

Our reference: 2010/002767
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1 February 2010

Committee Secretary
House Standing Committee on Aboriginal and Torres
Strait Islander Affairs
House of Representatives
PO Box 6021
Parliament House
Canberra, ACT 2600

Dear Sir/Madam

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

Thank you for the opportunity to provide a submission to the abovementioned inquiry, and for granting an extension of time in which to do so.

For the past ten years my office has carried out extensive work with Aboriginal communities in NSW. This work has confirmed the critical importance of intervening early to provide young Aboriginal people and their families with coordinated, effective support. It has also enabled us to identify at a very practical level what is needed to improve service delivery to Aboriginal communities. Reducing the level of involvement of Aboriginal children and young people with the criminal justice system is dependent on these factors.

This submission highlights some of the key issues and initiatives that we have identified through our work. However, it is important that they be considered within a broader context, most notably against the recent changes to the child protection system in NSW as a result of the Special Commission of Inquiry into Child Protection Services (Wood Inquiry). For additional context and detail, we refer the committee to our earlier submissions to the Wood Inquiry on youth at risk, early intervention, interagency cooperation and Aboriginal communities. These documents are attached and we refer to them on occasion throughout this submission.

We also note that the independent review of juvenile justice commissioned by the NSW Government will be critical to informing the committee about a range of issues relating to Aboriginal young people's involvement in the criminal justice system.

About the NSW Ombudsman

The NSW Ombudsman is an independent and impartial watchdog established by the *Ombudsman Act 1974*. We are independent of the government of the day and accountable to the public through Parliament itself. Our central goal is to keep government agencies and some non-government organisations accountable — by promoting good administrative conduct, fair decision making and high standards of service delivery — and protect the rights of people in NSW.



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We oversee the work of many agencies which may, at some stage in a young person's life, provide them with services or have a duty of care towards them, including:

- Community Services
- NSW Police Force
- Juvenile Justice
- Corrective Services
- Department of Education and Training
- Public, private and independent schools
- NSW Health
- Housing NSW
- Ageing, Disability and Home Care
- Non-government agencies that provide services such as mental health support, accommodation, recreational activities, counselling, mentoring services, emergency assistance and emergency accommodation.

Many of the observations in this submission are based on our specific functions under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, which include:

- reviewing the deaths of certain children and people with a disability
- reviewing the situation of children in care
- monitoring and reviewing the delivery of community services
- inquiring into matters affecting service providers and consumers.

Our observations are also informed by:

- our oversight of the NSW Police Force's handling of complaints about police and our work in keeping under scrutiny their complaint handling system
- our handling of complaints by detainees and inmates at juvenile justice and correctional centres
- our regular visits to juvenile justice and correctional centres to speak with detainees, inmates and staff and to inspect records and facilities.

Our work with Aboriginal people

Our work includes handling individual complaints by or on behalf of Aboriginal people as well as examining systemic issues with the aim of improving service delivery by government agencies and non-government service providers to Aboriginal communities. We regularly meet with local service providers, agencies, and community members to explore ways to improve outcomes for Aboriginal people in their area.

Our systemic work has included auditing the implementation of the NSW Police Force's *Aboriginal Strategic Direction* over four years, conducting a review of support provided to carers of Aboriginal children, and reviewing the implementation of Ageing, Disability and Home Care's *Aboriginal Consultation Strategy* and *Aboriginal Policy Framework*. In carrying out this work, we have consulted with thousands of Aboriginal people as well as many hundreds of agencies and organisations responsible for providing services to them.

Our experience in working with Aboriginal people has been recognised by the NSW Government, which recently tasked us with auditing the implementation of its *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* over three years, a recommendation of the Wood Inquiry.

I trust that the committee will find our submission to be of assistance. Please do not hesitate to contact Ms Julianna Demetrius on (02) 9286 0920 should you require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. A. Barbour', written in a cursive style.

Bruce Barbour
Ombudsman



Our reference: ADM/7556P01
Contact: Julianna Demetrius
Telephone ☎: 9286 0920

February 2011

Committee Secretary
House Standing Committee on Aboriginal and Torres Strait Islander Affairs
House of Representatives
PO Box 6021
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Canberra, ACT 2600

Dear Sir/Madam

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

Thank you for the opportunity to provide a further submission to the abovementioned inquiry. An earlier submission was provided in February 2010. Since that time, my office has undertaken additional work which, given its relevance to the inquiry's terms of reference, may be of interest to the committee.

Inquiry into service provision to the Bourke and Brewarrina communities

In particular, I draw the committee's attention to my special report to Parliament arising from an inquiry into service provision to the Bourke and Brewarrina communities. The report was tabled in December 2010 and is available on our website: www.ombo.nsw.gov.au. A hard copy is enclosed.

