diversion of Aboriginal and Torres Strait Islander youth from juvenile detention
diversion of Aboriginal and Torres Strait Islander youth from juvenile detention

Siggins Miller Consultants
in association with
Catherine Spooner Consulting

A report to the
Australian National Council on Drugs, 2003
# Contents

Acknowledgements ................................................................. ix  
Executive summary ............................................................... x  

Introduction .............................................................................. 1  

1 Literature review ................................................................. 4  
1.1 Introduction ........................................................................ 4  
1.2 Method ............................................................................. 4  
1.2.1 Search methods .......................................................... 4  
1.2.2 Limitations ................................................................. 5  
1.3 Background ....................................................................... 5  
1.3.1 Issues for Indigenous people in Australia ....................... 6  
1.3.1.1 Colonisation .......................................................... 6  
1.3.1.2 Royal Commission into Aboriginal Deaths in Custody .... 6  
1.3.1.3 Separation of young people from families .................... 8  
1.3.1.4 Self-determination .................................................. 9  
1.3.2 The juvenile justice system ......................................... 10  
1.3.2.1 Differences with the adult system ....................... 10  
1.3.2.2 Juvenile justice options ...................................... 11  
1.3.2.3 Principles of juvenile justice ................................. 11  
1.3.2.4 Health problems among juveniles in detention .......... 12  
1.3.3 Offending by Indigenous youth .................................. 12  
1.3.3.1 Types of offences .............................................. 12  
1.3.3.2 Over-representation of Indigenous juveniles in criminal justice system .... 12  
1.3.3.3 Pre-court discretionary decisions and Indigenous youth .. 15  
1.3.3.4 Sentencing decisions and Indigenous youth ............ 15  
1.3.3.5 Impact of contact with the criminal justice system on Indigenous juveniles ... 16  
1.3.4 Drug use among Indigenous adolescents ..................... 17  
1.3.5 Aetiology of psychoactive substance use disorders and offending behaviour .. 18  
1.3.6 Aetiology of substance use problems among Indigenous youth .......... 20  
1.3.6.1 Families .......................................................... 21  
1.3.6.2 Youth and peer groups ...................................... 22  
1.3.6.3 Schooling .......................................................... 22  
1.3.6.4 Communities ..................................................... 22  
1.3.6.5 Economic issues ................................................. 22
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2</td>
<td>Definition of a ‘juvenile’.</td>
<td>64</td>
</tr>
<tr>
<td>3</td>
<td>Programs and services available to Indigenous youth, and a profile of diversion activity in each jurisdiction</td>
<td>67</td>
</tr>
<tr>
<td>3.1</td>
<td>Diversion activity in each jurisdiction</td>
<td>67</td>
</tr>
<tr>
<td>3.1.1</td>
<td>Available information about diversion activity</td>
<td>68</td>
</tr>
<tr>
<td>3.2</td>
<td>Commonwealth diversion activities</td>
<td>69</td>
</tr>
<tr>
<td>3.2.1</td>
<td>National Illicit Drugs Strategy</td>
<td>70</td>
</tr>
<tr>
<td>3.3</td>
<td>New South Wales</td>
<td>71</td>
</tr>
<tr>
<td>3.3.1</td>
<td>Diversionary options and programs currently implemented</td>
<td>71</td>
</tr>
<tr>
<td>3.3.1.1</td>
<td>Cautions — formal and informal</td>
<td>71</td>
</tr>
<tr>
<td>3.3.1.2</td>
<td>Youth conferencing</td>
<td>72</td>
</tr>
<tr>
<td>3.3.1.3</td>
<td>Cannabis and other illicit drugs diversion programs</td>
<td>74</td>
</tr>
<tr>
<td>3.3.1.4</td>
<td>Youth Drug Court</td>
<td>74</td>
</tr>
<tr>
<td>3.3.2</td>
<td>Comments by informants about diversion of Indigenous juveniles</td>
<td>75</td>
</tr>
<tr>
<td>3.4</td>
<td>Victoria</td>
<td>76</td>
</tr>
<tr>
<td>3.4.1</td>
<td>Diversionary options and programs currently implemented</td>
<td>76</td>
</tr>
<tr>
<td>3.4.1.1</td>
<td>Cautions — formal and informal</td>
<td>76</td>
</tr>
<tr>
<td>3.4.1.2</td>
<td>Community conferencing</td>
<td>76</td>
</tr>
<tr>
<td>3.4.1.3</td>
<td>Cannabis Cautioning Program</td>
<td>77</td>
</tr>
<tr>
<td>3.4.1.4</td>
<td>Illicit drug diversion</td>
<td>77</td>
</tr>
<tr>
<td>3.4.1.5</td>
<td>Children’s Court</td>
<td>78</td>
</tr>
<tr>
<td>3.4.1.6</td>
<td>Bail diversion</td>
<td>78</td>
</tr>
<tr>
<td>3.4.2</td>
<td>Comments from informants about diversion of Indigenous juveniles</td>
<td>78</td>
</tr>
<tr>
<td>3.5</td>
<td>Queensland</td>
<td>79</td>
</tr>
<tr>
<td>3.5.1</td>
<td>Diversionary options and programs currently implemented</td>
<td>79</td>
</tr>
<tr>
<td>3.5.1.1</td>
<td>Cautions — formal and informal</td>
<td>79</td>
</tr>
<tr>
<td>3.5.1.2</td>
<td>Community conferencing</td>
<td>79</td>
</tr>
<tr>
<td>3.5.1.3</td>
<td>Diversion — cannabis</td>
<td>80</td>
</tr>
<tr>
<td>3.5.1.4</td>
<td>Diversion — other illicit drugs</td>
<td>81</td>
</tr>
<tr>
<td>3.5.1.5</td>
<td>Court diversion — Drugs Court/ Children’s Court</td>
<td>81</td>
</tr>
<tr>
<td>3.5.1.6</td>
<td>Bail diversion</td>
<td>81</td>
</tr>
<tr>
<td>3.5.2</td>
<td>Data on drug- and alcohol-related offences by Indigenous juveniles and rates of diversion</td>
<td>82</td>
</tr>
<tr>
<td>3.5.2.1</td>
<td>Formal cautions</td>
<td>82</td>
</tr>
</tbody>
</table>
Acknowledgements

Many thanks to the following people for commenting on drafts of the literature review section of this report.

- Dr Maggie Brady, Centre for Aboriginal Economic Policy Research, Australian National University
- Professor Chris Cunneen, Institute of Criminology, University of Sydney
- Professor Wayne Hall, formerly of the National Drug and Alcohol Research Centre, now Director of the Office of Public Policy and Ethics, University of Queensland
- Dr John Howard, Ted Noffs Foundation
- Members of the Australian National Council on Drugs
Executive summary

This report provides a comprehensive overview of the diversion of Aboriginal and Torres Strait Islander youth from the criminal justice system. The information was compiled in January 2002 and is current to that date.

Part 1: A review of the literature

Issues for Indigenous people in Australia

The history of Indigenous Australians since colonisation has been marked by conflict and dispossession, disruption of families and communities, and separation of children from their families. While this history is important to understand the present predicament, policies are needed to redress resulting social and health problems, including psychoactive substance abuse and criminal behaviour, and to reduce involvement in the criminal justice system. The Royal Commission into Aboriginal Deaths in Custody (1991) described the high number of deaths in custody owing to higher rates of incarceration.

The juvenile justice system

The juvenile justice system differs from the adult system in court arrangements and law. It emphasises developmental appropriateness and rehabilitation over punishment. But some argue that juveniles lack procedural rights and legal representation. Most jurisdictions have three tiers of juvenile justice: police cautions, conferencing and youth courts. There are similarities but also significant differences among jurisdictions in laws, policies and programs. The guiding principles in legislation suggest children should be punished in ways that give them opportunity to develop into responsible and useful members of the community, realise their potential, and allow education or employment to proceed uninterrupted and the child to reside in his or her own home. Physical and mental health problems among juveniles on entry to detention are significant and must be considered in planning interventions.

Offending by Indigenous youth

Diversion options need to take account of the type and seriousness of offences. In this target group, most offences concern theft, good order offences, and violence. Diversion for violent offences is not typically permitted. While alcohol and other drugs often contribute to offending behaviour, drug offences per se are not common. Indigenous youth are over-represented at all stages of the criminal justice system. Contributory factors include the rate and seriousness of offending, which in turn reflects a high level of family and environmental risk factors, cultural and historical issues, visibility and racism. Negative impacts of contact with the criminal justice system have included stigma, alienation and effects on future employment and family relationships. For young people, it may engender a criminal identity that perpetuates offending.

Drug use among Indigenous adolescents

There are some indications of greater drug use among Indigenous youth than non-Indigenous youth, with particular pockets of problems, including increased cannabis use and injecting drug use in urban areas, and petrol-sniffing in some rural communities. These localised problems suggest the need for community approaches.
Aetiology of psychoactive substance use disorders and offending behaviour

Multiple risk and protective factors common to psychoactive substance use disorders (PSUD) and offending behaviour suggest the need for multi-component interventions that will address both PSUD and offending. Drug use and criminal behaviour share common aetiologies and also exacerbate each other, suggesting that addressing both together is likely to be effective. Family, community and macro-environmental factors contribute to the initiation and continuation of drug use and offending behaviours, so interventions cannot focus on individuals alone. They must work to create supportive environments for young people.

Aetiology of substance use problems among Indigenous youth

Historical and cultural factors contribute to substance use by Indigenous youth, including the impact of the history of separation of children from families, resulting in a loss of parenting skills and community strength; and an emphasis on the autonomy of individuals, resulting in tolerance for behaviours such as drug use. Family, community and macro-environmental risk factors such as unemployment are particularly prevalent in many Indigenous communities, suggesting the need for particular attention to supportive environments for Indigenous youth. In addition to specific risk and protective factors, some offending can be an act of defiance against non-Indigenous authority. Some specific forms of resilience also exist in Indigenous communities, including the ability of women to lead community action, and pride in Indigenous identity.

Diversion from the criminal justice system

The rationale for diversion has been well covered elsewhere, and cogent references are listed. After police have detected an offence, there are multiple opportunities for diversion throughout the criminal justice process:

- **pre-arrest**: when an offence is first detected, before a charge is laid. This includes fines, warnings and cautions, sometimes with educational information or referral to assessment and treatment
- **pre-trial**: when a charge is made but before the matter is heard at court (e.g. treatment as a condition of bail, conferencing and prosecutor discretion)
- **pre-sentence**: a delay of sentence while assessment and treatment are sought
- **post-sentence**: as part of sentencing (e.g. suspended sentences, drug courts, non-custodial sentences and circle sentencing)
- **pre-release**: before release from a sentence, on parole.

The response should be commensurate with the offence. Increasingly coercive and treatment-focused diversion strategies should be used as offenders’ criminal careers and drug problems increase.

Diversion issues

‘Net widening’ refers to the situation where a diversion intervention increases the number of people involved in the criminal justice system or the consequences of offending for offenders. All diversion strategies are susceptible to net widening, and mechanisms need to be in place for its monitoring and prevention. However, some Indigenous communities do not always perceive net widening as negative. Coercion to treatment does not
appear to be a barrier to the effectiveness of treatment programs, but is in fact associated with increased entry to treatment and higher retention in treatment. Coercion to treatment is thought ethical if appropriate treatment is offered and the offender has the right to exercise some choice whether they enter treatment or the usual criminal justice process, and (if they choose treatment) the type of treatment they receive. There has been increased interest in restorative justice programs, in which offenders, victims and significant others discuss the offence and decide how to repair the damage resulting from the offence. These programs are most often used with juveniles because of their emphasis on rehabilitation and taking responsibility for actions rather than punishment. Both over-use and under-use of police discretion have been found in Indigenous communities, indicating that protocols, training and community consultation are important to ensure its effectiveness.

Diversion of Indigenous youth from the criminal justice system

Indigenous people desire greater control over criminal justice issues, and there has been some success when this has happened. However, there have been problems with diversion of Indigenous youth from the criminal justice system. These include a lack of adequately resourced diversionary options for Indigenous youth, problems with police control over access to diversion options, and a failure to involve Indigenous communities adequately in planning and implementing diversionary systems.

Specific issues have also been identified with restorative justice programs: difficulty in appointing an Aboriginal conference convenor, lack of awareness of the existence of diversionary options, and no provision for Aboriginal communities to decide whether a conference is the best option for their children. Conference-style resolutions and shaming structures of social control may not be appropriate for all Indigenous communities.

Circle sentencing is a type of restorative justice program at the sentencing stage of the criminal justice system. The Aboriginal Justice Advisory Council has investigated it for use with New South Wales Indigenous communities because it has a number of potential benefits, such as increasing the cultural relevance of punishments by communities’ involvement in sentencing. The use of customary law and practice has been recommended where it does not offend general law and where justice is served by its use, but some problems with the use of customary law have led to caution in its use. Some Indigenous communities have established community justice groups including an Elders scheme, representing men, women and clans. Police refer offending behaviour to an Elders group to deal with, and a range of community-based sanctions may be applied. Evaluation has shown sustained reduction in offending.
Bail and remand

For offenders who have been arrested, a critical point of diversion is whether the offender is granted bail or remanded in custody. This has become a particularly significant issue for juveniles. A large proportion of the children now in detention are on remand awaiting trial. The Cape York Justice Study proposed that community-based alternatives to remand are needed in light of the criminalising effect on young people of a stay in custody.

Sentencing Indigenous offenders

The New South Wales Law Reform Commission reviewed the issue of sentencing Indigenous offenders as part of a general review of sentencing law in New South Wales. It made a range of recommendations on customary laws, circle sentencing, mentoring, cross-cultural issues and culturally appropriate programs to satisfy community service orders.

Treatment for psychoactive substance use disorders (PSUD)

Recommendations for treatment of adolescents with PSUD include advice about the delivery model, a program philosophy of comprehensive care and harm reduction, networking and collaboration among youth services, treatment objectives based on thorough assessment and achievable in light of the client’s readiness to change, family programs, peer programs, physical and other recreational activities, services for dealing with the range of issues that accompany substance misuse, practical help, strategies for behaviour modification, skills development programs, cognitive restructuring, educational and vocational programs, psychological counselling, graduated withdrawal and structured after-care, monitoring and evaluation, case management, thorough assessment, cultural values and connection with the community. Adolescents need continuous assistance, not just a discrete program. Intensity should be high, with multi-modal programs to address multiple problems.

PSUD treatment in the juvenile justice system

A graduated sanctions framework supported by systems collaboration and case management has been recommended. The framework includes case managers to assess juveniles and help them move through and between judicial, drug treatment and social service systems to ensure they receive the most suitable and complete services a community can offer while remaining under juvenile justice system supervision.

PSUD treatment for Indigenous people

Whether interventions are appropriate for Indigenous youth needs to be considered, even if they have demonstrated efficacy with other populations. The appropriateness and effectiveness of interventions for Indigenous youth are likely to be improved with staff training in cultural issues, consultation with Indigenous people (especially those who know the youth’s home community), involvement of Indigenous people (especially those with links with the youth’s home community), a respectful flexible approach, and regard for issues of confidentiality when family and community members are involved.
In *The Grog Book*, Maggie Brady discusses the advantages and disadvantages of a number of different approaches. For example, harm reduction strategies such as night patrols and sobering-up centres help to reduce casualties associated with drinking. ‘Dry camps’ in the bush enable families to separate themselves from the drinking problems of larger settlements, and allow drinkers periods of abstinence away from intense social pressure to consume. Brady also argues that crisis-based intervention and drop-in services are useful for Indigenous youth.

Consistent with other literature about PSUD treatment, program features that are supported include interventions to address multiple risk factors for substance problems, such as unemployment, community-based interventions and family involvement.

**Interventions for reducing recidivism**

US reviews of evaluations of interventions for reducing juvenile recidivism have concluded that, compared with large custodial institutions, positive outcomes for recidivism have been associated with community-based programs run by private providers, involving family in treatment, high levels of intensity and duration, multiple modes of intervention and a high level of structure. The evidence does not support the use of boot camps or ‘scared straight’ programs for juvenile offenders. We found no published evaluations of recidivism interventions for Indigenous people.

**Part 2: National data on Indigenous youth in juvenile detention centres**

Detailed information has been compiled showing that the number of persons aged 10–17 in juvenile corrective institutions is small, and has been falling over the past 20 years: the total number of juvenile detainees on 30 June 2001 throughout Australia was 604. About two-fifths of them are Indigenous. Young Indigenous juvenile offenders are much more likely to be held in a corrective institution than their non-Indigenous counterparts. During the second quarter of 2001, the national rate of incarceration among Indigenous juvenile offenders was 284.0 per 100 000 relevant population, compared with the non-Indigenous rate of 16.3 per 100 000 in the same quarter. The level of over-representation has ranged from 14 to 21 times the rate of detention of non-Indigenous juveniles in the years 1994–2001, and seems to have stabilised at about 16 times that of non-Indigenous juvenile offenders since 2000.

Indigenous status, rate per 100 000 and the level of over-representation of Indigenous persons to non-Indigenous persons are reported for each State and Territory. The number of young persons held on remand has increased markedly as a percentage of the total number of persons in juvenile corrective institutions, but there were no observable differences by Indigenous status or gender in this respect.
Part 3: Programs and services, and diversion activity in each jurisdiction

The report of the National Drug Research Institute (NDRI) prepared for the Australian National Council on Drugs, *Indigenous Drug and Alcohol Projects 1999–2000*, identified 277 alcohol and other drug intervention projects conducted by or for Indigenous Australians, including 107 projects that provided treatment as either a primary or secondary part of their service; 57 prevention projects that provided a mixture of health promotion services, sporting and recreational activities as an alternative to or diversion from alcohol or other drug use, and a small number of community development projects; 93 projects that provided acute intervention services, generally in the form of night patrols and/or sobering-up shelters; and 22 other projects that provided support services, referral services, staff and resource development or program development.

The States and Territories with the largest Indigenous populations — New South Wales, the Australian Capital Territory and Queensland — had proportionately the lowest number of intervention projects. Important elements were clearly defined management structures and procedures, trained staff and effective staff development programs, multi-strategy collaborative approaches, adequate funding and clearly defined realistic objectives to support appropriate services that address community needs.

We have used data from NDRI’s Indigenous Australian Alcohol and Other Drugs Intervention Projects Database to identify current projects that include adolescents or children in their primary or secondary target group. We also invited informants to the present study to comment on the adequacy of the treatment services for Indigenous youth in their areas. A profile of diversion activity for each State and Territory jurisdiction is based on informants in Departments of Health, Corrective Services and Police, and other agents responsible for juvenile diversion in each area.

The topics canvassed included informal and formal cautions, cannabis cautioning programs, community conferencing, family or youth conferences, bail diversion, substance abuse diversion, illicit drug diversion, juvenile drug diversion programs, diversion and community-based programs, drug courts, juvenile or children’s or youth courts, juveniles in custody, and other issues such as suspended sentencing, rehabilitation and education. For each State and Territory, the report summarises the diversionary options in force, and diversion and treatment programs currently implemented. It presents objective data about drug- and alcohol-related offences by Indigenous young people, and existing rates of diversion. We also report the evaluative comments some informants made about the strengths and weaknesses of current programs and services.
Indigenous specific data about juvenile diversion were difficult to collect. In most States and Territories, police use only a ‘racial appearance’ indicator, and are largely unwilling to release these statistics because they do not accurately represent Aboriginality. The National Centre for Indigenous Statistics identifies ‘shifting denominators’ in the collection of statistics on Indigenous Australians. A growing number of Australians are willing to identify as Indigenous from a growing recognition of culture and self-acceptance; nevertheless, community leaders are concerned that some young Indigenous people do not disclose their Aboriginality even when invited, because they fear discrimination. Community education is needed to let them know it could be in their interests to do so. There is also a concern that Aboriginal people in remote communities have been under-counted.

The sample of juveniles in detention is very small: just over 600 juveniles (Indigenous and non-Indigenous) are in detention throughout Australia. Because the number of Indigenous offenders is so small, the figures about particular offences could allow an offender to be identified, and some informants were therefore reluctant to give even de-identified data for privacy reasons. Figures for rates of informal police caution were not available in any jurisdiction.

Part 4: Existing programs and key principles of diversion and treatment

The existing range of programs

Each jurisdiction has its own juvenile offenders legislation. In most cases, it provides a three-tiered system of warning, conferencing and court. Commonly, this does not operate hierarchically — courts may refer juvenile offenders ‘down’ the justice ladder for formal cautions or conferencing, even if they have committed previous offences. Typically, police divert young offenders to shorter preliminary interventions, and courts refer repeat offenders to more intensive and long-term programs, but rates of police diversion for similar offences across the jurisdictions vary greatly.

Cautions are informal and formal, with varying degrees of family and community involvement. Drug offenders may be warned in most jurisdictions, but supply and trafficking are generally excluded. An admission of guilt is not usually necessary. Prior convictions need not exclude young offenders from warnings, though in practice police are less likely to caution a child with prior convictions.

Various people in authority, sometimes a senior Indigenous person, administer formal cautions. In some jurisdictions, police must be specialist youth officers to administer cautions. Formal cautions may function as a form of youth conference, but conferencing and cautioning are usually separate. The involvement of Indigenous representatives in warnings varies among jurisdictions. It is provided for in most places, but police practices and community involvement vary widely.
Youth conferencing

Admissions of guilt are generally necessary for a child to take part in a conference. In most jurisdictions, drug offenders may participate, although suppliers and traffickers are excluded. Not surprisingly, conferencing programs that exclude youths with prior offences have limited impact on youth diversion. The programs vary in their emphasis on Indigenous participation. In Western Australia and New South Wales, Indigenous liaison officers take part in the administration and running of the conferences, and Indigenous persons of authority are also included in some jurisdictions. Rates of juvenile Indigenous participation appear to vary with the presence of Indigenous representatives and employees in the programs. Rates of police reference to conferences, as compared with court reference, vary widely across Australia. This variation seems to depend first on the existence of a good conferencing program in a jurisdiction, and secondly on the degree of police awareness and training about conferencing.

Most referrals to diversion are at the discretion of police rather than mandatory, though there are exceptions to this practice. Many are also dependent on an admission of guilt. Diversion projects tend to be managed across departments, usually with the police, juvenile justice and health services doing most of the administration. Further, the responsibility for diversion is handled very differently across States, and depends in many cases upon the location of the State’s juvenile justice branch. Their success depends to a large extent upon good coordination between departments, where relevant. Coordinated community responses appear to work best.

Juvenile Drug Courts have been established in New South Wales and Western Australia, and are in their pilot stages. Elsewhere, Children’s Courts are responsible for court diversion programs.

In the absence of a universal juvenile drug diversion scheme, good bail and sentencing options are crucial. They vary greatly among the States and Territories. In many cases the options exist, but the absence of the necessary accommodation or treatment facilities prevents their invocation.

Informants working in the areas of health or Indigenous legal aid in all jurisdictions note a lack of appropriate treatment options to which Indigenous juveniles with substance abuse problems can be diverted. This deficiency may be somewhat remedied with funding from the Council of Australian Governments for treatment services, but with the acute lack of treatment facilities accessible to young Indigenous substance abusers, the problem may be well beyond the scope of the National Illicit Drugs Strategy (NIDS) initiative (especially when alcohol, tobacco, petrol and solvents are all considered).

Police training

Police carry a large responsibility for juvenile diversion initiatives, particularly early interventions. Increased rates depend in part on good police understanding of their options where a young Indigenous drug offender presents. Continuous police training is likely to lead to higher levels of diversion. Inconsistent police and judicial comprehension of Indigenous young people’s experience is likely to fetter attempts to divert them from the criminal justice system.
Part 5: Recommendations for future diversion and treatment services

Recommendation 1
We recommend development of a greater number and range of culturally appropriate diversion options that specifically target Aboriginal and Torres Strait Islander youth in areas of high need, and increased capacity to deal appropriately with Aboriginal and Torres Strait Islander youth in mainstream diversion programs in areas where the numbers of young offenders may not warrant specific youth or Aboriginal and Torres Strait Islander programs.

Recommendation 2
We recommend that future diversion and treatment services for Indigenous juveniles be designed in accordance with these key principles:

- Diversion strategies and treatment services for Aboriginal and Torres Strait Islander young people should be culturally and developmentally appropriate, with meaningful involvement of Indigenous people, families and communities, and where possible be community-based.
- Treatment services should address multiple risk and protective factors, and offer interventions proportional to the behaviour — brief when drug use is not a PSUD, but long term for PSUD.
- Diversion strategies should increase the intensity of treatment with increasing offending history and PSUD, prevent net widening, monitor the use of discretion, and adopt restorative justice principles.

Recommendation 3
In designing and implementing future diversion activity, increased efforts should be made to enhance the knowledge of police and magistrates about diversion options for Indigenous juveniles, and implement specific programs to increase Indigenous participation in diversion programs where it is currently low.

Recommendation 4
Policies that exclude juvenile offenders from diversion programs on the basis of prior convictions should be revised to increase the availability of diversion to Aboriginal and Torres Strait Islander young people.

Recommendation 5
All jurisdictions should collect identifying data to enable monitoring of the involvement of Aboriginal and Torres Strait Islander young people in the full range of diversion options available in their jurisdictions, and to inform future policy and program development.

Recommendation 6
Broader social justice programs are required for sustained and significant improvements in PSUD interventions among Aboriginal and Torres Strait Islander youth. Good community services — schooling, health and policing services, and access to a ‘real economy’ and economic opportunity — are crucial. In particular, there is a clear need for health services and justice services to work in cooperation and partnership at all levels, but especially at local levels, to ensure that young Aboriginal and Torres Strait Islander people receive appropriate justice, care and support.
Introduction

The Australian National Council on Drugs commissioned Siggins Miller Consultants, in association with Catherine Spooner Consulting and Professor Wayne Hall, to study the diversion of Aboriginal and Torres Strait Islander youth from the criminal justice system, and to:

• collect, collate and analyse existing data on Aboriginal and Torres Strait Islander youth in detention, and on those in detention for alcohol- and other drug-related crime in each jurisdiction;

• document the range of programs and services available to Aboriginal and Torres Strait Islander youth in each jurisdiction and identify those suitable as diversion alternatives across each jurisdiction;

• document the range of diversionary programs already being implemented for Aboriginal and Torres Strait Islander youth across each jurisdiction; and

• produce a report and recommendations on the preferred model for Aboriginal and Torres Strait Islander youth including recommendations on preferred treatment programs.

The Review of the Commonwealth’s Aboriginal and Torres Strait Islander Substance Misuse Program\(^1\) discusses a range of informal diversionary programs such as pick-up services, sobering-up shelters and night patrols. While programs of this kind can be valuable in preventing behaviour that may lead to contact with the criminal justice system, initiatives of this nature do not fall within the scope of this study — namely, diversion following contact with the criminal justice system, and in particular to prevent juvenile detention.

In the course of the study, a number of informal diversion and pre-offending initiatives were also brought to our attention. These initiatives aim to divert youth from offending before formal processes occur. Examples range from school holiday programs, camps and discos to cooperative efforts between police, communities and other local organisations to reduce vandalism, petrol sniffing or other problems among youths at risk. For example, the Giyaali Community Group in Walgett, NSW, was established to offer support and guidance to young people experiencing health, academic or cultural difficulties, or displaying behaviours that could lead them into the criminal justice system. Its aim is to divert children or young juveniles before they come under police notice or get into trouble. It is made up of representatives of Aboriginal and other local organisations including the Aboriginal Medical Service, the Community Development Employment Program, the Lands Council, the Aboriginal Legal Service, the Violence Prevention Service, police, schools and Elders from the local Aboriginal communities. The Group speaks to children referred to them about the reasons why they were referred, and discusses how their actions affect them, their friends and relatives, and the rest of the community.

