



Legislative Assembly of New South Wales

Law and Safety Committee

Report 2/56 – September 2018

THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NEW SOUTH WALES



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Chair's Foreword

It has been a privilege to chair the Law and Safety Committee's inquiry into the adequacy of youth diversionary programs in NSW.

The Committee has consulted widely, receiving 28 written submissions and conducting three days of public hearings. The Committee recognised the importance of seeing issues first-hand and also conducted site visits to three of the State's Juvenile Justice centres in Wagga Wagga, Dubbo and Airds speaking directly with staff and detainees about the things that could be done better to get young offenders back on track, and divert them from criminal behaviour.

The over-representation of Aboriginal young people in the Juvenile Justice system was a particular concern for the Committee, about which it is anxious to see progress. It was therefore another highlight for the Committee to be able to visit the Youth Koori Court at Parramatta during its inquiry, observing proceedings and speaking with the magistrates, Aboriginal elders and other personnel instrumental in its processes. The Committee's visit confirmed all that it had been told about the Youth Koori Court: it is a culturally appropriate initiative that is assisting to address the underlying causes of offending, and initiatives like this must be supported and expanded.

The factors that lead to youth offending are complex and the Committee's consultations have culminated in a wide-ranging report that calls for change in a variety of areas. All up, the Committee makes 17 findings and 60 recommendations in areas that span youth justice procedure; court and police practice; health; mental health; disability; drug and alcohol rehabilitation; education; vocational training; housing; transport; children's services; reducing Aboriginal over-representation in the Juvenile Justice system; and coordination between Government and the non-government sector in the delivery of diversionary efforts. It is the Committee's hope that these recommendations will help turn young lives around and prevent entrenchment in the criminal justice system.

I'd like to take this opportunity to thank all the stakeholders who assisted the Committee with its inquiry including legal experts; Government agencies; Juvenile Justice centre staff; peak bodies; community groups; Aboriginal groups; non-government organisations and academics.

In particular, I'd like to thank the current and former detainees who spoke with the Committee for the purposes of its inquiry. The Committee considered it vital that young people's voices be heard as part of the inquiry, and case studies for some of these young people form an important part of the report.

Finally, I'd like to thank my fellow Committee members and the Committee staff for their valuable work for the inquiry. I commend the report.



Geoff Provest MP
Chair

Executive Summary

On 21 September 2017, the Committee resolved to conduct an inquiry into the adequacy of youth diversionary programs to deter juvenile offenders from long-term involvement with the criminal justice system.

Chapter One notes that the diversionary options available to young people in NSW seek to prevent them from entering and being detained in the criminal justice system, and to deter them from long-term involvement with the criminal justice system. It explains that in conducting its review of diversionary programs and efforts, the Committee has taken a broad view and considered diversionary options at every stage of a young person's life: early intervention options; pre-court diversion options; pre-sentence diversion; and post-conviction diversion.

The Chapter further outlines the legislative framework for the diversion of young offenders in NSW, and discusses many of the diversionary programs and efforts that are available to young people in NSW.

Chapter Two explores diversionary legislation, youth justice procedure and police interaction with diversionary programs and efforts, and the Committee makes recommendations to promote the diversion of young people from the criminal justice system wherever possible.

For example, the Committee makes recommendations for the NSW Government to consider changes to the *Young Offenders Act 1997* to make it easier for police and courts to divert young people using warnings, cautions and youth justice conferences. It also recommends that the NSW Government examine whether the current age of criminal responsibility and the age at which a child can be detained should be increased in NSW, in response to concerns from many stakeholders that the current age of 10 years is too low.

During its inquiry the Committee also heard concerns that the NSW Police Force's Suspect Targeting Management Plan (STMP) is undermining efforts to divert young people from the criminal justice system. There were a number of calls for Police to stop applying STMPs to anyone under 18 years.

The Committee finds that while the STMP is an important community safety tool that should be retained, every effort should be made to ensure that it does not undermine youth diversionary efforts. The Committee notes evidence that increased police monitoring of young people under the STMP can be perceived by those young people as unfair and arbitrary and can cause poor relations between police and young people, especially given that the STMP policy and criteria for placement on an STMP has not been made publicly available.

To improve transparency and accountability, the Committee has recommended that the STMP policy and high level operational arrangements be made publicly available. In making this recommendation it has stressed that Police should not be required to release any material that would compromise individual investigations. It has also recommended that the NSW Police Force introduce guidelines about the way in which STMPs are policed for those under 18 years to limit confrontational practices and language and reduce the risk of unnecessary escalation.

Chapter Three explores issues surrounding access to youth diversionary options in NSW, and the appropriate tailoring of diversionary efforts to both individuals and groups. It also reviews the adequacy of some of the prominent diversionary efforts of the NSW Government's Justice Cluster.

The Committee finds that young offenders' access to diversionary options varies across NSW with those who have committed an offence in a regional area less likely to be diverted from the criminal justice system than those who have offended in a metropolitan area.

The Committee makes a number of recommendations to increase police and courts' use of diversionary options under the *Young Offenders Act 1997*, regardless of location. These include recommendations that each Police Local Area Command employ a full time youth liaison officer; and that the NSW Government fund the appointment of at least three additional specialist children's magistrates so that more criminal matters in regional NSW are heard by magistrates with appropriate expertise.

The Committee also discusses the need to increase the availability and quality of diversionary programs and efforts in regional NSW and recommends that Juvenile Justice NSW conduct an audit of youth justice conferencing across the State to determine whether more conference convenors or other resources are needed to better support the process in regional areas.

On the subject of tailored diversionary efforts, the Committee notes that to be effective, diversionary efforts must be appropriately tailored to the groups and individuals they are targeting. The Committee recommends that the NSW Government review whether there need to be more gender-sensitive options and finds that it should consider whether there is a need for more options targeted to young people from culturally and linguistically diverse communities.

Regarding Justice Cluster diversionary efforts, the Committee reviews Youth On Track, noting that this program has received positive feedback and evaluation, but is not available across the State. The Committee finds that Youth on Track should be expanded if the results of a current evaluation being conducted by the NSW Bureau of Crime Statistics and Research are positive. It also examines the Joint Protocol to reduce the contact of young people in out-of-home care with the criminal justice system. To further address the over-representation of young people in out-of-home care in the criminal justice system, the Committee recommends police and out-of-home care workers receive thorough training on the Protocol.

Chapter Four examines how health, disability, education, housing and children's services are interacting with youth diversionary programs and efforts in NSW. Again, the Committee makes recommendations for improvements where necessary to promote the diversion of young people from the criminal justice system.

In the area of health and disability, the Committee finds that few young offenders are diverted under mental health legislation despite the fact that many have mental health issues and cognitive impairments. One of the reasons for this is that the services of the Adolescent Court and Community Team (ACCT), which conducts mental health assessments, are not available at every court that sits as a Children's Court in NSW. The Committee therefore recommends that the ACCT be made available at every court that sits as a Children's Court across NSW. It also recommends increased funding for mental health support services to which courts can refer young offenders.

The Committee also finds there is a lack of youth drug and alcohol rehabilitation services in NSW and that a significant proportion of young offenders have substance abuse issues. A lack of appropriate services to which a court can refer a young offender can prevent a court from diverting him or her from custody. Addressing underlying substance abuse issues is also critical for long-term diversion from the criminal justice system. For these reasons, the Committee recommends that the NSW Government increase the availability of youth drug and alcohol services in NSW, particularly in regional areas and Western Sydney.

In the area of education, the Committee notes that there is a strong link between disengagement from school and youth offending, and that one of the factors that may be contributing to disengagement is a lack of specialised and tailored learning support in schools. The Committee notes evidence that many detainees achieve much better at schools in custody, where more support is available, than at schools within the community. It therefore recommends that the NSW Department of Education consider whether there is a need for increased specialised and individualised learning support at NSW schools to assist young people at risk of disengaging from education.

Further, the Committee notes that young people who are suspended from school, and who are not supervised for the suspension period, are more likely to engage in criminal behaviour. The Committee therefore recommends that the NSW Department of Education amend its suspension guidelines so that students cannot be left unsupervised during a suspension period.

In the area of housing, the Committee finds that safe and secure housing is an essential element of youth diversion. If young people do not have safe and secure housing they cannot connect effectively with services or employment and education, and are more likely to offend or re-offend. While there are some excellent NSW Government initiatives to combat youth homelessness, the Committee received statistics indicating that more should be done. Therefore, it recommends that the NSW Government increase the supply of social housing for young people exiting the custody of Juvenile Justice NSW, and for people under the age of 18 years more generally.

The Committee also explores transitional and post-release support, noting that pre-release planning and post-release support needs to focus holistically on a range of areas such as access to employment, education, health services, drug and alcohol services and income support to ensure successful re-integration into the community and reduce the risk of re-offending. The Committee commends current initiatives in this area including the introduction of 22 new Juvenile Justice caseworkers to help young people transition out of custody. Such initiatives should be expanded wherever possible because they link detainees with a range of individualised and coordinated supports before they leave custody.

Finally, in the area of children's services, the Committee finds that early intervention is a key factor in diverting young people from the criminal justice system. Wherever possible, funds should be used to address the underlying causes of offending before it occurs rather than reacting afterwards. The Committee notes findings and recommendations made throughout its report in support of early intervention including a recommendation that the Government consider supporting further research into the potential of a justice re-investment approach for NSW, and a recommendation for more health screening in schools.

Chapter Five examines the over-representation of Aboriginal young people in the Juvenile Justice system and the current programs and strategies that are in place to address this.

Of particular concern is data the Chapter discusses indicating that Aboriginal young people are less likely to be diverted from the Juvenile Justice system than non-Aboriginal young people.

The Committee notes that the generic recommendations made throughout its report would be likely to have a particularly positive impact on Aboriginal young people, if implemented. For example, recommendations aimed at improving diversion rates in regional, rural and remote NSW would have a particular impact on Aboriginal young people as data shows that Aboriginal young people in custody are far more likely to be from non-metropolitan areas than non-Aboriginal young people. Similarly, the recommendation to increase coverage of the ACCT would have particular benefits for Aboriginal young people given data suggesting higher rates of mental health disorders amongst young Aboriginal offenders and lower rates of access to the ACCT based on the location of the courts in which they appeared.

The Committee also makes recommendations aimed specifically at Aboriginal young people. In particular, it notes concerns raised during the inquiry that diversionary options in NSW need to be made more appropriate for Aboriginal young people. It therefore makes recommendations that the NSW Government promote Aboriginal community control and partnerships with the Aboriginal community in the design and delivery of diversionary programs; that staff of all agencies and organisations that work with juvenile offenders receive thorough cultural awareness training; and that the number of Aboriginal people working in agencies and organisations that have involvement with juvenile offenders be increased.

During its inquiry, the Committee also heard overwhelming support for the Youth Koori Court as a diversionary initiative that is working well for young Aboriginal people. The Committee heard that it is a culturally appropriate initiative that addresses the underlying causes of offending, and there were numerous calls for its expansion. The Committee also visited the Parramatta Youth Koori Court in May 2018, and was able to see its benefits first-hand.

Given overwhelming stakeholder support and a positive evaluation of the Youth Koori Court by the University of Western Sydney, the Committee has recommended that the NSW Government further expand this excellent initiative, particularly to regional areas of NSW.

Chapter Six explores the coordination that occurs between Government and NGOs in the delivery of diversionary programs and efforts in NSW, as many such programs and efforts are delivered by the non-government sector. The Committee makes recommendations to make service delivery more efficient and effective.

For example, the Committee recommends the NSW Government promote longer-term contracts with NGOs wherever possible, in response to evidence that a requirement to regularly bid for funding can lessen the ability of NGOs to focus on quality service delivery. It also notes that robust evaluation is essential so that Government funding can be allocated to the programs and services that work best, and recommends that the Government consider building evaluation requirements and funding for same into contracts with NGOs.

The Committee also recognises that young offenders often have a variety of complex needs and require individualised support in a number of areas, making coordinated service delivery essential. It therefore also recommends that the NSW Government increase the level of coordination across Government and the non-government sector, and consider adopting a regional coordination model across NSW to maximise the quality of diversionary programs and efforts in all locations.

Findings and Recommendations

Recommendation 1	15
That the NSW Government review whether the number of cautions that Police and the Courts can give under the <i>Young Offenders Act 1997</i> should be increased, or limits removed.	
Recommendation 2	17
That the NSW Government review whether a young person should be required to make an admission before he or she can be dealt with by way of caution or youth justice conference under the <i>Young Offenders Act 1997</i> .	
Recommendation 3	19
That the NSW Police Force amend its policies and procedures to explicitly state that it is not necessary for a young person to participate in an electronically recorded interview of a suspected person (ERISP) before Police can issue him or her with a caution under the <i>Young Offenders Act 1997</i> .	
Recommendation 4	22
That the NSW Government review the <i>Young Offenders Act 1997</i> to determine:	
<ul style="list-style-type: none"> • whether the offences covered by the Act remain appropriate; • whether any additional offences should be able to be dealt with under the Act in appropriate cases; and • whether Police should be able to issue warnings and cautions and refer young people to youth justice conferences for additional offences in appropriate cases. 	
Recommendation 5	26
That the NSW Government conduct a review, in consultation with all relevant stakeholders, to examine whether the current age of criminal responsibility, and the age at which a child can be detained, should be increased in NSW.	
Recommendation 6	34
That the NSW Government consider whether background reports provided about young Aboriginal offenders under section 25 of the <i>Children (Criminal Procedure) Act 1987</i> should be required to contain more information about systemic and background factors (social, cultural and historical) that relate to the young person's Aboriginal community.	
Recommendation 7	36
That the NSW Government conduct an audit of the information that can be disclosed through Police and criminal record checks for offenders under the age of 18 years in NSW to determine whether changes are necessary to better align legislative provisions with the principles of diversion and rehabilitation.	
Finding 1	38

The NSW Police Force's Suspect Targeting Management Plan is an important community safety tool that should be retained.

Recommendation 8 _____ 38

That the NSW Police Force make the Suspect Targeting Management Plan policy and high level operational arrangements publicly available.

Recommendation 9 _____ 38

That the NSW Police Force introduce guidelines about the way Suspect Targeting Management Plans are to be policed for people under 18 years to limit confrontational practices and language, maintain respectful lines of communication and avoid the possibility of unnecessary escalation of interactions.

Finding 2 _____ 39

The Committee supports initiatives within the NSW Police Force so that children under the age of 12 years cannot be placed on a Suspect Targeting Management Plan without approval at the Assistant Commissioner level. It further supports extending this initiative so that it applies to any child under the age of 14 years.

Recommendation 10 _____ 44

That the NSW Government consider whether legislative amendments or amendments to NSW Police Force policies and procedures are necessary to provide that people under the age of 18 years are only to be arrested and detained as a last resort.

Recommendation 11 _____ 46

That the NSW Government consider providing additional funding to the Aboriginal Legal Service so that it can provide a telephone legal advice service to Aboriginal young people accused of committing offences, regardless of whether they are in custody.

Recommendation 12 _____ 48

That the NSW Government increase the number of bail support services available to young people under 18 years across the State, with a particular focus on regional areas, and services for Aboriginal young people and those with complex needs and substantial offending histories.

Recommendation 13 _____ 51

That officers of the NSW Police Force and Courts that hear juvenile criminal matters receive thorough training in the setting of bail conditions for young people under 18 years, to promote the diversion of young people wherever possible.

Recommendation 14 _____ 51

That the NSW Government amend the *Bail Act 2013* so that young people under 18 years, particularly young Aboriginal people, are able to nominate multiple addresses for the purpose of bail residence requirements, where appropriate.

Recommendation 15 _____ 53

That officers of the NSW Police Force receive thorough training concerning the policing of suspected bail breaches by young people under 18 years, to avoid unnecessary arrests and detention.

Recommendation 16 _____ 54

That the NSW Government consider whether the *Bail Act 2013* should be amended to specifically provide that police officers must have regard to a person's age in deciding what action to take for breach of bail.

Recommendation 17 _____ 57

That each Police Local Area Command across NSW employ a full-time Youth Liaison Officer.

Recommendation 18 _____ 58

That all officers of the NSW Police Force receive thorough training about the unique nature of children and young people and the diversionary options available under the *Young Offenders Act 1997*.

Recommendation 19 _____ 60

That the NSW Government provide the Children's Court of NSW with funding for the appointment of at least three additional specialist children's magistrates so that more criminal matters are heard by a specialist children's magistrate, particularly in regional, rural and remote NSW.

Finding 3 _____ 60

The NSW Government should consider further options to expand the reach of the Children's Court across as much of NSW as possible.

Recommendation 20 _____ 60

That all magistrates hearing matters in the children's jurisdiction receive thorough and ongoing training about the unique nature of children and young people, the specialist nature of children's proceedings, and the diversionary options available under the *Young Offenders Act 1997*.

Finding 4 _____ 64

The NSW Government should increase the availability of holistic, community-based programs and services in rural, regional and remote NSW that focus on diversion, early intervention and the prevention of youth offending, and address the underlying causes of crime.

Finding 5 _____ 65

The NSW Government should explore further initiatives to attract and retain suitably qualified people to deliver diversion, early intervention and prevention programs in rural, regional and remote NSW, and to build capacity within local communities.

Recommendation 21 _____ 65

That Juvenile Justice NSW:

- conduct an audit of youth justice conferencing across NSW to determine whether more conference convenors or other resources are needed to better support the process in regional, rural and remote areas;
- take action to ensure that fully trained youth justice conference convenors are available to conduct youth justice conferences in every area of the State.

Recommendation 22	70
That the NSW Government consider supporting further research into the potential of a justice re-investment approach for NSW.	
Recommendation 23	74
That the NSW Government review the currently available youth diversionary programs and efforts, within custody and the community, in consultation with girls and young women to assess whether they are suitable; any areas for improvement; and where more gender-sensitive options may be needed. In doing so, particular regard should be paid to the needs of Aboriginal girls and young women.	
Finding 6	77
The NSW Government should consider whether there is a need for more diversionary programs and efforts targeted to young people from culturally and linguistically diverse communities in NSW.	
Finding 7	79
The NSW Government should expand Youth on Track so that it is available across NSW should the results of the evaluation by the NSW Bureau of Crime Statistics and Research, due to report in 2020, be positive.	
Finding 8	81
The Department of Justice NSW should consider additional referral pathways for Youth on Track.	
Recommendation 24	86
That all NSW Police and residential out-of-home care workers receive thorough training on the Joint Protocol to reduce the contact of young people in out-of-home care with the criminal justice system.	
Recommendation 25	89
That the NSW Government examine whether the Children’s Court of NSW should be given the power to refer a young person in its criminal list, to the care and protection system in appropriate cases.	
Recommendation 26	94
That the NSW Government fund more Adolescent Court and Community Team (ACCT) practitioners so that the services of the ACCT are available at every Children's Court, and every Local Court that sits as a Children's Court, across NSW.	
Recommendation 27	97
That the Department of Justice NSW and the Justice Health and Forensic Mental Health Network (Justice Health) take steps to ensure that the use of audio-visual links in Juvenile Justice centres for young people appearing before Courts does not stop those young people from accessing the services of the ACCT.	
Recommendation 28	98

That the NSW Government increase funding for mental health support services to which Courts can refer young offenders under the age of 18 years, particularly in regional and remote areas of NSW.

Recommendation 29 _____ 100

That the NSW Government consider whether amendments are needed to section 32 of the *Mental Health (Forensic Provisions) Act 1990* so that Courts can require reports detailing a defendant's compliance with treatment, and to address the issues identified in *Director of Public Prosecutions (NSW) v Saunders (2017)*.

Recommendation 30 _____ 101

That the NSW Government increase the number of available beds at Austinmer Adolescent Unit or make new places available at a similar facility.

Recommendation 31 _____ 104

That the NSW Government increase the availability of drug and alcohol rehabilitation services for people under 18 years in NSW especially detox facilities and intensive residential rehabilitation programs; with a particular focus on regional areas of NSW and Western Sydney.

Recommendation 32 _____ 110

That the NSW Government identify and implement increased opportunities for health and disability screening of children and young people across the State, including in early childhood settings; at schools; and in cases where they come to the attention of the NSW Department of Family and Community Services.

Finding 9 _____ 110

The NSW Government should review its information strategy on an ongoing basis to maximise the knowledge of young people and their parents about the youth health and disability services and supports that are available in NSW.

Recommendation 33 _____ 113

That Juvenile Justice NSW explore further initiatives to attract and retain suitably qualified Juvenile Justice staff in regional areas of NSW; and take action to ensure that staff are recruited to Juvenile Justice centres as expeditiously as possible.

Recommendation 34 _____ 115

That the NSW Government review the availability of psychological treatment in NSW Juvenile Justice centres to ensure it is aligned with the support that is available in the community.

Recommendation 35 _____ 117

That the NSW Government conduct an audit of dental care within NSW Juvenile Justice centres to determine whether Justice Health is providing non-acute dental health treatment to detainees in each Centre about every three months; and make improvements if this target is not being met.

Recommendation 36 _____ 119

That Juvenile Justice NSW promote therapeutic design within its centres wherever possible.

Recommendation 37 _____ 120

That the NSW Government, in consultation with all relevant stakeholders, examine whether there is a need for legislated counsellor/client privilege for the counselling notes produced by the New Street Adolescent Service.

Recommendation 38 _____ 122

That the NSW Department of Education consider whether there is a need for increased specialised and individualised learning support at NSW schools to assist children and young people who are at risk of disengaging from education. The Department should pay particular regard to:

- The development of foundational skills in literacy and numeracy;
- Smaller class sizes.

Recommendation 39 _____ 125

That the NSW Government consider instituting a court-based initiative to help young people appearing before the Children's Court of NSW to re-engage with education, similar to the Victorian Education Justice Initiative.

Recommendation 40 _____ 127

That the NSW Department of Education amend its suspension guidelines so that students cannot be left unsupervised during a suspension period; and to ensure that the options of in-school suspensions and the State's 22 suspension centres are fully utilised.

Recommendation 41 _____ 127

That the NSW Department of Education link behaviour management strategies with the provision of specialised learning support; and that NSW schools use any suspension period to provide specialised learning support to students who need it.

Recommendation 42 _____ 130

That all teachers in NSW schools receive thorough training around the risk factors for young people's engagement with the criminal justice system, and the available support services and programs.

Recommendation 43 _____ 130

That the NSW Department of Education examine whether student support officers could be more effectively utilised in NSW schools to help schools identify students at risk of youth offending and to make appropriate referrals to support services and programs.

Recommendation 44 _____ 133

That the NSW Department of Education conduct a review of educational facilities within NSW Juvenile Justice centres to assess their effectiveness and whether there are areas for improvement.

Finding 10 _____ 134

There is a need for increased NSW Government funding for vocational training within Juvenile Justice centres.

Finding 11 _____ 134

No Juvenile Justice detainee should have to find his or her own funding to undertake a TAFE course that is available within the centre in which s/he is being held; for which s/he is eligible; and that s/he wishes to do. The cost should be covered by the NSW Government.

Recommendation 45 _____ 134

That Juvenile Justice NSW; the NSW Department of Education; and TAFE NSW form a working group to review:

- the amount of vocational training that is available to detainees within NSW Juvenile Justice centres;
- whether vocational training facilities within centres are being adequately utilised;
- the amount of NSW Government funding needed to plug any identified gaps.

Recommendation 46 _____ 137

That the NSW Government increase the supply of social housing for young people who are exiting the custody of Juvenile Justice NSW; and for people under the age of 18 years more generally.

Finding 12 _____ 141

The NSW Government should review its information strategy for young people at risk of homelessness on an ongoing basis to maximise their awareness of available youth homelessness services and other supports.

Recommendation 47 _____ 146

That the NSW Government consider providing a free Opal Card to young people for the six months after they exit the custody of Juvenile Justice NSW to assist them to link up with services and re-establish their lives.

Recommendation 48 _____ 146

That NSW transit officers be given the power to issue warnings and cautions under the *Young Offenders Act 1997*.

Recommendation 49 _____ 146

That NSW transit officers be given thorough training in relation to the *Young Offenders Act 1997* and the Protocol for Homeless People in Public Places.

Finding 13 _____ 148

Early intervention is a key factor in diverting young people from the criminal justice system.

Finding 14 _____ 153

The NSW Department of Family and Community Services should consider whether mandatory reporters need further training to identify the early warning signs that parents may need support before they reach the stage of child abuse or neglect.

Finding 15 _____ 155

Aboriginal young people are over-represented in the Juvenile Justice system.

Recommendation 50 _____ 163

That the NSW Government promote Aboriginal community control, and partnerships with Aboriginal communities, in the design and delivery of place-based diversionary programs for Aboriginal young people.

Recommendation 51 _____ 165

That the NSW Government further expand the Youth Koori Court, particularly to regional areas of NSW.

Finding 16 _____ 169

Clean Slate Without Prejudice in Redfern and *Breaking Barriers* in Mount Druitt have received positive feedback as effective and culturally appropriate programs for young Aboriginal people.

Recommendation 52 _____ 171

That the NSW Government ensure that staff of all agencies and organisations that work with juvenile offenders and at-risk youth receive thorough training in the areas of cultural awareness and competence; how racism affects young Aboriginal people; and the effects of intergenerational trauma and disadvantage on young Aboriginal people.

Recommendation 53 _____ 174

That the NSW Government continue to develop strategies to increase the number of Aboriginal people working in agencies and organisations that have involvement with juvenile offenders and at-risk youth.

Recommendation 54 _____ 178

That the NSW Government conduct ongoing consultations with young people about the content and delivery of diversionary programs and services, particularly Aboriginal young people.

Recommendation 55 _____ 181

That NSW Government contracts with non-government organisations for the delivery of diversionary programs and efforts be outcomes-focussed and not over-prescriptive.

Recommendation 56 _____ 182

That wherever possible the NSW Government promote longer-term contracts with non-government organisations for the delivery of diversionary programs and efforts and avoid short-term contracts, particularly those of two years or less.

Recommendation 57 _____ 185

That the NSW Government promote the involvement of non-government organisations in the design of the diversionary programs and efforts that they will be delivering.

Recommendation 58 _____ 186

That the NSW Government increase the level of coordination across Government and the non-government sector, and consider adopting a regional coordination model throughout the State

to maximise the quality of diversionary, early intervention and prevention programs and efforts in all locations.

Finding 17 _____ 190

In setting any training requirements for non-government organisations, the NSW Government should take account of prior learning and not be over-prescriptive.

Recommendation 59 _____ 192

That staff in all agencies and organisations working with young offenders and at-risk youth, Government and non-government, be thoroughly trained in trauma-informed practice.

Recommendation 60 _____ 193

That the NSW Government consider building evaluation requirements, and funding for same, into contracts with non-government organisations for the delivery of diversionary programs and services.

Chapter One – Youth Diversionary Programs and Efforts in NSW

- 1.1 This Chapter outlines the legislative framework for the diversion of young offenders in NSW and discusses many of the diversionary programs and efforts that are available to young people in NSW.

What is Diversion?

- 1.2 The diversionary options available to young people in NSW seek to prevent them from entering and being detained in the criminal justice system, and to deter them from long-term involvement with the criminal justice system. These options channel young people "away from judicial proceedings, criminal orders and potential incarceration and into other programs or processes".¹

- 1.3 The underlying principle is that young people should only be placed in detention as a last resort. This is consistent with the United Nations Convention on the Rights of the Child which requires that children only be deprived of liberty as a last resort and for the shortest appropriate period.² The NSW Government submission to the inquiry states:

All diversion programs have a common objective of identifying the underlying causes that contribute to criminal behaviour, to put in place an intervention strategy before offending occurs or escalates.³

- 1.4 During its inquiry, the Committee has heard that it is important to take a broad view of what diversion encompasses. For example, His Honour Judge Peter Johnstone, President of the NSW Children's Court told the Committee:

Diversion should be considered in a broad and flexible manner, as opportunities for diversion can be located, created and conceptualised at every stage of a young person's life and at every point of contact with the justice system, including once incarcerated and after release back into the community.⁴

- 1.5 Similarly, Ms Catherine Lourey, the NSW Mental Health Commissioner, told the Committee:

Any examination of youth diversionary programs needs to look at the three phases of a young person's criminal justice journey – the periods prior to, during and following the young person's contact with the criminal justice system.⁵

¹ Submission 27, NSW Government, p7.

² Submission 27, NSW Government, p7.

³ Submission 27, NSW Government, p7.

⁴ Submission 19, President of the Children's Court of NSW, p1.

⁵ Submission 8, NSW Mental Health Commissioner, p4.

1.6 Therefore, in conducting its review of the adequacy of diversionary programs and efforts in NSW, the Committee has taken a broad view and considered diversionary options at every stage of a young person's life:

1. Early intervention options that address vulnerabilities to stop a young person from becoming involved in the criminal justice system in the first place;
2. Pre-court diversion options that the police and courts can use under the *Young Offenders Act 1997*;
3. Pre-sentence diversion such as bail support and case work for young people in the community;
4. Post-conviction diversion, including efforts within custody and post-release to prevent young people re-offending and becoming entrenched in the criminal justice system.⁶

1.7 In focussing on youth diversionary programs and efforts for the purposes of its inquiry, the Committee has also taken note of the relevant age requirements for these programs and efforts and is generally concentrating on people under the age of 18 years. Further discussion about age requirements occurs throughout the report.

Overview of Diversionary Legislation in NSW for Young Offenders

Young Offenders Act 1997 (NSW)

1.8 The *Young Offenders Act 1997* (YOA) is the primary diversionary legislation for young offenders in NSW. It sets out a "graduated hierarchy of responses to young offenders (warnings, cautions and youth justice conferences); with court as the last resort".⁷

1.9 Two of the underlying principles of the YOA are that:

- the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to the matters that must be considered under the Act; and
- criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.⁸

1.10 The YOA applies to persons who:

- Are of or over the age of 10 years and under the age of 18 years when an offence covered by the Act was committed or alleged to have been committed;

⁶ See further Submission 27, NSW Government, p8.

⁷ Submission 26, Law Society of NSW, p2.

⁸ *Young Offenders Act 1997*, s7(a)&(c).

- Are under the age of 21 years when being dealt with under the Act.⁹
- 1.11 In addition, only certain offences are covered by the YOA, those being summary offences and indictable offences that may be dealt with summarily under the *Criminal Procedure Act 1986* or another prescribed law. Certain offences are expressly excluded from coverage under the YOA including certain traffic offences, offences under the *Crimes (Domestic and Personal Violence) Act 2007*, certain drug offences and any offence that results in the death of a person.¹⁰
- 1.12 Following an incident, police consider whether a young person is eligible for diversion under the YOA (a warning, caution or youth justice conference) or whether the matter should proceed to court. At this stage police can also refer young people to support programs such as Youth On Track or the Police Citizens Youth Club (PCYC) and such programs are discussed further below.¹¹
- 1.13 Police can give warnings for summary offences covered by the YOA other than a graffiti offence or any other offence prescribed by the *Young Offenders Regulation*.¹² Warnings cannot be given for violent offences.¹³ A warning can be given on the spot¹⁴ and police must make a record of the warning which must be destroyed after the young person reaches 21 years.¹⁵
- 1.14 For eligible matters too serious for warnings, police can give cautions¹⁶ and this option is available to police for any offence covered by the YOA other than a graffiti offence or an offence prescribed by the *Young Offenders Regulation*.¹⁷ A caution is a more formal process than a warning, for which notice must be given in a form approved by the Commissioner of Police.¹⁸ To receive a police caution the young person must admit the offence, consent to the giving of the caution,¹⁹ and he or she is not entitled to be dealt with by caution if he or she has already been dealt with by caution three or more times.²⁰
- 1.15 A police caution is generally given at a police station not less than 10 days and not more than 21 days after the notice of caution is given to the young offender,²¹ and the relevant police officer must make a record of the caution.²² Information contained in the record cannot be disclosed except in prescribed circumstances.²³

⁹ *Young Offenders Act 1997*, s7A.

¹⁰ *Young Offenders Act 1997*, s8.

¹¹ Submission 27, NSW Government, p13.

¹² *Young Offenders Act 1997*, s13.

¹³ *Young Offenders Act 1997*, s14(2)(a).

¹⁴ *Young Offenders Act 1997*, s15(1).

¹⁵ *Young Offenders Act 1997*, s17.

¹⁶ See *Young Offenders Act 1997*, s20(1).

¹⁷ *Young Offenders Act 1997*, s18.

¹⁸ *Young Offenders Act 1997*, s24.

¹⁹ *Young Offenders Act 1997*, s19.

²⁰ *Young Offenders Act 1997*, s20(7).

²¹ *Young Offenders Act 1997*, s26.

²² *Young Offenders Act 1997*, s33.

²³ *Young Offenders Act 1997*, s66.

- 1.16 Courts can also give cautions for any offence covered by the YOA including graffiti offences.²⁴ Again, a young person must admit the offence to be eligible for a caution²⁵ and a court cannot give a caution to a young person where he or she has already been dealt with by caution on three or more occasions.²⁶
- 1.17 Finally, for offences covered by the YOA that are too serious for warnings or cautions, or where a young person has exceeded the maximum number of cautions available to him or her, police and courts also have the option to refer a young person to a youth justice conference.²⁷ Youth justice conferences are underpinned by a philosophy of restorative justice which aims to encourage offenders to take responsibility for their criminal behaviour and repair damage to victims and the community.²⁸
- 1.18 To be eligible for a youth justice conference a young person must admit the offence and, in the case of a police referral, must consent to the holding of a conference.²⁹
- 1.19 Juvenile Justice NSW administers youth justice conferences and its website explains:
- Conferences bring young offenders, their families and supporters face-to-face with victims, their supporters and police to discuss the crime and how people have been affected. Other experts and respected members of the community may also be invited to participate. Together, they agree on a suitable outcome [plan] that can include an apology, reasonable reparation to victims, and steps to reconnect the young person with their community to help them desist from further offending.³⁰
- 1.20 In its submission to the inquiry, the NSW Government further advised that youth justice conference outcome plans can also include the offender receiving counselling or completing a rehabilitation or educational program and may include a referral to a treatment service to address risk factors identified during the conference e.g. drug and alcohol use, mental health or behavioural and cognitive issues.³¹

Children (Criminal Proceedings) Act 1987

- 1.21 Following an incident, a young person can refuse to accept police diversion (i.e. caution or conference) and proceed to court.³² In other cases, young people are

²⁴ *Young Offenders Act 1997*, s31(1)(a).

²⁵ *Young Offenders Act 1997*, s31(1)(b).

²⁶ *Young Offenders Act 1997*, s31(5).

²⁷ *Young Offenders Act 1997*, s37(1); see also Juvenile Justice NSW website:

<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/conferencing/conferencing.aspx>, viewed 19 June 2018.

²⁸ Submission 27, NSW Government, p16; see also *Young Offenders Act 1997*, s34.

²⁹ See *Young Offenders Act 1997*, ss 36(b)&(c) and 40(1A)(b).

³⁰ Juvenile Justice NSW website:

<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/conferencing/conferencing.aspx>, viewed 19 June 2018.

³¹ Submission 27, NSW Government, p16.

³² Submission 27, NSW Government, p13.

not eligible for diversion under the YOA because the offence they are accused of is not covered by it.

- 1.22 The *Children (Criminal Proceedings) Act 1987* (CCPA) governs the conduct of criminal proceedings against young people under the age of 18 years.
- 1.23 If proceeding to court, police will decide whether to grant bail or, in serious cases, the court will decide on bail. Cases that proceed to court will then end with the young person found not guilty, or the court issuing a fine, or sentencing the young person to a good behaviour bond, community service order, probation order, or to community supervision or custody.³³
- 1.24 As above, the court can also issue a caution or refer a matter to a conference and the CCPA was amended at the time the YOA was introduced to allow courts to administer cautions and refer young people to conferences.³⁴

Overview of Diversionary Programs and Efforts in NSW for Young Offenders

- 1.25 As above, in conducting its review of the adequacy of diversionary programs and efforts in NSW, the Committee has considered a broad range of diversionary options, spanning various stages of a young person's life. A number of Government agencies and non-government organisations (NGOs) are involved in delivering these diversionary options to stop young people becoming involved in the criminal justice system and, where they are involved, to stop them from becoming entrenched.
- 1.26 A discussion of the major diversionary programs and efforts considered by the Committee during its inquiry follows. This is in addition to the diversionary options under the YOA discussed above. A larger list of the programs and efforts available across NSW can also be found at Appendix Six.

Justice Cluster Programs and Efforts

Youth on Track

- 1.27 Youth on Track is an early intervention scheme for 10-17 year olds that identifies and responds to young people at risk of long-term involvement with the criminal justice system.³⁵ The Department of Justice funds non-government organisations (Mission Australia, Social Futures and Centacare) to deliver the scheme in six locations across NSW: Blacktown, the Hunter, the Mid North Coast, the Central West, Coffs and New England.³⁶
- 1.28 Police and local schools can refer a young person known to be at medium or high risk of offending to Youth on Track but the young person's engagement with the scheme is voluntary. Youth on Track has the benefit of multi-agency support and its caseworkers work with the NSW Police Force, local schools, community groups

³³ Submission 27, NSW Government, p13.

³⁴ Submission 26, Law Society of NSW, p2.

³⁵ Submission 27, NSW Government, p16.

³⁶ Juvenile Justice NSW website: <http://www.youthontrack.justice.nsw.gov.au/>, viewed 20 June 2018.

and other stakeholders to engage young people and their families with the aim of providing consistent services without duplication.³⁷ Juvenile Justice NSW also facilitates specialised training for the funded non-government organisations to deliver the scheme, focussing on the assessment of criminogenic needs and working with young people and their families.³⁸

- 1.29 Once a referral is made to Youth on Track and a young person agrees to participate, the case manager conducts an assessment and develops a case plan to address the young person's individual risks and needs. Case managers then deliver offence-focussed behaviour and family interventions, coordinate service delivery, and facilitate access to support such as drug and alcohol counselling, mental health support and improved links to education.³⁹
- 1.30 Before a young person finishes Youth On Track the case manager also works with the young person and his or her family to develop an exit plan to reduce the likelihood of re-offending and help facilitate access to ongoing community support where necessary. Ongoing follow up and contact between the case manager, the young person and their family is also discussed.⁴⁰

Youth Koori Court

- 1.31 In 2015, the NSW Government commenced a trial of the Youth Koori Court at Parramatta Children's Court.⁴¹ In May 2018, the NSW Government announced the 2018-19 budget would include a further \$2.7 million over three years to extend the Youth Koori Court to a second court – the Surry Hills Children's Court.⁴²
- 1.32 The Department of Justice NSW has explained how the Youth Koori Court works:
- Unlike a mainstream court, the Youth Koori Court is more informal. Participants sit around a table and speak plain English rather than using more formal and technical legal jargon. An Elder will sit with the judicial officer to provide cultural advice about the Aboriginal offender. The Elders may talk directly to the young person about their circumstances and why they are in court.
- Before being sentenced by the magistrate or judge, an informal conference is facilitated by a Children's Registrar with input from the young person, their family, Elders and staff from both government and non-government agencies. A plan is developed at this meeting to help reduce the likelihood of re-offending including strategies to improve cultural connections, encourage the offender to stay at school

³⁷ Juvenile Justice NSW website: <http://www.youthontrack.justice.nsw.gov.au/>, viewed 20 June 2018. See also Submission 27, NSW Government, p17.

³⁸ Submission 27, NSW Government, p17.

³⁹ Juvenile Justice NSW website: <http://www.youthontrack.justice.nsw.gov.au/>, viewed 20 June 2018 and Submission 27, NSW Government, p16.

⁴⁰ Juvenile Justice NSW website: <http://www.youthontrack.justice.nsw.gov.au/>, viewed 20 June 2018.

⁴¹ Department of Justice NSW, 'NSW Trials Youth Koori Court', 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 21 June 2018.

⁴² Perrottet, D. and Speakman, M. 'NSW Budget: Youth Koori Court Expands to Surry Hills', 31 May 2018, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/youth-koori-court-surry-hills.aspx>, viewed 21 June 2018.

or get work, secure stable accommodation and address any health, drug or alcohol issues.⁴³

- 1.33 If the magistrate or judge approves the plan, the Aboriginal young person has up to 12 months to comply with the program and achieve his or her goals before being sentenced.⁴⁴ The Department of Justice has explained further:

At the end of this period, the judicial officer determines the sentence after considering the work that has been undertaken by the young person to address his or her criminogenic risk factors. Victims have an opportunity to prepare a victim's impact statement as part of the court process and can be present at sentencing to hear from those involved in the case. If the young person breaches the program the matter can be referred back to the Children's Court for normal sentencing.⁴⁵

Bail Assistance Line

- 1.34 Juvenile Justice NSW's Bail Assistance Line (BAL) provides an after-hours service for police who are considering granting conditional bail to a young person in their custody but who cannot release the young person because the young person cannot meet his or her bail conditions.
- 1.35 Police can ring a 1300 number which operates from 4pm to 3am, 365 days a year to speak with a Bail Coordinator. The Bail Coordinator then provides a range of services including arranging transport for the young person from the police station to suitable accommodation so that s/he can await his/her court date within the community rather than in a detention centre.
- 1.36 The BAL has entered into funding agreements with several NGOs to provide this transport and accommodation as well as case management and/or referrals to drug and alcohol, mental health and vocational services.⁴⁶

Family Investment Model

- 1.37 At the time of the Committee's inquiry, a two year pilot of the Family Investment Model was running in Dubbo and Kempsey. It aims to address entrenched intergenerational disadvantage and offending by co-locating a multi-government agency team to work with at-risk families.
- 1.38 The multi-government agency team, led by the Department of Justice has representatives from each of the key government agencies including Juvenile

⁴³ Department of Justice NSW, 'NSW Trials Youth Koori Court', 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 21 June 2018.

⁴⁴ See Department of Justice NSW, 'NSW Trials Youth Koori Court', 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 21 June 2018; and Perrottet, D. and Speakman, M. 'NSW Budget: Youth Koori Court Expands to Surry Hills', 31 May 2018, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/youth-koori-court-surry-hills.aspx>, viewed 21 June 2018.

⁴⁵ Department of Justice NSW, 'NSW Trials Youth Koori Court', 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 21 June 2018.

⁴⁶ Department of Justice NSW website, http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/bail_assistance_line.aspx, viewed 21 June 2018.

Justice NSW, Corrective Services NSW, the NSW Police Force, the Department of Family and Community Services (FACS), the Department of Education and NSW Health.

- 1.39 The Family Investment Model aims to address complex and longstanding needs that have led to multiple contacts with government agencies, particularly Justice agencies.⁴⁷

Police Citizens Youth Club

- 1.40 The PCYC has a network of 63 clubs across NSW, and over 90,000 members. The PCYC provides young people with the opportunity to learn essential life skills such as dealing with violence, anger management, sexual health, relationships, drug and alcohol abuse and self-esteem. It also provides assistance with training and employment.
- 1.41 NSW Police Force Youth Case Managers, hosted by PCYCs, use a case management framework to prevent and/or reduce crime in their local area as part of the Targeted Programming Framework adopted by the NSW Police Force Youth Command.⁴⁸

Police Youth Liaison Officers

- 1.42 Police Youth Liaison Officers are responsible for:
- Supporting the implementation of the YOA;
 - Making determinations under the YOA;
 - Issuing police cautions;
 - Liaising with officers of Juvenile Justice NSW regarding the referral of young people to youth justice conferences;
 - Educating police;
 - Maintaining quality control for some of the tasks associated with supporting the YOA;
 - Establishing and maintaining networks with relevant service providers and local community members to develop a shared understanding of joint and individual responsibilities.⁴⁹

⁴⁷ See submission 27, NSW Government, p41; and Hon Troy Grant MP, Minister for Police and Minister for Emergency Services, *Legislative Assembly Debates*, 21 November 2017, NSW Parliament website, <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-99960>, viewed 21 June 2018. See also Mr Paul McKnight, Executive Director, Policy and Reform, Department of Justice NSW, *Transcript of Evidence*, 8 May 2018, p43.

⁴⁸ See Submission 27, NSW Government, p39; and Mr Joseph Cassar, Assistant Commissioner, Capability, Performance and Youth Command, NSW Police Force, *Transcript of Evidence*, 8 May 2018, p2.

⁴⁹ Submission 27, NSW Government, p39.

- 1.43 The NSW Police Force advises that there are 81 Youth Liaison Officer positions across the 58 police area commands in NSW.⁵⁰

Joint Protocol to reduce the contact of young people in residential out-of-home care with the Criminal Justice System

- 1.44 Signed and endorsed in August 2016, the Joint Protocol aims to reduce contact between young people living in residential out-of-home care with the criminal justice system by implementing the following strategies:
- Reducing the frequency of police involvement in responding to behaviour by young people living in residential services, which would be better managed solely within the service.
 - Promoting the principle that criminal charges will not be pursued against a young person if there is an alternative and appropriate means of dealing with the matter.
 - Promoting the safety, welfare and wellbeing of young people living in residential services, by improving relationships, communication and information sharing both at a corporate level and between local police and residential services.
 - Facilitating a shared commitment by police and residential services to a collaborative early intervention approach.
 - Enhancing police efforts to divert young people from the criminal justice system by improving the information residential services provide police about the circumstances of the young person to inform the exercise of their discretion.
 - Ensuring that appropriate responses are provided to young people living in residential services who are victims.⁵¹

- 1.45 FACS has advised:

The Protocol (and procedures) emphasise the importance of flexibility and proportionality in determining the most appropriate response to a young person's behaviour on a case by case basis. The procedures for residential staff emphasise that contact with police should only be made when circumstances warrant it.⁵²

Rural Residential Rehabilitation Adolescent Alcohol and Other Drugs Services

- 1.46 Rural Residential Rehabilitation Adolescent Alcohol and Other Drugs Services exist in Dubbo and Coffs Harbour. They target young people 13 to 18 years old, both male and female, who are clients of Juvenile Justice NSW and have a history of significant alcohol and other drug use and offending behaviour. They also target people with a dual diagnosis (both mental health and drug and alcohol

⁵⁰ NSW Police Force, *Answers to Questions Taken on Notice*, 8 May 2018, p1.

⁵¹ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

⁵² NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

problems) and young people on methadone, buprenorphine and/or other medically supervised medications.⁵³

1.47 The Services provide:

- A 24 hour staffed intensive residential rehabilitation program for young people to address their alcohol and other drug use and offending behaviour.
- A stable and secure environment where young people are assisted to manage problematic behaviours, improve life and interpersonal skills, learn alternative habits, develop resilience and confidence, build social networks and re-integrate into the community.⁵⁴

Joint Support Program

1.48 Juvenile Justice NSW funds NGOs to deliver services under the Joint Support Program including:

- Casework support
- Short-term crisis accommodation
- Long-term accommodation support
- Job readiness, employment placement and support
- Relationship intervention
- Mentoring.

1.49 The target group for the Joint Support Program is young people under the supervision of Juvenile Justice NSW within the community who have been assessed as having a medium to high risk of re-offending.⁵⁵

Health Programs and Efforts

NSW Health Funding of Non-Government Organisations to provide Youth-Specific Treatment Services

1.50 The NSW Government submission to the inquiry advised that the NSW Ministry of Health funds a number of NGOs to provide youth-specific treatment services valued at over \$3.05 million per year. These include:

- Newcastle Youth Service, an outreach service for at-risk youth
- Salvation Army Oasis Youth Support Service, Surry Hills

⁵³ Juvenile Justice NSW website, http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/funded-services/rural_residential_rehabilitation.aspx, viewed 22 June 2018.

⁵⁴ Juvenile Justice NSW website, http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/funded-services/rural_residential_rehabilitation.aspx, viewed 22 June 2018.

⁵⁵ Juvenile Justice NSW website, http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/funded-services/joint_support_program.aspx, viewed 25 June 2018.

- Ted Noffs Foundation, a drug and alcohol treatment service for young people
- The FACT Tree Youth Service Making It Program, a prevention and early intervention project for adolescents in the Waterloo area
- Waverley Action for Youth Services – Kids At Risk, a drug and alcohol service for young people in Waverley and surrounding areas
- Wayside Chapel Youth Services, an outreach and fixed site service providing information, assessment and referral for youth at risk of alcohol and drug related harm in the Kings Cross area
- Youth Solutions, counselling, education, drug and alcohol services, information, referral and health education/promotion for young people in South Western Sydney
- Sydney Drug Education and Counselling Centre which specialises in providing free counselling and support for young people aged 14-25 years. The service also offers support for parents affected by their child's alcohol and/or drug use.
- Mission Australia's South West Youth Services, a drug and alcohol prevention and education project for young people and their parents/caregivers in the Campbelltown region.⁵⁶

Getting On Track In Time – Got It!

1.51 Got It! is a specialised mental health early intervention program for children in kindergarten to year 2, aged 5-8 years, who display emerging conduct problems such as defiant, aggressive and disruptive behaviour. NSW Health advises that the targeted clinical program is delivered in schools in conjunction with universal Got It! interventions at a point in children's development where intervention is likely to be effective.⁵⁷

1.52 Got It! aims to:

- Reduce the frequency and severity of conduct problems in young children
- Strengthen the abilities of parents/carers to parent well
- Build capabilities of school staff and the capacity of the school system to respond to children with conduct problems and their families.⁵⁸

1.53 In particular, NSW Health advises that Got It! attends to:

⁵⁶ Submission 27, NSW Government, p43.

⁵⁷ Mental Health Branch, NSW Health, 'Getting On Track In Time – Got It! Program Delivery Implementation Guidelines' February 2017, p5, NSW Health website, <http://www.health.nsw.gov.au/mentalhealth/pages/got-it-guidelines.aspx>, viewed 25 June 2018.

⁵⁸ Mental Health Branch, NSW Health, 'Getting On Track In Time – Got It! Program Delivery Implementation Guidelines' February 2017, p5, NSW Health website, <http://www.health.nsw.gov.au/mentalhealth/pages/got-it-guidelines.aspx>, viewed 25 June 2018.

- Whole-of-school interventions: All families in the school are supported to provide a safe and nurturing environment for children by resourcing families to better manage parenting, and training teachers in Social Emotional Learning in the classroom.
- Targeted clinical interventions: Vulnerable / at risk families are better supported to care for their children without statutory involvement, through targeted early intervention.
- Intake and referral: Children at risk of significant harm are better protected through focussed assessment and referral strategies implemented in schools.⁵⁹

Adolescent Court and Community Team

- 1.54 The Adolescent Court and Community Team Program is run by the Justice Health and Forensic Mental Health Network (Justice Health) to provide mental health assessments for young people coming before the NSW Children's and Local Courts. It aims to identify mental health disorders and where possible, divert young people from custody to appropriate services within the community.⁶⁰

Community Integration Team

- 1.55 The Community Integration Team is a pre and post-release program coordinating post-release care for young people with an emerging or serious mental illness and/or problematic drug and alcohol use or dependence who are leaving custody. The Community Integration Team facilitates important links to community-based health and support services.⁶¹

New Street Services

- 1.56 New Street Services provides therapeutic services for children and young people aged 10 to 17 years who have engaged in harmful sexual behaviour towards others. It provides an early intervention and prevention program by working with the children and young people and their families and carers, and assisting the children and young people to understand, acknowledge, take responsibility for and cease the harmful sexual behaviour.
- 1.57 The New Street Service model incorporates two elements:
- Working with the whole family unit and an interagency approach to sustain and support interventions

⁵⁹ Mental Health Branch, NSW Health, 'Getting On Track In Time – Got It! Program Delivery Implementation Guidelines' February 2017, p5, NSW Health website, <http://www.health.nsw.gov.au/mentalhealth/pages/got-it-guidelines.aspx>, viewed 25 June 2018.

⁶⁰ Submission 27, NSW Government, p44. See also Justice Health and Forensic Mental Health Network website: <http://www.justicehealth.nsw.gov.au/about-us/health-care-locations/community>, viewed 25 June 2018.

⁶¹ Submission 27, NSW Government, p44. See also Justice Health and Forensic Mental Health Network website: <http://www.justicehealth.nsw.gov.au/about-us/health-care-locations/community>, viewed 25 June 2018.

- Emphasising the principle of safety for the child victim and for the young person who engaged in the harmful behaviour and who may him or herself be a victim of crime and/or abuse and neglect.

1.58 Aboriginal children, young people and communities are a priority for New Street Services. New Street Services operate from four sites: in Western Sydney (North Parramatta), Hunter New England (Tamworth and Newcastle), and Western NSW (Dubbo) Local Health Districts. A further service for the Illawarra Shoalhaven Local Health District is being developed and will operate from a site in Wollongong. All New Street Services also provide outreach services from additional sites within the Local Health Districts they service.⁶²

Department of Family and Community Services Programs and Efforts

Targeted Earlier Intervention Program Reform

1.59 Under the Targeted Earlier Intervention Program (TEIP) Reform, FACS is reforming its targeted earlier intervention programs to create a service system that is:

- Flexible – focussing on client needs rather than program guidelines
- Locally responsive – working to the strengths, assets and needs of local communities
- Evidence-based – grounded in what works, and building on that knowledge
- Adaptive – continuously improving and responding to change
- Client-centred – working with people and families to address their needs.⁶³

1.60 Mr Paul O'Reilly, Executive Director, Inclusion and Early Intervention, FACS, told the Committee:

The vision for the TEIP is that the needs of families, children and young people are met early to prevent the escalation of risks; families are able to access support earlier in the lives of their children and young people; risk factors that lead to child abuse, neglect and domestic and family violence are addressed early; and Aboriginal children, young people, families and communities have access to timely, effective, accessible and culturally safe support and services.⁶⁴

1.61 The outcomes that FACS is working towards under the TEIP are:

- Living a healthy life
- Learning, contributing and achieving in life

⁶² NSW Health website, <http://www.health.nsw.gov.au/kidsfamilies/protection/Pages/New-Street-Services.aspx> (viewed 25 June 2018).

⁶³ NSW Department of Family and Community Services website, <https://www.facs.nsw.gov.au/about/reforms/children-families/TEI> (viewed 25 June 2018).

⁶⁴ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p33.

- Contributing to and benefiting from the economy
- Feeling safe, participating, and feeling culturally and socially connected
- People contributing to decisions that affect them
- Access to safe and affordable housing.⁶⁵

1.62 Mr O'Reilly further told the Committee that there are three priority groups for the TEIP reform:

This program has three priority groups: nought to three-year-olds, reflecting what we know about those first 1000 days; younger parents, particularly where one parent is under 20 who may be more vulnerable and not have access to other supports...and the third priority group is Aboriginal children and their families...the way that services were designed for Aboriginal people in the past failed to recognise the strength and resilience in those communities. They also failed to recognise the need for strategies to be owned and developed in partnership with communities. That needs to change with this reform.⁶⁶

⁶⁵ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p33.

⁶⁶ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p33.

Chapter Two – Youth Justice Procedure, Diversionary Legislation and Police Practice

- 2.1 In this Chapter the Committee explores diversionary legislation, youth justice procedure and police interaction with diversionary efforts and programs in NSW, making recommendations to promote the diversion of young people from the criminal justice system wherever possible.

Diversionary Options under the *Young Offenders Act 1997 (NSW)*

- 2.2 As discussed in Chapter One, The *Young Offenders Act 1997* (YOA) is the primary diversionary legislation for young offenders in NSW. It sets out a "graduated hierarchy of responses to young offenders (warnings, cautions and youth justice conferences); with court as the last resort".⁶⁷ A 2013 report found the YOA had reduced the risk of young people being sentenced to a term of imprisonment by 17.5 per cent for Aboriginal young people and 16.3 per cent for non-Aboriginal young people.⁶⁸ During its inquiry the Committee heard a number of proposals for change to the YOA to further its effectiveness in diverting young people from the criminal justice system.

The NSW Government should further consider the number of cautions that can be given under the *Young Offenders Act*

Recommendation 1

That the NSW Government review whether the number of cautions that Police and the Courts can give under the *Young Offenders Act 1997* should be increased, or limits removed.

- 2.3 As discussed in Chapter One, police and the courts cannot caution a young person under the YOA if he or she has already been dealt with by way of caution on three or more occasions.⁶⁹ A number of stakeholders who gave evidence to the inquiry argued against this restriction.
- 2.4 The Committee considers that the restriction may prevent children and young people, particularly Aboriginal young people, being diverted from the criminal justice system in appropriate cases. However, the Committee has also heard arguments against an unlimited number of cautions. In the circumstances, the Committee considers that the NSW Government should review the matter in greater detail, in consultation with all relevant stakeholders, to decide whether the number of cautions that police and courts can give should be increased, or restrictions removed altogether.
- 2.5 During the inquiry, Legal Aid NSW told the Committee that the three caution cap arbitrarily limits the ability of police to caution and divert a child when this is the

⁶⁷ Submission 26, Law Society of NSW, p2.

⁶⁸ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p37.

⁶⁹ *Young Offenders Act 1997*, ss20(7) and 31(5).

most appropriate response to an offence. Legal Aid argued for the restriction to be removed or for the courts to be given discretion to go beyond the limit in appropriate circumstances.⁷⁰

- 2.6 The Law Society of NSW made similar arguments and it too called for removal of the cap or for the courts to be given broader discretion to award more cautions.⁷¹ In arguing for a removal of the cap, Ms Jane Irwin, Member of the Law Society's Children's Legal Issues Committee, indicated the YOA already gives the courts and police sufficient guidance in deciding whether to give a caution:

...the matters that they must take into account in terms of whether or not to caution are the seriousness of the offence, the degree of violence involved in the offence, the harm caused to any victim, the number and nature of any offences committed by the child and the number of times the child has been dealt with under the Act, and any other matter the official thinks appropriate in the circumstances...If it is the case that a young person has had simply too many cautions or the matter is of high objective criminality then it is very likely that that young person will not receive a caution by police or by courts, we do not believe that this needs to be prescribed in the legislation.⁷²

- 2.7 The President of the Law Society, Mr Doug Humphreys OAM also emphasised the need for flexibility in dealing with young offenders:

Particularly where there is a time gap between perhaps some cautions being given. They are kids. They will do stupid things. It is really important that there is flexibility...The police will look at the matter and they will look at what is there...For kids interacting with the police because they come from a dreadful home circumstance and whatever, it may well be that there is a really good reason why we should continue. They can be held accountable and they can be dealt with, but three just seems to be an arbitrary point.⁷³

- 2.8 The NSW Bar Association⁷⁴ and the President of the Children's Court, Judge Johnstone also argued for the removal of the cap. Judge Johnstone told the Committee:

...we want complete discretionary capacity in relation to all those types of things, and so should the police. If the police want to give a fourth caution why should they not give a fourth caution? If they think that is going to be effective then I would unfetter those sorts of restrictions.⁷⁵

- 2.9 The Aboriginal Legal Service also argued that the cap should be removed and that police should grant cautions based on the offence committed by the young person, not the number of times he or she has been dealt with under the YOA. The Aboriginal Legal Service emphasised that the cap impacts disproportionately on Aboriginal young people:

⁷⁰ Submission 14, Legal Aid, pp7-8.

⁷¹ Submission 26, Law Society of NSW, p3.

⁷² Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p53.

⁷³ Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p53.

⁷⁴ Submission 22, NSW Bar Association, p41.

⁷⁵ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p5.

Aboriginal and Torres Strait Islander people are over policed relative to non-Indigenous people. Recent research by the Bureau of Crime Statistics and Research (BOCSAR) found that, in NSW, Aboriginal and Torres Strait Islander people are six times more likely to be arrested for any offence than non-Indigenous Australians...Given this over policing, limits on the number of cautions or conferences a young person is entitled to...unfairly impact Aboriginal young people.⁷⁶

- 2.10 Other stakeholders indicated that while there is scope for the caution cap to be considered further, there may be arguments against unlimited cautions. Mr Paul McKnight, Executive Director, Policy and Reform, of the Department of Justice NSW told the Committee:

It is my recollection that the limit of three cautions was introduced something like 15 years ago in response to community concerns about young offenders getting repeated cautions from police and not having a more serious intervention made into their behaviour...if we were to launch a review of the YOA today I would expect to get submissions that suggest lifting that caution limit.⁷⁷

- 2.11 Similarly, when asked about the issue Mr Joseph Cassar, Assistant Commissioner, Capability, Performance and Youth Command, NSW Police Force told the Committee:

I certainly believe there are benefits to explore the scope of increasing the number of cautions beyond three, under certain circumstances. I believe that there needs to be a limit on the number of cautions. Generally speaking, I see that there is greater value in conferences than cautions because there is an outcome. I think you would get feedback from other people in that regard too.⁷⁸

The NSW Government should review whether a young person should have to make an admission to be eligible for diversion under the Young Offenders Act

Recommendation 2

That the NSW Government review whether a young person should be required to make an admission before he or she can be dealt with by way of caution or youth justice conference under the *Young Offenders Act 1997*.

- 2.12 A young person must admit an offence before police and the courts can issue him or her with a caution or refer him or her to a youth justice conference under the YOA.⁷⁹ Some stakeholders who gave evidence to the inquiry argued that this threshold should be lowered.
- 2.13 The Committee considers that the requirement for a young person to admit the specifics of an offence as charged by police may stop some young people being diverted from the criminal justice system. The NSW Government should consider whether the threshold should be lowered. For example, it could be lowered so that police and the courts can divert young people where they do not deny the

⁷⁶ Submission 23, Aboriginal Legal Service (NSW/ACT), pp15-16.

⁷⁷ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p39.

⁷⁸ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p7.

⁷⁹ *Young Offenders Act 1997* ss19(b), 31(1)(b), 36(b) and 40(1A)(b).

offence or where they concede wrongdoing even if they do not admit all the specifics of the offence as charged by police.

2.14 The President of the Children's Court told the Committee that requiring an admission of guilt before a young person can be cautioned or referred to a youth justice conference may discourage some young people from participating and being diverted from court proceedings and thus the criminal justice system. His Honour noted that in New Zealand a young person is required to "not deny" the offence before he or she is eligible for diversion.⁸⁰

2.15 His Honour recommended lowering the threshold in NSW to "not deny" or "concession of wrongdoing" rather than requiring a young person to admit the specifics of the offence as charged by police.⁸¹ Judge Johnstone stated:

...one of the inhibitors to using the Young Offenders Act is that the child at the police station has to admit guilt, has to admit the crime. That is a real inhibitor sometimes in enabling police to use the Young Offenders Act...[W]e have advocated adopting the New Zealand system to enable children to be diverted under the Young Offenders act by using the process of "not deny" as opposed to admit the crime. I think that would help us increase the uptake and utilisation of the Young Offenders Act.⁸²

2.16 In similar vein, the NSW Bar Association noted that the recent Royal Commission into the Protection and Detention of Children in the Northern Territory recommended removing the requirement for an admission before a child is eligible for diversion in the Northern Territory, so that a child is eligible if he or she does not deny the offence. The Bar Association recommended a similar approach for NSW.⁸³

2.17 The Aboriginal Legal Service also supported lowering the threshold so that a full admission is not necessary for a young person to be diverted. Ms Keisha Hopgood, Deputy Principal Solicitor, Redfern Office, Aboriginal Legal Service told the Committee:

It would certainly make sense...[A]n example would be where a young person agrees with 85 per cent of what is put to them and not the other 15 per cent. That is not a matter that should go to court; it is not in anyone's interest for that to go through the court system.⁸⁴

2.18 Assistant Commissioner Cassar of the NSW Police Force also agreed that there may be circumstances where it would be in the best interests of the community if police could divert young people without them having to admit to the offence:

Under the public admissions scheme we have grown to a position where NSW Police are able to offer the young person the opportunity to make that admission so that we can proceed by way of caution and the admission will not be used in any other form of proceedings against them...[I]f there was an opportunity for us to move

⁸⁰ Submission 19, President of the Children's Court of NSW, p3.

⁸¹ Submission 19, President of the Children's Court of NSW, p3.

⁸² Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p6.

⁸³ Submission 22, NSW Bar Association, pp21&37; and Ms Sarah Pritchard SC, Barrister, NSW Bar Association, p50.

⁸⁴ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018 p43.

forward and there were instances where we were able to proceed by way of caution for children, based on the fact that there was no admission but there was overwhelming evidence, I think it would be in the best interests of our communities to follow that path.⁸⁵

Young people should not have to participate in an Electronically Recorded Interview of a Suspected Person (ERISP) to be eligible for a Police caution under the Young Offenders Act

Recommendation 3

That the NSW Police Force amend its policies and procedures to explicitly state that it is not necessary for a young person to participate in an electronically recorded interview of a suspected person (ERISP) before Police can issue him or her with a caution under the *Young Offenders Act 1997*.

- 2.19 During its inquiry, the Committee heard that police sometimes mistakenly believe that to gain the necessary admission to issue a young person with a caution they must carry out an electronically recorded interview of a suspected person (ERISP) at which the admission is recorded.
- 2.20 As detailed below, some stakeholders indicated that requiring an ERISP can hamper efforts to divert young people from the criminal justice system. It can result in unnecessary arrests and delays that increase the contact young people have with police, increase the time they spend in custody, and increase the chances that they will further incriminate themselves. These stakeholders argued it should be made clear to police that it is sufficient for a young person to sign a standard form or notebook entry admitting the offence and that there is no requirement for police to carry out an ERISP before they can caution a young person.
- 2.21 Police have responded that in practice the Officer in Charge may decide to record an interview with a young person well before the Officer is in a position to decide whether the matter is suitable to be dealt with by caution, and that this may explain why police are using the ERISP in these cases.⁸⁶
- 2.22 In any event, there is no requirement in the YOA for police to electronically record an admission before they can caution a young person, and the YOA exists to promote the diversion of young people from the criminal justice system.⁸⁷ To eliminate the possibility of any confusion, the Committee considers that police policy and procedures should be amended to explicitly state that it is not necessary for police to carry out an ERISP before they can issue a young person with a caution under the YOA. The Committee agrees that wherever possible young people should instead be asked to sign a standard form or notebook entry admitting the offence.

⁸⁵ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p3.

⁸⁶ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p1.

⁸⁷ See for example s7(c).

- 2.23 In its submission to the inquiry, Legal Aid NSW stated that where police mistakenly believe an ERISP is required, it can cause a number of practical problems that may hamper diversion. Legal Aid stated:
- The YOA provides that a police officer may caution a child if, amongst other things, the child admits the offence. It appears that police currently interpret this requirement to mean that a child must make an admission to the offence on an...ERISP. In many cases police will therefore arrest the child and take them to the police station...where they may remain in custody for some time...
- ...[A]lthough a child may not have had the opportunity to obtain legal advice, our solicitors observe that many police will either proceed to interview a child or, if the child refuses to be interviewed, proceed to charge the child because they have not made an admission on a recorded interview. In other words, cautions are not being given where they are appropriate.⁸⁸
- 2.24 Legal Aid recommended the YOA be amended to expressly provide that for the purpose of a caution, it is not necessary to secure a young person's admission on an ERISP. It further stated that it should be sufficient for the young person to sign a standard form or notebook entry to admit the offence for the purposes of receiving a caution.⁸⁹
- 2.25 In evidence to the Committee, Ms Debra Maher, Solicitor in Charge, Children's Legal Service (Criminal Division) Legal Aid NSW noted the very simple admissions process that applies in court to make young people eligible for diversion:
- ...there needs to be an easier way to make an admission because the Young Offenders Act was drafted just to require an admission. If you go to court, that admission takes the form of, "Your Honour, I am here with my client. He admits to this possess prohibited drug offence". The Judge will say, "Thank you Ms Maher. We will proceed".⁹⁰
- 2.26 Ms Maher contrasted this with the cases where police are requiring fully recorded admissions through an ERISP, noting that this increases the chances that young people will further incriminate themselves thereby undermining diversionary efforts. She stated:
- At the police station, the police in the majority of cases require a fully recorded admission...[ERISP]. That is really an investigative tool. It is more than an admission and it is more than the Act requires...
- You can imagine the difficulties that that can bring. "Possess prohibited drug" is a really good example. The young person wants to say, "Yes, I admit that that drug in my pocket is mine", but if they go into an ERISP when the police want to use it as an investigative tool, they can be asked questions like, "Where did you get it?..." The silly kid says, "It wasn't all for me; it was for my friends too" – and that is a "supply

⁸⁸ Submission 14, Legal Aid NSW, p8.

⁸⁹ Submission 14, Legal Aid NSW, p8.

⁹⁰ Ms Debra Maher, *Transcript of Evidence*, 30 April 2018, p14.

prohibited drug". You can see that there are dangers and that children need protection from their own self a lot of the time.⁹¹

- 2.27 The Law Society of NSW made very similar comments in its submission to the inquiry, raising concerns "that some police are under a misapprehension that for a child to make an admission they must make this on an...ERISP".⁹² It noted that to carry out the ERISP, a child is likely to have increased contact with police as they will often have to be taken to the police station and may remain locked in a cell while waiting to be interviewed. Similarly, where the ERISP is used as an investigative tool in these situations it erodes the original intent of the YOA to promote diversion.⁹³
- 2.28 The Law Society contended that a simpler admissions process would promote diversionary efforts (for example, having the young person sign a standard form or notebook entry) and recommended that the YOA be amended to provide that for the purposes of a caution it is not necessary to use an ERISP, or any other form of interview, to record a young person's admission.⁹⁴
- 2.29 At the Committee's hearing on 10 May 2018, Ms Irwin of the Law Society expanded on these comments, raising particular concerns that the use of the ERISP to gain admissions for a caution had also been linked with unnecessary and unlawful arrests:
- When the Children's Court deals with a young person under the Young Offenders Act by way of a caution, a solicitor simply attends the bar table and says to the court that this young person admits the offence. The court can then proceed to caution the young person. It should not be any different in a police station. It is very concerning not just that there appears to be a compulsion for comprehensive interview but that there is an arrest for that purpose, which in my view is unlawful arrest. It does not accord with section 99 of the Law Enforcement (Powers and Responsibilities) Act and it does not accord with common law principles that relate to the power of arrest.⁹⁵
- 2.30 The NSW Bar Association also agreed that there should be no requirement for a child to participate in an ERISP to make an admission for the purposes of receiving a caution under the YOA. It too stated that the young person should instead be able to sign a standard form.⁹⁶
- 2.31 In answers to questions the Committee asked about this issue, the NSW Police Force noted that there is no requirement in the YOA for the police to electronically record an admission before they can caution a young person. However, in practice the Officer in Charge may decide to record an interview with a young person well before he or she is in a position to decide whether it is a suitable matter to be dealt with by caution:

⁹¹ Ms Debra Maher, *Transcript of Evidence*, 30 April 2018, p14.

⁹² Submission 26, Law Society of NSW, p3.

⁹³ Submission 26, Law Society of NSW, p3.

⁹⁴ Submission 26, Law Society of NSW, p4.

⁹⁵ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p52.

⁹⁶ Submission 22, NSW Bar Association, p41.

