.137 The FRC is seen by most Indigenous groups and academics as the most inclusive and consultative of the current income management based programs mainly because it appoints locally-respected elders to positions of responsibility, thereby:

- rebuilding local authority,
- articulating the original Indigenous community values of respect and responsibility, and
- sending a consistent message about the expected behaviour of individuals, families and households.

8.138 These Local Commissioners work with their communities and are responsible for:

- determining appropriate actions to address the dysfunctional behaviour of people in the community;
- where appropriate, referring individuals to community support services to assist them to address their behaviours; and
- where appropriate, directing the person's income to be managed by Centrelink to pay for the priority needs of their family.

8.139 FaHCSIA's implementation review of the FRC in September 2010 identified the following initial impacts of the trial:

76 David Glasgow, Family Responsibilities Commission, *Committee Hansard*, Cairns, 7 May 2010, p. 15.

77 David Glasgow, Family Responsibilities Commission, *Committee Hansard*, Sydney, 28 January 2011, p. 69.

- The FRC appears to be contributing to restoring Indigenous authority by supporting local and emerging leaders in Local Commissioner roles to make decisions, model positive behaviour and express their authority outside the FRC.
- With average attendance rates of around 60-70 percent at conferences, which compares favourably with other conditional welfare initiatives, and the majority of clients reaching agreements with the FRC about what action they should take to improve their lives, there are signs of individuals responding to the drivers and incentives created by the FRC.
- There is growing awareness in the communities that the FRC is operational and will hold people accountable for certain behaviour, although this understanding is not yet broad or deep.
- Story telling through face-to-face interviews with FRC clients reveals that some people have experienced an improvement in their lives and the lives of their families, although there are also signs that individual change is fragile, with many people breaching another social obligation after being in the FRC system.
- Indicators of positive community-level change around school attendance, alcohol and violence in two communities (Aurukun and Mossman Gorge) may be associated with the FRC and other initiatives, and underpin a higher level of acceptance of the FRC in these communities.

8.140 The review outlined the following key issues that require further attention for the remainder of the trial:

- Development of the FRC system should be progressed, focusing on the linkages and cooperation between the Commission, notifying agencies and support services.
- Forward planning for the volume of clients likely to enter the FRC as it is critical that the FRC is able to respond quickly to identified breaches of social obligations, to facilitate early intervention and to maintain its credibility.
- Working with sub-groups in the community where acceptance of the FRC is strongest, including former clients, to support them to be influencers within their family group or community will aid realisation of FRC goals and assist in raising awareness.

8.141 An independent evaluation was carried out by KPMG and the report was made public in November 2010. The report's findings overall suggested

that the 'FRC is progressing towards its objectives, and there are opportunities to further enhance its influence in the communities.'⁷⁸

- 8.142 Whilst there was no conclusive evidence demonstrating a sustainable change to social norms in all communities there was some evidence to suggest that school attendance alongside reductions in problems associated with alcohol and violence in two communities had tangible evidence of community-led change.⁷⁹

Committee comment

- 8.143 Effective intra-agency collaboration is essential for each state and territory responsible for delivering youth justice services. The Committee was concerned about the substantial criticism that was raised throughout the inquiry about the distinct lack of coordinated Indigenous services across all overlapping agencies involved in the criminal justice system.
- 8.144 The successes described are where there is a coordinated response with the community and achievements are made sometimes in spite of, rather than because of, government program assistance. It is notable that when questioned about coordination, departmental responses refer to high level inter-departmental exchange of information. This is vital. However this high level coordination should also translate to on the ground coordination - which does not seem to be the case. There are still multiple agencies engaged to deliver separate services, which is not empowering to communities or families, results in some issues 'falling between the cracks' and is inefficient.
- 8.145 The Committee was pleased to hear that the FRC was achieving some success despite the inevitable challenges that come with coordinating many stakeholders with an objective of restoring social norms in four Indigenous communities.
- 8.146 Given the time taken to establish community trust and engagement in the FRC and the early indications of community led change, it would be a backward step to abandon the pilot. Throughout the inquiry the Committee has become sensitive to the fact that many innovative programs do not get evaluated sufficiently and then cease operations due to the expiry of funding.

⁷⁸ *Implementation Review of the Family Responsibilities Commission, FaHCSIA, p. 5.*

⁷⁹ *Implementation Review of the Family Responsibilities Commission, FaHCSIA, p. 132.*

- 8.147 The Committee notes the 2011-2012 Australian Government Budget provides \$16.1 million to extend the FRC until 31 December 2012.⁸⁰ The Committee is of the opinion that it is critical to extend the funding of the FRC until December 2013 in order to allow the operations of the FRC to be adequately evaluated and a more long-term decision on funding then to be made.

Recommendation 38 – Funding of the Family Responsibilities Commission

- 8.148 **The Committee recommends that the Australian Government in partnership with the Queensland Government and the Cape York Institute for Policy and Leadership extend the funding of the Family Responsibility Commission until December 2013, pending further evaluation.**

Indigenous delivered services

- 8.149 Effective coordination and engagement between government agencies and local Indigenous organisations is lacking. One of the most persistent messages heard by the Committee is that Indigenous controlled and operated programs are best placed to provide effective services, and yet government agencies run programs in parallel to existing grassroots Indigenous programs. Also, an absence of sustained investment and evaluation of policies and programs has led to a failure to achieve cost-effective outcomes.
- 8.150 The Commonwealth Government has recognised that increasing its engagement with Indigenous communities is essential to improve Indigenous justice and community safety. The National Indigenous Law and Justice Framework recommends that governments ‘strengthen engagement mechanisms to assist Aboriginal and Torres Strait Islander peoples to provide meaningful input to key service providers and government departments’.⁸¹
- 8.151 Cath Halbert, Group Manager, FaHCSIA, acknowledged that:

80 *Budget: Investing to Close the Gap between Indigenous and non-Indigenous Australians*, Statement by the Honourable Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 10 May 2011, p. 9.

81 Standing Committee of Attorneys-General Working Group on Indigenous Justice, *National Indigenous Law and Justice Framework 2009-2015*, p. 28.

When things are being negotiated through COAG, there is a tendency for governments to talk to governments. That is the nature of those kinds of agreements. But this government has made a very strong commitment to resetting the relationship and to engaging with Indigenous people on policy development, program design and service delivery issues.⁸²

8.152 Her colleague Greg Roche added that, following the establishment of the National Congress of Australia's First Peoples as a national representative body, 'there will be a much greater level of engagement at the national level in terms of policy formation through a consultative process'.⁸³

8.153 However, a Western Australia magistrate was critical of the way government's forge relationships with Indigenous communities for the delivery of programs:

Generally, agencies do not forge relationships with local Aboriginal people and organisations and they lack spiritual connection and empathy for the Aboriginal people who live in the areas where they are sent to work and deliver the services. There is a lack of continuity of personnel. Often it is the case that some person in an agency goes to work somewhere, they are a champion and then very soon they are shifted to some other location and all of their good work is lost.⁸⁴

8.154 The Committee received evidence about the value of increasing the involvement of Indigenous people at the policy level in government. Sharon Letton from the Youth Justice Aboriginal Advisory Committee commented that a program in South Australia is successful in part because:

They have Aboriginal family practitioners there. It is about building that rapport and that trust, even though they are Families SA workers. They are still Aboriginal people that live and work within the Aboriginal community. It is about building that relationship and strengthening the family and working in partnership.⁸⁵

82 Cath Halbert, Department of Families, Housing, Community Service and Indigenous Affairs, *Committee Hansard*, Canberra, 27 May 2010, p. 10.

83 Greg Roche, Department of Families, Housing, Community Service and Indigenous Affairs, *Committee Hansard*, Canberra, 27 May 2010, p. 11.

