

# Chapter 7: Prevention And Diversion

## *A Quality Youth Justice System Is Embedded In A Human Service System That Seeks To Prevent Young People's Criminal Behaviour And Divert Young People From Unnecessary Engagement*

### Relevant Terms of Reference

- Early intervention services
- The effectiveness of diversionary strategies.

### Relevant Human Rights Standards

- Protection of Family and Children (HR Act s.11, CROC Art 3, 19)
- Consideration should be given to dealing with juvenile offenders without resorting to formal trial (BR r.11)
- Diverting young people from judicial proceedings
- (CROC 40(3)).
- Appropriate scope of discretion should be allowed at all stages of proceedings (BR r.6)

## 7.1 Introduction

- 7.1.1 This Chapter focuses on the systems, services and supports available to young people in the ACT that aim to prevent them from having contact with the youth justice system; and, if they do, to divert them away from unnecessary contact with that system. It broadly assesses the effectiveness of the ACT's current prevention and diversion systems and makes recommendations for improvement based on the literature.
- 7.1.2 Effective prevention and diversion are widely accepted as providing the most positive outcomes with regard to the justice system for young people, and being highly cost effective for the community over the long term. Despite this, many jurisdictions continue to invest in tertiary prevention (like child protection and community youth justice) and the building of youth justice centres at the expense of investment in primary and secondary prevention and diversion. In this regard, the Commission proposes the ACT Government implement improved prevention and diversion systems through justice reinvestment.

## 7.2 Prevention

### *The importance of prevention*

- 7.2.1 The inclusion of prevention policies in human service and youth justice systems is asserted and accepted as best practice. The European Commission for Human Rights has highlighted:  
*'...preventing juvenile delinquency is an essential part of crime prevention. A juvenile justice policy that does not include measures aimed at preventing offending is considered deficient.'*<sup>1</sup>
- 7.2.2 Section 11 of the ACT *Human Rights Act 2004* (the HR Act) enshrines the right to protection of the family and children. Specifically, s.11(2) notes that *'every child has the right to protection needed by the child or young person because of being a child or young person, without distinction or discrimination of any kind'*. The United Nations Convention on the Rights of the Child

1 Commissioner for Human Rights, Council of Europe, *Children and Juvenile Justice: Proposals for improvements*, Issue Paper (2009) 12.

(the CROC) further elaborates on this, and in particular requires that 'all decisions about a child or young person are made in his or her best interests'. Article 19 of the CROC further requires that 'governments take all legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation'.

- 7.2.3 Preventing young people having contact with the youth justice system is a critical area of public policy. The aim of prevention is to guide young people away from life paths that are likely to lead them towards future adjustment difficulties like chronic unemployment, entry into the adult criminal justice system, mental and physical disease.<sup>2</sup> In addition to these significant benefits for young people, the community benefits by being safeguarded against undesirable future consequences<sup>3</sup> and avoiding the cost implications of lost productivity, higher crime rates, larger detention and prison populations, and increased health costs. Despite these individual and societal benefits, prevention is often considered the weakest link in the chain of actions intended to promote progressive approaches to juvenile justice.<sup>4</sup>
- 7.2.4 Many, if not all, young people involved in the youth justice system have been known to the prevention system for a considerable length of time. While there is little Australian evidence, Winkworth and White draw on international evidence, which recognises that young people detained in custody are:
- 'more likely to have encountered many human service systems but tend not to engage with them in a sustained way or in a way that positively contributes to their future wellbeing. These systems include education and special education, mental health and drug and alcohol agencies, child welfare agencies, out of home care and housing. .... a picture emerges of children and young people who do not access services, drift away from key institutions that are critical to their future, or in many instances are actively excluded from them.'*<sup>5</sup>
- 7.2.5 The international literature evidences many circumstances that demonstrate that young people in custody have not been well served by the prevention system, such as:
- The established link between children who have suffered trauma through child abuse and neglect with later episodes of youth crime.<sup>6</sup> A more detailed discussion of this is contained in Chapter 10 (individual needs);
  - The lack of prior consistent community health care provided to young people who enter custody.<sup>7</sup> A detailed discussion of the health status of young people detained in the ACT is contained in Chapter 13 (health);
  - The known association between offending, substance use and mental health. Studies in America found substance use was frequently cited as a contributing factor at the time of a young person's arrest,<sup>8</sup> and a high proportion of detained young people reported an average time of substance dependence of 4.5 years, including 2.5 years of substance use prior to their first contact with the youth justice system;<sup>9</sup>
  - The high proportion of young people in detention with diagnosable mental health conditions, including major depressive disorders, mania, conduct disorders, and substance dependence, the latter two being the most common co-occurring conditions.<sup>10</sup> A discussion of the provision of mental health and drug and alcohol services to young people in the ACT youth justice system and the Bimberi Youth Justice Centre (Bimberi) is contained in Chapter 13 (health); and
  - The high levels of school disruption, disengagement and drop-out by young people in the youth justice system.<sup>11</sup> Chapter 12 (education) provides further discussion on the provision of education services to young people in the ACT youth justice system and Bimberi.

2 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 6.

3 Ibid 2.

4 Commissioner for Human Rights, Council of Europe, *Children and Juvenile Justice: Proposals for improvements*, Issue Paper (2009) 12.

5 Winkworth, G., and White, M., *Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice* (2011) 26 at Appendix B.

6 Mersky, J., & Reynolds, A., 'Child Maltreatment and Violent Delinquency: Disentangling Main Effects and Subgroup Effects', *Journal of Interpersonal Violence*, 26, (2011) 88-110 cited in ibid 24.

7 Pumariaga, A.J., Atkins, D.L., Rogers, K.L., Montgomery, L., Nybro, C., & Caesar, R., 'Mental health and incarcerated youth II: Service utilization', *Journal of Child and Family Studies*, 8(2), (1999) 205-215; Rogers, K., Pumariaga, A.J., Atkins, L., & Cuffe, S., 'Conditions associated with identification of mentally ill youths in juvenile detention', *Community Mental Health Journal*, (2006) 42(1) cited ibid 26.

8 National Institute of Justice, 'Needs of juvenile offenders: A comparison of detention, incarceration, and treatment settings', *Children's Services: Social Policy, Research, and Practice*, 4(2), (1999) 69-85 cited in ibid 26.

9 Abrantes, A., Hoffman, R., & Anton, R., 'Prevalence of co-occurring disorders among juveniles committed to detention centers', *International Journal of Offender Therapy and Comparative Criminology*, 49(2), (2005) 179-193 cited in ibid 26.

10 Ibid.

11 Burns, B., Schoenwald, S., Burchard, J., Faw, L., & Santos, A., 'Comprehensive community-based interventions for youth with severe emotional disorders: multisystemic therapy and the wraparound process', *Journal of Child and Family Studies*, 9(3), (2000) 283-314; Maschi, T., Smith Hatcher, S., Schwalbe, C., & Scotto Rosato, N., 'Mapping the social service pathways of youth to and through the juvenile justice system: A comprehensive review', *Children and Youth Services Review*, 30(12), (2008) 1376-1385 cited in ibid 27.

## Defining prevention

### Risk-protective factors and resilience

- 7.2.6 A large body of evidence has been developed to understand the risks that can threaten the development of children and young people. Risk factors can be defined as those events, characteristics or conditions that make a negative outcome more likely.<sup>12</sup> Risk factors can be found within (individual attributes) and outside of (environment contexts) the individual. The specific risks that can endanger the development of children and young people may take a variety of forms including family dysfunction and disempowerment, school and community disorganisation, and exposure to pervasive violence and substance abuse within family, school and community contexts.<sup>13</sup> There is also evidence that the number of risk factors that a person has been exposed to is a predictor of behaviour, whether that be drug use or criminal behaviour, regardless of what the particular risk factors are. The more risk factors there are, the greater the likelihood of a child or young person experiencing negative outcomes,<sup>14</sup> most notably escalated involvement in problem behaviours and experiencing adjustment difficulties in adulthood.<sup>15</sup>
- 7.2.7 The factors that protect children and young people from being influenced by risks are called protective factors. It has been recognised that these are not merely an absence of risks, but factors that actively influence the effects of risks.<sup>16</sup> Protective factors may work in one or more of the following four ways: directly decreasing dysfunction; interacting with risk factors to buffer their effects; disrupting the chain by which risk leads to disorder; or preventing the initial occurrence of risk factors.<sup>17</sup>
- 7.2.8 The concept of resilience is also important and related to the influence of risk. Resilience is often described as the ability to cope with stress or adversity. For example, a resilient young person is one who is able to main a normal or high level of functioning when confronted with developmental challenges or time-limited stressor. A hallmark of resilience is when a young person achieves high quality developmental outcomes in the presence of ongoing risk.

### Primary, secondary and tertiary prevention

- 7.2.9 There is some definitional confusion in the literature regarding prevention,<sup>18</sup> however, in recent years the literature has begun to more uniformly adopt a public health approach to prevention. This approach classifies levels of prevention by the amount of protection or risk experienced by a given person or population.<sup>19</sup> There are three levels of prevention in the public health approach:
- **Primary prevention** – which aims to ‘prevent or lower the incidence or prevalence of specific problems or issues in a population or sub-population’<sup>20</sup> by building ‘resources through the provision of support and education to prevent harm from occurring’;<sup>21</sup>
  - **Secondary prevention** – which aims to ‘reverse or reduce the impact of known risk factors’<sup>22</sup> by providing individuals or groups whose complex needs cannot be met through their own networks or primary services with tailored services to prevent escalation of problems and address any related consequences;<sup>23</sup> and
  - **Tertiary prevention** – which aims to reduce the consequences of harm and prevent any further harm from occurring.<sup>24</sup>

12 Carbonell et al., (2002) cited in Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 50.

13 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 7.

14 Chang, Dixon, & Hancock, (2001); Dillon et al., (2007) in Carbonell et al., (2002) Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 50.

15 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 7.

16 Hoge, (2002); Hoge, Andrews, & Leschfield, (1996) cited in Carbonell et al., (2002) Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 51.

17 Coei et al (1993) 5 cited in Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 8.

18 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 8.

19 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 4.

20 Shonkoff, J., and Phillips, D., *From Neurons to Neighbourhoods: The Science of Early Childhood Development*, (2000).

21 ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 7.

22 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 12.

23 ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 8.

24 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 12; ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 8.

7.2.10 The ACT Government has adopted a public health approach to prevention. Table 7.1, below, combines the ACT Government approach to prevention with definitions in the literature.

