



**Report of the Legislative Assembly
Committee on Law and Safety – Inquiry into
the Adequacy of Youth Diversionary
Programs in NSW**

NSW Government response

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Executive Summary

On 21 September 2017, the Law and Safety Committee resolved to conduct an Inquiry into the adequacy of youth diversionary programs in NSW. The report was released on 20 September 2018 and the Committee received 28 written submissions, conducting three days of public hearings. In total the Committee made 17 findings and 60 recommendations.

The recommendations require whole of government action, looking at changing the way statutory, judicial and community bodies interact with young people who may be or are already in contact with the criminal justice system.

The NSW Government is undertaking work across Government to address the issues highlighted by the Committee, both in response to the Committee's recommendations and as a part of broader strategic youth policy and program delivery.

The legislative framework for diverting young people from the justice system

In response to the Inquiry, the NSW Government will conduct a review of the *Young Offenders Act 1997*, in line with the Committee's recommendations.

Agency interactions with young people

Recent changes to the NSW Government structure, the merging of the Department of Family and Community Services and the Department of Justice as part of the Stronger Communities Cluster, provides for the opportunity to prioritise support for more vulnerable cohorts, including young people, with an increase in focus on early intervention and diversion.

The NSW Police Force, with the establishment of the Youth Crime and Prevention Command, continue to strengthen the organisation's commitment to early intervention and diversionary options for young people. The NSW Police Force's Youth Strategy sets the organisations direction for preventing youth offending and re-offending, protecting children and young people, and diverting and disrupting youth crime.

The Children's Courts and the Department of Education are currently trialling a number of programs to improve court outcomes for young people, increase educational opportunities for young people in contact with the justice system, and provide specialist provisions for young Aboriginal people through the expansion of the Youth Koori Court. The Department of Communities and Justice (DCJ) has a number of programs aimed at reducing instability of young people's housing circumstances and supporting access to education to help break the cycle of disadvantage.

Access and availability of program and services across NSW

The NSW Government has established the Office for Regional Youth to address challenges faced by young people from regional NSW. The Office will deliver NSW's first Regional Youth Strategy to address these issues and support the newly appointed Minister for Regional Youth.

Addressing drug, alcohol and mental health issues amongst young people is a key priority for the NSW Government. The DCJ and the Ministry of Health have made increasing efforts to improve access to services within custody, in regional NSW and within educational settings.

The over-representation of young Aboriginal people in custody

The NSW Government has taken a number of steps to reduce the over-representation of young Aboriginal people in the criminal justice system. A key element addressing over-representation is ensuring early intervention and diversionary programs directed towards young Aboriginal people are

designed and developed with them and their communities. Agencies are identifying opportunities to improve their interactions with Aboriginal communities, increasing employment opportunities for Aboriginal people and working with communities and families to improve outcomes for these people.

Coordination and service delivery

In line with the Committee's findings, the NSW Government is committed to improving coordination with non-government organisations which deliver diversionary programs to make service delivery more effective and efficient. This includes working towards outcomes-focussed approaches, implementing commissioning models that are flexible, and incorporating formal evaluation requirements into contracts.

Introduction

The NSW Government welcomes the Committee's report and recommendations arising from its Inquiry into the adequacy of youth diversionary programs in NSW, tabled in September 2018.

The NSW Government is committed to reducing the impact of youth offending in our communities by ensuring that young people who are at high risk of entering or becoming entrenched in the criminal justice system are supported to take responsibility for their behaviour and make positive changes to their lives.

In considering the Committee's recommendations to improve interactions with young people who may be, or already are, in contact with the criminal justice system the NSW Government will take a system-wide approach to diversionary programs for young people.

Significant progress has been made by the NSW Government towards addressing many of the issues considered by the Committee, with further work also planned. This response outlines work the NSW Government is undertaking to address those issues.

Overview of the work and findings of the Committee

The Committee took a broad view on the meaning of diversion, considering options at every state of a young person's life: early intervention options; pre-court diversion options; pre-sentence diversion; and post-conviction diversion.

The Committee explored the legislative framework for the diversion of young offenders in NSW. The Committee recommended specific amendments to the *Young Offenders Act 1997* to increase the use of diversionary options by both Police and courts.