84 Denis Reynolds, *Committee Hansard*, Perth, 30 March 2010, p. 7.

85 Sharen Letton, Youth Justice Aboriginal Advisory Committee, *Committee Hansard*, Adelaide, 20 May 2010, p. 7.

8.155 The failure to decrease Indigenous youth involvement with the criminal justice system in the two decades since the Royal Commission into Aboriginal Deaths in Custody signifies that a new way of doing things is required. Chief Justice Martin claimed that:

...the white imposed solutions that we have used in past decades have spectacularly failed to address this problem. I think that a much better way to go is to encourage and facilitate Aboriginal people taking responsibility for and ownership of the solutions that are needed to address these problems. That way, I think we will also encourage them to take some ownership of the problems and to address offending within their communities.⁸⁶

8.156 Judge Reynolds submitted that:

Government agencies need to connect with the Aboriginal people they are supposed to be providing services to. Government agencies need to be prepared to work more as program managers. They need to (1) outsource to Aboriginal people the job of designing and delivering programs for Aboriginal people; (2) support Aboriginal local communities in capacity building; and (3) get local Aboriginal communities to identify mentors for children and also guardians and safe places for Aboriginal children generally, and particularly when on bail.⁸⁷

8.157 Non-government organisations and ATSILS have long been aware of the need to partner with and empower existing local communities and structures. BoysTown noted that 'unless Indigenous communities control, manage and influence the direction of crime prevention strategies, initiatives at a local level will not be successful'.⁸⁸ The Committee was advised that:

... if you really want to crack this seemingly intractable problem, you need to look at agencies such as [Aboriginal legal services] and Aboriginal medical services which are actually owned by the communities themselves and run for the communities, which do not have a party political or government political allegiance but have an allegiance right at the top to the child, to the family and to the parents.⁸⁹

86 The Hon. Wayne Martin, *Committee Hansard*, Perth, 30 March 2010, p. 3.

87 Denis Reynolds, *Committee Hansard*, Perth, 30 March 2010, p. 7.

88 John Dagleish, BoysTown, *Committee Hansard*, Brisbane, 4 May 2010, p. 66.

89 John McKenzie, Aboriginal Legal Service (NSW/ACT), *Committee Hansard*, 4 March 2010, p. 48.

- 8.158 Various submissions have called on governments to recognize effective Aboriginal approaches to diversion and sanction and resource those approaches. The North Australian Aboriginal Justice Agency (NAAJA) stated:

Rather than trying to invent programs the government should take notice of programs that have already been developed by Aboriginal people and that need funding to survive. The Balunu Foundation have developed cultural camps for troubled Aboriginal youth that have had significant success in turning kids around. We urge the Inquiry to look at the work of this foundation.⁹⁰

- 8.159 Indigenous Community Volunteers, a community development organisation, run on the principle that:

Maximising local ownership and participation, and the use of local knowledge and technology is critical for long-term development. Communities need a sense of ownership and control if they are to participate actively in their development trajectory and if it is to be sustainable.⁹¹

- 8.160 Despite the strong consensus among Indigenous Australians that Indigenous-run programs are the most effective in reaching Indigenous youth:

... we continually watch dollars, resources and programs fade into oblivion away from what we have already identified: programs should be delivered by Aboriginal and Torres Strait Islander people to Aboriginal and Torres Strait Islander people because it involves ownership and solutions based on their geographical area.⁹²

- 8.161 Mick Gooda told the Committee that 'my observation is the only place coordination happens is the place the least equipped to do it – that is, the community'.⁹³ There are existing organisations and services in Indigenous communities that, if resourced, are well-placed to implement government policies. An Indigenous advocate noted that one challenge is 'how to build

90 NAAJA, *submission 15*, pp. 8-9.

91 Indigenous Community Volunteers, *submission 18, attachment C*, p. 11.

92 Shane Duffy, Aboriginal Legal Service (NSW/ACT), *Committee Hansard*, 4 March 2010, p. 55.

93 Mick Gooda, *Committee Hansard*, Sydney, 4 March 2010, p. 40.

community capacity to support the organisations that now have limited funds'.⁹⁴

- 8.162 Evidence received by the Committee consistently pointed to local Indigenous people being best positioned to advise on how to factor the 'uniqueness of the social context' into program design. Judge Reynolds advised the Committee that:

... Aboriginal communities ... enjoy diversity and so, with programs, it is not a case of one size fits all. Local communities should be empowered and they should be supported. Government agencies should not seek to control or impose on them programs that they think are appropriate for them. It should be left to local communities to develop, design and deliver programs that they think are best suited for their children. It is the role of government agencies to then provide and deliver those programs to those local communities.⁹⁵

- 8.163 The Committee heard reports of a number of innovative and successful community approaches to reducing offending behaviour amongst Indigenous youth.

- 8.164 Barry Abbott runs a healing program for Indigenous youth with alcohol and inhalant abuse problems at his Ilpurla Outstation in Central Australia. Ilpurla Outstation and a similar program at Mount Theo are held in high regard in Central Australia. The Central Australian Aboriginal Legal Aid Service submits that:

... the success of both the Mount Theo program and the Ilpurla Outstation is largely due to them being culturally appropriate and both initiated and run by Aboriginal people who are the Traditional Owners and Elders of the respective lands.⁹⁶

- 8.165 The Committee received evidence about an Aboriginal owned and led justice diversion program, the Yiriman Youth Program, targeting at risk young people aged between 14 and 25 years in the Fitzroy Crossing area. The program received support and commendation from representatives of the local communities at the Committee hearing.⁹⁷ The Yiriman Business Plan 2011-14 was developed and the Kimberley Aboriginal Law and

94 Cheryl Axelby, Youth Justice Aboriginal Advisory Committee, *Committee Hansard*, Adelaide, 20 May 2010, p. 7.

95 Denis Reynolds, Children's Court of Western Australia, *Committee Hansard*, Perth, 30 March 2010, p. 6.

96 Central Australian Aboriginal Legal Aid Service, *submission 26*, p. 7.

97 *Committee Hansard*, Fitzroy Crossing, 31 March 2010, pp. 16, 40, 46, 53, 56.

Culture Centre (KALACC) seeks coordinated and sustained investment from the Commonwealth and Western Australian governments.⁹⁸

- 8.166 Another Central Australian organisation run by Indigenous women proved to be so successful that it formed the basis for innovative multi-state legislation. Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council:

... operated as one organisation under a tri-State model. This model has now been adopted under the [Cross-Border] Act, and substantially supports our position that when Aboriginal community controlled organisations are engaged, those organisations are in the best position to discuss and implement particular programs.⁹⁹

- 8.167 The Committee notes the strength of evidence supporting Indigenous – run local programs to best meet the needs of Indigenous youth. The following section outlines a number of other examples of Indigenous operated services and programs, and their successes in providing safety, social mentoring and healing for Indigenous juveniles and youth.

Night Patrol

- 8.168 One method of reducing Indigenous people's contact with the police involves a patrol conducted by community members who work in cooperation with the police. These patrols are frequently referred to as Night Patrols as they operate in the evening hours, and they have a strong association with Indigenous communities. Many patrols in Indigenous communities are run by Indigenous people who have a relationship or cultural authority status with the community that they patrol.¹⁰⁰
- 8.169 Patrols generally function – in different formats across the nation – to maintain public order, provide transportation to homes or treatment centres, and divert people from contact with the police.¹⁰¹ They have been

98 Email from Wes Morris, Kimberley Aboriginal Law and Culture Centre (KALACC) to Ministers Snowdon, Macklin and Roxon, 6 November 2010.

99 Aboriginal Legal Service (NSW/ACT), North Australian Aboriginal Justice Agency and Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 27.

100 H Blagg, *An Overview of Night Patrol Services in Australia*, Attorney-General's Department, Canberra, 2003, p. 74.

101 H Blagg, *An Overview of Night Patrol Services in Australia*, Attorney-General's Department, Canberra, 2003, p. 7.

found to contribute to reducing the incidence of juvenile crime during hours of operation.¹⁰²

- 8.170 In March 2010, the Committee met with members of the Dubbo Safe Aboriginal Youth Patrol which operates on three evenings per week and provides strategic support for police, targeting trouble spots and operates as an authority structure that provides a socially legitimate justice response for Aboriginal people.
- 8.171 The Committee also met with members of the Larrakia Nation Aboriginal Corporation Night Patrol in Darwin in May 2010. The Night Patrol is funded by the Northern Territory Department of Justice, and operates seven nights a week. The use of Night Patrol services is voluntary, as patrollers do not have any legal powers, but approximately 90 percent of potential clients accept the offer of support. The Manager, James May, said that the Night Patrol picks up approximately 150 people each night, usually for public intoxication or unsupervised children. However there is only one 32-bed sobering-up shelter in Darwin so many people are transported from the streets to their homes. There are also two rehabilitation clinics but they both have long waiting lists.
- 8.172 Mr May indicated that one of the limitations of the Night Patrol was its emphasis on night-time, when they find that intoxication and alcohol-related disturbances occur 24 hours a day for people with alcohol abuse problems. The AG's Department acknowledged that the main obstacles night patrols face are related to the lack of rehabilitation services available.¹⁰³ Although night patrols contribute to reducing contact with the police by removing individuals from public view before any incidents occur, without the appropriate treatment resources, their service is not a long-term solution.
- 8.173 Like other similar organisations, the Larrakia Nation Aboriginal Corporation Night Patrol requires more funding if it is to expand its service to day-time hours or employ more patrollers. This is not a unique situation. Commonwealth and state funding arrangements for night patrols vary for each jurisdiction; however:

... the majority of patrols are inadequately resourced given the scale of their activities, the risks associated with their work, the skills required and the anti-social hours ... [and] while a broad

102 C Cunneen, *The Impact of Crime Prevention on Aboriginal Communities*, Australian Institute of Criminology, 2001, p. 9.

103 Kym Duggan, Attorneys-General Department, *Committee Hansard*, Canberra, 26 November 2009, p. 4.

range of government agencies has been involved in supporting night patrols, it has been Indigenous people and their representative organisations (including those within State, Territory, and Commonwealth governments) and Aboriginal community organisations that have sustained the vast majority of them.¹⁰⁴

- 8.174 The Committee is aware that 'patrols frequently fill gaps in service provision in many Indigenous communities that would be carried out by a number of government agencies in mainstream Australia'.¹⁰⁵ The Committee commends the work of paid and unpaid patrollers who contribute to the safety of their communities through initiatives such as night patrols, and notes that much of their success lies in the involvement and support of respected community members.