**Table 7.1: Defining prevention**

ACT Government language	Primary Prevention	Secondary Prevention		Tertiary Prevention
Other language	Universal	Selective/Targeted/ Early Intervention		Indicated/Treatment/ Intervention
Goal	To keep problems from emerging	To reverse or reduce the impact of known risk factors		To reduce harm
Objective	To reduce the incidence of an identified problem/condition	To build individual capacity/protective factors		To provide the most effective treatment to achieve fullest possible recovery
Timing	Before the problems arise or early in the life of the problem	Early in the life of the problem	Significant harm to a child or young person has occurred or is at imminent risk of occurring	
Target audience	All children and young people	Children and young people experiencing additional risk requiring early intervention	Highly vulnerable young people requiring comprehensive and coordinated services	High risk children and young people
Specific target groups identified in the literature		<ul style="list-style-type: none"> <li>Children and young people with behavioural problems</li> <li>Children and young people with physical or learning disability</li> <li>Young men aged 8 – 12 years</li> <li>Aboriginal and Torres Strait Islander young people</li> </ul>	<ul style="list-style-type: none"> <li>Family conflict and/or violence</li> <li>Alcohol or other drug use by parent or young person</li> <li>Parent or young person with a mental health problem</li> <li>Parent/s with a significant learning disability and/or intellectual disability</li> <li>Parenting skills, knowledge and/or practice does not meet the development and/or situational needs of the child or young person</li> <li>Disengagement with family, social and primary service system</li> <li>Young person with a parent or sibling in custody</li> </ul>	

### Effective prevention

7.2.11 When implementing prevention programs the literature suggests the following considerations be taken into account:

- **Developmental considerations.** Understanding the developmental changes in risk-protective factors and the normative onset of problem behaviours was found to be critical for the timing of effective prevention programs.<sup>25</sup>
- **The context of the intervention.** The setting in which prevention programs are implemented impacts upon effectiveness. While some settings, such as family or school, present unique opportunities for intervention, the literature suggests prevention programs should look at the totality of the environment and the person.<sup>26</sup> In many cases, the most effective prevention programs use a combination of these settings to achieve successful outcomes.<sup>27</sup>
- **Key risk and protective factors that have a causal relationship with the problem behaviour being addressed.** Prevention programs were found to be effective only if they were able to influence key risk and protective factors that have a causal relationship with the problems being addressed. That is, they need to have a strong conceptual framework built on a solid empirical base which describes the relationship between risk and protective factors, and relevant problems.<sup>28</sup>
- **Active engagement of those most likely to benefit.** An identified challenge for effective prevention programs is the ability of service providers to ensure that vulnerable children and young people who are exposed to risk factors are engaged in services. It is likely that those children, young people and families who potentially have the most to

25 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 9.

26 Ibid.

27 Carbonell et al., (2002) cited in Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 50.

28 Ibid 58.

gain from prevention programs are the least likely to access them.<sup>29</sup> The evidence base on successful strategies for engaging families in secondary prevention programs is weak,<sup>30</sup> but does suggest assertive outreach and the active reduction of barriers to engagement (such as physical and practical barriers, cultural factors, stigma and help seeking behaviour of families).<sup>31</sup>

7.2.12 In terms of best practice in prevention, the literature suggests the following guiding principles be applied to the planning and implementation of prevention programs:

- **Base responses in the community.** Programs that both engage local communities in identifying and responding to its member's risks and needs, and redress community-level problems such as domestic violence, poor school attendance, alcoholism and problem attitudes to crime, can be particularly effective;<sup>32</sup>
- **Intervene as early as possible** (in the life of the child and in the life of the problem). Best practice prevention programs recognise early signs of difficulty and provide assistance to children, young people and families to minimise risks and increase protective factors;
- **Be child centred.** Placing the child or young person at the centre of the intervention and considering their best interests has shown to be helpful for practitioners and clients;
- **Cover multiple settings.** Prevention programs that are planned and implemented across multiple settings (individual, family, school, peers and community) are more likely to be effective as they reinforce intended outcomes;
- **Recognise strengths and resources.** Programs that draw on individual young people's, family and community strengths and resources are more likely to effectively prevent youth offending, while achieving broad and sustainable positive outcomes;
- **Collaborate and integrate.** Prevention services should work together in a way that creates a seamless and integrated service experience for children, young people and their families. Time and resources should be invested into the mechanisms of integration, such as collective principles of practice, memoranda of understanding, common assessment tools, established referral pathways and methods of referral (warm or supported);
- **No wrong door.** Effective systems ensure that young people and families who seek support from any service in any part of the system are channeled to the most responsive and appropriate programs;
- **Assertive holding.** Effective systems ensure that when a vulnerable child, young person or family presents to any service they are sustained within the service system, even when the appropriate service is currently not available;
- **No eject/no reject.** (sometimes described as 'unconditional care'). Ensure that at-risk children, young people and families are supported within the system regardless of their behaviours and that they will receive support even after periods of absence;
- **Continuity.** Programs are sustained for as long as supports and services are required by the child, young person and their family; and
- **Make existing programs more effective for prevention.** Programs should be assessed against criteria including: the numbers and types of risk and protective factors targeted; the number of life course transition points that come within the ambit of the program; the degree of fit with the needs of specific communities or groups; and the capacity to facilitate partnerships with other agencies.<sup>33</sup>

## 7.3 The ACT's prevention framework for vulnerable children, young people and their families

7.3.1 During this Review, the Commission originally intended to assess the effectiveness of the ACT's prevention system in relation to its engagement and support of vulnerable children, young people and their families.<sup>34</sup> However, the Commission was unable to undertake this assessment in the timeframe provided, largely due to the ACT prevention system being diverse, poorly mapped, and having limited evaluations.

29 Ghate & Hazel, (2002) cited in Katz et al, (2007) in Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 26.

30 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 26.

31 Watson, (2005); Katz et al, (2007) cited in Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 27.

32 Kelly Richards, Lisa Rosevear & Robyn Gilbert, *Promising interventions for reducing Indigenous juvenile offending* (2011).

33 National Crime Prevention *Pathways to Prevention, Developmental and early intervention approaches to crime in Australia*, Attorney General Department, Canberra (1999) 26.

34 In reviewing the ACT Government's current practice in relation to prevention, the Commission read Government plans, documents and submissions, including: the Canberra Social Plan, the ACT Children's Plan 2010–2014, the ACT Young People's Plan 2009–2014, the Department of Housing and Community Services (DHCS) Service Delivery Platform, DHCS Annual Reports, the ACT Government Submission to the Review, the Youth and Family Support Framework, the Towards a Diversionary Framework for the ACT Discussion Paper, and the Consultation Report in response to the Towards a Diversionary Framework for the ACT Discussion Paper. The Commission also reviewed a number of academic papers written on the ACT human service system, and the submissions provided to the Review by a variety of stakeholders.

- 7.3.2 The last mapping exercise of ACT Government funded programs for young people at risk took place in 2003. That mapping exercise concluded that there was ‘a diverse range of programs for young people at risk that provide a significant body of support’.<sup>35</sup> However, the report also concluded that:
- Information on program effectiveness could be strengthened;
  - Few programs incorporate centralised assessment and ongoing, individual support;
  - Many services offer support targeted at a particular risk, rather than more general assistance. The report suggested follow-up with young people could be enhanced as could mechanisms for determining if the assistance was effective in addressing the particular risk; and
  - Some mechanisms for tracking young people may be necessary given the need to ensure young people at risk receive the support they need.
- 7.3.3 The Commission notes that some of these concerns may be addressed by the introduction of the recently released *Youth and Family Support Framework* (YFSP Framework). However, in the course of attempting to map and assess the effectiveness of the ACT’s prevention system, the Commission found that some of these concerns remained unaddressed. In addition, the Commission found other areas within the prevention system that could be strengthened. Each of these areas is described below with accompanying recommendations.

### **Engagement of vulnerable children, young people and their families**

- 7.3.4 The early years in a child’s life are considered to be the most important developmental phase. Optimal development in terms of physical, social and emotional, and cognitive domains is vital for children’s immediate and long-term health and wellbeing.<sup>36</sup> What happens to children in their early years strongly influences a range of physical health issues such as obesity or stunting, and heart disease, as well as their mental health, learning capabilities (particularly relating to literacy and numeracy), involvement in criminal activities and participation in the workforce.<sup>37</sup>
- 7.3.5 Looking specifically at crime prevention, effective parenting has been shown to be the most powerful way to reduce adolescent problem behaviour.<sup>38</sup> Studies show that the strongest predictors of adolescent antisocial behaviour are those which measure disruptions in parenting processes, poor school performance and early childhood aggression.<sup>39</sup> Programs that aim to enhance parenting practices, including improving communication, and supervision and monitoring of children are important in reducing adolescent antisocial behaviour. Attendance at preschool has also been found to be a strong correlate with lower rates of arrest in young people.<sup>40</sup>
- 7.3.6 In the ACT programs such as the regional Child and Family Centres, Schools as Communities, and Communities for Children have been recognised as good practice. Broadly, these programs provide universal or primary prevention services like early childhood health screening, parenting programs, playgroups and school transition support to vulnerable children and families. They apply evidence based practices and have been the subject of evaluations which show improved outcomes for engaged families and children. The Commission’s concern in relation to these types of prevention services is their ability to engage ‘hard to reach’ families – the families who would benefit most from their support.
- 7.3.7 Similarly, this concern is also held by the Commission and others in respect of the implementation of the YFSP Framework. A number of submissions to this Review noted the difficulties of engaging hard-to-reach families. One participant spoke of the difficulty in accessing families who do not self refer or accept services when a referral is provided. While the YFSP Framework has recognised this through funding a Youth Engagement Service within each Network Hub, and through requiring funded organisations to have the capacity to provide services outside standard business hours using an assertive outreach/home visiting model,<sup>41</sup> the Commission believes successful implementation will require the capacity of the community service sector to be lifted. In their submission to the Review, the Youth Coalition of the ACT (YCACT) noted that implementation of the YFSP Framework will require a workforce development strategy for the community services sector, listing assertive outreach as an example. The Commission agrees with this and suggests training also be offered to funded organisations on how to engage with hard-to-reach children, young people and their families.

35 ACT Government, *Mapping ACT Government Funded Programs for Young People at Risk: reducing young people’s involvement in crime project* (2003) 7.

36 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 5.

37 Ibid 8.

38 Kumpfer, K. L., and Rose, A., ‘Family-strengthening approaches for the prevention of youth problem behaviours’, *American Psychologist*, Vol 58, June-July (2003).

39 McGee, T.R., Wickes, R., Corcoran, J., Bor, W., and Najman, J., *Antisocial behaviour: An examination of individual, family, and neighbourhood factors. Trends & Issues In Crime and Criminal Justice* no. 410, Australian Institute of Criminology, (2010)

40 Reynolds, A. J., Temple J. A. Robertson, D. L., & Mann, E. A., ‘Long-term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest: A 15-Year Follow-up of Low-Income Children in Public Schools’, *The Journal of the American Medical Association*, (2001) 285.

41 ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 23.

**Recommendation 7.1:** The Community Services Directorate offer training on assertive outreach and methods of engaging with hard-to-reach children, young people and families to all organisations funded under the *Youth and Family Support Service Delivery Framework*.

**Recommendation 7.2:** The Community Services Directorate require funded prevention programs to report on their level of effective engagement with Aboriginal and Torres Strait Islander children, young people and their families and communities.

### *A greater focus on boys aged 8 to 12 years*

- 7.3.8 A number of participants in the Review noted the lack of secondary prevention programs which focus on middle childhood. Of particular concern was the need for better early detection of children aged eight to 12 years who were starting to disengage with school, particularly Aboriginal and Torres Strait Islander boys. Boys aged eight to 12 years are noted in the literature as being a priority target group for prevention. Further, the ACT Government submission acknowledged that more could be done for this group of children.

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*Promising practice: The Steer Program is a collaboration between Northside Community Services, Schools as Communities, Ainslie Primary School and local Aboriginal and Torres Strait Islander parents. Steer provides transitional support for boys (aged 10 to 12 years) in their final term of primary education.*

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**Recommendation 7.3:** The Community Services Directorate include boys aged eight to 12 years, particularly Aboriginal and Torres Strait Islander boys, as a target group in the *Youth and Family Support Service Delivery Framework*.

