

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

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

1. Introduction

Thank you for the invitation to provide comment on this important inquiry into the high levels of involvement of Indigenous juveniles and young adults in the justice system. This submission offers joint comment from the Australian Children's Commissioners and Guardians (ACCG) who, collectively, have legislated responsibility to advocate for all Australian citizens under the age of 18 and to promote and monitor their wellbeing. The ACCG has particular regard for the needs of Indigenous children and young people, and children and young people who are vulnerable or disadvantaged for any reason.

This submission focuses on the Inquiry's final three terms of reference and sets out some of the primary areas of concern for ACCG; a brief overview of policies and practices that are believed to be contributing to the ongoing over-representation and incarceration of Indigenous children and young people. This submission also includes proposed direction for improvement and examples of best/promising practice to build on.

2. Summary of recommendations

Recommendation 1: That the Australian Government, through COAG, set criminal justice targets—including youth justice—to be integrated into the Closing the Gap agenda.

Recommendation 2: That new and innovative approaches to youth justice be supported across government, developed in collaboration with Indigenous people, with a strong focus on integration and holistic responses.

Recommendation 3: That approaches to crime prevention extend to early protective factors, including by providing long-term investment in culturally appropriate maternal health and early childhood services.

Recommendation 4: That sport and recreation activities be provided for Indigenous children and young people, particularly in regional and remote communities.

Recommendation 5: That culturally appropriate education programs be made available to Indigenous young people to improve school attendance, retention and attainment at school.

Recommendation 6: That support is provided to Indigenous parents and communities to assist them in providing leadership to ensure the optimum development of their children and young people.

Recommendation 7: That crime prevention strategies be implemented in Indigenous

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communities that encompass concurrent and multiple interventions to address complex problems.

Recommendation 8: That there be an increased focus on crime prevention, diversions, intensive interventions and rehabilitation for serious and repeat offenders (and those at high risk of becoming serious and repeat offenders), with a strong emphasis on very young offenders.

Recommendation 9: That meaningful consultation and participation with Indigenous children and young people become a standard approach in future planning for the youth justice system.

Recommendation 10: That police be encouraged to maximise the use of cautioning and diversion wherever appropriate.

Recommendation 11: That more efforts be made to improve the relationship between Indigenous young people and police.

Recommendation 12: That a commitment be made to support community owned and operated diversion programs for Indigenous children and young people that are sustainable, based on need and subject to evaluation.

Recommendation 13: That accommodation options be established across the country, particularly in regional and remote communities, to enable children and young people to be safely housed when they are eligible for bail and have nowhere else to go/no responsible adult.

Recommendation 14: That bail conditions are age, location, and culturally appropriate and do not present a child or young person with unreasonable or unworkable challenges.

Recommendation 15: That Indigenous young people in custody have access to a range of programs and services that are specific to their cultural needs.

Recommendation 16: That therapeutic and practical supports follow Indigenous young people on their release into the community to encourage successful transition from detention.

Recommendation 17: That 'Justice Reinvestment' be explored as a new approach for the youth justice system in Australia.

3. Preliminary Statement

It is important to note at the outset of this submission, and in any conversation about youth justice, that the vast majority of Australia's children and young people are leading productive lives and making all manner of positive contributions to the social and cultural fabric of our community. In Western Australia for example, between 2003 and 2008, 96 percent of children and young people had little to no contact with the police,¹ and the most recent

¹ (Between 2003 and 2008) The Western Australian Auditor General's performance examination *The Juvenile Justice System: Dealing with Young People Under the Young Offenders Act 1994*, 2008, p6.

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COAG meeting noted that overall offending by young people has declined in the past 10 years.² Further, the ACCG acknowledges that Indigenous young people are more likely to be victims of crime—particularly sexual assault, domestic violence and assault causing grievous bodily harm.³

This is an important perspective to maintain—to ensure that not all children and young people are considered as likely entrants to the justice system, but also to highlight that focused and dedicated attention is required to assist those who are.

While there is clearly much work to be done in this area, the ACCG wishes to acknowledge the positive work that is already underway by governments, non-government organisations, and Indigenous communities themselves to prevent crime and improve outcomes for Indigenous people.

4. Youth Justice in Australia

Youth justice is a key priority area for the ACCG. Most members, in their respective states and territories, have called for urgent action to address Australia’s high rates of detention and the continuing over-representation of Indigenous children and young people in the justice system.

The number of children and young people in detention on an average day in Australia (excluding New South Wales, for which data was unavailable) has increased by 17% since 2004-05.⁴ Although this increase is a national trend, the daily average population of young people in detention in some states is disproportionately high compared to others (see table below).

Table 1: The daily average population of people aged 10-17 years in juvenile detention (number) (2006-07)⁵

Jurisdiction	Number of young people in detention
NSW	277
VIC	48
QLD	138
WA	132
SA	42
TAS	19
ACT	14
NT	26

² COAG Communique from meeting: 7 December 2009 (http://www.coag.gov.au/coag_meeting_outcomes/2009-12-07/docs/20091207_communique.pdf).

³ Youth Action and Policy Association (NSW) <http://www.yapa.org.au/youthwork/facts/aboriginalyoungpeople.php>

⁴ *Juvenile Justice in Australia 2007-08*, Australian Institute of Health and Welfare, 2009, pvii.

⁵ *Report on Government Services 2009*, Productivity Commission, 2009, p15.56.

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The number of children and young people in detention is unacceptable—especially in New South Wales, Queensland and Western Australia—and should be an issue demanding attention. When coupled with the over-representation of Indigenous children and young people in every state and territory,⁶ however, it indicates that significant work still needs to be done to address the factors that contribute to this over-representation.

In 2007, Indigenous young people were 28 times as likely to be in detention than non-Indigenous young people (up from 23 in 2005).⁷ Again, this over-representation varies between jurisdictions, with Indigenous young people representing at least 75% of the juvenile detention centre population in Western Australia,⁸ and almost half in New South Wales.⁹ In short, these figures provide evidence to the frequent commentary from a range of sources that: “our policy and legislative framework for dealing with young offenders is not working.”¹⁰

Indigenous young people are not only over-represented among the incarcerated population, but also more generally among the recidivist population. In New South Wales, studies have shown that Indigenous status alone is not just a predictor of reoffending, but so is the interaction between Indigenous status, age and gender.¹¹

The situation of Indigenous over-representation is well researched, well known and the underlying reasons are complex and varied. However, there are some examples of best and promising practice occurring across Australia. Where success is being seen it should serve as a blueprint for other jurisdictions to build on—not least because success has been rare in this context. Throughout this submission, light grey boxes include examples of programs and strategies that the ACCG members consider to be producing promising results.

5. The Policy Context

In the past two years there have been a number of national commitments to Indigenous people—arguably the most significant of which has been the Council of Australian Government's (COAG) Closing the Gap agenda. Under this agenda, the Australian Governments have made substantial financial investments to support the objective of closing the gap on Indigenous disadvantage in the areas of health, education and employment.

The ACCG concurs with the recent comment made by the Social Justice Commissioner: that it will be impossible to meet the ‘closing the gap’ targets around health, education and employment without also addressing the high level of Indigenous imprisonment which compounds individual and community disadvantage. To this end, the ACCG supports the

⁶ *Juvenile Justice in Australia 2007-08*, Australian Institute of Health and Welfare, 2009, p4.

⁷ Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2009*, 2009, p5, and *Overcoming Indigenous Disadvantage: Key Indicators 2007*, 2007, p131.

⁸ *Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre*, Report No. 58, Office of the Inspector of Custodial Services, December 2008, p19

⁹ Department of Human Services (NSW), *Juvenile Justice Annual Report 2008-2009*, 2009, P51.

