

**Submission  
No 66**

**INQUIRY INTO HIGH LEVEL OF FIRST NATIONS  
PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF  
DEATHS IN CUSTODY**

**Organisation:** Office of the NSW Advocate for Children and Young People  
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# Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody

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## About ACYP

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The Advocate for Children and Young People (ACYP) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, well-being and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged.

Under the Advocate for Children and Young People Act 2014, our activities include:

- making recommendations to Parliament, and Government and non-Government agencies on legislation, policies, practices and services that affect children and young people;
- promoting children and young people's participation in activities and decision-making about issues that affect their lives;
- conducting research into children's issues and monitoring children's well-being;
- holding inquiries into important issues relating to children and young people;
- providing information to help children and young people
- preparing, in consultation with the Minister responsible for youth, a three-year, whole-of government Strategic Plan for Children and Young People (Plan). The inaugural Plan was launched in July 2016.

Further information about ACYP's work can be found at: [www.acyp.nsw.gov.au](http://www.acyp.nsw.gov.au).

## Preface

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ACYP acknowledges the Gadigal People of the Eora Nation as the traditional custodians of the land on which our office rests. We acknowledge Elders, past, present and given who we are as an organisation, the emerging leaders of tomorrow. We acknowledge the pain and trauma that the policies and practices of successive governments have caused to Aboriginal people and we commit our organisation to the continued work of reconciliation.

ACYP welcomes the opportunity to provide comment to the Select Committee on High Level of First Nations People in Custody and Oversight and Review of the Deaths in Custody.

Under the *Advocate for Children and Young People Act 2014*, the Advocate has the function to 'make recommendations to government and non-government agencies on legislation, reports, policies, practices, procedures and services affecting children and young people.'<sup>i</sup> In exercising these functions, the Advocate is to 'focus on systemic issues affecting children and young people with giving a priority to the interests and needs of vulnerable and disadvantaged children and young people.'<sup>ii</sup>

It will explore the legislative framework and organisational practice that potentially leads to the overrepresentation of Aboriginal children and young people,

This submission addresses s1(a) of the Terms of Reference, namely ‘the unacceptably high level of First Nations people in custody in New South Wales’<sup>iii</sup>, with a focus on children and young people.

## Recommendations

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1. Services that are directed towards and focussed on Aboriginal children and young people are delivered whenever possible through Aboriginal owned and controlled organisations, and are culturally appropriate.
2. Youth Justice NSW should explore greater use of restorative justice alternatives which take into account the cultural background of the offender over a more punitive justice sentencing.
3. Additional programs and policies are developed to acknowledge and address the racism and discrimination experienced by Aboriginal children and young people and training for workers to ensure that their practices take into account how racism impacts Aboriginal young people.
4. Increased resourcing for whole-of-community programs, particularly in regional and Aboriginal communities – to help strengthen capacity to tackle systematic conditions such as poverty, substance use, mental health difficulties, family violence and intergenerational trauma to support children and young people and prevent them from entering the justice system
5. Referral pathways are improved to connect Aboriginal children and young people in conflict with the law with community-based cultural programs.
6. Driver licensing programs are resourced to provide comprehensive end-to-end support for vulnerable or disadvantaged children and young people, particularly those in rural and regional areas, to obtain their driver licences.
7. Transit officers and Police are encouraged to use warnings and cautions as an alternative to transport fines and criminal charges.
8. The Government consider developing a system for the distribution of pre-paid Opal cards or for remote top-up of Opal cards for children and young people who at risk of coming into contact with the Justice System for instances of fare evasions and similar transport offences. Alternatively, subsidised travel vouchers are made available at places open late for young people to access to avoid coming into conflict with transit officers and police.
9. Where appropriate, the Government further invest and promote programs such as the Work Development Orders as an alternative to detention for minor offences as an alternative to detention or fines.
10. The Suspect Target Management Program (SMTP) program is no longer applied to children and young people under the age of 18 years.
11. The code of practice for Move on Directions in Schedule 3 of the *Law Enforcement (Powers and Responsibility) Regulation* is reviewed to ensure that it reflects the rights of children and young people to use public space and the diversionary principles underlying the juvenile justice system.
12. Offences under the *Young Offenders Act 1997* (NSW) (‘YOA’) that are ineligible for diversion are reviewed with a view to increasing the discretion of the Police to divert children and young people in appropriate circumstances. These offences include; transport offences, traffic offences. .

