

## **INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NSW**

**Organisation:** NSW Coalition of Aboriginal Regional Alliances  
**Name:** Aunty Jean Hands  
**Position:** Chairperson  
**Date Received:** 15 February 2018



*NSW Coalition of Aboriginal Regional Alliances*

The Committee Director  
Legislative Assembly Committee on Law and Safety  
Inquiry into  
The Adequacy of Youth Diversionary Programs in NSW

C/- Elspeth Dyer [Lawsafety@parliament.nsw.gov.au](mailto:Lawsafety@parliament.nsw.gov.au)

Dear Sir

Please accept the attached submission to the Inquiry into the adequacy of youth diversionary programs in NSW on behalf of the NSW Coalition of Aboriginal Regional Alliances (NCARA).

NCARA was established in March 2014 by the chairpersons of regional alliances participating in the Local Decision Making (LDM) initiative under OCHRE. The primary role of NCARA is as a leadership group providing advice to government and advocacy on behalf of participating regional alliances. This includes issues that relate to equitable access to basic and essential services, programs and funding for Aboriginal people, as well as development and application of policy.

This submission focuses on culturally sound early intervention diversion strategies for Aboriginal young people with recommendations that focus on;

1. Development of youth diversionary programs for Aboriginal young people in accordance with the international best practice principles
2. The expansion of the Youth on Track program across all regional areas of NSW, and
3. NSW Government support for the development of community-based justice reinvestment programs across regional NSW

NCARA would welcome the opportunity to address the inquiry in person to further discuss the contents of our submission.

Kind Regards,



Aunty Jean Hands  
Chairperson  
NSW Coalition of Aboriginal Regional Alliances

*NSW Coalition of Aboriginal Regional Alliances*

Chairperson **Aunty Jean Hands** Email: [REDACTED]  
Executive Support **Steve Butler** Email: [REDACTED]





*NSW Coalition of Aboriginal Regional Alliances*

**Submission to the NSW Legislative Assembly Law and Safety Committee  
Inquiry into the adequacy of youth diversionary programs in NSW**

Prepared by Annette van Gent, Convenor, Youth Justice Coalition  
Melanie Schwartz, University of New South Wales  
Sophie Russell, University of New South Wales  
and  
Mali Strachan-Brown

On behalf of

NSW Coalition of Aboriginal Regional  
Alliances

Chairperson Aunty Jean Hands Email: [REDACTED]

[REDACTED]

Executive Support Steve Butler Email: [REDACTED]

[REDACTED]

DATE: 16 February 2018

*NSW Coalition of Aboriginal Regional Alliances*



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## **1. Introduction**

This report has been prepared in response to the NSW Government Inquiry into the Adequacy of Youth Diversionary Programs (“the Inquiry”). This report addresses the terms of reference for the inquiry with a particular focus on term of reference (a) (the way in which youth diversionary efforts work with the police, juvenile justice, community corrections, the Courts; health, housing and human services; schools and educational authorities; and non-government organisations and the local community and (b) Aboriginal over-representation in the Juvenile Justice System.

This report was prepared with the assistance of members of the New South Wales Coalition of Aboriginal Regional Alliances (NCARA). Established in 2014, NCARA is an advocacy organisation which works to achieve equitable access to basic services, programs and funding for Aboriginal people, as well as the development and application of policy. NCARA members provided invaluable insights into the experience of young Aboriginal people living in regional New South Wales, and it is those insights that has informed this report.

For any enquiries in relation to this report, please contact the NCARA Chairperson or Secretariat.

## **2. Indigenous youth justice: a complex landscape**

The staggering overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice systems across all Australian states and territories is one of Australia's most significant social problems (Snowball 2008). During 2015-16, 59 per cent of the young people incarcerated in Australia were Indigenous, despite comprising less than 3 per cent of the nations youth population (AIHW 2017). Indigenous young people are up to 25 times more likely to be in detention than non-Indigenous youth (AIHW 2017).

Consistent evidence from NSW, Victoria, Queensland and Western Australia shows that Indigenous young people are less likely to receive a police diversionary option and are more likely to be arrested, to have bail refused and to have their matter determined in a youth court when compared with their non-Indigenous peers (Cunneen et al 2015: 154-159). Similarly, evidence suggests that Indigenous young people are not referred as frequently to restorative justice youth conferences as non-Indigenous youth (Allard et al 2010; Cunneen et al 2015). This is despite the fact that a key rationale for the introduction of restorative justice youth conferencing was to provide a more culturally sensitive method of responding to offending by Indigenous children and young people (Cunneen and Tauri 2017: 74).

Indigenous young people in conflict with the law have higher levels of mental health disorders and cognitive disabilities. This must be recognised and taken into consideration when discussing best practice principles for diversion. The 2015 NSW Young People in Custody Health Survey (YPiCHS), for example, found 87 per cent of Indigenous young people screened for any psychological disorder, compared with 79 per cent of non-Indigenous young people (Justice Health & Forensic Mental Health Network (JH&FMHN) and Juvenile Justice NSW 2017: 65). The same survey recorded 69 per cent Indigenous (and 56 per cent non-Indigenous) young people screened for two or more disorders (JH&FMHN 2017:65). The study also showed that 24 per cent of Indigenous young people were in the 'extremely low' range, indicating disability, and a further 40 per cent in the 'borderline' range (JH&FMHN 2017:81). Similarly high prevalence figures for psychological disorders and cognitive impairment amongst Indigenous young people have been found in previous health surveys (see, for example, Indig et al 2011; Allerton and Champion 2003).

The UNSW Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System (IAMHDCD) project reported Indigenous people with complex needs were 2 times more likely to have been in juvenile justice custody. The project further found that when compared with non-Indigenous people, Indigenous people with complex needs were significantly more likely to: have spent time in OOHC; have a lower age of first police contact, custody and conviction; have a higher number of police convictions; be juvenile justice clients and in juvenile custody; and have a higher number of adult corrections custodial episodes (Baldry et al 2015).

Although by no means only an Indigenous issue, the prevalence of Foetal Alcohol Spectrum Disorders (FASD) amongst young people in contact with the criminal justice system is increasingly recognised as a significant issue of concern in Australia, particularly amongst

Indigenous young people. Until very recently, there has been no diagnostic tool for FASD<sup>1</sup> and there is still no agreed assessment across Australian criminal justice agencies. As a result there are no reliable figures on its prevalence within community or justice settings, with some referring to it as the ‘invisible disability’ (Standing Committee on Social Policy and Legal Affairs 2012). One study has found one in eight children in 2002–03 living in WA remote communities had FASD and 55% of birth mothers reported alcohol use during their pregnancy (Fitzpatrick et al 2015). In light of evidence of borderline intellectual disabilities within the youth justice system, it is hypothesised that young people with FASD are significantly overrepresented amongst youth in juvenile justice (Australian National Council on Drugs 2012; Parkinson and McLean 2013; Mutch et al 2013).

### **The age of criminal responsibility**

Some interviewees we spoke to for this submission expressed the view that children should never be brought into interaction with the criminal justice system, in any circumstances. While a strictly abolitionist approach is a stance that may not be shared by all, it interacts with an important current discussion about the minimum age at which children should be able to be punished via the juvenile justice system. The age of criminal responsibility is the primary legal barrier to criminalisation and entry into the criminal justice system. Current Australian legislation establishes 10 as the minimum age of criminal responsibility, although a presumption against responsibility exists until the age of 14 through the principle of *doli incapax*. At 10 years, Australia’s minimum age of criminal responsibility is inconsistent with prevailing practice in Europe. Indeed, the average minimum age of criminal responsibility in the European Union is 14 years (Goldson 2013).