¹⁰ Magistrate Dean Potter, ‘Issues in Juvenile Justice in Western Australia: Observations from the Bench and Beyond’, keynote address given to Australasian PCYC Conference, 7 November 2008. Also stated by Social Justice Commissioner Tom Calma, ‘Investing in Indigenous Youth and Communities to Prevent Crime’, address to Indigenous Young People, Crime and Justice Conference, Australian Institute of Criminology, 31 August 2009.

¹¹ Chen *et al.*, ‘The Transition from Juvenile to Adult Criminal Careers’, in *Crime and Justice Bulletin: Contemporary issues in crime and justice*, NSW Bureau of Crime Statistics and Research, Number 86, May 2005. –

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Commissioner's call for specific justice targets to be integrated into the COAG Closing the Gap agenda.¹²

Recommendation 1: That the Australian Government, through COAG, set criminal justice targets—including youth justice—to be integrated into the Closing the Gap agenda.

On 13 February 2008, the Prime Minister offered his apology to Australia's Indigenous people and offered a new beginning for, and new commitment to, addressing Indigenous disadvantage.

*The truth is, a business as usual approach towards Indigenous Australians is not working. Most old approaches are not working. We need a new beginning—a new beginning which contains real measures of policy success or policy failure... allowing flexible, tailored, local approaches to achieve commonly-agreed national objectives that lie at the core of our proposed new partnership...*¹³

More recently, the Standing Committee of Attorneys-General has released a National Indigenous Law and Justice Framework which commences with the following vision:

*[The Framework] aims to eliminate Indigenous disadvantage in law and justice. All Australian governments, Aboriginal and Torres Strait Islander peoples and relevant stakeholders work together as partners to close the gap in law and justice outcomes between Indigenous and non-Indigenous Australians. All partners embrace the values of reconciliation, trust and goodwill, with an ongoing commitment to innovative and sustainable approaches.*¹⁴

Finally, the ACCG refers to the Australian Government's Social Inclusion Framework, which nominates the Closing the Gap agenda among its priority areas in which to start the work of addressing social exclusion and increasing social inclusion.¹⁵

It is in the context of these commitments, agendas, and frameworks—which all align on the desperate need to overcome Indigenous disadvantage—that the ACCG urges strong and strategic action for Indigenous children and young people, ensuring their best interests lie at the heart of all new directions.

6. The Required Policy Response

Indigenous history has been marked by dispossession, erosion of identity, "profound grief, suffering and loss"¹⁶. Many Indigenous families maintain a struggle with unresolved historic and inter-generational trauma, as well as ongoing trauma reaching into the present day in the form of drug and alcohol abuse, mental health problems, family violence or criminal

¹² Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission, 2010, pp53-56.

¹³ Prime Minister of Australia, Hon Kevin Rudd, 'Apology to Australia's Indigenous Peoples', Wednesday 13 February 2008

¹⁴ *National Indigenous Law and Justice Framework 2009-2015*, Standing Committee of Attorneys General Working Group on Indigenous Justice, 2009, p5.

¹⁵ <http://www.socialinclusion.gov.au/SIagenda/Priorities/Pages/default.aspx>

¹⁶ Prime Minister of Australia, Hon Kevin Rudd, 'Apology to Australia's Indigenous Peoples', Wednesday 13 February 2008

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behaviour.¹⁷ For young people, and Indigenous young people particularly, there is no clear demarcation of justice and welfare issues – the two are inextricably linked.

*The ongoing over-representation of Indigenous Australians in the criminal justice system cannot be accounted for solely in terms of the prejudices of individuals within the system, or greater levels of offending by Indigenous people – although that may play an accompanying role. They are, rather, a reflection of the multiple layered patterns of disadvantage and extreme forms of marginalisation experienced by Aboriginal people.*¹⁸

The same factors that can lead a child or young person into the justice system are largely the same as those that can lead them into State care—that is, dysfunction at home and in the community, alcohol and drugs, violence, disadvantage and poverty.

- A study in the ACT showed that 93% of children and young people who entered the youth justice system had previously been reported to the care and protection system.¹⁹
- In Queensland, 16% of young people in detention (in 2009) reported that they had been homeless before entering detention.²⁰
- A survey undertaken in Victoria showed that 46% of children and young people in custody had current or previous involvement with the child protection system.²¹
- A Tasmanian study revealed that children with a child protection history are 20 times more likely to become involved with the youth justice children than other children.²²
- Studies in NSW showed rates of intellectual disability as high as 17% among young detainees (15% among community clients), and that 88% of detainees reported mild, moderate or severe symptoms of mental illness consistent with a clinical disorder, and 30% reported high or very high psychological distress.²³
- The NSW studies also demonstrate the generational impact of the normalisation of crime and imprisonment within families, with 42% of young detainees having a history of parental or step-parental imprisonment.²⁴

The connection between child maltreatment and youth offending has been so well documented and for so long that it is often described as a “Pathway”. The ACCG is concerned that the understanding about the multidimensional disadvantage of Indigenous children and young people is not being adequately translated into agency policy and program responses and, too often, Indigenous children and young people are ‘falling between the gaps’ of justice and human services agencies.

¹⁷ Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission, 2008, pp155-156.

¹⁸ Blagg, H., *Crime, Aboriginality and the Decolonisation of Justice*, Hawkins Press, 2008, p9.

¹⁹ *Statutory Involvement of ACT Youth Justice Services and ACT Family Services*, ACT Office of the Community Advocate, 2000.

²⁰ Commission for Children and Young People and Child Guardian (QLD), *Views of Young People in Detention Queensland*, 2009.

²¹ *Youth Parole Board and Youth Residential Board of Victoria Annual Report 2008-2009*, 2009.

²² *Review of Juvenile Remandees in Tasmania*, Commissioner for Children, 2006, p10.

²³ Department of Juvenile Justice, Justice Health & University of Sydney, *2003 NSW Young People in Custody Health Survey: Key Findings Report*, 2003; and Department of Juvenile Justice, Justice Health & University of Sydney, *NSW Young People on Community Orders Health Survey 2003- 2006: Key Findings Report*, 2006.

²⁴ *Ibid.*

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The confusion between justice and welfare (particularly child protection) in some jurisdictions has resulted in a lack of coordination, communication and integration. It has also enabled a level of 'blame shifting'—especially for Indigenous children and young people with complex needs.

This lack of integration at a policy and government level creates a 'chaos' that has been identified as a constraint on children's optimal social and emotional wellbeing, as well as resulting in a lack of appropriate services.

Policy development for children has become a political fashion with governments of the day formulating policies and branding, re-branding and repackaging children's services and programs for the life of government rather than for the lives of children. Governments have a responsibility to formulate, implement and evaluate coherent, sustained policies that assist and support in the development of children.²⁵

This comment was recently reinforced by the following observation by Aboriginal organisations in Fitzroy Crossing, Western Australia:

The current level of chaos that Aboriginal people in the [Fitzroy] Valley have to deal with in their relationship with governments is disastrous: and it is a state of dysfunction that Indigenous people struggle with throughout Australia at one level or another.²⁶

The lack of collaboration in government structures across Australia is an issue that has been commented upon frequently from a range of disciplines. The experience in the main, in some jurisdictions, is that government agencies have been unable to address complex social issues or achieve social policy reform where the involvement of several agencies is required. Youth justice is one such issue.

To address this, there is a need to find new ways of doing business—rather than repeatedly calling for improved collaboration and being disappointed when it fails to happen or does not achieve shared goals. For Indigenous young people, there is a pressing need for policy responses to focus on the broader social and economic disadvantage which continue to result in higher levels of offending,²⁷ and to provide care and protection responses as much as criminal justice responses. This can only be achieved with input and collaboration from Indigenous people, especially Indigenous young people, who understand their own needs, their challenges and their hopes for the future.