From an operational policing perspective, it may be that the OIC decides to record an interview with a Young Person – that decision may occur well before the OIC is in a position to make a determination under s20(2) YOA, which might explain why police are deciding to record interviews with the Young Person.⁹⁷

The NSW Government should review the offences covered by the Young Offenders Act

Recommendation 4

That the NSW Government review the *Young Offenders Act 1997* to determine:

- whether the offences covered by the Act remain appropriate;
- whether any additional offences should be able to be dealt with under the Act in appropriate cases; and
- whether Police should be able to issue warnings and cautions and refer young people to youth justice conferences for additional offences in appropriate cases.

- 2.32 A young offender can only be dealt with under the YOA, receiving warnings, cautions and youth justice conferences, if the offence is covered by the YOA – certain offences are excluded. For other offences a court can caution a young person or refer him/her to a youth justice conference but police cannot do this. To promote the diversion of young people from court and the criminal justice system, many stakeholders have told the Committee that a greater range of offences should be able to be dealt with under the YOA where appropriate, and that police should be able to divert young people for more offences.
- 2.33 Noting broad stakeholder support, the Committee agrees there may be scope for a greater range of offences to be able to be dealt with under the YOA in appropriate cases. There may also be scope to increase the number of offences for which police can provide a warning or caution, or refer a young person to a youth justice conference. Police and the courts would retain the discretion not to divert or refer young people for these offences in cases where this is not appropriate, and the YOA contains provisions to guide these decisions.⁹⁸
- 2.34 As detailed below, the Committee notes that certain offences may be excluded or partially excluded from the YOA because of a concern that a YOA outcome or police referral would not be sufficient to hold a young person accountable for these types of offences. However, some types of excluded offences may actually be better dealt with by a YOA outcome or police referral, given an appropriate case. For example, were a young person to attend a youth justice conference for a graffiti offence, face his or her victim, and make reparation for his or her behaviour this may better assist to hold him/her accountable than a fine issued by a court.
- 2.35 In short, the Committee considers the NSW Government should review the offences that are covered by the YOA, in consultation with all relevant stakeholders, to determine whether they remain appropriate, whether any

⁹⁷ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p1.

⁹⁸ See for example *Young Offenders Act 1997* ss14(2); 20(3); and 40(5).

additional offences should be able to be dealt with under the YOA, and whether police should be able to issue warnings and cautions and refer young people to youth justice conferences for additional offences where appropriate.

2.36 Legal Aid NSW told the Committee that the current offence exclusions under the YOA are unwarranted, preventing the diversion of young people in appropriate cases. For example:

- Graffiti offences – while a court can caution a person who has committed an offence under the *Graffiti Control Act 2008* or refer him/her to a youth justice conference, police cannot do this.⁹⁹ Nor can police issue a young person with a warning for a graffiti offence.¹⁰⁰ Legal Aid stated that its solicitors most commonly see young people who are charged with a graffiti offence go to court and get sentenced with a fine that they are often not able to pay.

Legal Aid argued that fines have little deterrent or rehabilitative effect and that the YOA provides better methods for sanctioning and educating young people in relation to graffiti offences. At a youth justice conference a young person has to face the person whose property has been damaged by the graffiti and the conference outcome plan can include a provision requiring him/her to clean up the graffiti. Legal Aid recommended that police warnings, cautions and youth justice conferences be available for graffiti offences.¹⁰¹

- Traffic offences – the YOA does not apply to traffic offences committed by a young person who was, at the time of the offence, old enough to obtain a learner's licence.¹⁰² Legal Aid contended that in some cases such offences would be suitable for a YOA outcome and consideration should be given to bringing them within the scope of the YOA.¹⁰³
- Some sexual offences – most sexual offences are excluded from the YOA.¹⁰⁴ Legal Aid argued that some sexual offending by young people should be able to be dealt with under the YOA in appropriate cases, e.g. an act of indecency like mooning or calling out an inappropriate comment; low level cases of indecent assault; and consensual sex between two young people of similar age who cannot consent because one or both are under the age of 16 years.¹⁰⁵
- Domestic violence offences – a young person cannot be diverted under the YOA if they are alleged to have committed a domestic violence offence under the *Crimes (Domestic and Personal Violence) Act 2007* (CDPV Act).¹⁰⁶ Legal Aid does not support this exclusion and stated that the majority of offences

⁹⁹ See *Young Offenders Act 1997* ss18, 31(1), 37(1) and 40(1A)(a).

¹⁰⁰ *Young Offenders Act 1997* s13.

¹⁰¹ Submission 14, Legal Aid NSW, p7.

¹⁰² *Young Offenders Act 1997* s8(2)(b).

¹⁰³ Submission 14, Legal Aid NSW, p5.

¹⁰⁴ *Young Offenders Act 1997*, s8(2)(d).

¹⁰⁵ Submission 14, Legal Aid NSW, p6.

¹⁰⁶ *Young Offenders Act 1997*, s8(2)(e).

under the CDPV Act dealt with in the Children's Court do not involve the typical domestic violence power imbalance that the CDPV Act seeks to address – it is usually violence between siblings and against parents and carers.¹⁰⁷

- 2.37 The Law Society of NSW made similar comments stating that the general exclusion of all strictly indictable offences from the YOA is inappropriate. It also argued that the range of offences covered by the YOA should be extended to cover all offences for which the Children's Court has jurisdiction to deal with to finality.¹⁰⁸ At the Committee's hearing on 10 May 2018, Ms Irwin stated:

...if an offence is objectively serious, our experience is that...police or courts will not refer or divert under the Young Offenders Act. They take into account a range of factors including the harm to the victim and the objective seriousness of the offence. We believe that there should not be these exclusions peppered throughout the Young Offenders Act that have developed over time...the discretion should be left with the police and with the Children's Court in terms of whether or not the factors are met that they need to consider when diverting under the Young Offenders Act.¹⁰⁹

- 2.38 The President of the Children's Court also told the Committee that there may be opportunity for a broader range of offences to be covered under the *Young Offenders Act 1997* "...which would increase the availability of warnings, cautions and Youth Justice Conferences to children and young people".¹¹⁰ Similarly, the Office of the Advocate for Children and Young People (ACYP) noted that some offences are ineligible for diversion under the YOA and stated:

ACYP is of the view that there may be some circumstances in which it would be more appropriate to issue a warning, caution or conference than to charge a child or young person with these offences. We therefore suggest that the ineligible offences should be reconsidered with a view to providing the Police with greater discretion to divert young people away from the criminal justice system.¹¹¹

- 2.39 In addition, the NSW Bar Association told the Committee that certain currently excluded offences should be able to be dealt with under the YOA in appropriate circumstances including offences under the CDPV Act and less serious sexual offences such as indecent assault, act of indecency and consensual sex between two young people of similar age who cannot consent because one or both are under the age of 16.¹¹²

- 2.40 Jesuit Social Services also agreed that there is more scope for matters to be dealt with by youth justice conferencing under the YOA. It stated:

¹⁰⁷ Submission 14, Legal Aid NSW, p6.

¹⁰⁸ Submission 26, Law Society of NSW, pp3-4.

¹⁰⁹ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p54.

¹¹⁰ Submission 19, President of the Children's Court of NSW, p3; see also Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p5.

¹¹¹ Submission 20, Office of the Advocate for Children and Young People, p23.

¹¹² Submission 22, NSW Bar Association, p41.

We believe the more serious the offence, the greater the opportunity for restoration through group conferencing because the impact of the offence on all parties involved has generally been greater and there is more harm to repair.¹¹³

- 2.41 At the Committee's public hearing on 30 April 2018, Ms Hopgood of the Aboriginal Legal Service supported greater scope for the YOA to be able to deal with certain offences in appropriate cases, whilst still allowing police discretion to refer serious cases involving those offences to court.¹¹⁴ Ms Hopgood provided contextual information about why certain offences should not be excluded from the YOA:

...traffic matters could be dealt with very appropriately by way of a youth justice conference...A young person is then forced to look at the potential dangers in their driving behaviour, the potential consequences to the community and to themselves. A plan could be put in place that includes a traffic offenders course.¹¹⁵

- 2.42 Speaking of the fact that police cannot divert a young person who has committed the offence of intimidation, where appropriate, from going to court Ms Hopgood also stated:

...the offence of intimidation, which is an offence that comes under the Crime (Domestic and Personal Violence) Act...cannot be dealt with under the Young Offenders Act. That may be a young person who has come from a very difficult background and may not have a lengthy history of offending, is in a group home placement and is under the care of the Minister but gets into an argument with another person about a remote control, saying something that constitutes intimidation. That is a matter that would have to go to court.¹¹⁶

- 2.43 On the subject of police being unable to warn, caution or refer a young person to a youth justice conference for graffiti offences, Mr McKnight of the Department of Justice also provided contextual information:

I think that reflects a view taken by the Government at the time that graffiti offences required a court-based response. The quote I have in front of me from the Attorney General in his second reading speech in 2013, referring to the amendments to the Graffiti Control Act which achieved that, was that the changes that were made then reflected the requirement that young offenders be brought before a court. That was a government policy choice.¹¹⁷

- 2.44 However, like Legal Aid NSW, the Law Society argued that graffiti offences are often particularly suitable for a YOA outcome and that police should be able to caution young people or refer them to youth justice conferences for graffiti offences where appropriate. Ms Irwin told the Committee:

On the issue of graffiti, statistics show that the Children's Court are cautioning under the Young Offenders Act or referring the majority of matters to a conference. We think it is appropriate that police also have the power to refer or caution under that

¹¹³ Submission 3, Jesuit Social Services, p8.

¹¹⁴ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, pp42-43.

¹¹⁵ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p42.

¹¹⁶ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p42.

¹¹⁷ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p39.

Act. We do not believe there is any clear or logical reason why they are excused from being dealt with by the police under the Act. Much more serious offences...such as offences of violence, go before youth justice conferences. It does not really make sense, in our view, that these matters are excluded.¹¹⁸

2.45 Mr Humphreys of the Law Society said:

To discover why we excluded graffiti I think you would have to look at the second reading speech in *Hansard*. Some people got sick of it and they wanted people to be dealt with severely for graffiti... If you turn around and send a kid off to a conference, what is going to happen? As the landowner I am going to have to attend; I am going to have to tell the kid all of the issues I have had. I am then going to have a say in the outcome. I think that is a much better way. It gives a much better outcome than simply making a kid go to court.¹¹⁹

2.46 When asked if a greater range of offences should be able to be dealt with under the YOA in appropriate cases, Assistant Police Commissioner Mr Cassar stated:

There is certainly scope to provide consideration. Our societies and our environments have changed significantly. The NSW Police Force would embrace the opportunity to comment should we go down that path.¹²⁰

Age of Criminal Responsibility

The NSW Government should conduct a review to consider the age of criminal responsibility in NSW

Recommendation 5

That the NSW Government conduct a review, in consultation with all relevant stakeholders, to examine whether the current age of criminal responsibility, and the age at which a child can be detained, should be increased in NSW.

2.47 As discussed in Chapter One, the CCPA governs the conduct of criminal proceedings against young people under the age of 18 years in NSW. Under this Act, there is a conclusive presumption that a child under the age of 10 years cannot commit an offence.

2.48 Further, there is a rebuttable common law presumption in NSW that children aged between 10 and 14 years cannot commit a criminal offence. To rebut this presumption, the prosecution must prove that the child did the act charged and that in doing so the child knew that it was seriously wrong in the criminal sense and not merely naughty.¹²¹ The presumption that a child cannot commit an offence is sometimes referred to as *doli incapax*.

2.49 As detailed below, during the inquiry, many stakeholders told the Committee that the age of criminal responsibility in NSW should be raised from 10 years. Some suggested the age should be set at 12 years while others recommended 13

¹¹⁸ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p54.

¹¹⁹ Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p54.

¹²⁰ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p7.

¹²¹ See submission 26, Law Society of NSW, p6; and Submission 20, Office of the Advocate for Children and Young People, p23.

or 14 years. Some stakeholders also stated that the age at which a child can be ordered to serve a sentence of imprisonment should be raised to 14 years except in very serious circumstances.

- 2.50 Despite the work that has been done to divert young people from the criminal justice system in NSW, a number of young people still end up in juvenile detention, some at very young ages. As mentioned earlier in the Chapter, a 2013 report found that the YOA had reduced the risk of young people being sentenced to a term of imprisonment by 17.5 per cent for Aboriginal young people and 16.3 per cent for non-Aboriginal young people.¹²² Nonetheless, as at 11:59pm on 6 May 2018, there were 277 males and 33 females in Juvenile Justice detention.¹²³ During the Committee's site visits to Riverina Juvenile Justice Centre, Wagga Wagga; Orana Juvenile Justice Centre, Dubbo; and Reiby Juvenile Justice Centre, Airds; staff of Juvenile Justice NSW confirmed that children as young as 10 years are sometimes detained in Juvenile Justice centres in NSW.
- 2.51 The Committee agrees that the age of criminal responsibility, and the age at which a child can be detained, warrants review by the NSW Government. It notes arguments put by many stakeholders (discussed in detail below) that the current law does not adequately protect younger children and that raising the age would:
- reflect current research about adolescent brain development;
 - reflect research indicating that if a child can be kept out of the justice system his/her prospects of staying out are enhanced;
 - better address issues around mental health and cognitive impairment;
 - bring NSW into line with Australia's international obligations;
 - address concerns that Aboriginal children are disproportionately affected by a low age of criminal responsibility as they tend to come into conflict with the law at a younger age.
- 2.52 The Committee further notes recommendations made in this area by the recent Royal Commission into the Protection and Detention of Children in the Northern Territory, which are discussed below.
- 2.53 However, the Committee also notes evidence discussed below that if criminal justice responses were taken away for younger children who committed wrongs, there would have to be an alternative response about which there would need to be serious consideration. Another serious question is how lifting the age of criminal responsibility would sit with concerns such as community safety and the prevention of vigilante activity in the rare cases where a younger child commits an extremely serious offence.
- 2.54 In short, the age of criminal responsibility, and the age at which a child can be detained in NSW warrants review but this must be done in consultation with all

¹²² Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p37.

¹²³ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p1.

affected stakeholders and the complex issues surrounding it closely considered. For this reason the Committee recommends that the NSW Government conduct a review, in consultation with all relevant stakeholders, to examine whether the current age of criminal responsibility, and the age at which a child can be detained, should be increased in NSW.

- 2.55 In his submission to the inquiry, the President of Children's Court of NSW, Judge Johnstone, noted that the recent Royal Commission into the Protection and Detention of Children in the Northern Territory recommended that:
- The age of criminal responsibility be increased from 10 years to 12 years;
 - That youth under the age of 14 years not be able to be ordered to serve a time of detention other than where the youth has been convicted of a serious and violent crime against the person; presents a serious risk to the community; and the sentence is approved by the President of the Children's Court.¹²⁴
- 2.56 Judge Johnstone supported close consideration of the recommendation to increase the age of criminal responsibility noting that an increase to 12 years "would align NSW with contemporary scientific research, as well as...the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* which stipulates that the minimum age set should recognise emotional, mental and intellectual maturity".¹²⁵
- 2.57 His Honour also stated that the recommendation would reduce the number of children coming before the courts at an early age, which increases the risk they will become desensitised to the court process, reducing its effectiveness as a deterrent.¹²⁶ This is consistent with the remarks of one young person the Committee spoke with during its site visit to Reiby Juvenile Justice Centre in July 2018 who indicated that "the younger you are when you go into a Juvenile Justice centre, the harder it is to change".
- 2.58 In supporting the recommendation concerning detaining people under 14 years, His Honour also stated that this would reflect the practice in Belgium, Switzerland, Finland, Scotland and England "which require children under a certain age to be dealt with through a therapeutic, protective response".¹²⁷
- 2.59 At the Committee's hearing on 30 April 2018, Judge Johnstone expanded on these comments, emphasising emerging scientific knowledge in relation to adolescent brain development:

As children are growing up in their teens they do not use the frontal lobes to the fullest extent, so they are doing stupid things. We can give the Committee all sorts

¹²⁴ Submission 19, President of the Children's Court of NSW, pp12-13; see also Royal Commission into the Protection and Detention of Children in the Northern Territory, (2017) *Final Report* vol 2B, Recommendation 27.1, available at Royal Commission website: https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx#_Findings, viewed 10 July 2018.

¹²⁵ Submission 19, President of the Children's Court of NSW, pp12-13.

¹²⁶ Submission 19, President of the Children's Court of NSW, p13.

¹²⁷ Submission 19, President of the Children's Court of NSW, p13.

of examples as to why child crime can differ from adult crime based on this underdevelopment of the brain or the non-use of the frontal lobes as opposed to the hippocampus, which is that part of the brain that is emotional...Based on that sort of evidence, we are very supportive of raising the age of criminal responsibility and raising the age for...putting children into gaol.¹²⁸

2.60 However, Judge Johnstone emphasised that if the age of criminal responsibility and the age at which a child can generally be detained were to be increased, alternative processes would have to be put in place to deal with younger children who had committed wrongs that would previously have been classed as crimes:

You have to have proper processes in place to deal with those children who have committed a wrong that adequately deals with and addresses their criminogenic tendencies. Otherwise they are only going to continue to do what they are doing, come back at the age of 13 and commit worse crimes...So yes, I would raise the age for criminal responsibility to 12, but I would make sure that there is a system behind that which enables us to work with those children to address their problems. Likewise, I would support raising the age for incarceration to 14, but that is again on the basis that we have appropriate and sufficient community-based programs to look after those children.¹²⁹

2.61 At the hearing on 8 May 2018, Mr McKnight of the Department of Justice NSW made a similar point, noting that if criminal justice responses were to be taken away for children aged 10 to 12 years, there would have to be an alternative response about which there would need to be serious consideration:

There are some young people between the ages of 10 and 12 who do commit offences, and sometimes those are serious. A potential position is that a criminal justice response to that should be taken away, but I think we would have to give very serious consideration as to what kind of a response to that behaviour we would provide. It would not be a case of simply taking it out of the criminal justice system.¹³⁰

2.62 In its submission to the inquiry, the Public Interest Advocacy Centre (PIAC) argued the age of criminal responsibility should be raised to 12 years, in line with the recommendations of the Royal Commission, with consideration to setting it at 14 years. PIAC stated that "10 years is too young and unnecessarily brings young people into contact with the criminal justice system when they are unable to understand that they have done something wrong".¹³¹ PIAC further stated that the United Nations Committee on the Rights of the Child has recommended a minimum age of 12 years for criminal responsibility. In addition, it noted the findings of the Royal Commission that:

Empirical and scientific research has convincingly shown that:

¹²⁸ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p5.

¹²⁹ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p5.

¹³⁰ Mr Paul McKnight, *Transcript of Evidence*, 30 April 2018, p40.

¹³¹ Submission 15, Public Interest Advocacy Centre, pp13-14.

- Many children and young people who engage in anti-social behaviour and even criminal conduct will mature eventually and become responsible adults
- Those children and young people who are at risk of continuing on a trajectory of criminal behaviour are able to be deflected from such an outcome, and
- If the child can be kept out of the formal criminal justice system, the prospects of staying out are considerably enhanced.¹³²

2.63 PIAC also stated that it agreed with the Royal Commission that detention of children younger than 14 is likely to be counter-productive and that a similar prohibition to that recommended by the Royal Commission should be introduced in NSW.¹³³

2.64 In addition, PIAC agreed with the President of the Children's Court that if the age of criminal responsibility and the age at which a child can generally be detained were to be increased, alternative processes would have to be put in place to deal with younger children who committed wrongs. At the hearing on 30 April 2018, Ms Anna Dawson, Senior Solicitor, Indigenous Justice Program, told the Committee:

...there certainly will still be circumstances where young people under that age [12 years] come to the attention of police for what otherwise would be offending behaviour but there need to be programs in place to properly engage and divert it at that young age so as to make sure that it is not just a matter of everybody being flooded into the system at 12.¹³⁴

2.65 At the hearing, the Deputy Chair also noted that there have been cases of extremely serious offending by children under the age of 12 years and asked Ms Dawson how the recommendation to increase the age of criminal responsibility sits with considerations such as community safety and the prevention of vigilante activity.¹³⁵ Ms Dawson responded that these issues would have to be seriously considered if the age of criminal responsibility were to be raised:

I understand that concern and it is something that would have to be seriously considered if the age of criminal responsibility was raised. I do not have the answer right now but I know that in other jurisdictions where they also have an age of criminal responsibility of 12 years of age there are ways to deal with children who have committed otherwise serious crimes. Sometimes they are carved out, they are like an exception, but otherwise the focus is on diversion.¹³⁶

2.66 Another stakeholder who supported change to the age of criminal responsibility was the NSW Bar Association. In its submission to the inquiry it too supported raising the age of criminal responsibility to 12 years. Regarding the detention of

¹³² Submission 15, Public Interest Advocacy Centre, pp13-14.

¹³³ Submission 15, Public Interest Advocacy Centre, pp14-15.

¹³⁴ Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, p33.

¹³⁵ *Transcript of Evidence*, 30 April 2018, p34.

¹³⁶ Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, p35.

children younger than 14, it also supported a prohibition similar to that recommended by the Royal Commission, being introduced in NSW.¹³⁷

2.67 In response to the question about how the recommendations sat with community safety and the prevention of vigilante activity where very serious offences have been committed by children under the age of 12 years, Mr Phillip Boulten SC of the NSW Bar Association emphasised the cognitive abilities of such children stating:

There are kids who do things very badly who are younger than 12. It is still the case that those kids do not have the same cognitive abilities as adults...The more...we learn about the brain and how it operates...the more we all get to understand that people who are still only 10 or 11 have nothing like the same ability to be able to understand why things are wrong or how it is going to impact on other people if they do wrong things...They think they are just being naughty if they think about it at all.¹³⁸

2.68 Mr Boulten also pointed to the fact that cognitive impairment is very prevalent amongst juvenile offenders and stated further:

For those reasons there is now a very settled view amongst academics – legal academics, practising lawyers, psychologists, psychiatrists and the medical profession – that people who are 10 or 11 just are not in the same category as older kids...As a profession we are very strong on this issue.¹³⁹

2.69 In its submission to the inquiry, the Law Society of NSW argued that the age of criminal responsibility should be raised to a minimum of 12 years in NSW but that it would prefer a minimum of 13 years – when the child is in high school, not primary school.¹⁴⁰ The Law Society stated that this would mean fewer children were brought into the criminal justice system and would reflect current research about adolescent brain development. The Law Society also mentioned research indicating a strong link between encountering the justice system at a young age and re-offending later in life.¹⁴¹

2.70 Further, the Law Society indicated that the United Nations Committee on the Rights of the Child has repeatedly criticised countries including Australia, stating that having an age of criminal responsibility below 12 years is internationally unacceptable. An international study of 90 countries found that 60 per cent had a minimum age of 12 years or higher, with the most common age being 14 years.¹⁴²

2.71 When asked about how its proposals in this area align with concerns around community safety and the prevention of vigilante activity in cases where children younger than 12 or 13 have committed extremely serious offences, the Law

¹³⁷ Submission 22, NSW Bar Association, p38.

¹³⁸ Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p57.

¹³⁹ Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p57.

¹⁴⁰ Submission 26, Law Society of NSW, p7.

¹⁴¹ Submission 26, Law Society of NSW, p6.

¹⁴² Submission 26, Law Society of NSW, p6.

Society acknowledged the criminal justice system must balance the rights of the individual against the rights of the community and stated:

For children under the age of 12 or 13, we submit that many of the concerns regarding a young offender's ongoing risk to community safety can be addressed through targeted interventions focusing on the child's criminogenic needs (such as cognitive impairment, mental illness and social welfare concerns).¹⁴³

2.72 The Law Society also indicated that cases of children under 13 committing very serious offences is rare:

In terms of the actual risk posed to the community, we refer to research indicating that across Australia "very serious offences (such as homicide and sexual offences) are rarely perpetrated by juveniles". In our experience in NSW, the frequency of children under 13 committing "very serious offences" is virtually non-existent.¹⁴⁴

2.73 At the Committee's hearing on 10 May 2018, Mr Benjamin Stevens of Youth Off The Streets gave evidence about 10 year olds who he has worked with in Juvenile Justice centres, indicating the centres are not suitable for children of this age:

I have worked in different capacities for the last 10 years at Reiby Juvenile Justice Centre for a non-government organisation that runs homework centre programs...I have worked with young people who have come in at the age of 10. I cannot speak to their specific circumstances for getting locked up, but getting locked up in a Juvenile Justice centre, which at one point went to the age of 16, is a very, very unsafe place and developmentally a completely unsuitable position for them to be in.¹⁴⁵

2.74 Mr Will Bovino of Youth Off The Streets also raised concerns that some of these children may be, developmentally speaking, much younger than 10 years:

It literally has to be done on a case-by-case basis because a 10-year-old developmentally may not be 10; they may be six or seven still. Putting them into custody at that age could be detrimental to their ongoing development and future life opportunities.¹⁴⁶

2.75 In its submission to the inquiry, ACYP noted the rebuttable common law presumption that children between 10 and 14 years cannot commit an offence and that despite this and research demonstrating the adolescent brain undergoes significant development and growth during and well past 10-14, some children within this age group continue to fall into the criminal justice system.¹⁴⁷

2.76 ACYP also noted that Aboriginal children tend to come into conflict with the law at a younger average age than non-Aboriginal children. Further, the United Nations Committee on the Rights of the Child and Special Rapporteur on the Rights of Indigenous Peoples have expressed concern over the over-

¹⁴³ Law Society of NSW, *Answers to Questions on Notice and Supplementary Questions*, 10 May 2018, pp3-4.

¹⁴⁴ Law Society of NSW, *Answers to Questions on Notice and Supplementary Questions*, 10 May 2018, p4.

¹⁴⁵ Mr Benjamin Stevens, *Transcript of Evidence*, 10 May 2018, p27.

¹⁴⁶ Mr Will Bovino, *Transcript of Evidence*, 10 May 2018, p28.

¹⁴⁷ Submission 20, Office of the Advocate for Children and Young People, p23.

representation of Aboriginal children in the criminal justice system and have recommended an increase in the minimum age of criminal responsibility.¹⁴⁸

- 2.77 ACYP supported calls to raise the minimum age of criminal responsibility and argues that people under the age of 14 years should be referred to diversionary programs such as Youth On Track to address the underlying causes of their offending.¹⁴⁹
- 2.78 In its submission to the inquiry, the Aboriginal Legal Service argued the age of criminal responsibility should be raised to 14 years in NSW.¹⁵⁰
- 2.79 In its submission to the inquiry, the NSW Coalition of Aboriginal Regional Alliances (NCARA) noted the arguments for raising the age of criminal responsibility in NSW including:
- International comparisons;
 - The protection of children's rights;
 - The limited ability of the common law doctrine of *doli incapax* to protect young children;
 - Child development arguments and issues of mental and cognitive impairment;
 - Contact with the criminal justice system being one of the key predictors of future youth offending, indicating that raising the age of criminal responsibility has the potential to reduce the likelihood of lifelong interaction with the criminal justice system;
 - A low minimum age of criminal responsibility disproportionately affects Aboriginal children who comprise the majority of children under 14 years who come before the courts in Australia.¹⁵¹
- 2.80 NCARA stated that raising the age to 12 years would align Australia with its international obligations under the UN Convention on the Rights of the Child and with other common law jurisdictions such as Canada and Ireland.¹⁵²
- 2.81 Finally, the NSW Police Force was asked about the proposal to increase the age of criminal responsibility from 10 years to 12 years and responded that the current law already provides protections for children aged 10-14 years if they are not capable of forming criminal intent:

If a child is between the ages of 10 and 14 years...then they are presumed not to be capable of forming criminal intent and the prosecution are required to rebut that presumption. If the aim of changing the age of criminal responsibility is to provide

¹⁴⁸ Submission 20, Office of the Advocate for Children and Young People, p23.

¹⁴⁹ Submission 20, Office of the Advocate for Children and Young People, pp23-24.

¹⁵⁰ Submission 23, Aboriginal Legal Service (NSW/ACT), p15.

¹⁵¹ Submission 24, NSW Coalition of Aboriginal Regional Alliances, pp6-7.

¹⁵² Submission 24, NSW Coalition of Aboriginal Regional Alliances, p7.

protections for children who are not capable of forming criminal intent, the protections are already in place.¹⁵³

Pre-sentencing Reports

The NSW Government should consider whether pre-sentencing reports about young Aboriginal offenders should contain more information

Recommendation 6

That the NSW Government consider whether background reports provided about young Aboriginal offenders under section 25 of the *Children (Criminal Procedure) Act 1987* should be required to contain more information about systemic and background factors (social, cultural and historical) that relate to the young person's Aboriginal community.

- 2.82 As discussed in detail in Chapter Five of this report, Aboriginal young people are over-represented in the Juvenile Justice system in NSW, about which the Committee is very concerned. In the course of the inquiry, the NSW Bar Association told the Committee that in sentencing young Aboriginal offenders, courts have insufficient information about an offender's background to assist them to reach an appropriate sentence.¹⁵⁴
- 2.83 The Committee received conflicting evidence on this issue. While the Bar Association and the Aboriginal Legal Service supported greater detail going into pre-sentencing reports or "background reports" for young Aboriginal offenders, the Department of Justice NSW raised doubts about whether this would do anything to address over-representation or affect sentencing levels.¹⁵⁵
- 2.84 The Committee further notes a recent Australian Law Reform Commission report which recommended that sentencing legislation should provide that when sentencing Aboriginal offenders, courts should take into account systemic and background factors affecting Aboriginal people.¹⁵⁶
- 2.85 In short, these are complex legal issues which should be further considered by the NSW Government and the Committee so recommends.
- 2.86 Under section 25 of the CCPA, a court cannot sentence a young person to a term of imprisonment unless a background report has been furnished concerning the circumstances surrounding the commission of the offence. These background reports are provided by Juvenile Justice NSW.¹⁵⁷
- 2.87 The Bar Association told the Committee that, in the case of young Aboriginal offenders, these background reports rarely if ever provide any information in

¹⁵³ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p5.

¹⁵⁴ Submission 22, NSW Bar Association, pp28-29.

¹⁵⁵ See Submission 22, NSW Bar Association, pp28-29; Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p48; and Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p49.

¹⁵⁶ Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No. 133 (2017), Recommendation 6-1.

¹⁵⁷ See Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p5, where Juvenile Justice confirms it prepares client background reports for the Children's Court.

relation to systemic and background factors (social, cultural and historical) that relate to the young person and the young person's Aboriginal community. The Bar Association calls for legislative amendments to require such details to be included in background reports, and for resources so that communities can provide these details for background reports.¹⁵⁸

2.88 In support of this proposal, the Bar Association argued:

- Including these details in the reports would provide the court with a fuller understanding of the impact of those factors on the young person's life;
- Consideration of those factors should operate as a check before the court imposes a sentence;
- Consideration of those factors may assist in informing the type, length and structure of the sentence, promoting proportionality and individualised sentencing;
- Individual relevant factors will no longer be assessed in a vacuum but within their relevant historical context.¹⁵⁹

2.89 At the Committee's hearing on 8 May 2018, the Chair asked Mr McKnight of the Department of Justice about this issue and he responded:

Part of this relates to an idea coming from a model in Canada of sentence reporting that provides the court with a general picture of the community and its history, in order for the court to take that history of disadvantage, colonialism et cetera into account in sentencing the offender. This is not a system that works in Australia. The common law in Australia [is that]...the court can take into account the disadvantage of the particular offender but it does not go so far as to take into account the general background information.¹⁶⁰

2.90 Mr McKnight also indicated that the changes proposed by the Bar Association would be resource-intensive and may have limited effects on sentencing levels for young Aboriginal people in NSW and Aboriginal over-representation:

The measure was raised in the Australian Law Reform Commission report on Aboriginal overrepresentation as well. There would be some questions about it as a measure to reduce Aboriginal overrepresentation in the system. It is potentially resource intensive, and its ability to allow the court to sentence in a way that reduces imprisonment is questionable. I note that the Canadian High Court has considered this process and has noted that it has had limited effect on sentencing levels in the courts. It would need quite a bit of thought before we supported a process like that in how effective it would be in addressing the problem.¹⁶¹

2.91 However, Ms Hopgood of the Aboriginal Legal Service strongly supported the Bar Association's proposals, telling the Committee:

¹⁵⁸ Submission 22, NSW Bar Association, p29.

¹⁵⁹ Submission 22, NSW Bar Association, p28.

¹⁶⁰ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p49.

¹⁶¹ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p49.

I would support that submission 100 per cent...In juvenile courts [background reports] are very extensive in comparison to what occurs...in the adult jurisdiction. However, in terms of including that cultural information and that background, they are lacking, and that comes through. There is a formula that is followed for the background report. I do not think that formula, and what Juvenile Justice officers are asked to include, is adequate to deal with all those issues.¹⁶²

- 2.92 Ms Hopgood stated that to fix this there should be training for Juvenile Justice NSW staff, more Aboriginal staff, and that the formula that Juvenile Justice staff are given to write the reports should be changed to include the systemic and background issues.¹⁶³
- 2.93 In answers to questions taken on notice, Juvenile Justice NSW provided advice about the information it currently puts in background reports including information about the young person's family and living circumstances, education and employment, peer relations, any substance abuse and personality and behaviour.¹⁶⁴ During the Committee's site visit to Reiby Juvenile Justice Centre in July 2018 more than one detainee remarked that these reports cannot give a full history, meaning the information the court bases its decision on is somewhat limited.

Criminal Records

Criminal records can have lifelong adverse impacts on a young person

Recommendation 7

That the NSW Government conduct an audit of the information that can be disclosed through Police and criminal record checks for offenders under the age of 18 years in NSW to determine whether changes are necessary to better align legislative provisions with the principles of diversion and rehabilitation.

- 2.94 During its inquiry, the Committee heard that there are gaps in the current regime to prevent the disclosure of criminal records for juvenile offenders. The Committee heard that this can have lifelong adverse impacts for a young person and that it is contrary to the principles of rehabilitation and diversion.¹⁶⁵
- 2.95 The Committee is of the view that the NSW Government should conduct an audit in this area to consider whether there are opportunities to better align the relevant legislative provisions with the principles of rehabilitation and diversion.
- 2.96 The Law Society of NSW told the Committee that even where they have been diverted under the YOA, young people can still receive disclosable records. While those who receive a caution or conference under the YOA do not receive a "criminal record" their offence still constitutes a police record which is disclosable for certain job applications listed in section 66 of the YOA, including employment as a teacher or teachers' aid, and for any working with children check. The Law

¹⁶² Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p48.

¹⁶³ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p48.

¹⁶⁴ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p5.

¹⁶⁵ Submission 26, Law Society of NSW, p17.

Society recommended legislative amendments to provide that YOA records are not disclosable.¹⁶⁶

- 2.97 In addition, both the Law Society and the Aboriginal Legal Service complained that many sexual offences lead to a lifelong criminal record regardless of whether the offender was a child when he or she committed the offence, and regardless of whether the offence involved consensual sex. For example, "consensual" sex between two young people of similar age, one of whom cannot consent because he or she is underage, can lead to prosecutions, a lifelong criminal record for the offender and place the offender on the Child Protection Register.¹⁶⁷
- 2.98 Another example put forward was consensual "sexting" between two young people which can lead to prosecution and be disclosed on a National Police Check. The Aboriginal Legal Service remarked:
- This can have a significant impact on the successful rehabilitation and reintegration of a child throughout their life, including the accessibility of employment opportunities, and is not compatible with the diversion of such children and young persons from the criminal justice system.¹⁶⁸
- 2.99 The Law Society has called for a "three year similar age defence" where a victim is under the age of consent but intercourse is consensual. It has also called for the decriminalisation of consensual sexting involving people under 16 years.¹⁶⁹
- 2.100 Similarly, ACYP noted with concern that while there are protections in place to limit the circumstances and time period during which a juvenile offender's criminal history can be disclosed, there are gaps and inconsistencies in these protections. ACYP recommended an audit of the information disclosed through criminal record checks in relation to juvenile offenders.¹⁷⁰

Police Interaction with Diversionary Programs and Efforts

- 2.101 Police have a key role in promoting the diversion of young people from the criminal justice system. During its inquiry, the Committee heard about the extensive work the NSW Police Force has done recently to promote diversion and about the areas where further work should be done.

Youth diversion is a key priority for the NSW Police Force

- 2.102 At the Committee's hearing for the inquiry on 8 May 2018, Assistant Commissioner Cassar stated that since taking command of the NSW Police Force in 2017, Commissioner Michael Fuller APM has made youth diversion a key priority for police. Mr Cassar indicated that the following activities have occurred in support of this priority:

¹⁶⁶ Submission 26, Law Society of NSW, p17.

¹⁶⁷ See submission 26, Law Society of NSW, p17; Aboriginal Legal Service (NSW/ACT), *Answers to Questions Taken on Notice*, 30 April 2018, p4.

¹⁶⁸ Aboriginal Legal Service (NSW/ACT), *Answers to Questions Taken on Notice*, 30 April 2018, p4.

¹⁶⁹ Submission 26, Law Society of NSW, p17.

¹⁷⁰ Submission 20, Office of the Advocate for Children and Young People, p8.

- On 1 August 2017, Mr Cassar was appointed as an Assistant Commissioner to lead the NSW Police Force response to youth in NSW. Since that time, Mr Cassar has reviewed police practices and strategies to do with youth diversion and the engagement of young people.
- The Youth Crime Prevention and Early Intervention Board has been established. It is chaired by Mr Cassar with membership at the Director level from the Departments of Family and Community Services, Education, Health, Justice, the Department of Premier and Cabinet, and Treasury. This Board is exploring opportunities to more effectively link databases across agencies and to coordinate responses to youth at risk of becoming entrenched in the criminal justice system.
- The establishment of a strategy to better coordinate policing resources for police youth programs and to work more effectively with the 63 PCYCs across the State.
- Commissioner Fuller and Assistant Commissioner Cassar have been working on a six-stage strategy which aims to divert youth from becoming entrenched in a life of crime. The strategy establishes a process to connect at-risk youth with more timely Government agency support. It includes a multi-agency approach to information sharing and a collaborative approach to those identified as at-risk youth or young offenders.
- Assistant Commissioner Cassar has reviewed and re-engineered the Police Youth Command into the Youth and Crime Prevention Command. Mr Cassar indicated that as a result “We now see a greater local awareness and connectivity between police and youth at the command level. There is an awareness that prevention is a priority and early engagement and diversion strategies will be a priority for all police to pursue when considering action involving youth”.¹⁷¹

The Suspect Targeting Management Plan is an important community safety tool

Finding 1

The NSW Police Force's Suspect Targeting Management Plan is an important community safety tool that should be retained.

Recommendation 8

That the NSW Police Force make the Suspect Targeting Management Plan policy and high level operational arrangements publicly available.

Recommendation 9

That the NSW Police Force introduce guidelines about the way Suspect Targeting Management Plans are to be policed for people under 18 years to limit confrontational practices and language, maintain respectful lines of

¹⁷¹ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018,p2.

communication and avoid the possibility of unnecessary escalation of interactions.

Finding 2

The Committee supports initiatives within the NSW Police Force so that children under the age of 12 years cannot be placed on a Suspect Targeting Management Plan without approval at the Assistant Commissioner level. It further supports extending this initiative so that it applies to any child under the age of 14 years.

- 2.103 Notwithstanding the extensive work that the NSW Police Force has done to promote youth diversion in NSW, a number of stakeholders told the Committee that another Police initiative, the Suspect Targeting Management Plan (STMP), is undermining efforts to divert young people from the criminal justice system. They argued the NSW Police Force should cease applying the STMP to anyone under 18 years.
- 2.104 The STMP is comprised of an administrative policy, an intelligence and risk assessment tool, and a targeted policing program. Its purpose is to identify, assess and target people suspected of being recidivist offenders, or responsible for emerging crime problems within each Police Local Area Command (LAC). It seeks to target Police resources to prevent and address identified current crime problems.¹⁷²
- 2.105 In spite of the complaints it received, the Committee supports the STMP. It is an important measure that allows LACs to target their resources to maintain community safety and the Committee notes feedback from Police LACs that the STMP is an effective crime prevention tool.¹⁷³
- 2.106 The Committee further notes Police advice that a fair percentage of the crimes that are committed in NSW are committed by people under the age of 18 years.¹⁷⁴ In addition, only a very small number of the State's youth are actually the subject of an STMP. As at 24 May 2018, 70 people 18 years and younger were on an STMP.¹⁷⁵ This indicates STMPs are only being used in respect of young people in a very restricted set of circumstances. For all the above reasons, the Committee considers that the NSW Police Force should continue to be able to apply STMPs to people under the age of 18 years in appropriate circumstances.
- 2.107 However, while the Committee considers the STMP is a necessary tool for Police in maintaining community safety, it is concerned that every effort be made to ensure that STMPs do not undermine the valuable work that police and others are doing across the State every day to divert young people from the criminal justice system.

¹⁷² Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW) p5.

¹⁷³ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p5.

¹⁷⁴ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p3.

¹⁷⁵ NSW Police Force, *Answers to Questions Taken on Notice*, 8 May 2018, p1.

- 2.108 In particular, the Committee notes evidence from some stakeholders that increased police monitoring and surveillance of young people under the STMP can be perceived by those young people as unfair and arbitrary.¹⁷⁶ The Committee is concerned in this regard that the STMP policy and the criteria for placement on the STMP has not been made publicly available. To improve transparency and accountability, the Committee considers that the NSW Police Force should be required to make the STMP policy and high level operational arrangements available. In making this recommendation however the Committee stresses that the NSW Police Force should not be required to release any operational material that would compromise individual investigations.
- 2.109 The Committee is also concerned at evidence from some stakeholders that increased monitoring and surveillance under the STMP can cause poor relations between police and young people, generating criminal charges like offensive language and resist arrest, thereby drawing young people into the criminal justice system rather than diverting them.¹⁷⁷ For this reason, the Committee considers the NSW Police Force should introduce guidelines about the way that STMPs are policed for those under 18 years to limit confrontational practices and language, maintain respectful lines of communication and avoid the possibility of unnecessary escalation.
- 2.110 Finally, the Committee is concerned at the effect increased police monitoring and surveillance under the STMP may have on younger children who have reduced capacity to understand why they are being targeted regardless of the circumstances.¹⁷⁸ For this reason, the Committee welcomes advice from the NSW Police Force that no child under the age of 12 years can be placed on the STMP without approval at the Assistant Commissioner level, and that every alternative would be explored before doing so. It also welcomes Police advice that in the future, Commissioner Fuller would like to see a move towards a higher age bracket of 13 or 14 years.¹⁷⁹ The Committee would support this.
- 2.111 During the inquiry, a number of stakeholders raised concerns about the application of the STMP to people under 18 years. This included the President of the NSW Children's Court; the Law Society of NSW; the NSW Bar Association; the Aboriginal Legal Service; Legal Aid NSW; the Advocate for Children and Young People; Youth Off The Streets; NCARA; PIAC; Dr Vicki Sentas; and Just Reinvest.¹⁸⁰

¹⁷⁶ See Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW) p1; and Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, p29.

¹⁷⁷ See Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, pp30-31; and Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, p29. See more generally Mr Phillip Boulten SC, NSW Bar Association, *Transcript of Evidence*, 30 April 2018, p51; Youth Off The Streets, *Answers to Questions Taken on Notice*, 10 May 2018, pp1-2; Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p56; and Mr Des Jones, *Transcript of Evidence*, 10 May 2018, p40.

¹⁷⁸ See the evidence of Mr Phillip Boulten SC, NSW Bar Association, *Transcript of Evidence*, 30 April 2018, p55 regarding the reduced capacity of a child to understand why he or she is being targeted by police. See also the evidence of Youth on Track, *Transcript of Evidence*, 10 May 2018, pp27, 31&32 regarding the stress response police targeting can cause in teenagers.

¹⁷⁹ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p4.

¹⁸⁰ See Submission 19, President of the Children's Court of NSW, p7; Submission 26, Law Society of NSW, p5, see also Law Society of NSW, *Transcript of Evidence*, 10 May 2018, pp51&56; Submission 22, NSW Bar Association, p40, see also NSW Bar Association, *Transcript of Evidence*, 30 April 2018, pp55-57; Submission 23, Aboriginal Legal

2.112 Many of these stakeholders called expressly for the NSW Police Force to discontinue applying the STMP to people under the age of 18 years. For example, as part of her submission to the inquiry, Dr Vicki Sentas provided a Youth Justice Coalition report she recently co-authored, *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, which contained a recommendation that:

NSW Police discontinue applying the STMP to children under 18. Children suspected of being at medium or high risk of reoffending should be linked to services and considered for evidence-based prevention programs that address the causes of reoffending, rather than placement on the STMP.¹⁸¹

2.113 The Committee heard a number of criticisms of the STMP including:

- There is currently no publicly available information about the effectiveness of the STMP as a crime prevention tool.¹⁸² Similarly, the policy itself and the criteria for placement on an STMP are not publicly available and individuals cannot access their STMP plan.¹⁸³
- It is not necessary to have been convicted of an offence, or charged with one to be placed on an STMP. Some young people on the STMP have minimal criminal records or are suspected of only minor offending.¹⁸⁴
- The STMP has been linked with “oppressive patterns of policing”. The report that Dr Sentas co-authored states that young people targeted by the STMP “experience a pattern of repeated contact with police in confrontational circumstances such as stop and search, move on directions and regular home visits”.¹⁸⁵

Service (NSW/ACT), p15; Submission 14, Legal Aid NSW, p12; Mr Andrew Johnson, Advocate for Children and Young People, *Transcript of Evidence*, 8 May 2018, p33; Youth Off The Streets, *Transcript of Evidence*, 10 May 2018, pp26&30-32; Submission 24, NSW Coalition of Aboriginal Regional Alliances, p10, see also Mr Des Jones, Member, NSW Coalition of Aboriginal Regional Alliances, *Transcript of Evidence*, 10 May 2018, pp40-41; Submission 15, Public Interest Advocacy Centre, pp4-6, see also Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, pp29-30; Submission 13, Dr Vicki Sentas, see also Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, pp30-34; and Submission 21, Just Reinvest, p12.

¹⁸¹ Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW) p2. Other stakeholders who called for the NSW Police Force to discontinue applying the STMP to under 18s were: the Advocate for Children and Young People, see Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p33; Just Re-invest, see Submission 21, Just Reinvest, p12; the Law Society of NSW, see Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p51; NSW Bar Association, see Submission 22, NSW Bar Association, p40; and the Public Interest Advocacy Centre, see Submission 15, Public Interest Advocacy Centre, p6.

¹⁸² Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, p33.

¹⁸³ Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW) p1.

¹⁸⁴ Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, p29; Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, p34. Assistant Commissioner Cassar confirmed that it is not necessary to have been charged with an offence to be put on an STMP, see *Transcript of Evidence*, 8 May 2018, p4.

¹⁸⁵ Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW) p1.

- In these circumstances, increased police monitoring and surveillance of a young person on an STMP can be perceived as arbitrary and unfair by the young person.¹⁸⁶
- Given this dynamic, many stakeholders argued that the STMP is counter-productive as a crime prevention tool. They argued it fosters poor relations between police and young people, and runs counter to international research indicating coercive or deterrent-based policing is not effective as a crime prevention tool for young people. They also argued increased antagonistic contact with police can actually generate criminal charges like offensive language, resist arrest and assault police.¹⁸⁷
- Likewise, some stakeholders argued that the STMP runs counter to current policy settings for youth justice in NSW that emphasise therapeutic interventions designed to address the causes of offending, divert young people from the criminal justice system and rehabilitate them.¹⁸⁸ Research was cited that the more contact young people have with police, the more likely they will be drawn into the criminal justice system, not diverted from it.¹⁸⁹ The Committee also received evidence that several Aboriginal young people participating in Youth Koori Court therapeutic programs had had their rehabilitation compromised by remaining on the STMP.¹⁹⁰
- The Committee also heard that by policing people on what they have done in the past rather than factual objective evidence that a person has committed or is about to commit an offence, the STMP undermines basic rule of law principles and principles surrounding the reach of police powers.¹⁹¹
- There is disproportionate use of the STMP against Aboriginal people. At the Committee's hearing on 8 May 2018, the NSW Police Force indicated that around 50 per cent of people on the STMP are Aboriginal, despite the fact that Aboriginal people only comprise 2.9 per cent of the NSW population.¹⁹²

¹⁸⁶ Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, p29.

¹⁸⁷ See Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, pp30-31; and Ms Anna Dawson, *Transcript of Evidence*, 30 April 2018, p29. See more generally Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p51; Youth Off The Streets, *Answers to Questions Taken on Notice*, 10 May 2018, pp1-2; Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p56; and Mr Des Jones, *Transcript of Evidence*, 10 May 2018, p40.

¹⁸⁸ See Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, p33; Youth Off The Streets, *Answers to Questions Taken on Notice*, 10 May 2018, pp1-2; Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW) p43.

¹⁸⁹ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p56.

¹⁹⁰ Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW) p1.

¹⁹¹ Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, p32.

¹⁹² See Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p6; and Australian Bureau of Statistics, *2016 Census Data Summary – Aboriginal and Torres Strait Islander Population*, Australian Bureau of Statistics website: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20Data%20Summary~10>, viewed 9 July 2018.

- In addition, the STMP disproportionately targets young people. Of 213 people subject to an STMP in 2014-15, 50 were under 18 years old, and children as young as 9 years old have been subject to an STMP.¹⁹³

2.114 At the Committee's hearing on 8 May 2018, Assistant Police Commissioner Cassar indicated that the primary emphasis of the STMP is community safety.¹⁹⁴ Mr Cassar stated that the NSW Police Force would not support a discontinuation of its ability to apply STMPs to people under the age of 18 years because "there is a good percentage of that group who are responsible for crimes within our communities".¹⁹⁵ The NSW Police Force has since indicated that as at 24 May 2018, there was a total of 70 people aged 18 years and under who were the subject of an STMP:

- Central Metropolitan Region – 2
- South West Metropolitan Region – 14
- North West Metropolitan Region – 16
- Southern Region – 9
- Northern Region – 14
- Western Region – 9
- Non PAC/PD Region – 6.¹⁹⁶

2.115 The Assistant Commissioner also indicated that while there has been no review of the effectiveness of the STMP as a crime prevention tool "There has been feedback from the Local Area Commands that it is an effective strategy".¹⁹⁷

2.116 The Committee heard that in late 2017, Assistant Commissioner Cassar initiated a review of the NSW Police Force's compliance with the STMP, undertaken by the Directorate of the NSW Police Intelligence Unit. Mr Cassar stated: "They directed a review of the same parameters as the report that was put out by the Youth Justice Coalition, I think, to investigate the environment out there".¹⁹⁸

2.117 In response to the Committee's request for a copy of the review, the Assistant Commissioner advised: "The results of the review are classified as protected information. Due to the classification of its contents...the NSW Police Force cannot release the review".¹⁹⁹ However, Assistant Commissioner Cassar did advise at the 8 May hearing that as a result of the review, nobody under the age

¹⁹³ See Sentas, V and Pandolfini, C, (2017) *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan*, (Sydney: Youth Justice Coalition NSW), p13; and Dr Vicki Sentas, *Transcript of Evidence*, 30 April 2018, p34.

¹⁹⁴ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p5.

¹⁹⁵ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p3.

¹⁹⁶ NSW Police Force, *Answers to Questions Taken on Notice*, 8 May 2018, p1.

¹⁹⁷ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p5.

¹⁹⁸ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p4.

¹⁹⁹ NSW Police Force, *Answers to Questions Taken on Notice*, 8 May 2018, p1.

of 12 years can be placed on the STMP without his approval, and every alternative option would be explored before doing so. Mr Cassar stated:

To get to a point where I would sign off and approve a child aged 12 or under to be on the STMP program, there would have...to have been a series of very serious offences and maybe even a bail determination when the child is subject to charges and bail conditions. Before they get to that point, I would be engaged with them through our Youth Crime Prevention Commands with our PCYCs...and I would need to be convinced that this is the absolute last resort to provide a safe environment for the community.²⁰⁰

- 2.118 Mr Cassar advised further that as of midnight on 7 May 2018, the youngest person on the STMP was 13 years old and that "Moving forward, the Commissioner would like to see us moving towards a higher age bracket of 13 or 14".²⁰¹

Young people should only be arrested and detained as a last resort

Recommendation 10

That the NSW Government consider whether legislative amendments or amendments to NSW Police Force policies and procedures are necessary to provide that people under the age of 18 years are only to be arrested and detained as a last resort.

- 2.119 Following from the issue discussed earlier in the Chapter concerning ERISPs, the Committee also heard more general concerns during its inquiry about police arresting young offenders for conduct that may come within the scope of the YOA. Some stakeholders told the Committee that to promote diversion from the criminal justice system, young people must only be arrested and detained as a last resort.
- 2.120 The Committee agrees that young people under the age of 18 years should not be arrested or detained unless there is no other appropriate way of dealing with them. Unnecessary arrests undermine the principles of the YOA seeking to divert young people from the criminal justice system. They increase young people's contact with police, may have a tendency to escalate their offending behaviour, and expose them to custodial settings.²⁰² Australia's obligations under the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice and the Convention on the Rights of the Child require detention to be a last resort.²⁰³
- 2.121 In the Committee's view, the NSW Government should consider whether greater guidance is necessary for police in this area e.g. legislative amendments or amendments to Police policies and procedures to provide that police are only to arrest young people under the age of 18 years as a last resort. This includes arrests for breach of bail discussed in more detail later in this Chapter.

²⁰⁰ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p4.

²⁰¹ Mr Joseph Cassar, *Transcript of Evidence*, p4.

²⁰² See Submission 26, Law Society of NSW, pp4-5.

²⁰³ Submission 27, NSW Government, p35.

- 2.122 Under section 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA), police can arrest a person without a warrant if they suspect on reasonable grounds that the person is committing or has committed an offence and they are satisfied that arrest is necessary on one or more of the grounds set out in section 99(1)(b). Under section 105 of LEPRA a police officer can discontinue an arrest at any time including where it is more appropriate to deal with the matter under the YOA.
- 2.123 In its submission to the inquiry, the Law Society of NSW noted anecdotal reports of a widespread police practice of arresting a young person whose offending may come within the scope of the YOA, and before they have had a chance to seek legal advice. The Law Society stated that this is contrary to the spirit of the YOA and that it is well established that ill-advised arrests may escalate conduct by young people, thereby drawing young people into the criminal justice system rather than diverting them.²⁰⁴
- 2.124 The Law Society suggested that the YOA should be amended to clarify that a young person must not be arrested unless there is no other appropriate way of dealing with him or her. It stated that this would bring the YOA more in line with the Convention on the Rights of the Child, in particular Article 37(b), which states that arrest should be a measure of last resort.²⁰⁵
- 2.125 As mentioned earlier in the Chapter, at the Committee's hearing on 10 May 2018, Ms Irwin spoke of police arresting young people who receive cautions under the YOA. Noting that the use of the power of arrest is governed by section 99 of LEPRA and the common law principle that arrest is a last resort Ms Irwin commented further:
- The attendance at the police station by the young person and their support person does not require an arrest for a caution... The common law principle that arrest is a last resort is a fundamental principle...arrest takes away the very basic right to personal liberty. So arresting young people for the purposes of an interview so that they can then be cautioned goes against the principles underpinning diversionary program to limit contact with the criminal justice system and divert these young people away from formal process.²⁰⁶
- 2.126 In its submission to the inquiry, PIAC also raised concerns that the principle of arrest as a last resort is not being routinely adhered to by the NSW Police Force. PIAC stated:
- In PIAC's experience, the principle of arrest as a last resort is not routinely adhered to by NSW police officers in deciding what action to take when confronted with suspected offending, particularly in relation to Aboriginal and Torres Strait Islander young people. Our case work shows police exercising their discretion to arrest...and continue to arrest...when circumstances of a person clearly indicate that a warning, caution or court attendance notice would have been more appropriate and desirable. The failure by police to routinely consider alternatives to arrest and adhere to the principle of arrest as a last resort, particularly in relation to young

²⁰⁴ Submission 26, Law Society of NSW, pp4-5.

²⁰⁵ Submission 26, Law Society of NSW, p5.

²⁰⁶ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p52.

people is, in our view, a significant contributor to incarceration rates of Aboriginal and Torres Strait Islander people.²⁰⁷

- 2.127 PIAC states that the principle of arrest and detention as a last resort is not sufficiently embedded in the legal frameworks guiding the practices and decision making of police officers in NSW. PIAC notes that nowhere in LEPR does it expressly state that arrest and detention are to be used as a last resort, and there is little published guidance for police regarding the principle of arrest as a last resort.²⁰⁸
- 2.128 In its submission to the inquiry, Mission Australia stated that "In line with Australia's international obligations, arrest, detention or imprisonment of young people should be seen as a last resort, only undertaken in conformity with the law and for the shortest appropriate time".²⁰⁹

Custody Notification Service

The NSW Government should consider additional funding for the Aboriginal Legal Service to provide legal advice to Aboriginal young people regardless of whether they are in custody

Recommendation 11

That the NSW Government consider providing additional funding to the Aboriginal Legal Service so that it can provide a telephone legal advice service to Aboriginal young people accused of committing offences, regardless of whether they are in custody.

- 2.129 The Custody Notification Service (CNS) is a 24 hour legal advice and "RU OK?" phone line for Aboriginal people taken into police custody, run by the Aboriginal Legal Service. Under NSW law, police must contact the Aboriginal Legal Service whenever they have taken an Aboriginal person into custody.²¹⁰
- 2.130 In its submission to the inquiry, Legal Aid NSW stated that police will call the CNS when they are dealing with an Aboriginal young person and considering whether to divert him or her under the YOA, rather than charging him or her with an offence. Until recently, police have used the CNS regardless of whether the young person they are dealing with is in police custody. For example, they may have visited the young person's house or be dealing with him or her in a public place.²¹¹
- 2.131 However, owing to limited funding, the Aboriginal Legal Service has recently advised that it will now only take calls relating to Aboriginal people who are actually in police custody. This means that calls relating to Aboriginal young people who are not in custody must be directed to the Legal Aid NSW Youth Hotline, which provides legal advice and information to anybody under 18 years. Legal Aid has expressed uncertainty over whether police will always call the

²⁰⁷ Submission 15, Public Interest Advocacy Centre, p8.

²⁰⁸ Submission 15, Public Interest Advocacy Centre, pp8-9.

²⁰⁹ Submission 12, Mission Australia, p7.

²¹⁰ Aboriginal Legal Service (NSW/ACT) website: <https://www.alsnswact.org.au/our-work/custody-notification-service/>, viewed 9 July 2018.

²¹¹ Submission 14, Legal Aid NSW, p9.

Youth Hotline in these circumstances, which it says is likely to impact on diversion rates.²¹²

2.132 As detailed throughout this report, the Committee is extremely concerned about the over-representation of Aboriginal young people in the Juvenile Justice system. Any opportunity to divert a young Aboriginal person under the YOA instead of charging him or her should be taken, and access to legal advice is essential in facilitating this.

2.133 Therefore, the NSW Government should consider extra funding for the Aboriginal Legal Service so that it can provide a telephone legal advice service to Aboriginal young people regardless of whether they are in custody. In recommending this, the Committee acknowledges the excellent job Legal Aid's Youth Hotline does advising young people across the State. Notwithstanding this, it would be ideal for Aboriginal Legal Service solicitors, who are specially trained in assisting Aboriginal people in a culturally appropriate way and who police currently call about YOA matters involving Aboriginal youth, to continue to advise as many young Aboriginal people as possible.²¹³

2.134 When asked about the CNS at the Committee's hearing on 30 April 2018, Ms Hopgood of the Aboriginal Legal Service explained why the Aboriginal Legal Service made a decision that the CNS should only take calls relating to Aboriginal people who are actually in custody:

The Custody Notification Service...is a custody notification service and that is what the funding is for....In an ideal world, the Custody Notification Service would deal with young persons who are not in custody but who the Police are wanting to deal with under the Young Offenders Act. We did look at that...On some occasions the solicitors on duty had time to take those calls and on others they did not. If they did then a person that was in custody and perhaps very vulnerable missed out on getting that call or the solicitor got to that call late, and the consequences of that are very real and very serious.²¹⁴

2.135 Ms Hopgood spoke highly of Legal Aid's Youth Hotline. However, she said that it would be ideal if the Aboriginal Legal Service could take calls from all Aboriginal young people regardless of whether they are in custody, because Aboriginal Legal Service solicitors have special training on cultural issues and "R U OK?":

...in an ideal world a service with the training that Aboriginal Legal Service solicitors get as to cultural issues that are raised and the R U OK? part that goes with the Custody Notification Service with ALS would definitely be my first port of call if the ALS could provide that service to all Aboriginal and Torres Strait Islander young persons. But we would have to have two solicitors per shift and there is just not the resources to do that at the moment.

²¹² Submission 14, Legal Aid NSW, pp9-10. See also Legal Aid NSW website: <https://www.legalaid.nsw.gov.au/what-we-do/criminal-law/youth-hotline>, viewed 10 July 2018. See also the evidence of Mr Doug Humphreys, *Transcript of Evidence*, 10 May 2018, p60, which indicates police are required to advise young people about the Youth Hotline if they interview a young person.

²¹³ See Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p44, for evidence about Aboriginal Legal Service solicitors being specially trained to assist Aboriginal people in a culturally appropriate way.

²¹⁴ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p44.

In an ideal world, calls from State-based non-Aboriginal young persons would go to the Legal Aid Youth Hotline. All calls involving Aboriginal young persons – be they in custody or otherwise – would come to the Custody Notification Service and be dealt with by an Aboriginal Legal Service solicitor but, again, we just do not have the resources at the moment.²¹⁵

Bail

Bail and bail support programs are an essential element of youth diversion

Recommendation 12

That the NSW Government increase the number of bail support services available to young people under 18 years across the State, with a particular focus on regional areas, and services for Aboriginal young people and those with complex needs and substantial offending histories.

- 2.136 Following an incident, police will consider whether a young person is eligible for diversion under the YOA or whether he or she will be charged and the matter proceed to court. If a matter proceeds to court, police will then decide whether to grant bail or in serious matters the court will decide on bail.²¹⁶
- 2.137 Bail is an essential element of youth diversion. As the NSW Government states in its submission to the inquiry, "Supervision in the community allows diversion programs to intervene and provide support to the young person and her or his family to avoid the negative impacts of custody".²¹⁷ As noted earlier in this Chapter, Australia's international obligations require youth detention to be a last resort and this includes detention pending trial.²¹⁸
- 2.138 By extension, bail support programs – programs to assist young people who would otherwise be remanded in custody to meet their bail conditions and stay in the community – are also an essential element of youth diversion. Under section 28 of the *Bail Act 2013*, the court can impose a bail condition that suitable arrangements be made for the accommodation of the young person before he or she is released on bail. Hence, bail support programs that help young people find suitable accommodation are very important.
- 2.139 During the inquiry, the Committee heard concerns discussed below that some young people who have been granted bail in NSW remain in custody because they lack appropriate accommodation. To increase young people's access to bail across the State, the Committee considers that the NSW Government must increase the number of bail support services available to young people under 18 years across NSW, with a particular focus on regional areas, and services for Aboriginal young people and those with complex needs and substantial offending histories.
- 2.140 The NSW Government funds bail support and remand interventions to help young people meet their bail conditions. For example, as outlined in Chapter

²¹⁵ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p44.

²¹⁶ Submission 27, NSW Government, p13.

²¹⁷ Submission 27, NSW Government, p35.

²¹⁸ Submission 27, NSW Government, p35.

One, Juvenile Justice NSW's Bail Assistance Line provides a provides an after-hours service for police who are considering granting conditional bail to a young person in their custody but who cannot release the young person because the young person cannot meet his or her bail conditions.

2.141 Police can ring a 1300 number which operates from 4pm to 3am, 365 days a year to speak with a Bail Coordinator. The Bail Coordinator then provides a range of services including arranging transport for the young person from the police station to suitable accommodation so that s/he can await his/her court date within the community rather than in a detention centre.²¹⁹

2.142 Notwithstanding these services, during the inquiry, the Committee heard concerns that some young people who have been granted bail in NSW remain in custody because they lack appropriate accommodation. The Committee heard this is a particular problem for Aboriginal young people, young people in regional and remote areas, and young people with complex needs or substantial offending histories. For example, Mission Australia stated:

A lack of appropriate services to support young people to obtain bail and meet bail conditions has been identified as potentially contributing towards the high number of young people on custodial remand, particularly for Aboriginal or Torres Strait Islander young people and young people from regional or remote areas...Alarming, some young people who were granted bail in NSW still remain in custody due to lack of appropriate community accommodation...Although there are support programs such as the Bail Assistance Line to divert young people away from remand in cases of family crises or chronic homelessness, these services are not available across the state.²²⁰

2.143 Similarly, ACYP stated:

While the NSW Government offers a number of programs to help young people meet the conditions of their bail and remain in the community, such as the Bail Assistance Line, gaps remain in the support system for the most vulnerable children and young people. The Australian Institute of Criminology's 2017 national review of bail support highlighted a number of recurring issues with the provision of bail support for children and young people including gaps in regional and remote services; a lack of engagement with children and young people with complex needs or substantial offending histories; and excessive monitoring and scrutiny of the young people accessing these services.²²¹

2.144 Mission Australia also raised issues about the quality of bail support that is provided in some cases, indicating young people are sometimes bailed to a motel without adequate supervision:

I might just start with the accommodation provided for young people who are under bail orders...[A]s a conference convener I was allocated a particular matter where I had to go and see a young person whose accommodation was expiring that day

²¹⁹ Department of Justice NSW website, http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/bail_assistance_line.aspx, viewed 21 June 2018.

²²⁰ Submission 12, Mission Australia, p22; see also Dr Evelyne Tadros, State Leader, Metro NSW, Mission Australia, *Transcript of Evidence*, 30 April 2018, p25.

²²¹ Submission 20, Office of the Advocate for Children and Young People, p14.

with...Juvenile Justice identified accommodation...[B]y 4 o'clock that day she had to have her bags packed and move...The person who was providing that accommodation was obviously only contracted to deliver it until 5 o'clock that day, so...it was on Juvenile Justice to find accommodation. But where do you put someone where there is no accommodation option? In a motel...Imagine your own child who is under 18 in a motel...Certainly the lack of appropriate services to support young people to obtain bail and meet bail conditions is...contributing to high custodial remands...²²²

2.145 When asked at the Committee's 8 May hearing about young people being held on remand for want of appropriate accommodation, Ms Melanie Hawyes, Executive Director, Juvenile Justice NSW confirmed it is a problem. She stated:

I mentioned...our Bail Assistance Service which is an out-of-hours support that operates until 3 o'clock in the morning every day. That service exists – at that final point of determining bail or not – as a resource for police, young people and others to say, "Is there any other option?" Before we reach that crisis point we also have a lot of strong and robust partnerships with Family and Community Services that try to ensure that if accommodation is the issue then we have done what we can to meet those accommodation requirements. I am not saying that it does not happen – it certainly does...²²³

2.146 Assistant Commissioner Cassar of the NSW Police Force also acknowledged that this issue is a problem:

My only concern is instances where the child may not have a home. It is disappointing to see that they cannot be bailed somewhere because they do not have a home to go to...At the end of the day, from a policing point of view, we would like to see a safe haven for them.²²⁴

2.147 In its evidence to the inquiry, the Law Society of NSW stressed that more out-of-detention accommodation is essential in promoting bail for young people:

We need more emergency accommodation. We need more short-term accommodation, we need more medium-term accommodation, and we need more long-term accommodation. The provisions of the Bail Act allow a Children's Court to compel the relevant Government Department to look for housing for a young person. But again, it goes back to the resources. If it is not there, then there is a real issue about whether young people in detention should be in detention or it is because they are homeless because of a welfare issue. Detention is punitive. It is not a good outcome at all.²²⁵

2.148 In addition, Mr Boulten SC of the Bar Association emphasised the need for more flexible models of supported accommodation to maximise bail support, particularly in regional areas:

I think there needs to be bail accommodation in various places and some degree of flexibility given to the functioning of those bail accommodation places. For instance, in New Zealand they have quite flexible arrangements whereby accommodation in

²²² Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p25.

²²³ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p43.

²²⁴ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p9.

²²⁵ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p60.

the community can be bail accommodation, can be post-release accommodation and can also sometimes be used for care in the community for young people at risk...that sort of flexibility can be quite cost-effective and it would allow the development of the sort of supported accommodation system in various towns and regions where it is really needed.²²⁶

- 2.149 The Committee was pleased to note that the NSW Government is already planning additional bail support services for Aboriginal young people. The NSW Government submission to the inquiry advised that in 2018, scoping work would occur for an Adolescent Aboriginal Court Diversion and Bail Support Program. At the Committee's hearing on 10 May 2018, Mr Gary Forrest, Chief Executive, Justice Health provided further information on this:

We have previously piloted a very successful Aboriginal Court Diversion and Bail Support Program for adult Aboriginal offenders at the Campbelltown Local Court. That service has been running for almost two years now. It is having a very good success rate: Close to 100 per cent of Aboriginal people referred to that program being successfully diverted. We have also had some discussions with Judge Johnstone about piloting a similar program in one of the local children's courts. A business case has been developed, a proposal and estimated funding; that is where we are up to at the moment. The intent would be that the funding source is secured for that to enable the Network to be able to implement that program.²²⁷

Bail conditions must be set appropriately, consistent with diversionary principles

Recommendation 13

That officers of the NSW Police Force and Courts that hear juvenile criminal matters receive thorough training in the setting of bail conditions for young people under 18 years, to promote the diversion of young people wherever possible.

Recommendation 14

That the NSW Government amend the *Bail Act 2013* so that young people under 18 years, particularly young Aboriginal people, are able to nominate multiple addresses for the purpose of bail residence requirements, where appropriate.

- 2.150 Under the *Bail Act 2013*, police and the courts can impose bail conditions when they grant bail or vary a bail decision.²²⁸ During its inquiry, the Committee heard concerns from some stakeholders, discussed below, about inappropriate bail conditions being placed on young people.
- 2.151 Where this occurs, young people may be unable to meet their bail conditions and may be remanded in custody and drawn deeper into the criminal justice system unnecessarily. For this reason, the Committee supports training for courts and the police in setting suitable bail conditions that promote diversion wherever possible. It also supports an amendment to the *Bail Act 2013* to make it clear

²²⁶ Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p52.

²²⁷ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p8.

²²⁸ *Bail Act 2013*, s23(2).

that young people, particularly young Aboriginal people, can nominate multiple addresses for the purposes of bail residence requirements.

2.152 Under section 20A of the *Bail Act 2013*, police and courts are only to impose bail conditions if satisfied that the condition is:

- reasonably necessary
- to address a bail concern
- reasonable and proportionate to the offence for which bail is granted
- appropriate to the bail concern in relation to which it is imposed
- no more onerous than necessary to address the bail concern
- reasonably practicable for the accused person to comply with, and
- there are reasonable grounds to believe that the condition is likely to be complied with.