Ipswich Community Justice Group

- 8.175 The Committee heard from Rosemary Connors from the Ipswich Community Justice Group about the invaluable work that is being carried out. The Ipswich Community Justice Group assists hundreds of Indigenous youth each year and diverts them away from the criminal justice system. She explained that Queensland actually supports 51 justice groups, however they only receive an annual budget of \$83 000 each to carry out all their youth justice support programs. Some remote justice groups receive more funding for their remoteness however they have less people to support than in an urban location.
- 8.176 Ms Connors outlined the programs that the Ipswich Community Justice Group supports:

We have our Murri Court bail program, which is a three-month intensive program. During that time adults and young people go through a community service as part of their bail program. They undertake men's group activities. We do a Murri in the bush program, which is a five-day adventure based bush program. The men designed this for their men's group, so they are out camping, canoeing, hunting and doing a whole range of things for themselves. We have the women's group, we are now establishing our own substance abuse program – which has been used in the prison – and we have an 'ending family violence' program. We are

104 H Blagg, *An Overview of Night Patrol Services in Australia*, Attorney-General's Department, Canberra, 2003, p. 46.

105 H Blagg, *An Overview of Night Patrol Services in Australia*, Attorney-General's Department, Canberra, 2003, p. 80.

doing a whole range of programs for our juveniles and our adults.¹⁰⁶

Balunu Healing Camp, Darwin

- 8.177 In Darwin, the Committee met with David Cole, Director of the Balunu Foundation. The Balunu Foundation is an organisation focused on healing of Indigenous youth. In particular, Balunu seeks to instil a cultural identity among Indigenous youth at risk through a culturally appropriate healing program which builds self belief and self esteem whilst assisting Indigenous youth to overcome the wide range of challenges they face as young Indigenous people in today's society.
- 8.178 The Committee visited the Balunu cultural camp which is run on an island just off the mainland of Darwin. The Committee met with some of the Indigenous elders and case workers that run Balunu programs as well as some of the Indigenous youth on the program.
- 8.179 David Cole told the Committee that the program was proving successful in terms of helping to redirect Indigenous youth towards a more positive pathway. In addition, the justice system recognises the value in this program and refers Indigenous youth to the program. Unfortunately Balunu is unable to satisfy the high need for such a program in Darwin. Mr Cole pointed out that the program was operating on a shoestring budget.

Grannies Groups

- 8.180 In Adelaide, the Committee spoke with Colleen Welch who is an Aboriginal Justice Officer who works for the Courts Administration Authority and who is also a member of the local Grannies Group. The Committee was informed about several Aboriginal Granny Groups across Australia who are able to facilitate support networks for Aboriginal people involved in the criminal justice system. Colleen Welch shares her knowledge of the court system with Aboriginal groups such as the Grannies Group in Adelaide.
- 8.181 The Committee's attention was drawn to another Aboriginal Granny support group named 'The Graniators' operating in Queensland. In addition to their initial work of supporting each other, the group extended their field of action to the entire community to address social issues, particularly those around youth and children. The Committee was

106 Rosemary Connors, Ipswich Community Justice Group, *Committee Hansard*, Brisbane, 4 May 2010, p. 47.

impressed to hear about the partnerships the Graniators formed with local organisations and departments:

To complement and strengthen their initiative, the Graniators partnered with other organizations in the community including the police, the municipal council, the state government's department of housing, the local primary school and a special youth service group. The program's evaluation has proved to be extremely positive in providing others in the community a clear and positive formula for driving change at a grass roots level.¹⁰⁷

Committee comment

- 8.182 The Committee was impressed with a number of Indigenous run organisations it either met with or heard about throughout the inquiry process, and the inspirational work of these organisations in assisting Indigenous youth through diversion and rehabilitations programs.
- 8.183 A common thread that was emphasised by all these Indigenous groups was the issue of limited funding available to these organisations, despite the high need for the delivery of such services.
- 8.184 The Committee was made aware of the fact that there was little scope for such small groups to win funding tenders from government agencies and therefore the Committee urges the Commonwealth Government, in collaboration with state and territory governments, to devise more flexibility in the awarding of funding to small yet highly valuable Indigenous organisations working in the youth justice sphere. The Committee discusses further funding opportunities later in the chapter.

Integrating the service approach

- 8.185 Following sustained criticism through the inquiry regarding the lack of government agency co-ordination and the benefits of local Indigenous engagement in the delivery of services, the following sections consider how service funding and delivery may be improved.

New Zealand model of service delivery

- 8.186 In considering how services are coordinated and delivered in Australia, the Committee made several comparisons with New Zealand and their

107 *Exhibit 4, 'The Graniators support group program', p. 1.*

interagency Drivers of Crime approach and integrated service delivery model Whanau Ora.

- 8.187 Recently New Zealand has introduced a new model for coordinating across government agencies all policy responses to crime prevention, and for delivering of services in a coordinated way that focuses on families/communities identifying their needs. The Drivers of Crime involves all agencies responsible for the issues leading to offending, as well as rehabilitation. Introduced as a government priority in 2009, the agencies involved include Accident Compensation Corporation, Alcohol Advisory Council, Department of Corrections, Ministry of Education, Ministry of Health, Ministry of Justice, Ministry of Social Development, New Zealand Police, Te Puni Kokiri (key Government advisory agency on Maori affairs) and the Ministry of Transport.
- 8.188 The premise of the Drivers of Crime interagency coordination is that better connections between justice and social sectors mean better outcomes for all. This approach is also directed at prioritising Maori, as Maori have the highest offending, re-offending and victimisation rates of any population group in New Zealand. By prioritising Maori, the approach develops policy and program responses most suited to Maori, recognising that these may be adapted to other cultural groups – rather than the traditional approach of adapting program response to ‘fit’ Indigenous populations.
- 8.189 To this end, Drivers of Crime specifically seeks Maori consultation and leaders to identify opportunities for Maori to design, develop and deliver innovative solution to better Maori wellbeing and reduce offending.
- 8.190 Four priority areas inform the government response to Drivers of Crime. These are:
- maternity and early parenting – effective maternity and early parenting support services for families whose circumstances place their children at risk of poor outcomes
 - conduct and behaviour – prevent, treat and manage problems amongst children who have experienced trauma and difficulties in their early years that has contributed to behaviour issues
 - alcohol – reduce harm from alcohol, and improve the availability and accessibility of alcohol and other drug treatment services, and
 - low-level offenders – identify alternative approaches and pathways out of offending for low-level offenders.¹⁰⁸

108 <www.justice.govt.nz/justice-sector/drivers-of-crime> accessed 30 March 2011.

- 8.191 The model of service delivery is called Whanua Ora, which can be translated as the life/well-being of the family.¹⁰⁹ The new approach adopted by the New Zealand government is for a Whanau-centred (family-centred) service delivery which will lead to:
- strengthened whanau capabilities
 - an integrated approach to whanua wellbeing
 - collaborative relationships between state agencies in relation to whanau services
 - relationship between government and community agencies that are broader than contractual, and
 - improved cost-effectiveness and value for money.¹¹⁰
- 8.192 During its visit to New Zealand, groups explained to the Committee that this approach was to place the family at the centre of decisions-making in terms of identifying needs and a plan to bring about change, and was to coordinate service delivery so that a family was not dealing with multiple agencies duplicating some services and missing other areas of need. In effect the approach was to ensure that one service provider visited a household, rather than ten perspectives from ten different agencies.
- 8.193 The Committee notes that the aims of these approaches are similar to what needs to be achieved in Australia. However there are some crucial differences between the Australian and New Zealand context – namely the challenges of Australian geography and isolation, a greater degree of social dysfunction and lack of Indigenous leadership in some communities, cultural and historical differences which have lead to a greater suspicion of government and police services, and a culture of welfare dependence which has lead to resistance to change in some communities. That said, the Committee also saw some valuable lessons in the Drivers of Crime coordination and the integrated service delivery approaches that New Zealand has implemented.
- 8.194 The Committee endorses the objectives of the Whanau Ora approach and notes that this approach has only been implemented recently. Consequently there has been no evaluation process or analysis of its cost-effectiveness, and agencies were only able to provide anecdotal accounts of its impact. The Committee had some reservations about a lack of

109 While whanau is translated as family, it is taken to mean the extended family and also members of the community that form a community around a child.

110 Whanau Ora: Report of the Taskforce on Whanau-Centred Initiatives <<http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/planning-strategy/whanau-ora/whanau-ora-taskforce-report.pdf>> accessed 7 April 2011.

reporting and accountability in the Whanau Ora service delivery, and looks forward to tracking the outcomes of this approach and improvements achieved for Maori.