According to NSW Juvenile Justice, Aboriginal children make up over 80% of juvenile detainees in Western NSW. My report examines the provision of community and child protection services to Bourke and Brewarrina, two towns in Western NSW with significant Aboriginal populations. In particular, the report examines the adequacy of the response to vulnerable children in these communities. However, the observations and recommendations in the report are relevant to rural and regional communities across NSW and may also be applicable to other jurisdictions.

The inquiry was informed by long-standing concerns brought to our attention by community leaders from Bourke and Brewarrina about service sector inefficiencies and the limited reach of major early intervention and prevention programs in these communities, particularly to address the needs of young people involved in risk-taking behaviours. The inquiry has provided a 'litmus test' of whether the various federal and state government initiatives aimed at addressing Indigenous disadvantage and child protection are making, or are likely to make, a difference in high needs Aboriginal communities across NSW.

The inquiry found that there are a number of challenges which need to be addressed in order to build an effective service system within disadvantaged rural and remote Aboriginal communities. These challenges include providing a broad range of competent and well targeted services, strengthening the Aboriginal service sector, achieving 'integrated' and efficient service provision, and rationalising governance and accountability arrangements.

Police and Community Services information holdings clearly show that for many young offenders, their anti-social behaviour occurs within complex and difficult family environments. A key finding of the inquiry is the need for human services agencies to take an 'intelligence driven' approach to the early identification of vulnerable children and young people who are 'at risk', for the purpose of undertaking integrated case management aimed at supporting them and their families. This should involve holistically assessing individual needs and directly facilitating access to a range of services.

The report recommends that the NSW Department of Premier and Cabinet, together with human service and justice agencies, should develop an action plan for responding to the critical service delivery challenges in high need communities in disadvantaged rural and remote locations, having specific regard to the areas identified by our inquiry. The report also contains a number of recommendations specific to the Bourke and Brewarrina communities.

The report recommends that within six months of the date of the report, the Department of Premier and Cabinet should provide advice to our office about the steps taken to implement this action plan, and that within three months of the date of the report, the Department of Human Services should provide advice about the steps take to implement recommendations specific to the Bourke and Brewarrina communities.

Review of a cohort of children and young people at risk

In 2010 my office also commenced a review of a cohort of children at risk in two towns in Western NSW. The review is being carried out with the support and cooperation of justice and human services agencies in the region, and is aimed at identifying ways of improving interagency early intervention and prevention work. The cohort includes children between the ages of 8 and 11 years who present with the following risk indicators:

- Repeated contact with police
- Habitual non-attendance at school, repeated or long suspension and expulsions
- Risk of harm reports to Community Services
- Any contact with Juvenile Justice in a community or detention setting.

The finds of the review will be shared with relevant agencies to enable them to prioritise the case-management of 'high-risk' children and their families.

I trust that the committee will find the information outlined above to be of assistance. Please do not hesitate to contact Ms Julianna Demetrius on (02) 9286 0920 should you require any further information.

Yours sincerely



Bruce Barbour
Ombudsman

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

Submission by NSW Ombudsman

1. Early identification of risk

Young Aboriginal people may be at risk of becoming involved in the criminal justice system for a range of reasons and may be identified by agencies at various 'entry points' including through:

- non-attendance at school
- risk of harm reports to Community Services
- family violence
- homelessness
- offending behaviour

Early intervention at each of these points of vulnerability is needed to reduce the likelihood of a young person's contact with the criminal justice system as well as to ensure their overall wellbeing. Some observations arising from our work which underscore the importance of this are outlined below.

1.1 School attendance

From our work with Aboriginal communities we have become concerned about the apparently high rates of non-attendance by Aboriginal children in particular locations. This problem often emerges late in primary school, as children are making a transition from childhood to adolescence. The issue is of particular significance to young people because they are not only being deprived of a fundamental right relating to their development but they also lose the social support network and structure that the school community can provide.

In the reviewable deaths area particularly, our work has shown that chronic truancy is a significant risk factor for children. Justice Wood's report quoted research showing that over 90% of juvenile detainees had been suspended from schooling at one time or another.¹ Our mandatory reporting submission to the Inquiry suggested that there was merit in a legislative amendment to specify habitual non-attendance at school as specific grounds for reporting that a child is at risk of harm. Justice Wood agreed and recommended that section 23 of the *Children and Young Persons (Care and Protection) Act 1998* should be amended to insert as paragraph (g) 'the child or young person habitually does not attend school.'²

¹ *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (Vol. 2), November 2008, p556.

² Recommendation 6.2. The Act has been amended to include the following as a grounds for determining that a child or young person is at risk of significant harm: 'in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990*—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act.' (s23b(1)).

The Department of Education and Training's school attendance policy was implemented in 2006. The policy sets out the process that should be taken in dealing with non-attendance at school. Under section 23 of the *Education Act 1990*, a parent of a child of compulsory school age is guilty of an offence if the parent fails to enrol the child at a school or register the child for home schooling, or fails to cause the child to attend school at all times when the school is open.