Until we do this, we will continue to be "systemically and structurally geared towards fixing the 'Aboriginal problem', rather than dealing with Aboriginal people's problems."²⁸

²⁵ Zubrick, S., et al., *The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research, 2005.

²⁶ Joint submission to the senate inquiry on remote and regional communities, Marninwarntikura Fitzroy Women's Resource & Legal Centre, Marra Worra Worra Aboriginal Corporation, and Nindilingarri Cultural Health Services (Fitzroy Crossing), 2009, p3.

²⁷ Joudo, 2008., cited in: National Indigenous Drug and Alcohol Committee, *Bridges and Barriers: Addressing Indigenous Incarceration and Health*, Australian National Council on Drugs, 2009, p6.

²⁸ Blagg, H , 'Zero Tolerance or Community Justice', presentation at University of Western Australia, 22 April 2009.

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Recommendation 2: That new and innovative approaches to youth justice be supported across government, developed in collaboration with Indigenous people, with a strong focus on integration and holistic responses.

7. Key Issues of Concern and Areas for Attention

In the following section, the ACCG has taken a holistic view of the youth justice system—from prevention through to rehabilitation—and provided comment on the critical areas of concern and the areas most requiring action.

7.1 Prevention and intervention

In matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure...prevention is the first imperative of justice.²⁹

It is well known that preventing crime is more socially and economically beneficial than dealing with crime once it has happened. As recommended by the National Indigenous Law and Justice Framework, a broad range of crime prevention initiatives that are responsive to local needs is required.³⁰ Below, the ACCG has highlighted the key areas where prevention and intervention should be focused for maximum effect.

7.1.1 Early childhood education and care

An area of focus for the ACCG, and for COAG, has been to promote an investment in early childhood services for Indigenous children and their families. Between birth and the age of 8 years, children's physical, emotional and cognitive skills and capacities develop at a rate which exceeds that of any other stage of life.³¹ During these years, the trajectory for physical, social and emotional wellbeing for adulthood is laid, and it is a critical time for intervention in order to break intergenerational disadvantage and establish skills and resilience.

The economic and social benefits of high quality early childhood education and care are now well documented, both in terms of the benefits to children and their families and in the longer term, society as a whole.³²

Preventing child maltreatment in the first place is likely to produce a larger reduction in offending. By directing attention to those children who are maltreated and ensuring that the maltreatment is not repeated, significant benefits in crime reduction and outcomes for children can also be obtained. Understanding more about what maltreatment experiences

²⁹ United Nations Secretary General, cited in Homel, P., 'Improving Crime Prevention and Practice', in *Trends and issues in Criminal Justice, Australian Institute of Criminology, 2009, p1.*

³⁰ *National Indigenous Law and Justice Framework 2009-2015*, Standing Committee of Attorneys General Working Group on Indigenous Justice, 2009, p17.

³¹ National Research Council Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development*, National Academy Press Washington DC, 2000, p30.

³² Commission for Children and Young People and Child Guardian's (QLD) submission to the Senate Education, Employment and Workplace Relations Committee's Inquiry into the Provision of Child Care, 2009.

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*lead to offending would help direct crime prevention approaches to transition points in the child's life or to risk factors so that greater success might be achieved.*³³

Any consideration of youth justice strategies should include an examination of how early childhood services can be boosted or better directed to support vulnerable families and enable children to receive the best possible outcomes in their development.

*Aboriginal and Torres Strait Islander children and young people are grossly over-represented in negative engagements with welfare and the juvenile justice system. These issues require a renewed, integrated focus, especially in the early years – from birth – with a pact between health, wellbeing, justice and education agencies to effect improvements in service delivery, and secure improved outcomes as poverty is vigorously addressed.*³⁴

South Australia: Family Home Visiting Scheme

The South Australian 'Family Home Visiting Service' offers intensive care and support for Indigenous parents (and others who are considered at-risk). These parents are then offered 34 visits over the first 2 years of the child's life. This model is based on the building of a relationship between the nurse home visitor and the family, and on the development of the infant and the parent-infant relationship. Flexibility is embedded in the program so that it suits the family and follows the parent's lead, addressing the issues they raise. This universal contact enables early identification of family and child development issues, leading to the possibility of earlier intervention and problem prevention.³⁵

Queensland: Foundations for Success

The Queensland Government's pre-Prep in Indigenous communities initiative is ensuring three-and-a-half to four-and-a-half year old Indigenous children living in 29 remote North Queensland communities have access to high quality, culturally appropriate early childhood education programs. These programs employ committed early childhood qualified educational staff, both Indigenous and non-Indigenous and include a strong presence of local culture and community participation. The place-based planning approach used in this program values and builds on the local communities' existing strengths and infrastructure and aims to integrate local Indigenous knowledge about childhood, learning and community with contemporary early childhood understandings. Community participation in the ongoing decision-making about the program is a high priority.

New South Wales: Aboriginal Maternal and Infant Health Strategy

The Aboriginal Maternal and Infant Health Strategy (AMIHS) was developed to improve health service delivery for Aboriginal women and babies in New South Wales. The AMIHS offers community-based, culturally sensitive continuity of care for Aboriginal babies and their mothers to 8 weeks postpartum. Care is provided by midwives and Aboriginal Health Workers or Aboriginal Health Education Officers. Programs are developed locally and the emphasis is on working collaboratively, especially with local Aboriginal Community Controlled Health Services. The AMIHS has been evaluated as achieving

³³ Stewart, A., et al., 'Pathways from Child Maltreatment to Juvenile Offending', *Trends and Issues in Crime and Criminal Justice*, Number 241, Australian Institute of Criminology, 2002, p5.

³⁴ *Review of Australian Directions in Indigenous Education 2005-2008 for the Ministerial Council for Education, Early Childhood Development and Youth Affairs*, David Unaipon College of Indigenous Education and Research University of South Australia, 2009, p44.

³⁵ South Australian Children, Youth and Women's Health Service, *Family Home Visiting: Service Outline*, 2005, pp15-19.

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significant improvement in the number of Aboriginal women presenting for antenatal care before 20 weeks and reducing low birth weight and pre-term births among Aboriginal babies.

Recommendation 3: That approaches to crime prevention extend to early protective factors, including by providing long-term investment in culturally appropriate maternal health and early childhood services.

7.1.2 Sport, recreation and education

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

*Young people wanted more after-school and holiday-based activities (that are affordable)... It was said to me that this lack of things to do resulted in boredom and frustration during these periods, and made them look for alternatives. Many felt that it was at these times that they were most vulnerable to involvement in crime. The comment made by one young person continues to resonate with me: 'Only reason Nunga fellas get involved in crime is there's nothin' to do'...*³⁶

In Queensland, the recent report by the Crime and Misconduct Commission³⁷ has supported this call, stating that there is an "obvious and continuing gap" in crime prevention strategies operating outside the criminal justice system. The Commission recommended that an appropriate mix of crime prevention strategies outside the criminal justice system be implemented in each of Queensland's Indigenous communities, with a particular focus on the implementation of evidence-based early intervention strategies. The ACCG fully supports this recommendation for Indigenous communities across Australia.

Western Australia: Midnight Basketball

As part of a strategy to keep young children from engaging in anti-social behaviour in Northbridge, the Western Australian Department of Sport and Recreation set up a range of activities to run on Friday and Saturday nights. Children who attend the activities must also attend a variety of seminars where they learn life skills.³⁸

Recommendation 4: That sport and recreation activities be provided for Indigenous children and young people, particularly in regional and remote communities.

³⁶ Commissioner for Social Inclusion (SA), *To Break the Cycle: Prevention and rehabilitation responses to serious repeat offending by young people*, Government of South Australia, 2007, p18.

³⁷ *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*, Queensland Crime and Misconduct Commission, 2009.