Method

• We gathered publicly available data from the Australian Bureau of Statistics, the Australian Institute of Criminology, State/Territory and Commonwealth justice, police, corrective services, family and health departments, and other extant studies and reports.

---

\(^1\) Commonwealth Department of Health and Aged Care (2000). Review of the Commonwealth’s Aboriginal and Torres Strait Islander Substance Misuse Program. Canberra: The Department.
• We made a thorough and up-to-date assessment of the literature on diversion, with priority to recent literature (particularly in the past three years); reviews backed by evidence rather than unsubstantiated commentary; and expert opinion from people recognised by their peers as having special skills or notable publications in peer-reviewed journals.

• We examined the major current policy documents and government statements of intent about diversion, including the Council of Australian Governments’ Illicit Drug Diversion Initiative and its State counterparts.

• We mapped what is currently available in diversion options and programs for Indigenous young people in Australia. Key informants in each State and Territory were contacted to ensure the analysis was comprehensive, and to document other informal diversionary programs that are not reported in the published literature. A list of these informants is included in Appendix 1.

• We developed a set of key principles to assess the range of diversionary and treatment services, and consulted a number of expert informants on the acceptability of these key principles.

Data presented in this report are current as of 31 December 2001.

The evaluation team

Members of the evaluation team were:

Mary-Ellen Miller, BA (Hons), MAppPsych, PhD, AFCHSE. Dr Miller has a long history of work in the drug and alcohol area since the beginning of the first coordinated national efforts in the mid-1980s, and before that as a clinician in the treatment of drug dependence. Her experience in health service delivery management and as a clinical psychologist informed her practical understanding of what it takes to deliver services in such humanly complex areas.

Catherine Spooner, BA (Hons Psych), MPH, PhD. Dr Spooner has worked extensively with Siggins Miller Consultants and with Mel Miller in drug-related policy, evaluation and program development in the New South Wales Department of Health in the late 1980s and early 1990s. She has published widely on the topics of youth and drugs, and diversion options in Australia currently. She has been active in the drug and alcohol field since 1986. She has worked in government, area health, academic and non-government settings and has provided consultancy services to organisations such as the World Health Organisation, NSW Health and the NSW Police Service. Her work has included evaluations of drug prevention and drug treatment programs, reviews of best practice in drug prevention and treatment, and research into data collection methods for investigating hidden populations of drug users. She has completed a strategic overview of diversion programs for drug offenders for the New South Wales Government, and participated in the evaluation of the Council of Australian Governments’ Initiatives on Illicit Drugs. The centrepiece of the COAG initiatives was diversion strategies for drug offenders.
Wayne Hall, BSc (Hons), PhD, is a senior psychologist and leading researcher in the field of drugs and alcohol in Australia. He is Director of the Office of Public Policy and Ethics in the Institute for Molecular Biology at the University of Queensland. He was previously Professor and Executive Director of the National Drug and Alcohol Research Centre at the University of New South Wales. He has been series editor on psychiatric research for the *Australian and New Zealand Journal of Psychiatry*, deputy editor of the *Drug and Alcohol Review*, assistant editor of *Addiction*, and on the editorial advisory board of *Addiction Abstracts*. Professor Hall is a former member of the Australian National Council on Drugs. Since 1996, he has been a member of the World Health Organisation (WHO) Expert Committee on Drug Dependence. He has advised WHO on the health implications of cannabis, drug substitution treatment, and evaluation of the Swiss scientific studies of medically prescribed narcotics to dependent drug users. Professor Hall acted as technical adviser to the members of the project team.

Ian Siggins, MA (Melbourne & Yale), PhD (Yale), ThL, Adjunct Professor in the Faculty of Health Sciences at the University of Queensland, and Director of Siggins Miller Consultants. He has internationally recognised skills as an historian, researcher, educator, consultant and change agent. He was Australia’s senior health ombudsman for ten years, first as foundation Health Services Commissioner in Victoria and then as the first Health Rights Commissioner in Queensland. His many years’ experience in Australia and the US in human and civil rights as an anti-discrimination and health commissioner has placed him at the forefront of many reforms to equity policy. He provided expert advice to the report of the recently released Cape York Justice Study.

Sharon Sweeney, BA, MPoplnHlth, is a senior consultant with Siggins Miller Consultants. She worked for over 12 years in the public sector at Commonwealth and State levels developing public health policy and programs. A recent position in the Commonwealth Department of Health and Aged Care involved facilitating State partnerships and monitoring progress in Queensland on the Police and Court Drug Diversion Initiatives being funded under the National Illicit Drugs Strategy.

Marianne Jago, BA (Hons), LLB (UQ), MPhil (IR) (Oxon), recently completed a Master’s degree in International Relations at Oxford University, with a human rights focus. She has expertise in international politics and law, in particular native title. She has worked in the North Queensland Land Council Aboriginal Corporation in Cairns, and as a case manager with the National Native Title Tribunal in Brisbane.

Natalie Collie, BA (Hons, UQ), is a research officer with Siggins Miller Consultants. She is a doctoral candidate in the English Department of the University of Queensland, and holder of an Australian Postgraduate Award Scholarship.

Peter Steur, BA (UQ), LLB in progress, is a research assistant with Siggins Miller Consultants, and a postgraduate student in the Law School of the University of Queensland. He supported the team with retrieval and analysis of qualitative and quantitative information.
1. Literature review

1.1 Introduction

This review of the literature is intended to inform recommendations for diversion and treatment programs for Aboriginal and Torres Strait Islander youth with a psychoactive substance use disorder (PSUD) in contact with the criminal justice system.\(^1\)

It covers:

- treatment for adolescents with a PSUD
- diversion of offenders who commit drug-related offences
- treatment and diversion issues for Aboriginal and Torres Strait Islander youth.

In addition, we also investigate background issues that inform the development of recommendations, including issues confronting Australian Aboriginal peoples (the Royal Commission into Aboriginal Deaths in Custody; the ‘Stolen Generation’), the aetiology of PSUD and offending, and the juvenile justice system.\(^2\) Diversion and treatment principles have been developed from a broad field of research, but with little in-depth discussion of issues. For further information, we recommend the following key documents listed in the numbered references at the end of this report:

- the aetiology of PSUD \(^2\) and offending \(^4\)
- diversion of drug-related offenders \(^6\)
- treatment for adolescents with a PSUD \(^8\)
- treatment for adolescents with a PSUD in juvenile justice \(^9\)
- restorative justice in Australia \(^10\)
- criminal justice and Aboriginal people/juveniles \(^11\)–\(^13\)
- sentencing of Aboriginal offenders \(^14\)

In the great majority of cases, diversion occurs in relation to illicit drugs. Nevertheless, alcohol plays a major role in many of the problems encountered by Aboriginal and Torres Strait Islander young people. Accordingly, throughout this report PSUD should be read as including alcohol.

1.2 Method

1.2.1 Search methods

Spooner and colleagues previously reviewed the aetiology and treatment for adolescents with a PSUD \(^2\) and diversion of drug offenders from the criminal justice system.\(^6\) While those reviews noted that Aboriginal and Torres Strait Islander people tend to be exposed to greater risk of drug- and crime-related problems, issues for Aboriginal people were not explored in depth. The approach for this report was to build on, rather than duplicate, those reviews. Consequently, greater attention has been given to publications specific to the diversion and treatment of Indigenous youth than to the aetiology and treatment of adolescent PSUDs, and the diversion of offenders who commit drug-related offences. Searching was conducted using the following methods:

---

\(^1\) The legal definition of a ‘juvenile’ differs in different Australian jurisdictions (see Part 2 below). ‘Juvenile’ is used in this literature review only as part of accepted terminology (e.g. ‘juvenile detention centre’) or in relation to young people in contact with (or at risk of contact with) police and/or the juvenile justice system.


\(^3\) http://www.atsic.gov.au/default_ns.asp
1. Articles were identified using Web of Science with the following search term combinations:

- (aboriginal or indigenous) and (youth or young or adolescent or juvenile) and (crime or offending)
- drug and treatment and adolescent and review
- (crime or offence or illegal) and diversion and (adolescent or juvenile or youth)
- significant authors (e.g. Cunneen and Brady) plus keywords ‘indigenous or aboriginal’

‘Related records’ (a search facility of Web of Science) was used to identify articles relevant to this review.

2. Relevant websites, including (but not restricted to) the Australian Institute of Criminology, the NSW Bureau of Crime Statistics and Research, the Centre for Restorative Justice, ANU, and the Aboriginal and Torres Strait Islander Commission.

3. References cited by articles obtained by the methods above.

4. Reviewers of a draft of this report recommended some references.

1.2.2 Limitations

A liberal use of quotations reflects the intention to use existing reviews within the limitations of this project.

The literature review covers only those areas that had some direct relevance to the objective of identifying a preferred model for diversion for Aboriginal and Torres Strait Islander youth, including recommendations for preferred treatment programs. There is no attempt, for example, to provide a rationale for diversion strategies (see Spooner et al. (6)), or to demonstrate that drug treatment can be an effective means to reduce illegal drug use, crime and recidivism (see Lurigio (16) or the ANCD Research Paper on Evidence Supporting Treatment (17)).

1.3 Background

We first present background information of relevance to the diversion and treatment of Aboriginal and Torres Strait Islander youth with a PSUD from the criminal justice system.\(^5\)

Topics include issues for Aboriginal people in Australia, the juvenile justice system, offending among Indigenous adolescents, drug use among Indigenous adolescents, the aetiology of psychoactive substance use disorders (PSUD) and criminal behaviour, and the drugs–crime link.\(^6\)

---

\(^5\) The terms ‘youth’ and ‘young people’ are used to refer to people aged 0–25 years.

\(^6\) Psychoactive substance use disorder (PSUD) is substance use that meets DSM-IV Revised criteria for substance abuse or dependence. American Psychiatric Association (1994) Diagnostic and Statistical Manual of Mental Disorders. Washington, DC: APA. The term ‘drug use’ does not assume the presence of a PSUD.
1.3.1 Issues for Indigenous people in Australia

1.3.1.1 Colonisation

The history of Indigenous peoples since European settlement has been one of conflict and dispossession. Cunneen described this history:

There have been at least three modes of intervention into the lives of Aboriginal and Torres Strait Islander young people during the last two centuries. These forms of intervention have included the period of open warfare and resistance; the period of ‘protective’ legislation; and the contemporary period of criminalisation.\(^{(11)}\)

Cunneen asserted that these interventions disrupted families and communities. There was not the same separation or exclusion of children from the adult world, and responsibility for children and young people was allocated through the kinship system and the wider community.

Colonisation has wrought changes in these social patterns to varying degrees, either through disruption of whole communities and nations by expropriation of land or through specific policies aimed at the removal of Aboriginal children and young people.

Indigenous people now disproportionately suffer problems such as low levels of educational attainment \(^{(18)}\), high unemployment \(^{(19)}\), and high rates of mental and physical health problems.\(^{(20–22)}\) The New South Wales Parliament Standing Committee on Law and Justice noted:

One of the strongest legacies of this past history is that many Aboriginal people are extremely reluctant to go to government welfare agencies for assistance or support, so that the only contact then becomes in a time of crisis where again the issue of separation is a consideration.\(^{(23)}\)

1.3.1.2 Royal Commission into Aboriginal Deaths in Custody

The report of the Royal Commission into Aboriginal Deaths in Custody was published in 1991.\(^{(24)}\) One of the findings of the report was: ‘The first strategy to reducing the number of deaths in custody is to reduce the number of Aboriginal people coming into custody in the first place.’\(^{(24, p.133)}\) The report made 339 recommendations, concentrating on the underlying reasons that brought Aboriginal people to the attention of police. It sought changes in a range of areas, including police training, court and prison practices, government facilities and counselling services.

As Sarre noted, ‘In relation to sentencing practices, little was said, other than that imprisonment ought to be the consideration of last resort (recommendation 92).’ Sarre outlined the difficulty of solving the problems identified by the Royal Commission in sentencing practices:

Simple solutions are invariably laced with difficulties. What criteria does one use in order to sentence justly, for example, an Aboriginal defendant who has pleaded guilty or been found guilty of a serious crime? On the one hand, recognition needs to be given to the problems faced by Aboriginal Australians caught in a culture clash between ancient mores and colonial laws (Behrendt 1998). On the other hand, considerations of community safety (and the victim’s suffering) ought to be given importance too. Then again, there are arguments that there is an obligation under international law to recognise customary rights (Cassidy 1993). By the same token one might argue that there ought to be formal equality before the law. In the end, it is very difficult for one sentence to meet multiple expectations.\(^{(25)}\)
The issue of sentencing Indigenous offenders is discussed further below.

Cunneen reviewed the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody across Australia by 1997 (12) and in New South Wales by 2000.(26) In the 1997 national review, he said:

There has been a failure on the part of governments to adequately implement specific recommendations relating to the administration of the criminal justice system. This failure represents a massive lost opportunity to resolve critical issues that lead to the unnecessary incarceration of Aboriginal and Torres Strait Islander people.

There has been inadequate regard to a key recommendation on the need for negotiation and self-determination in the design and delivery of services. A failure to comprehend the centrality of this recommendation has negatively impacted on the implementation of a range of other recommendations.

There has been a wider socio-political context worked against the interests of Aboriginal people in receiving fair and just treatment from the legal system. There has been a stronger emphasis on more punitive approaches to law and order in many Australian jurisdictions since the Royal Commission into Aboriginal Deaths in Custody reported. This more punitive approach has been particularly evident in changes to sentencing law, but also affects other areas such as the decriminalisation of public drunkenness.(12)

In relation to juveniles in the criminal justice system, Cunneen wrote:

The recommendations require that Aboriginal communities and organisations should be negotiated with to find the best solutions to the problem of over-representation. They should also be resourced to provide adequate non-custodial community-based alternatives. Another section of the recommendations deals primarily with police practices involving the adequate use of diversionary facilities for Aboriginal and Torres Strait Islander young people.(12)

In 1997, he said, there was still wide scope to further implement these recommendations:

Despite formal commitment by governments, the recommendation requiring negotiation with Aboriginal communities and organisations to reduce incarceration levels has not yet been adequately implemented. There is also a strong apprehension that the current political climate in relation to juvenile offending is one which is going to see more Aboriginal and Torres Strait Islander young people in custody.

There has been a general improvement in the extent to which Aboriginal organisations can contribute to decisions about individual young people appearing before the courts. However, it is also clear that there are variations between States and different regions within States as to the extent to which the recommendation has been implemented on the ground.

It is clear that greater resourcing is needed for community-based and devised strategies for young people. No matter what non-custodial options are available in juvenile justice legislation, the central issue is the extent to which they are applied in practice.
All jurisdictions claim to have implemented the recommendation requiring the use of summons rather than arrest for juveniles. However, because of inadequate monitoring it is difficult to know what the standard operational practice may be. We also do not know whether decisions are applied equitably to Aboriginal and Torres Strait Islander young people.

The use of cautioning varies considerably among the States. Those jurisdictions that restrict cautioning to first offenders only, effectively limit the availability of the option to Aboriginal and Torres Strait Islander young people. Few jurisdictions have picked up on the need for proper evaluation. Indeed, for many jurisdictions it is impossible to know how often cautioning is used for Indigenous young people compared to non-Indigenous youth.

The recommendation requiring that juveniles not be held in police cells unless there are exceptional circumstances is poorly implemented by State and Territory governments. Indigenous young people are still held in police lock-ups across the length and breadth of the country. The Federal Government has sought exemption from complying with the international instrument that seeks to achieve the same end as the Royal Commission’s recommendation.(12)

In important respects, the States and Territories have addressed Cunneen’s criticisms in the intervening years.

1.3.1.3 Separation of young people from families

As mentioned above, Cunneen has described three modes of intervention into the lives of Aboriginal young people during the last two centuries (warfare, ‘protective’ legislation and criminalisation).(27) In 1995, the Federal Attorney-General established a national inquiry into the separation of Aboriginal children from their families by compulsion, duress or undue influence, and the effects of those laws, practices and policies. The Human Rights and Equal Opportunity Commission (HREOC) conducted the inquiry, and the final report was produced in 1997 (Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families).(28) It made multiple recommendations, including a range of changes to the criminal justice system to reduce exposure of Aboriginal youth to the system. 7

Drawing on the National Inquiry, Cunneen has written:

The high levels of criminalisation and subsequent incarceration of Indigenous young people in Australia effectively amount to a new practice of forced separation of Aboriginal and Torres Strait Islander children and young people from their families. The failure to reform juvenile justice law and practice, the failure to remedy the social justice issues facing Indigenous youth, and the failure to respect the right of self-determination of Indigenous people mean that in practice the human rights of Indigenous young people and their families are being abused. This abuse of human rights parallels the earlier genocidal policy of assimilation.(29)

1.3.1.4 Self-determination

Self-determination is one of a number of fundamental human rights included in the United Nations draft Declaration on the Rights of Indigenous Peoples, and the Council of Australian Governments’ statement National Commitment to Improved Outcomes in Program and Service Delivery for Aboriginal Peoples and Torres Strait Islanders. It also is an important element of effective diversion strategies with Aboriginal peoples.

The New South Wales Parliament Standing Committee on Law and Justice inquired into the relationship between crime and the types and levels of social support afforded to families and communities. With respect to Aboriginal communities, the Committee noted the importance of self-determination and ‘the practical importance of reconciliation as a starting point for effective crime prevention’.

The committee emphasises the importance of applying self-determination in crime prevention in Aboriginal communities, as there is little evidence of success of programs imposed from outside their communities. Self-determination includes ensuring Aboriginal communities have input into the program from its beginnings through to implementation. The committee sees the need to strengthen the role of authority figures in Aboriginal communities, such as Elders. Recommendations include involving Aboriginal leaders in police cautioning of young offenders and consultation in decisions about interventions in families where there are claims of neglect.

Self-determination was explained specifically as being ‘concerned with effective input into how current processes work and how decisions are made’.

They noted that the ‘importance of self-determination is not a new concept; it underlies the recommendations of the reports on the Inquiry into Aboriginal Deaths in Custody and the Inquiry into the Separation of Aboriginal and Torres Strait Islander Children, and those inquiries contain many recommendations which seek to bring greater input by Aboriginal people into the practices and policies of welfare and criminal justice agencies. Progress is slow in implementing these recommendations.’

The New South Wales Parliament Standing Committee on Law and Justice quoted Human Rights Commissioner Chris Sidoti:

All of our crime prevention and support responses to Indigenous people must be based on the principle of self-determination. This requires, among other things, consultation with Indigenous communities and respect for the decision-making roles of Indigenous organisations. It requires us to assist communities as far as possible to decide what is best for themselves and to go ahead and do it, and it requires the commitment of the level of resources necessary to address the entrenched poverty and disadvantage that they experience.

In sum, the history of Indigenous Australians since white colonisation has been marked by dislocation, separation of children from their families, and disruption to Indigenous societal structures. Resulting social and health problems, including but not restricted to psychoactive substance abuse

and criminal behaviour, must be addressed to reduce Indigenous involvement in the criminal justice system. Self-determination has been promoted as a fundamental principle in this process.

1.3.2 The juvenile justice system

1.3.2.1 Differences with the adult system

The criminal justice system is different for juveniles and adults. Minors are subject to different legislation, appear before juvenile courts and, if sentenced to detention, attend juvenile justice centres. Relative to the adult system, the juvenile justice system is generally regarded as oriented more to rehabilitation than to punishment (though it has been argued that more is needed in this direction).(31) Cunneen has noted a ‘general trend both towards a greater reliance on restorative justice mechanisms, the greater use of diversionary options for young people, and the development of specific Indigenous response to crime and disorder’. (13)

On the negative side, it has been argued that juveniles in the criminal justice system lack procedural rights and legal representation.(32) O’Connor has argued that there are some negative trends within the juvenile justice system: ‘In all States there has been a shift to the justice model with a renewed focus on the offence, proportionality of punishment, the payment of lip-service to due process rights and a superficial commitment to non-intervention for non-criminal behaviour.’(33)

The basis for treating juveniles differently from adults is generally made on the assumption that juveniles are more treatable, less culpable and less able to be deterred than adults. Woolard, Fondacaro and Slobogin reviewed the literature on these three hypotheses. (34)

1. Propensity to respond to treatment

Woolard et al. concluded that there was no evidence to suggest that recidivism among juveniles is more, less or equally treatable than among adults. They did note, however, that:

Research on the additive and/or cumulative effects of risks factors does indicate that early intervention can be more efficient, and perhaps more effective, than waiting until negative outcomes have begun to accumulate (Yoshikawa 1994; Zigler, Taussig & Black 1992). Furthermore, earlier involvement in delinquency is clearly associated with more persistent and serious offending patterns (Elliott 1994; Farrington 1997). Developmental changes in autonomy, independence, identity formation and moral reasoning may also differentiate adolescents’ receptivity to treatment from treatment receptivity of adults. (34)

2. Culpability

Research on decision-making capacity suggests that developmental influences result in different decision-making strategies and choices for adolescents; that is, adolescents make different decisions than they presumably would once they matured (Scott 2000). For example, theoretical work on judgment posits that developmental factors lead adolescents to use and process information differently (and less effectively) than adults when considering legally relevant decisions (Scott, Reppucci & Woolard 1995). Literature reviews and preliminary empirical work indicate that a multitude of age-based factors are related to juveniles’ decision-making capacities. They include a foreshortened time perspective, a greater proclivity for risk behavior, changing estimates of risk likelihood, propensity to be influenced
by peers, and reduced social responsibility or 'stake in life' (Cauffman, Woolard & Reppucci 1999; Scott et al. 1995; Steinberg & Cauffman 1996).(34)

Similarly, Cauffman and Steinberg’s research has identified lower competence in logical reasoning and socially responsible decision making among adolescents relative to young adults.(35) They concluded that laws and social policies should accommodate this inequality.

3. Propensity to deterrence

On the effectiveness of the deterrence approach with juveniles,

A recent meta-analysis of juvenile justice intervention efficacy suggests that deterrence-based interventions not only do not reduce recidivism among juveniles, but may actually have negative effects … deterrence may be more effective with older adolescents and adults who have developed an increasing stake in their future and a lessening preference for risk than younger adolescents.(34)

1.3.2.2 Juvenile justice options

Strang noted that most jurisdictions have three tiers in their juvenile justice system: police cautions, conferencing and youth courts.(10) Conferencing is mainly available for, or used with, juveniles rather than adults (10), and is further discussed below. While there are similarities, there are also significant differences in juvenile justice systems (legislation, policies, programs) among jurisdictions. For example, Cunneen discussed different mandatory sentencing legislation in Western Australia and the Northern Territory, and how this has disproportionately affected Indigenous youth in those jurisdictions.(13)

1.3.2.3 Principles of juvenile justice

Cunneen has described common principles in juvenile justice. Many State and Territory jurisdictions, he says, have stated legislative objectives and principles to guide decision making within the system, particularly in sentencing. ‘The common thread … has been the need to deal with children in a way which is appropriate to their stage of maturity and to reinforce the fundamental importance of rehabilitation.’

Despite differences among the jurisdictions, the basic principles in Australian legislation are rehabilitation and family and community reintegration, and seek a proper balance between holding a young person responsible for their actions and ensuring that they realise their potential and develop into useful and responsible community members. Cunneen says the guiding principles in legislation can be summarised as follows:

Children should be punished in a way

• which gives them the opportunity to develop in responsible, beneficial and socially acceptable ways
• which allows for their development into responsible and useful members of the community
• which allows for the proper realisation of their potential
• which allows the education or employment of the child to proceed without interruption
• which allows the child to reside in his or her own home.(13)
1.3.2.4 Health problems among juveniles in detention

Among those juveniles who receive a sentence of detention, many have significant health problems including respiratory illness, such as bronchitis and asthma, histories of significant physical injury, and mental health problems including substance abuse.\(^{(36–38)}\) Similarly, multiple health needs of juveniles in detention have been noted in the US.\(^{(39, 40)}\) Many of these problems are pre-existing on entry to the criminal justice system, and need to be considered in planning treatment.

1.3.3 Offending by Indigenous youth

1.3.3.1 Types of offences

In devising appropriate diversion options, the type and seriousness of offences committed by the target group need to be considered.\(^{(7)}\) Drug offences per se are rare among Indigenous offenders and among the general population.\(^{(6, 27)}\) The offences committed by Indigenous youth most commonly detected by the criminal justice system are ‘other theft’ (25 per cent), breaking and entering (22 per cent), good order, traffic and rail offences (20 per cent) and grievous assault and malicious wounding and other assault (18 per cent).\(^{(27)}\) Diversion for violent offences is not typically permitted, suggesting the need for diversion activity across the full spectrum of the criminal justice system.

A detailed breakdown of the types of offences committed by Aboriginal relative to non-Aboriginal juveniles in New South Wales is presented in Table 1.1.

The New South Wales Attorney General’s Department reported that:

Aboriginal youth tend to commit similar crimes to non-Aboriginal youth (property offences are 64 per cent of the total for Aboriginal and 60 per cent for non-Aboriginal) but the former commit more serious break and enters and far fewer shoplifting offences and are arrested for more public order offences. These differences are probably due to several factors such as (1) the exercise of police discretion, (2) different environmental opportunities between urban and rural areas, (3) a culture of resistance against non-indigenous persons and property, and (4) the overall inferior position of indigenous people with regard to health, economic position, education and welfare dependency.\(^{(41)}\)

1.3.3.2 Over-representation of Indigenous juveniles in criminal justice system

Another reason for an interest in the types of offences committed by Indigenous youth is the possibility that their over-representation in the criminal justice system is because they commit more frequent and more serious offences than non-Indigenous youth. Cunneen, Gale and colleagues have discussed problems with this interpretation as follows:\(^{(27, 42)}\)

- Statistics are kept of detection by police rather than offences committed. These statistics are influenced by factors such as police discretion and the sophistication of the offender.
- Indigenous youth (particularly those in rural areas) tend to be subject to different environmental influences compared with non-Indigenous youth. For example, simple theft and shoplifting are primarily urban crimes with low clear-up rates.
There is greater chance of being caught breaking into a home in a rural area than of shoplifting in an urban area.

- Higher rates of violent offences could stem from the tendency for Indigenous people to congregate in public places.