On 12 May 2009, *the Sydney Morning Herald* reported that since May 2008, 420 parents have been prosecuted, with 22.5% being from Western NSW. This is consistent with feedback we have received from Aboriginal communities in Western NSW about a perceived increase in the number of families receiving court attendance notices because their children have failed to attend school. Community members are concerned that this action is being taken in the absence of adequate early intervention with families. This raises the question of whether government agencies are doing enough to attempt to deal with the causes of habitual non-attendance at school before issuing parents with court attendance notices. Further, as noted by Justice Wood, it needs to be remembered that prosecuting and punishing offending parent/s does not necessarily address child protection concerns and may in fact increase the risks to children and young people if underlying issues are not addressed.

Our recent report to Parliament on *The death of Ebony: The need for an effective interagency response to children at risk* (available on our website) found that the Department of Education and Training's actions in relation to the enrolment and attendance at school of the child and her siblings were inadequate. We recommended that Home School Liaison Officers receive better training, professional development, supervision and direction, and that police assistance be utilised for particular home visits. It will be important to monitor the effectiveness of recent initiatives relating to school attendance, including the employment of additional Home School Liaison Officers and Aboriginal Student Liaison Officers.

We have separately made several recommendations to the Department of Education and Training about long school suspensions. The key issue with long suspensions is that the exclusion of a child or young person from school does not necessarily deal with the underlying issues causing poor behaviour and potentially increases their risk of becoming involved in anti-social and/or criminal behaviour. Our recommendations address operational and administration issues, data recording and analysis, adequacy of support services, and the use of in-school suspension rooms as well as the training, supervision and use of Home School Liaison Officers and education planning and support for children in out-of-home care.

1.2 Risk of harm reports to Community Services

The link between people who were at risk of harm as children and juvenile offending is supported by ample evidence. For example, a 1997 review by the Bureau of Crime Statistics and Research reported that child neglect was more likely to lead to juvenile delinquency than drug use or poor school performance.³ In 2004, the NSW Police Force undertook an analysis of Aboriginal offenders aged 10 and 11 years.⁴ The review examined criminal charges against 10 and 11 year old Aboriginal offenders in the six months to 31 December 2003.

³ Please see pages 19-20 of Part 1 of our submission to the Special Commission of Inquiry into Child Protection Services in NSW, on the Children's Court (available on our website), for more details.

⁴ NSW Police Operations Support Command, 'Reasons for charge: Aboriginal and Torres Strait Islander Young Persons aged 10 and 11 years', 11 October 2004.

It identified 23 children who were charged with a total of 91 offences in this period. Analysis of police information relating to the 23 children charged found that:

- Every child charged had child / young person at risk reports, and 15 of the 23 had 5 or more reports of this nature.
- All 23 had been the subject of Community Services referrals, and 16 of the 23 had been the subject of Community Services referrals on 5 or more occasions.
- At age 10 or 11, every child charged with an offence in the six-month review period had previously been charged.
- Every child had faced between 2 and 53 charges before this six-month period.

In the six-month period reviewed, one child accrued a further 23 charges.

The analysis illustrates the correlation between high levels of offending behaviour and indicators of risk among very young offenders. It highlights the importance of justice and human services agencies working together creatively to give people support as children, or, if more support is necessary when a child reaches adolescence, devise interventions with sufficient intensity to address underlying factors that contribute to a person's offending or risk-taking behaviour.

1.3 Out-of-home care

In 2007 we conducted a review of support provided to carers of Aboriginal children, who comprise approximately 30% of all children in out-of-home care in NSW. Our report, *Supporting the Carers of Aboriginal Children*, outlines the critical importance of:

- providing carers with practical, regular support
- children in care receiving comprehensive health screening and coordinated follow-up as well as adequate education and cultural support case planning
- the practical application of the Aboriginal Child Placement Principle and involving Aboriginal people in care and protection decisions
- enhancing the capacity of Aboriginal out-of-home care organisations
- attracting and retaining suitable carers for Aboriginal children.

Aboriginal children in out-of-home care are particularly vulnerable to becoming involved in risk-taking behaviour if they are not adequately supported in their placements by the out-of-home care system.

We refer the committee to our report, available on our website, for further information.

1.4 Coordinated case management

The Anti-Social Behavioural Pilot Project (ASBP), announced in September 2006, is being trialled in several locations in NSW, many of which have significant Aboriginal populations. It involves participating agencies coordinating the management of complex cases or crises involving children, young people and families who live in, or are habitual visitors of identified locations. The target age group is 0 to 25 years. However, the ASBP mostly deals with young people aged 10-15 years and their families. The ASBP was established with exemptions under the *Privacy and Personal Information Act 1998* to facilitate the exchange of information between partner agencies without consent, where the senior officers group responsible for

overseeing the project believed there were reasonable grounds that seeking consent could 'unreasonably prevent or delay necessary service being provided with the result that the child/young person or third parties might suffer harm'.