Pooled and sustained funding

- 8.195 The lack of coordination between Commonwealth departments and a reluctance to take responsibility for cross-portfolio issues is attributable in part to the funding model which allocates funds to individual departments for programs that are within their respective portfolios. However, when issues such as addressing Indigenous youth involvement in the criminal justice system require multi-agency and multi-jurisdictional programs, the pursuit of funds can result in competitive and adversarial, rather than integrated behaviour. More significantly, certain areas can be missed altogether. One example of a funding gap is youth services in Central Australia:

At the moment, youth services in remote communities are funded out of a particular FaHCSIA funding bucket which funds out of school hours care and vacation care [and] that is the only real funding source that is used in remote communities to [employ] youth workers.¹¹¹

- 8.196 Having different funding sources means that programs are also feeling the push and pull of different objectives instead of being supported to integrate their services. Feedback from consultations with Indigenous community-controlled health organisations indicated that:

... the mere process of collaboration and providing an integrated service is not specifically funded. The services are funded by their roles. The hours that they are funded for are for client contact or for administrative work. The actual role of collaborating within your service, let alone across services and in particular between community controlled organisations and mainstream services, is just not funded. Yet Closing the Gap and other initiatives are based on the assumption that it is an integrated service. So having more specific funding tied to those processes in particular is important ... [otherwise] we are relying on people's own initiative to do that collaboration and that information exchange.¹¹²

111 Blair McFarland, Central Australian Youth Link Up Service, *Committee Hansard*, Darwin, 6 May 2010, p. 79.

112 Julienne Ware, ANEX, *Committee Hansard*, Melbourne, 3 March 2010, p. 34.

- 8.197 Sam Jeffries, interim Co-Chair, National Congress of First Peoples commented on the lack of coordinated program support:

Administrative complexity should not be a barrier to achieving any outcomes. The bureaucracy that gets in the way at times of achieving some sensible results in communities and how they work or sometimes prevents programs going ahead is sometimes beyond understanding. Those sorts of things need to be really factored in. Flexibility in funding is almost nonexistent.¹¹³

- 8.198 At a public hearing, Anne Hampshire from Mission Australia observed that 'we do not have a culture in Australia where we have a pooled funding opportunity. COAG perhaps offers that light'.¹¹⁴

- 8.199 The Minister for Families, Housing, Community Services and Indigenous Affairs acknowledged that the lack of sustained investment and coordination across governments has contributed to continuing Indigenous disadvantage:

COAG recognises that overcoming Indigenous disadvantage will require a sustained effort from all levels of government. Governments are now working together to overcome the legacy of decades of under-investment, ad hoc approaches and duplication of effort in Indigenous funding and services.¹¹⁵

- 8.200 In response to this, the Committee commends the Flexible Funding Pool that was announced by the Commonwealth Government in February 2010 for remote Indigenous services in 29 communities to overcome the siloed and red-tape-burdened funding models that has hindered the implementation of local programs.¹¹⁶ This flexible funding pool under the Remote Service Delivery National Partnership Agreement will 'try to provide some support for things that are community priorities and maybe do not easily fit in one of the silos'.¹¹⁷
- 8.201 The issue of a lack of sustained funding in justice diversion and rehabilitation programs, particularly those delivered and supported by

113 Sam Jeffries, National Congress of First Peoples, *Committee Hansard*, Sydney, 28 January 2011, p. 17.

114 Anne Hampshire, Mission Australia, *Committee Hansard*, Melbourne, 3 March 2010, p. 30.

115 Budget Ministerial Statement by the Hon. Jenny Macklin, *Closing the Gap - Building Momentum*, 11 May 2010, p. 2.

116 Kevin Rudd, *House of Representatives Hansard*, Canberra, 11 February 2010, p. 1172.

117 Ms Wood, Department of Education, Employment and Workplace Relations, *Committee Hansard*, Canberra, 17 June 2010, p. 9.

Indigenous people, was brought to the Committee's attention on numerous occasions throughout the inquiry.

- 8.202 It was argued that diversion from the criminal justice system is cost effective. A 2003 report by the Australian National Council on Drugs argued that diversion could be justified not simply because it was an effective means of reducing Indigenous contact with the criminal justice system, but also because diversionary options 'are likely to be cheaper' than dealing with growing rates of crime and detainees.¹¹⁸
- 8.203 Sustained investment to diversion programs at all stages of the criminal justice system was viewed as critical to improving Indigenous justice outcomes as they provide a potential circuit breaker in offending behaviour and reduce entrenched contact with the criminal justice system. On this point, the Public Interest Advocacy Centre advised the Committee:
- There is a need for increased diversion at all stages of the criminal justice process, as the reduction of time spent in juvenile detention can assist in reducing the criminal behaviour of young people. Increasing diversion prior to arrest should be a key focus.¹¹⁹
- 8.204 A number of witnesses believed that supporting rehabilitation programs to reduce recidivism is crucial to improving Indigenous justice outcomes. As expressed earlier in this report, Don Weatherburn from BOCSAR told the Committee that reducing recidivism was more effective in reducing Indigenous imprisonment rates in the short to medium term than were preventative or diversionary interventions.¹²⁰ Luke Grant, New South Wales Department of Corrective Services, told the Committee the rehabilitative potential of detention and imprisonment had not been realised and 'that incarceration is a criminogenic factor in itself and that the experience of incarceration results in an increased likelihood of someone offending'.¹²¹
- 8.205 The Alcohol and Other Drugs Council of Australia (ADCA) was amongst those to address the issue of sustained investment, focusing on short funding cycles as one of the factors adversely affecting the effectiveness of Indigenous services. In their submission to the Committee, ADCA noted:

118 Australian National Council on Drugs (ANCD), *Diversion of Aboriginal and Torres Strait Islander Youth from Juvenile Detention*, Canberra, 2003, p. 25.

119 Public Interest Advocacy Centre (PIAC), *submission 23*, p. 3.

120 Don Weatherburn, BOCSAR, *Committee Hansard*, Sydney, 4 March 2010, p. 18.

121 Luke Grant, New South Wales Department of Corrective Services, *Committee Hansard*, Sydney, 4 March 2010, p. 29.

... short-term funding arrangements ... present serious impediments to not-for-profit organisations as they generate uncertainty, inhibit innovation, make it difficult to retain staff, render longer-term financial planning and proper investment extremely difficult, and stop organisations from pursuing more holistic strategic and organisational goals. ADCA considers a consistent and secure funding stream is vital for ensuring the effectiveness and sustainability of not-for-profit organisations' services and operations ... a three year [funding] basis ... would enable longer-term approaches and outcomes.¹²²

- 8.206 Assistant Commissioner Luke Grant, Offender Services and Programs, New South Wales Corrective Services asserted that any support to diversion programs must be applied with intensity and rigour:

The key message ... is that it is not just the scale of the programs but also the intensity of the programs. If you have a person with serious, complex issues, you are not going to resolve that through an experiential workshop that lasts for two weekends, giving people a great time, or a mentor who is with someone for three months and not longer than that. I think the duration and the intensity of interventions is really important, along with approaching this incredibly complex issue with a degree of rigour.¹²³

- 8.207 Adam Tomison, from the AIC, also singled out short term funding as an issue, implicitly pointing to a scatter-gun approach to investment resulting in an inability to consolidate success:

... through experience over 20 years and having done national reports looking at prevention programs across the country, I have learnt that the tendency is still towards the short term. The best programs may get bigger and survive but mostly they do not; they disappear and something similar will happen somewhere else.¹²⁴

- 8.208 The Aboriginal Legal Service (NSW/ACT), NAAJA, and the Queensland Aboriginal and Torres Strait Islander Legal Service identified 'pilot syndrome' as a common feature of the Indigenous services funding landscape. Pointing to the New South Wales Youth Drug and Alcohol

122 Alcohol and Other Drugs Council of Australia (ADCA), *submission 65*, p. 11.

123 Luke Grant, New South Wales Corrective Services, *Committee Hansard*, Sydney, 28 January 2011, p. 21.

124 Adam Tomison, AIC, *Committee Hansard*, Canberra, 11 February 2010, p. 8.

Court, which is still a pilot program after ten years of operations, their submission argued:

While pilots and trials may prove to be effective, they are considered too expensive to be widely implemented ...in this case, and with many other programs ... it is not the lack of an established, evidence-based methodology, but resource restraints that prevent them from being rolled out throughout Australia and achieving the reductions in the rates of Aboriginal and Torres Strait Islander youth detention that are available.¹²⁵

Justice reinvestment

8.209 A substantial number of witnesses emphasised the need to invest more heavily in preventative measures rather than punitive responses to Indigenous offending behaviour through justice reinvestment.¹²⁶ Assistant Commissioner Grahame Kelly, Regional Operations Services, Northern Territory Police asked:

Why don't we shift the money from the crisis point to early intervention? There are a whole lot of factors like housing, education and leadership. Why don't we do that? The answer is really simple: because we have to spend all this money at this point here because we have already got the crisis. If we are going to be smart about it we have to bite the bullet and recognise that we have to keep spending that money there but start spending money here as well for a time. Sooner or later, if the theory is correct, we will reach a point where we can stop spending the money up this end and can reinvest it at the front end. If you look at that from a practical point of view: why are kids in care and why do we end up with children in conflict with the justice system? No home, no education, no job, no hope and no future.¹²⁷

8.210 Foremost amongst those to emphasise the value of redistribution of justice spending was the Australian Human Rights Commission which called for governments to rethink their approach to Indigenous justice through the pursuit of justice reinvestment strategies. Justice reinvestment is:

125 Aboriginal Legal Service NSW/ACT, NAAJA, Queensland Aboriginal and Torres Strait Islander Legal Service, *submission 66*, p. 11.