There have been many reports of over-representation of Indigenous juveniles in the criminal justice system.\(12, 43-47\) The report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, \textit{Bringing Them Home}, highlighted one negative impact of this over-representation:

The removal of Indigenous children and young people can occur by way of juvenile justice intervention either through the use of police custody or through the incarceration of a young person in a juvenile detention centre. The length of separation can vary from a few hours or days to months or years. However, as submissions to the Inquiry noted, the effects of the separation can last a lifetime.\(28\)

Reasons for this over-representation have been discussed elsewhere.\(28, 48-51\) For example, Cunneen noted that the National Inquiry identified numerous social, economic and cultural factors, which contribute to the likelihood of increased intervention by juvenile justice in the lives of Indigenous children and young people. Some of the factors arise from cultural difference. Others are the outcome of dispossession and

<table>
<thead>
<tr>
<th>Offences</th>
<th>Non-Aboriginal %</th>
<th>Aboriginal %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide and manslaughter</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Armed robbery</td>
<td>0.3</td>
<td>0.1</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>0.5</td>
<td>0.3</td>
</tr>
<tr>
<td>Drug trafficking</td>
<td>0.4</td>
<td>0.0</td>
</tr>
<tr>
<td>Unarmed robbery</td>
<td>0.4</td>
<td>0.4</td>
</tr>
<tr>
<td>Grievous assault and malicious wounding</td>
<td>6.1</td>
<td>7.1</td>
</tr>
<tr>
<td>Other assault</td>
<td>6.4</td>
<td>10.7</td>
</tr>
<tr>
<td>Breaking and entering</td>
<td>14.1</td>
<td>22.0</td>
</tr>
<tr>
<td>Stealing motor vehicle</td>
<td>11.1</td>
<td>8.8</td>
</tr>
<tr>
<td>Shoplifting</td>
<td>6.0</td>
<td>3.8</td>
</tr>
<tr>
<td>Other theft</td>
<td>32.5</td>
<td>25.3</td>
</tr>
<tr>
<td>Good order, traffic and rail offences</td>
<td>17.5</td>
<td>19.9</td>
</tr>
<tr>
<td>Other drug offences</td>
<td>3.9</td>
<td>1.0</td>
</tr>
<tr>
<td>Other offences</td>
<td>0.8</td>
<td>0.5</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

marginalisation, which manifest themselves in high levels of poverty, ill health and homelessness. The Inquiry noted that cultural difference, particularly different familial structures and child-rearing practices can lead to adverse decisions by juvenile justice, welfare and other agencies, particularly where cultural difference is not understood or does not inform policy development and implementation.(13)

There have been many studies and reports on when over-representation occurs in the criminal justice system. Mugford’s review of this literature suggested that ‘the relative degree of over-representation occurs at the policing level rather than during court decision making. In support of this finding there is research which suggests that the courts do take into account various social, economic and other disadvantages related to an offender’s membership of an Aboriginal community.’(52) Mugford noted the jurisdictional differences in the degree of over-representation of Aboriginal youth:

In Queensland, for example, the Juvenile Justice Act 1992 ... acknowledges the vulnerability of children in dealing with authority figures in the criminal justice system, and highlights the particular vulnerability of Indigenous children in this regard. The Act further requires that prison be used as a last resort. In contrast, the Crime (Serious and Repeat Offenders) Sentencing Act 1992 in Western Australia ... imposes harsh minimum sentences for repeat offences that could result in increases both in the prison population and Aboriginal over-representation. The Act was targeted mainly, though not exclusively, at young offenders who steal cars and drive them dangerously.(52)

A more recent analysis of relative over-representation of Indigenous people at different stages of the criminal justice system in New South Wales reported:

The findings indicate that the over-representation of Indigenous persons stems initially from their higher rate of appearance at court, but is amplified at the point of sentencing, with Indigenous offenders sentenced to imprisonment at almost twice the rate of non-Indigenous persons. The violent nature of Indigenous convictions and the greater likelihood of Indigenous persons having prior convictions were found to contribute to their higher rate of imprisonment. These findings suggest that the greatest leverage for reducing Indigenous imprisonment rates appears to lie in reducing the rate at which Indigenous persons appear in court rather than in reducing the rate at which convicted offenders are sentenced to imprisonment.(53)

Further, Baker found that:

The greater rate at which ATSI defendants receive prison sentences in the Local Court is not necessarily due to discriminatory sentencing practices by magistrates. The greater likelihood of a prison sentence may be partly because ATSI defendants are more likely to be convicted of a violent offence and, partly, because they are more likely to have a prior criminal record.(53)

Cunneen has discussed over-representation at two stages of the criminal justice system, in the context of mandatory sentencing proposals.
1.3.3.3 Pre-court discretionary decisions and Indigenous youth

Cunneen asserted: ‘There is now substantial evidence which demonstrates that Indigenous young people are more harshly dealt with by the juvenile justice system prior to their appearance in court.’(13) He summarised the main points from the discussion of the discriminatory aspects of discretionary decision making in the juvenile justice system from the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.(28)

In relation to the adverse use of police discretion the Inquiry found that:

- arrests for public order offences still constitute a significant reason for the involvement of Indigenous young people in the juvenile justice system and that arrests of Indigenous young people are increasing ...
- various types of legislation to regulate the behaviour of Indigenous young people in public places (including welfare, local government and ‘parental responsibility’ legislation) contribute to over-policing ...
- all the available research evidence shows overwhelmingly that Indigenous young people do not receive the benefits of police cautioning schemes to the same extent as non-Indigenous young people ...
- Indigenous young people are more likely to be proceeded against by way of arrest rather than by summons than are non-Indigenous young people in both Western Australia and the Northern Territory. The process itself negatively affects the judiciary’s perception of the seriousness of the offence and the offender ...
- there is widespread and disproportionate use of police custody for Indigenous juveniles ...

The Inquiry found that in relation to diversionary schemes such as ‘family group conferencing’ police control over the referral process has meant that there has been limited diversion for Indigenous young people ...

In Western Australia, Aboriginal and Torres Strait Islander organisations have argued that there is a lack of empowerment for Aboriginal and Torres Strait Islander families or communities which would assist in utilising the diversionary options which are offered ...

All of the above evidence shows that discriminatory treatment within the justice system means that Indigenous young people are more likely to appear in court, are more likely to have a prior record, and they are more likely to fall within the mandatory sentencing regimes.(13)

1.3.3.4 Sentencing decisions and Indigenous youth

Cunneen also summarised the main points from the National Inquiry about discriminatory decision making at the point of sentencing.

Greater likelihood of incarceration was caused by a number of factors including:

- greater likelihood that an Indigenous young person came from a rural background and appeared before a non-specialist Children’s Court (or Justice of the Peace). Geographic isolation also raises issues of inadequate legal representation, fewer non-custodial sentencing options and harsher sentencing attitudes by non-specialist magistrates
greater likelihood that an Indigenous young person has been institutionalised previously, was less likely to have received a diversionary alternative to court, and was more likely to have a greater number of prior convictions. Each of these factors increased the likelihood of a custodial order ...

formal intervention occurs at a younger age with Indigenous children, they accumulate a criminal record at a much earlier age than non-Indigenous children

earlier discrimination in the system results in Indigenous young people being less likely to be considered for non-custodial options. Early discrimination compounds as the young person moves through the system. Apparently equitable treatment at the point of sentencing may simply mask earlier systemic biases.(13)

In sum, over-representation of Indigenous youth occurs at multiple points in the criminal justice system and is caused by multiple factors, suggesting that multiple strategies are required to address this problem.

1.3.3.5 Impact of contact with the criminal justice system on Indigenous juveniles

The negative impacts of contact with the criminal justice system for any person have been reviewed elsewhere.(6) Cunneen and White discuss the damaging impact of incarceration for Indigenous people:

Incarceration has been criticised on many grounds: ineffective; criminogenic, stigmatising; expensive; and inhumane. It is also important to consider the effects of gathering often already marginalised young people into segregated groups. Such policies are likely to increase resentment and alienation.(11)

There has been particular concern that arrest has been found to reduce the probability of employment, particularly among Indigenous people.(54–56) Spooner et al. have also discussed the limited effectiveness and negative consequences of criminal justice sanctions.(6) A particular concern for young people is the impact of labelling young people as offenders. Spooner, Mattick and Howard discussed this issue in relation to PSUD, but it is also relevant to offending:

Kaplan and Johnson found that the strongest predictor of increased substance use was the effect of specific labelling: substance use increased as a result of getting into trouble because of initial substance use.(57) According to labelling theory, ‘deviant behaviour or social roles based upon it, which becomes a means of defence, attack, or adaptation to the overt and covert problems created by the societal reaction to primary deviantion’.(58) Kaplan and colleagues explained that negative social sanctions (labelling) lead to an escalation of substance use via three paths:(59)

- a) by perceiving the label of ‘substance user’ as a positive thing, substance users can have a more positive self-evaluation and greater self-acceptance
- b) having been alienated by society because of being a substance user, the substance user loses motivation to conform to that society
- c) having been alienated by society because of being a substance user, the substance user has less opportunity to socialise with non-substance users; this leads to increased involvement with substance-using groups, hence greater opportunity and encouragement to use substances.(8, pp.2–12)
Similarly, being labelled as an offender, being given a criminal record, being sanctioned, can contribute to a young person’s offending career, as they adopt the given label of ‘offender’.

On the other hand, Ogilvie and Van Zyl report how detention can be attractive to some Indigenous youth from remote communities, as it provides resources and experiences that cannot be obtained in the home community, and there is little stigma or impact upon already ‘slim’ employment prospects in going to detention.(60) They concluded that community interventions are required to address the level of social disorder in the communities from which these young Indigenous offenders come.

### 1.3.4 Drug use among Indigenous adolescents

Gracey has noted that, while Indigenous child health has improved over the past two decades, ‘the use of addictive drugs, including the sniffing of petrol, glue and other volatile substances, is cause for serious concern for the future health and well-being of Aboriginal youth and their families’. (61)

There have been some indications of higher rates of substance use among Aboriginal adolescents than non-Aboriginal adolescents. Forero and colleagues reported on data from the 1996 survey of drug use by secondary school students in New South Wales. (62) The prevalence rates of drug use behaviours by Aboriginal and non-Aboriginal students aged 12–17 years are presented in Table 1.2.

<table>
<thead>
<tr>
<th>Substance type</th>
<th>Pattern of use</th>
<th>Aboriginal students</th>
<th>Non-Aboriginal students</th>
<th>Adj OR*</th>
<th>Significance*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol</td>
<td>Hazardous</td>
<td>53</td>
<td>35</td>
<td>2.1</td>
<td>&lt;0.001**</td>
</tr>
<tr>
<td>Cannabis</td>
<td>Ever tried</td>
<td>50</td>
<td>36</td>
<td>1.6</td>
<td>&lt;0.01**</td>
</tr>
<tr>
<td>Analgesics</td>
<td>Weekly</td>
<td>37</td>
<td>37</td>
<td>1.0</td>
<td>&gt;0.05 ns</td>
</tr>
<tr>
<td>Alcohol</td>
<td>Weekly</td>
<td>34</td>
<td>32</td>
<td>1.0</td>
<td>&gt;0.05 ns</td>
</tr>
<tr>
<td>Inhalants</td>
<td>Ever tried</td>
<td>33</td>
<td>27</td>
<td>1.1</td>
<td>&gt;0.05 ns</td>
</tr>
<tr>
<td>Tobacco</td>
<td>Weekly</td>
<td>31</td>
<td>21</td>
<td>1.5</td>
<td>&lt;0.01**</td>
</tr>
<tr>
<td>Sedatives</td>
<td>Ever tried</td>
<td>25</td>
<td>20</td>
<td>1.1</td>
<td>&gt;0.05 ns</td>
</tr>
<tr>
<td>Hallucinogens</td>
<td>Ever tried</td>
<td>15</td>
<td>10</td>
<td>1.4</td>
<td>&gt;0.05 ns</td>
</tr>
<tr>
<td>Amphetamines</td>
<td>Ever tried</td>
<td>12</td>
<td>7</td>
<td>1.3</td>
<td>&gt;0.05 ns</td>
</tr>
<tr>
<td>Ecstacy</td>
<td>Ever tried</td>
<td>10</td>
<td>4</td>
<td>2.0</td>
<td>&lt;0.01**</td>
</tr>
<tr>
<td>Cocaine</td>
<td>Ever tried</td>
<td>10</td>
<td>4</td>
<td>1.9</td>
<td>&lt;0.01**</td>
</tr>
<tr>
<td>Narcotics</td>
<td>Ever tried</td>
<td>10</td>
<td>4</td>
<td>1.7</td>
<td>&lt;0.05 *</td>
</tr>
</tbody>
</table>

a Odds Ratios and significance calculated after adjusting for age, gender, spending money, family type, missing school days for illness, and wagged school.

ns = not significant, p >0.05
* = significant, p <0.05
** = significant, p <0.01
After adjusting for age, gender, spending money, family type, missing school days for illness, and wagged school, analysis found that Aboriginal students were significantly more likely to drink alcohol at hazardous levels, to smoke cigarettes, and to have tried cannabis and some other illicit drugs.\(^{(62)}\)

The school-based survey was consistent with a national household survey of 2993 Aboriginal people in urban areas conducted in 1994.\(^{(63)}\) The national household survey identified that illicit drug experimentation was higher among Aboriginal people than in the general urban population, with 50 per cent having tried at least one illicit drug, compared with 38 per cent in the general community. Most of this higher prevalence was accounted for by cannabis use: 48 per cent of Aboriginal people compared with 36 per cent of the general community had tried cannabis.\(^{(63)}\) Since that survey, there have been reports of problematic cannabis use in some remote communities.\(^9\)

Research with injecting drug users has found an over-representation of Aboriginal people. For example:

- 17 per cent of a sample of 400 heroin users in Sydney, recruited between October 2000 and March 2001 through needle exchange programs, a methadone maintenance clinic and snowballing, identified as Aboriginal.\(^{10}\)

- 11 per cent of clients in drug treatment on the day of the last census of drug treatment agencies identified as Aboriginal.\(^{(64)}\) Given that a number of Aboriginal treatment agencies did not complete the census,\(^{11}\) this figure is likely to be an underestimate of the percentage of people in drug treatment programs who identify as Aboriginal.

Further discussions of alcohol \(^{(65, 66)}\) and other drug use by Aboriginal people \(^{(67, 68)}\) and solvent use by young Aboriginal people, particularly in remote communities \(^{(69)}\), are presented elsewhere.

In sum, there are some indications of higher rates of hazardous alcohol use, tobacco consumption and illicit drug use among Aboriginal youth than non-Aboriginal youth, with particular pockets of problems, including petrol sniffing in some rural communities and injecting drug use in urban areas. These localised problems suggest the need for community approaches, at least in some instances.

1.3.5 Aetiology of psychoactive substance use disorders and offending behaviour

Reviews of the research on the aetiology of psychoactive substance abuse disorders (PSUD) among adolescents have been published elsewhere.\(^{(3, 70)}\) Some have noted the particular importance of families.\(^{(15, 71)}\)

Reviews of the research on the aetiology of juvenile offending have also been published

---

\(^9\) Personal communication: Professor Wayne Hall, then Executive Director, National Drug and Alcohol Research Centre, 2001.

\(^{10}\) Personal communication: Carolyn Day, PhD candidate, National Drug and Alcohol Research Centre, 2001, from initial analysis of data from a study of treatment service use by heroin users in Sydney by Carolyn Day, Kate Dolan, Joanne Ross, Bethany White, National Drug and Alcohol Research Centre (2001).

\(^{11}\) Personal communication: Fiona Shand, Senior Research Assistant, National Drug and Alcohol Research Centre, 2001.
elsewhere.(4, 5, 72, 73) Reviews focused on aggression have been published following increased concern about violent offences by young people.(74–78) PSUD and criminal behaviour often co-exist (79) and share common aetiologies.(80) While many will cease or reduce offending with age and adoption of adult roles (73, 81–83), the earlier they start, the more likely they are to persist.

The aetiological research found there are multiple risk and protective factors for offending and PSUD, and therefore single-risk factor approaches are unlikely to work. In particular, approaches that focus on the individual are unlikely to be successful.(2)

- **Macro-environmental factors**: Interventions with individuals can only ever have limited impact, given the impact of broader factors such as socio-economic status, the physical environment and socio-economic gaps.(2) 

- **Family factors** have direct and indirect impact on youth drug use and delinquency, so have an important role in interventions.(15) For example, the family can mediate the impact of socio-economic disadvantage on criminal behaviour.(73)

- **School factors**: There has been some debate about the association between IQ, school performance and criminal involvement.(73) However, interventions that improve school performance have been found to reduce involvement in crime.(84)

- **Peer factors**: Association with delinquent peers contributes to peer attitudes as well as knowledge of crime, which then contributes to criminal behaviour.(73) Strong parental attachment and controls can mediate peer influences.(15) Detention can provide negative peer influences that contribute to criminal behaviour.(11)

- **Community factors**: Rose and Clear noted that ‘an over-reliance on incarceration as a formal control may hinder the ability of some communities to foster other forms of control because they weaken family and community structures. At the ecological level, the side effects of policies intended to fight crime by controlling individual behaviour may exacerbate the problems they are intended to address. Thus, these communities may experience more, not less, social disorganisation.’(85)

While the focus of this report is on early intervention and treatment, the need for preventive strategies is also noted, especially at the community level. Beresford and Omaji have argued that there is a need for primary as well as secondary prevention interventions:

At least two distinct types of intervention are needed to address the marginalisation and criminalisation of many Aboriginal youth. Firstly, a primary intervention strategy must address the underlying causes of social disadvantage experienced in the daily lives of Aboriginal youth. In addition, a secondary intervention strategy must focus on those Aboriginal youth currently on the treadmill of the criminal justice system.(86)

Brady has argued for more secondary prevention and early intervention strategies for Aboriginal communities.(87)

---


1.3.6 Aetiology of substance use problems among Indigenous youth

As part of an investigation into PSUD among adolescents published in 1996, Spooner, Mattick and Howard studied PSUD among Indigenous youth. We quote from that investigation:

Brady has conducted and written up a significant amount of ethnographic research with Indigenous Australian populations, particularly non-urban populations and with a particular interest in substance abuse by those aged 12 to 25. Brady has stressed that Indigenous Australian adolescents are, in many ways, similar to adolescents from other cultures. For example, solvent use and excessive alcohol use tend to be a result of the desire to be part of the peer group, because the experience is pleasurable, and because of parental role models.

However, a number of differences exist between Indigenous and non-Indigenous Australian adolescents that contribute to substance abuse. Hunter discusses how the degree of disadvantage faced by Indigenous Australian adolescents contributes to their substance-related problems. Relative to non-Indigenous Australian adolescents, Indigenous Australian adolescents are more likely to experience unemployment, less likely to possess work qualifications, more likely to live in public housing, and more likely to be placed in a juvenile detention centre.

Numerous, predominantly US, models exist to explain substance abuse among Indigenous populations. However, no model has been agreed upon and the applicability of the models to Indigenous Australian adolescents is not known. From a local perspective, Brady argues that Indigenous Australian substance abuse is explained by different antecedents from non-Indigenous Australian substance use:

These relate to dispossession, colonisation, low socio-economic status and rapid social change. These are all eminently social factors. In other words, in contrast to our understanding of drug abuse in Western society, the reasons for Aboriginal drug abuse are seen to be primarily external, imposed factors rather than individual traits.

Brady argues that notions of autonomy and relatedness, integral to Indigenous Australian culture, appear to have exacerbated problematic substance use by Indigenous Australian adolescents:

Aboriginal social life, in the areas where I undertook my research, is marked by an emphasis on the autonomy of the individual, while at the same time it stresses notions of relatedness between people — connections that require constant outward expression through generosity, compassion and concern ... Young people are treated as autonomous individuals, and learn from an early age that they have a wide range of freedoms — a much wider range than would be tolerated by most white Australians ...

Drinkers of alcohol and sniffers of petrol (both groups predominantly male) are able to transform the notion of personal autonomy, and the emphasis...
on generosity and indulgence, to their own ends. At their disposal are communities of people who have been socialised into the belief that to refuse the direct request of a relative is tantamount to admitting that they do not care for them, and that to remonstrate or dissuade them from their drug use is to interfere with their right to do what they please with their own bodies.(69, pp.73–74)

Among some Indigenous Australian communities, adolescent substance misuse is perceived to have gone beyond their control. In regard to volatile substance abuse, Brady wrote:(8)

A major social ramification of sniffing has been that the behaviour of these young people has caused a crisis of faith among Aboriginal people in their society’s ability to deal with problems. Young people who sniff exert considerable power over others, both because they are in an altered state which is bewildering and frightening to the uninitiated, and because in this altered state they often run wild, breaking windows, causing affray and screaming out ... At a loss to deal with the unwillingness of young sniffers to listen to their parents, many adults leave their children to their own devices and hope that outside help and programs, or even institutionalisation, will solve the problem.(22, p.24)

Brady has discussed risks and vulnerabilities for drug use problems relating to family, peer, school, community and economic issues among Aboriginal peoples, as follows.(91)

1.3.6.1 Families

Families and welfare: Welfare authorities’ views of what constitutes a stable living environment have contributed to institutionalisation (‘stolen generation’), poor self-esteem, excessive drinking and offending. Help of welfare workers tends now to be rejected with suspicion, as people fear their children will be removed.

In remote areas, welfare workers have difficulty persuading parents of offenders to accompany them to court and in taking on greater supervision as ordered by the court. This is because much juvenile offending in these circumstances is of no relevance to families, especially if the offences are against the property of white staff, or community property over which individuals have no control. Juvenile offending often simply does not threaten the normative order of life of Aboriginal residents, so it is ignored.(14)

Parenting: Many Aboriginal children have been removed from the family and institutionalised, either by being taken away from their natural family (‘stolen generation’ – particularly Aboriginal people living in settled areas) or being raised in missions (particularly remote communities). This has resulted in a lack of parental role models.

Cultural values and beliefs: Aboriginal parents have difficulty bringing up young people, due to the history of separation, institutionalisation and interference to normal parenting (above), but also due to cultural factors. For example, Aboriginal social life is marked by an emphasis on the autonomy of the individual, while emphasising connectedness, love and generosity. This results in a reluctance to impose one’s will on another and high tolerance for drug use and offending.
1.3.6.2 Youth and peer groups

Even in remote settlements, Aboriginal youth are more exposed to same-age peers (for example, through schools) than was the case in the early twentieth century. This has increased the role of peers. Urban Aboriginal adolescents have been described as dealing with adult concerns earlier than non-Aboriginal adolescents, for example, finding work, child-rearing and coming to terms with issues of identity. Drug and alcohol abuse has been described as a means of refusing to surrender to the ‘required conformities of mainstream adult life’.

1.3.6.3 Schooling

Aboriginal children have high truancy rates, leave school early, and have low literacy and numeracy skills. In remote areas, many parents do not insist their children attend school. School appears irrelevant to many Aboriginal children. The New South Wales Parliament Standing Committee on Law and Justice discussed the impact of truancy on Aboriginal students and identified strategies for addressing this problem.(23)

1.3.6.4 Communities

The ‘short history of experience with collective decision making, together with cultural norms of tolerance towards others’ activities both provide impediments to groups action on access to alcohol’. This comment could apply more broadly to community action addressing other substance problems as well as alcohol.

In discussing alcohol use, Homel and colleagues have reported how different Aboriginal communities structure alcohol use. In some, it is ‘an important means of exchange with its basis in traditional Aboriginal practices of reciprocity’. In others, it is a means of empowerment. He concluded that ‘when designing programs to address high alcohol consumption, the cultural and social factors related to the practice should be taken into account before, for example, assuming that people are individually pathological’.(92)

1.3.6.5 Economic issues

Aboriginal people are disproportionately affected by unemployment and low economic status, risk factors for drug and alcohol use and imprisonment.(93)

1.3.6.6 Other

Prevalence of heavy drinking, and in some communities sniffing, is so high that it is normalised. Young Aboriginal children grow up with it: ‘drinking was seen as the enactment of equality with non-Aborigines. For this reason, there were deep-seated objections to prohibitory rules’.

1.3.6.7 Resilience

Brady then discussed protective factors, or resilience, among Aboriginal people, with implications for prevention programs. The discussion featured the following relevant points:

• ‘Any attempt at community action concerning youth that does not directly and constantly involve parents is not only culturally unacceptable, but perpetuates the dispossession of their parental role (personal communication Dr M. Moissee). One of the most effective approaches against sniffing in some native American populations has been intense parental involvement in alternative activities together with parental “patrols”: and in Australia the Healthy Aboriginal Life Team (HALT) worked with the extended families of petrol sniffers to help them to reincorporate sniffers into family life.’
• While not unique to Aboriginal people, Brady outlined the importance of informal supports for producing resilience, and suggested mentor programs to assist vulnerable young people.

• Some communities have overridden concerns described above (e.g. about protecting children from sanctions) and taken collective action against a drug problem. ‘These communities allowed their councils to deal with sniffers by sending them away for periods of time to survive in the bush, and on occasions by administering public physical punishment.’ Night patrols are another example of community action against a drug problem.

• Aboriginal women are most likely to be abstainers from alcohol and drugs, and most likely to lead community-based actions. They are a source of resilience, ‘due primarily to their role and concerns as bearers and carers for children’. However, they are often suffering high levels of stress induced by ‘economic, medical and other social conditions’.

• Sources of resilience, identified by Aboriginal people in a family forum in South Australia, included a sense of humour, determination and hope, ability to turn negatives into positives, pride in Aboriginal identity, family connections, old people, spirituality and religion, and Aboriginal organisations.

1.3.7 Aetiology of offending among Indigenous youth

Many of the issues described above for the aetiology of substance abuse by Indigenous youth (such as parenting problems) are likely to be pertinent to the aetiology of offending. In addition, Cunneen and White have noted that some offending might be a form of defiance against non-Indigenous authority, and the poorer living conditions and socio-economic disadvantage of Indigenous communities could contribute to Indigenous offending.(27, 42) Cunneen has also noted that:

Many of the adult Aboriginal and Torres Strait Islander people who come before the court are there for offences which were committed while intoxicated. Many have an alcohol dependency. Large proportions are reliant on social security and have no opportunity to make restitution for the property loss or damage arising from the offence.(13)

The New South Wales Parliament Standing Committee on Law and Justice identified a number of reasons for high rates of crime among Aboriginal communities in New South Wales that are relevant nationally. These include:

• the continuing effects of the dispossession of black by white Australians and the loss of cultural identity

• the breakdown in the authority of Elders and parents

• the breakdown in parenting skills as a result of the impacts of the policy of separation of Aboriginal children from their parents

• discrimination in policing for public order offences
• lack of sentencing options; lack of use of alternatives to prison contributing to repeat offending
• discrimination in sentencing
• high rates of unemployment and a culture of dependency
• drug and alcohol problems
• the cumulative impact of socio-economic disadvantages of the kind shared by other disadvantaged groups. (23)

Hunter analysed data from the 1994 National Aboriginal and Torres Strait Islander Survey and identified a range of factors associated with Aboriginal arrest rates. (94) The major factors associated with arrest were being male, unemployed, alcohol consumption (alcohol use was one of the largest single factors associated with being arrested), having been physically attacked or verbally threatened, and lack of education. Other factors included family environment (e.g. living with non-Aboriginal parents and having been taken from the natural family) and negative peer influences.

1.4 Diversion from the criminal justice system

1.4.1 Rationale

This review does not repeat the rationale for diversion because it has been well covered elsewhere. (7) However, the Cape York Justice Study (Fitzgerald et al.) recently argued the rationale for diversion with Aboriginal people cogently in these terms.

Diversionary strategies recognise that effective ways to address offending behaviour must be drawn from within Indigenous communities, rather than imposed by a system underpinned by external values. Diversion is seen as reinforcing community social control, and an expression of the principle of self-determination the Royal Commission said was the lynchpin of any long-term improvement in justice in Indigenous communities. The Bringing Them Home report also believed that the responsibility for children’s well-being, including the administration of juvenile justice, needed to be transferred to Indigenous peoples within a framework of self-determination, autonomy and self-government, but with minimum standards (HREOC 1997).
Diversionary strategies can be justified not only because of their greater prospect of success, but also because they are likely to be cheaper. Traditional justice interventions processed by the courts and correctional systems are enormously expensive. Diversion requires an additional investment in community capacity and infrastructure, but these costs will be far less than the criminal justice system. An independent review of the Government’s program for Community Justice Groups estimated that the crime prevention and diversionary strategies adopted by the Groups (at a cost of about $1.5 million a year) resulted in savings in the cost of administering justice of more than $18 million per year (McDonnell-Phillips 2000). (95)

1.4.2 Overview of diversion options

Diversion options span the whole course of the criminal justice process: pre-arrest, pre-trial, pre-sentence, post-sentence and pre-release. The earlier options are particularly suited to keeping juveniles out of the criminal justice system, while those later in the process focus more on addressing those factors that contribute to repeat offending. Diversion options at each stage of the criminal justice process (6, 7) are summarised in Table 1.3 below.