2.153 However, Legal Aid NSW told the Committee:

...courts impose bail conditions on young people such as curfews, place restrictions and daily reporting requirements that do not meet these [section 20A] requirements. This often results in a breach of those conditions, with the young person then being taken into custody. This is generally reflected in Department of Justice statistics: in 2015-16, children charged with a criminal offence who were unable to meet their bail conditions were remanded in custody on 67 occasions.²²⁹

2.154 Legal Aid pointed to research indicating that children are most often remanded in custody for breach of bail conditions rather than the commission of a new offence. It further noted that many young people do not have stable home environments and there are many reasons why they might leave home after curfew hours. Legal Aid called for more training for police and the courts on the nature and scope of bail conditions. It further argued for a legislative provision to state that arrest on breach of bail should be a matter of last resort.²³⁰

2.155 Similarly, the Law Society of NSW raised concerns that bail conditions are often imposed on young offenders which do not meet the criteria set out in section 20A, particularly the requirement that the condition be no more onerous than necessary to address the bail concern. It stated that where young people are unable to meet their bail conditions they are driven further into the criminal justice system.²³¹

2.156 The Law Society too, noted with concern the research indicating that the most common reason children are remanded in custody is for breach of bail conditions, (typically breach of a curfew condition), rather than the commission of a new

²²⁹ Submission 14, Legal Aid NSW, p13.

²³⁰ Submission 14, Legal Aid NSW, pp13-14.

²³¹ Submission 26, Law Society of NSW, p15.

offence. The Law Society called for training for police and courts about appropriate bail conditions.²³²

2.157 The Advocate for Children and Young People, Mr Andrew Johnson, also raised concerns about the appropriateness of some bail conditions stating: "We need to be clear when we are setting bail conditions for children and young people that we understand they may not have a stable place to stay and therefore may not be able to meet their bail conditions".²³³

2.158 One suggestion that was made during the inquiry was that to increase flexibility, young people should be able to nominate multiple addresses for the purposes of bail residence requirements. This may be particularly useful for Aboriginal young people who have extended kinship ties. In explaining that the courts may sometimes set the bar too high when setting bail conditions, Ms Maher of Legal Aid stated:

...this is probably true with Aboriginal kids and in some Aboriginal communities – it is harder for the court to properly understand the kinship ties and the fact that there are people they can go and live with who they call "auntie" but may not be a blood relative but it is part of the way the community is structured.²³⁴

2.159 Consistent with this, Miyay Birray Youth Services told the Committee:

The inflexibility of bail residence conditions can make it incredibly difficult for young people, particularly Indigenous, to comply. If a young person is bailed to a particular address but has issues getting [to] or remaining at that address they are often arrested on breach. Miyay Birray endorses the position advocated by NSW Police Commissioner Mick Fuller, and trialled in Dubbo, that Indigenous offenders should be able to nominate multiple addresses for the purpose of bail residence requirements.²³⁵

2.160 In evidence to the Committee on 8 May, Assistant Commissioner Cassar stated his view that there needs to be greater flexibility around bail accommodation decisions, particularly for Aboriginal young people.²³⁶

Bail enforcement must be carried out appropriately, consistent with diversionary principles

Recommendation 15

That officers of the NSW Police Force receive thorough training concerning the policing of suspected bail breaches by young people under 18 years, to avoid unnecessary arrests and detention.

²³² Submission 26, Law Society of NSW, p15.

²³³ Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p29.

²³⁴ Ms Debra Maher, Legal Aid NSW, *Transcript of Evidence*, 30 April 2018, p17.

²³⁵ Submission 4, Miyay Birray Youth Services INC, p6.

²³⁶ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p9.

Recommendation 16

That the NSW Government consider whether the *Bail Act 2013* should be amended to specifically provide that police officers must have regard to a person's age in deciding what action to take for breach of bail.

- 2.161 During the inquiry, the Committee also heard concerns around bail enforcement. As discussed earlier in the Chapter, some stakeholders told the Committee that police are not routinely adhering to the principle of arrest and detention as a last resort and this includes where they are considering what action to take for breach of bail.
- 2.162 The Committee is pleased at evidence from the President of the NSW Children's Court that police have improved their policing of bail breaches in recent times, with far fewer young people gaoled for minor issues such as a breach of curfew.²³⁷ As noted above, bail is an essential element of youth diversion. Therefore, in addition to its earlier recommendation that police should be thoroughly trained in the setting of bail conditions for young people, the Committee considers that police across the State should be given thorough training concerning the policing of suspected bail breaches by young people under 18 years, to avoid young people being unnecessarily arrested and detained.
- 2.163 As recommended earlier in the Chapter, the NSW Government should also consider whether legislative amendments are necessary to provide that people under the age of 18 years are only to be arrested and detained as a last resort, and this includes arrest and detention for breach of bail.
- 2.164 In addition, while the Committee notes a police officer is required to take the personal attributes and circumstances of the relevant person into account in deciding what action to take for breach of bail²³⁸ the NSW Government should also consider whether the *Bail Act 2013* should be amended to specifically provide that police officers must have regard to a person's age in deciding what action to take for breach of bail. This would send a clear message that age is a relevant consideration for bail enforcement decisions, consistent with youth diversionary principles.
- 2.165 Under section 77(1) of the *Bail Act 2013*, a police officer confronted with a suspected breach of bail can:
- Decide to take no action
 - Issue a warning to the person
 - Issue an application notice to the person which requires him/her to appear before a court or authorised justice

²³⁷ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p10.

²³⁸ *Bail Act 2013*, s77(3)(c).

- Issue a court attendance notice to the person, if the police officer believes the breach is an offence
- Arrest the person without warrant and take the person as soon as practicable before a court or authorised justice
- Apply to an authorised justice for a warrant to arrest the person.

2.166 Under section 77(3) of the *Bail Act 2013*, a police officer is to consider the following matters in deciding what action to take for a suspected breach of bail:

- The relative seriousness or triviality of the breach
- Whether the person has reasonable excuse for the breach
- The personal attributes and circumstances of the person, to the extent known to the police officer
- Whether an alternative to arrest is appropriate in the circumstances.

2.167 However, PIAC told the Committee that its casework shows that police, when confronted with a suspected breach of bail, are:

- Failing to consider the alternatives to arrest under section 77(1), such as issuing a warning or issuing an application notice.
- Failing to consider relevant matters in deciding what action to take for breach of bail such as the triviality of the breach and the circumstances of the individual, as required by the section 77(3).²³⁹

2.168 PIAC called for the law to be amended to provide that arrest on breach of bail is a sanction of last resort and to provide that police are to consider a person's age in deciding what action to take for breach of bail.²⁴⁰

2.169 In similar vein, Legal Aid NSW recommended that bail enforcement concerns be addressed by a legislative amendment to provide that arrest on breach of bail should be a matter of last resort. Legal Aid also commented that this could be accompanied by police education on this provision.²⁴¹

2.170 When asked about bail enforcement at the Committee's hearing on 30 April 2018, Judge Johnstone indicated police had, over the last 4 or 5 years improved the way in which they police bail breaches:

...the police have become much more responsible in the last four or five years in terms of putting kids into gaol overnight. We see quite a lot of it but it is not nearly as bad as it used to be. The number of children in gaol has reduced as a result of

²³⁹ Submission 15, Public Interest Advocacy Centre, p11.

²⁴⁰ Submission 15, Public Interest Advocacy Centre, p11.

²⁴¹ Submission 14, Legal Aid NSW, p14.

police being much more sophisticated in their policing of young people. A lot fewer people are being gaoled for breach of curfew and minor crimes like that.²⁴²

²⁴² Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p10.

Chapter Three – Diversionary Options: Access, Appropriateness and a Review of the Justice Cluster Options

- 3.1 In this Chapter, the Committee explores issues surrounding access to youth diversionary options in NSW, and the appropriate tailoring of diversionary programs and efforts both to individuals and groups. It also reviews the adequacy of some of the prominent diversionary programs and efforts of the NSW Justice Cluster, namely the Department of Justice which includes Juvenile Justice NSW; and the NSW Police Force.
- 3.2 Again, the Committee makes recommendations to promote diversion, and to promote the appropriate tailoring of diversionary options to maximise their effectiveness.

Access to Diversionary Options

Young offenders' access to diversionary options varies across the State

- 3.3 During its inquiry, many stakeholders told the Committee that young people's access to diversionary options varies across the State, with those who have committed an offence in a regional, rural or remote area much less likely to be diverted from the criminal justice system than those who have committed an offence in a metropolitan area.
- 3.4 The Committee heard that there were two main problems that are contributing to this unequal access. First, police and magistrates' use of the diversionary options available under the YOA (that is, warnings, cautions and youth justice conferences), varies according to geographical location. The Committee heard that in some areas, police are much more likely to proceed straight to charging a young person than to divert them under the YOA. It also received evidence that rates of diversion are lower in areas of the State not covered by specialist children's magistrates.
- 3.5 Secondly, the Committee heard that there is a scarcity of youth diversionary options in some areas of the State and some stakeholders also raised concerns about their quality, where they do exist.
- 3.6 Both these problems are dealt with in detail below.

Steps should be taken to encourage Police to use the diversionary options available under the Young Offenders Act 1997 more often

Recommendation 17

That each Police Local Area Command across NSW employ a full-time Youth Liaison Officer.

Recommendation 18

That all officers of the NSW Police Force receive thorough training about the unique nature of children and young people and the diversionary options available under the *Young Offenders Act 1997*.

- 3.7 During its inquiry, the Committee heard that police use of the diversionary options available under the YOA varies according to geographical location. The Committee also heard that the Police youth liaison officer role is crucial in maximising police usage of YOA diversionary options across NSW. This evidence is discussed below. The Committee therefore considers every Police LAC across the State should employ a youth liaison officer and he or she should be employed in a full time capacity.
- 3.8 In addition, the Committee notes the emerging scientific knowledge concerning adolescent brain development discussed in Chapter Two, meaning that youth offending is fundamentally different from offending by adults.²⁴³ In keeping with this, and promoting diversion wherever possible, the Committee further considers that all NSW police officers should receive thorough training about the unique nature of children and young people, and the diversionary options available under the YOA.
- 3.9 The President of the Children's Court told the Committee that police uptake of the diversionary options available under the YOA varies across geographical location and LACs in NSW.²⁴⁴ In particular, Judge Johnstone indicated that the rate at which police are diverting young people to youth justice conferences is especially disappointing in some areas of the State:
- Youth justice conferences is one of the components of the Young Offenders Act...it is totally underutilised...Port Macquarie is the second highest local area command in NSW for the use of youth justice conferences. Other local area commands have nothing...That was the thing we discovered when we started our circuit in the Upper Hunter. In some of the towns there the usage of youth justice conferences had reduced to nil and we found that very disturbing...²⁴⁵
- 3.10 Judge Johnstone further indicated that rates of diversion would improve were every LAC to have a full-time specialist youth liaison officer:
- ...every local area command is supposed to have a full-time youth liaison officer and some local area commands do have a...youth liaison officer but it is 10 per cent of their duties. We advocate that every youth liaison officer...be full time.²⁴⁶
- 3.11 As discussed in Chapter One, youth liaison officers are responsible for a range of youth-focussed tasks within Police LACs including supporting the implementation of the YOA, making determinations under the YOA, and issuing police cautions.

²⁴³ See Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p5; Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p57; Submission 26, Law Society of NSW, p6; and Submission 20, ACYP, p23.

²⁴⁴ Submission 19, President of the Children's Court of NSW, p4.

²⁴⁵ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p3.

²⁴⁶ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p3.

- 3.12 Judge Johnstone also stated that he is in ongoing discussions with the NSW Police Force to ensure that all police officers receive specialised training on the unique nature of children and young people and the mechanisms available for police to divert children and young people away from the criminal justice system and into support services.²⁴⁷
- 3.13 In its submission to the inquiry, Miyay Birray, a youth service that is based in Moree NSW, gave similar evidence. It told the Committee that police were not using the YOA, instead proceeding directly to criminally charging young people:
- Miyay Birray considers that the procedures in the *Young Offenders Act 1997*...are not applied consistently or at all. The Act provides for a system of warnings, cautions and youth justice conferences which are intended to be used in relation to a broad range of offences prior to and in preference to criminal charges. Unfortunately, police are not utilising the Act and instead proceed straight to charging. For example, one Miyay Birray client who had no previous offences was arrested on suspicion of stealing a dog.²⁴⁸
- 3.14 Like Judge Johnstone, Miyay Birray emphasised the importance of the Police youth liaison officer role in increasing the rates of diversion:
- Miyay Birray submits the resistance in using cautions as diversion is largely due to the high turnover of Youth Liaison Officers (YLOs) in Moree, who typically arrange times for cautions and for support persons such as Miyay Birray staff to be present. It takes time to build trust and rapport with a YLO; when they leave, Miyay Birray has to start this training process again.²⁴⁹
- 3.15 In similar vein, Mission Australia raised concerns with the Committee that there were only a limited number of youth liaison officers to support young people in some areas of NSW stating "It is also concerning that changes to the Local Area Commands...including possible amalgamations may further reduce the number of Youth Liaison Officers".²⁵⁰
- 3.16 When asked whether there was a youth liaison officer position in every LAC across the State, Assistant Commissioner Cassar told the Committee that there was and that, regardless of any amalgamations, the number of youth liaison officer positions across NSW has remained stable at 80.²⁵¹ Following the Committee's hearing on 8 May 2018, the NSW Police Force provided further information and stated:

According to SAP there are 81 Youth Liaison Officer (YLO) positions across 58 Police Area Commands... When considering Regions...the specific positions of YLOs are as follows:

Central Metropolitan Region – 15

²⁴⁷ Submission 19, President of the Children's Court of NSW, p4.

²⁴⁸ Submission 4, Miyay Birray Youth Service INC, p3.

²⁴⁹ Submission 4, Miyay Birray Youth Service INC, p3.

²⁵⁰ Submission 12, Mission Australia, p4.

²⁵¹ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p6.

South West Metropolitan Region – 15

North West Metropolitan Region – 16

Southern Region – 11

Northern Region – 13

Western Region – 11.²⁵²

- 3.17 Assistant Commissioner Cassar also indicated that, while the NSW Police Force does aim to have the youth liaison officer positions filled at all times, they do sometimes fall vacant and that the 40 school liaison police across NSW and police within the Youth Command can provide further support:

We do aim, like any other position within the NSW Police Force, to have that position filled. Unfortunately, due to the nature of our occupation, police are subject to injuries and take leave, whether it is paid or unpaid. We encourage local area commands to backfill that position if they have the capability and to cross train in those areas. That said, if we do not have it in the local area command, under my command of youth crime prevention, I have that capability through 40 school liaison police across the State, as well as police within the Youth Command to provide additional support.²⁵³

Steps should be taken to encourage the courts to use the diversionary options available under the Young Offenders Act 1997 more often

Recommendation 19

That the NSW Government provide the Children's Court of NSW with funding for the appointment of at least three additional specialist children's magistrates so that more criminal matters are heard by a specialist children's magistrate, particularly in regional, rural and remote NSW.

Finding 3

The NSW Government should consider further options to expand the reach of the Children's Court across as much of NSW as possible.

Recommendation 20

That all magistrates hearing matters in the children's jurisdiction receive thorough and ongoing training about the unique nature of children and young people, the specialist nature of children's proceedings, and the diversionary options available under the *Young Offenders Act 1997*.

- 3.18 During the inquiry, the Committee also received evidence, discussed below, that rates of diversion under the YOA are lower in areas of the State not covered by specialist children's magistrates. That is, a specialist children's magistrate is more likely to divert a young person under the YOA than a generalist magistrate sitting in the children's jurisdiction.

²⁵² NSW Police Force, *Answers to Questions Taken on Notice*, 8 May 2018, p6.

²⁵³ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p6.

- 3.19 It therefore heard calls for the NSW Government to increase the number of specialist children's magistrates across the State. It also heard calls for the expansion of the entire Children's Court across as much of NSW as possible so that more young people receive the full benefit of specialised procedures and treatment from a range of trained professionals, not only specialist magistrates but the specialist lawyers and caseworkers etc. that are part of a specialist Children's Court.
- 3.20 Data obtained by the Committee, and discussed below, indicates specialist children's magistrates are indeed more likely to divert a young person than a generalist magistrate. This is particularly concerning given further data, also discussed below, suggesting that a number of young people in NSW are being imprisoned for non-violent offences. The Committee also notes a Parliamentary inquiry into child protection recently recommended that the number of specialist children's magistrates in NSW be increased by at least three so that all care and protection matters are heard by a specialist children's magistrate.²⁵⁴
- 3.21 Given the evidence that young people are more likely to be diverted if their matter is heard by a specialist children's magistrate, and given only 67 per cent of criminal matters are heard by a specialist magistrate in NSW (compared with 90 per cent in the care jurisdiction)²⁵⁵ the Committee considers the NSW Government should also fund at least three new specialist children's magistrates to hear criminal matters. Opportunities to expand the reach of the entire Children's Court over as much of the State as possible should also be explored, so that more young people receive the full benefit of its specialised procedures and resources.
- 3.22 The Committee also notes evidence that despite training that all new magistrates receive in the specialist nature of children's proceedings, this training can be quickly forgotten by generalist magistrates who are working mainly in the adult jurisdiction.²⁵⁶ For this reason, the Committee recommends that for any magistrate who hears matters in the children's jurisdiction this training should be ongoing, with a requirement to do periodic refresher training, not just one-off training.
- 3.23 At the Committee's hearing on 30 April 2018, the President of the Children's Court explained that 67 per cent of youth crime in NSW is dealt with by specialist children's magistrates, while the other 33 per cent (most often in rural locations) is dealt with by generalist Local Court magistrates sitting in the children's jurisdiction.²⁵⁷ Judge Johnstone also provided information about the areas of the State that are covered by specialist children's magistrates:

²⁵⁴ Legislative Council General Purpose Standing Committee No 2, *Child Protection*, March 2017, recommendation 11, p81, available at NSW Parliament website:

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2396#tab-reportsandgovernmentresponses>, viewed 18 July 2018.

²⁵⁵ Submission 19, President of the Children's Court of NSW, p8; see also Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p48.

²⁵⁶ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7.

²⁵⁷ See Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7; and Submission 19, President of the Children's Court of NSW, p8.

The Children's Court is a standalone specialist jurisdiction that has a long history dating back to legislation enacted in the 1850s, and more recently the establishment of specialist children's magistrates in about 1915. We have 15 specialist magistrates in the jurisdiction, plus myself as the President. They are in seven locations across NSW covering most of the east coast from Lismore down to Port Kembla and Nowra. In addition to the seven permanent locations, we have four regional circuits covering the Upper Hunter and mid North Coast, the inner western region and the Riverina.²⁵⁸

- 3.24 Judge Johnstone indicated to the Committee that generalist magistrates may be less likely to divert a young person, and raised particular concerns about young people being incarcerated for non-violent crimes:

We believe there will be a direct correlation between children being put into detention by specialist children's magistrates and non-specialist magistrates...What I can tell you is that at the moment, of the close to 300 children who are left in detention on any given day, 47 per cent of those children...have been incarcerated for nonviolent crimes. So that is our next target group – getting nonviolent offenders out of gaol and into community programs.²⁵⁹

- 3.25 Judge Johnstone also indicated that generalist magistrates (who spend most of their time hearing matters in the adult jurisdiction) are also less sensitive to the specialist nature of children's proceedings in general, regardless of the training they have received:

Every new magistrate now has to do a three-month induction in the Children's Court. We use that time to try to inculcate into them some of the specialist philosophies, training and experience that the full-time children's magistrates get...But they very quickly forget them because they have got a busy list every day and they try to find a free hour on Friday afternoon to do the Children's Court work. My experience is that they often forget to close the court, for example. They forget that we have the specialist process.²⁶⁰

- 3.26 Judge Johnstone stated that the only way to ensure that young people are dealt with appropriately is to expand the reach not only of specialist children's magistrates but the entire Children's Court across as much of NSW as possible:

The only way to really solve that problem is to expand what I call the whole of the Children's Court. It is not just the magistrates; it is the lawyers that go with it, the caseworkers, the police. All of that needs to be, in my view, rolled out across the whole of the State.²⁶¹

- 3.27 Judge Johnstone's remarks align with evidence provided by Legal Aid NSW that specialist children's magistrates may tend to divert young people more often than generalist magistrates:

Based on our casework experience, Legal Aid NSW is concerned that there may be variation in the use of diversion between the dedicated Children's Courts and the

²⁵⁸ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p2; see also Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p48.

²⁵⁹ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, pp5-6.

²⁶⁰ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7.

²⁶¹ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7; see also Submission 19, President of the Children's Court of NSW, p8.

Local Court sitting as the Children's Court in regional and rural areas...anecdotally, legal practitioners often advise that the dedicated Children's Courts are more likely to caution a young person or refer them to a youth justice conference than regional Local Courts sitting as Children's Courts. This could be attributable to the different training and experience of the Magistrates presiding in these matters...²⁶²

- 3.28 Ms Hopgood of the Aboriginal Legal Service also commented on the need for more specialist children's magistrates in regional areas because they better understand the diversionary options available under the YOA:

A lot of specialist magistrates are on board. I think the problem is more in regional areas where they do not have specialist magistrates. I would strongly support the retention of the specialist magistrates that we do have. If there is the capacity to increase the number of those or those servicing the regional areas it would have a huge impact. I think it is a lack of understanding and then a particular view that it [the YOA] is seen as soft.²⁶³

- 3.29 Having noted these comments, the Committee requested data from the NSW Bureau of Crime Statistics and Research (BOCSAR) regarding how frequently specialist children's magistrates refer young people to a youth justice conference compared with how frequently this is done by generalist Local Court magistrates sitting in the children's jurisdiction. BOCSAR provided the Committee with the following figures (and the data BOCSAR provided in this area is included in full at Appendix Seven):

	2016		2017	
	Specialist Children's Magistrate	Other ²⁶⁴	Specialist Children's Magistrate	Other ²⁶⁵
Dismissed after Youth Justice Conference	390	144	312	120
Percentage	73%	27%	72.2%	27.8%

- 3.30 The data shows that the overwhelming majority of matters that were dismissed after a youth justice conference in 2016 and 2017 were presided over by a specialist children's magistrate, and would appear to be consistent with the suspicions voiced by Judge Johnstone, Legal Aid NSW and the Aboriginal Legal Service that specialist children's magistrates are more likely than generalist magistrates to divert a young person under the YOA.

- 3.31 Noting Judge Johnstone's concerns about young people being imprisoned for non-violent offences, the Committee also made inquiries in this area, this time with Juvenile Justice NSW. Data provided by Juvenile Justice confirmed that many children are incarcerated for non-violent offences – of the 310 young people detained by Juvenile Justice as at 11:59pm on 6 May 2018, 77, or nearly

²⁶² Submission 14, Legal Aid NSW, p10.

²⁶³ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, pp45-46.

²⁶⁴ Local Court magistrates dealing with Children's Court proceedings.

²⁶⁵ Local Court magistrates dealing with Children's Court proceedings.

25 per cent were in custody for non-violent offences.²⁶⁶ Ms Hawyes of Juvenile Justice also stated "The young people in custody are there for either persistent and/or serious offences. It is rare to see a new admission for a first-time, non-serious offence".²⁶⁷

- 3.32 When asked about the coverage of specialist children's magistrates across NSW, Mr McKnight of the Department of Justice confirmed that about 90 per cent of care matters and 67 per cent of criminal matters come before specialist magistrates stating "...we have relatively good coverage, but it is not perfect coverage".²⁶⁸ Mr McKnight also provided the following information:

As at now, there are four specially designated Children's Courts at Parramatta, Woy Woy, Broadmeadow and Surry Hills – the new Surry Hills Children's Court opened in January. There are specialist magistrates that operate out of shared court facilities at Campbelltown, Sutherland, Wyong, Moss Vale, Goulburn and in the Illawarra, the Hunter, mid North Coast, Northern Rivers, Western and Riverina areas. Moss Vale and Goulburn have come online since January 2018, and from June this year we expect specialist children's magistrates to start hearing criminal matters at Singleton and Griffith.²⁶⁹

- 3.33 In addition, Mr McKnight noted that the Legislative Council's General Purpose Standing Committee No. 2 conducted an inquiry into Child Protection and that its March 2017 report recommended that the NSW Government provide the Children's Court of NSW with funding for the appointment of at least three additional children's magistrates to ensure that all care and protection matters in NSW are presided over by a specialist children's magistrate.²⁷⁰ He further stated:

The Government response indicates that we are currently considering that recommendation. Obviously there are lots of advantages to specialist Children's Court magistrates and there is a real attempt to provide as much coverage as we possibly can, but there are resourcing issues and suchlike.²⁷¹

The NSW Government should increase the availability and quality of diversionary options in regional, rural and remote areas of NSW

Finding 4

The NSW Government should increase the availability of holistic, community-based programs and services in rural, regional and remote NSW that focus on diversion, early intervention and the prevention of youth offending, and address the underlying causes of crime.

²⁶⁶ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, pp1&3.

²⁶⁷ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p46.

²⁶⁸ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p48.

²⁶⁹ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p49.

²⁷⁰ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p49; and Legislative Council General Purpose Standing Committee No 2, *Child Protection*, March 2017, recommendation 11, p81, available at NSW Parliament website: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2396#tab-reportsandgovernmentresponses>, viewed 18 July 2018.

²⁷¹ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p49.

Finding 5

The NSW Government should explore further initiatives to attract and retain suitably qualified people to deliver diversion, early intervention and prevention programs in rural, regional and remote NSW, and to build capacity within local communities.

Recommendation 21

That Juvenile Justice NSW:

- **conduct an audit of youth justice conferencing across NSW to determine whether more conference convenors or other resources are needed to better support the process in regional, rural and remote areas;**
- **take action to ensure that fully trained youth justice conference convenors are available to conduct youth justice conferences in every area of the State.**

- 3.34 Another problem contributing to uneven access to youth diversionary options across NSW is the scarcity of diversionary options in many regional, rural and remote areas, about which the Committee heard a lot of evidence. It also heard concerns that where diversionary options do exist in these areas, their quality may not be high and that there is a need for greater resourcing.
- 3.35 The Committee noted evidence, discussed below, that to be effective, programs in regional, rural and remote areas must be community-based and focussed not only on those already involved in the Juvenile Justice system but on the underlying causes of crime, to intervene early and prevent offending in the first place.²⁷² The Committee therefore considers that the NSW Government should increase the availability of holistic, community-based programs and services in rural, regional and remote NSW that focus on diversion, early intervention and the prevention of youth offending, and address the underlying causes of crime.
- 3.36 The Committee also heard that a greater level of interagency coordination would improve the quality of diversionary efforts in regional, rural and remote NSW and has made a recommendation for increased coordination across the State in Chapter Six.²⁷³ In addition, the Committee heard that attracting suitably qualified staff can be difficult in regional, rural and remote areas, affecting the quality of diversionary efforts.²⁷⁴ The Committee therefore considers that the NSW Government should explore further initiatives to attract and retain suitably qualified staff (for example, incentive schemes), and that building capacity within local communities is also important.

²⁷² Submission 24, NSW Coalition of Aboriginal Regional Alliances, pp9-10.

²⁷³ See Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7; and Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p41.

²⁷⁴ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p38.

- 3.37 The Committee is particularly concerned at evidence that the youth justice conference process is severely underutilised in some areas of the State.²⁷⁵ It has therefore recommended that Juvenile Justice NSW conduct an audit of youth justice conferencing across NSW to determine whether more conference convenors or other resources are need to better support the process in regional, rural and remote areas. It has further recommended that Juvenile Justice NSW take action to ensure that fully trained youth justice conference convenors are available to conduct youth justice conferences in every area of the State.
- 3.38 In addition, the Committee notes that Youth on Track is not available across the State and this issue is dealt with later in the Chapter. The Committee has also noted concerns that many diversionary programs in regional, rural and remote areas are not culturally appropriate for Aboriginal people and has dealt with the issue of cultural appropriateness in detail in Chapter Five, making relevant recommendations.²⁷⁶ Recommendations made in Chapter Four about increasing the availability of health services, youth drug and alcohol rehabilitation services, housing services and special education resources in NSW are also relevant to improving access to diversionary initiatives in regional, rural and remote areas of the State.
- 3.39 At the Committee's hearing on 30 April 2018, the Chief Executive Officer of the NSW Council of Social Service, Ms Tracy McLeod Howe summed up the situation in the following terms:
- ...diversionary options are not available across the board in NSW, particularly when you go regional and remote...It is terrible that it does often just come down to financial investment...You should not have to be a young Aboriginal person in Broken Hill who does not have the same choices as someone who is in Sydney. That is unfair in NSW. We are a very rich State so we should be investing up front in these diversionary programs.²⁷⁷
- 3.40 Ms McLeod Howe also indicated that it is often hard to attract qualified staff to run programs in regional, rural and remote areas, suggesting incentives schemes and local capacity-building may assist:
- ...the staff who are trained to work in these areas are not always there when you go regionally and rurally. If you go out particularly to the Far West, it is hard to secure personnel to work on the ground. But certainly incentives could be provided in order to ensure that this happens. Also...building the capacity of those communities who have the expertise within to be part of this solution, or to be the solution.²⁷⁸
- 3.41 Similarly, in its submission to the inquiry, NCARA stated that there is a paucity of youth diversionary programs across regional NSW. People who want to access diversionary programs in these circumstances often have to travel long distances

²⁷⁵ See submission 26, Law Society of NSW, p4; Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p55; Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p55; and Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p3.

²⁷⁶ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p9.

²⁷⁷ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, pp36&38.

²⁷⁸ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p38.

to do so and NCARA noted this is often not possible for those on low incomes or with caring responsibilities.²⁷⁹

3.42 NCARA indicated that community-based programs (that are situated in the community they serve, staffed by local people and supported with ongoing, consistent levels of funding) are more likely to successfully engage young people with complex needs than programs based outside the community to which people need to travel, or programs delivered on an "outreach" basis from another location.²⁸⁰

3.43 NCARA further stated that programs that do exist in regional areas are often not culturally appropriate and tend to be directed towards young people who are already involved in the Juvenile Justice system rather than the issues that lead a young person to that involvement in the first place, such as family violence, homelessness, poverty and substance abuse.²⁸¹

3.44 In her evidence to the inquiry, the Chairperson of NCARA, Aunty Jean Hands, expanded on these points:

If there are any programs that need to be designed, they need to be put into regional areas. The city areas have these but it is the regional areas that do not pick up on any of these diversionary programs...The diversionary programs should be co-designed, culturally appropriate and culturally sensitive.²⁸²

3.45 Ms Sarah Pritchard SC of the NSW Bar Association also told the Committee about an absence of diversionary programs in regional NSW. In 2017, the Bar Association established a joint working party on the over-representation of Indigenous people in the NSW criminal justice system with membership that included barristers, judges and academics, and unequal access to diversionary options was a recurring theme that arose:

One of the matters that arose frequently during the course of the deliberations of our joint working party, with the benefit of the experience of a number of judicial officers, was the lack of equal accessibility to diversionary programs across the State, hence [the] recommendation...in our submission that there be a commitment to a principle of equal accessibility for children and young people throughout the State including in regional and remote areas to the full range of diversionary programs and services. We heard from numerous members of the working party, in particular the judicial officers, about the absolute absence of programs in rural and remote areas.²⁸³

3.46 On the subject of youth justice conferencing, the Law Society of NSW told the Committee that unequal access to this process across NSW may be linked to the fact that it is under-resourced in many parts of the State, with magistrates consequently reluctant to make referrals:

²⁷⁹ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p9.

²⁸⁰ Submission 24, NSW Coalition of Aboriginal Regional Alliances, pp9-10.

²⁸¹ Submission 24, NSW Coalition of Aboriginal Regional Alliances, pp9-10.

²⁸² Aunty Jean Hands, *Transcript of Evidence*, 10 May 2018, p42.

²⁸³ Ms Sarah Pritchard SC, *Transcript of Evidence*, 30 April 2018, pp49&51.

We have some concerns with reports that YJCs are being underutilised, and outcome plans are not being properly developed and resourced, particularly in regional areas. Research published in 2017, which involved interviewing all 12 Children's Court magistrates in NSW, found that some magistrates are hesitant to refer young offenders to diversionary programs if they perceive them to be poorly resourced and implemented.²⁸⁴

- 3.47 Mr Humphreys of the Law Society expanded on these points at the hearing on 10 May 2018. Like Ms McLeod Howe above, he emphasised the injustice of a young person missing out on diversion based solely on location. He stated:

...there is a very patchy use of youth justice conferencing in some regions. In some cases, they do not even have the resources to have properly trained convenors. If we are going to try to address this, we have to make sure that the resources are even and statewide. The fact is that if a child who committed an offence in Sydney can gain access to a youth justice conference, if they commit the same offence in Moree or Taree or somewhere else they should also have the same access to a youth justice conference and the same access to rehabilitation services.²⁸⁵

- 3.48 Ms Irwin of the Law Society also commented on the lack of resources for youth justice conferencing, particularly resources to support the "outcome plans" that come out of the conferencing process and aim to address the young person's offending behaviour and make reparation to victims. She told the Committee:

There is evidence that there is inconsistent use of the Young Offenders Act across NSW. There are some places where there simply is no infrastructure to support those diversionary programs, everything from youth justice convenors to venues to community organisations that can support outcome plans. Outcome plans are supposed to be addressing criminogenic issues, factors that are drawing young people into the criminal justice system to try to halt offending. But if you do not have the community and organisational resources in regional areas then you have a real inequity in terms of which young people are able to access these programs.²⁸⁶

- 3.49 The Law Society's evidence on youth justice conferencing is consistent with Judge Johnstone's evidence mentioned earlier in the Chapter that when the Children's Court magistrates started their circuit in the Upper Hunter they found usage of conferencing in some towns had reduced to nil.²⁸⁷ Judge Johnstone further called for more resources for regional centres, not only for youth justice conferencing but other diversionary initiatives like the PCYC and Youth On Track:

In relation to youth justice conferences...there might be some places where the availability of options for children to engage in services is more limited...It is part of what I am talking about in increasing the available resources and services in regional centres that you would have options available for children to engage in. What I would like to see, for example, is expansion of things like Youth on Track and increased presence of...PCYC facilities in country regions. I went to Walgett a couple of weeks ago. That town has a small PCYC, so small that it can only service kids from

²⁸⁴ Submission 26, Law Society of NSW, p4.

²⁸⁵ Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p55.

²⁸⁶ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p55.

²⁸⁷ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p3.

about the age of 14 to 18 whereas if they had a bigger facility they could service all of the kids in that community.²⁸⁸

3.50 Judge Johnstone also called for "more collaborative agency cooperation" within regional areas, indicating that agencies often operate in silos and that a regional coordinator model may achieve better outcomes for young people.²⁸⁹ These comments are addressed in Chapter Six where the Committee has recommended that the NSW Government increase the level of coordination across Government and the non-Government sector, and consider adopting a regional coordination model throughout the State to maximise the quality of diversionary, early intervention and prevention programs and supports in all locations.

3.51 Another stakeholder who raised concerns about resourcing of the youth justice conference process and about the varying quality of PCYCs across the State was Mission Australia. On the subject of youth justice conferencing it stated:

...there are still opportunities to improve the YJC process. For instance, the Outcome Plan established with young people and their victims enables the young person to make reparation towards the victim and community, but should also allow the young person to...address criminogenic needs. Conference convenors have underlined that there are limited referral options for programs or further interventions.²⁹⁰

3.52 On the subject of the varying quality of PCYCs across the State, Dr Evelyne Tadros, State Leader, Metro NSW, Mission Australia told the Committee:

We were talking offline before about...PCYCs and how in some areas they are phenomenal and in others areas you might as well shut up shop and redirect the money. That is quite negative but it puts it out there that there is an opportunity...in some of the PCYCs that are not delivering as effectively as they could be, to turn them around to deliver for the community and ultimately for young people.²⁹¹

3.53 When asked about the availability of diversionary programs in regional NSW, Ms Hawyes of Juvenile Justice NSW indicated that Juvenile Justice funds youth justice coordinators across the State but conceded that Youth On Track is not available everywhere:

We fund conferencing coordinators across the State. If there are specific areas where people are raising the issue of the ability to access a conference coordinator then I would like some more detailed feedback. In terms of Youth on Track, it is not available everywhere – that is true.²⁹²

3.54 Ms Hawyes also indicated that if evaluations of Youth On Track are positive, these results would be put to Government to consider future expansion.²⁹³

3.55 In response to the concerns raised that diversionary programs in regional areas tend to be directed at those already involved in the Juvenile Justice system rather

²⁸⁸ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p3.

²⁸⁹ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7.

²⁹⁰ Submission 12, Mission Australia, p13.

²⁹¹ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p27.

²⁹² Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p42.

²⁹³ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p42.

than the underlying issues that lead to offending, Mr McKnight of the Department of Justice pointed to the Family Investment Model trials running in Dubbo and Kempsey. He indicated that they aim to address the underlying causes of crime in a more holistic fashion. As discussed in Chapter One, this model focusses on intergenerational disadvantage, co-locating a multi-government agency team to work with at-risk families. Mr McKnight stated:

This is a trial where the Department of Justice is leading a multiagency approach to quite vulnerable and high-needs families...It involves staff from the Department of Justice, Family and Community Services, the Department of Health and the Department of Education that work with some very high-needs families to reduce the immediate risk of offending and address some of the underlying causes of crime.²⁹⁴

- 3.56 In responding to concerns about variation in PCYCs across the State, Assistant Commissioner Cassar of the NSW Police Force indicated variations can occur to customise PCYC programs to the needs of a particular geographical area. Mr Cassar stated:

The reason there is a large variation of programs out there is that there is a variation of communities out there with varying demands on what types of programs they need. Generally speaking, all the PCYC programs involve a number of core components: health and nutrition, physical exercise and education. If there is an area that wants to run a program in regard to domestic violence, violence or cybercrime, then there would be a program that could be tailored to that.²⁹⁵

Recommendation 22

That the NSW Government consider supporting further research into the potential of a justice re-investment approach for NSW.

- 3.57 In considering ways to fund increased and better diversionary options in regional, rural and remote areas, the Committee noted the justice reinvestment approach advocated by a number of stakeholders who gave evidence to the inquiry. The Committee considers the potential of the justice reinvestment approach warrants further consideration by the NSW Government.

- 3.58 In a joint submission, Professor Michael Levy AM, Dr Jill Guthrie and Councillor Bill West explained what justice reinvestment is:

Justice Re-investment...is a criminal justice policy approach that diverts a portion of the funds spent on detention towards local communities where there is a high concentration of offenders. The money that would have been spent on deprivation of liberty is re-invested in programs and services that address the underlying causes of crime in these communities.²⁹⁶

- 3.59 Judge Johnstone provided an example of how a justice reinvestment approach could improve the quality of diversionary efforts in regional NSW. In discussing the need for greater interagency coordination to improve services in regional

²⁹⁴ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p43.

²⁹⁵ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p7.

²⁹⁶ Submission 5, Professor Michael Levy AM, Dr Jill Guthrie and Councillor Bill West, p2.

areas, His Honour indicated that it would make sense to re-invest any money saved from not detaining young people into regional coordinators.²⁹⁷

- 3.60 Between 2013 and 2017, an Australian Research Council funded research project to explore the potential of justice re-investment took place in Cowra, NSW. The project was designed to allow the community to set priorities for how they would like money that is currently spent on imprisonment, re-invested back into the community. Professor Levy, Dr Guthrie and Councillor West told the Committee:

The community deliberations estimated that the total direct cost of incarcerating Cowra citizens for crimes which the community considered 'JR-amenable' – that is, if a JR policy were in place, there would be alternatives to imprisonment for those crimes – was approximately \$23 million, representing a notional \$2.3m per annum over ten years.²⁹⁸

- 3.61 Just Reinvest NSW also told the Committee about a justice reinvestment trial it has been undertaking with the Bourke Aboriginal community since 2013 called the Maranguka Justice Reinvestment Project. Just Reinvest told the Committee:

The Maranguka JR Project illustrates how communities can work with a diverse range of service providers and government for youth diversionary efforts. The Justice Reinvestment approach in Bourke is holistic encompassing early intervention, prevention and diversion by engaging the whole community and addressing the causes of incarceration of Aboriginal children and young people.²⁹⁹

- 3.62 As part of the trial, the Bourke community identified a number of "justice circuit breakers" for children and young people in their community including a warrant clinic, a justice support team and a driver licensing program.³⁰⁰

- 3.63 In its submission to the inquiry, the NSW Bar Association also recommended that the NSW Government support the principles of justice reinvestment, focus its efforts on early intervention and diversionary programs, and support further research to investigate the justice reinvestment approach in Australia.³⁰¹

Aboriginal young people do not have equal access to diversionary options

- 3.64 Still on the subject of access to diversionary options, during the inquiry the Committee heard from a number of stakeholders that Aboriginal young people are less likely to receive a diversionary option and more likely to have their matter proceed to court than their non-Aboriginal peers.³⁰² Similarly, BOCSAR data obtained by the Committee (included in full at Appendix Eight) indicates that the Aboriginal status of a young offender may significantly affect his or her access to a diversionary option under the YOA. The Committee is extremely concerned

²⁹⁷ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7.

²⁹⁸ Submission 5, Professor Michael Levy AM, Dr Jill Guthrie and Councillor Bill West, pp2-3.

²⁹⁹ Submission 21, Just Reinvest NSW, pp5-6.

³⁰⁰ Submission 21, Just Reinvest NSW, p6.

³⁰¹ Submission 22, NSW Bar Association, p36.

³⁰² See for example Submission 14, Legal Aid NSW, p10; Submission 20, Office of the Advocate for Children and Young People, p23; Submission 23, Aboriginal Legal Service (NSW/ACT) pp9-10; and Submission 24, NSW Coalition of Aboriginal Regional Alliances, p5.

about this and these matters are discussed in detail in Chapter Five, which deals with Aboriginal over-representation in the Juvenile Justice system.

Participation in diversionary programs should continue to be voluntary

- 3.65 Another issue of relevance to access to diversionary options is that many young people may themselves decline to participate in diversionary programs.
- 3.66 For example, in its submission to the inquiry, NCARA noted that a 2017 evaluation of Youth on Track by the Cultural and Indigenous Research Centre Australia (CIRCA) found that some young people decline to participate in Youth on Track and recommended studies about why this is.³⁰³ Similarly, in his submission Dr Garner Clancey of the University of Sydney Law School stated that if young people are not mandated to attend programs or services it can be very hard to encourage their participation, noting "the modest rates of engagement of young people in the Youth on Track Program".³⁰⁴
- 3.67 At hearings for the inquiry, the Committee noted that some people decline to participate in diversionary programs and asked various stakeholders whether attending diversionary programs and services should be mandatory. Stakeholders indicated that they should not be mandatory with some suggesting that this might actually be counter-productive. This evidence is discussed below.
- 3.68 This is consistent with statements made by a number of detainees and former detainees with whom the Committee spoke informally during the course of its inquiry. They said that for any program or intervention to work, a person has to want to change him or herself.
- 3.69 For these reasons, the Committee considers that participation in diversionary programs should continue to be voluntary and agrees with CIRCA that research into the reasons some young people decline to participate in programs like Youth on Track may be helpful to address this phenomenon.
- 3.70 Ms Hawyes of Juvenile Justice NSW told the Committee:
- ...for somebody to want to change they have to want to be a part of that. Fundamentally, Youth on Track relies on people wanting to participate...[I]t is voluntary...[T]here is an element of young people who do not want to participate, and I question whether even if it was mandatory the change would be sustained and deeply meant. What we do find with Youth On Track is that young people who choose to really participate do well, and you would expect that; your heart and spirit has to be in a change process like that because we are trying to change a person's underlying values and certainly their behaviours.³⁰⁵
- 3.71 In similar vein, Ms McLeod Howe of NCOSS cautioned against using "the stick" and instead encouraged a focus on engaging with the young person's community, particularly Aboriginal communities, to encourage participation:

³⁰³ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p13.

³⁰⁴ Submission 2, Dr Garner Clancey, p4.

³⁰⁵ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p37.

I suppose the stick does not tend to work, particularly with young people. We need to look at the root cause of what is happening for those young people and that would also include the community and community perceptions...What we would say is if you can get the community on board you will be able to reach those young people. Go to the mentors in those communities.³⁰⁶

- 3.72 Ms Katie Acheson, Chief Executive Officer of Youth Action, also emphasised the importance of building relationships and trust with a young person for a diversionary program to work, something that may be harder if a young person is forced to participate:

For the success of youth services we know that the youth development approach is soft entry. Acknowledging the necessity of relationships and that trust factor for young people to be able to open up about what is happening in their lives as they talk to a support worker is so important...In a lot of programs that target young people – particularly in juvenile justice – there is an all-or-nothing approach: you do this or you do not. There is no relationship there...Many young people want to know how it is going to work for them and see that people care. When the outcome for a particular program is about a juvenile justice statistic rather than about the young person...the program will not be as successful as it would if the young person is involved in that process and in the decision making.³⁰⁷

- 3.73 Ms Acheson indicated that well-trained youth workers who know how to forge good relationships with young people quickly would assist with the take-up of diversionary options.³⁰⁸

- 3.74 For his part, His Honour Judge Johnstone stated that making diversionary programs mandatory would not necessarily make them more effective but that opinions can differ:

There is a school of thought that says unless you are change ready, being put into any program is ineffective. It is like drug programs. There is another school of thought that says to put people into a program and quite often you will get results. I guess at the moment it is not an issue because the Youth on Track program is so overworked anyway. They have got enough people coming into the program as it is.³⁰⁹

Appropriately Tailored Diversionary Programs and Efforts

Diversionary programs and efforts must be appropriately tailored to target groups and individuals

- 3.75 During its inquiry the Committee received evidence that to be effective, diversionary programs and efforts must be appropriately tailored to the groups and individuals they are targeting.

³⁰⁶ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, pp36-37.

³⁰⁷ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, pp12-13.

³⁰⁸ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p13.

³⁰⁹ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, pp6-7.

Diversionary efforts must be culturally appropriate and sensitive to the needs of young Aboriginal people

- 3.76 In particular, the Committee heard that it is essential that diversionary efforts are culturally appropriate and sensitive for Aboriginal young people, especially given the over-representation of this group in the Juvenile Justice system.³¹⁰ The Committee agrees that this is extremely important and discusses this aspect in detail in Chapter Five which relates to Aboriginal over-representation in the Juvenile Justice system, making relevant recommendations.

Diversionary efforts must be appropriately tailored to the needs of young women and girls

Recommendation 23

That the NSW Government review the currently available youth diversionary programs and efforts, within custody and the community, in consultation with girls and young women to assess whether they are suitable; any areas for improvement; and where more gender-sensitive options may be needed. In doing so, particular regard should be paid to the needs of Aboriginal girls and young women.

- 3.77 The Committee also heard that diversionary programs and efforts for girls and young women need to be appropriately tailored and that, as females are a minority group within the Juvenile Justice population, there is a danger special provisions will simply be tacked onto male-focused programs.³¹¹
- 3.78 The Committee agrees that diversionary programs and efforts must take the unique needs and experiences of young females into account. It is concerned at evidence, discussed below, that current diversionary efforts may not be appropriately gender-sensitive. This is especially the case for young Aboriginal females who often face a particular set of challenges, also discussed below. During Committee site visits to Reiby Juvenile Justice Centre for the inquiry, young female detainees stressed that their needs must not be overlooked just because the majority of Juvenile Justice detainees are boys and young men.
- 3.79 In the Committee's view, to maximise the effectiveness of diversionary efforts for young females, their voices must continue to be heard. The Committee recommends that the NSW Government review the currently available diversionary programs and supports within custody and within the community in consultation with girls and young women, to assess whether they are suitable, any areas for improvement and where more gender-sensitive options may be needed. In doing so, the NSW Government should pay particular regard to the needs of Aboriginal girls and young women.
- 3.80 Speaking specifically about Aboriginal girls and young women, the NSW Bar Association told the Committee that initiatives must be tailored to their distinct needs and perspectives. It also recommended that they should be consulted in relation to the content and delivery of programs, having regard to both their

³¹⁰ See for example Submission 24, NSW Coalition of Aboriginal Regional Alliances, p9; and Aunty Jean Hands, *Transcript of Evidence*, 10 May 2018, p42.

³¹¹ As at 11:59pm on 6 May 2018, there were 277 males and 33 females in Juvenile Justice detention, see Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p1.

gender and culture, rather than special provisions being added onto male-focused programs.³¹²

- 3.81 The Bar Association also pointed to particular areas of importance for these young women including high levels of exposure to domestic violence, being a mother in custody and the fact that young women are more likely to be separated from country when they are incarcerated. This is because the only Juvenile Justice Centre that holds female detainees for any length of time in NSW is Reiby Juvenile Justice Centre, Airds, while male detainees are held in various locations throughout the State.³¹³ Ms Gabrielle Bashir SC of the Bar Association told the Committee:

...in relation to separation from country, which means separation often from family and community – the girls in custody are a long way from country – there was a recommendation as far back as the Royal Commission into Aboriginal Deaths in Custody in relation to regard being had to where a prisoner might be housed and separation from country because of the repercussions that could occur...In relation to girls and women also, there is a history often – again, this is a generalisation but we know because of systemic factors and because of studies into domestic violence and the like – there is often exposure to domestic violence, homelessness and mums in custody.³¹⁴

- 3.82 The Aboriginal Legal Service made similar comments, noting that while female detainees are managed at Reiby Juvenile Justice Centre, those from regional areas can be managed for up to five days in any of the male Juvenile Justice Centres across the State pending court appearance and transfer to Reiby. The Aboriginal Legal Service stated that it is unclear what if any access females have to programs whilst in male custodial settings.³¹⁵

- 3.83 The Aboriginal Legal Service also indicated that while programs have been developed for Aboriginal young people in Juvenile Justice NSW, it is not clear if any of them cater specifically to the needs and experiences of Aboriginal young women. It further stated:

The anecdotal experience of the ALS confirms the observations and conclusions of a variety of research reports that programs provided in custodial settings are often organised around the needs of male detainees with special provisions adopted or "added on" for female detainees.³¹⁶

- 3.84 The Aboriginal Legal Service agreed with the Bar Association that programs should not merely replicate male-focused or non-Indigenous programs but be both gender-sensitive and culturally appropriate. It also stated that such

³¹² Submission 22, NSW Bar Association, pp22&40-41.

³¹³ As per discussions of Committee with Juvenile Justice NSW staff at its site visits to Reiby Juvenile Justice Centre on 16 March 2018 and 5 July 2018. Male detainees are held at Acmena Juvenile Justice Centre, Grafton; Cobham Juvenile Justice Centre, Werrington; Frank Baxter Juvenile Justice Centre, Kariang; Orana Juvenile Justice Centre, Dubbo; Riverina Juvenile Justice Centre, Wagga Wagga; and Reiby Juvenile Justice Centre Airds, see Juvenile Justice NSW website: <http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/aboutdij/juvenile-justice-centres/juvenile-justice-centres.aspx>.

³¹⁴ Ms Gabrielle Bashir SC, *Transcript of Evidence*, 30 April 2018, p52.

³¹⁵ Aboriginal Legal Service (NSW/ACT), *Answers to Questions Taken on Notice*, 30 April 2018, p2.

³¹⁶ Aboriginal Legal Service (NSW/ACT), *Answers to Questions Taken on Notice*, 30 April 2018, p2.

programs should be a priority for Government given a recent 77 per cent surge of women in custody in Australia, many of them Aboriginal.³¹⁷

3.85 In developing gender-sensitive and culturally appropriate programs, the Aboriginal Legal Service stressed that the following factors should be taken into account:

- The role of young women as a primary parent and the impact of custody on family and maternal responsibilities;
- The high rates of family violence experienced disproportionately by Aboriginal girls and women;
- The disadvantaged status of Aboriginal females based on all key indicators; and
- The experience of intergenerational trauma and the continuing impacts of dispossession, colonisation and discrimination as it is experienced by Aboriginal women and girls.³¹⁸

3.86 The Aboriginal Legal Service further stated:

Any such programs should be genuinely rehabilitative, trauma-responsive and based on best practice. In addition, services must be targeted to deal with the impact of custody on matters such as childcare, housing, drug and alcohol withdrawal as well as the overall physical and mental needs of all indigenous girls and women held in detention.³¹⁹

3.87 At the Committee's hearing on 10 May 2018, Aunty Jean Hands of NCARA agreed that specific programs are necessary for Aboriginal girls and young women and that special provisions should not simply be tacked onto male-focused programs:

I definitely do because of cultural reasons and women's business. There is a total difference, as we all know, between the cultures. There should be different suggestions of things that should happen with the young women and girls.³²⁰

3.88 Similarly, Mr Stevens of Youth Off The Streets told the Committee that Youth Off The Streets is constantly discussing ways of attracting young women and girls to its outreach services and that a number of its sites run girls' only programs:

Generally outreach services tend to target and attract males to a greater extent. This is an issue across the services. We are always discussing new ideas of best practice as to how we bring more women in. A typical outreach program includes a lot of sports – Oztag and these sorts of things – which women are not excluded from, but they do not have as great an inclination to participate in that. Typically what we do is run art programs and music programs. A number of our sites run groups for girls exclusively. Mr Walsh mentioned earlier our cultural support team, which is a

³¹⁷ Aboriginal Legal Service (NSW/ACT), *Answers to Questions Taken on Notice*, 30 April 2018, p2.

³¹⁸ Aboriginal Legal Service (NSW/ACT), *Answers to Questions Taken on Notice*, 30 April 2018, p2.

³¹⁹ Aboriginal Legal Service (NSW/ACT), *Answers to Questions Taken on Notice*, 30 April 2018, pp2-3.

³²⁰ Aunty Jean Hands, *Transcript of Evidence*, 10 May 2018, p41.

team of specialist Muslim caseworkers. They run a girls' group for young Muslim women who maybe do not get the opportunity to get out and be a part of these sorts of social environments as often.³²¹

- 3.89 Dr Tadros of Mission Australia also agreed that making programs useful for target groups is very important, listing gender, cultural and LGBTIA groups as groups that need consideration.³²²

Diversionary options for young people from culturally and linguistically diverse communities should be further explored

Finding 6

The NSW Government should consider whether there is a need for more diversionary programs and efforts targeted to young people from culturally and linguistically diverse communities in NSW.

- 3.90 During its inquiry the Committee also heard calls for diversionary programs specifically targeted at culturally and linguistically diverse (CALD) communities. The Committee agrees that this is another area that should be explored, particularly in communities where there are disproportionate rates of at-risk youth from a particular community.

- 3.91 In particular, Macarthur Legal Centre told the Committee that at Campbelltown Children's Court a significant proportion of young people charged with offences come from New Zealand Maori and Pacific Island backgrounds. Further, a lot of young people from this population group come to court without family or other support.³²³

- 3.92 Macarthur Legal Centre stated that a program that provided individualised intervention to assist young offenders from this population group, similar to the Youth Koori Court discussed in Chapters One and Five, would be a meaningful alternative to existing court diversion programs and meet the need for a culturally relevant alternative to traditional Children's Court procedures.³²⁴

- 3.93 Dr Tadros of Mission Australia also noted that programs tailored to particular communities can be effective, although this can vary:

One program that I know we delivered in Mission Australia years ago was the Pasifika Support Program that was specifically working with the Pacific community. That was about providing culturally appropriate and sensitive supports. It engaged the police quite heavily, it engaged the schools and it engaged the Pacific community itself. It ran for a number of years because there was a high population of Pasifika young people mixing in the wrong areas and a high offence rate. So that worked with that community. We did try some stuff with the Arabic community in Lakemba, some mentoring programs. That did not work as successfully.³²⁵

³²¹ Mr Benjamin Stevens, *Transcript of Evidence*, 10 May 2018, p25.

³²² Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p21.

³²³ Submission 18, Macarthur Legal Centre, p4.

³²⁴ Submission 18, Macarthur Legal Centre, p4.

³²⁵ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p20.

Diversionary programs and efforts must be client-centred

- 3.94 It was also clear to the Committee throughout its inquiry that for maximum effectiveness, diversionary programs and efforts must be appropriately tailored to the individual young person, that is, they must be "client-centred". In its submission to the inquiry, the NSW Government noted the importance of client-centred service, pointing to its case management approach to service delivery:

Juvenile Justice case work is a coordinated service, delivered in partnership with other agencies, particularly the Departments of Education, Health, Family and Community Services and Police, with support from community organisations. Services focus on maximising the capacity and opportunity of the young person to choose positive alternatives. Case work is used as a diversion from court, as part of community orders and when reintegrating [into] the community from custody.³²⁶

Case study – Natalie – Tailored Diversionary Programs and Efforts

Natalie* is an independent young woman who indicated to the Committee that diversionary programs and supports should be appropriately tailored to the individual young person. If diversionary programs and efforts do not take into account the needs and requirements of the specific young person, they will be less effective.

Natalie said that she had had positive experiences with various programs and efforts when they were responsive to her needs. For instance, Natalie knows that being able to exercise and play sport is important to her progress and her mental and physical well-being. Natalie stated that she would like to continue with her sport when she returns to the community as it provides an excellent outlet for stress release.

Natalie also indicated that while having access to a counsellor in custody has been useful in some ways, and very useful for some other people, one particular style or approach will not work for everyone. It is important for Natalie to have a positive connection with her particular counsellor who understands what she needs and how best to offer therapeutic support and guidance. Natalie also indicated that for her, counselling may actually be more helpful when she leaves custody and she looks forward to having access to a counsellor of her own choosing at this time.

In discussing drug and alcohol rehabilitation programs, Natalie also told the Committee that not all programs were run by people who had "been there done that". Therefore, they could not offer a personal perspective on addiction and rehabilitation. It was clear that this kind of lived experience was important for Natalie to feel properly understood, and to be able to fully connect to a program or service.

³²⁶ Submission 27, NSW Government, p33.

Within the community, Natalie also indicated programs and efforts could have been improved had they been more effectively tailored to her individual needs. For example, her school teachers did not pick up that she needed more help and she was often placed on detention as well as being suspended from school. Similarly, during her time in the court system while her solicitors tried to help, Natalie found the court process intimidating and hard to understand. Natalie made it clear that having support services around that were able to understand what she needed and respond to that would have been particularly helpful.

* Not her real name.

NSW Justice Cluster Diversionary Programs and Efforts

- 3.95 The remainder of the Chapter reviews current and former diversionary programs and efforts of the NSW Justice Cluster, about which the Committee received significant evidence, namely, Youth on Track; the Joint Protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system; and the Youth Drug and Alcohol Court.

Youth on Track

- 3.96 As discussed in Chapter One, Youth on Track is an early intervention scheme for 10-17 year olds that identifies and responds to young people at risk of long-term involvement with the criminal justice system.³²⁷ Police and local schools can refer a young person known to be at medium or high risk of offending to Youth on Track. However, as discussed above, the young person's engagement with the scheme is voluntary.³²⁸

The NSW Government should expand Youth on Track across NSW if evaluations continue to be positive

Finding 7

The NSW Government should expand Youth on Track so that it is available across NSW should the results of the evaluation by the NSW Bureau of Crime Statistics and Research, due to report in 2020, be positive.

- 3.97 As noted earlier in the Chapter, Youth on Track is not available across the State. The Department of Justice funds NGOs to deliver the scheme in six locations across NSW: Blacktown, the Hunter, the Mid North Coast, the Central West, Coffs and New England.³²⁹
- 3.98 The Committee received positive feedback concerning Youth on Track during its inquiry and notes that the program was also positively evaluated by CIRCA in 2017. Further, BOCSAR is evaluating the program, and is expected to report in 2020 (see below). Should this evaluation also prove positive, the NSW

³²⁷ Submission 27, NSW Government, p16.

³²⁸ Juvenile Justice NSW website: <http://www.youthontrack.justice.nsw.gov.au/>, viewed 20 June 2018.

³²⁹ Juvenile Justice NSW website: <http://www.youthontrack.justice.nsw.gov.au/>, viewed 20 June 2018.

Government should expand Youth on Track across the State. Were this to occur, it would assist to address concerns discussed earlier in the Chapter about access to diversionary options in regional, rural and remote areas of NSW.

- 3.99 During its inquiry, the Committee heard a number of calls for the expansion of Youth on Track. For example, NCARA told the Committee:

YOT [Youth on Track] provides a good example of a holistic, wraparound, family-centred early intervention program tailored to a young person's individual needs. Importantly, the program is available *before* a young person becomes deeply enmeshed in the youth justice system. YOT is currently only available at six sites across NSW, demonstrating a clear and significant service gap for communities which do not benefit from a similar program. We hope that following the positive evaluation by CIRCA that funding for YOT is continued and the program is subject to ongoing review and improvement.³³⁰

- 3.100 Similarly, Mission Australia noted that CIRCA evaluation of Youth on Track found that the program had positive attitudinal and behavioural impacts on participants with improvement in their relationships with peers and community. Mission Australia further stated:

Youth on Track is currently available in a limited number of areas in NSW. Considering the successful outcomes and the positive evaluations, we recommend that the program is expanded across NSW.³³¹

- 3.101 As noted earlier in the Chapter, the President of the Children's Court has also called for Youth On Track to be expanded into more regions of NSW.³³² In addition, Dr Vicki Sentas noted that the early evaluations of Youth on Track have been promising, stating that:

Any opportunity to expand Youth on Track with tailored opportunities for Aboriginal young people would certainly be welcomed and it seems consistent with best practice in that area.³³³

- 3.102 Ms Hawyes of Juvenile Justice NSW confirmed that evaluations of Youth on Track to date are promising, and that BOCSAR was conducting a further evaluation:

In terms of evaluation, it is promising. The outcome of participation in the program appears to significantly stabilise and/or reduce formal contact with police. So we think it is stabilising or reducing the frequency and intensity of offending behaviour...BOCSAR is currently undertaking randomised controlled testing to demonstrate...that it is effective...It complements an evaluation we had done on the social outcomes of Youth on Track by the Cultural Indigenous Research Centre of Australia that demonstrates that after three months of participation there has been a significant reduction in the risk of offending and improved engagement with other

³³⁰ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p13.

³³¹ Submission 12, Mission Australia, p3.

³³² Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, pp3&7.

³³³ Dr Vicki Sentas *Transcript of Evidence*, 30 April 2018, p33.

protective factors such as school and a safe and stable place to live...After six months those sustained benefits are still there.³³⁴

3.103 The BOCSAR evaluation report will be completed in 2020.³³⁵ As noted earlier in the Chapter, Ms Hawyes also indicated that if evaluations of Youth On Track are positive, these results would be put to Government to consider future expansion.³³⁶

3.104 In his submission to the inquiry, Dr Garner Clancey stated that any attempts to expand Youth on Track should await final evaluations.³³⁷

The Department of Justice NSW should consider additional referral pathways for Youth on Track

Finding 8

The Department of Justice NSW should consider additional referral pathways for Youth on Track.

3.105 During its inquiry the Committee also heard evidence, discussed below, from a number of stakeholders that improvements could be made around the referral pathways for Youth on Track. The Committee is of the view that to maximise opportunities for uptake, the Department of Justice should consider additional referral pathways for the program, for example, to allow FACS and the Department of Health to make referrals to it.

3.106 In making this finding, the Committee notes advice discussed below that extra referral pathways would have resourcing implications for the program, and that, for operational reasons, it may be best to reserve final judgment on this issue until the BOCSAR evaluation of the program is complete.

3.107 As noted above, police and local schools can refer a young person known to be at medium or high risk of offending to Youth on Track. However, during the inquiry the Committee heard some criticism of these referral pathways.

3.108 These criticisms included that a program that relies on referrals from police may struggle to engage Aboriginal young people; and evidence suggesting that in practice it is hard to obtain referrals to Youth on Track from schools. Some stakeholders told the Committee that there should be additional referral pathways to Youth on Track, for example, through the Department of Health and FACS.

3.109 In its submission to the inquiry, when speaking about Youth on Track, Legal Aid NSW stated:

³³⁴ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p40.

³³⁵ Department of Justice NSW website, http://www.youthontrack.justice.nsw.gov.au/Pages/yot/about_us/yot-performance.aspx, viewed 23 July 2018.

³³⁶ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p42.

³³⁷ Submission 2, Dr Garner Clancey, p3.

...because of the historic and current difficult relationship between Aboriginal people and police, a scheme that relies upon referrals from police officers may struggle to engage Aboriginal young people.³³⁸

- 3.110 Youth Off The Streets agreed with this, noting that for older Aboriginal people, their experiences as part of the stolen generation or their family members' experiences can affect their attitudes to support programs, which can in turn affect the likelihood of young people engaging with a program.³³⁹ Mr Stevens of Youth Off The Streets told the Committee:

For a lot of young people we work with there is a general distrust of police. So when a police officer endorses a young person to a service like Youth on Track, they do not necessarily have full buy-in at that point in time or they do not trust where they are being pushed to.³⁴⁰

- 3.111 Similarly, Mr Des Jones of NCARA told the Committee: "Whether it is Youth on Track or any other program, I find that there is mistrust between the parties when it is referred by police".³⁴¹

- 3.112 Other stakeholders indicated that while police referral of Aboriginal young people can sometimes be a problem, this is not always the case. For example, Judge Johnstone told the Committee:

All agencies sometimes struggle to engage with Aboriginal young people. It is just part of the problem. On the other hand, I have seen some very good caseworkers who do engage regularly with Aboriginal children, particularly the Youth on Track in Kempsey. They have quite a number of Aboriginal families they are dealing with in their caseload.³⁴²

- 3.113 Similarly, Ms McLeod Howe of NCOSS told the Committee:

We travel around the State...and we see that police referrals are not an impediment across the board. But I think what the Committee needs to take into account is that there needs to be a sense of community engagement – some reference to the community itself and some choice around how that occurs. There is no impediment to police doing this work but you need to be connected at the community level or you will not get through.³⁴³

- 3.114 Mission Australia, one of the NGOs that delivers the Youth on Track program also told the Committee that it had not experienced any trouble engaging Aboriginal young people.³⁴⁴ Further, Juvenile Justice NSW told the Committee that Youth on Track had not struggled to engage Aboriginal young people:

62 per cent of people who have participated have identified as Aboriginal young people since the program began. Since the program began in 2013, there have been

³³⁸ Submission 14, Legal Aid NSW, p19.

³³⁹ Mr Evan Walsh, *Transcript of Evidence*, 10 May 2018, p24.

³⁴⁰ Mr Benjamin Stevens, *Transcript of Evidence*, 10 May 2018, p24.

³⁴¹ Mr Des Jones, *Transcript of Evidence*, 10 May 2018, p40.

³⁴² Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p4.

³⁴³ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p36.

³⁴⁴ Ms Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p20.

over 500 young people who participated. A large proportion have been Aboriginal young people. That reflects their over representation in terms of police contact but it also shows that we are able to engage with Aboriginal young people.³⁴⁵

- 3.115 Juvenile Justice NSW did, however state that work could be undertaken to further strengthen this figure:
- I think there is always work to do to strengthen and enhance the way that we engage with Aboriginal families and communities as service agencies and we work with our funded partners in Youth on Track to do this as much as our own.³⁴⁶
- 3.116 Another concern around Youth on Track referral pathways was raised by NCARA, which noted that the 2017 CIRCA evaluation identified challenges obtaining referrals to the program, particularly from schools.³⁴⁷
- 3.117 In responding to these concerns, the Department of Education advised that since 2014, schools have provided 3-5 per cent of all referrals to Youth on Track. Education further noted that it is to be expected that police would make more referrals than schools because:
- Police Youth Liaison Officers have the opportunity to refer a young person to Youth on Track at the time of their first youth justice conference, caution or charge.
 - Police also have in place an automatic referral process for young people who have had two or more formal contacts with police and are at a higher chance of re-offending.³⁴⁸
- 3.118 At the Committee's hearing on 8 May 2018, Assistant Commissioner Cassar agreed that "The NSW Police Force is the primary referral point because we have the greatest interaction with individuals".³⁴⁹
- 3.119 In addition, Education advised that its Learning and Teaching Directorate liaises with Juvenile Justice NSW about the Youth on Track Program and that this Directorate is also represented on the "Youth on Track Implementation Committee".³⁵⁰ Further, schools work closely with Youth on Track providers in their area and Youth on Track has been promoted through the Department's internal communication publication which is available to all Government schools across NSW.³⁵¹
- 3.120 Youth Action also suggested the small number of school referrals to Youth on Track may be linked to a lack of training for teachers about spotting the risk factors for youth offending, and about the available support services to which

³⁴⁵ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p40.

³⁴⁶ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p37.

³⁴⁷ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p13.

³⁴⁸ NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

³⁴⁹ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p8.

³⁵⁰ NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p8.

³⁵¹ NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, pp1-2.

they can refer students.³⁵² The Committee has made a recommendation for teachers to receive this training in Chapter Four.

- 3.121 At the Committee's site visit to Mac River Rehabilitation Centre, Dubbo on 16 November 2017, Centre staff noted that referrals to Youth on Track cannot be made by the Department of Health. This prompted the Committee to ask stakeholders whether there should be additional referral pathways to the Youth on Track program, and it found that a number of stakeholders thought there should be.
- 3.122 For example, when asked whether further referral pathways should be considered, Ms Acheson of Youth Action stated:
- Yes. The huge investment that is being made in that program would be best utilised by making the referral process more open...I would argue that youth support services are often seeing a wide range of young people. They can have already identified risk factors and could see the benefit of people going through that program – making it not just available to police and schools but also to health services. Specifically targeting youth services, which already know a young person and know what would work effectively through that program would be most effective.³⁵³
- 3.123 Similarly, when asked whether further referral pathways should be considered, Dr Tadros of Mission Australia indicated that as long as there were enough staff to manage the referrals, this would be a good idea:
- Absolutely. I think that would be feasible as long as the case to client ratio is sufficient. By that I mean that we do not just get all of these referrals and then do not have the staff to be able to manage it...The Youth Crime Prevention Program in fact is like that where it takes referrals from any source as long as a young person is seen to be going off track.³⁵⁴
- 3.124 Following the Committees hearings, Mission Australia also told the Committee that there is currently additional capacity in some of the sites where it operates Youth on Track to take more referrals. However, it further told the Committee that if the Department of Justice were to change the referral system it would need to consider the resourcing and program implications.³⁵⁵
- 3.125 Judge Johnstone also provided support for expanded referral pathways for Youth on Track stating: "Yes, Health, Justice Health, any agency should be able to refer".³⁵⁶
- 3.126 Similarly, in noting that the majority of referrals are currently made by Police, Assistant Commissioner Cassar also indicated there is capacity for referral pathways to be expanded, stating: "Yes, Family and Community Services, and I

³⁵² Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p13.

³⁵³ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p12.

³⁵⁴ Dr Evelynne Tadros, *Transcript of Evidence*, 30 April 2018, p20.

³⁵⁵ Mission Australia, *Answers to Questions Taken on Notice*, 30 April 2018, p1.

