CIRCLES OF SUPPORT
Towards Indigenous Justice: Prevention, Diversion & Rehabilitation
ACTCOSS and the Aboriginal Justice Centre
July 2008
About the Aboriginal Justice Centre

The Aboriginal Justice Centre (AJC) wishes to acknowledge the research which has gone in to the preparation of this report. It is grateful to ACTCOSS for the opportunity to collaborate in the preparation of this exciting report.

The AJC is committed to seeking solutions to address the Indigenous over-representation in the criminal justice system. Crime prevention and diversion are contributing factors in this challenge.

We have a long way to go and many challenges face us, however the AJC is encouraged by the Government and community support we are experiencing. It is encouraging to experience this tangible support, reflected in the genuine interest of many members of Government and community agencies and requests to visit our Agency to familiarise themselves with our operational processes.

Craig Sams,
Chair
AJC Board of Directors

Contact Details

Phone: 02 6162 1000
Fax: 02 6162 1100
E-mail: info@actajc.org.au
WWW: http://www.actajc.org.au
Location: Level 3, Griffin Centre,
Genge St,
Canberra, 2600, ACT

Director: Rae Lacey

Cover Artwork by Dale R. Huddleston

The Circles of our Life, 2008.

Dale is Ngalaka (Roper River, NT) and Wiradjuri (Western NSW). The circles in the artwork represent the various types of support to Indigenous people for justice. The gum leaves represent the support Indigenous people provide to each other.
About ACTCOSS

ACTCOSS acknowledges that Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage traditional owners have suffered since European settlement. ACTCOSS celebrates the Ngunnawal’s living culture and valuable contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS’ objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a professional, cohesive and effective community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

Contact Details

Phone: 02 6202 7200
Fax: 02 6281 4192
Mail: PO Box 849, Mawson, ACT 2607
E-mail: actcoss@actcoss.org.au
WWW: http://www.actcoss.org.au
ABN: 81 818 839 988
Location: Level 1, 67 Townshend St, Phillip, 2606, ACT

Director: Ara Cresswell

July 2008

© Copyright ACT Council of Social Service Incorporated

This publication is copyright, apart from use by those agencies for which it has been produced. Non-profit associations and groups have permission to reproduce parts of this publication as long as the original meaning is retained and proper credit is given to the ACT Council of Social Service Inc (ACTCOSS). All other individuals and Agencies seeking to reproduce material from this publication should obtain the permission of the Director of ACTCOSS.
# Table of Contents

About the Aboriginal Justice Centre ................................................................. 2  
Cover Artwork by Dale R. Huddleston ............................................................ 2  
About ACTCOSS ................................................................................................. 3  
Acronyms ............................................................................................................ 6  
Introduction and purpose .................................................................................. 7  
Research methodology ...................................................................................... 8  
Defining the issue. ............................................................................................... 9  
   A general profile of the ACT’s Indigenous population .................................. 9  
   Indigenous Criminal justice statistics ......................................................... 9  
   Indigenous socio-economic statistics: The causes of over-representation ...... 11  
   Systemic failures and institutional racism as causes of over-representation .... 14  
   Other research on the causes of crime ....................................................... 15  
   The ACT Indigenous community’s views of Indigenous over-representation in the criminal justice system .................................................. 16  
Identifying the framework: the diversion spectrum .......................................... 19  
Background information: a social and spatial profile of crime in the ACT ......... 21  
   Offence targeting: crimes most frequently committed by Indigenous offenders. . 21  
   Gender-specific patterns ............................................................................. 22  
   Age distribution of crime ........................................................................... 23  
Some key principles in developing appropriate and effective crime prevention interventions .......................................................... 24  
   Gender ........................................................................................................... 24  
   Age .............................................................................................................. 25  
   Collaboration ............................................................................................... 26  
   Evaluation .................................................................................................... 26  
The social and legal policy context ................................................................. 27  
   National reports and policies. ................................................................. 27  
   ACT Government policies ......................................................................... 31  
   Other policies and frameworks .................................................................. 33  
   Case study: Victorian Aboriginal Justice Agreements .................................. 34  
   Role of the Non-Government Sector ....................................................... 35  
Stage 1: Prior to first contact with police. ....................................................... 36  
   Program or service options. ................................................................. 41
<table>
<thead>
<tr>
<th><strong>Stage 2: Diversion in law enforcement</strong></th>
<th>54</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategies</td>
<td>55</td>
</tr>
<tr>
<td>Program or service options</td>
<td>56</td>
</tr>
<tr>
<td>ACT programs and services</td>
<td>57</td>
</tr>
<tr>
<td>Case studies from other jurisdictions</td>
<td>60</td>
</tr>
<tr>
<td>Measuring success</td>
<td>62</td>
</tr>
<tr>
<td>Areas of unmet need/gaps in service delivery</td>
<td>62</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Stage 3: Court processing</strong></th>
<th>64</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program or service options</td>
<td>64</td>
</tr>
<tr>
<td>ACT programs and services</td>
<td>65</td>
</tr>
<tr>
<td>Case studies from other jurisdictions</td>
<td>67</td>
</tr>
<tr>
<td>Measuring success</td>
<td>69</td>
</tr>
<tr>
<td>Areas of unmet need/gaps in service delivery</td>
<td>70</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Stage 4: Non-custodial sentencing options</strong></th>
<th>72</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program and service options</td>
<td>72</td>
</tr>
<tr>
<td>ACT programs and services</td>
<td>73</td>
</tr>
<tr>
<td>Case studies from other jurisdictions</td>
<td>74</td>
</tr>
<tr>
<td>Measuring success</td>
<td>75</td>
</tr>
<tr>
<td>Areas of unmet need/gaps in service delivery</td>
<td>76</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Stage 5: Pre- and post- release (custodial)</strong></th>
<th>77</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program or service options</td>
<td>78</td>
</tr>
<tr>
<td>ACT programs and services</td>
<td>79</td>
</tr>
<tr>
<td>Case studies from other jurisdictions</td>
<td>81</td>
</tr>
<tr>
<td>Measuring success</td>
<td>81</td>
</tr>
<tr>
<td>Areas of unmet need/gaps in service delivery</td>
<td>82</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Conclusions: Lessons we can learn from other jurisdictions</strong></th>
<th>84</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>Conclusions: Evaluating change</strong></th>
<th>86</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendations</strong></td>
<td>89</td>
</tr>
<tr>
<td><strong>References</strong></td>
<td>93</td>
</tr>
<tr>
<td><strong>Appendix 1 - Consultation Participants</strong></td>
<td>97</td>
</tr>
<tr>
<td><strong>Appendix 2 - Extract from Bringing them Home Report</strong></td>
<td>98</td>
</tr>
</tbody>
</table>
### Acronyms

- **ABS**: Australian Bureau of Statistics
- **ACOSS**: Australian Council of Social Service
- **ACTCOSS**: ACT Council of Social Service
- **ACT**: Australian Capital Territory
- **AFP**: Australian Federal Police
- **AIC**: Australian Institute of Criminology
- **AJA**: Aboriginal Justice Agreement
- **AJAC**: Aboriginal Justice Advisory Committee
- **AJC**: Aboriginal Justice Centre
- **AMC**: Alexander Maconochie Centre
- **AOD**: Alcohol and Other Drugs
- **CSP**: Cognitive Skills Program
- **HACC**: Home and Community Care
- **HREOC**: Human Rights and Equal Opportunity Commission
- **ICLO**: Indigenous Community Liaison Officer
- **ILO**: Indigenous Liaison Officer
- **MERIT**: Magistrates Early Referral into Treatment Program
- **NATSISS**: National Aboriginal and Torres Strait Islander Social Survey
- **NGO**: Non-Government Organisation
- **NHISA**: Narrabundah House Indigenous Supported Accommodation Service
- **NSW**: New South Wales
- **RAJAC**: Regional Aboriginal Justice Advisory Committee
- **RAP**: Reconciliation Action Plan
- **RJC**: Restorative Justice Conference
- **RJU**: Restorative Justice Unit
- **ROGS**: Review of Government Services
- **SAAP**: Supported Accommodation Assistance Program
Introduction and purpose

Although the ACT has the lowest rate of imprisonment of any Australian jurisdiction, and one of the lowest rates of Indigenous imprisonment, Indigenous people are still significantly over-represented in our justice system. This fact was acknowledged by the ACT Government in response to the Report on Government Services data, to which the Chief Minister responded:

While the ACT has one of the nation’s lowest rates of Indigenous imprisonment at 799 per 100,000 adults, it is still well above that for non-Indigenous persons ... This is something the Government is actively addressing, through initiatives such as the ACT Aboriginal Justice Centre and Circle Sentencing.¹

This report attempts to engage with the reasons for this over-representation, to identify existing mainstream and Indigenous crime prevention and diversion initiatives in the ACT, to highlight gaps in service provision and areas of unmet need and make recommendations for change.

The ACT Government has expressed its commitment to Indigenous justice and equality. The ACT Council of Social Service (ACTCOSS) and the Aboriginal Justice Centre (AJC) seek to work with the ACT Government to find solutions to the problems of Indigenous over-representation. It is in this spirit of dialogue and cooperation that we offer this report, to inform Government decision making in this area.

The purpose of this report is to stimulate a shift in thinking within Government and the broader community about crime prevention and diversion. In particular, it is to stimulate a re-conceptualisation of crime prevention as social support, with a particular focus on early intervention. For too long, prevention has been considered ‘too “soft” for a problem as “hard” as crime’.² This is despite research which clearly demonstrates the effectiveness of social support in reducing crime. Many community organisations are currently engaged in providing social support services which have a crime prevention function. Most of them do not define their work in this way, nor measure the success of their programs in terms of crime prevention, or receive funding from crime prevention grants funding. We hope through this report, and related advocacy and community development work, to encourage Government and community organisations to see social support services in this way.

Research methodology

This report is informed by extensive research of law and justice literature. In particular, it has drawn from the research and findings of:

- The NSW Standing Committee into Law and Justice report, *Crime Prevention through Social Support*; and


It has also been informed by consultations with Government policy officers and program managers, public and community legal services, mainstream community sector organisations engaged in crime prevention and Indigenous community organisations and community sector workers. These consultations were conducted in a variety of ways, including one-on-one meetings and a community forum.

The project has been conducted in partnership with the Aboriginal Justice Centre. The AJC has supported ACTCOSS to conduct consultations with the Indigenous community in the ACT and had input into the policy content of this paper, identifying key priorities for action. Our two organisations co-hosted a forum on crime prevention and diversion for Indigenous young people and adults, which was attended by a number of representatives from a range of Indigenous community organisations as well as Indigenous workers from mainstream community sector organisations. In this consultation, we sought to adduce people’s understanding of crime prevention and diversion, what programs currently exist in the ACT, what service gaps and areas of unmet need exist and possible recommendations for change.

It is through this research and consultation process that we have documented the programs and services mentioned in this report. However, it is important to note that the programs and services mentioned in this report do not represent an exhaustive list. There are relevant services that we have not included in the report. That said, where we have identified service gaps, we have sought to ensure that no service currently exists which provides the relevant service, or that existing services lack the capacity (due to resource, staffing or facilities issues) to meet the current need.
Defining the issue

A general profile of the ACT’s Indigenous population

In order to accurately assess and define priority criminal justice issues relating to the ACT’s Indigenous community, it is essential to outline some of the social and economic characteristics of this community. A Social and Cultural Profile of Aboriginal and Torres Strait Islander People in Canberra, published by the ACT Chief Minister’s Department in August 2004 revealed the following general demographic information:

- Indigenous people make up about 1% (1.2% in 2006 census) of the total population of Canberra³;
- There has been high growth in the ACT’s Indigenous population in the ACT in recent decades⁴;
- Children under 15 years of age make up approximately 40% of the Indigenous population in the ACT compared to about 20% in the non-Indigenous population⁵;
- Although there are some concentrations of Indigenous people living in some suburbs (e.g. Narrabundah, Charnwood, Lyons and Phillip) most are evenly spread across the suburbs.⁶

Indigenous criminal justice statistics

The issue to which this paper responds is the high rate of Indigenous representation in the criminal justice system. The key indicator of this over-representation is the rate of Indigenous imprisonment, relative to the rate of non-Indigenous imprisonment.

Recent data from the 2008 Report on Government Services indicates that the ACT rate of Indigenous imprisonment is 799 per 100,000 adults. This figure, while lower than many other jurisdictions, is well above the rate of imprisonment for non-Indigenous offenders, at 58 per 100,000 adults.⁷

In addition to this data, other indicators are also useful in measuring Indigenous over-representation and poor outcomes in the justice system. In particular, rates which reflect

---

³ Chief Minister’s Department, A Social and Cultural Profile of Aboriginal and Torres Strait Islander People in Canberra, 2004 at 5.
⁴ Ibid at 9.
⁵ Ibid at 13.
⁶ Ibid at 5.
⁷ Productivity Commission, Report on Government services, 2008 at Table 8A.4.
differential treatment and/or outcomes for Indigenous offenders in the criminal justice system, for example, rates of cautioning, bail and remand.

It is important to acknowledge the small sample size when analysing ACT statistics. Further, it is often difficult to obtain detailed, up-to-date ACT specific data. This is particularly true around Indigenous justice issues. ACTCOSS understands that some efforts have been made to coordinate the sharing of ‘secure justice related data’ to monitor changes and inform policy development. With those caveats in mind, data obtained from the National Aboriginal and Torres Strait Islander Social Survey (NATSISS, 2002), the Australian Federal Police (AFP) and the Chief Minister’s Department reveal that:

- Indigenous people make up one in ten arrests in Canberra, despite comprising only 1% of the population;

- The rate of imprisonment of Indigenous people in the ACT was the second lowest in Australia, but Indigenous adults were still 12 times more likely to be imprisoned than the rest of the Canberra population, which is similar to the ratio in other states;

- The number of Indigenous prisoners has increased dramatically over the past ten years – between 1995 and 2002 increasing by 17% per year;

- The ACT had the highest reported population of Indigenous victims of physical violence in 2001-2002, with more than 33% reporting physical violence or threats in the last year compared with 24% nationally;

- Low income Indigenous people (those in the lowest quintile) had higher rates of arrests, imprisonment and physical violence;

- About a fifth (19.4%) of Indigenous people in the lowest income quintile reported that they had been arrested in the last 5 years, compared to 8.5% of those in the third to fifth quintile;

- Almost half of all Indigenous males in Canberra have been charged by police for an offence at some time in their lives, nearly one in five before they were 17 years of age.

More recent figures from the ACT Criminal Justice Statistical Profile indicate that, for the December 2007 quarter, the Indigenous proportion of the NSW prison population was

---

8 ACT Aboriginal Justice Centre, Jurisdictional Report to the National Aboriginal Justice Advisory Committee, June 2007 at 3.
9 Data obtained from AFP.
10 Data obtained from Chief Minister’s Departments.
12 ABS, National Aboriginal and Torres Strait Islander Social Survey, 2002.
13 Ibid.
14 Ibid.
15 Ibid.
approximately 10% throughout the quarter.\textsuperscript{16} Statistics relating to admissions to the Belconnen Remand Centre reveal that, over the quarter, the Aboriginal and Torres Strait Islander population comprised 12.2% of the total remand centre population (24 of the 197 remandees).\textsuperscript{17} The statistics for Quamby are even more alarming, with some 30.5% of young persons in Quamby identifying as Aboriginal or Torres Strait Islander (32 out of a population of 105).\textsuperscript{18} This indicates that the rate of Indigenous over-representation in the criminal justice system is even greater among the youth population, and suggests the need to target crime prevention and diversion initiatives at this group.

Unfortunately, these statistics show no sign of improvement. To the contrary, the Steering Committee for the Review of Government Service Provision report, \textit{Overcoming Indigenous Disadvantage, Key Indicators 2007}, indicates that outcomes for Indigenous people in the criminal justice system are deteriorating. Imprisonment rates across the country increased by 31.9% for Indigenous people generally between 2000 and 2006 and by 34% for Indigenous women.

**Indigenous socio-economic statistics: the causes of over-representation**

The \textit{Royal Commission into Aboriginal Deaths in Custody} identified Indigenous disadvantage as the primary reason for Indigenous over-representation in the criminal justice system.\textsuperscript{19} Indigenous disadvantage is related to a large number of complex, diverse and inter-dependent factors. It is commonly measured by a number of key indicators including poverty, homelessness, unemployment, education level, poor health status, high levels of family breakdown and high levels of family and community violence. It is therefore critical to consider specific factors and statistics measuring Indigenous disadvantage, in order to formulate effective crime prevention responses which address these factors.

Compared to the national average, Indigenous people in the ACT had better health status, the highest levels of post-school qualifications, lower rates of arrest and less transport difficulties.\textsuperscript{20} However, despite this, ACT data reveals that the Indigenous population continues to experience significant social and economic disadvantage relative to the non-Indigenous population, as measured by a range of indicators. A \textit{Social and Cultural Profile of Aboriginal and Torres Strait Islander People in Canberra} provided a summary of key socio-economic data relating to the ACT’s Indigenous community:

\textsuperscript{16} ACT Criminal Justice Statistical Profile, December 2007 Quarter, Tabled in the ACT Legislative Assembly by Mr Simon Corbell MLA Attorney General, at 22.

\textsuperscript{17} Ibid, See Table 19, Admissions to Belconnen Remand Centre by gender and ethnicity, at 21.

\textsuperscript{18} Ibid, See Table 17: Young persons in Quamby (remands and committals) by gender and ethnicity, at 21.


\textsuperscript{20} ABS, \textit{A Social and Cultural Profile of Aboriginal and Torres Strait Islander People in Canberra}, at 6.
Family breakdown

- A much higher proportion of Indigenous families are one parent families than for the non-Indigenous population\(^\text{21}\);

- The 2008 ROGS calculated that the rate of Indigenous children aged 0-17 in out-of-home care and protection orders was about 7 times higher than for non-Indigenous children.\(^\text{22}\)

Employment and income

- 36% of Indigenous children live in households without any employed parents – this is three times the rate for the non-Indigenous population\(^\text{23}\);

- Although Indigenous people in Canberra have higher employment participation rates than nationally, this rate is significantly lower than for the non-Indigenous population of Canberra\(^\text{24}\);

- Despite an increasing number of Indigenous people earning higher incomes, the proportion of Indigenous people in the lowest income levels has not changed in the last 15 years\(^\text{25}\);

- The unemployment rate for Indigenous people in Canberra was 10.8% of the workforce compared to 5.1% of the non-Indigenous population\(^\text{26}\);

- Over one fifth of Indigenous people in the ACT reported that Government income support was their main source of income in the previous two years\(^\text{27}\).

Education

- Indigenous students in the ACT at year 3 generally are performing at a level equal to non-Indigenous students in reading and writing and are close to the average in numeracy. However a gap in performance appears in years 5 and 7;\(^\text{28}\)

- By year 9, half of Indigenous students have not reached the required literacy standards expected for their age and have higher rates of absenteeism from school\(^\text{29}\);

\(^{21}\) Ibid at 5.
\(^{22}\) Productivity Commission, *Report on Government services*, 2008 at 15.11.
\(^{23}\) ABS, *A Social and Cultural Profile of Aboriginal and Torres Strait Islander People in Canberra*, at 5.
\(^{24}\) Ibid at 5.
\(^{25}\) Ibid at 6.
\(^{26}\) Ibid at 46.
\(^{27}\) Ibid at 48.
\(^{28}\) Ibid at 30.
\(^{29}\) Ibid at 5.
• Half of Indigenous students in year 10 were absent from school on average for more than one day per week\textsuperscript{30};

• Indigenous students tend to leave school earlier than non-Indigenous students, with 69% of Indigenous students still in school at age 17 compared to 89% of non-Indigenous 17 year olds\textsuperscript{31}.