Coumarelos and Weatherburn argue that ‘strategies designed to reduce juvenile recidivism are more appropriately targeted at repeat offenders rather than those with no or little prior criminal record’. (96) In contrast, Dembo et al. argue for intervention at the earliest opportunity in the criminal justice system. (97) These apparently opposing positions can be reconciled if the principle is adopted of providing interventions that are appropriate to the offence and the offender (Figure 1.1). (7) That is, more intensive interventions are reserved for high-need, high-risk offenders, briefer interventions are given to low-risk, first offenders. Further, the principle of the justice response being commensurate with the offence must also be considered. For example, a drug-dependent offender detected/convicted for a first minor offence cannot be sentenced to a 12-month drug-treatment program.
<table>
<thead>
<tr>
<th>Stage</th>
<th>Diversion</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-arrest</td>
<td>Police discretion to not take action</td>
<td>Police officer observes an offence but decides not to take action, to ignore it.</td>
</tr>
<tr>
<td></td>
<td>Infringement notice</td>
<td>Fine issued, no record.</td>
</tr>
<tr>
<td></td>
<td>Informal warning</td>
<td>Warnings take place ‘on the spot’ without, in theory, any legal repercussions for the individual involved (e.g. a verbal warning, escorting a person home, or moving them along). The individual does not receive a police record of warning. A note might be made in the police station logbook.</td>
</tr>
<tr>
<td></td>
<td>Formal caution (no intervention)</td>
<td>A verbal warning, no written information or referral to intervention, record kept.</td>
</tr>
<tr>
<td></td>
<td>Caution plus intervention</td>
<td>A verbal warning, written information and/or referral to intervention, record kept.</td>
</tr>
<tr>
<td>Pre-trial</td>
<td>Treatment as condition of bail</td>
<td>Might need to plea guilty, treatment a condition of bail, no conviction is recorded if an offender successfully completes the undertakings.</td>
</tr>
<tr>
<td></td>
<td>Conferencing</td>
<td>In place of a trial, victims of crime and other members of the community, including experts and family members, become involved in dealing with offenders beyond the normal confines of the criminal justice system.</td>
</tr>
<tr>
<td></td>
<td>Prosecutor discretion</td>
<td>Public prosecutors offer an offender the option of attending a drug-treatment intervention rather than proceeding with prosecution.</td>
</tr>
<tr>
<td>Pre-sentence</td>
<td>Delay of sentence</td>
<td>A magistrate or judge can use adjournments, assessments and other means to delay or stop proceedings prior to sentencing while the offender is assessed or treated. The defence lawyer can initiate the process. Some diversion systems allow for no conviction to be recorded if the person successfully completes the program. Sanctions can also be built in for non-compliance.</td>
</tr>
<tr>
<td>Stage</td>
<td>Diversion</td>
<td>Explanation</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Post-sentence</td>
<td>Circle sentencing</td>
<td>Circle court participants include the presiding judicial officer, the offender, the defence council, the offender’s family and/or support people, the victim and his/her support people, and a community Elder. Offender pleads guilty, then participants discuss the case in a circle. Goals are set for the offender such as curfew, work programs, abstention from alcohol, and/or drug-treatment programs. The circle is then adjourned and these items set as bail conditions.</td>
</tr>
<tr>
<td>Suspended sentence</td>
<td>Court imposes a sentence of imprisonment, and then suspends its operation for a period of time while the offender is released on specific conditions (bond). Bonds can contain conditions relating to matters such as probation supervision, associates, abstinence from drugs, and participation in treatment. If the offender breaches any of the conditions, he/she might be liable to serve the sentence originally imposed or face other consequences. If no breach occurs during the bond period, the offender can be discharged.</td>
<td></td>
</tr>
<tr>
<td>Drug court</td>
<td>Courts specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction or court-enforced drug treatment program.</td>
<td></td>
</tr>
<tr>
<td>Non-custodial sentences — supervised order, probation, bond</td>
<td>A magistrate or judge specifies that offenders participate in a specific drug-treatment program as part of their sentence.</td>
<td></td>
</tr>
<tr>
<td>Pre-release</td>
<td>Transfer to drug treatment</td>
<td>An inmate could be transferred to a community-based treatment program that provides 24-hour supervision. In this latter option, the offender is still regarded as being in custody.</td>
</tr>
<tr>
<td></td>
<td>Early release to treatment</td>
<td>An inmate may be eligible for early release from detention into a structured, supervised treatment program to address their drug problems and assist with re-integration into the community.</td>
</tr>
</tbody>
</table>
Figure 1.1 Model of diversion options

1.4.3 Diversion issues

1.4.3.1 Net widening

‘Net widening’ refers to the situation where a diversion intervention increases the number of people involved in the criminal justice system, or the consequences of offending for offenders. For example, if a diversion program is thought to be less burdensome than the usual criminal justice sanction, it might be applied to a person who would not otherwise be sanctioned at all. In such cases, diversion has increased rather than reduced the number of offenders exposed to criminal justice sanctions. Net widening can also occur when, if offenders begin and then fail in a diversion program, they receive a more severe sentence than they would have if they had accepted the usual criminal justice process in the first place. There is little empirical research on net widening, but anecdotal reports suggest it can be a significant problem for any diversion program in the absence of procedures to prevent it.(7)

Some examples of net widening at different stages of the criminal justice system follow:(7)

- **Police cautions:** The lack of ‘due process’ in police diversion schemes can lead to offenders being cautioned when there is insufficient evidence to prosecute. Despite this lack of due process, sanctions can be recorded as an ‘official’ part of an individual’s offending history and individuals can later be subject to formal sanctions. Some innocent individuals might admit guilt in order to obtain formal diversion in preference to facing court. The requirements of diversion programs can sometimes be more onerous than those that would otherwise have been imposed if the person had progressed through the criminal justice system in the usual way.

- **Infringement notices:** There has been concern about net widening when young and/or low-income people cannot afford to pay a fine, and are then incarcerated for a crime that previously would not have resulted in detention. An evaluation of the Cannabis Expiation Notice (CEN) scheme in South Australia identified an increase in the number of minor cannabis offences for which CENs were issued from 6231 expiable offences in the 1987–88 financial year to a peak of 17,425 offences in 1993–94. The increase appeared unrelated to the prevalence of cannabis use. It did, however, appear to be related to changes in police procedures as more operational police were available for this work, and the work involved in issuing a CEN was much less onerous than required under a prohibition model.(100) About half of the CENs were not expiated and most of the unpaid CENs resulted in a court conviction.

- **Conferencing:** There is a possibility of net widening if offenders are charged rather than cautioned in order to make them eligible for conferencing. In addition, the results of conferencing can be more restrictive than might otherwise result through the normal judicial system. This is of particular concern if agreements are coerced rather than negotiated.

- **Drug courts:** Individuals who would not otherwise have received a custodial sentence could be sentenced to detention just so they can be diverted to treatment. If they fail the treatment, then they have to serve the custodial sentence that they would not have otherwise received.

Evidence of net widening has been identified with police diversion of juveniles in Canada (98) owing to reduced use of discretion. (99)
It is worth noting that a study of justice issues in Cape York identified that Aboriginal communities did not always perceive net widening as negative:

It should not be assumed that members of Cape York communities would not favour a diversionary intervention that is more onerous than the conventional sanction. In fact, the view is often expressed that the conventional justice system responses have no meaningful effect on offenders, and that alternatives should ensure that offenders face up to their behaviour (especially its impact on the community) rather than ‘escape’ accountability. For example, community justice groups have suggested that first-time young offenders should be dealt with firmly as a means of preventing their further involvement in offending. An approach that results in a form of net widening, therefore, may be an effective intervention.(95)

In sum, all diversion strategies are susceptible to net widening, and mechanisms need to be in place to monitor and prevent it (when appropriate).

1.4.3.2 Coerced treatment

The coercion of offenders to participate in a drug treatment program raises concerns about infringements on civil liberties and the effectiveness of treatment under coercion.(101) However, it has been justified on the grounds that: the drug dependence of some offenders contributes significantly to their offending behaviour and treatment under coercion is an effective way of treating that dependence, and thereby reducing the risk of re-offending.(16, 102, 103) Coercion into treatment has been associated with increased entry to treatment (104) and retention in treatment (105) relative to voluntary treatment.

While this research has been positive about coercion to treatment, others have urged caution in its use.(101) Wild has raised concerns about its compatibility with harm-reduction principles. First, Wild argued that diversion programs often lack the administrative, fiscal and evaluative support to effectively divert offenders to treatment. Second, concerns remain about infringement of civil liberties. Finally, close scrutiny of the research evidence on mandated versus voluntary clients in drug treatment revealed numerous conceptual and methodological problems. A recent review of the literature on coercion to treatment by Wild and colleagues identified that, while there is evidence that coercion does improve treatment entry and retention, the evidence does not support the view that coercion has positive impacts treatment outcomes: drug use and recidivism.(106) In fact, these authors suggested that coercion might ‘undermine client involvement in the process of behaviour change’. (106, p.90) Thus, there is some reason to suggest the use of caution in the acceptance of the use of coercion.
In sum, it appears that coercion might not improve treatment outcomes, but it does have benefits in terms of treatment entry and retention. Coercion to treatment can be ethical if appropriate treatment is offered and the offender has the right to exercise some choice as to (a) the treatment and the usual criminal justice process, and (b) the type of treatment they receive.(7)

1.4.3.3 Restorative justice

Restorative justice has been described in a report on *Restorative Justice Programs in Australia* by Heather Strang, Director of the Centre for Restorative Justice at the Australian National University.(10) An excerpt from that report is presented here.

Restorative justice is a term which has recently emerged to refer to a range of informal justice practices designed to require offenders to take responsibility for their wrongdoing and to meet the needs of affected victims and communities. It refers to the restoration of victims, offenders and communities (Bazemore & Umbreit 1994; Brown & Polk 1996) and emphasises the repair of harm resulting from the crime, including harm to relationships (Daly & Immarigeon 1998).

Restorative programs are means of dispute and conflict resolution which are characterised by principles of restorative justice. Although there is a good deal of diversity of form in restorative justice programs, essential to all of them is the principle of direct participation by victims and offenders. Victims have the opportunity for a say in how the offence will be resolved, while offenders are required to understand the consequences of their actions and the harm they have caused. Another essential aspect is the attention given to the context in which the offence occurs:

that, in Leslie Wilkins’ famous words (1991), ‘the problem of crime cannot be simplified to the problem of the criminal’. Bazemore & Umbreit (1995) suggest that a core principle in restorative justice is to balance offender needs, victim needs and the needs of the community as well. Here ‘community’ is usually seen primarily as the victim’s and offender’s ‘community of concern’ (Braithwaite & Daly 1994), that is those people in the lives of the victim and offender who care most about them, though it may encompass the broader community in which the offence took place as well. A definition of restorative justice which has become widely accepted has been offered by Marshall (email, Marshall to McCold 1997), who describes it as ‘a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future’. Braithwaite (1999) suggests that this can be refined so that those ‘with a stake’ in the offence are defined as the victim(s), the offender(s) and the affected community, which includes the families of the principals. In summary, Van Ness (1993: 259) suggests that restorative justice rests on the following principles:

- Crime is primarily conflict between individuals resulting in injuries to victims, communities and the offenders themselves; only secondarily is it lawbreaking.

- The overarching aim of the criminal justice process should be to reconcile parties while repairing the injuries caused by the crime.
• The criminal justice process should facilitate active participation by victims, offenders and their communities. It should not be dominated by the government to the exclusion of others. (10)

Braithwaite (107–112), Bazemore (113–116), LaPrairie (117) and others (118–120) have written extensively on restorative justice. It is beyond the scope of this paper to review this research, but we note that restorative justice is an important principle in juvenile justice in Australia.

1.4.3.4 Police discretion

Morrison has studied police diversion in Australia, and has summarised the pros and cons of police discretion and of the formalisation of that discretion. (121)

The arguments generally posed in defence of the use of police discretion are that it reduces the high workloads of police, releases court time for more serious cases, reduces the potential harms caused by police arrest and prosecution of offenders, and avoids a potential mismatch between sanction and crime, when criminal justice processes and sanctions are perceived to be ‘over-the-top’ responses to minor offences.

Many of the arguments against the use of police discretion relate to the lack of consistency and accountability inherent in the use of discretion. Inconsistent use of discretionary powers between police districts can lead to a form of ‘justice by geography’. Discrimination by individual police officers against certain classes of people can occur – for example, young people, racial minorities or low socio-economic classes. There is no visible accountability mechanism to address concerns of discrimination. Consequently police discretion has the potential to be misused as a means of ‘leaning on’ offenders or potential informants and to lead to police corruption in the form of monetary rewards in return for leniency. Discretion can also be unsupported by the community, as it is seen as ‘going soft’ on crime. Finally, by using their discretion not to proceed, the offenders could be being denied a means of access to treatment or other services that could be available through diversion at a later stage in the criminal justice system.

Formal procedures for police diversion aim to address the problems with accountability and consistency noted above ... However, there are a number of arguments against the concept of formal diversion, mostly relating to problems with net widening. (6)

Issues with over-use and under-use of police discretion have been identified in Aboriginal communities, suggesting that protocols, training and community consultation are important to ensure its effectiveness. Fitzgerald et al. reported:

While diversionary strategies can be frustrated by the failure of police to exercise their discretion to divert appropriate cases to the alternative processes, problems also arise where police do exercise their discretion to divert in inappropriate cases. The existence of a diversionary option should not be used by police as a means to abrogate their responsibility for the enforcement of the law. Consultations and submissions in this study showed that, while members of Cape York communities wish to see alternatives to the justice system for minor offences or behaviour that can be better dealt with by communities themselves, they are frustrated when police do not respond with the full force of the law where serious offences are committed and where members of the community require protection. (95)
1.4.4 Diversion of Indigenous youth from the criminal justice system

The person who has studied and written most on the criminal justice system and Indigenous youth is Professor Chris Cunneen. (11–13, 26, 27, 29, 51, 122–124) He reports greater demand by Indigenous people for negotiated outcomes in justice issues, and success where this has occurred:

There is a significant body of research and writing indicating the desire of Indigenous communities to exert greater control over the nature of criminal justice policy within their own lands and communities. Furthermore, Indigenous community control over aspects of justice can have a powerful positive impact on improving conditions. In many cases where Aboriginal and Torres Strait Islander community justice initiatives have flourished there have been successes in reducing levels of arrests and detention, as well as improvements in the maintenance of social harmony. The success of these programs has been acknowledged as deriving from active Aboriginal and Torres Strait Islander community involvement in identifying problems and developing solutions (Cunneen & McDonald 1997, NISATSIC 1997). (13)

Cunneen has described problems with access to diversion programs for Aboriginal youth with particular emphasis on Western Australia and the Northern Territory in the context of mandatory sentencing legislation: (13)

- In the Northern Territory: ‘ATSIC consultations with Aboriginal and Torres Strait Islander Legal Services indicate few of the diversionary options are available in practice.’

- ‘The Inquiry found that in relation to diversionary schemes such as “family group conferencing” police control over the referral process has meant that there has been limited diversion for Indigenous young people. In Western Australia and the pilot conferencing projects in the Northern Territory, police control over access to conferences has meant limited availability for Indigenous young people.’

- ‘In Western Australia, Aboriginal and Torres Strait Islander organisations have argued that there is a lack of empowerment for Aboriginal and Torres Strait Islander families or communities which would assist in utilising the diversionary options which are offered.’

More broadly, Cunneen has identified the following problems with diversion for Indigenous offenders, particularly juveniles, in Australia:

Why have new regimes failed? The evidence before the Inquiry suggests several reasons. Many of the more progressive changes have been restricted in form, content and applicability. In other words they are designed and implemented as non-Indigenous systems with the expectation of finding solutions to the problems facing Indigenous people. In addition, tokenism pervades some of the changes, particularly in relation to police cautioning and family conferencing schemes. Finally, there has been the failure to address the ‘underlying issues’ which contribute so substantially to Indigenous offending levels. (29)
A national problem is that, by and large, the main diversionary schemes which operate in the various States and Territories have been introduced without proper negotiation with Indigenous communities and organisations, and without providing a framework for control by Indigenous organisations where communities desire such control. Often this occurs at the same time as State and Territory governments publicly espouse a commitment to self-determination (NISATSIC 1997, p.502). There is also a lack of adequate funding for the few Indigenous community-based alternatives that do operate. The lack of alternatives undermines self-determination at the local level and results in greater numbers of Indigenous young people ending up in institutions, effectively removed from their families and communities.(29)

The New South Wales Parliament Standing Committee on Law and Justice discussed the under-representation of Indigenous juveniles in diversion programs, cautioning and conferencing.(23) Reasons for under-representation included the requirement of an admission of guilt, coupled with legal advice from the Aboriginal Legal Service to not admit guilt, and mistrust of the police. In sum, Indigenous people desire greater control over criminal justice issues, and there has been some success when this has happened. However, there have been reports of problems with diversion of Indigenous youth from the criminal justice system. These include a lack of adequately resourced diversionary options for Indigenous youth, problems with police control over access to diversion options, and a failure to adequately involve Aboriginal communities in planning and implementing diversionary systems.

1.4.4.1 Restorative justice programs and Aboriginal communities

Cunneen (1997) analysed the use of community conferencing for young people in various jurisdictions in Australia, with a particular focus upon its impact in Indigenous communities. He concluded that:

The manner in which these programs have been introduced has ignored Aboriginal rights to self-determination and has grossly simplified Indigenous mechanisms for resolving conflicts. In most jurisdictions, community conferencing has reinforced the role of state police and done little to ensure greater control over police discretionary decision-making. The changes have also been introduced in the context of more punitive law and order policies, including mandatory minimum imprisonment terms and repeat offender legislation for juveniles. The end result is likely to be greater bifurcation of the juvenile justice system along racialised boundaries, with Indigenous youth receiving more punitive outcomes.(122)

Blagg (1997) has criticised the role of police in reintegrative shaming and family conferencing, as practised in Australia.(125) He compared it with the New Zealand model, where:

- Youth justice coordinators, rather than police, acted as gatekeepers and conveners of conferences. For example, Blagg argued that the police had traditionally been the instrument of dispossession in some regions of Australia, so they were unlikely to be regarded as neutral. Young people were reported to ‘clam up’ when police were present.
- The marae (community meeting place) rather than the police station is used as the site for many conferences.
Blagg recounted reports that Aboriginal people were only willing to be involved in conferences when the role of police was less active than usual and Aboriginal workers were dealing with the youth and his/her community. Blagg also noted that:

- ‘There is also danger in assuming that all Indigenous peoples are amenable to conference-style resolutions and that all operate within shaming structures of social control.’

- Those charged with the responsibility of children might not be the child’s biological parents: ‘The child’s biological parent may have little authority in relation to issues of law infraction (either customary or introduced) and may feel not the slightest sense of shame when their biological child commits breaches of either law; while those charged with responsibility for the child’s behaviour under Aboriginal law, such as an “uncle”, may still have no responsibility where infractions of non-Aboriginal law are concerned.’

- ‘The savagery of white colonisation has left a situation where ... “Aboriginal people are not shamed by having white values shouted at them”.’

- Aboriginal people tend to be highly mobile, and this is a barrier to attendance at conferences.

- There is a lack of appropriate options for conferences to refer young Aboriginal people on to.

In the context of reviewing mandatory sentencing legislation in Western Australia and the Northern Territory, Cunneen (1999) noted:

There has been criticism of the introduction of conferencing in Australia in terms of negotiation with Indigenous communities and accessibility of Indigenous children (NISATSIC 1997; Cunneen 1997). However, it is also recognised that restorative justice principles when coupled with recognition of Indigenous rights to self-determination are likely to provide important opportunities for Indigenous communities.(13)

In the context of a review of restorative justice programs in Australia, Strang (2001) discussed the question of their appropriateness and effectiveness in Aboriginal communities:

Cunneen (1997) summarised the criticisms as follows: a failure of those setting up restorative programs to negotiate and consult with Aboriginal communities and organisations; concerns about the discretionary powers of police over access to programs; inadequate attention to cultural differences; the undermining of self-determination through a tokenistic recognition of Indigenous rights. Bargen has addressed this subject from an operational point of view. In reviewing the first year of operation of the New South Wales program in 1999 she observed: “disappointingly, but perhaps not surprisingly, the Act is not yet working as it should in Indigenous communities. Cautioning rates and conference referral numbers for Indigenous children and young people remain low in many parts of the State. It is not always possible for an administrator to appoint an Aboriginal convenor in all appropriate cases. Many Indigenous people are still not aware of the existence of the Act nor of the part they can play in its operation nor of its potential to reduce the entry of significant numbers of Aboriginal children into the juvenile justice and ultimately adult criminal justice systems” (unpublished, p.19).
Wundersitz (1996) in her South Australian evaluation also observed that conferences did not appear to be working as well for Aboriginal cases, with around 12 per cent of Aboriginal youths failing to appear for conferences. However, she noted that steps had been taken to address some of their special needs: wherever possible an Aboriginal conference convenor was assigned to the case and, rather than attempting contact by phone, these convenors preferred to visit Aboriginal youth and their families at home. Wundersitz suggested that “This face to face contact is important in breaking down some of the mistrust which Aboriginal people often feel towards the criminal justice system, and it makes it easier for the coordinator to identify who, of the extended kin network, needs to be invited to the conference” (pp.117–118).

Similar efforts are being made in New South Wales and Queensland too (Strang & Braithwaite, forthcoming).(10) Cunneen (1998) commented in the context of the Stolen Generation report:

In particular, the Inquiry considered the use of ‘family group conferencing’ and found that the available theoretical, observational and empirical evidence strongly suggests that family group conferencing, far from being a panacea for offending by Indigenous young people, is likely to lead to harsher outcomes for Indigenous children and young people. It is a model that, by and large, has been imposed on Indigenous communities without consideration of Indigenous cultural values, and without consideration of how communities might wish to develop their own Indigenous approaches to the issue (NISATSIC 1997, p.525). In particular, police control over the referral process in many jurisdictions is not likely to benefit Indigenous access to conferencing. More fundamentally, there is no provision for Indigenous organisations and communities to make decisions about whether their children would be best served by attending a conference. The best that is included in conferencing models is that when conferences are held which involve Indigenous youth, then an Elder or other representative of the young person’s community must be invited (NISATSIC 1997, p.526).(29)

As part of an investigation of justice issues in Cape York, Fitzgerald et al. also noted a range of problems with community conferencing. They noted the cultural inappropriateness of some of the methods typically used in the conferencing model, and the need for adaptation for Aboriginal peoples:

The scope for a model of conferencing that allows Indigenous control over a culturally appropriate dispute resolution process has not been fully explored. If conferencing is to be beneficial in remote Indigenous communities, the standard model will have to be adapted. Many of the tenets of conferencing conflict with Indigenous methods of dispute resolution, or with cultural imperatives. For example, in mainstream conferencing models, it is considered essential that the convenor is neutral, and has no stake in the outcome. In Indigenous dispute resolution, however, it may be more appropriate to have a number of convenors related to the offender and the victim, and perhaps in positions of authority in customary kinship structures. Sauve (1996: 11) demonstrates this point in her study of mediation in Hope Vale:

Respect for the mediator and their reputation for fair-mindedness far outweigh concerns about neutrality. In
a small, tightly bonded community the mediator, of necessity, will be known to the disputants, know the history and nature of the dispute, have family ties and history and so on.

Sauve also argues that a crucial difference between western models of mediation and Indigenous models is the contrast between the ‘cognitive, problem-solving orientation’ of western mediation, and the ‘transformation and healing’ focus of Indigenous mediation. ‘What needs “settling”, or redress, is not “issues”, but relationship’ (1996: 10). Cunneen (1997: 301) says another problem of conferencing in an Indigenous setting is the use of a confrontational approach, which runs counter to avoidance or withdrawal strategies in the Indigenous context.(95)

Despite the problems, however, Fitzgerald et al. recommended that community conferencing be made available to Aboriginal communities, with modifications such as adapting the model to allow for local dispute resolution methods and cultural factors.

In sum, as well as the problems identified above with diversion of Aboriginal youth, specific issues identified with restorative justice programs include: difficulty appointing an Indigenous conference convenor in all appropriate cases; a lack of awareness of the existence of diversionary options and the role they can play among Indigenous people; and a lack of provision for Indigenous organisations and communities to make decisions about whether a conference is the best option for their children. Further, the use of conference-style resolutions and shaming structures of social control might not be appropriate for all Indigenous communities.

1.4.4.2 Case study: Circle sentencing

Circle sentencing is a form of restorative justice program.(10) This summary is based on a discussion paper written by the Aboriginal Justice Advisory Council.(126)

A Canadian Judge, in consultation with a local Indian community and using principles of restorative justice, developed circle sentencing or circle courts. This approach focuses on the needs of the victim, on healing the damage that has been done by the offence and on empowering individuals, families and whole communities in the justice process. Circle sentencing is not necessarily a diversionary strategy because the sentence can still include detention. However, circle sentencing is included in this overview for two reasons. First, the emphasis is on rehabilitation rather than punishment, and detention sentences have not often been used. Second, it is a model that has been developed with and used by Indigenous people in Canada and the US that might be appropriate for Aboriginal peoples and Torres Strait Islanders in Australia. The information on circle sentencing below was provided by the Aboriginal Justice Advisory Council (AJAC).

There is some variation in the implementation of circle sentencing in different circle courts. Following is a typical description. After an offender has pleaded guilty or has been found guilty by a court, s/he must do extensive work prior to being accepted to a circle court. If a community has established a community justice committee to administer the circle court, the offender must gain the approval of that committee plus the active support of other influential community members, particularly Elders. To demonstrate that they are committed to the circle court process, offenders
need to show that they are committed to healing the harm caused by their actions and commencing rehabilitation. This could involve participation in drug and alcohol treatment programs prior to attending the circle court.

Circle court participants include the presiding judicial officer, the offender, the defence council, the offender’s family and/or support people, the victim and his/her support people, and a community Elder. Seats are arranged in a room in a circle and participants are welcomed to the circle by community Elders and the judicial officer. People then introduce themselves and explain why they are there. The Crown presents the facts of the case and the defence is allowed to comment. A group discussion then focuses on issues such as the extent of similar crimes in the community; the underlying causes of such crime; the impact of these crimes on community life, on family life, and on victims; what can be done in the community to prevent this type of behaviour; what must be done to heal the victim; what must be done to heal the offender; the sentence plan; who will be responsible for carrying out the sentence plan; who will support the offender to ensure that the sentence plan is completed; and what support can be provided for the victim. This discussion can take from 2–3 hours to several days. At the end of the circle goals are set for the offender such as curfew, work programs, abstention from alcohol and/or drug-treatment programs. The circle is then adjourned and these items set as bail conditions.

The circle is reconvened several months later and the court hears from the support group about the offender’s progress. If the offender has successfully met the conditions, they might be extended or modified as probation conditions. If the offender has shown no willingness to meet the conditions, then the circle might be abandoned and the offender sentenced in a regular court.

General benefits of circle sentencing are the breadth of information the court is able to receive and the breadth of solutions that the court can facilitate. The court receives information about the whole community, the background to the offenders, the impact of the offence on the victim, the problems experienced by the local community. This information is received to a level rarely available through written pre-sentence reports. The circle court can attempt to address the causes of criminal behaviour and to implement broader solutions to the issues raised, actively involving the community in solving its own problem. It can look beyond the individual criminal act and examine ways of preventing similar behaviour in the same community.