126 Peter Murphy, Noetic Solutions, *Committee Hansard*, Canberra, 18 March 2010, pp. 8-10; Indigenous Offender Health Research Capacity Building Group (IOHR-CBG), *submission 9*, pp. 6-7; ACCG, *submission 59*, pp. 24-26; ADCA, *submission 65*, pp. 6-7, 13.

127 Grahame Kelly, *Committee Hansard*, Sydney, 28 January 2011, p. 17.

... a criminal justice policy approach that diverts a portion of the funds that will be spent on imprisonment to local communities where there is a high concentration of offenders. The money that might be spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these communities ... Justice reinvestment is not just about reforming the criminal justice system but trying to prevent people from getting there in the first place.¹²⁸

- 8.211 Emilie Priday from the Australian Human Rights Commission asserted that the biggest impacts on incarceration rates are made by investing in diversion and early intervention rather than incarceration. Justice reinvestment would involve diverting a portion of funds that would be spent on prisons to communities which have a high concentration of offenders. The communities would have some ownership and responsibility about how they spend the funds. Ms Priday gave an example of how this might work:

It is actually a really well-stepped-out, evidence based process. The first thing you need to do is work out where the offenders are coming from. There is a demographic component. There is a research component for identifying the communities that are, I guess, high-risk communities. You would be looking at different places. If, say, you are in New South Wales, there has been some scoping around Dubbo, for instance. But equally you could have an urban place. It could be somewhere like Mount Druitt or Blacktown. They would be other good examples. You identify the research and then you look at the drivers that are bringing people into the criminal justice system. That will entail a research component in terms of the demographic and also the systemic changes. Then there is a process of actually sitting down. In America it is based on bipartisan support. In Australia it is most likely to involve a holistic government approach. A whole range of departments would in the first instance sit down and work out an agreement, and then there is the process of bringing in the community.¹²⁹

- 8.212 As yet, there has not been sufficient research in Australia to demonstrate the effectiveness of justice reinvestment, although some examples from the

128 Australian Human Rights Commission, *submission 30*, p. 1.

129 Emilie Priday, Australian Human Rights Commission, *Committee Hansard*, Sydney, 28 January 2011, pp. 80-81.

United States indicate a measure of success.¹³⁰ A researcher from the Australian Institute of Aboriginal and Torres Strait Islander Studies suggested that 'a national reference group on justice reinvestment be established'.¹³¹

Committee comment

- 8.213 The Committee considers that there has been an ongoing problem with coordinating the provision of services that assist Indigenous people, most especially in the area of Indigenous justice. The Committee agrees that the Commonwealth Government must take a stronger lead in promoting better coordination of services for Indigenous Australians. At the same time the Commonwealth Government needs to make a stronger commitment to engaging and collaborating with Indigenous communities in order to deliver effective and culturally supportive services that will be used by Indigenous Australians and result in positive outcomes.
- 8.214 The Committee is concerned that funding and programs are scattered across the country without clear and cohesive objectives and leadership. A coherent framework is necessary for the collection and sharing of information about the availability and distribution of funds and services.
- 8.215 Therefore the Committee has made a recommendation in chapter 2 that the Commonwealth Government should commit to implementing a National Partnership Agreement (NPA) on safe communities through COAG and include justice targets in order to facilitate the improvement of Indigenous youth justice services throughout Australia.
- 8.216 The Committee acclaims the hard work of numerous grass-roots Indigenous organisations around Australia, and strongly supports the notion that Indigenous-run organisations should be involved integrally with the delivery of services to Indigenous people.
- 8.217 The Committee notes that many strategies and solutions which have been imposed on Indigenous communities by various state, territory and Commonwealth governments have failed in the past, and that working in consultation and partnership with Indigenous stakeholders is more likely to meet with success and positive change for the future.

130 Emilie Priday, Australian Human Rights Commission, *Committee Hansard*, Sydney, 28 January 2011, p. 57; John Dalgleish, Boystown, *Committee Hansard*, 4 May 2010, p. 66.

131 Jillian Guthrie, Indigenous Offender Health Capacity Building Group, *Committee Hansard*, Canberra, 4 February 2010, p. 10.

- 8.218 The Committee is encouraged by engagement and coordination strategies which involve Indigenous representation such as the Western Australian State Justice Plan which was developed by Aboriginal representatives and is supported by the Western Australian Government.
- 8.219 The Committee sees value in the establishment and coordinated use of more flexible funding pools which would assist certain programs that are falling currently between the cracks due to the issue of intra-agency support that is required to facilitate some youth justice programs. This approach is currently being trialled through the Remote Service Delivery Flexible Funding Pool which provides \$46 million over three years to fund a broad range of projects in 29 priority remote locations.
- 8.220 Flexible funding pools would be useful as an interim measure until an NPA on safe communities can be implemented. The Committee strongly supports the on-going establishment of flexible funding pools to be used for areas that require intra-agency cooperation such as the issue of improving Indigenous hearing and educational outcomes.
- 8.221 The Committee considers that Indigenous involvement, and preferably Indigenous ownership of diversion and rehabilitation programs, is key to successful intervention. However it is acknowledged that while Indigenous groups may have valuable skills in communicating with youth and providing well structured healing programs, they may not be skilled in preparing funding applications and reporting on the integrity of accounting and governance practices – all of which are a requirement for securing government grants.
- 8.222 Recognising the desirability of Indigenous involvement in programs, especially programs which are driven by local Indigenous leaders, the Committee considers it critical to ensure that Indigenous organisations have the capacity to be competitive in applying for funding for youth diversion and rehabilitation programs. The Committee heard about many examples of individuals and groups who, from their own funds and time, have initiated valuable programs to contribute positively towards the lives of Indigenous youth. While the Committee applauds this selfless work, the Committee is anxious to ensure that the valuable work already being done by some can be funded and, further, that other Indigenous organisations are able to compete fairly alongside more experienced non-government organisations.
- 8.223 In regard to the need for Indigenous ownership of programs and support for Indigenous involvement, the Committee reiterates the need for a National Indigenous Advisory Body as recommended earlier in this chapter. Indigenous involvement in diversion and rehabilitation initiatives

should commence at the policy stage and continue through to programs development and implementation. It is the view of the Committee that past initiatives by governments have had limited success and we must seek new paradigms and ways of working and take lessons from the success of locally run, Indigenous driven programs in this area.

- 8.224 The Committee considers that the Commonwealth Government, through COAG, should take a lead role in coordinating the sustained investment of Indigenous locally supported and developed youth justice diversion and rehabilitation programs.

Recommendation 39 – Sustained flexible funding

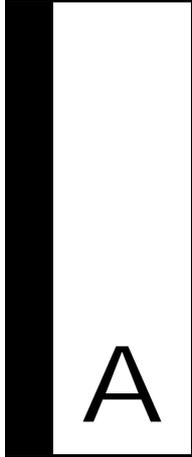
- 8.225 **The Committee recommends that the Commonwealth Government work with state and territory governments to coordinate sustained and flexible funding support for a range of youth justice diversion and rehabilitation services which are developed with and supported by local Indigenous communities.**
- 8.226 The Committee considers that, through the recommendations of this report, there is the opportunity to achieve a momentum of change and make a real difference. However, to achieve that momentum and to make that difference, the Committee acknowledges that an extensive range of initiatives are required. It is the view of the Committee that to put in place half measures and to underfund programs will not reduce the overrepresentation of Indigenous juveniles and young adults in the criminal justice system.
- 8.227 The Committee supports the principles of justice reinvestment in that it focuses funds towards early intervention and prevention rather than incarceration, and it allows communities to make decisions about the best possible solutions to reducing offending behaviour.

Recommendation 40 – Justice reinvestment

- 8.228 **The Committee supports the principles of justice reinvestment and recommends that governments focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Australia.**

- 8.229 In conclusion, the Committee considers that, to effect change in the area of Indigenous disadvantage, the service delivery of programs must be predicated on the following principles to:
- engage and empower Indigenous communities in the development and implementation of policy and programs
 - address the needs of Indigenous families and communities as a whole
 - integrate and coordinate initiatives by government agencies, non-government agencies, and local individuals and groups
 - focus on early intervention and the wellbeing of Indigenous children rather than punitive responses, and
 - engage Indigenous leaders and elders in positions of responsibility and respect.
- 8.230 The Committee has made a large number of recommendations in this report. Some recommendations are designed to improve existing service delivery, and build Indigenous involvement in both policy and program development. Others recommend new action and the provision of new support services to provide appropriate accommodation options and improve health, education and employment outcomes.
- 8.231 The cost of wide-scale action in this area is certainly significant. However, our current path ensures the ongoing economic cost of incarcerating another generation and the social cost of losing future generations of Indigenous children to lives in incarceration.
- 8.232 The Committee insists that Australians cannot wait another twenty years to address this national crisis and urges that the Committee's recommendations are responded to within six months from the tabling of this report.
- 8.233 The Committee concludes by noting that every Indigenous child of this generation who follows the path of offending and recidivism contributes to a subsequent generation where offending and incarceration are considered the norm, where education and employment are not prioritised, and where children are raised in fractured families with absent kin.