The ASBP project has the potential to provide a clear process for coordinated planning and support to vulnerable young people. For this reason, there is a need to closely monitor its progress and outcomes. Additionally, we note that in practical terms, there are dangers in any multi-agency intervention focusing primarily on 'high risk' adolescents with significant offending profiles as this may effectively exclude other vulnerable young people, including those on a trajectory of escalating offending behaviours but who do not yet have a significant history of criminal offending. Ideally, cross-agency program models should also target vulnerable children and their families as early as possible. If this model is shown to be effective, consideration should be given to the target group being expanded to include high-risk children more generally.

Our submission to the Wood Inquiry on young people at risk highlighted a number of local, national and international interagency models and programs to address young people 'at risk', including the ASBP. Many of these models were also highlighted by Justice Wood in his final report. Although it has not been evaluated, Justice Wood concluded that refinement of a model similar to the ASBP should be encouraged at a local and regional level, including the development of a more formal structure.

Our submission to the Wood Inquiry on interagency cooperation highlighted what is in our view needed in order to make multi-agency case management initiatives such as the ASBP work effectively. We refer to the committee to the submission for further detail.

2. Police strategies to divert young offenders from the criminal justice system

Police are the first point of contact for young Aboriginal people who become involved in the criminal justice system. They have a critical role to play both in reducing this level of contact, and appropriately responding to young people who come to their attention.

Our 2005 report to Parliament, *Working with Aboriginal Communities* (available on our website), resulted from our audit of the implementation of the NSW Police Force's *Aboriginal Strategic Direction*, which included a detailed focus on local police strategies to divert Aboriginal young people from crime and anti-social behaviour. The report outlined the key issues that police need to address to improve criminal justice outcomes for Aboriginal people and their relationship with Aboriginal communities. We refer the committee to this report for further information about 'good practice policing' in Aboriginal communities.

In many respects, local police have been at the forefront of developing initiatives to improve outcomes for young people in a number of Aboriginal communities in NSW. For several years we have received very positive feedback from Aboriginal communities about the substantial benefits of police-led initiatives, such as mentoring programs, for young people. While it is clear that many of these programs have led to positive outcomes for individuals and have helped strengthen relationships between police and local Aboriginal communities, too often their long term continuation is dependent on the availability of recurrent funding and the commitment of particular individuals.

We have consistently stressed with the NSW Police Force and with lead human service agencies the critical importance of institutionalising good practice by securing funding and commitment for programs that have proven to be successful.

2.1 Engaging high risk offenders

An example of an impressive police-led initiative to engage positively with high risk young offenders in order to reduce crime is Project Energy, an ambitious scheme aimed at identifying, engaging and turning around the lives of high risk young offenders who were engaging in behaviour indicating that they were on the verge of 'graduating' to a career in serious and violent crime. Project Energy's brief was to develop a comprehensive set of rewards and incentives to build self esteem, discourage offending and reward positive choices over an extended period. As many of the participants were Aboriginal and the initial trial led to a sharp drop in motor vehicle theft, the successes achieved by Project Energy helped underpin a dramatic shift in the local police-Aboriginal relationship.

Several factors set Project Energy apart from most other police initiatives to work with young people:

- It was a sustained intervention, with weekly activities and frequent contact over a period of several months that was designed to foster regular contact with participants and change patterns of behaviour by rewarding them for regular school attendance and other achievements.
- It focused on and actively recruited young people identified by Lake Illawarra's crime management unit personnel as high risk offenders. While it was designed for all young offenders who were in situations where they were likely to become involved in more serious offending behaviour or lure others into crime, the strategic use of an active Aboriginal Community Liaison Officer (ACLO) ensured high rates of Aboriginal participation.
- It engaged frontline officers who actively enforced compliance with bail conditions, regular school attendance and other conditions, making program participants accountable for their actions. Any breaches would lead to exclusion from the weekly rewards until the young person was back on track.
- It led to measurable improvements, notably a sharp reduction in motor vehicle thefts.
- Its strategic focus on the risk of vulnerable adolescents 'graduating' to more serious crime provided the basis for a rigorous evaluation of project outcomes, and led to significant revisions for subsequent programs.

While the focus of Project Energy was on serious young offenders, it also generated other benefits. We found that police ties with Aboriginal leaders became much stronger, Aboriginal young people were more willing to engage with police and the willingness of officers to volunteer to give up their own time to work with kids provided a tangible demonstration of officers' commitment to work with local communities.

Another positive outcome was that the work of the ACLO, the Youth Liaison Officer and the Project Energy program accelerated Aboriginal use of the Lake Illawarra PCYC, which hosted and coordinated many of the Project Energy activities and other programs. While the club has long provided quality programs, our earlier audit found that Aboriginal young people and their families had previously shunned the facility. The leadership and strategic support of the local command was an important factor in helping the club reverse negative Aboriginal community perceptions and ensure more effective use of its resources.

Project Energy proved the value of sustained interventions over an extended period, and for linking targeted interventions with crime prevention objectives or other tangible outcomes. Even where there are difficulties in establishing clear measures, the links with crime prevention objectives can shape and inform a program, imposing disciplines on the scheme that extends it beyond mere 'relationship building' and 'feel-good' activities.