As described by the AJAC, there are a number of potential benefits of circle sentencing for Aboriginal peoples. It allows the Aboriginal communities to be involved in determining the conditions for punishment. This increases the cultural relevance of the punishment, particularly in the eyes of the offender. Having communities punish their own members means that punishments are seen as real community sanctions and not a continuation of an oppressive colonial system. The offender is confronted with his or her sentencers every day, making their sentence more real and immediate. As members of
Diversion of Aboriginal and Torres Strait Islander youth from juvenile detention

the community play a significant role in sentencing, the potential for racial bias in the court and in the sentence is significantly reduced or removed. Finally, circle courts allow the values of Aboriginal peoples and Torres Strait Islanders and the structure of the western justice system to be merged.

Problems with circle courts described by the AJAC relate to consistency, cost and the level of family and community involvement. Circle sentencing has no legislative base, so there can be inconsistency in application between and within communities. The cost is much higher than the usual court costs as they can take four to five times longer than regular sentencing and because many are conducted in remote locations. This can add to court delays for other matters. Finally, implementation of the sentencing plan often requires support from family and community members. If this is not available, then circle courts are not viable.(7)

Circle sentencing has been introduced in New South Wales on a pilot basis, and will be trialed in Victoria.

1.4.4.3 Case study: Elders scheme

A second innovation, the Kowanyama Justice Group in North Queensland, was described to the New South Wales Parliament Standing Committee on Law and Justice:(23)

This is an isolated community, and young offenders were flown to Brisbane for detention. The community was distressed by the way these offenders returned worse than they had left, so initiated an alternative scheme with the support of the local magistrate and local police. They established an Elders scheme, which represented both men and women and all clans. Offending behaviour was referred by the police to an Elders group to deal with and a range of community-based sanctions was used. An evaluation has been published that shows a sustained reduction in offending levels by young people since the scheme was introduced.(127, p.62)

1.4.5 Bail and remand

Bail and remand was discussed by Fitzgerald et al. in the context of the Cape York Justice Study:

For offenders who have been arrested, a critical point of diversion is whether the offender is granted bail or remanded in custody. This has become a particularly significant issue for juveniles. A large proportion of the children now in detention are on remand awaiting trial ... Community-based alternatives to remand are needed. A number of studies describe the criminalising effect on young people of a stay in custody. There is no need to expose to this risk a child who has not been convicted of any offence, especially where the child is unlikely to be incarcerated if convicted. The cost of remand for both children and adults is
exorbitant, because of the high cost of travel: these funds should be redirected to community-based programs for supervision of bail. Many communities have expressed interest in a greater role in diverting young people from custody. Bail programs represent a key strategic opportunity for this to occur.

In practice, the discretion to grant bail is often exercised in ways that discriminate against Indigenous offenders. The criteria in the Bail Act for assessment by a police officer or court do not recognise the obvious differences in the home environment for most offenders in Indigenous communities — for example, sureties and reporting requirements to police are probably never suitable. A re-education process for watch-house keepers and magistrates may be needed ...

For both adults and juveniles who plead guilty, courts should consider bail conditions that require attendance at rehabilitation courses or supervision by a Community Justice Group or similar organisation. The court could then take satisfactory completion of the bail conditions into account at the time of sentencing.[95]

1.4.6 Sentencing Indigenous offenders

The New South Wales Law Reform Commission has reviewed the issue of sentencing Indigenous offenders as part of a general review of sentencing law in New South Wales.[14] The Commission discussed sentencing principles in general and in relation to Indigenous offenders (the ‘Fernando’ principles); current sentencing options within New South Wales, including alternatives to full-time custody and non-custodial options; and their cultural appropriateness and effectiveness in achieving rehabilitation and reducing recidivism. They noted that the Royal Commission into Aboriginal Deaths in Custody recommended diversionary and treatment policies and programs for Aboriginal people who were already caught up in the criminal justice system, and had expressed concern that non-custodial sentences appeared to be under-used as an alternative punishment for Indigenous offenders. The recommendations below were written for the New South Wales Government and are not specific to youth, but have varying relevance to Indigenous juvenile offending across Australia.

Recommendation 1: Where a person who is, or was at a relevant time, a member of an Aboriginal community is convicted of an offence, in determining the sentence, the court shall have regard to any evidence concerning the customary laws of that Aboriginal community, and the customary laws of any other Aboriginal community of which the victim was a member at a relevant time.

Recommendation 2: Pilot schemes for circle sentencing and adult conferencing should be instituted in consultation and collaboration with Aboriginal communities.
Recommendation 3: The Department of Corrective Services should establish a mentoring program for young adult offenders based on the Young Offenders’ Mentoring Program conducted for juvenile offenders by the Department of Juvenile Justice and the Crime Prevention Division of the Attorney General’s Department.

Recommendation 4: A pilot program based on the Pitjantjatjara community service program in South Australia should be established in New South Wales in consultation and collaboration with the Aboriginal Justice Advisory Council. (That is, magistrates may hear representations on matters of customary law in relation to penalty from a lawyer representing the Pitjantjatjara Council on behalf of the community.)

Recommendation 5: The Department of Corrective Services should establish more Attendance Centres in rural areas.

Recommendation 6: Courts should have the power to order that participation in approved community-based, personal development programs may be credited towards Community Service Orders.

Recommendation 7: The following statistical information about Aboriginal offenders, with breakdown into gender categories, should be compiled and published at regular intervals:

- the numbers coming into the criminal justice system
- the numbers being convicted of a criminal offence
- a breakdown into types of offences for which a conviction is entered
- a breakdown into types and lengths of sentences given, and
- the numbers in all correctional centres.

Recommendation 8: Programs to raise awareness in the judiciary, and all others involved in the sentencing process, of cross-cultural issues should include a component dealing specifically with Aboriginal women offenders. Among other things, such programs should focus on increasing awareness and understanding of:

- the circumstances surrounding the offences committed by Aboriginal women, including their historical and current social contexts
- the role that Aboriginal women play within the family and community
- the potential for Aboriginal women to suffer from both racism and sexism, and
- the impact of imprisonment upon women and their families.

Recommendation 9: The Department of Corrective Services should give consideration to accommodating women serving short sentences at minimum security correctional centres rather than at Mulawa Correctional Centre (a women’s detention centre).

Recommendation 10: The Department of Corrective Services should institute mothers’ and children’s programs at all correctional centres accommodating women.

Recommendation 11: In accordance with the recommendation contained in its report, *Women’s Action Plan: A Three-Year Strategy for Female Inmates in NSW Correctional Centres*, the Department of Corrective Services should construct additional transitional centres for female inmates in regions of greatest need, and expand the eligibility criteria for all centres.
**Recommendation 12:** A multi-purpose community cultural centre should be trialed in a regional area with a significant Aboriginal population. In addition to serving a variety of community needs, the centre should organise and coordinate programs satisfying community service orders.

The Law Reform Commission report is recommended further reading about the sentencing of Aboriginal offenders.

In Port Adelaide, an Aboriginal Court Day has been operating since June 1999. The Aboriginal Court Day is a day set aside in a Magistrates Court to sentence adult Aboriginal offenders. The local community refers to this day as the Nunga Court. Its aim is to keep Aboriginal people out of gaol. Programs that can help the defendant with issues such as alcohol and drug misuse and anger management are discussed as alternatives to a custodial sentence. Characteristics of the Nunga Court that differentiate it from other court days include:

- Aboriginal Court deals only with Aboriginal people who plead guilty to an offence.
- The magistrate sits off the bench, more at eye-level with the offender.
- An Aboriginal Justice Officer or a senior Aboriginal person sits beside the magistrate, to advise on cultural and community matters.
- The offender sits at the bar table with his/her lawyer and may have a relative sitting with him/her.
- Once the prossector and the defence counsel have had their say, the offender, the family and community members, or the victim (if present), have a chance to speak to the magistrate. The magistrate may ask them questions to help him/her in the sentencing process.
- Family and community members are encouraged to attend.
- Aboriginal justice officers and an Aboriginal court orderly work in the court. They can help the offender, his/her family and members of the Aboriginal community if they have queries about the court process or outcomes, for example, payment of fines, conditions of bonds etc.

At Port Adelaide, the attendance rate for Aboriginal people to the Nunga Court has been over 80 per cent. This is higher than normal attendance rates, which tend to be below 50 per cent for Aboriginal people in other courts.

The South Australian Courts Administration Authority is committed to extending the Aboriginal Court Day model to other areas where Aboriginal people are strongly represented, including regional areas. To date, Nunga Courts have been established in Port Adelaide, Port Augusta and Murray Bridge. A similar court is currently being piloted in Victoria — the Koori Court — and proposals are being discussed for establishment of a Murri Court in Queensland.

### 1.4.7 Customary law

Customary law is an option that has been proposed for responding to offending by Aboriginal people, which can reduce or preclude the usual criminal justice responses. (25, 52, 129) Sarre described how infrequently customary law has been recognised, and the problems associated with its adoption:

The courts continue to struggle with the idea of customary sentencing in the absence of clear policy and judicial

---

13 Written material provided by the Courts Administration Authority, Magistrates Court of South Australia
guidelines. The [Australian Law Reform Commission] recommended that, where possible, customary law and practice should be recognised where it does not offend general law and where justice is best served thereby. But there has been little evidence of widespread acceptance of that principle, essentially, one suspects, because it usually raises more questions than it solves. Certainly there have been a number of reasons advanced for the recognition of some customary law, specifically in the sentencing process. The most significant of those is to bring about safer and less violent communities, given anecdotal evidence that many ‘customary’ communities employ what might be described as ‘restorative’ models of justice, and have very low levels of violence and criminality generally (Sarre 1998). There are, however, a number of reasons put forward to suggest that policy makers should move cautiously in this area and not be too hasty to advance this process without serious thought and widespread consultation ... For example, there will be some circumstances where sentencing in accordance with customary law may offend other human rights and the laws based upon those rights (Cox 1994, p.51). Could not such a punishment be in defiance of the international rules forbidding torture or inhuman punishment as found in Articles 21 and 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (in force in Australia since 7 September 1989)? What if customary law allowed men to suffer possible death as a result of ‘pay-back’ punishment? If customary law permits capital punishment or other cruel punishments, it could never be adopted (McLaughlin 1996, p.8). What if there is opposition to close analysis of customary practices? How can one preserve cultural confidentiality (McRae et al. 1997, p.133)? What if there is no evidence that the person to be sentenced still observes traditional practices (Nader 1985)? The list of problematic issues is a long list indeed.(25)

Sarre concluded: ‘Perhaps the best approach is to adopt guidelines suggested by the Royal Commission (Recommendation 104) that where there are Indigenous communities Australia’s obligations internationally are not compromised, policy makers should allow local jurisdictions to employ customary options.’(25)

The New South Wales Law Reform Commission has also reviewed the issue of Aboriginal customary law. After describing Aboriginal customary law, and outlining the arguments for and against recognition of customary law, the Commission concluded:

The Commission’s terms of reference specifically asked the Commission to consider whether there should be legislative endorsement of the court practice of taking into account Aboriginal customary laws when relevant in sentencing Aboriginal people. The Commission has concluded that, despite the common law precedent for judicial discretion to recognise Aboriginal customary law, there should be legislative endorsement of the common law discretion ... Legislating for recognition of Aboriginal customary law has potential symbolic significance for New South Wales’ credibility in the reconciliation process; for redress of the alarming consequences of Aboriginal contact with the criminal justice system, and the incidence of incarceration and deaths in custody; and for according respect to Aboriginal people, and real value to Aboriginal culture.’(14)
1.5 Treatment for psychoactive substance use disorders

Reviews of the effectiveness of treatments for psychoactive substance use disorders (PSUD) such as pharmacotherapies, 12-step approaches and cognitive–behavioural skills training programs have been published elsewhere.(130–132) This section will identify principles for good practice with the relevant populations: adolescents; adolescents in the juvenile justice system; and Aboriginal people.

1.5.1 Treatment of adolescents with PSUD

Multiple reviews of the literature on treatment of adolescents with a PSUD (8, 15, 133–137) and family treatments (138) have been conducted. For example, Williams and Chang reported:

Methodologically stronger studies have usually found most adolescents receiving treatment to have significant reductions in substance use and problems in other life areas in the year following treatment. Average rates of sustained abstinence after treatment are 38 per cent (range, 30–55) at 6 months and 32 per cent at 12 months (range, 14–47). Variables most consistently related to successful outcome are treatment completion, low pre-treatment substance use, and peer/parent social support/non-use of substances. There is evidence that treatment is superior to no treatment, but insufficient evidence to compare the effectiveness of treatment types. The exception to this is that outpatient family therapy appears superior to other forms of outpatient treatment.(136)

From their review, CritsChristoph and Siqueland concluded: ‘The existing data suggest that substance abuse treatment should be intensive and should probably involve multiple modalities targeted to various problems encountered in patients with substance use disorders, including comorbid psychiatric problems.’(139)

Spooner, Mattick and Howard conducted a literature review, key informant consultations and youth consultations to identify best practice in the treatment of PSUDs among adolescents. Their results were as follows: (8)

Program delivery model: No single service delivery model was found to be superior in adolescent PSUD treatment. Rather, it could be pertinent to focus on treatment matching. However, treatment matching was found to be hampered by (a) a lack of information based upon controlled studies on treatment matching, and (b) a lack of assessment procedures and service options: adolescents tend to go to services that happen to be close or that happen to have a space, rather than the service that would best suit their situation.

Program philosophy: It was recommended that PSUD interventions incorporate holistic treatment and harm reduction.

Program issues: Issues that need to be addressed or considered in treatment for adolescents:

- Adolescents are not adults, so interventions need to be developmentally appropriate.
- Treatment is a process, not an event; interventions need to be long term.
- Substance use serves a function for young people, so interventions need to consider those functions in developing a treatment plan.
• Rules and boundaries are among the most important components of a program for client outcome, even though the clients complain about them.

• It is important to not label adolescents who use substances in a maladaptive manner.

• Networking and collaboration among services are essential for holistic youth services.

Program objectives: Abstinence is not the only treatment goal. Treatment objectives need to be holistic and based upon thorough assessment, knowledge of what is valuable for adolescent drug treatment, consideration of what is achievable, particularly in light of the client’s readiness to change, and the informed opinion and wishes of the client.

Program content: It is unlikely that any program can include all of the components that are necessary to deal with all of the problems facing young people with a PSUD. Recommended components include:

• family and peer programs
• physical and other recreational activities
• services for dealing with the range of issues that accompany substance misuse, whether they be causal, consequential or correlational (e.g. child sexual abuse, psychological problems, medical problems)
• practical assistance (e.g. organise or provide accommodation)
• mechanisms/strategies for behaviour modification (e.g. a reward or levels system) might be necessary
• skills development programs (e.g. social skills, communication skills, living skills) and cognitive restructuring
• educational and vocational programs
• psychological counselling
• graduated withdrawal and structured, scheduled after-care
• monitoring and evaluation
• case management, including thorough assessment, to plan and monitor the above components.

Program duration: Adolescents with a PSUD problem need continuous assistance, not just a discrete program.

Program documentation: Program integrity has been associated with program success. Documented policies and procedures are crucial to the delivery of a quality service.

Youth participation: Young people want and need to participate in their treatment program, rather than being told what to do. Their involvement in setting rules, program development, their own treatment plan, and so on, ensures they have a commitment to the program and assists the program to meet their needs.

Accessibility: There was an expressed preference for a number of small services geographically dispersed, so that (a) youths can be close to community and family supports, and (b) services do not have the atmosphere of a large institution.

 Appropriateness: There was little support for a principle of specific programs for specific groups, particularly as there are so many overlapping subgroups of adolescents that such a principle would be impractical. Furthermore, ‘special’ programs for ‘special’ people can be counter to the notions of treating people as individuals and of mainstream society accepting and understanding the diverse range of people who make up society. Staff training and program policies to ensure that programs can be attractive and appropriate to all youths with a PSUD were recommended. Occasionally, there might be some basis for a small number of specialised programs.
Attractiveness: Services tend to be unattractive to youths; youths are fearful of most services, the staff and what they will do to them. This acts as a barrier to seeking treatment and, once in, youths do not want to stay in services that they do not like or do not feel comfortable in. Services need to be perceived as attractive, relevant, credible and confidential to attract and retain clients.

Staff: Staff teams need a variety of backgrounds, as there are a variety of needs that no single person would be likely to meet. Whatever the background, they need to be trained, psychologically mature, stable and adequately supervised. Furthermore, young people are particularly concerned that the staff members care about them: a supportive staff team was seen as crucial to their progress.

In addition to the above, programs that address cultural values and (re)connection with the community are recommended.

1.5.2 PSUD treatment in the juvenile justice system

Terry, VanderWaal, McBride and Van Buren have proposed a systemic reform of the organisational structure and delivery of substance abuse services for adolescents within the juvenile justice system. They have recommended a graduated sanctions framework, supported by systems collaboration and comprehensive case management. Systems collaboration between service providers must exist for juveniles to receive appropriate and comprehensive services. Case managers both assess juveniles and help them move through and between judicial, drug treatment, and social service systems. In this way, juveniles receive the most suitable and complete services a community can offer while remaining firmly under juvenile justice system supervision.

The article by Terry et al. is useful to the consideration of recommendations for PSUD treatment for juvenile offenders in Australia. They discuss:

• the need for thorough, culturally appropriate screening, assessment and case management

• graduated sanctions as part of a comprehensive intervention strategy, using two broad intervention tracks: supervision options (e.g. probation supervision) and treatment options (e.g. therapeutic communities, day programs, outpatient programs). The success of family therapy and skills training programs were noted across multiple settings and populations

• high drop-out rates and need for aftercare services and relapse-prevention skills training

---

• the need for system reform to improve cooperation between services, reduce duplication, increase comprehensiveness of treatment, increase accessibility and relevance of services to clients, and increase ownership and accountability with all parties.

They propose methods for developing collaboration, including:

• recognition of ‘(1) the primary role the justice system will carry in monitoring adolescents along the graduated sanctions continuum, and (2) the primary role substance abuse treatment services will play in providing appropriate and effective treatment services’

• funding for program development requiring collaborative applications

• joint vision and goals

• collaboration with partners who contribute resources, perspective, expertise and diversity to the overall effort

• agreed structural connections

• management and administrative support of the various partner agencies

• resource development.

Guiding principles for the integrated structure are outlined. These include systems collaboration and a culturally sensitive continuum of care, community-based interventions, early intervention, accountability to juveniles as well as the community, and cross-systems case management.

They propose a strategy for implementing mandated treatment in the community. It includes:

• the conduct of a community assessment to ‘(1) identify juvenile justice system willingness to participate and provide leadership, (2) identify potential resources and existing collaborative structures, and (3) understand community expectations and determine level of community support for program goals and objectives’

• involvement of all major systems (including schools and families) in the development of services’ strategies

• commitment from the juvenile justice system at the local level

• training for all involved

• implementation of mechanisms to ensure sustainability of collaborative program efforts

• anticipation of problems

• monitoring.

1.5.3 PSUD treatment for Indigenous people

Little research is available on PSUD treatment for Indigenous youth. The applicability to Indigenous youth of these recommendations for PSUD treatment for adolescents and the juvenile justice system is not known. Yet the need for effective interventions has been well described by the Menzies School of Health Research:

While many outsiders romanticise the ‘caring and sharing’ of the extended Aboriginal family, and the strengths of Aboriginal ‘communities’, the reality in many regions is that some populations have been powerless to deal with drug uses such as petrol sniffing and dysfunctional drinking. In Central Australia, community councils, Elders and parents are often at a loss to deal with the difficulties of managing adolescent substance use, and hope that outside help and programs or even institutionalisation will help to solve the problem.(140)
In a brief review in 1996, Spooner, Mattick and Howard cited Hunter’s opinion:

Hunter argues that while Indigenous Australian adolescents can be among the most in need, they are a difficult group for services to assist: ‘The reticence of health professionals towards working with intoxicated young Aborigines must be challenged. While at times threatening, often ungrateful, and likely to repeat and return, it is these Aborigines who are most vulnerable and in greatest need.’(89, pp.91–92)

Arguments for and against provision of Indigenous-specific services are beyond the scope of this report. Given the reality that Indigenous Australian adolescents present to mainstream services, how can these services be made attractive, appropriate and effective for them? Workers from the Aboriginal and Torres Strait Islanders Commission responsible for substance-use issues were interviewed as part of an investigation into the needs of substance-affected adolescents in the Australian Capital Territory.(141) They recommended:

- having Indigenous as well as non-Indigenous workers on staff, and an Indigenous liaison officer
- ensuring the environment was accessible to Indigenous adolescents, for example, by having Indigenous posters on the walls
- training of non-Indigenous workers to increase awareness of racism and knowledge of appropriate strategies for dealing with racism.

In addition to these recommendations, one of the key strategies of the National Aboriginal Health Strategy Working Party is that ‘people suffering problems of addiction should not, wherever possible, be removed from their community environment to obtain treatment.’(142) This principle runs counter to the option of residential treatment for Indigenous adolescents. However, residential treatment for a short period that maintains links with the adolescent’s community might be appropriate and effective.15

Burns et al. also recommend that, at least in the context of preventing petrol sniffing in rural areas, it can be effective to encourage Indigenous communities to use family relationships to dissuade adolescents from petrol sniffing in addition to focusing on education, training, employment and recreation.(143)

Brady has noted the value of careful use of Indigenous workers:

As with any adolescents, there are a number of social and cultural barriers for young Aboriginal people to accessing treatment. Employing appropriate Indigenous workers can help overcome many of these. For example, Indigenous workers can advise on the acceptability and appropriateness of interventions, and give advice on communication skills. They can also act as role models for Indigenous clients. There can, however, be disadvantages in employing people from the same community or neighbourhood as the clients; social proximity may cause clients concern about confidentiality in these circumstances. Young people may be unwilling to confide in workers who belong to particular families. Careful local

---

15 Personal communication with health worker working with Indigenous Australian adolescents in Redfern, 1994.

16 Personal communication: Dr Maggie Brady, Australian National University, 2001.
consultations should ensure that these potential barriers to accessing services are overcome.\(^1\)

Gray et al. reviewed treatment, health promotion education, acute interventions and supply-reduction interventions for reducing excessive consumption of alcohol, and related harm, among some segments of Australia’s Aboriginal population.\(^{144}\) They found that there were few systematic evaluations, but were able to draw the following conclusions:

- The impact of most interventions had been limited. The poor outcomes were attributed, in the main, to inadequate resourcing, staff expertise and program support.

- One intervention that did appear promising, particularly as a diversion intervention, was sobering-up shelters. Sobering-up shelters were described as acceptable to the community and to police, providing a more dignified, cost-effective alternative to police lock-ups.

- Community-based field workers and aftercare were described as ‘essential’ to residential treatment programs.

- Any single intervention cannot solve a community’s alcohol problems, particularly in light of the ‘political and economic inequalities stemming from colonialism and dispossession’. They concluded that ‘there is a need to redress the fundamental inequalities faced by Aboriginal people’.

In 1999, Hunter, Brady and Hall produced national recommendations for the clinical management of alcohol-related problems in Indigenous primary care settings.\(^{145}\) These recommendations were written for the primary care setting, were specific to alcohol disorders, and not specific to youth, but their limited relevance to the current review can be summarised as follows:

- There are problems with adopting treatment guidelines that have not been tested with Indigenous people. Local knowledge and clinical judgement are required to interpret the applicability of guidelines to Indigenous people and communities.

- Respectfulness and flexibility are recommended for effective intervention. Confrontation is not recommended, as it is culturally inappropriate and can reinforce the person’s sense of loss of control.

- There are pros and cons with residential treatment. **Pros:** It can provide ‘time out’ for the dependent person and a period of sobriety for decision making as well as providing ‘time out’ for the family and community. **Cons:** Residential treatment is a high-cost option, is usually not community-based, and existing programs usually offer only a single model of treatment.

- Some literature on cross-cultural issues is not useful. A list of recommended literature on cross-cultural issues is suggested.

Bourke has discussed the issue of communication with Indigenous people, and stressed ‘the need for professionals to have a greater awareness of cultural differences and to examine the way in which they communicate with clients from races other than their own’.\(^{146}\)

In *The Grog Book*, a manual of strategies for managing alcohol-related problems in Aboriginal communities, Maggie Brady discussed the advantages and disadvantages of a number of different approaches. The book provides examples of practical and
appropriate interventions being used by Aboriginal people in different parts of the country, for example:

- Harm reduction strategies such as night patrols and sobering-up centres help to reduce casualties associated with drinking.
- ‘Dry camps’ in the bush enable families to separate themselves from the drinking problems of larger settlements, and allow drinkers periods of abstinence away from intense social pressure to consume.(147)

Brady also argues that crisis-based intervention and drop-in services are useful for Aboriginal youth:

In metropolitan areas, young Aboriginal people need access to youth support schemes and drop-in centres. Some cities have Aboriginal youth support schemes already and teams of street workers. In other cases Aboriginal young people may access adolescent drop-in centres, some of which provide primary health care, drug and alcohol counselling, and family planning advice. These are important, accessible and non-threatening contexts for youths to access timely intervention. Aboriginal childcare agencies also work with street kids.(22, pp.37–38)

In planning PSUD interventions for Aboriginal peoples, the experience of fields outside or not specific to the drug and alcohol field should be used. In particular, research has been conducted in violence prevention in Aboriginal communities. For example, the comprehensive review by Memmott et al. of the literature and programs for addressing violence in Aboriginal communities is consistent with the literature on PSUD treatment in that it identifies the need for holistic programs to address the multiple risk factors for violence, the need for community-driven programs and the need for partnerships between community and government agencies.(148)

In sum, the appropriateness of interventions for Aboriginal youth needs to be considered, even if such interventions have demonstrated efficacy with other populations. The appropriateness and effectiveness of interventions for Aboriginal youth are likely to be improved with:

- staff training in cultural issues
- consultation with Aboriginal people, particularly those with knowledge of the youth’s home community
- involvement of Aboriginal people, particularly those with links with the youth’s home community
- a respectful, flexible approach
- regard for issues of confidentiality when family and community members are involved.

Consistent with other literature relating to PSUD treatment, program features that are supported include:

- interventions to address multiple risk factors for substance problems, including unemployment
- community-based interventions
- family involvement
- a range of intervention models, from drop-in centres to residential programs.

Finally, PSUD interventions can only ever have limited impact, while Aboriginal people are so socio-economically disadvantaged. Broader social justice programs are required for sustained and significant improvements in PSUDs among Aboriginal youth.
1.6 Interventions for reducing recidivism

1.6.1 Interventions for reducing recidivism among juveniles

A number of reviews of interventions for juvenile recidivism were identified.(149–152) We present here results from three of these reviews.

In 1996, Greenwood published a review of evaluations of various juvenile corrections alternatives, and identified improvements in recidivism with certain types of programs:

In contrast to the conclusions of scholars in the late 1970s that ‘nothing worked’ in juvenile corrections, Mark Lipsey’s 1992 meta-analysis of more than 400 evaluations of juvenile programs reported an average 10 per cent improvement in recidivism rates for all the programs evaluated. Lipsey’s meta-analysis found a significant advantage in community-based programs run by private providers compared with large custodial institutions, such as traditional state training schools. The most effective privately-run community programs have high levels of intensity and duration, multiple modes of intervention, and a great deal of structure. Non-residential, dawn-to-dusk educational programs that work with both juveniles and their families are good examples of this type of programming. Boot camps for juvenile offenders have proliferated because of their political popularity. A recent evaluation of eight of these programs showed that four had no effect on recidivism, one resulted in higher recidivism rates, and three showed improvements in some recidivism measures. Probation and diversion, the most common of all juvenile court dispositions, are not effective options for youths with multiple risk factors. Juvenile courts need an array of dispositional options, the ability to monitor program effectiveness and the flexibility to find the appropriate placement for each juvenile offender.(149)

In 2001, Latimer published a meta-analysis of 35 comparative studies, focusing on the relationship between youth delinquency, family intervention treatment and recidivism. He concluded that family intervention treatment significantly ‘reduced the recidivism of young offenders compared to traditional non-familial responses to youth crime’. (151)

Researchers at the Washington State Institute for Public Policy analysed the comparative costs and benefits of programs to reduce crime.(152) Juvenile offender programs studied by the group included specific ‘off-the-shelf’ programs, and had benefit–cost ratios (including benefits to victims) from $25 to $46:

- multi-systemic therapy
- functional family therapy
- aggression replacement training
- multi-dimensional treatment foster care
- adolescent diversion project.