There are various arguments for raising the minimum age of criminal responsibility in Australia, some of which include: 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; criminological arguments relating to the failure of a criminalisation approach; and the views of juvenile justice practitioners (see Cunneen 2017 for a detailed explanation of these arguments).

It is well recognised that criminal justice systems are themselves criminogenic, with contact being one of the key predictors of future youth offending (Payne 2007; Chen et al 2005). Data from the Australian Institute of Health and Welfare (AIHW) 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 (AIHW 2013). This indicates that raising the age of criminal responsibility has the potential to reduce the likelihood of life-course interaction with the criminal justice system (Cunneen et al 2016: 176-177).

Importantly, a low minimum age of criminal responsibility adversely affects Indigenous children who comprise the majority of children under the age of 14 years who come before

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<sup>1</sup> A FASD diagnostic tool has been released recently: <http://www.nofasd.org.au/announcements/australian-fasd-diagnostic-instrument-published>

youth courts in Australia and are sentenced to either youth detention or a community-based sanction (Cunneen 2017).

In Australia there have been repeated calls to raise the minimum age of criminal responsibility, from academics (eg Crofts 2015; O'Brien and Fitz-Gibbon 2017; Cunneen et al 2016; Cunneen 2017); various non-government organisations including members of the Child Rights Taskforce (2011:31-32); Jesuit Social Services (2015); Amnesty International (2015); criminal lawyers associations and some Children's Commissioners (Zillman 2017), and most recently the Royal Commission into the Protection and Detention of Children in the Northern Territory (NTRC 2017).

As Cunneen (2017) has argued, although the UN Convention on the Rights of the Child does not specify an appropriate age of criminal responsibility, 12 years has been recommended by the UN Committee on the Rights of the Child as the absolute minimum age for states to implement (UNCRC 2007: para 32; see also Beijing Rules article 4(1)). Raising the minimum age of criminal responsibility to 12 would bring Australia into line with its obligations under the UN Convention on the Rights of the Child (CRC) and consistent with other common law jurisdictions such as Canada and Ireland.

### **Defining diversion**

Across all Australian jurisdictions there has been a commitment to minimising young people's contact with the criminal justice system through a range of diversionary measures (Richards and Renshaw 2013).

Jordan and Farrell (2013: 421) observe that diversion operates at three key points of contact with the justice system: strategies which aim to prevent young people becoming involved in criminal activity in the first place; schemes which aim to divert young people away from the criminal justice system as early as possible; and sentencing options which aim to divert young people away from custodial sentences. These distinctions in 'diversion' are significant, especially since contact with the justice system is itself criminogenic, through negative labeling and stigmatisation among other reasons (Allard et al 2010). Moreover, it is important to recognise that each of these categories of diversion is not universally available, but rather apply selectively (formally or informally) depending on locality, mental health, cognitive function, gender and race. This reflects the views of members of the NSW Coalition of Aboriginal Regional Alliances, who commented on the paucity of programs available to rural and regional Aboriginal young people, the dearth of culturally appropriate programs where programs did exist.

While there has been a clear commitment to diversion in youth justice policy in NSW, one of the challenges of diversionary practice is to ensure that there is something meaningful to divert the young person to. This is particularly the case for young people outside metropolitan areas, and also for young people with multiple and complex support needs. For young people with complex needs, including many Indigenous children, warnings and cautions have very limited effect on diversion from the criminal justice system.

Taking this into account, in this submission we focus on the first category of diversion – early intervention strategies which seek to deter future contact with juvenile justice for children at risk of, or who have just started with, such contact. This reflects the views of the members of the NSW Coalition of Aboriginal Regional Alliances interviewed for this submission, who stated that what diversion strategies were available to regional and remote Aboriginal young people often came too late - situated at a point of contact with the juvenile justice system too far along to maximise the impact that could be had on the prospects of the young person.

**Thus this submission focuses on culturally sound early intervention diversion strategies for Aboriginal young people.**

### **3. Aboriginal Communities' Experience of Youth Diversionary Programs in Regional New South Wales**

For the preparation of this report, the Youth Justice Coalition interviewed four members of NCARA. Each member was from a different regional area of New South Wales. Together, the members were able to offer insights into the experience of Aboriginal communities with youth diversionary program in the New South Wales North Coast (from Singleton), the South Coast (from Wollongong), the central west (from Dubbo), and the south west (from Wentworth). While each member described experiences relevant to his or her particular region, a number of themes emerged through the interviews.

The first theme that emerged throughout the interviews was that there is simply an overall paucity of youth diversionary programs across regional New South Wales. The interviewees indicated that there were either no youth diversionary programs in their regional area of which they were aware, or that the youth diversionary programs which did exist were inadequate to meet the community need. The interviewees also described problems of access to youth diversionary programs for people living in different regional areas. Individuals in regional areas who want to access diversionary programs, but do not have any such programs in their own community, are often required to travel long distances to access those programs. This impedes the accessibility of the program particularly for young people on low incomes, and young people with caring responsibilities for children or other family members, which in turn leads to disengagement with those programs.

The second theme that emerged throughout the interviews was that the programs which do exist in regional areas tend to be directed towards young people who are already involved in the juvenile justice system. The interviewees expressed the view that diversionary efforts at this stage are in many instances simply too late to make a significant difference to life trajectory of young people who are struggling. The interviewees talked about the many complex and inter-related issues that lead a young people to involvement with the juvenile justice system – such as family violence, homelessness, poverty, and substance abuse – and consistently expressed the view that youth diversionary should be directed at addressing these issues at an early stage in a young person's life, in order to prevent the issues from escalating into offending, and involvement with the juvenile justice system. In emphasising the importance of true early intervention, interviewees talked about the enormous challenges facing young people trying to re-engage in normal community life after being involved in the juvenile justice system, and described how – sadly – involvement in the juvenile justice system often seemed to aggravate rather than resolve the young person's issue, leading to a greater likelihood of involvement in the adult justice system.

The third theme that emerged throughout the interviews was that youth diversionary programs that exist in regional New South Wales are most often not culturally appropriate and community-based. This relates back to the issue of the geographic inaccessibility of programs for many people living in regional New South Wales, but also raises other issues. Interviewees expressed a strong and consistent view that programs which were community-based (meaning

situated in the community that they serve, staffed by local community people and supported with ongoing, consistent levels of funding) were more likely to successfully engage young people with complex needs than programs that were based outside the community, to which people would need to travel, or programs that were delivered on an “outreach” basis from another location. This was in part because such programs would simply be more accessible, but also because such programs would have a greater capacity to engage not only with young people, but with their families, and their community. Family and community involvement in the youth diversionary process was expressed as being important to the success of the process. It would be enough to try to engage with a young person in isolation from that family and community context.

In terms of cultural appropriateness, interviewees expressed the view that youth diversionary programs in regional New South Wales are generally not culturally appropriate for Aboriginal people. Interviewees expressed the view that culturally appropriate programs were needed to effectively engage with Aboriginal young people and their communities. This would involve programs that were controlled by Aboriginal people and where possible staffed by Aboriginal people, with any non-Aboriginal staff receiving extensive and appropriate culturally awareness training.

The fourth theme related to interactions between young Aboriginal people in regional New South Wales, and the police. Interviewees expressed concerns in relation to over-policing of Aboriginal young people – particularly those with a high level of visibility due to homelessness – resulting in Aboriginal young people becoming involved in the juvenile justice system at a higher rate, a younger age, and for less serious offending than their non-Aboriginal peers. Some interviewees referred to the NSW Police Suspect Targeting Management Program (STMP) and the contribution that this had made to the over-policing and criminalisation of Aboriginal young people, as well as a deterioration in trust between Aboriginal communities and police. Indeed, interviewees described a very high level of mistrust between Aboriginal young people and police.