**Housing**

• Indigenous people in Canberra are more likely to be renting, with approximately 56.5% of households with an Indigenous resident being either privately or publicly rented, compared with approximately 30% of other households;\textsuperscript{32}

• Public housing tenancies comprise 24% of all Indigenous households in the ACT;\textsuperscript{33}

• About one in ten Indigenous people in Canberra had moved three times in a one year period. Males and young people in particular had high levels of mobility\textsuperscript{34};

• One in five Indigenous households were in housing stress, that is, spending more than 30% of their income on housing costs\textsuperscript{35}.

**Health**

• Overall, the health of the Indigenous population in Canberra has more in common with the Indigenous population nationally than with the total Canberra population. Although levels of health are slightly better than national Indigenous figures, they are well below health levels experienced by Canberra’s non-Indigenous population.\textsuperscript{36}

**Culture and community**

• Indigenous people in Canberra had the highest levels of participation in culture and family and friend support in Australia\textsuperscript{37};

• Compared to national statistics, the ACT Indigenous population experiences above average rates of identification with clan, involvement in social activities, participation in sport, involvement in voluntary work, support in crisis and attendance at cultural events\textsuperscript{38};

\textsuperscript{30} Ibid at 5.
\textsuperscript{31} Ibid at 5 and 23.
\textsuperscript{32} ABS, *Population Characteristics, Aboriginal and Torres Strait Islanders, Australian Capital Territory*, 2006.
\textsuperscript{33} ABS, *A Social and Cultural Profile of Aboriginal and Torres Strait Islander People in Canberra*, at 32.
\textsuperscript{34} Ibid at 11.
\textsuperscript{35} Ibid at 56.
\textsuperscript{36} Ibid at 6.
\textsuperscript{37} Ibid at 6 and 29.
\textsuperscript{38} Ibid at 29.
• However, levels of culture and family support were higher for Indigenous people on high incomes than on low incomes\textsuperscript{39};

• The second highest personal stressor for Indigenous people in the ACT was the experience of discrimination or racism – reported by 40% and more than double the national average of 17.7%\textsuperscript{40};

**Systemic failures and institutional racism as causes of over-representation**

While Indigenous disadvantage may be considered a primary cause of criminal offending, it cannot be understood separately from the systemic failures of governments to adequately address disadvantage and the persistence of institutional racism. Inappropriate Government and service responses to these issues contribute to the rate of over-representation. In support of this view, the HREOC *Social Justice Report* summarises some of the systemic failures which contribute to the increased risk of juveniles entering the juvenile justice system as including:

‘…..lack of support services, appropriate treatment and behaviour intervention programs, family based care services and accommodation options; the use of inappropriate and harmful service practices, such as physical restraint and medication; the risk or actual occurrence of physical and sexual assault; and the reliance on the police to resolve challenging behaviour. There is also evidence to suggest that the lack of support services for children and appropriate policies and practices to deal with challenging behaviour often leads services to rely on or view juvenile justice facilities to provide a stable and secure environment and as a solution to a complex problem.’\textsuperscript{41}

Research also indicates that children placed in care and state wards are at much higher risk of criminal offending later in life. The NSW Standing Committee on Law and Justice identified a number of risk factors to criminal offending related to children in care, including:

• Multiple placements;

• The lack of respite care for carers;

• The need to address the special needs of disabled people in care;

• The intergenerational cycle of young people in care;

• Difficulty of obtaining foster parents for adolescents;

• Vulnerability of those in care to becoming victims of crime.

\textsuperscript{39} Ibid at 31.
\textsuperscript{40} Ibid at 33.
It suggested the need to track and prevent the progress of young people in care into the adult prison system. 42

The Royal Commission into Aboriginal Deaths in Custody found that overt, hidden and institutional racism continued to adversely affect Aboriginal people and demonstrated how ‘some laws bear unequally upon Aboriginal people.’ 43

Other research on the causes of crime

A number of other risk factors have been identified for the general population (non-Indigenous) in the research literature. The Pathways to Prevention report by National Crime Prevention found that disability, low intelligence, difficult temperament, poor social skills and poor problem solving were all contributing factors to criminal offending. 44

Disability

The NSW Standing Committee on Law and Justice reported in 1999 that 20% of those currently detained in NSW prisons have an intellectual disability (‘defined as a permanent condition of significantly lower than average intellectual disability’), compared to only 2-3% of the general population. The Committee concluded that, ‘this alone should suggest that this group should be a key target of crime prevention efforts.’ 45 It noted that the ‘criminal justice system is a particularly blunt instrument to use to deal with behavioural problems.’ 46 An earlier report on intellectual disability found that Aboriginal people were particularly disadvantaged. 47 The Standing Committee report indicated that a much higher proportion of Indigenous offenders have an intellectual disability than other groups. 48 The Law Reform Commission report found that crimes committed by intellectually disabled persons tend to be of a more impulsive or unpremeditated nature. 49 Sexual offences are more common among this population, while offences involving planning (for example, drug trafficking or robbery) are uncommon. 50

44 National Crime Prevention, Pathways to Prevention: Development and Early Intervention Approaches to Crime in Australia, 1999 at 136.
46 Ibid.
50 The NSW Standing Committee on Law and Justice, First Report of the Inquiry into Crime Prevention through Social Support, 1999 at 162.
Other issues relating to persons with an intellectual disability include:

- Higher risk of victimisation, particularly in institutions/long term respite care;
- Lack of social supports for those living in the community;
- Difficulties accessing services for those with mild disabilities (more likely to be involved in crime than those with severe disabilities);
- Lack of funding for disability services;
- Lack of support services for those in community based living;
- Need for the criminal justice system to adapt to the special needs of this population group;
- High incidence of dual-disability: intellectual disability and mental illness and the need for a coordinated response to these issues.

The ACT Indigenous community’s views of Indigenous over-representation in the criminal justice system

During the course of this project we sought the community’s views on the reasons for Indigenous over-representation. A variety of factors were identified as causes of over-representation, including:

**Discriminatory conduct**

Several participants cited differential police treatment as a reason for the over-representation of Indigenous people in the criminal justice system. One attendee described the experience of her son, who had been fined as a young adolescent for a minor offence while riding his bike. The suggestion was that a non-Indigenous person was less likely to be fined for such an offence, and that the existence of a record in relation to this incident then undermined other opportunities later in life.

Others pointed to the ‘judgments’ and discrimination faced by Indigenous people seeking access to services. They suggested that Indigenous clients sometimes felt ‘marked’ by their Aboriginality and judged by others when they sought to access services. This was cited as a disincentive to seeking help early, resulting in a higher proportion of people ending up in crisis situations resulting in interventions by Care and Protection services or the criminal justice system. One worker in a legal service indicated that not a week went by without an Indigenous woman accessing her service after having had her children taken into care.
**Sexual assault**

Sexual assault was identified as a key causal factor in later offending behaviour. Addressing some of the resulting trauma through sexual assault counselling was identified as a priority. In particular, the importance of Indigenous sexual assault counsellors was emphasised, with attendees perceiving that Indigenous workers were better able to gain the trust of Indigenous clients. The need for better linkages between corrective services and youth justice and community sexual assault services was also highlighted. The potential for corrections to link prisoners with a history of abuse to appropriate Indigenous counsellors should be realised. The current practice in Quamby seems to be that care and protection is notified if a young person reports a history of sexual abuse, but that linkages with community services are not directly made.

**Issues around identity**

Identity issues arose at various points during the consultation, with lack of cultural identity a clear risk factor in offending. Conversely, a strong cultural identity and close community ties represent protective and preventive factors. Given the displacement experienced by many Indigenous people, the need for community organisations to provide a strong link to culture and community was emphasised. Organisations can provide a cultural contact point for Indigenous people. Related to this, attendees described the confusion experienced by many Indigenous young people, especially males, about their role and responsibilities in society and the community.

**Housing and homelessness**

Housing affordability and access to housing generally was raised as a key issue in consultations, in particular, the lack of appropriate housing for Indigenous young people. Homeless young people under the age of 18 were identified as a critical gap in the social security system, increasing their vulnerability. Attendees highlighted that young people who are homeless before they become entitled to Centrelink benefits are extremely at risk and often resort to crime due to lack of alternative financial means.

**Lack of support for Indigenous prisoners**

Attendees at the forum suggested that the absence of appropriate support and rehabilitation programs in prison made it more likely that Indigenous prisoners would re-offend. The need for effective pre-release planning was emphasised, in particular, the need to set up better transitional systems to link prisoners up with housing, education, training and employment opportunities. The need for better synergies between training inside prison and employment or further training opportunities outside was highlighted.

Attendees stressed the importance of community organisations being involved in service provision in the new prison (the Alexander Maconochie Centre) and the need for organisations to be resourced to provide this support. They noted that, to be effective, organisations needed to maintain some continuity with their clients throughout their time in detention or prison.
Ignorance of criminal law and legal rights

Participants noted that many of the Indigenous people accessing community legal services have become involved in the criminal justice system due to a complex chain of events, often related to misunderstanding or ignorance of rights and responsibilities. For example, statistics demonstrate that Indigenous people are more likely to be imprisoned for failure to pay fines. Other people become caught up in offending behaviour through poverty, as a result of breaching Centrelink requirements and resorting to crime to meet expenses.

The lack of legal advice and support workers during the charge and court processes was also cited as a contributing factor. The need for advice in circle sentencing was also raised, with concerns expressed about the adequacy of legal advice and representation received by some participants in the circle sentencing process. Participants had observed that the rate of conviction in court was far greater where a young person had no legal representative in Court.

The stress created when people became involved in complex civil legal proceedings, it was suggested, could also increase the risk of offending. Forum participants also cited the lack of case management throughout the criminal justice process as a contributing factor. It was reported that clients seeking the advice of community legal centres frequently have complex, multi-faceted issues that cannot be addressed by one service or government department. The need for case managers was here emphasised. There were concerns that community and Indigenous legal services were understaffed and under-resourced, and the lack of funding for legal services emerged as a key issue. Indigenous staff in these organisations are few in number, and all attendees stressed the significance of having an Indigenous ‘face’ within mainstream services, to improve their accessibility to Indigenous clients and their capacity to build trust.

Need for more coordinated service delivery and service systems which reinforce each other

One of the comments relating to circle sentencing was the lack of systems existing to back up the process. Without systems to support and reinforce the process, its outcomes will be compromised. Indigenous people going through circle sentencing need to be supported to fulfil undertakings made during the process.

Lack of appropriate service provision by mainstream organisations

Some attendees present expressed frustration about the expectations placed upon Indigenous organisations to provide solutions to the social problems experienced by the community while also supporting mainstream organisations. One attendee asked, ‘What are the whitefellas doing?’. This led to a discussion of the need for more cross-cultural awareness training, greater awareness of the particular issues affecting Indigenous clients and the importance of Indigenous workers in mainstream organisations.
Identifying the framework: the diversion spectrum

In this text, ACTCOSS has adopted a broad definition of crime prevention and diversion which extends beyond the law enforcement stage to encompass a continuum from primary prevention through to pre- and post-release strategies. In doing so, we have used the five-stage model proposed in a paper prepared for the Indigenous Issues Unit of the Department of Justice, Victoria. Using this approach:

Diversionary strategies can be viewed along a continuum of possibilities that correspond to five stages of progression into the criminal justice system.

This approach is represented in a table in the report which is reproduced below:

<table>
<thead>
<tr>
<th>Stage of the criminal justice process</th>
<th>Goals of diversion</th>
<th>Examples of diversion strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prior to first contact with the police</td>
<td>Reduce exposure to criminogenic influences and strengthen resilience and protection of Indigenous persons at risk of police contact, especially young people</td>
<td>Primary prevention programs that reduce risk factors and increase protection, e.g. educational support, sports, cultural strengthening activities</td>
</tr>
<tr>
<td>2. Law enforcement</td>
<td>Reduce the rate at which apprehended Indigenous persons are arrested and charged with an offence</td>
<td>Police cautioning instead of arrest, referral to appropriate community services, intensified primary prevention programs</td>
</tr>
<tr>
<td>3. Court processing</td>
<td>Reduce the likelihood of conviction and/or the severity of sentencing outcomes for Indigenous people who have been charged with an offence</td>
<td>Bail support programs with relevant service linkages, Koori Court or Circle Sentencing processes</td>
</tr>
<tr>
<td>4. After sentencing</td>
<td>Reduce Indigenous re-offending rates by addressing criminogenic needs of convicted offenders in custody or under Community Correctional supervision</td>
<td>Community based sentences with special conditions as an alternative to prison, offender rehabilitation programs in prisons and community</td>
</tr>
<tr>
<td>5. Pre- and post-release</td>
<td>Reduce Indigenous re-offending rates by facilitating successful community reintegration of convicted Indigenous offenders</td>
<td>Integrated pre-release transition and post-release support programs, including linkages to housing, health, employment and other essential services</td>
</tr>
</tbody>
</table>

---


52 Ibid at 5.
On this model, crime prevention initiatives can take place at any point in the criminal justice cycle, ranging from prior to first contact with police to pre- and post-release initiatives for prisoners to prevent recidivism through the provision of social support. That said, the earlier the intervention, the better the chance of an individual living a crime-free life.\textsuperscript{53} For that reason, the emphasis in this paper is on interventions which target children, young people and families at risk, well before first contact with police.

As the Indigenous population in the ACT is a youthful population, there is likely to be most pressure at the pre-contact stage, which is the most critical stage of prevention. Each stage along the continuum represents an increased risk of offending and re-offending.\textsuperscript{54} It should also be noted that more intensive diversionary initiatives are required further along the continuum. It therefore makes financial, as well as social sense, to intervene early and focus on crime prevention through social support. However, that said, the diversion continuum embodies the idea that ‘it is never too late to invest in diversion’, and that diversion is not limited to the ‘front end’ of the criminal justice process.\textsuperscript{55}

As explained above, this paper takes the view that ‘prevention’ should be defined very broadly. In particular, it should be re-conceptualised to encompass programs and services often not understood to be playing a role in crime prevention. As crime prevention must be understood to be a whole-of-government responsibility, a diverse range of agencies and services are involved. In the ACT, these include:

- The Chief Minister’s Department, which must play a key role in coordinating the Government’s response to reduce Indigenous disadvantage;
- The Department of Justice and Community Safety, in particular the crime prevention division;
- ACT Policing;
- ACT Corrective Services;
- Youth Justice;
- The Department of Disability, Housing and Community Services;
- ACT Health;
- The Department of Territory and Municipal Services (Sport and Recreation Services);
- Indigenous units in Government Departments;
- ACT Human Rights Commission;

\textsuperscript{53} Ibid at 6.
\textsuperscript{54} Ibid.
\textsuperscript{55} Ibid.
Background information: a social and spatial profile of crime in the ACT

The Indigenous Issues Unit paper suggests that certain types of information should be established in order to operationalise the five stage diversionary model including:

- The most highly over-represented types of crime for Indigenous offenders;
- The gender distribution of offenders by crime and location; and
- The age distribution of offenders by crime and location.\(^{56}\)

Offence targeting: crimes most frequently committed by Indigenous offenders

Most prevalent types of crime

Indigenous and non-Indigenous young offender statistics for the ACT show that the main offence types for young offenders in the justice system in 2001-2 were:

- Theft;
- Assault;
- Burglary; and
- Motor vehicle offences.\(^{57}\)

Statistics on particular offences committed by Indigenous persons must be interpreted with some caution due to the small sample sizes involved. However, of the 25 ACT Indigenous prisoners in 2003, nine (36%) were charged with assault and five (20%) were imprisoned for offences against justice (e.g. resisting arrest).

The Consultative Draft on the National Indigenous Law and Justice Strategy (National Draft Strategy) reports that Indigenous people are much more likely than other Australians to be convicted of offences resulting in imprisonment. Property, violent crime and serious road and traffic offences are the most common reasons for incarceration. Other less serious offences include non-payment of fines and car and license offences. The National Draft Strategy also highlights the extremely high rates of recidivism affecting the Indigenous community, with 2003

---

56 Ibid at 6.
57 Australian Institute of Criminology, Profile of Young Offenders in the ACT 2001-2002, Chief Minister’s Department, 2003 at 5.
research indicating that more than 75% of Indigenous prisoners had previously been imprisoned, compared to 50% of non-Indigenous prisoners.\(^{58}\)

In examining the most prevalent types of crime committed by Indigenous persons in the ACT, it is important to examine the greatest inequities between rates of charge and incarceration. For example, research indicates that the proportion of Indigenous prisoners who have been imprisoned for offences against justice is much higher than for non-Indigenous people and also higher than for Indigenous people nationally.\(^{59}\)

The *National Draft Strategy* reports that Indigenous prisoners are more likely to be serving shorter sentences than the overall prison population. It refers to a 2001 study which found that if Indigenous offenders in NSW serving sentences of 6 months or less were given non-custodial sentences, the number of offenders in prison would be reduced by 54% over a 12 month period. This suggests that a greater proportion of Indigenous persons are sentenced for less serious offences. The *National Draft Strategy* suggests that greater use should be made of non-custodial sentencing options such as community service orders, periodic detention and home detention as well as restorative justice.\(^{60}\) The *National Draft Strategy* also proposes the need for a more holistic approach to sentencing which includes pre- and post-release programs addressing underlying factors for re-offending.\(^{61}\)

**Gender-specific patterns**

Male Indigenous adults are arrested in the ACT at approximately four times the rate of females.\(^{62}\) By comparison, AFP data reveals that there are a similar number of male and female Indigenous juveniles arrested in the ACT.\(^{63}\) This indicates the relatively higher proportion of Indigenous females charged by police and serving Children’s Court Orders.\(^{64}\)

Victorian research suggests that some 80% of Indigenous women imprisoned in 2003 were mothers, mostly with young children.\(^{65}\) Queensland data suggests that 45.3% of Indigenous female prisoners were sentenced for violent crime, 28.3% for property crime, 24.5% for crimes such as social security fraud, procedures offences, unlawful possession of weapons and driving related offences, with a very small percentage for drug offences. In Queensland, the trend is that Indigenous women are more likely than non-Indigenous women to be imprisoned for a violent

---


\(^{61}\) Ibid at 14.

\(^{62}\) Date obtained from AFP.

\(^{63}\) Ibid.

\(^{64}\) Australian Institute of Criminology, *Profile of Young Offenders in the ACT 2001-2002*, Chief Minister’s Department, 2003 at 3.

crime and less likely to be imprisoned for drug offences. Statistics also suggest that Indigenous women have higher rates of recidivism than non-Indigenous women.

**Age distribution of crime**

Across the whole ACT youth population, the peak age for entering the justice system was in the 16-17 years group (4.4%) and the 18-25 years group (4.1%). The *National Draft Strategy* reports that Indigenous persons aged 10 to 17 years remain 25 times more likely to be in detention than non-Indigenous people in the same age group. It notes that ‘research indicates that Indigenous prisoners enter the criminal justice system at an earlier age and are more likely than other prisoners to have been incarcerated as juveniles’.

The HREOC *Social Justice Report 2006* notes that, while data is limited, it is believed that a significant percentage of Indigenous juvenile detainees have a disability, noting that this is related to the poor physical and social environment in which many Indigenous young people live. Major life stress events in the lives of Indigenous young people have also been found to be causal in the development of clinically significant emotional or behavioural difficulties. In 2003 the NSW Department of Justice surveyed 242 juvenile offenders, of whom 42% were Indigenous. The results showed that 84% reported symptoms consistent with a clinical disorder and approximately 20% had considered suicide in the past.
Some key principles in developing appropriate and effective crime prevention interventions

Having engaged in a social analysis of crime in the ACT, it is useful to develop some principles relating to the needs and characteristics of specific population groups. The patterns of crime and offending in the ACT analysed in the previous section highlight the need for early interventions to target children and young people.