General types of treatment programs were also reviewed, with more modest benefits for all except the ‘scared straight’ programs, which had negative returns:

- diversion with services (vs regular juvenile court processing)
- intensive probation (vs regular probation caseloads)
- intensive probation (as alternative to incarceration)
• intensive parole supervision (vs regular parole caseloads)
• coordinated services
• ‘scared straight’ type programs.

Their descriptions of these programs and results are presented as an addendum to the literature review. How well these findings apply to Aboriginal youth is not known. In particular, culturally inappropriate application of these programs with Aboriginal youth could result in much poorer outcomes than reported in the addendum.

In summary, reviews of evaluations of interventions for reducing juvenile recidivism have concluded that positive outcomes for recidivism have been associated with:
• community-based programs run by private providers compared with large custodial institutions
• involving family in treatment
• high levels of intensity and duration
• multiple modes of intervention
• a high level of structure.

The evidence does not support the use of ‘scared straight’ programs or boot camps for juvenile offenders.

1.6.2 Recidivism interventions for Aboriginal peoples

Published outcome evaluations of recidivism interventions for Aboriginal people were not found. Young reported on a case management model for Aboriginal prisoners (153) and Morgan has described a comprehensive juvenile justice program for Aboriginal youth (154), but little detail was provided. Key informant research is recommended for obtaining information on the experiences to date in the reduction of recidivism with Aboriginal youth.

The New South Wales Parliament Standing Committee on Law and Justice conducted a review of crime prevention in Aboriginal communities.(23) The recommendations relevant to the provision of treatment services for Aboriginal juvenile offenders are summarised below.

• Greater control by Aboriginal communities over decision making and methods of crime prevention in programs that directly affect them. (Recommendation 5)
• Local councils with Aboriginal populations sign formal statements of reconciliation with representatives of their Aboriginal communities. (Recommendation 8)
• That all ‘Families First’ programs (this could be translated nationally to refer to all government-funded family programs) affecting Aboriginal families introduce those programs in partnership with Aboriginal families and Aboriginal organisations. (Recommendation 9)
• Schools with a high proportion of Aboriginal students give priority to employing Aboriginal teachers, emphasise teaching aspects of the curriculum that relate to Aboriginal identity, provide cross-cultural training to teachers, and increase contact with Aboriginal organisations. (Recommendation 10)
• Increase employment of Aboriginal people in the private sector. (Recommendation 12)
1.7 Key principles

Drawing upon the literature presented above, the following key principles for the diversion and treatment of Aboriginal juvenile offenders are proposed.

1.7.1 Principles for diversion strategies and treatment services for Aboriginal adolescents

- Culturally appropriate
- Developmentally appropriate
- Meaningful (not tokenistic) involvement of Aboriginal people
- Involvement of family and community
- Community-based, where possible

1.7.2 Principles for treatment services for Aboriginal adolescents

- Multi-modal — that is, addresses multiple risk and protective factors (e.g. counselling, education, skills training etc)
- Intervention commensurate with drug use behaviour — that is, brief intervention when drug use does not constitute a PSUD; intense and long-term interventions for PSUD.

1.7.3 Principles for diversion strategies for Aboriginal adolescents

- Increasing sanctions and intensity of treatment with increasing offending history and PSUD
- Mechanisms for preventing net widening
- Mechanisms for monitoring the use of discretion
- Restorative justice principles
- Acknowledgement and incorporation of previous reviews in this area, including the report of the Royal Commission into Aboriginal Deaths in Custody (24) and the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (28), both of which stress the importance of self-determination. The latter also proposed the establishment of national minimum standards, including:
  - principles relating to the best interests of the child
  - requirements for consultation
  - requirements for representation of the juvenile by a person of the juvenile’s choice, or an accredited Aboriginal organisation if the child is incapable of choosing
  - a set of 15 rules relating to juvenile justice:
    - Rules 1 and 2 seek to minimise the use of arrest and maximise the use of summons and attendance notices.
    - Rule 3 requires notification of an accredited Indigenous organisation whenever an Indigenous young person has been arrested or detained.
    - Rule 4 requires consultation with the accredited organisation before any further decisions are made.
    - Rules 5–8 provide protection during the interrogation process.
    - Rules 9–12 ensure that Indigenous young people are not denied bail and that detention in police cells is eliminated except in truly exceptional circumstances.
    - Rule 13 prioritises the use of Indigenous-run community-based sanctions.
Rule 14 establishes the sentencing factors that need to be considered.

Rule 15 requires that custodial sentences be for the shortest possible period, and that reasons must be stated in writing.\(^{(29)}\)

1.8 Addendum: Costs and benefits of crime reduction programs

This addendum is a summarised analysis of the comparative costs and benefits of programs to reduce crime conducted by Washington State Institute for Public Policy.\(^{(152)}\)

**Multi-systemic therapy (MST)**

MST is an intensive home-based intervention for chronic, violent or substance-abusing juvenile offenders, aged 12–17. Trained therapists work with the youth and his or her family. The MST intervention is based on several factors, including an emphasis on addressing the causes of delinquency. The treatment services are delivered in the youth’s home, school and community settings, with a strong focus on treatment adherence and program fidelity. Service duration averages 60 hours of contact over four months. Each MST therapist works in a team of four therapists and carries a caseload of four to six families. The Institute’s review of national research found that MST has been rigorously evaluated in several settings, although we would like to see more replications in diverse settings. After reviewing the evaluations, the Institute found an average effect size of about −0.31 for basic recidivism. Based on the Institute’s estimates, a typical average cost per MST participant is about $4,743. Overall, taxpayers gain approximately $31,661 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $131,918 per participant, which is equivalent to a benefit-to-cost ratio of $28.33 for every dollar spent.

**Functional family therapy (FFT)**

This program targets youth, aged 11–18, with problems of delinquency, violence and substance use. FFT focuses on altering interactions among family members and seeks to improve the functioning of the family unit. FFT is provided by individual therapists, typically in the home setting, and focuses on increasing family problem-solving skills, enhancing emotional connection, and strengthening the parental ability to provide appropriate structure, guidance and limits to their children. FFT generally requires 8–12 hours of direct service to youth and their families, and generally no more than 26 hours for the most severe problem situations. The Institute’s review of national research found that FFT has been evaluated in several settings. After analysing the individual FFT research findings, the Institute found an average effect size of about −0.25 for basic recidivism. Based on the Institute’s estimates, a typical average cost per FFT participant is about $2,161. Overall, taxpayers gain approximately $14,149 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $59,067 per participant, which is equivalent to a benefit-to-cost ratio of $28.81 for every dollar spent.
Aggression replacement training (ART)

This program is a cognitive–behavioural intervention that attempts to reduce the anti-social behaviour, and increase the pro-social behaviour, of juvenile offenders. ART has three components. In the ‘anger control’ component, participants learn what triggers their anger and how to control their reactions. The ‘skill-streaming’ behavioural component teaches a series of pro-social skills through modelling, role playing, and performance feedback. In the ‘moral reasoning’ component, participants work through cognitive conflict in ‘dilemma’ discussion groups. The program is run in groups of 8–10 juvenile offenders, which helps keep the per-participant cost lower than individually focused interventions. The Institute’s review of ART research found only a few evaluations of these programs. Using the Institute’s weighting scheme to combine the study results, the evaluations have an average effect size of –0.18 for basic recidivism. Based on the Institute’s estimates, a typical average cost per ART participant for this group-based intervention is about $738. Overall, taxpayers gain approximately $8,287 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $33,143 per participant, which is equivalent to a benefit-to-cost ratio of $45.91 for every dollar spent.

Multi-dimensional treatment foster care (MTFC)

MTFC is an alternative to group residential placement for high-risk and chronic juvenile offenders. Youth are placed with two trained and supervised foster parents for 6–12 months, and the youth’s parents participate in family therapy. Near the end of the child’s stay, the youth and his or her parents participate together in family therapy. The intervention is intensive, with at most two, and usually one, youth placed in the foster family. Families are recruited, trained and closely supervised. MTFC-placed adolescents are given treatment and intensive supervision at home, in school and in the community; clear and consistent limits with follow-through on consequences; positive reinforcement for appropriate behaviour; a relationship with a mentoring adult; and separation from delinquent peers. MTFC training for community families emphasises behaviour management methods to provide the youth with a structured and therapeutic living environment. After reviewing the two evaluations of MTFC, the Institute found an effect size of about –0.37 for basic recidivism. A typical cost per MTFC participant is $2,052. Note that this cost is the net difference between a placement in MTFC versus a regular group home situation; this cost could vary significantly depending on the resource it displaces. Overall, taxpayers gain approximately $21,836 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $87,622 per participant, which is equivalent to a benefit-to-cost ratio of $43.70 for every dollar spent. Note that there is some uncertainty in these
estimates about the net cost of the program itself (assumed to be $2,052 in this analysis). Even if the actual cost is considerably higher, however, the underlying economics of this approach are likely to be favourable given the substantial positive results reported here.

Adolescent diversion project (ADP)

This program stems from research experiments conducted in the 1970s and 1980s where youth were diverted from the juvenile court to prevent labelling as ‘delinquent’. ADP ‘change agents’ (usually college students) work with youth in their environment to provide community resources and initiate behavioural change. Change agents are trained in a behavioural model (contracting, with rewards written into actual contracts between youth and other significant persons in the youth’s environment) and to become advocates for community resources. Youth and change agents are matched, whenever possible, on race and gender. The evaluation results are for males only. After reviewing the ADP evaluations, the Institute found an average effect size of about –0.27 for basic recidivism. Based on the Institute’s estimates, a typical average cost per ADP participant is about $1,138. Overall, taxpayers gain approximately $5,720 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $27,212 per participant, which is equivalent to a benefit-to-cost ratio of $24.91 for every dollar spent.

General types of juvenile offender programs

Other programs for juvenile offenders have not developed to the ‘market-like’ stage of the programs just described. For these programs, we categorised the existing evaluations into logical groupings of programs; for example, we summarise the results, using the meta-analytic procedures described in Section III of the report, of the existing studies on juvenile intensive probation and intensive parole. We then estimate the economics for these general approaches given the strength of the research evidence behind them. One effect of this generalising process is to mask some of the individual differences of particular programs. Not all intensive supervision programs, for example, are the same. Our results, therefore, should be interpreted as statements about the economic effect of the average approach for each category studied. As with any average, some programs will do better than the average, while some will do worse. The purpose of these categories is to estimate the expected effect of different types of programs given the evidence of all programs that have been tried and evaluated. As the following results indicate, the economics of some approaches appear promising, while some do not.
Diversion with services (vs regular juvenile court processing)

The Institute conducted a meta-analysis of 13 studies that focused on juvenile court diversion programs where providing services to youth was an important element. These programs are usually designed for low-risk, first-time juvenile offenders who would otherwise have their cases handled formally in the juvenile court. This is a diverse set of programs that include citizen accountability boards and counselling services provided by other social service agencies. After reviewing the evaluations, the Institute found an average effect size of about –0.05 for basic recidivism. Based on the Institute’s estimates, a typical average cost per program participant is a negative $127; that is, the added cost of a diversion service is, on average, cheaper than the cost of normal juvenile court processing. Overall, taxpayers gain approximately $1,470 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $5,679 per participant.

Intensive supervision programs

We found 20 evaluations of juvenile intensive supervision programs that met our minimum research design standards. For our cost–benefit analysis, we divided this set of studies into three types: intensive probation supervision vs regular probation caseloads (7 studies); intensive parole supervision vs regular parole caseloads (7 studies); intensive probation as an alternative to incarceration (6 studies). The evidence on intensive probation and parole indicates that these types of programs can, on average, have a small reduction in recidivism rates compared to regular probation or parole. The effect sizes from our analysis of the evaluations of intensive probation and parole vs regular caseloads were similar at –0.05 and –0.04, respectively. We estimate that the extra costs of these two approaches (i.e. the costs in excess of the cost of regular supervision) are also similar, at about $2,500 per offender. Given these parameters, the economics of these programs produce net present values that roughly pay the taxpayer back for the extra cost, and they produce gains of $5,000–$6,000 per participant when the benefits to crime victims are considered. The equivalent benefit-to-cost ratios are about $4 of benefits per dollar of cost. These rate-of-return numbers are considerably lower than those for the specific ‘off-the-shelf’ treatment programs described above, but they do demonstrate economics that are more attractive than regular probation and parole services. There have also been attempts to use juvenile probation supervision as an alternative to incarceration; we found six evaluations of this approach that met our minimum research design standards. The average effect of the programs was zero; that is, on average there was no difference in recidivism rates between those juveniles incarcerated and those placed on intensive probation. It was cheaper, however, to use probation instead of incarceration; we estimate the difference at about $18,478 per youth diverted. With no apparent difference in recidivism rates, the net present value becomes $18,000–$19,000 in savings.
Coordinated services

We found four evaluations of programs for juvenile offenders where the ‘treatment’ was devoting resources to coordinating existing multi-agency resources in the community and focusing those resources on the youth. The purpose of this intervention approach is to use existing resources in the community more effectively. This approach has sometimes been called ‘wrap-around’ services. After reviewing the four evaluations, the Institute found an average effect size of about –0.14 for basic recidivism. Based on the Institute’s estimates, a typical average cost per participant for this brokerage–advocacy service is about $603. Overall, taxpayers gain approximately $3,131 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $14,831 per participant, which is equivalent to a benefit-to-cost ratio of $25.59 for every dollar spent.

Juvenile boot camps

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded demonstration programs at three sites to develop prototypical boot camp and after-care programs for male juvenile offenders (Cleveland, Denver and Mobile). According to OJJDP, the programs were intended to: serve as a cost-effective alternative to institutionalisation; promote discipline through physical conditioning and teamwork; instill moral values and a work ethic; promote literacy and increase academic achievement; reduce drug and alcohol abuse; encourage participants to become productive law-abiding citizens; and ensure that offenders are held accountable for their actions. Our review of the ten existing evaluations of juvenile boot camps (the three federal projects as well as seven boot camps in California and Florida) indicated that, relative to comparison groups, juvenile offenders in these programs had higher, not lower, subsequent recidivism rates. The average effect size was +0.10, meaning recidivism rates were, on average, about 10 per cent higher for boot camp participants compared to juvenile offenders who went through regular juvenile institutional facilities. We estimate that these boot camps are cheaper up-front (hence the negative $15,424 shown in the table below), but the increased costs to taxpayers and crime victims associated with the higher recidivism rates more than offset the up-front taxpayer savings. This produced an expected negative bottom line of $3,587 per boot camp participant.
‘Scared straight’ type programs

We found eight existing evaluations of these programs. These programs typically take young juvenile offenders to an adult prison where they are lectured by adult offenders about how their life will turn out if they don’t change their ways. The Institute’s review of studies found an average effect size of +0.13 for basic recidivism, meaning that recidivism rates were, on average, about 13 per cent higher for ‘scared straight’ type program participants compared to juvenile offenders who went through regular juvenile case processing. We estimated a nominal per participant cost of about $50 to run a ‘scared straight’ type program. Overall, because of the higher expected recidivism, taxpayers lose approximately $6,572 in increased subsequent criminal justice costs for each program participant. Adding the increased costs that accrue to crime victims from the higher recidivism rates increases the negative expected net present value to –$24,531 per participant.

Other family-based therapy approaches

We found six evaluations of programs for juvenile offenders that employed a family-based approach to counselling, somewhat similar to the approaches taken in MST and FFT, described earlier. These programs differ from each other, but are grouped for this cost–benefit analysis because the underlying approach involved working with both the youth and his or her family members. After analysing these six studies using meta-analytic techniques, the Institute found an average effect size of about –0.17 for basic recidivism. Based on the Institute’s estimate of what these diverse programs might cost, a typical average cost per program participant is about $1,537. With these parameters, taxpayers gain approximately $7,113 in subsequent criminal justice cost savings for each program participant. Adding the benefits that accrue to crime victims increases the expected net present value to $30,936 per participant, which is equivalent to a benefit-to-cost ratio of $21.13 for every dollar spent. The result for this class of programs is general and suggestive only. Since the positive economics of these family-based approaches is similar to those of the specific MST and FFT programs, it provides additional evidence that the focus on family-based therapy for certain types of juvenile offenders makes economic sense.

(152)
Table 1.4 Summary of program economics (all monetary values in 2000 US dollars)

<table>
<thead>
<tr>
<th>Juvenile offender programs</th>
<th>Program effects</th>
<th>Average crime reduction effect</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific ‘off-the-shelf’ programs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi-systemic therapy</td>
<td>3</td>
<td>0.31</td>
<td></td>
</tr>
<tr>
<td>Functional family therapy</td>
<td>7</td>
<td>0.25</td>
<td></td>
</tr>
<tr>
<td>Aggression replacement training</td>
<td>4</td>
<td>0.18</td>
<td></td>
</tr>
<tr>
<td>Multi-dimensional treatment foster care</td>
<td>2</td>
<td>0.37</td>
<td></td>
</tr>
<tr>
<td>Adolescent diversion project</td>
<td>5</td>
<td>0.27</td>
<td></td>
</tr>
<tr>
<td>General types of treatment programs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversion with services (vs regular juvenile court processing)</td>
<td>13</td>
<td>0.05</td>
<td></td>
</tr>
<tr>
<td>Intensive probation (vs regular probation caseloads)</td>
<td>7</td>
<td>0.05</td>
<td></td>
</tr>
<tr>
<td>Intensive probation (as alternative to incarceration)</td>
<td>6</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Intensive parole supervision (vs regular parole caseloads)</td>
<td>7</td>
<td>0.04</td>
<td></td>
</tr>
<tr>
<td>Coordinated services</td>
<td>4</td>
<td>0.14</td>
<td></td>
</tr>
<tr>
<td>‘Scared straight’ type programs</td>
<td>8</td>
<td>0.13</td>
<td></td>
</tr>
<tr>
<td>Other family-based therapy approaches</td>
<td>6</td>
<td>0.17</td>
<td></td>
</tr>
<tr>
<td>Juvenile boot camps</td>
<td>10</td>
<td>0.10</td>
<td></td>
</tr>
</tbody>
</table>

* Note that a negative effect size means lower crime.
* Includes taxpayer benefits only.
* Includes taxpayer and crime victim benefits.

### Net benefits per participant

<table>
<thead>
<tr>
<th>Standard error</th>
<th>Net cost per participant</th>
<th>Lower end of range</th>
<th>Upper end of range</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.10</td>
<td>$4,743</td>
<td>$31,661</td>
<td>to $131,918</td>
</tr>
<tr>
<td>0.10</td>
<td>$2,161</td>
<td>$14,149</td>
<td>to $59,067</td>
</tr>
<tr>
<td>0.14</td>
<td>$738</td>
<td>$8,287</td>
<td>to $33,143</td>
</tr>
<tr>
<td>0.19</td>
<td>$2,052</td>
<td>$21,836</td>
<td>to $87,622</td>
</tr>
<tr>
<td>0.07</td>
<td>$1,138</td>
<td>$5,720</td>
<td>to $27,212</td>
</tr>
<tr>
<td>0.02</td>
<td>-$127</td>
<td>$1,470</td>
<td>to $5,679</td>
</tr>
<tr>
<td>0.06</td>
<td>$2,234</td>
<td>$176</td>
<td>to $6,812</td>
</tr>
<tr>
<td>0.05</td>
<td>-$18,478</td>
<td>$18,586</td>
<td>to $18,854</td>
</tr>
<tr>
<td>0.06</td>
<td>$2,635</td>
<td>-$117</td>
<td>to $6,128</td>
</tr>
<tr>
<td>0.10</td>
<td>$603</td>
<td>$3,131</td>
<td>to $14,831</td>
</tr>
<tr>
<td>0.06</td>
<td>$51</td>
<td>-$6,572</td>
<td>to -$24,531</td>
</tr>
<tr>
<td>0.04</td>
<td>$1,537</td>
<td>$7,113</td>
<td>to $30,936</td>
</tr>
<tr>
<td>0.04</td>
<td>-$15,424</td>
<td>$10,360</td>
<td>to -$3,587</td>
</tr>
</tbody>
</table>

---

*a* Note that a negative effect size means lower crime.

*b* Includes taxpayer benefits only.

*c* Includes taxpayer and crime victim benefits.
2. National data on Indigenous youth in juvenile detention centres

The ANCD asked the consultants to ‘document the overall number, proportion and characteristics (including sentence) of Indigenous youth in juvenile detention centres across jurisdictions’. The Australian Institute of Criminology (AIC) is the primary source of national statistics about juveniles in corrective institutions. Their reports are based on data obtained through a census muster taken by the relevant juvenile authorities in each State and Territory on the night of the last day of every quarter. The data are provided to the AIC by the Department of Juvenile Justice, New South Wales; the Department of Human Services, Victoria; the Department of Families, Queensland; the Minister of Justice, Western Australia; the Department of Family and Community Services, South Australia; the Department of Health and Human Services, Tasmania; Northern Territory Correctional Services, and the Department of Youth and Justice Services, Australian Capital Territory.17

2.1 Trends in juvenile detention

In 1999, the AIC published the first of a series of annual reports on long- and short-term trends so that changes in the numbers and rates of juvenile incarceration in Australia could be assessed. Some of the major findings of the 1999 report, and the most recent report (2001), were as follows:

- On a national basis, the number of persons aged 10–17 years in juvenile corrective institutions is small, and has shown a declining trend over the last 20 years from 1981 to 2001, as has the rate of incarceration. The number of persons aged 10–17 years was thought to have stabilised around an average of 780 people a year in 1998, equating to a rate of incarceration of about 37 persons aged 10–17 years per 100 000 relevant population.18 But further consistent declines have occurred, resulting in a total of just 604 juvenile detainees on 30 June 2001.19

- Data on Indigenous persons held in juvenile corrective institutions have been collected since 1993. Indigenous rates of juvenile incarceration have declined by an average 2 per cent a quarter during the six years 1993–1998, while non-Indigenous rates have remained stable over the same period. The rate of over-representation of Indigenous persons declined from 26 per cent during the first quarter of 1993 to 18 per

---

During the fourth quarter of 1998, or an average of 1.5 per cent per quarter.\textsuperscript{20}

- Nationally, the number of persons held on remand increased from 21 per cent in 1981 to 43 per cent in 1998 as a percentage of the total number of persons in juvenile corrective institutions. This result suggests that, while the number of juveniles coming through the correction system was declining over the years, either the time taken by the courts to process them was increasing, or there was a growing preference for incarceration of offenders on remand. No differences were observable according to Indigenous status or gender in this respect.\textsuperscript{21}

- Young Indigenous juvenile offenders are much more likely to be held in a corrective institution than are their non-Indigenous counterparts. On a national basis, the rate of incarceration among Indigenous juvenile offenders has declined from 413.9 per 100 000 relevant population during the second quarter of 1994 to 284.0 per 100 000 relevant population during the second quarter of 2001. Non-Indigenous rates of juvenile incarceration have also declined over the same period, but from much lower rates of 26.7 per 100 000 relevant population during the first quarter of 1994 to 16.3 per 100 000 relevant population during the second quarter of 2001. Indigenous people were 17 times over-represented in Australian detention facilities.\textsuperscript{22}

Table 2.1 shows that the level of over-representation of Indigenous juveniles in detention has ranged from 14 to 21 times the rate of detention of non-Indigenous juveniles in the period 1994–2001. The level of over-representation appears to have stabilised.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
Year & 1st quarter & 2nd quarter & 3rd quarter & 4th quarter \\
\hline
1994 & 14.7 & 17.0 & 16.1 & 16.2 \\
1995 & 18.2 & 14.9 & 16.5 & 15.5 \\
1996 & 17.3 & 17.1 & 17.4 & 16.6 \\
1997 & 17.2 & 18.2 & 20.3 & 21.8 \\
1998 & 18.5 & 18.4 & 17.5 & 18.6 \\
1999 & 18.6 & 17.3 & 14.1 & 17.9 \\
2000 & 18.0 & 17.0 & 14.6 & 15.5 \\
2001 & 16.2 & 17.4 & – & – \\
\hline
\end{tabular}
\caption{Australia 1994–2001: Persons aged 10–17 years in juvenile detention – level of over-representation of Indigenous persons to non-Indigenous persons}
\end{table}

Calculated from data in Cahill & Marshall, \textit{Statistics on Juvenile Detention in Australia: 1981–2001}. The rate–ratio method has been used to calculate over-representation.

\textsuperscript{20} Cahill \& Marshall, \textit{Statistics on Juvenile Detention in Australia: 1981–2001}. The most recent publication excludes data for 1993, which were considered to be unreliable.

\textsuperscript{21} Carcach, \textit{Juveniles in Australian Corrective Institutions 1981–1998}.


at around 16 times that of non-Indigenous juvenile offenders over the last couple of years. Figure 2.1 highlights the differences in the rates of detention per 100,000 persons of Indigenous and non-Indigenous juveniles.

2.2 Definition of a ‘juvenile’

Jurisdictions differ in their definitions of a ‘juvenile’. In New South Wales, South Australia and Western Australia, a juvenile is defined as a person who is at least 10 years old but under 18. In Victoria, Queensland and until recently the Northern Territory, a juvenile was defined as someone aged 10 but under 17. At 1 June 2000, legislative changes in the Northern Territory to the legal definition of a juvenile mean that people aged 17 are no longer classified as adults. Tasmania has the widest definition — from 7 to under 17. In theory, the Australian Institute of Criminology (AIC) notes, the Tasmanian juvenile justice net could cover 40 per cent more juveniles than Victoria’s. The AIC’s published statistics are for people aged between 10 and 17 years.

A recent AIC report made the following comments about national and State/Territory levels of over-representation of Indigenous juveniles to non-Indigenous juveniles between 1994 and 2001:

New South Wales and Victoria had similar levels of over-representation to the national level. Higher levels of over-representation were found for:

- Queensland (with Indigenous people being 29 times over-represented in juvenile detention; and

---


Western Australia (where Indigenous people were 65 times over-represented in juvenile detention facilities). This very high ratio results from a decrease in the rate (and number) of non-Indigenous people in juvenile detention, rather than from an increase in the rate (and number) of Indigenous people being detained.

South Australia, Tasmania, the Northern Territory and the Australian Capital Territory all had lower levels of over-representation than the national ratio.

It is important to bear in mind that the rates per 100,000 population are very unstable, as are the over-representation ratios, in States and Territories with:

- small populations of Indigenous people;
- small numbers of people in juvenile detention; and/or
- small numbers of Indigenous people in juvenile detention.

This particularly applies in Victoria, Tasmania, the Northern Territory and the Australian Capital Territory.

Figure 2.2 illustrates the level of over-representation of Indigenous people in New South Wales, Queensland, Western Australia and South Australia relative to the national over-representation level. (The other States and Territories are not represented in the figure owing to the unstable nature of the over-representation rates.)