Interviewees acknowledged the efforts of police in some regional areas in running youth diversionary programs such as those offered by the Police-Citizens Youth Clubs (PCYC), but expressed the view that these programs were not meeting the needs of Aboriginal young people, for many reasons. Due to the widespread mistrust between Aboriginal young people and police, many Aboriginal young people simply did not want to engage in programs operated by police. Interviewees said that some young people and their families were worried that participating in such programs might bring them under closer scrutiny by police, making them vulnerable to being the subject of the STMP or being approached by police when out in the community. 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. Interviewees also expressed the view that these programs were not targeting the most vulnerable young people in the community, but seemed rather to provide social and sporting outlets for young people who were not really vulnerable to being involved in the juvenile justice system. These social and sporting activities were described as not really meeting the complex needs of the truly

vulnerable young people who were struggling with issues around family violence, homelessness, poverty and substance abuse, and therefore the young people most in need of diversion from the juvenile justice system.

The final theme that emerged from the interviews was a strong commitment to the concept of youth diversion itself. As noted in the discussion about early intervention above, interviewees talked about the difficulties faced by young people in getting out of the cycle of offending and incarceration once they were in it, and about the all too well-trodden path from the care system, to the juvenile justice system, to adult prison, to a life of poverty and marginalisation. Because it can have this trajectory, interviewees expressed the view that criminal prosecution and incarceration of young people should be absolute last resort (if it is to be pursued at all) and that there needed be a much greater investment into effective youth diversionary programs across regional New South Wales.

#### **4. Youth Diversionary Programs Currently Operating in Regional New South Wales**

Regional New South Wales currently has a very limited number of youth diversionary programs. Here we will discuss the Maranguka Justice Reinvestment Project (Bourke), the Bail Assistance Line, the Rural Residential Adolescent Alcohol and Other Drugs Rehabilitation Program, and Triple Care Farm.

##### ***Youth On Track (“YOT”)***

YOT is an early intervention scheme servicing young people who have a medium to high risk of becoming entrenched in the juvenile justice system. It provides intensive one-on-one case management to young people, and provides interventions based around family, education, behaviour and criminal offences. YOT provides a case management service of the type normally reserved for young people who have had several contacts with police and have received a supervised order from Juvenile Justice. To be eligible, young people must be between the ages of ten and seventeen years; have had at least one formal contact with police and a number of offending risk factors or at least two formal contacts with police and be at a 60% or greater chance of re-offending (assessed using a Bureau of Crime Statistics and Research tool); have never received a supervision order; and have been referred by their school or the police (NSW Government 2016 [http://www.youthontrack.justice.nsw.gov.au/Pages/yot/about\\_us/yot-locations.aspx](http://www.youthontrack.justice.nsw.gov.au/Pages/yot/about_us/yot-locations.aspx) and NSW Government 2017 [http://www.youthontrack.justice.nsw.gov.au/Pages/yot/about\\_us/yot-model.aspx](http://www.youthontrack.justice.nsw.gov.au/Pages/yot/about_us/yot-model.aspx)). All those referred to the program are screened for cognitive disabilities.

It is estimated the demographic of YOT participants is that 88% are male, 71% identify as Aboriginal or Torres Strait Islander, and that 46% were first involved in the CJS before the age of 14 (NSW Government 2015: n.p.). Other data shows that, between July 2013 and December 2016, 75% of YoT participants were male and 56% identified as Aboriginal or Torres Strait Islander (NSW Department of Justice 2016 ‘Youth on Track Snapshot 1 July 2013 – 31 December 2016’).

YOT has operated in the areas of Blacktown, the Hunter and the Mid North Coast since 2013. It expanded to the Central West, Coffs Harbour and New England in 2016.

Baldry et al (2017) interviewed key youth justice stakeholders in NSW, who described the program as ‘a good example of the appropriateness of early intervention for young people’ as a means of diverting them from the youth justice system. One respondent commented (ibid: 10):

*The idea is to pick up the kids who have been cautioned by police but who have issues which really need attention... possible early signs of mental health problems, learning disabilities... to basically have a way of sort of picking up these kids, so once they’re already come to the attention of police and possibly been cautioned a couple of times,*

*but before they get really entrenched in the juvenile justice system, to actually have a kind of referral pathway for these kids to get some help.*

An evaluation by CIRCA (2017) found the program had led to positive behavioural, family and education outcomes. In particular, the evaluation found:

Access to an Aboriginal and Torres Strait Islander caseworker was noted as crucial to ensure Aboriginal and Torres Strait Islander clients' needs are being met in culturally appropriate ways. For example, engagement of some very hard to reach young men in one of the evaluation sites was only possible because of the ways in which the Aboriginal male caseworker interacted with them, including during the initial contact period (CIRCA 2017: 58).

CIRCA (2017: 58) further noted that '... young people who come into contact with the juvenile justice system at a very young age are more likely to be Indigenous... and for this reason alone a targeted, individualised and culturally relevant and appropriate intervention that addresses the underlying causes of their involvement in crime is essential to reduce the likelihood of continued offending into adulthood'.

Whilst many YOT clients' social outcomes have improved, 'challenges in obtaining referrals (particularly from schools) and issues with initial engagement' have also been identified (CIRCA 2017: 7). A report published by the Cultural and Indigenous Research Centre Australia suggests further studies address 'why some young people decline to participate and others engage in the scheme' (CIRCA 2017: 7). (Cultural and Indigenous Research Centre Australia (CIRCA) 2017, 'Youth on Track Social Outcomes Evaluation: Final Report'.)

YOT provides a good example of a holistic, wraparound, family-centered 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.

## **PCYC**

Police Citizen Youth Clubs NSW (PCYC) are partnerships between the NSW police and local communities that attempt to deter young people from offending. PCYC work with all young people and adults in their community, but also provide support specifically for young people with a history of offending or those considered at risk of offending. PCYC offers a range of programs from recreational to educational.

As an example, Lake Illawarra PCYC works in partnership with the Wollongong Juvenile Justice Community Office to provide programs that satisfy Youth Justice Conference outcome plans (discussed later) and act as low-level diversion at court. For instance, first time offenders may be offered a caution instead of a criminal sentence if they successfully complete PCYC programs during a period of adjournment. These programs include Think First (domestic

violence offence focus), Knock It Off (low level offending i.e. shoplifting) and Graff Off (Graffiti) (Juvenile Justice NSW 2016, 'Juvenile Justice Year in Review 2015-16').

PCYCs provide services and programs to all community members. PCYCs are located throughout regional New South Wales, including the Central West, South West, South and North Coasts.

This report notes again the comments of the interviewees with respect to PCYCs, and their adequacy in meeting the needs of Aboriginal children and young people.

### ***Maranguka Justice Reinvestment Project, Bourke***

Just Reinvest NSW has been working in partnership with the Bourke Aboriginal community since 2013 to implement the first major justice reinvestment (JR) trial in Australia the Maranguka JR Project. The project is community-led, using a collective impact framework that brings together a diverse range of organisations and services to work on a common agenda. The Maranguka JR Project illustrates how communities can work with a diverse range of service providers for youth diversionary efforts. The JR 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 (Just Reinvest NSW 2017). It aims to address underlying social and criminogenic factors such as homelessness, child protection, disability, violence, poverty, lack of appropriate services and drug and alcohol abuse.