The ongoing challenge for the NSW Police Force is to build on successful programs such as Project Energy and maintain a long-term focus. Corporate level support and leadership is needed to strengthen and sustain the strategic focus of police work with young people in relation to:

- monitoring to promote the wider police use of existing youth diversionary options
- better targeting and more sustained interventions
- better coordinated and systemic strategies, including police developing closer ties with other services that work with the same high-need young people and families.

2.2 Use of the *Young Offenders Act 1997*

In 2003 we reviewed the implementation of the *Young Offenders Act 1997* by the NSW Police Force. Since that time, we have continued to monitor how the Act is being used by police in specific locations around the state through our ongoing consultations with communities.

Under the Act, young people who make admissions can be dealt with by way of warning, caution or conference rather than subjected to a criminal charge and formal court process. Various aspects of this scheme have been reviewed and evaluated in the past decade. Researchers have concluded that the scheme is an innovative and effective juvenile justice reform which reduces or delays reoffending, and reduces the likelihood of young Aboriginal first offenders being taken to court. The research also reveals certain shortcomings in the scheme and impediments to its wider use.

One of the findings of our review was the significant discrepancy between local commands in how police were implementing the diversionary measures provided by the Act. We noted this finding in our submission to the Wood Inquiry on young people at risk and suggested the issue should be closely monitored by the NSW Police Force to increase the use of these measures. Justice Wood endorsed this suggestion in his final report.

In 2005 we also became aware of a potential barrier facing police in attempting to utilise the diversionary methods available under the *Young Offenders Act 1997*. Concerns were raised with us by police and youth advocates about the quality of legal advice provided to young people in police custody. It is a requirement of the Act that young offenders be given an opportunity to seek such advice. This advice is often provided by the Legal Aid Youth Hotline or the Aboriginal Legal Service (ALS) Hotline. We identified that young people were often

being advised not to make admissions. Often, a young person's unwillingness to make admissions on the basis of legal advice left police with few options other than to press charges, except where a 'cooling off period' system was in place.

The Act allows police to defer decisions about how to proceed in order to give a young person up to 14 days to seek legal advice. In practice, this generally requires local commands to establish arrangements with local ALS solicitors or other legal services to provide that advice. Although there is potentially some scope for the Legal Aid Youth Hotline and ALS Hotline to provide advice during the cooling-off period, this has not been a common practice to date. In a recent submission to the NSW Police Force in relation to the review of their youth policy, we stressed the importance of monitoring the implementation of the cooling-off period.

We have worked with the NSW Police Force and Legal Aid to attempt to address the situation, and observed some improvements. Legal Aid has cited high staff turnover, lack of resources and the 'decentralised' provision of legal advice as impediments to ensuring that advice is being given by solicitors to individual young people which is consistent with the objectives of the *Young Offenders Act 1997*. The issue continues to be raised with us through our consultations with communities, police and youth advocates and we will continue to work closely with police to monitor progress in this area.

It has been suggested that the number of young people being dealt with by way of youth justice conferencing is in decline.⁵ According to the Australian Institute of Criminology, Aboriginal young people are more likely than non-Aboriginal young people to be arrested and taken to court (48%) than non-Aboriginal juveniles (21%). Compared with 18% of Aboriginal juveniles, 32% of non-Aboriginal young offenders received warnings in 2007-2008.⁶

2.3 Application of *Bail Act 1978*

There will always be young offenders who cannot be diverted from the criminal justice system via the remedies provided by the *Young Offenders Act 1997*. Furthermore, because Aboriginal defendants are more likely to be dealt with by arrest, they are also more likely to face a bail determination and the possibility of being unable to meet bail conditions, breaching bail conditions or being refused bail. An issue affecting this cohort is the application of the *Bail Act 1978*. A report released in 2009 by the Bureau of Crime Statistics and Research (BOCSAR), *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, found that:

- Police activity in relation to breach of bail is putting upward pressure on the juvenile remand population.
- The introduction of section 22A of the Bail Act is putting upward pressure on the juvenile remand population by increasing the average length of stay on remand.
- Among those juveniles remanded solely for not meeting bail conditions, the most common bail conditions that were breached were failure to adhere to curfew conditions and not being in the company of a parent.

⁵ Dr Eric Heller, Juvenile Justice (Department of Human Services), Presentation at the Indigenous Youth, Justice and Crime Conference, Parramatta, 31 August 2009.

⁶ Australian Institute of Criminology, *Juveniles' contact with the criminal justice system in Australia*, September 2009.

BOCSAR found that there is some evidence that the growth in juvenile remand is helping to reduce crime, but the evidence is weak.