³⁵⁶ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p3.

believe NSW Health would have a good opportunity to make referrals. They would be the key players".³⁵⁷

- 3.127 Juvenile Justice NSW indicated to the Committee that while it would not be opposed to adding referral pathways for Youth on Track, it may not currently be the best time to do so given the program is being evaluated:

Youth on Track works under that referral framework [i.e. referrals from Police and schools] simply because they are the most likely points of contact at which our service partners realise a young person is in trouble. The scheme, as it is, is under robust evaluation and changing it at this point could be tricky for us operationally. I would not be closed to adding referral pathways, but our focus at the moment is bedded in, for want of a better term. That has been done to ensure that our evaluation is as crisp and robust as it can possibly be so that we can come before the Government and say that we are confident that the scheme does or does not work.³⁵⁸

Youth on Track must be delivered in a culturally appropriate and sensitive way

- 3.128 As noted earlier in the Chapter and in Chapter Five, diversionary programs must be culturally appropriate and sensitive to the needs of Aboriginal young people. Youth on Track is no exception, especially given figures showing that a large number of the young people accessing this program identify as Aboriginal.³⁵⁹ As part of this, and as discussed in detail in Chapter Five, it is also essential to encourage the employment of Aboriginal workers to deliver diversionary programs like Youth on Track. The Committee makes recommendations in Chapter Five to increase the appropriateness of diversionary programs and efforts for Aboriginal young people.
- 3.129 Legal Aid NSW expressed concerns in this area, specific to Youth On Track, stating that further efforts need to be made to employ Aboriginal workers to deliver the program. Legal Aid also noted that Youth On Track employs the CHART (Changing Habits Reaching Targets) approach and that "it is not clear that this approach is effective with Aboriginal young people".³⁶⁰
- 3.130 As above, Mission Australia is one of the NGOs that delivers Youth on Track and it stated that employing Aboriginal people to deliver the program can be challenging:

What we have been challenged by is we have tried to get dedicated Aboriginal workers working in those areas where there is a high population of Aboriginal young people and we have struggled to get them on board and then to retain them...I cannot say that it is pay because the pay is pretty much the same in the sector. I think they just get more interesting and better offers or ones that take them back to their own communities. Obviously Youth on Track is only in certain areas so they may have to come out of their communities to serve in those areas...³⁶¹

³⁵⁷ Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p9.

³⁵⁸ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p37.

³⁵⁹ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p40.

³⁶⁰ Submission 14, Legal Aid NSW, pp18-19.

³⁶¹ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p20.

3.131 On the subject of the CHART approach, Mission Australia told the Committee that it is used effectively with Aboriginal young people, and that it can be, and is, adapted to maximise cultural appropriateness and young peoples' individual needs:

Our staff report that CHART is being used effectively with Aboriginal young people, however in some cases it is adapted through conversations rather than worksheets to better suit the young person's needs. Other creative strategies have also been tried including cultural painting to engage Aboriginal young people while keeping the integrity and fundamental core process of the CHART program.³⁶²

Joint Protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system

Action should be taken to further address the over-representation of young people in out-of-home care with the criminal justice system

Recommendation 24

That all NSW Police and residential out-of-home care workers receive thorough training on the Joint Protocol to reduce the contact of young people in out-of-home care with the criminal justice system.

3.132 The Committee is very concerned at evidence it received during its inquiry that young people in out-of-home care are over-represented in the criminal justice system. This is particularly so, given the vulnerability of this group and the fact that the criminal charges they face are often the result of household incidents that would ordinarily be managed by parents without police involvement. The Committee welcomes the advent of the Joint Protocol to reduce the contact of people in out-of-home care with the criminal justice system (Joint Protocol), which aims to address these issues.

3.133 However, the Committee notes the concerns that have been raised about the levels of awareness and understanding that some police and out-of-home care workers have about the Joint Protocol, discussed below. The Committee is pleased that both police and FACS have taken steps to train staff regarding the Joint Protocol and considers that all police and out-of-home care workers should be required to undertake thorough training on it.

3.134 During its inquiry, the Committee heard from a number of stakeholders that young people in residential out-of-home care are over-represented in the criminal justice system. For example, the Aboriginal Child, Family and Community Care State Secretariat (AbSec) told the Committee:

- Young people in out-of-home care are often subjected to greater police intervention for behaviour that would normally be dealt with by families within the home.
- Young people in out-of-home care are more likely to be charged and remanded by police for minor offences.

³⁶² Mission Australia, *Answers to Questions Taken on Notice*, 30 April 2018, pp1-2.

- NSW research suggests that less experienced police officers may lack the skills to diffuse situations where a young person behaves aggressively, often a behavioural response to trauma.³⁶³

3.135 Similarly, ACYP pointed to the 2015 Young People in Custody Health Survey stating that one in five respondents to this survey reported having been placed in out-of-home care before the age of 16 years. Participants were 26 times more likely to have been placed in out-of-home care during their childhood than an Australian child in the general population and female participants were 40 times more likely than other Australian females to have been placed in care.³⁶⁴

3.136 Like AbSec, ACYP suggested that one reason for the over-representation of young people in out-of-home care with the criminal justice system is that carers may call the police about behaviour that parents might ordinarily address themselves or with the help of family support services, e.g. assault or property damage within the home.³⁶⁵

3.137 At the Committee's hearing on 30 April 2018, Ms Maher of Legal Aid NSW also referred to this phenomenon:

...with the way many out-of-homecare places run, if one child hits another child, if the kid puts their fist through the wall...These kids are the most damaged kids, so acting out is surely to be predicted, not to be surprised by, and yet we bring into play all of the domestic violence legislation...In out of homecare we have represented children who have pages and pages of criminal history based solely on their behaviour within out of homecare. They have never gone outside and stolen anything, they have never broken in, they have never done a robbery...[They are] children who have done nothing except not cope in their home environment with their "parents".³⁶⁶

3.138 The Joint Protocol aims to address these issues. As outlined in Chapter One, it was signed and endorsed in August 2016 and it informs practice for residential out-of-home care providers and police, emphasising flexibility and proportionality in determining the appropriate response to a young person's behaviour on a case-by-case basis. Procedures for residential out-of-home care staff emphasise that they should only contact police when this is truly necessary.³⁶⁷

3.139 However, the Law Society of NSW told the Committee that while the Joint Protocol has achieved some positive results, some police and out-of-home care caseworkers need better awareness about it, and a better understanding of it:

While some members of the Law Society have reported positive outcomes from the joint protocol (for example, the withdrawal of police charges after consideration of the protocol), other members are aware of instances where OOHHC caseworkers and police have either not been aware of the joint protocol or have lacked an understanding of its operation. This has led to OOHHC workers contacting the police

³⁶³ Submission 17, Aboriginal Child, Family and Community Care State Secretariat, p6.

³⁶⁴ Submission 20, Office of the Advocate for Children and Young People, p16.

³⁶⁵ Submission 20, Office of the Advocate for Children and Young People, pp16-17.

³⁶⁶ Ms Debra Maher, *Transcript of Evidence*, 30 April 2018, pp16-17.

³⁶⁷ See Submission 20, Office of the Advocate for Children and Young People, p17; and NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

without consulting the joint protocol and considering whether there is an alternative and appropriate means of dealing with an incident.³⁶⁸

- 3.140 The Law Society recommended training as a priority for all those involved with the Joint Protocol, especially casual care workers and police.³⁶⁹
- 3.141 When asked about these issues at the Committee's hearing on 10 May 2018, Mr O'Reilly of FACS told the Committee:
- That is partly to do with the scale of the workforce of both sectors. I understand the Protocol is currently under review and part of that process is working out how we can better improve communication, refinement of the way it is implemented, but fundamental awareness and confidence to apply the Protocol is critical.³⁷⁰
- 3.142 FACS also provided information following the hearing that a "Joint Protocol Steering Committee" has developed procedures for residential service providers including:
- A Joint Protocol Complex Trauma training module that would be available online in June 2018 for all NSW residential care providers and staff. This supplements training that was already delivered to management of all residential service providers in November 2016, which included establishment of the Protocol, trauma training and safety planning.
 - Strategies for residential care staff including appointing senior residential staff as a police liaison officer, guidelines for behaviour management, de-escalation processes and signage within residences, delegated authorisation to call the police, and improved record keeping.³⁷¹
- 3.143 FACS indicated that the online training component for residential care staff had been delayed owing to legal issues surrounding the ownership of training content but that this issue had now been resolved.³⁷²
- 3.144 The Committee also asked Police for comment on police knowledge surrounding the Joint Protocol. The NSW Police Force responded that a communication strategy marked the launch of the Joint Protocol in August 2016, which included:
- A statewide message from the then Corporate Sponsor for Youth, Mr Loy, informing all personnel that the Joint Protocol was taking effect;
 - A *Police Monthly* article in September 2016, including case studies developed in consultation with FACS.³⁷³

³⁶⁸ Submission 26, Law Society of NSW, p12.

³⁶⁹ Submission 26, Law Society of NSW, p12.

³⁷⁰ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p35.

³⁷¹ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice and Supplementary Questions*, 10 May 2018, pp1-2.

³⁷² NSW Department of Family and Community Services, *Answers to Questions Taken on Notice and Supplementary Questions*, 10 May 2018, p2.

³⁷³ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, pp3-4.

- 3.145 In addition, the NSW Police Force developed a six minute intensive training module about the Joint Protocol, which is available online to all Police staff. It has recently been reviewed and a modified version will be rolled out soon.³⁷⁴ The NSW Police Force also advised that it is working with FACS to establish an Operational Implementation Group which will deal with day to day local implementation issues as they arise. Further, the Joint Protocol is often discussed at the NSW Police Force Youth Advisory Group meetings, chaired by Assistant Commissioner Cassar.³⁷⁵

Recommendation 25

That the NSW Government examine whether the Children’s Court of NSW should be given the power to refer a young person in its criminal list, to the care and protection system in appropriate cases.

- 3.146 During the inquiry, the President of the Children’s Court raised a further issue relating to the over-representation of young people in out-of-home care with the criminal justice system. Noting that young people who commit offences are often the same young people who are in need of care and protection, Judge Johnstone advocated for a power to refer a child in the criminal justice system to the care and protection system.³⁷⁶
- 3.147 The Committee supports initiatives additional to the Joint Protocol to address the needs of this vulnerable group. It therefore recommends that the NSW Government examine whether the Children's Court should be given such a power.
- 3.148 Judge Johnstone noted that in the ACT, a court can divert a child who is in need of care and protection from the criminal courts to the care courts. His Honour contended that were the Children’s Court to have such a power, this “could contribute to the successful diversion of a child or young person with complex needs away from the criminal justice system in NSW”.³⁷⁷
- 3.149 In supporting such a power, the Law Society of NSW stated:

On the face of it, this appears to be a power to divert those appropriate cases from the criminal jurisdiction to the care jurisdiction where the primary issue in terms of the alleged offending relates to the welfare of the child or young person. We see merit in adopting a diversionary option in these circumstances, where the Children's Court has the power to dismiss the offence and divert the child or young person from the criminal court to the care jurisdiction.³⁷⁸

³⁷⁴ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p4.

³⁷⁵ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p4.

³⁷⁶ Submission 19, Judge Peter Johnstone, p15.

³⁷⁷ Submission 19, Judge Peter Johnstone, p15; see also *Court Procedures Act 2004 (ACT)*, s74K.

³⁷⁸ Law Society of NSW, *Answers to Supplementary Questions*, 30 May 2018, p5.

Youth Drug and Alcohol Court

Adolescent drug and alcohol services should be prioritised over any re-instatement of the Youth Drug and Alcohol Court

- 3.150 During the inquiry the Committee heard a number of calls for the NSW Youth Drug and Alcohol Court (YDAC) to be re-instated, despite evidence from the Government, discussed below, that it was not cost-effective.
- 3.151 The Committee considers that programs to address the underlying causes of youth offending, including substance abuse, are extremely important and that the YDAC did valuable work. However, a YDAC will be of limited use if there are not enough adolescent drug and alcohol services within the community to which a young person can be referred.
- 3.152 The Committee notes that there is a lack of adolescent drug and alcohol rehabilitation services in NSW, and this is discussed in detail in Chapter Four. Judge Johnstone indicated that increasing such services is more important than re-instating the YDAC and Mission Australia commented that a court cannot help a young person with drug and alcohol issues if there are no services to which to refer him or her.³⁷⁹
- 3.153 In the circumstances, the Committee considers that, rather than re-instating the YDAC, finite resources should be applied to increasing the number of adolescent drug and alcohol services across the State, particularly residential services and detox facilities, and it makes recommendations to this effect in Chapter Four.
- 3.154 The YDAC started in July 2000 and operated until July 2012 when it was abolished.³⁸⁰ Under this program, any young person charged with an offence that could be dealt with to finality in the Children's Court, could be referred for an eligibility assessment if he or she:
- had entered a plea of guilty to, or had been found guilty of all charges, none of which were sex offences
 - had a demonstrable drug and/or alcohol problem
 - was aged between 14-18 (or was over 18 but under 18 at the time of the offence)
 - lived in, committed the offence in, or otherwise identified with the greater Sydney metropolitan area; and
 - was ineligible for a caution or youth justice conference.³⁸¹
- 3.155 If he or she agreed to the assessment and was assessed eligible, a treatment plan would then be drawn up for the young person which included alcohol and/or drug treatment, the attainment of living skills, completion of offence-focussed

³⁷⁹ See Judge Johnstone, *Transcript of Evidence*, 30 April 2018, p9; and Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p25.

³⁸⁰ Submission 28, Hon Justice Hilary Hannam, p2.

³⁸¹ Submission 28, Hon Justice Hilary Hannam, p3.

counselling and schooling, vocational training or employment. Compliance with the treatment program would then become a condition of the young person's bail and sentencing in the Children's Court was deferred for up to 12 months to allow him or her to complete the program.³⁸²

- 3.156 In a submission to the inquiry, the Hon Justice Hilary Hannam, who had been the presiding magistrate in the YDAC for a period of three years, called for a return of the YDAC:

It remains my view to this day that the YDAC was a successful and worthwhile program that achieved positive outcomes both for the juvenile justice system and for young offenders themselves. For the sake of future young offenders and more importantly the community at large serious consideration should be given to reinstating the YDAC or a similar program which focuses on holistic and enduring rehabilitation rather than the populist but ineffective quick-fix of incarceration.³⁸³

- 3.157 Similarly, Mission Australia told the Committee:

Despite positive evaluations and community support for YDAC, the government discontinued funding and redirected the young participants to other programs. Considering the need to support young people with drug and alcohol dependences, we recommend reinstating YDAC or establishing a similar court dedicated to young people.³⁸⁴

- 3.158 Mission Australia also stressed that if the YDAC were to be re-instated there would have to be enough adolescent drug and alcohol services to support it. Dr Tadros told the Committee:

If you have a magistrate in a drug and alcohol court who says, "Yep, you're not going to juvie because we know you've got a drug and alcohol problem. We'll send you to detox and rehab." Detox and rehabs have to be available to send them to.³⁸⁵

- 3.159 In evidence to the inquiry, the Law Society of NSW, NCOSS, the Aboriginal Legal Service and Youth Off The Streets also supported a reinstatement of the YDAC.³⁸⁶

- 3.160 When asked about this issue, Judge Johnstone agreed that the YDAC was a worthwhile program but did not support its re-instatement. Like Mission Australia, he emphasised the importance of adolescent drug and alcohol services within the community. His Honour stated:

We were very disappointed when the funding was withdrawn for our Youth Drug and Alcohol Court. On the other hand, I am not advocating for it to be re-instated. What I am asking for is sufficient residential drug and alcohol facilities for young people to be provided within the western suburbs that we can utilise and divert children to...I think we are sufficiently well equipped to deal with those sorts of

³⁸² Submission 28, Hon Justice Hilary Hannam, pp3-4.

³⁸³ Submission 28, Hon Justice Hilary Hannam, p8.

³⁸⁴ Submission 12, Mission Australia, p8.

³⁸⁵ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p25.

³⁸⁶ See submission 26, Law Society of NSW, p8; Submission 16, NSW Council of Social Service, p1; Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p46; and Mr Evan Walsh, *Transcript of Evidence*, 10 May 2018, p24.

issues through our processes anyway, but what we do want is somewhere to be able to send them.³⁸⁷

3.161 Mr McKnight of the Department of Justice told the Committee that the YDAC was disbanded because it was not considered to be cost-effective:

The reason that the Youth Drug and Alcohol Court was discontinued was to do with how much it cost, as opposed to how much benefit it was providing for the young people involved. That is not to say that drug and alcohol treatment is not an issue for young people in the criminal justice system, but that court was not found to be a cost-effective way of addressing those issues.³⁸⁸

3.162 Ms Hawyes of Juvenile Justice NSW also noted that young people are currently referred to drug and alcohol treatment as part of their rehabilitation, pointing to the Rural Residential Adolescent Alcohol and Other Drugs Rehabilitation Program funded by the Department of Justice, with services located at Coffs Harbour and Dubbo.³⁸⁹

³⁸⁷ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p9.

³⁸⁸ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p42.

³⁸⁹ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p42; see also Submission 27, NSW Government, p42.

Chapter Four – Interaction of Diversionary Programs and Efforts with Social Services

- 4.1 In this Chapter, the Committee explores how Health, Disability, Education, Housing and Children's Services are interacting with youth diversionary programs and efforts in NSW. As in previous Chapters, the Committee makes recommendations for improvement where necessary, to promote the diversion of young people from the criminal justice system wherever possible.
- 4.2 It is worth noting at this juncture that the various Government agencies fund NGOs to deliver many services relevant to youth diversion in NSW and this input is acknowledged throughout the report with Chapter Six being devoted entirely to the coordination between Government and NGOs in the delivery of diversionary efforts.

Health and Disability

Diversion of young people with mental health issues and cognitive impairment

Few young offenders are diverted under mental health legislation despite high rates of impairment

- 4.3 Under sections 32 and 33 of the *Mental Health (Forensic Provisions) Act 1990*, a magistrate can divert mentally disordered person from the criminal justice system. The President of the Children's Court notes that these provisions allow the Children's Court to dismiss charges against a young person and discharge him or her into the care of a responsible person on the condition that he or she obtains a mental health assessment or treatment.³⁹⁰
- 4.4 However, during the inquiry the Committee heard that diversion rates for young people under mental health legislation are low. Only around 1.5 per cent of defendants in the Local Court have their matter diverted under mental health legislation, and rates of diversion in the Children's Court are similarly low.³⁹¹
- 4.5 This is despite the fact that many young offenders have mental health issues and cognitive impairments. The NSW Mental Health Commissioner, Ms Catherine Lourey told the Committee that comparative surveys conducted over the last five years by Justice Health show that:
- 83 per cent of young people in custody met the criteria for a psychological disorder in the preceding 12 months
 - 48 per cent of young people in custody had been exposed to a traumatic event

³⁹⁰ Submission 19, President of the Children's Court of NSW, p8.

³⁹¹ Submission 8, Mental Health Commission of NSW, p3.

- 68 per cent of young people in custody had experienced childhood abuse or neglect
 - 17 per cent of young people in custody has an IQ in the extremely low range, that is, they had an intellectual disability.³⁹²
- 4.6 The Committee also heard that Aboriginal young people who come into conflict with the law have even higher rates of mental health disorders and cognitive impairments than their non-Aboriginal peers. NCARA told the Committee that the 2015 Young People in Custody Health Survey conducted by Justice Health and Juvenile Justice NSW found that:
- 87 per cent of Aboriginal young people screened for a psychological disorder, compared with 79 per cent of non-Aboriginal young people
 - 69 per cent of Aboriginal young people screened for two or more disorders, compared with 56 per cent of non-Aboriginal young people.³⁹³
- 4.7 The same survey also found 23.8 per cent of Aboriginal young people to be in the "extremely low" IQ range indicating a potential intellectual disability compared with 8.1% of non-Aboriginal young people.³⁹⁴
- 4.8 Further, NCARA and the Law Society of NSW indicated to the Committee that foetal alcohol spectrum disorders are prevalent amongst young people in contact with the criminal justice system, especially young Aboriginal people.³⁹⁵ Mr Humphreys of the Law Society told the Committee:

There is some research from Western Australia...where they did a diagnosis on a group of people that were in detention. Particularly amongst the Aboriginal and Torres Strait Islander grouping, the level of foetal alcohol spectrum disorder was enormous...The impact of that disorder is that high-level thinking, impulse control and being able to make sound decisions are impacted.³⁹⁶

Access to the Adolescent Court and Community Team must be increased

Recommendation 26

That the NSW Government fund more Adolescent Court and Community Team (ACCT) practitioners so that the services of the ACCT are available at every Children's Court, and every Local Court that sits as a Children's Court, across NSW.

³⁹² Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p19.

³⁹³ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p5; see also Justice Health and Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, p65, available at: <http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>, viewed 24 July 2018.

³⁹⁴ Justice Health and Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, p80, available at: <http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>, viewed 24 July 2018.

³⁹⁵ Submission 24, NSW Coalition of Aboriginal Regional Alliances, pp5-6; Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p58. See also Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p57.

³⁹⁶ Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p58.

- 4.9 During the inquiry, the Committee heard evidence indicating that one of the reasons such a small percentage of young people are diverted under mental health legislation is that the services of the Adolescent Court and Community Team (ACCT) are not available in every court that sits as a Children's Court in NSW.
- 4.10 The ACCT, run by Justice Health, conducts mental health assessments on young people appearing before the Children's Court, with the aim of identifying those with mental health issues and diverting them to appropriate care and treatment within the community.³⁹⁷ Criteria for referrals to the ACCT include (noting that not all young people referred will be found eligible for diversion):
- That a young person has been charged with summary offences or indicatable offences that are triable summarily.
 - That a young person displays behaviour that may be indicative of a mental illness, or has a history of mental illness.³⁹⁸
- 4.11 The Committee notes data that is discussed below indicating that only a minority of young people who appear before NSW Local and Children's Courts in NSW have access to the ACCT should they need it. Access rates are particularly low in regional areas and amongst Aboriginal young people. However, the data also indicates that where young people do have access to the ACCT, diversion rates are significant.
- 4.12 The Committee considers that diversion rates under mental health legislation are too low given the incidence of mental health issues and cognitive impairment amongst young offenders discussed above. Increasing access to the ACCT would help to address this and this should be a priority. Therefore, the Committee recommends that the NSW Government fund more Adolescent Court and Community Team (ACCT) practitioners so that the services of the ACCT are available at every Children's Court, and every Local Court that sits as a Children's Court, across NSW. Where a physical presence is not possible, modern technology should be applied so that young people have access to the ACCT by audio-visual link or something similar.
- 4.13 The Law Society of NSW told the Committee that the ACCT is not available across the State. The Law Society noted that it is physically based in some Children's Courts and available by audio-visual link or teleconference in other Children's Courts. However, not every Local Court which sits as a Children's Court has access to this service.³⁹⁹
- 4.14 The Law Society contended that this affects the numbers of young people who are diverted under mental health legislation stating that magistrates are less likely to divert under section 32 of the *Mental Health (Forensic Provisions) Act 1990* where there is not an appropriately qualified ACCT clinician to assist the court. The Law Society called for funding for more ACCT practitioners, preferably

³⁹⁷ See Submission 27, NSW Government, p44; see also Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p2.

³⁹⁸ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p1.

³⁹⁹ Submission 26, Law Society of NSW, p10.

with formal training as a psychologist or psychiatrist, to be located at more courts that sit as Children's Courts.⁴⁰⁰

- 4.15 Mr Forrest of Justice Health confirmed that while the ACCT is available at 21 courts across the State, it is not available at all courts that hear eligible children's matters.⁴⁰¹ Similarly, although a magistrate is able to transfer a young person's case from a court where the ACCT does not operate to a court where it does (to enable access), in practice this is not common.⁴⁰²
- 4.16 Data provided to the Committee also indicates that less than half of young people who appear before NSW Local and Children's Courts in NSW have access to the ACCT should they need it. The Department of Justice provided data to the Committee indicating that for the period between January and December 2017, of the 5229 young people aged 10-17 years who appeared before the NSW Local and Children's Courts charged with summary or indictable offences, only 42 per cent appeared at one of the 21 courts from which the ACCT operates.⁴⁰³
- 4.17 Access to the ACCT is particularly poor in regional areas of NSW. For the period between January and December 2017, while 83 per cent of young people had access to the ACCT in metropolitan NSW courts, only 21 per cent of young people had access to the ACCT in regional NSW courts.⁴⁰⁴
- 4.18 This is of particular concern because significant numbers of young people appear before the courts in regional areas. Indeed, the majority of young people who appeared before NSW Local and Children's Courts during the January to December 2017 period, appeared in regional areas. Of the 5229 young people who appeared, 66 per cent (3354) appeared in regional NSW courts, while 34 per cent (1775) appeared in metropolitan NSW courts.
- 4.19 Where regional courts do have the facility to refer young people to the ACCT, rates of diversion appear to be significant. In the period between January and December 2017, of the 721 young people who appeared before a regional court at which the ACCT operates, 30.8 per cent (222) were referred to the ACCT. Of these young people referred, 80.6 per cent were diverted.⁴⁰⁵
- 4.20 Diversion rates in metropolitan courts that have access to the ACCT were also significant for the period. Of the 1469 young people who appeared before metropolitan courts at which the ACCT operates, 23.3 per cent (343) were

⁴⁰⁰ Submission 26, Law Society of NSW, p10.

⁴⁰¹ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p3.

⁴⁰² Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p1.

⁴⁰³ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p1.

⁴⁰⁴ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p2.

⁴⁰⁵ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p2.

referred to the ACCT. Of these young people referred, 76 per cent were diverted.⁴⁰⁶

- 4.21 Rates of access to the ACCT by young Aboriginal people are also concerning, especially given the particularly high rates of mental health and cognitive impairment amongst young Aboriginal people who come into conflict with the law, discussed above. Department of Justice data indicated that in the period between January and December 2017, while 47 per cent of non-Aboriginal young people had access to the ACCT based on the location of the courts in which they appeared, only 35 per cent of Aboriginal young people had access to it.⁴⁰⁷
- 4.22 Where Aboriginal young people do appear at a court from which the ACCT operates, diversion rates are significant. During the period, of the 775 Aboriginal young people who appeared at a court with ACCT services, 19.9 per cent (154) were referred to the ACCT. Of these young Aboriginal people referred, approximately 78 per cent were diverted.⁴⁰⁸ In comparison, during the period, of the 1415 non-Aboriginal young people who appeared at a court from which the ACCT operates, 29 per cent (411) were referred to the ACCT. Of these young non-Aboriginal people referred, approximately 78 per cent were diverted.⁴⁰⁹
- 4.23 Mr Forrest indicated to the Committee that it would be ideal if every young person appearing before a court were entitled to the kind of mental health assessment provided by the ACCT:

The ideal situation would be that every young person who appears before the court is entitled to have a mental health assessment undertaken by a qualified mental health clinician...That would allow the mental health clinicians to identify those early indicators right at the point of first court appearance to be able to identify patients who may have a mental health picture.⁴¹⁰

- 4.24 Similarly, the Mental Health Commissioner told the Committee that a report on mental health issues should be required in all cases before a juvenile offender is sentenced, stating: "I would say that when you look at the statistics and the level of incidents of mental health and cognitive impairments that would be wise".⁴¹¹

Recommendation 27

That the Department of Justice NSW and the Justice Health and Forensic Mental Health Network (Justice Health) take steps to ensure that the use of audio-visual links in Juvenile Justice centres for young people appearing before Courts does not stop those young people from accessing the services of the ACCT.

⁴⁰⁶ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p2.

⁴⁰⁷ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p2.

⁴⁰⁸ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, pp2-3.

⁴⁰⁹ Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, pp2-3.

⁴¹⁰ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p3.

⁴¹¹ Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p24.

- 4.25 As above, audio-visual links can be, and are, used to increase young people's access to the ACCT. However, during the inquiry the Committee also heard that in some cases, where these links are used so that young people detained in Juvenile Justice centres can appear before the courts without physically presenting at court, they can actually adversely impact on their ability to access the ACCT.
- 4.26 It is essential that young people in Juvenile Justice centres who may require the services of the ACCT are able to access them. The Committee notes that the NSW Government has taken some steps (discussed below) to promote such access and recommends that further steps be taken so that audio-visual linking does not stop any young people in Juvenile Justice centres accessing the services of the ACCT should they need them.
- 4.27 In its submission to the inquiry, the NSW Government stated:
- The increase in use of Audio Visual Link (AVL) in Juvenile Justice Detention Centres for young people appearing before the Children's Courts has resulted in fewer young people physically presenting before the courts. This increased resource and transport efficiencies for several government departments however impacted on the opportunity to access the services of the ACCT for those young people in detention that may require a mental health assessment.⁴¹²
- 4.28 The NSW Government advised that in 2017, the ACCT started a pilot project in metropolitan and rural NSW under which ACCT clinicians attended select Juvenile Justice centres, providing mental health assessments to young people appearing before the Children's Court in criminal matters.⁴¹³ Further, at the Committee's hearing on 10 May 2018, Mr Forrest of Justice Health stated:
- The Adolescent Court and Community Team model has been in place for several years now and Justice Health is aware of the changing landscape in relation to young people appearing before the court via audio-visual link. As a service, we are looking at our service model to allow it to continue to evolve to be able to adapt to those changes in presentation of young people not appearing in person.⁴¹⁴

Funding for mental health support services for people under 18 years must be increased

Recommendation 28

That the NSW Government increase funding for mental health support services to which Courts can refer young offenders under the age of 18 years, particularly in regional and remote areas of NSW.

- 4.29 During its inquiry the Committee heard that another issue preventing young people from being diverted under mental health legislation is that there is a lack of services to which to refer them, particularly in regional and remote areas of the State.

⁴¹² Submission 27, NSW Government, p29.

⁴¹³ Submission 27, NSW Government, p29.

⁴¹⁴ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p3.

- 4.30 Again, the Committee considers that diversion rates under mental health legislation are too low given the incidence of mental health issues and cognitive impairment amongst young offenders discussed above. It also accepts that if there is a lack of mental health support services to which to refer young people, courts are less likely to divert young people under mental health legislation. Given evidence that not enough such support services exist, particularly in regional and remote areas of NSW, the Committee recommends that the Government increase funding for such services.
- 4.31 In stating that it would be ideal if all young people had access to the ACCT, Mr Forrest of Justice Health indicated this would address only one side of the issue – once a young person is assessed as needing mental health assistance, services must exist to which to refer them:
- What is required...is if we increase the amount of assessments, increase the presence of health clinicians in courts across NSW, to then allow for those assessments to lead into interventions. Health assessment is one component of it. It needs the additional wraparound services to make that entire intervention effective.⁴¹⁵
- 4.32 Similarly, the President of the Children's Court stated that "A lack of available services can also weigh heavily in the balancing exercise which is undertaken in deciding whether a diversion under s32 will produce better outcomes".⁴¹⁶
- 4.33 The Committee heard that not enough of these services exists, particularly in regional and remote areas. For example, the Mental Health Commissioner told the Committee:
- The Justice Health system does have supports. In our local health districts we have programs and supports as well. The issue would be around having them available across NSW. There are always issues around access and availability outside metropolitan Sydney.⁴¹⁷
- 4.34 Similarly, speaking about regional and remote areas of NSW, ACYP told the Committee:
- Many of these areas...lack...specialist services for children and young people, including...mental health services. As a result, children and young people living outside...urban areas are less likely to receive the services they need to address the underlying causes of their offending and stay out of the criminal justice system.⁴¹⁸
- 4.35 ACYP also remarked that in some regions there are wait lists for mental health treatment which is problematic for children and young people who need more immediate assistance.⁴¹⁹
- 4.36 Ms McLeod Howe of NCOSS told the Committee:

⁴¹⁵ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p3.

⁴¹⁶ Submission 19, President of the Children's Court of NSW, p9.

⁴¹⁷ Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p25.

⁴¹⁸ Submission 20, Office of the Advocate for Children and Young People, p25.

⁴¹⁹ Submission 20, Office of the Advocate for Children and Young People, p25.

What we are seeing is that when there is a lack of mental health support in communities we have people being incarcerated, not just young people but also Aboriginal people when it could have been dealt with through mental health liaison. That is something we see going around the regional and rural areas from the far west, in the south and up in the north. It is consistent.⁴²⁰

- 4.37 Like Judge Johnstone, the Law Society of NSW commented that courts are less likely to divert young people under section 32 of the *Mental Health (Forensic Provisions) Act 1990* where there is a lack of therapeutic services available. In calling for greater access to the ACCT, the Law Society also commented: "this must...be attached to more funding for adequate services to which mental health referrals can be made, including specialist forensic psychiatric hospitals for children".⁴²¹

The NSW Government should consider whether amendments to mental health legislation are necessary to promote greater levels of diversion

Recommendation 29

That the NSW Government consider whether amendments are needed to section 32 of the *Mental Health (Forensic Provisions) Act 1990* so that Courts can require reports detailing a defendant's compliance with treatment, and to address the issues identified in *Director of Public Prosecutions (NSW) v Saunders (2017)*.

- 4.38 Most of the evidence that the Committee heard about diverting young people under mental health legislation related to the practical difficulties associated with using the legislation, that is, the lack of assessment and treatment services discussed above. However, in his submission to the inquiry, the President of the Children's Court also suggested that the legislation itself needs amendment.
- 4.39 Judge Johnstone stated that there is concern in the Children's Court about diverting a young person under the *Mental Health (Forensic Provisions) Act 1990* owing to lack of follow-up and the inability to require a report that details the young person's compliance with treatment.⁴²²
- 4.40 Judge Johnstone argued that section 32 of the *Mental Health (Forensic Provisions) Act 1990* should be strengthened to ensure the Children's Court is not inhibited from using it, and to address the issues identified in the case of *Director of Public Prosecutions (NSW) v Saunders (2017)*.⁴²³
- 4.41 In this case an adult defendant was discharged under section 32 but in doing so, the Court did not identify the person or place to which he was to report for assessment and/or treatment. The Director of Public Prosecutions appealed and the appeal Court held that nominating a type of person (for example, a psychiatrist) or a type of place, does not comply with the requirements of the

⁴²⁰ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p40.

⁴²¹ Submission 26, Law Society of NSW, p10.

⁴²² Submission 19, President of the Children's Court of NSW, p8.

⁴²³ Submission 19, President of the Children's Court of NSW, p9.

legislation and is so vague as to make compliance uncertain and enforcement near impossible.⁴²⁴

- 4.42 In evidence to the Committee, Mr McKnight of the Department of Justice confirmed that the *Mental Health (Forensic Provisions) Act 1990* is currently being considered by the Government.⁴²⁵

Young people with acute mental health issues should not be held in Juvenile Justice centres

Recommendation 30

That the NSW Government increase the number of available beds at Austinmer Adolescent Unit or make new places available at a similar facility.

- 4.43 The Committee was particularly concerned at reports from staff during one of its site visits to Reiby Juvenile Justice Centre in March 2018. Centre staff told the Committee that patients at mental health facilities are sometimes transferred to Juvenile Justice centres following an incident because there is not enough security in mental health facilities to manage violent incidents. They were concerned that this results in young people with significant mental health concerns being held in custody.
- 4.44 It is clear to the Committee that young people with acute mental health concerns, and who pose a risk to others, need to be managed in a secure environment that is nonetheless therapeutic. The Committee notes evidence discussed below that neither custodial environments nor standard inpatient units are appropriate in these circumstances, and that an adolescent forensic facility is needed. Further, while an appropriate environment is available at Austinmer Adolescent Unit, an acute adolescent unit run by Justice Health at Malabar, Sydney, it has very limited spaces – only six beds for the whole State.⁴²⁶
- 4.45 Given the serious concerns raised with the Committee about young people with significant mental health concerns being held in custody, the NSW Government should increase the number of available beds at this highly specialised facility, or provide new places at a similar facility.
- 4.46 At the Committee's hearing on 8 May 2018, the Committee asked Department of Justice witnesses about transfers from mental health facilities to Juvenile Justice Centres. They indicated that a "direct transfer" from a mental health facility would not occur, the relevant person would have to be prosecuted through the courts. Mr McKnight stated:

...a person who commits a crime in a mental health facility is subject to the criminal law in the same way that everybody else is. That person would need to be prosecuted through the courts, and in the case of a young person typically through

⁴²⁴ *Director of Public Prosecutions (NSW) v Saunders* [2017] NSWSC 760 (16 June 2017); see also Submission 19, President of the Children's Court of NSW, pp8-9.

⁴²⁵ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p44.

⁴²⁶ Justice Health and Forensic Mental Health Network website: <http://www.justicehealth.nsw.gov.au/our-services/forensic-mental-health-youth-services>, viewed 27 July 2018.

the Children's Court. That would be unusual if the person was very ill – ill enough to be in a mental hospital. I would be surprised if that were happening.⁴²⁷

- 4.47 In addition, Juvenile Justice NSW advised that it does not collect data on whether young people were in a mental health facility immediately prior to entering a Juvenile Justice centre, so it was unable to tell the Committee how often such transfers are occurring.⁴²⁸
- 4.48 On the subject of people with acute mental health concerns being detained in Juvenile Justice centres, Juvenile Justice NSW also advised of the mental health supports it provides within custody. It stated that within 24 hours of arrival in custody Juvenile Justice detainees are screened and assessed for a range of mental health issues. Detainees with mental health concerns are referred to a Juvenile Justice psychologist, Justice Health Clinical Nurse Consultant, and/or Justice Health and Forensic Mental Health Network psychiatrist. Specialist assessment and treatment is then coordinated and, if necessary, a young person may be transferred to hospital.⁴²⁹
- 4.49 In addition, Juvenile Justice advised that detainees experiencing serious mental illnesses while in custody can be scheduled under the *Mental Health Act 2007* and transferred to the Austinmer Adolescent Unit at Malabar, Sydney for treatment.⁴³⁰ Austinmer is a six bed acute adolescent unit run by Justice Health. Dr Yolisha Singh, Clinical Director Adolescent Mental Health at Justice Health told the Committee:
- ...the Network [Justice Health] does have some limited capacity to deal with young people presenting with acute mental health symptoms such as psychosis or very serious depression and who pose a risk to others within the custodial environment. We are lucky in NSW that the Network currently has the only adolescent forensic unit in the country. The unit has only six beds, but when young people in a correctional environment are acutely unwell they can be transferred into it. Although it is a high security unit, it is very much a therapeutic environment, and their acute mental health care needs are met there.⁴³¹
- 4.50 Juvenile Justice NSW further advised that Justice Health and Juvenile Justice NSW have procedures in place for the return of a young person to custody from Austinmer. This includes a discharge summary and report on the young person's progress in hospital and, on return to a Juvenile Justice centre, the young person is again assessed by Justice Health staff and Juvenile Justice NSW psychologists.⁴³²
- 4.51 In the 2016-17 year there were 21 transfers of detainees between Juvenile Justice centres and Austinmer, involving 19 young people. The median stay in Austinmer was 63 days. Upon release from Austinmer most young people

⁴²⁷ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p44.

⁴²⁸ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 10 May 2018, p2.

⁴²⁹ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

⁴³⁰ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 10 May 2018, p2.

⁴³¹ Dr Yolisha Singh, *Transcript of Evidence*, 10 May 2018, p7.

⁴³² Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 10 May 2018, p2.

entered the community, while others were transferred to Juvenile Justice centres.⁴³³

4.52 Juvenile Justice NSW also advised that Juvenile Justice operational staff can refer any concerns regarding a young person returning from hospital to a Juvenile Justice centre to Juvenile Justice psychologists and onsite Justice Health staff. Outside business hours 'On Call' Justice Health staff can be contacted.⁴³⁴

4.53 The Committee also asked the Mental Health Commissioner for her comments on young people being referred from mental health facilities to Juvenile Justice centres because of security concerns, and the Commissioner noted that inpatient facilities in NSW are not designed or staffed to deal specifically with children who have specific or acute behaviour challenges or issues:

...the inpatient facilities we have in NSW are not designed or staffed to deal specifically with children who have specific or acute behaviour challenges or issues...[S]o if you are having a particular set of circumstances where you have a juvenile who may have very significant behavioural or other issues, you could imagine that managing that on a very small inpatient unit has reverberations and repercussions for the other inpatients, the other children who are on that unit, as well as the ability of staff to manage that...⁴³⁵

4.54 Dr Singh also told the Committee that custodial environments are not designed to be therapeutic and that where a young person is identified as having a mental health concern in custody, the care that they receive will not match that available in the community:

...a detention centre's function is not to be a therapeutic environment...[T]hat is not the best environment for young people with mental health issues...If a young person is identified as having a mental health concern in custody and they see a psychiatrist, unfortunately we do not have entirely equitable care yet, but we aspire to being able to deliver the same care that a young person would have in the community.⁴³⁶

4.55 Further, Dr Singh indicated custodial environments can exacerbate mental health issues:

What we know is that correctional environments by their very nature are not therapeutic, they can be damaging to structures – for example, they take children out of their communities and their families – and they are quite isolating. They can also exacerbate or precipitate an episode of mental illness – be that a trauma syndrome, psychotic episode, a severe depression or exacerbate an anxiety.⁴³⁷

Youth justice proceedings should be appropriately linked with the National Disability Insurance Scheme

4.56 To promote the diversion of young people with cognitive impairment and other disability, it is important that youth justice proceedings are appropriately linked

⁴³³ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 10 May 2018, p2.

⁴³⁴ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 10 May 2018, p2.

⁴³⁵ Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p21.

⁴³⁶ Dr Yolisha Singh, *Transcript of Evidence*, 10 May 2018, p7.

⁴³⁷ Dr Yolisha Singh, *Transcript of Evidence*, 10 May 2018, p8.

with the National Disability Insurance Scheme (NDIS), allowing young people to access the support and services they require.

- 4.57 The Law Society of NSW told the Committee that, in the adult jurisdiction, a pilot program called the Cognitive Impairment Diversion Program has taken positive steps to link justice proceedings with the NDIS. Jointly launched by the Department of Justice and NSW Health in December 2017, the program helps defendants with a cognitive impairment charged with lower level offences and appearing at the Penrith or Gosford Local Courts access to services that address the underlying causes of their offending behaviour.⁴³⁸
- 4.58 A psychologist or psychiatrist screens defendants appearing before these Courts for summary offences, to identify people with cognitive impairment. Support workers then identify defendants' needs and goals and help them access the services of the NDIS.⁴³⁹
- 4.59 At the Committee's hearing on 10 May 2018, the Chair noted the above pilot and asked Mr O'Reilly of FACS whether anything was done in the children's jurisdiction to link the NDIS with youth justice proceedings. Mr O'Reilly confirmed that this connection does exist and that the way it is managed under the NDIS differs from the way in which it was managed previously:

Prior to the NDIS, and during the ramp-up phase with NDIS going full scheme in a couple of months, Juvenile Justice would sometimes make referrals directly to Ageing, Disability and Homecare NSW or FACS for the Community Justice Program where young people would be provided with case management and access to specialist accommodation...The specialist accommodation is block funded under the State model but the NDIS model is obviously not block funded; it is individual packages. So the role of FACS now is slightly different: it is about making the referral and making sure the young person is supported in his or her application to the NDIS for a funding package, that the funding package is adequate, that support coordination is funded along the way in that process, and that there is adequate provision for accommodation also in the NDIS funding package.⁴⁴⁰

Diversion of young people with drug and alcohol problems

There are insufficient drug and alcohol rehabilitation services for people under 18 years in NSW

Recommendation 31

That the NSW Government increase the availability of drug and alcohol rehabilitation services for people under 18 years in NSW especially detox facilities and intensive residential rehabilitation programs; with a particular focus on regional areas of NSW and Western Sydney.

⁴³⁸ Submission 26, Law Society of NSW, p10; and Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/court-project-to-help-people-with-a-cognitive-impairment.aspx>, viewed 25 July 2018.

⁴³⁹ Law Society of NSW, p10; and Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/court-project-to-help-people-with-a-cognitive-impairment.aspx>, viewed 25 July 2018.

⁴⁴⁰ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, pp38-39.

- 4.60 As touched upon in Chapter Three, during its inquiry the Committee heard that there is a lack of drug and alcohol rehabilitation services for people under the age of 18 years in NSW.
- 4.61 As discussed below, a significant proportion of young offenders have substance abuse issues and it is clear that a lack of appropriate services to which to refer a young offender can prevent a court from diverting him or her from custody. It is also clear that addressing underlying drug and alcohol issues is very important for long-term diversion from the criminal justice system.
- 4.62 The Committee notes that while the NSW Government funds a number of youth-specific drug and alcohol services across the State, there is strong evidence, discussed below, that more services are needed, especially in regional areas and in Western Sydney. In particular, the Committee heard there is a need for more detox facilities for young people under the age of 16 years, and for intensive residential rehabilitation programs like the one offered at Mac River Rehabilitation Centre.
- 4.63 The Committee therefore recommends that the NSW Government increase the availability of youth-specific drug and alcohol rehabilitation services in NSW, especially intensive residential rehabilitation programs and detox facilities, and particularly in regional areas of NSW, and in Western Sydney.
- 4.64 In its submission to the inquiry, Legal Aid NSW stated that there should be more attention paid to the drug rehabilitation needs of young offenders. It noted that the 2015 NSW Young People in Custody Health Survey found that illicit drugs were used at least weekly by 81 per cent of young people surveyed and 61 per cent reported committing a crime to obtain alcohol or drugs. Further, 78 per cent of respondents were intoxicated on alcohol, drugs or both at the time of their offence.⁴⁴¹ Legal Aid complained of a lack of drug rehabilitation services in regional NSW:
- There are almost no drug rehabilitation services available for children in regional areas, and even where services do exist, many do not appear to take a culturally appropriate or trauma-informed approach to service delivery.⁴⁴²
- 4.65 As noted in Chapter Three, Judge Johnstone also told the Committee that there is a lack of residential drug and alcohol rehabilitation services in Western Sydney. In arguing that increasing the number services is more important than re-instating the Youth Drug and Alcohol Court, His Honour stated:
- What I am asking for is sufficient residential drug and alcohol facilities for young people to be provided within the western suburbs that we can utilise and divert children to...[N]o doubt the Committee is looking at how many drug and alcohol rehabilitation centres there are in NSW for children. As far as I am aware there is Father Chris Riley's Youth Off The Streets. In NSW there are about eight beds in the eastern suburbs, there is one on the Southern Highlands and that is all. Other than that, there is Mac River at Dubbo which has eight beds for kids...How ironic that it is way out in the west; nothing in Western Sydney. The other one is Junaa Buwa!

⁴⁴¹ Submission 14, Legal Aid NSW, p19.

⁴⁴² Submission 14, Legal Aid NSW, p19.

Centre for Youth Wellbeing at Coffs Harbour which has got about eight beds...But in the western suburbs of Sydney, after the closure of the [Youth Drug and Alcohol Court] there is nothing.⁴⁴³

- 4.66 As with mental health services, Judge Johnstone also indicated that a lack of available drug and alcohol rehabilitation services can prevent courts from diverting young people. He stated that a lack of services can weigh heavily in the balancing exercise that courts undertake to decide whether diversion will produce better outcomes for the young person and the community. In addition, having effective rehabilitation services impacts on the successful long-term diversion of young people from the criminal justice system.⁴⁴⁴
- 4.67 ACYP told the Committee that its consultations with young people have revealed that 'too many young people with complex drug and alcohol and mental health needs are in homelessness refuges... [instead of] rehabilitation services'.⁴⁴⁵ Concerns were also raised about the age-appropriateness of available services:
- Some expressed a strong desire to address their substance use, but reported significant barriers to accessing detox and rehabilitation facilities in NSW. They felt that facilities were designed to support adult populations, were unaware of the specific needs of children and young people and had long waiting lists.⁴⁴⁶
- 4.68 In similar vein, the Law Society of NSW noted that diversionary efforts need increased funding for age-appropriate drug and alcohol rehabilitation services, including "dual diagnosis" services for the many cases where mental health and drug issues overlap. In particular, the Law Society expressed concerns over a lack of detox facilities stating that "[M]ost drug and alcohol addicted teens in NSW who want to detox must do so at home or wait for a bed in a public hospital or adult detox facility".⁴⁴⁷
- 4.69 The Law Society spoke highly of the Triple Care Farm, "a holistic service for young people with co-occurring mental illness and drug and alcohol problems" and David Martin Place, a youth drug and alcohol detox facility, operating from the same property in the Southern Highlands of NSW. The Law Society called for more funding for these programs as only 100 young people can participate per program per year.⁴⁴⁸
- 4.70 On the subject of detox facilities, during its site visit to Dubbo on 13 November 2017, staff at the Orana Juvenile Justice Centre told the Committee that there is no hospital near the Centre that can provide detox treatment – the closest one is Nepean Hospital. On the same site visit, the Committee had the opportunity to visit the Mac River Rehabilitation Centre. As noted above, it is based in Dubbo and provides an intensive residential rehabilitation program to Juvenile Justice clients to address alcohol and other drug use and offending behaviour.⁴⁴⁹ Staff at

⁴⁴³ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p9.

⁴⁴⁴ Submission 19, President of the Children's Court of NSW, p9.

⁴⁴⁵ Submission 20, Office of the Advocate for Children and Young People, p20.

⁴⁴⁶ Submission 20, Office of the Advocate for Children and Young People, p20.

⁴⁴⁷ Submission 26, Law Society of NSW, p9.

⁴⁴⁸ Submission 26, Law Society of NSW, p9.

⁴⁴⁹ Submission 27, NSW Government, p42.

Mac River told the Committee that Nepean Hospital will only take people 16 years and over for detox. The only option for people younger than this who are not in custody is to do the detox at home.

- 4.71 Dr Tadros of Mission Australia provided similar evidence about detox services, in particular, the difficulty people under 16 years experience in accessing them, particularly in regional areas:

Young people under 16 are unable to access detox services through specialist services or hospitals unless they are on custodial sentence or order. The age-appropriate facilities for these young people are not available in the community. They often have to travel to Sydney and other metropolitan areas for detox and that is inappropriate and costly...[At Sydney facilities] they are hooked up with 16 to 25 year olds – and you never want to mix under 16 year olds with 25 year olds, not in accommodation or in detox.⁴⁵⁰

- 4.72 Ms Acheson of Youth Action also told the Committee that there is a lack of drug and alcohol rehabilitation services for young people in NSW, particularly in regional areas:

We do regular consultations with our youth sector and one of the things, particularly in regional areas, that comes up as a major barrier for youth services being able to support young people is the lack of alcohol and other drug support services. Rehabilitation services, particularly in regional areas, are very few and far between, hard to get into, expensive, and not always appropriate for young people. Where there is a service or support program, it might not be appropriate for the young person because it is not age appropriate...It is costly but it is also very effective and I think it is one of the things that we as a State really need to consider...⁴⁵¹

- 4.73 In evidence to the Committee, Youth Off The Streets and the NSW Bar Association also indicated that there is a need for more funding for drug and alcohol services to cover children and young people in all areas of the State.⁴⁵² In particular, Mr Bovino of Youth Off The Streets said that there are not enough programs in Western Sydney.⁴⁵³

- 4.74 When asked about access by people under 16 years to drug and alcohol detox services in NSW, for example a 13 year old with a drug problem, Dr Kerry Chant, Chief Health Officer and Deputy Secretary, Population and Public Health, NSW told the Committee that there are a range of services:

There are a range of services...As part of the NSW Government's commitments, \$75 million was allocated over four years for drug and alcohol services in 2016. Of that, \$16 million was provided specifically to new youth alcohol and other drugs detox and treatment services. That funded 11 new non-government organisation services for youth and enhanced 16 existing local health district services. We also have expertise sitting in our Sydney Children's Hospitals Network and addiction medicine

⁴⁵⁰ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p24.

⁴⁵¹ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p15.

⁴⁵² Ms Sarah Pritchard, *Transcript of Evidence*, 30 April 2018, p50; and Mr Will Bovino, *Transcript of Evidence*, 10 May 2018, p28.

⁴⁵³ Mr Will Bovino, *Transcript of Evidence*, 10 May 2018, p28.

specialists who are focused on the very severe end, which would be characterised by the case you presented.⁴⁵⁴

4.75 In further information provided to the Committee, NSW Health also stated:

Young people can access alcohol and other drug treatment in a range of settings including through specialist and community settings, for example at mental health, emergency departments, community health and generalist youth health services. The Justice Health and Forensic Mental Health Network, Sydney Children's Hospitals Network, and Nepean Blue Mountains LHD withdrawal unit are some of the key existing NSW Health services.⁴⁵⁵

4.76 Further, NSW Health stated that in 2016, the NSW Government provided \$16 million to NGOs and local health district services for new youth alcohol and other drug treatment services across NSW. NSW Health indicated that the NSW Government funded:

- Hunter New England Local Health District; South Western Sydney Local Health District; Nepean Blue Mountains Local Health District; Western NSW Local Health District; Central Coast Local Health District; and the Sydney Children's Hospitals Network to enhance multidisciplinary alcohol and other drug service delivery for young people.
- A Youth Addiction Fellowship to build the state-wide capacity of the NSW child and adolescent specialist medical workforce to address the harms related to substance abuse in young people.⁴⁵⁶

4.77 Both the further information provided by NSW Health and the NSW Government submission to the inquiry also contained a list of youth-specific drug and alcohol services across NSW, funded by NSW Health.⁴⁵⁷ In addition, the NSW Government submission mentioned the Rural Residential Adolescent and Other Drugs Rehabilitation Program, discussed in Chapter One and funded by the Justice Cluster. This is the program under which Mac River Dubbo and Junaa Buwa! Centre for Youth Wellbeing at Coffs Harbour operates, providing an intensive residential rehabilitation regime for young people to address their alcohol and other drug use and offending behaviour.⁴⁵⁸

4.78 In the post-release area, Mr Forrest of Justice Health also mentioned the Community Integration Team. As discussed in Chapter One, this is a pre and post-release program coordinating post-release care for young people with an emerging or serious mental illness and/or problematic drug and alcohol use or

⁴⁵⁴ Dr Kerry Chant, *Transcript of Evidence*, 10 May 2018, p5.

⁴⁵⁵ NSW Health, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

⁴⁵⁶ NSW Health, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

⁴⁵⁷ NSW Health, *Answers to Questions Taken on Notice*, 10 May 2018, p2; and Submission 27, NSW Government, p43.

⁴⁵⁸ Submission 27, NSW Government, p42; see also Juvenile Justice NSW website, http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/funded-services/rural_residential_rehabilitation.aspx (viewed 22 June 2018).

dependence who are leaving custody, facilitating important links to community-based health and support services.⁴⁵⁹

Case study – Max – Intensive Drug and Alcohol Treatment Programs

Max* is a young man who has had multiple stints in custody but since completing an intensive drug and alcohol rehabilitation program, he has not re-offended and is living successfully in the community, with stable employment.

Max spoke to the Committee about how positive his experience in the program was. It allowed him to fully understand his drug and alcohol issues for the first time, have intensive therapeutic support, and develop the various everyday skills essential for when he transitioned into independent living.

Max told the Committee that prior to entering the program, he had received minimal assistance to deal with his drug issues. One of the biggest problems he encountered was the waiting times that applied to get into a service. "Six weeks is a long time on the street" he said, "when you get told six weeks or that you have to wait...you walk out the door, you say '...I need help now'".

Max said that while there was some access to support while he was in custody, such as drug and alcohol counselling, it was not the kind of intensive and focussed rehabilitation that he needed. Having access to a youth specific drug and alcohol program when he exited detention gave him the intensive and ongoing support he needed.

Max described developing a routine as part of the program, saying that it helped to change his mind set and to realise there could be a positive way forward in life. This routine included learning time when he acquired strategies to deal with his drug problem; work experience; time devoted to learning everyday living skills such as cooking and how to do other household chores; and recreational time during which he enjoyed engaging in physical training and football. Max said he could feel himself getting fitter and healthier and that "...they re-taught me to do all this stuff...it works you back into normal life".

Max also stated that prior to his exit from the program, the service helped him to take the practical steps needed for a smooth transition into the community: securing accommodation and household effects, dealing with Centrelink, and linking him up with doctors and psychological support near where he would be living. The service also followed up with him in the months following his exit.

It was clear from Max's experience that accurate and timely information-sharing between relevant agencies and organisations is vital if young people are to get the help they need. Services rely on agencies such as Juvenile Justice and FACS to provide accurate information about young people so that they can assess how best to help them and ensure that suitable candidates receive help in their drug and alcohol program. In Max's case he had the benefit of a family member to advocate on his behalf and to stress directly to the service that he was in need of the intensive support that service provides.

⁴⁵⁹ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p2; see also Submission 27, NSW Government, p44; and Justice Health and Forensic Mental Health Network website: <http://www.justicehealth.nsw.gov.au/about-us/health-care-locations/community> (viewed 25 June 2018).

Max told the Committee that a lot of young people in custody have problems with substance abuse. This is often a response to other issues in the young person's life such as family violence and disengagement or suspension from school. Max told the Committee that where a young person has been suspended from school and spends this time unsupervised, substance abuse is common. If young people are to break out of these cycles, it is vital that they have timely access to youth-specific drug and alcohol support services that can understand and respond appropriately.

*Not his real name

Health of Young People in Custody

Early intervention is key in addressing youth health and disability issues

Recommendation 32

That the NSW Government identify and implement increased opportunities for health and disability screening of children and young people across the State, including in early childhood settings; at schools; and in cases where they come to the attention of the NSW Department of Family and Community Services.

Finding 9

The NSW Government should review its information strategy on an ongoing basis to maximise the knowledge of young people and their parents about the youth health and disability services and supports that are available in NSW.

- 4.79 As discussed earlier in the Chapter, surveys have revealed high rates of mental health issues and cognitive impairments amongst young people in custody in NSW. During the inquiry, the Committee also heard that there are high rates of physical health issues amongst this cohort, and that these issues – physical health, mental health and disability – are often only identified for the first time when young people enter custody.
- 4.80 The Committee considers early intervention is paramount. It is clear that certain conditions, left undiagnosed, can lead to youth offending.⁴⁶⁰ If these conditions are only identified for the first time in custody, this represents a lost opportunity to have diverted children into appropriate support services, and potentially away from contact with the police. It is also very concerning from a child welfare perspective if young people are presenting in custody with undiagnosed issues. In some cases these problems are entirely preventable, for example, dental issues.⁴⁶¹
- 4.81 The Committee notes evidence discussed below that there are many opportunities to identify issues earlier, including within early childhood settings, schools, and where a child has come to the attention of FACS. For this reason,

⁴⁶⁰ See Submission 19, President of the Children's Court of NSW, p6. See also Mr Doug Humphreys, *Transcript of Evidence*, 10 May 2018, p58, concerning the prevalence and impact of foetal alcohol spectrum disorder.

⁴⁶¹ See Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p9; and Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p18.

the Committee recommends that the NSW Government identify and implement increased opportunities for health and disability screening of children and young people across the State.

- 4.82 The Committee also notes evidence discussed below that while there are a number of youth health services and supports available to young people in the community, this is not always communicated successfully to young people and their parents. Similarly, young people who have disability identified for the first time in custody have not had the chance to access support that may be available under the NDIS. For this reason, the Committee also finds that the NSW Government should review its information strategy on an ongoing basis to maximise the knowledge of young people and their parents about the youth health and disability services and supports that are available in NSW.
- 4.83 In its submission to the inquiry, ACYP noted that the Young People in Custody Health Survey measured disability through participants' self-reports and through professional assessments. There were significant discrepancies between the self-reports and the assessments that measured intellectual disability, language and literacy. The majority of survey participants did not report any disability while the assessments demonstrated high rates of disability and support needs.⁴⁶²
- 4.84 ACYP stated that this highlights a need for much earlier screening of young people in the community to identify these issues:

These results indicate that many young people are only assessed as having disability after they have entered detention, making it very unlikely that they have previously been afforded the opportunity to access the supports available through the National Disability Insurance Scheme...and other sources. This points to a need for much earlier screening of young people to determine if they have disability, and if so, to connect them with the appropriate supports to meet their full range of health, educational and other needs and minimise their risk of coming into conflict with the law.⁴⁶³

- 4.85 The President of the Children's Court made similar observations. His Honour stated that some disabilities and problems are easier to identify than others – some learning difficulties and language impairments can be masked by certain conduct but significantly impair a young person's ability to express him or herself and regulate behaviour. Noting that the Young People in Custody Survey showed that this cohort are scoring well below their peers in a number of areas including verbal comprehension and reasoning, and perceptual reasoning, which includes organised thought and cognitive flexibility, Judge Johnstone called for earlier identification through improved screening:

Early identification of disabilities and other difficulties experienced by children as well as access to targeted supports is needed to increase the chances of successful diversion from problematic behaviours and potential criminal offending. Given the early and frequent contact schools have with children, there may be merit in

⁴⁶² Submission 20, Office of the Advocate for Children and Young People, p15.

⁴⁶³ Submission 20, Office of the Advocate for Children and Young People, p15.

considering a way to implement improved screening by health professionals at an early stage, and to then facilitate the provision of specialised supports.⁴⁶⁴

- 4.86 At the Committee's hearing on 30 April 2018, Judge Johnstone also remarked on high rates of health problems, including in the area of oral health, that are often only identified for the first time when young people enter custody. Noting that young people receive an assessment on entering custody, His Honour stated:

They will all get a health check by Justice Health and 90 per cent of them have bad teeth – if they stay there long enough 90 per cent of them will get their teeth fixed. The large majority of them will be diagnosed and it will be discovered that they have got some sort of mental health issue that has never been addressed...I keep asking the question: Why do we have to send kids into gaol to get their teeth fixed, to find out that they are not being properly educated or to have their mental health issues diagnosed? All that should be happening in the community in advance.⁴⁶⁵

- 4.87 In similar vein, in its submission to the inquiry, the Public Health Association of Australia called for greater investment in screening programs for cognitive disabilities (e.g. Foetal Alcohol Spectrum Disorder and dementia) to ensure that individual needs are being met.⁴⁶⁶

- 4.88 In evidence to the Committee, Dr Singh of Justice Health confirmed that many young people who enter the Juvenile Justice system have undiagnosed health problems.⁴⁶⁷ Dr Chant of NSW Health also indicated that there are a number of opportunities to identify issues at an earlier stage:

There is good evidence around parenting programs, there is good evidence around sustained targeted home visiting to support vulnerable families, and to be able to bring in drug and alcohol, mental health to support the environment in which the child is growing up...There is good evidence around early engagement with preschool or structured early childhood learning. It is important we put those programs in place to prevent. Clearly, there is the next level where we have issues perhaps coming up in terms of children being notified potentially at risk of significant harm. That is where our child protection system kicks in...⁴⁶⁸

- 4.89 Dr Chant also noted that there are a number of services and supports available to young people within the community and that communicating this to them, and to their parents, is very important:

What we want to do is open up the discussion or the channels and make sure that young people know that there is a range of services. There are online services, call lines, general practice...We need to make more visible to parents and young people what the range of options are that could support them getting the right care at the right time...if they are too fearful of going to their GP there are other services, there are anonymous services. We see people in our drug and alcohol services and our sexual health services...There are opportunities in a variety of our youth services,...our drop in adolescent services. The staff would have an ability to identify

⁴⁶⁴ Submission 19, President of the Children's Court of NSW, p6.

⁴⁶⁵ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p9.

⁴⁶⁶ Submission 10, Public Health Association of Australia, p5.

⁴⁶⁷ Dr Yolisha Singh, *Transcript of Evidence*, 10 May 2018, p6.

⁴⁶⁸ Dr Kerry Chant, *Transcript of Evidence*, 10 May 2018, p4.

and refer issues, but I should not underestimate the challenge. The child or family has to be in a place and frame of mind to take the next steps.⁴⁶⁹

- 4.90 When the Mental Health Commissioner was asked about health issues going undiagnosed until young people reach custody she also supported improved health screening for children, including within school settings, emphasising the importance of early intervention:

The evidence that I have been giving has always been around focussing on early intervention. For early intervention, you need to be able to understand what the circumstances are. So screening of at-risk children or children who are in at-risk families is essential...this cohort of young people will have already had flags raised at school...So it would not be the first time that they have come to the notice of our systems. It is around how we have a set of formal frameworks where we say, "This child has ticked enough boxes to require a formal assessment," rather than waiting for the young person to do something that brings them into contact with the police...⁴⁷⁰

- 4.91 The Commissioner also indicated that where a child is brought to the attention of the Department of Family and Community Services, this could trigger a potential referral for health screening. In addition, given the link between out-of-home care clients and youth offending, discussed in Chapter Three, the Commissioner stated that entry into out-of-home care should trigger a referral for a mental health assessment: "...when you understand the pathway between out-of-home care and the trajectory to offending behaviours, it is essential to get those assessments in place".⁴⁷¹

- 4.92 When Ms Acheson of Youth Action was asked about these issues, like Dr Chant, she emphasised the importance of making young people aware of the youth health services available in the community:

One of the additional elements we have to always think about is that age is a significant barrier for many young people accessing the supports they need. They may not have the skill set at the moment to know that they can go to a dentist or how to find a dentist, or that they need to go...Those additional things need to be provided within the community. It is quite possible within community services and with the system we have. Health has many great youth health services. Young people just do not know about them. Often it is just about communication.⁴⁷²

Comprehensive mental health support for young people in custody is essential

Recommendation 33

That Juvenile Justice NSW explore further initiatives to attract and retain suitably qualified Juvenile Justice staff in regional areas of NSW; and take action to ensure that staff are recruited to Juvenile Justice centres as expeditiously as possible.

⁴⁶⁹ Dr Kerry Chant, *Transcript of Evidence*, 10 May 2018, p5.

⁴⁷⁰ Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p22.

⁴⁷¹ Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p24.

⁴⁷² Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p18.

- 4.93 Having regard to the high number of mental health issues discussed above, another priority area for youth diversion is ensuring that young people in custody have access to comprehensive mental health, drug and alcohol and allied supports.
- 4.94 As is also discussed earlier in the Chapter, there must be adequate services so that young people with acute mental health issues are diverted from Juvenile Justice centres altogether and the Committee has made a recommendation about this. But for the general custodial population, there must be adequate mental health support within centres if the underlying issues that contribute to offending are to be addressed so that young people can be diverted to a better life path.
- 4.95 For this reason, the Committee was concerned at reports from Centre staff during its visit to Riverina Juvenile Justice Centre in November 2017 that there was currently no mental health practitioner at the Centre. Centre staff advised that, as a result, only the most acute cases were being seen regarding mental health.
- 4.96 In response to the Committee's questions about this at its hearing on 8 May 2018, Ms Hawyes of Juvenile Justice NSW indicated that while there are over 40 psychologists working for Juvenile Justice, recruiting to regional areas can be difficult:
- ...we have more than 40 psychologists working for Juvenile Justice, and there are psychologists in all the centres. Riverina is particularly difficult to recruit to. If that person was on leave, then that may very well have been the case at the time...We find it challenging to recruit regionally and we are constantly considering what is the best recruitment campaign. There is quite a lot of competition for those jobs from Education, Health and other employers.⁴⁷³
- 4.97 Later, in answers to questions taken on notice, Juvenile Justice stated that there are two psychologist positions at Riverina Juvenile Justice Centre and that recruitment action is underway for one position.⁴⁷⁴
- 4.98 The Committee acknowledges that it can be difficult to attract suitably qualified staff in regional areas and notes its finding in Chapter Three that the NSW Government should explore further initiatives to attract and retain staff to deliver diversionary programs in these areas. This also applies to the recruitment of staff to Juvenile Justice centres, particularly those in crucial roles like mental health support. Therefore, the Committee recommends that Juvenile Justice NSW explore further initiatives to attract and retain suitably qualified staff in regional areas; and take action to ensure that staff are recruited as expeditiously as possible.
- 4.99 Juvenile Justice NSW also advised of the following mental health resources at Riverina Juvenile Justice Centre:

⁴⁷³ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p44.

⁴⁷⁴ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p3.

- A clinical nurse consultant (mental health) who attends one day per fortnight
- A psychiatrist clinic which is held once per fortnight
- General nursing staff available Monday to Friday with access to on-call specialist advice
- Out-of-hours on-call Justice Health services
- All detainees have access to the Mental Health Hotline.⁴⁷⁵

Recommendation 34

That the NSW Government review the availability of psychological treatment in NSW Juvenile Justice centres to ensure it is aligned with the support that is available in the community.

- 4.100 The Committee was also concerned at evidence provided by Dr Singh that mental health support, in particular psychological treatment (i.e. therapy), in Juvenile Justice centres is not always on par with that available in the community. The Committee notes that during the Committee's site visit to Reiby Juvenile Justice Centre in March 2018, some detainees also expressed a desire for more mental health support within the Centre.
- 4.101 Given the evidence of high rates of mental health issues amongst young people in custody, and evidence from the Mental Health Commissioner discussed below that quality mental health support is fundamental to successful rehabilitation, the Committee considers the NSW Government should review the psychological treatment available in Juvenile Justice centres to ensure it is aligned with the support that is available in the community. In so recommending, the Committee acknowledges the mental health supports that are already being provided by the dedicated staff of Justice Health and Juvenile Justice NSW, and these are discussed further below.
- 4.102 The Committee heard that Justice Health delivers health care to young people in all six Juvenile Justice Centres across the State. Mr Forrest told the Committee:
- The centres are staffed seven days a week with health staff. The services include specialist mental health, primary care, drug and alcohol, oral health, Aboriginal health, women's health and sexual health clinicians. An initial assessment of all young people entering custody is done within 48 hours of admission and this includes attending to any necessary treatments and making referrals as required. Within 10 days of admission a more comprehensive health assessment is conducted examining psychosocial factors, such as their home environment, education, employment, drug and alcohol use, sexual activity and mental health. In 2016-17 there were 2,999 young people who were admitted to custody during that year as new admissions...3,218 mental health appointments attended by the young people...and 2,491 primary health appointments.⁴⁷⁶

⁴⁷⁵ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p3.

⁴⁷⁶ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p2.

4.103 As noted above, Juvenile Justice NSW also employs over 40 psychologists, and Ms Hawyes told the Committee:

We have psychologists in every centre who are all trained to provide assessments and interventions to young people. Our staff are trained in mental health first aid and we also have, through Justice Health, access to psychiatrists...if we need psychiatric assessments and interventions.⁴⁷⁷

4.104 However, Dr Singh indicated that young people in custody who have mental health concerns do not always have access to the level of care they would in the community:

If a young person is identified as having a mental health concern in custody and they see a psychiatrist, unfortunately we do not have entirely equitable care yet, but we aspire to being able to deliver the same care that a young person would have in the community. We are not there yet...⁴⁷⁸

4.105 Dr Singh later elaborated:

...whilst we provide the medical and nursing interventions within the Juvenile Justice centres, we do not provide the psychosocial interventions. That is what I meant when I said that we do not yet provide completely equitable care to what young people would receive in the community in that they would have within a Child and Adolescent Mental Health Service access to psychiatrists, nurses, psychologists, occupational therapists, speech and language therapy et cetera.⁴⁷⁹

4.106 Dr Singh emphasised that while medication is made available to those young people in custody who require it, a gap exists in the psychological support that is available:

If for example a young person presented with depression in the community, they may or may not require medication but they would have access to one-on-one cognitive behaviour therapy or psychotherapy. Within the custodial environment, that is slightly different. What you are more likely to have is access to a psychiatrist who would be able to consider whether you required medication and who would be able to do some therapy with you, but our resources are not enough that we can support the required amount of therapy. We would collaboratively work with Juvenile Justice psychologists who would try to provide that, but that is sometimes limited.⁴⁸⁰

4.107 The Mental Health Commissioner told the Committee that having access to quality mental health support whilst in the Juvenile Justice system is fundamental:

It is highly important. Early intervention is the key to changing not only the trajectory of illness but to supporting that person in their own recovery and therefore being able to participate more in their own rehabilitation...and that also

⁴⁷⁷ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p39.