In August 2017, the Bourke Local Area Command and the Maranguka Community Hub instigated daily morning meetings to provide updates and share data, with a view to providing support to community members in need, with particular focus on children at risk of offending and their family members. This has become a space to workshop acute responses to situations requiring emergency action and identified support (Just Reinvest NSW 2017).

In its early stages, the Maranguka JR Project also implemented 'circuit breaker' initiatives that are examples of the police and services working collaboratively: (i) the establishment of a warrant clinic to avoid individuals going 'underground', which results in them ceasing to access services (ii) the introduction of bail protocols to reduce the length of time young people spend on remand and (iii) a driver licensing program. These circuit breakers formed part of the long-term vision of reducing offending and creating a safer community (Just Reinvest NSW 2017).

As a relatively new initiative, the Maranguka JR Project is only beginning to be evaluated, but is showing early signs of success (Just Reinvest NSW Inc <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>).

At this stage the project operates only in Bourke, and so access to it is limited to that location.

### ***Bail Assistance Line ("BAL")***

The BAL began as a trial in Dubbo in June 2010. Since then, the program has expanded to service the Newcastle/Hunter region, as well as a large area of western and south-western

Sydney (including Penrith, Fairfield, Parramatta, Macquarie Fields, and Mt Druitt). The BAL seeks to provide an after-hours service for police who are considering granting conditional bail to a young person who is in their custody but who cannot be released as they cannot meet their bail conditions. The BAL aims to minimise the entrenchment of young people in the juvenile justice system and provide services that are appropriate and sensitive to a young person's age, gender, cultural background and disability.

By funding NGOs to provide accommodation and other support services, the BAL seeks to divert young people away from remand in cases of family crisis and chronic homelessness. In the absence of stable home care, NGO specialists can provide accommodation, transport, case management, court assistance, and modest support to purchase clothes and necessities (NSW Govt 2014

[http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/bail\\_assistance\\_line.aspx](http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/bail_assistance_line.aspx) and NSW Govt 2018

[http://www.keepthemsafe.nsw.gov.au/initiatives/acute\\_services/bail\\_assistance\\_line](http://www.keepthemsafe.nsw.gov.au/initiatives/acute_services/bail_assistance_line) ).

The writers of this report were unable to access any information about the effectiveness of the BAL for Aboriginal children and young people.

### ***Rural Residential Adolescent Alcohol and Other Drugs Rehabilitation Programs***

Regional New South Wales has two of these programs operating, in Coffs Harbour (Junaa Buwa) and in Dubbo (Mac River). These are both 24-hour staffed intensive residential rehabilitation programs, which assist young people to address their alcohol and other drug use and their offending behaviour. To be eligible to participate, young people must be aged 13 to 18, currently involved with Juvenile Justice, and having a significant history of drug and alcohol-related offending behaviour. The program is also available for young people with dual diagnosis (substance abuse and mental illness).

### ***Triple Care Farm***

Triple Care Farm is a residential rehabilitation and treatment program for young people between the ages of 16-24 years, from all over Australia, located in the Southern Highlands of New South Wales. It takes a holistic approach to rehabilitation over the course of 12 weeks. Staff provide treatment for addiction but also seek to address underlying issues and contributing factors to the young person's situation, including mental illness, homelessness and family breakdown.

Triple Care Farm services up to 100 young people each year. Triple Care Farm has an admission fee (\$140 at the time of writing) and a weekly fee (\$150 at the time of writing). It has a “rolling intake”, meaning that as soon as a bed becomes available, a young person can be accepted (Triple Care Farm N.D. <https://www.sdmf.org.au/youth-programs/triple-care-farm>).

The writers of this report were unable to access any information about the adequacy of this program or the Rural Residential Adolescent Alcohol and Other Drugs Rehabilitation Programs for Aboriginal young people.

\*

As this brief overview demonstrates, regional New South Wales does have a number of operating youth diversionary programs, some of which are showing signs of success in working with young people. However, this overview also underlines many of the themes that emerged from the interviews with members of NCARA, notably:

- There are relatively few programs operating across regional New South Wales;
- There is no even and consistent spread of programs, with some areas having a number of programs operating and other areas having none;
- The currently operating programs are primarily directed at young people who are already in the juvenile justice system;
- With the exception of JRNSW, none of the programs are community-based and community-controlled, with a focus on working specifically with Aboriginal children and young people.

Before making recommendations as to how these issues may be addressed, we turn to consider some examples of international best practice in this area.

## **5. Youth Diversionary Programs Operating Across Australia and the World**

Below we discuss a number of promising programs for Indigenous young people in Australia, New Zealand and Canada. However it is important to keep in mind the fallacies of policy transfer and ‘what works’ in youth justice. As Muncie (2001: 33-34) argues:

Evaluation is never a pure science. Most commissioners of evaluation research might want the ‘facts’ but facts do not speak for themselves. The unpredictability and variability of the social and the political militates against generalities and uniformity. The search for the consistently efficient (and cost-effective) practice tends to mean that the dynamics of local contingencies are often overlooked. ‘What works’; in some contexts (spatial and temporal) may not ‘work’ in others. The pragmatic ‘quick-fix’ precludes research analysis and policy proposal that looks to the long term and fundamentally transformative. Policies of ‘what works’ tend to focus only on the immediate problems of individual young people and their parents. Whilst it is possible to view some initiatives with a guarded optimism it is unlikely that any can be simply transferred from one jurisdiction to another, or indeed from one locality to another with the same results.

However, it is nonetheless worth exploring good existing practice to glean principles (rather than programs) that can be applied to the NSW context.

### **Australia**

#### ***BushMob Aboriginal Corporation, Northern Territory (NT)***

Based in Alice Springs in the NT, BushMob provides treatment for young people aged 12 to 25 years experiencing difficulties with substance addiction. BushMob includes a residential treatment facility and provides intensive outreach and case management and delivers adventure therapy bush trips (Pryor 2009). Each year, 700 Young People access BushMob, of whom 110 attend a residential program. The majority of residential referrals (70%) are from the justice system, and irrespective of the source of the referral, most (98%) are subject to a protective order (BushMob 2016). BushMob’s Apmere Mwerre program works specifically with young people in conflict with the law. It operated for 14 months until mid-2017 before being discontinued when funding from the NT government was not renewed.

BushMob provides a distinctive service that builds the health and wellbeing of young people, families and communities. All young people who enter BushMob are complex needs clients with significant primary care health issues. Many have experienced early life trauma and continue to experience ongoing trauma as a result of poverty, substance abuse, lack of access to services, cultural isolation, and the effects of intergenerational grief and loss (Pryor 2009). BushMob (2014) estimates that approximately 30 per cent of their clients are affected by Foetal Alcohol Spectrum Disorder (FASD). In recognition of the complex needs of those they support, the BushMob program model is trauma-informed. The BushMob model reflects the importance of choices and informed consent of the young person engaged in the program; incorporates flexible arrangements such as multiple entry and exit points; and ensures the involvement of

positive role models and mentors and provides non-judgemental, interpersonal support for young people (BushMob 2016).

BushMob Aboriginal Corporation encapsulates what we consider to be a key best-practice principle in the diversion of Indigenous young people - that all youth diversionary programs for Indigenous young people are community owned, developed and driven. It describes its work as follows:

BushMob has developed from the priorities expressed by Indigenous people in the Northern Territory about strengthening youth against high risk behaviours. Its practices are therefore rooted in the community it serves. The community development ethos enables Bushmob to draw on the cultural and community assets and strengths that exist within Indigenous families and in the Indigenous cultural context as the foundation for its work (BushMob 2016).