Shayne Neumann MP
Chair



Appendix A – List of submissions

1. Ms Lenore Ketchup
2. Ms Sarah Crellin
3. Menzies School of Health Research
4. UnitingCare Burnside
- 4a. UnitingCare Burnside – Supplementary Submission
5. Australian Hearing
6. BoysTown
7. Mental Health Alcohol Tobacco and Other Drugs Service
8. The Catholic Bishops of Broome and Darwin
9. Indigenous Offender Health Research Capacity Building Group
- 9a. Indigenous Offender Health Research Capacity Building Group –
Supplementary Submission
10. CatholicCare Wollongong
11. National Organisation for Fetal Alcohol Syndrome and Related Disorders
12. Mr Peter Cooley
13. CatholicCare Hunter-Manning
14. Police Federation of Australia
15. North Australian Aboriginal Justice Agency
16. Meenah Mienne

17. Telethon Speech and Hearing Centre for Children
18. Indigenous Community Volunteers
19. Aboriginal Legal Service of Western Australia
20. Mission Australia
21. Youth Advocacy Centre
22. Dr Janet Hunt
23. Public Interest Advocacy Centre
24. NSW Council for Intellectual Disability and Intellectual Disability Rights Service
25. ANEX
26. Central Australian Aboriginal Legal Aid Service Inc
27. Central Australian Youth Link-Up Service
28. Professor Dennis Foley and Mr Terry Lovat
29. The Law Society of New South Wales
30. Australian Human Rights Commission
- 30a. Australian Human Rights Commission – Supplementary Submission
31. Province Promotions
32. CONFIDENTIAL
33. Eternity Aid and Save the Children
34. ACT Council of Social Service Inc
35. Department of Human Services
36. Children’s Court of Western Australia
37. Legal Services Commission of South Australia
38. Archbishop of Adelaide
39. Victoria Legal Aid
40. Victorian Aboriginal Legal Service Co-operative Limited
41. Chief Magistrate Jenny Blokland
42. Australian Sports Commission
43. NSW Department of Education and Training

44. Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd
45. Northern Territory Legal Aid Commission
46. Law Council of Australia
47. The Hon. Wayne Martin, Chief Justice of Western Australia
48. Aboriginal Building Association
49. Aboriginal Connections Pty Ltd
50. Central Australia Youth Justice Committee
51. ACT for Kids
52. Kimberley Aboriginal Law and Culture Centre
53. Royal Australasian College of Physicians
54. Department of Corrective Services (Western Australia)
55. Children's Court of New South Wales
56. New South Wales Ombudsman
57. Nindilingarri Cultural Health Services
58. Desert Knowledge
59. Australian Children's Commissioners and Guardians
60. National Indigenous Drug and Alcohol Committee
61. Australian Youth Affairs Coalition
62. Victorian Indigenous Youth Advisory Council
63. Department of Education, Employment and Workplace Relations
64. Wirringa Baiya Aboriginal Women's Legal Centre
65. Alcohol and other Drugs Council of Australia
66. Aboriginal Legal Service New South Wales/ Australian Capital Territory,
North Australian Aboriginal Justice Agency and Queensland Aboriginal
and Torres Strait Islander Legal Service
67. Australian Institute of Criminology
68. Law Institute of Victoria
69. Courts Administration Authority, South Australia
70. Principals of Excelior, Message Stick Group and Nallawilli

71. Minister for Community Services, Victoria
72. Mr Rod Madgwick QC
73. Department of Health and Ageing
- 73a. Department of Health and Ageing – Supplementary Submission
74. The Chief Magistrate of the Local Court, New South Wales
75. Victorian Attorney-General
76. Australian Women’s Coalition
77. Ms Rosemary O’Grady
78. Western Australian Police
79. Department of Families, Housing, Community Services and Indigenous Affairs
- 79a. Department of Families, Housing, Community Services and Indigenous Affairs – Supplementary Submission
80. Mr Stephen Norrish
81. Department of Education, Western Australia
82. South Australian Government
83. Department of Indigenous Affairs, Western Australia
84. New South Wales Government
85. Mr Mark Horton
86. Aboriginal Family Violence Prevention and Legal Service Victoria
87. Dr Damien Howard
- 87a. Dr Damien Howard – Supplementary Submission
88. Magistrate Stephanie Tonkin
89. Northern Territory Government Agencies
90. Department of Premier and Cabinet Tasmania
91. Queensland Government
92. Ms Libby Carney
93. Ms Margaret Sue Barstow
94. Mr Wayne Applebee and Mr Paul Collis

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95. Youth Empowered Towards Independence
 96. Geoff Ferguson, Alice Haines and Serene Fernando
 97. Youth Justice Aboriginal Advisory Committee - South Australia
 98. Aboriginal Legal Rights Movement
 99. Mr Shane Brennan
 100. Youth Affairs Network of Queensland
 101. Ms Cheryl Cooper
 102. Northern Territory Department of Justice
 103. Magistrate Rosanne McInnes
 104. Northern Territory Department of Education and Training
 105. Attorney-General's Department
 106. Women's Advisory Council
 107. Danial Kelly
 108. Neapean Community and Neighbourhood Services
 109. Australian for Native Title and Reconciliation (ANTaR)
 110. Rio Tinto Iron Ore



Appendix B – List of hearings, witnesses and inspections

Canberra: 4 February 2010

Australian Institute of Aboriginal and Torres Strait Islander Studies

Dr Jillian Guthrie - Research Fellow, Indigenous Offender Health Capacity Building Group

Australian National University

Professor Michael Levy – Clinical Professor, School of Clinical Medicine

Canberra: 11 February 2010

Australian Institute of Criminology

Dr Kelly Richards – Research Analyst

Dr Adam Tomison - Director

Canberra: 25 February 2010

Australian National Council on Drugs

Mr Bradley Freeburn – NIDAC Member, National Indigenous Drug and Alcohol Committee

Miss Sue-Anne Morley – Executive Officer, National Indigenous Drug and Alcohol Committee

Mr Gino Vumbaca – ANCD Executive Officer, National Indigenous Drug and Alcohol Committee

Mr Scott Wilson – NIDAC Co-Deputy Chair, National Indigenous Drug and Alcohol Committee

Melbourne: 3 March 2010

Anex (Association for Prevention and Harm Reduction)

Ms Elizabeth Sutton – Executive Manager, Policy and Programs

Ms Julienne Maree – Acting Chief Executive Officer

Department of Justice, Victoria

Mr Andrew Jackomos – Director, Koori Justice Unit

Mission Australia

Ms Prue Burns – Senior Researcher and Project Officer, Victoria State Office

Ms Anne Hampshire – National Manager Research and Social Policy

Private Capacity

Mr Edwin Batt

The Hon. Geoffrey Eames, AM, QC

Victorian Aboriginal Community Services Association Ltd

Dr Alfred Bamblett – Chief Executive Officer

Victorian Aboriginal Legal Service Co-operative Ltd

Mr Frank Guivarra – Chief Executive Officer

Victorian Indigenous Youth Advisory Council

Ms Jarrah Jones – Committee Member

Mr Timothy Kanoa – State Coordinator

Miss Clarisse Slater – Project Officer

Sydney: 4 March 2010

Aboriginal Child, Family and State Secretariat

Mr Bill Pritchard – Executive Officer

Aboriginal and Torres Strait Islander Legal Service (NSW/ACT) Ltd

Mr John McKenzie – Chief Legal Officer

Aboriginal and Torres Strait Islander Legal Service (Queensland) Ltd

Mr Shane Duffy - Chief Executive Officer

Australian Human Rights Commission

Mr Mick Gooda - Aboriginal and Torres Strait Islander Social Justice Commissioner