More generally, the research literature in this area suggests that crime prevention interventions are more likely to be successful where they involve collaboration with the Indigenous community and across Government and have evaluation methodology built in to program planning. \(^7^1\)

**Gender**

There are a number of other issues to consider relating to women in the criminal justice system in formulating effective crime prevention and diversion responses. The causes of Indigenous women’s offending are complex and inter-related. The recently released *National Draft Strategy* notes that although available research does not provide a definitive reason for increasing rates of female incarceration, poverty and under-use of sentencing alternatives are likely to be key factors:

Poverty is likely to be a systemic cause, shown in the number of Indigenous women serving sentences for shoplifting, social security fraud or their inability to pay Centrelink overpayments and traffic, parking and other fines. Queensland research further suggests that under-use of sentencing alternatives, such as suspended sentences and home detention, has led to an increase in imprisonment of Indigenous women offenders. \(^7^2\)

In developing effective crime prevention and diversion interventions, the specific context of women’s lives must be taken into account. A number of these factors are identified in the Victorian *Indigenous Issues Unit* paper, including:

*Women’s role as primary parent* – criminal justice sanctions are therefore likely to have more disruptive consequences and crime prevention responses therefore need to take family and maternal responsibilities into account.

*Women’s greater degree of financial dependence upon their partners* – this leaves them more vulnerable to victimisation. Interventions therefore need to mitigate this risk.

---

\(^7^1\) *Indigenous Issues Unit* report at 12.

High rates of family violence experienced by Indigenous women – research indicates a clear relationship between being a victim of crime and perpetrating crime. Indigenous women are also over-represented as victims of crime. A 2002 survey of Indigenous women prisoners in NSW found that over 70% of prisoners had been sexually assaulted or suffered other types of abuse as children, and more than 40% reported that they had been sexually assaulted as adults.\textsuperscript{73} Crime prevention initiatives should therefore seek to create safe living environments for women.

Indigenous women’s experience of discrimination on basis of ethnicity and gender – Indigenous women’s experience and perception of discrimination and gender needs to be considered in the formulation of crime prevention responses.

The disadvantage status of Indigenous women based on all key indicators – this is a critical risk factor for criminal justice involvement. Indigenous women in prison tend to be more disadvantaged than men, with female offenders having poorer physical and mental health, lower levels of education, employment and income, and a lower standard of housing. This population group has more needs than most other groups, requiring ‘more intensive and multi-dimensional services if there is to be an impact on their over-representation’.\textsuperscript{74}

The National Draft Strategy cites statistics indicating that:

- Indigenous women were found to be the most legally disadvantaged group in Australia\textsuperscript{75} and that significant disadvantage still exists;
- Indigenous women represent the fastest growing prison population in Australia, although absolute numbers remain low;
- Indigenous women are imprisoned at a rate per head of population approximately 20 times that of non-Indigenous women, and this is increasing more rapidly than for Indigenous men;
- Little research has been conducted on the needs and circumstances of Indigenous women in the criminal justice system.\textsuperscript{76}

Age

The preceding analysis has established the need for early intervention programs targeted at children and young people. This is particularly critical given that most offenders begin offending as juveniles and that the Indigenous youth population is rapidly growing in the ACT.

\textsuperscript{73} Ibid at 18.
\textsuperscript{74} Victorian Government, \textit{Victorian Aboriginal Justice Agreement Phase 2 (AJA2)}, 2006 at 19 (hereafter AJA2).
Collaboration

The Royal Commission into Aboriginal Deaths in Custody stressed the importance of collaboration with Indigenous communities in developing crime prevention initiatives. It found that:

‘[the] success or otherwise of [crime prevention and diversion] schemes depends to a very large extent—and often wholly—upon the involvement of Aboriginal people, organisations and communities. The success of the schemes is very much connected with the empowerment of Aboriginal people...’\(^77\)

The Commission continued:

‘The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.’\(^78\)

Approaches to these issues in other jurisdictions have stressed the importance of linkages between Government and Indigenous community organisations, particularly those with a justice focus. For example, in Victoria there are Regional Aboriginal Justice Advisory Committees and Local Aboriginal Justice Advisory Committees engaged in developing and supporting criminal justice initiatives. Bodies such as these can provide important bridges between justice agencies and the community.

Evaluation

The importance of building evaluation mechanisms into all new crime prevention and diversion programs is emphasised in much of the research literature. This is explored in greater detail towards the end of this report in the evaluation section.

---


\(^78\) Ibid at 1.7.6.
The social and legal policy context

This section identifies key reports and government policy documents relevant to crime prevention and diversion for Indigenous young people and adults. The Royal Commission into Aboriginal Deaths in Custody and the Bringing them Home report on the Stolen Generation both set the context for much of the thinking in this area. At the Commonwealth level, a consultative draft has been recently released on a National Indigenous Law and Justice Strategy.

In the ACT, elections for an Indigenous representative body are taking place in June. It is hoped that the ACT might follow Victoria’s lead and develop an Indigenous Justice Agreement. Victoria’s Aboriginal Justice Agreements are discussed in this section, as they provide an important case study in collaborative action on these issues. It would be very useful to learn from the successes and mistakes of this process. Other relevant ACT policy documents include the ACT Property Crime Reduction Strategy and the Australian Federal Police’s Reconciliation Action Plan (RAP). The ACT Government has also produced a strategic plan on Indigenous Health entitled A New Way: The ACT Aboriginal and Torres Strait Islander Health and Family Wellbeing Plan 2006-2011. At a more systemic level, Facing up to Racism: A Strategic Plan Addressing Racism and Unfair Discrimination 2004-2008 is the ACT Government’s core policy statement relating to racism and discrimination.

National reports and policies

Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal Deaths in Custody released its report in 1991. This report highlighted the need not only to change the criminal justice system and its impact on Indigenous people but to address the causes of Indigenous contact with the criminal justice system.

There are, in the view of all Commissioners, two levels at which the problem of the disproportionate numbers of Aboriginal people in the criminal justice system and in custody can be tackled. The first, and in some ways the most immediate and in many ways least difficult, is at the level of the criminal justice system itself. The second is at the level of those more fundamental factors which bring Aboriginal people into contact with the criminal justice system. This section deals with issues of the criminal justice system.79

1.6.2 In a sense it begins before the criminal justice system takes effect. By far the largest number of Aboriginal people in police lockups, are those who are detained for what is often called protective custody, that is those who are found drunk in a public place—which in most jurisdictions is no longer a criminal offence—but who are detained and taken to police cells and kept there for a

79 Ibid at 1.6.1.
number of hours until they are thought to be sufficiently sober to be released. And these numbers are added to by those who are arrested for the offence of public drunkenness where drunkenness has not been decriminalised. The Interim Report of the Royal Commission strongly advocated sobering-up shelters, not associated with police or other custodial agencies, to which a person drunk in public could be taken. There have been some such shelters created and others are being created. Many more are needed.

The Royal Commission noted that a relatively small number of Indigenous offenders were incarcerated for serious offences.\(^{80}\)

In Victoria, the AJA1 committed the Victorian Government to undertaking the Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody in partnership with the Koori community. The Report was tabled in Parliament in October 2005 and found that:

- ‘There were entrenched processes, procedures and attitudes throughout the criminal justice system that continue to discriminate against Koories;’
- There were seven Indigenous deaths in custody between 1991 and 2000; and that
- Koories continue to be over-represented in all components of the criminal justice system.’\(^{81}\)

The AJA2 states that ‘the fact that many Indigenous people under-utilise justice-related services ... because they are not responsive to Koories’ cultural and personal needs is a form of systemic discrimination.’\(^{82}\)

*National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Bringing them Home)*

The *Bringing them Home* report, released in 1997 found that the profound problems suffered by Indigenous people and communities are on-going and a failure to address these problems and to implement the recommendations set out in the Report would impact on the present and future generations of Indigenous people.

It identified the high rates of violence, self-harm and abuse, particularly among young men in Indigenous communities as a consequence of the protracted and damaging intrusion into family life that accompanied and followed colonisation. It went on to conclude that this destabilisation continues as a result of the poor social circumstances and disadvantage of contemporary Aboriginal societies.

\(^{80}\) Ibid at 1.6.3.

\(^{81}\) Summary obtained from the AJA2 at 10.

\(^{82}\) Ibid at 14.
The report suggests several reasons why attempts to reduce the number of Indigenous people removed from their families and in custody have failed, including that:

Many of the more progressive changes have been restricted in form, content and applicability. They have been designed and implemented as non-Indigenous systems with the expectation of finding solutions to the problems facing Indigenous people. Tokenism pervades some of the changes, particularly in relation to police cautioning and family conferencing schemes. Finally, the `underlying issues’ which contribute so substantially to Indigenous offending levels have still not been addressed.

The Inquiry supports the eventual transfer of responsibility for children’s well-being to Indigenous people and proposes a framework for negotiating autonomy measures.

In 2003 the Ministerial Council for Aboriginal and Torres Strait Islander Affairs sponsored an independent evaluation of government and non-government responses to the Bringing them Home report. The Evaluation found that while a large number of initiatives had been developed, particularly in relation to family tracing and reunion and education, there is a lack of communication between governments and organisations at every level of the responses and that the responses would benefit from stronger links with other community and family building programs at both Commonwealth and State level.83

**Consultative Draft of the National Indigenous Law and Justice Strategy**

Currently under consultation, the Strategy is intended as a framework for discussion and input for a whole of government coordinated approach to Indigenous justice issues across Australia. The National Draft Strategy was released in mid 2007 and received considerable feedback. According to its website, the Attorney General’s Department is currently reviewing the submissions received and further developing the Strategy. The guiding principles for the Strategy are the themes of: justice, healing, reconciliation and mutual trust. The Strategy seeks a ‘bi-partisan, coordinated, long term and multi-jurisdictional approach to reducing the rate of Indigenous representation in courts and in custody while addressing the complex and underlying issues of Indigenous disadvantage.’84

The Draft identified a number of law and justice aims and actions to be considered in the context of a whole of government coordinated approach to law and justice issues for Indigenous Australians. They are set out in the table below, derived from the National Draft Strategy:

---

#### Aim

<table>
<thead>
<tr>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Address the underlying causes of crime</td>
</tr>
<tr>
<td>2. Improve access to legal aid services</td>
</tr>
<tr>
<td>3. Increase law and justice outcomes for Indigenous women</td>
</tr>
<tr>
<td>4. Monitor Indigenous deaths in custody issues</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reduce overrepresentation in the criminal justice system</td>
</tr>
<tr>
<td>2. Redress rising incarceration rates of Indigenous women</td>
</tr>
<tr>
<td>3. Address overrepresentation of young people in the criminal justice system</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Build safer communities</td>
</tr>
<tr>
<td>2. Reduce the number of Indigenous children whose welfare is at risk</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Address levels of violence in Indigenous communities</td>
</tr>
<tr>
<td>2. Provide a holistic response to issues of family violence</td>
</tr>
</tbody>
</table>

---

### Commonwealth Funding Programs

The Attorney General’s Department is responsible for a number of programs particularly targeted at Indigenous people and communities, including:

- Legal Aid for Indigenous Australians program, providing funding for organisations to deliver Legal Aid services such as information, duty lawyer assistance and legal casework to Indigenous Australians;

- The Law and Justice Advocacy Program, supporting the advancement of the legal rights of Indigenous Australians by funding groups to pursue advocacy, research and community-level education;

- The prevention, diversion and rehabilitation program, providing funding to develop and undertake activities that will divert Indigenous Australians away from adverse contact with the legal system. The program is also intended to facilitate activities that will rehabilitate and support Indigenous Australians who have been incarcerated or are in custody; and

- Family Violence Prevention legal services, providing funding to services to assist Indigenous adults and children who are victims of family violence, including sexual abuse, or who are at immediate risk of such violence.

---

There are also a number of programs administered by the Department of Families, Housing, Community Services and Indigenous Affairs, including:

- Aboriginal Rental Housing program involves the provision of $91 million annually to provide safe, healthy and sustainable housing specifically for Indigenous people. An extra $29 million was provided in the 2001 budget, but was directed towards states with high Indigenous populations with high needs such as the Northern Territory, Queensland and South Australia;

- Indigenous Women’s Program funds activities aimed at reducing Indigenous women’s disadvantage through enhancing leadership, representation, wellbeing, safety and economic status; and

- Indigenous Children’s program and Indigenous Child Care programs.

There may be the potential for ACT organisations to access more funding under these schemes.

**ACT Government policies**

The *Indigenous Issues Unit* Paper stresses the importance of a supportive policy context, and cites the Victorian Aboriginal Justice Agreements and Action Plans as examples. A number of documents and research including those set out below, inform the ACT’s policy and approach to Indigenous justice issues.

**Facing up to Racism: A Strategic Plan Addressing Racism and Unfair Discrimination 2004**

Developed as a result of extensive community consultation, the Strategic Plan is a key initiative of the *Canberra Social Plan* and is based on the underlying principles of respect, fairness, inclusiveness and multiculturalism. It contains a substantial list of strategies and recommendations to be implemented by individual departments within the ACT government, with the aim of promoting a community where every person is able to participate fully without the fear of racism or discrimination.

**A New Way: The ACT Aboriginal and Torres Strait Islander Health and Family Wellbeing Plan 2006-2011**

The Plan is intended as a long term vision and commitment to achieve measurable change in the health and family wellbeing of Indigenous people in the ACT and surrounding areas. It is a response to the requirement of the *National Strategic Framework for Aboriginal and Torres Strait*
Islander Health that each jurisdiction develop a local implementation plan, and is based on a set of core principles including:

- Family centred;
- Cultural diversity;
- Community engagement;
- Collaborative community and government action; and
- Focus on wellbeing, not merely the absence on disease.

Implementation of the Plan involved the development of tightly coordinated action plans for each of the three key bodies, being:

- The ACT Government;
- The Australian Government; and
- The Indigenous community controlled health service, Winnunga Nimmityjah.

ACT Health has published the Cultural Respect Implementation Plan 2006-2009 containing strategies to reduce Indigenous involvement and employment within the Health sector. As yet, however, there does not appear to be a published action plan by the ACT Government.

**ACT Property Crime Reduction Strategy**

In 2004 the ACT Government published the Building a Safer Community Report regarding the reduction of property crime. The aim was to achieve and sustain a 10% reduction in burglary and a 25% reduction in motor vehicle theft by the end of December 2007. The Action Plan involved a combination of initiatives including early intervention and diversion programs, supported accommodation and community awareness programs. There has been some success in meeting the targets, with a 35% reduction in motor vehicle theft from 2003 to 2007.87

**Reducing Young People’s Involvement in Crime Project**

The ACT Government, in 2003, reported that the Reducing Young People’s Involvement in Crime report forms part of a larger project being undertaken by the ACT Chief Minister’s Department to develop a strategy for effectively dealing with young people in the ACT.88 It focuses on what can be done to reduce youth offending and identifies interventions and programs that can address

88 Australian Institute of Criminology, What Works in Reducing Young People’s Involvement in Crime? Chief Minister’s Department, 2003 at 5.
this problem. The report concludes that programs targeting the individuals’ specific needs are likely to be most effective, with a ‘case management’ approach to dealing with young people the best approach. Programs addressing many risk factors have a greater effect than those addressing only one per intervention. In addition, it is important that programs are culturally specific.

**ACT Aboriginal and Torres Strait Islander Representative Body**

In the 2007-08 Budget the ACT Government announced and provided funding for an Indigenous Elected Body to be set up to advocate for the interests and concerns of the ACT Indigenous community. The Elected Body will provide direct advice to the ACT Government on policies and services aimed at improving the lives of local Aboriginal and Torres Strait Islander people. It will also scrutinise the performance of government agencies that deliver services to Indigenous Canberrans. Legislation establishing the Body passed in May 2008, and voting for the first Elected Body will take place in June.

**Other policies and frameworks**

**Australian Federal Police Reconciliation Action Plan (RAP)**

The Plan sets out the key commitments of the AFP:

- Employment of Indigenous people;
- Community policing;
- Cultural Awareness;
- Community Involvement;
- Cross Agency Involvement; and
- Education.

In order to meet these commitments a number of programs are described, along with possible performance indicators to allow for appropriate evaluation.

---

Case study: Victorian Aboriginal Justice Agreements

Victorian Aboriginal Justice Agreements 1 and 2

The Victorian AJA2 outlines six objectives:

1. Crime Prevention and early intervention: reduce the numbers of young Koori people coming into contact with the criminal justice system;

2. Diversion/Strengthening alternatives to imprisonment: prevent crime and intervene to strengthen community-based alternatives to prison for Koori people and to divert them from more serious contact with the criminal justice system;

3. Reduce re-offending: reduce the rate of re-offending among Koori people by changing factors in the environment and in peoples’ behaviour;

4. Reduce victimisation and its impact on Koori communities, families and individuals to help reduce intergenerational factors in offending;

5. Responsive and inclusive services: make mainstream justice-related services respond better to the needs of the Koori community and include the community more; and

6. Strengthen community justice responses build capacity and strength in Koori communities to help improve justice outcomes, especially by delivering local initiatives.

The parties to the agreement include:

- The Victorian Government;
- The Aboriginal Justice Forum (the peak coordinating body, consisting of government and community members and responsible for overseeing the development, implementation and direction of the AJA2 in the Koori community);
- The Victorian Aboriginal Justice Advisory Committee (community based advocacy body established as a direct response to Royal Commission recommendation);
- Regional Aboriginal Justice Advisory Committees (community and government members);
- Local Aboriginal Justice Action Committee; and
- Indigenous Issues Unit (Department of Justice).

Each party to the agreement makes a number of defined undertakings relevant to their role, ranging from an obligation by the Victorian Government to establish accountability through measurement of efficacy against benchmarks and performance indicators to the Local Aboriginal Justice Action Committees who undertake to advocate, monitor and comment on local Koori contact with the justice system and identify issues that contribute to poor outcomes for the local Koori community.
Role of the Non-Government Sector

The community sector plays a critical role in crime prevention through social support. Indeed, the NSW Standing Committee on Law and Justice found, in its *Inquiry into Crime Prevention through Social Support*, that ‘by far the most diverse crime prevention activity is undertaken by the non-government sector.’\(^9^0\) Organisations involved in this work include but are not limited to the areas of:

- Early childhood intervention and childcare services;
- Children and adolescent support services;
- Family support services;
- Primary health care services;
- Alternative education services for young people;
- Alcohol and drug services;
- Mental health services;
- Refuges and emergency accommodation;
- Community housing providers;
- Community legal centres;
- Indigenous organisations;
- Prisoner support groups; and
- Disability services.

---

Stage 1: Prior to first contact with police

Pathways to Prevention, a report developed by the National Crime Prevention Strategy, urges Governments to focus on early developmental phases of a child as a means of preventing future contact with the criminal justice system. Similarly, Western Australian research indicates that the factor most strongly associated with the high risk of clinically significant emotional or behavioural difficulties in children was the number of major life stresses (including family break ups, arrests or financial difficulties) experienced by the family in the 12 months prior to the finding. Failure to address issues relating to mental health, child protection, disability and community service systems contribute to the increased risk of young Indigenous people entering the criminal justice system.

Risk factors and protective factors need to be identified as early as possible as ‘it has been demonstrated that targeted interventions that introduce protective factors and remove risk factors from key transition points are able to produce better outcomes for children and families.’

Identifiable risk factors for Indigenous young people include:

- Individual factors (abuse etc);
- Family factors;
- School factors;
- Peer factors;
- Neighbourhood and community factors;
- Racism and discrimination;
- Intergenerational impacts of forced separation; and
- Higher rates of major life stressors – trauma and loss.

Protective factors, being individual, family and cultural controls on behaviour, include:

- Strong bonds with family, friends and teachers;
- Adequate parental monitoring;

---

92 Ibid, 339.
93 Indigenous Issues Unit report at 13.
94 This list of risk factors is derived from the Indigenous Issues Unit report at 13, and is reflected in the AJA2 at 15.
Belief in a positive future;

Participation in family, school and community activities;

Recognition and praise for positive behaviour; and

Cultural resilience.  