How agencies interact with youth diversionary programs was explored and a number of recommendations for improvements in policies and processes to promote the diversion of young people from the criminal justice system were made.

Increasing access to youth diversionary options in NSW was recommended, along with the appropriate tailoring of diversionary efforts to both individuals and groups. There was a particular focus on the availability and quality of diversionary programs and efforts in regional NSW.

The report highlighted the over-representation of Aboriginal young people in the Youth Justice system and the current programs and strategies that are in place to address this. The Committee noted the importance of having Aboriginal led and developed programs and agreed that the generic recommendations made throughout the report, if implemented, would have a positive impact for young Aboriginal people.

The Committee also explored the coordination between Government and non-government organisations (NGO's) in the delivery of diversionary programs and efforts in NSW, as many such programs and efforts are delivered by the non-government sector. The Committee's recommendations were in relation to making service delivery more efficient and effective.

The legislative framework for diverting young people from the justice system

The Inquiry explored options for the NSW Government's consideration to improve access to diversionary options through legislative reform.

The NSW Government will review the *Young Offenders Act 1997* to consider changes recommended by the Committee

The Committee recommended the NSW Government consider a number of changes to the *Young Offenders Act 1997* (Young Offenders Act) to improve access to diversion wherever possible.

In response to the Inquiry, the NSW Government will conduct a review of the *Young Offenders Act 1997*, in line with the Committee's recommendations. Further legislative reform is being considered to improve outcomes for young people

The NSW Government acknowledges the difficulties in accessing diversionary opportunities for young people under the current mental health legislative framework. As part of a wider suite of legislative reforms to forensic mental health, the DCJ is considering amendments to clarify diversion provisions, identify barriers to use, and to make diversion more effective.

The *Bail Act 2013* is scheduled to be reviewed by the Department of Communities and Justice in 2020. This will include consideration of the Inquiry's recommendations.

The NSW Government is participating in a national working group examining whether the age of criminal responsibility should be raised from the current age of 10 years. The establishment of the working group was agreed in November 2018 by the Council of Attorneys-General. The NSW Government will further consider the matter once the working group has concluded its work.

The NSW Government is undertaking a program of work to re-design and improve the service system response to children and young people with and affected by problematic and harmful sexual behaviours. This will include a review of the current legislative and policy frameworks and consideration of diversion approaches. The aim will be to develop a NSW Government Framework that delivers individualised responses, improves treatment access and uptake, and improves the outcomes for children, young people and their families.

The program of work is being developed in response to the Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report Volume 10 and 12 and the NSW Ombudsman's Joint Investigation Response Team Review 2017.

Agency interactions with young people

A number of recommendations from the Inquiry were made for government agencies to review policies and practices regarding their interactions with young people.

The recent decision to merge the Department of Family and Community Services (FACS) and the Department of Justice to form the DCJ, as part of the Stronger Communities Cluster provides for the opportunity for priority to be given to prevention and early intervention. This will enable the NSW Government to drive major change in how NSW looks after its most vulnerable people, including at risk young people who come into contact with both the social support and the criminal justice systems.

The NSW Police Force is continuing to promote diversion of young people from the criminal justice system

The Inquiry acknowledged the increasing efforts made by the NSW Police Force regarding early intervention and diversion. A number of recommendations were directed to improve NSW Police Force policies, practices, and training given they are usually the first point of contact for young people with the criminal justice system. Since the Committee concluded its Inquiry, the NSW Police Force has made further progress in this area.

In 2019, modules on youth diversion were included in the NSW Police Force Mandatory Continuing Police Education package. This package is available to all officers and outlines the diversionary options under the Young Offenders Act. Officers have access to all the options available to them to divert young people in appropriate circumstances.

The NSW Police Force has committed to training relevant staff on the Joint Protocol to reduce the contact of young people, in residential care, with the criminal justice system in all Police Area Commands where DCJ funded residential care services exist. All staff that work in NGOs funded by the FACS to deliver residential out of home care must also complete training on the Joint Protocol.

Disengagement from school is being addressed to improve outcomes for young people

The Committee found a strong link between disengagement from school and youth offending. It made a number of recommendations for the Department of Education to improve levels of engagement with young people.