³⁸ Department of Sport and Recreation (WA) at <http://www.dsr.wa.gov.au/3664>

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Programs to encourage school attendance, improve school retention and transition and reduce school failure are also key, as evidence shows young people who are not engaged with education are at increased risk of entering the youth justice system. We also know that successful education is a major factor in reducing the rate of detention, and broader social disadvantage, for Indigenous young people.³⁹

Studies in NSW have showed that education levels of young people in the justice system are commonly low, with 75% of detainees having left school before finishing Year 9, and more than 90% having been suspended at one time or another.⁴⁰

In Queensland, community buses in some Indigenous communities collect children and take them to school. Also, in the four communities in the Family Responsibilities Commission trial, school attendance is one of the requirements for families to maintain control of all Centrelink payments.

Victoria: Koori Early School leavers and Youth Employment Program

The Koori Early School Leavers and Youth Education Program is an initiative designed to divert young people from the youth justice system by focusing on the key risk factors for young offenders, particularly lack of engagement with school or other learning and employment opportunities.⁴¹

Recommendation 5: That culturally appropriate education programs be made available to Indigenous young people to improve school attendance, retention and attainment at school.

7.1.3 Support for families and communities

The role that Indigenous families and communities play in reducing the involvement of Indigenous young people and young adults in the justice system is critical. Strong and functioning families and communities that provide leadership and responsibility for good parenting, school attendance and activities for children and young people are the greatest points of leverage. Changes to the justice system are downstream responses that do not remedy or ameliorate the underlying causes of offending.

It is important that parents, schools and communities have high expectations of Indigenous children, and expect them to succeed. Dr Chris Sarra, a leading figure in Indigenous school reform, claims that an underlying philosophy of high expectations for success is crucial to achieving better outcomes for children and young people. His "Strong and Smart" program at Cherbourg State School in Queensland, where he was principal, led to a 94% cut in

³⁹ *Review of Australian Directions in Indigenous Education 2005-2008 for the Ministerial Council for Education, Early Childhood Development and Youth Affairs*, David Unaipon College of Indigenous Education and Research University of South Australia, 2009, p46.

⁴⁰ Department of Juvenile Justice, Justice Health & University of Sydney, *2003 NSW Young People in Custody Health Survey: Key Findings Report*, 2003; and Department of Juvenile Justice, Justice Health & University of Sydney, *NSW Young People on Community Orders Health Survey 2003- 2006: Key Findings Report*, 2006.

⁴¹ <http://www.cyf.vic.gov.au/youth-justice/services/youth-justice-koori-programs>

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absenteeism and significant improvements in literacy and numeracy. Dr Sarra describes his experience when he first arrived at the Cherbourg State School:⁴²

On my arrival there in 1998 the school was in dismal chaos, and nobody was questioning why it was like this. It was as if there was a mindset that convinced people that this is how Aboriginal schools should be. The first 12 months were extremely difficult because the key players at the school accepted the appalling degree of under-achievement and poor student behaviour. They tried to explain that this was the best we could expect from our children, given their cultural and social complexities. This made a very convenient smokescreen for an under-performing school and laid the blame on the children and the community. As an Aboriginal person, I was disgusted at having to tolerate such poor student performance and outcomes, and indeed such poor school performance. I set about changing that by getting rid of most of the teachers and getting in a new team that would actually believe we could make the children in our school stronger and smarter. We also convinced the children that they could be stronger and smarter, by making them feel great about being Aboriginal. Importantly, we got them to understand that they can be successful, and they can still be Aboriginal.

It is also important that Indigenous young people are not perceived as a subset of young people and that no sanctions apply to them. As North Queensland Aboriginal Leader Noel Pearson suggests:

...the challenge for public education for indigenous Australians, and might I say, for lower-class Australians generally - the challenge is for Australian governments to get serious about creating no excuses schools, that is, schools that never surrender to the idea that socioeconomic disadvantage is destiny.⁴³

It is important that parents, schools and communities have high expectations of Indigenous children, and expect them to succeed. Any culturally appropriate school programs, sporting activities, or diversionary programs will not be effective if they are not seen by the children and young people to be valued and supported by Indigenous families and communities, or if there are no expectations that they are to attend or participate. This again, reinforces the need to collaborate with Indigenous people and communities in the development of appropriate services and responses.

Parents and communities may need support to strengthen their roles around parenting, activities and school attendance as an effective point of intervention, to ensure optimum development of children and young people.

Recommendation 6: That support is provided to Indigenous parents and communities to assist them in providing leadership to ensure the optimum development of their children and young people.

⁴² *Aboriginal children are expected to do poorly at school. Teacher Crhis Sarra blasts away the prejudice*, New Internationalist, Issue 364, February 2004

⁴³ Transcript of 7.30 Report interview with Noel Pearson, 1 October 2009, Australian Broadcasting Corporation, regarding his essay entitled *Radical Hope*, urging a serious lift in the quality of bi-cultural education and a longer school day.

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7.1.4 Health and social responses

In Queensland, 74% of the young people surveyed the Queensland Commissioner for Children and Young People's *Views of Young People in Detention Centres, Queensland 2009* report, said that when they first came into contact with police they had multiple health and social problems.⁴⁴ In New South Wales, 19% of young people in detention reported having injected drugs and almost 90% had used cannabis and alcohol.⁴⁵ It is also known that, across Australia, Indigenous children rank 23rd of 24 OECD countries in the area of mental health.⁴⁶

These findings highlight the great need for youth justice strategies to take a long-term, holistic view and work with young people and their families in multiple settings, particularly because of the multidimensional nature of Indigenous disadvantage.

*...thinking about crime prevention must move beyond specific short-term projects to embedded, long-term programs. This is because design and delivery of effective crime prevention outcomes is complex which reflects the complexity and multifaceted nature of the underlying causes of crime. Therefore, a good crime prevention program must be built on the use of multiple interventions to address linked problems; for example, the use of a mixture of public education, policing and physical design measures to control alcohol consumption in order to prevent public violence and related offences such as drunk driving. The specific activities that comprise each of these interventions should be implemented at the same time or in a very tightly organised, logical sequence.*⁴⁷

In some communities in Western Australia and Queensland alcohol restrictions have been imposed, mostly as a result of years of lobbying by local women. Although the restrictions themselves have provided these communities with respite from the destructive consequences of alcohol abuse, as well as much-needed space for recovery, other services have been slow to arrive, meaning that the opportunity to maximise benefits for the community—particularly the children and young people—has not been realised.

In Fitzroy Crossing, an evaluation of the restrictions revealed that the 'multiple interventions' 'implemented at the same time' (that Homel describes in the quote above), have not been forthcoming.

...there have been significant benefits [from alcohol restrictions] ... in the form of reduced intoxication, increased safety, positive health gains, increased cultural activities and increased engagement with training and community development. Significant gaps in support services that are needed to enable the social reconstruction of the Fitzroy Valley continue to hinder the community... This gap requires the resourcing of community based organisations operating at the coalface of community development, cultural health, mental

⁴⁴ Commission for Children and Young People and Child Guardian (QLD), *Views of Young People in Detention Queensland*, 2009.

⁴⁵ Department of Juvenile Justice, Justice Health & University of Sydney, *2003 NSW Young People in Custody Health Survey: Key Findings Report*, 2003; and Department of Juvenile Justice, Justice Health & University of Sydney, *NSW Young People on Community Orders Health Survey 2003- 2006: Key Findings Report*, 2006.

⁴⁶ Australian Research Alliance for Children and Youth, *The Wellbeing of Young Australians: Report Card*, ARACY, 2008, p4.

⁴⁷ Homel, P., 'Improving Crime Prevention and Practice', in *Trends and issues in Criminal Justice*, Australian Institute of Criminology, 2009, p2.

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*health (counselling), education, community safety (Policing) and training, to build on the window of opportunity that the restriction has created.*⁴⁸

Recommendation 7: That crime prevention strategies be implemented in Indigenous communities that encompass concurrent and multiple interventions to address complex problems.