Targeted interventions should be designed to introduce protective factors and remove risk factors from key transition points. The AJA2 suggests that there are three different types of transitions that need to be considered:

- Life stage transitions, for example, birth, preschool years, primary to secondary school; and school to work or higher education;
- Developmental pathways, for example, late childhood and early adolescence; and
- Life transitions triggered by crises or events, for example, death of a relative, family breakdown, first contact with police.

Early Childhood Intervention

The NSW Standing Committee on Law and Justice, First Report of the Inquiry into Crime Prevention through Social Support dedicated an entire chapter of its report to ‘Early Childhood Intervention’, stating:

Early childhood intervention is one of the most effective forms of crime prevention through social support.

It noted that early childhood intervention provided the most direct way of developing protective factors in vulnerable individuals. It outlined a useful approach to addressing both the structural factors that increase the risk of offending behaviour while also promoting resilience:

...structural changes such as the alleviation of poverty and unemployment are critical to crime prevention. Nevertheless, the committee believes that early childhood intervention strategies, through carefully evaluated programs and for families at high risk, can offer a means of promoting resilience and compensate for the stresses that are imposed by poverty and disadvantage.
Early childhood intervention is defined for the purposes of this paper as interventions in the zero to five age range. The NSW Standing Committee on Law and Justice Report outlines a number of general NSW early childhood intervention programs and initiatives. However, it cautions that there are specific issues relating to early intervention with Indigenous communities which need consideration. The Committee sought further evidence from the community in relation to early childhood intervention programs for Indigenous children as well as the role of schools in crime prevention for Indigenous children. Unfortunately, it did not receive many submissions highlighting effective crime prevention initiatives among Indigenous people. Giving evidence to that Inquiry, Professor Ross Homel said:

The only real evidence I see of real success in the reduction of violence and the improvement of conditions in Aboriginal communities anywhere in this country is where local people have genuinely taken some control over their situation.

The Standing Committee Report highlighted the particular effectiveness of parenting education programs, identified as a key strategy for crime prevention ‘for which there is abundant evidence of success’. The report described the impact of ‘social and economic stress’ on parenting in the following terms:

While competent parenting or otherwise can cross all social strata, economic and social stress, brought about by poverty, can negatively influence parents behaviours ... The Committee recognises that social and economic stress are factors that cannot be immediately alleviated. However, competent parenting skills, learnt through parent education, is one of the means of compensating for the pressures imposed by poverty and the consequent negative effects on child development.

Child care and pre-school not only support parents to return to the workforce and provide socialisation opportunities for children, but can also provide models of appropriate parenting and teach constructive ways of interacting with peers. Child care centres provide opportunities to locate other services on site and link families with these services. The Pathways to Prevention report concluded:

This evidence reinforces the need to locate resources in child care centres or preschools in order that behavioural problems may be targeted in an environment in which families feel comfortable and which is as supportive as possible. Workers in these centres are in a good position to reduce risk factors such as poor parenting and school failure, and enhance protective factors such as good

---

100 See RAND Institute’s definition, referred to in NSW Standing Committee on Law And Justice report, cited above.
101 Ibid at 78.
102 Evidence 26/7/99, Professor R Homel quoted at 200.
103 Ibid quoted at 87.
104 The NSW Standing Committee on Law and Justice, First Report of the Inquiry into Crime Prevention through Social Support, 1999 at 86.
parenting and school success. They are also in an ideal position to influence the very significant transition to school.\textsuperscript{105}

Programs should have as their stated purpose not crime prevention but supporting families and facilitating child and family development.\textsuperscript{106} Research by the Australian Institute of Criminology into resilient behaviour in adolescents demonstrated the importance of helping families to deal with problems before they get to the point of no return and the need for more and better targeted intervention programs designed to offer a variety of forms of assistance at the first indications of family distress.\textsuperscript{107}

It was suggested during the NSW Standing Committee enquiry that home visits and parent education programs may have a stigmatising effect for people and families who participate in the process. This is particularly relevant where programs operate in the context of preventing child abuse and criminal activity. The Standing Committee reached the conclusion that it is important to offer services well before a child is the subject of official reports of neglect or has engaged in criminal behaviour, to reduce stigma.\textsuperscript{108} There should also be on offer universal programs, which provide a referral opportunity for high-need families into more targeted programs.

The NSW Standing Committee on Law and Justice identified several issues which frequently arose in submissions and evidence to their inquiry, including:

- Under-funding of early childhood intervention programs;
- Crime prevention rarely identified as an outcome for early intervention programs; and
- Lack of local evaluation of the success of these programs in preventing crime.\textsuperscript{109}

The ACT Government has a commitment to providing each child with a funded pre-school place so the first point is less applicable in the ACT context. However, the problem still exists in relation to other early intervention programs.

**Cost effectiveness of early intervention**

Generally, patterns of spending on crime prevention tend to be skewed towards older age groups.\textsuperscript{110} Although early interventions are cost effective, with a recent AIC publication noting that there is mounting evidence that early intervention is a more cost effective strategy than

\begin{itemize}
  \item \textsuperscript{105} National Crime Prevention, \textit{Pathways to Prevention: Development and Early Intervention Approaches to Crime in Australia}, 1999 at 187.
  \item \textsuperscript{106} Ibid at 90.
  \item \textsuperscript{107} Australian Institute of Criminology, Sue Howard and Bruce Johnson, \textit{Resilient and Non-resilient Behaviour in Adolescents}, November 2000 at 3.
  \item \textsuperscript{108} The NSW Standing Committee on Law and Justice, \textit{First Report of the Inquiry into Crime Prevention through Social Support}, 1999 at 89.
  \item \textsuperscript{109} Ibid at 91.
  \item \textsuperscript{110} Ibid at 91.
\end{itemize}
more conventional approaches to reducing crime,\textsuperscript{111} crime prevention results will generally not be seen in the short term. As a result, early intervention policy requires political commitment to long term impacts, despite short term electoral cycles and political pressure for reactive, short term responses.

To encourage long term commitments, it is necessary to identify the crime prevention outcomes of human services early childhood intervention programs. As the NSW Standing Committee noted:

\begin{quote}
... the failure to identify these as outcomes has two results:

the impact on reducing crime is not measured; and

the view that early childhood intervention is not part of the ‘real business’ of crime prevention is compounded.\textsuperscript{112}
\end{quote}

Once identified, it follows that the crime prevention outcomes of early intervention programs also need to be evaluated. However, early intervention outcomes are often long term as well, requiring an equally long term commitment to research and monitoring.\textsuperscript{113}

**Youth Intervention**

The focus of much of the above discussion is early childhood, being children aged less than five years. The Commonwealth Government review of the Reconnect program (a national early intervention program aimed at reducing youth homelessness) emphasises the need for strategies that include positive outcomes for children and young people as they mature as well as at early childhood. The research in the evaluation indicates the value of continuing to build protective factors for young people throughout their development into young adulthood.\textsuperscript{114}

Similar findings emerged from the AIC research into resilience among adolescents, showing that the greater the number of protective factors experienced by adolescents, the more likely they are to display resilient behaviour, indicating a need for further investment in intervention and protective programs for young adults.\textsuperscript{115}

\begin{footnotes}
\item[112] The NSW Standing Committee on Law and Justice, First Report of the Inquiry into Crime Prevention through Social Support, at 93.
\item[113] Ibid.
\item[114] Department of Family & Community Service, I’m Looking at the Future: Evaluation report of Reconnect, 2003 at 10.
\item[115] Australian Institute of Criminology, Sue Howard and Bruce Johnson, Resilient and Non-resilient Behaviour in Adolescents, November 2000, 5.
\end{footnotes}
Program or service options

The Indigenous Issues Unit paper details a number of diversionary strategies that have demonstrated positive outcomes in preventing Indigenous people from coming into contact with the criminal justice system, including:

- Awareness raising and media campaigns;
- Education and training for communities, Indigenous organisations and mainstream organisations;
- Family strengthening, including parenting programs, targeted parent education (e.g. managing difficult teenagers);
- Youth activity programs (cultural, creative, vocational, sporting etc); and
- Community controlled initiatives designed to prevent youth contact with police in high risk places and at high risk times (e.g. Koori Night Patrols, community wardens).

To ensure the strategies were of a sufficiently high quality and met best practice guidelines, the Indigenous Issues Unit referred to a checklist, requiring the initiatives to, among other things:

- Focus on vulnerable ages/stages of development;
- Address a range of risk and protective factors;
- Strengthen young people’s connectedness to positive activities, community and peers;
- Promote skills, tools and strategies that help young people manage the risk factors and strengthen the protective factors they encounter in daily life; and
- Involve and empower the community and the family.

The Draft National Strategy describes the importance of involving the community in the following terms:

Community projects often provide outlets for creativity, cultural affirmation, recreation and self-development and build community capacity to prevent offending, particularly in regional areas.\(^\text{116}\)

---

ACT programs and services

Koori Preschool

The ACT Government provides funding for a Koori pre-school program to enable access to two years of preschool for Indigenous children aged 3-4 years. Rates of pre-school attendance for Indigenous children in the ACT are encouraging. Indigenous children attending either Koori or non-Koori preschools rose from 80 in August 2003 to 101 in August 2004. The ACT currently has five government Koori preschools, attended by 79 Indigenous children.\(^{117}\)

The program also provides opportunities for parents to be involved in the education of children in the 0-3 year age group. The program operates as a mobile pre-school, spending a number of days per week at various locations. The Indigenous Community Facilitator also offers an outreach service, visiting families in their homes and working with them to encourage sustainable development around child and family welfare. The worker undertakes locally based community development work through the Koori preschools, including working with families to develop child and family welfare, strengthen family foundations and improved inclusion of Indigenous children and families within the ACT community.\(^{118}\) The service is currently limited to the Belconnen and Gungahlin areas of Canberra.

Turnaround program

Established in response to the 2002 review of Intensive Youth Support Services in the ACT, *Turning Lives Around*, the program targets young people with extremely high and complex needs. The program incorporates a new model of providing case management to persons with complex issues. It brings together a wide range of service providers to develop and implement case management, encompassing all the services required to assist the young person.\(^ {119}\) The centralised assessment service results in strengthened and individualised case coordination for each young person and incorporates a team to support each young person including natural supports (parents, teachers, people with whom they already have relationships) and professionals.

The program involves 3 tiers:\(^ {120}\):

1. Governance: overall agreement of key agencies to work together on the initiative;

2. The service system: arrangements made between different organisations so service delivery reflects broad agreements made at governance level; and

---


\(^{118}\) ACT Department of Justice and Community Safety, *Aboriginal and Torres Strait Islander Justice Initiatives in the ACT*, April 2008 at 23.

\(^{119}\) Ibid at 18.

\(^{120}\) Ibid at 19.
3. Case coordination: Turnaround workers coordinating service delivery.\textsuperscript{121}

The AJC is seeking to use this model to achieve best practice of integrated case management. Clients are engaged immediately and referred to appropriate programs and professional agencies at the earliest possible opportunity. The AJC refers to agencies that they have assessed to best meet client’s needs. The Case Manager liaises closely with those agencies monitoring the progress of the client and keeping an open mind in respect to whether a more appropriate referral should be actioned. The clients are followed up within a twenty-four hour period to ensure that they are receiving the appropriate support to reduce their risk of further offending and to enhance their ability to develop a stable offence free life style.

Client records, including referrals and progress reports are maintained on the updated and confidential data-base.

**Integrated Service Delivery for Aboriginal and Torres Strait Islander People**

The ACT Government provided funds in 2006-07 for the development of a model of integrated service delivery for at-risk Aboriginal and Torres Strait Islander families. The project has a strong focus on early-intervention and is ‘aimed at diverting families away from statutory systems of care and protection services and community youth justice services’. An additional $2.5 million over four years was allocated in the 2008-09 ACT Budget for development of the Integrated Family Support Services. The project provides an example of the way government departments can jointly develop and implement programs addressing the high levels of disadvantage and high rate of involvement of Indigenous people in the justice system.

The Health Department is able to play a significant role in crime prevention, particularly though mental health and AOD services, but also through prenatal care. Health professionals often play a role in providing parenting advice and identifying families and communities at risk.\textsuperscript{122} However, more resources are required and energy directed at the early intervention end of the spectrum, to prevent the deterioration of situations to the extent that Health services are required to play a role in the identification and notification of child abuse and neglect.

Some examples of the role ACT Health plays/can play in crime prevention, through primary, secondary and tertiary services include:

**Primary Services**

- Antenatal education programs provided through maternity wards in hospitals;
- Early childhood health centres; and

\textsuperscript{121} Ibid.

\textsuperscript{122} The NSW Standing Committee on Law and Justice, First Report of the Inquiry Into Crime Prevention through Social Support, 1999 at at 69.
Child and family health teams located in community health centres providing multidisciplinary assessment and management advice.

Secondary Services

- Family care/cottages which provide multidisciplinary support, education and advice to families with more complex parenting problems; and
- Child and adolescent mental health workers.

Tertiary Services

- Residential family care services for families requiring intensive specialist support; and
- Sexual assault services and specialist services for children who have been subject to abuse.\(^\text{123}\)

Similarly, the Department of Education and Training has a role to play, particularly in addressing issues of school performance and truancy. The development of programs that target vulnerable or disadvantaged young people or identify risk factors at important or ‘key transitional stages’ can be essential in successful early diversion.

Through subsidised housing, Housing ACT is able to reduce some of the stress of poverty that contributes to neglect and abuse of children, and to relieve some financial burden. It is important there is a focus on designing public housing in a way that minimizes the risk of criminal offending and victimisation. There was an additional $4.5 million over three years granted in the 2006-07 ACT Budget to provide additional public housing for Indigenous people, supported by an increased focus within the Department on improving responsiveness to the needs of Indigenous people including sustaining tenancies and responding to overcrowding.

Aboriginal Justice Centre

The 2006 ACT AJAC Jurisdictional Report outlines a role for AJC case managers in crime prevention and early intervention, stating:

The case manager would be in a unique position to engage in prevention work by focusing on criminogenic factors that raise the risk of a person’s offending behaviour irrespective of whether the person is in contact with the criminal justice system or not. In this sense, the case manager would also be in a position to engage in early intervention.\(^\text{124}\)

\(^{123}\) These roles are derived from the New South Wales Standing Committee on Law and Justice report, at 69-70.

\(^{124}\) Australian Capital Territory, Aboriginal Justice Advisory Committee (AJAC), Jurisdictional Report to the National Aboriginal Justice Advisory Committee, September 2006 at 10.
**Galilee programs**

Galilee Incorporated is an ACT charity operating youth services including foster care, vocational education and training, a registered school, and an education support program and targeted at young people aged 10-25. Galilee’s programs are located at Youth Haven farm in the southern suburbs of the ACT. Young people in Galilee’s programs are able to access a range of services delivered by community agencies such as Fusion Australia, local church groups and the Lions Club.

Galilee includes the Urayarra and Lift projects. Urayarra aims to enhance personal development by providing opportunities for at-risk Indigenous young people to increase their skills in a range of areas and fostering leadership abilities.

Lift is a SAAP funded program that uses creative and innovative programs to engage young people and help them build skills and confidence. It focuses on life skills, peer education, pre-vocational training and personal development for young homeless people aged 14-21 years.

**Narrabundah House Indigenous Supported Accommodation Service (NHISA)**

NHISA provides culturally based residential and integration programs for young Aboriginal and Torres Strait Islander males, aged 12-18 years, who are at risk of entering custody or becoming homeless. During our consultations, the view was expressed that this service should be community run rather than through the ACT Government.

**Messengers Program, Tuggeranong Community Arts Centre**

Tuggeranong Arts Centre’s Messengers Program has operated since 2000, working with every ACT Government high school to promote youth resilience through art, drama, dance, film and writing workshops. Participants work with artists, professional tutors and members of their peer groups to create work which is relevant to them. The Program co-ordinates outreach theatre performances, exhibitions, film screenings and publications.

**Winnunga Nimmityjah**

A number of programs supported and funded by ACT Health are run by Winnunga Nimmityjah Aboriginal Health Service, including:

- The Aboriginal Midwifery Access Program providing antenatal and postnatal support to Indigenous mothers;
- The Dental Health Program, providing dental assessment and treatment services for Indigenous children, youth and adults;
- The Dual Diagnosis Program involving an outreach worker who coordinates the provision of services to Indigenous people with a dual diagnosis of mental health and drug and alcohol issues, and their families; and
• The Mental Health Service, providing support to clients to facilitate access to mainstream mental health services.\textsuperscript{125}

**Gugan Gulwan Youth Aboriginal Corporation**

Gugan Gulwan operates a range of programs and services with a particular focus on young people from Aboriginal and Torres Strait Islander backgrounds, including:

- A drop in service;
- Program activities;
- Community based-projects;
- Case management; and
- Sector development.

**Billabong**

Currently with only two workers, the Billabong housing program has 23 properties with residents of mixed demographics. It includes aged and disability housing as well as rebateable rent (25% of income) and affordable rent (74.99% of market rent) properties. Billabong has just over 1120 persons waiting to be housed. As the program is very stable and there is little turnover of properties it is unlikely an impact will be made on the waiting list without a substantial increase in funding or provision of further properties.

Other programs run by Billabong include:

- Conservation & Land Management Certificate II with a Greencorps project involving 6 months training in working in Billabongs Native seed bank and nursery (provenance plants, irrigation and conservation). Participants who complete the training receive a Conservation and Management certificate;
- Heavy Rigid; Medium Rigid; Loader forklift; Loader Skid Steer tickets and licenses;
- Certificate II in IT training;
- Experiential education programs;
- Low Income Housing Program;
- Family support program (referral and advocacy);

\textsuperscript{125} ACT Department of Justice and Community Safety, *Aboriginal and Torres Strait Islander Justice Initiatives in the ACT*, April 2008 at 31.
• Free civil legal clinic, Centrelink Clinic and Budgeting support; and
• Advocacy and referral.

A number of other programs are being developed including a playgroup, the return of the youth mechanics program for young people aged 15-18 years and a range of art programs.

**Case studies from other jurisdictions**

**Preventive Youth Early School Leaver and Youth Employment Program, Victoria**

Aimed at young Koories who have entered or are at risk of entering the criminal justice system and who have disengaged from education and training, the program provides intensive outreach support, facilitating their reconnection to school, alternative educational settings, training or employment. Early evaluation of the program shows 86% of clients reconnected to education, training and employment and 76% of clients reported ceasing their offending behaviour during the period of the program.\(^{126}\) The direct cost benefit saving was estimated at 7:1 which is consistent with international best practice benchmarks.\(^{127}\) Although the ACT has high education retention rates for students in general, the rate is much lower among Indigenous young people and as such a similar program could have much to offer the ACT Indigenous community.

**Justice Community Grants Program/RAJAC Youth Initiatives, Victoria**

An initiative of the Victorian Aboriginal Justice Agreement, the community grants program funds Victorian Koori communities to deliver early intervention and prevention strategies to at-risk children and young people through pro-social opportunities.\(^{128}\) Some examples of programs funded include:

• Night Patrol, in Shepparton, Mildura, Bairnsdale and some north-west suburbs of Melbourne, involves developing positive relationships between local police and Indigenous young people and providing safe transport for young people away from situations where they are at risk of negative contact with the criminal justice system. After the night patrol service commenced in a rural Indigenous community, reports show that the crime rate at the local shopping mall dropped by 39%.

• Police and Youth Groups, established to provide a safe place and means of interaction between local Koori young people and police.