Table 2.2 presents numbers and rates of persons aged 10–17 years in juvenile detention in Australia.

---

<table>
<thead>
<tr>
<th>Year</th>
<th>Indigenous persons</th>
<th>Number</th>
<th>Rate</th>
<th>Non-Indigenous persons</th>
<th>Number</th>
<th>Rate</th>
<th>Total persons</th>
<th>Number</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1st quarter</td>
<td>2nd quarter</td>
<td>3rd quarter</td>
<td>4th quarter</td>
<td>1st quarter</td>
<td>2nd quarter</td>
<td>3rd quarter</td>
<td>4th quarter</td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td>257</td>
<td>271</td>
<td>248</td>
<td>249</td>
<td>392.5</td>
<td>413.9</td>
<td>378.8</td>
<td>380.3</td>
</tr>
<tr>
<td>1995</td>
<td></td>
<td>309</td>
<td>260</td>
<td>274</td>
<td>254</td>
<td>472.0</td>
<td>397.1</td>
<td>418.5</td>
<td>388.0</td>
</tr>
<tr>
<td>1996</td>
<td></td>
<td>276</td>
<td>284</td>
<td>289</td>
<td>260</td>
<td>421.6</td>
<td>433.8</td>
<td>441.4</td>
<td>397.1</td>
</tr>
<tr>
<td>1997</td>
<td></td>
<td>336</td>
<td>312</td>
<td>333</td>
<td>303</td>
<td>451.4</td>
<td>419.2</td>
<td>447.4</td>
<td>407.1</td>
</tr>
<tr>
<td>1998</td>
<td></td>
<td>322</td>
<td>326</td>
<td>310</td>
<td>284</td>
<td>406.3</td>
<td>411.4</td>
<td>391.2</td>
<td>358.4</td>
</tr>
<tr>
<td>1999</td>
<td></td>
<td>319</td>
<td>290</td>
<td>251</td>
<td>254</td>
<td>378.7</td>
<td>344.2</td>
<td>297.9</td>
<td>301.5</td>
</tr>
<tr>
<td>2000</td>
<td></td>
<td>284</td>
<td>286</td>
<td>248</td>
<td>239</td>
<td>317.4</td>
<td>319.7</td>
<td>277.2</td>
<td>267.1</td>
</tr>
<tr>
<td>2001</td>
<td></td>
<td>262</td>
<td>269</td>
<td>–</td>
<td>–</td>
<td>276.6</td>
<td>284.0</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td>525</td>
<td>479</td>
<td>464</td>
<td>462</td>
<td>26.7</td>
<td>24.3</td>
<td>23.6</td>
<td>23.5</td>
</tr>
<tr>
<td>1995</td>
<td></td>
<td>509</td>
<td>526</td>
<td>497</td>
<td>491</td>
<td>25.9</td>
<td>26.7</td>
<td>25.3</td>
<td>25.0</td>
</tr>
<tr>
<td>1996</td>
<td></td>
<td>478</td>
<td>497</td>
<td>500</td>
<td>456</td>
<td>24.3</td>
<td>25.3</td>
<td>25.4</td>
<td>23.2</td>
</tr>
<tr>
<td>1997</td>
<td></td>
<td>527</td>
<td>463</td>
<td>443</td>
<td>376</td>
<td>26.2</td>
<td>23.0</td>
<td>22.0</td>
<td>18.7</td>
</tr>
<tr>
<td>1998</td>
<td></td>
<td>446</td>
<td>454</td>
<td>452</td>
<td>392</td>
<td>22.0</td>
<td>22.4</td>
<td>22.3</td>
<td>19.3</td>
</tr>
<tr>
<td>1999</td>
<td></td>
<td>414</td>
<td>404</td>
<td>429</td>
<td>341</td>
<td>20.4</td>
<td>19.9</td>
<td>21.1</td>
<td>16.8</td>
</tr>
<tr>
<td>2000</td>
<td></td>
<td>359</td>
<td>385</td>
<td>389</td>
<td>351</td>
<td>17.6</td>
<td>18.8</td>
<td>19.0</td>
<td>17.2</td>
</tr>
<tr>
<td>2001</td>
<td></td>
<td>350</td>
<td>335</td>
<td>–</td>
<td>–</td>
<td>17.1</td>
<td>16.3</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

3. Programs and services available to Indigenous youth, and a profile of diversion activity in each jurisdiction

3.1 Diversion activity in each jurisdiction

We now document the programs and services available to Aboriginal and Torres Strait Islander youth as diversion alternatives in each jurisdiction.

The Australian National Council on Drugs (ANCD) recently commissioned a project to identify the number and nature of programs specifically targeted at Indigenous people who are experiencing drug and alcohol problems. The report, *Indigenous Drug and Alcohol Projects 1999–2000*, was prepared by the National Drug Research Institute (NDRI) at Curtin University. It identified a total of 277 alcohol and other drug intervention projects conducted by or for Indigenous Australians, including:

- 107 projects that provided treatment as either a primary or secondary part of their service
- 57 prevention projects that provided a mix of health promotion services, sporting and recreational activities as an alternative to or diversion from alcohol or other drug use, and a small number of community development projects
- 93 projects that provided acute intervention services, generally in the form of night patrols and/or sobering-up shelters, and
- 22 other projects that provided support services, referral services, staff and resource development or program development.

The States and Territories with the largest Indigenous populations — New South Wales/Australian Capital Territory and Queensland — had the lowest number of intervention projects per 10 000 people.

Existing evaluations did not offer a basis for identifying ‘best practice’ alcohol and other drug interventions but, on the basis of the literature and key informant interviews, NDRI was able to highlight the elements considered to contribute to best practice in the field, including clearly defined management structures and procedures, trained staff and effective staff development programs, multi-strategy collaborative approaches, adequate funding and clearly defined, realistic objectives to support provision of appropriate services that address community needs.

---

It was not within NDRI’s brief to identify projects specific to Indigenous youth. We have therefore used data from the NDRI Indigenous Australian Alcohol and Other Drugs Intervention Projects Database to identify current projects that include adolescents or children in their primary or secondary target group. A brief description of projects identified in this way is at Appendix 2.

3.1.1 Available information about diversion activity

We identified key informants by making initial contact with Departments of Health, Corrective Services and Police across Australia. We asked these informants about juvenile diversionary processes in general, and then specifically about drug diversion for Indigenous youths. We asked them to identify other departments and individuals in their jurisdiction that were responsible for juvenile diversion. In many cases, they referred us to people who could offer additional relevant information. We pursued leads to successive informants until we judged that further inquiry would not add significant value. We also contacted a number of individuals and organisations identified by the ANCD. We are confident that the major initiatives are represented here.

We found no systematic nationwide approach to diversion. State police, health and justice departments chiefly have the carriage of diversion activity, and there has been little, if any, coordination among the States and Territories. Their responsibility for diversion means that specific information depends on what State and Territory sources can or will provide, and this varies widely.

Variation in the age of majority illustrates the lack of coordination among jurisdictions. As noted above, 17 year olds are treated as adult offenders in some jurisdictions, and as juvenile offenders in others. In Tasmania, the Northern Territory and Victoria, for example, 17 year olds are adult offenders. Until very recently, 17 year olds in Queensland were also treated as adult offenders. In these jurisdictions drug offenders who are 17 may not be able to access the more lenient juvenile diversionary programs of their counterparts in other States, although in some places the relevant authority can treat the adult as a juvenile offender.

Only about 630 juveniles (Indigenous and non-Indigenous) are in detention throughout Australia. About two-fifths of them are Indigenous. Because the number of Indigenous offenders is small, figures about particular offences could potentially allow an offender to be identified, and some informants were therefore reluctant to provide even de-identified data for privacy reasons.

Most data collections use the Australian National Classification of Offences (ANCO), or an adaptation of it, for classifying offences. The ANCO classification includes a division called Drug Offences whose subclassifications include possession and/or use of drugs, importing and exporting of drugs, dealing and trafficking in drugs, manufacturing and growing drugs, and other drug offences.

---

27 [http://www.db.ndri.curtin.edu.au](http://www.db.ndri.curtin.edu.au)

28 In most jurisdictions criminal responsibility begins at the age of 10; except in Tasmania (7) and the ACT (8). We found no cases of apprehensions for drug offences of children under the age of 10.
As the literature indicates, drug offences per se are rare among both Aboriginal offenders and the general population. Most drug-related offences occur while the offender is intoxicated, or to fund drug use. From most statistical data it is not possible to discern the extent to which criminal offences other than drug offences are drug-related.29, 30

Specific Indigenous data about juvenile diversion were difficult to collect. In most States and Territories, police use only a ‘racial appearance’ indicator, and are largely unwilling to release these statistics because they do not accurately represent Aboriginality.31 The National Centre for Indigenous Statistics has identified ‘shifting denominators’ in the collection of statistics on Indigenous Australians. On one hand, a growing number of Australians are willing to identify as Indigenous owing largely to a growing recognition of culture and self-acceptance, and this can make it difficult to compare year with year.32 On the other hand, community leaders have expressed concern that Indigenous people in remote communities have been under-counted. For example, the University of Queensland recently investigated the level of under-enumeration in Cape York communities using alternative sources such as school enrolments, perinatal data, community health records and Centrelink data, and preliminary results indicated that the populations of these communities were under-enumerated by about 16 per cent at the 1996 Census.33

Finally, statistics indicating rates of informal police caution were not available in any jurisdiction. These limitations in the statistical data should be kept in mind in the profiles below.

3.2 Commonwealth diversion activities

The primary current Commonwealth diversion activity is the Illicit Drugs Diversion Initiative of the National Illicit Drugs Strategy. The Commonwealth has provided funding to States and Territories to promote police diversion of drug offenders into health services. We identified no other Commonwealth initiatives that were explicitly diversionary.

---


31 The Australian Bureau of Statistics has developed an Indigenous Data Working Group dedicated to improving the data on Aboriginal and Torres Strait Island peoples. The collection of data by police is its priority. It has devised a standard question to extract data regarding Aboriginality. So far, only WA police have incorporated this into their procedures. New South Wales has collected this data for some time but the quality is low, and a standard form is not yet used. (Telephone interview, National Centre for Indigenous Statistics, 15 October 2001.)

32 Informant interview.

3.2.1 National Illicit Drugs Strategy

The Prime Minister launched the National Illicit Drugs Strategy (NIDS), ‘Tough on Drugs’, in November 1997. Under this strategy, the Commonwealth Government has allocated over $500 million for a range of supply reduction and demand reduction measures.

As part of the demand reduction initiatives, the Council of Australian Governments (COAG) agreed on a national approach to the development of a drug diversion initiative and supporting measures. A total of $221 million over four years was allocated for a range of measures that included support for diversion of illicit drug users from the criminal justice system into education and treatment, and establishment of assessment services and additional treatment places.

On 10 June 1999, the Ministerial Council on Drug Strategy (MCDS) endorsed 19 principles to guide the diversion initiative nationally, and ‘to ensure a nationally consistent approach to diversion whilst recognising that law enforcement, drug assessment, education and treatment systems are jurisdictionally based and have different legislative, practice and cultural circumstances’. In general terms, diversion in the context of the COAG initiative refers to police diversion of young offenders ‘to assessment for drug education and/or a diverse range of clinically acceptable drug treatment services. In some jurisdictions, police will divert certain offenders directly to drug education’. No criminal record is incurred if the offence is expiated through the relevant diversion program. Failure to expiate an offence results in redirection to the criminal justice system. This emphasis has seen the growth of police cannabis diversion, and more recently illicit drugs diversion programs, throughout Australia. The evaluators of these initiatives noted: ‘There was a considerable level of diversion activity in many States and Territories before the COAG initiative, but these activities varied considerably in their point of action, eligibility criteria and referral/treatment options’. COAG NIDS allocations to States and Territories for 1999–2003 were as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>$31,873,203</td>
</tr>
<tr>
<td>Victoria</td>
<td>$22,979,179</td>
</tr>
<tr>
<td>Queensland</td>
<td>$19,511,052</td>
</tr>
<tr>
<td>Western Australia</td>
<td>$11,135,529</td>
</tr>
<tr>
<td>South Australia</td>
<td>$9,167,666</td>
</tr>
<tr>
<td>Tasmania</td>
<td>$3,808,163</td>
</tr>
<tr>
<td>Aust Capital Territory</td>
<td>$2,899,040</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>$2,729,679</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$104,103,511</strong></td>
</tr>
</tbody>
</table>


36 Email correspondence, Alcohol Strategy and Illicit Drug Interventions Group, Commonwealth Department of Health and Aged Care, 2 November 2001.
The Illicit Drugs Diversion Initiative report flagged the need to target priority groups: ‘The diversion initiative will be rolled out within each State and Territory over a four-year period, as agreed bilaterally. Under this approach, priority targets will be agreed on a bilateral basis for initial implementation’. Identification of priority targets would require, among other things, ‘evidence of the level of illicit drug use among the target group’. Indigenous Australians were identified as a special needs group in relation to diversion activities. Wherever possible, it was intended that young offenders would have access to youth-specific drug assessment services and Indigenous offenders would have the option of attending an appropriate Indigenous agency for assessment.\(^{37}\)

3.3 New South Wales

3.3.1 Diversionary options and programs currently implemented

3.3.1.1 Cautions – formal and informal

The New South Wales Young Offenders Act 1997 provides for a young person to be warned or cautioned rather than detained. Warnings may be given for summary offences only, which include the possession and/or use of small amounts of drugs. Details of the warning are recorded, but they do not become part of a criminal record. No admission of guilt is necessary.

A Youth Liaison Officer generally administers official police cautions in a loosely prescribed format. Summary offences and offences that may be heard summarily can be cautioned. This excludes trafficking and supply of drugs, but extends to use and possession. An admission of guilt is necessary.

Training in relation to the Young Offenders Act is provided to all recruits. Youth Liaison Officer positions have also been established — full-time station positions that focus wholly on working with young people. The Youth Liaison Officers Development Program is designed to equip participants with the knowledge, skills and resources to perform the duties of youth liaison officer effectively. It consists of a basic two-day package as well as a more detailed four-day course, and covers a wide range of areas including a segment on young people and drugs and alcohol.

Specialist Youth Officer workshops are also provided for any police officer who has been appointed under the *Young Offenders Act* to make decisions about diverting young people away from the court system. The workshop is partly aligned to Youth Liaison Officer competency standards. Training officers conduct the two-day workshop in local area commands across the State. Senior police officers generally attend. There is a component about making culturally appropriate decisions, and attendees are read a range of material that identifies the over-representation of ethnic and Aboriginal youths in the justice system. The objectives of the training are to inform participants about the *Young Offenders Act*, when one can caution, for what offences caution and conference can be used, procedures in cautioning, the paper and computer work involved in implementing diversion, and timeframes.

There has been no evaluation of the effect of police programs on diversion practices. Overall, more and more youths are being diverted every year. The diversion rates of Indigenous youth are improving but are smaller relatively than diversion rates for youth in general. One informant said that, in the three years since the *Young Offenders Act* was introduced, there had been an increase in the rates of diversion, but some difficulties still existed. Part of the problem involved some lawyers who advised people not to cooperate or participate in police interviews. The result of this advice is that people cannot be diverted because diversion is an option only if the offender pleads guilty.

### 3.3.1.2 Youth conferencing

The legislative framework for youth conferencing is contained in sections 3, 7 and 34 of the *Young Offenders Act 1997*. Responsibility for the scheme was assigned to the Department of Juvenile Justice, and began to operate in the middle of 1998. Certain drug offences are excluded. Further, the offender must have admitted the offence, or can be referred once charged, and must be willing to take part in a conference. The program can be diversionary but its scope is very much broader.

Juveniles are referred to the program either by police or by the courts. They are required to have admitted to the offence, or they can be referred once charged. The following table lists the number of referrals to youth justice programs between 1998 and 2001:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Police referrals</td>
<td>731</td>
<td>992</td>
<td>898</td>
</tr>
<tr>
<td>Court referrals</td>
<td>898</td>
<td>1125</td>
<td>1123</td>
</tr>
<tr>
<td>Total referrals (including DPP adjudicated)</td>
<td>1630</td>
<td>2120</td>
<td>2021</td>
</tr>
<tr>
<td>Indigenous referrals (police and court)</td>
<td>292</td>
<td>480</td>
<td>444</td>
</tr>
<tr>
<td>% Indigenous referrals</td>
<td>18.8%</td>
<td>22.6%</td>
<td>21.9%</td>
</tr>
</tbody>
</table>

---


39 Informant interviews.

40 Statistics provided by New South Wales Department of Juvenile Justice.
One of the objects of this scheme is community-based negotiated responses to offenders. Staff work with police, court staff, solicitors and community organisations, and across government. It is intended to be a ground-up, rather than top-down approach, which key informants view as crucial to the success of the scheme. Victims are encouraged to attend, and have a veto over the outcome if they do. Support people of both offender and victim also take part, and additional people may be invited, such as Indigenous community Elders, in the case of an Indigenous offender. Administrators within the Department of Juvenile Justice oversee conferences. At present there are 17 administrators who are full-time public servants. They are attached to 17 Department offices across New South Wales. Five of the administrators are Aboriginal and one is a Pacific Islander.

At the end of the first year of operation, half of the referrals had come from police. Strang identifies an initial lack of police referrals, and notes that nevertheless ‘progress is being made through the appointment of specialist police officers involved in the program and continuing close liaison between police and the conferencing administrators and convenors’. Several New South Wales informants noted that only a small proportion of drug offenders are youths, and that a smaller proportion yet are Indigenous. Drug offenders accounted for 4 per cent of the conferences, but no Indigenous indicator is given on this specific statistic. It is therefore not clear how many juvenile Indigenous drug offenders are participating in these conferences. Nevertheless, some figures indicate that young Indigenous offenders are being successfully diverted from court to conferences. The Trimboli review of the youth conference program noted:

Almost one quarter of the offenders in this sample identified themselves as being of Indigenous origin. By comparison, of the offenders who were dealt with through court during the current study’s data collection period and who were of comparable age to those in this sample, 17.0 per cent identified themselves in this way.

Trimboli observes that comparatively strong rates of Indigenous participation on the scheme are largely because three of the 17 administrator positions are deliberately designated for Aboriginal or Torres Strait Islander people. Further, these positions are located in areas with relatively high proportions of Indigenous residents. In addition to the three reserved positions, there are two other administrators of Indigenous origin. The Trimboli review found that the conferencing scheme is largely successful, as gauged by the questionnaire feedback of victims, offenders and their supporters.

41 Informant interview.
42 Strang, Restorative Justice Programs in Australia, p.8, citing Bargen (unpublished).
43 Strang, Restorative Justice Programs in Australia.
44 Informant interviews.
46 Trimboli, An Evaluation of the NSW Youth Justice Conferencing Scheme, p.65.
The Bureau of Crime Statistics and Research (BOCSAR) recently reported the results of an evaluation of the effect of the Young Offenders Act 1997. BOCSAR followed up 590 juveniles referred to a Youth Justice Conference (YJC) and compared them with 9346 juveniles dealt with by the Children’s Court either before or after the introduction of YJCs. The study found that the proportion of juveniles who re-offended was about 28 per cent lower for those who had been before a YJC than for those who had originally been dealt with by a Children’s Court. The results indicate that conferencing produces a moderate reduction of up to 15–20 per cent in re-offending across different offence types and regardless of the gender, criminal history, age or Aboriginality of the offenders.

Because Aboriginal juveniles are over-represented among those charged by police with criminal offences, BOCSAR made a special point of examining the effect of YJCs on Aboriginal offending. The results revealed that Aboriginal juveniles are less likely to re-offend if brought before a YJC than if brought before a Children’s Court. The study noted that information on the Aboriginality of young people appearing in court or in conference was limited, as Aboriginality was not routinely recorded. The data indicate that Aboriginal young people are more likely than non-Aboriginals to be referred to a conference than go to court.47

3.3.1.3 Cannabis and other illicit drugs diversion programs

These programs are not available for juveniles in New South Wales. Juveniles are dealt with through the framework established by the Young Offenders Act 1997, using cautions and youth conferences where appropriate. Police may suggest treatment programs during cautioning processes, or form part of the resolution at a youth conference. The Young Offenders Act was recently amended so that its diversionary provisions could extend to young persons caught with small amounts of drugs for personal use. A cannabis cautioning scheme came into operation in New South Wales in April 2000 as a COAG-funded initiative. It operates for adult offenders only, and is outside the scope of this study.

3.3.1.4 Youth Drug Court

The Youth Drug Court (YDC) is intended to divert young people from the criminal justice system into treatment. It uses the facilities of the Children’s Court, at Cobham and Campbeltown, and operates as a pilot program. Its primary focus is drug-related crime, as well as drug offences. The first Youth Drug Court began operation in Western Sydney in July 2000. Juvenile offenders are eligible if they:

- have a drug or alcohol problem
- plead guilty to most of their offences
- are not eligible for a Young Offenders Act caution or youth justice conference

• may otherwise be incarcerated
• live in Western Sydney (the program is therefore geographically limited)
• consent to taking part in the program.

This program allows a release on bail, under the condition that the young person fulfils the requirements of the program, as well as several other checks.\(^4^8\) If they do not, the young person must ‘give the YDC magistrate good reasons for letting (them) stay’\(^4^9\) within the program. If the young person does not wish to complete the program, or is excluded from it, they will be sentenced. Once they complete the program, the YDC magistrate will consider their progress in sentencing them. Juveniles are referred to the program from the Children’s Court.

It was anticipated that 120 juveniles per year would come before the court. The actual rates of attendance are lower than projected, perhaps because of the limited geographic scope of the program. An independent review of the program will determine whether the pilot should be extended past July 2002.\(^5^0\) Figures for July 2000 to November 2001 show there were 113 referrals to the program in this 16-month period, 55 participants (including 29 current participants) and 7 successful completions.\(^5^1\)

### 3.3.2 Comments by informants about diversion of Indigenous juveniles

A New South Wales informant notes that, though many youths referred for a youth conference have significant drug or alcohol problems, in most cases this was not the reason they were referred to a conference. Drugs and alcohol and polydrug use are correlates of offending behaviour, although they do not necessarily predict it. A community-based response to offenders is therefore essential.\(^5^2\)

---

\(^4^8\) For example, submit to tests for drugs and alcohol, live in a place that the YDC deems to be ‘safe and stable’, attend court as requested: *Youth Drug Court Program*, Pamphlet, Legal Aid, New South Wales, January 2001.

\(^4^9\) *Youth Drug Court Program*, Pamphlet, Legal Aid, New South Wales, January 2001.

\(^5^0\) Informant interview.

\(^5^1\) Source: Psychological and Specialist Services, Department of Juvenile Justice.

\(^5^2\) Informant interview.
3.4 Victoria

3.4.1 Diversionary options and programs currently implemented

3.4.1.1 Cautions — formal and informal

Victoria has a comprehensive cautioning scheme that was first implemented in 1959. It allows police to caution juveniles for most offences. Cannabis offences, for example, can be cautioned under this scheme. Juvenile cautioning extends to most first and second-time offenders, including drug offenders. Juveniles aged 10–16 years are eligible. Youths are cautioned by a sergeant, who may recommend but not mandate that youths receive treatment for drug problems where appropriate. A 24-hour telephone referral service (Direct-Line) refers juveniles to local services. A third offence would generally disqualify a juvenile from the scheme.

Victorian police say that, at the cautioning stage, they may recommend that a young offender seek treatment for a substance abuse problem. A 24-hour referral service is available. There are specific agencies for Koori young people. Koori Resource Centres, which grew out of sobering-up centres, are phoned when a Koori person is taken to a police station, and the offender is taken to the centre to sober up. An officer in the Drug Education and Training section of the Victoria Police considers there are few problems with referrals, and the treatment services are good.53

3.4.1.2 Community conferencing

Anglicare (Victoria) oversaw the establishment in 1995 of the Juvenile Justice Group Conferencing Pilot, which operates from the Melbourne Children’s Court. The program operates as a ‘joint venture of Anglicare, the Children’s Court of Victoria, Victoria Police, Victoria Legal Aid and the Department of Human Services ... [It] has received funding from the Buckland Foundation, the Department of Justice’s Crime Prevention and Victims’ Aid Fund and the Department of Human Services.' The program has no specific legislative basis, but draws on existing provisions of the Children and Young Persons Act 1989.54 Juveniles must have admitted their offence in order to take part. Evaluations suggest the conference program did not significantly affect recidivism rates.55

The Juvenile Justice Group’s Conferencing Pilot aimed originally at targeting 100 young offenders every year. However, it did not achieve this scale: in its first two years, the program held 40 conferences involving 42 young people.56

52 Informant interview.
53 Informant interview.
54 Strang, Restorative Justice Programs in Australia, p.10.
56 Strang, Restorative Justice Programs in Australia, p.10 citing Markiewicz, Juvenile Justice Group Conferencing.
The Aboriginal Legal Service says it has not seen a Koori juvenile take part in a conference. There are several reasons. Conferences are limited to metropolitan areas. Many Koori young people have multiple offences and victims beyond the reach of current conferencing models. It is also difficult for unstable youths to transfer into a non-Koori environment, and they expect prejudice. A Koori-specific group conferencing model is needed, because mainstream conferencing is too restrictive in that it will take only first offenders. Because Koori youths often start offending quite early, many become ineligible. Many previous offences are quite minor (for example, minor shoplifting). The Department of Human Services is designing a program in which second and third offenders can take part. It is not just for Koori juveniles, although its emphasis is on this group. The program is to be implemented in rural as well as metropolitan centres. Previous convictions will not necessarily rule juveniles out.57

3.4.1.3 Cannabis Cautioning Program

Victoria’s Cannabis Cautioning Program (CCP) is for adults. Given the status of 17 year olds in Victoria as legal adults until recently, the program has included 17 year olds. The Cannabis Cautioning Program was trialed in 1998 in one police district in Victoria. In the six-month pilot period, 97 cautions were served, 8 of them to re-offenders.58 Its success saw the program being extended across Victoria in July 1999. To be eligible, offenders must have been caught with less than 50 grams of cannabis leaf, no prior drug offence convictions, and have admitted to the offence. Two cautions are allowed under the program, and offenders are given contact details of Direct-Line, the 24-hour drug and alcohol counseling and referral service. Offenders are not obliged to contact the service.

Victoria Police say that no participants in either this program or the Drug Diversion Program (other illicit drugs) identified as Indigenous.59 Young people can otherwise be cautioned for the possession or use of small amounts of cannabis under the juvenile cautioning arrangements set out in the Children and Young Persons Act 1989.

3.4.1.4 Illicit drug diversion

Given the success of the cannabis program, the Drug Diversion Project (DDP) was launched on 1 September 1999, directed at users of all illicit drugs aged 10 and older (including adults). It ‘represents a significant police-driven harm-minimisation initiative’.60 Eligibility requirements for the DDP are similar to the CCP, including the allowance of two cautions. Offenders with prior convictions are not accepted to the program, and it is limited to use or possession of illicit drugs. Attendance at a drug treatment agency for assessment and treatment is compulsory. If the offender identifies as Koori, they may choose either a Koori-specific agency or a mainstream service for treatment. They must take part in an assessment at the chosen agency within five days.61

57 Informant interviews.


59 Informant interview.

60 Cannabis Cautioning Pilot Program and Drug Diversion Project.

61 Informant interviews.
3.4.1.5 Children’s Court

In Victoria 17 year olds are legally adults, but the Sentencing Act 1991 provides courts with an option to sentence them (and young people under the age of 21) to a juvenile justice centre, rather than to an adult prison. The present government is in the process of extending the jurisdiction of the Children’s Court to 18 year olds. The Children’s Court may refer juveniles to community conferences, but rates of referral are low.