7.1.5 Different strategies for different offenders

Research shows there are primarily two groups of young offenders: 'early onset' and 'late onset'. Children and young people from the early onset group begin offending early in childhood, are drawn from families characterised by disadvantage and dysfunction, and tend to continue repeat offending. The children and young people in the late onset group tend to offend first after age 14 and are usually adolescent-limited offenders whose offending is opportunistic and transitory.

*The Bureau of Crime Statistics and Research (2005) found that a young Indigenous male aged 10-14 years who has had three contacts with the justice system and who is outside the education system is almost guaranteed to end up in adult prison.*⁴⁹

It is important to acknowledge the distinction between early and late onset as prevention strategies will differ for these two groups. The group that should be targeted most intensively is the early onset. It is clear from research and from what we know of these young people that their early family experiences, including deprivation, homelessness and cultural confusion, are a significant root cause of their persistent offending. Their needs are particularly complex, and prevention of further offending then requires a social and emotional response as much as one that holds them responsible for their actions.⁵⁰

In an American analysis of 200 studies of treatment outcomes,⁵¹ it was found that the most effective types of community-based interventions for persistent and serious young offenders were those focused on individual counselling, interpersonal skills, anger management and multi-systemic intervention. These types of community-based interventions were found to reduce recidivism by as much as 40%. Family-type group homes were also found to be effective among this group of young offenders, where small numbers of young people live with adults who deliver behavioural modification programs. Although there would be additional challenges for Indigenous young people, the ACCG recommends exploring this further through engagement with the Indigenous community in order to determine how such community-based interventions could work in an Australian context.

⁴⁸ *Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of alcohol restrictions in Fitzroy Crossing relating to measurable health and social outcomes, community perceptions and alcohol-related behaviours after a 12 month period*, University of Notre Dame, 2009, p130.

⁴⁹ NSW Government, *Keep Them Safe: A shared approach to child wellbeing*, 2009, p35.

⁵⁰ Guardian for Children and Young People (SA), *Serious Repeat Young Offenders: Response to Commissioner for Social Inclusion*, 2007, p3.

⁵¹ Lipsey, M., & Wilson, D., 'Effective intervention for serious juvenile offenders: A synthesis of research', In Loeber, R., & Farrington, D., (Eds.) *Serious and violent juvenile offenders: Risk factors and successful interventions*, Thousand Oaks: Sage, 2008, pp313-345.

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New South Wales & Western Australia: Intensive Supervision Program

The Intensive Supervision Program (ISP) is based on the multisystemic therapy model of family intervention. Operating in areas of New South Wales and Western Australia, the ISP is an evidence-based program specifically aimed at juveniles who commit serious and/or repeat offences, or whose antisocial behaviour increases their likelihood of offending. The ISP address some of the factors associated with re-offending including substance abuse, financial problems, housing needs, family conflict and negative peer pressure. A critical aspect of the ISP is working with the young person’s family with an emphasis on promoting behavioural change in the young person’s family, peer and school environment.⁵²

Recommendation 8: That there be an increased focus on crime prevention, diversions, intensive interventions and rehabilitation for serious and repeat offenders (and those at high risk of becoming serious and repeat offenders), with a strong emphasis on very young offenders.

7.1.6 Consultation with Indigenous children and young people

The ACCG wishes to emphasise the importance of consultation with Indigenous children and young people in the development of any future programs and/or strategies for the youth justice system.

As the ‘key stakeholders’ in the delivery of youth justice, children and young people’s views on how effectively the youth justice system is being implemented is integral to knowing how well we are faring. One of the guiding principles of the United Nations Convention on the Rights of the Child is that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken in their regard.⁵³

The aim of this principle is to recognise the potential of children and young people to “enrich decision-making processes, to share perspectives and to participate as citizens and actors of change.”⁵⁴

Children not only have the right to be consulted, but consulting with children and young people who have experience in the youth justice system can provide valuable insight that can only be gained from those within the system. Tasmanian consultation with residents of the Ashley Youth Detention Centre by the Commissioner for Children’s Residents’ Advocate demonstrates how options that may be overlooked by adults can be raised by young people.

For example, when discussing alternatives to remand within the detention centre environment, one Indigenous resident indicated that he believed all young people should have the opportunity to attend Lungtalanana, an Indigenous program operated by the Tasmanian Aboriginal Centre (TAC) on Clarke Island in Bass Strait. This is an option currently only available to young offenders detained within Ashley following approval under Ashley risk assessment processes and who are recognised as a Tasmanian Aborigine and

⁵² Department of Sport and Recreation (WA) at <http://www.dsr.wa.gov.au/3664>

⁵³ United Nations Convention on the Rights of the Child, Article 12.

⁵⁴ UNICEF, Convention on the Rights of the Child Factsheet: ‘The Right to Participation’, <http://www.unicef.org/crc/files/Right-to-Participation.pdf>

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accepted into the program by TAC. The young resident stated that it had been helpful to him and he didn't see why "white" residents didn't have the same opportunity to participate in the program. This view was strongly supported by other residents who had attended Lungtalanana but was an alternative that many adults would not have raised for fear of it being labelled inappropriate.

In Queensland, the Commission for Children and Young People and Child Guardian conducts a biennial survey of the views of young people in detention. This survey offers a useful and unique insight to the experiences and concerns of the detainees, and helps ensure the justice system is responsive to their needs.

The benefits of engaging with Indigenous children and young people are wide ranging, and the ACCG strongly encourages that it become a standard approach in future planning.

Recommendation 9: That meaningful consultation and participation with Indigenous children and young people become a standard approach in future planning for the youth justice system.

7.2 Cautioning and diversion

The legislative and policy frameworks that underpin the youth justice system reflect the broad understanding that children and young people should be treated differently from adults. Children and young people constitute a distinct and vulnerable group and differ from adults in their psychological and physical development, and their emotional and educational needs.⁵⁵

Consequently, diversion of young people away from the justice system, involving and strengthening family, encouraging rehabilitation, and ensuring that the detention of a child or young person is always a last resort are key principles of the youth justice system.

Police are the 'gatekeepers' to the youth justice system, as the first agency to have contact with a young offender, and their decisions on how to proceed therefore play a key role in shaping the direction of the youth justice system.

While diversion can occur at a number of decision making points, the principal point of diversion is at the 'front end' of the system - at the point of contact with the system's major 'gatekeeper', the police. Diversion can simply consist of a verbal or written warning. Most children and young people handled in this way never come into contact with the system again.⁵⁶

Most legislation governing youth justice in each jurisdiction gives the police the authority to choose from a range of actions (including taking none) when dealing with young offenders.

In Western Australia, the rate at which police have directed young people away from court declined by 13% between 2003 and 2008. Further, police direct Indigenous young people

⁵⁵ As noted by the United Nations Committee on the Rights of the Child, *General Comment on Juvenile Justice (No 10)*, 2007, p5.

⁵⁶ Blagg, H., *Youth Justice in Western Australia*, 2009, p5 [report for Commissioner for Children and Young People WA].

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away from court in 41% of instances, and they direct non-Indigenous young people away from court in 64% of instances.⁵⁷ Research undertaken in New South Wales has shown that Indigenous young people are less likely to receive a police caution than non-Indigenous young people.⁵⁸

A study in South Australia found that 44% of Indigenous young people experienced at least one formal police apprehension between the ages of 10 and 17. This figure was only 15.9% for non-Indigenous young people.⁵⁹

There is a need to explore this research further to identify the causes of these differences in rates of cautioning and diversion between Indigenous and non-indigenous young people. However, while the reasons for the higher level of police contact are broad and complex, research shows that the likelihood of a young person's progression to detention increases with the severity of the initial contact with the criminal justice system⁶⁰ so we must, then, be very cautious in our treatment of children and young people.