An evaluation of BushMob was conducted in 2009. The evaluation found that BushMob was one very few Australian examples of ‘best practice adventure therapy industry standards’ and one of few services that can be said to offer support across the full spectrum of public health needs in the area of mental health (including substance misuse). It also found that the BushMob model offers ‘an incredibly cost effective health intervention’, given its potential impacts across nine domains of well-being (physical, mental, emotional, behavioural, social, cultural, spiritual, environmental and economic (Pryor 2009: 43)), stating that ‘it is possible the effects and effectiveness of BushMob’s approach will compare favourably with any clinical health intervention’ (Pryor 2009: 14-15).

Deep attention to the context and needs of Indigenous young people was noted as factor in the success of the model:

It appears that BushMob achieves... opportunities for individuals, families and communities to build self-reliance and leadership. These practices are undertaken in non-paternal, non-patriarchal, and non-colonising ways, and with an attitude of deep respect for all those involved (Pryor 2009: 43).

### ***Warlpiri Youth Development Aboriginal Corporation (WYDAC), NT***

WYDAC, formerly known as the Mt Theo program, operates youth diversionary programs across four Warlpiri communities: Yuendumu, Lajamanu, Nyirripi and Willowra. WYDAC receives referrals from the police, the courts, Territory Families, schools and the community, with 50% of its referrals coming from the police and the courts under the *Youth Justice Act NT* (NTRC 2017: 272-273). The physical space Mt Theo (Puturlu) has significance as a cultural site among Warlpiri people, containing powerful Jukurrpa (Dreaming) sites and stories (Dudgeon et al 2016: 20). The program operates youth justice conferencing and seeks to engage young people in ‘positive, healthy, safe and interesting activities’ including sports, art and craft, music and specialised activities like dance workshops (Shaw 2015).

One of the cultural elements of the program includes weekly bush trips, where Elders and young people engage in activities that promote positive relationships and cultural teaching

(NTRC 2017: 272-273). The aim of the program is to support Warlpiri young people to create positive and meaningful futures as individuals, and for their communities, through diversionary, education, training and employment programs that develop a sense of self, family, leadership and culture (Shaw 2015: 3). Dudgeon et al (2016: 20) highlight the WYDAC as an example of best practice in reducing drug and alcohol use for Indigenous young people. They comment that the WYDAC program ‘fosters a strong link with Warlpiri culture and with all the inherent benefits embedded in that culture for at-risk Warlpiri youth. It is a place where strong, positive, health Warlpiri identity is forged, promoted, practiced and imparted’ (Dudgeon et al 2016: 20). The program also incorporates peer-to-peer youth mentoring. Youth mentors will often have ‘genuine, direct, honest and insightful advice on preventative behaviours, coping strategies and positive pathways. Peer status is particularly powerful and important in Warlpiri youth culture’ (Dudgeon et al 2016: 21).

A 2015 independent evaluation of WYDAC’s youth diversion programs found that the programs lowered levels of youth crime in communities and improved quality of life amongst program participants (Shaw 2015). Notably, over 92% of program graduates in the evaluation cohort were employed after completing the program. Despite this positive evaluation, the WYDAC continues to face challenges in securing long-term, stable funding (Shaw 2015).

#### ***Tiwi Islands Youth Development and Diversion Unit, NT***

The Tiwi Islands Youth Diversion and Development Unit provides culturally appropriate formal and informal diversionary programs for Tiwi youth, focusing on developing participants’ attachment to family, community and school. The case management team work with at risk youth through Tiwi Skin groups. The program is run by TIYDDU staff, with the support of a diversion team within the Northern Territory police. Importantly, community members were involved in the design of the project, and play an important role in its ongoing implementation. Participants are usually first-time offenders who are given the opportunity to participate in a youth justice conference and supported by a range of cultural interventions to address risk factors for offending. NTLAC referred to the program as a ‘best practice example’ of youth diversion (NTRC 2017: 273). The program has been operating for over 10 years.

A 2014 evaluation by the Australian Institute of Criminology (Stewart et al 2014) found that only 20 per cent of young people participating in the diversion program had contact with police for alleged offences in the 12 months following commencement of the program, which compares very favourably with reoffending rates calculated in other jurisdictions (Stewart et al 2014: vii). Additionally, the evaluation found that ‘the program was useful in reconnecting young people to cultural norms and... directly addressed the factors that contribute to offending behaviour, such as substance misuse, boredom and disengagement from work or education’ (Stewart et al 2014: vii).

#### ***Yiriman Project, Western Australia (WA)***

The Yiriman Project is an intergenerational ‘on-country’ cultural program, conceived and developed directly by Elders or ‘bosses’ from four Kimberly language groups, Nyikinia, Mangala, Karajarri and Walmajarri, in the Fitzroy Valley. As part of the project, young people

‘at risk’ are taken onto remote desert country to ‘build stories in young people’. In the 17 years since the project began in 2000, more than 150 on-country trips have been made, engaging more than 1500 young people (Palmer 2013). Examples of such trips range from 5 day camel treks to a trip into the remote Great Sandy Desert spanning 60 days. Dudgeon et al (2016: 20) comment ‘On country, they [young people] are provided with the opportunity to reconnect with their Elders, Aboriginal culture and the land of their family. It is also a way in which young people’s attention can be diverted away from alcohol and drugs, antisocial activities and general unhealthy lifestyle choices and behaviour’. Anecdotal evidence suggests that the rhythms of life on country are beneficial for people because they are not being bombarded with stimuli and are able to work within Indigenous notions of time (Blagg et al 2015a: 260). A core element of the Yiriman Project’s success is that it is a community owned and managed initiative developed by respected cultural bosses (Blagg 2012; Thorburn and Marshall 2017; Palmer et al 2006).

A three-year review of the Yiriman Project found that the project has had a positive impact on the life of the community as well as a positive impact on the young people themselves (Palmer 2013). Notably, the evaluation found that:

One ought not to expect that the project can be a panacea for the range of difficulties confronting communities in the Kimberley. However, there is good evidence that taking young people and other generations on country is important for their health. There are definitely immediate healthy effects of taking young people away from their poor diets and living conditions that create depression and despair. There is also evidence that Yiriman has assisted in the campaign to minimise young people’s involvement in the justice system. Indeed, some, including a magistrate, conclude that Yiriman is more capable in this regard than most other diversionary and sentencing options (Palmer 2013: 122, cited in Blagg et al 2015b: 11).

A simple cost-benefit analysis by Thorburn and Marshall (2017: 4) found that even if just one of the trips undertaken as part of the Yiriman Project had kept one young person out of Banksia Hill Detention Centre for one year, then the program would have justified itself.

As Thorburn and Marshall (2017: 6) further highlight, in 2013/14, the WA Department of Corrective Services invested some \$7.83 million in ‘prevention and diversion services’ versus \$46.8 million in detention. The Yiriman project costs approximately \$350,000 per annum, and has the potential to save million each year. As a community-controlled project that incorporates wider community development initiatives, the Yiriman Project could form the basis of a much broader regional justice reinvestment strategy. This would require a concerted and coordinated cross-agency focus at a regional level, with proper long term community engagement (Thorburn and Marshall 2017: 6).