In February 2019, the Premier announced an investment of \$88 million over four years for mental health and wellbeing support. The funding will allow for an allocated, full-time counsellor or psychologist and a student support officer in every government high school. The Department of Education is also consulting with a range of stakeholders in their review of the Student Discipline Policy and associated suspension from school procedures.

The Department of Education is facilitating a 12-month trial with Children's Registrars of the Children's Courts to hold conferences to deal with unsatisfactory school attendance. The trial aims to encourage meaningful participation of parents and young people in addressing a young person's school attendance patterns through facilitation by a third party. The specialised mediation skills of Children's Registrars will also promote a holistic approach to considering the support a young person needs to improve their school attendance.

The Department of Education has also established five court liaison officers across NSW Children's Courts to assist children to re-engage with education. This follows the successful Victorian Education Justice Initiative model. The officers are located at Parramatta, Surry Hills, Port Kembla,

Broadmeadow and Campbelltown. The position at Parramatta Children's Court commenced in November 2018 and at 5 June 2019 had supported 405 young people. The Children's Courts also have a number of specialised agencies and services working to support young people, such as the Children's Court Assistance Scheme. This Scheme provides services to children in criminal matters, including informal counselling and conflict resolution, and referral to a range of welfare services.

The NSW Police Force in collaboration with Police Citizens Youth Clubs NSW deliver a suite of programs aimed at building engagement with education, employment and community, under the NSW Police Force Commissioner's RISEUP Strategy. 'Fit to Learn' is a program designed to reconnect disengaged youth into the education system, allowing them to further develop intellectual and social skills. The program encourages participants to explore their strengths in building respectful relationships within the school environment while also developing emotional intelligence skills to prepare them for future employment.

The Youth Koori Court is working to increase the use of diversionary options within the Children's Court

The Committee acknowledged the benefits of the Youth Koori Court as a diversionary initiative and its role in addressing the underlying causes of offending in young Aboriginal people. The Inquiry made a number of recommendations encouraging courts to use diversionary options under the Young Offenders Act and increase specialist training for Magistrates practising within the children's jurisdiction.

The NSW Government has committed \$2.7 million over three years to fund the expansion of the Youth Koori Court to Surry Hills Children's Court, which opened in February 2019. This expansion will allow an additional 30 young people to participate in the program each year. The NSW Government will consider further expansion of the Youth Koori Court following an evaluation of the court.

Agencies are implementing reforms that target the needs of at-risk young people

Their Futures Matter (TFM) is a landmark reform of the NSW Government to deliver improved outcomes for vulnerable children, young people and their families. Its vision is a coordinated service system that delivers evidence-based, integrated solutions for children and families and achieves lasting change. Central to this vision is an investment approach that will direct and prioritise whole-of-government funding to deliver targeted solutions that achieve measurable and meaningful outcomes.

TFM is working with the DCJ, the Children's Court, the Department of Education and other organisations to reduce the number of young people in short term remand. This includes opportunities to address the life circumstances that increase the risk of young people coming into contact with the justice system.

The NSW Government is investing \$19 million over 5 years to expand the Ministry of Health New Street Services, which will achieve state-wide service coverage. This investment is part of \$67.1 million from 2018-2023 in response to the Royal Commission into Institutional Responses to Child Sexual Abuse. New Street is an effective, evidence-based and safety focused, program, which supports children and young people 10-17 years with harmful sexual behaviours to turn their lives around. The service works closely with family and community.

The NSW Homelessness Strategy has allocated \$4.7 million to expand the use of universal screening and supports (USS) for homelessness and risk of homelessness in Albury and Western Sydney across eight secondary schools from 2019 to 2022. The approach aims to identify at-risk students in years 7-12 providing them with various levels of support, thus preventing them from disengaging early from school and entering into homelessness. The USS model is place based and draws on a community of schools and services model by engaging youth support providers, health and mental

health providers, local government and government agencies to identify and support vulnerable young people and their families.

Trauma-informed practices are being used when working with young people at risk

In line with the Committee's findings, the NSW Government acknowledges the importance of having staff, who work with young people at risk, trained in trauma-informed practice.

In May 2018, DCJ appointed the Australian Childhood Foundation, in partnership with Southern Cross University, to operate an 'intermediary' organisation known as the Centre for Excellence in Therapeutic Care. The Centre for Excellence works with service providers to enhance trauma-informed and therapeutic service models and capacity through expert advice and implementation consultancy services; a knowledge bank of evidence-based therapeutic and trauma-informed care; promoting knowledge sharing across the sector; and learning and development activities.