Expanding the range of diversionary options for Indigenous young people would provide police with a wider range of alternatives in this regard (this is one of the recommendations in the National Indigenous Law and Justice Framework). Further, the ACCG recommends that more efforts be made to improve the relationship between Indigenous young people and police.

Queensland: Coordinate Response to Young People at Risk

Coordinate Response to Young People at Risk (CRYPAR) is an early intervention/prevention initiative being piloted in North Brisbane Police District. The aim is to intervene early with young people between the ages of 12 and 25 years who are 'at risk' of involvement in the youth justice system. Police, who are often the first to see a troubled young person, are provided with training in youth culture, engaging young people, and the referral process using the CRYPAR model. During their contact with a young person, police may identify an underlying problem (including: family conflict, relationship problems, substance abuse, domestic violence, health issues, antisocial behaviour, mental health and accommodation/homelessness) and are able to offer to refer the young person to an appropriate support service.

New Zealand: Strengthening controls and checks on police discretion

In New Zealand, under the *Children, Young Persons and their Families Act 1989*, every enforcement officer who arrests a child or young person without warrant has to provide a written report to the Commissioner of Police within 3 days of making the arrest, stating the reason why the child or young

⁵⁷ The Western Australian Auditor General's performance examination *The Juvenile Justice System: Dealing with Young People Under the Young Offenders Act 1994*, 2008, pp21-28.

⁵⁸ Cunneen, C, 'Changing the Neo-Colonial Impacts of Juvenile Justice' in *Current Issues in Criminal Justice*, Vol 20., Number 1, 2008, pp43-58.

⁵⁹ Wundersitz J., & Skrzyplec, G., 'Youth Justice in Australia: Old Challenges in a New Millennium', unpublished paper, 2004, cited in Parliament of South Australia, *Report of the Select Committee on the Youth Justice System*, Adelaide, 2005, p48.

⁶⁰ Ferrante, A., Loh, N., Mailer, M., *Pathways through justice: A statistical analysis of offender contact with the WA juvenile justice system*, Crime Research Centre, University of Western Australia, 2004, p57.—

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person was arrested. Further, the rules governing the arrest, interrogation and detention of young people are clearly embedded in the legislation.⁶¹

Tasmania: Adopt A Cop program

Run by the Department of Police and Emergency Management, this program aims to provide schools with a local officer whom they ‘adopt’. The officer becomes the role model for the school providing an avenue for children to know and trust their local police member as a friend.

Recommendation 10: That police be encouraged to maximise the use of cautioning and diversion wherever appropriate.

Recommendation 11: That more efforts be made to improve the relationship between Indigenous young people and police.

A critical part of encouraging the police and courts to divert young offenders is to ensure there are adequate and appropriate diversion options available—young offenders cannot be diverted if no programs exist. This is a constant source of frustration for police and courts across Australia, particularly in regional and remote areas, and is seriously hindering progress on reducing children and young people’s contact with the justice system.

There is a need to support community owned and operated diversion programs, and to allow for long term funding to enable ‘scaling up’ of innovation and expansion where success is being seen. Too often, promising diversion programs are collapsing due to short-term funding and a lack of government commitment. The ACCG draws the Committee’s attention to the recent Senate report which stated that:

[There is a] need to adequately resource diversionary programs for young people in remote communities, to insulate them against the dangers of substance abuse. Where the funding of such programs is stop-start in nature, the effectiveness of the service is severely compromised.⁶²

Western Australia: The Yiriman Project

The Yiriman Project, auspiced by the Kimberley Aboriginal Law and Culture Centre (KALACC), is a cultural diversionary program that has been operating since 2001. Aboriginal owned and led and governed by Indigenous Elders, Yiriman offers a range of activities that reconnect young people to culture – community, land, stories, language and practices – and includes: intensive cultural bush trips into country with Elders and community members; cultural projects, including cultural mapping; leadership development and exchange opportunities; skills development and training; individual and family advocacy and support; and referral into specialist services.⁶³

⁶¹ Blagg, H., *Youth Justice in Western Australia*, 2009, p14 [report for Commissioner for Children and Young People WA].

⁶² Senate Select Committee on Regional and Remote Indigenous Communities, 2009, p108.

⁶³ Kimberley Aboriginal Law and Culture Centre, *Business Case for Kimberley Regional ‘At-Risk’ Indigenous Youth Diversion Program – The Yiriman Project*, 2009.

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Victoria: Youth Justice Units

Youth Justice Units are at the front line of diverting young Aboriginal people from inappropriate entry into the youth justice system. In recent years Youth Justice Units have undertaken a range of initiatives to reduce the number of young Aboriginal people re-entering the youth justice system, including the development of community-based programs, specifically for young Indigenous offenders, which take into account cultural needs.⁶⁴

Recommendation 12: That a commitment be made to support community owned and operated diversion programs for Indigenous children and young people that are sustainable, based on need and subject to evaluation.

7.3 Remand and Bail

In 2004–05, just over one-third of the average daily detention population in Australia was unsentenced but, by 2007–08, unsentenced young people in detention outnumbered those who were sentenced.⁶⁵ Nearly 60% of the children and young people on remand across Australia are Indigenous.⁶⁶

In New South Wales, the number of children and young people sent to custody on remand increased by 40% between 2006 and 2008.⁶⁷ In Western Australia, the average length of remand detention has increased significantly from three days in 1994 to 17 days in 2007⁶⁸ and even Victoria, which has seen the benefits of a range of recent positive initiatives in youth justice, has experienced a significant increase in remand numbers over the past three years.⁶⁹

This all demonstrates a deeply concerning trend across the country: that children and young people are being remanded into custody more frequently, and for longer.

7.3.1 Accommodation options before detention sentence – Bail and Remand

The ACCG is aware that in many situations children and young people are being remanded in custody even when they are eligible for bail. It appears that remand is viewed and used as an accommodation option for a child if a responsible adult cannot be found or if authorities are concerned for the child's safety. The ACCG strongly rejects this position. It is an extraordinary act of public policy that would see children and young people who are eligible for bail and not yet convicted of any crime being placed in detention simply because they have nowhere else to go.

⁶⁴ <http://www.cyf.vic.gov.au/youth-justice/services/youth-justice-koori-programs>

⁶⁵ *Juvenile Justice in Australia 2007-08*, Australian Institute of Health and Welfare, 2009, pvii.

⁶⁶ *Ibid*, p.71.

⁶⁷ *Releasing the Pressure on Remand: Bail support solutions for children and young people in NSW*, NCOSS Roundtable Report, 2009, p2.

⁶⁸ *Report of an Announced Inspection of Rangeview Juvenile Remand Centre*, Report No. 50, Office of the Inspector of Custodial Services, April 2008, p1.

⁶⁹ *Youth Parole Board and Youth Residential Board of Victoria Annual Report 2008-2009*, 2009.

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Ostensibly, remand is detention for a child or young person—in terms of location, experience and company—and should therefore be considered as much of a last resort as detention proper.

...[by being held in remand] thousands of children are being unnecessarily exposed to an environment that can have a detrimental effect on their future life chances, and a higher number of children and young people are at risk of cycling through the prison systems.⁷⁰

It is incumbent on the entire system to ensure that young people coming into contact with the youth justice system are given every opportunity to be safe and supported, and are not detained by virtue of their circumstance.

Western Australia: Youth Bail Service

As part of the Mid-West Gascoyne Youth Justice Services, the WA Department of Corrective Services has established the Youth Bail Service (YBS). The YBS is an after-hours, seven-day-a-week bail service to help police identify responsible adults to provide bail for young people. The YBS also provides limited short-term bail accommodation as a last resort for young people who are granted bail but do not have anywhere to stay before their court appearance. Since the YBS began operating, no child who is eligible for bail has been transported to the remand centre in Perth.⁷¹

New South Wales: Bail Assistance Line

In New South Wales, Juvenile Justice is establishing an after hours Bail Assistance Line (BAL) to assist in diverting young people from being remanded in custody at the point of arrest. The BAL will be available for NSW Police and courts and will assist in finding placements for young people in safe and secure accommodation.