### ***Kowanyama and Palm Island Justice Groups, Queensland***

The Kowanyama and Palm Island Community Justice Groups were established in 1993 in response to high levels of personal and property crime, drug use, and family violence in remote Indigenous communities in North Queensland (Gant and Grabosky 2000). The groups were

developed to provide Indigenous communities with a mechanism for dealing with justice issues through customary laws and practices. They involved community consultation and consisted of Indigenous community members and a community development officer (Gant and Grabosky 2000). The groups undertook a variety of roles and responsibilities, including primary prevention activities such as conflict resolution, conducting night patrols, and settling family disputes (Just Reinvest 2013).

An evaluation of the program was conducted using interviews with members of both justice groups and those within the wider community, as well as analysis of police and community corrections records. The qualitative findings indicated the groups effectiveness in diverting people from the criminal justice system, sanctioning anti-social behaviour, resolving family disputes and reducing the levels of personal and property crime in these remote areas (Gant and Grabosky 2000). As Gant and Grabosky (2000) report, this was supported by police data which found that from 1993 there were decreases in:

- Youth crime (reduced from 40-50 per month to four charges in 1994)
- Break and enter (from 207 to 37 in 1994)
- Theft (from 123 to 11 in 1994)
- Receiving stolen goods (from 179 to 2 in 1994)
- Court appearances (from 24 to 6 in 1997)
- Charges against young people (116 to 11 in 1997).

### ***Panyappi Indigenous Youth Mentoring Project, South Australia***

The Panyappi Indigenous Youth Mentoring Project is an intensive, culturally appropriate mentoring program for Indigenous young people and their families. The program was implemented in 2001 in response to high levels of youth crime in the inner city of Adelaide (Richards 2011). The program aims to intervene in pathways of offending behaviour; decrease young people's contact with the criminal justice system; promote self-discovery and self-determination; and work with relevant agencies to help young people (Richards et al 2011). The majority of clients are disengaged from education, have high rates of social and emotional concerns, and often experience substance addiction and abuse (Just Reinvest 2013). As part of the program, an Indigenous mentor is matched with a young person, who works intensively with the mentee and connects them with relevant local support services (Richards et al 2011).

The Panyappi Indigenous Youth Mentoring Project was evaluated in 2004. The evaluation used a mixed methods approach, including a series of interviews and focus groups with young people, family members, program staff, program collaborators, funders and Advisory Group members (Stacey and Associates 2004). Program statistics, client demographics and program documentation were also analysed.

Qualitative data indicated that the frequency and severity of the offending by participants in the program had significantly decreased. In addition, qualitative data indicated that the program had been effective by 'providing a turning point, generating positivism and hope, strengthening relationships, enhancing school connectedness and instilling positive consideration for the future' (Stacey and Associates 2004, cited in Soriano et al 2008). Quantitative data reflected substantial decreases in formal cautions, orders, and convictions. The greater majority (12

young people or 80 per cent) decreased their rate of offending by 25 per cent or more - often much more (70-100 per cent). Five participants had not offended since their involvement with Panyappi (Just Reinvest 2013). It is worth noting that sample sizes for the quantitative analysis were small (n=15) and no comparison or control group could be used in the study (Richards et al 2011).

## **New Zealand**

Maori young people continue to be overrepresented within New Zealand youth justice systems, comprising 60 per cent of the total number of young people coming into contact with the law, but just 20 per cent of the total youth population (Poa and Wright Monod 2017). While the overall number of Indigenous young people in youth justice systems has *decreased*, it has not decreased at the same rate as non-Indigenous young people, meaning that the overall proportion of Indigenous young people has actually *increased*. For example, the proportion of Maori youth in court increased from 44 per cent in 2005 to 57 per cent in 2014 (Becroft 2015).

The New Zealand *Children, Young Persons and their Families Act 1989* ('The CYPF Act') highlights the importance of family in decision-making. Section 5(a) of the Act states: 'The principle that, wherever possible, a child's or young person's family... should *participate in the making of decisions affecting that child or young person*, and accordingly that, wherever possible, regard should be had to the views of that family'. The CYPF Act provides that, in the context of youth justice, any measures for dealing with offending by children or young persons should be designed to strengthen the family of the child or young person concerned; and to foster the abilities of families to develop their own means of dealing with offending by their children and young persons (CYPFA s 208(c)(i), (ii), cited in Becroft 2015: 11). As Maxwell and Morris (2006: 243) state:

The New Zealand youth justice system incorporated a number of innovative strategies: the rights and needs of Indigenous people were to be taken into account; families were to be central to all the decision-making processes involving their children; young people themselves were to have a say in how their offending should be responded to; victims were to be given a role in negotiations over possible penalties for juvenile offenders; and the model of decision-making advocated was to be by group consensus.

Ball and Thornley (2015: 2) identify the following as characteristics or processes associated with successful community-level initiatives in Maori communities:

- A shared vision, owned by the community
- Community readiness
- Intentionality and a focus on outcomes
- Long-term and adaptable funding arrangements
- A focus on community capacity-building
- Skilled leadership and facilitation
- Processes for addressing power imbalances
- A focus on relationships
- Appropriate scale
- Continuous learning and adaption

- Initiatives that are grounded in relevant cultural concepts
- Funders using cross-cultural engagement skills
- Maori participation and leadership
- Processes for reflecting on the impacts of colonisation.

### ***Family Group Conferencing, Te Whanau Awhina Conferencing Program***

Family Group Conferencing (FGC) was introduced in New Zealand in 1989 through the *Children, Young Persons and their Families Act*, and is based on the principles of restorative justice. The FGC enables the involvement of the family, the young person and the victim in decision-making at a venue and using a procedure of their own choice and in accordance with their culture (Maxwell and Morris 2006: 243). In Maori custom and law, any wrongdoing by a young person is based on notions of collective rather than individual responsibility (Becroft 2003; Maxwell and Morris 2006).

The FGC forum is often presented as a culturally appropriate and empowering restorative justice mechanism for Indigenous people, particularly in the case of Maori (Moyle and Tauri 2016: 88). For example, Becroft (2003) discusses a number of innovative strategies incorporated into the New Zealand model of family group conferencing, including:

- Taking account of the rights and needs of Indigenous people
- Making families central to all the decision-making processes involving their children
- Having young people themselves actively participate and have a voice in the decisions as to how their offending should be responded to
- Giving victims a key role in negotiations over possible penalties for juvenile offenders, making possible a healing process
- Having decision-making negotiated by group consensus at a family group conference.

Success is related to gaining the offender's trust and consent and in the importance given to developing educational and vocational strategies to facilitate social inclusion (Muncie 2001: 30).

However Indigenous researchers Paora Moyle and Juan Tauri (2016: 87) have recently argued that the forum is experienced by some Maori participants as 'one that encloses Indigenous cultural and Indigenous participants within a Eurocentric, formulaic and standardised process'. Participants in Moyle's practitioner research (2013) found that participants wanted policy makers to reconsider their preference for importing socially and culturally inappropriate interventions and instead work directly with Maori communities to develop effective solutions that reflect Aotearoa New Zealand's Indigenous context (Moyle 2013, cited in Moyle and Tauri 2016). Moyle (2013) also reported that social work practitioners argued strongly for the decentralisation of the design and delivery of services and the privileging of 'bottom up' community-based approaches that they believe are grounded in a more complete understanding of the social context which Maori related youth justice and care and protection issues are arising (Moyle and Tauri 2016: 99).

Moyle and Tauri (2016: 101) argue:

Simply put, for the FGC forum to work as a culturally responsive, empowering, and whanau-inclusive process for Maori participants, it must be delivered by (or at the very least reflect the needs and cultural contexts of) the communities within which it is practiced. For any intervention to be effective for whanau (i.e. the FGC), Maori need to be involved in its development and delivery - from identification of community needs to designing and directly delivering those programs themselves. They also need to be involved at all stages of program development, change, and local program evaluation.