DCJ Psychological Services are also developing a training package to be delivered to caseworkers and carers on trauma-informed care. This package will also include a train the trainer package for NGOs. The roll out of the training will begin in late 2019.

The NSW Police Force has committed to continuing its delivery of trauma-informed training and education to its Officers to ensure police develop and enhance their responses, including when engaging with young people.

TFM has currently two programs that operate across NSW – Links Trauma Healing Services and OurSPACE using trauma informed approached and evidence based programs. LINKS and OurSPACE support children and young people living in statutory foster or kinship care to improve stability within their placement and relationships between the children and young people and their carers. These programs also support teachers to understand the impact of trauma on children's learning and behaviour within the school environment to improve outcomes for children and young people.

Access and availability of program and services across NSW

The recent changes to the machinery of government have provided increased opportunities to develop meaningful, targeted strategies directed towards young people. They allow for an even greater focus in areas such as social reform and regional NSW.

The NSW Government is addressing the needs of young people in regional areas

The Government has appointed a Minister for Regional Youth, the Hon. Bronwyn Taylor MLC, and established the Office for Regional Youth to examine how to address the challenges facing young people in regional NSW.

The Office will deliver NSW's first Regional Youth Strategy. One of those issues is the variable access young people have to services and programs which is due mainly to the size of regional NSW. The NSW Government will also establish a Regional Youth Taskforce to provide grassroots advice to the newly appointed Minister for Regional Youth.

The Committee noted the justice reinvestment approach as a positive way to fund increased and better diversionary options in regional, rural and remote areas. In 2019, the NSW Government and the Commonwealth committed \$1.8m for the Maranguka Justice Reinvestment project. Key NSW agencies currently provide strategic and governance support to the project.

Work is underway to increase access to drug, alcohol and mental health services

In the area of health and disability the Inquiry made recommendations relating to increasing the availability of mental health support services and drug and alcohol rehabilitation services to young people in, outside of, and after custody.

The NSW Government recognises that regional, rural and remote NSW communities are strong and resilient, yet they continue to experience significant demand for alcohol and drug services. The NSW Government has allocated \$6.2 million to run a ten bed mixed gender drug and alcohol residential rehabilitation service with "step-up" and "step-down" day program support in Goulburn to service the Southern Tablelands region. The project has been funded for four years and is scheduled to commence in 2020/21.

Children who come into the care of DCJ receive health and disability screening, assessment, intervention, monitoring and review of their health needs under the Ministry of Health Out-of-Home Care Health Pathway Program. The health screening and assessment process undertaken when a child enters care may result in them being diagnosed with a disability or developmental delay that had previously gone undiagnosed. All children then have a Health Management Plan that is regularly reviewed. This process supports timely access to health and therapeutic services to assist them.

The Adolescent Community and Courts Teams (ACCT), located within 21 local courts, provide prompt access to a mental health assessment for young people coming before the NSW Children's Courts, with a view to the identification of mental health disorders and where possible, diversion to appropriate services in the community. The Ministry of Health has identified an external evaluation within the Adolescent Mental Health Operational Plans will be conducted within 2 years.

Youth Justice provides psychological services to young people in detention, including those on remand, and young people under Youth Justice supervised orders in the community. Psychological assessments are conducted as required, with evidence-based treatment responding to individual needs.

Youth Justice includes specific courses dealing with Mental Health First Aid within its suite of training and development programs. The program teaches staff how to assist a young person who may be experiencing a mental health problem or mental health crisis until appropriate professional help is received or the crisis resolved, using a practical, evidence-based action plan. The program includes material with a specific focus on working with young Aboriginal people. In May 2019, the first group of Youth Justice Youth Officers attended the Aboriginal and Torres Strait Islander Mental Health First Aid Program.

A number of youth diversion options are being tailored for individual groups

The Inquiry made recommendations regarding the development of gender-sensitive and culturally appropriate programs to maximise effectiveness of diversionary efforts for young females.

The NSW Police Force RISEUP strategy is aimed at preventing and disrupting youth-related crime and diverting young people from the criminal justice system. A number of the programs have distinct priorities including domestic and family violence, with another specifically designed for Aboriginal young people.