⁴⁷⁸ Dr Yolisha Singh, *Transcript of Evidence*, 10 May 2018, p7.

⁴⁷⁹ Dr Yolisha Singh, *Transcript of Evidence*, 10 May 2018, p11.

⁴⁸⁰ Dr Yolisha Singh, *Transcript of Evidence*, 10 May 2018, p11.

goes to just the opportunity for them to engage with education or other opportunities. So it is fundamental.⁴⁸¹

- 4.108 Following the Committee's hearings, Juvenile Justice NSW also provided details of the mental health services that are provided at Reiby Juvenile Justice Centre:
- A clinical nurse consultant (mental health) attends three days per week from June 2018;
 - A psychiatrist clinic is held once a week
 - There are four psychologist positions
 - General nursing staff are available Monday to Friday with access to on call specialist advice
 - There are out of hours, on-call Justice Health services
 - Consultations are available via audio-visual link
 - All young people have telephone access to the Mental Health hotline.⁴⁸²

The availability of dental services within Juvenile Justice centres should be maximised

Recommendation 35

That the NSW Government conduct an audit of dental care within NSW Juvenile Justice centres to determine whether Justice Health is providing non-acute dental health treatment to detainees in each Centre about every three months; and make improvements if this target is not being met.

- 4.109 Having regard to evidence discussed above and below that there are high rates of oral health issues amongst young people in custody, and given oral health is very important to overall health, the Committee considers that this should be a priority area.⁴⁸³
- 4.110 Evidence provided by Justice Health, discussed below, indicates that Justice Health tries to provide dental health treatment to non-acute cases in custody about every three months. However, given concerns raised at Riverina Juvenile Justice Centre about limited dental services, the Committee considers the NSW Government should conduct an audit of NSW Juvenile Justice centres to ensure that this target is being met, and make improvements if it is not.
- 4.111 During the Committee's site visit to Riverina Juvenile Justice Centre in November 2017, Centre staff noted that dental services available to the Centre's detainees are limited. While priority is given to acute cases, more standard procedures like

⁴⁸¹ Ms Catherine Lourey, *Transcript of Evidence*, 10 May 2018, p20.

⁴⁸² Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p3.

⁴⁸³ For an account of how oral health affects overall health see: Dental Services Victoria, 'Links Between Oral Health and General Health The Case For Action' available at: https://www.dhsv.org.au/_data/assets/pdf_file/0013/2515/links-between-oral-health-and-general-health-the-case-for-action.pdf.

the periodic “clean and scale” may not always be available. Similarly, while there is a dental clinic at the Centre, staff indicated that it was not currently in use.

4.112 At the Committee’s hearing on 10 May 2018 Mr Forrest explained the way in which dental services are provided to young people by Justice Health, confirming that the most acute cases are given priority:

People who come into the custodial environment...generally have a poorer state of health. Their oral health is generally neglected and the need for oral health intervention is higher. In all our six Juvenile Justice centres we provide a dental service where a dentist and dental assistant visits each of the centres. The program is managed centrally to make it effective for the dentist to be able to see the maximum number of young people. We put young people on a waiting list. That waiting list is triaged and if there is a young person who has an acute dental need – for example, they might have an infection or a dental abscess – those conditions are treated. The patient could be given antibiotics or the patient may need to be taken out to the local health district’s dental service in order to receive emergency dental treatment, and the network would pay for that service.⁴⁸⁴

4.113 Mr Forrest further explained that Justice Health tries to attend Juvenile Justice centres about every three months to treat non-acute cases:

Our routine dental service goes around to each of the six Juvenile Justice centres to see typically those patients who are non-acute and who can wait usually a period of three months before the dentist comes back around to the centre again. We do not staff the dental services everyday... We try to get around to each of the six juvenile justice centres in approximately a three month period to see the non-acute cases.⁴⁸⁵

4.114 In evidence provided following the hearing, NSW Health clarified that the dental clinic at the Riverina Juvenile Justice centre is not a NSW Health facility and that detainees at that Centre access dental services at the public dental clinic at Wagga Wagga.⁴⁸⁶ NSW Health also provided the Committee with the number of dental patients treated by Justice Health in a Juvenile Justice centre from 2011-12 to 5 May 2018:

Year						
2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
357	299	254	268	335	211**	167*

*The number of patients treated as at 5 May 2018. NSW Health advised the number treated in 2017-18 was expected to be consistent with previous years by the end of June 2018.

**NSW Health advised that the reduced number of dental patients treated in Juvenile Justice centres in 2016-17 and 2017-18 is because of an overall decrease in the number of juveniles in custody since 2011 and decreased service demand.⁴⁸⁷

⁴⁸⁴ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p8.

⁴⁸⁵ Mr Gary Forrest, *Transcript of Evidence*, 10 May 2018, p8.

⁴⁸⁶ NSW Health, *Answers to Questions Taken on Notice*, 10 May 2018, p6.

⁴⁸⁷ NSW Health, *Answers to Questions Taken on Notice*, 10 May 2018, p6.

Juvenile Justice centres should be designed to minimise psychological distress so far as possible

Recommendation 36

That Juvenile Justice NSW promote therapeutic design within its centres wherever possible.

- 4.115 In its submission to the inquiry, the Mental Health Commission of NSW noted that the design of Juvenile Justice centres can have an effect on detainees' mental state. It stated that softening the environment within Juvenile Justice centres may create a more calming setting in which staff can work with detainees.⁴⁸⁸
- 4.116 The Committee agrees that Juvenile Justice centres should be designed in a way that minimises detainees' psychological distress. In making this point it appreciates that a balance must be struck between softening environments and managing risk, and this is discussed further below.
- 4.117 The Committee notes from its various site visits, that aspects of Juvenile Justice centre design are harsh e.g. infrastructure to prevent escapes. However, it also notes that at every centre it visited, measures have been taken to minimise this. For example, art produced by detainees was displayed prominently at all of the centres. The Committee considers that Juvenile Justice NSW should continue to promote therapeutic design within its centres wherever possible.
- 4.118 At the Committee's hearing on 8 May 2018, the Mental Health Commissioner expanded on points made in the Mental Health Commission's submission, noting that anything that reduces trauma and psychological distress should be supported and that being admitted to a custodial environment is inherently distressing:
- ...one of the saddest things I hear is when a young person has been admitted to an adult in-patient unit...they find it devastating – and that is in a health environment which is supposed to be therapeutic. Imagine what it is like to be put into an environment that is not health focussed or therapeutic in its design and culture. It must be so much worse.⁴⁸⁹
- 4.119 The Commissioner also noted the balance that must be struck between managing risk and maximising the therapeutic nature of environments:
- An issue that I have dealt with for many years in my career is how to get the balance between risk and responsibility for young people in adult in-patient care and the therapeutic environment. There is always a tension but we need to be creative and we can be creative in the way we design our units. Walls do not have to have razor wire. Walls can be made from other materials. We can have murals. We can get young people involved in the design of units and hear what they think is good for them. It is around scale and the materials to make the building more home like,

⁴⁸⁸ Submission 8, Mental Health Commission of NSW, p5.

⁴⁸⁹ Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p25.

comfortable and familiar...You have young people going into environments and knowing that the design is anti them.⁴⁹⁰

- 4.120 The Committee raised these issues with Ms Hawyes of Juvenile Justice NSW, noting from its site visits that aspects of Juvenile Justice centre design can be harsh, for example, the use of barbed wire around perimeters. Like the Mental Health Commissioner, Ms Hawyes noted that managing risk is an important element in the design of custodial environments:

One of the issues we have with our infrastructure is that it was constructed with good intentions in its day but it does have quite low-lying roof access points. It is problematic for us to manage because young people can really quite easily hop onto those roofs and potentially put themselves at risk and do a fair bit of damage. That explains some of the barbed wire that you have seen; it is a deterrent to stop people getting on the roof and potentially falling off, hurting themselves and/or doing a fair bit of damage.⁴⁹¹

- 4.121 Ms Hawyes also noted that were Juvenile Justice centres to be designed from scratch today, the design would take a different course:

If you were going to design them again today you would certainly design them to have a higher roof line for one thing; let alone you might design for other features that would remove the risks of certain sorts of antisocial behaviour and bring about an environment more conducive to rehabilitation.⁴⁹²

New Street Adolescent Service

The issue of counsellor/client privilege for New Street Adolescent Service should be further explored

Recommendation 37

That the NSW Government, in consultation with all relevant stakeholders, examine whether there is a need for legislated counsellor/client privilege for the counselling notes produced by the New Street Adolescent Service.

- 4.122 As discussed in Chapter One, NSW Health provides a specialised early intervention community-based service called the New Street Adolescent Service to address harmful sexual behaviours displayed by 10-17 year olds who, for a range of reasons, have not been criminally prosecuted.⁴⁹³
- 4.123 In its submission to the inquiry, the Law Society of NSW raised concerns that children are inhibited from engaging in full and honest therapy at New Street because there have been instances of police charging children with an offence and obtaining New Street's counselling notes to use them as evidence against the child. The Law Society recommended consideration of a legislated

⁴⁹⁰ Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p26.

⁴⁹¹ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p38.

⁴⁹² Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p38.

⁴⁹³ NSW Health website, <http://www.health.nsw.gov.au/kidsfamilies/protection/Pages/New-Street-Services.aspx>, viewed 25 June 2018.

counsellor/client privilege to protect against this use of New Street's counselling notes.⁴⁹⁴

4.124 The Committee considers that the NSW Government should further explore this issue. The diversionary work of New Street is important and it should not be impeded. However, as discussed below, this is a complex area of the law about which further consultation should take place before reaching a conclusion.

4.125 At the Committee's hearing on 10 May, Mr Humphreys expanded on the Law Society's comments and stated:

...if we are going to look at diversion as being the main aim, it would seem to me to be only proper and right that you would provide a statutory protection in relation to those notes...It seems to me to be an improper use of the diversion program to then try to use admissions made in counselling as evidence to charge somebody.⁴⁹⁵

4.126 When asked about this issue, NSW Health responded that this is a complex area of the law and that any changes to privacy or information-sharing requirements in this context would require research and consultation with other Government agencies:

There are a small number of cases within the New Street Program, where information sought by non-Health agencies causes disruption to the therapeutic process and potential treatment outcomes and safety, health and wellbeing of any children involved. However, NSW Health is of the view that this is a complex area of law and policy and any changes to privacy or information sharing requirements in this context would require research and consultation with other Government agencies, to determine whether it would be in the best interests of: (1) children and young people who have been harmed or might be at risk of harm; (2) children/young people with harmful behaviours engaging in treatment; (3) the wider community.⁴⁹⁶

4.127 NSW Health further advised that generally confidential relationship or sexual assault communications privilege is not an issue at New Street. This is because children attend New Street where police or the Director of Public Prosecutions have decided not to proceed with charges, or where the prosecution has been completed, so it is unlikely the child will go before the court again for the same matter. However, New Street will advise police if they become aware of further incidents, or previously unknown incidents. New Street will also report to FACS where they deem it necessary to ensure the safety and wellbeing of a child.⁴⁹⁷

⁴⁹⁴ Submission 26, Law Society of NSW, p16.

⁴⁹⁵ Mr Doug Humphreys OAM, *Transcript of Evidence*, 10 May 2018, p61.

⁴⁹⁶ NSW Health, *Answers to Questions Taken on Notice*, 10 May 2018, p7.

⁴⁹⁷ NSW Health, *Answers to Questions Taken on Notice*, 10 May 2018, p7.

Education

Further steps should be taken to address the link between disengagement from school and youth offending

Recommendation 38

That the NSW Department of Education consider whether there is a need for increased specialised and individualised learning support at NSW schools to assist children and young people who are at risk of disengaging from education. The Department should pay particular regard to:

- **The development of foundational skills in literacy and numeracy;**
- **Smaller class sizes.**

4.128 During its inquiry the Committee heard that there is a strong link between disengagement from school and youth offending. Measures to address this issue would be likely to have a strong diversionary impact and should be supported.

4.129 The Committee notes evidence discussed below that one of the factors that may be contributing to disengagement is a lack of specialised and tailored learning supports within mainstream schools in NSW. Detainees felt that they achieved much better at schools in custody, where more support was available, than at schools within the community. Given this, and the results of recent surveys of young people in custody which revealed alarmingly low rates of literacy (also discussed below), the Committee considers that the NSW Department of Education should examine whether there is a need for more specialised and individualised learning support at schools within the community in NSW to assist those at risk of disengaging.

4.130 The President of the Children's Court told the Committee that a large percentage of the young people who appear before the Children's Court are not attending school:

If a child or young person becomes disengaged from education, they lose one of the biggest protective factors against the risk of offending...Anecdotally, we believe that roughly 40% of the children coming before the Children's Court in its criminal jurisdiction are not attending and are totally disengaged from school. Recent, informal observations at one of the Children's Courts located in Sydney indicate that the number of children in the criminal jurisdiction of the Court who are not attending school is, in fact, much higher than 40%.⁴⁹⁸

4.131 Judge Johnstone also told the Committee that if these figures could be halved: "we would probably reduce the youth crime rate in NSW by many percentage points".⁴⁹⁹

4.132 Similarly, ACYP observed that "Poor school attendance, disengagement and underperformance are associated with a range of adverse outcomes, including

⁴⁹⁸ Submission 19, President of the Children's Court of NSW, pp15-16.

⁴⁹⁹ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p3.

contact with the criminal justice system".⁵⁰⁰ This is borne out by the results of the 2015 Young People in Custody Health Survey which found that only 27 per cent of survey respondents had been attending school in the six months prior to entering custody.⁵⁰¹

- 4.133 The Committee heard that one of the factors that may be contributing to disengagement is a lack of specialised and tailored learning supports within mainstream schools in NSW. Young people in custody told ACYP that schools within Juvenile Justice centres worked a lot better for them because they did provide these supports:
- A majority of the young people we heard from in Juvenile Justice Centres reported that the schools within these centres were working well for them. They generally reported that having smaller class sizes and teachers who understood and supported their needs allowed them to achieve accomplishments that they had not previously thought possible – one young person told us that he had learned to read in custody at the age of 16.⁵⁰²
- 4.134 These young people further stated that they felt they would do better in mainstream schools "if they could learn more flexibly, at their own pace and with more tailored support from teachers".⁵⁰³
- 4.135 This is consistent with the experience of a young man who spoke with the Committee during one of its Juvenile Justice centre site visits, who will be referred to as "Ben". Ben told the Committee that the specialised support that he had received at school whilst in custody had helped him to learn and progress in a way that he had not experienced at school in the community. A full case study for Ben appears below.
- 4.136 It must also be seen in light of the 2015 Young People in Custody Health Survey which found high rates of oral language and reading difficulties amongst respondents. For example, nearly three quarters of respondents demonstrated difficulty in reading single words, with half demonstrating severe difficulties, and nearly all demonstrated reading comprehension difficulties.⁵⁰⁴
- 4.137 At the Committee's hearing on 10 May 2018, Ms Cheryl Best, Acting Executive Director, Learning and Teaching at the Department of Education acknowledged that if foundational skills in numeracy and literacy are missing, this makes it hard for students to access other parts of the curriculum and can lead to disengagement. Ms Best also provided information about the support that is

⁵⁰⁰ Submission 20, Office of the Advocate for Children and Young People, p4.

⁵⁰¹ Submission 20, Office of the Advocate for Children and Young People, p5; see also Justice Health and Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, p14, available at: <http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>, viewed 24 July 2018.

⁵⁰² Submission 20, Office of the Advocate for Children and Young People, p5.

⁵⁰³ Submission 20, Office of the Advocate for Children and young People, p5.

⁵⁰⁴ Justice Health and Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, p96, available at: <http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>, viewed 24 July 2018.

currently provided within mainstream schools in NSW to support students at risk of falling behind in the attainment of these foundational skills:

...public schools in NSW are fully committed to the achievement of foundational skills in literacy and numeracy for all students. In fact, we have a very targeted early intervention program to ensure that all students achieve those fundamental skills. We track students, particularly in the early years of schooling...Teachers are very aware when students display poor skills in those areas, and there are many programs and interventions in schools that can be put in place to support them...Students are identified at any stage of their schooling but generally as early as possible. If general interventions and additional support around literacy and numeracy have not produced the desired progress, then there would be the next level of intervention.⁵⁰⁵

Case study – Ben – Specialised Support in Schools

Ben*, who is an Aboriginal young man, told the Committee that the specialised support that he received at school whilst in custody was extremely valuable, helping him to learn and progress in a way that he had not experienced at school in the community. These services have also equipped Ben with the skills and supports he will need to transition out of detention.

Ben spoke of his experience of school within the community, prior to entering custody. He told the Committee he had often misbehaved at school and not found the classes interesting. He further described having no connection with his teachers who tended not to focus as much on the “naughty kids”.

In contrast, Ben described his experience at Juvenile Justice schools as very positive. There, Ben had a lot of one-on-one interaction with his teachers and behavioural coaching, which enabled him to re-engage with his education. Ben said “The teachers would talk to you and you would learn stuff”. It was clear that this individualised attention to Ben’s learning and behavioural needs helped him to overcome some of the barriers he had experienced at school in the community.

Ben also described being involved in “Koori School” while he was in custody. There was a maximum of six students to a class and Ben’s class had only four. The two teachers were Aboriginal and this was the first time Ben had ever had an Aboriginal teacher. Ben described this as an extremely positive experience. He could now interact with his teachers in a way that had not been possible before, because he knew they had been through similar life experiences as him.

At the Koori School, Ben was able to learn about his Aboriginal culture, language, stories, dance and art. This not only helped him to maintain a connection with the culture in which he had grown up, but to develop a strong sense of responsibility in passing this knowledge on to younger boys, both within custody and the community.

Ben also told the Committee that extra-curricular activities are an important part of diversionary and post-release support programs. Things like football, camps and fitness classes provide a positive way in which to spend free time, diverting young people from drugs, alcohol and anti-social behaviour.

⁵⁰⁵ Ms Cheryl Best, *Transcript of Evidence*, 10 May 2018, p21.

Ben also emphasised the importance of preparing for release whilst still in custody and described learning a trade, doing work release, and having a job lined up for when he gets out as being extremely positive. He listed having employment, appropriate housing, means of travel, and positive recreational activities as the most important things in helping him to make a successful transition back into the community once he leaves custody.

* Not his real name

Recommendation 39

That the NSW Government consider instituting a court-based initiative to help young people appearing before the Children's Court of NSW to re-engage with education, similar to the Victorian Education Justice Initiative.

- 4.138 During its inquiry, the Committee also heard calls for the NSW Government to adopt a court-based initiative to help young people appearing before the Children's Court of NSW to re-engage with their education, providing the Victorian Education Justice Initiative as a model.
- 4.139 The Committee notes evidence discussed below that there is a critical gap in education support services for those who appear before the Children's Court and that without such support many of these young people are unlikely to re-engage in education. It further notes evidence discussed below that the Victorian Education Justice Initiative has been very successful in re-engaging young people in education.
- 4.140 Given these factors and the strong link between educational disengagement and youth offending, the Committee is of the view that the proposed initiative offers excellent potential as a diversionary program and that it should be considered by the NSW Government.
- 4.141 In calling for such a court-based initiative, the President of the Children's Court noted that a Victoria Institute evaluation has shown that by linking young people with an education officer when they come to Court, the Victorian Education Justice Initiative has successfully re-engaged 75 per cent of these young people in education.⁵⁰⁶
- 4.142 His Honour also elaborated on how the Victorian Education Justice Initiative works:
- ...an education officer funded by the Victorian Department of Education attends the Melbourne Children's Court. Contact is made with young people by reaching out to them in the foyer (33%) or through a referral by the Court (22%) or by referral from one of the agencies working in the court such as Legal Aid or the equivalent of Juvenile Justice (42%). The education officer then talks to the young person about their previous experiences in education and their preferences and then liaises with education providers to determine options for the young person to re-engage with education. The education officer will set up meetings for the young person with

⁵⁰⁶ President of the Children's Court of NSW, *Answers to Questions Taken on Notice*, 30 April 2018, p1.

particular education providers and will attend re-engagement meetings where appropriate.⁵⁰⁷

- 4.143 Judge Johnstone also indicated that the Children's Court of NSW has already discussed this issue with the Department of Education and that the Children's Court understands such an initiative would have resourcing implications for the Department.⁵⁰⁸
- 4.144 In its submission to the inquiry, Macarthur Legal Centre also called for a program like the Victorian Education Justice Initiative for NSW, indicating that there is currently a critical gap in educational support services for young people who appear before the Children's Court, especially at the pre-sentence stage when they are not under the supervision of Juvenile Justice NSW.⁵⁰⁹
- 4.145 Macarthur Legal Centre further noted that without the sort of specialised support provided by the initiative, many young people appearing at court stand little chance of re-engaging with education or employment:
- ...young people involved in youth justice often have complex needs and they generally do not have the capacity or resources to navigate through the education system. Rather, it is our experience that they require accessible and tenacious advocates with knowledge of schools and procedures to find a suitable, supported education pathway for them. Without this specialised assistance, these vulnerable young people stand little chance of re-engaging in education or employment.⁵¹⁰
- 4.146 In recommending a program like the Victorian Education Justice Initiative, Macarthur Legal Centre also noted that the Victoria Institute's evaluation described the initiative as a "circuit breaker" and stated that the key to its success was not only the specialist knowledge the staff had about schools and procedures but "their willingness to work for weeks or even months to identify the right schools and build relationships".⁵¹¹
- 4.147 Another stakeholder who supported a program like the Victorian Education Justice Initiative for NSW was ACYP. In its submission it noted that such a program would help the young people that it heard from who wanted to attend school but had trouble getting accepted or re-admitted to local schools after coming into contact with the criminal justice system. ACYP further noted that it would also benefit children in out-of-home care who miss a disproportionate amount of school.⁵¹²
- 4.148 The Law Society of NSW also supported a similar model to the Victorian Education Justice Initiative for NSW to identify children who are not attending school and help them to re-engage with their education.⁵¹³

⁵⁰⁷ President of the Children's Court of NSW, *Answers to Questions Taken on Notice*, 30 April 2018, p1.

⁵⁰⁸ President of the Children's Court of NSW, *Answers to Questions Taken on Notice*, 30 April 2018, p1.

⁵⁰⁹ Submission 18, Macarthur Legal Centre, p3.

⁵¹⁰ Submission 18, Macarthur Legal Centre, p3.

⁵¹¹ Submission 18, Macarthur Legal Centre, p3.

⁵¹² Submission 20, Office of the Advocate for Children and Young People, p6.

⁵¹³ Submission 26, Law Society of NSW, p13.

- 4.149 The Committee was pleased at evidence that following an interagency forum on 1 August 2017, some work has commenced to assist young people who have disengaged from school and who appear before the Children's Court. The Committee understands that representatives from the Children's Court, Juvenile Justice NSW, FACS, Legal Aid NSW, the Aboriginal Legal Service, the Department of Justice, the NSW Police Force and ACYP attended the forum; which produced an agreement to undertake work to assist this cohort, in conjunction with whole of Government work being done under the Their Futures Matter reform.⁵¹⁴

Steps should be taken to address the link between school suspensions and youth offending

Recommendation 40

That the NSW Department of Education amend its suspension guidelines so that students cannot be left unsupervised during a suspension period; and to ensure that the options of in-school suspensions and the State's 22 suspension centres are fully utilised.

Recommendation 41

That the NSW Department of Education link behaviour management strategies with the provision of specialised learning support; and that NSW schools use any suspension period to provide specialised learning support to students who need it.

- 4.150 During the inquiry, the Committee heard about the "school to prison pipeline" whereby children who are suspended from school, and who are not supervised for the suspension period, are more likely to engage in criminal behaviour. Many stakeholders called for measures to be taken so that children are supervised for the suspension period. As many of the children suspended are also the same children who are slipping behind in class and disengaging, the Committee also heard calls for suspension periods to be used to provide specialised learning support to children who need it.
- 4.151 Having regard to evidence of the significant numbers of children who are suspended from school each year (discussed below), providing greater supervision for these children could have significant impact on diversionary rates in NSW. The Committee has concerns about evidence that is also discussed below, from the Department of Education, that suspended children are at home with their families.⁵¹⁵ Given the weight of evidence discussed below about the school to prison pipeline, it considers there would be many cases where this is not so.
- 4.152 The Committee is of the view that the Department should amend its suspension guidelines so that students cannot be left unsupervised during a suspension period; and to ensure that the options of in-school suspensions and the State's 22 suspension centres are fully utilised. In addition, as many of the children suspended are the same children who are slipping behind in class⁵¹⁶ the

⁵¹⁴ NSW Department of Education, *Answers to Questions Taken on Notice*, p9.

⁵¹⁵ Ms Robyn Bale, Acting Executive Director, Learning and Wellbeing, NSW Department of Education, *Transcript of Evidence*, 10 May 2018, p16.

⁵¹⁶ Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p32.

Department should link its behaviour management strategies with the provision of specialised learning support, and suspension periods should be used to provide specialised learning support to the students who need it.

- 4.153 In 2017, a significant number of students were suspended from NSW schools. 31,813 were "short suspended" and 12,627 were "long suspended" out of a student body of 791,763.⁵¹⁷ "Short suspensions" are any suspension from half a day up to four days, while "long suspension" can be for up to 20 days.⁵¹⁸ In 2017, the average long suspension was 12 days.⁵¹⁹
- 4.154 A disproportionate number of these young people were Aboriginal young people. Of the 31,813 young people "short suspended", 7,714 (or 24.2 per cent) were Aboriginal young people. Of the 12,627 young people "long suspended", 3,620 (or 28.6 per cent) were Aboriginal young people.⁵²⁰ In contrast, only about 5.3 per cent of the overall youth population in NSW is Aboriginal.⁵²¹
- 4.155 Ms Robyn Bale, Acting Executive Director of Learning and Wellbeing at the Department of Education indicated to the Committee that suspensions are a strategy that can be used to help the student learn that inappropriate behaviour has consequences. Long suspensions are only imposed for serious or sustained misbehaviour. Similarly, students and staff are entitled to a safe working environment and there are times when mandatory suspensions are put in place, for example, where a student has threatened to use a weapon; made credible threats against students or staff; or engaged in persistent bullying, harassment or victimisation.⁵²²
- 4.156 When asked where children go after they have been suspended, Ms Bale responded that "They will be at home with their family" and that the Department also has "suspension centres" offsite from the school, where children will participate in a program.⁵²³ There are 22 suspension centres across NSW, both in metropolitan and regional areas.⁵²⁴
- 4.157 The President of the Children's Court told the Committee that suspension and expulsion from school can contribute to the risk of a young person offending. His Honour cited studies showing that within 12 months of being suspended from school, students are 50 per cent more likely to engage in anti-social behaviour and 70 per cent more likely to engage in violent behaviour.⁵²⁵
- 4.158 Miyay Birray noted suspensions can lead to unsupervised children engaging in anti-social behaviour and called for in-school suspensions, stating:

⁵¹⁷ NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p3.

⁵¹⁸ Ms Robyn Bale, *Transcript of Evidence*, 10 May 2018, p15.

⁵¹⁹ NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p5.

⁵²⁰ NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p4.

⁵²¹ Submission 27, NSW Government, p22.

⁵²² Ms Robyn Bale, *Transcript of Evidence*, 10 May 2018, p14.

⁵²³ Ms Robyn Bale, *Transcript of Evidence*, 10 May 2018, p16.

⁵²⁴ NSW Department of Education, *Answers to Questions Taken on Notice*, p6.

⁵²⁵ Submission 19, President of the Children's Court of NSW, p15.

The phenomenon of youths engaging in anti-social behaviour following a suspension from school is so well documented that it has been labelled the 'school to prison pipeline'...instead of suspending youths there should be in school suspension programs that would work towards reengaging students.⁵²⁶

4.159 In its submission to the inquiry, ACYP stated that in conducting consultations with young people in Juvenile Justice centres, many raised the issue of the long suspensions of up to 20 days during which they get into trouble with police because they lack supervision and constructive activities. ACYP further stated that removing children from school may have the unintended consequence of further entrenching problematic behaviour and disconnecting them from their main source of pro-social support.⁵²⁷

4.160 The young people ACYP consulted called for in-school alternatives to suspension to maintain their connection to education. Accordingly, ACYP recommended that the Department of Education review its suspension and expulsion policies and procedures to reduce the maximum amount of time a student can be suspended; introduce in-school alternatives to suspension; and link behaviour management strategies with the provision of learning support.⁵²⁸

4.161 At the Committee's hearing on 8 May 2018, the Advocate for Children and Young People, Mr Johnson, expanded on these points. Mr Johnson told the Committee that one young person told ACYP:

And I reckon it's stupid too when you get in trouble at school, so they suspend you, keep us away from school, which is just what we would want, get away from school. When you get in trouble they shouldn't suspend you, they should make you do more school work. When you get suspended you just start doing stuff on the outside and get locked up or something. Why don't they just do in-school suspensions?⁵²⁹

4.162 Consistent with the evidence discussed earlier in the Chapter, Mr Johnson also indicated that young people who are getting into trouble with police are often the same young people who are slipping behind at school, becoming disengaged, and who are in need of more specialised support. Mr Johnson provided further evidence that young people are themselves calling for suspension periods to be used to help them catch up with their peers:

The words they use are "feel stupid" and they want someone to help them get back on track for when they go back into the classroom...They are saying, "I want to take this time so that I can catch up, so that I can be better when I go back"...The children are telling us that one of their trigger points is the feeling that they are being left behind – that they are not understanding what is going on in the classroom. I think we need to reframe the debate. Rather than saying that a young person is "up for suspension" – the language that we use right now – we need to say, "This is a young person who may need extra support and services".⁵³⁰

⁵²⁶ Submission 4, Miyay Birray Youth Services INC, pp5-6.

⁵²⁷ Submission 20, Office of the Advocate for Children and Young People, p5.

⁵²⁸ Submission 20, Office of the Advocate for Children and Young People, p6.

⁵²⁹ Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p28.

⁵³⁰ Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p32.

- 4.163 Mr Humphries of the Law Society of NSW also indicated that keeping suspended young people busy with any constructive activity, even if it is not school work, is key to improving their self-worth and stopping them from engaging in crime:
- ...what is the point of excluding them if we are not trying to see if we can give them something else to occupy their time?...What if we keep them busy and give them other skills? They may not necessarily be in school but at least they are not wandering the streets...Being busy could be just doing sport or it could be doing a whole heap of other things. One of the problems with these kids is they have a very low sense of self-worth. If you can show them that they can do some things, it then becomes easier to convince them that they can do other things, such as schoolwork and traditional schoolwork. But it is keeping them busy. If they are occupied they are not committing crime.⁵³¹
- 4.164 In their submissions to the inquiry, both AbSec and the Aboriginal Legal Service also pointed to the school to prison pipeline, with AbSec pointing to studies showing that suspensions are a significant factor contributing to the incarceration of Aboriginal children.⁵³²
- 4.165 Ms Bale indicated to the Committee that the Department has a school discipline policy which includes guidelines around the use of suspension and that these guidelines were being reviewed in consultation with FACS, the Departments of Justice and Health, and the Advocate for Children and Young People.⁵³³ This work is expected to be finalised for implementation by schools at the start of the 2019 school year.⁵³⁴

Teachers should be trained and resourced to spot risk factors for youth offending and to take appropriate action

Recommendation 42

That all teachers in NSW schools receive thorough training around the risk factors for young people's engagement with the criminal justice system, and the available support services and programs.

Recommendation 43

That the NSW Department of Education examine whether student support officers could be more effectively utilised in NSW schools to help schools identify students at risk of youth offending and to make appropriate referrals to support services and programs.

- 4.166 During its inquiry, Youth Action told the Committee that while teachers are well placed to spot risk factors for youth offending, they may not be sufficiently resourced or trained to do so, and to make the necessary referrals:

Although teachers are well-placed to know a young person's history and observe their actions and behaviours, they are often unaware of and inadequately resourced

⁵³¹ Mr Doug Humphreys, *Transcript of Evidence*, 10 May 2018, p57.

⁵³² Submission 17, AbSec, p2; Submission 23, Aboriginal Legal Service (NSW/ACT), p8.

⁵³³ Ms Robyn Bale, *Transcript of Evidence*, 10 May 2018, pp14,15&19.

⁵³⁴ NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p3.

to spot risk and protective factors and take appropriate actions. Teachers, on the whole, don't seem to have an awareness of how worrisome behaviours they notice in the classroom can often relate to wider wellbeing issues...⁵³⁵

- 4.167 The Committee agrees that teachers who see the same students day-to-day are well placed to spot changes in behaviour that may signal a student is at risk of offending. If teachers are thoroughly trained to do so, they can intervene early and take the necessary action to support these students. This opportunity for early intervention should not be missed.
- 4.168 Further, the Committee notes that current school procedures for managing at-risk students through "learning and support teams" discussed below, appear to rely somewhat on teachers as the people likely to identify these risk factors.
- 4.169 Therefore, the Committee recommends that all teachers in NSW schools receive thorough training around the risk factors for young people's engagement with the criminal justice system, and the available support services and programs.
- 4.170 The Committee also heard evidence discussed below that "student support officers" are a useful resource in assisting teachers to support at-risk students. It is however unclear how many schools have student support officers and whether they are being engaged effectively. Therefore, the Committee recommends that the NSW Department of Education examine whether student support officers could be used more effectively in NSW schools to help schools identify students at risk of youth offending and to make appropriate referrals to support services and programs.
- 4.171 Ms Acheson of Youth Action expanded on the evidence provided in Youth Action's submission at the Committee's hearing on 8 May 2018. As discussed in Chapter Three, there is some evidence that obtaining referrals to Youth On Track from schools has been challenging⁵³⁶ and Ms Acheson told the Committee this could be linked to a lack of teacher training:
- ...teachers are often best placed to see the early signs. They can see when a student's behaviour is changing and those early risk factors. They are really well placed to do the referrals...But teachers are often not given the training to do those referrals effectively or identify those risk factors...[I]f local youth services and Youth on Track for example, are included in that training process, the teachers will have the ability to identify the early risk factors and will automatically be able to see where they can channel those supports, including into Youth on Track.⁵³⁷
- 4.172 Youth Action recommended that the Department of Education fund a comprehensive training program for teachers in NSW to address gaps in their knowledge about adolescents, their risk factors for engagement with the criminal justice system and the supports and services that they can access and refer to. Youth Action recommended that this training be carried out by local youth-

⁵³⁵ Submission 9, Youth Action, pp9-10.

⁵³⁶ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p13.

⁵³⁷ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p13.

focussed organisations and youth workers "as they are...experts in youth issues and in their local community context".⁵³⁸

- 4.173 Youth Action also provided strong support for Student Support Officers in schools to assist teachers to support students who may be high-risk. Student Support Officers are "wellbeing-oriented youth service workers who work...alongside school staff".⁵³⁹ Ms Acheson explained:

Student support officers have been really successful, because they help teachers who do not have the time to do early analysis. A teacher can approach a student support officer early in the piece to say that a student is acting up, and the youth worker can immediately support that young person. The student support officers have the expertise to make connections and identify behaviour. They are also connected with the community and they know what programs are out there, for example, Youth on Track.⁵⁴⁰

- 4.174 Youth Action told the Committee that 50 student support officer positions were piloted across NSW, and in 2014 the Department of Education reviewed this initiative favourably. Following this, as part of the Supported Students Successful Students program, the Department allocated \$51 million for wellbeing, and schools have discretion to employ student support officers using this money. However it is unclear whether the money is being spent on student support officers and whether they are being engaged effectively.⁵⁴¹

- 4.175 Youth Action recommended that the NSW Government increase the number of student support officers in schools, conduct a public review of student support officers in schools, and provide centralised support, training and coordination to their activities.⁵⁴²

- 4.176 At the Committee's hearing on 10 May 2018, Ms Bale provided information that every NSW school has a learning and support team to assist students about whom teacher have raised concerns:

Every public school across NSW has a learning and support team. The principal or their delegate...will chair that group. The school counsellor will be part of that team, teachers within the school, other executive members, sometimes there will be people from other agencies who will also be part of that team, it might be a youth worker in one of our schools. That team is in place whereby teachers will refer children because they have got some concerns for a whole range of reasons. It could be their learning, it could be their behaviour, it could be mental health, it could be something else. That team will work together and problem solve what action they need to take.⁵⁴³

- 4.177 Ms Bale indicated a range of action can be taken by the learning and support team including referring a student to the school counsellor who can then refer

⁵³⁸ Submission 9, Youth Action, p10.

⁵³⁹ Submission 9, Youth Action, p12.

⁵⁴⁰ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p17.

⁵⁴¹ Submission 9, Youth Action, p12.

⁵⁴² Submission 9, Youth Action, p13.

⁵⁴³ Ms Robyn Bale, *Transcript of Evidence*, 10 May 2018, p18.

students on to services beyond the school if necessary.⁵⁴⁴ The Committee commends the learning and support team initiative but observes that it appears to rely somewhat on teachers making referrals. This reinforces the need for those teachers to be appropriately trained to do so.

There should be a review of educational facilities within NSW Juvenile Justice centres

Recommendation 44

That the NSW Department of Education conduct a review of educational facilities within NSW Juvenile Justice centres to assess their effectiveness and whether there are areas for improvement.

- 4.178 During its inquiry, the Federation of Parents and Citizens Associations of NSW told the Committee that there has never been a review of the education units in NSW Juvenile Justice centres that are administered by the Department of Education, and called for one to take place.⁵⁴⁵
- 4.179 As discussed earlier in the Chapter, access to quality education is an important protective factor in diverting young people from offending and to a more positive life path. As is also discussed earlier, the Committee received a lot of positive feedback about schools within Juvenile Justice centres during the inquiry.
- 4.180 Notwithstanding this, the Committee heard some concerns relating to education and training within custody and these concerns are discussed below. It is also correct in principle to conduct periodic reviews of these important services to see whether there are areas for improvement. For these reasons, the Committee considers the NSW Government should conduct a review of the educational facilities within Juvenile Justice centres, to determine whether any improvements are required.
- 4.181 At the Committee's hearing on 10 May 2018, the Department of Education confirmed that no review of educational facilities within Juvenile Justice centres had taken place, at least in recent times, but that a review was in the planning stages:
- To my knowledge there has been no review, certainly in recent times. However, we are aware of the need to do that and we have already started planning the scope of such a review to ensure we get accurate information to assess the effectiveness of the operation of the centres, how their performance might be improved over time, and how they are supporting young people. The notion of a review is certainly in the Department's work plan and we will be progressing it.⁵⁴⁶
- 4.182 While the Committee heard very positive feedback about schools within Juvenile Justice centres during its inquiry, it did also hear some concerns, both about the schools and the vocational training available in centres. Vocational training concerns are dealt with further below.

⁵⁴⁴ Ms Robyn Bale, *Transcript of Evidence*, 10 May 2018, p18.

⁵⁴⁵ Submission 1, Federation of Parents and Citizens Associations of NSW, p5.

⁵⁴⁶ Ms Cheryl Best, *Transcript of Evidence*, 10 May 2018, p20.

- 4.183 In relation to schools, detainees at Reiby Juvenile Justice centre raised a concern during the Committee's site visit in March 2018 about internet access within school rooms. In particular, the Committee heard that detainees cannot access the internet in their school rooms, instead they must ask a teacher to search for information and print it for them. The detainees indicated that this can make study more time-consuming and difficult, particularly as some detainees are studying at HSC or university level.
- 4.184 The Committee raised this concern with Juvenile Justice NSW and the Department of Education at its hearings in May 2018 and heard that students would generally have supervised access to the internet for learning and education, and that risk assessments would be carried out depending on the individual student's needs.⁵⁴⁷ The Committee considers that this issue highlights why regular reviews are desirable, to keep the lines of communication open and examine whether policies and procedures are working well and where there may be a need for adjustments.

Vocational training is a key diversionary measure for Juvenile Justice detainees

Finding 10

There is a need for increased NSW Government funding for vocational training within Juvenile Justice centres.

Finding 11

No Juvenile Justice detainee should have to find his or her own funding to undertake a TAFE course that is available within the centre in which s/he is being held; for which s/he is eligible; and that s/he wishes to do. The cost should be covered by the NSW Government.

Recommendation 45

That Juvenile Justice NSW; the NSW Department of Education; and TAFE NSW form a working group to review:

- **the amount of vocational training that is available to detainees within NSW Juvenile Justice centres;**
- **whether vocational training facilities within centres are being adequately utilised;**
- **the amount of NSW Government funding needed to plug any identified gaps.**

- 4.185 At the March site visit to Reiby Juvenile Justice Centre, the Committee also heard concerns regarding TAFE funding. In particular, the Committee heard that detainees sometimes have to find their own funding if they wish to do a TAFE course at the Centre. In addition, at its site visit to Riverina Juvenile Justice Centre on 9 November 2017, the Committee was told that although there are

⁵⁴⁷ See Ms Cheryl Best, *Transcript of Evidence*, 10 May 2018, p21; and Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p38.

facilities for detainees to do TAFE courses (for example, industrial arts classrooms), fewer courses were on offer than in the past, owing to TAFE funding cuts.

- 4.186 In response to these concerns, the Minister for Skills has indicated that there will be cases where a Juvenile Justice detainee is eligible for a TAFE course but not eligible for a fee exemption or concession.⁵⁴⁸ The Minister has also advised that the Department of Education is the primary education provider in Juvenile Justice centres as most detainees are under school leaving age; the Department purchases vocational training for detainees from providers including TAFE; and that the availability of TAFE training to detainees is a matter for the Department of Education and Juvenile Justice NSW.⁵⁴⁹ The Minister's response is set out in more detail below.
- 4.187 The Committee is concerned that there appear to be cases where detainees have to fund their own vocational training. Just like education, vocational training is important in diverting young offenders to a more positive life path.⁵⁵⁰ The Committee finds that no detainee should have to fund him or herself to undertake a TAFE course that is available within the centre in which s/he is being held; for which s/he is eligible; and that s/he wishes to do.
- 4.188 The Committee is also concerned that the amount of vocational training available within Juvenile Justice centres may not be adequate, and that vocational training infrastructure within Juvenile Justice centres may not be being adequately utilised. This evidence, and the evidence that there are cases where detainees have to fund their own vocational training, has led the Committee to make a finding that there is a need for increased NSW Government funding for vocational training within Juvenile Justice centres.
- 4.189 It appears from the Minister's advice that the provision of vocational training within Juvenile Justice centres is an interagency matter. The Committee therefore recommends that Juvenile Justice NSW, the Department of Education; and TAFE NSW form a working group to review the amount of vocational training that is available to detainees within NSW Juvenile Justice centres; whether vocational training facilities within centres are being adequately utilised; and the amount of NSW Government funding required to plug any identified gaps.
- 4.190 The Committee wrote to the Minister for Skills on 11 May 2018, about the concerns raised by the detainees and requested information about TAFE funding within NSW Juvenile Justice centres. The Minister responded by letter dated 13 July 2018.
- 4.191 With regard to courses on offer at Juvenile Justice centres for those under the school leaving age, the Minister advised that:

The NSW Department of Education is the primary education provider in Juvenile Justice Centres as young people in custody are largely under the school leaving age.

⁵⁴⁸ Hon John Barilaro MP, Deputy Premier and Minister for Skills, *Attachment to Letter to Chair*, 13 July 2018, p1.

⁵⁴⁹ Hon John Barilaro MP, Deputy Premier and Minister for Skills, *Letter to Chair*, 13 July 2018, p1.

⁵⁵⁰ See Judge Peter Johnstone's comments regarding the importance of vocational training, *Transcript of Evidence*, 30 April 2018, p9.

The Department purchases training for Juvenile Justice clients from approved providers, including TAFE NSW, under its Vocational Education and Training (VET) for secondary school students' framework. Availability of TAFE training to Juvenile Justice clients and whether other types of VET courses are offered are matters for the Department of Education and Juvenile Justice NSW.⁵⁵¹

4.192 The Minister also advised that Juvenile Justice detainees who are 17 years or older may be eligible for Government-subsidised courses under *Smart and Skilled* fee arrangements but this will depend on the type of programs in which they enrol.⁵⁵² Information attached to the Minister's letter indicated that there will be cases where a Juvenile Justice detainee is eligible for a course but not eligible for fee exemption or concession, and they will be required to pay fees according to the TAFE NSW enrolment policy. The attachment also stated that "It is estimated that very few Juvenile Justice participants fall into this category".⁵⁵³ It also contained the following detailed information about payment arrangements for TAFE NSW delivery to Juvenile Justice detainees:

- For TAFE delivered vocational education and training, the NSW Department of Education pays for the Juvenile Justice clients who enrol via the External Delivery of VET (EVET) program.
- Under the TAFE Youth Engagement Strategy, which uses Community Service Obligation funding to deliver non-nationally recognised courses to meet specific needs of target groups, Juvenile Justice participants do not have to pay.
- For Smart and Skilled Entitlement foundation skills courses, and Targeted Priorities Pre-vocational and Part Qualifications program, courses are fully subsidised for eligible Juvenile Justice participants (that is, those aged 17 years and above). No payment is required.
- For other Smart and skilled course not identified above, Juvenile Justice client who are eligible to participate but not eligible for fee-exemption or concession will pay fees according to the TAFE NSW enrolment policy.⁵⁵⁴

4.193 At the Committee's hearing on 30 April 2018, the President of the Children's Court emphasised the importance of vocational training within Juvenile Justice centres:

It is important in detention centres for children once they get to a certain age, leaving aside the education issue, they are better off being trained in an apprenticeship or a vocational setting where they can leave the detention centre and go into a job.⁵⁵⁵

⁵⁵¹ Hon John Barilaro MP, Deputy Premier and Minister for Skills, *Letter to Chair*, 13 July 2018, p1.

⁵⁵² Hon John Barilaro MP, Deputy Premier and Minister for Skills, *Letter to Chair*, 13 July 2018, p1.

⁵⁵³ Hon John Barilaro MP, Deputy Premier and Minister for Skills, *Attachment to Letter to Chair*, 13 July 2018, p1.

⁵⁵⁴ Hon John Barilaro MP, Deputy Premier and Minister for Skills, *Attachment to Letter to Chair*, 13 July 2018, p1.

⁵⁵⁵ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p9.

Housing, Transitional and Post-Release Support

Housing

Safe and secure housing is an essential element of youth diversion

Recommendation 46

That the NSW Government increase the supply of social housing for young people who are exiting the custody of Juvenile Justice NSW; and for people under the age of 18 years more generally.

- 4.194 During the inquiry, the Committee heard a number of serious concerns about a lack of social housing for young people in NSW, both while they are on bail and post-release from the custody of Juvenile Justice NSW; as well as more generally. While there are already some excellent Government initiatives to combat youth homelessness, data discussed below indicates that more should be done.
- 4.195 In Chapter Two, the Committee recommends increased bail support services for young people under 18 years, recognising that bail is an essential element of youth diversion. By the same token, housing is important to stop young people becoming involved in the criminal justice system in the first place, and post-release housing is essential to reduce the risk of re-offending. If young people do not have safe and secure housing they cannot connect effectively with services or employment and education, and are more likely to offend or re-offend.⁵⁵⁶ In some cases young people who do not feel safe and supported will re-offend for the express purpose of returning to a Juvenile Justice centre.⁵⁵⁷
- 4.196 Therefore, the Committee recommends that the NSW Government increase the supply of social housing for young people who are exiting the custody of Juvenile Justice NSW, and for people under the age of 18 years more generally. In so doing, it notes evidence discussed below that one way of increasing social housing for those exiting custody is to introduce more flexible models, for example, housing that doubles as bail accommodation and post-release accommodation.⁵⁵⁸
- 4.197 In its submission to the inquiry, the Mental Health Commission stated that despite a case manager working with a young person to plan for their re-integration into the community, 10.5 per cent of juvenile detainees who had previously been released from custody report difficulty finding accommodation within six months of being released.⁵⁵⁹
- 4.198 Australian Institute of Health and Welfare (AIHW) data provided to the Committee by FACS also indicates that in 2016-17 there was significant unmet need for crisis or emergency accommodation amongst people aged 10 to 19 years exiting custody. Specialist Homelessness Services (SHS) is the primary NSW

⁵⁵⁶ See for example the evidence of Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p60.

⁵⁵⁷ Discussions with Centre staff at Committee site visit to Riverina Juvenile Justice Centre, 9 November 2018; see also Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p42 indicating that some young people feel safer in Juvenile Justice centres than they do in the community.

⁵⁵⁸ See Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p52.

⁵⁵⁹ Submission 8, Mental Health Commission, p7.

Government response to homelessness.⁵⁶⁰ In 2016-17, 469 young people who exited custody applied for SHS assistance. 273 of these young people needed crisis or emergency accommodation.⁵⁶¹ The below table⁵⁶² provides an age breakdown of these young people:

Age Group	Needed crisis or emergency accommodation	Total exiting custodial arrangements
10-14 years	21	38
15-17 years	167	267
18-19 years	86	164
Total	274*	469

*The data provided in the table may not sum to the totals owing to the weighting of client records by the AIHW.

4.199 FACS further advised that of the 273 young people who needed crisis or emergency accommodation, 155 (57 per cent) had this accommodation provided by the SHS, 35 (13 per cent) were referred by SHS to receive this accommodation from other service providers, and 83 (30 per cent) had an unmet need for the accommodation, that is, the accommodation was not provided by or referred by the SHS.⁵⁶³ The below table⁵⁶⁴ provides another age breakdown for this information:

Age Group	Provided by SHS	Referred by SHS	Unmet Need	Total
10-14	9	3	8	21
15-17	109	15	43	167
18-19	37	16	32	86
Total	155	34	83	274

4.200 There also appear to be concerns about the suitability of some of the accommodation that does exist when young people exit the custody of Juvenile Justice NSW. As noted in Chapter Two, young people who need bail accommodation are sometimes bailed to a motel and the Committee asked FACS

⁵⁶⁰ NSW Department of Family and Community Services website: <https://www.facs.nsw.gov.au/providers/funded/programs/homelessness/specialist-services>, viewed 2 August 2018.

⁵⁶¹ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p3.

⁵⁶² NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p3.

⁵⁶³ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p3.

⁵⁶⁴ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p3.

if young people are ever housed in a motel following release from custody for want of an alternative. FACS confirmed that this does occur. Of the 469 young people who applied to the SHS for assistance in 2016-17 following release from custody, FACS advised that nine were staying in a hotel or motel when they first presented to the SHS.⁵⁶⁵

- 4.201 At the Committee's visit to Reiby Juvenile Justice Centre on 5 July 2018, Centre staff highlighted the need for coordination and cooperation between Juvenile Justice NSW, FACS and social housing providers; and the need for more social housing. They noted that finding accommodation for a young person exiting custody can be very challenging. In particular, the search for accommodation cannot start until soon before release, as services cannot hold places for a particular release date.
- 4.202 Mission Australia was another stakeholder that raised concerns about young people becoming homeless after leaving juvenile detention and it too stressed the need for interagency cooperation. Dr Tadros told the Committee:
- One of the biggest challenges we are witnessing is young people becoming homeless due to their brushes with the justice system. There must be clear government policies and cooperation across departments to prevent young people becoming homeless after leaving juvenile detention.⁵⁶⁶
- 4.203 Dr Tadros also raised concerns about rates of youth homelessness more generally:
- NSW recorded the most severe jump in homelessness from the 2011 Census and the 2016 Census, with 9,042 young people, 12 to 24, experiencing homelessness and nearly 11,000 people in other marginalised dwellings.⁵⁶⁷
- 4.204 Dr Tadros highlighted the *Everybody's Home* Campaign of which Mission Australia is a partner, which is calling for a number of measures to be taken around housing in Australia including 500,000 new low-cost rental homes and an increase to Commonwealth rental assistance.⁵⁶⁸
- 4.205 On the subject of the general rates of youth homelessness, FACS also provided data about the number of children and young people who are approved for priority housing in NSW but are on the NSW Housing Register, that is, the wait list for social housing. Again, these figures indicated a significant amount of unmet need. FACS advised that:
- As at 30 June 2017, there were 55,949 approved households on the NSW Housing Register.
 - Of these households, 4,496 were approved for priority housing.

⁵⁶⁵ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p4.

⁵⁶⁶ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p19.

⁵⁶⁷ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p21.

⁵⁶⁸ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p21.

- Within the 4,496 households approved for priority housing, there were 3,276 children and young people.⁵⁶⁹

4.206 In addition, Ms Acheson of Youth Action raised concerns about the general rates of youth homelessness in NSW:

In the past 10 years youth homelessness in NSW has increased by 92 per cent...What this means is that young people are not safe and do not have roofs over their heads. That creates a whole gamut of problems...There is a housing affordability crisis in Australia because of the high cost of rent...Rent in the past year has gone up 44 per cent...Services where we used to see maybe a disengagement with school or an issue with family, homelessness or risk of homelessness is automatically an issue that many services are facing. We hear it all the time from young people. The insecurity of their housing is so high with over cramped accommodation or couch surfing.⁵⁷⁰

4.207 Ms Irwin of the Law Society of NSW explained how crucial secure housing is to diversionary efforts. She stated that if young people do not have access to secure housing they cannot connect effectively with services or employment and education, and are more likely to offend or re-offend:

If we are to seriously talk about effective diversionary programs for young homeless people...we need to provide secure housing. You cannot even manage a Centrelink payment if you do not have secure housing because you are buying takeaway food all the time. You cannot manage a job; you cannot have a shower to go to a job. You cannot go to school because everyone has got lunch, or you are just so chaotic. It is a real problem. And that is why so many people who are homeless are in the Juvenile Justice system.⁵⁷¹

4.208 During the Committee's site visit to Riverina Juvenile Justice Centre on 9 November 2017, Centre staff also told the Committee that where young people are not released into a safe environment following custody, which involves secure housing, they sometimes re-offend with the express purpose of returning to juvenile detention. At the Committee's hearing on 8 May 2018, Ms Hawyes of Juvenile Justice NSW confirmed that some young people feel safer in custody than in the community.⁵⁷²

4.209 As noted in Chapter Two, Mr Boulten SC of the Bar Association also suggested that one way of increasing social housing for young people exiting custody is to employ more flexible models of supported accommodation, for example, the New Zealand model where bail accommodation can double as post-release accommodation and can also be used for care in the community for young people at risk.⁵⁷³

4.210 The Committee was pleased to hear of the work the Government currently has underway to address youth homelessness, noting the following evidence from Mr O'Reilly of FACS:

⁵⁶⁹ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p4.

⁵⁷⁰ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p17.

⁵⁷¹ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p60.

⁵⁷² Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p42.

⁵⁷³ Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p52.

Work is underway to strengthen social housing communities through the Future Directions reform. The universal and targeted youth services that FACS is involved in and funds – for example the Foyer 51 project – supports young people in their transition to independence. It is a purpose-built, foyer-style accommodation for out-of-homecare leavers who are ready to engage in education and training and employment. In the current financial year budget the NSW Government is investing in a range of youth homelessness services, including \$12 million for the Premier's Youth Initiative; \$9.9 million for the Homelessness Youth Assistance Program; \$48 million for specialist youth homelessness services and \$4 million for Rent Choice Youth...[T]he 2017-18 budget included a record \$1.1 billion to support people experiencing homelessness and improve services for social housing.⁵⁷⁴

Young peoples' awareness about youth homelessness services must be maximised

Finding 12

The NSW Government should review its information strategy for young people at risk of homelessness on an ongoing basis to maximise their awareness of available youth homelessness services and other supports.

- 4.211 Having regard to the importance of safe and secure housing to youth diversionary efforts, the Committee also considers that young peoples' awareness about available youth homelessness services and other supports should be maximised. The Committee heard evidence, discussed below, that age is often a barrier to accessing services – young people may not know how to do so, what is available, or what they need.
- 4.212 The Committee therefore finds that the NSW Government should review its information strategy for young people at risk of homelessness on an ongoing basis to maximise their awareness of the available youth homelessness services and other supports. The Committee is also pleased to note that ACYP is developing OurLocal, a web portal to provide children and young people in NSW with tailored information about the facilities, activities and services in their community.⁵⁷⁵
- 4.213 In its submission to the inquiry, ACYP stated that although housing support services are available, young people may not be aware that they exist. In its consultations with young people ACYP heard calls for information about the process of accessing homelessness support, from the initial stages of experiencing youth homelessness to eventually finding long-term accommodation. They also called for access to information about their rights; the numbers they could call for help; details about eligibility criteria for services; and information to help them confirm that services are safe and welcoming for young people.⁵⁷⁶
- 4.214 When asked how and where this information should be provided, they called for a website that children, young people, schools and services can use and share. They also recommended posters at bus stops, railway stations and tunnels, radio

⁵⁷⁴ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p34.

⁵⁷⁵ Submission 20, Office of the Advocate for Children and Young People, p14.

⁵⁷⁶ Submission 20, Office of the Advocate for Children and Young People, p14.

and television advertisements from the perspective of a young person, and social media campaigns across Facebook, Instagram and YouTube.⁵⁷⁷

- 4.215 ACYP called for the NSW Government to develop an improved information strategy to ensure that children and young people know where to get help if they are at risk of homelessness.⁵⁷⁸
- 4.216 ACYP's evidence aligns with evidence from Ms Acheson of Youth Action discussed earlier in the Chapter that age is a significant barrier for many young people in accessing the support that they need – they may not have the skill set yet to access the services they need or to know what they need.⁵⁷⁹

Transitional and post-release support

There must be targeted planning, coordinated support and adequate services for young people leaving custody

- 4.217 As noted above, young people exiting custody need safe and secure accommodation but this is just one of the necessary elements to ensure successful re-integration into the community and reduce the risk of re-offending. Pre-release planning and post-release support also needs to focus holistically on areas such as access to employment, education, health services, drug and alcohol services and income support.
- 4.218 The NSW Government has a number of excellent initiatives, discussed below, to help young people transition out of custody and re-integrate into the community. These include 22 new Juvenile Justice caseworkers to focus on pre-release planning, and the Waratah Pre-release unit at Airds which provides a structured pre-release program to prepare detainees for their return to the community.
- 4.219 These types of programs should be encouraged and expanded wherever possible because they address young people's underlying needs in an individualised, holistic fashion, linking them with a range of supports before they leave custody. Importantly, detainees receive coordinated service, with agencies and community groups working in partnership to deliver the varying supports that are needed. This gives the young people the best chance of successfully re-integrating into the community.
- 4.220 There must also be sufficient services once a young person exits custody and the Committee notes its earlier recommendations for increased funding for drug and alcohol services, mental health services and social housing.
- 4.221 The Committee also notes that some young people come from environments that may contribute to their offending, and for this and other reasons they do not wish to return to those environments upon exiting custody. In this area, the Committee commends the work of Juvenile Justice NSW and NGOs participating in the Joint Support program, discussed below, who have assisted young people to relocate upon release from custody.

⁵⁷⁷ Submission 20, Office of the Advocate for Children and Young People, p14.

⁵⁷⁸ Submission 20, Office of the Advocate for Children and Young People, p14.

⁵⁷⁹ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p18.

- 4.222 In its submission to the inquiry, Mission Australia explained the sort of holistic support that is necessary to prevent re-offending post release:
- Community reintegration is...essential for...young people released from detention. Preparation needs to happen prior to release and accommodation is a key support to prevent exits into homelessness. Employment supports and working with the family are also critical to addressing the intersecting and compounding issues leading to detention...Effective post-release supports can substantially reduce the risk of reoffending as well as improve the outcomes for the person themselves.⁵⁸⁰
- 4.223 Similarly, the Mental Health Commission of NSW told the Committee that services providing transitional support to young people leaving custody must be able to provide holistic support that covers a number of areas, must be longer term, and must not focus solely on offending behaviour:
- Many transitional support services are short-term and only provide support in relation to factors considered to be directly related to a person's offending. Focusing solely on offending behaviour does not assist young people with relevant impairments to establish an identity outside...the criminal justice system...Transitional support providers must have a good understanding of mental health, disability, substance abuse and trauma, and must have the skills and connections to assist people with the practical issues they face on release, such as complying with parole orders, securing housing and gaining employment.⁵⁸¹
- 4.224 The Mental Health Commissioner expanded on this at the Committee's hearing on 8 May 2018, stating that to successfully re-integrate a young person into the community their "whole of life network" must be considered:
- ...when young people are transferred back into the community...in one sense their journey just starts again. If we want to reduce reoffending then we have to understand their whole of life network and the supports to move them away from criminogenic behaviour. This is about engaging them back with local networks – football, sport – about keeping them in school and also about supporting their parents...[B]y...looking at all those aspects of that young person you are giving them a leg-up into employment...You have to be connected to community, education, vocational education and employment and that does not happen in four weeks after you are back in the community; that is a longer-term issue.⁵⁸²
- 4.225 NCOSS also told the Committee that young people exiting custody need the right levels of support to decrease the risk they will re-offend. NCOSS called for Juvenile Justice NSW to develop and expand post-release transitional services.⁵⁸³
- 4.226 During its site visits to Riverina, Orana and Reiby Juvenile Justice centres for the inquiry, staff and detainees also told the Committee that sometimes returning to the environment in which they offended can increase the risk a young person will re-offend on release from custody. Consistent with the evidence discussed above about some young people feeling safer in custody than in the community, Ms Maher of Legal Aid NSW said Legal Aid often has young clients who want to stay

⁵⁸⁰ Submission 12, Mission Australia, pp15-16.

⁵⁸¹ Submission 8, Mental Health Commission of NSW, p7.

⁵⁸² Ms Catherine Lourey, *Transcript of Evidence*, 8 May 2018, p21.

⁵⁸³ Submission 16, NSW Council of Social Service, p2.

in custody because the supports provided are superior to those that will be available in the community to which they will return:

Juvenile Justice do a really good job...[W]e regularly have children who will say, "I want to stay in until the end of the year because if I stay in here I can finish my year 10 but I know if I go home I won't be able to finish it"...It is unfortunate that we have young people who want to stay in custody...I do not know what the answer to that is except to try and provide education and support in a way outside.⁵⁸⁴

4.227 The Government provides a number of transitional and post-release support services for young people exiting custody to reduce the risk of re-offending. In its submission to the inquiry, it advised that 22 new caseworkers had started work in NSW Juvenile Justice centres and that six of these positions are Aboriginal-identified. These case workers focus on pre-release planning for detainees "focussing on stable housing, education and employment, and access to health services on return to the community".⁵⁸⁵ To achieve these objectives, they work in partnership with other agencies including the Departments of Education, Health, FACS and Police, with support from community organisations, thereby providing a coordinated service.⁵⁸⁶

4.228 Ms Hawyes provided further detail about the caseworkers at the Committee's hearing on 8 May 2018:

One of the really concrete things we did last year that I am incredibly proud of is we introduced caseworker roles into custody, one per unit, so that essentially from the moment the young person walks through the door...we are planning for them leaving...successfully – as in leaving less likely to re-offend...What that means in real life is making sure that upon exit the detainee, the young person going back to the community, has a place to live that we think will be secure and stable, is supported to re-engage in school or assisted to find a job, has appointments made with medical professionals – those kind of things. Sometimes it is about social connection too, connecting a person with a club or an interest so that instead of hanging out with negative peers they find some more positive peers.⁵⁸⁷

4.229 Similarly, next door to Reiby Juvenile Justice Centre is the Waratah Pre-Release Unit, which the Committee toured on 5 July. This has capacity for 10 young people at a time, providing a structured program, that aims to prepare young people for their return to the community. The Committee also spoke with one young man who was doing the Waratah program who indicated that it set him up with the life skills he needed upon exiting custody (such as cooking and doing laundry) and the opportunity to participate in work release and line up a job for when he exits custody.

4.230 The Committee understands that the Waratah Pre-Release Unit is available to male and female detainees and during its site visits the Committee also met a young woman who will be referred to as "Kelly" who emphasised detainees should have access to this valuable initiative regardless of gender. Kelly also

⁵⁸⁴ Ms Debra Maher, Legal Aid NSW, *Transcript of Evidence*, 30 April 2018, p16.

⁵⁸⁵ Submission 27, NSW Government, p31.

⁵⁸⁶ Submission 27, NSW Government, p33.

⁵⁸⁷ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p45.

talked about the need for the support that she receives upon exiting custody to be coordinated between agencies and planned, and her case study appears later in the Chapter.

- 4.231 This aligns with the evidence of Government witnesses who stressed the need for cooperation and coordination between Juvenile Justice NSW and social services to successfully transition a young person out of custody, re-connect them with the mainstream and make sure that connection is stable.⁵⁸⁸ For example, Mr O'Reilly of FACS emphasised the importance of a quality case plan being drawn up by Juvenile Justice NSW whilst a young person is in custody, that then needs to be followed up and supported by other services on return to the community.⁵⁸⁹
- 4.232 On the subject of other transitional and post-release support services, the Committee also notes the various available services discussed earlier in the Chapter that assist young people with mental health and drug and alcohol issues upon release from custody, including the Rural Residential Adolescent and Other Drugs Rehabilitation Program, and the Community Integration Team.
- 4.233 In addition, on the subject of young people sometimes wanting to avoid returning to the environment in which they offended, under the Joint Support Program discussed in Chapter One, Juvenile Justice NSW funds NGOs to deliver a variety of services one of which is mentoring for young people under the supervision of Juvenile Justice within the community who have been assessed as having a medium to high risk of re-offending.
- 4.234 Ms Hawyes indicated that Juvenile Justice NSW has occasionally assisted a young person to relocate to a new area and adjust to independent living with a mentor. Ms Hawyes told the Committee:
- ...it is true that it is a high risk time for young people to come out of custody where there has been structure, support, activities to go back home and potentially back to peer networks that are less than ideal...[O]ur community-based workers recognise that and focus a lot on exit planning to help young people if they are going home to make sustainable changes so they do not end up coming back. It is a challenge. We deal with a lot of kids for whom part of the issue is the environment they are from...We do also relocate some young people where they want to be relocated. I know of more than one occasion where we have supported a young person to settle in a new town, adjust to independent living and provided them with a mentor to help them.⁵⁹⁰
- 4.235 On one of its site visits, the Committee had the opportunity to meet with a young man who had relocated upon exiting custody with the help of a mentor from an NGO under the Joint Support Program funded by Juvenile Justice NSW.⁵⁹¹

⁵⁸⁸ See Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p45; and Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p36.

⁵⁸⁹ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p36.

⁵⁹⁰ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p45.

⁵⁹¹ See Juvenile Justice NSW website, http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/funded-services/joint_support_program.aspx, viewed 25 June 2018, for further information about the Joint Support Program.

- 4.236 The young man was now living successfully within the community to which he had relocated, having obtained educational and vocational qualifications, stable accommodation and stable employment. He spoke of the valuable support provided by his mentor in showing him around the new locality, taking him to movies and transporting him to appointments so that he could be linked up with the services he needed. The Committee was very impressed with the success and resilience of the young man and the excellent, sustained support provided by his mentor to help him achieve this success.

Young people must have access to transport if they are to link to services upon release from custody

Recommendation 47

That the NSW Government consider providing a free Opal Card to young people for the six months after they exit the custody of Juvenile Justice NSW to assist them to link up with services and re-establish their lives.

Recommendation 48

That NSW transit officers be given the power to issue warnings and cautions under the *Young Offenders Act 1997*.

Recommendation 49

That NSW transit officers be given thorough training in relation to the *Young Offenders Act 1997* and the Protocol for Homeless People in Public Places.

- 4.237 During its site visits to Juvenile Justice centres for the inquiry, the Committee heard from detainees and staff that access to transport is essential upon release from custody so that young people can link up with the necessary services to re-establish their lives including housing, health, employment, education and income support services. This can sometimes present problems if they do not have the money for a ticket, leading to fines that they cannot pay.
- 4.238 In its submission to the inquiry, ACYP raised a similar issue about homeless young people being fined for sleeping on trains, buses and station platforms and even being arrested as a result of ensuing altercations with transit officers and police.⁵⁹²
- 4.239 Young people must have access to transport to enable them to link up with the services they need to establish stable lives post-custody, and to give them the best chance to avoid re-offending. In addition, young people should not be sanctioned for sleeping on a bus or train when they are homeless, which may present a safer option.
- 4.240 The NSW Government should consider offering free Opal cards to young people for the six months after they exit custody to assist them to link with services and re-establish their lives.

⁵⁹² Submission 20, Office of the Advocate for Children and Young People, p9.

- 4.241 Similarly, to reduce the number of fines, transit officers should have the power to issue warnings and cautions under the *Young Offenders Act 1997*, and they should be given thorough training in relation to that Act and the Protocol for Homeless People in Public Places.⁵⁹³
- 4.242 At the Committee's hearing on 10 May 2018, Ms Irwin of the Law Society of NSW explained the scenario that young people can be confronted with:
- We have a huge fine practice at the Shopfront Youth Legal Centre because we are dealing with fines that young people have started sometimes when they were as young as 13. They are fare evasion fines for sleeping on trains because trains are one of the safest places to be if you have to sleep rough. It is quite a process to get those fines waived or written off or for a young person to be placed on a work and development order. You can see why somebody who is homeless, who has no access to income because of their age then gets fined and ends up having to work it off. There is a sense of injustice and there are problems in respect of relations with transit officers and police that spiral into why these young people are turning up in the criminal justice system.⁵⁹⁴
- 4.243 Ms Irwin called for transit officers to be trained in relation to the *Young Offenders Act 1997*, and to have the power to warn or caution a young person under that Act instead of issuing a fine.⁵⁹⁵ It would appear that transit officers do not currently have that power under the Act.⁵⁹⁶ In similar vein, ACYP called for more frequent use of warnings and cautions, and for the implementation of the Protocol for Homeless People in Public Places.⁵⁹⁷
- 4.244 Ms Acheson of Youth Action also stressed the need for communication, instead of punitive responses:
- Often it is just about communication...The transit people should ask, "Why can't you afford it? Why didn't you get a ticket today?" rather than charging them. They could also ask, "Do you have enough money to buy a ticket, or did you purposely try to rort the system because you wanted to? Is it a choice or do you actually not have enough money? Are you going to try to get a job or find a house?" It would make a huge difference if we started asking young people questions rather than charging them immediately because they broke the law.⁵⁹⁸

Case Study – Kelly – Transitional and Post Release Support

Kelly* is a young woman who is preparing for her release back into the community, after a significant period in custody. Kelly told the Committee that to successfully transition back into the

⁵⁹³ See Protocol for Homeless People in Public Places, Housing NSW website: https://www.housing.nsw.gov.au/_data/assets/pdf_file/0003/326046/ImplementationGuidelines.pdf, viewed 6 August 2018.

⁵⁹⁴ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p60.

⁵⁹⁵ Law Society of NSW, *Answers to Questions Taken on Notice*, 10 May 2018, p2.

⁵⁹⁶ See definition of 'investigating official' *Young Offenders Act 1997*, s4. Under sections 15 and 21 an 'investigating official' can issue a warning or caution, respectively.

⁵⁹⁷ Submission 20, Law Society of NSW, p9; see also Protocol for Homeless People in Public Places, Housing NSW website: https://www.housing.nsw.gov.au/_data/assets/pdf_file/0003/326046/ImplementationGuidelines.pdf, viewed 6 August 2018.