### ***Awhi Whanau, Mana Social Services Trust (Rotorua)***

Mana Social Services Trust was established in 1996 in response to a need for professional counseling and social services for Maori in particular in Rotorua (Haar 2011). Awhi Whanau is one programme offered by the trust. Awhi Whanau provides a community based preventative intervention programme for nine to 13 year olds that will help deter programme participants' progress towards youth offending through the utilisation of holistic restorative justice practices. The initiative allows whanau and schools to make referrals for the service (Haar 2011). The initiative takes a holistic approach by engaging and participating with the whanau unit and builds a future crime prevention plan through whanau development. The initiative is based on the premise that by addressing tamariki (children) problems at an early stage, links to future crime can be addressed (Haar 2011).

Awhi Whanau was evaluated in 2011 (Haar 2011). Overall, the findings provided strong support for the Awhi Whanau initiative. Clients spoke of the empathy, support and cultural understanding they received from Mana Social Services Trust and how their tamariki had gained major improvements, not only returning to school, but also with their educational performance improved after going through the programme. The evaluation concluded that it appears that the programme has been successful in preventing recidivism offending (Haar 2011: 3). The evaluation also highlighted the pressures associated with short-term funding to maintain the organisation's ability to break the cycle of suspensions and potential expulsions from school amongst tamariki, as well as the potential for reducing future crime in tamariki (Haar 2011: 3).

### **Canada**

Indigenous<sup>2</sup> communities in Canada experience poorer socio-economic, health and education outcomes as a result of the historical legacy of colonisation (Lafferty 2012). Intrinsically linked to this is the significant and well-documented overrepresentation of Indigenous young people and adults in criminal justice systems (Jackson 2015). Like Australia, the overall number of young people in custody in Canada has actually decreased, however the relative proportion of detained Indigenous youth has actually *increased* over this same period (Jackson 2015). Despite the fact that the Canadian *Youth Criminal Justice Act* ('The YCJA Act') emphasises using extrajudicial measures to divert first time or less serious offenders, diversionary options have been less effective in reducing contact with the criminal justice system for Indigenous young people.

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<sup>2</sup> We use the term Indigenous to refer to First Nations, Inuit and Metis peoples.

While there is considered to be a paucity of literature regarding proven intervention programs with Indigenous youth in Canada (Kwok et al 2017), there are some notable programs which provide examples of best practice in culturally appropriate early intervention programs.

### ***Gwich'in Outdoor Classroom***

The Gwich'in Outdoor Classroom was a culture-based crime prevention program run in the remote communities of Fort McPherson and Aklavik, Northwest Territories, from 1999-2004. The project was designed for Aboriginal children between the ages of 6-12 years, and aimed to re-engage young people in school by working with their peer groups, families and communities. The project was based on an understanding that youth crime should be dealt with through 'on the land' projects and through supporting young people in their education. Participating children faced multiple risk factors associated with crime, such as a lack of attachment to school and to community role models, addictions, involvement in youth gangs and lack of parental support (Public Safety Canada 2007; National Crime Prevention Centre 2008). The main components of the project included an outdoor camp, a morning breakfast program, and in-school programming involving life and communication skills, Elders and traditional learning. Engaging, educational programs that teach Indigenous young people about their own language and culture are recognised as best practice by the NSW Coalition of Aboriginal Regional Alliances.

The Gwich'in Outdoor Classroom was evaluated in 2004 using a pre- and post-test design and comparison group. Although it was not possible to measure impacts on offending (as children were below the age of criminal responsibility), the evaluation found statistically significant differences in school achievement levels and increased school attendance for those engaged in the program (Richards et al 2011).

### ***Saskatoon Tribal Council (STC) Community Justice, Extrajudicial Measures and Opikinawasowin Reintegration Programs***

The STC is an *Aboriginal Justice Strategy* Program. The *Aboriginal Justice Strategy* supports Aboriginal community-based justice programs that offer alternatives to mainstream justice processes in appropriate circumstances.

STC Justice Programs provide support and assistance to young people, adults and their families for the duration of their involvement in the justice system. The program offers extrajudicial measures, providing mediation services for those who are referred for first-time and less serious offences; extrajudicial sanctions, as well as intensive support services for those charged with break and enter and other related offences; enhanced extrajudicial sanctions, to deal with first time and less serious offenses by providing intensive support using a case management model based on a community safety plan; as well as youth a community reintegration which provides mentoring and support for young people and young adults who are currently serving time in a secure or open facility. The program focused on integrated services in a family centered case management model and is based on the belief that a holistic, community-based approach is required to restore balance and harmony in the lives of the offender and the victim so that the

healing process can begin. The active participation and guidance of Elders is key to all phases of the diversion process.

The program works ‘to ensure that the community-based justice programs were developed to ensure that they responded to the needs of Indigenous people in the communities. This was done through programs being run by and for Indigenous people, and ensuring that some of the programming focused on culture and heritage. The support and services were offered within an Indigenous empowerment framework to ensure they were culturally appropriate’ (Department of Justice Canada 2016: 111).

### ***Walking the Path Together, Alberta (multiple locations)***

Walking the Path Together is a culturally based, innovative, pilot project aimed at reducing the likelihood that Aboriginal aged 6 to 11 will grow up to use or accept violence in their intimate relationships (Hoffart 2014). It is a voluntary programme ‘developed in a First Nations context to be in harmony with the gifts, history and vision of First Nations peoples’ (Cunningham and Baker 2014: vii). The project is overseen by the Alberta Council of Women’s Shelters (ACWS) - which is a province-wide, voluntary organisation supporting women’s shelters and their partners through education, research and services for the benefit of abused women and their children.

The Walking the Path Together model is based on a long-term, intensive and flexible approach and adopted principles of strength-based intervention, matched to the context and needs of the children involved (Hoffart 2014: 3). At the core the project’s work with children and families is the practice of intervention staff called ‘Eagle Feather Workers’. These workers, based within the five participating women’s shelters, provide one-on-one supports to children who have witnessed violence and their families (siblings and caregivers), through the following key activities: 1) case management; 2) individual counseling sessions; 3) Talking circles; 4) Family counseling sessions; 5) Arranging talks with Elders; 5) Family group conferencing sessions (Public Health Agency of Canada 2017). By working with the child’s family, school and community supports, and emphasising cultural teachings, the Eagle Feather Workers aspire to make the environment of the child safe; help the family heal; and make room for the possibility of a violence free future for that child (ACWS, see <https://acws.ca/walkingthepath>; see also Cunningham and Baker 2014).

An evaluation of the program in 2014 found that the program creates significant social value, primarily through addressing the inter-generational root causes of violence. By decreasing abuse and violence in the families, addressing inter-generational trauma, building self-esteem through reconnection with culture and focusing on parenting and life skills the project:

- Reduce costs for the schools, associated with behavioural incidents, school absenteeism, and vandalism,
- Reduces demand for justice system resources required to respond to domestic violence incidents or other crime (e.g. police and court time).
- Increases productivity and stability of family members (e.g. through reconnection with education, employment, and stable housing),

- Prevents family breakdown and reduces child welfare costs as fewer children become involved with Child Welfare,
- Reduces personal and financial costs associated with addiction and addiction treatment
- Reconnects family with necessary services and supports such as child care and counseling, but also reduces reliance on other supports such as domestic violence shelters
- Reduces health costs for the whole family through decreased hospital use and doctor visits.