• Youth Contact Minimisation Project was established in Mildura as a means of encouraging Koori young people to participate in formal organised sport. The project has

126 Indigenous Issues Unit report at 16.
127 Ibid.
128 Ibid.
attracted up to 250 Koori young people who have competed in a regional soccer competition.\textsuperscript{129}

**Social Competence Training Programs**

Research has shown that young offenders tend to be impulsive, have poor moral reasoning, planning and problem-solving skills and are unable to see other perspectives. Social competence training teaches new behaviours and thinking and has been shown to impact positively on criminal activity by changing how young people think and act. Studies suggest that these programs have produced a 40% reduction in recidivism and had the largest effect of all programs reviewed in the *What Works? Report*.

An Australian study of the Peacebuilders program that addressed cognitive, social and imitative risk factors associated with violent and antisocial behaviour showed an 83% fall over two years in the number of police call outs to the school, lower level of detention, truancy and suspension and a greater level of parental involvement.\textsuperscript{130}

Social Competence Training Programs can include:

- Family based training, targeting improved family communication;
- School-based training, addressing truancy, academic and discipline problems and aggressiveness; and
- Residential programs, possibly involving anger control, training in leadership qualities and interpersonal skills.

Evaluations of all three types of programs have shown marked success; with a 36% reduction in offending among 27 young people who completed family based training and a group who completed school based training 66% less likely to have county court criminal records than the control group.\textsuperscript{131}

**Mentoring programs**

According to The *What Works? Report*, evaluations of mentoring programs indicate that they can have positive short-term results but few such evaluations have been conducted so far. There is a lack of evidence in relation to long term impacts of mentoring programs and more investigation is needed into this.\textsuperscript{132}

\textsuperscript{129} Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007* at 35.

\textsuperscript{130} Australian Institute of Criminology, *What Works in Reducing Young People’s Involvement in Crime?* Chief Minister’s Department, 2003 at 30.

\textsuperscript{131} Ibid.

\textsuperscript{132} Ibid.
Programs that have been evaluated involve three to four meetings a month on average. The *National Crime Prevention Programs Report* recommends that to be fully effective, the mentoring relationship should be sustained over a long period of time, for a minimum of six months.\(^{133}\) Generally all mentors receive training but they can be paid or volunteers, students or adults. Results from the evaluations are quite variable but the ‘mentoring plus’ model from the UK which aims to reduce crime and risky behaviour among disadvantaged young people by helping them back into education and employment, combining mentoring, employment training and a pre-college course has shown good results. Evaluations indicated a 61\% reduction in arrests and a finding that 73\% of those who completed the first phase of the program were in college or employment.\(^{134}\)

**Circular Head Aboriginal Corporation – Youth Justice Program (Tasmania)**

Based in north-west Tasmania, the program focuses on supporting children aged 10-18 years who are at risk of adverse contact with the criminal justice system. A range of activities, including bush survival camps, mentoring at school, drug diversion and mediation between young people and their parents support a positive transition from childhood to adulthood. The program receives funding from the federal government and has partnerships with a wide range of groups and services, including local police, alcohol and drug services, the local council and high school, Centrelink, Anglicare and the Circular Head Rural Health Service.\(^{135}\)

**Comprehensive programs**

These programs adopt a holistic case management approach to offending and use different interventions targeted at a range of high risk behaviours. The basis for this approach is the opinion that there are multiple causes of youth crime making it ineffective to target them in isolation.

Programs can include social competence training, counselling, mentoring, activity programs, education programs and community programs, addressing all areas of influence in a young person’s life that could contribute to them embarking on a criminal pathway, namely the family, school, peers and community.\(^{136}\)

The Magpie Centre in New South Wales is a community centre offering comprehensive programs, providing support to residents in a housing estate. The services available at the centre include health services, advocacy work, mentoring, counselling and education for truants. Evidence indicates that the level of violence in the neighbourhood has reduced since the centre opened.\(^{137}\)

---

134 Australian Institute of Criminology, *What Works in Reducing Young People’s Involvement in Crime?* Chief Minister’s Department, 2003 at 31.
135 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, at 7.4
136 Australian Institute of Criminology, *What Works in Reducing Young People’s Involvement in Crime?* Chief Minister’s Department, 2003 at 32.
137 Ibid.
Similarly the South Carlton Youth Project in Victoria offers recreational activities, a drop in centre providing counselling and a one stop shop for teenagers involved with drugs, alcohol or other anti-social behaviours. Again, evidence shows that youth violence, crime drugs and vandalism have been reduced significantly.\footnote{138}

There have been particularly good results from programs involving multi-system therapy providing individualised, comprehensive case-management services for young people with severe multidimensional problems. Multi-system therapy identifies causes of offending behaviour by individually tailoring the program to work across all social systems relevant to the offender. The Turnaround program in the ACT is a similar concept, offering a holistic approach to services for Indigenous young people.

**Recreation programs**

Youth recreation, including sports and music, provide opportunities for young people to spend their spare time safely, with the opportunity to socialise with peers and adults. Rather than address the young person’s problems or risk factors, recreation programs attempt to enhance self-esteem. Whist recreational programs can contribute a small effect in this regard in the short term if activities are provided that young people are interested in; the effects are generally not sustained over time and after the program is finished, as young people return to their original lifestyle and community.\footnote{139}

A recreation program that did have positive outcomes was a culturally based camp in Queensland for 14-16 year olds, designed to build positive relationships between local Indigenous young people and police, giving police a better understanding of young people at risk and improving self-esteem and self-worth among the young people. Rapport between local police and young people improved and police developed a greater understanding of Indigenous culture. The *What Works? Report* suggests the strength of programs such as this lies in the fact it was conceived, planned and executed locally and as a result was able to build on-going relationships between the participants and that it was targeted at a particular group (i.e. local Indigenous young people).

**Indigenous Community Mediation and Dispute Resolution Services**

The Mawul Rom Project involves combining Yolnu Leaders from Arnhem Land with mediation exponents to establish a learning institution to graduate cross-culturally trained mediators, enabling them to more adequately meet the needs of all Australians.

**NSW programs: early childhood intervention initiatives**

The NSW Standing Committee *Report on Crime Prevention through Social Support* sets out a number of initiatives that have had success in the areas of diversion through early intervention.

\footnotesize{
\begin{tabular}{ll}
138 & Ibid. \\
139 & Ibid at 41
\end{tabular}
}
The NEWPIN program, developed in the UK but piloted in NSW, targets mothers of preschool children. Mothers attend a centre at least twice a week, building relationships with staff and other parents. A personal development program is put in place consisting of four modules:

- Our skills as parents, exploring parental stress and discipline strategies;
- Family play program, involving joint sessions with parents, children and a play facilitator;
- Seers program, assisting parents to develop friendships with other parents; and
- Learning for Life, an individual plan for each parent to develop further training and follow their own interests.

Barnardo’s Family Centres are located in areas of high economic disadvantage and provide a wide range of family support services including intensive support for ‘at risk’ children, tailored to the individual and changing needs of clients. Major programs include temporary family care, counselling, home visiting, adolescent services and semi-supported accommodation.

Families First is a joint department initiative, based upon universal service provision, which will involve a local plan for each of the 16 areas in NSW with a locally appointed manager. Support is provided in the areas of:

- Antenatal and postnatal support and early childhood health services;
- Support for parents caring for young children in their first three years, including parent education programs, playgroups and transition to school programs;
- Specialist child and family health services;
- Drug and alcohol services;
- Counselling services; and
- Strengthening of connections between communities and families, through schools, neighbourhood centres and public housing programs.

**Areas of unmet need/gaps in service delivery**

Forum attendees highlighted the effectiveness of a former ACT community program which provided young people at risk with the opportunity to do mechanic and spray painting workshops. The program was administered by a strong role model in the community, took a holistic
approach, included both vocational and recreational aspects (activities included taking young people away for weekends) and provided young people with certificates of attainment upon completion of the course.

Despite the success of the program, forum attendees expressed frustration that this program had been unable to attract re-current funding, and was reliant on the good will of volunteers. It was reported that the program had, as an ultimate goal, the development of a sustainable community business. Research from other jurisdictions suggests that this program has some of the core features of an effective crime prevention program, including mentoring, vocational and recreational aspects as well as providing a cultural and community contact point.

Other mentoring programs in the ACT, for example a mentoring program for men run by Gugan Gulwan, have failed to attract recurrent funding, despite their clear crime prevention role. This represents a significant gap in service delivery in the ACT and should be a priority area for further Government funding.

Another problem noted was a systemic failure of government services, with forum attendees citing cases of perceived racism in decisions by various ACT Government authorities, for example, to evict people.

A more general issue raised in relation to funding was the importance of recurrent, rather than short-term or pilot funding, to enable organisations to develop programs and enable future planning and greater certainty for workers. A proposal to develop an Indigenous specific early intervention program working with young children has not received funding by the ACT Government. The program proposal was based on a model developed on the South Coast, which involved community members in the provision of support to children. The South Coast program had a literacy focus, and reported positive outcomes both for the children in the program and for the community members involved.

Much of the discussion at the Indigenous community forum related to the viability of Indigenous community organisations, and the challenges of recruitment and retention of Indigenous workers. The small size of the ACT Indigenous population and competition with the ACT Government and Commonwealth Government for workers were identified as contributing factors. Poor pay and conditions in the sector were also raised as key issues to be addressed. This issue was raised in relation to diverse areas of service provision but seemed central to strengthening early intervention and prevention for Indigenous children and young people. Some priority areas identified were the need for domestic violence workers to work with violent men, the need for Indigenous support workers for children escaping domestic violence and crisis situations, and the need for general administrative and support staff within existing Indigenous organisations.

Other systemic issues relating to Indigenous community organisations and workers were identified, including the lack of awareness of other available programs in the ACT. Workers expressed support for the idea of a network of Indigenous workers in the sector and government, which would be cross-sectoral and inter-agency.

The importance of Indigenous services in early intervention and prevention work was also emphasised, with attendees reporting that they were able to achieve markedly different results
to mainstream organisations. One attendee stated, ‘when we manage to link young Indigenous people with Indigenous services, they change completely’. Indigenous workers reported that they had observed that Indigenous young people were more likely to open up to them about sensitive issues than with non-Indigenous workers.
Stage 2: Diversion in law enforcement

In its inquiry into crime prevention through social support, the NSW Standing Committee on Law and Justice highlighted the critical but difficult nature of the role of police in such diversion. It captured both the risks and potential of this role in its statement that ‘crime prevention by law enforcement can assist crime prevention through social support or hinder it’.  

The Royal Commission into Aboriginal Deaths in Custody also examined the relationship between the police and Indigenous defendants, stating:

The first group of diversion schemes are those which occur before a defendant gets before the court and concerns the interaction with police, the arrest or charge on summons, the questions of bail. Very important to all these matters is the relationship between police and Aboriginal people. Where there is less tension and less bitterness, what might be an arrest or a charge might become a caution. What might be an arrest becomes a summons to attend a court. What might be a summons to attend court does not become an arrest because matters such as indecent language or resisting enter into the course of the dealing. One of the most heartening things in this report is the improvements that are taking place in many parts of Australia in police and Aboriginal relationships.

It emphasised that the difficult relationships between the police and Indigenous people cannot be understood in isolation from the general relationship between the broader community and the Indigenous population, citing Commissioner Muirhead’s description of the police as ‘the cutting edge of an uncaring society’.

Although many young people participate in criminal activity at some point in time, it is only a minority who go on to become serial offenders. For example, over two-thirds of juveniles offend once before desisting and a further 15% desist after committing two offences. The objective in this stage of the diversion spectrum is to prevent people from progressing into the court system. There are three key points at which a decision to engage in diversionary practices could be made:

- A decision to issue caution or warning rather than charge;
- Upon arresting and charging, an officer could decide to use court summons rather than detaining the offender in police cells until the preliminary hearing; or

145 Ibid at 13.1.1.
147 Ibid at 13.
148 Indigenous Issues Unit report at 19.
• The officer could refer the offender to community-based services, for example drug and alcohol rehabilitation services, housing, mental health.\textsuperscript{149}

Australian Institute of Criminology research indicates that among the general population, relatively few charges in the ACT result in cautions. In 2002, some 13\% of charges resulted in cautions in the 12-25 years bracket.\textsuperscript{150} This does not capture cautions that are unrecorded as, for example, no charge was laid, and refers to the number of charges for young people (and some people may have numerous charges against them).\textsuperscript{151} This research drew a number of implications from the profile findings, including that the instances of cautions and diversionary conferencing should be reviewed.\textsuperscript{152}

National statistics tend to show differential rates of caution for non-Indigenous and Indigenous offenders. In Victoria, while the rate of cautions for the general population was 77\%, it was lower for Indigenous Victorians at 64\%.\textsuperscript{153} The greatest differential in Victoria was for assault.\textsuperscript{154} Victorian data indicates that not only are Koories cautioned at a lower rate, they are also arrested at a higher rate than other Victorians.\textsuperscript{155}

It should be noted that there has been little evaluation done of the effectiveness of cautioning in reducing offending.\textsuperscript{156} The National Crime Prevention paper concluded that though there was little data available, in general Indigenous offenders are less likely to be diverted by cautioning that non-Indigenous offenders.\textsuperscript{157}

Strategies

The most important way to address diversion at the policing stage is to strengthen diversionary processes so that alternative pathways are available within the system. The Indigenous Issues Unit report gives as an example, workforce development to increase police cautioning rates. As well as strengthen diversionary processes, programs and services need to be developed so that the diversionary pathways lead to meaningful alternatives. In many cases, diversionary alternatives, such as cautioning will not be effective unless they can be combined with a referral to an appropriate service, be it a program to address substance abuse or to reconnect a young person with education.\textsuperscript{158} The Indigenous Issues Unit report recommends that the programs and

\begin{thebibliography}{9}
\bibitem{149} Ibid at 17.
\bibitem{150} Australian Institute of Criminology, Profile of Young Offenders in the ACT 2001-2002, Chief Minister’s Department, 2003 at 4.
\bibitem{151} Ibid.
\bibitem{152} Ibid at 6.
\bibitem{153} Indigenous Issues Unit Report at 17.
\bibitem{154} Ibid at 18.
\bibitem{155} AJA2 at 16.
\bibitem{156} Australian Institute of Criminology, What Works in Reducing Young People’s Involvement in Crime? Chief Minister’s Department, 2003 at 6.
\bibitem{157} National Crime Prevention, Early Intervention: Youth Mentoring Programs, 2003.
\bibitem{158} Indigenous Issues Unit report at 18.
\end{thebibliography}
services need to address risk factors in a similar way to the early intervention programs in Stage 1, but more targeted and intense.

**Program or service options**

Possible program options at this stage include training police on cultural awareness, the problem of Indigenous over-representation in the criminal justice system and the alternatives to arrest. As discussed above, programs that offer alternatives to arrest and address risk factors need to be strengthened. This could include strengthening and expanding mental health services, primary prevention programs and youth and family conferences.

The *Indigenous Issues Unit* paper suggests creating additional Police Liaison positions to intervene when Indigenous people are apprehended but not yet charged. A similar proposal is an increase in the number of Indigenous police officers, who have an understanding of the cultural issues facing Indigenous people within the system. The NSW Ombudsman in his 2005 Audit of the NSW Police Aboriginal Strategic Direction found that in every community they visited they were told that there needed to be more Aboriginal police.\(^{159}\)

Despite national efforts towards putting in place recruiting strategies and units, liaison officers and community participation, there is still a low proportion of Indigenous police officers in the Australian Federal Police. Jo Kamira\(^{160}\) in 1999 suggested a number of reasons why this could be, including:

- Despite the number of Indigenous application to the AFP which fit the recruiting criteria, the psychological profile may create a barrier to progressing through the application process, by favouring non-Indigenous middle class applicants;

- Difficulties in retaining Indigenous staff. Kamira argues that many Indigenous police officers that make it through the selection process feel they have been selected because they are Black, but once they are in the force, they “aren’t allowed to be Black”; and

- Attitudes from individual officers within the force to Indigenous officers, typically that they claimed their ancestry as an advantage and are as a result not deserving of their position.

She goes on to suggest that simply increasing numbers of Indigenous police officers may not solve the inherent problems in the policing system, if there is still insufficient understanding of Indigenous culture and a failure to deal with issues of police culture.


Since this paper was presented, the AFP has put in place a number of programs and initiatives that address issues including AFP culture and community engagement. Of particular note is the Malunggang Indigenous Officers Network (MION) which encourage Indigenous employees to participate and share experiences, offering support, advice and guidance to employees and aiding in representation, retention and professional development of Indigenous officers. The RAP also puts in place an action plan for the future. Numbers of Indigenous police officers remain significantly low, though we note this is an issue faced by all police services around Australia.

### ACT programs and services

#### Indigenous police liaison officers

Since 1998, ACT Policing has recognised the need for Indigenous Community Liaison Officers (ICLO) to improve relations between the police and members of Indigenous communities in the ACT. The ICLO role is extensive and highlights the commitment of the AFP to improving relationships with the Indigenous community.

The ICLO works as an intermediary between the Indigenous community and police and educates colleagues on cultural awareness and Indigenous justice issues with the intention that this work may reduce the rate of arrests and charges by increasing cross-cultural understanding, for example by providing a context for certain behaviour. The ICLO also works to ‘develop and maintain a network of contacts between the police and the local Indigenous communities within the ACT to strengthen cooperation and communication’, maintain close personal support with Elders of the local community, assist in mediation of disputes and implement crime prevention strategies for ACT Policing.

#### Restorative Justice Conferencing

The Restorative Justice Unit (RJU) is a unit within the Department of Justice and Community Safety, which provides opportunity for victims to discuss the impact of offences and offenders to accept responsibility for their actions. Restorative Justice Conferences (RJC) are currently only available for young people (age 10-18 years), but are expected to extend to adults when the delayed second stage of the program comes into effect.

A matter may be referred to restorative justice at all stages of the criminal justice continuum. During phase 1, referrals can occur:

- After apprehension or caution and before prosecution, instead of the offender going to court;
- During prosecution;

---

161 ACT Department of Justice and Community Safety, Aboriginal and Torres Strait Islander Justice Initiatives in the ACT, April 2008 at 8.
162 Ibid.
After a matter has been referred to court and before a hearing or trial commences;
Before sentencing after a plea of guilt;
After a finding of guilt and before the end of the proceeding; or
Post-sentence.\(^{163}\)

The suitability for RJC is determined by reference to the power relationships between the parties, personal characteristics of the participants and safety issues for all parties.\(^{164}\) Restorative justice agreements will commonly incorporate one or more of the following:

- An apology;
- A promise to address offending behaviour;
- A work plan for the young person to undertake work for the victim or community;
- Financial reparation.

As at November 2007, of the 548 total offenders who had been referred to the program since it began, 65 identified as Aboriginal or Torres Strait Islander, approximately 12% of all referrals. Of the 26 agreements which have not been complied with since the scheme commenced in January 2005, six of them involved Indigenous offenders, meaning Indigenous offenders are more likely to fail to comply with their agreements.\(^{165}\)

As shown above, restorative justice is not always a substitute for the court system. It acts as such only when the AFP refers the matter for diversionary conferencing prior to the matter progressing into the court system. In November 2007, ACT Policing referred 10 offenders to the RJU at this stage of the process.\(^{166}\)

Some Australian studies have indicated a positive effect on the rate of recidivism, but to date a definitive evaluation has yet to be conducted.\(^{167}\) However, a recent Australian study by the NSW Bureau of Crime Statistics and Research was able to demonstrate that a large-scale youth justice conferencing initiative can produce reductions of 15-20% in re-offending across different offence types and regardless of the gender, criminal history, age and culture of the offenders.\(^{168}\)

\(^{163}\) Information obtained from the First Stop Legal and Referral Centre and Restorative Justice Unit, Restorative Justice in the ACT Solicitor Information Sheet.
\(^{164}\) Ibid.
\(^{165}\) Data obtained from the Restorative Justice Unit, May 2008.
\(^{166}\) Ibid.
**ACT Policing Early Intervention and Diversion Program for Drug Offenders**

The target of this program is young offenders who have no prior involvement with the courts. It is designed to provide early incentives for drug offenders to deal with their drug problems. Young people who qualify for the program have the opportunity of being referred to a variety of education and treatment options. It operates on a partnership approach between the health system, police and NGOs adhering to the principles of the *National Drug Strategy.*

The program is for those who have been apprehended by police with a small amount of illicit drugs (or licit drugs used illicitly). If a young offender is considered eligible for the program, ACT Policing refers them to the Assessment and Coordination Team (part of the Alcohol and Drug Program, ACT Health). They may then be referred to a treatment agency and their progress monitored. The AFP received regular reports on compliance or non-compliance, and can then decide what action to take.169

**The role of the Aboriginal Justice Centre**

The Aboriginal Justice Centre provides a vehicle to bring the Aboriginal and Torres Strait Islander community together to reduce the over-representation of Indigenous people in the ACT criminal justice system.