13. The minimum age of criminal responsibility should be raised from 10 to 14, and children and young people under the age of 14 who come into conflict with the law should be connected with support services to address their underlying needs.
14. Further work is done to examine the factors contributing to the early contact and non-diversion of Aboriginal children and young people in the criminal justice system.
15. The Youth Koori Court is fully funded and expanded across the state.
16. There is greater flexibility and use of deferred sentencing for children and young people to allow them an opportunity to connect with support services in the community.
17. Given the disproportionate effect on Aboriginal children and young people, the number of limits that can be issued under the YOA is increased or removed.
18. ACYP recommends that under our obligations to the Convention on the Rights of the Child (CRC) and existing NSW legislation, arrest should be legislated as a last resort.

## Introduction

Firstly, we would like to acknowledge and welcome the Government's pledge to address the issues of First Nations overrepresentation, and we commend the significant reduction in the overall number of children and young people having been detained within the justice system over the past several years.

Within the NSW Strategic Plan for Children and Young People (the Plan), the Government made the commitment to 'reduce the percentage of Aboriginal young people in custody.'<sup>iv</sup> While acknowledging there is still significant progress to be made, the average daily number and percentage of young people of Aboriginal and/or Torres Strait Islander background in custody has been decreasing since 2015/16.<sup>v</sup> ACYP looks forward to continuing to work across Government to continue to reduce the number of Aboriginal children and young people in the justice system.

Year	Percentage	Number
<b>2015/16</b>	54.1%	158
<b>2016/17</b>	53%	144
<b>2017/18</b>	47%	134
<b>2018/19</b>	48%	127 <sup>vi</sup>
<b>In April 2020</b>	41%	99

The issue of Aboriginal overrepresentation within the criminal justice system is not a new issue. The 1987 Royal Commission into Aboriginal Deaths in Custody (RCIADIC), identified 'significant, widespread and surprisingly common underlying issues to offending by Aboriginal people across Australia.'<sup>vii</sup> The evidence presented in the RCIADIC pointed to a need to contextualise the offending behaviour of individuals against a backdrop of psycho-social, economic and historical factors that are outside the control of the individual and undeniably had and continue to have a significant impact on

Aboriginal communities.<sup>viii</sup> The overrepresentation of First Nation's people within the criminal justice was a core concern of many of the 339 recommendations of the RCIADIC.

Both the RCIADIC's findings and our consultations underpinned this overrepresentation partly due to the systemic issues that Aboriginal children and young people experience on a daily basis. The RCIADIC spoke about the impact of systematic issues such as poverty, substance use, mental health difficulties, family violence and intergenerational trauma, and the relationship this had to them entering the justice system.

Acknowledging this context, in our Consultations with Aboriginal children and young people, ACYP recommended increased resourcing for whole-of-community programs, particularly in regional and Aboriginal communities – to help strengthen capacity to tackle systematic conditions such as poverty, substance use, mental health difficulties, family violence and intergenerational trauma to support children and young people and prevent them from entering the justice system.<sup>ix</sup>

It is clear that Aboriginal children and young people continue to experience racism in their daily lives. In our consultations with over 2,800 Aboriginal young people, racism and discrimination were raised by 45 per cent of participants in response to the question “what is not working well in your community?” and by 60 per cent of participants in response to the question “what makes you feel unwelcome in your community?”. Some reported that peer groups at school are defined by race. Others spoke about shopkeepers and others holding stereotypes that Aboriginal young people are criminals.<sup>x</sup>

Similarly, the 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.<sup>xi</sup> This type of behaviour can escalate situations and cause young people to react in a way that brings them into conflict with the law. In our consultations with Aboriginal children and young people we recommend the development of additional programs to help address racism in the community, as well as further training for workers to ensure that their practices take into account how racism impacts Aboriginal young people.<sup>xii</sup>

## Legislative Framework

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Both Australia's obligations under international human rights instruments<sup>xiii</sup> and the NSW legislative framework<sup>xiv</sup> recognise that young people who commit offences should only be placed in detention as a last resort and there is a clear evidence base that effective approaches to juvenile justice are firmly based in early intervention and diversionary measures.<sup>xv</sup> These findings were reiterated within the RCIADIC which acknowledged that imprisonment should only be used as a last resort.