### *Greater coordination and integration of prevention services*

- 7.3.9 As part of this Review, the Commission held a community forum to explore opportunities for youth justice in the ACT (see Appendix E). Participants at that forum felt prevention programs were not serving young people well enough. Participants felt that:
- ‘...many of the families of young people currently engaged in the youth justice system have been known by agencies and services for many years. It was considered a poor indictment upon the ACT’s service system that these young people had not been assertively assisted in the past, and that many ended up at Bimberi because the system itself failed to adequately identify and respond to their needs.’<sup>42</sup>*
- 7.3.10 Similar feedback was provided to Noetic Solutions (Noetic), the organisation contracted by the Community Services Directorate (CSD) to collate feedback from consultations on the *Towards a Diversionary Framework for the ACT Discussion Paper*. Participants in that process called for mechanisms that would deliver better outcomes from existing resources, such as:
- Better prioritising of secondary prevention;
  - Better coordination;
  - Building the capacity of the community services sector to more effectively engage with young people in primary and secondary interventions; and
  - More tailored services that better target at-risk young people and their families and communities.<sup>43</sup>
- 7.3.11 Participants also thought secondary prevention programs required long-term planning with more investment and longer-term funding contracts.<sup>44</sup>
- 7.3.12 The YFSP Framework released in January 2011 outlines a new way for community organisations to be funded to provide services and supports to vulnerable and in need children, young people and their families. The intent of the Framework is to support the effective and efficient operation of secondary prevention programs by the non-government sector.

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42 *Forging New Pathways* (2011) At Appendix E.

43 Ibid.

44 Murphy, P., Victorsen, D., & Richards, S., *Consultations: Towards a Diversionary Framework for the ACT Discussion Paper*, Noetic Solutions, April 2011 (2011) 14.

- 7.3.13 In the Commission's view, the YFSP Framework has the potential to address many of the concerns held about the effectiveness of current secondary prevention programs. The YFSP Framework aims to provide better information sharing and coordination, improve localised and networked collaboration, and improve common assessment tools to aid in determining the level and type of service provision required. In addition, the YFSP Framework seeks to better utilise existing case management, youth engagement, specialist and complementary services.
- 7.3.14 From a design perspective, it is evident that the YFSP Framework has drawn on the literature in determining the risk factors to be addressed through secondary prevention. The Commission suggests the addition of a further risk factor being a parent or sibling in custody. Further, the Commission believes that the multiple risk factors present in the lives of young people at risk of offending warrants these young people being prioritised within the YFSP Framework.

**Recommendation 7.4:** The Community Services Directorate include children and young people with a parent or sibling in custody as a target group in the *Youth and Family Support Service Delivery Framework*.

**Recommendation 7.5:** The Community Services Directorate require organisations funded under the *Youth and Family Support Service Delivery Framework* to prioritise young people at risk of offending.

- 7.3.15 While the introduction of the YFSP Framework has been largely positively received, there are some concerns regarding its design and implementation. From a design perspective, concerns have been voiced that the YFSP Framework is skewed towards children and young people aged 0 to 17 years, meaning young people aged 18 to 25 years may receive fewer services. This is of particular concern for young people leaving institutional care, such as out-of-home care or Bimberi. There is also concern that service delivery may be skewed towards young people with statutory involvement with care and protection and youth justice services, meaning young people who present voluntarily may receive fewer services.
- 7.3.16 The Commission believes the relationship brokered between the YFSP Framework's Information, Engagement and Coordination Service, Network Based Services and Youth Engagement Services, and the ACT Police's Youth Liaison Officers (YLOs) and local schools, will be critical to the successful implementation of the YFSP Framework. Both YLOs and schools are key to the early detection of vulnerable children and young people. In its submission to the Review, Northside Community Services noted that ACT Policing have only two trained YLOs who cover the entire ACT. While their role in diverting young people away from the youth justice system was acknowledged, Northside Community Services noted that the YLOs are limited in their knowledge of mental health or drug support services to which they can refer. In relation to schools, the Commission is of the view that concerning absence from school by a child or young person should trigger an automatic referral to the Information, Engagement and Coordination Service.

**Recommendation 7.6:** The Community Services Directorate coordinate the development and implementation of strong relationships and referral pathways between ACT Police and schools, and the Information Engagement and Coordination Service, Network Based Services and Youth Engagement Services created under the *Youth and Family Support Service Delivery Framework*.

### Appropriate risk assessment

- 7.3.17 Given the significant change the YFSP Framework represents to the provision of secondary prevention programs to children and young people, the Commission will closely monitor its implementation. One area the Commission will pay particular attention to will be the way YFSP funded programs are delivered to young people involved with the youth justice system or assessed as being at risk of offending. The Commission is keen to ensure a balance is struck between addressing risk factors and enhancing protective factors and pro-social development of these young people. The basis of the Commission's concern is a tension between the language in the various ACT Government documents and frameworks. The YFSP Framework describes level of risk in relation to a young person's stage of development, protective factors, complexity and timing. However, the ACT Government's submission to the Review and the *Towards a Diversionary Framework for the ACT* Discussion Paper describe primary, secondary and tertiary prevention in relation to a young person's level of involvement with the youth justice system.<sup>45</sup> While these differences in language may be semantic and driven by the definitional confusion in the literature, the Commission is keen to ensure that the overly risk-focused culture within CSD observed in this Review is not permeated in the implementation of the YFSP Framework.

<sup>45</sup> ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 14.

- 7.3.18 However, the Commission does recognise the need for young people who have risk indicators for offending to be identified early and engaged in prevention programs.<sup>46</sup> The Commission is aware that risk and protective tools such as Looking After Children (LAC) and HEADSS (Home Education/Employment, peer group Activities, Drugs, Sexuality and Suicide/Depression) are used by some ACT services in their work with young people prior to their involvement in tertiary services (youth justice or care and protection). In the Commission's view, these assessment tools could be applied more uniformly by services working with vulnerable and at-risk young people and their families.

**Recommendation 7.7:** The Community Services Directorate work with the Youth Justice Advisory Panel to develop and implement a range of risk and protective assessment tools for vulnerable children, young people and their families.

## 7.4 An integrated prevention system for children and young people

- 7.4.1 The Commission is concerned about the effectiveness of the ACT's prevention system, particularly in relation to its engagement and support of young people at risk of contact with the youth justice system. In the Commission's view there is room for improvement in the levels of planning, investment, evidence-based practice, and evaluation. The Commission believes that, while the ACT Government has sought to strengthen the prevention system for children and young people with the introduction of YFSP Framework, this Framework alone is not sufficient to prevent children and young people from escalating in their levels of risk and need towards the tertiary and statutory system, including and in particular Bimberi.
- 7.4.2 The Commission acknowledges that it has not had sufficient time to undertake an assessment of the current and intended system of prevention in the ACT. However, through this Review the Commission believes it has read and heard sufficient information to recommend that the ACT Government strengthen the prevention system in relation to young people, including vulnerable young people, by developing a comprehensive prevention plan. In the Commission's view the prevention plan for young people should clearly state:
- How the prevention plan furthers the statement of purpose for the ACT youth justice system;
  - A vision for prevention in the ACT;
  - The values and principles that underlie an approach to working with vulnerable children and young people;
  - A definition of prevention ;
  - A set of objectives drawn from an evidenced based theory of change;
  - The role and core capabilities of Government in achieving these objectives (whole-of- Government);
  - The role and core capabilities of the community sector in achieving these objectives (whole-of-community);
  - The role and core capabilities of children, young people and their families in achieving these objectives (whole-of-community);
  - The outcome measures and performance indicators Government agencies and community providers will pursue in order to collectively contribute to the objectives;
  - Specific approaches and techniques considered fundamental to achieving the desired outcomes. This might include evidence based approaches, promising practices and/or approaches believed to be effective through practice based experience;
  - The way that partners will work together to achieve the vision and to integrate values and principles;
  - The governance arrangements for the plan which reflect a whole-of-Government and whole-of-community approach, and allow for meaningful participation of Aboriginal and Torres Strait Islander people;
  - A commitment to continuous improvement through evaluation, action learning and innovation; and
  - The relationship between this strategy and the Canberra Social Plan, the CSD service delivery platform, the ACT Children's Plan 2010–2014, the ACT Young People's Plan 2009–2014, the ACT Diversionary Plan (recommended below), and the YFSP Framework.

<sup>46</sup> Ibid 18.

**Recommendation 7.8:** The Community Services Directorate work with key stakeholders to develop an ACT Prevention Plan which, among other things, clearly draws together the large number of existing plans and frameworks that focus either fully or in part on prevention.

**Recommendation 7.9:** The Community Services Directorate, in consultation with other Directorates, develop an effective executive oversight mechanism that minimises the critical 'grey area' between the secondary and tertiary prevention systems by identifying those children and young people whose level of need and/or risk is increasing, and by referring them to appropriate tertiary prevention services.

7.4.3 In making these recommendation, the Commission suggests the CSD draw on the documented policy framework *Pathways to Prevention*.<sup>47</sup>

## 7.5 Diversion

### *Defining diversion*

7.5.1 The definition of diversion is not clear in the literature, as is the case with prevention. The *Towards a Diversionary Framework for the ACT* Discussion Paper provided at least three definitions for diversion.<sup>48</sup> The definition favoured by the Commission is 'any process that prevents young people from entering or continuing in the formal criminal justice system'.<sup>49</sup> In this section of the Review, the Commission examines the effectiveness of the ACT's diversionary system in terms of its ability to:

- Divert young people from the youth justice system; and
- Divert young people from custody.

## 7.6 Diverting from the youth justice system

### *The importance of diverting young people from the youth justice system*

7.6.1 Diverting young people from involvement with the criminal justice system is a critical policy issue and is now well established in policy, legislation, research and practice. Article 40(3) of the United Nations Convention on the Rights of the Child (CROC) requires signatories to, whenever appropriate and desirable, promote measures for dealing with children alleged to have infringed, accused of infringing or recognised as having infringed penal law without resort to judicial proceedings. Rule 11 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) states that attempts should be made to divert young people away from formal trial whenever possible. It requires that police, prosecution and other agencies dealing with young people be empowered to dispose of cases, at their discretion, without formal trial. Under Article 11.3 of the Beijing Rules, any diversion involving referral to an appropriate service should be done with the consent of the young person. Efforts should be made to provide for community programs, such as temporary supervision and guidance, restitution and compensation of victims.

7.6.2 The commentary on the Beijing Rules emphasises that diversionary practices aim to prevent the negative effects of subsequent criminal proceedings for a young person, including the stigma of conviction and sentence. They also recognise the particular vulnerabilities of young people and reflect the fact that most of their offending is episodic and transitory, with the majority of young people maturing out of criminal behaviour.<sup>50</sup>

7.6.3 Research consistently shows that most young people who come into contact with the criminal justice system do so only once. In the ACT in 2009-2010, only about 20% of young offenders were proceeded against by police on more than one occasion.<sup>51</sup> In response to these circumstances, and in line with other Australian jurisdictions, the ACT's *Children and Young People Act 2008* (the CYP Act) established mechanisms to divert young people from the youth justice system.

47 National Crime Prevention, *Pathways to Prevention, Developmental and early intervention approaches to crime in Australia*, Attorney General Department, Canberra (1999).

48 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 31.

49 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010).

50 Australian Human Rights Commission, 'Best practice principle for the diversion of juvenile offenders', *Human Right Brief No. 5* (2001); Richards, K., 'What makes juvenile offenders different from adult offenders?' *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology (2011).

51 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 12.