⁵⁹⁸ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p18.

community, she needs to be equipped with the necessary skills and supports, both before she leaves custody and when she is back in the community.

Kelly was very clear about the need for a pre-release unit to be made available both to young men and young women who are getting ready to transition from custody. Pre-release programs provide supports like work skills programs and work release as well as secured work placements, once a young person exits custody. They also assist young people to develop the everyday life skills they will need such as cooking and doing the laundry and to start interacting with the wider community both in a recreational sense and through volunteering their time to worthy causes. Kelly indicated she would feel more confident re-adjusting to the community and living an independent life if she had access to a structured support process like this before she leaves custody.

Kelly was also clear about the need for psychological support to adequately prepare her to leave custody and to assist her once she returns to the community. It is clear that Kelly's transition plan will need to address this area so that she can continue progressing. In addition, Kelly raised concerns over the intermittent contact that she has had with one of her caseworkers whilst in custody. Kelly indicated more regular contact is necessary to facilitate the ongoing discussions that will help her successfully transition back into the community.

Kelly spoke very clearly and eloquently about the support services she will need upon exiting custody, and how they will need to be coordinated and planned. Kelly told the Committee about past experiences she had had with various agencies and programs that did not communicate effectively with one another. This resulted in Kelly missing out on the support and help she needed. To avoid this happening again, Kelly identified that she will need a comprehensive transition plan that incorporates all areas of her life, and for services to operate in an integrated manner.

In particular, Kelly raised the idea of a "one-stop-shop". Like many young people exiting custody, Kelly will need assistance in a number of areas, for example, income support, health, transport and housing. Being able to organise these supports in the one place at the one time would not only be more convenient but would enable the various services to communicate more effectively with each other to provide wraparound support in an interconnected way. Any assistance with travel concessions would also be of great use to Kelly, allowing her to connect with the programs and supports that she needs.

* Not her real name

Children's Services

Early intervention is a key factor in diverting young people from the criminal justice system

Finding 13

Early intervention is a key factor in diverting young people from the criminal justice system.

4.245 Throughout its inquiry the Committee heard that early intervention is a key factor in diverting young people from the criminal justice system. Stakeholders

indicated that while initiatives to divert young people after they have committed offences are important, the ideal situation is to prevent those offences happening in the first place.

4.246 The Committee agrees that early intervention is key and that, wherever possible, funds should be used to address the underlying causes of offending before it occurs, rather than reacting afterwards.

4.247 For this reason, the Committee has made findings and recommendations throughout the report in support of an early intervention approach, including a recommendation for more health screening in schools; a finding that the NSW Government should consider supporting further research into the potential of a justice re-investment approach for NSW; and a finding that the Government should increase the number of programs and services in regional areas that focus on early intervention. It has also recommended increased funding for youth homelessness services, mental health, and drug and alcohol services, measures to stop young people disengaging from school, and training and staff within schools to identify areas of concern.

4.248 The Committee is pleased to note that early intervention is a priority for the NSW Government, which has a number of initiatives to support vulnerable children and their families and address risk factors that may otherwise escalate and lead to offending. These initiatives include parenting programs; evidence-based funding for early childhood learning; support for those in out-of-homecare and transitioning out of it; the Got It! program to address conduct problems in primary school children aged 5-8 years; and the Family Investment trial taking place in Dubbo and Kempsey that works with at-risk families to address their complex needs. These are discussed further below.

4.249 In her evidence to the Committee, Ms Acheson of Youth Action emphasised that early intervention programs, aimed at young people before they have offended, represent the best investment, because they are the most likely to be successful. Providing support for the Justice re-investment approach discussed in Chapter Three, she stated:

It is useful in that it recognises the fact that when you put a young person into the [criminal justice] system, a bad outcome is almost guaranteed, no matter what you do. It is not diversionary. Once they get to the point where there is contact the statistics are not great...By trying to avoid that engagement, or consistent engagement, with the justice system through very early intervention – getting involved with a young person as soon as you see risk factors and putting supports in place – is when you see great outcomes.⁵⁹⁹

4.250 Youth Off The Streets was another strong advocate of the early intervention approach. It echoed Ms Acheson's concerns that it can be harder to divert a young person from the criminal justice system once he or she has had contact with it:

We believe that adoption of early intervention strategies will decrease the impact of factors that lead to youth crime, this early intervention being prior to entry into the

⁵⁹⁹ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p14.

Juvenile Justice system...[P]atterns of behaviour and exposure to criminality are generally entrenched by the time a young person is apprehended or incarcerated for criminal offences. The fundamental influences leading to incarceration include but are not limited to family criminal history, intergenerational disadvantage, family and domestic violence, limited education, homelessness, drug and alcohol abuse, mental health...To address these challenges we recommend the Government adopt early intervention strategies prior to the Juvenile Justice process starting.⁶⁰⁰

- 4.251 In particular, Youth Off The Streets emphasised the importance of positive parenting programs to divert young people from criminal behaviour:

Young people we work with seek our help as they most likely are in a family situation hindering their personal development that they don't have the skills to cope with. This is often the result of parents not possessing basic child-rearing skills or having challenges of their own such as limited education, mental health issues or drug abuse. We believe that many young people could be diverted from the criminal justice system if government placed greater emphasis on educating parents of at-risk children and directed resources accordingly.⁶⁰¹

- 4.252 The Committee also heard that providing appropriate levels of care to out-of-homecare clients is an important early intervention strategy. In its submission to the inquiry, Mission Australia highlighted a Monash University study indicating that the level of support available to young people during and in transition from state care was an important factor contributing to the risk of offending. Mission Australia stated that "Access to specialised trauma informed support services while in state care, and adequate transitioning support upon exiting state care is necessary to support young people and reduce the risk of reoffending".⁶⁰²

- 4.253 NCOSS also stated that early childhood education and care can play a crucial role in early intervention, ensuring that vulnerable children and their families are connected and supported from the beginning. NCOSS provided some examples of pre-schools providing wraparound support to vulnerable families:

We know there are many strong examples of early childhood education and care services acting as key hubs and 'soft entry points' that engage families that would otherwise be missed in the system, and link them to a variety of early childhood support, community and health services. This is certainly the case with preschools such as Jarjum Preschool (Lismore), Wee Waa and District Preschool, Condobolin Preschool and Coraki Preschool. These centres are deeply connected and respected in the community. They provide wraparound support for vulnerable families, including food, transport and health screening programs, and connect families to the services they need.⁶⁰³

- 4.254 NCOSS called for the establishment of a \$250 million Early Childhood Education Investment Fund to complement existing funding measures and ensure

⁶⁰⁰ Mr Evan Walsh, *Transcript of Evidence*, 10 May 2018, pp23-24.

⁶⁰¹ Submission 11, Youth Off The Streets, p4.

⁶⁰² Submission 12, Mission Australia, p12.

⁶⁰³ NSW Council of Social Service, *Answers to Questions Taken on Notice*, 30 April 2018, p1.

vulnerable children have access to the full benefits of an early childhood education.⁶⁰⁴

4.255 Evidence provided by the NSW Government indicates that early intervention is a strong priority. Mr O'Reilly of FACS told the Committee:

The literature on prevention and early intervention is very clear: the right supports early in life and at critical points throughout childhood will improve outcomes for vulnerable children, young people and their families. Effective targeted early intervention has the power to reduce the escalation of risk factors that a child or young person may experience, including disengagement from school, poor health and mental health, dependency on welfare, substance misuse and, of course, involvement with the criminal justice system.⁶⁰⁵

4.256 Mr O'Reilly further indicated that FACS is reforming its targeted earlier intervention programs under the TEIP Reform. As detailed in Chapter One, programs are being reformed to create a service system that is:

- Flexible – focussing on client needs rather than program guidelines
- Locally responsive – working to the strengths, assets and needs of local communities
- Evidence-based – grounded in what works, and building on that knowledge
- Adaptive – continuously improving and responding to change
- Client-centred – working with people and families to address their needs.⁶⁰⁶

4.257 Mr O'Reilly told the Committee:

The vision for the TEIP is that the needs of families, children and young people are met early to prevent the escalation of risks; families are able to access support earlier in the lives of their children and young people; risk factors that lead to child abuse, neglect and domestic and family violence are addressed early; and Aboriginal children, young people, families and communities have access to timely, effective, accessible and culturally safe support and services.⁶⁰⁷

4.258 Similarly, as part of the Their Futures Matter reform, the Government has committed funding over four years to July 2020 to provide 900 places each year for intensive family preservation and restoration services that are aimed at keeping families together and out of the care system. Mr O'Reilly told the Committee that under the reform, children at risk of entering the out-of-home care system receive a coordinated package of supports based on their needs and that models used under this reform “have a proven record in addressing

⁶⁰⁴ NSW Council of Social Service, *Answers to Questions Taken on Notice*, 30 April 2018, p2.

⁶⁰⁵ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p33.

⁶⁰⁶ NSW Department of Family and Community Services website, <https://www.facs.nsw.gov.au/about/reforms/children-families/TEI>, viewed 25 June 2018.

⁶⁰⁷ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p33.

underlying trauma that may result in drug and alcohol abuse, mental illness et cetera”.⁶⁰⁸

- 4.259 On the subject of parenting programs, Mr O’Reilly indicated that programs under the Their Futures Matter reform are there to strengthen parenting by working intensively with families. He also indicated FACS funds neighbourhood centres so that parents can “get together and learn from each other in a facilitated way”.⁶⁰⁹ In addition, in relation to early childhood learning, Mr O’Reilly indicated that FACS considers how funded services can make a difference to wellbeing outcomes and that it shares evidence of what works with those services, asking them to shift their service to respond to that evidence if necessary.⁶¹⁰
- 4.260 For those children and young people in out-of-home care, the Joint Protocol to reduce the contact of young people in residential out-of-home care with the criminal justice system was signed and endorsed in August 2016. It aims to minimise police intervention in behaviour by children in out-of-home care that would normally be dealt with by families within the home, and is discussed in detail in Chapter Three.⁶¹¹ Similarly, in recognition of the trauma suffered by this cohort, FACS has advised that it is replacing residential care with a new Intensive Therapeutic Care service system “where providers must focus on the child’s recovery from trauma and abuse and support them to transition to a safe, permanent and caring environment”.⁶¹²
- 4.261 FACS also supports young people to transition from out-of-home care to independent living. “Leaving care planning” begins at 15 years, initially focussing on the development of independent living skills such as obtaining a drivers licence and knowledge of how to access support. As the young person nears 18 years, concrete action is taken regarding accommodation, health, education, employment, income support and legal matters. Where possible, access to individuals or agencies to provide support or services after leaving care is confirmed.⁶¹³
- 4.262 Another important early intervention program is NSW Health’s Got It! which is also discussed in Chapter One and aimed at children in kindergarten to year 2, (aged 5-8 years), who display emerging conduct problems such as defiant, aggressive and disruptive behaviour. NSW Health advises that the targeted clinical program is delivered in schools at a point in children’s development where intervention is likely to be effective.⁶¹⁴
- 4.263 Similarly, as mentioned more than once throughout the report, a two year pilot of the Family Investment Model is currently running in Dubbo and Kempsey. It

⁶⁰⁸ Mr Paul O’Reilly, *Transcript of Evidence*, 10 May 2018, p34.

⁶⁰⁹ Mr Paul O’Reilly, *Transcript of Evidence*, 10 May 2018, p35.

⁶¹⁰ Mr Paul O’Reilly, *Transcript of Evidence*, 10 May 2018, p35.

⁶¹¹ See Submission 20, Office of the Advocate for Children and Young People, p17; and NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p1.

⁶¹² NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p8.

⁶¹³ NSW Department of Family and Community Services, *Transcript of Evidence*, 10 May 2018, p9.

⁶¹⁴ Mental Health Branch, NSW Health, ‘Getting On Track In Time – Got It! Program Delivery Implementation Guidelines’ February 2017, p5, NSW Health website, <http://www.health.nsw.gov.au/mentalhealth/pages/got-it-guidelines.aspx>, viewed 25 June 2018.

aims to address entrenched intergenerational disadvantage and the underlying causes of offending by co-locating a multi-government agency team to work with at-risk families.

- 4.264 The multi-government agency team, led by the Department of Justice NSW, has representatives from each of the key government agencies including Juvenile Justice NSW, Corrective Services NSW, the NSW Police Force, FACS, the Department of Education and NSW Health.
- 4.265 The Family Investment Model aims to address complex and longstanding needs that have led to multiple contacts with government agencies, particularly Justice agencies.⁶¹⁵

Finding 14

The NSW Department of Family and Community Services should consider whether mandatory reporters need further training to identify the early warning signs that parents may need support before they reach the stage of child abuse or neglect.

- 4.266 Youth Off The Streets has also noted that while mandatory reporting guidelines currently require people employed in a range of services to report suspected child abuse and neglect to Government authorities, these mandatory reporters should be upskilled and trained as “early identifiers” to recognise the early warning signs that parents need help to fulfil their responsibilities before it reaches the stage of abuse or neglect.⁶¹⁶
- 4.267 When asked for comment about mandatory reporters being trained as “early identifiers”, FACS responded:
- Mandatory reporters including teachers, health professionals, child care workers and police generally have the capacity to identify the risk factors associated with increased risk of harm to children and young people...If the concern [about a child or young person] doesn't reach the threshold for contacting the Helpline, mandatory reporters can consult their manager or professional network. They can also seek assistance from their family referral service. Mandatory reporters from NSW Health, NSW Police and the Department of Education can also contact their Child Wellbeing Unit for advice.⁶¹⁷
- 4.268 FACS further advised that the Child Wellbeing Units can help to advise about and identify services and interventions for children and young people where a statutory intervention is not warranted.⁶¹⁸

⁶¹⁵ See submission 27, NSW Government, p41; and Hon Troy Grant MP, Minister for Police and Minister for Emergency Services, *Legislative Assembly Debates*, 21 November 2017, NSW Parliament website, <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-99960>, viewed 21 June 2018. See also Mr Paul McKnight, *Transcript of Evidence*, 10 May 2018, p43.

⁶¹⁶ Submission 11, Youth Off The Streets, p6; see also Mr Evan Walsh, *Transcript of Evidence*, 10 May 2018, p23.

⁶¹⁷ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p7.

⁶¹⁸ NSW Department of Family and Community Services, *Answers to Questions Taken on Notice*, 10 May 2018, p7.

- 4.269 The Committee accepts FAC's advice that mandatory reporters can generally identify where a child is at increased risk of harm. However, in line with an early intervention focus, the Committee finds that FACS should consider whether training for mandatory reporters needs any further refinement to assist them to spot these early warning signs and take appropriate action.

Chapter Five – Aboriginal Over-representation in the Juvenile Justice System

- 5.1 In this Chapter the Committee examines the over-representation of Aboriginal young people in the Juvenile Justice system and the current programs and strategies that are in place to address this. The Committee considers the effectiveness of these programs, making recommendations for improvement where necessary.

Over-representation of Aboriginal young people in the Juvenile Justice system

Aboriginal young people are over-represented in the Juvenile Justice system

Finding 15

Aboriginal young people are over-represented in the Juvenile Justice system.

- 5.2 During its inquiry, the Committee heard that Aboriginal young people are over-represented in the Juvenile Justice system. According to BOCSAR, as of March 2018, Aboriginal young people made up around 50.1 per cent of the juvenile prison population⁶¹⁹ despite making up only about 5.3 per cent of the youth population in NSW.⁶²⁰
- 5.3 The Australian Institute of Health and Welfare estimated that in 2016/17, the incarceration rate for Aboriginal young people was around 17 times higher than that for non-Aboriginal young people.⁶²¹ This breaks down to roughly 154 in every 10,000 Aboriginal young people being subject to a supervision order compared to 9 in 10,000 for non-Aboriginal young people.⁶²²
- 5.4 As touched upon in Chapter Two, Aboriginal young people also tend to come into contact with the Juvenile Justice system at a younger age than non-Aboriginal young people. On average, during 2016/17, around 49 per cent of all Aboriginal young people in custody were aged between 10-15 years. For non-Aboriginal young people, this number was only 33 per cent.⁶²³

⁶¹⁹ NSW Bureau of Crime Statistics and Research, *NSW Custody Statistics: Quarterly Update – March 2018*, p6, available at: http://www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Mar2018.pdf, viewed 6 August 2018.

⁶²⁰ Submission 27, NSW Government, p22.

⁶²¹ Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, p8, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018.

⁶²² Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, p8 – Table 3.1, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018.

⁶²³ Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, p8 – Table 3.1, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018.

- 5.5 This is significant, because children incarcerated at a younger age are more likely to become entrenched in the criminal justice system. Data from the Australian Institute of Health and Welfare shows that "children first supervised between the ages of 10-14 are significantly more likely to experience all types of supervision - and particularly sentenced supervision - in their later teens when compared with children first supervised at 15-17 years".⁶²⁴
- 5.6 Aboriginal young people in custody are also far more likely to be from non-metropolitan areas than non-Aboriginal young people. For example, in 2016/17, 24 per cent of Aboriginal young people in custody had lived in outer regional areas, compared to 7 per cent of non-Aboriginal young people.⁶²⁵ Similarly, 17 per cent of Aboriginal young people in custody had lived in remote or very remote areas, compared to only 1 per cent of non-Aboriginal young people.⁶²⁶
- 5.7 While these statistics reflect the general geographical distribution of the broader Aboriginal population, they have implications for access to diversionary programs, specialist magistrates and support services. As detailed in Chapter Three, young people who have committed an offence in regional, rural or remote areas are less likely to be diverted from the criminal justice system than those who have committed an offence in a metropolitan area. As also discussed in that Chapter, rates of diversion are lower in areas of the State not covered by specialist children's magistrates; and there is a scarcity of diversionary programs in many regional, rural and remote areas.
- 5.8 The Committee notes that overall numbers for Aboriginal and non-Aboriginal young people in custody have fallen since 2012/13. However, the fall in numbers of non-Aboriginal young people in custody are greater than those for Aboriginal young people. This has resulted in an increase in the level of Aboriginal over-representation, despite a decrease in overall numbers.⁶²⁷
- 5.9 Aboriginal young people also have higher rates of recidivism once they exit detention. A study undertaken in 2005 determined that "Aboriginal males and females were far more likely to be reconvicted than non-Aboriginal males and females following their first formal contact with the criminal justice system".⁶²⁸ For example, this study found that 84 per cent of Aboriginal young people were

⁶²⁴ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p6; see also Submission 19, Children's Court of NSW, p13 which suggests that where children come before the courts at an early age it increases the risk that they will become desensitised to the court process.

⁶²⁵ Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, p10 – Table 3.1, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018.

⁶²⁶ Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, p10 – Table 3.1, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018.

⁶²⁷ Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, pV– Table 3.1, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018.

⁶²⁸ Submission 27, NSW Government, p22.

re-convicted within 10 years, compared with 56 per cent of non-Aboriginal young people.⁶²⁹

There is a link between intergenerational trauma and disadvantage and Aboriginal over-representation in the Juvenile Justice System

- 5.10 During the inquiry, the Committee heard of a strong link between intergenerational trauma and disadvantage, and the over-representation of Aboriginal young people in the Juvenile Justice system. Ms Hawyees of Juvenile Justice NSW told the Committee: "We are dealing with the impacts of dispossession in our community and in Aboriginal communities. There is no one quick solution".⁶³⁰
- 5.11 Similarly, Mr McKnight of the Department of Justice stated: "The problem is huge and often we are responding to a situation of historical disadvantage and cycles of disadvantage".⁶³¹
- 5.12 Some stakeholders also indicated that intergenerational disadvantage in some Aboriginal communities has reached a point where some, particularly young men, may view involvement with the Juvenile Justice system as a rite of passage. For example, Youth Off The Streets told the Committee:
- A good example of this is the growing trend among young men in Aboriginal communities to view entry into the criminal justice system as a step towards manhood. In many communities, teenagers being incarcerated in Juvenile Justice facilities leads to a high degree of respect among peers. This often flows on to young men and boys committing crimes in the hope they will be apprehended and handed a custodial sentence.⁶³²
- 5.13 Similarly, Mission Australia stated:
- Some young people, particularly young Aboriginal men, view going into detention as a rite of passage, see detention as a safe place due to having high numbers of family and extended family in custody, or appreciate the structure and routine offered in custody.⁶³³
- 5.14 Mission Australia indicated that this highlights the need for community-based programs that support young people to form their personal and cultural identity in a more positive way.⁶³⁴
- 5.15 The Aboriginal Legal Service made similar comments in the context of "multi-generational distrust for government, particularly for police"⁶³⁵ amongst some Aboriginal people. Mr Michael Higgins, Regional Community Engagement

⁶²⁹ Payne, J. and Weatherburn, D. 'Juvenile Reoffending: a ten-year retrospective cohort analysis', *Australian Journal of Social Issues* Vol. 50, No.4, 2005, p356.

⁶³⁰ Ms Melanie Hawyees, *Transcript of Evidence*, 8 May 2018, p47.

⁶³¹ Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p47.

⁶³² Submission 11, Youth Off The Streets, p12.

⁶³³ Submission 12, Mission Australia, p18.

⁶³⁴ Submission 12, Mission Australia, p18.

⁶³⁵ Mr Michael Higgins, Regional Community Engagement Manager, Central and Southern Region, Aboriginal Legal Service (NSW/ACT), *Transcript of Evidence*, 30 April 2018, p46.

Manager, Central and Southern Region told the Committee: "It is generational—because of the over-representation of Aboriginal people in prison for many that life is very familiar, the story is very familiar".⁶³⁶

- 5.16 However, NCARA challenged the idea that some Aboriginal young people may see contact with the Juvenile Justice system as a rite of passage. While indicating that mistrust of police is an issue within Aboriginal communities, particularly amongst young people, Mr Jones of NCARA told the Committee that Aboriginal young people do not consider Juvenile Justice contact a rite of passage:

I have heard this over and over. I believe that is a cop-out from the agencies. You ask any young child if they want to go to gaol and they will tell you no. They do not even want to go to court. I think that is a cop-out from the agencies as their way of saying this is what they want. I think we need to be very careful about that rite of passage scenario. I have not heard it from the young kids, but I have heard it from the agencies.⁶³⁷

- 5.17 Aunty Jean Hands of NCARA elaborated on this: "There is always a fear, even going up those court steps: 'Am I going to go to gaol, mum?' 'Aunty, what is wrong?' They do not want to go to gaol".⁶³⁸

Aboriginal young people are over-represented in other related areas

- 5.18 Aboriginal young people are also over-represented in other related areas. For example, as detailed in Chapter Three Aboriginal young people are more likely to be suspended from school, a factor that has been linked to an increased risk of youth offending.⁶³⁹ Aboriginal young people are also over-represented in the care and protection system. Ms Irwin of the Law Society of NSW told the Committee:

There is over-representation of young Aboriginal people and Torres Strait Islander people in Juvenile Justice detention centres. There is over-representation of young Aboriginal and Torres Strait Islander people who fall away from the education system in terms of nonattendance, suspension and expulsion. There is over-representation of young Aboriginal people and Torres Strait Islander people in the child protection system, and we know from research that these are all linked. Young people who fall away from education and who are over-represented in the child protection system are the same young people who drift into the Juvenile Justice system.⁶⁴⁰

- 5.19 This highlights the need for a "multi-pronged approach" to addressing the over-representation of Aboriginal young people in the Juvenile Justice system.⁶⁴¹

⁶³⁶ Mr Michael Higgins, *Transcript of Evidence*, 30 April 2018, p46.

⁶³⁷ Mr Des Jones, *Transcript of Evidence*, 10 May 2018, p48.

⁶³⁸ Aunty Jean Hands, *Transcript of Evidence*, 10 May 2018, p48.

⁶³⁹ See NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p4; indicating that 28.6 per cent of the young people long suspended from NSW schools in 2017 were Aboriginal young people. This is despite the fact that only about 5.3 per cent of the overall youth population in NSW, see Submission 27, NSW Government, p22.

⁶⁴⁰ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p55.

⁶⁴¹ Ms Jane Irwin, *Transcript of Evidence*, 10 May 2018, p55.

Access to Diversionary Programs

Aboriginal young people are less likely to be diverted from the Juvenile Justice system than non-Aboriginal young people

5.20 During its inquiry, the Committee heard that Aboriginal young people are less likely to receive a diversionary option under the YOA than non-Aboriginal young people. For example, Legal Aid NSW stated:

Legal Aid NSW is of the view that the *Young Offenders Act 1997*... provides a good legislative framework for the diversion of young offenders in NSW. However, we are concerned that the Act's scope and implementation have hampered the full realisation of its objectives. This is most apparent with respect to young Indigenous people, who do not have the same access to diversion under the YOA as non-Indigenous young people, and remain over-represented in the criminal justice system.⁶⁴²

5.21 In similar vein, ACYP commented that Aboriginal young people do not have equal access to diversion and called for Police and the Department of Justice to research the factors that are contributing to this.⁶⁴³

5.22 Having noted these comments, the Committee requested data from BOCSAR about how frequently Aboriginal young people receive a warning, caution or referral to a youth justice conference under the YOA, compared with non-Aboriginal young people. BOCSAR provided the Committee with the following figures (and the data BOCSAR provided on this topic is produced in full at Appendix Eight):

Method of proceeding	2016		2017	
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous
Proceeded against to Court	3954 (63.2%)	6140 (22%)	4356 (64.5%)	6445 (25.5%)
Proceeded against other than to Court (including warnings, cautions, Youth Justice Conferencing and Infringement Notices)	2298 (36.8%)	21802 (78%)	2398 (35.5%)	18859 (74.5%)

5.23 The data indicates that most Aboriginal young people are proceeded against in court (63.2-64.5 per cent), rather than receiving a diversionary option, including a warning, a caution or a Youth Justice Conference (36.8-35.5 per cent). In contrast, most non-Aboriginal young people are proceeded against in a way that does not involve court (78-74.5 per cent).

5.24 While this data has not been broken down into type of offence and does not reflect prior cautions or court appearances, it does indicate that the statements

⁶⁴² Submission 14, Legal Aid NSW, p3.

⁶⁴³ Submission 20, Office of the Advocate for Children and Young People, p23.

made by Legal Aid and ACYP about inequality of access to diversionary options for Aboriginal young people have a basis in fact.

- 5.25 This is of particular concern given that one of the underlying principles of the YOA is that "the over representation of Aboriginal and Torres Strait Islander children in the criminal justice system should be addressed by the use of youth justice conferences, cautions and warnings".⁶⁴⁴ This highlights the need to understand the problem thoroughly so that it might be responded to effectively.

Diversion rates are lower in areas of the State not covered by specialist children's magistrates

- 5.26 As discussed in Chapter Three, 67 per cent of youth crime in NSW is dealt with by specialist children's magistrates while the other 33 per cent (most often in rural locations) is dealt with by generalist Local Court magistrates sitting in the children's jurisdiction.⁶⁴⁵ As is also discussed in that Chapter, some stakeholders indicated to the Committee that rates of diversion under the YOA may be lower in areas not covered by specialist children's magistrates.⁶⁴⁶
- 5.27 BOCSAR data set out in that Chapter also shows that the overwhelming majority of matters that were dismissed after a youth justice conference in 2016 and 2017 (73 per cent and 72.2 per cent respectively) were presided over by a specialist children's magistrate, lending significant weight to concerns that diversion rates may be lower in areas not covered by children's magistrates.
- 5.28 This finding is also significant for Aboriginal young people. As discussed earlier in the Chapter, Aboriginal young people who are involved in the Juvenile Justice system are far more likely than non-Aboriginal young people to be from non-metropolitan areas, where matters are less likely to be heard by a specialist magistrate.⁶⁴⁷

The Committee's recommendations would be likely to have a particularly significant impact on Aboriginal young people, if implemented

- 5.29 In what follows of the Chapter, the Committee makes recommendations aimed at reducing the over-representation of Aboriginal young people in the Juvenile Justice system. However, before doing so it is relevant to note that the generic recommendations made thus far in the report would be likely to assist to reduce Aboriginal over-representation in the Juvenile Justice system, if implemented.
- 5.30 This is particularly the case in respect of recommendations directed at improving diversion rates in regional, rural and remote NSW (where many Aboriginal young

⁶⁴⁴ *Young Offenders Act 1997*, s7(h).

⁶⁴⁵ See Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7; and Submission 19, President of the Children's Court of NSW, p8.

⁶⁴⁶ See Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, pp5-6; Submission 14, Legal Aid NSW, p10; and Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, pp45-46.

⁶⁴⁷ Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, p10 – Table 3.1, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018. For information on the coverage of Children's Courts and magistrates in NSW see Mr Paul McKnight, *Transcript of Evidence*, 8 May 2018, p49; see also Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7.

people live – see above). These include greater coverage of specialist children's magistrates across NSW; more community-based diversionary and early intervention programs in regional, rural and remote NSW; and measures to promote youth justice conferencing in regional, rural and remote areas.

- 5.31 It is also the case in respect of the Committee's recommendation that the NSW Government review whether the age of criminal responsibility in NSW should be increased. As discussed above, Aboriginal young people tend to come into contact with the Juvenile Justice system at a younger age than non-Aboriginal young people.⁶⁴⁸
- 5.32 The recommendation to increase access to the ACCT across the State would also be likely to have particular benefits for Aboriginal young people given data discussed in Chapter Four suggesting higher rates of mental health disorders amongst young Aboriginal offenders and lower rates of access to the ACCT based on the location of the courts in which they appeared.⁶⁴⁹ So would the recommendation for the NSW Department of Education to amend its suspension guidelines – as detailed in Chapter Four, Aboriginal young people are more likely to be suspended from school, a factor that has been linked to an increased risk of youth offending.⁶⁵⁰
- 5.33 In addition, further recommendations have been made earlier in the report that specifically relate to Aboriginal young people, including:
- a recommendation for more flexible bail residence requirements where appropriate, especially for Aboriginal young people;
 - a recommendation regarding funding for the Aboriginal Legal Service to provide further telephone advice to young Aboriginal people; and
 - a recommendation for the NSW Government to further consider whether pre-sentencing reports provided about young Aboriginal offenders should be required to contain more information about systemic and background factors that relate to the young person's Aboriginal community
 - a recommendation that the NSW Government review current diversionary programs and supports, in consultation with girls and young women to assess whether they are suitable; any areas for improvement; and where more

⁶⁴⁸ Australian Institute of Health and Welfare, *Youth Justice in Australia: 2016-17*, p8 – Table 3.1, available at: <https://www.aihw.gov.au/getmedia/19707990-1719-4600-8fce-f0af9d61331c/aihw-juv-116.pdf.aspx?inline=true>, viewed 6 August 2018.

⁶⁴⁹ Justice Health and Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, p65, available at: <http://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>, viewed 24 July 2018; and Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice NSW, letter to Chair dated 19 July 2018, p2.

⁶⁵⁰ See NSW Department of Education, *Answers to Questions Taken on Notice*, 10 May 2018, p4; indicating that 28.6 per cent of the young people long suspended from NSW schools in 2017 were Aboriginal young people. This is despite the fact that only about 5.3 per cent of the overall youth population in NSW, see Submission 27, NSW Government, p22.

gender-sensitive options may be needed; paying particular regard to the needs of Aboriginal girls and young women.

Appropriateness of Diversionary Programs and Efforts

The Committee heard concerns about the appropriateness of current diversionary programs for Aboriginal young people

- 5.34 During the inquiry, the Committee heard a number of concerns that current diversionary options in NSW need to be made more appropriate for Aboriginal young people. The Committee has listened to these concerns in making the recommendations that follow in this Chapter concerning Aboriginal community control and partnerships with the Aboriginal community in the design and delivery of place-based diversionary programs; the need for staff training in cultural awareness and sensitivity; and increasing Aboriginal employment in agencies that have involvement with young offenders.
- 5.35 The Committee was particularly concerned at the following evidence from members of NCARA that diversionary programs that exist in regional areas tend not to be culturally appropriate:
- The third theme that emerged throughout the interviews [with NCARA members] was that youth diversionary programs that exist in regional NSW are most often not culturally appropriate...Interviewees expressed the view that culturally appropriate programs were needed to effectively engage with Aboriginal young people and their communities.⁶⁵¹
- 5.36 The Committee also heard more specific criticisms of diversionary initiatives. For example, as detailed in Chapter Three, Legal Aid NSW told the Committee that Youth On Track employs the CHART approach and that "it is not clear that this approach is effective with Aboriginal young people".⁶⁵² While Mission Australia, one of the non-government organisations that delivers Youth On Track, responded that CHART has been adapted to maximise cultural appropriateness⁶⁵³ this issue demonstrates the desirability of Aboriginal involvement in the design of programs.
- 5.37 Similarly, as detailed in Chapter Three, some stakeholders raised concerns that a scheme like Youth On Track, that largely relies on referrals from police, may struggle to engage Aboriginal people. For example, Legal Aid NSW stated:
- ...because of the historic and current difficult relationship between Aboriginal people and police, a scheme that relies upon referrals from police officers may struggle to engage Aboriginal young people.⁶⁵⁴
- 5.38 While both Juvenile Justice and Mission Australia told the Committee that, in practice, Youth On Track has not struggled to engage Aboriginal people⁶⁵⁵ this

⁶⁵¹ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p10.

⁶⁵² Submission 14, Legal Aid NSW, pp18-19.

⁶⁵³ Mission Australia, *Answers to Questions Taken on Notice*, 30 April 2018, pp1-2.

⁶⁵⁴ Submission 14, Legal Aid NSW, p19.

⁶⁵⁵ See Ms Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p20; and Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p40.

example too highlights the desirability of Aboriginal involvement in the design of programs from the outset, to communicate clearly and iron out potential issues, optimise effectiveness and foster positive community relationships.

- 5.39 In addition, the Committee heard that the way in which diversionary programs are branded can affect their chances of successfully engaging with young Aboriginal people. NCARA told the Committee:

Other interviewees noted that the programs were sometimes badged as “crime prevention programs” meaning that Aboriginal young people participating could feel stigmatised as a current or future criminal just by participating in the programs.⁶⁵⁶

- 5.40 Mr Jones of NCARA expanded on this point at the Committee's hearing on 10 May 2018:

Another thing is the wording or the promotion of PCYCs...They had a footy match and all these kids turned up...What they had in the paper next day was a crime prevention strategy. Straightaway they are targeted as future criminals and the poor kids just went along to play football...Adults...pick that up straight away and say "We cannot keep sending our kids to these crime prevention strategies because they are picked as future criminals already" ...⁶⁵⁷

- 5.41 It is important that the messaging around any diversionary program be carefully considered to ensure that the support aspects are clearly articulated and emphasised, and that the program does not appear to be punitive or negative. Again, the Committee considers that this is the type of issue that could be resolved by increasing Aboriginal community control over the design and delivery of place-based programs to make them more responsive to the needs and concerns of particular communities, and this is discussed in detail below.

Diversionary programs aimed at Aboriginal young people should be led by, or significantly involve, the Aboriginal community

Recommendation 50

That the NSW Government promote Aboriginal community control, and partnerships with Aboriginal communities, in the design and delivery of place-based diversionary programs for Aboriginal young people.

- 5.42 The Committee heard from stakeholders that it is very important to involve the Aboriginal community in the design and delivery of diversionary programs for young Aboriginal people. It also heard that a "place-based approach" that responds to local conditions and problems is important to the overall success of diversionary initiatives.

- 5.43 The Committee agrees that community input into, and control of, diversionary programs is very important for their success. This kind of engagement not only allows programs to be culturally appropriate and sensitive, but will ensure a greater degree of trust, investment and engagement with them. As noted by the

⁶⁵⁶ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p10.

⁶⁵⁷ Mr Des Jones, NSW Coalition of Aboriginal Regional Alliances, p46.

Chief Executive Officer of NCOSS, Ms McLeod-Howe, "if you can get the community on board you will be able to reach those young people".⁶⁵⁸

- 5.44 In its submission to the inquiry NCARA emphasised the importance of Aboriginal community control:

Successful diversionary programs for Indigenous young people are developed to address local issues, and are community owned and driven. Indigenous organisations have advocated for Aboriginal elders and communities to be empowered to play a role in decisions around diversion.⁶⁵⁹

- 5.45 NCARA also highlighted General Comment no. 11 (2009:17) of the United Nations Committee on the Rights of the Child:

States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child. The Committee draws the attention of States parties to the United Nations Guidelines for the Prevention of Juvenile Delinquency, which encourage the development of community programmes for the prevention of juvenile delinquency. States parties should seek to support, in consultation with indigenous peoples, the development of community-based policies, programmes and services which consider the needs and culture of indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by indigenous peoples.⁶⁶⁰

- 5.46 Similarly, AbSec stressed ongoing research that confirms that programs will be more effective if there is substantive and ongoing involvement with the Aboriginal community. AbSec indicated that this must extend beyond consultation and needs to work towards "empowerment through self-determination and ownership of programs".⁶⁶¹

- 5.47 The Committee also heard that there is a need for a "place-based approach" that is able to understand and recognise the nuances and differences within local communities and adequately design responsive programs – local solutions for local problems.⁶⁶² NCARA told the Committee that programs located in the community they serve, staffed by local people and supported with ongoing, consistent levels of funding are more likely to successfully engage young people than programs based outside the community to which people need to travel, or programs delivered on an "outreach" basis from another location.⁶⁶³

- 5.48 The Maranguka Justice Reinvestment trial in Bourke is a clear example of a community-led, place-based approach to diversionary initiatives. As discussed in

⁶⁵⁸ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p37.

⁶⁵⁹ Submission 24, NSW Coalition of Aboriginal Regional Alliances, p27.

⁶⁶⁰ United Nations Committee on the Rights of the Child, *General Comment No. 11 (2009)*, p17, available at: http://www.un.org/esa/socdev/unpfii/documents/CRC.GC.C.11_EN.pdf, viewed 6 August 2018; see also Submission 24, NSW Coalition of Aboriginal Regional Alliances, p27.

⁶⁶¹ Submission 17, Aboriginal Child, Family and Community State Secretariat, p4.

⁶⁶² Submission 21, Just Reinvest NSW, pp3-4.

⁶⁶³ Submission 24, NSW Coalition of Aboriginal Regional Alliances, pp9-10.

Chapter Three, Just Reinvest NSW has been undertaking the trial in partnership with the Bourke Aboriginal community since 2013.

- 5.49 In its submission to the inquiry, Just Reinvest emphasised the place-based nature of the trial which "looks at local problems and local solutions".⁶⁶⁴ It further highlighted the benefits of community-led programs, noting that:

Through community-led justice reinvestment initiatives, Aboriginal and Torres Strait Islander communities will be empowered to determine the strategies and programs most likely to effectively divert their children and young people away from the criminal justice system, monitor the effectiveness of youth diversionary programs and hold service providers to account when agreed outcomes are not achieved.⁶⁶⁵

The Youth Koori Court should be further expanded

Recommendation 51

That the NSW Government further expand the Youth Koori Court, particularly to regional areas of NSW.

- 5.50 During the inquiry, the Committee heard overwhelming support for the Youth Koori Court, as a positive initiative to address the over-representation of young Aboriginal people involved in the Juvenile Justice system. Given the concerns the Committee heard regarding the appropriateness of many diversionary programs for Aboriginal young people, discussed above, it was particularly pleased to hear this positive feedback.
- 5.51 Many stakeholders told the Committee that the Youth Koori Court is a culturally appropriate initiative that addresses the underlying causes of offending and increases the level of trust that Aboriginal young people have in court processes and the criminal justice system. It heard numerous calls for the Youth Koori Court to be expanded particularly to Central Sydney, Campbelltown and regional NSW, and this evidence is discussed in detail below.
- 5.52 As discussed in Chapter One, the Youth Koori Court began as a trial in 2015, operating out of the Parramatta Children's Court one day per week.⁶⁶⁶ During the inquiry, on 31 May 2018, the Government announced it would expand the initiative to a second Sydney location namely Surry Hills.⁶⁶⁷ This followed a positive evaluation of the initiative by the University of Western Sydney, also released in May 2018, which found the Youth Koori Court reduces the likelihood

⁶⁶⁴ Submission 21, Just Reinvest NSW, p4.

⁶⁶⁵ Submission 21, Just Reinvest NSW, p3.

⁶⁶⁶ Department of Justice NSW, "NSW Trials Youth Koori Court" 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 7 August 2018.

⁶⁶⁷ Perrottet, D. and Speakman, M. "NSW Budget: Youth Koori Court Expands to Surry Hills" 31 May 2018, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Documents/Media%20Releases/2018/youth-koori-court-expands-surry-hills.pdf>, viewed 7 August 2018.

of young Aboriginal people re-offending by dealing with underlying issues in a culturally appropriate setting.⁶⁶⁸

- 5.53 The Committee also had the advantage of visiting the Youth Koori Court at Parramatta on 11 May 2018, viewing its proceedings and meeting with magistrates, Aboriginal elders and other personnel instrumental in its processes. As a result, it was able to see first-hand the benefits of this tailored and culturally appropriate court process for Aboriginal young people.
- 5.54 Given the overwhelming support it heard for the initiative, the many calls it heard for its expansion, and the positive evaluation by the University of Western Sydney, the Committee considers that the Government should further expand the program, beyond Parramatta and Surry Hills. As discussed earlier, a high number of Aboriginal young people live in non-metropolitan areas of NSW, so regional areas should be given particular consideration in this expansion.
- 5.55 The Youth Koori Court has the same powers as the Children's Court but it is more informal and involves Aboriginal elders in its processes. To participate, young people must be aged 10 to 17 years, of Aboriginal or Torres Strait Islander background, and have pleaded guilty to, or been found guilty of a criminal offence.⁶⁶⁹
- 5.56 The NSW Government lists the following as the aims of the Youth Koori Court:
- Increasing Aboriginal community, including Aboriginal young people's confidence, in the criminal justice system in NSW
 - Reducing the risk factors impacting on the recidivism of Aboriginal young people in NSW
 - Increasing compliance with court directions and orders by Aboriginal young people in NSW.⁶⁷⁰
- 5.57 As detailed in Chapter One, the Department of Justice NSW has explained that at the Youth Koori Court, participants sit around a table and speak plain English rather than using more formal and technical legal jargon. An elder will sit with the judicial officer to provide cultural advice about the Aboriginal offender. The

⁶⁶⁸ University of Western Sydney, "Report: Koori Court Effective for Young Offenders" 7 May 2018, available at University of Western Sydney website, https://www.westernsydney.edu.au/newscentre/news_centre/more_news_stories/report_koori_court_effective_for_young_offenders, viewed 8 August 2018; see also Williams, M. Tait, D. Crabtree, L. Meher, M., *Youth Koori Court Review of Parramatta Pilot Project*, May 2018, available at University of Western Sydney website, https://www.westernsydney.edu.au/_data/assets/pdf_file/0008/1394918/YKC_review_Oct_24_v2.pdf, viewed 8 August 2018.

⁶⁶⁹ Perrottet, D. and Speakman, M. "NSW Budget: Youth Koori Court Expands to Surry Hills" 31 May 2018, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Documents/Media%20Releases/2018/youth-koori-court-expands-surry-hills.pdf>, viewed 7 August 2018.

⁶⁷⁰ Submission 27, NSW Government, p27.

elders may talk directly to the young person about their circumstances and why they are in court.⁶⁷¹

- 5.58 Before being sentenced by the magistrate or judge, an informal conference is facilitated by a Children's Registrar with input from the young person, their family, elders and staff from both government and non-government agencies. A plan is developed at this meeting to help reduce the likelihood of re-offending including strategies to improve cultural connections, encourage the offender to stay at school or get work, secure stable accommodation and address any health, drug or alcohol issues.⁶⁷²
- 5.59 If the magistrate or judge approves the plan, the Aboriginal young person has six months to comply with the program and achieve his or her goals before being sentenced. At the end of this period, the judicial officer determines the sentence after considering the work that has been undertaken by the young person to address his or her criminogenic risk factors.⁶⁷³
- 5.60 During its inquiry, a number of stakeholders praised the Youth Koori Court as a culturally appropriate and effective program that addresses the underlying causes of offending and increases the confidence of Aboriginal young people in court processes, and called for its expansion to other areas of the State.
- 5.61 Legal Aid NSW told the Committee that it considered the Youth Koori Court has considerable benefit in diverting and supporting young Aboriginal offenders and addressing their risk of ongoing involvement with the criminal justice system. Legal Aid argued that the Youth Koori Court should be adequately funded to maintain this role and called for its expansion into regional areas.⁶⁷⁴
- 5.62 At the Committee's hearing on 30 April 2018, Ms Maher of Legal Aid expanded on these points, stating that the Youth Koori Court enables the court to better understand the individual circumstances of the young person and thereby formulate an individualised plan to rehabilitate them:

What something like the Youth Koori Court gives you is an opportunity for the court to be more informed about what the circumstances of the young person really are. That means that there is more integrity even in the decision-making and that there is more tailoring of the actual program that the young person can have put in place, because the ultimate aim is rehabilitation. It is not reoffending, which is the risk management part of it, but it is even more than that: it is getting them back on the right track.⁶⁷⁵

⁶⁷¹ Department of Justice NSW, "NSW Trials Youth Koori Court" 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 7 August 2018.

⁶⁷² Department of Justice NSW, "NSW Trials Youth Koori Court" 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 7 August 2018.

⁶⁷³ Department of Justice NSW, "NSW Trials Youth Koori Court" 14 November 2014, available at Department of Justice NSW website: <https://www.justice.nsw.gov.au/Pages/media-news/news/2014/NSW-Trials-Youth-Koori-Court-.aspx>, viewed 7 August 2018.

⁶⁷⁴ Submission 14, Legal Aid NSW, pp16-17.

⁶⁷⁵ Ms Debra Maher, *Transcript of Evidence*, 30 April 2018, p15.

- 5.63 The President of the Children's Court also supported expansion of the Youth Koori Court, particularly to areas such as Dubbo and Central Sydney.⁶⁷⁶ In providing this support, His Honour noted that the Youth Koori Court aims to address the distrust that many Aboriginal people feel with the criminal justice system:
- ...the Court process itself has a role in relation to the distrust and disconnection experienced by the Aboriginal community from the criminal justice system. Although disconnection from the Court process is not uncommon for young people regardless of cultural identity, the perception of bias and the lack of connection to the process have an historical context for the Aboriginal and Torres Strait Islander community and must be addressed by the criminal justice system if the legal process is to have any deterrent or diversionary effect.⁶⁷⁷
- 5.64 Further, Judge Johnstone indicated that after sitting for nearly three years, the Youth Koori Court had been shown to have positive social outcomes, including improvements in the areas of cultural connection, education and employment, accommodation, health and management of alcohol and drug use.⁶⁷⁸
- 5.65 The Aboriginal Legal Service told the Committee that it supports the Youth Koori Court. As part of a stakeholder consultation process it underwent in preparing its submission, some participants told it that the court is successful because it links young people to appropriate services, mandates service participation, includes Aboriginal elders, and is informed by cultural practices. They called for the Court to be expanded to other communities.⁶⁷⁹
- 5.66 Ms Hopgood of the Aboriginal Legal Service expanded on this support at the Committee's hearing on 30 April. Following from Judge Johnstone's point that the Youth Koori Court aims to address the distrust that many Aboriginal people feel with the criminal justice system, she noted that the Youth Koori Court fosters a more positive dynamic:
- ...the difference between traditional court and Youth Koori Court is that in traditional court where you might have a very well-meaning magistrate who seeks to...shame an Aboriginal kid into compliance, it is not going to work at all. There is often already a strong feeling of shame and distrust for that system and being made to feel lesser. By contrast, the Youth Koori Court often involves tears and feelings of disappointment that are conveyed but in a way that is about acknowledging what has happened and the impact on that community. It is done in a very different way and the young persons begin to trust the system—not instantly. The elder is sitting there with the magistrate. All the disapproval and the condemnation of the behaviour can be expressed but it is done in a very different way and in a way that the young persons are open to. It is not unusual to have one of the elders crying, a family member that has been tracked down crying, and the young person crying and even the magistrate...crying or teary on occasion. It is a very different environment.⁶⁸⁰

⁶⁷⁶ Submission 19, President of the Children's Court of NSW, p11.

⁶⁷⁷ Submission 19, President of the Children's Court of NSW, p10.

⁶⁷⁸ Submission 19, President of the Children's Court of NSW, p11.

⁶⁷⁹ Submission 23, Aboriginal Legal Service (NSW/ACT), p6.

⁶⁸⁰ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p47.

- 5.67 The Law Society of NSW made similar comments, telling the Committee that it supports the work of the Youth Koori Court in assisting to support young Aboriginal offenders. It stated:
- We are informed that young people who regularly would not attend court, who spent many months in custody and who did not trust the system have attended court of their own volition, achieved bail and built trust in the system.⁶⁸¹
- 5.68 Like Judge Johnstone, it supported the expansion of the Youth Koori Court Dubbo and Central Sydney.⁶⁸²
- 5.69 In providing its support for the Youth Koori Court, and calling for its expansion, Youth Off The Streets emphasised the cultural appropriateness of the program, stating that Koori Courts place cultural competence at the centre of youth engagement processes:
- Aboriginal and Torres Strait Islander people provide direct guidance in the design and decision making of the court, legal officers with relevant experience engaging Aboriginal youth are employed, and the culture of the community in question is incorporated where possible. Evaluations have shown that Aboriginal and Torres Strait Islander specialist courts provide a sense of ownership to participants over court processes and outcomes, increase court appearances, and improve compliance with court orders.⁶⁸³
- 5.70 In similar vein, Macarthur Legal Centre emphasised that the Youth Koori Court addresses the underlying reasons for offending and does so in a more culturally appropriate setting than a traditional court.⁶⁸⁴ Macarthur Legal Centre called for the expansion of the Youth Koori Court in the Campbelltown region, and in other areas with high rates of Aboriginal detention.⁶⁸⁵
- 5.71 In their submissions to the inquiry, Mission Australia; NCOSS; ACYP and the NSW Bar Association also called for the expansion of the Youth Koori Court.⁶⁸⁶

There was positive feedback concerning some other diversionary programs for Aboriginal young people

Finding 16

***Clean Slate Without Prejudice* in Redfern and *Breaking Barriers* in Mount Druitt have received positive feedback as effective and culturally appropriate programs for young Aboriginal people.**

- 5.72 During the inquiry, there were other diversionary programs about which the Committee heard positive feedback regarding their effectiveness and appropriateness for Aboriginal young people, in particular Clean Slate Without

⁶⁸¹ Submission 26, Law Society of NSW, p15.

⁶⁸² Submission 26, Law Society of NSW, p15.

⁶⁸³ Submission 11, Youth Off The Streets, p12; see also Mr Evan Walsh, *Transcript of Evidence*, 10 May 2018, p12.

⁶⁸⁴ Submission 18, Macarthur Legal Centre, pp4-5.

⁶⁸⁵ Submission 18, Macarthur Legal Centre, p5.

⁶⁸⁶ Submission 12, Mission Australia, p20; Submission 16, NSW Council of Social Service, p1; Submission 20, Office of the Advocate for Children and Young People, p25; and Submission 22, NSW Bar Association, p40.

Prejudice which commenced in Redfern in 2009 and Breaking Barriers which operates in the Mount Druitt area.⁶⁸⁷ These are clear examples of a community-led and place-based approach to diverting young Aboriginal people from the Juvenile Justice system and, as recommended earlier in the Chapter, this is the approach that must be promoted.

- 5.73 By seeking to build positive relationships between Aboriginal communities and the police, and assisting with practical supports, these programs also acknowledge the intergenerational trauma and disadvantage discussed earlier in the Chapter, that is linked to Aboriginal over-representation in the Juvenile Justice system.
- 5.74 Clean Slate targets young Aboriginal people at risk of offending, and is organised by local Aboriginal leaders and organisations in partnership with the Redfern Police.⁶⁸⁸ It aims to reduce crime by developing strong working relationships between community members and police through "creat[ing] an opportunity for police and community members to work together in a neutral environment".⁶⁸⁹ It incorporates a number of strategies including early morning boxing, early intervention, developmental crime prevention, support networking, and behavioural workshops.⁶⁹⁰ As part of the program, an Aboriginal mentor also assists participants with practical supports such as accommodation, employment, education and training.⁶⁹¹
- 5.75 Breaking Barriers is a twice-weekly fitness and mentoring program overseen by Aboriginal and Torres Strait Islander elders and the Mount Druitt Police.⁶⁹²
- 5.76 In preparing its submission to the inquiry, the Aboriginal Legal Service consulted a range of community members, and a number of respondents provided very positive feedback about Clean Slate and Breaking Barriers. They highlighted the community-based nature of the programs, the way in which they facilitated genuine relationship-building with police, and the involvement of Aboriginal youth workers, as the keys to their success:

...some participants cited examples of programs run by Police or with Police in attendance operating with high levels of participation and engagement by young Aboriginal people. These participants suggested that the time taken by Police to build meaningful connections with young people, their families and community and the involvement of Aboriginal youth workers were both key to success of the programs.⁶⁹³

- 5.77 One respondent to the Aboriginal Legal Service also stated:

⁶⁸⁷ See Submission 12, Mission Australia, p20; and Submission 23, Aboriginal Legal Service (NSW/ACT), p5. The Committee also heard positive feedback about Never Going Back, see Submission 27, NSW Government, p25.

⁶⁸⁸ Submission 23, Aboriginal Legal Service (NSW/ACT), p5.

⁶⁸⁹ Submission 27, NSW Government, pp25-26.

⁶⁹⁰ Submission 23, Aboriginal Legal Service (NSW/ACT), p5; Submission 12, Mission Australia, p20.

⁶⁹¹ Submission 12, Mission Australia, p20.

⁶⁹² Submission 23, Aboriginal Legal Service (NSW/ACT), p5.

⁶⁹³ Submission 23, Aboriginal Legal Service (NSW/ACT), p5.

I think Shane Phillips (Clean Slate Without Prejudice) is doing a great job in Redfern. Part of the success is the willingness of the police to engage and the connection to the community.⁶⁹⁴

- 5.78 The NSW Government also stated that Clean Slate Without Prejudice has been well received by the local community⁶⁹⁵ while Mission Australia stated crime rates relating to robbery offences have dropped in Redfern since the inception of the program.⁶⁹⁶

Staff and Training

Staff of all agencies and organisations that work with young offenders must receive thorough cultural awareness training

Recommendation 52

That the NSW Government ensure that staff of all agencies and organisations that work with juvenile offenders and at-risk youth receive thorough training in the areas of cultural awareness and competence; how racism affects young Aboriginal people; and the effects of intergenerational trauma and disadvantage on young Aboriginal people.

- 5.79 During the inquiry, the Committee heard that cultural competence and awareness training is essential for those working in the Juvenile Justice sector given that many clients are from an Aboriginal background. It also heard that this training should cover the way in which racism continues to impact on Aboriginal young people and the effects of intergenerational trauma and disadvantage.
- 5.80 The Committee agrees that training in these areas is essential if workers are to respond effectively to young Aboriginal people. It is therefore an important strategy in optimising the effectiveness of diversionary efforts, and addressing the over-representation of young Aboriginal people in the Juvenile Justice system. Staff of all agencies and organisations, Government and non-government, who work with juvenile offenders and at-risk youth, should receive this training.
- 5.81 The Committee was pleased at evidence, discussed below, that cultural awareness and competence training is available to all staff of Juvenile Justice NSW, and is an essential requirement for non-government providers of its diversionary programs. Likewise, it was pleased at evidence that staff at all levels of the NSW Police Force receive training about working with Aboriginal communities.
- 5.82 This training should continue to be a priority for the NSW Government. Given the evidence discussed below, and the link between intergenerational trauma and disadvantage and Aboriginal over-representation figures discussed earlier in the Chapter, this training should also incorporate content on how racism affects young Aboriginal people; and the effects of intergenerational trauma and

⁶⁹⁴ Submission 23, Aboriginal Legal Service (NSW/ACT), p5.

⁶⁹⁵ Submission 27, NSW Government, p25.

⁶⁹⁶ Submission 12, Mission Australia, p20.

disadvantage. It must also cover staff of all agencies and organisations that work with young offenders and at-risk youth.

- 5.83 The Aboriginal Legal Service told the Committee that staff working with young people need to be trained in cultural competence. In a survey it conducted, 96 per cent of respondents thought that cultural competence and cultural awareness training can assist staff to deliver better service to Aboriginal youth; and 89 per cent responded that it was very important for any agency working with Aboriginal youth or communities to undertake regular mandatory cultural competence training.⁶⁹⁷
- 5.84 The Aboriginal Legal Service recommended that "The NSW Government ensure all officials interacting with Aboriginal and Torres Strait Islander children and young people in the criminal justice system receive adequate cultural competency training".⁶⁹⁸
- 5.85 Similarly, in its submission to the inquiry, ACYP stated that front line Juvenile Justice workers may benefit from child rights training and that, given the diverse cultural and linguistic backgrounds of the children and young people in detention, such training should include a component on cross-cultural awareness.⁶⁹⁹ In addition, it called for workers to be trained to ensure that their practices take into account how racism impacts on Aboriginal young people:
- It is clear that Aboriginal children and young people continue to experience racism in their daily lives....[T]he 2015 Young People in Custody Health Survey found that 61 per cent of Aboriginal young people in custody had experienced some form of racism in the previous 12 months, most commonly hearing others talk about Aboriginal people in a racist way, followed by being the target of name-calling, verbal abuse or gestures. This type of behaviour can escalate situations and cause young people to react in a way that brings them into conflict with the law. We recommend...training for workers to ensure that their practices take into account how racism impacts Aboriginal young people.⁷⁰⁰
- 5.86 The Advocate for Children and Young People, Mr Johnson, expanded on these points at the Committee's hearing on 8 May 2018, indicating that an understanding of intergenerational trauma and disadvantage is essential for people working with young Aboriginal people:

...it is about understanding, particularly for some groups – and we have to highlight...Aboriginal children and young people – that they represent a system that those young people may have felt discriminated by, from the whole of government history. We just finished listening to some young boys in one of the detention centres who spoke very bravely about their notion of intergenerational trauma. They were struggling with hearing the stories of their grandmother, their mother and now them...I think it is about understanding the importance of on-the-ground direct service workers fully comprehending that lived reality for young people.⁷⁰¹

⁶⁹⁷ Submission 23, Aboriginal Legal Service (NSW/ACT), p14.

⁶⁹⁸ Submission 23, Aboriginal Legal Service NSW/ACT), p14.

⁶⁹⁹ Submission 20, Office of the Advocate for Children and Young People, p27.

⁷⁰⁰ Submission 20, Office of the Advocate for Children and young People, pp27-18.

⁷⁰¹ Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p34.

5.87 Mr Johnson continued:

I think the service system as a whole needs to comprehend the systematic disadvantages that young people face and the history of discrimination that has been faced by Aboriginal people. Even if a worker is doing the right thing, they have to understand that they are coming representing a system that has not done particularly well by [Aboriginal people].⁷⁰²

5.88 Aunty Jean Hands of NCARA made a similar point, noting that it is not only cultural awareness that is important, but cultural sensitivity:

We can say "culturally appropriate" but they must be sensitive. People have to be sensitive in the way they treat our people. It goes back to what Mr Jones says: they are coming from families that have been dysfunctional nearly all their lives.⁷⁰³

5.89 NCOSS also emphasised the importance of cultural competence training, stating that "The Government needs to allocate extra resources and funding for police to develop the right level of cultural competence to enable them to work effectively with Aboriginal communities".⁷⁰⁴ In addition, the Mental Health Commission of NSW called for a systematic approach to building cultural competence across the entire justice workforce.⁷⁰⁵

5.90 Similarly, the NSW Bar Association called for:

a national framework for the provision of comprehensive Indigenous cultural awareness training for all police employees that promotes better understanding and relations between police and Indigenous communities [and]addresses the specific circumstances of Indigenous youth overrepresentation in police contact.⁷⁰⁶

5.91 When asked what cultural competence training is currently available to Juvenile Justice NSW staff, Juvenile Justice responded that it has a "strong commitment to engagement with Aboriginal people".⁷⁰⁷ Further, Juvenile Justice stated that an important component of the Juvenile Justice 2017-2020 Strategic Plan is the "cultural awareness and competence training delivered to staff to strengthen their capability to deliver culturally appropriate services to detainees".⁷⁰⁸ Importantly, Juvenile Justice also advised that this kind of training is an essential requirement for all staff at non-government providers who deliver programs such as Youth on Track and the Joint Support Program.⁷⁰⁹

5.92 In addition, Juvenile Justice provided the Committee with a list of resources that staff are able to access regarding improving cultural awareness. These included the Aboriginal and Torres Strait Islander Respect Package and the Working with Aboriginal and Torres Strait Islander Persons Good Practice Guide.⁷¹⁰ In addition,

⁷⁰² Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p34.

⁷⁰³ Aunty Jean Hands, *Transcript of Evidence*, 10 May 2018, p42.

⁷⁰⁴ Submission 16, NSW Council of Social Service, p1.

⁷⁰⁵ Submission 8, Mental Health Commission of NSW, p6.

⁷⁰⁶ Submission 22, NSW Bar Association, p32.

⁷⁰⁷ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p4.

⁷⁰⁸ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p4.

⁷⁰⁹ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p4.

⁷¹⁰ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, p4.

it advised that it was currently investigating how the Aboriginal 8 Ways of Learning program could be integrated into core programs so that staff can adapt program content to the learning styles and preferences of Aboriginal young people.⁷¹¹

- 5.93 Similarly, the NSW Police Force advised that training about working with Aboriginal communities is delivered on a cyclical basis to all levels of staff within the NSW Police Force. The NSW Police Force stated:

The training delivers information and strategies to develop skills and knowledge to enable officers to engage in an effective and sensitive manner with Aboriginal people. The training discusses Aboriginal health issues,...Aboriginal cultural behaviours, interviewing strategies and language differences.

The focal point of the training is a DVD that was developed following a parliamentary inquiry into the Bowraville murders. The DVD follows the investigation into the Bowraville murders and examines the mistakes and misconceptions made by police...From the large amount of positive feedback received from across the state, this training is assisting officers in [the] NSW Police Force to better understand cultural differences of Aboriginal communities.⁷¹²

The numbers of Aboriginal people working with young offenders must be increased across the sector

Recommendation 53

That the NSW Government continue to develop strategies to increase the number of Aboriginal people working in agencies and organisations that have involvement with juvenile offenders and at-risk youth.

- 5.94 In addition to ensuring that all staff working with young offenders and at-risk youth have adequate training in cultural competence and the impacts of intergenerational trauma, it is also important that there be a sufficient number of Aboriginal people working in relevant agencies and organisations. The Committee heard evidence, discussed below, about the significance for Aboriginal young people of being able to connect to people with similar lived experiences, and develop a cultural connection that may not be possible with a non-Aboriginal person.
- 5.95 Increasing the number of Aboriginal people working in relevant agencies is linked to the importance of ensuring diversionary options are culturally appropriate. It also builds on the Committee's recommendation to promote Aboriginal community control in the design and delivery of diversionary options. Increasing the level of community involvement in all parts of the Juvenile Justice system is critical in attempting to address the over-representation of young Aboriginal people in the Juvenile Justice system, and promote authentic and meaningful partnerships with the Aboriginal community.
- 5.96 The Committee commends Juvenile Justice NSW and the NSW Police Force on the steps that it has taken to encourage Aboriginal employment, discussed below.

⁷¹¹ Juvenile Justice NSW, *Answers to Questions Taken on Notice*, 8 May 2018, pp4-5.

⁷¹² NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p4.

This work should continue to be undertaken right across the agencies and organisations that work with young offenders and at-risk youth.

5.97 During the inquiry, the Mental Health Commission of NSW told the Committee that "any strategies that are implemented must consider the particular requirements of Aboriginal people, and the system as a whole needs to be better equipped to respond to this group".⁷¹³ The Commission emphasised the need to build the Aboriginal workforce in this context:

A systematic approach to expanding the Aboriginal workforce within the justice sector, and to building cultural competency across the entire justice workforce, is needed. Reliance on small numbers of Aboriginal liaison officers, or Aboriginal-identified positions, is tokenistic and will not result in systemic change. We need to build a strong, well-supported and well-resourced Aboriginal peer workforce across all stages of the justice system.⁷¹⁴

5.98 The NSW Bar Association gave similar evidence, stressing the need for more Aboriginal people within the Justice system. They told the Committee that while having ongoing cultural competence training is critical for lawyers and judicial officers, it is also important to encourage and support Aboriginal people to join the legal profession and thrive in it. Mr Boulten SC told the Committee that:

...It is not just training; we need, as a profession, to do everything we can to encourage and then mentor Aboriginal law students, Aboriginal law graduates and people to practise at the Bar and then, ultimately, to become judges and magistrates.⁷¹⁵

5.99 The NSW Bar Association also called for:

- An expanded national network of Indigenous Police Liaison Officers with facilities to share information and knowledge across jurisdictions; and
- Incentives to increase the employment of Indigenous police men and women and opportunities for mentoring and police work experience for Indigenous students.⁷¹⁶

5.100 The President of the Children's Court of NSW also remarked on the need for more Aboriginal people in the legal profession and indicated that steps have been taken in New Zealand to address this issue:

[T]here is a lot more room for Aboriginal people to come into the system. For example, there is only one Aboriginal judge in the whole of New South Wales, whereas if you went to New Zealand you will find a higher proportion of Maori and Pacific Islander judges and magistrates. But we do not even really have Aboriginal people coming through as law students, let alone making it to judicial positions.⁷¹⁷

⁷¹³ Submission 8, Mental Health Commission of NSW, p6.

⁷¹⁴ Submission 8, Mental Health Commission of NSW, p6.

⁷¹⁵ Mr Phillip Boulten SC, *Transcript of Evidence*, 30 April 2018, p54.

⁷¹⁶ Submission 22, NSW Bar Association, pp32-33.

⁷¹⁷ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p6.

- 5.101 The Aboriginal Legal Service also stressed the importance of lived experience and a genuine understanding of what it is to be part of the Aboriginal community. This arose when Ms Hopgood expressed support for more cultural, social and historical information being included in the pre-sentencing reports for young Aboriginal offenders – reports that are provided by Juvenile Justice NSW (as discussed in Chapter Two). She emphasised the need for Aboriginal Juvenile Justice workers to be involved in this process, thereby incorporating a more nuanced understanding of the social, cultural and historical factors relevant to sentencing a young Aboriginal person.⁷¹⁸
- 5.102 During its site visits to Juvenile Justice centres the Committee also heard first hand from a young Aboriginal detainee "Ben" whose case study appears in Chapter Four about the importance of employing Aboriginal staff in Juvenile Justice centres, and more generally. Ben told the Committee that having Aboriginal teachers for the first time ever in custody was an extremely positive experience and that he could interact with these teachers and learn in a way that had not been possible before, because he knew they had been through similar life experiences as him.
- 5.103 Juvenile Justice NSW acknowledged the importance of employing Aboriginal people, and told the Committee that it is a leading employer of Aboriginal people in NSW. The NSW Government submission to the inquiry stated:
- Approximately 10 per cent of the total Juvenile Justice workforce identify as Aboriginal and Torres Strait Islander, in roles ranging from administrative, managerial and front line...An Aboriginal employee life cycle model is also being developed, to further strengthen practice in relation to recruitment, development, promotion, support and retention of Aboriginal employees.⁷¹⁹
- 5.104 As discussed in Chapter Four, 22 new caseworkers have also started work in NSW Juvenile Justice centres to improve pre-release planning, and six of these positions are Aboriginal identified.⁷²⁰
- 5.105 At the Committee's hearing on 8 May 2018, Ms Hawyes of Juvenile Justice NSW expanded in this area. She emphasised the work that Juvenile Justice is doing to develop and support Aboriginal staff to work with young people in custody to provide a sense of cultural connectedness and community that may otherwise be lacking:
- One of the key things we are seeking to do is develop and support Aboriginal staff to work with young people in custody because, having visited the New Zealand system, I can see that that has very tangible benefits and creates that sense of community, having a vested interest in young people making different life choices. For us, engaging with families and communities, the things you would have seen at Reiby – the cultural engagement activities but also getting elders in...⁷²¹

⁷¹⁸ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p48.

⁷¹⁹ Submission 27, NSW Government, p31.

⁷²⁰ Submission 27, NSW Government, p31.

⁷²¹ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p47.

- 5.106 Similarly, the NSW Police Force advised that it is seeking to increase the number of Aboriginal people in its ranks:
- NSWPF has committed to employ Aboriginal people through our current Aboriginal Employment Strategy (AES) 2015-2019. The AES seeks a minimum 4% representation of Aboriginal or Torres Strait Islander people in its workforce. NSWPF currently employs 625 Aboriginal people or 3.5% of our workforce. NSWPF markets employment opportunities through various media, career days, information days etc. and has developed a range of promotional materials including brochures featuring current NSWPF Aboriginal employees.⁷²²
- 5.107 The NSW Police Force also told the Committee about the initiatives it has to encourage Aboriginal people to study policing and join the Police. It partners with TAFE NSW to offer pre-recruitment programs to attract Aboriginal people and/or prepare them to study at the NSW Police Academy under the Indigenous Police Recruitment Our Way Delivery Program.⁷²³
- 5.108 The first course under this program is marketed specifically to adults considering employment with the NSW Police Force. NSW Police advised the Committee that over 100 graduates of this program have joined the NSW Police Force since its first trial program in 2007. Classes for this program are currently being delivered at Dubbo, Mount Druitt and Nowra and NSW Police advised that a class was also proposed for Tamworth starting in July 2018.⁷²⁴
- 5.109 The second course under this program is the Miimi-djuul Program, targeted at year 10 Aboriginal high school students to assist them to gain the skills and confidence to join the NSW Police Force in the future. NSW Police advised that 44 Aboriginal students are currently enrolled in the Miimi-djuul program across NSW but that take-up by schools has been minimal since the program began in 2013.⁷²⁵
- 5.110 Further, the NSW Police Force employs Aboriginal Community Liaison Officers (ACLOs), who are members of the LAC Crime Management Teams and have responsibility for providing advice and support to police in the management of Aboriginal Issues across the LAC.⁷²⁶ The ACLO role also involves working with the local Aboriginal community, and any relevant community organisations, and promoting a positive relationship between the police and the Aboriginal community.⁷²⁷

⁷²² NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p5.

⁷²³ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p5.

⁷²⁴ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p5.

⁷²⁵ NSW Police Force, *Answers to Supplementary Questions*, 21 June 2018, p5; see also "2018 IPROWD Miimi-djuul Courses Do you want a career in the NSW Police Force?" available at: <https://walc.com.au/wp-content/uploads/2017/06/2018-Miimi-djuul-form-final.pdf>, p1, viewed 9 August 2018.

⁷²⁶ NSW Police Force website, http://www.police.nsw.gov.au/safety_and_prevention/your_community/aboriginal_persons_and_communities/aboriginal_issues/aboriginal_community_liaison_officers, viewed 6 August 2018.

⁷²⁷ NSW Police Force website, http://www.police.nsw.gov.au/safety_and_prevention/your_community/aboriginal_persons_and_communities/aboriginal_issues/aboriginal_community_liaison_officers, viewed 6 August 2018.