### Young Offenders Act

#### Access to Diversionary Measures

A principle of the Young Offenders Act (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 warnings,

cautions and conferences.<sup>xvi</sup> We are very pleased that the Government has made this an ongoing priority.

ACYP strongly supports the use of diversionary options available through the YOA.

Over the past six years ACYP has heard from over 33,000 children and young people across NSW. This has included targeted consultations with specific populations of children and young people who are more likely to have contact with the justice system, such as Aboriginal children and young people.<sup>xvii</sup> ACYP has also held consultations with children and young people in detention and has conducted exit interviews with children and young people exiting detention.<sup>xviii</sup> These consultations have highlighted the value of diversionary approaches in that they take into account the individual circumstances of the child or young person. This is particularly important for the socially excluded populations that are more likely to be in contact with the justice system, but it is important to all children and young people.<sup>xix</sup>

In addition, Australia has an obligation under the Convention on the Rights of the Child (CRC) to implement measures for dealing with children who have interacted with the justice system without resorting to judicial proceedings. It should be noted that the CRC states these measures should be available “whenever appropriate or desirable”<sup>xx</sup> meaning that diversion should not be excluded as a possibility for any type of offence where it is possible that in some circumstances diversion would be appropriate.

Adolescence is a key period for intervention to address negative behavioural patterns,<sup>xxi</sup> and some criminal justice responses make future offending more likely.<sup>xxii</sup> Contacts with the criminal justice system during adolescence, such as incarceration or having an official record, increase the likelihood of later adult offending.<sup>xxiii</sup> In contrast, research by the NSW Bureau of Crime Statistics and Research (BOCSAR) shows that most young people who receive a caution (58 per cent) and many who complete a conference (42 per cent) do not reoffend within five years.<sup>xxiv</sup> BOCSAR research has also demonstrated that both young offenders (94 per cent) and victims (86 per cent) are usually satisfied with outcome plans made at conferences, and feel that they are fair (98 per cent of young offenders and 91 per cent of victims).<sup>xxv</sup> The evidence is clear that diversion is an effective intervention tool that supports children and young people and diverts them away from engaging in criminal or anti-social behaviour.

ACYP acknowledges the YOA has recently undergone an extensive review. Within this review, ACYP advocated for significant changes to the application of the YOA. Formulated from our extensive consultation data, changes advocated for within the Advocate’s submission to the YOA review, have the potential to decrease the over-representation of Aboriginal children and young people in custody. We would be happy to provide a copy of the submission to the Committee, should it be requested.

#### Expansion of Offences Covered Under the YOA

We note that some offences are not eligible for diversion under the YOA. 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 rather than to charge a child or young person with these offences. The view of ACYP is

that the appropriateness of diversion cannot be determined solely by the type of offence, but should be determined by considering the individual circumstances of each offence, and this can best be achieved through the discretion of investigating officials and specialist youth officers. It is important to examine why non-Aboriginal young people may receive diversionary options under the YOA at a higher rate than Aboriginal young people.<sup>xxvi</sup> We encourage the Police and Youth Justice NSW to research the contributing factors and consider what actions may be needed to ensure that Aboriginal children and young people have equal access to diversion.

Two types of offences that are repeatedly raised in ACYP's consultations that young people believe should be reviewed are those around transport offences and, driving offences, specifically driving without a license.

For example, during ACYP's consultations with young people in Juvenile Justice Centres in 2019, young people spoke about receiving fines when using public transport and having no means to pay the fines and being arrested as a result of altercations with transit officers or police. One young person told us that:

*"If you don't have money you end up jumping a train, get in trouble, get arrested, end up in here [custody]."*<sup>xxvii</sup>

Based on these consultations with children and young people, ACYP recommends that Transit Officers be given the power to issue formal warnings and cautions, and to make referrals to Youth Justice Conferences. This would not only reduce children and young people's contact with the justice system, but would also give Transit Officers further options, beyond the existing system of warnings and reduced fines, when interacting with children or young people who do not have a valid ticket or are engaged in disruptive behaviour. In addition, it will enhance consistency as Police patrolling trains already have these powers.