The objects of the Association are:

1. For Aboriginal and Torres Strait Islander people to work together to provide services that target and address the causes of disadvantage for Aboriginal and Torres Strait Islander people in the ACT resulting from the effects of colonisation, marginalisation, social attitudes and discrimination;

2. To significantly address the causes and effects of Aboriginal and Torres Strait Islander persons coming into contact with the criminal justice system by:
   a. Providing culturally appropriate services to Aboriginal and Torres Strait Islander people and their families which reduce criminal offending, incarceration and over representation in the criminal justice system with particular emphasis on providing direct support, preventative programs, referral and other related support services;
   b. Providing and/or improving the effectiveness of legal and related support services working to assist Aboriginal and Torres Strait Islander people who become involved in the criminal justice system in the ACT;
   c. Liaising and coordinating with governments, key agencies, service providers and other bodies to improve and maximise the availability of culturally appropriate

service provision to Aboriginal and Torres Strait Islander people within the ACT; and

d. Representing the views of the ACT Aboriginal and Torres Strait Islander Community in relation to broad justice issues impacting upon the community.

3. To recruit and train persons, including volunteers, to advance these objects;

4. To promote awareness, understanding and acknowledgement of the diversity of Aboriginal culture and the needs of Aboriginal and Torres Strait Islander people in the ACT and undertake education and community awareness activities to achieve these objects;

5. To promote awareness of mainstream society, systems and services to Aboriginal and Torres Strait Islander people in the ACT to allow them access their entitlements and rights that are available to the wider community; and

6. To undertake activities that the Board deem appropriate to improve the emotional, spiritual and physical wellbeing of Aboriginal and Torres Strait Islander people in the ACT through service provision and the development of programs.

Case studies from other jurisdictions

Caution Programs and Policies (various states including NSW & the Northern Territory)

In all jurisdictions other than the ACT and Victoria, police cautioning has a legislative basis. In the ACT, police use their common law power of discretion for formal and informal cautioning, based on the ACT Policing practical guide and policies.\textsuperscript{170} In contrast, in NSW, the \textit{Young Offenders Act 1997} specifies that where an officer decides not to issue a warning, they must consider either issuing a caution or refer the matter to a specialist youth officer who will then determine the appropriateness of youth justice conferencing. The Act also allows for the issuing of cautions by respected persons or elders where the offender is Indigenous and the officer believes it is appropriate to proceed in this way.\textsuperscript{171}

In the Northern Territory the \textit{Youth Justice Act 2006} states that an officer must divert a young person instead of charging them wherever appropriate, encouraging the use of the least restrictive sanction first. The diversion scheme includes written and verbal warning, cautions, youth conferencing and community based programs. It is mandatory for police officers to gain approval from a senior sergeant or officer in charge of a police station prior to issuing a summons or arresting a young person.\textsuperscript{172}

\textsuperscript{170} Australian Institute of Criminology, \textit{Responding to Substance Abuse and Offending in Indigenous Communities: Review of Diversion Programs}, Jacqueline Joudo, June 2008 at 38.

\textsuperscript{171} Ibid.

\textsuperscript{172} Ibid at 39.
Although evaluations showed the scheme was less successful with Indigenous young people than non-Indigenous young people, the number of Indigenous juveniles appearing before court and being convicted is now decreasing at a more rapid rate indicating the program is becoming more successful.\(^{173}\)

**HALT Program (the Netherlands)**

In the Netherlands, all first and second time offenders between the ages of 12-18 years are diverted to the HALT Project where they undertake 20 hours of work in an area relevant to the crime they have committed. If this program is completed, the police dismiss the case. The success of the program has led to the development of similar programs in other nations, for example the Final Warning Scheme in Britain and ‘alternative measures’ in Canada.\(^{174}\)

**Moree Recruitment Strategy (NSW)**

Police identified 20 local Aboriginal young people who were interested in becoming police officers. To overcome deficiencies in their previous education a bridging course was developed at the local TAFE. Fifteen of the 20 passed the course and were given advanced standing in respect of admission to the NSW Police Academy.\(^{175}\) The local area commander continued to provide a significant amount of support and the school careers advisers spoke of the success of the program to other young people, providing a good example of local employment strategies targeting Indigenous people.

**Community Diversion Programs**

Piloted in New Zealand, the program involves community diversion panels who review the case against the young person, with input from the offender and their family. An action plan is then drawn up, which could include such diversionary methods as employment or education programs. According to a report in 1999 the re-offending rate was a reasonably low 22% and offences committed were generally of a less serious nature in comparison to the control group.\(^{176}\)

Project Turnaround and Te Whanau Awhina are similar New Zealand conferencing programs for adult offenders. Te Whanua Awhina is particularly targeted at Maori offenders. The program places less emphasis on face to face meetings between offenders and victims and allows for conferences to take place in the marae, a Maori sacred space. Reconviction rates for those who completed the program were 33% compared to 47% for the control group.\(^{177}\)

---

173 Ibid at 40.
174 Australian Institute of Criminology, *What Works in Reducing Young People’s Involvement in Crime?* Chief Minister’s Department, 2003 at 11.
176 Ibid at 18.
177 Ibid at 19.
Illawarra Disabled Persons Trust

The program provides volunteers to support intellectually disabled persons in their dealings with the police and courts. It also involves training local criminal justice agencies in responding to the needs of intellectually disabled persons.\textsuperscript{178}

There has been little evaluation of the effectiveness of this service, but the NSW Standing Committee on Law and Justice suggested that there might be a need for a similar court support scheme for people with an intellectual disability in other areas (depending on such an evaluation of the Illawarra Project).\textsuperscript{179}

**Measuring success**

As discussed above, there is little data on the success of cautioning in preventing re-offending and diverting Indigenous people from the criminal justice system. There is a real need for evaluation of these programs and processes already in place. As a result, there is a further need for appropriate indicators to determine success.

Examples of indicators that could be used in relation to the diversion of Indigenous people prior to them being charged could include:

- The number of times Indigenous young people are processed by police (arrest + summons + caution); and
- The proportion of Indigenous persons cautioned when processed by police.\textsuperscript{180}

**Areas of unmet need/gaps in service delivery**

The lack of Indigenous workers in criminal justice organisations and institutions emerged as a central theme in community consultations. Attendees reported that in their experience, young people were more likely to ‘open up and have a yarn’ with an Indigenous worker than a non-Indigenous worker. They highlighted the fear held by many Indigenous clients that adverse judgments would be made by human and legal services staff because of their Aboriginality. In addition, there is currently only one ICLO within the AFP and it was suggested that the extensive work undertaken in this role is too large for a single person.

The AFP has set aside two Indigenous places in the 2009 graduate program and is hoping to engage six Indigenous trainees in 2009, which will fill some of the gap reported by the Indigenous community.

\textsuperscript{179} Ibid.
\textsuperscript{180} AJA2 at 28.
In relation to restorative justice programs, feedback from the Indigenous community forum highlighted a community perception that the RJU process did not always successfully accommodate the specific needs of Indigenous clients and the process may benefit from a greater number of Indigenous staff. Other attendees who worked in law and justice related fields reported a lack of awareness about the RJU process.

National Crime Prevention found in their consultations for the Early Intervention project,\(^{181}\) that Indigenous people thought the restorative justice process was too focused on the victim/offender relationship rather than a more balanced community approach that would divert the young offender into positive community activities. They also argued that involvement of the local community resources, including extended families and elders is essential for conferencing to succeed.

Chris Cuneen supports this view that restorative justice programs are more likely to be successful if they are understood as a way of empowering Aboriginal communities, through for example establishing a central role for the community elders.\(^{182}\) The Standing Committee on Education, Training and Young People recently published the final report on their *Inquiry into Restorative Justice Principles in Youth Settings* which recognised the difficulties for Indigenous people in the restorative justice process. The Restorative Justice Unit stated in their evidence to the inquiry that they are striving to improve outcomes for Indigenous people in the program and to find different ways of responding to Indigenous young people in the system. The RJU noted this approach is showing success with more young people complying with their programs, doing volunteer work and undertaking courses.\(^{183}\)

A further possible response to the problems noted by the community and the report is an extension of the circle sentencing process to young people, as it provides for a greater level of community and elder involvement and a more culturally appropriate option than the mainstream restorative justice process.

Finally, the second phase of the restorative justice program will extend to adults and to cases involving domestic and sexual violence. As the majority of offenders in these cases are male and the majority of victims are female, the potential for gender discrimination and power imbalances to influence behaviour was raised in the ACT Standing Committee’s report.\(^{184}\) It is important that the RJU continue to work with stakeholder groups to construct guidelines and assessment processes to minimise the possible harm to victims in this difficult area.


\(^{183}\) Ibid, 117.

\(^{184}\) Ibid, 118.
Stage 3: Court processing

There are various points in the court process at which magistrates can support diversionary initiatives to reduce the likelihood or severity of conviction for Indigenous people who have been charged with an offence. A good example is the preliminary hearing where a magistrate could release a defendant unconditionally or on bail with appropriate conditions as an alternative to remanding him/her in prison.

Australian Institute of Criminology research indicates that only 2.6% of charges against young people aged 12-25 years in the period 2001-2 were involved in diversionary conferences. In the case of a conviction, the Royal Commission highlighted the ‘great scope for keeping people out of prison because they cannot pay a fine’. The Royal Commission suggested the need for an expansion in alternative non-custodial responses to the breaching of non-custodial orders and non-payment of fines, noting that some of those who died in custody were in prison due to non-payment of fines.

In Victoria, for example, Indigenous people are remanded at rates on average 15 times higher than non-Indigenous people. Data also suggests that Indigenous Victorians are much less frequently released on bail than the general population. As a result there is a need for appropriate bail support and/or alternatives to increase the use of bail and provide monitoring and support.

Program or service options

Possible programs include:

- Adapted court processes, for example Koori Courts or Circle Sentencing;
- Culturally appropriate programs that offer prevention-type activities with a combination of community support for offenders, so courts can bail rather than remand offenders, and/or impose community based rather than custodial sentences, for example:
  - Indigenous-focused residential bail alternatives;
  - Intensive bail supervision;
  - Post-sentence supervision, monitoring and family support by case managers or mentors;

---

185 Australian Institute of Criminology, Profile of Young Offenders in the ACT 2001-2002, Chief Minister’s Department, 2003 at 4.
188 Ibid at 22.
- Case-managed linkages to relevant services e.g. housing, health.\textsuperscript{189}

If Indigenous people are convicted, further progression into the system could be minimised through:

- Penalties like fines, restitution orders, compensation orders or good behaviour bonds as alternatives to community based supervision;

- Non-custodial sentences, like community based orders with community service requirements or rehabilitation program conditions, intensive corrections orders or home detention as alternative to imprisonment;

- Suspended sentences or combined custody and treatment orders as alternative to purely custodial sentence;

- Judicial discretion to impose shorter sentences; and

- Indigenous specific courts such as in the circle sentencing model.

\textbf{ACT programs and services}

\textbf{Circle Sentencing}

The Ngambra Circle Sentencing Court, a division of the Magistrates Court, commenced in the ACT in May 2004. The Court is modelled on the Nowra Circle Sentencing Court. It has a number of aims and objectives, which include:

- To involve Aboriginal and Torres Strait Islander communities in the sentencing process;

- To provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Island offenders;

- To provide the offender concerned with support services that will assist the offender to overcome his or her offending behaviour;

- To provide support to victims of crime and enhance the rights and place of victims in the sentencing process; and

- To reduce repeat offending in Aboriginal and Torres Strait Islander communities.\textsuperscript{190}

The Court is currently only available for adult offenders.

\textsuperscript{189} Ibid at 23.
\textsuperscript{190} His Honour Magistrate Shane Madden, \textit{The Circle Court in the ACT – An Overview and its Future}, 1 September 2007 at 3.
An application may be made for referral for an assessment to the Circle Court where an Aboriginal or Torres Strait Islander person has been charged with and pleaded guilty to an offence that may be heard and determined within the Magistrates Court.\(^\text{191}\) The Court has extensive jurisdiction including summary and indictable offences carrying a maximum custodial sentence of 10 years.\(^\text{192}\) However, a sexual offence is not eligible for circle sentencing.\(^\text{193}\) Applications for referral may be made by the individual charged with an offence or the prosecution and a Magistrate may, of his or her own motion, consider an application in the exercise of his or her own discretion.\(^\text{194}\) The majority of offenders who appear before the court are for offences relating to domestic violence or to long term drug and alcohol abuse. Other offences relate to traffic matters and minor assaults.\(^\text{195}\)

The Circle Sentencing Court has not yet been externally evaluated. Magistrate Madden recently indicated his view that it was an appropriate time for an external evaluation of the court to be conducted.\(^\text{196}\) Similarly, intensive longitudinal studies have not been undertaken in the ACT, but it is estimated that the Court has a 75% success rate.\(^\text{197}\)

An evaluation of circle sentencing in Nowra was conducted after 12 months of operation. The review found that circle sentencing helps to break the cycle of recidivism, introduces more relevant and meaningful sentencing options for Aboriginal offenders, reduces barriers between courts and aboriginal people, leads to improvements in level of support for Aboriginal offenders, incorporates support for victims, promotes healing and reconciliation, increases confidence and promotes Indigenous empowerment.\(^\text{198}\)

**Court Alcohol and Drug Assessment Service**

The program is a pre-sentencing treatment option for clients charged with alcohol and other drug (AOD) related offences. Clients are referred by a Magistrate only, but anyone (self, lawyer, police) can ask a magistrate to refer them. The goals of the program are to reduce recidivism during bail periods and engage clients in treatment, by an immediate, short-term intervention when the client first appears before the court. The clinician is located at the Magistrates Court, and is able to provide an immediate AOD assessment, and recommend an appropriate treatment plan. If the client is released on bail to comply with the treatment program, the Court Alcohol and Drug Assessment Service clinician monitors attendance, and reports all outcomes to the court. Non-
compliance does not necessarily result in penalty, but is taken into account in sentencing by magistrate.\textsuperscript{199}

The Magistrates Early Referral into Treatment Program (MERIT) is a comparable program in NSW, providing an opportunity for adult defendants with drug problems to work, on a voluntary basis, towards rehabilitation as part of the bail process. Approximately 10-15\% of the program’s clients are Indigenous. The program is intended to allow participants to focus on treating their drug problem in isolation from legal matters.\textsuperscript{200}

However, in light of recent research that suggests that compulsory treatment may be less effective than voluntary options, it may be necessary to question the effectiveness of these programs. A recent report on compulsory drug treatment by the Australian National Council on Drugs suggests that compulsory treatment should be used only in very limited circumstances.\textsuperscript{201} Instead, it argues that the emphasis should be on diversion programs, which individuals can choose to participate in, rather than progress through the mainstream criminal justice system.

\textbf{Forensic Mental Health Court Liaison Officer}

According to the \textit{Property Crime Reduction Strategy}, Magistrates report an improved satisfaction in the provision of information to the court by offenders with a mental illness. Offenders also indicated a greater awareness of their options through a six monthly satisfaction survey.

\textbf{Case studies from other jurisdictions}

\textit{Koori Court Network – Victoria}

Operated as a division of the Magistrates Court, the Courts provide an informal atmosphere and allow for greater participation by the Koori community in the court process. The Magistrate accepts contributions from Elders or respected persons, as well as the offender and their family, but maintains the ultimate decision making power. Evaluations of the pilot program showed a drop in recidivism from 29.4\% in normal courts to 12.5\% for offenders who went through the Koori Court system.\textsuperscript{202}

Nunga Courts in South Australia have been similarly successful. Positive feedback from the Indigenous community in South Australia has included that the courts provide a more culturally relevant environment and give Indigenous people more input into the judicial process, particularly in relation to sentencing. Attendance rates for Indigenous people to Nunga Courts are frequently around 80\%, compared with less than 50\% for general magistrate courts. The


\textsuperscript{202} Department of Justice, Victorian Aboriginal Justice Agreement, \textit{A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002- October 2004} at 83.
Nunga Courts have had success in reducing arrests for non-appearance and breaking the cycle of Indigenous re-imprisonment for unpaid fines by applying alternative penalties such as community service and allowing the gradual payment of fines.\textsuperscript{203}

The Youth Offending Prevention Program (YOPP), various states including Victoria

YOPP provides a single point of contact for young offenders with complex needs, focusing on improving coordination of appropriate services and directly providing intensive support to the young people. Positive outcomes have so far been reported, with 90% of participants not re-offending while on the program and 89% being involved in educational services at the program’s conclusion, compared with 29% at its beginning.\textsuperscript{204}

NSW Youth Drug Courts

The Drug Court is aimed at diverting people who have been charged with drug offences or drug-related crimes away from traditional court processes. Intensive case management overseen by a judge is provided, along with a range of support services such as substance abuse treatment, mentoring, counselling, family therapy and educational and vocational skills development.

In the first two years of the Court, of the 75 offenders judged eligible, 39% completed the program to the Court’s satisfaction. Graduates of the program were found to be less likely to re-offend. Approximately 35% of participants were not recorded as having offended after they left or completed the program, showing considerable success, however data is incomplete as it was only available for a short time after the program ended.\textsuperscript{205}

Project RAP (Rape and Abuse Prevention)

Project RAP was a USA program in the late 1990s. It was developed as a community-based alternative to incarceration for predominantly African American and Hispanic young people who had been convicted of sex offences.\textsuperscript{206} The program provided rehabilitation and a community based alternative at the pre-sentence stage for otherwise jail bound young people, through a combination of intensive community based supervision and offence-specific therapy. It included outreach to the home and school, connections to positive community activities, case managers from within the local community and support for the families of the offenders. Attendance rates were high, 80% of participants completed the program, there were no re-convictions for sex crimes in the 3 year follow up period and only 18% were re-convicted of other types of crimes, and those were generally minor.\textsuperscript{207}

\textsuperscript{203} Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2007 at 123.
\textsuperscript{204} Indigenous Issues Unit report at 24.
\textsuperscript{206} Indigenous Issues Unit report at 24.
\textsuperscript{207} Ibid.
Mental Health (Criminal Procedure) Act 1990 (NSW)

Section 32 of the Act allows a magistrate in a Local Court to discharge defendants into the care of responsible persons subject to certain conditions. Evidence suggests this ability is under-utilised due to the failure to detect disability and a concern it will encourage recidivism.\(^{208}\)

There is no equivalent in ACT law, although under Section 334 of the Crimes Act 1900, where an accused is mentally impaired, a magistrate dealing with a summary matter may dismiss the case unconditionally or require the accused to submit to the jurisdiction of the Mental Health Tribunal. In this instance, there is still no provision for a person to be released into the care of a responsible person.