## Current practice

- 7.6.4 The ACT's performance in relation to diverting young people from the youth justice system is difficult to ascertain.<sup>52</sup> Data collection is poor and guidelines regarding the use of police discretion are contained in local operating procedures which are not publicly available.<sup>53</sup> Because of these factors, the Commission notes the ACT Government was unable to present a holistic picture of the current state of diversion in its *Towards a Diversionary Framework for the ACT Discussion Paper*.<sup>54</sup> In providing an overall commentary, the Discussion Paper acknowledges that recent statistics show that fewer young people who have come into contact with police have been kept out of the formal youth justice system, and this cannot be fully explained by trends in juvenile crime.
- 7.6.5 In seeking to assess the current performance of the diversion system in the ACT the Commission contracted the Australia Institute of Criminology (AIC) to collect and analyse data on young people's contact with the criminal justice system in the ACT, including diversion. Their report is annexed to this Report at Appendix A.
- 7.6.6 In 2008-2009, 605 young people in the ACT were taken into custody by police. Of these, most (91%, n=550) were arrested, with the remainder taken into protective custody for intoxication. Approximately four times as many young men were taken into custody as young women. Approximately four times as many non-Indigenous young people were taken into custody as Aboriginal and Torres Strait Islander young people.<sup>55</sup>
- 7.6.7 In comparison, in 2009-2010, 607 young people were taken into custody by police. Of these, the majority (92%, n=558) were arrested, with the remainder taken into protective custody for intoxication. Approximately four times as many young men were taken into custody as young women. Over three times as many non-Indigenous young people were taken into custody as Aboriginal and Torres Strait Islander young people.<sup>56</sup>
- 7.6.8 Aboriginal and Torres Strait Islander young people were heavily over-represented among those taken into police custody in both data periods. Despite Aboriginal and Torres Strait Islander young people comprising only 2.9% of young people in the ACT, during 2008-2009, 18% (n=118) of young people taken into custody were Aboriginal and Torres Strait Islander, and during 2009-2010, 23% (n=141) were.<sup>57</sup>
- 7.6.9 Not all young people who come into contact with police for an offence need to be taken into custody. Police in the ACT are able to divert young people away from the youth justice system by taking no action (with their actions recorded) or issuing verbal warnings. The Commission does not have data on the number and demographics of young people who were diverted from the youth justice system in this way. Not taking action and giving verbal warnings are subject to police discretion and are not part of required national or Territory data sets.
- 7.6.10 Police in the ACT are also able to divert young people from the youth justice system through:
- Informal and formal caution;
  - Issue of penalty or infringement notice;
  - Referral to a drug or alcohol program; or
  - Referral to restorative justice conferencing.
- 7.6.11 Through all these means, in 2008-2009, 10.4% (n=67) of the 550 young people arrested by police were diverted from the youth justice system. The following year, 13.6% (n=76) of the young people arrested by police were diverted.<sup>58</sup>
- 7.6.12 In relation to police cautions, research conducted in Queensland indicates that young people who are diverted through cautioning are less likely to have re-contact with the criminal justice system than are young people who have a court appearance.<sup>59</sup> However, research also shows that, while Aboriginal and Torres Strait Islander young people were 4.5 times more likely to have contact with the criminal justice system than non-Indigenous young people, they were 2.9 times less likely to be cautioned than they were to appear in court, and 1.5 times less likely to be cautioned than attend a conference for their first contact with the system.<sup>60</sup>

52 Ibid 46.

53 ACT Government, *Towards a Diversionary Framework for the ACT Discussion Paper* (2011) 25.

54 Ibid 8 & 19.

55 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 10 at Appendix A.

56 Ibid 11.

57 Ibid.

58 Ibid.

59 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 2.

60 Ibid.

- 7.6.13 In 2008-2009, 29.7% (n=846) of all charges were dealt with by way of caution. Of those, 5.4% (n=44) were for charges brought against Aboriginal and Torres Strait Islander young people.<sup>61</sup>
- 7.6.14 In relation to police diverting young people by issuing fines, ACT Health note in their submission to the Review that police issue an average of 84 Simple Cannabis Offence Notices (SCON)<sup>62</sup> each year. Of these, 9.5% (n=8) were young people. Of all charges laid against young people only 0.3% (n=8) were dealt with by way of a SCON. Of those charges diverted in this way, none were against Aboriginal and Torres Strait Islander young people.<sup>63</sup>
- 7.6.15 In relation to police referral to a drug or alcohol program, ACT Police have a number of avenues available to them, including the ACT Early Intervention Pilot Project<sup>64</sup> and Police Early Intervention and Diversion Program (PED).<sup>65</sup> In 2008-2009, 0.7% (n=20) of all charges laid against young people were dealt with by way of referral to a drug or alcohol program. Of those charges diverted in this way, 5% (n=1) were against Aboriginal and Torres Strait Islander young people.<sup>66</sup>
- 7.6.16 In relation to police referral to restorative justice conferences, research indicates that young people who are diverted through conferencing are less likely to have re-contact with the criminal justice system than are young people who have a court appearance.<sup>67</sup> Research also shows that, while Aboriginal and Torres Strait Islander young people were 4.5 times more likely to have contact with the criminal justice system than non-Indigenous young people, they were 2 times less likely to be referred to a conference than they were to appear in court.<sup>68</sup>
- 7.6.17 In 2008-2009, 2.4% (n=67) of all charges were dealt by way of referral to restorative conferencing. Of those charges diverted in this way, 7.5% (n=5) were against Aboriginal and Torres Strait Islander young people<sup>69</sup>. The ACT Government submission to the review suggests 45 young people were referred by police to restorative justice conferencing in 2008-2009, equating to 8.1% of all young people arrested. In 2009-2010, the police referred 57 young people, equating to 10.2% of all young people arrested.<sup>70</sup>
- 7.6.18 As the ACT Government notes in their submission to the Review, an important measure of restorative justice is whether young people comply with the agreement arising out of the conference. 86% of the agreements due for completion in 2009-10 were complied with. The level of compliance with agreements at 31 March 2011 is 91%, and the satisfaction rate across victims and offenders (combined result based on survey after conference) is 95%. The nature of tasks completed under these agreements include compensation paid to victims, donations to charities, hours worked to benefit victims or the community, and hours completed at counselling or programs.<sup>71</sup>
- 7.6.19 Participants in this Review consistently called for more young people to be referred to restorative justice conferences. Some believed the low referral rates were partly due to Phase 1 of the *Crimes (Restorative Justice) Act 2004* limiting access to restorative justice conferences to young people who had committed only minor offences. Noetic, in its consultation report on the diversionary framework, noted the ACT Government could take immediate action and implement Phase 2 of the *Crimes (Restorative Justice) Act 2004* to include more serious crimes. The Commission supports this suggestion and notes the European Human Rights Commissioner's Paper relating to improvements in juvenile justice states that diversion should not be limited to first time offenders or those who have committed minor offences.<sup>72</sup> The submission to the Review from Northside Community Services was particularly persuasive:

*'The admission of an offence by a young person presents a turning point for those involved in the care and support of the individual. Young people who have admitted an offence must have the opportunity to own the event and to participate in*

61 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: an overview*, Australian Institute of Criminology (2011) 13.

62 The SCON Scheme enables offenders who have been apprehended with a small amount of cannabis for personal use, or not more than two cannabis plants (excluding all artificially cultivated plants) to be issued with fine of \$100 for each charge which must be paid within 60 days to expiate the notice.

63 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: an overview*, Australian Institute of Criminology (2011) 13.

64 The ACT Early Intervention Pilot Project is for young people under the age of 18 years who have been detected by the police to be in possession of alcohol, and/or intoxicated from alcohol. The young person may be referred by police to the ACT Health's Alcohol and Drug Program for an information and education session.

65 The Police Early Intervention and Diversion Program (PED) enables minor drug offenders who have been apprehended for possession of a small amount of illicit drugs or illicit possession of a pharmaceutical drug (including cannabis) for personal use to be referred to drug education counselling and treatment services as an alternative to the criminal justice system.

66 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: an overview*, Australian Institute of Criminology (2011) 13.

67 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 2.

68 Ibid.

69 Ibid.

70 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 47.

71 Ibid.

72 Commissioner for Human Rights, Council of Europe, *Children and Juvenile Justice: Proposals for improvements*, Issue Paper, (2009)16.

*reparation in regards to the event. If the young person is not referred to Restorative Justice or refuses to take part in a conference, then at no other point in the youth justice process is it routinely offered. Upon admission of guilt for an offence, the opportunity to participate in active reparation for an offence should be made available to young people during first contact with police, negotiated in bail conditions, taken into account during sentencing, and certainly be made available whilst serving a period of detention.'*

**Recommendation 7.10:** The ACT Government implement Phase 2 of the *Crimes (Restorative Justice) Act 2004* to allow young people to be referred to restorative conferencing for more serious crimes.

7.6.20 In its submission to the Review, the ACT Government also noted that police can refer young people to prevention services. The Commission does not have data on the number and demographics of referrals made by police to secondary prevention services. In Recommendation 7.6 of this Report the Commission has noted the importance of police being well linked to the Information, Engagement and Coordination Service, Network Based Services and Youth Engagement Services created under the YFSP Framework. In addition, the Commission suggests that, given the prevalence of family breakdown and dysfunction among vulnerable young people, there is value in the police being able to refer young people to Family Group Conferencing within CSD.

**Recommendation 7.11:** The Community Services Directorate liaise with ACT Police to determine the feasibility of young people and their families being referred by the police to Family Group Conferencing options within the Directorate.

- 7.6.21 If police elect to prosecute a young person by way of summons or charge, the Childrens Court can also divert young people from the criminal justice system. The only mechanism for the Court to divert young people is to refer them to a restorative justice conference. In their submission to the Review, the ACT Government reported that in 2009-2010, 63.9% (n=117, an increase from 53 in 2008-2009) of all referrals to restorative justice conferencing were made by the Court; 4.4% (n=8) were made the Director of Public Prosecution (representing a significant decrease from 100 in 2008-2009)<sup>73</sup>; and 0.5% (n=1, a decrease from 3 in 2008-2009) by CSD.<sup>74</sup> Given data on young people at the ACT Childrens Court is not disaggregated by Aboriginal and Torres Strait Islander status, the number of Aboriginal and Torres Strait Islander young people referred to restorative justice conferencing by the Court, and those associated with the Court, is not known. Recommendations relating to continuing education for the ACT Childrens Court, ACT Police, Director of Public Prosecutions and Legal Aid are made at recommendation 7.30 below.
- 7.6.22 The Childrens Court has a number of avenues through which it can divert young people from custody. These options and their utilisation are discussed in the section below on sentencing.
- 7.6.23 Based on the material reviewed, the Commission finds that diversion strategies are effective for young people, in that completion rates are high, and research suggests diversion reduces re-contact with the criminal justice system. However, the Commission further finds that the legislated opportunities for diversion of young people are not being fully realised due to the low referral rates by both the police and Courts. It is the Commission's view that current diversionary strategies in the ACT are not fully effective. In its submission to the Review, the ACT Government acknowledged that the current system 'is not sufficiently providing effective diversion for those young people who are at the periphery in terms of their risk taking behaviours.'<sup>75</sup>
- 7.6.24 The data clearly shows that diversionary strategies in the ACT are even less effective for Aboriginal and Torres Strait Islander young people. Table 7.2, below, shows that Aboriginal and Torres Strait Islander young people are over-represented in those young people who are taken into police custody, and then extremely under-represented in those young people who are diverted from the youth justice system. Of the 330 charges laid against Aboriginal and Torres Strait Islander young people, 13.6% (n=45) were diverted from the criminal justice system.

73 Justice and Community Safety, *Annual Report 2009 - 2010*.

74 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 47.