An administrative barrier to this is that Transit Officers do not have access to the Computerised Operational Policing System (COPS) database, where Police record warnings and cautions. However, it would be possible to have Transit Officers generate a notice of intension to give a warning or caution, similarly to a notice of caution given by Police. This would state a time, date and place where the warning or caution will be given by Police and details could be entered into COPS at that time by Police.

An alternative to the issuing of warnings and cautions, which should be explored by the Police and Revenue NSW is greater access to programs such as the Work Development Orders, which allow an individual to pay off their fines through approved activities such as unpaid work, counselling, courses and treatment programs, instead of money.

In order to prevent and divert young people from transport-related conflict with the law, it was suggested by children and young people that travel vouchers could be provided to those in need<sup>xxviii</sup>. It was recommended that vouchers be made available in shops or services with extended trading hours. Suggestions varied based on what was available in their area; examples included Woolworths, 7-

Eleven or Police stations. Other young people felt that an Opal card that could be topped up remotely by homelessness services, caseworkers or the Bail Assistance Line would also be helpful.

In addition to issues with public transport, the children and young people we heard from discussed barriers to getting a driver licence.<sup>xxix</sup> Access to a driver licence supports young people's pathway to independence and can provide a critical connection to education, employment, services, and recreational and social opportunities, particularly for young people in regional and rural areas that are poorly served by public transport. The inability to obtain a licence, or the suspension or cancellation of a licence, can contribute to and perpetuate disadvantage for young people with limited access to public transport. It can also lead to unlicensed driving, which may result in fines, further suspensions, arrests and imprisonment.

A number of the barriers identified in our consultations with young people are also supported in the literature on driver licensing. For example, a review of challenges to driver licensing participation for Aboriginal people in NSW highlighted a number of barriers to getting and retaining a licence, including difficulty providing identity documents that meet the requirements of Roads and Maritime Services, inability to pay fees, difficulty reading and understanding written tests, lack of access to a registered and insured vehicle and a licensed supervising driver, and licence sanctions for unpaid fines.<sup>xxx</sup> This review also found that programs which provide end-to-end support to navigate through the licensing system and attain a driver licence have been found to have the most benefits for Aboriginal people.<sup>xxxi</sup>

Within our recent submission on the YOA, ACYP advocated for the YOA to be amended to apply to traffic offences committed by 16 and 17 year old drivers. Traffic offences are an area where young people come into contact with the justice system. A number of traffic offences, including driving while disqualified are punishable by imprisonment.<sup>xxxii</sup> The proposed amendments would make warnings and cautions available to Police who have pulled over a young person for a traffic offence. It would also give diversion options to the Children's Court where a traffic offence is being heard because it arose in the same circumstances as another offence being dealt with by the Children's Court.

#### Limits on the Number of Cautions Under the YOA

A further aspect of the operationalisation of the YOA that affects Aboriginal children and young people is the limit in the number of cautions an individual can receive. The Aboriginal Legal Service have noted that the limits of cautions disproportionately affected Aboriginal Children and Young People.<sup>xxxiii</sup> This means that the YOA may be less effective at diverting Aboriginal children and young people from the justice system. The Legal Aid submission also highlighted the fact that young offenders are given cautions much earlier which means they are losing the ability for further cautions at a younger age.<sup>xxxiv</sup> Furthermore, as noted in the NSW Law Reform Commission Report 104: *Young Offenders*, limiting the ability to divert children and young people from the justice system conflicts with the aims and principles of the YOA, especially that principle of least restrictive sanction being applied to a young person alleged to have committed a crime.<sup>xxxv</sup> Furthermore it was reiterated in submissions to the 2018 Parliamentary Inquiry into the Adequacy and Scope of Diversionary Programs in NSW (Parliamentary Inquiry) that limiting the number of cautions available under the YOA is an arbitrary and unnecessary burden limiting the discretion of police and the court.



Within the review of the YOA, ACYP has advocated for a broader range of offences to be covered by access to diversionary measures, including traffic offences and transport offences. Should some or all of these changes be made, it is imperative that the limits on the number of cautions a young person can receive is increased or removed to reflect these broader inclusions.