2.4 Limited accommodation facilities for young people on bail

An issue that is central to the implementation of the *Bail Act 1978* is the difficulty in securing suitable accommodation for young people to enable them to be released on bail (in cases where they are unable to return home due to family breakdown or health and safety risks). This difficulty was raised in submissions to the Wood Inquiry and has been a common theme to emerge from our own community consultations. As Justice Wood noted in his report, many of the young people who are affected are Aboriginal.

The NSW Youth Justice Coalition's recent report on young offenders and bail suggested that:

'There is a significant gap in policy development with respect to the provision of appropriate assistance to young people on bail. There is no policy or residential service model funded by the government that supports young people's adherence to their bail conditions in a community setting. There is also significant inconsistency between the evidence base for diverting young people from the justice system and the practices of policing and monitoring this group of young people'.⁷

Justice Wood also noted that Juvenile Justice does not appear to have any legislative obligation to provide or to arrange accommodation for young people in contact with the justice system, other than accommodation within juvenile justice centres. Moreover, Juvenile Justice is not funded to provide bail accommodation. It also appears that Community Services cannot be compelled to find accommodation for young people unless a young person is under the Minister's parental responsibility.

Homelessness is not expressly included in the list of factors to be taken into account in determining whether a child or young person is 'at risk of harm' under section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (although the child's or young person's basic physical or psychological needs not being met or being at risk of not being met is included).

In response to preliminary inquiries we made in relation to a complaint by a young person in detention due to lack of suitable alternative accommodation, Community Services informed us of an integrated case management project being trialled at Parramatta Children's Court. The project, which involves Community Services, Juvenile Justice, Justice Health and Ageing, Disability and Home Care, aims to respond to the needs of young people before the courts who have high level and complex needs and who would normally be bailed if they had suitable accommodation or placement options. A major limitation of the trial is that only five young people at a time can be case managed.

After-hours bail service

Justice Wood commended the project and recommended its expansion if an evaluation after two years of operation finds it has been effective. He also recommended that:

⁷ Youth Justice Coalition, *Bail Me Out: NSW Young Offenders and Bail*, September 2009, pvi.

*'An after hours bail placement service should be established by the Department of Juvenile Justice similar to the Victorian Central After Hours and Bail Placement Service, that is available to young people aged between 10 and 18 years, who are at risk of being remanded in custody, or who require bail accommodation; or similar to the Queensland conditional Bail and Youth Program Accommodation Support Service.'*⁸

Justice Wood noted that the absence of dedicated bail facilities has led to many young people being remanded in detention. However most of his comments on this issue were focused on bail support programs, not dedicated bail facilities, despite noting there are limited accommodation options for young people with complex needs. The recommendation pertaining to an after hours bail placement service refers to two models that do not provide accommodation facilities, rather brokerage for accommodation and other supports and referrals.

The government has supported the recommendation and in the June 2009 Budget funded a 24-hour 'Bail Hotline' for juveniles being held in police custody.

The establishment by the government of a Bail Hotline does not of itself address the issue of ensuring adequate accommodation is available to young people. This is noted in the recent position paper prepared by UnitingCare Burnside, which calls for the establishment of a Residential Bail Support Program that would be delivered by the non-government sector and provide support and accommodation for an average of 4-5 children and young people per day. The paper contains costings and identifies key locations the program should operate in.⁹

Review of juvenile justice

Following the release of the BOCSAR report, the Minister for Juvenile Justice announced on 20 July 2009 that the NSW Government had commissioned an independent review of the juvenile justice system. The review will be conducted by the Noetic Group which will report to the government in December 2009. The review's terms of reference are broad and include identifying emerging issues and trends in juvenile justice and offending, evaluating the impact of existing government legislation, policy and practice, advising on strategies for dealing effectively with offending young people. The review will include a specific focus on Aboriginal young people. This is critical given that in 2008-2009, 48.5% of young people remanded in juvenile custody in NSW were Aboriginal or Torres Strait Islander.¹⁰

The government has undertaken to make the results of the review public.¹¹ At the time of writing, we understand that the review has been completed. However, it has not yet been publicly released.

The release of the review findings will inform any future work we undertake in this area

⁸ *Report of Special Commission of Inquiry into Child Protection Services in NSW*, November 2008, Recommendation 15.1

⁹ UnitingCare Burnside, *Releasing the pressure on remand: Bail support solutions for children and young people in NSW* (Position paper resulting from a Roundtable convened by NCOSS), July 2009.

¹⁰ Juvenile Justice, *Annual Report 2008-2009*, p28.

¹¹ The Hon. Graham West MP, Minister for Juvenile Justice, Media release, 20 July 2009.

3. Alternative pathways

Our consultations with Aboriginal communities have indicated that for some young people, there is significant benefit in taking them out of a 'negative' environment which is contributing to their risk-taking behaviour and providing them with access to an alternative experience of positive living. For other young people, there are greater benefits in working with them within their existing familial and social environment. Whatever approach is adopted, supporting the young person *and* their family is critical.

Tirkandi Inaburra and the Intensive Supervision Program are examples of each of these approaches. They both provide intensive case management and support to young people with the aim of preventing further escalation of 'at risk' behaviours.