Overall, value is created in the community by empowering and strengthening families so that they can be safe and productive in their communities (Hoffart 2014: 68). The evaluation also found outcomes specific to children including increased awareness of culture, increased pride in their heritage and culture, lower rates of exposure to family violence, less exposure to the criminal behaviour of adults, good friendships formed with other children in the program, better school attendance, less conflict with siblings and increased compliance with parental expectations (Hoffart 2014: 72).

## **6. Recommendations**

The preceding discussion explored the aspects of national and international diversion programs for Aboriginal young people which exemplify best practice. The highlighted programs are community owned, developed and led, have positive outcomes for participants, and often operate outside of the criminal justice system.

### **RECOMMENDATION ONE**

**Develop youth diversionary programs for Aboriginal young people in accordance with the international best practice principles outlined in this submission. They are:**

#### **1. Diversion for Indigenous young people should be Indigenous community developed, owned and driven**

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 (Ware 2013; Becroft 2003; Dudgeon et al 2016). This is reflected in the United Nations Committee on the Rights of the Child (2009: 17) which encourages all states to support Indigenous people to design and implement traditional restorative justice systems and community-based services that considers the needs and cultures of Indigenous children, their families and communities. It is also echoed in the following recommendations of the recent NT Royal Commission that:

Youth diversion programs in remote communities be developed and operated in partnership with, or by, Aboriginal communities and/or Aboriginal controlled organisations (Rec 25.14).

The Northern Territory and Commonwealth Governments immediately engage with Aboriginal community representatives to negotiate the broad terms for the partnership and its implementation across the Northern Territory built on the following principles:

- the best interest of the child
- local solutions for local problems
- local decision-making
- the centrality of family and community to the wellbeing of children and young people
- the Northern Territory Government has the ultimate responsibility to ensure the safety and security of all Northern Territory children and young people, and
- shared responsibility and accountability (Rec 7.3).

## **2. Culturally appropriate programs and cultural competency should be in place at all stages of youth justice processes and programming**

Evidence indicates that increased participation and completion of diversionary programs can be achieved by employing Indigenous staff and professionals to promote culturally safe service delivery (Closing the Gap 2013). To ensure diversion plays a significant role in reducing the overrepresentation of Indigenous young people in the criminal justice system, diversionary programs must operate in a culturally relevant way. They must have trained, experienced and qualified staff (APO 2017: 168). This principle also recognises the importance of incorporating training for police, Magistrates, Judges, and court staff (Victorian Aboriginal Legal Service 2010).

## **3. Initiatives should incorporate elements of Indigenous custom and law**

The Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People found that the most successful diversionary strategies for young Aboriginal people ‘are generally believed to be those grounded in and drawing upon the family, kinship, social and cultural networks of the young person’ (Parliament of Victoria Drug and Crime Prevention Committee 2009: 253; see also Cunneen 2001; Colquhoun and Dockery 2012).

## **4. Diversionary programs should feature wraparound, family-centred support for young people based on a holistic view of Indigenous health and wellbeing**

Fundamental to the development of any diversionary program is that it is based on a holistic approach to deal with any offending behaviour. ‘Indigenous “Healing Centre” approaches are based on holistic concepts of health and have been utilised in varying degrees in New Zealand, North America and other Australian jurisdictions. Part of the approach is that it is under Indigenous control; uses traditional Indigenous cultural approaches to healing; works with families and not just individuals; sees treatment as a community objective rather than an isolated program’ (Cunneen 2001). Diversionary programs which view young people’s needs holistically and provide a broad range of support are more effective (Denning-Cotter 2008). Family and community should be involved (Cunneen 2001; Denning-Cotter 2008; Trotter et al 2015).

## **5. Discretion to access diversionary programs should not be entirely in the hands of police**

Diversiory programs should be available at all points of the criminal justice system and should not only be available to those with no prior convictions. Such eligibility criteria are likely to be a bigger impediment to access for Indigenous young people (Victorian Aboriginal Legal Service 2010). Magistrates should be enabled to have power to override a decision of police about access to diversion, enabling review of alleged discriminatory practices by police as gatekeepers (Victorian Aboriginal Legal Service 2010).

## **6. A trauma-informed approach should be taken and appropriate support given to young people with complex needs**

In recognition of the complex support needs of many Aboriginal and Torres Strait Islander young people in conflict with the law. Diversionary programs recognise intergenerational trauma and incorporate the recognition of pain and distress that has been caused by past government policies and practices.

## **7. Programs should feature built-in education, training, employment pathways and mentoring specific to the needs of Indigenous people**

Diversiory programs which incorporate on-the-job work experience, practical skills, and other forms of support such as mentoring, help reduce reoffending and promote reintegration into the community (Closing the Gap 2013; Ware 2013). Diversionary programs should assist in establishing and strengthening relationships with Indigenous people who can become mentors and role models (Cunneen 2001). Mentoring should be based on common interests, mutual respect, genuine friendship and a non-judgemental approach (Ware 2013).

## **8. Independent monitoring and strong evaluation frameworks should be incorporated into all schemes**

Provision for independent evaluation should be part of funding structures for diversion initiatives. Frequent decisions to pull funding from promising community controlled programs, detailed above, highlights the importance of evaluations as a way of safeguarding against claims of ineffectiveness and of advocating for continued funding support. The centrality of evaluation has been recently recognised by the Royal Commission into the Protection and Detention of Children in the Northern Territory (NTRC 2017), which recommended that:

- Specific evaluation plans be established as a mandatory component of policy and program development... (*Rec 43.1*)
- Outcomes from evaluation be used to establish a local evidence base to support the existence and funding of policies and programs (*Rec 43.2*).

Diversion programs should be evaluated against established criteria to determine whether the programs are leading to positive change (NTRC 2017). Monitoring and evaluation of diversionary programs should not just use recidivism as an indicator of program success. While it may appear as a universal and transparent measure, such measures can fail to gauge a number of positive outcomes such as improvement in social and emotional health and wellbeing, reconnection with family and friends, and reductions in harmful or risk-taking behaviour. In some cases, reoffending rates may fail to recognise the frequency of reoffending or offence severity (Cunneen and Luke 2007: 197-199). Governments are increasingly calling on

organisations to provide evidence for the success of their programs, but rarely is funding attached which would allow for thorough evaluations.

Independent monitoring of schemes should include the collection and analysis of statistical data.

### **9. Programs should be appropriately funded**

A lack of committed (long-term) funding can limit the reach and functioning of diversionary programs, particularly in rural and remote areas (Closing the Gap 2013; Victorian Aboriginal Legal Service 2010). The United Nations Convention on the Rights of the Child establishes that diversion should be available at every point of the criminal justice system.

The recent finding of the NT Royal Commission that a lack of resources and adequate programs has inhibited full and effective use of diversion by courts (NTRC 2017: 319) echoes the situation in NSW. The Royal Commission recommends that government consult with Aboriginal health and legal assistance organisations and the NT Legal Aid Commission to undertake an immediate assessment of the diversion program requirements available to the Youth Justice Court, and make available the necessary resourcing to support their implementation and delivery (rec 25.39).

Justice Reinvestment principles should be used to secure additional funding for diversionary programs for Indigenous young people (Dudgeon et al 2016: 4).

### **RECOMMENDATION TWO**

**The Youth On Track program be expanded so that it can be delivered consistently across all regional areas of NSW.**

However, any expansion should be done collaboratively with Aboriginal organisations in the locations chosen. This is in accordance with principles 1-4 in Recommendation One above.

### **RECOMMENDATION THREE**

**The NSW Government support the development of community-based justice reinvestment programs (such as the Maranguka JR Project) across regional NSW.**

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