Recommendation 13: That accommodation options be established across the country, particularly in regional and remote communities, to enable children and young people to be safely housed when they are eligible for bail and have nowhere else to go/no responsible adult.

7.3.2 Bail conditions

When young people are released on bail it is usually with conditions such as curfews, non association orders and accommodation requirements. If young people do not comply with these conditions and breach bail then they are remanded in custody. The ACCG is concerned that onerous bail conditions imposed on young people are cycling some young people back into the justice system unnecessarily. For example, it is the ACCG’s view that it is unreasonable to expect a 14 year old to have the skills required to successfully negotiate themselves on public transport to a specific appointment at a specific time. Imposing adult requirements and expectations on a child is entirely inappropriate and the system must be cognisant of this.

⁷⁰ *Releasing the Pressure on Remand: Bail support solutions for children and young people in NSW*, NCOSS Roundtable Report, 2009, p3.

⁷¹ *Mid West Gascoyne Youth Justice Services: Youth and Family Support Fact Sheet*, Department of Correction Services, [year unknown], p1.

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A consultation in Tasmania with the young residents of Ashley Youth Detention Centre reinforced this point, and revealed that the young people were concerned that many of the current conditions that Magistrates place on bail are unrealistic and unworkable and, as a result, set them up to fail. The young people explained that placing restrictions on an individual that were likely to be broken actually made their situation worse as breaches of the conditions constituted additional charges against them.⁷² On the other hand, the young people expressed support for the bail conditions that required attendance at education programs and work orders that provided them with skills and hands on employment.

The ACCG is particularly concerned by the amendments to the *Bail Act 1978* in NSW in 2007 that now stipulates that alleged offenders, including children and young people, can only apply once for bail except in particular circumstances. This, coupled with the proactive policing of compliance with bail conditions, is increasing the number of children and young people entering the youth justice system.⁷³ As already described, all efforts should be on reducing this number, and the ACCG firmly believes that any legislation, policy or program that has the opposite effect should be the subject of comprehensive scrutiny, serious consideration, and informed public debate.

Recommendation 14: That bail conditions are age, location, and culturally appropriate and do not present a child or young person with unreasonable or unworkable challenges.

It is important to note that punitive approaches which result in an increase in the number of children and young people being detained, and for longer periods of time, generally do not make communities safer or reduce crime. The punitive approach taken in New South Wales, for example, has:

*...not necessarily had the desired effect of reducing crime and reoffending. In fact, it has led to overcrowding, placing juveniles at risk both in terms of their safety and in relation to their increased exposure to the juvenile justice system itself.*⁷⁴

However, the experience in Victoria, where the three-pronged reform process which aims to "prevent low risk young people from entering the criminal justice system, rehabilitate more serious young offenders and support them to establish crime-free lifestyles after their release"⁷⁵ has seen some positive results:

*Victoria has managed to run youth justice from within a human services directorate, divert children from the criminal justice system and remain parsimonious in the use of custody, without being deluged by waves of juvenile crime.*⁷⁶

It is clear to all members of ACCG that the less punitive path chosen by Victoria is demonstrating the most promising practice and should be the base model that is supported.

⁷² *Review of the Youth Justice Act 1997 – CFC Resident Advocate: AYDC Resident Consultations*, Commissioner for Children (TAS), 2009, p3.

⁷³ NSW Ombudsman, *Annual Report 2008-2009*, 2009, p77.

⁷⁴ Youth Justice Coalition (NSW) at <http://www.yjconline.net/>

⁷⁵ Department of Human Services (VIC) at <http://www.cyf.vic.gov.au/youth-justice>

⁷⁶ Blagg, H., *Youth Justice in Western Australia*, 2009, p4 [report for Commissioner for Children and Young People WA].

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7.4 Custody and post-release

Related to the absence of diversionary programs, is the general lack of culturally appropriate services for Indigenous children and young people when they are in the justice system—for example, programs in custody and for post-release.

The importance of providing programs that encourage Indigenous young people to retain/connect to Indigenous culture in custody cannot be overstated. It is the ACCG's position that this is an element of the system that has been overlooked for too long. Although there are stand-out examples of where it is happening well (Victoria is leading on this issue), there is no consistent, strategic or national commitment to implementing cultural programs for Indigenous young people in the justice system.

...[We] support the development and funding of culturally specific advocacy and support services, and potentially, the development of Aboriginal mentor schemes for young Indigenous people in custody... [There is] clearly a need to investigate ways in which the local community can become more involved with the delivery of programs in secure care for young Indigenous people.⁷⁷

In Western Australia, the Inspector of Custodial Services has recommended in his reports on the State's detention centre that it should incorporate Indigenous art work, make better use of Indigenous names, fly the Aboriginal flag and provide more cultural activities outside of NAIDOC week.⁷⁸ Although these recommendations are eminently sensible, it seems unusual to the ACCG that these cultural elements are not already standard practice in detention centres across the country.

Victoria: Yannabil Youth Justice Koori Visitors Program

'Yannabil' is the Woiwurrung language word for visitor. Yannabil is a visitors program for young Indigenous people in Victoria's Youth Justice custodial centres. Visitors help to make sure that young Aboriginal people are safe and well in custody. Visitors give young people support while they are in the centre and make sure that they are treated with respect. They will also share cultural lore, their stories and ensure that the Koori workers are assisting the young people.⁷⁹

Recommendation 15: That Indigenous young people in custody have access to a range of programs and services that are specific to their cultural needs.

In terms of transition from custody to the community, studies show that young people in detention are very likely to reoffend and return to detention following their release to the community.⁸⁰ It is important, therefore, to provide comprehensive 'throughcare' for children and young people and implement programs and services that go with them into the community.

⁷⁷ Day, A., & Wanganeen, R., *The Needs of Young Indigenous People in Secure Care in South Australia*, 2003, p52.

⁷⁸ Inspector of Custodial Services (WA), *Report of an Announced Inspection of Banksia Hill Detention Centre (Report No.58)*, 2008.

⁷⁹ <http://www.cyf.vic.gov.au/youth-justice/services/youth-justice-koori-programs>

⁸⁰ *Juvenile Justice in Australia 2006-07*, Australian Institute of Health and Welfare, 2008; and Lynch, M., et al, *Youth justice: Criminal Trajectories*, Australian Institute of Criminology, 2003.

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Therapeutic supports such as interpersonal skills and counselling programs and multi-systemic interventions are considered the most effective ways of reducing the risk of reoffending among chronic young offenders,⁸¹ yet findings from the Queensland Commission's research show that Indigenous young people are more likely to view practical supports (for example, employment and training, sporting activities and mentoring) as helpful in their transition to the community than therapeutic supports (for example, counselling and drug and alcohol support).⁸² This finding suggests that Indigenous young people may engage in therapeutic post-release programs more readily if those programs also include a significant practical component such as sporting, employment and training programs and mentorship activities.

This is a clear example of where engagement with Indigenous children and young people in the justice system would provide direction and help build programs that are tailored, effective and young-person centred.