75 Ibid 3.

**Table 7.2: Aboriginal and Torres Strait Islander, and non-Indigenous, young people who were arrested and referred to diversion**

Type of Police action	Aboriginal and Torres Strait Islander	Non-Indigenous
Young people arrested	19% (n=104)	81% (n=446)
Charges referred to caution	5.4% (n=44)	94.6% (n=802)
Charges referred to SCON	Nil	100% (n=8)
Charges referred to drug diversion	5% (n=1)	95% (n=19)
Charges referred to restorative justice	7.5% (n=5)	92.5% (n=62)

- 7.6.25 The lower level of police referral to diversion for Aboriginal and Torres Strait Islander young people is a pressing issue for most youth justice systems across Australia. Lower diversion rates have a cumulatively negative effect that results in Aboriginal and Torres Strait Islander young people progressing through the stages within the youth justice system faster than non-Indigenous young people. A recent study found that the over-representation of Aboriginal and Torres Strait Islander young people increased with each successive discretionary stage in the youth justice system, resulting in high levels of over-representation in the more serious processes and outcomes.<sup>76</sup> The literature concludes that low levels of police diversion are a contributing factor in the over-representation of Aboriginal and Torres Strait Islander young people in detention.
- 7.6.26 Researchers have examined why Aboriginal and Torres Strait Islander young people are diverted by police at a significantly lower rate. Studies variously explain the disparity through: differences in the proportion of young people pleading guilty and therefore being ineligible for diversion,<sup>77</sup> Aboriginal and Torres Strait Islander young people having more informal contact with the police than non-Indigenous young people, differences in attitudes and demeanors of young people, and the particular circumstances as well as the seriousness of offences.<sup>78</sup> Studies in other jurisdictions have also alleged racial bias of policing plays a part in the disparity.<sup>79</sup> Some of these explanations are a result of behaviours from Aboriginal and Torres Strait Islander young people – not admitting guilt, attitudes and demeanors, and seriousness of offending; however, others are more systemic – more contact with police and racially biased policing.
- 7.6.27 All young people's behaviours and attitudes, and relationship to offending is shaped by the environment in which they are raised. In Australia, an unacceptably high proportion of Aboriginal and Torres Strait Islander young people grow up in complex environments of socio-economic disadvantage, cultural dispossession and marginalisation, and structurally lower level of access to resources and opportunities. For some Aboriginal and Torres Strait Islander young people these environments foster hostility and behaviours of retaliation against society, which includes offending. For others, these environments create offending patterns driven by a sense of economic necessity and survival. The literature identifies these socio-economic and cultural reasons as the root cause of offending and the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system.<sup>80</sup> To affect the behaviours, attitudes and offending patterns of Aboriginal and Torres Strait Islander young people, targeted and effective primary, secondary and tertiary prevention programs are needed (see Recommendation 7.2 above). Planning needs to meaningfully involve Aboriginal people and communities, and programming needs to be across the life course and operate on the individual, family, community and society level. The Commission believes addressing these socio-economic and cultural factors must be a policy priority for the ACT Government.
- 7.6.28 Another priority must be influencing change in the assumptions and practices of policing. The level and type of surveillance police exercise over Aboriginal and Torres Strait Islander young people and their community shapes the relationship these young people have with police. Historical distrust in police has been found to be a major factor in young people not admitting offending to police, therefore negating the opportunity for diversion. The Commission believes police practices should recognise this by seeking to build more positive relationships with Aboriginal and Torres Strait Islander young people, and by ensuring they have culturally trusted support at the time an admission is required. In this regard, the Commission welcomes the recent budget measure which makes three year provision for an Aboriginal and Torres Strait Islander Guidance Partner to provide assistance to young Aboriginal and Torres Strait Islander people who are referred to or involved in restorative justice.

76 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 4.

77 Snowball (2008) cited in ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 50.

78 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 4.

79 Cunneen, C., 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues', *Current Issues in Criminal Justice*, vol. 17, no. 3, (2006) 329-346.

80 Ibid.

- 7.6.29 In 2010, the ACT Government released the *ACT Aboriginal Justice Agreement 2010-2013*. This plan seeks to reduce the over representation of Aboriginal and Torres Strait Islander people in the ACT justice system as both victims and offenders. The Agreement contains an action item to increase the referral rates of Aboriginal and Torres Strait Islander young people to restorative justice conferencing.<sup>81</sup> The Commission believes this action should be expanded to increasing police referral rates to all diversionary options.

**Recommendation 7.12:** ACT Police develop and implement guidelines regarding the use of discretion in diverting young people from the youth justice system, with these guidelines being as transparent and open as the effective operations of ACT Police allows.

**Recommendation 7.13:** ACT Police set targets for police referral to all diversionary options, particularly in relation to Aboriginal and Torres Strait Islander young people. Performance against these targets to be reported in the ACT Police annual report.

**Recommendation 7.14:** ACT Police collect and publish in their annual report data on diversion rates by age, gender and Aboriginal or Torres Strait Islander status.

**Recommendation 7.15:** The ACT Government amend the *ACT Aboriginal Justice Agreement 2010-2013* to include increased referral rates of Aboriginal and Torres Strait Islander young people to all forms of diversion.

## 7.7 Diverting young people from custody

### *The importance of diverting young people from custody*

- 7.7.1 According to Article 37 of the CROC, *'the arrest, detention or imprisonment of a child must be in conformity with the law and used only as a measure of last resort and the shortest appropriate period of time'*.
- 7.7.2 Spending time in custody has a proven negative effect on young people. Research has shown incarceration leads to social isolation and disconnection, institutionalism and increases the likelihood of reoffending. More specifically, recidivism is correlated highly with future juvenile offending,<sup>82</sup> and adult offending.<sup>83</sup> The most significant reasons for this were found to be: stigmatization of young people, formation of criminal associations and networks, placing vulnerable young people at risk, and reduction of opportunities for positive rehabilitation.<sup>84</sup> Remand has been shown to have negative impacts on a young person's family, relationships, education and work.<sup>85</sup> Remanding a young person in custody also comes at significant economic costs to the community. A longer discussion on the negative effects of incarceration is contained in this Report in Chapter 8 (case management).

### *Diverting young people from police custody*

#### **Arrest**

- 7.7.3 Within any youth justice system, the first opportunity for a young person to be exposed to custody is police custody. Being in police custody is largely understood to be when a police officer takes physical custody of a person, or when a person is held in the cells at a police station. This section is primarily concerned with the latter. In observance of the principle of custody being used as a last resort, it is important to examine what mechanisms are available and utilised to divert young people from police custody. Section 94 of the CYP Act states *'a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary'*.

81 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 51.

82 Holman & Ziedenberg, *The Dangers of Detention: The impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, USA (2006) 4.

83 Gatti, Tremblay & Vitaro, (2009) cited in Richards, K (2011) 'What makes juvenile offenders different from adult offenders?', *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, February 2011, 409 (2011) 7.

84 Victorian Department of Human Services, *Youth Justice Group Conferencing: Information for the young person* (2007).

85 Stubbs, (2009) cited in Vignaendra, S., Moffatt, Weatherburn, D and Heller, E., 'Recent trends in legal proceedings for breach of bail, juvenile crime and remand', *Crime and Justice Bulletin* Number 128, NSW Bureau of Crime Statistics and Research, (2009).

- 7.7.4 When a young person (without a warrant) comes to the attention of police, the first option available is to divert the young person from the youth justice system, as described in detail in Section 7.6 of this Chapter. Some of these mechanisms can be used without requiring the young person to enter police custody, for example, a verbal warning. However, most other diversionary options require the young person to be transported to the police station for the administration of the referral. It is unclear whether these young people are placed in police cells or not. In the Commission's view, young people being referred to a diversionary option should not be placed in police cells.

**Recommendation 7.16:** The ACT Police guidelines be updated to include a direction that young people being diverted from the youth justice system only be placed in police cells as a last resort. The level of compliance with this direction be reported in the ACT Police annual report.

- 7.7.5 If police elect not to exercise their discretion to divert in this way, their next option is to decide whether they prosecute the matter by way of summons or charge. Sections 212(1)(b) and 252J of the *Crimes Act 1900 (ACT)* stipulate that police are obliged to commence proceedings against young people by way of summons unless to do so would be ineffective in terms of ensuring attendance at court, prevention of further offending, ensuring the integrity of evidence and the safety of witnesses, and to ensure the safety and welfare of the young person. The issuing of a summons can be done by mail or by a young person accompanying police (technically in their custody) to the police station for administrative processing. Again, in the Commission's view, young people being dealt with by way of summons should not be placed in police cells.

**Recommendation 7.17:** The ACT Police guidelines be updated to include a direction that young people dealt with by way of summons only be placed in police cells as a last resort. The level of compliance with this direction be reported in the ACT Police annual report.

- 7.7.6 In 2008-2009, 20.6% (n=588) of all charges in the ACT were dealt with by way of summons. While national data sets on this issuing of summonses are not yet consistent or robust, it appears that other jurisdictions use summonses at a much higher rate, with NSW and Queensland using summonses for 33% of matters brought before the Court<sup>86</sup>, and West Australia, 27%.<sup>87</sup> Of particular concern in the ACT is that only 7.5% (n=44) of summonses issued were for charges brought against Aboriginal and Torres Strait Islander young people.<sup>88</sup>

**Recommendation 7.18:** The ACT Government introduce a mechanism that allows police to issue a summons to a young person without requiring their attendance at a police station.

### **Bail**

- 7.7.7 The ACT *Bail Act 1992* (the Bail Act) governs the decision making process police must adhere to when considering whether or not to release a young person from police custody. The options available at this juncture are to:
- Release the young person from police custody on unconditional bail, with an undertaking to appear at Court;
  - Release the young person from police custody on bail with conditions; or
  - Detain the young person in police custody by refusing bail. Exercising this option requires the police to then transport the young person to the ACT Childrens Court for the bail decision to be reviewed by a Magistrate.
- 7.7.8 Section 26 of the Bail Act requires the court or authorised person to have regard to the principles contained in s. 94 of the CYP Act, and to consider, as a primary consideration, the best interests of the child. While the Commission does not have data on the number, demographic and trends in relation to police decision-making regarding the granting or refusing of bail, the ACT Government's *Towards a Diversionary Framework* Discussion Paper indicates that more young people are being refused bail by the police.<sup>89</sup>

86 Luke, G., & Cunneen, C., *Aboriginal over-representation and discretionary decisions in the NSW Juvenile Justice System*, Criminal Justice Commission (1995) 82.

87 Bartholomew, P., *Preventative and Diversionary programs in Western Australia*, National Conference on Juvenile Justice.

88 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 13 at Appendix A.

89 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 8.

- 7.7.9 In 2009-2010, 558 young people were taken into police custody through arrest and 76 diverted from the youth justice system. This leaves 482 young people who were prosecuted by way of summons or charge.<sup>90</sup> Of those 482 young people, 182 were granted conditional bail requiring they respond to supervision by the Chief Executive of CSD.<sup>91</sup>

#### ***Breach of bail and remand***

- 7.7.10 It is clear from the data that young people subject to bail in the ACT are breached at a high rate. In 2009-2010, 83 young people were remanded in Bimberi for breach of bail. The data also indicates that many young people are subject to multiple periods of remand. In 2009-2010, there were 384 remand episodes for 170 young people. Of those 170 young people whose bail was breached, 80 had only one episode of remand; meaning 53% of young people granted bail had multiple episodes of remand. Almost half of the remand episodes following an alleged breach of bail were one to two days in length (49%), with a further 20% being three to seven days. The majority of these remand admissions to Bimberi occurred outside of business hours.<sup>92</sup>
- 7.7.11 In 2008-2009, offences against justice procedures, of which breach of bail is one, were the second most frequent offence young people were charged with, at 40.9% (n= 338) of all charges laid. This is reflected by the fact that breach of bail is the primary reason for the admission of young people into Bimberi.<sup>93</sup>
- 7.7.12 National data sets designed to compare each jurisdiction's performance show that the ACT is performing poorly in relation to the number of young people on remand. In 2008-2009, of the 163 young people who were admitted into Bimberi in that year, 161 (98.8%) were admitted on remand. Of the 14 young people in detention on an average day, 11 (73%) were on remand, up from 55% in 2005-2006. Comparatively, in June 2008, 59.6% of all young people detained nationally were on remand.<sup>94</sup>
- 7.7.13 In 2008-2009, the average length of time spent on remand detention was 25 days.<sup>95</sup> Of those young people held on remand in 2008-2009, 64% were Aboriginal and Torres Strait Islander young people, with their average length of time spent on remand being 54 days. The average length of time for non-Indigenous young people was 18 days.<sup>96</sup>
- 7.7.14 Nationally, more than half (53%) of remand periods served by young people in 2008-09 ended in the young people being granted bail.<sup>97</sup> This is particularly concerning in light of the body of evidence which demonstrates the negative impact incarceration, including remand, has on young people.
- 7.7.15 Nationally about one-fifth (21%) of remand periods were followed by a period of sentenced detention for the young person.<sup>98</sup> However, during this Review the Commission heard that only 7% of ACT young people on remand go on to receive a custodial sentence.<sup>99</sup> Even taking into account, as the ACT Government submission to the Review did, that time spent on remand may be a factor in the decision not to impose a custodial sentence, an unacceptably high number of young people are spending time unnecessarily in Bimberi.
- 7.7.16 Nationally, two primary explanations are put forward for the increase in remand: (a) more restrictive bail legislation; and (b) lack of appropriate accommodation options for young people experiencing homelessness.<sup>100</sup> Each is examined in turn below.
- 7.7.17 In terms of legislation, the Commission is concerned about the potentially unintended impacts of section 9F of the *Bail Act 1992 (ACT)* on young people's exposure to remand. Section 9F creates a presumption against bail for a person accused of a domestic violence offence unless the police officer is satisfied on the balance of probabilities that the person poses no danger to the alleged victim of the offence. In 2009-2010, 170 young people experienced an episode of remand,<sup>101</sup>

90 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 13 at Appendix A.