The YOA already places a number of factors for consideration by police and courts when deciding which mechanism of diversion is most appropriate. The Act also gives these agencies significant discretion in how they operationalise the Act. For this reason, police and courts are the best placed agencies to consider if a caution is appropriate. In their experience, there may be circumstances where this would mean a child or young person may receive more than three cautions.

For these reasons, ACYP supports removing the limits on cautions that a child may receive under the YOA. Where this is not possible, the number of limits should be increased to reflect any and all legislative changes to the scope of diversionary offences under the YOA.

### Cultural Outcome Planning within the YOA

In our consultations, the importance of culture in outcome planning has been raised as a potential area of weakness in the current operationalisation of the YOA. ACYP supports consideration being given to a child's cultural needs in the development of outcome plans. In many of ACYP's consultations the importance of culture emerges within the context of Aboriginal children and young people. Cultural needs are already considered within the outcome plans for children and young people involved in OOHC and the same principle should be implied for outcome plans with juvenile justice, especially as a key component of these outcome plans involve the local community which in these cases normally consist of extensive cultural consideration.

In ACYP consultation with children and young people in juvenile justice the importance of culture comes across strongly. Aboriginal young people said connection to culture is central to their sense of identity and crucial to their emotional, social, and spiritual wellbeing. They spoke about how cultural programs engage young people in constructive activities, build their confidence, and connect them to strong Elders, mentors, and other cultural role models in their community who provide guidance and share knowledge.<sup>xxxvi</sup>

Given our findings, ACYP would support the inclusion of cultural planning in outcomes plans. In developing these ACYP would encourage Youth Justice NSW to partner with the Children's Court and their experience of formulating cultural care plans within statutory care. In regards to the specific cultural aspects of the plans, Aboriginal people are best placed to determine the types of approaches that will work for them, and we join Aboriginal Affairs and others in their call to ensure that local Aboriginal communities are empowered to design, develop and deliver diversionary interventions that meet the needs of their communities.<sup>xxxvii</sup> Our consultations with children and young people confirm that, wherever possible, services targeted to Aboriginal children and young people should be delivered through Aboriginal owned and controlled organisations. We therefore suggest that Juvenile Justice NSW further strengthen its referral to cultural programs, such as Aboriginal Language and Culture Nests and Opportunity Hubs, for young people receiving interventions or transitioning out of detention.<sup>xxxviii</sup>

## Children (Criminal Proceedings) Act 1987

### Minimum Age of Criminal Responsibility

Under the Children (Criminal Proceedings) Act 1987, the minimum age of criminal responsibility is 10 years.<sup>xxxix</sup> Between the ages of 10 and 14 years, children and young people are presumed to be incapable of forming criminal intent, though this presumption can be overcome if evidence is presented establishing that they knew their actions were seriously wrong and not merely naughty.<sup>xi</sup> Despite research demonstrating that the adolescent brain undergoes significant growth and development during—and well past—this age range,<sup>xii</sup> it seems that some Aboriginal children and young people under the age of 14 years continue to fall into the criminal justice system.

The United Nations Committee on the Rights of the Child and the Special Rapporteur on the Rights of Indigenous Peoples have expressed concern regarding the over-representation of Aboriginal children and young people in the criminal justice system, and have recommended an increase in the minimum age of criminal responsibility.<sup>xiii</sup>

In a submission to the Council of Attorney General's in which ACYP partnered with the Office of the Children's Guardian, we recommend that the age of criminal responsibility be raised to at least 14 years, in line with recommendations by the United Nations Committee on the Rights of the Child and medical consensus on child brain development.<sup>xiii</sup> Criminalising the behaviour of young and vulnerable children creates a cycle of disadvantage and forces children to become entrenched in the criminal justice system.<sup>xiv</sup> This disadvantage is acutely experienced by Aboriginal and Torres Strait Islander children and young people who, as the Committee has acknowledged, are disproportionately represented in the criminal justice systems, not only in NSW, but across Australia. It is also important to examine why Aboriginal children and young people tend to come into conflict with the law, and end up under the supervision of Juvenile Justice NSW at a younger average age than non-Aboriginal children and young people.<sup>xiv</sup> ACYP believes that children and young people under the age of 14 years can be better served by referral to multi-systemic therapy programs, such as Youth on Track, which offer intensive family- and community-based interventions to address underlying causes of offending.