Ms Emilie Priday - Policy Officer

Children's Court of New South Wales

Ms Hilary Hannam - Children's Magistrate, Youth Drug and Alcohol Court

Corrective Services New South Wales

Mr Luke Grant - Assistant Commissioner

Department of Human Services, New South Wales

Ms Edwina Crawford - Manager, Aboriginal Strategic Coordination Unit

Mr Peter Muir - Chief Executive, Juvenile Justice

Koori Communications and Training Pty Ltd

Mr Peter Cooley - Director

Law Society of New South Wales

Mr Andrew Wilson - Practice Manager

New South Wales Bureau of Crime Statistics and Research

Dr Don Weatherburn - Director

New South Wales Health

Ms Julie Babineau - Chief Executive, Justice Health

Dr Richard Matthews - Deputy Director-General, Strategic Development

New South Wales Police Force

Deputy Commission Dave Owens, APM - Deputy Commissioner, Field Operations

Private Capacity

Mr Byron Arellano

Acting Judge Rod Madgwick

Mr Shane Phillips

Magistrate Margaret Quinn

Public Interest Advocacy Centre

Ms Laura Brown – Solicitor, Indigenous Justice Program

Mr Ken Zulumovski – Indigenous Men’s Access to Justice

Wirringa Baiya Aboriginal Women’s Legal Centre

Ms Rachael Martin – Principal Solicitor

Canberra: 11 March 2010

Indigenous Community Volunteers

Mr Gregory Andrews – Chief Executive Officer

Ms Stephanie Harvey – Advocacy and Fundraising Manager

Canberra: 18 March 2010

Noetic Solutions Pty Ltd

Mr Peter Murphy – Chief Executive Officer

Perth: 30 March 2010

Aboriginal Legal Service of Western Australia

Ms Mara Barone – Counsel, Criminal Unit

Mr Peter Collins – Director Legal Services

Children’s Court of Western Australia

Judge Denis Reynolds – President

Commissioner for Children and Young People

Ms Michelle Scott – Commissioner

Department of the Attorney-General, Western Australia

Mr Andrew Marshall – Manager, Research and Analysis

Department of Child Protection, Western Australia

Mrs Jenni Collard – Executive Director, Aboriginal Engagement and Coordination Directorate

Department of Corrective Services, Western Australia

Assistant Commissioner Lex McCulloch – Assistant Commissioner Youth Justice
Department of Education, Western Australia

Associate Professor Robert Somerville AM – Director of Aboriginal Education
Rio Tinto

Mr Andrew Burrow – Superintendent, Work Readiness and Education
State Aboriginal Justice Congress

Mr Ismahl Croft – Congress Member, Representative from the West Kimberley
Region

Mr John Hart – Congress Co-Chair, Representative from the Mulga Mallee Region

Mrs Leza Radcliffe – Yamatji Representative

Supreme Court of Western Australia

The Hon Wayne Martin – Chief Justice, Department of the Attorney-General

Western Australian Police

Superintendent Michael Emmanuel – Community Engagement Division, Strategy
and Performance Directorate

Mr Robert Skesteris – Executive Manager, Indigenous and Community Diversity
Unit, Community Engagement Division, Strategy and Performance Directorate

Fitzroy Crossing: 31 March 2010

Australian Catholic Bishops Conference

Bishop Christopher Saunders

Bunaba Elder

Mr George Brooking

Council of Australian Governments

Sergeant Travis Lupton – Local Area Coordinator, Remote Service Delivery
Program

Department of Families, Housing, Community Services and Indigenous Affairs

Miss Kelly Anderson – Agreement Manager, Derby ICC

Fitzroy Valley District High School

Ms Marmingee Hand - Teacher/ Aboriginal Education Consultant

Mr Paul Jefferies - Principal

Kimberley Aboriginal Law and Cultural Centre

Ms Michelle Coles - Coordinator Women's Programs, Yiriman Project

Mr Steven James - Yiriman Project Officer/Cultural Adviser

Mr Simon Keenan - Men's Project Coordinator, Yiriman Project

Ms Annette Kogolo - Yiriman Cultural Adviser

Mr Allan Lawford - Yiriman Cultural Adviser

Ms Selina O'Meara - Yiriman Cultural Adviser

Leedal Pty Ltd

Mr John Rodrigues - Chief Operations Officer

Marninwarntikura Fitzroy Women's Resource and Legal Unit

Ms Emily Carter - Chairperson

Marninwarntikura Women's Resource Centre

Ms Christine Gray - Manager, Family Support Unit

Mrs Olive Knight - Coordinator, Early Intervention Prevention Program

Ms June Oscar - Chief Executive Officer

Mount Pierre Aboriginal Corporation and Galeru Aboriginal Corporation, Fitzroy Valley Area

Mr Louie Dolby - Manager/Mentor

Mrs Marion Dolby - Wife/Supporter

Nindilingarri Cultural Health Services

Ms Maureen Carter - Chief Executive Officer

Private Capacity

Mr Patrick Green

Mr Ronnie Jimbidie

Mrs Pauline Maclagan

Shire Derby West Kimberley

Mr Brad Isbister - Manager, Community Development

Western Australia Country Health Service

Ms Joanne Wraith - Child and Adolescent Mental Health Professional

Western Australia Police

Senior Sergeant Ian Gibson - Officer in Charge

Commander Murray Smalpage - District Officer

Brisbane: 4 May 2010ANTaR

Ms Monique Bond

Ms Jan Gillies

BoysTown

Mr Dean Bruncker - Program Manager, Employment Education and Training

Mr John Dalgleish - Manager, Strategy and Research

Children of Dreaming, Ipswich

Mr Joseph Kirk

Department of Communities, Queensland

Ms Bette Kill - Associate Director-General, Strategy, Policy, Programs and Performance

Department of Community Safety, Queensland

Mr Kelvin Anderson - Commission for Corrections, Queensland Corrective Services

Department of Education and Training, Queensland

Ms Angela Leitch - Director, Indigenous Education Policy

Department of Justice and Attorney-General, Queensland

Mr Terry Ryan - Acting Deputy Director-General, Justice Services

Ipswich Community Justice Group

Mrs Rosemary Connors - Coordinator

Private Capacity

Mr Norman Clarke

Ms Stephanie Tonkin

Queensland Health

Dr Aaron Groves - Executive Director, Mental Health Directorate

Dr Peter Steer - Chief Executive Officer, Children's Health Services

Queensland Police Service

Mr Robert Atkinson - Commissioner of Police

Shannon Donaldson Province Lawyers

Mr Adair Donaldson - Partner

Youth Advocacy Centre

Ms Raylene D'Cruz - Community Legal Education Officer

Ms Rosslyn Monro - Director

Darwin: 6 May 2010Central Australian Aboriginal Legal Aid

Ms Antoinette Carroll - Youth Justice Advisory Project Coordinator

Central Australian Youth Justice Committee

Mr Mark O'Reilly - Principal Legal Officer

Ilpurla Aboriginal Corporation

Mr Barry Abbott - Manager

Menzies School of Health Research

Dr Teresa Cunningham - Research Fellow

Dr Kate Senior - Senior Research Fellow

North Australian Aboriginal Justice Agency

Miss Chantelle Bala -Criminal Solicitor

Mr Josh Brock -Criminal Solicitor

Mr Danial Kelly - Former solicitor

Miss Shaleena Musk - Practice Manager, Criminal Solicitor

Northern Territory Police

Assistant Commissioner Mark McAdie – Assistant Commissioner, Crime and Support

Private Capacity

Dr Damien Howard

Tangentyere Council Inc

Mr Blair McFarland – Manager, Central Australian Youth Link Up Service

Mr Tristan Ray – Manager, Central Australian Youth Link Up Service

Youth Justice Court, Northern Territory

Ms Suzanne Oliver – Youth Magistrate

Cairns: 7 May 2010ACT for Kids

Ms Lynda Coon – Program Manager

Mr Anthony Sullivan – Family Coach

Cairns and District Aboriginal and Torres Strait Islander Corporation for Elders

Mr Major Colless - Manager

Department of Education and Training, Queensland

Mr Thomas O'Donnell – Manager, Flexible Learning Centre

Family Responsibilities Commission, Queensland

Mr David Glasgow – Commissioner

Ms Tammy Sovenyhazi - Registrar

Innisfail Community Justice Group (Aboriginal and Torres Strait Islander) Corporation

Ms Julie Go-Sam - Coordinator

Private Capacity

Professor Chris Cunneen

Youth Empowered Towards Independence

Ms Genevieve Sinclair - Manager

Canberra: 13 May 2010Private Capacity

Mr Wayne Applebee

Mr Paul Collis

Dr Tony Deklin

Mr Geoffrey Ferguson

Ms Serene Fernando

Miss Alice Haines

Mr Rod Little

Adelaide: 20 May 2010Aboriginal Drug and Alcohol Council, South Australia

Mr Jimmy Perry - Project Officer, Makin' Tracks, Mobile Rural and Remote Team

Mr Scott Wilson - Director

Aboriginal Legal Rights Movement

Mr Chris Charles - General Counsel

Mr Neil Gillespie - Executive Officer

Mr Michael Wanganeen - Field Operations Service

Department of the Attorney-General, South Australia

Dr Kylie O'Connell - Director, Justice Youth Reform

Mr Gavin Wanganeen - Ambassador for Youth Opportunity

Mr Rodney Welch - Community Development Officer

Department of Correctional Services, South Australia

Mr Peter Severin - Chief Executive Officer

Department of Education and Children's Services, South Australia

Ms Vicki Wilson - Principal Policy Officer, Aboriginal Education and Employment Strategies