91 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 7.

92 Ibid.

93 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 50.

94 Ibid.

95 Ibid 15.

96 Ibid.

97 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 48 at Appendix A.

98 Ibid.

99 Presentation from Dr Debbie Rickwood at the HRC Commission-organised Community Forum, see Appendix C.

100 UnitingCare Burnside, *Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales*, Sydney: UnitingCare Burnside (2009).

101 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 7.

30 of whom were remanded for either family violence matters or alleged breaches of personal protection orders.<sup>102</sup> This means that 17.6% of all young people who experienced remand were either refused bail or unable to meet bail conditions associated with family violence offences. The average amount of time these young people spent on remand was two to three days.<sup>103</sup>

**Recommendation 7.19:** The ACT Government amend the *Bail Act 1992 (ACT)* to remove the presumption against bail for young people accused of domestic or family violence matters.

- 7.7.18 The Commission notes this recommendation was also made by the Australian Law Reform Commission and the former Human Rights and Equal Opportunities Commission in their 1997 report *Seen and Heard*.
- 7.7.19 In relation to the lack of appropriate accommodation options for young people experiencing homelessness, the Commission heard repeatedly that this was one of the major reasons young people were being held in Bimberi on remand. Most young people remanded were either waiting for accommodation to be found, or had their bail breached for leaving or being discharged from the accommodation they had been directed to reside at. One participant commented that Bimberi was:  
*'largely being used as crisis accommodation.'*
- 7.7.20 Chapter 11 (housing) assesses the provision of housing for vulnerable young people and makes recommendations for increased investment and support.
- 7.7.21 In regard to the application of the Bail Act, the Commission heard from many participants that bail conditions imposed on young people by police and Courts were variously too onerous, too welfare oriented or too unrealistic. Bail conditions that were considered too onerous were those that did not reflect the young person's level of risk of re-offending. Participants were concerned that low risk offenders were being drawn further into the youth justice system through supervision and other conditions. It was alleged that onerous bail conditions increased young people's chances of an episode of remand in Bimberi.
- 7.7.22 Bail conditions that were considered to be too welfare oriented included conditions to attend school or not drink alcohol. These were seen by participants as attempts by the police or Courts to case manage young people, rather than ensure their attendance at court. Questions were raised about the necessity of these conditions, particularly when young people were often required to follow directions of their CYJ case manager, which would reasonably include such things as attending school and not drinking alcohol.
- 7.7.23 Examples of bail conditions that were considered too unrealistic included: a young person prohibited from going to a particular bus interchange when going through that interchange was the only way the young person could get to services and supervision; and a young people not being able to leave home unless in the company of his/her parents, which resulted in that young person being unable to attend appointments. The Australian Law Reform Commission and former Human Rights and Equal Opportunity Commission recommended in their report *Seen and Heard* that:  
*'children should not be subject to inappropriate bail conditions, such as 24 hour curfews, that disrupt their education and have the effect of forcing constant contact with their families or that impose policing roles on carers.'*<sup>104</sup>
- 7.7.24 Overall, participants were concerned that onerous, welfare oriented and/or unrealistic bail conditions may result in a young people's non-offending behaviour being criminalised. Examples provided included young people's bail being breached for not attending school, or being out of the family home without a parent. Many participants advocated for fewer bail conditions, suggesting that the only conditions of bail imposed by police or Courts should be reporting/supervision, residing as directed, and staying away from the victim/s, where relevant.
- 7.7.25 Recent research suggests that overly strict bail laws and conditions are generally ineffective in reducing crime. In NSW, changes to the NSW Bail Act and stricter enforcement of bail laws by police contributed to a 32% increase in the remand population with no decrease in juvenile property crime.<sup>105</sup>
- 7.7.26 A number of participants in the Review made suggestions as to how more information can be provided to police and Courts to ensure bail conditions better reflect young people's needs and risks, being (1) risk assessments, and (2) increased engagement with the community, particularly community workers.

<sup>102</sup> Ibid 28.

<sup>103</sup> Ibid.

<sup>104</sup> Recommendation 228.

<sup>105</sup> Virginia, S., Moffatt, S., Weatherburn, D., & Heller, E., 'Recent trends in legal proceedings for breach of bail, juvenile remand and crime', *Contemporary Issue in Crime and Justice, No 128*. NSW Bureau of Crime Statistics and Research, (2009).

- 7.7.27 In relation to risk assessment, the Commission notes that CSD has purchased the Youth Level of Service/Case Management Inventory (YLS/CMI) assessment tool. While this tool is yet to be broadly implemented, participants believed that the intended application of YLS/CMI to all young people subject to CYJ bail supervision would allow more informed drafting of bail conditions.
- 7.7.28 Participants also felt that CYJ needed to consult more with a young person's existing community support workers when suggesting bail conditions, particularly with Aboriginal or Torres Strait Islander young people. As one participant commented:
- 'Community workers often have information and details regarding the family or household which render certain [bail] conditions pointless and unrealistic. Many community service workers are available and willing to provide support to young people on bail, however are currently only involved at the end of the process when information which would have prevented a breach of bail cannot be submitted.'*
- 7.7.29 In terms of providing information regarding risk assessments and community supports to the police, CYJ only operates during business hours and the majority of remand admissions to Bimberi for breach of bail occurred outside of business hours.<sup>106</sup> Research shows that one of the most significant obstacles facing young people in being granted bail and meeting bail conditions is access to afterhours support services, which take into account the times when young people are most likely to breach their bail.<sup>107</sup>
- 7.7.30 The ACT Government's *Towards a Diversionary Framework for the ACT* Discussion Paper explored the possibility of a Diversion from Custody Support Service, similar to that operating in Victoria.<sup>108</sup> Such a service would be established for young people in police custody after hours. The Commission supports the introduction of such a service. Similar to the Victorian model, the Commission suggests that consideration be given to requiring Diversion from Custody Support Service staff to attend police stations for the purposes of conducting assessments (risk and housing), advocating for young people, liaising with the young person's family or other supports, providing or arranging transport, and making decisions as to the use of brokerage funds.

**Recommendation 7.20:** The Community Services Directorate establish a Diversion from Custody Support Service for young people in police custody after hours.

- 7.7.31 Regarding the provision of information to the Court on risk assessments, in the Commission's view, the pro-forma pre-sentence report is overly deficit and compliance based. The implementation of the YLS/CMI assessment tool will go some way to providing a more balanced view of the young person, including their strengths and the resources and opportunities available to them. Participants believed that the intended application of YLS/CMI to all young people subject to CYJ bail supervision would allow for more informed drafting of bail conditions.

**Recommendation 7.21:** The Community Services Directorate use Youth Level of Service/Case Management Inventory (YLS/CMI) risk assessments to assist ACT Police and the ACT Childrens Court draft bail conditions for young people.

**Recommendation 7.22:** The Community Services Directorate redraft the pro-forma pre-sentence report used by Community Youth Justice to better reflect the strengths of young people and the opportunities and resources available to them.

- 7.7.32 Once a young person has been granted bail, participants suggested improvement to the way compliance can be supported and monitored by CYJ staff. Northside Community Services' submission stated:
- 'In 2009-2010, the Aboriginal and Torres Strait Islander Unit of [adult] Corrective Services saw a 58% decrease in breaches of bail stemming from reporting requirements. This decrease was largely due to an increase in outreach visits by corrective services workers. This approach enabled individuals to meet reporting requirements without travelling into the city or to court'*

106 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 50.

107 McCord, C., Spatz Widom, Crowell eds, *Juvenile crime, Juvenile Justice*, Panel on Juvenile Crime: Prevention, Treatment and Control, Committee on Law and Justice and Board on Board, Youth and Families, National Academy Press Washington DC, (2001) 223.

108 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 16.

*by encouraging joint meetings at community centres or at the individual's home. Current Youth Justice processes do not allow for joint outreach visits by CYJ and existing support workers, or for community organisations to facilitate reporting visits at their premises. This innovation would not only reduce the number of missed appointments and subsequent breaches in bail, but would also introduce community programs /workers which may support the young person in the future.'*

- 7.7.33 The Commission supports this innovation, and builds on it by suggesting that the supervision of young people assessed as low risk of re-offending could be 'outsourced' to community services providers, especially Turnaround, Youth Connections, and those funded under the YFSP Framework. These secondary and tertiary prevention services could assume many of the supervision and support roles currently provided by CYJ to this group. Low risk offenders would still be monitored by CYJ workers but only in relation to compliance. Such a model would:
- Reduce contact with the youth justice system by young people assessed as low-risk of offending;
  - Allow CYJ to focus more attention and resources on the case management, rehabilitation and supervision of young people assessed as higher risk of offending; and
  - Build stronger relationships between CYJ and the community service sector.

**Recommendation 7.23:** Community Services Directorate develop and implement a model of supervision that allows Community Youth Justice workers to undertake outreach visits to young people in the community to, among other things, satisfy the reporting condition of a young person's bail.

**Recommendation 7.24:** Community Services Directorate 'outsource' the supervision and support of low risk offenders to community service providers, particularly those funded under the Youth and Family Support Program Framework.

- 7.7.34 In the ACT, police have the power to arrest (without warrant) if they believe a young person has breached or will breach a condition of their bail. The exercise of this discretion, along with other police discretionary decisions mentioned in this section, are not subject to legislative guidance, but rather police guidelines and local operating procedures which are not publicly available. The Commission is concerned that these police guidelines are only now being updated to reflect the legislative changes introduced by the HR Act and the CYP Act.

**Recommendation 7.25:** ACT Police finalise updating the police guidelines in relation to the legislative changes introduced by the *Human Rights Act 2004* and *Children and Young People Act 2008*, and ensure all police officers receive training on the new guidelines.

- 7.7.35 For young people supervised by the Chief Executive of CSD, their bail can be breached when their CYJ worker becomes aware of a possible or actual non-compliance with bail. The Bail Act is silent on the powers of the Chief Executive regarding action to be taken in relation to an alleged breach of bail. The Commission was told that CSD was drafting policy guidelines. However, participants stated that these Guidelines had been in draft for an extended period of time, were not the subject of communication or training, and were not embedded into practice. As a result an inconsistency in approach between CYJ workers was reported by participants.