3.1 Tirkandi Inaburra

The Tirkandi Inaburra Cultural and Development Centre residential program in the Riverina aims to strengthen the cultural identity, self-esteem and resilience of Aboriginal boys aged 12 to 15 years, and aims to reduce their future contact with the criminal justice system. It is for boys who demonstrate potential but are just starting to get into trouble or showing signs of being at risk of contact with the criminal justice system. The aim is to assist young people at risk before they become involved in offending behaviour, by providing them with training opportunities to develop the skills and confidence to make positive life choices. A feature of its work is a 'pathways' program that closely involves Aboriginal Elders and uses agency case planning to provide young participants with ongoing community and family support after graduating.

Young people with an established offending profile are not eligible for Tirkandi. As we have outlined earlier, young people are not always eligible for a caution or conference because they may not make admissions to the offence they are suspected to have committed. Therefore, they may appear before a court several times for offences that are not necessarily serious. Young people who fall into this category are likely to be excluded from Tirkandi based on the current eligibility criteria. Consideration may need to be given to expanding the program's eligibility to include these young people. Clearly, the needs of young people with a history of serious violence, chronic substance dependency and/or mental illness need to be addressed separately. There may be merit in giving consideration to the establishment of a separate facility that focuses on this group of young people. Our consultations with communities have established that there are no viable options for this group apart from custody.

There are a number of ways that suitable candidates could be successfully identified for referral to Tirkandi, for example through the Anti Social Behaviour Pilot project across the state. Any evaluation of the success of Tirkandi needs to involve a close examination of whether the lead agency responsible for the 'referral' has provided adequate case management and support to individual young people. It will also be important to include a longitudinal study to track the ongoing wellbeing outcomes for participants. It would be short-sighted to examine offending patterns, for example, without having regard to the role of the agencies in supporting participants. It would also be problematic to make determinations about the success of an individual's participation based on short-term and single indicators, particularly where participating agencies have not sought to intervene to prevent an individual's escalating behaviour.

During our consultations with communities we have been repeatedly told that a facility such as Tirkandi could provide an important 'circuit breaker' and opportunity for young people who are 'at risk' to have an experience which leads to a positive engagement with agencies and the realisation of alternative options and pathways. The current catchment area for Tirkandi is Riverina/Western NSW. There has been strong interest from communities in areas such as Bourke, Brewarrina, Wilcannia, Walgett, New England and the South Coast for a similar facility to be established.

3.2 Intensive Supervision Program

Our consultations with service providers and agency staff have affirmed the significant benefits that can flow from multisystemic therapy (MST), an approach that is based on the understanding that a young person is part of an interconnected system that takes in the individual, their family, and their social environment (including peers, school, and neighbourhood). MST is expensive but advocates argue that the cost needs to be viewed in the context of the significant social and economic costs associated with the very problems and their consequences that MST seeks to address.

MST is being utilised by the Intensive Supervision Program being run by Juvenile Justice in Newcastle and Western Sydney. The program is specifically aimed at juveniles who commit serious and/or repeat offences. A range of issues are addressed including substance abuse, financial problems, housing needs, family conflict and negative peer pressure. The program deals not only with behavioural problems specific to the young offender, but assists in tackling underlying problems within their family as well as their relationships in the wider community. The program has a clear focus on young Aboriginal people between the ages of 10-14.

ISP teams consist of trained clinicians, a clinical supervisor and an Aboriginal team advisor, who work systemically with each young person on an individual, family and community level. The Aboriginal team advisors work with the clinicians and families to ensure cross-cultural sensitivity, and monitor to ensure the interventions are best matched to the needs of Aboriginal clients, families and communities.

A recent article in the *Sydney Morning Herald* (December 18-20 2009) noted that since mid last year, 53 families in western Sydney and Newcastle have agreed to join the Intensive Supervision Program, with another 13 on a waiting list. Forty per cent of them are Aboriginal. As at 30 June 2009, 11 out of 15 Aboriginal families had successfully completed the ISP.¹² The Minister for Juvenile Justice announced in December 2009 that reoffending rates had dropped dramatically for young people involved in the program.¹³ Research in other jurisdictions has supported the efficacy of MST for individuals at high risk of involvement with the criminal justice system.

¹² Juvenile Justice, *Annual Report 2008-2009*, p44.

¹³ The Hon. Graham West MP, Minister for Juvenile Justice, Media release, 14 December 2009.

4. Young people in the adult correctional system

A significant number of young Aboriginal people will either directly enter or graduate to the adult correctional system.