Department for Families and Communities, South Australia

Ms Julia Lamont - Manager, Cavan Training Centre

Department of Health, South Australia

Ms Kathy Crossing - Manager, Child and Adolescent Mental Health Services

Ms April Lawrie-Smith - Executive Director, Aboriginal Health Division

Department of the Premier and Cabinet, South Australia

Ms Sonia Waters - Director, Community Relations, Social Inclusion Division

Grannies Group

Mrs Colleen Welch - Member

Mrs Lorraine Williams - Member

Kumangka Aboriginal Youth Service

Mr Stan Butler - Manager

Kura Yerlo Inc

Mr Trevor Bromley - Chairperson

National Organisation for Foetal Alcohol Syndrome and Related Disorders

Ms Sue Miers - Spokesperson

Private Capacity

Mr Kenny Wilson

South Australia Police

Mr Neil Smith - Assistant Commissioner, Performance Management and Reporting

Mr Byron Wright - Officer, Police Drug Diversion Initiative

Wiltanendi

Mr Phillip Graham - Regional Manager

Mr Peter Smith - Project Coordinator

Mr Ken Teo - Project Director

Youth Justice Aboriginal Advisory Committee

Ms Cheryl Axelby - Member

Mrs Sharon Letton - Acting Manager, Metropolitan Aboriginal Youth and Family Services

Mr Tony Minniecon - Representative

Mr Shane Tongerie - Member

Mrs Lesley Wanganeen - Chair

Mrs Lesley Wilson - Manager, Statewide Community Education

Young Nungas Yarning Together

Ms Katie Perry - Project Leader

Canberra: 27 May 2010

Attorney-General's Department

Ms Katherine Jones - First Assistant Secretary, Social Inclusion Division

Ms Christine Freudenstein - Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Mr Daniel Abraham - Acting Director, Indigenous Policy Section

Mr Peter Arnaudo - Assistant Director, Indigenous and Community Legal Services Branch

Department of Families, Housing, Community Services and Indigenous Affairs

Ms Cath Halbert - First Assistant Secretary

Ms Michelle McGaurr - Manager, National Projects Sections

Mr Keith Ogborn - Director, Community Safety Section, Indigenous Policy Branch

Ms Vesna Ringuet - Manager, Innovation and Strategic Projects Section

Mr Greg Roche - Manager, Indigenous Programs Branch

Mr Bruce Smith - Manager, Indigenous Policy Branch

Ms Karen Wilson - Manager, Children's Policy Branch

Canberra: 17 June 2010

Department of Education, Employment and Workplace Relations

Ms Jo Wood - Group Manager, Indigenous Economic Strategy

Ms Helen McLaren - Branch Manager; Youth Attainment and Transitions Branch, Digital Education and Youth Transitions Group, Schools Cluster

Mr David Pattie - Branch Manager, Assurance and Student Payments Branch, Income Support Group, Employment Cluster

Mr Glen Hansen – Director, Indigenous Education Policy Team; Indigenous Education Reform Branch, Lifting Educational Outcomes Group, Schools Cluster

Mr Don MacKenzie – Director; Ex-Offender Policy Section; Social Inclusions Populations Policy Branch, Social Policy Group, Strategy Cluster

Canberra: 24 June 2010

Corrective Services New South Wales

Ms Katherine McFarlane – Member, Women’s Advisory Council

Ms Mandy Young – Member, Women’s Advisory Council

Sydney: 28 January 2011

National Congress of Australia’s First People’s

Mr Sam Jeffries – Co-Chair

Northern Territory Police

Assistant Commissioner Graham Kelly – Regional Operation Services

Queensland Police

Commissioner Robert Atkinson – Commissioner of Police

Acting Inspector Lilian Bensted – Manager, Cultural Advisory Unit, Office of the Commissioner

Western Australia Police

Superintendent Michael Emmanuel – Community Engagement Division

Darwin Magistrates Court, Northern Territory

Ms Sue Oliver – Acting Chief Magistrate

Aboriginal Legal Service (NSW/ACT) Ltd

Mr John McKenzie – Chief Legal Officer

Corrective Services NSW

Mr Luke Grant – Assistant Commissioner, Offender Services and Programs

NSW Corrective Services Women’s Advisory Council

Ms Katherine McFarlane – Member

New South Wales Police

Superintendent Luke Freudstein – Local Area Commander, Redfern

Australian Human Rights Commission

Ms Emilie Friday – Senior Policy Officer

Aboriginal Drug and Alcohol Council (SA) Inc

Mr Scott Wilson – Director

National Organisation for Fetal Alcohol Syndrome and Related Disorders

Ms Sue Miers – Spokesperson

Rio Tinto Iron Ore

Mr Andrew Burrow – Superintendent, Work Readiness and Education

Family Responsibilities Commission

Mr David Glasgow – Commissioner

Ms Tammy Sovenyhazi – Registrar

UnitingCare Burnside

Ms Romola Hollywood – Manager, Social Policy and Advocacy

Western Australian State Aboriginal Justice Congress

Miss Patricia Mason – Co-Chair

Mrs Leza Radcliffe – Female Representative, Yamatji Region

Victorian Aboriginal Child Care Agency Co-operative Ltd

Professor Muriel Bamblett – Chief Executive Officer

Tribal Warriors Association

Mr Shane Phillips – Chief Executive Officer

Batchelor Institute of Indigenous Tertiary Education

Dr Peter Shepherd – Manager, Business Development

Aboriginal Child, Family and Community Care State Secretariat

Mr David Tierney – Senior Programs Officer

Department of Education, Western Australia

Associate Professor Robert Somerville AM – Director, Aboriginal Education

Australian Children’s Commissioners and Guardians

Ms Michelle Scott - Commissioner for Children and Young People, Western Australia

Australian Youth Affairs Coalition

Mr Andrew Cummings - Executive Director

New South Wales Health

Dr Kerry Chant - Deputy Director-General, Population Health and Chief Health Officer

Ms Una Champion - Nurse Manager, Adolescent Health, Justice Health

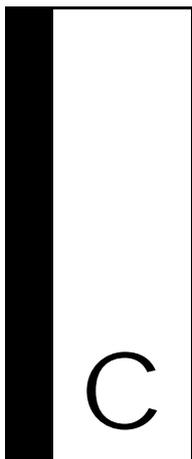
Dr Claire Gaskin - Clinical Director, Mental Health, Justice Health

Children's Court of New South Wales

Magistrate Joan Baptie

Private Capacity

Dr Harry Blagg



Appendix C – List of exhibits

1. DVD from Department of Education, Employment and Workplace Relations – *Welcome to our World – Indigenous Youth*
2. TAFE NSW – *Time Wize – A resource for TAFE NSW teachers working in juvenile justice centres*
3. TAFE NSW – *Procedures for TAFE NSW Provision in Juvenile Justice Centres*
4. Article by Emily Sullivan, Ilise Blignault, Aunt Shirley Duncan and Lisa Jackson Pulver – *The Graniators support group program*
5. Kimberley Aboriginal Law and Culture Centre (KALACC) – *Business case for a Kimberley Regional ‘At-Risk’ Indigenous Youth Diversion Program* presented to COAG Closing the Gap meeting in March 2009
6. Western Australian Aboriginal Justice Agreement
7. Confidential
8. Indigenous Licensing – Learners Licence Test
9. From Monique Bond – *Project 10% - keeping families together and moving forward*
10. From Menzies School of Health Research – *Individual quality of life among at risk Indigenous youth in Australia*
11. Article prepared by Alice Haines – *Safe Houses Indigenous Perspective Proposal* – dated 13 May 2010
12. Article by Serene Ferando – *Independence Mentoring and Accommodation Initiative – Incarceration Diversionary Initiative for High Risk Indigenous Juveniles*
13. Miscellaneous articles from Kura Yerlo Inc.

14. Article by Chris Cunneen, Law School, UNSW – *Are governments bound to fail Indigenous children and their families and communities?*
15. Article by Fiona Allison and Chris Cunneen – *Abstract – The Role of Indigenous Justice Agreements in improving legal and social outcomes for Indigenous people*
16. Article by Damien Howard with David Lines, Kerri Kelly, Raelene Wing, Tim Williams, Helen Morris Numija, Sean Heffernan, Dianne Hampton Nalyirri, Denella Beer, Tanyah Nasir, Eric Thomas, Suzie Berto and Bruce Roggiro – *Mixed Messages*
17. Letter from Nicole McGuinness to Ms Colleen Welsh, Aboriginal Liaison Officer, Port Adelaide Courthouse
18. Statistics on Offenders – 2006-07 to 2008-09
19. DVD from Tess White, Chief Executive Officer, Midnight Basketball Australia
20. Presentation to the ATSLA Committee by Katherine McFarlane and Mandy Young, Women’s Advisory Council (NSW)
21. Presentation to NSW Health by Justice Health at Women’s Advisory Council Meeting on 1 April 2009 – *Inmate Health Survey Trends 1996 to 2008*
22. Romola Hollywood – *Long suspension and expulsion summary 2009* by NSW Department of Education and Training
23. Queensland Police Service – *Justice Entry Program (JEP) Statistics, 3 March 2011*
24. Queensland Police Service – *A road to somewhere (arts) program*
25. Presentation to the ATSLA Committee by Brisbane Youth Detention Centre at the inspection on 16 March 2011.