**Recommendation 7.26:** The Community Services Directorate finalise guidelines on what Community Youth Justice case managers need to consider when exercising discretion to breach a young person's bail, and ensure all case managers receive training on the new guidelines.

### *Diverting young people from detention: the importance of sentencing*

- 7.7.36 Rule 17 of the Beijing Rules requires the following principles to govern the sentencing of young people:
- The reaction shall always be in proportion not only to the circumstances and gravity of the offence, but also to the circumstances and needs of the juvenile as well as to the needs of the society;
  - Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

- Deprivation of personal liberty shall be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response; and
- The wellbeing of the juvenile shall be a guiding factor in the consideration of his or her case.

7.7.37 Article 40 of the CROC requires that children found to have infringed the law must be treated in the same manner that is consistent with the promotion of the child's sense of dignity and worth. Together with Article 37, which requires that detention be used only as a last resort, this provision clearly requires priority to be given to the use of non-custodial or community-based measures as an alternative to detention. In addition, Article 40(4) of the CROC provides that:  
*'A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offence.'*

### Current practice

- 7.7.38 In 2008-2009, 485 defendants were finalised in the ACT Childrens Court. Of those young people, 8.7% (n=42) were acquitted, 57.7% (n=280) were proven guilty (by plea or hearing), 1.2% (n=6) were transferred to other courts, and 0.8% (n=4) were 'other'.<sup>109</sup> This section of the Report examines the utilisation of sentencing options for those who were proven guilty.
- 7.7.39 During the most recent data period (the quarter ending September 2008) there were 216 pleas in the ACT Childrens Court, 150 of which were pleas of guilty. 50% of the guilty pleas had convictions recorded (n=74), with no conviction recorded for the other half (n=76).<sup>110</sup>
- 7.7.40 In comparison to the national average, a high proportion of matters before the ACT Childrens Court were withdrawn. Nearly 33% of adjudications were withdrawn in 2008-2009 in the ACT, compared with the national figure of 10%.<sup>111</sup>

**Recommendation 7.27:** The Director of Public Prosecution determine the reasons why so many adjudications are being withdrawn in the ACT Childrens Court and take any corrective action that may be warranted.

- 7.7.41 After a guilty plea has been entered or adjudicated, the Court has a choice to divert the young person from the youth justice system by way of referral to restorative justice conferencing. This is discussed in detail at paragraph 7.6.21 of this chapter.
- 7.7.42 If the Court elects not to divert a young person in this way, there are a number of sentencing options available to the court to divert the young person from custody. These options are laid out in the *Crimes (Sentencing) Act 2005 (ACT)*. Chapter 8A of the Act of the sets out the provisions that apply to the sentencing of young people.

### Pre-sentence assessment

- 7.7.43 To assist the Court in its deliberations on sentencing options, the court requests, or in some cases is required to request, a pre-sentence report prepared by CSD.<sup>112</sup> As discussed previously in this Chapter, in the Commission's view, the pro forma pre-sentence report is overly deficit and compliance based. The Commission believes these reports should be reframed to better reflect the YLS/CMI risk assessments, as well as young people's strengths and the opportunities and resources available to them, and has made a recommendation to that effect in recommendation 7.22.
- 7.7.44 Prior to sentence a Magistrate may refer a young person for further assessments than those contained in the pre-sentence report. One such option is the Court Alcohol Drug Assessment Service (CADAS), which commenced in the ACT Childrens Court in 2002. The CADAS is a pre-sentencing and sentencing treatment option for clients charged with alcohol and other drug (AOD) related offences. The CADAS clinician is located at the Court, and provides an immediate AOD assessment, and recommends an appropriate treatment plan. If the young person is released on bail to comply with the treatment plan, the

109 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 21, Appendix A.

110 Ibid 25.

111 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 57 at Appendix A.

112 The Crimes Sentencing Act requires that pre-sentence reports for young people are prepared by the Chief Executive CSD. In most cases a report is discretionary, but a report must be ordered when the court is considering periodic detention or a good behaviour order involving community work or a rehabilitation program.

CADAS clinician monitors attendance, and reports all outcomes to the Court. Non-compliance is reported directly to a Court and may be taken into account at sentencing.

7.7.45 In their submission to this Review, the Alcohol Tobacco and Other Drug Association noted that:

*'Whilst CADAS referrals have remained fairly steady, averaging about 40 young people . . . per year since 2003 / 2004, this number has decreased since March 2010. Since September 2010 there has only been one referral for assessment from the Children's Court Magistrates which was received in March 2011.*

*ATODA understands that the reason for such a dramatic reduction in referrals is not clear. It will be important that the Diversionary Framework provide strategies to ensure that current barriers to referral (including limited awareness, perceptions of efficacy, feedback loops, etc) are included so that the programs the ACT currently has are being effectively utilised.'*

**Recommendation 7.28:** The Community Services Directorate and the Health Directorate work with the ACT Childrens Court to determine why recommendations by the Court Alcohol Drug Assessment Service for referral are not being implemented.

7.7.46 In April 2011, a six month trial commenced where all youth justice alcohol and drug treatment referrals will go through to CADAS. This trial has been developed in partnership between CSD, ACT Health, the Gugun Gulwan Aboriginal Corporation and the Ted Noffs Foundation. In their submission to the Review, the Alcohol Tobacco and Other Drug Association expressed optimism for the trial on the basis that it will create opportunities to significantly improve the likelihood of young people benefiting from uptake of alcohol and other drug services.

7.7.47 The Commission understands the ACT Childrens Court is considering introducing a Youth Drug and Alcohol Court and that a practice direction has already been drafted. The Alcohol Tobacco and Other Drug Association is supportive of this proposal, as is the Commission. The Commission notes some of the components for a drug court already exist in ACT, being: the legislative ability to make deferred sentencing orders, and a centralised drug and alcohol assessment and monitoring team in CADAS. These components, coupled with the care teams proposed as part of the new case management model recommended in Chapter 8, would bring together the necessary supervisory, criminogenic, psycho-social and community aspects of a drug court model.

**Recommendation 7.29:** The Justice and Community Safety Directorate, in partnership with other Directorates, consider implementing and evaluating a two year pilot of a Youth Drug and Alcohol Court.

#### *Non-custodial sentences*

7.7.48 When the Court elects to sentence a young person, a number of non-custodial options are available. Almost all young people who were found guilty in the Childrens Court in 2008-2009 were placed on a non-custodial order (95.7%). The most common order was a good behaviour bond (45.7%). This varies from what has occurred previously in the ACT and what is occurring nationally, where the proportion of non-custodial sentences is relatively evenly distributed across community supervision/work orders, monetary orders, good behaviour bonds and other types of non-custodial sentences.<sup>113</sup> These sentencing decisions have contributed to the ACT having the second highest rate nationally of young people being under community-based supervision.

7.7.49 Aboriginal and Torres Strait Islander young people are over-represented in community supervision in the ACT.<sup>114</sup> Aboriginal or Torres Strait Islander young people are approximately 12 times more likely to be under supervision on an average day than their non-Indigenous counterparts. Of the 200 young people under community based orders in 2008-2009, 17.5% (n=35) were Aboriginal and Torres Strait Islander.<sup>115</sup>

<sup>113</sup> Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 25 at Appendix A.

<sup>114</sup> Australian Institute of Health and Welfare, *Juvenile justice in Australia 2007 – 2008* (2009)

<sup>115</sup> Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 29 at Appendix A.

- 7.7.50 Participants in the Review felt that the Courts referred young people to CYJ supervision too readily. As one participant reported:

*'A young person with a first offence might be put on a 12 month supervision order and then they come in and meet all the other young people and get better at crime. It also puts them at risk of breaching for things like not attending school, when the original offence may not have been that serious. The YLS/CMI suggests that those kids at low risk should be kept away from the system as far as possible. The courts are sending kids here for minor matters, misguided referrals and then if we breach them they end up in Bimberi.'*

- 7.7.51 For Aboriginal and Torres Strait Islander young people there is an additional sentencing option – the Galambany Circle Sentencing Court. The Commission welcomes the recent budget measure that provides for funding for the Galambany Circle Sentencing Court panel members. The Galambany Circle Sentencing Court has the same sentencing powers as the ACT Childrens Court. Participants at the Circle may recommend any sentence they see fit, including a period of incarceration. Where the young person consents to the sentence recommended by the Circle, the Magistrate remands the offender for sentence in Court. Where the young person does not consent, the charges are referred back to the Court to be dealt with. Sentencing focuses on imposing an appropriate sentence that considers a healing process, moving on from the offence, and helping the young person address a range of issues that include education, health, housing, rehabilitation and unemployment.<sup>116</sup>
- 7.7.52 The referral of Aboriginal and Torres Strait Islander young people to the Galambany Circle Sentencing Court commenced in 2009-2010. In that period eight young people were referred to the circle court. From that period date, two young people have been referred to the circle court.<sup>117</sup> Data on young people at the ACT Childrens court is not disaggregated by Aboriginal and Torres Strait Islander status. Therefore, it is not possible to calculate the percentage of those Aboriginal and Torres Strait Islander young people before the Court who are referred to the Circle. The Commission makes recommendations on data collection by the Court in Chapter 6 (evidence based practice).

#### **Custodial sentences**

- 7.7.53 The last resort available to the court is to sentence a young person to a custodial order. Only a small proportion (3.9%) of young people found guilty in the ACT Childrens Court received a custodial sentence during 2008-2009. In that year, no young people received custody in a correctional institution, 2.5% received custody in the community, and 2% received a fully suspended sentence. As at June 2009, one third (n=3) of young people in Bimberi were sentenced.<sup>118</sup>
- 7.7.54 Aboriginal and Torres Strait Islander young people are over-represented in detention in the ACT.<sup>119</sup> However, data on young people at the ACT Childrens Court is not disaggregated by Aboriginal and Torres Strait Islander status. It is therefore unclear what proportion of young people adjudicated by the Court are Aboriginal and Torres Strait Islander. Collecting this data is important given the over-representation of Aboriginal and Torres Strait Islander young people in detention, and would allow greater analysis into the stages at which the over-representation of Aboriginal and Torres Strait Islander young people becomes entrenched.<sup>120</sup>

#### **Continuing education of police and court officers**

- 7.7.55 The effectiveness of the ACT's diversionary strategy is almost fully dependant on the actions of individuals and agencies outside the control of CSD. ACT Police exercise a significant degree of discretion which contributes to the number of young people coming into contact with or entering the youth justice system. The exercise of this discretion is not subject to legislative guidance, but rather police guidelines and local operating procedures which are not publically available. Many participants in this Review felt ACT Police were not as informed about prevention and diversion options as they would like them to be.
- 7.7.56 Similar concerns were expressed in relation to the ACT Courts and the officers within. Judges, Magistrates, the DPP, Legal Aid, Aboriginal Legal Services and the private legal profession each can have a determining influence over a young person's diversion from and progression through the youth justice system.

116 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 45.

117 Ibid.

118 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 25 at Appendix A.

119 Australian Institute of Health and Welfare, *Juvenile justice in Australia 2007 – 2008*, (2009)

120 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 57 at Appendix A.

**Recommendation 7.30:** The Community Services Directorate:

- Work with the National Judicial College to develop and implement an annual training program for judges and magistrates on issues relevant to youth justice, including, for example, child development; Aboriginal and Torres Strait Islander culture; the structural causes of youth offending; the What Works principles; the provision of case management to young people involved in the youth justice system; the YSL/CMI risk assessment tool; the new Youth and Family Support Program Framework; and available supported accommodation services.
- Develop and implement an annual education program for the ACT Police, Director of Public Prosecution, Legal Aid, Aboriginal Legal Services and the private legal profession on a range of issues relevant to youth justice, including: child development; Aboriginal and Torres Strait Islander culture; the structural causes of youth offending; the What Works principles; the YLS/CMI risk assessment tool; the new Youth and Family Support Program Framework; and available supported accommodation services.