Victoria: Aboriginal Cultural Support Plans

Young Indigenous people have the opportunity to have an Aboriginal Cultural Support Plan to ensure their connection to their community, to enhance their sense of belonging to community and cultural supports to assist in diverting them from the youth justice system.⁸³

In remote parts of the country, Indigenous children and young people are experiencing a form of 'justice by geography' whereby their location determines the quality and consistency of the justice services they receive.⁸⁴ For example, in most remote parts of North-Western Australia there are no early intervention/prevention programs, no remand centres or bail accommodation options, no diversionary programs, and no post-release support services. The practical outcomes of this are that some children and young people (as young as 10) have to be transported the 3,000km to Perth to be held on remand, and after a stay in custody they are sent back to the community where they face the same issues with no supports for change. Without investments in culturally appropriate programs and follow-up services in these communities, there is little hope that the 'revolving door' of the justice system will cease for these children and young people.

Victoria: Koori Youth Justice Program

Koori Justice Programs operate in rural and metropolitan locations in Victoria and provide support and supervision to young Indigenous people on community-based orders and in custody. Koori Justice Programs are operated by local Aboriginal agencies and provide programs aimed at preventing offending or re-offending behaviour through strengthening positive role modeling for young Indigenous people. A key aim of the Koori Justice Program is to maintain young Indigenous people within their own community while providing the community with the resources and support to develop

⁸¹ Lipsey, M., & Wilson, D., 'Effective intervention for serious juvenile offenders: A synthesis of research', in: Lober, R., & Farrington, D. (Eds), *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions*, 1998, pp313-45.

⁸² Evans, R., & Fraser, E., 'The Views and Experiences of Aboriginal and Torres Strait Islander Young People in Queensland's Youth Detention Centres', *Indigenous Law Bulletin*, Volume 7, Issue 15, 2009, p9.

⁸³ <http://www.cyf.vic.gov.au/youth-justice/services/youth-justice-koori-programs>

⁸⁴ Blagg, H., *Youth Justice in Western Australia*, 2009, p24 [report for Commissioner for Children and Young People WA].

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and maintain diversionary programs, appropriate alternatives to incarceration and support for young Aboriginal people in the youth justice system.⁸⁵

Victoria: Koori Pre and post release services

The Koori Pre and Post Release Program comprises three components: the Koori Statewide Coordinator, Koori Intensive Support Practitioners and the delivery of cultural programs in the youth justice custodial centres. The Koori Statewide Coordinator provides coordination across the youth justice program to ensure effective pre and post release services to young Aboriginal people in custody are in place as part of pre release planning. The Koori Intensive Support Practitioner (Post Release) is a specialist role and provides culturally based case-management support to young Aboriginal people being released from youth justice custodial centres. The delivery of cultural programs is tailored to meet the requirements of the demographics of each centre.⁸⁶

Victoria: The Children's Koori Court

The Children's Koori Court was established under the *Children, Youth and Families Act 2005* (VIC). The Court is a division of the Children's Court of Victoria that sentences young Indigenous defendants. The Koori Court provides a less formal setting that allows greater participation by the Koori community in the court process. The Magistrate sits at a table with the participants at the court hearing, not at the bench. Koori Elders and/or Respected Persons, a Children's Koori Court Officer, the defendant, and their family/other support person can all contribute to the discussions during the court hearing. Sentencing outcomes are determined by the Magistrate with elders providing advice to Magistrates about the young person's situation.⁸⁷

Recommendation 16: That therapeutic and practical supports follow Indigenous young people on their release into the community to encourage successful transition from detention.

8. Justice reinvestment

Although the above sets out the primary areas of concern in the current system, and the appropriate points for intervention, the ACCG proposes that the youth justice systems across Australia would benefit from an increased focus on crime prevention and community support, rather than punishment and detention.

Quite simply, what we are doing is just not working. If it was working, we would be seeing a decrease, rather than the 27% increase in the Indigenous juvenile detention rate between 2001 to 2007... When something isn't working we need to be bold and creative in our thinking... there are solutions to the problem if we are creative and innovative.⁸⁸

⁸⁵ <http://www.cyf.vic.gov.au/youth-justice/services/youth-justice-koori-programs>

⁸⁶ <http://www.cyf.vic.gov.au/youth-justice/services/youth-justice-koori-programs>

⁸⁷ www.childrencourt.vic.gov.au

⁸⁸ Presentation by Social Justice Commissioner Tom Calma 'Investing in Indigenous Youth and Communities to Prevent Crime' at the Australian Institute of Criminology's Indigenous Young People, Crime and Justice Conference, August 2009.

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This comment was made by the Social Justice Commissioner, Tom Calma, at a recent conference on Indigenous youth justice. In the recent Social Justice report, the Commissioner has proposed 'Justice Reinvestment' as a new direction for Australia, to reverse the alarming and continuing trend of Indigenous over-representation in the youth justice system.⁸⁹

Justice reinvestment is a policy approach emerging from parts of the United States of America which diverts a portion of the funds spent on imprisonment to the local communities where there is a high concentration of offenders. It allows for the development of community wide services to actually prevent offending from happening in the first place, and halts the practice of channelling money into the acute end of the system in the form of bigger and better detention centres.

In short, justice reinvestment looks at how funding can be used to rebuild communities and prevent crime.

Justice reinvestment staff, with the help of expert consultants, work closely with state policymakers to advance fiscally-sound, data driven criminal justice policies to break the cycle of recidivism, avert prison expenditures and make communities safer...

- *Step 1: Analyze the prison population and spending in the communities to which people in prison often return.*
- *Step 2: Provide policymakers with options to generate savings and increase public safety.*
- *Step 3: Quantify savings and reinvest in select high-stakes communities.*
- *Step 4: Measure the impact and enhance accountability.*⁹⁰

Unfortunately, in many jurisdictions there remains a concerning trend of implementing options that are the most expensive and the least effective. For example, accommodating a child or young person in detention in Western Australia costs the State Government almost \$500 per day,⁹¹ and the total cost reduction realised by diverting young people from court and using detention as a last resort would be close to \$9 million per year.⁹² It is known, however, that young people given custodial orders are no less likely to reoffend than young people given non-custodial orders.⁹³ Yet, Western Australia is in the process of expanding its juvenile detention centre.

Detention is the most expensive option, not the most effective option, yet the system continues to be structured around looking to detention to solve the problem of youth offending.

Quite plainly, and as all the evidence shows, it is a prudent financial decision to examine alternatives to incarceration and encourage smarter, more considered approaches to youth justice that will achieve the greatest gains at the lowest cost.

⁸⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission, 2010.

⁹⁰ <http://justicereinvestment.org/about>

⁹¹ Advice from Department of Corrective Services (WA), 18 June 2009.

⁹² Auditor General of Western Australia, *A Cost Benefit Analysis of Proactive Redirection Measures in The Juvenile Justice System*, (Supporting paper for Auditor General's performance examination *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994*), Volume 2, 2008, p9.

⁹³ Weatherburn, D., et al, *The specific deterrent effect of custodial penalties on juvenile reoffending*, Australian Institute of Criminology, 2009, p10.

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For this reason, as well as the strong social benefits, the ACCG strongly supports Commissioner Calma’s call for an exploration of justice reinvestment in an Australian context, and for it to be a key strategy in Australia’s social inclusion agenda. This is a new approach that comes at a critical time and clearly warrants further consideration.

Recommendation 17: That ‘Justice Reinvestment’ be explored as a new approach for the youth justice system in Australia.

9. Conclusion

The ACCG recognises that complex and entrenched issues have contributed to the over-representation of Indigenous young people in Australia’s justice systems. These include intergenerational disadvantage arising from historical, social and economic causes, as well as the more immediate issues of limited availability of quality legal representation, bail supports, diversionary and culturally appropriate rehabilitation programs.

Addressing the over-representation of Indigenous young people in the youth justice system will require strategic approaches to prevention and early intervention across the continuum of child and youth development, as well as engaging Indigenous communities in working with government agencies and non-government organisations to redirect vulnerable young people on negative pathways to a better future.

The ACCG proposes that Justice Reinvestment presents a new model that is worth considering to help address the concerning, and ongoing, high levels of involvement of Indigenous young people in the justice system.