Youth Justice has reviewed its suite of endorsed programs and developed a tiered system of programs for young people in both community and custodial settings. The multi-tiered approach considers interventions on a spectrum from prevention, through early intervention/diversion to offence-focused intervention. This approach is outlined in the new Practice Framework which informs Youth Justice service delivery. The framework emphasises that interventions should be responsive to the individual. Programs are flexible and can be adapted to any young person's needs.

Youth Justice is also currently evaluating the success of a diversionary program piloted with Aboriginal girls and young women in Northern NSW. Originally designed for young Aboriginal men, *My Journey My Life* is now being tailored for young Aboriginal girls as *Her Journey Her Life*. Youth Justice will continue to monitor and review its programs for young people to identify improvements and applicability to the needs of young people.

Youth Justice has enhanced the operation of Youth Justice Conferences

Since the Committee completed its Inquiry, Youth Justice has completed significant work to enhance the operation of Youth Justice Conferences (YJC), a key diversion option under the Young Offenders Act. In 2018, Youth Justice commenced a comprehensive review of YJC practices, timeframes and workplace needs. The review resulted in a state-wide, bulk recruitment of YJC convenors. Youth Justice is currently trialling and refining a centralised recruitment process to ensure there are enough YJC convenors to meet demand. Youth Justice is also designing a robust YJC training and assessment package which prospective YJC convenors must complete before they can be appointed as a convenor. All newly appointed convenors have completed this training and participated in professional development to maintain their appointment.

The over-representation of young Aboriginal people in custody

The Inquiry made a number of recommendations to improve the availability of, and young Aboriginal people's access to, diversionary options and programs.

Since the Committee concluded its Inquiry, the NSW Government has taken a number of steps to try and reduce the over-representation of young Aboriginal people in the criminal justice system.

The NSW DCJ Aboriginal Overrepresentation Plan 2018-2020 is a holistic response to the over-representation of Aboriginal people in the criminal justice system. The main goals of the plan are to help Aboriginal people avoid coming into contact with the criminal justice system; reduce the length of time Aboriginal people spend in custody; and reduce the rate of Aboriginal reoffending. The plan is supported by the NSW Government's \$330 million investment into reducing reoffending and includes the development of an Aboriginal Justice dashboard to monitor trends and provide a clearer understanding of Aboriginal people's involvement in the criminal justice system to better inform targeted interventions.

Work is underway to promote Aboriginal community control and partnerships

The NSW Government acknowledges that diversionary programs aimed at young Aboriginal people should be led by, or significantly involve, Aboriginal communities.

In February 2019 the NSW Coalition of Aboriginal Regional Alliances (NCARA) and the NSW Government, signed an Accord jointly committing to work together to support, renew and return Aboriginal people to prosperity.

This is the first multi-regional Accord and marks an important milestone under Local Decision Making, which is a key initiative under the NSW Government's OCHRE – the NSW plan for Aboriginal affairs. One of the priority areas for partnership between NCARA and the NSW Government is decreasing the number of Aboriginal youth entering the juvenile justice system including incarceration rates and recidivism.

The DCJ Targeted Earlier Intervention Reform identifies Aboriginal children, families and communities as a priority group. It also emphasises the need for all services to be culturally safe and relevant for Aboriginal children, young people and communities and recognises that Aboriginal self-determination is required to overcome the legacy of intergenerational trauma. DCJ is currently rolling out a state-wide Aboriginal cultural capability framework to all staff including frontline child and family caseworkers.

DCJ also supports the development of a sustainable Aboriginal service sector through an Aboriginal child and family investment strategy and a range of similar initiatives. The NSW Child, Family and Community Peak Aboriginal Corporation is funded to build capacity of the Aboriginal sector including workforce development, strengthening communities, maintaining accreditation to deliver out-of-home-care, and partnerships.

The Youth Justice Aboriginal Strategic Plan 2019-2022 and accompanying Aboriginal Strategic Plan Performance Framework outlines a framework of Aboriginal engagement and reporting to deliver better outcomes for Aboriginal young offenders, their families and communities. All Youth Justice Centres host Aboriginal Community Consultative Committees, bringing together local Aboriginal organisations and communities to support young Aboriginal people in custody and after they are released from a Centre.