Consulting with Aboriginal young people

Aboriginal young people, and young people more generally, should be consulted about the content and delivery of diversionary programs and services

Recommendation 54

That the NSW Government conduct ongoing consultations with young people about the content and delivery of diversionary programs and services, particularly Aboriginal young people.

- 5.111 During the inquiry, the Committee also heard evidence that in addition to promoting partnerships with Aboriginal communities and Aboriginal community control in the design and delivery of diversionary programs, young Aboriginal people must themselves be consulted about the content and delivery of diversionary programs and services. It also heard calls for young people in general to be consulted in this area to ensure the success and responsiveness.
- 5.112 The Committee agrees that listening to what Aboriginal young people have to say about various programs and services, and using this feedback in a constructive way, is vital in developing more responsive, culturally appropriate and successful programs that Aboriginal young people want to engage in. It also considers that the value of consulting with young people more generally about the content and delivery of diversionary programs and services, and what is and is not working, is self-evident.
- 5.113 In recommending such consultation take place, the Committee notes its recommendation in Chapter Three, that the NSW Government review current diversionary programs and supports, in consultation with girls and young women to assess whether they are suitable; any areas for improvement; and where more gender-sensitive options may be needed; paying particular regard to the needs of Aboriginal girls and young women.
- 5.114 The Aboriginal Legal Service told the Committee that when it conducted its community consultations to prepare its submission to the inquiry, some respondents emphasised the importance of including children's voices and perspectives in project and program design. The Aboriginal Legal Service therefore made the following recommendation:
- The NSW Government ensure children are consistently represented in decision-making bodies and processes with respect to youth diversion programs.⁷²⁸
- 5.115 Similarly, the NSW Bar Association made the following recommendation:
- The NSW Government provide legislation for a representative body of Aboriginal and Torres Strait Islander children and young people who are or have been in and out of home care or who have been in the youth justice system to express their views on the development and implementation of laws and policies which affect children and young people in those systems and that those views be given due weight.⁷²⁹

⁷²⁸ Submission 23, Aboriginal Legal Service (NSW/ACT), p13.

⁷²⁹ Submission 22, NSW Bar Association, p36.

- 5.116 The Advocate for Children and Young People, Mr Johnson, also stressed the importance of consulting and engaging with Aboriginal young people, and feeding that information back into the design and delivery of diversionary programs:

I can tell the Committee what Aboriginal young people say to us. We have heard from 1,000 young Aboriginal people over the past two years. They say they are more likely to trust and to open up to organisations that have a connection with Aboriginal culture and have Aboriginal workers...Often when we ask children what is working well they say they go to a service and we know it is usually Aboriginal owned and controlled. When we do not know about the service, we go back to the office and invariably we find out it is Aboriginal. They are very clear about what is working for them. In fact, last week we sat down with 10 Aboriginal young people who were completing a program about connection to culture and they said how important it was to them and called for greater access to programs like that on the outside.⁷³⁰

- 5.117 In addition, Mr Johnson emphasised that it is important to hear from children and young people more generally, to determine what is working and what is not:

The children and young people we have heard from have been very clear about what is and what is not working across the variety of domains relevant to this inquiry, from education to housing, to health, to justice and beyond, and their feedback has led us to develop some overarching recommendations...We will continue to place great emphasis on hearing directly from children and young people from a diverse range of life experiences and we have committed to visiting each Juvenile Justice centre at least twice per year.⁷³¹

Closing the Gap

Justice-related targets should be included in the Closing the Gap Framework

- 5.118 During the inquiry, the NSW Bar Association noted that the Council of Australian Governments' (COAG's) Closing the Gap strategy, does not include specific targets relating to justice. It indicated support for COAG developing and including such targets in Closing the Gap, stating that these targets should be monitored and reported against.⁷³²
- 5.119 The Committee agrees that Closing the Gap should incorporate justice-related targets and that they should be monitored and reported against. This would assist to provide ongoing public oversight of the progress of jurisdictions, including NSW, in addressing Aboriginal over-representation in the criminal justice system.
- 5.120 The Closing the Gap framework was established in 2008 to address Indigenous disadvantage with respect to life expectancy, child mortality, access to early childhood education, educational achievement and employment outcomes. The targets were to:

⁷³⁰ Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, pp28-29.

⁷³¹ Mr Andrew Johnson, *Transcript of Evidence*, 8 May 2018, p28.

⁷³² Submission 22, NSW Bar Association, p32.

- Halve the gap in child mortality by 2018
- Have 95 per cent of all Indigenous four year olds enrolled in early childhood education by 2025
- Close the gap in school attendance by 2018
- Halve the gap in reading and numeracy by 2018
- Halve the gap in Year 12 attainment by 2020
- Halve the gap in employment by 2018
- Close the gap in life expectancy by 2031.⁷³³

5.121 In calling for Closing the Gap to include justice-related targets, the NSW Bar Association noted a 2011 report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system:

The Standing Committee...found it concerning that...Closing the Gap...did not include a National Partnership Agreement dedicated to the Safe Communities Building Block [or]... specific targets relating to justice. The Standing Committee found this concerning in view of the weight of evidence it received...that linked unsafe communities to the development of negative social norms and increasingly high rates of juvenile offending.⁷³⁴

⁷³³ Commonwealth of Australia, Department of Prime Minister and Cabinet, *Closing the Gap Prime Minister's Report 2018*, pp8-9, available at Department of Prime Minister and Cabinet website: <https://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2018.pdf>, viewed 10 August 2018.

⁷³⁴ Submission 22, NSW Bar Association, p4; see also House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system*, June 2011, available at Commonwealth Parliament website: https://www.aph.gov.au/parliamentary_business/%20committees/house_of_representatives_committees?url=atsia/sentencing/report.htm, viewed 6 August 2018.

Chapter Six – Coordination Between Government and Non-Government Organisations in the Delivery of Diversionary Efforts

- 6.1 In this Chapter the Committee explores the coordination that occurs between Government and NGOs in the delivery of diversionary programs and efforts in NSW. Where necessary, the Committee makes recommendations to make service delivery more effective and efficient.

Contracts with Non-Government Organisations

- 6.2 As discussed throughout the report, the NSW Government funds NGOs to deliver many of the diversionary programs and related services on offer throughout the State. Effective and ongoing coordination between Government and the non-government sector is therefore essential to ensure transparent, accountable and effective service delivery.

Contracts for the delivery of diversionary programs and efforts should be outcomes-focused

Recommendation 55

That NSW Government contracts with non-government organisations for the delivery of diversionary programs and efforts be outcomes-focused and not over-prescriptive.

- 6.3 During the inquiry some stakeholders told the Committee that it is important for contracts between the Government and NGOs for the delivery of services to be outcomes-focused and not over-prescriptive in a way that limits the flexibility of NGOs to deliver the services that clients need.
- 6.4 The Committee considers that contracts which are too focussed on the details of how a service is to be provided may prevent NGOs from delivering services in a tailored and relevant way. Given that the strength of NGOs is their ability to provide community-based services that are flexible and responsive to the particular needs of their clients, it is important that contracts with Government do not limit this.
- 6.5 The Committee agrees that contracts should be outcomes focussed. In this way, service delivery is aligned with the Government's overarching aims without limiting the way in which NGOs can achieve specified goals, thereby promoting responsiveness, innovation, efficiency and effectiveness.
- 6.6 Youth Action, the peak organisation representing youth services in NSW, told the Committee that the contracts between the Government and NGOs for the delivery of services are often over-prescriptive, not allowing NGOs enough flexibility to achieve the best outcomes for clients:

Contract funding often focuses on the wrong information. Instead of putting the outcome of the young person first, contracts are often overly prescriptive, specifying delivery models to be used and activities to be undertaken, rather than relying on services to deliver the most appropriate actions to achieve an outcome. Youth services have the expertise and experience to select the best method of action to take.⁷³⁵

6.7 Ms McLeod Howe of NCOSS agreed, telling the Committee that:

We should have outcomes-based contracts...with incentives that deliver outcomes for people rather than widgets...Certainly NCOSS and our members are very much of the view that there needs to be much less of a tight rope around the funding in order for us to do some good work. I think what we often hear is there needs to be more innovation. We should not be so prescriptive and we box in the policies and procedures around the services we provide...This is often because of the tyranny of the contract. We would say certainly some level of flexibility is needed to demonstrate we can do some new things to create change.⁷³⁶

Contracts for the delivery of diversionary programs and efforts should be longer-term wherever possible

Recommendation 56

That wherever possible the NSW Government promote longer-term contracts with non-government organisations for the delivery of diversionary programs and efforts and avoid short-term contracts, particularly those of two years or less.

6.8 During the inquiry various stakeholders told the Committee that short-term contracts significantly impact on the quality of services delivered by NGOs.

6.9 The Committee considers that longer-term contracts should be encouraged wherever possible. As discussed below, it is clear that where organisations are required to regularly bid for funding, their ability to focus on service delivery is lessened. Additionally, not having the security of a longer-term contract means that the service providers are unable to work on building their capacity, undertake more strategic work, and plan in a long-term way.

6.10 As is also discussed below, short-term contracts may also undermine collaboration within the NGO sector as organisations compete for resources; are linked with high staff turnover; and stop NGOs building the long-term community connections and relationships that are essential to optimising diversionary efforts.

6.11 Youth Action told the Committee that short-term contracts between Government and NGOs can adversely impact on the services to be delivered under the contract:

Competitive, short-term funding often undermines collaboration between services as they compete for the same resources and clients. Organisations often try to

⁷³⁵ Submission 9, Youth Action, p14.

⁷³⁶ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, pp37-38.

obtain as much funding as possible to sustain lean periods and staff, which turns them into 'generalist' not 'specialist' service providers. In addition, it leaves organisations and individuals constantly unsure of their funding and resources going forward, undermining their ability to think strategically and for the long-term.⁷³⁷

6.12 It therefore recommended a more streamlined contracting process including increasing contract terms to five years; and the Government taking a more holistic view of the overall funding that is provided to the NGO sector, promoting increased coordination between parties, reducing duplication of effort and reducing the administrative burden associated with frequent funding and contract negotiations.⁷³⁸

6.13 In similar vein, Dr Tadros of Mission Australia told the Committee that short-term funding models can adversely impact on the effectiveness of services:

The short-term funding models make it harder for the services to build meaningful and sustainable relationships within communities to address the issues at hand.⁷³⁹

6.14 When asked what kind of funding model is optimal, Dr Tadros advocated for the "five plus five" model:

If I were the person issuing the contracts I would want to make sure that the contracts are being delivered and that the performance is being achieved. If Mission Australia is on the other end of a contract we have not won and we can see it is not being delivered as effectively as we potentially could deliver it...then we would want to be able to have the opportunity to bid for a contract where we have not been successful, and vice versa. I think five plus five would be the preferred model, but at best three years. Certainly, the one-year models are just absolutely ridiculous. We could have one-year models that operate for 18 years. That is 18 years of inconsistency.⁷⁴⁰

6.15 Ms McLeod Howe of NCOSS also called for longer-term funding indicating that short-term, unstable funding distracts services from the strategic planning needed to deliver optimal services:

It is hard on the ground in the competitive tendering environment. It is difficult to make long-term plans if you have a two-year contract. By year two what you are doing with the small bucket of funding is you are looking up the road to your competitor and you have your eye on the tender process as opposed to being able to focus wholly on being innovative and delivering on the ground.⁷⁴¹

6.16 Similarly, Just Reinvest emphasised the importance of stable funding to the success of diversionary efforts. As discussed in Chapter Three, Just Reinvest has been undertaking a justice reinvestment trial with the Aboriginal community in Bourke since 2013, called the Maranguka Justice Reinvestment Project. In its submission to the inquiry Just Reinvest stated that long-term funding is essential

⁷³⁷ Submission 9, Youth Action, p14.

⁷³⁸ Submission 9, Youth Action, p16.

⁷³⁹ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p19.

⁷⁴⁰ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p24.

⁷⁴¹ Ms Tracy McCleod Howe, *Transcript of Evidence*, 30 April 2018, p41.

to the success of diversionary initiatives under the justice reinvestment approach:

JR requires that savings be quantified and the government commit to reinvesting a portion of those savings into evidence-based solutions to crime prevention...Importantly there must...be a commitment to long-term funding. Communities must trust the process for it to succeed and building trust takes time. Insufficient funding and short-term commitment are key risks to the successful implementation of a JR approach.⁷⁴²

- 6.17 Just Reinvest also indicated that in undertaking the Maranguka Project, the Bourke community identified secure funding as crucial from the outset:

One of the first activities undertaken as part of the Maranguka vision is to address issues facing young people through a justice reinvestment approach. This is in response to community concerns over the level of youth offending, the lack of detailed outcome-driven evaluations of the numerous programs delivering services into Bourke, and the short-term nature of the funding allocated by government for these programs. In order to provide effective programs and services, the Bourke community identified a critical need for a framework that will provide long-term, sustainable funding.⁷⁴³

- 6.18 Further, Just Reinvest agreed with other stakeholders concerning the standard length of funding cycles recommending that:

Funding cycles be increased to 5 years. Competitive, short-term funding inhibits collaboration between organisations and services, and damages/inhibits relationships with communities.⁷⁴⁴

- 6.19 In its submission to the inquiry, the Aboriginal Legal Service also stressed the importance of stable funding for services to build the long-term community relationships necessary for the success of diversionary initiatives. It relayed the results of community consultations it had conducted in preparing its submission:

Participants commented that a lack of funding reduced chances of consistent staffing and of organisations building long term relationships with communities...Participants saw the high turnover of staff, programs and services as problematic, as the kind of work required by people in this sector requires building relationships of trust with communities which takes time.⁷⁴⁵

⁷⁴² Submission 21, Just Reinvest NSW, p5.

⁷⁴³ Submission 21, Just Reinvest NSW, p6.

⁷⁴⁴ Submission 21, Just Reinvest NSW, p27.

⁷⁴⁵ Submission 23, Aboriginal Legal Service (NSW/ACT), p11.

Co-design of Diversionary Programs and Efforts

The NSW Government should promote the co-design of diversionary programs

Recommendation 57

That the NSW Government promote the involvement of non-government organisations in the design of the diversionary programs and efforts that they will be delivering.

- 6.20 During the inquiry, the Committee also heard evidence that where NGOs are involved in the design of diversionary programs, they are able to deliver more effective services that lead to more positive outcomes for young people. This is consistent with evidence discussed in Chapter Five about the importance of involving Aboriginal communities in the design and delivery of diversionary programs aimed at young Aboriginal people.
- 6.21 In short, it makes sense to involve the communities and organisations that will be engaged with a program on a day-to-day basis in the design of that program. Program design would also benefit from the subject matter expertise of NGOs, and their knowledge and understanding of a particular community. The Committee therefore agrees that NGOs should be involved in the design of the diversionary programs and efforts that they will be delivering.
- 6.22 In its submission to the inquiry, Youth Action stated that "Services make better impacts when they are consulted about the services they will be delivering and included in their design (by co-design)".⁷⁴⁶
- 6.23 This view was echoed by Mission Australia, who recommended that:
- A whole-of-sector approach should be adopted when designing, developing and delivering youth services in consultation with young people from diverse backgrounds, community sector organisations as well as Federal, State and local governments.⁷⁴⁷
- 6.24 Youth Action also pointed to the Their Futures Matter reform which is being rolled out by the NSW Government and under which some 380 young offenders will receive intensive case management and offence-focussed interventions.⁷⁴⁸ This reform is also discussed in Chapter Four. Youth Action noted that under the reform a single commissioning agency is proposed, and that this will provide greater opportunity for NGOs to be involved in the design and development of services and programs in a whole of government environment.⁷⁴⁹
- 6.25 At the Committee's hearing on 10 May 2018, Mr O'Reilly of FACS, confirmed that this reform will aim to foster increased design collaboration between NGOs and the Government:

⁷⁴⁶ Submission 9, Youth Action, p15.

⁷⁴⁷ Submission 12, Mission Australia, p27.

⁷⁴⁸ See submission 27, NSW Government, pp9-10.

⁷⁴⁹ Submission 9, Youth Action, 15.

The program is limited to rolling out needs-based supports across New South Wales and this will be achieved by agencies and their non-government partners working together to design and implement evidence-based packages and wrapping needs around particular cohorts of children and young people and their families.⁷⁵⁰

Co-ordinated Service Delivery

Coordination across Government and the non-government sector is essential to optimise diversionary programs and efforts

Recommendation 58

That the NSW Government increase the level of coordination across Government and the non-government sector, and consider adopting a regional coordination model throughout the State to maximise the quality of diversionary, early intervention and prevention programs and efforts in all locations.

- 6.26 As has been demonstrated throughout the report, young people who are involved or are at risk of involvement with the Juvenile Justice system often have a variety of complex needs, and the Committee heard that the diversionary initiatives that will be most effective are those that provide individualised support in all the necessary areas of a young person's life.⁷⁵¹ As has been noted in Chapter Four, early intervention is also key and wherever possible the underlying causes of offending should be addressed before it occurs. To provide the necessary supports in a timely way, there must be communication, cooperation and coordination across the Government and non-Government sectors.
- 6.27 However, as discussed below, the Committee has heard that sufficient coordination does not always take place, with agencies and services operating in silos thereby affecting the quality of support available to young people, particularly in regional areas. The Committee therefore recommends that the NSW Government increase the level of coordination across Government and the non-government sector, and consider adopting a regional coordination model throughout the State to maximise the quality of diversionary, early intervention and prevention programs and supports in all locations.
- 6.28 The NSW Government highlighted the need for coordination in its submission to the inquiry:
- Diverting young people from the criminal justice system requires a coordinated effort across many government and non-government organisations, combined with support from people with specialised criminogenic knowledge and skills. Success in delivering diversion programs is achieved by early identification of, and response to, a young person's criminogenic risks, as well as their health, social, education, employment and cultural needs.⁷⁵²

⁷⁵⁰ Mr Paul O'Reilly, *Transcript of Evidence*, 10 May 2018, p35.

⁷⁵¹ Submission 27, NSW Government, p11.

⁷⁵² Submission 27, NSW Government, p4.

6.29 Similarly, NCOSS told the Committee:

... all parts of the community services sector which includes education, community services, and justice, need to work together in a coordinated and flexible manner to intervene at all 'touch points' to prevent adverse contact with the justice system.⁷⁵³

6.30 Ms McLeod Howe of NCOSS expanded on this point at the Committee's hearing on 30 April 2018 stating "You can have 10 agencies covering 10 different things but if it is not joined up it is a bit of a mess". She also indicated a coordinated model should not just be based around diversionary programs but a more all-encompassing concept such as promoting healthy communities within a particular area.⁷⁵⁴

6.31 Mission Australia also described coordination as "imperative to ensure young people receive necessary supports"⁷⁵⁵ and stated:

Although the roles of different stakeholders are discussed individually, they are all intrinsically intertwined and the NSW Government should adopt a holistic approach to ensure better coordination and collaboration within, and between, these diverse stakeholders. Considering the diversity of the young people and their specific circumstances, it is imperative that early intervention programs, support services and aftercare or follow-up services identify and cater for their individual needs in order to deter long-term involvement with the criminal justice system.⁷⁵⁶

6.32 However, the Committee heard that sufficient coordination does not always take place. For example, Ms Acheson of Youth Action stated:

Youth services need to be able to work strategically, focusing on outcomes for young people at the centre of their work, planning for the long term and working collaboratively with other agencies. Our consultations, however, have shown that youth services often feel alone in seeking best outcomes for young people. They face departments that operate in silos and systems that do not promote collaboration, and there are gaps in community knowledge about the impacts of outcomes on vulnerable young clients and contracts often expire very quickly.⁷⁵⁷

6.33 As noted in Chapter Three, Judge Johnstone also stated that this lack of interagency coordination is a particular problem in regional areas and that a regional coordinator model may achieve better outcomes for young people.⁷⁵⁸

6.34 In addition, the Aboriginal Legal Service called for greater regional and local coordination, noting that nearly all those it consulted in preparing its submission to the inquiry identified this need:

Almost all survey respondents thought there is a need for a coordinated approach at a regional and local level for community and government organisations (such as police, schools, health, housing, children's services and other local community

⁷⁵³ Submission 16, NSW Council of Social Service, p2.

⁷⁵⁴ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p41.

⁷⁵⁵ Submission 12, Mission Australia, p4.

⁷⁵⁶ Submission 12, Mission Australia, pp2-3.

⁷⁵⁷ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p12.

⁷⁵⁸ Judge Peter Johnstone, *Transcript of Evidence*, 30 April 2018, p7.

organisations) to work together to divert at risk Aboriginal and Torres Strait Islander youth before they are formally involved with the justice system.⁷⁵⁹

- 6.35 The Aboriginal Legal Service also noted that roundtable meetings can be useful to promote coordination:

Many participants suggested the possibility of facilitating round table meetings to help facilitate greater communication between these different groups. Some participants suggested developing a similar model to that recently developed by the NSW Government in response to domestic violence, where all parties are involved in safety action meetings.⁷⁶⁰

- 6.36 Similarly, Miyay Birray expressed support for roundtable meetings between Government agencies and service providers indicating that they can provide an opportunity to discuss relevant regional issues and determine the necessary services for young people at risk. In its submission to the inquiry, it indicated that it had found community service roundtables that used to take place in Moree useful for "monitoring and coordinating support for youths that were on the police's radar".⁷⁶¹

- 6.37 On the subject of work that is being undertaken by the NSW Government to coordinate holistic support for young offenders, the Committee was pleased to hear evidence about the Youth Crime and Early Intervention Board chaired by Assistant Commissioner Cassar of the NSW Police Force. The Board is made up of representatives from FACS, Education, Health, Justice, Treasury and the Department of Premier and Cabinet. Mr Cassar told the Committee that:

The terms of reference for this board include exploring opportunities to link up databases across agencies more effectively, and to establish strategies which see a coordinated response to youth at risk of becoming entrenched within the criminal justice system.⁷⁶²

Capacity-Building for Non-Government Organisations

Staff and organisational capacity are crucial to optimise diversionary programs and supports

- 6.38 For NGOs to be able to deliver effective diversionary programs on an ongoing basis, it is important that there be investment in capacity-building, both for organisations and their staff. NCOSS emphasised this point in its submission to the inquiry, stating:

There is a need to build the capabilities of existing staff, so that they can be retained and enable better continuity in relational service delivery.⁷⁶³

- 6.39 The NSW Government made its commitment to this kind of capacity-building clear in its submission to the inquiry, noting that engagement of this sort is

⁷⁵⁹ Submission 23, Aboriginal Legal Service (NSW/ACT), p13.

⁷⁶⁰ Submission 23, Aboriginal Legal Service (NSW/ACT), p14.

⁷⁶¹ Submission 4, Miyay Birray Youth Service INC, p6.

⁷⁶² Mr Joseph Cassar, *Transcript of Evidence*, 8 May 2018, p2.

⁷⁶³ Submission 16, NSW Council of Social Service, p2.

necessary to "drive a cycle of continuous improvement".⁷⁶⁴ The submission outlined three examples of the way in which this is currently being done, which are as follows:

- The mandatory training requirements for Youth on Track case workers, in addition to regular meetings and quality assurance processes.
- The Sector Assistance Strategy, which supports existing TEIP-funded services to transition to the new TEIP.
- The engagement between NSW Health and Aboriginal Family Health Workers as part of a whole of community approach to family violence in Aboriginal Communities, including Aboriginal Family Health Coordinators and Local Support Coordinators.⁷⁶⁵

6.40 In what follows, the Committee identifies two areas of focus for NGO capacity-building about which it heard significant evidence during the inquiry – ensuring that staff training requirements are not over-prescriptive, and making sure that staff are thoroughly trained in trauma-informed practice.

6.41 The Committee also notes that it has already made a number of recommendations and findings in previous Chapters that recognise that staff capacity, both Government and non-government, must be built to optimise diversionary programs and supports in NSW and to maximise the number of young people diverted from the Juvenile Justice system. These include:

- A finding that the NSW Government should explore further initiatives to attract and retain suitably qualified people to deliver diversion, early intervention and prevention programs in rural, regional and remote NSW, and to build capacity within local communities (Chapter Three).
- A recommendation that the NSW Government ensure that staff of all agencies and organisations that work with juvenile offenders receive thorough training in the areas of cultural awareness and competence; how racism affects young Aboriginal people; and the effects of intergenerational trauma and disadvantage (Chapter Five).
- A recommendation that the NSW Government continue to develop strategies to increase the number of Aboriginal people working in agencies and organisations that have involvement with juvenile offenders (Chapter Five).
- A recommendation that NSW police and courts that hear juvenile criminal matters receive thorough training in the setting of bail conditions for young people under 18 years, to promote the diversion of young people wherever possible (Chapter Two).

⁷⁶⁴ Submission 27, NSW Government, p32.

⁷⁶⁵ Submission 27, NSW Government, p32.

- A recommendation that NSW police receive thorough training concerning the policing of suspected bail breaches by young people under 18 years, to avoid unnecessary arrests and detention (Chapter Two).
- A recommendation that all NSW police officers receive thorough training about the unique nature of children and young people and the diversionary options available under the *Young Offenders Act 1997* (Chapter Three).
- A recommendation that all magistrates hearing matters in the children's jurisdiction receive thorough and ongoing training about the unique nature of children and young people, the specialist nature of children's proceedings, and the diversionary options available under the *Young Offenders Act 1997* (Chapter Three).
- A recommendation that all NSW police and residential out-of-home care workers receive thorough training on the Joint Protocol to reduce the contact of young people in out-of-home care with the criminal justice system (Chapter Three).
- A recommendation that all teachers in NSW schools receive thorough training around the risk factors for young people's engagement with the criminal justice system, and the available support services and programs (Chapter Four).
- A recommendation that NSW transit officers be given thorough training in relation to the *Young Offenders Act 1997* and the Protocol for Homeless People in Public Places (Chapter Four).
- A finding that FACS should consider whether mandatory reporters need further training to identify the early warning signs that parents may need support before they reach the stage of child abuse or neglect (Chapter Four).

Staff training requirements for NGOs should take account of prior learning

Finding 17

In setting any training requirements for non-government organisations, the NSW Government should take account of prior learning and not be over-prescriptive.

- 6.42 As has been discussed earlier in this Chapter in the context of over-prescriptive contracts, it is important that NGO service providers are not over-burdened with unnecessary requirements so that they may concentrate on the core business of quality service delivery. This also holds true in the context of over-prescriptive training requirements.
- 6.43 As discussed below, during the inquiry the Committee heard that for some youth diversionary programs, including Youth on Track, NGO staff are required to undertake burdensome, costly training, with little regard paid to prior experience. The Committee has made recommendations for thorough training of those working with juvenile offenders and at-risk youth in this report, for example, recommendations for cultural awareness training in Chapter Five and

training in trauma-informed practice (see below). In making these recommendations, however, it finds that a balance must be struck so that, in setting its training requirements for NGOs, the NSW Government takes account of prior learning and is not over-prescriptive.

- 6.44 Mission Australia told the Committee about the training and support that is required to allow for capacity-building, and overall improved service delivery. In doing so it noted staff time constraints and workloads, stressing that training and support must be delivered in a flexible way to accommodate these, and to limit service disruption:

Training and capacity building supports are imperative to ensure that staff members are able to receive the most up to date information and to maintain the quality of service delivery. However, these training programs need to be flexible to suit the circumstances of the staff members and delivered in a manner that has minimal disruption to their capacity to provide services.⁷⁶⁶

- 6.45 Mission Australia also indicated that for some youth diversionary programs, NGO staff are required to undergo burdensome, inflexible training with no recognition for past training and experience. It quoted one of its Program Managers:

For some services, you have to complete 14 modules within 12 months...For those in rural areas, having to travel for training means they are unable to work for several days. It would be easier if there were better alternatives. For example, some modules can be delivered online through webinars...We have also seen that past training or experience is not given enough consideration and some people have to re-do some modules. The training system needs to recognise these and be more efficient.⁷⁶⁷

- 6.46 Dr Tadros of Mission Australia expanded on this at the Committee's hearing on 30 April 2018, describing the training that accompanies the Youth on Track program:

Youth on Track...has strong KPIs, a massive training module—I think in the submission we put down that our staff were required to complete 14 training modules with no regard for previous experience or qualification.⁷⁶⁸

- 6.47 Dr Tadros further indicated that Mission Australia staff undertaking this training will already have quite extensive qualifications in the field, and that it is altogether too costly:

We hire, I think, community service workers level 3 under our enterprise agreement, which means they have to have a minimum of two years experience and a social work or psychology or some relevant degree...Obviously you have to pay a trainer for those 14 modules, and they do not come cheap. But then if I am bringing people from western NSW down to Sydney to attend that training, that is a couple of days out and a couple of nights worth of accommodation, et cetera.⁷⁶⁹

⁷⁶⁶ Submission 12, Mission Australia, p22.

⁷⁶⁷ Submission 12, Mission Australia, p21.

⁷⁶⁸ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p22.

⁷⁶⁹ Dr Evelyne Tadros, *Transcript of Evidence*, 30 April 2018, p26.

- 6.48 In her evidence to the Committee, Ms McLeod Howe of NCOSS agreed that to maximise quality, there should not be prescriptive policies and procedures around the services that NGOs provide.⁷⁷⁰

Staff working with young offenders must be thoroughly trained in trauma-informed practice

Recommendation 59

That staff in all agencies and organisations working with young offenders and at-risk youth, Government and non-government, be thoroughly trained in trauma-informed practice.

- 6.49 During its inquiry the Committee heard that a history of trauma is very common amongst young people who come into contact with the Juvenile Justice system, and that it is essential that all staff, Government and non-government, who work with young offenders and at-risk youth, be thoroughly trained in trauma-informed practice. The Committee agrees and so recommends. Such training is a critical part of capacity-building to ensure that staff within those organisations are able to deliver the best and most effective diversionary programs possible.
- 6.50 The Committee has already noted the importance of trauma-informed practice in successfully diverting young people from the Juvenile Justice system earlier in its report. In particular, in Chapter Five it has recommended that staff of all agencies and organisations that work with juvenile offenders and at-risk youth receive thorough training in the effects of intergenerational trauma and disadvantage on young Aboriginal people.
- 6.51 Similarly, in Chapter Three the Committee recommends thorough training for police and out-of-home care workers in the Joint Protocol to reduce the contact of young people in out-of-home care with the criminal justice system, a protocol that aims to appropriately respond to cases where this typically very traumatised cohort may "act out".⁷⁷¹
- 6.52 In its submission to the inquiry, the Mental Health Commission of NSW stated that:
- ...a history of trauma is particularly common amongst people who come into contact with the criminal justice system. This means that all services provided to this cohort need to be recover-oriented and trauma-informed. Improved general awareness and capability of all staff in the criminal justice system will be critical to reducing the re-traumatisation of individuals, and increasing engagement in rehabilitative programs.⁷⁷²
- 6.53 Ms Hawyes of Juvenile Justice NSW also emphasised the importance of trauma-informed practice right across agencies and organisations:

⁷⁷⁰ Ms Tracy McLeod Howe, *Transcript of Evidence*, 30 April 2018, p38.

⁷⁷¹ See in particular the evidence of Ms Debra Maher, *Transcript of Evidence*, 30 April 2018, p16, that children in out-of-home care are a particularly traumatised cohort and that appropriate responses to "acting out" are essential in this context.

⁷⁷² Submission 8, Mental Health Commission of NSW, p5.

(The) understanding of trauma backgrounds...is really important to understand the types of what could otherwise be completely incomprehensible behaviour or responses to things. It is as applicable to detention centres as it is to education and in health settings. Skilling our health and human services workforce to understand that a person who has experienced significant trauma will react to things in potentially volatile and violent ways is an important safety consideration but it also makes more sense of what otherwise would not make sense.⁷⁷³

- 6.54 This was supported by NGOs who gave evidence to the Committee, who stressed that to be effective service delivery must be trauma-informed. Just Reinvest recommended that the NSW Government:

Provide training across the service sector in all youth diversionary approaches to manage behaviours in a therapeutic, non-punitive, non-adversarial, trauma-informed and culturally responsive way.⁷⁷⁴

- 6.55 Mission Australia also emphasised the importance of trauma-informed practice to effectively engage young people, stating that "Through our operational experience, we have learnt the importance of working within a trauma informed approach to increase engagement and positive outcomes for young people".⁷⁷⁵

- 6.56 In addition, Ms Hopgood of the Aboriginal Legal Service stressed the need for all staff to be trauma-informed, including the judicial officers who are hearing juvenile matters. She further noted that:

The difference in the staff is what makes a massive difference to the quality of the program. There are some wonderful programs out there but they are only as good as their staff.⁷⁷⁶

Evaluating the Outcomes of Programs and Services

The NSW Government should consider building evaluation requirements into contracts with NGOs who deliver diversionary programs and services

Recommendation 60

That the NSW Government consider building evaluation requirements, and funding for same, into contracts with non-government organisations for the delivery of diversionary programs and services.

- 6.57 During the inquiry the Committee heard evidence discussed below that robust and ongoing evaluation is essential so that Government funding can be allocated to the programs and services that work best. The Committee agrees that thorough evaluation is important so that finite resources are applied to the programs and services that work best to divert young people from involvement with the Juvenile Justice system.
- 6.58 The Committee is concerned at evidence discussed below that adequate funding is not always allocated for proper evaluation. The Committee considers that

⁷⁷³ Ms Melanie Hawyes, *Transcript of Evidence*, 8 May 2018, p48.

⁷⁷⁴ Submission 21, Just Reinvest NSW, p27.

⁷⁷⁵ Submission 12, Mission Australia, p10.

⁷⁷⁶ Ms Keisha Hopgood, *Transcript of Evidence*, 30 April 2018, p45.

providing NGOs with the funding and training to undertake comprehensive program evaluation, is an important part of ensuring overall improvements diversionary programs and services.

- 6.59 Therefore, the NSW Government should consider building formal evaluation requirements and funding for same into contracts with NGOs for the delivery of diversionary programs and services. Ensuring that evaluation requirements are accompanied by the necessary funding to undertake such evaluation is a significant factor in ensuring that the service quality is not compromised by additional and burdensome administration.
- 6.60 The Committee has also noted comments made by Youth Off The Streets, discussed below, that owing to the complexity of issues faced by many young people, it is not always possible to accurately evaluate a program within the space of one or two years.⁷⁷⁷ The Committee accepts that proper evaluation often requires a longer term view to be taken, and its recommendation earlier in the Chapter for the NSW Government to promote longer-term contracts wherever possible is consistent with these concerns.
- 6.61 In its submission to the inquiry, the NSW Government indicated that evaluation is fundamental:
- Evaluation is central to good program management and good government planning and decision making. Evaluation informs decision making and can provide an evidence base on which to determine whether services are effective, delivering value for money and meeting identified needs.⁷⁷⁸
- 6.62 It further stated that it has devised the NSW Government Program Evaluation Guidelines and Circular C2016-01 Program Evaluation to ensure that Departments adopt and implement an evaluation framework for their programs.⁷⁷⁹ It also noted the extensive evaluation that is currently being undertaken for the Youth On Track Program, which is also discussed in Chapter Three.⁷⁸⁰
- 6.63 The NSW Bar Association also stressed the importance of evaluation, indicating that measures should span a number of areas given the complexity of issues that often face young people involved with the Juvenile Justice system:
- Diversion programs should be evaluated against established criteria to determine whether the programs are leading to positive change. Measures might include engagement with education, training or employment; reconnecting with family; maintaining or securing stable accommodation; and the rates and/or types of re-offending participants compared with non-participants.⁷⁸¹

⁷⁷⁷ Submission 11, Youth Off The Streets, p12.

⁷⁷⁸ Submission 27, NSW Government, p28.

⁷⁷⁹ Submission 27, NSW Government, p28.

⁷⁸⁰ Submission 27, NSW Government, p28.

⁷⁸¹ Submission 22, NSW Bar Association, p20.

- 6.64 However, in its submission to the inquiry, Youth Action told the Committee that evaluation processes need to be improved:

Contracts very rarely include the resources or information to perform evaluation during, or at the end of a contract. As a sector, we are missing out on determining what works best for our funding in the future by not allocating a fraction of our funding to evaluation now.⁷⁸²

- 6.65 At the Committee's hearing on 8 May 2018, Ms Acheson of Youth Action expanded on this point, arguing that contracts between Government and NGOs for the delivery of services and programs should include allocated funding for evaluation:

My old job was in international development and in most international development contracts there is a certain percentage that is put aside solely for evaluation and they give the tools to measure it in a particular way so that there is consistency for the Government about cost spending and what that looks like. It is shame, I think, that across the State we do not do that. A lot of these services and programs that are really successful have very little money— they often just barely cover the very low wages of a trained youth worker—and they just make ends meet, but there are no additional supports for tools or evaluation opportunities and resources and there is no impetus to make sure that the evaluation is continued in a consistent way.⁷⁸³

- 6.66 Ms Acheson also indicated that thorough evaluation processes are part of Just Reinvest's Maranguka Justice Reinvestment program in Bourke, and emphasised the need for evaluations to be carried out over a number of years to obtain an accurate indication of the effectiveness of programs and services. Ms Acheson told the Committee:

Just Reinvest has a really great evaluation program. We need to give the time to look at what is happening and then make sure we do evaluation over a number of years. I do not think we do that very well, to be honest.⁷⁸⁴

- 6.67 For its part, Just Reinvest also stressed the importance of ongoing evaluation stating that "A justice reinvestment framework requires constant evaluation of what is working and reinvestment into effective community led programs".⁷⁸⁵ It also stated that "evaluations must be adequately funded and supported".⁷⁸⁶

- 6.68 Similarly, Red Cross emphasised the importance of evidence-based program development, indicating that in seeking Government funding, NGOs could be required to consider evaluation as part of program design:

Formal evaluations...are costly and are often not factored into funding proposals. Government requests for tender proposals could have a standard requirement to

⁷⁸² Submission 9, Youth Action NSW, p14.

⁷⁸³ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p14.

⁷⁸⁴ Ms Katie Acheson, *Transcript of Evidence*, 8 May 2018, p14.

⁷⁸⁵ Submission 21, Just Reinvest NSW, p8.

⁷⁸⁶ Submission 21, Just Reinvest NSW, p30.

ensure that evaluation is considered as part of program design with associated costs included.⁷⁸⁷

- 6.69 Dr Garner Clancey of the University of Sydney Law School also emphasised the need for greater focus on evaluation:

Evaluating outcomes and identifying areas of improvement – it is an obvious statement that greater importance needs to be given to evaluating the outcomes of diversionary programs and measures.⁷⁸⁸

- 6.70 Mission Australia was another stakeholder that emphasised the importance of evaluation stating that "Evaluation of outcomes and identifying areas for improvement are essential components of effective programs".⁷⁸⁹

- 6.71 However, in its submission to the inquiry, while welcoming the increased accountability and transparency that comes with ongoing evaluation and outcome reporting, Youth Off The Streets cautioned that program outcomes cannot always be comprehensively and accurately measured over the space of one or two years, particularly in the area of early intervention. Youth Off The Streets stated that a longer-term outlook is often needed:

Youth Off The Streets strongly believes governments need to adopt a longer-term view when assessing early intervention programs. Outcomes of early intervention programs cannot be holistically and accurately measured in the space of a single year or two. These issues have, in some cases, spanned generations and require a longer term outlook. This reality challenges the current shift towards exhaustive data collection and outcome reporting by the NSW Government in which funding recipients are required to provide evidence of the effectiveness and usefulness of funding received on a year-to-year basis. While our organisation fully supports this transition towards increased accountability and transparency of recipients, we believe some degree of flexibility and longevity of funding needs to exist when implementing early intervention programs and measurement of outcomes aligned to this timeframe.⁷⁹⁰

- 6.72 Youth Off The Streets also provided some examples of positive outcomes that can be difficult to measure in the short-term including improvements in family decision-making and improvements in a child's social-emotional wellbeing.⁷⁹¹

⁷⁸⁷ Submission 6, Red Cross, p3.

⁷⁸⁸ Submission 2, Dr Garner Clancey, p4.

⁷⁸⁹ Submission 12, Mission Australia, p20.

⁷⁹⁰ Submission 11, Youth Off The Streets, p12.

⁷⁹¹ Submission 11, Youth Off The Streets, p13.

Appendix One – Terms of Reference

That the Legislative Assembly Committee on Law and Safety inquire into and report on the adequacy of diversionary programs to deter juvenile offenders from long-term involvement with the criminal justice system.

In examining this matter, the Committee should pay particular regard to:

- a. the way in which youth diversionary efforts work with:
 - the Police
 - Juvenile Justice
 - Community Corrections
 - the Courts
 - Health, Housing and children's services
 - schools and educational authorities
 - non-government organisations and the local community
- b. Aboriginal over-representation in the Juvenile Justice system
- c. evaluating outcomes and identifying areas for improvement
- d. staff capacity and training requirements
- e. case management options
- f. bail issues
- g. the experience of other jurisdictions
- h. any other related matter.

Appendix Two – Conduct of Inquiry

Terms of Reference

On 21 September 2017, the Committee resolved to conduct an inquiry into the adequacy of youth diversionary programs in NSW to deter juvenile offenders from long-term involvement with the criminal justice system. The full terms of reference can be found at Appendix One.

Submissions

The Committee called for submissions by issuing a media release and writing to key stakeholders, inviting them to make a submission. The closing date for submissions was 30 January 2018.

The Committee received 28 submissions from a range of stakeholders including the NSW Government; the President of the Children's Court of NSW; peak bodies; non-government organisations and community groups; youth support and advocacy services; Aboriginal groups; legal experts; academics; the Mental Health Commissioner of NSW; and the NSW Advocate for Children and Young People.

A complete list of submissions can be found at Appendix Three.

Hearings

The Committee held public hearings for the inquiry on 30 April, 8 May and 10 May 2018. 34 witnesses appeared to give evidence at the public hearings. They included the President of the Children's Court of NSW; an Assistant Commissioner of the NSW Police Force, Mr Joseph Cassar; the Chief Executive Officer of the NSW Council of Social Service; the President of the Law Society of NSW; NSW Government representatives; legal experts; and representatives of peak bodies for Aboriginal people, non-government organisations, and youth support and advocacy services. A complete list of the witnesses who appeared at the public hearings can be found at Appendix Four.

The Committee also held an *in camera* hearing for the inquiry on 10 May 2018, hearing from two witnesses.

Site Visits

During the course of the inquiry, the Committee also conducted five site visits.

On 9 November 2017, the Committee conducted a site visit to Riverina Juvenile Justice Centre Wagga Wagga, touring the facility, speaking with detainees and staff about issues of relevance to the inquiry, and meeting with a mentor and mentee of the Joint Support Program delivered by Anglicare.

On 13 November 2017, the Committee conducted a site visit to Dubbo visiting the Dubbo Juvenile Justice Community Office; Orana Juvenile Justice Centre and Mac River Rehabilitation Centre, speaking to staff, detainees and clients about issues of relevance to the inquiry, and touring the facilities.

On 16 March 2018, the Committee conducted a site visit to Reiby Juvenile Justice Centre, Airds touring part of the facility and speaking with detainees and staff about issues of relevance to the inquiry.

On 11 May 2018, the Committee conducted a site visit to the Youth Koori Court Parramatta meeting with magistrates, Aboriginal elders and other personnel instrumental in the Youth Koori Court process and discussing matters of relevance to the inquiry; and observing Youth Koori Court proceedings.

On 5 July 2018, the Committee conducted a further site visit to Reiby Juvenile Justice Centre, Airds; speaking to staff and detainees about issues of relevance to the inquiry and touring the Waratah Pre-Release Unit.

Appendix Three – Submissions

Submission No 1	Federation of Parents and Citizens Associations of NSW
Submission No 2	Dr Garner Clancey, University of Sydney Law School
Submission No 3	Jesuit Social Services
Submission No 4	Miyay Birray Youth Services Inc
Submission No 5	Dr Jill Guthrie, Australian National University; Councillor Bill West, Mayor of Cowra; and Professor Michael Levy AM.
Submission No 6	Australian Red Cross
Submission No 7	People with Disability Australia
Submission No 8	Mental Health Commission of NSW
Submission No 9	Youth Action NSW
Submission No 10	Public Health Association of Australia
Submission No 11	Youth Off The Streets
Submission No 12	Mission Australia
Submission No 13	Dr Vicki Sentas, University of NSW
Submission No 14	Legal Aid NSW
Submission No 15	Public Interest Advocacy Centre
Submission No 16	NSW Council of Social Service
Submission No 17	Aboriginal Child, Family and Community Care State Secretariat
Submission No 18	Macarthur Legal Centre

Submission President of the Children's Court of NSW
No 19

Submission Advocate for Children and Young People
No 20

Submission Just Reinvest NSW and Maranguka Justice Reinvestment Project
No 21

Submission NSW Bar Association
No 22

Submission Aboriginal Legal Service (NSW/ACT) Ltd
No 23

Submission NSW Coalition of Aboriginal Regional Alliances
No 24

Submission Redfern Aunties and Uncles Community Action Group
No 25

Submission Law Society of NSW
No 26

Submission NSW Government
No 27

Submission Hon Justice Hilary Hannam
No 28

Appendix Four – Witnesses

MONDAY 30 APRIL 2018, MACQUARIE ROOM, PARLIAMENT HOUSE

Witness	Organisation
Judge Peter Johnstone President	Children's Court of NSW
Ms Debra Maher Solicitor in Charge – Children's Legal Services (Criminal Division)	Legal Aid NSW
Dr Evelyne Tadros State Leader, Metro NSW	Mission Australia
Ms Anna Dawson Senior Solicitor – Indigenous Justice Program	Public Interest Advocacy Centre
Dr Vicki Sentas Senior Lecturer	University of NSW Law Faculty
Ms Tracy McLeod Howe Chief Executive Officer	NSW Council of Social Service
Mr Michael Higgins Regional Community Engagement Manager, Central and Southern Region	Aboriginal Legal Service
Ms Keisha Hopgood Deputy Principal Solicitor Redfern Office	Aboriginal Legal Service
Mr Phillip Boulten SC Barrister	NSW Bar Association
Ms Sarah Pritchard SC Barrister	NSW Bar Association
Ms Gabrielle Bashir SC Barrister	NSW Bar Association

TUESDAY 8 MAY 2018, ROOM 814-815, PARLIAMENT HOUSE

Witness	Organisation
Mr Joseph Cassar Assistant Commissioner Capability, Performance and Youth Command	NSW Police Force
Ms Katie Acheson Chief Executive Officer	Youth Action
Ms Catherine Lourey Commissioner	Mental Health Commission of NSW

Mr Andrew Johnson Advocate for Children and Young People	Office of the Advocate for Children and Young People
Ms Melanie Hawyes Executive Director	Juvenile Justice NSW
Mr Paul McKnight Executive Director, Policy and Reform	Department of Justice NSW

THURSDAY 10 MAY 2018, MACQUARIE ROOM, PARLIAMENT HOUSE

Witness	Organisation
Dr Kerry Chant Chief Health Officer and Deputy Secretary Population and Public Health	NSW Health
Mr Gary Forrest Chief Executive	Justice Health and Forensic Mental Health Network
Dr Yolisha Singh Clinical Director Adolescent Mental Health, Adolescent Health	Justice Health and Forensic Mental Health Network
Ms Cheryl Best Acting Executive Director, Learning and Teaching	NSW Department of Education
Ms Robyn Bale Acting Executive Director, Learning and Wellbeing	NSW Department of Education
Ms Marnie O'Brien Executive Director, Health and Safety Directorate	NSW Department of Education
Mr Will Bovino Director Training and Development Services	Youth Off The Streets
Mr Evan Walsh Manager of Government Advocacy and Funding	Youth Off The Streets
Mr Benjamin Stevens Outreach Development Manager	Youth Off The Streets
Mr Steven Armstrong School Principal	Youth Off The Streets
Mr Paul O'Reilly Executive Director, Inclusion and Early Intervention	Department of Family and Community Services
Aunty Jean Hands Chairperson	NSW Coalition of Aboriginal Regional Alliances
Mr Des Jones Member	NSW Coalition of Aboriginal Regional Alliances
Mr Mark Davies Member	NSW Coalition of Aboriginal Regional Alliances

Ms Annette Van Gent Consultant	NSW Coalition of Aboriginal Regional Alliances
Mr Doug Humphreys OAM President	Law Society of NSW
Ms Jane Irwin Member, Children's Issues Legal Committee	Law Society of NSW

Appendix Five – Extracts from Minutes

MINUTES OF MEETING No 14

9:04am

21 September 2017

Room 1136, Parliament House

Members Present

Mr Provest (Chair), Mr Rowell (Deputy Chair), Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Jason Arditi, Elspeth Dyer, Madeleine Dowd and Mohini Mehta.

1. Confirmation of minutes

Resolved, on the motion of Mr Atalla, seconded by Ms Leong:

That the draft minutes of meeting no 13, held on 3 August 2017, be confirmed.

2. ***

3. Possible new inquiry topics

The Committee noted the following topics had been suggested by members as possible new inquiry topics for the Committee:

- ***
- the adequacy of youth diversionary programs in NSW.

The Chair proposed that the Committee proceed with an inquiry into the adequacy of youth diversionary programs in NSW.

The Committee considered draft terms of reference and a draft timetable for the first stage of the inquiry.

Discussion ensued.

Resolved, on the motion of Ms Leong, seconded by Mr Rowell:

- That the Committee conduct an inquiry into the adequacy of youth diversionary programs in NSW;
- That the draft terms of reference for the inquiry be adopted as circulated;
- That the Committee agree to a timetable for the first stage of the inquiry with submissions to be received by 30 January 2018 and a follow up meeting to discuss inquiry direction in the sitting weeks of February 2018;
- That the Chair issue a media release announcing the inquiry and calling for submissions by the agreed closing date, for dissemination by the Secretariat;

- That the Committee agree on a list of targeted stakeholders to be invited to make a submission to the inquiry out of session, by email;
- That the Chair write to those on the agreed list of targeted stakeholders inviting submissions by the agreed closing date;
- That the Committee conduct site visits to relevant service providers for the purposes of the inquiry;
- That the Chair seek the approval of the Speaker to conduct site visits to regional juvenile justice centres for the purposes of the inquiry;
- That the Chair write to the Minister requesting information on culturally appropriate ways in which to engage with Aboriginal stakeholders during the inquiry process.

4. ***

5. Next meeting

The Committee adjourned at 9:14am until a date and time to be determined.

MINUTES OF SITE VISIT TO WAGGA WAGGA

9 November 2017

Members Present

Mr Provest (Chair), Mr Atalla and Ms Leong.

Officers in Attendance

Elsbeth Dyer and Madeleine Dowd.

1. Apologies

Apologies were received from Mr Rowell (Deputy Chair) and Mr Tudehope.

2. Site Visit

The Committee conducted a site visit to Wagga Wagga for its inquiry into the adequacy of youth diversionary programs in NSW.

Mr Provest, Mr Atalla, Ms Leong and Committee staff met at Sydney Airport and took an 8:05am flight, arriving in Wagga Wagga at 9:15am.

The Committee and staff then travelled by taxi to the Riverina Juvenile Justice Centre, corner of Fernleigh and Glenfield Roads, Wagga Wagga, arriving at approximately 10am.

The Committee and staff received a welcome to country from Mr Wilfred Williams, shift supervisor at the Centre, and met with officers of Juvenile Justice including Mr Murray Hillan, Head of Government and External Relations; Mr Matthew Billett, Area Manager, Riverina Murray; Mr Panapasa Turaga, Acting Centre Manager; and Mr Wayne Collingwood, Assistant Manager, Client Services. A discussion regarding matters of relevance to the inquiry ensued.

At 11am the Committee and staff were given a tour of the Centre including its admissions area, housing units, school, gymnasium, chapel and clinic; and conducted informal discussions with staff from Juvenile Justice, the Department of Education and Justice Health, and detainees.

At 1:30pm the Committee and staff took the luncheon adjournment.

At 2:00pm, the Committee and staff met with a mentor and mentee of the Anglicare Joint Support Program, discussing issues of relevance to the inquiry.

At 3:00pm, the Committee and staff departed the Centre by taxi and travelled to Wagga Wagga Airport.

The Committee and staff took a 4:40pm flight, arriving at Sydney Airport at 5:45pm after which the site visit concluded and Committee members returned to their electorates.

MINUTES OF SITE VISIT TO DUBBO

13 November 2017

Members Present

Mr Provest (Chair), Mr Tudehope, Mr Atalla and Ms Leong.

Officers in Attendance

Elsbeth Dyer and Madeleine Dowd.

1. Apologies

Apologies were received from Mr Rowell (Deputy Chair).

2. Site Visit

The Committee conducted a site visit to Dubbo for its inquiry into the adequacy of youth diversionary programs in NSW.

Mr Provest, Mr Tudehope, Mr Atalla, Ms Leong and Committee staff met at Sydney Airport and took a 7:25am flight, arriving in Dubbo at 8:35am.

The Committee and staff then travelled by taxi to the Dubbo Juvenile Justice Community Office, Carrington Avenue, Dubbo, arriving at approximately 9am.

The Committee and staff met with Mr Craig Biles, Area Manager, discussing issues of relevance to the inquiry. The Committee and staff departed at approximately 10:40am.

The Committee and staff then travelled by taxi to Orana Juvenile Justice Centre, Westview Street, Dubbo, arriving at approximately 11am.

The Committee and staff received a welcome to country and met with officers of Juvenile Justice including Ms Leonie Berder, Regional Director, Western; Ms Monique Mathis, Senior Practice Officer, Western; and Mr Kimble Appleyard, Centre Manager. A discussion regarding matters of relevance to the inquiry ensued.

At 11:30am the Committee and staff were given a tour of the Centre, including a housing unit, school rooms, clinic, gymnasium, security centre, and visiting area; and conducted informal discussions with staff from Juvenile Justice, the Department of Education and Justice Health, and detainees.

At 1pm the Committee and staff took the luncheon adjournment. The Committee and staff departed at approximately 1:30pm.

At 1:30pm the Committee and staff travelled by taxi to Mac River Rural Rehab facility, Furney's Road, Dubbo, arriving at approximately 2:15pm.

The Committee and staff met with staff from Mission Australia, including Ms Ann Winterton, Regional Leader; Ms Megan Boshell, Program Manager; Mr Rob Hayward, Program Manager; Mr Jye Ryan, Case Manager; Mr Ray Fuller, Case Worker; and Ms Emily Lake, Case Worker. A discussion regarding matters of relevance to the inquiry ensued.

At 3pm the Committee and staff were given a tour of the facility, including its residential areas, kitchen, pool, reflection area and gymnasium; and conducted informal discussions with staff from Juvenile Justice, Mission Australia and the clients of the facility.

At 3:45pm, the Committee and staff departed the facility by taxi and travelled to Dubbo Airport. The Committee and staff took a 5:10pm flight, arriving at Sydney Airport at 6:20pm after which the site visit concluded and Committee members returned to their electorates.

MINUTES OF MEETING No 15

5:11pm

22 November 2017

Room 1254, Parliament House

Members Present

Mr Provest (Chair), Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Jason Arditi, Elspeth Dyer and Madeleine Dowd.

1. Apologies

An apology was received from Mr Rowell.

2. Confirmation of minutes

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:

That the draft minutes of meeting no 14, held on 21 September 2017, be confirmed.

Resolved, on the motion of Mr Atalla, seconded by Ms Leong:

That the draft minutes of the site visits on 9 November 2017 and 13 November 2017 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence received:

- Ms Rachel Dow, Office Manager to the South Australian Minister for Youth, dated 5 October 2017, advising Committee's request for a submission to its inquiry into the adequacy of youth diversionary programs is receiving attention.

- Ms Leilani Tonumaipea, Reiby Juvenile Justice Centre, email dated 28 September 2017, advising the Centre will provide a submission to the Committee's inquiry into the adequacy of youth diversionary programs.
- Ms Alicia Webster, Justice Health and Forensic Mental Health Network, email dated 29 September 2017, advising the Network will contribute to a whole-of-Health submission to the Committee's inquiry into the adequacy of youth diversionary programs.
- Mr Michael Raine, Family Court of Australia, email dated 3 October 2017, advising the Court will not be making a submission to the Committee's inquiry into the adequacy of youth diversionary programs.
- Hon T.F. Bathurst AC, Chief Justice of NSW, letter dated 9 October 2017, declining to make a submission to the Committee's inquiry into the adequacy of youth diversionary programs.
- Ms Erin Gough, Policy Manager, Law Reform and Sentencing Council Secretariat, NSW Department of Justice, email dated 10 October 2017 advising the NSW Law Reform Commission will not be making a submission to the Committee's inquiry into the adequacy of youth diversionary programs.
- Mr Joseph Waugh PSM, Senior Policy Officer, Department of Justice, email dated 16 October 2017, advising the NSW Sentencing Council will not be making a formal submission to the Committee's inquiry into the adequacy of youth diversionary programs.
- Hon David Elliot MP, Minister for Corrections, dated 13 November 2017 regarding arrangements for the Committee's site visits for its inquiry into the adequacy of youth diversionary programs.
- Mr David Mackie, Director General Qld Department of Justice and Attorney General, dated 17 November 2017 regarding Committee's invitation to make a submission to its inquiry into the adequacy of youth diversionary programs.

The Committee noted the following items of correspondence sent:

- Hon David Elliot MP, Minister for Corrections, dated 27 September 2017, seeking assistance to arrange site visits for youth diversionary program inquiry, and requesting information on culturally appropriate ways in which to engage with Aboriginal stakeholders.
- Mr Daryl Maguire MP, Member for Wagga Wagga, sent 31 October 2017, advising of Committee's site visit to Wagga Wagga on 9 November and inviting him to same (*the Committee agreed out of session by email on 31 October 2017, to send the letter*).
- Hon Troy Grant MP, Member for Dubbo, sent 31 October 2017, advising of Committee's site visit to Dubbo on 13 November and inviting him to same (*the Committee agreed out of session by email on 31 October 2017, to send the letter*).

4. Inquiry into the adequacy of youth diversionary programs

4.1 Possible further site visits

The Chair proposed conducting a further site visit to a Sydney juvenile justice centre in early 2018.

Discussion ensued.

Resolved, on the motion of Ms Leong:

- That the Committee conduct a site visit to a Sydney juvenile justice centre in early 2018 for its inquiry into youth diversionary programs.
- That the Committee secretariat make any necessary arrangements with Juvenile Justice to arrange the site visit.

4.2 Formal evidence from Juvenile Justice detainees

The Chair proposed to invite detainees of juvenile justice centres to give formal, *in camera* evidence to the Committee as part of its inquiry.

Discussion ensued.

Resolved, on the motion of Mr Tudehope, seconded by Ms Leong:

That the Chair write to the Minister for Corrections requesting approval for the Committee to take formal evidence from Juvenile Justice detainees for its inquiry into the adequacy of youth diversionary programs; and seeking an assurance that arrangements will be made to allow a representative sample of detainees, with a variety of classifications, to provide candid and fearless evidence to the Committee.

5. ***

6. ***

7. Next meeting

The Committee adjourned at 5:32pm until a date and time to be determined.

MINUTES OF MEETING No 16

1:01pm

15 February 2018

Room 1043, Parliament House

Members Present

Mr Provest (Chair), Mr Rowell, Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Jonathan Elliott, Elspeth Dyer, Madeleine Dowd and Mohini Mehta.

1. Confirmation of minutes

Resolved, on the motion of Ms Leong, seconded by Mr Rowell:

That the draft minutes of meeting no 15, held on 22 November 2017, be confirmed.

2. ***

3. Correspondence

The Committee considered the following item of correspondence sent:

- Hon David Elliot MP, Minister for Corrections, dated 24 November 2017, requesting a Committee site visit to Reiby Juvenile Justice Centre and requesting approval for the

Committee to take evidence from Juvenile Justice detainees as part of its hearings for its inquiry into the adequacy of youth diversionary programs.

The Committee also considered the following items of correspondence received

- Ms Cara Montague, Researcher, email dated 23 January 2018 on behalf of Justice Price AM, Chief Judge of the NSW District Court, declining to make a submission to the Committee's inquiry into the adequacy of youth diversionary programs.

Resolved, on the motion of Mr Rowell:

- That the Committee note the correspondence.

4. Inquiry into the adequacy of youth diversionary programs

4.1 Publication of Submissions

The Committee considered publication resolutions for submissions 1-14 lodged to its inquiry into youth diversionary programs.

Discussion ensued.

Resolved, on the motion of Mr Tudehope, seconded by Mr Rowell:

That submissions 1-14 to the Committee's inquiry into the adequacy of youth diversionary programs be received by the Committee and published on the Committee's webpage.

4.2 Public Hearings

The Committee considered whether to set aside dates in April/May 2018 to conduct public hearings for its inquiry into the adequacy of youth diversionary programs.

The Committee noted that it is still receiving late written submissions to its inquiry and that a Chair's draft witness list for the hearings will be presented to the Committee for its consideration at a later date.

Discussion ensued.

Resolved, on the motion of Mr Atalla, seconded by Mr Rowell:

That the Committee conduct public hearings for its inquiry into the adequacy of youth diversionary programs on suitable dates to be confirmed by the secretariat.

4.3 Site Visit to Reiby Juvenile Justice Centre

The Chair noted that a site visit to Reiby Juvenile Justice Centre, Airds, has been scheduled for Friday 16 March 2018. The Chair further noted that a letter had been drafted to the local member, Mr Greg Warren MP, advising him of the visit and inviting him to attend.

Resolved, on the motion of Mr Rowell, seconded by Ms Leong:

That the Chair's draft letter to Mr Greg Warren MP concerning the Committee's site visit to Reiby Juvenile Justice Centre, be sent as circulated.

5. ***

6. Next meeting

The Committee adjourned at 1:09pm until Friday 16 March 2018.

MINUTES OF MEETING No 17

9:03am

16 March 2018

Room 1136, Parliament House

Members Present

Mr Provost (Chair); Ms Leong; and Mr Tudehope (by telephone until 10:40am, then in person); Mr Atalla (from 10:25am)

Officers in Attendance

Elspeth Dyer and Madeleine Dowd.

1. Apologies

An apology was received from Ms Cooke.

2. Confirmation of Minutes

Resolved, on the motion of Ms Leong, seconded by Mr Tudehope:

That the draft minutes of meeting no 16, held on 15 February 2018, be confirmed.

3. Membership of Committee

The Committee noted extracts from Votes and Proceedings No 163, 13 March 2018, and that Ms Cooke has been appointed to serve on the Committee in place of Mr Rowell who has been discharged.

4. Correspondence

The Committee considered items of correspondence sent and received ***

Sent

a. ***

b. ***

c. Mr Greg Warren MP, Member for Campbelltown, dated 15 February 2018, inviting him to attend the Committee's site visit to Reiby Juvenile Justice Centre on 16 March 2018.

Received

d. Mr Mitch Wright, Senior Electorate Officer, Office of Mr Greg Warren MP, Member for Campbelltown, emails dated March and February 2018, concerning the Committee's invitation for Mr Warren to attend its site visit to Reiby Juvenile Justice Centre on 16 March 2018.

e. ***

Resolved, on the motion of Mr Tudehope, seconded by Ms Leong:

- That the Committee note the correspondence

5. Inquiry into the adequacy of youth diversionary programs

5.1 Publication of Submissions

The Committee considered publication orders for submissions 15-26 to its inquiry.

Resolved, on the motion of Ms Leong, seconded by Mr Tudehope:

- That submissions 15-20 and 22-26 be received by the Committee and published in full;
- That submission 21 be received by the Committee and published in part.

5.2 Public Hearings

The Committee noted that as per its previous decision to conduct public hearings for its inquiry, 30 April, 8 May and 10 May have been set aside for this purpose. The Committee considered the Chair's draft witness list for the public hearings.

The Chair also noted the Committee's previous decision to take *in camera* evidence from young people currently detained in a Juvenile Justice Centre for the inquiry, and that a separate day would need to be set aside to do this.

Discussion ensued.

Resolved, on the motion of Ms Leong, seconded by Mr Tudehope:

- That the Committee agree to the Chair's draft witness list for public hearings for its inquiry into the adequacy of youth diversionary programs;
- That the Chair issue a media release announcing the public hearings in due course.

5.3 Site Visit to Youth Koori Court

The Chair proposed a site visit to the Youth Koori Court for its inquiry.

Discussion ensued.

Resolved, on the motion of Mr Tudehope, seconded by Ms Leong:

- That the Committee conduct a site visit to the Youth Koori Court for its inquiry into the adequacy of youth diversionary programs;
- That the Chair's draft letter to the Attorney General requesting a site visit to the Youth Koori Court be sent as circulated.

5.4 Indicative Timeline for Inquiry

The Committee noted an indicative timeline for the remainder of the inquiry.

6. ***

7. Site Visit

The Committee adjourned at 9:17am and Mr Provest, Ms Leong and Committee staff met in the Parliament House foyer at 9:30am. The members and staff then travelled by taxi to Reiby

Juvenile Justice Centre, Airds, for a site visit for the Committee's inquiry into the adequacy of youth diversionary programs.

Committee members and staff arrived at Reiby Juvenile Justice Centre at 10:25am and joined Mr Atalla. Mr Tudehope arrived at 10:40am.

The Committee and staff met with officers of Juvenile Justice including Mr Murray Hillan, Head of Government and External Relations; Ms Leilani Tonumaiepa A/ Centre Manager; Mr Adrian Gillespie, A/Assistant Manager Client Services; and Ms Elizabeth Debski, Unit Manager; receiving an induction to the Centre and discussing issues of relevance to the inquiry.

At 11:30am, the Committee and staff received a tour of the Centre visiting school rooms, a housing unit, art room and the Centre's grounds and conducted informal discussions with staff and detainees, before meeting with Ms Denise Hanley, Regional Director, at 12:50pm and discussing issues of relevance to the inquiry.

The Committee and staff departed the Centre at approximately 1pm. Mr Atalla and Mr Tudehope returned to their electorates. Mr Provest, Ms Leong and Committee staff took a taxi back to Parliament returning at approximately 2:30pm.

8. Next Meeting

The Committee adjourned at 1pm until a date and time to be determined.

MINUTES OF MEETING No 18

1:02pm

11 April 2018

Room 1254, Parliament House

Members Present

Mr Provest (Chair), Ms Cooke, Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Elsbeth Dyer and Madeleine Dowd.

1. Confirmation of Minutes

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:

That the draft minutes of meeting no 17, held on 16 March 2018, be confirmed.

2. Election of Deputy Chair

The Chair noted that as Mr Rowell was discharged from the Committee on 13 March 2018 and replaced by Ms Cooke, and as Mr Rowell had been the Deputy Chair of the Committee, the Committee needed to elect a new Deputy Chair.

The Chair asked if there were any nominations for Deputy Chair.

Mr Tudehope moved that Ms Cooke be nominated Deputy Chair of the Committee.

Mr Atalla seconded the nomination.

Question put and passed.

The Chair congratulated Ms Cooke on becoming Deputy Chair of the Committee.

3. Correspondence

The Committee considered the following items of correspondence sent:

- Hon Mark Speakman SC MP, Attorney General, dated 16 March 2018 requesting approval for the Committee to conduct a site visit to the Youth Koori Court for the purposes of its inquiry into youth diversionary programs.
- ***

Resolved, on the motion of Mr Tudehope:
That the correspondence be noted.

4. Inquiry into the adequacy of youth diversionary programs

4.1 Publication of Submissions

The Committee considered a publication order for the NSW Government submission to the inquiry (submission 27), previously circulated to the Committee on 22 March 2018.

Resolved, on the motion of Mr Tudehope, seconded by Ms Leong:
That submission 27 to the Committee's inquiry into the adequacy of youth diversionary programs be received by the Committee and published in full.

4.2 Letter concerning TAFE Funding

Following issues raised about TAFE funding during the Committee's site visits to Juvenile Justice Centres, the Committee considered the Chair's draft letter to the Minister for Education requesting information about policies for the funding of TAFE courses in Juvenile Justice Centres.

Discussion ensued.

The Committee agreed that the letter should be sent to the Assistant Minister for Skills rather than the Minister for Education.

The Committee agreed that a sentence should be added to the letter noting concerns raised at Riverina Juvenile Justice Centre that, while facilities exist for detainees to undertake TAFE courses whilst in custody, fewer classes are now offered because of funding cuts.

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:
That the Chair's draft letter requesting information about TAFE funding for Juvenile Justice Centres be sent to the Assistant Minister for Skills, as amended.

4.3 Letter to the NSW Bureau of Crime Statistics and Research

The Committee noted that in written submissions to the inquiry, some stakeholders have raised issues regarding uneven access to youth diversionary options based on the Court the

relevant matter is heard in and Aboriginal status. The Chair proposed to send a letter to the NSW Bureau of Crime Statistics and Research, requesting any recent data on these issues.

Discussion ensued.

Resolved, on the motion of Mr Tudehope, seconded by Ms Cooke:

That the Chair's draft letter to the NSW Bureau of Crime Statistics and Research requesting data regarding access to youth diversionary options be sent as circulated.

4.4 Site Visit to Youth Koori Court

The Committee noted that the Children's Court had been in contact with the secretariat following the Committee's request to visit the Youth Koori Court, that arrangements were in the early stages and that the secretariat would be in touch with members' offices to identify a suitable date in due course.

5. General Business

Ms Leong noted that at the site visit to Reiby Juvenile Justice Centre on 16 March 2018, there was no opportunity to view the boys' section or the Waratah Pre-release Unit and that it would be desirable to ask Juvenile Justice if the Committee could do so as part of the Committee's next visit to the Centre to take formal evidence from detainees.

6. Next Meeting

The Committee adjourned at 1:11pm until Monday 30 April 2018 at 9:00am.

MINUTES OF MEETING No 19

10:45am

30 April 2018

Macquarie Room, Parliament House

Members Present

Mr Provest (Chair), Ms Cooke (Deputy Chair), Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Jonathan Elliott, Elspeth Dyer, Madeleine Dowd and Mohini Mehta.

1. Confirmation of Minutes

Resolved, on the motion of Ms Leong, seconded by Mr Tudehope:

That the draft minutes of meeting no 18, held on 10 April 2018, be confirmed.

2. Correspondence

The Committee noted the following items of correspondence:

Sent:

- Hon Adam Marshall MP, Assistant Minister for Skills, dated 11 April 2018, seeking information about TAFE funding for juvenile justice centres.

- Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research, dated 10 April 2018, requesting data related to the Law and Safety Committee inquiry into the adequacy of youth diversionary programs.

Received:

- Mr Evan Walsh, Manager Government Advocacy and Funding, Youth Off The Streets, email dated 26 April 2018, declining the Committee's invitation for Youth Off The Streets to appear at a public hearing on 30 April 2018 for its inquiry into the adequacy of youth diversionary programs.
- NSW Office of Social Impact Investment, email dated 13 April 2018, declining the Committee's invitation to appear at a public hearing for its inquiry into the adequacy of youth diversionary programs.
- Hon David Elliot MP, Minister for Corrections, dated 27 March 2018, regarding the Committee taking evidence from Juvenile Justice detainees for its inquiry into youth diversionary programs.
- Ms Jodie Porter, Executive Officer, AbSec, email dated 23 March 2018, declining the Committee's invitation for AbSec to appear at a public hearing for its inquiry into the adequacy of youth diversionary programs.