Western Australian Regional Supervised Bail Program

Focused on supporting young people to remain in their communities, the program supports family-focused supervised bail orders. The young people are supported to successfully complete their bail in familiar surroundings, reducing the number of young people who are incarcerated. The program is currently moving towards a model that considers the individual needs of the young person involved and the best family or extended family with which to place them while they complete their order.\(^{209}\)

The NSW Intensive Court Supervision Program was previously operating on a similar model in NSW, as a pre-sentence program specifically targeted at Indigenous young people who were repeat offenders. It aimed to identify and address participant’s health or social problems, provide mentoring and support and increase participant’s involvement with cultural activities, education and sport. The program was discontinued due to a lack of funding.\(^{210}\)

Measuring success

Key indicators for the success of diversion of Indigenous people who have been apprehended by the police and charged but not yet convicted of a criminal offence are:

- The proportion of Indigenous people remanded in custody; and
- The proportion of Indigenous people released on bail.

More research is also required on the success of the alternative courts, such as the Circle Courts and Youth Drug Courts, including long term analysis of re-offending.

\(^{208}\) The NSW Standing Committee on Law and Justice, First Report of the Inquiry into Crime Prevention through Social Support, 1999 at 183.
\(^{209}\) Australian Institute of Criminology, Responding to Substance Abuse and Offending in Indigenous Communities: Review of Diversion Programs, Jacqueline Joudo, June 2008 at 34.
\(^{210}\) Ibid.
Areas of unmet need/gaps in service delivery

A similar community driven and location specific program to Project RAP, offering offence-specific rehabilitation for young people convicted of crimes against the person could be successful in the ACT. The NSW AJAC has recommended the establishment of community controlled mechanisms to deal with family violence, similar to proposals made elsewhere, including in Canada. This would involve establishing local justice mechanisms and healing centres as well as alternative sentencing processes for offenders, for example combined community justice and healing centres.\(^\text{211}\) The transferability of these models requires further research.\(^\text{212}\)

In relation to rehabilitation programs, community consultations indicated that Indigenous people participating in the alcohol and drug treatment programs are less likely than non-Indigenous clients to complete the program, with Indigenous clients leaving for a variety of reason, often related to family ties and commitments. However, when Indigenous clients do successfully complete the programs there are broad impacts for the whole family unit, with not just the individual client benefiting. In addition, currently there are no secure drug rehabilitation facilities in the ACT and very few beds at secure mental health facilities.\(^\text{213}\) As a result there is a need to expand and increase programs for short term drug rehabilitation programs that specifically cater for Indigenous clients.

The positive outcomes shown by the NSW Youth Drug Courts have been mirrored in other jurisdictions, with recent evaluations both in Australia and overseas having generally identified a number of positive outcomes from drug courts, including:

- Reductions in drug use and criminal recidivism both during and after program completion;
- Improvements in participant’s health and well-being;
- Monetary savings in prosecution, law enforcement, prison and court costs; and
- Social benefits such as the long-term reduction in drug use, increases in employment, education, and the reunification of families.\(^\text{214}\)

Further research into the possible effectiveness of an ACT Drug Court is recommended.

It has already been suggested (in Section 2) that extending the circle sentencing program to Indigenous young people could have positive outcomes in diverting young people from further contact with the criminal justice system. In making this recommendation, however, the important issue of resourcing must be considered. Ordinarily, sentencing in the Magistrate Court is a

---


\(^{212}\) Ibid at 340.

\(^{213}\) See comments of Supreme Court Justice Malcolm Gray, reported on 29 November 2007 in ‘Judge lashes jail’s lack of rehab’, Canberra Times.

fairly quick process. The majority of sentencing hearings are dealt with in under an hour. Circle sentencing, on the other hand, involves a hearing process in which many participants are expected to take an active part, which can in some cases involve a whole day of hearings before the sentence is handed down. As a result of this extra time needed for hearings, the court costs of circle sentencing can be quite high and the extended hearing times could potentially create backlogs in the system.

A Review and Evaluation of Circle Sentencing in NSW weighed up the cost of sentencing against the benefits to the community, legal system and the offender, stating:

If circle sentencing reduces future offending, there will be considerable benefits in terms of quality of life for the offender and for the community at large. Further, a reduction in future offending entails considerable savings to the criminal justice system in terms of police, courts and corrections.\(^\text{215}\)

It is suggested that, if properly resourced, circle sentencing can be seen as providing additional resources at one point in time in exchange for long-term benefits.

---

Stage 4: Non-custodial sentencing options

One of the strongest predictors of criminal activity is a prior criminal record. Interventions at this stage, after offenders have been convicted of a crime, can increase offenders’ compliance with sentencing conditions and improve access to rehabilitation. The greatest possibility of success exists where the process is most flexible and judicial discretion at its highest.

Indigenous offenders frequently attract additional justice convictions for failure to pay fines or other minor offences. In Victoria, Indigenous offenders have been found to be more likely to breach their Community Based Orders and Intensive Corrections Orders than non-Indigenous offenders. There is also evidence that some community based organisations may be unwilling to take Indigenous individuals from the criminal justice system due to concerns they will be too high maintenance, although we note that there is no evidence such a practice is regularly occurring in the ACT. This unwillingness may be due to lack of coordination and support indicating there is a need for more community-based programs that provide ‘an intensive, viable alternative to incarceration for higher risk Indigenous offenders’ for example residential healing centres.

Indigenous offenders are generally underrepresented in mainstream offender rehabilitation programs. Possible reasons for this could include that programs exhibit a lack of cultural relevance and that Indigenous people are uncomfortable in the mainstream process. Similarly, when Indigenous offenders do participate in mainstream programs, outcomes tend to be lower; though it appears urbanised people do better than those in remote areas.

Program and service options

Possible program option could involve community based programs or rehabilitation programs for offenders while they are in prison.

Priority areas for targeting during rehabilitation include:

- AOD rehab;
- Alternatives to violence;
- Sex offender treatment/abuse prevention;
- Cognitive skills/problem solving skills;

---

216 Indigenous Issues Unit report at 25.
217 Ibid.
218 Ibid.
219 Ibid at 26.
Culture based programs;

Education and employment services; and

Life skills programs.

**ACT programs and services**

**Treatment referral program**

The program is a post-sentencing option for clients who have either committed a crime to get drugs, or money for drugs, or while under the influence of drugs. It currently applies only to those drugs which appear in Schedule 4 of the *Drugs of Dependence Act* (1989) which does not include alcohol.

The magistrate or judge may instruct a client to undergo a treatment order as part of sentence imposed, rather than to receive a custodial sentence, or as an option to reduce custodial time. The treatment is overseen by a Treatment Assessment Panel, and conducted by an approved treatment agency. Periods of treatment can vary from a period of 6 months to a maximum of 2 years. Clients who fail to complete their treatment order may revert to a custodial sentence.

**Bush Rehabilitation Camp**

In mid-2007 the ACT Government announced a number of sites were being examined for a proposed bush healing farm. The camp is likely to be an Indigenous specific drug and alcohol rehabilitation service. Significant funds were set aside for this purpose in December 2007 though it is not clear when a site will be found and what point planning is at.

**Restorative justice conferencing**

As discussed in stage 2, the purpose of Restorative Justice for the offender is to provide an opportunity for the offender to accept responsibility for their actions and discuss with the victim what may be done to repair that harm. The system allows young offenders to be referred to restorative justice, either as a diversion from the criminal justice system, or in addition to prosecution.

A court is not required to reduce a sentence because the offender has participated in restorative justice conferencing before sentencing, but it does have discretion about whether to take it into account. Alternatively the court may use restorative justice conferencing as part of a sentence and suspend final sentencing until the conference has been finalised.

---

The ACT Children’s Court referred 12 matters to the Restorative Justice Unit in November 2007 and 152 cases since the program began. The data shows that this stage in the process is the point at which the greatest number of referrals is made.\(^\text{221}\)

**Winnunga Youth Detox Support Service**

The Youth Detox Support Service provides programs for Indigenous people aged between 14 and 18 years who experience problems with alcohol and drugs, and involves working with Indigenous young people at the Quamby Youth Detention Centre.

**Case studies from other jurisdictions**

**The Koori Cognitive Skills Program – Corrections Victoria**

Based on the mainstream correctional offender rehabilitation program, the Koori Cognitive Skills Program (CSP) is designed to strengthen the skills of prisoners and offenders to effectively solve problems in their everyday lives, to help reduce the risk of re-offending.\(^\text{222}\) Corrections Victoria appointed a Koori registered psychologist to adapt the mainstream CSP so it would be more culturally appropriate for Indigenous men and women in the Victorian system. Examples of adaptations to the mainstream program include talking circles at the start and end of each session, inclusion of traditional activities, the substitution of art, music, role-play or visual material for written material where appropriate and alteration of mainstream examples of situations to reflect Indigenous interests and concerns.

Evaluation of pilot programs has been encouraging, with attendances rates averaging 91\% and participants demonstrating mastery of the skills, strong bonds with others in the group and a loyalty to the program. Most participants indicated they thought the program was valuable and could help them not re-offend in the future.\(^\text{223}\)

**Mainstream and Indigenous-focused sex offender treatment in New Zealand**

The New Zealand Indigenous focused program for Maori offenders has shown to be much more effective than the mainstream program, with prisoners re-convicted at approximately one third the rate of Maori prisoners who undertook the mainstream version of the program.

**Healing Lodges in Canada**

Okimaw Ohci, a 30 bed treatment centre for Canadian Indigenous women opened in the mid 1990s with the aim of assisting reintegration of offenders and decreasing recidivism through

---

\(^{221}\) Data obtained from Restorative Justice Unit.

\(^{222}\) Indigenous Issues Unit report at 28.

\(^{223}\) Ibid at 28.
healing. The lodge was planned in full partnership with the Indigenous community and a body of aboriginal community members monitors the lodge’s operation. Although based on Indigenous ethics, values and principles, the lodge maintains the statutory mandate of the Correction Services of Canada. Once admitted, each woman is assigned a case management team which works to create an individual Corrections Plan and Personal Healing Journey Plan. Early evaluation of the 412 Indigenous offenders admitted to several healing lodges across Canada show that approximately 70% completed the program and the recidivism level was well below the national average, indicating the program has had a positive impact and having some success in its mandate to successfully reintegrate offenders.

Rumbalara Women’s Mentoring Program (Victoria)

Established in 2002 as a pilot initiative to intervene in the cycle of re-offending by Indigenous women, the program provides women undertaking community based orders including parole with mentoring and support by Indigenous Elders and Respected Persons. The program’s aims are to improve community based order completion rates and reduce recidivism. Of the 27 women who had taken part in the program to 2005, 19 successfully completed and a further 5 were still completing community based orders with the assistance of the program. These outcomes contrast to a normal community based order breach rate in Victoria of approximately 29%.

Measuring success

Key indicators of success in this area could include:

- The proportion of Indigenous adults sentenced to orders other than prison;
- The proportion of Indigenous young people sentenced to orders other than juvenile detention;
- The proportion of Indigenous prisoners released on parole;
- The proportion of Indigenous people in maximum security prisons.

---

225 Ibid.
226 Ibid.
228 Derived from AJA2.
Areas of unmet need/gaps in service delivery

The Indigenous Reference Group has been placed on hold awaiting development of through-care options for the AMC.\(^{229}\)

However, in the 2007 ACT Jurisdictional Report, it was reported that ACT Corrective Services had a number of initiatives under consideration, including:

- Development of a workable relationship with the AJC, with respect to the effective delivery of a range of correctional and community based services to indigenous offenders;

- In collaboration with the AJC, explore and develop placement and program options for Indigenous offenders placed on a court order to undertake a drug and alcohol rehabilitation program; and

- Also, in collaboration with the AJC and Auswide identify, tender and develop a framework (under an AMC prisoner transitional release program) that will provide sustainable long term employment opportunities for Indigenous offenders.\(^{230}\)

In 2001, research by the AIC demonstrated that although there is considerable interest and initiative in the design and implementation of drug rehabilitation programs for women prisoners, comparatively little attention is paid to employment and education programs. NSW evidence from this time showed that 60% of the NSW prison population (which included ACT prisoners) were not functionally literate and 48% were long term unemployed.\(^{231}\) It is reasonable to expect that the female prisoners in the AMC may in a similar position in regards to education and preparation to participate in the workforce.

More information is required as to the programs that will be offered to prisoners in the AMC, particularly those specifically targeted at Indigenous people.

---

\(^{229}\) ACT Aboriginal Justice Centre, Jurisdictional Report to the National Aboriginal Justice Advisory Committee, June 2007 at 6.

\(^{230}\) Ibid.

\(^{231}\) Australian Institute of Criminology, Women Prisoners and Corrections Programs, Margaret Cameron, February 2001.
Stage 5: Pre- and post-release (custodial)

The increasing recognition that community safety can be enhanced by successfully reintegrating ex-prisoners into mainstream community life is driving a change in the way correctional authorities in Western jurisdictions manage offenders. Research has shown that pre- and post-release prisoners can experience multiple social and economic disadvantages, and that these disadvantages are linked to offending and re-offending.\textsuperscript{232}

Post-release interventions are a category of programs and services that aim to assist in the reintegration of known offenders into mainstream society. Victorian data suggests that the Indigenous population has higher rates of recidivism than the non-Indigenous population. Indigenous people are also less likely to use mainstream pre- and post-release support programs.\textsuperscript{233}

There is a need for pre- and post release programs to support Indigenous people in their return to the broader community and help Indigenous people prepare for and navigate post-release stressors, which are particularly severe for Indigenous offenders, due to higher levels of risk and more complex need.

In order to be effective in reaching Indigenous prisoners, overcoming barriers including Indigenous mistrust of mainstream services and the impact of discrimination, post-release services need to be Indigenous specific, taking culturally aware and adapted approaches to the needs of Indigenous people re-entering the community.\textsuperscript{234}

In 2005 the AIC published research into the effectiveness and variety of post-release and transition interventions across Australia. The evidence showed that around two-fifths of individual programs included both pre- and post-custody components and could be considered examples of through-care. Interestingly, when asked if post-release programs in general involved through-care, only 56\% of agencies responded positively. Thus whilst the majority of agencies supported through-care in general, it was not necessarily considered to be a principle underpinning all reported-upon programs.\textsuperscript{235}

Through-care implies that services are continued, or at least mirrored between custody and the community. Notably, whilst custodial and community correctional functions fall under the umbrella of correctional services or justice departments in all jurisdictions, only 42\% of surveyed

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{232} Australian Institute of Criminology, \textit{Interventions for Prisoners: Returning to the Community}, Prepared for the Community Safety and Justice Branch of the Australian Government Attorney General’s Department, February 2005.
\item \textsuperscript{233} AJA2 at 15.
\item \textsuperscript{234} Indigenous Issues Unit report at 30.
\item \textsuperscript{235} Australian Institute of Criminology, \textit{Interventions for Prisoners: Returning to the Community}, Prepared for the Community Safety and Justice Branch of the Australian Government Attorney General’s Department, February 2005.
\end{itemize}
\end{footnotesize}
government community and custodial respondents reported consulting with their complementary arm when developing programs.\textsuperscript{236}

**Program or service options**

It is important that prisoners’ unique risks and needs are addressed whilst they are in custody but also afterwards—via post-release services—because by ensuring a continuum of care (also called through-care), individuals are better able to respond in a non-criminal way when confronted with the challenges in community life that were previously related to their offending.

The NSW Standing Committee on Law and Justice highlighted a number of issues relating to recidivism, including:

- The need for bail hostels;
- Lack of AOD programs within prison;
- Post-release housing problems;
- Changes to Centrelink payments;
- Lack of planning for transition back to community; and
- The special needs of women, Aboriginal and intellectually disabled prisoners.\textsuperscript{237}

There is a need for a continuum of services from pre- to post release (a ‘through-care’), linking people to services in housing, education, employment and family reconciliation, as well as negotiating reintegration into Indigenous community networks and specific supports for criminogenic needs, such as substance abuse.

Possible strategies for these services include:

- Case management, supervision;
- Mentor networks;
- Individual counselling;
- Group peer based counselling and support;
- Family meetings; and

\textsuperscript{236} Ibid at 130.

• Community forums.

The research undertaken by the AIC noted some important factors in successful implementation of initiatives at the post-release or transition stage. These include:

• The need for strong community partnerships to effectively deliver a range of programs in the community;

• The need for strong relationships between community workers and custodial institutions; and

• Relationships between clients and workers need to be established well before release to ensure a strong relationship that can survive the transition process.238

ACT Corrective Services is developing a through-care program to be implemented in the Alexander Maconochie Centre, aimed at ensuring an integrated and seamless approach to the delivery of services for offenders as they move between prison, community corrections and the community.

Corrective Services has also indicated they will offer culturally focused responses to areas of need, which will include input from the Indigenous community and organisations such as the Aboriginal Justice Centre and Winnunga Nimmityjah Aboriginal Health Service. More information is required as policies are developed in regards to means by which individual prisoners can make connections with support organisations whilst still in prison, thereby building relationships that can be continued post-release.

**ACT programs and services**

**Supported Accommodation for prisoners on release**

The *ACT Property Crime Reduction Strategy* committed in the Action Plan to establishing a supported accommodation service for men leaving custody or involved in the criminal justice system who are homeless or at risk of homelessness. There was a commitment in the 2008-09 ACT Budget to provide transition accommodation for men as they exit prison.

**Proposed role of Winnunga in holistic health care provision**

Winnunga aims to promote a holistic approach to good health in a culturally safe environment. With research funding, Winnunga in conjunction with the government and other stakeholders,

---

has developed a draft *Holistic Model for Health Care Delivery* for Indigenous prisoners at the AMC.239

Winnunga is also currently engaged in health care provision in corrections including:

- Weekly visits by doctor and health worker to Belconnen Remand Centre;
- Fortnightly visits to Goulburn and Cooma prisons by a doctor and health worker;
- Pharmacotherapy;
- Advocacy and referral counselling services;
- Court support and transport;
- Youth diversion program; men’s group;
- Home maintenance program; and
- Parenting program and anger management program.240

**Bimberi: New Youth Justice Centre**

The new ACT Youth Justice Centre is expected to be completed in mid 2008. The ACT Aboriginal and Torres Strait Islander community have been involved in the consultation process to inform the design and naming of the new centre, particularly in relation to the inclusion of and design of spiritual space.

ACT Youth Justice is also involved in a number of studies and data collection projects, including diversionary options to decrease the over-representation of Indigenous children in the youth justice system and policy development in relation to parents in youth detention.

**Aboriginal Justice Centre**

The 2006 Jurisdictional Report outlined a role for the AJC in maintaining links with offenders post-release. It contrasts the continuing role of the AJC with the strict delineations in the roles of the courts (ceasing once sentence is passed) and ACT Corrective Services (ceasing upon conclusion of sentence).241

---

239 ACT Department of Justice and Community Safety, *Aboriginal and Torres Strait Islander Justice Initiatives in the ACT*, April 2008 at 32.

240 Ibid.

Case studies from other jurisdictions

Rekindling the spirit: Lismore Probation and Parole Officer, NSW

This program for male Aboriginal offenders in NSW has won a number of awards for innovative practice. It provides a holistic response to the needs of Aboriginal male clients, including actively involving families in the program. The program empowers men to take responsibility for changing their own violent behaviour and the effect it has on their families, by focusing on individual and personal development, strengthening family relationships and parenting skills.

Early evaluation of the first twenty offenders involved in the program has shown a 20% reduction in recidivism, including offenders with long criminal conviction histories who are experiencing their longest period of freedom since reaching adulthood. Other positive outcomes were also recorded in reduced use of alcohol and drugs among men involved in the program, improved family relationship, improved health and reduced rates of breaches of parole and court orders.

Yulawirri Nurai, NSW

Another NSW initiative, located on the Central Coast, the program was established in 1996 with the sole purpose of providing support and assistance to Aboriginal people in NSW with accommodation, employment, and education, legal and training needs before, during and after their release from prison. It is funded by the NSW Corrective Services Community Grants Program but relies heavily on the support of volunteers for the ongoing functioning of the program. There is a post-release officer responsible for supporting Aboriginal women leaving prison, the only position of its kind in Australia. The post release worker aims to develop a supportive relationship with women during their incarceration (prior to release) in order to establish an understanding of the woman’s individual needs. The service also continues to provide support to women well after they have completed their orders.