## 7.8 An integrated diversion system for children and young people

- 7.8.1 Respondents to the Diversionary Framework consultations and participants in this Review expressed concern that the ACT Government was undertaking a fragmented or piecemeal approach to the development of a more effective diversionary framework.<sup>121</sup> In its consultation report on the *Towards a Diversionary Framework for the ACT Discussion Paper*, Noetic Solutions called for a whole-of-ACT strategy on youth diversion that applied across ACT Government agencies and non-government service providers.<sup>122</sup> Respondents and participants agreed with this suggestion, calling for a diversionary framework that includes clear objectives, with indicators and targets for specific types of diversion. Stakeholders also called for investment in evaluation to ensure that diversionary strategies were meeting their stated objectives, and governance models that allowed the Framework to be monitored by the range of stakeholders involved.
- 7.8.1 The Commission supports these views and recommends that the ACT Government develop a comprehensive diversion plan. In the Commission's view, the diversion plan should clearly state:
- How the diversion plan furthers the statement of purpose for the ACT youth justice system;
  - A vision for diversion in the ACT;
  - The values and principles the system will apply in achieving that vision;
  - A definition of diversion;
  - A set of objectives drawn from an evidenced-based theory of change;
  - The role and capabilities of Government in achieving these objectives (whole-of-government);
  - The role and capabilities of the community sector in achieving these objectives (whole-of-community);
  - The role and capabilities of young people and their families in achieving these objectives (whole-of-community);
  - The outcomes measures and performance indicators Government agencies and community providers will pursue in order to collectively contribute to the objectives;
  - The governance arrangements for the plan which reflect a whole-of-Government and whole-of-community approach, and allow for meaningful participation of Aboriginal and Torres Strait Islander people;
  - A commitment to improving diversionary outcomes for young Aboriginal and Torres Strait Islander people;
  - A commitment to continuous improvement through evaluation, action learning and innovation; and
  - The relationship between this strategy and the Canberra Social Plan, the CSD service delivery platform, the ACT Children's Plan 2010-2014, the ACT Young People's Plan 2009-2014, the ACT Prevention Plan (recommended above), the YFS Framework, and the ACT Aboriginal Justice Agreement 2010-2013.

**Recommendation 7.31:** The ACT Government works with key stakeholders to develop an ACT Diversion Plan.

121 Murphy, P., Victorsen, D., & Richards, S., *Consultations: Towards a Diversionary Framework for the ACT Discussion Paper*, Noetic Solutions, April 2011 (2011) 32.

122 Ibid 33.

## 7.9 Justice reinvestment

- 7.9.1 The ACT Government is expecting a great deal from an improved diversionary framework. The ACT Budget for 2011-2012 sees the forecasted expenditure on 'enhanced youth justice services' at Bimberi dramatically fall by almost two thirds, from \$1,435,000 in 2013 to \$538,000 in 2015. The Government believes this reduction in expenditure will be driven by the effectiveness of the diversionary framework, reducing the number of young people at Bimberi, particularly those on remand. The Commission is concerned about how realistic these expectations are and urges the Government to retain the 2013 levels of expenditure for at least a further two years and reduce the projected expenditure on a more graduated sliding scale.
- 7.9.2 The anticipated budget savings generated by effective diversion strategies gives rise to the consideration of a justice reinvestment approach in ACT. As the name suggests, justice reinvestment, is premised on reinvesting public funds currently allocated to dealing with the consequences of crime, and redirecting them to address the causes of crime through investment in prevention and diversion strategies. Evidence from jurisdictions who have adapted justice reinvestment indicates that justice investment is an effective means of achieving measureable benefits in reduced crime, reduced cost to Government, and the associated long term benefits to the community.

### Evidence base

- 7.9.3 Justice reinvestment as a social policy was pioneered in the United States and a body of evidence now exists to demonstrate the effectiveness of the approach. In their report to the NSW Government, Noetic Solutions summarised the US evidence in the following way:
- 'The avoidance of future prison construction in Washington State through evidence based options for adult corrections programs, juvenile corrections programs, and prevention has saved approximately \$2 billion and reduced crime rates. Justice reinvestment has been adopted in a number of states including Arizona, Connecticut, Kansas, Michigan, Nevada, New Hampshire, Ohio, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin. For example, Kansas has experienced a 7.5% reduction in their prison population, and the re-offending rate for people on parole has dropped by 35% since adopting Justice Reinvestment. Additionally, Oregon has reduced youth incarceration by 72%, which is the biggest ever decrease in juvenile detention according to the National Centre for Juvenile Justice.'*<sup>123</sup>
- 7.9.4 A major publication produced in the United Kingdom, *Backing the Future*, makes a compelling case for significant investment in prevention services for children and young people. It argues that targeted interventions for the most vulnerable children will deliver wide benefits to society, reduce the need to deal with the impact of problems later, and break the intergenerational cycle of deprivation.<sup>124</sup> Importantly, the evidence shows that the most effective programs are those delivered and administered in the community, as opposed to the youth justice systems.
- 7.9.5 In practice, effective justice reinvestment is the integrated investment in and delivery of programs such as: nurse home visits, mental health assessments for new mothers, parenting education, two days a week of early education before starting kindergarten, restorative justice for low-risk offenders, Aggression Replacement Training, Multi-systemic Therapy, Functional Family Therapy and Multidimensional Treatment Foster Care and youth drug courts.<sup>125</sup>
- 7.9.6 Effective implementation of justice reinvestment programs requires a commitment to long term reinvestment and staged implementation. The Noetic Report to the NSW Government stated:
- 'A Justice Reinvestment approach will have the greatest return on investment over an extended timeframe such as 10 years. This is because the majority of diverted funds will target earlier intervention, including broader care and protection issues for children and families. This will have a greater likelihood of preventing children and young people from entering the juvenile justice system, but will of course have a longer lead time to realise the benefits of the investment.'*<sup>126</sup>
- 7.9.7 The UK's *Backing the Future* report recommends a staged approach to implementation, whereby immediate investment is first made in young people at high risk, delivering short term results. Subsequent to that, investments are made to embed and broaden the improvements through deeper structural change.

123 Murphy, P., McGinness, P., Balmarks, A., McDermott, T., and Corriea, M., *A Strategic Review of the New South Wales Juvenile Justice System: Report to the Minister for Juvenile Justice*, Noetic Solutions (2010) 190.

124 Murphy, P., McGinness, P., Balmarks, A., McDermott, T., and Corriea, M., *A Strategic Review of the New South Wales Juvenile Justice System: Report to the Minister for Juvenile Justice*, Noetic Solutions (2010) 190.

125 Ibid.

126 Ibid.


- 7.9.8 In the US, effective justice reinvestment policies have been implemented using a data-driven four phase approach that comprises:
- **Step 1: Analyse.** Reviewing detention admission data to determine what is driving increases in the population. Geographic analysis is used to identify communities that have disproportionate numbers in detention, and how money is being spent on programs and services.
  - **Step 2: Provide.** Generating various options that consider the characteristics of the state's justice system and tailor them to better manage the growth in detention population and increase public safety. These options include strategies to prevent offending, reduce re-offending, focus community-supervision and holding offenders accountable for the successful completion of programs such as drug treatment and job training.
  - **Step 3 Quantify.** Determine how much can be saved, and how much investment can be avoided, through adopting options identified in Step 2. Plans are developed for reinvesting a portion of these savings in new or enhanced initiatives in local communities.
  - **Step 4: Measure.** Setting performance measures and projected outcomes, for example, costs saved or avoided, re-offending rates, and indicators of community capacity. This may also involve establishing systems that can collect and analyse data and provide periodic reports to policy makers. These reports can be used to determine whether initiatives are being implemented effectively, and as a result, expected benefits are being realised, to determine whether adjustments need to be made.<sup>127</sup>

### *The potential application of justice reinvestment in the ACT*

- 7.9.9 A number of participants in the Review advocated for the adoption of a justice reinvestment approach in the ACT. One participant felt:
- 'we should have invested in the youth justice system as a whole before building a new detention centre. Bimberi was seen as the shining light of the youth justice system but detention alone can never achieve the goals of youth justice. We need to look at early intervention and intervention at all stages before incarceration, every avenue to keep young people out of detention. I think there has been an investment in detention at the expense of investment in community services. We need avenues for early support. The Territory as a whole needs a plan for youth justice. We need to review and invest in community services and determine what should be provided by government and what could be done in the community.'*
- 7.9.10 In the Commission's view, justice reinvestment is a viable policy option for the ACT. The size of the ACT jurisdiction and the anticipated budget savings from custodial services as a result of effective diversionary strategies are such that a reorienting of policy and programs is not only possible, but likely to be easier and more effective than in larger jurisdictions. If a justice reinvestment approach were adopted in the ACT, the Commission anticipates significant benefits being realised, namely:
- Long term cost savings for the ACT Government and community;
  - More effective supports and resources being targeted to children, young people and families at risk of social exclusion;
  - Targeted investment of resources in children and young people at greater risk of offending ;
  - A safer and more cohesive community through a reduction in offending and re-offending rates;
  - A reduction in the number of young people in detention, which will prevent a repeat of the difficult circumstances within Bimberi last year; and
  - A reduction in the over-representation of Aboriginal and Torres Strait Islander young people in detention and community supervision.
- 7.9.11 The Commission views the commissioning of this Review into the ACT youth justice system as a unique opportunity for the ACT Government to signal a change in justice policy by adopting a justice reinvestment approach. In the Commission's view, investing over the long term in an integrated prevention and diversion strategy will provide the best opportunity to reduce offending (and re-offending) and deliver significant long term benefits to the ACT community.

**Recommendation 7.32:** The ACT Government adopt a long-term Justice Reinvestment Strategy that addresses the underlying causes of crime.

127 Murphy, P., McGinness, P., Balmarks, A., McDermott, T., and Corriea, M., *A Strategic Review of the New South Wales Juvenile Justice System: Report to the Minister for Juvenile Justice, Noetic Solutions* (2010) 190.



7.9.12 In particular, the Commission anticipates significant benefits would flow to the ACT's Aboriginal and Torres Strait Islander community. Aboriginal and Torres Strait Islander young people are over-represented in the ACT in both community supervision and detention, and under-represented in their access to diversionary options. A justice reinvestment response would allow for a specific, partnership response to address these circumstances. The foundations for such a partnership response are already laid by:

- The work being undertaken by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) to progress justice reinvestment within the ACT; and
- The existing commitment and mechanisms created by the 2010 released *ACT Aboriginal Justice Agreement 2010-2013*.

7.9.13 In the Commission's view, a specific justice reinvestment response for the Aboriginal and Torres Strait Islander community must:

- Be designed and delivered in partnership with the Aboriginal and Torres Strait Islander community; and
- Must be informed by a clear understanding of the current levels of investment in the programs and services currently being delivered to the Aboriginal and Torres Strait Islander community, including levels of service engagement.

**Recommendation 7.33:** The ACT Government develop meaningful mechanisms to partner with Aboriginal and Torres Strait Islander communities to design and deliver a long-term Justice Reinvestment Strategy that will reduce offending by Aboriginal and Torres Strait Islander young people. Consideration be given to conducting a thorough 'mapping' of all programs and services offered to Aboriginal and Torres Strait Islander communities, including the level of engagement by Aboriginal and Torres Strait Islander people.