Ms Leong noted that the letter from the Minister for Corrections, dated 27 March 2018, concerning the Committee taking evidence from Juvenile Justice detainees states that arrangements will be made for the Committee to take evidence directly from detainees in a way that ensures that the wellbeing of the young person is protected by allowing a Juvenile Justice staff member, familiar and acceptable to the young person, to attend the interview as a support person.

Discussion ensued.

3. Inquiry into the adequacy of youth diversionary programs

3.1 Publication of Submissions

The Committee considered a publication order for a late submission to the inquiry from Justice Hilary Hannam, previously circulated to the Committee on 23 April 2018 and noted that Justice Hannam has asked that the submission remain confidential.

Mr Tudehope suggested that the Committee ask Justice Hannam for the reasons that Her Honour would like the submission to remain confidential.

Discussion ensued.

The Committee agreed, prior to making a publication order for the submission, to ask Justice Hannam for the reasons that Her Honour would like the submission to remain confidential.

3.2 Public Hearing

The Committee considered standard resolutions for the conduct of a public hearing on 30 April 2018 for its inquiry into the adequacy of youth diversionary programs.

Resolved, on the motion of Mr Tudehope, seconded by Ms Leong:

- That the Committee conduct a public hearing on 30 April 2018 for its inquiry into the adequacy of youth diversionary programs;
- That the Committee take evidence from witnesses from the Children's Court of NSW; Legal Aid NSW; Mission Australia; the Public Interest Advocacy Centre; the University of NSW Law Faculty; the NSW Council of Social Service; the Aboriginal Legal Service; and the NSW Bar Association;
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 30 April 2018;
- That the Chair send questions on notice to witnesses following the public hearing on 30 April 2018 as required;
- That the Committee secretariat publish the answers to any questions taken on notice at the public hearing on 30 April 2018 on the Committee's webpage;
- That the Committee secretariat publish the transcript of evidence taken at the public hearing on 30 April 2018, after making corrections for recording inaccuracy, on the Committee's webpage.

4. General Business

Mr Atalla raised a question about the order in which members would examine witnesses at the public hearing on 30 April 2018 for the Committee's inquiry into the adequacy of youth diversionary programs.

Discussion ensued.

5. Public Hearing – Inquiry into the Adequacy of Youth Diversionary Programs

At 11am the Chair declared the public hearing open and witnesses and the public were admitted.

Judge Peter Johnstone, President of the Children's Court of NSW, was sworn and examined.

Judge Johnstone made an opening statement.

At 11:54am, Judge Johnstone's evidence concluded and the witness withdrew.

At 11:57am, Ms Debra Maher, Solicitor in Charge, Children's Legal Services (Criminal Division), Legal Aid NSW, was affirmed and examined.

Ms Maher made an opening statement.

At 12:38pm, Mr Tudehope departed.

At 12:40pm, Ms Maher's evidence concluded and the witness withdrew.

At 12:40pm, the Committee took the luncheon adjournment and the public withdrew.

The public hearing resumed at 1:16pm and the public and witness were admitted.

Dr Evelyne Tadros, State Leader, Metro NSW, was sworn and examined.

Dr Tadros made a disclosure that she has been a conference convenor for Juvenile Justice NSW for many years.

Dr Tadros made an opening statement.

Mr Tudehope returned at 1:59pm.

At 2:03pm Dr Tadros' evidence concluded and the witness withdrew.

At 2:05pm, Ms Anna Dawson, Senior Solicitor, Indigenous Justice Program, Public Interest Advocacy Centre, was affirmed and examined; and Dr Vicki Sentas, Senior Lecturer, University of NSW Law Faculty, was affirmed and examined.

Ms Dawson made an opening statement.

Dr Sentas made an opening statement.

At 2:45pm the evidence of Ms Dawson and Dr Sentas concluded and the witnesses withdrew.

At 2:45pm, Mr Tudehope departed.

At 2:47pm, Ms Tracy McCleod Howe, Chief Executive Officer of the NSW Council of Social Service was affirmed and examined.

Ms McCleod Howe made an opening statement.

At 3:18pm Ms McCleod Howe's evidence concluded and the witness withdrew.

At 3:18pm, the Committee took the afternoon tea adjournment and the public withdrew.

6. Resumption of Deliberative Meeting

At 3:36pm the Chair resumed the deliberative meeting and noted that a response had not yet been received to a letter to the Minister for Police inviting the NSW Police Force to appear at a hearing for the Committee's inquiry into the adequacy of youth diversionary programs.

Discussion ensued.

Resolved on the motion of Mr Atalla, seconded by Ms Cooke:

That the Chair send a letter to the Minister for Police noting that there had been no response to the Committee's invitation for the NSW Police Force to appear at a hearing for its inquiry into youth diversionary programs, and confirming that the Committee would like to hear evidence from the NSW Police Force.

7. Resumption of Public Hearing – Inquiry into the Adequacy of Youth Diversionary Programs

The public hearing resumed at 3:38pm and the public and witnesses were admitted.

Mr Michael Higgins, Regional Community Engagement Manager, Aboriginal Legal Service, Central Southern Region was affirmed and examined; and Ms Keisha Hopgood, Deputy Principal Solicitor, Redfern Office, Aboriginal Legal Service, was affirmed and examined.

Mr Higgins made an opening statement.

Mr Tudehope returned at 3:58pm.

At 4:18pm the evidence of Mr Higgins and Ms Hopgood concluded and the witnesses withdrew.

At 4:20pm, Mr Phillip Boulten SC, Barrister, NSW Bar Association was affirmed and examined; Ms Sarah Pritchard SC, Barrister, NSW Bar Association was affirmed and examined; and Ms Gabrielle Bashir SC, Barrister, NSW Bar Association was sworn and examined.

At 5:22pm the evidence of Mr Boulten, Ms Pritchard and Ms Bashir concluded and the witnesses withdrew.

The public hearing concluded at 5:23pm and the public withdrew.

8. Next Meeting

The Committee adjourned at 5:23pm until Tuesday 8 May 2018 at 9:00am.

MINUTES OF MEETING No 20

9:03am

8 May 2018

Room 814/815, Parliament House

Members Present

Mr Provest (Chair), Ms Cooke (Deputy Chair), Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Jonathan Elliott, Elspeth Dyer, Madeleine Dowd and Mohini Mehta.

1. Confirmation of Minutes

Resolved, on the motion of Ms Leong, seconded by Ms Cooke:

That the draft minutes of meeting no 19, held on 30 April 2018, be confirmed.

2. Inquiry into the adequacy of youth diversionary programs

2.1 Publication Order

The Committee considered a publication order for a late submission to its inquiry (submission 28) from Hon Justice Hilary Hannam, previously circulated to the Committee on 23 April 2018. Justice Hannam originally asked that the submission remain confidential.

At the last Committee meeting the Committee agreed to ask Justice Hannam for the reason/s for requesting that the submission be kept confidential.

The Committee noted that by email dated 2 May 2018 Justice Hannam's Associate subsequently advised that Her Honour is happy to withdraw her request for the submission to remain confidential.

Resolved, on the motion of Mr Atalla, seconded by Mr Tudehope:

That submission 28 to the Committee's inquiry into the adequacy of youth diversionary programs be received by the Committee and published on the inquiry webpage.

2.2 Public Hearing

The Committee considered standard resolutions for the conduct of a public hearing on 8 May 2018 for its inquiry into the adequacy of youth diversionary programs.

Resolved, on the motion of Ms Cooke, seconded by Ms Leong:

- That the Committee conduct a public hearing on 8 May 2018 for its inquiry into the adequacy of youth diversionary programs;
- That the Committee take evidence from witnesses from the NSW Police Force; Youth Action; the Mental Health Commission of NSW; the Office of the Advocate for Children and Young People; Juvenile Justice NSW and the NSW Department of Justice;
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 8 May 2018;
- That the Chair send questions on notice to witnesses following the public hearing on 8 May 2018 as required;
- That the Committee secretariat publish the answers to any questions taken on notice at the public hearing on 8 May 2018 on the Committee's webpage;
- That the Committee secretariat publish the transcript of evidence taken at the public hearing on 8 May 2018, after making corrections for recording inaccuracy, on the Committee's webpage.

2.3 Hearing 10 May 2018

The Committee noted that a hearing for the inquiry has been scheduled for 10 May and it has been arranged for the Committee to take evidence from a former participant in a diversionary program who is now over the age of 18 years. The former participant has asked to appear with his case manager.

The Committee further noted that the case manager has not provided the name of former participant, and it is understood the former participant would like to appear in camera. It will be necessary for the former participant to provide his real name to swear an oath or make an affirmation prior to giving evidence but it is not necessary for his real name to be recorded in the Hansard transcript, a pseudonym could instead be used.

Resolved, on the motion of Ms Leong, seconded by Mr Tudehope:

- That the Committee conduct an in camera hearing on 10 May 2018 for its inquiry into the adequacy of youth diversionary programs;
- That the Committee take evidence from a former participant in a diversionary program and his case manager at the in camera hearing on 10 May 2018;

- That the real name of the former participant in a diversionary program not be recorded in the in camera transcript of evidence taken at the hearing on 10 May 2018;
- That the Chair send questions on notice to witnesses following the in camera hearing on 10 May 2018 as required.

3. General Business

The Chair noted the Committee will conduct a site visit to the Youth Koori Court, Parramatta on Friday 11 May 2018 and proposed that he send a letter to the Member for Parramatta, Mr Geoff Lee, MP, inviting him to the site visit.

The Committee agreed that the Chair send a letter to Mr Geoff Lee MP, Member for Parramatta, inviting him to the Committee's site visit to the Youth Koori Court, Parramatta on Friday 11 May 2018.

Mr Tudehope requested that Members be emailed a copy of a 2010 report prepared by Noetic, *A Strategic Review of the NSW Juvenile Justice System*.

4. Public Hearing – Inquiry into the Adequacy of Youth Diversionary Programs

At 9:15am the Chair declared the public hearing open and the witness and the public were admitted.

At 9:15am, Mr Joseph Cassar, Assistant Commissioner, Capability, Performance and Youth Command, NSW Police Force was sworn and examined.

Mr Cassar made an opening statement.

At 10:04am, Mr Cassar's evidence concluded and the witness withdrew.

At 10:05am, Ms Katie Acheson, Chief Executive Officer, Youth Action, was sworn and examined.

Ms Acheson made an opening statement.

At 10:43am, Ms Acheson's evidence concluded and the witness withdrew.

At 10:43am, the Committee adjourned for morning tea and the public withdrew.

The public hearing resumed at 10:56am and the witness and the public were admitted.

At 10:56am, Ms Catherine Lourey, Commissioner, Mental Health Commission of NSW was affirmed and examined.

Ms Lourey made an opening statement.

At 11:49am, Ms Lourey's evidence concluded and the witness withdrew.

At 11:51am, Mr Andrew Johnson, Advocate for Children and Young People was affirmed and examined.

Mr Johnson made an opening statement.

At 12:40pm, Mr Johnson's evidence concluded and the witness withdrew.

At 12:41pm, the Committee took the luncheon adjournment and the public withdrew.

The public hearing resumed at 1:18pm and the witnesses and the public were admitted.

At 1:18pm, Ms Melanie Hawyes, Executive Director, Juvenile Justice NSW, was affirmed and examined; and Mr Paul McKnight, Executive Director, Policy and Reform, was affirmed and examined.

Ms Hawyes made an opening statement.

Mr McKnight made an opening statement.

At 2:46pm the evidence of Ms Hawyes and Mr McKnight concluded and the witnesses withdrew.

The public hearing concluded at 2:46pm and the public withdrew.

MINUTES OF MEETING No 21

9:00am

10 May 2018

Macquarie Room, Parliament House

Members Present

Mr Provest (Chair), Ms Cooke (Deputy Chair), Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Jonathan Elliott, Elspeth Dyer, Madeleine Dowd and Mohini Mehta.

1. Confirmation of Minutes

Resolved, on the motion of Mr Atalla, seconded by Mr Tudehope:

That the draft minutes of meeting no 20, held on 8 May 2018, be confirmed.

2. Correspondence

The Committee noted the following item of correspondence sent:

- Dr Geoff Lee MP, Member for Parramatta, dated 9 May 2018, inviting him to attend the Committee's site visit to the Youth Koori Court on 11 May 2018 for its inquiry into youth diversionary programs.

3. Inquiry into the adequacy of youth diversionary programs

3.1 TAFE Funding to Juvenile Justice Centres

The Chair noted that by letter dated 11 April 2018, he had written to the Assistant Minister for Skills on behalf of the Committee requesting information about funding of TAFE courses in NSW Juvenile Justice centres in NSW.

The Chair further noted that the Minister has verbally advised him that the letter should be re-directed to the Deputy Premier and Minister for Skills, the Hon John Barilaro MP.

The Committee considered the Chair's draft letter to the Deputy Premier requesting the information.

Resolved, on the motion of Ms Cooke, seconded by Ms Leong:

That the Chair's draft letter to the Deputy Premier requesting information about TAFE funding in NSW Juvenile Justice centres be sent as circulated.

3.2 Public Hearing

The Committee considered standard resolutions for the conduct of a public hearing on 10 May 2018 for its inquiry into the adequacy of youth diversionary programs.

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:

- That the Committee conduct a public hearing on 10 May 2018 for its inquiry into the adequacy of youth diversionary programs;
- That the Committee take evidence from witnesses from the NSW Health; the Justice Health and Forensic Mental Health Network; the NSW Department of Education; Youth Off The Streets; the Department of Family and Community Services; the NSW Coalition of Aboriginal Regional Alliances; and the Law Society of NSW, at its public hearing on 10 May 2018;
- That the Committee permit audio-visual recording, photography and broadcasting of the public hearing on 10 May 2018;
- That the Chair send questions on notice to witnesses following the public hearing on 10 May 2018 as required;
- That the Committee secretariat publish the answers to any questions taken on notice at the public hearing on 10 May 2018 on the Committee's webpage;
- That the Committee secretariat publish the transcript of evidence taken at the public hearing on 10 May 2018, after making corrections for recording inaccuracy, on the Committee's webpage.

3.3 Site Visit 11 May 2018

The Committee noted arrangements for its site visit to the Youth Koori Court, Parramatta on Friday 11 May 2018.

4. ***

5. Public Hearing – Inquiry into the Adequacy of Youth Diversionary Programs

At 9:12am the Chair declared the public hearing open and the witnesses and the public were admitted.

At 9:12am, Dr Kerry Chant, Chief Health Officer and Deputy Secretary Population and Public Health, NSW Health was sworn and examined; Mr Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network was affirmed and examined; and Dr Yolisha Singh, Clinical Director Adolescent Mental Health, Adolescent Health, Justice Health and Forensic Mental Health Network was affirmed and examined.

Mr Forrest made an opening statement.

At 10:25am, the evidence of Dr Chant, Mr Forrest and Dr Singh concluded and the witnesses withdrew.

At 10:28am, Ms Cheryl Best, Acting Executive Director, Learning and Teaching, NSW Department of Education was affirmed and examined; Ms Robyn Bale, Acting Executive Director, Learning and Wellbeing, NSW Department of Education, was sworn and examined; Ms Marnie O'Brien, Executive Director, Health and Safety Directorate, NSW Department of Education, was sworn and examined.

Ms Bale made an opening statement.

At 11:22am the evidence of Ms Best, Ms Bale and Ms O'Brien concluded and the witnesses withdrew.

At 11:22am, the Committee adjourned for morning tea and the public withdrew.

The hearing resumed at 11:30am and the witnesses and the public were admitted.

At 11:30am Mr Will Bovino, Director Training and Development Services, Youth Off The Streets, was affirmed and examined; Mr Evan Walsh, Manager of Government Advocacy and Funding, Youth Off The Streets, was affirmed and examined; Mr Benjamin Stevens, Outreach Development Manager, Youth Off The Streets was sworn and examined; and Mr Steven Armstrong, School Principal, Youth Off The Streets was sworn and examined.

Mr Walsh made an opening statement.

At 12:21pm, the evidence of Mr Bovino, Mr Walsh, Mr Stevens and Mr Armstrong concluded and the witnesses withdrew.

At 12:23pm, Mr Paul O'Reilly, Executive Director, Inclusion and Early Intervention, NSW Department of Family and Community Services, was affirmed and examined.

Mr O'Reilly made an opening statement.

At 12:59pm, Mr O'Reilly's evidence concluded and the witness withdrew.

At 12:59pm, the Committee took the luncheon adjournment and the public withdrew.

The public hearing resumed at 1:33pm and the witnesses and the public were admitted.

At 1:33pm, Aunty Jean Hands, Chairperson, NSW Coalition of Aboriginal Regional Alliances (NCARA) was affirmed and examined; Mr Des Jones, Member, NCARA was affirmed and

examined; Mr Mark Davies, Member, NCARA, was affirmed and examined; and Ms Annette van Gent, Convenor, Youth Justice Coalition was affirmed and examined.

At 2:32pm the evidence of Aunty Jean Hands, Mr Des Jones, Mr Mark Davies and Ms Annette van Gent concluded and the witnesses withdrew.

At 2:32pm the Committee adjourned for the afternoon break, and the public withdrew.

The public hearing resumed at 3:45pm and the witnesses and the public were admitted.

At 3:45pm, Mr Doug Humphreys OAM, President, Law Society of NSW was sworn and examined and Ms Jane Irwin, Member, Children's Legal Issues Committee was affirmed and examined.

Mr Humphreys made an opening statement.

Ms Irwin made an opening statement.

At 4:58pm, the evidence of Mr Humphreys and Ms Irwin concluded and the witnesses withdrew.

The public hearing concluded at 4:58pm and the public withdrew.

6. *In Camera* Hearing – Inquiry into the Adequacy of Youth Diversionary Programs

At 5:02pm, the Chair declared the *in camera* hearing open and the witnesses were admitted.

One witness was sworn and examined, the other witness was affirmed and examined.

At 5:48pm evidence concluded and the witnesses withdrew.

The *in camera* hearing concluded at 5:48pm.

7. Next Meeting

The Committee adjourned at 5:48pm until Friday 11 May 2018 at 9am.

MINUTES OF SITE VISIT TO YOUTH KOORI COURT PARRAMATTA

11 May 2018

Members Present

Mr Provest (Chair), Ms Cooke (Deputy Chair), Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Elsbeth Dyer and Madeleine Dowd.

1. Site Visit

The Committee conducted a site visit to the Youth Koori Court, Parramatta for its inquiry into the adequacy of youth diversionary programs in NSW.

The Chair met Committee staff at Parliament House at 8am and travelled by taxi to the Children's Court Parramatta arriving at approximately 9am and meeting with Ms Cooke, Mr Atalla, Ms Leong and Mr Tudehope.

At 9:10am the Committee and staff met with His Honour Judge Peter Johnstone, President of the NSW Children's Court; Her Honour Magistrate S Duncombe; Ms Rosemary Davidson, Executive Officer, NSW Children's Court; and staff and Aboriginal Elders instrumental in the Youth Koori Court process. A discussion regarding matters of relevance to the inquiry ensued.

At 10am the Committee and staff observed a team meeting presided over by Magistrate Duncombe and involving Aboriginal Elders, Police, a solicitor, caseworkers and Court staff, to review the progress of young people appearing before the Youth Koori Court.

At 10:45am, the Committee and staff observed Youth Koori Court proceedings.

At 11:30am, the Committee and staff took a morning tea adjournment with Judge Johnstone; Magistrate Duncombe; Ms Davidson; Aboriginal Elders; and Children's Court staff and a discussion regarding matters of relevance to the inquiry ensued.

At 12 noon the site visit concluded. Ms Cooke, Mr Atalla and Ms Leong returned to their electorates. The Chair, Mr Tudehope and Committee staff returned to Parliament by taxi.

2. Next Meeting

The Committee adjourned at 12 noon until a date and time to be determined.

MINUTES OF MEETING No 22

3:31pm

31 May 2018

Room 1136, Parliament House

Members Present

Mr Provest (Chair), Ms Cooke (Deputy Chair by telephone), Mr Atalla (by telephone), Ms Leong (by telephone) and Mr Tudehope (by telephone).

Officers in Attendance

Jonathan Elliott, Elspeth Dyer, Madeleine Dowd and Ze Nan Ma.

1. Confirmation of Minutes

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:

- That the draft minutes of meeting no 21, held on 10 May 2018, be confirmed;
- That the draft minutes of the Committee's site visit to the Youth Koori Court on 11 May 2018 be confirmed.

2. Correspondence

The Committee considered the following items of correspondence sent:

- Hon John Barilaro MP, Deputy Premier and Minister for Skills, dated 11 May 2018, requesting information about TAFE funding in NSW Juvenile Justice Centres.
- Judge Peter Johnstone, President of the Children's Court, dated 16 May 2018, thanking him and participants at the Youth Koori Court for hosting the Committee at a site visit on 11 May 2018.

Resolved, on the motion of Ms Cooke, seconded by Mr Tudehope:
That the Committee note the correspondence.

3. Inquiry into the adequacy of youth diversionary programs

3.1 Visit to Reiby Juvenile Justice Centre Airds, 5 July 2018

The Committee noted that in the letter to the Chair from the Minister for Corrections dated 27 March 2018 (giving approval for the Committee to take evidence from Juvenile Justice detainees for its inquiry), the Minister noted that, where a worker has access to confidential information about a child, there may be a need for that worker to obtain a Working With Children Check to avoid breaching the *Child Protection (Working With Children) Act 2012*.

The Committee further noted that, for its 5 July 2018 visit to Reiby Juvenile Justice Centre where it will take evidence from detainees, all Committee members and relevant staff, including Hansard, will need to obtain a Working With Children Check if they do not already have one and that this will cost \$80 per applicant.

Discussion ensued.

The Committee also noted that the price of a bus to take members, staff and Hansard from Parliament to Reiby Juvenile Justice Centre and back on 5 July has been quoted to be \$1080.00.

Resolved, on the motion of Ms Leong, seconded by Mr Atalla:
That the Chair seek the approval of the Speaker for expenditure related to its visit to Reiby Juvenile Justice Centre on 5 July 2018.

3.2 Additional Questions to the NSW Police Force

The Committee considered the Chair's draft letter attaching additional questions for the NSW Police Force following the appearance of Assistant Commissioner Joseph Cassar at the Committee's hearing for the inquiry on 8 May 2018.

Resolved, on the motion of Mr Tudehope, seconded by Ms Cooke:
That the Chair's draft letter to the NSW Police Force, attaching additional questions following the Committee's hearing on 8 May, be sent as circulated.

3.3 Public Hearing – 10 May 2018 Transcript

The Committee noted that at its public hearing on 10 May 2018, the Committee took evidence from the NSW Coalition of Aboriginal Regional Alliances (NCARA).

The Committee considered an extract of NCARA's evidence on page 49 of the 10 May 2018 transcript and noted that having regard to the allegations contained therein; possible identification of persons alleged to be involved; and the need to avoid reprisal action or defamation; it had the option of redacting this paragraph from the published transcript.

Resolved, on the motion of Mr Atalla, seconded by Ms Cooke:

- That the Committee secretariat redact evidence on page 49 of the transcript for the Committee's 10 May 2018 public hearing for its inquiry into youth diversionary programs from the words *** to *** before publishing the transcript on the Committee's webpage;
- That the Committee write to Aunty Jean Hands of the NSW Coalition of Aboriginal Regional Alliances, advising of its decision.

4. ***

5. Next Meeting

The Committee adjourned at 3:40pm until 6 June 2018 at 4:30pm.

MINUTES OF MEETING No 23

4:37pm

6 June 2018

Room 1254, Parliament House

Members Present

Mr Provest (Chair), Ms Cooke (Deputy Chair), Mr Atalla (from 4:43pm), Ms Leong and Mr Tudehope (from 4:46pm).

Officers in Attendance

Helen Minnican, Jonathan Elliott, Elspeth Dyer and Madeleine Dowd.

1. Confirmation of Minutes

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:

That the draft minutes of meeting no 22, held on 31 May 2018, be confirmed.

2. Correspondence

The Committee considered the following item of correspondence sent:

- Mr Joseph Cassar, Assistant Commissioner, Capability, Performance and Youth Command, NSW Police Force, letter dated 1 June 2018 attaching additional questions following public hearing for the Committee's youth diversionary program inquiry on 8 May 2018.

Resolved, on the motion of Ms Cooke:

That the Committee note the correspondence.

3. Inquiry into the adequacy of youth diversionary programs – Visit to Reiby Juvenile Justice Centre, Airds, 5 July 2018

The Committee noted that by letter dated 22 November 2017, the Chair asked the Minister for Corrections whether the Committee could take formal evidence from Juvenile Justice detainees for its inquiry. By letter dated 27 March 2018, the Minister gave approval for this to take place and 5 July 2018 has been set aside for the Committee to return to Reiby Juvenile Justice Centre.

In giving approval for the Committee to take this evidence, the Minister warned of two main issues:

1. The existence of legal provisions that prohibit the publication or broadcast of the name of a child or young person that could connect the child or young person with criminal proceedings.
2. The possibility that Members, Hansard and Committee staff would have to obtain working with children checks, under the *Child Protection (Working with Children) Act 2012* ('the WWC Act), before taking the evidence.

The Clerk of the Legislative Assembly therefore sought legal advice from the Crown Solicitor's Office to ensure that the evidence would be collected lawfully and in a way that guaranteed the young people giving evidence, and all other individuals involved, would be appropriately protected.

The Committee noted a briefing note summarising the legal advice, prepared by Committee staff, and the Clerk briefed members concerning the issues.

Discussion ensued.

The Committee agreed to advise the secretariat by email by 1pm on Friday 8 June whether it would like to obtain case studies from current Juvenile Justice detainees to include in its report for the inquiry:

- a. By taking sworn evidence *in camera* from detainees with Hansard present at the Juvenile Justice Centre; or
- b. By taking the information through informal discussions with detainees, with Committee staff taking notes.

4. ***

5. Next Meeting

The Committee adjourned at 4:58pm until a date and time to be determined.

MINUTES OF MEETING No 24

8:34am

20 June 2018

Room 1136, Parliament House

Members Present

Mr Provest (Chair), Mr Atalla, and Mr Tudehope.

Officers in Attendance

Jonathan Elliott, Elspeth Dyer and Madeleine Dowd.

1. Apologies

Apologies were received from Ms Cooke (Deputy Chair) and Ms Leong.

2. Confirmation of Minutes

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:

That the draft minutes of meeting no 23, held on 6 June 2018, be confirmed.

3. Correspondence

The Committee considered the following items of correspondence sent:

- Aunty Jean Hands, dated 6 June 2018, advising of the Committee's decision to redact and not publish evidence on page 49 of the transcript of evidence for the Committee's 10 May public hearing for its inquiry into youth diversionary programs.

Resolved, on the motion of Mr Atalla, seconded by Mr Tudehope:

That the Committee note the correspondence.

4. Inquiry into the adequacy of youth diversionary programs

4.1 Site Visit to Reiby Juvenile Justice Centre, 5 July 2018

The Chair raised the issue of taking evidence from Juvenile Justice detainees at Reiby Juvenile Justice Centre on 5 July that may be used to create case studies for inclusion in the Committee's report for the inquiry.

The Committee considered whether it would prefer to obtain the case studies by:

1. Taking the information through informal discussions with detainees, with Committee staff taking notes; or
2. Sworn evidence taken in camera from detainees, with Hansard present.

Discussion ensued.

Resolved, on the motion of Mr Tudehope, seconded by Mr Atalla:

- That the Committee conduct a site visit to Reiby Juvenile Justice Centre on 5 July 2018 for the purposes of its inquiry into youth diversionary programs;
- That the Committee meet informally with detainees during the site visit to obtain information that may later be used to create de-identified case studies for inclusion in the Committee's report for the inquiry.

4.2 Data from the Bureau of Crime Statistics and Research

The Committee noted that in response to the Committee's request dated 10 April 2018, the Bureau of Crime Statistics and Research provided statistics concerning:

1. Aboriginal young peoples' access to diversionary options under the *Young Offenders Act 1997* when compared with non-Aboriginal young people;
2. How often specialist children's magistrates divert young offenders under the *Young Offenders Act 1997*, compared with generalist magistrates sitting in the children's jurisdiction.

The Committee also noted a briefing note concerning the statistics, prepared by Committee staff.

4.3 Data regarding the Adolescent Court and Community Team

The Committee noted that at its hearing on 10 May 2018, Committee members asked the Justice Health and Forensic Mental Health Network ('Justice Health') what proportion of juveniles appearing before the NSW Local Court charged with an offence have access to the services of the Adolescent Court and Community Team. Justice Health indicated that the Department of Justice would hold this data.

The Committee considered the Chair's draft letter to the Department of Justice requesting data in this area.

Resolved, on the motion of Mr Atalla, seconded by Mr Tudehope:

That the Chair's draft letter to the Department of Justice, requesting data about the Adolescent Court and Community team be sent as circulated.

4.4 Report

The Chair noted that to allow Committee staff to start preparing a draft report for the inquiry, the Committee needed to discuss recommendations and that a complex issue raised during the inquiry has been the NSW Police Force's Suspect Targeting Management Plan (STMP).

The Committee noted a briefing note concerning the STMP, prepared by Committee staff.

Discussion ensued.

Resolved, on the motion of Mr Atalla, seconded by Mr Tudehope:

That the following recommendations concerning the STMP be included in the Chair's draft report for the Committee's inquiry into the adequacy of youth diversionary programs:

- That the NSW Police Force make the STMP policy and high level operational arrangements publicly available;
- That the NSW Police Force introduce guidelines about the way STMPs are policed for those under 18 years to limit confrontational practices and language, maintain respectful lines of communication and avoid the possibility of unnecessary escalation.

The Committee also considered a draft report plan and draft recommendations document prepared by Committee staff. The Committee agreed that Committee staff commence preparing a Chair's draft report based on these documents.

5. ***

6. Next Meeting

The Committee adjourned at 8:46am until a date and time to be determined.

MINUTES OF SITE VISIT TO REIBY JUVENILE JUSTICE CENTRE

5 July 2018

Members Present

Mr Provost (Chair), Ms Cooke (Deputy Chair), Ms Leong and Mr Tudehope.

Officers in Attendance

Elspeth Dyer and Madeleine Dowd.

1. Apologies

Apologies were received from Mr Atalla.

2. Site Visit

The Committee conducted a site visit to Reiby Juvenile Justice Centre for its inquiry into the adequacy of youth diversionary programs in NSW.

Mr Provost, Ms Leong and Mr Tudehope met Committee staff met at Parliament at 8:30am and took a chartered bus to Reiby Juvenile Justice Centre, arriving at approximately 9:30am and meeting with Ms Cooke at the Centre.

The Committee and staff met with officers of Juvenile Justice including Mr Murray Hillan, Head of Government and External Relations; Ms Denise Hanley, Regional Director; Mr Phil Turton, Centre Manager; and Mr James English, Caseworker, Custodial; and received an induction to the Centre.

At 10am, the Committee met with a Juvenile Justice detainee in the presence of Committee staff, Mr Hillan and Mr English, discussing issues of relevance to the inquiry with the detainee.

At 10:40am, the Committee took a short break and discussed issues of relevance to the inquiry with Mr Hillan and Mr English.

At 10:50am, the Committee met with a second Juvenile Justice detainee in the presence of Committee staff, Mr Hillan and Mr English, discussing issues of relevance to the inquiry with the detainee.

At 11:20am, the Committee took a short break.

At 11:30am, the Committee met with a third Juvenile Justice detainee in the presence of Committee staff, Mr Hillan and Mr English, discussing issues of relevance to the inquiry with the detainee.

At 12:15pm, the Committee and staff toured the grounds of the Centre with Mr Hillan and Mr English viewing artwork created by detainees at the Centre and discussing issues of relevance to the inquiry.

At 12:30pm, the Committee took the luncheon adjournment.

At 12:45pm, the Committee and staff toured the Waratah Pre-Release Unit discussing issues of relevance to the inquiry and viewing the kitchen, common area and two bedrooms.

At approximately 1:15pm, Ms Cooke departed the Centre to return to her electorate while the remaining Committee members and staff boarded the chartered bus back to Parliament arriving at approximately 2:15pm.

MINUTES OF MEETING No 25

1:02pm

18 September 2018

Room 1254, Parliament House

Members Present

Mr Provest (Chair), Ms Cooke (Deputy Chair), Mr Atalla, Ms Leong and Mr Tudehope.

Officers in Attendance

Clara Hawker, Elspeth Dyer, Madeleine Dowd and Mohini Mehta.

1. Confirmation of Minutes

Resolved, on the motion of Mr Atalla, seconded by Ms Cooke:

- That the draft minutes of meeting no 24, held on 20 June 2018, be confirmed.

Resolved, on the motion of Mr Tudehope, seconded by Ms Leong:

- That the draft minutes of the site visit to Reiby Juvenile Justice Centre on 5 July 2018 be confirmed.

2. Correspondence

The Committee considered the following items of correspondence sent:

- Mr Paul McKnight, Executive Director, NSW Department of Justice, dated 20 June 2018 requesting data about the Adolescent Court and Community Team.
- Three letters to three Juvenile Justice detainees, dated 3 July 2018, explaining the Committee's work in advance of the Committee interviewing them for its inquiry into youth diversionary programs.

The Committee also considered the following items of correspondence received:

- ***
- Aunty Jean Hands, Chairperson, NSW Coalition of Aboriginal Regional Alliances, received 6 July 2018, reaffirming key concerns and recommendations for the Committee's inquiry into youth diversionary programs.
- Hon John Barilaro MP, Deputy Premier and Minister for Skills, dated 13 July 2018, regarding the funding of TAFE NSW courses in Juvenile Justice centres.

- Ms Kate Connors, A/Executive Director, Policy and Reform Branch, Department of Justice, dated 19 July 2018, responding to the Chair's request for data about the Adolescent Court and Community Team.

Resolved, on the motion of Ms Leong, seconded by Mr Atalla:
That the Committee note the correspondence.

3. Inquiry into the Adequacy of Youth Diversionary Programs – Consideration of the Chair's Draft Report

The Committee agreed to consider the Chair's draft report *The Adequacy of Youth Diversionary Programs in NSW*, distributed to members by email on 6 September 2018, by commencing with the recommendations and findings, and then moving through the body of the report *in globo*.

Recommendations and findings put.

Ms Leong moved that Finding 1 be removed.

Discussion ensued.

Amendment put and negatived.

Ms Leong moved that:

The first sentence of Finding 2 be removed and replaced with "The Committee believes that children under the age of 12 years should not be placed on a Suspect Targeting Management Plan".

Discussion ensued.

Amendment put and negatived.

Ms Leong moved that Recommendation 16 be amended to insert the words "or Aboriginality" after the word "age".

Discussion ensued.

Amendment put and negatived.

Ms Leong moved that Finding 6 be removed and a recommendation inserted in its place "That the NSW Government consider supporting further research into the potential of a justice re-investment approach for NSW".

Discussion ensued.

Amendment put and agreed to.

Ms Leong moved that Finding 10, circulated in the Chair's draft report as Finding 11, be removed and a recommendation inserted in its place "That Juvenile Justice NSW promote therapeutic design within its centres wherever possible".

Discussion ensued.

Amendment put and agreed to.

Ms Leong moved that Recommendation 48, circulated in the Chair's draft report as Recommendation 46, be amended to insert the words "as an alternative to issuing fines" after the word "1997".

Discussion ensued.

Amendment put and negatived.

Body of the report put *in globo*.

Ms Leong moved that a new finding be inserted in Chapter 2 of the report, immediately following Finding 2 "The Committee identified significant and concerning impacts of the Suspect Targeting Management Plan, particularly with regard to the overrepresentation of Aboriginal people targeted by the program".

Discussion ensued.

Amendment put and negatived.

Upon which, Mr Atalla moved that a new finding be inserted in Chapter 5 of the report, immediately above paragraph 5.2 "Aboriginal young people are over-represented in the Juvenile Justice system".

Amendment put and agreed to.

Resolved, on the motion of Mr Atalla, seconded by Ms Cooke:

- That the Committee adopt the Chair's draft report as amended and that it be signed by the Chair and presented to the House.
- That the Committee authorise the Secretariat to make appropriate final editing and stylistic changes as required.
- That once tabled, the report be published on the Committee's webpage.
- That the Chair issue a media release announcing the tabling of the Committee's report, for dissemination by the Committee Secretariat.

4. General Business

Mr Tudehope thanked the Chair for his work chairing the Inquiry into the Adequacy of Youth Diversionary Programs.

The Chair thanked the Committee and the Committee Secretariat for their work on the Inquiry into the Adequacy of Youth Diversionary Programs.

5. Next Meeting

The Committee adjourned at 1:47pm until a date and time to be determined.

Appendix Six – Current NSW Government-Funded Youth Diversionary Programs and Efforts

Appendix 6 – Current NSW Government-Funded Youth Diversionary Programs and Efforts

Name of Program	Organisation Delivering and/or Funding Program	Description
Youth on Track	Department of Justice NSW and NGOs	<ul style="list-style-type: none"> • An early intervention scheme for 10-17 year olds that identifies and responds to young people at risk of long-term involvement with the criminal justice system. • Police and local schools can refer a young person known to be at medium or high risk of offending to Youth on Track but the young person's engagement with the scheme is voluntary. • Focuses on early intervention, engaging families and providing targeted individualised intervention using the Changing Habits and Reaching Targets (CHART) approach.
Youth Justice Conferences	Courts, Juvenile Justice NSW	<ul style="list-style-type: none"> • Youth Justice Conferences are based on principles of restorative justice, and aim to raise the young person's understanding of the impact of their offending on the victim, family and community. • They bring together young offenders, their families and supporters; with victims, their supporters and police to discuss the offence and how people have been affected. • Together they agree on an outcome plan that sets out how young person will make amends, (which may include an apology to the victim and making reparations to the victim) and includes steps to re-connect the offender with their community and help them desist from further offending for example counselling or other rehabilitation programs.
Youth Koori Court	Courts	<ul style="list-style-type: none"> • The Youth Koori Court is part of the Children's Court, and is a dedicated court for Aboriginal young people who have been charged with an offence. • Before being sentenced, there is an informal conference with input from the young person, their family, Aboriginal elders and staff from Government agencies and NGOs. They develop a plan to connect the young person with support services to address the underlying causes of their offending. • The Youth Koori Court monitors the young person's progress, and then takes it into consideration when determining sentence.
Bail Assistance Line	Juvenile Justice NSW and NGOs	<ul style="list-style-type: none"> • The Bail Assistance Line provides an after-hours service for police who are considering granting conditional bail to a young person who is in their custody,

		<p>but who cannot be released as they cannot meet their bail conditions (often relating to accommodation).</p> <ul style="list-style-type: none"> • Under the program, NGOs are funded to provide transport, accommodation, case management, and/or referrals to drug and alcohol, mental health and vocational services.
Joint Support Program	Juvenile Justice NSW and NGOs	<ul style="list-style-type: none"> • Targeted at young people under the supervision of Juvenile Justice NSW in the community who have been assessed as having a medium to high risk of offending. • Juvenile Justice NSW funds NGOs to deliver services under the program including casework support, accommodation support, employment support, relationship intervention and mentoring. • Focuses on collaboration with funded organisations, client-focused strategies and regular review meetings.
Rural Residential Rehabilitation Adolescent Alcohol and Other Drugs Services	Juvenile Justice NSW and Mission Australia	<ul style="list-style-type: none"> • Residential rehabilitation centres for clients of Juvenile Justice NSW. • Targets people 13 to 18 years old who have a history of significant alcohol and other drug use and offending behaviour, and those with a dual diagnosis (both mental health and drug and alcohol problems). • Services at Dubbo and Coffs Harbour provide a 24 hour staffed intensive residential rehabilitation program for young people to address their alcohol and other drug use and offending behaviour; as well as educational and living skills training and aftercare support.
Family Investment Model	Multi-agency team led by Department of Justice NSW – includes Juvenile Justice NSW; NSW Police Force; NSW Department of Family and Community Services; NSW Department of Education; and NSW Health.	<ul style="list-style-type: none"> • A two year trial, based in Dubbo and Kempsey, that aims to address entrenched intergenerational disadvantage and offending by co-locating a multi-Government agency team to work with at-risk families who have had multiple contacts with Government agencies.
Act Now Together Stronger (ANTS)	Juvenile Justice NSW and Mission Australia	<ul style="list-style-type: none"> • Based in central west NSW, this is a 6-8 week program and involves partnership with the family of young offenders to work collaboratively on agreed goals. • It aims to develop pro-social and communication skills within the family unit.

Children's Court Assistance Scheme	Courts and community legal centres	<ul style="list-style-type: none"> Provides a range of services to young people who attend court for criminal matters (explaining the court process, making referrals to community organisations and services, assistance with accommodation, counselling and alcohol and other drug issues).
Aboriginal Strategic Direction Crime Prevention Grant Program	NSW Justice Cluster	<ul style="list-style-type: none"> An annual \$200,000 grant that focusses on crime prevention in Aboriginal communities.
NSW Engagement and Support Program	Department of Justice NSW, NSW Police Force (Counter Terrorism Command)	<ul style="list-style-type: none"> Voluntary program that aims to decrease any tendencies toward violent extremism. Uses a risk assessment and diversionary program, tailored to the individual young person.
My Journey My Life	Juvenile Justice NSW	<ul style="list-style-type: none"> A group session program for Aboriginal young men under Juvenile Justice supervision, targeted at the reduction of family and intergenerational violence.
Dthina Yuwali	Juvenile Justice NSW	<ul style="list-style-type: none"> A group work program for young Aboriginal people under the supervision of Juvenile Justice regarding alcohol and other drugs.
South Coast Aboriginal and Torres Strait Islander Reintegration and Transition Program	Juvenile Justice NSW	<ul style="list-style-type: none"> Program providing intensive support for young Aboriginal offenders, after leaving custody or where they are under community supervision.
Veterans Young Offenders Mentoring Program	Juvenile Justice NSW, SHINE for Kids and Returned Services League (NSW)	<ul style="list-style-type: none"> Veterans of the Defence Forces provide 12 months of one-on-one mentoring to young offenders.
Work and Development Orders	Revenue NSW	<ul style="list-style-type: none"> Young people are able to satisfy outstanding debts through various work, courses, or treatment (all approved by the program).
Police Citizens Youth Clubs (PCYCs)	NSW Police Force	<ul style="list-style-type: none"> There are over 60 PCYC clubs across NSW, which provide young people with the opportunity to learn essential life skills including dealing with violence, anger management, sexual health, and drug and alcohol issues. It also connects young people with training and employment opportunities. NSW Police Youth Case Managers work within PCYCs, and utilise a case management framework to address youth crime in the Local Area Command.
Targeted Programming	NSW Police Force (Youth Command)	<ul style="list-style-type: none"> Engages young offenders and at-risk youth in crime prevention programs, delivered through PCYCs.

		<ul style="list-style-type: none"> • Programs run from 6-10 weeks and include education and physical activity, and respond to specific local crime problems.
NSW Police Force Youth Liaison Officers	NSW Police Force (Youth Command)	<ul style="list-style-type: none"> • Youth Liaison Officers support the implementation of the <i>Young Offenders Act 1997</i> (NSW), including by issuing warnings and cautions to young people, liaising with Juvenile Justice NSW, and educating police.
Warnings	NSW Police Force	<ul style="list-style-type: none"> • As provided under the <i>Young Offenders Act 1997</i> (NSW), police can give warnings in response to low level offending.
Cautions	NSW Police Force and Courts	<ul style="list-style-type: none"> • As provided under the <i>Young Offenders Act 1997</i> (NSW), a caution is a more formal measure than a warning. Police and courts can give a maximum of three cautions under the Act.
Protected Admissions Scheme	NSW Police Force	<ul style="list-style-type: none"> • Gives the opportunity for a young person to admit guilt for a minor offence, and not face conviction for that offence, but rather, receive a caution. The scheme also allows the young person to maintain a right to silence regarding any admissions that could be used in court.
Joint Protocol to reduce the contact of young people in residential out of homecare with the criminal justice system	NSW Police Force and NSW Department of Family and Community Services	<ul style="list-style-type: none"> • Aims to reduce police involvement in incidents involving young people that occur in residential out of homecare services. • Emphasises the importance of flexibility and proportionality in determining the most appropriate response to a young person's behaviour.
Clean Slate without Prejudice	NSW Police Force (Redfern) and local Aboriginal community	<ul style="list-style-type: none"> • The program aims to create a neutral space for community members and police to interact and work together. It targets Aboriginal and Torres Strait Islander youth at risk of offending, and involves early morning boxing, early intervention, developmental crime prevention, support networking and behavioural workshops. • As part of the program an Aboriginal mentor also assists participants with practical supports such as accommodation, employment, education and training.
Breaking Barriers	NSW Police Force (Mount Druitt) and local Aboriginal community.	<ul style="list-style-type: none"> • Twice weekly fitness and mentoring program.
School Liaison Police Programs and Presentations	NSW Police Force (Youth Command)	<ul style="list-style-type: none"> • This program is aimed at building positive relationships between the community and the police, as well as providing educational programs regarding a variety of issues including domestic and family violence, sexual assault, driving offences and anger management.

Your Choice	NSW Police Force (Youth Command)	<ul style="list-style-type: none"> Aimed at assisting young people to take responsibility for harmful use of alcohol by referring them to this program, rather than pursuing legal processes for alcohol related incidents.
Targeted Earlier Intervention Program	NSW Department of Family and Community Services	<ul style="list-style-type: none"> Programs and interventions for young people, families and communities, who have known vulnerabilities, including domestic and family violence, mental health concerns, and drug and alcohol issues.
Adolescent Court and Community Teams	Justice Health	<ul style="list-style-type: none"> Provides a mental health assessment for young people coming before the NSW Children's Court or Local Courts, aiming to identify mental health concerns and provide relevant diversionary options, where possible.
Community Integration Team	Justice Health, Juvenile Justice NSW, NGOs, community health services	<ul style="list-style-type: none"> Multi-disciplinary case management for young people with significant mental health concerns and/or drug and alcohol issues, who are leaving custody. Works with individuals while they are detained, and then provides support for up to three months in the community while the young person is transferred into suitable community-based support services.
NSW Fixated Threat Assessment Centre	NSW Health and NSW Police Force	<ul style="list-style-type: none"> Responds to established risk of 'fixated persons'. Health works closely with Police to share information and collaborate.
New Street Services	NSW Health	<ul style="list-style-type: none"> Provides therapeutic, community-based services for children and young people aged 10-17 who have engaged in harmful sexual behaviours towards others, but have not been criminally prosecuted. It focusses on prevention and early intervention.
Getting on Track in Time – Got It! Program	NSW Health	<ul style="list-style-type: none"> School based early intervention program, aimed at children with emerging conduct disorders.
Program for Adolescent Life Management	NSW Health and NGOs	<ul style="list-style-type: none"> A residential drug and alcohol treatment program for people from Aboriginal and culturally and linguistically diverse backgrounds. It has a particular focus on young people with mental health concerns.
Mums and Kids Matter Program	NSW Health and Wesley Mission	<ul style="list-style-type: none"> Service for mothers with complex mental illness.
Whole Family Teams	NSW Health	<ul style="list-style-type: none"> Specialist mental health and drug and alcohol services for families where child protection concerns exist for children.
Child Protection Counselling Services	NSW Health	<ul style="list-style-type: none"> Casework services for young people and their families, where the Department of Family and Community Services has determined that a child has been harmed.

Family Referral Services	NSW Health	<ul style="list-style-type: none"> Links children, young people and families to support services to prevent escalation, including case management, housing, parenting support, youth support, alcohol and other drug services, and mental health services.
School Link	NSW Health and NSW Department of Education	<ul style="list-style-type: none"> Under School Link, NSW Health and the NSW Department of Education work together to improve the mental health, wellbeing and resilience of children and young people in NSW schools and TAFEs. NSW Health funds Local Health Districts and Specialty Networks to employ School-Link Coordinators to implement the School-Link initiative across approximately 3000 NSW schools and TAFEs in partnership with teachers, school counsellors and specialist mental health staff.
Ted Noffs Foundation	Ted Noffs Foundation (receives NSW Health funding)	<ul style="list-style-type: none"> Drug and alcohol treatment service for young people.
Newcastle Youth Service	Newcastle Youth Service (receives NSW Health funding)	<ul style="list-style-type: none"> An outreach service for at-risk youth.
Salvation Army Oasis Youth Support Service, Surry Hills	Salvation Army (receives NSW Health funding)	<ul style="list-style-type: none"> Various services, including accommodation, education and case management for at risk youth.
FACT Tree Youth Service Making It Program	Fact Tree Youth Service (receives NSW Health funding)	<ul style="list-style-type: none"> A prevention and early intervention project for adolescents in the Waterloo area.
Waverley Action for Youth Services, Kids At Risk	Waverley Action for Youth Services (receives NSW Health funding)	<ul style="list-style-type: none"> A drug and alcohol service for young people in Waverley and surrounding areas.
Youth Solutions	Youth Solutions (receives NSW Health funding)	<ul style="list-style-type: none"> Counselling, education, drug and alcohol services, information, referral and health education/promotion for young people in South Western Sydney.
Sydney Drug Education and Counselling Centre	Sydney Drug Education and Counselling Centre (receives NSW Health funding)	<ul style="list-style-type: none"> Specialises in providing free counselling and support for young people aged 14-25 years. The service also offers support for parents affected by their child's alcohol and/or drug use.
South West Youth Services	Mission Australia (receives NSW Health funding)	<ul style="list-style-type: none"> A drug and alcohol prevention and education project for young people and their parents/caregivers in the Campbelltown region.
Wayside Chapel Youth Services	Wayside Chapel (receives NSW Health funding)	<ul style="list-style-type: none"> An outreach and fixed site services providing information, assessment and referral for youth at risk of alcohol and drug-related harm in the Kings Cross area.

Supported Students, Successful Students	NSW Department of Education	<ul style="list-style-type: none"> • The Supported Students, Successful Students initiative provides an additional \$167 million over four years for a package to support the wellbeing of students in public schools across NSW. • Some of the resources under the initiative include: 236 new school counselling service positions; more than \$51 million for wellbeing services equivalent to an additional 200 Student Support Officers; and refugee student support teams who offer psychological expertise to refugee students and their families.
Mentoring and Leadership Programs	NSW Department of Education	<ul style="list-style-type: none"> • Mentoring and leadership programs available at NSW schools, focussing on the targeted and intensive learning and wellbeing needs of students.
School Communities Working Together	NSW Department of Education	<ul style="list-style-type: none"> • An early intervention initiative that aims to identify and address the signs of vulnerability in a young person that may lead to problematic behaviour, by building the skills of the school community, and providing support. Services include an incident report and support hotline, awareness-raising resources and specialist advice that helps to address some of the precursors for high risk-taking behaviour.
Specialist Support Teams	NSW Department of Education	<ul style="list-style-type: none"> • Provides direct support to schools in the form of teams that include psychological advisors, community liaison officers, student advisors and school staff. • Aims to foster cohesive and respectful school communities, identify and support vulnerable students and ensure effective incident management and recovery. The teams can work with schools to strengthen a range of areas including staff and student wellbeing, behaviour, attendance and community partnerships.
School Counsellors	NSW Department of Education	School counsellors and psychologists work with school-based learning and support teams to provide psychological services, enhance student wellbeing and learning, and to access support for students with complex needs.
Network Specialist Centres	NSW Department of Education	<ul style="list-style-type: none"> • Provides complex case management, alongside school services, which aims to address family, social or other relevant factors.
Youth Get Wise Program	Miyay Birray Youth Service Inc (receives NSW Government funding)	<ul style="list-style-type: none"> • Program connects young people who have offended or are at risk with specialist services. • Drug and alcohol rehabilitation and counselling, mental health assistance, anger management programs, Indigenous culture and identity programs, employment programs.

		<ul style="list-style-type: none"> • Works on a referral basis – referred by Juvenile Justice NSW, Department of Family and Community Services, magistrates and family members. • Young people attend 4 weeks of sessions with specialist providers. Outcomes are then reported through Miyay Birray to the court and Juvenile Justice.
Street Beat	Miyay Birray Youth Service Inc (receives NSW Government funding)	<ul style="list-style-type: none"> • Aims to reduce the opportunities young people have to commit offences and come into police contact by driving them home at night. • Based in Moree.
Holiday programs	Miyay Birray Youth Service Inc (receives NSW Government funding)	<ul style="list-style-type: none"> • Supervision and activities during school holidays – aim is to keep young people, who may otherwise be unsupervised, out of trouble.
Youth Off The Streets' Outreach Services	Youth off the Streets (receives NSW Government funding)	<ul style="list-style-type: none"> • Targets young people aged between 12 and 25 years. • Families are also encouraged to attend and support the involvement of their children. • Provide integrated services, including crisis accommodation, cultural support, mental health support, education and social/recreational activities. • Establishes the outreach service directly in the community, and seeks to engage support from community partners.
Maranguka Justice Reinvestment Project, Bourke	Just Reinvest NSW and Community Partners (receives NSW Government funding)	<ul style="list-style-type: none"> • Justice Re-investment is a criminal justice policy approach that diverts a portion of the funds spent on detention towards local communities where there is a high concentration of offenders. The money that would have been spent on detention is re-invested in programs and services that address the underlying causes of crime in these communities. • Just Reinvest NSW has been undertaking a justice reinvestment trial with the Bourke Aboriginal community since 2013 called the Maranguka Justice Reinvestment Project. • As part of the trial, the Bourke community identified a number of "justice circuit breakers" for children and young people in their community including a warrant clinic, a justice support team and a driver licensing program.
Learner Driver Mentoring Program, Shoalhaven	Red Cross and Aboriginal Legal Service (funded by the NSW Government)	<ul style="list-style-type: none"> • Participants in this program are matched with a mentor who provides support to meet the 120 hours of supervised driving practice and assists participants to overcome other barriers to obtaining a drivers licence.

The Breakaway Program, Cowra	Involvement from NSW Department of Education, TAFE, NSW Police Force, local health services, PCYC and Cowra community members	<ul style="list-style-type: none">• Initially developed in 2003 in response to growing concerns over the number of Aboriginal girls disengaging from school.• Was aimed at female Aboriginal students aged 13-15 considered at risk of disengaging (identified by parents, school staff and the Home Liaison Officer).• The initial program was a 10 week program designed to complement the school syllabus and it focussed on self-esteem, stress, anger management, sexual education, nutrition, alcohol and other drug awareness.• The program has since expanded to male students, non-Aboriginal students and students at further high schools.
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Appendix Seven – BOCSAR Data regarding Diversion by Specialist and Generalist Magistrates in NSW

NSW Children's and Local Criminal Courts January 2013 - December 2017
Number of *juveniles aged 10-17 years received 'Dismissed after Youth Conference' penalty
in the last 5 years to December 2017
by court group, penalty type and year

Court group	Dismissed after YJC																													
	2013					2014					2015					2016					2017					Total				
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%				
**Specialist Children's Magistrates	351	72.7	369	71.1	275	72.8	390	73.0	312	72.2	432	100.0	534	100.0	1,697	72.3														
Other Children's Court	132	27.3	150	28.9	103	27.2	144	27.0	120	27.8	120	27.0	144	27.0	649	27.7														
Total	483	100.0	519	100.0	378	100.0	534	100.0	432	100.0	432	100.0	534	100.0	2,346	100.0														

*where a person has received more than one penalty, the relevant juvenile penalty (ie. dismissed after YJC/caution under Young Offenders Act) is selected first.

**Specialist Children's Magistrates: Ballina (from August 2015), Bidura (up to Dec 17), Broadmeadow, Campbelltown, Cessnock (from August 2015), Coff's Harbour (from August 2015), East Maitland (from May 2017), Goulburn (from Jan 2018), Grafton (August 2015), Griffith (from June 2018), Kempsey (from November 2017), Lismore (from August 2015), Maitland (August 2015 to May 2017), Moss Vale (from January 2018), Mullumbimby (from August 2015), Murwillumbah (from August 2015), Muswellbrook (from August 2015), Nowra, Parramatta, Port Kembla, Port Macquarie (from November 2017), Raymond Terrace, Singleton (from June 2018), Sutherland, Surry Hills (from January 2018), Tweed Heads (from August 2015), Woy Woy & Wyong

***Local Court magistrates dealing with Children's Court proceedings: Albury, Armidale, Balranald, Bankstown, Batemans Bay, Bathurst, Bega, Bellingen, Blacktown, Blayney, Boggabilla, Bombala, Bourke, Brewarrina, Broken Hill, Burwood, Byron Bay, Casino, Cobar, Condobolin, Cooma, Coonabarabran, Coonamble, Cootamundra, Corowa, Cowra, Deniliquin, Dubbo, Dunedoo, Dungog, Eden, Finley, Forbes, Forster, Gilgandra, Glen Innes, Gloucester, Gosford, Grenfell, Gundagai, Gunnedah, Hay, Holbrook, Hornsby, Inverell, Junee, Katoomba, Kiama, Kurri Kurri, Kyogle, Lake Cargelligo, Leeton, Lightning Ridge, Lithgow, Liverpool, Macksville, Maclean, Milton, Moama, Moree, Moruya, Mudgee, Mungindi, Narooma, Narrabri, Narrandera, Narramine, Newcastle, North Sydney, Nyngan, Oberon, Orange, Parkes, Peak Hill, Penrith, Picton, Queanbeyan, Quirindi, Rylstone, Scone, Sydney Downing Centre, Tamworth, Taree, Temora, Tenterfield, Toronto, Tumbarumba, Tumut, Wagga Wagga, Walcha, Walgett, Warialda, Warren, Wauchope, Wee Waa, Wellington, Wentworth, West Wyalong, Wilcannia, Windsors, Wollongong, Yass & Young.

Source: NSW Bureau of Crime Statistics and Research, reference 18-16290
 Please retain this reference number for future correspondence.

NOTE: Data sourced from the NSW Bureau of Crime Statistics and Research
 Must be acknowledged in any document (electronic or otherwise) containing that data.
 The acknowledgement should take the form of '**Source: NSW Bureau of Crime Statistics and Research**'

Appendix Eight – BOCSAR Data regarding Access to Diversionary Options by Aboriginal Young People in NSW

NSW Recorded Crime Statistics 2013 to 2017

Number of juveniles aged 10-17 years proceeded against by the NSW Police Force by method of legal proceeding and Indigenous status

Offender's Indigenous status	Method of legal proceeding	2013	2014	2015	2016	2017	
Indigenous	Proceeded against to court	3758	4168	4422	3954	4356	
	Proceeded against other than to court	Youth Conference	199	172	221	130	160
		Caution Young Offenders	1147	1147	1142	1010	1078
		Cannabis Caution	1	2	2	1	1
		Criminal Infringement Notice	3	3	3	2	4
		Infringement Notice	481	512	651	587	493
		Warning Young Offenders from 2010	426	525	480	568	662
		Total proceeded against other than to court	2257	2361	2499	2298	2398
Total	6015	6529	6921	6252	6754		
Non-indigenous	Proceeded against to court	7781	6452	6771	6140	6445	
	Proceeded against other than to court	Youth Conference	529	423	414	355	408
		Caution Young Offenders	5440	5073	5141	4761	4860
		Cannabis Caution	8	12	8	9	10
		Criminal Infringement Notice	11	12	15	7	6
		Infringement Notice	9559	10282	12947	8919	5157
		Liquor Offence Compliance Notice	0	0	1	0	0
		Warning Young Offenders from 2010	6078	6959	8450	7751	8418
Total proceeded against other than to court	21625	22761	26976	21802	18859		
Total	29406	29213	33747	27942	25304		
Unknown	Proceeded against to court	1569	1061	1216	1182	1369	
	Proceeded against other than to court	Youth Conference	67	58	82	74	112
		Caution Young Offenders	699	688	854	1004	1396
		Cannabis Caution	0	0	3	1	0
		Criminal Infringement Notice	0	1	2	0	1
		Infringement Notice	13870	13634	16144	20321	26983
		Warning Young Offenders from 2010	436	615	1105	1377	1332
		Total proceeded against other than to court	15072	14996	18190	22777	29824
Total	16641	16057	19406	23959	31193		
Total	Proceeded against to court	13108	11681	12409	11276	12170	
	Proceeded against other than to court	Youth Conference	795	653	717	559	680
		Caution Young Offenders	7286	6908	7137	6775	7334
		Cannabis Caution	9	14	13	11	11
		Criminal Infringement Notice	14	16	20	9	11
		Infringement Notice	23910	24428	29742	29827	32633
		Liquor Offence Compliance Notice	0	0	1	0	0
		Warning Young Offenders from 2010	6940	8099	10035	9696	10412
Total proceeded against other than to court	38954	40118	47665	46877	51081		
Total	52062	51799	60074	58153	63251		

Source: NSW Bureau of Crime Statistics and Research

Reference: sr18-16221

Please retain this reference number for future correspondence

NOTE: Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing that data. The acknowledgement should take the form of **Source: NSW Bureau of Crime Statistics and Research**

^ Persons of interest (POIs) are suspected offenders recorded by police in connection with a criminal incident. Some POIs are formally proceeded against to court and some are proceeded against other than to court whilst others are not proceeded against. The POIs included in the table above have all been proceeded against. POIs are not a count of unique offenders. Where an individual is involved in multiple criminal incidents throughout the year they will appear as a POI multiple times. Correspondingly, no person of interest information will be recorded for criminal incidents in which there is no known suspect. This is very common among incidents of property crime which have a low clear up rate.

Note: There could be quite some time between an event being recorded by police, an investigation being completed and an alleged offender (ie a person of interest (POI)) being charged. This delay can impact upon the number of POIs being proceeded against to court or in other ways. For this reason, POIs are counted in the time period they were proceeded against, rather than the time period the event /incident was reported to or recorded by police. Due to this change, POI data prepared prior to March 2018 is not comparable to POI data prepared after this date. Comparable data for all years is available on request.

NSW Criminal Court Statistics 2013 to 2017

Number of juveniles aged 10-17 years appearing in finalised Children's Court appearances by court location, court outcome and the defendants Indigenous status

Court location	2013				2014				2015				2016				2017				
	Indigenous status	Guilty	Not Guilty	Other*	Total	Guilty	Not Guilty	Other*	Total	Guilty	Not Guilty	Other*	Total	Guilty	Not Guilty	Other*	Total	Guilty	Not Guilty	Other*	Total
**Dedicated Children's Court	Indigenous	827	70	96	993	681	34	94	809	666	38	83	787	602	30	88	720	620	24	147	791
	Non Indigenous	1424	83	153	1660	1226	51	145	1422	1257	54	143	1454	1115	47	135	1297	1149	51	176	1376
	Unknown	26	1	4	31	20	0	2	22	19	0	3	22	27	1	1	29	37	2	8	47
	Total	2277	154	253	2684	1927	85	241	2253	1942	92	229	2263	1744	78	224	2046	1806	77	331	2214
Other Children's Court	Indigenous	1619	84	98	1801	1641	89	145	1875	1678	75	143	1896	1524	66	119	1709	1366	74	130	1570
	Non Indigenous	1348	50	112	1510	1184	43	120	1347	1192	36	127	1355	1238	38	113	1389	1084	36	113	1233
	Unknown	68	2	5	75	41	3	4	48	56	1	7	64	57	1	4	62	62	6	9	77
	Total	3035	136	215	3386	2866	135	269	3270	2926	112	277	3315	2819	105	236	3160	2512	116	252	2880
Total Children's Court	Indigenous	2446	154	194	2794	2322	123	239	2684	2344	113	226	2683	2126	96	207	2429	1986	98	277	2361
	Non Indigenous	2772	133	265	3170	2410	94	265	2769	2449	90	270	2809	2353	85	248	2686	2233	87	289	2609
	Unknown	94	3	9	106	61	3	6	70	75	1	10	86	84	2	5	91	99	8	17	124
	Total	5312	290	468	6070	4793	220	510	5523	4868	204	506	5578	4563	183	460	5206	4318	193	583	5094

Source: NSW Bureau of Crime Statistics and Research

Reference: sr18-16221

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*Other includes dismissed by lower courts due to mental illness, withdrawn by prosecution, and otherwise disposed of (eg transferred to Drug Court, deceased)

**Dedicated courts: Bidura cc, Broadmeadow cc, Cobham cc, East Maitland cc, Lidcome cc Parramatta cc, Surry Hills cc, and Woy Woy cc

Number of juveniles aged 10-17 years found guilty in finalised Children's Court appearances by court location, principal penalty* and the defendants Indigenous status

Court Location	Principal penalty*	2013				2014				2015				2016				2017			
		Indigenous	Non Indigenous	Unknown	Total	Indigenous	Non Indigenous	Unknown	Total	Indigenous	Non Indigenous	Unknown	Total	Indigenous	Non Indigenous	Unknown	Total	Indigenous	Non Indigenous	Unknown	Total
**Dedicated Children's Court	Juvenile control order	123	113	0	236	83	122	0	205	114	91	0	205	77	82	0	159	87	86	0	173
	Suspended sentence with supervision	22	20	0	42	15	24	0	39	18	16	0	34	5	17	0	22	10	17	0	27
	Suspended sentence without supervision	3	6	0	9	1	3	0	4	1	6	0	7	1	5	0	6	2	5	0	7
	Community Service Order	28	67	0	95	25	56	1	82	27	70	1	98	9	60	0	69	14	48	0	62
	Juvenile probation order	164	278	5	447	123	222	4	349	124	251	1	376	117	196	0	313	89	193	4	286
	Bond with supervision	85	138	4	227	67	127	1	195	71	143	0	214	59	91	2	152	72	135	2	209
	Bond without supervision	96	182	8	286	80	131	1	212	66	140	3	209	72	114	6	192	68	137	3	208
	Fine	18	63	1	82	23	53	2	78	26	69	0	95	17	43	3	63	18	52	2	72
	Nominal Penalty	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0
	Bond without conviction	29	90	0	119	32	82	2	116	35	91	3	129	39	95	5	139	50	107	3	160
	No action taken on a breach of bond	51	61	0	112	66	79	0	145	50	53	0	103	51	56	0	107	38	53	0	91
	Other penalties	92	162	0	254	91	174	3	268	46	127	2	175	66	153	1	220	64	126	4	194
	Juvenile offence proved, dismissed	116	244	8	368	75	153	6	234	88	200	9	297	88	203	10	301	108	190	19	317
	Total		827	1424	26	2277	681	1226	20	1927	666	1257	19	1942	602	1115	27	1744	620	1149	37
Other Children's Courts	Juvenile control order	222	68	1	291	179	60	0	239	218	58	0	276	199	50	0	249	168	54	0	222
	Intensive correction order	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
	Suspended sentence with supervision	62	26	0	88	58	32	1	91	61	33	1	95	76	34	2	112	57	36	2	95
	Suspended sentence without supervision	7	3	0	10	4	4	0	8	10	7	0	17	12	5	0	17	6	5	0	11
	Community Service Order	58	40	5	103	54	44	0	98	57	26	1	84	42	29	1	72	42	27	0	69
	Juvenile probation order	327	223	10	560	301	212	4	517	342	195	6	543	276	190	4	470	293	179	3	475
	Bond with supervision	245	189	4	438	230	154	5	389	265	153	4	422	195	155	6	356	163	156	5	324
	Bond without supervision	208	204	14	426	208	186	6	400	161	176	9	346	153	198	10	361	134	176	8	318
	Fine	95	88	10	193	113	72	8	193	99	72	6	177	74	73	7	154	57	43	7	107
	Nominal Penalty	2	0	0	2	2	0	1	3	0	0	1	1	7	3	1	11	1	3	0	4
	Bond without conviction	44	69	2	115	70	67	3	140	72	81	3	156	72	106	9	187	86	98	8	192
	No conviction recorded	2	3	0	5	0	0	1	1	2	1	2	5	3	1	0	4	3	2	1	6
	No action taken on a breach of bond	62	50	0	112	75	55	2	132	84	58	1	143	73	40	1	114	66	30	0	96
	Other penalties	93	119	4	216	114	120	2	236	89	96	1	186	150	143	3	296	114	99	7	220
Juvenile offence proved, dismissed	192	266	18	476	233	178	8	419	218	236	21	475	192	211	13	416	175	176	21	372	
Total		1619	1348	68	3035	1641	1184	41	2866	1678	1192	56	2926	1524	1238	57	2819	1366	1084	62	2512
Total Children's Court	Juvenile control order	345	181	1	527	262	182	0	444	332	149	0	481	276	132	0	408	255	140	0	395
	Intensive correction order	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
	Suspended sentence with supervision	84	46	0	130	73	56	1	130	79	49	1	129	81	51	2	134	67	53	2	122
	Suspended sentence without supervision	10	9	0	19	5	7	0	12	11	13	0	24	13	10	0	23	8	10	0	18
	Community Service Order	86	107	5	198	79	100	1	180	84	96	2	182	51	89	1	141	56	75	0	131
	Juvenile probation order	491	501	15	1007	424	434	8	866	466	446	7	919	393	386	4	783	382	372	7	761
	Bond with supervision	330	327	8	665	297	281	6	584	336	296	4	636	254	246	8	508	235	291	7	533
	Bond without supervision	304	386	22	712	288	317	7	612	227	316	12	555	225	312	16	553	202	313	11	526
	Fine	113	151	11	275	136	125	10	271	125	141	6	272	91	116	10	217	75	95	9	179
	Nominal Penalty	2	0	0	2	2	0	1	3	0	0	1	1	8	3	1	12	1	3	0	4
	Bond without conviction	73	159	2	234	102	149	5	256	107	172	6	285	111	201	14	326	136	205	11	352
	No conviction recorded	2	3	0	5	0	0	1	1	2	1	2	5	3	1	0	4	3	2	1	6
	No action taken on a breach of bond	113	111	0	224	141	134	2	277	134	111	1	246	124	96	1	221	104	83	0	187
	Other penalties	185	281	4	470	205	294	5	504	135	223	3	361	216	296	4	516	178	225	11	414
Juvenile offence proved, dismissed	308	510	26	844	308	331	14	653	306	436	30	772	280	414	23	717	283	366	40	689	
Total		2446	2772	94	5312	2322	2410	61	4793	2344	2449	75	4868	2126	2353	84	4563	1986	2233	99	4318

Source: NSW Bureau of Crime Statistics and Research

Reference: sr18-16221

Please retain this reference number for future correspondence

NOTE: Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing that data. The acknowledgement should take the form of Source: NSW Bureau of Crime Statistics and Research

*Where a person has been found guilty of more than one offence, the offence which received the most serious penalty is the principal offence.

**Dedicated courts: Bidura cc, Broadmeadow cc, Cobham cc, East Maitland cc, Lidcome cc Parramatta cc, Surry Hills cc, and Woy Woy cc