ACYP acknowledges that in July 2020, the Council of Attorney General's made the decision to defer any decision around raising the age of criminal responsibility until at least 2021, to allow a working group to examine alternatives to imprisonment. We acknowledge that both of these issues are important conversations to be had and we look forward to continuing to work with all relevant parties to ensure the best interests of children and young people is paramount.

## Law Enforcement (Powers and Responsibility) Act 2002

### Power to Give Directions

Under the Law Enforcement (Powers and Responsibilities) Act 2002, Police are authorised to give a direction to a person in a public place whose behaviour or presence is obstructing people or traffic; harassing or intimidating others; causing (or likely to cause) fear to persons of reasonable firmness;

indicating that they are there to engage in a drug deal; or acting in a way that is disorderly or likely to cause injury or risk as a result of intoxication.<sup>xlvi</sup>

In a review of this power, the NSW Ombudsman found that Aboriginal and Torres Strait Islander people were given more on directions at a disproportionately high rate, and that directions were given in a wider range of circumstances than authorised by law.<sup>xlvii</sup> As a result, the Ombudsman recommended the introduction of a code of practice for issuing directions.<sup>xlviii</sup>

In 2016, the Law Enforcement (Powers and Responsibilities) Regulation was amended to include such a code of practice in Schedule 3.

ACYP has concerns about the power to give directions due to unintended consequences on the ability of children and young people use and enjoy public space, and the potential for confrontation to result in public conduct offences and fines. While we welcome the introduction of a code to guide Police in the difficult task of promoting safe and equitable enjoyment of public spaces, ACYP is of the view that Schedule 3 of the Regulation could be strengthened by providing further guidance on the issues identified in the Ombudsman's report, and by ensuring that it reflects the diversionary principles underlying related juvenile justice legislation.

## Organisation Practice

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### Youth Koori Court

ACYP supports the initiatives that have been instigated by the Children's Court in an effort to reduce the overrepresentation of Aboriginal young people appearing before it, including that of the Youth Koori Court.

The Youth Koori Court offers an alternative process for managing cases involving Aboriginal young people charged with offences before the Children's Court.<sup>xlix</sup> If a case is assessed as suitable, the Youth Koori Court conducts a conference with the young person, his or her legal representative, family members or supporters, representatives from relevant Government and non- Government support agencies and an Elder or Respected Person.<sup>i</sup> The purpose of the conference is to have an open discussion about the risk factors that may be impacting on the young person's involvement in crime and to encourage the young person to agree on taking action, with appropriate support, to address these risk factors through the development of an Action and Support Plan.<sup>ii</sup>

The Youth Koori Court began in Parramatta in 2015. The program has recently undergone an evaluation by Western Sydney University (WSU). The review found the pilot program to be an effective and culturally appropriate means of addressing the underlying issues that may have led many Aboriginal young people to appear before the Court. Prior to the Youth Koori Court, the 33 people involved in the study each spent on average 57 days in detention whereas after involvement with the Youth Koori Court only spent average 25 days in custody. Ultimately, Young people engaged in the court were less likely to end up in detention. Additionally, over the research period, over half the items listed on young people's action plans were completed by the time of sentence.<sup>iii</sup>

A key strength of the model that the evaluation identified was that for many young people, their issues with the law are either a direct result of, or compounded by, the issues they face in their daily lives – to do with jobs, safe housing and access to essential services. By deferring sentencing until the

factors that led to their criminal behaviour are addressed, it not only decreasing the risk of reoffending but as the evaluation found, leads to a greater chance of outcomes plans being achieved.<sup>liii</sup> Given the success of the program, the Youth Koori Court was expanded to Surry Hills in 2019.

ACYP recommends that the Youth Koori Court is further expanded across the State, especially to regional areas, where access to culturally appropriate diversion measures can be limited.

## NSW Police - Suspect Target Management Plans

In many of our consultations, the Police are mentioned as something that is working well for children and young people. They speak especially highly of Police and Citizens Youth Clubs (PCYC) and the sports and fitness opportunities that PCYC provides, such as the annual Nations of Origin rugby and netball tournament.

While many children and young people have positive impressions of the Police, some children and young people we have heard from have also raised concerns. Some participants have expressed the feeling that the Police were more likely to stop them on the street due to their race, and several reported incidents where they felt that Police had used more force than was necessary during arrest.