Measuring success

The Victorian AJA2 commits to reducing the rate at which Koorie re-offend by changing environmental and behavioural factors that contribute to that offending. The AJA2 proposes that the success of this objective be measured by the:

- Proportion of Indigenous adults/young people who do not re-offend within two years of their previous conviction; and

- Proportion of Indigenous adults/young people who return to prison/juvenile detention within 2 years.

243 AJA2 at 28.
Areas of unmet need/gaps in service delivery

A systematic review of the evaluations of 32 North American transitional initiatives concluded:

Analysis of prisoner re-entry programs has identified several categories of programs in which there is evidence of success. Correctional administrators should take note of these programs; implement or expand the use of vocational training and/or work release programs, drug rehabilitation programs, education programs, halfway house programs, and pre-release programs that have proven success; and expand the use of sex- and violent-offender programs that show promise.\(^\text{244}\)

The Australian Institute of Criminology in its report to the Commonwealth Attorney-General recognised the importance of promoting links between government and non-government/community organisations.\(^\text{245}\) Further research is necessary to address the degree of formality that governs these between agency relationships, and to assess the form that the joined-up operations should take to maximise the chances of reintegration, whilst minimising the risk of re-offending.\(^\text{246}\)

The importance of peer to peer service provision to prisoners was also emphasised in community consultations. Current obstacles to this model of service provision exist due to the difficulties faced by people with prior criminal records or prison sentences in gaining visiting rights to Australian prisons. Some sub-sectors place particular emphasis in recruitment on lived experience, which means that workers are likely to have previous convictions or prison time.

One of the recommendations emerging from consultations was the need to review corrective services policies around the conferral of authorised visitor status, to facilitate peer to peer service delivery. There has been some indication this will be considered in the development of policies for the AMC, but further information is required.

There is also a need to make clear what initiatives are planned for the AMC for both remanded and sentenced offenders. Detail is required in relation to the provision of:

- AOD programs and services;
- Mental health programs;
- Education and vocational training;
- Aboriginal pre- and post-release programs;

\(^{244}\) Australian Institute of Criminology, *Interventions for Prisoners: Returning to the Community*, Prepared for the Community Safety and Justice Branch of the Australian Government Attorney General’s Department, February 2005.

\(^{245}\) Ibid.

\(^{246}\) Ibid.
• Funding to NGOs to provide support services to inmates, ex-inmates and their families;
• Services for mothers and their babies;
• Women’s transitional centre; and
• Post-release planning for offenders with an intellectual disability.\textsuperscript{247}

\textsuperscript{247} The NSW Standing Committee on Law and Justice, \textit{First Report of the Inquiry Into Crime Prevention through Social Support}, 1999 at 73.
Conclusions: Lessons we can learn from other jurisdictions

A number of key lessons and trends have emerged from the analysis of the various stages of diversion.

The importance of community building

It is vitally important to support communities to develop their own responses to criminal justice issues. A strong community, resourced, cohesive and inclusive, leads to other positive outcomes, including reduced contact with the criminal justice system and improved educational and employment outcomes. As the Bringing them Home Report states, however, the traditional protective bonds of Indigenous family and community have been damaged by colonisation. If diversionary initiatives are to succeed, they need to integrate a community strengthening component into their work.

Examples of successes in this area are the Regional AJACs in Victoria, which enable representatives from Koori communities and justice agencies to jointly drive positive change at state, regional and local levels. According to the AJA2, outcomes of the implementation of local Aboriginal justice groups have included:

- A reduction in juvenile offending and school truancy;
- A reduction in family violence and community disputes;
- Better support for offender reintegration.

Place based responses

Targeted and place based approaches focus on delivering responses and connecting systems at the local level. Data on negative contact with the justice system shows that not only do Indigenous communities experience higher levels of contact; there is a variation between regions, with some communities experiencing higher levels than others. A place based approach allows the justice system to respond to regional diversity and work intensively in particular locations and target the particular factors contributing to higher rates of contact with the justice system.

Other successful strategies

An analysis of the ‘things that work’ across jurisdictions, in conjunction with wide consultation, identified the following success factors:

---

249 AJA2 at 17.
• Cooperative approaches between Indigenous people and government (and the private sector);

• Community involvement in program design and decision making – a bottom up approach rather than top down;

• Good governance; and

• On-going government support (including human, financial and physical resources).

Similarly the analysis of the important early intervention stage has shown that some key features of effective early intervention and crime prevention programs include:

• Individually targeted programs;

• Case management approach;

• Programs that address multiple risk factors;

• Programs that work across social settings;

• Programs that affect the way a person thinks and acts;

• Programs including a skills based component (educational or vocational);

• School based programs;

• Culturally specific programs; and

• Programs of sufficient length and intensity.250

---

250 Australian Institute of Criminology, *What Works in Reducing Young People’s Involvement in Crime?* Chief Minister’s Department, 2003 at 8.
Conclusions: Evaluating change

At the outset, it may be noted that there are a large number of programs about which there is no publicly accessible literature or evaluations available. Rigorous evaluation is important to counter the perception that social support is ineffective in preventing crime and that law and justice approaches are more effective. Available research suggests that this is a false assumption, but there is a need for more local research on the efficacy of crime prevention programs. Most local evaluations are process focused and there is a need for more long term, outcome focused evaluation.

In relation to government programs, the Commonwealth Government has shown a notable commitment to evaluation, via its publicly available Directory of Indigenous-specific Evaluations 2002-2007. The directory identifies evaluations of Indigenous programs undertaken by Australian Government departments and key external evaluators including formal evaluations, process evaluations, policy reviews, and performance audits. Over the longer term, the directory aims to provide an up-to-date resource for Australian Government agencies and to promote evaluations that target gaps in previous evaluation work.

Community crime prevention evaluation

The NSW Standing Committee recognised one of the problems of evaluation at the community level is the limited capacity of NGOs and community organisations to conduct long term outcome evaluations due to the costs and the need for government funding to do so. Although some large organisations benefit from relationships with research institutes this is certainly not always the case. As a result evaluations that do take place are often focussed on isolated, time-limited projects with little known about their context or potential for renewal.

Though the costs of more comprehensive evaluation will undoubtedly be higher, more rigorous program research is well justified if it leads to more effective community-based prevention programs. In order to draw conclusions about the most effective models of, in particular community based crime prevention interventions, it is important to develop models of evaluation that can address:

- The causal links between a program’s assumptions and the outcomes desired. (Are crime prevention initiatives based on a sound theoretical underpinning? Do community based programs reduce crime? Do they have other unintended impacts?);
- The effectiveness of the processes involved in implementation of the programs. (Who should be funded? How and to what level? Who should drive the programs? How can agencies best work together?);

---

Understanding what and why things happen in programs can determine why particular objective were or were not achieved;

The effectiveness of individual initiatives. (How successful are different approaches? Which are most successful? Why? What long term effects do they have on prevention? How appropriate are they to different contexts?);

The contribution of initiatives to the wider community goals (health and wellbeing of the community; government policy objectives of a ‘safer community’); and

The cost benefit of both individual community based initiatives and an overall assessment of a program’s multiple initiatives.

Lawrence Sherman in his article suggests that a strong community program evaluation involves analysing large samples, measuring program operations and their effects as well as the possible rival causes of those effects. In contrast, a weak evaluation may measure program content and crime but fails to measure other factors that may affect crime other than the program.

Possible Measures for Evaluation

There is a need to devise appropriate measures to evaluate policies and programs. The problem that then arises is how to measure success. Recidivism could provide a key measure, but should be complemented by other factors, for example:

- Employment;
- Reduction of family violence;
- Housing/stable accommodation etc; and
- Continuity in education or training.

The Victorian AJA2 states that rates of Koories in prison are to be used as a headline indicator to measure the extent to which the aims of the Agreement are met, but notes that other intermediate indicators are also necessary as the headline indicator is influenced by factors outside the scope of the justice system, such as socio-economic disadvantage. Examples of intermediate indicators include:

- Number of times Indigenous young people are processed by police;
- Proportion of Indigenous cautioned, remanded, and sentenced to prison rather than other orders;

---

• Number of Indigenous who are victims of crime;

• Number of community initiated and implemented programs;

• Number of Indigenous employed in criminal justice system-related agencies; and

• Proportion of people accessing positive criminal justice system related services who are Indigenous.
Recommendations

Recommendation 1
Consider opportunities for agreement making to contribute to the reduction of Indigenous rates of contact with the criminal justice system.

Recommendation 2
Progress the resolution of the 1997 Ministerial Summit on Indigenous Deaths in Custody that Commonwealth, State and Territory Ministers develop strategic plans to address issues of justice, education, health, housing, employment and training.

Recommendation 3
Develop an ACT Aboriginal Justice Agreement in consultation with members of the ACT’s Indigenous communities

- Victoria has recently entered the second stage of its Aboriginal Justice Agreement Process. The first phase of the Aboriginal Justice Agreement was launched in June 2000 and reviewed 4 years later. It recommended a renewal of the parties’ commitment to the process. The result of that process is AJA2.

- The Western Australian Aboriginal Justice Agreement was signed in 2004 and after receiving an additional almost $11 million in 2006 the forward movement is gaining pace.

Recommendation 4
Establish an Indigenous crime prevention and diversion community funding program based on the AJA grant programs in Victoria to promote the development of regional and local responses to criminal justice-related issues, for example:

- Night Patrols;

- Programs targeting ‘at-risk’ Indigenous young people;

- Indigenous Offenders Support and Mentoring Programs.

Recommendation 5
Address the poor success rates of Indigenous persons in existing diversionary and alternative sentencing processes. Commit to more research in the reasons for differential rates of success in restorative justice processes and drug diversionary programs, which could include:

- Lack of access to transport;

- Family instability;

- Need for more flexible programs, for example of shorter duration;
• Need for more Indigenous staff in programs to facilitate more open communication and make the process less intimidating and alien, and reduce the perception of bias.

**Recommendation 6**
Increase the number of Indigenous liaison staff at the courts and within Legal Aid ACT.

• Victoria has established an Aboriginal Liaison Officer Program and cultural awareness training for court staff and Magistrates.

**Recommendation 7**
Expand the number of ICLOs in ACT Policing.

**Recommendation 8**
Increase Indigenous involvement in Indigenous-police encounters, and support workers with counselling, training and support for dealing with such incidents (this might be through an expansion of the role of ICLOs or through a program based on the Aboriginal Community Justice Panel Program in Victoria (see Victorian AJA1)).

**Recommendation 9**
Revisit the Indigenous Recruitment and Career Strategy aimed at increasing the number of Indigenous staff in the Department of Justice and Community Safety, the Courts, the Police etc

**Recommendation 10**
Provide funding for an Indigenous specific early intervention program, involving community member in the support of young children in the ACT.

**Recommendation 11**
Resource another Indigenous Community Facilitator working through the Koori preschools to service the south and central areas of the ACT.

**Recommendation 12**
Establish an alternative education program for young people in years 10-12 and expand existing alternative education programs for Indigenous young people.

**Recommendation 13**
Commit greater and more consistent resources to mentoring programs, such as the former mechanic and spray painting workshops and men’s mentor programs.

**Recommendation 14**
Expand the RJU to include adults (where the matter does not involve family violence or sexual assault). The RJ must continue to work with stakeholder groups, representing Indigenous people, women and victims of crime etc, to construct guidelines and policies for the next stage of the RJ program.

**Recommendation 15**
Expand the Ngambra Circle Sentencing program to include young people.
**Recommendation 16**
Develop clear policies relating to police cautioning (for example a requirement to caution all young people under certain age unless authorised by a supervisor to charge).

**Recommendation 17**
Establish a cross-sectoral and inter-agency network of Indigenous workers in the sector and government to facilitate communication, community engagement and partnership building.

**Recommendation 18**
Expand drug rehabilitation sentencing options.

**Recommendation 19**
Research and evaluate the feasibility of establishing a drug court in the ACT.

**Recommendation 20**
Develop community based alternatives to prison, specifically designed for Indigenous offenders, such as the Bush Rehabilitation Camp.

**Recommendation 21**
Expand community dispute resolution options for Indigenous people in the ACT. See for example the Victorian options of:

- Community mediation training;
- An Aboriginal Mediators Program; and
- Improved organisation-based mediation referral services.

**Recommendation 22**
Support Indigenous people in their post-release transition from prison to the community, through for example an Aboriginal pre- and post-release program and a greater number of transitional beds at the AMC.

**Recommendation 23**
Release information on the range of services and programs that will be available to prisoners in the Bimberi Youth Justice Centre and the AMC, in particular Indigenous specific programs.

**Recommendation 24**
Outline strategies for adequately resourcing community services to provide services in the AMC as well as to cope with the additional demand on their services created by the prison population and their families post-release.

**Recommendation 25**
Review corrective services policies around the conferral of authorised visitor status for the AMC, to facilitate peer to peer service delivery.
Recommendation 26
Devise appropriate measures to evaluate policies and programs, including recidivism, but complemented by other factors including:

- Employment levels;
- Reductions in family violence;
- Housing and stable accommodation;
- Continuity in education or training.

Recommendation 27
The ACT Government investigate ways to ensure that restorative justice principles are applied in all aspects of the Alexander Maconochie Centre’s functioning and that the Restorative Justice Unit be authorised to provide post-sentencing restorative justice conferencing.
References


ACT Criminal Justice Statistical Profile, December 2007 Quarter, Tabled in the ACT Legislative Assembly by Mr Simon Corbell MLA Attorney General.

ACT Department of Justice and Community Safety, *Aboriginal and Torres Strait Islander Justice Initiatives in the ACT*, April 2008.


Australian Institute of Criminology, *Resilient and Non-resilient Behaviour in Adolescents*, Sue Howard and Bruce Johnson, November 2000.


First Stop Legal and Referral Centre and Restorative Justice Unit, *Restorative Justice in the ACT Solicitor Information Sheet*. 


Appendix 1 - Consultation Participants

**Forum Participants**

Beryl Women’s Refuge  
Billabong Aboriginal Corporation  
Canberra Rape Crisis Centre  
Centrelink  
The Connection  
Gugan Gulwan  
ACT Office Children, Youth and Family Services  
Women’s Legal Centre

**Individual Consultation**

NSW/ACT Aboriginal Legal Service  
ACT Victims of Crime  
ACT Policing  
Alcohol and Drug Foundation of the ACT  
ACT Department of Disability, Housing and Community Service  
ACT Department of Justice and Community Safety  
Galilee  
Legal Aid ACT  
MERIT Program  
Winnunga Nimmityjah Aboriginal Health Service
Appendix 2 - Extract from Bringing them Home Report

Extract from the Human Rights and Equal Opportunity Commission, Bringing them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families at 663

National Standards for Indigenous children under State, Territory or shared jurisdiction

Standard 8: Juvenile justice

53a. That the national standards legislation incorporate the following rules to be followed in every matter involving an Indigenous child or young person.

53b. That the national standards legislation provide that evidence obtained in breach of any of the following rules is to be inadmissible against the child or young person except at the instance of the child or young person himself or herself.

Rule 1. Warnings

Arrest and charge are actions of last resort. Subject to Rule 2, a police officer is to issue a warning, without charge, to a child or young person reasonably suspected of having committed an offence without requiring the child or young person to admit the offence and without imposing any penalty or obligation on the child or young person as a condition of issuing the warning.

Rule 2. Summons, attendance notice

A child or young person may be charged with an offence when the alleged offence is an indictable offence. The charging officer must secure the suspect’s attendance at the court hearing in relation to the charge by issuing a summons or attendance notice unless the officer has a reasonable belief that the suspect is about to commit a further indictable offence or, due to the suspect’s previous conduct, that the suspect may not comply with a summons or attendance notice.

Rule 3. Notification

When a child or young person has been arrested or detained the responsible officer must notify the appropriate accredited Indigenous organisation immediately of the fact of the arrest and make arrangements for the attendance of a representative of that organisation.

Rule 4. Consultation

The responsible officer, in accordance with Standard 4, must consult thoroughly and in good faith with the appropriate accredited Indigenous organisation as to the appropriate means of dealing with every child or young person who has been arrested or detained.

Rule 5. Interrogation

No suspect or witness is to be interviewed in relation to an alleged offence unless,
a. a parent or person responsible for the suspect or witness is present, unless the suspect or witness refuses to be interviewed in the presence of such a person or such a person is not reasonably available,

b. a legal adviser chosen by the suspect or witness or, where he or she is not capable of choosing a legal adviser, a representative of the appropriate accredited Indigenous organisation is present, and

c. an interpreter is present in every case in which the suspect or witness does not speak English as a first language.

Rule 6. Caution

No suspect or witness is to be interviewed in relation to an alleged offence unless,

a. the caution has been explained in private to the suspect or witness by his or her legal adviser or representative,

b. the interviewing officer has satisfied himself or herself that the suspect or witness understands the caution, and

c. the suspect or witness freely consents to be interviewed.

Rule 7. Withdrawal of consent

The interview is to be immediately discontinued when the suspect or witness has withdrawn his or her consent.

Rule 8. Recording

Every interview must be recorded on audio tape or audiovisual tape. The tape must include the pre-interview discussions between the suspect or witness and the interviewing officer in which the officer must satisfy himself or herself that the suspect or witness understands the caution and freely consents to be interviewed.

Rule 9. Bail

Unconditional bail is a right. The right to bail without conditions can only be varied where conditions are reasonably believed due to the suspect’s past conduct to be necessary to ensure the suspect will attend court as notified. The right to bail can only be withdrawn where it is reasonably believed, due to the nature of the alleged offence or because of threats having been made by the suspect, that remand in custody is necessary in the interests of the community as a whole.

Rule 10. Bail review

The suspect has a right to have the imposition of bail conditions or the refusal of bail reviewed by a senior police officer. In every case in which the senior officer refuses to release the suspect on bail, the officer must immediately notify a magistrate, bail justice or other authorised
independent person who is to conduct a bail hearing forthwith. The suspect is to be represented at that hearing by a legal adviser of his or her choice or, where incapable of choosing, by a representative of the appropriate accredited Indigenous organisation.

Rule 11. Bail hostels

When bail has been refused the suspect is to be remanded in the custody of an Indigenous bail hostel, group home or private home administered by the appropriate accredited Indigenous organisation unless this option is not available in the locality.

Rule 12. Detention in police cells

No suspect is to be confined in police cells except in extraordinary and unforeseen circumstances which prevent the utilisation of alternatives. Every suspect confined in police cells overnight is to be accompanied by an Indigenous person in a relationship of responsibility to the suspect.

Rule 13. Non-custodial sentences

Custodial sentences are an option of last resort. Every child or young person convicted of an offence who, in accordance with Rule 14 cannot be dismissed without sentence, is to be sentenced to a non-custodial program administered by the appropriate accredited Indigenous organisation or by an Indigenous community willing to accept the child. The child’s consent to be dealt with in this way is required. The selection of the appropriate program is to be made on the advice of the appropriate accredited Indigenous organisation and, where possible, the child’s family.

Rule 14. Sentencing factors

The sentencer must take into account,

a. the best interests of the child or young person,

b. the wishes of the child or young person’s family and community,

c. the advice of the appropriate accredited Indigenous organisation,

d. the principle that Indigenous children are not to be removed from their families and communities except in extraordinary circumstances, and

e. Standard 3.

Rule 15. Custodial sentences

Where the sentencer, having taken into account all of the factors stipulated in Rule 14, determines that a custodial sentence is necessary, the sentence must be for the shortest appropriate period of time and the sentencer must provide its reasons in writing to the State or Territory Attorney General and the appropriate accredited Indigenous organisation. No child or young person is to be given an indeterminate custodial sentence or a mandatory sentence.
CIRCLES OF SUPPORT