Our regular visits to correctional centres have enabled us to identify and inspect first-hand several initiatives implemented by Corrective Services aimed at improving outcomes for Aboriginal inmates, who, as in other jurisdictions, are over-represented in NSW correctional centres. Some centres, such as the Ivanhoe 'Warakirri' and Broken Hill correctional centres, have a very high proportion of Aboriginal inmates. Additionally, Yetta Dhinnakkal Centre is a minimum security institution specifically for Aboriginal males, located in Brewarrina in north western NSW, 800 km from Sydney. It runs a number of behavioural change based programs targeting first time young Aboriginal offenders through culturally relevant intensive case management. While Yetta Dinnakkal only caters for a small number of minimum security inmates, our observation is that these inmates appear to benefit significantly from the programs on offer.

We have also had the opportunity to observe at first-hand the court diversionary program run by Corrective Services at Tabulam (Balund-a). The program offers an intensive approach to managing predominantly Aboriginal offenders in a community-based residential facility. It includes offending behaviour programs based on cognitive therapy; a wide range of educational and vocational courses; relationship and family programs; cultural programs run by local Elders; practical farm and community work experience for offenders; and employment assistance.

Balund-a operates as a community with residents receiving case-management over a six month period. Progression and regression is assessed on the basis of participation in formal programs, compliance with the facility's rules, completion of a pre-requisite catering and food handling statement of attainment, and general attitude and behaviour. In 2008-2009, the catchment area for court referrals to Balund-a was extended to the west to incorporate Moree and Inverell.

While the longer-term benefits of Balund-a are unknown as yet, our consultations with Aboriginal communities have confirmed strong support for the holistic, culturally appropriate approach it takes to the rehabilitation of Aboriginal offenders.

Given the significant numbers of Aboriginal people in detention, particularly young Aboriginal people, there is a critical need for facilities and programs that are specifically designed to cater to their needs. The feedback we have received from Aboriginal communities indicates that to be successful, rehabilitation programs need to be designed and delivered in close partnership with Aboriginal people. While we appreciate that Corrective Services directly funds and supports a range of custody and community based violence prevention, victim support and rehabilitation initiatives for Aboriginal people, there is a need for these initiatives to be embedded in the correctional system and delivered as part of a broader strategic approach to improving outcomes for Aboriginal offenders.

5. Healing programs

Our consultations with Aboriginal men's and women's groups particularly have reinforced that the impact on many young Aboriginal people of growing up in circumstances of violence, trauma and dislocation from family and culture is profound and inextricably linked to high rates of offending behaviour. The many Aboriginal people we have consulted feel strongly that this impact and its consequences can only begin to be effectively addressed through access to healing programs. Two such programs in NSW that stand out are Red Dust Healing and Rekindling the Spirit.

5.1 Red Dust Healing

Originally developed and run in Queensland, the aim of the Red Dust healing project is to give Aboriginal men an understanding of identity, self evaluation skills, development of future role models and fathers and the restoration of family relationships. The programs offered under the project allow Aboriginal men to examine personal issues and how they affect family and personal relationships and the ongoing negative behaviours they may engage in, for example, violence and abuse. The project incorporates traditional practices and highlights their role in everyday life for the men. Case management plans allow for ongoing support to be provided by mainstream and Aboriginal service providers and Aboriginal Elders who deliver the programs.¹⁴

Funded by the NSW Attorney General's Department and in partnership with Lismore City Council, a local service, Community Connections, is running a series of Red Dust healing camps in the Northern Rivers region for Aboriginal boys and young men aged 13-18 who are identified as being at risk of involvement in crime. The program has been developed in consultation with police, the local community and Bundjalung Elders. Up to 12 participants will be accommodated by each camp.

5.2 Rekindling the Spirit

Based at Lismore, the Rekindling the Spirit service began in 1998 and aims to support Aboriginal men and women to be empowered through spiritual, emotional, sexual and physical healing. Run by and for Aboriginal people, the service provides individual, couple and family counselling, men's and women's groups, cultural and healing camps and retreats, advocacy and support, crisis and employment assistance.¹⁵ It also delivers a range of services to address the issues facing many Aboriginal offenders, particularly family violence, drug and alcohol abuse and child abuse and neglect. A number of government agencies including Corrective Services and Community Services have formed partnerships with Rekindling the Spirit in the Northern Rivers area.

Programs of this type need to be actively supported and engaged with by justice and human service agencies at both a strategic and local level.

¹⁴ <http://www.healthinonet.ecu.edu.au/health-resources/programs-projects?pid=118>. Accessed 29 January 2009.

¹⁵ <http://www.rekindlingthespirit.org.au/index.php?pageid=1541>. Accessed 29 January 2009.

6. Final observations

Addressing the high level of Aboriginal young people's involvement with the criminal justice system ultimately depends on improving service delivery to Aboriginal communities. One of the strongest themes to emerge from our work with Aboriginal communities is the need for agencies to engage them as genuine partners in the design and delivery of programs and services. We refer the committee to page 37 of our submission to the Wood Inquiry on Aboriginal communities which outlines what we believe to be the key components that need to be examined in order to improve service delivery to Aboriginal communities.

7. Annexures

NSW Ombudsman submissions to Wood Inquiry:

- Young people at risk
- Interagency cooperation
- Aboriginal communities
- Early intervention