A small cohort of the young people we heard from in Juvenile Justice Centres told us that they felt “constantly watched” by Police in the community. We note that the practice of monitoring those who have come into conflict with the law is part of the Suspect Target Management Plan (STMP), a framework implemented by the Police to prevent recidivist offenders from committing crimes.

In February 2020, the Law Enforcement Conduct Commission (LECC) handed down their findings of a two year investigation into the operationalisation of the SMTP. The LECC’s investigation reviewed the cases of the 429 children aged between nine and 17 who were placed on the plan between August 2016 and 2018. The two-year investigation found that while the STMP had been designed to monitor repeat offenders and prevent crime it often involved “intrusive” policing tactics, “unreasonable surveillance” and “harassment” that could in some cases increase young people’s risk of entering the justice system.<sup>liv</sup>

Of the children examined during its investigation 72% were found to be “possibly” Aboriginal on the basis of previous self-identification. It should be acknowledged that NSW Police dispute this figure, as they do not rely on self-identification figures, instead placing the figure at around 47%-55%. In some cases, Aboriginal children were placed on an STMP despite never having been charged with an offence. It is important to acknowledge that the LECC did not make a finding on the disproportionate number of Aboriginal people subject to the STMP. Instead the report stated that it had “concerns” the basis for selecting STMP targets “does not demonstrate sufficient rigour” to prevent unfair targeting “of certain types of young offenders” and to “ameliorate officer bias”. Noting, for obvious reasons, even the appearance of discrimination in the application of a policy such as the STMP can have negative implications for its effectiveness.<sup>lv</sup>

The NSW Police have accepted all 15 of the LECC recommendations and have committed to redesign the program so that it takes a broader approach to recidivism and criminal behaviour. We recommend that NSW Police discontinue applying the STMP to children and young people under 18 years, as it has the potential to compromise the positive Police-youth relations that are being built through initiatives such as the Youth Strategy and PCYCs, and to disrupt the other programs aimed at

diverting and rehabilitating young offenders, such as therapeutic services provided through the Youth Koori Court.

## Conclusion

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The issue of the overrepresentation of Aboriginal children and young people within the Juvenile Justice System is an issue of great concern and is the product of generations of systemic disadvantage. We commend the Committee on focusing on this issue. While there is indeed much work to be done in this space, we acknowledge that there is also some good work being done. In summary, there is a need for wrap around, holistic supports that recognise and support the disadvantages faced by Aboriginal children and young people before they come into contact with the justice system. Additionally, diversionary programs and alternatives to reduce their contact with the Court should be created to provide appropriate, culturally sensitive programs to greater support a reduction in criminal behaviour.

ACYP thanks the Select Committee on High Level of First Nations People in Custody and Oversight and Review of the Deaths in Custody for considering these important issues and welcomes any follow up questions from its members. Should you have any further comments or questions, please do not hesitate to contact my office on \_\_\_\_\_ or email \_\_\_\_\_.

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<sup>i</sup> *Advocate for Children and Young People Act 2014 No 29, Part 3: Functions of the Advocate:*  
<https://www.legislation.nsw.gov.au/#/view/act/2014/29/whole#/schs45>

<sup>ii</sup> Ibid.

<sup>iii</sup> Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody, *Terms of Reference*  
s1(a).<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committeedetails.aspx?pk=266#tab-submissions>

<sup>iv</sup> Advocate for Children and Young People, *NSW Strategic Plan for Children and Young People.*  
<://cdn2.hubspot.net/hubfs/522228/documents/acyp/NSW-Strategic-Plan-for-Children-and-Young-People-2016-to-2019.pdf>

<sup>v</sup> Figures provided by Youth Justice NSW.

<sup>vi</sup> *Note that although the percentage for 2018/19 was higher than in the previous year, the actual figure is at its lowest point due to an overall reduction in the daily average of young people entering detention*

<sup>vii</sup> Judge Stephen Norrish QC, 'Sentencing Indigenous Offenders – Not Enough 'Judicial notice'?  
*Judicial Conference of Australia Colloquium*, (October 2013)

<sup>viii</sup> Ibid.

<sup>ix</sup> Advocate for Children and Young People, *What Aboriginal Children and Young People Have to Say.*  
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