The NSW Police Force Aboriginal Employment Strategy 2020-2024 is currently being developed and is expected to be made publicly available in early 2020. The current employment strategy outlines the

organisation's commitment to establishing a workforce that encourages opportunities and enhances the participation of Aboriginal young people. The NSW Police Force's Aboriginal Strategic Direction 2018 – 2023 is the latest iteration of strategies to engage with and promote self-determination and partnership between Aboriginal communities and the NSW Police Force. The NSW Police Force actively engages with Aboriginal communities to develop and implement Aboriginal Action Plans that guide interventions and focus on 'local solutions for local issues'. The Action Plans provide Aboriginal people with a voice in how their community is policed.

Agencies are committed to addressing the effects of trauma and disadvantage on young Aboriginal people

The NSW Government acknowledges the importance of having cultural awareness and competence embedded within the training provided to staff working with young Aboriginal people.

The Youth Justice Operational Training Unit is embedding trauma-informed practice in all training programs to provide staff with skills and knowledge to work effectively with young people. The Youth Justice Induction Training and Assessment Program, which is delivered to all new Youth Officers, includes training in child protection, proactive supervision skills and the needs of young people, behaviour management policy and practice, managing young women in centres and working with Aboriginal young people in custody.

The Ministry of Health recently completed an evaluation of the Respecting the Difference cultural workforce training, which identified that the training achieved an increase in knowledge and awareness of Aboriginal culture throughout its workforce. Enhancements will now be developed for the content and delivery of this training to enhance workplace respect, knowledge, awareness and practices which support and encourage inclusive organisational culture throughout the health system in NSW.

The Ministry of Health is also building the cultural safety of the health system through development of an overarching Governance and Accountability Framework and Aboriginal Cultural Engagement Audit Tool. This will support the system to embed elements of a culturally safe and inclusive organisational culture across the Ministry of Health to better meet the needs of Aboriginal people.

The NSW Police Force will continue to promote engagement which is culturally sound and appropriate. The NSW Police Force employs a full-time Lecturer/Training Coordinator in the Aboriginal Coordination Team to deliver training to both police recruits and commands across the Organisation. This includes 'Working with Aboriginal Communities' which covers strategies for interviewing, de-escalation and crime prevention. Youth-focused scenarios are used to provide police with opportunities to develop and enhance their responses by considering intergenerational trauma, language and physical and mental health.

Coordination and service delivery

The NSW Government funds non-government organisations to deliver the majority of the diversionary programs and related services across the state. The Committee made a number of recommendations to improve coordination and communication between Government and NGOs to make service delivery more effective and efficient. These recommendations were particularly focussed on the NSW Government making efforts to ensure service delivery of diversionary programs is outcomes focussed and not overly prescriptive.

Improving effectiveness of government NGO coordination to deliver better services

The NSW Government agrees that an outcomes-focussed approach encourages commissioners and service providers to be clear about the impact they want to have and puts people's needs at the centre of service design and delivery. Taking a less prescriptive approach to commissioning services encourages innovative approaches.

In line with the Committee's findings, the NSW Government agrees that certainty and stability with NGO contracting is preferred when possible. A key element to the effective delivery of outcomes-based contracting is ensuring contract terms drive the behaviour and performance that the Government is seeking.

As commissioning becomes integrated into human services across the public sector the focus for government is to implement commissioning models and contracting arrangements that are flexible and customised to the desired outcomes.

The Committee made reference to increasing the level of coordination, communication and cooperation between the NSW Government and service delivery partners. In line with the Human Services Outcomes Framework, the DCJ Targeted Early Intervention (TEI) reform supports collaboration both between and within agencies to have clearer goals and better together, and for more holistic and innovative responses to community aspirations. The TEI reform supports central and local learning and decision making across government and the non-government sector through shared measurements relating to performance and evaluation.

Robust evaluations are important to demonstrating outcomes are achieved

The Committee, throughout the Inquiry, also heard the importance of building formal evaluation requirements into contracts with non-government organisations for the delivery of diversionary programs. The NSW Government agrees that evaluation requirements and the effective resourcing to support assessments of program and service performance both during and at the completion of contracts is essential.

Treasury is undertaking a review of the NSW Government Program Evaluation Guidelines to set out evaluation requirements that can be consistently applied across public expenditure.