3.4.1.6 Bail diversion

The Magistrates Court may refer adults (including 17 year olds) at the point of bail through the CREDIT (Court Referral Evaluation for Drug Intervention and Treatment) system. Other bail diversion programs also run through the Magistrates Court, but like the CREDIT system do not extend to juveniles.\(^6^2\)

3.4.2 Comments from informants about diversion of Indigenous juveniles

The Victorian Aboriginal Legal Service (ALS) says there is a chronic lack of drug treatment and rehabilitation options for young drug offenders in Victoria. Anecdotally, of the ten young Aboriginal people aged between 17 and 21 they may see in a fortnight who have been remanded for drug offences, only one will find a place in a treatment facility. The absence of practical options for drug diversion means that young people are ‘pushed up the sentencing tree’ – in other words, they may plead guilty in the hope of getting a non-custodial sentence. This problem is made worse, the ALS says, by a shortage of prison accommodation, and use of police lock-ups and other facilities as jails.

The ALS also notes that an obstacle to diverting young Indigenous offenders from jail is the improper functioning of bail procedures. If a person is under the age of 17, they are to be summonsed rather than bailed. Bail is intended only where the young offender has prior convictions. There are no recent statistics; but until two years ago Koori juveniles were much less likely to be summonsed than their non-Koori counterparts. This criminalises young offenders, since a child who is bailed must appear in court if they breach their bail conditions. This leads to juvenile detentions, or failures to appear. Summonses, in contrast, serve a more cautionary function.

Prior convictions limit adult Indigenous participation in drug diversion projects. In addition to the Cannabis Cautioning Program, the Heidelberg and Mildura Courts also run a diversion pilot for adult offenders. A full-time diversion coordinator is employed. No Indigenous adults appear to have gone through them, perhaps because of the exclusion of offenders with prior convictions.\(^6^3\)

\(^{62}\) Informant interview.

\(^{63}\) Informant interview.
3.5 Queensland

3.5.1 Diversionary options and programs currently implemented

3.5.1.1 Cautions — formal and informal

Queensland’s Juvenile Justice Act (s.19) requires police to consider formal and informal cautions when dealing with juvenile offenders. Arrest powers are preserved in some cases (see also s.211 of the Police Powers and Responsibilities Act 2000). Cautions may be administered for minor drug offences, which are limited to the possession and/or use of small amounts of drugs. A person whom the Indigenous juvenile offender respects may be present during a formal caution.64

3.5.1.2 Community conferencing

The Juvenile Justice Act was amended in 1996 to provide for youth community conferencing. The Community Conferencing Pilot Project began in April 1997, and its funding was made permanent in December 2000. In addition to juveniles, the program accepts a limited number of adult offenders, by administrative arrangement with the police, rather than via the Juvenile Justice Act.65 As yet, community conferencing is available only in Brisbane, the Gold Coast, Ipswich/Logan and Palm Island.66

The Youth Justice Program in the Department of Families is responsible for youth conferencing. Initially, there were four pilot programs, but each had a different administrator and its own model of delivery. A Griffith University evaluation of the program concluded that, although the conferences cost more than police and court appearances, they were likely to reduce the longer-term social cost, and had the benefit of reconciling the victim and offender.67

The Department of Families describes the scheme as a ‘diversionary youth justice intervention that involves a meeting between parties affected by a crime and the youth who committed the crime’.68 The conferencing program can operate in one of three ways:

- police reference after offender’s admission of guilt
- court reference after finding of guilt and in place of sentencing (‘indefinite referral’)
- court reference after finding of guilt and before sentencing, when the outcome of the conference is considered.

---

64 Informant interview.


66 Email, Department of Families, Queensland, 1 October 2001.


68 Department of Families website: www.families.qld.gov.au/juvenile/community_conferencing.html
Referral of youths to a community conference depends on several additional factors. The courts and the police may refer, but are not required to do so. Courts may make either an indefinite referral (without making a sentence order) or a pre-sentence referral, and await its outcome. Second, the victim of the offence must consent to the offender’s referral to a community conference, irrespective of whether the victim wishes to attend.

### 3.5.1.3 Diversion — cannabis

The Queensland Illicit Drug Diversion Initiative (QIDDI) is a ‘joint initiative of the Commonwealth and Queensland Governments’, aimed to divert ‘minor illicit drug offenders into assessment, education and treatment programs’. The QIDDI has so far established a police diversion program for cannabis, provided for in s.211 of the *Police Powers and Responsibilities Act 2000*. The program provides cannabis offenders ‘an opportunity to be diverted from the criminal justice system to attend a drug diversion assessment program rather than being charged for the offence’.

The program began in Queensland on 24 June 2001, and extends to both juveniles and adults. The Commonwealth has undertaken to provide up to $19.5 million to the Queensland Government for the QIDDI through COAG over a period of four years.

A Queensland Health tendering process led to engagement of suitable agencies to which cannabis offenders can be diverted for treatment. They include community health centres, drug and alcohol centres, and non-governmental organisations such as the Alcohol and Drug Foundation of Queensland.

There is no specific Indigenous component in the program, though Indigenous health services (such as Wu Chopperen in Cairns) form part of the initiative.

People are eligible for diversion under this program if they:

- are arrested for, or questioned about, a minor drugs offence
- have not committed another indictable offence in circumstances related to the minor drugs offence
- have not previously been convicted of an offence involving violence against another person
- admit having committed the offence during an electronically recorded interview; and
- have not been offered diversion on a previous occasion.

Offenders meeting these criteria can participate in a drug diversion assessment program. Additional time may need to be allowed for offenders in rural and remote areas to access regional centres where the program is offered. The program entails a two-hour cannabis assessment and education/brief intervention package, in keeping with research suggesting that brief interventions are effective in ‘helping people change their drug use consumption and reduce associated problems’. State-wide police training has taken place in implementation of the QIDDI program.

---


70 *QIDDI Background Paper*, p.4.
One informant said the cannabis diversion program had only limited application for juvenile drug offenders, and for Indigenous juvenile drug offenders in particular. The exclusion of juveniles with previous assaults or drug offences greatly narrowed its ambit, particularly since young Indigenous people tended to be involved in the criminal justice system earlier than their non-Indigenous counterparts. There were few Indigenous juvenile cannabis or illicit drug offenders in any case. No statistics are yet available for the Queensland Illicit Drug Diversion Initiative.

### 3.5.1.4 Diversion — other illicit drugs

An illicit drugs court diversion pilot program that would extend diversion to treatment for illicit drug users is currently being developed, with the backing of State Cabinet. The Premier announced the program on 17 September 2001, with implementation from 1 July 2002. It applies to minor possession charges for all illicit drugs. Like the QIDDI cannabis diversion program, it may apply to juveniles as well as adults, and be administered through the Brisbane Magistrates Court, rather than by the police. Juvenile drug rehabilitation services appear to be scarce in Queensland.

### 3.5.1.5 Court diversion — Drugs Court/Children’s Court

The Queensland Drugs Court may deal with persons who are not defined as children under the *Juvenile Justice Act 1992*. In Queensland, 17 year olds are statutorily not children, and may therefore be dealt with by the Drugs Court Diversionary Program (s.6(1) of the *Drug Rehabilitation (Court Diversion) Act*), although few, if any, 17 year olds have been through it in recent years. The Magistrates Court deals with juvenile drug offenders. The Department of Justice does not keep statistics on the ethnicity of offenders who appear before its courts.

One informant said court diversion into rehabilitation centres required very good facilities and infrastructure, and liaison among the agencies responsible for diversion (police, drug courts, health and corrective services). Judicial flexibility was also important. The Logan House rehabilitation program had succeeded because of the flexibility of the Drugs Court magistrates. Offenders initially went straight through court, but for already unstable offenders this process was too disruptive. The magistrate allowed these offenders to appear in court three weeks after their arrival at Logan House. This had greatly improved the success rate of the program.

### 3.5.1.6 Bail diversion

Except in limited circumstances, juveniles are bailed as a matter of course. Nevertheless, the decision to grant juveniles bail, and thus keep them out of custody, can depend on the availability of appropriate accommodation. Youth bail initiatives such as the Youth Bail Accommodation Support Service, operated by the Indigenous Youth Working Party, are in this sense diversionary.

---


72 Informant interviews.

73 Informant interview.
3.5.2 Data on drug- and alcohol-related offences by Indigenous juveniles and rates of diversion

Indigenous specific statistics were not readily available. The statistical services sections of the Queensland Police, Department of Families and Health Department provided the following data about juvenile drug and alcohol offences.

3.5.2.1 Formal cautions

The Queensland Police provided statistics about formal cautioning of juvenile drug offenders for the years 1999 and 2000. In 1999, 674 males and 208 females aged 10–16 years were cautioned for possessing and/or using dangerous drugs. Cautions were given for possession of implements for use of dangerous drugs to 477 male and 119 female youths in 1999. No Indigenous identifiers were available.

3.5.2.2 Community conferencing

Indigenous participation in community conferencing is relatively low, particularly in light of the high rate of Indigenous juvenile detention in Queensland. During the pilot period of the Juvenile Justice Program (April 1997–June 1998), data were collected on Indigenous youth participation. As we have seen, the program was piloted in four areas, each with its own administrator and model of delivery. Unfortunately ‘the data collection system on Palm Island did not operate as effectively’, so that accurate data are not available for the area where Indigenous youths make up the highest proportion of referrals. Although a part-time project officer was employed to track referrals and the experiences of offenders and victims, there were difficulties in doing so. ‘This was more likely to be an issue in those cases where we were most interested in the information (e.g. was conferencing a helpful process for “street kids” or Indigenous youth). Frequent changes of address for these youths and lack of telephone access contributed to this difficulty. Nevertheless, the following statistics are available for south-east Queensland during the pilot period.

In Ipswich and Logan 148 juveniles were referred to community conferencing, and the average age of the referred offenders was 14.1 years. Of these, 12 per cent were identified as Aboriginal or Torres Strait Islander (no explanation is given of how Indigenous identity was ascertained). The 65 Ipswich referred-offenders together committed 92 offences, of which nine were classified as ‘other’, which included drug offences. The 67 referred-offenders in Logan together committed 131 offences, of which ten were ‘other’ offences (including drug offences). The percentages of both Indigenous youth offenders and drug offences are therefore low. Further, the data do not indicate the nature of the offences Indigenous youth offenders committed. A Griffith University evaluation noted that in general referral rates were low, and suggested that this may have been because it was a pilot project.

---

74 17 year olds do not appear in the statistics because they are dealt with as adult offenders in Queensland (Juvenile Justice Act 1992).
75 Formerly the Department of Families, Youth and Community Care.
76 Pal, G. et al., Community Conferencing in Queensland.
77 Pal, G. et al., Community Conferencing in Queensland.
78 Strang, Restorative Justice Programs in Australia, p.18, citing Hayes et al., Making Amends p.6.
the pilot period, almost all referrals to the program were diversionary referrals from the police, even though there was provision for court referral.

More recent statistics suggest that numbers of juvenile participants in community conferencing remain relatively static. In December 2000, the Department of Families completed a review of Community Conferencing Services, and the Minister decided to continue the funding for the program. As a result of this review, and to provide greater consistency, the conferencing service providers (Youth and Family Service (Logan City), and the Alternative Dispute Resolution Branch of the Department of Justice and Attorney-General) were placed by a Families Department service in April 2000. From July 2000 to June 2001, 22 young people were involved in conferences for drug-related offences. Three were identified as Indigenous. Types of offences included possession or use of drugs, dealing and trafficking in drugs, manufacturing and growing drugs and ‘other’ drug offences. Overall rates of conferencing were significantly higher than during the pilot program. For the April–June quarter 2001, referrals increased from 135 to 199 compared with the same period in 2000, and conferences held increased from 93 to 138. Indigenous participation is not indicated in these statistics. Given the data collection problems of the conferencing pilot program, it is difficult to compare numbers of conferences or Indigenous participation in them for drug offences. In any case, the conference numbers are relatively low.

Evaluations of the conferencing pilot were generally positive, and their funding has been made permanent. Nevertheless some difficulties were identified. For example, the evaluators were critical of ‘the lack of integration of data collection in the criminal justice system generally’. This problem persists, and continues to restrict evaluation of juvenile Indigenous interaction with the criminal justice system. A 1998 juvenile justice report identified an ‘under-representation of Indigenous referrals to conferencing’, and reiterated the need to ‘address the significant over-representation of Indigenous young people in the juvenile justice system’.

---

79 Email correspondence, Department of Families, Queensland, 1 October 2001.
80 Email correspondence, Department of Families, Queensland, 19 October 2001.
81 Queensland Department of Justice 1997; Centre for Crime Policy and Public Safety, July 1998.
82 Queensland Department of Families, Youth and Community Care (1998) *A Commentary on the Evaluation of the Queensland Community Conferencing Pilot*. Brisbane: Juvenile Justice Program, the Department, p.3.
3.5.3 Comments by informants about diversion of Indigenous juveniles

Queensland informants also offered their perceptions and opinions about programs for Indigenous youth. One informant said there were no facilities for young people with substance abuse problems in Cape York, other than in-patient care in hospitals. The youth treatment facility for Aboriginal youth with petrol and other substance abuse problems at Petford Training Farm was closed. Demand has not diminished since Petford was defunded, and there are continuing calls from community residents and some services for it to be reopened. Since the closure of Petford, the Department of Families has shifted the focus of youth justice intervention away from residential ‘treatment’ programs for individual young offenders and into developmental work for young people in their communities.

The Justice Group in Kowanyama had taken positive steps, this informant said. It is not a formal diversion program; but it seeks to help juveniles whose families are not caring for them adequately, and has purchased a property, Sefton, for this purpose. The Apunipima Cape York Health Council is also trying to help youths become involved in economic activities on their country. Bama Healing, established by Queensland Health in the wake of the Deaths in Custody report, had addressed youth substance abuse, but was closed. ‘Rumble in the Jungle’ is a government-funded program for young people with substance abuse problems: it is not Indigenous-specific, but does have Indigenous young people in it.

Yuddika, an Aboriginal and Torres Strait Islander family support agency in Cairns, had a program that was intended to help adolescent pregnant women with substance abuse problems. The agency has recently had its funding withdrawn. The informant said an issue of major concern was the effects on babies of substance abuse by mothers. Recent studies had shown an alarming incidence of violent behaviour and crime in these children when they became adolescents.

Another Queensland informant believed that police were not familiar enough with diversion options for Indigenous juvenile offenders. With the exception of officers from the Juvenile Aid Bureau, many police seemed to know little about diversionary options. This led to over-detention of young people, particularly Indigenous youths. In practice, the onus fell on another agency to persuade police to conference or caution a young Indigenous offender. Informal cautions should be used more often, the informant said, given the statutory requirement that police consider this option. Formal cautions were effective when an Indigenous person trusted by the offender was present, and this was usually the case. Nevertheless, the informant noted that police referral rates to community conferencing were improving. Conferencing gave the young offender an opportunity to see the effect of their crime, and tended to change a young person’s attitude to the victim, which in turn was a criterion for the court in deciding later whether or not to detain the youth.

84 Informant interview.
3.6 Western Australia

3.6.1 Diversionary options and programs currently implemented

3.6.1.1 Cautions — formal and informal

The Young Offenders Act 1994 provides a framework for youth cautioning. Informal warnings may be issued 'on the street, at a station or as part of the patrol function'.

Informal warnings may be issued in writing. Minor drug offences may be cautioned.

3.6.1.2 Youth conferencing

Two pilot Juvenile Justice Teams were established in 1993. The Young Offenders Act makes formal provision for juvenile conferencing. To qualify, the young offender must admit the offence. The police, the prosecutors or the court may refer a young person to a conference. In practice, the majority are police-referred (about 65 per cent), and the Children’s Court refers the remainder.

Seven full-time Juvenile Justice Teams work in the Perth metropolitan area. Teams can also operate from 16 country bases. In recognition of initially low rates of Indigenous participation, the Juvenile Justice Teams’ management appointed a full-time Aboriginal coordinator. A part-time Aboriginal support worker also assists each team. Conferences extend to apprehensions for possession or use, but not for trafficking, of drugs. Prior convictions for drug and other offences will not automatically exclude youths from the program.

Informants from the Juvenile Justice Team say the relative success of its conferencing program is the result of several factors. In the metropolitan area, the teams are based in police districts. The police dedicate an officer to work full-time with each team. This is crucial, because it allows the coordinator of each team, the police officer and the part-time Aboriginal support officer to work closely together, and this creates a positive and innovative work atmosphere. In rural areas, there is no provision for dedicating an individual officer to a team, and the program is not as successful.

Rough statistics are available for Indigenous participation in juvenile conferencing for the year 2000–2001. Of 2380 referrals, 487 (20 per cent) were Indigenous. About 95 per cent of young people who took part in conferencing completed the agreed action plan.

Nevertheless, the Aboriginal Justice Council, the Aboriginal Affairs Department and others have expressed concern about continued low Aboriginal participation, despite the over-representation of Indigenous youths in the criminal justice system. Failures to refer, and the non-attendance of Indigenous young people, have kept attendance rates low, as has the initial exclusion of juveniles with prior misdemeanours.

The Juvenile Justice Team appointed its Aboriginal coordinator...

---

85 WA Police procedures, Operational Procedure 24.1: Juvenile Cautioning System.
86 Strang, Restorative Justice Programs in Australia, p.19.
87 Informant interview.
88 Strang, Restorative Justice Programs in Australia, p.19.
89 Informant interview. These figures do not represent all districts where conferencing occurs.
to help deal with the problem of low Indigenous participation, and emphasised pre-conference support for Indigenous offenders. Appropriate engagement is needed, and this is happening as Indigenous communities gain confidence in the process. Other improvements being discussed include the evaluation and expansion of the Indigenous coordinator, the involvement of Aboriginal police officers in meetings, and taking meetings into communities, rather than holding them in the team’s offices.91

The Juvenile Justice Team notes a continuing improvement in rates of police referral. Members of the team provide a half-day’s training to new police recruits at the Police Academy. In addition, police members of the team train other serving police. The team is aware of the possible net-widening effect of conferencing in situations where a caution would have been more appropriate. Referrals may be sent back to police where other diversionary measures, in particular cautions, are more appropriate. Net widening is also being countered by efforts to expand the role of teams to deal with more serious offences and more persistent offenders.92

Team management notes that there is an emphasis in the program upon referring youths to treatment and rehabilitation services outside the juvenile justice system, so as to avoid the latter’s debilitating psychological effect.

3.6.1.3 Drug diversion programs

There is a Cannabis Cautioning and Mandatory Education Program in operation which covers adults only. There is also a Brief Intervention Regime, which operates as a pre-sentence option for first-time cannabis offenders. In addition, there is a Police Diversion for Drugs Other than Cannabis Program. In each case, clients may be referred to non-governmental services for treatment.93 A current limitation on the extension of diversion programs to juveniles is the absence of specific provision for them in the Juvenile Justice Act. Amendments are pending to allow the development of a youth cannabis cautioning program.94 A series of additional treatment programs is available to adult offenders with substance abuse-related offences and problems.95

Illicit drugs form a small part of juvenile substance abuse patterns in Western Australia. Drug diversion activity for illicit drugs is relatively uncommon. In the Kimberley, for example, ‘just over 50 per cent of juveniles detained in police lock-ups were there because of alcohol’.96 An informant noted that solvents constitute a major source of juvenile substance abuse among Indigenous youths.97 Petrol sniffing is not an offence in Western Australia except on the Ngaanyatjarra Lands. A change in the West Australian Sentencing Act in 1996 meant

91 Informant interviews.
92 Strang, Restorative Justice Programs in Australia, p.21.
93 WA Drug Abuse Strategy Office, Draft Service Agreement Outline.
94 Informant interview.
97 Informant interview.
that petrol sniffing offences no longer attract a jail term. This change did not affect juveniles, as a jail sentence for petrol sniffing has never applied to them.  

3.6.1.4 Drug Court/ Juvenile Court and diversion

A Youth Drug Court pilot program is under way, operating on Monday mornings through the Children’s Court in Perth. The President of the Children’s Court presides. A court officer decides if an offender should go before the court. The presiding judge then determines if the young offender is suitable for the program, and what action to take if they do not complete it. The program operates at the upper end of the juvenile criminal justice system, in that it is reserved for more serious offences and repeat offenders. This is a deliberate strategy and recognises the broad range of diversion options available in Western Australia.  

It is an onerous program, and requires juveniles to keep a series of appointments for urine analysis, counselling and other treatment.

A rough estimate of numbers of young offenders who have gone through the program to the end of October 2001 is 25. Less than a quarter have been Indigenous. Success rates are relatively low; but the court does not necessarily detain a child who does not complete the program.

3.6.1.5 Other services

Two new programs funded through the National Illicit Drug Diversion Initiative are the WA Family Program Supporting Diversion, and the WA School Program Supporting Diversion. The police or the courts may divert juveniles into these programs. Service providers carry out these compulsory interventions.

The WA School Program Supporting Diversion, funded through the National Illicit Drug Diversion Initiative, commenced in November 2000. The program is coordinated at a State level by the Drug and Alcohol Office and implemented by 12 regional and metropolitan Community Drug Service Teams. The aim of the program is to provide early intervention and intensive support to high-risk young people, including those diverted by police, to remain engaged with school programs. The objectives of the program are to reduce the risk of continuing drug abuse among high-risk young people; improve the outcomes for high-risk young people through continuing engagement with school programs; provide a range of integrated intervention services to high-risk young people and their families; and provide specialist support to school pastoral care staff.

---


99 Informant interview.

100 Informant interview.
Under this program, Community Drug Service Teams have provided a broad range of interventions. Examples include:

- a six-week program for youth on anger management and drug use
- assistance to high-risk young people to return to mainstream education and services
- provision of school staff education on the role of early intervention and the importance of accessing family members for intervention
- attendance of youth counsellors at youth and high school events
- alcohol and other drug education and life skill development to at-risk youth and parents
- a seven-week substance education program for high-risk young people
- a pilot program to engage young people suspended from school for drug use
- one-to-one counselling
- family mediation, counselling and support
- parent support groups.

The WA Family Program Supporting Police Diversion began in November 2001. Its aim is to provide early intervention and support to families and parents of people diverted by police into compulsory interventions and to help them manage drug-related problems and associated issues. This program is also coordinated at State level by the Drug and Alcohol Office and implemented through 12 regional and metropolitan Community Drug Service Teams. The objectives are to facilitate early intervention and support parents and families; provide information and practical support to parents and families; and improve outcomes for drug users diverted into compulsory assessment and participation in treatment through the involvement of parents and families.

Support is offered to families in a number of ways, including initial contact, information and advice, individual counselling, parent programs and support groups, outreach support and follow-up of families who have not engaged with the program four weeks after initial contact. An informant said this program has not worked as planned, primarily because very few juveniles have been diverted. The majority of people being diverted by police or courts for illicit drug use are adults, many of whom do not wish to receive support for their family through this program.

A series of school and community diversion initiatives operate in Western Australia. These include the School Drug Education Project, the School Protocol Development and Dissemination Project, the School Drug Counseling Program, and Community Drug Service Teams. These programs aim to introduce police diversion into schools, and emphasise the importance of keeping at-risk children within the school system.
3.6.2 Comments from informants about diversion of Indigenous juveniles

Police say many drug and alcohol treatment programs are in place throughout the State, especially in Aboriginal communities. The best strategies are locally developed and operated, and involve local police, government and Indigenous groups, and others.\(^{101}\)

One informant believes that encouraging Indigenous young people to stay at school for as long as possible is crucial in keeping them drug-free and out of the criminal justice system. Quite apart from the very obvious long-term benefits of education, school attendance keeps youths occupied and tends to prevent them getting into trouble. The Aboriginal school in Perth called Clontarf has a normal curriculum as well as a very successful specialist after-school Australian Football League academy. It has limited funding, despite the long waiting list for young people to get in. A last-minute State government grant recently prevented its closure.

Another informant said drug education within schools was crucial in lowering rates of substance abuse, as well as early diversionary interventions.\(^{102}\)

One informant believed that low levels of Aboriginal participation in the Youth Drug Court’s diversion program were probably attributable to the regimented nature of the program, as well as a failure to refer. This informant said most young people with drug problems had other welfare problems as well, and this was particularly true of Aboriginal youths. Many did not have a sufficiently structured life to allow them to stick to the program. For example, many had no access to private transport, which made it more difficult for them to attend appointments at any distance. The program was a good idea, and the court should persevere, but its success was limited. It would be preferable, for example, to have the drug treatment services (such as urine testing facilities and counsellors) in the same premises as the Drug Court. Failure to complete the Youth Drug Court program could exacerbate self-esteem problems: these programs needed to be realistic, accessible and flexible.

---

\(^{101}\) Informant interview.

\(^{102}\) Informant interview.
3.7 South Australia

3.7.1 Diversionary options and programs currently implemented

The legislative framework for diversionary programs in South Australia is the *Young Offenders Act 1993*. The Act ‘introduced a multi-tiered system of pre-court diversion designed to deal with all “minor” offences. It also established the Youth Court of South Australia to deal with more serious and or repeat offenders.’ This system of juvenile justice applies to youths who are 10–17 years of age. The objective of the Act is to secure care, correction and guidance for young offenders necessary for their development into responsible and useful members of the community as well as the proper realisation of their potential. The Act provides for the court and diversionary mechanisms for dealing with juvenile offenders.

3.7.1.1 Cautions — formal and informal

The *Young Offenders Act* allows police a wide discretion for cautioning. It extends to drug use, including illicit drugs. A police sergeant gives formal cautioning, with the parents of the offender present if possible. A note is made of the caution, but the child does not incur a criminal record. The juvenile may be required to make undertakings regarding future conduct or reparation.

3.7.1.2 Community conferencing

Family conferences are convened by youth justice coordinators and take place when a youth admits the commission of a ‘minor offence’. Conferences are intended to divert matters away from the court system. Conferences involve the young offender, the offender’s family, guardian or other appropriate person, the victims of the crime, and a police officer and a coordinator, who discuss the offence and determine a suitable outcome. Participants are empowered to take responsibility for key decisions affecting them.

Family conferencing is generally invoked once a child has received several cautions. It is overseen by the Police’s Juvenile Prosecution Unit, in conjunction with the Drug and Alcohol Services Council (DASC) within the Department of Human Services. There are several juvenile prosecution units in the Adelaide metropolitan area, each comprised of a welfare worker and a police prosecutor. Evaluations of the conferences found that a higher proportion of Aboriginal offenders failed to attend, or disagreed with the conference outcome. The sample of cases did not appear to include drug offences, although this is not entirely clear.

---

103 An overview of the diversionary provisions of this legislation is in *Crime and Justice in South Australia: Juvenile justice 1999* (Adelaide: Office of Crime Statistics, Attorney-General’s Department, September 2000 (Series A, no. 36(2)).

104 *Crime and Justice in South Australia: Juvenile justice 1999*.


3.7.1.3 Juvenile drug diversion programs

Juvenile drug diversion occurs within the rubric of the Young Offenders Act, as outlined above. The recent injection of COAG funding to diversionary programs has seen several important additions. In South Australia COAG funding of $9.2 million was provided.

COAG funding has been utilised to target the identification of illicit drug users early in their involvement with the criminal justice system. The emphasis is on ‘education, assessment and treatment’ of drug users, and the stated purpose is to ‘reflect international best practice in enabling police to provide educational material or arrange speedy access to assessment and treatment through a new and varied range of services’.108

The emphasis on early detection of drug use implies a corresponding emphasis on diversionary programs for youths. Among other things, a Police Drug Diversion Initiative was established: the youth offenders’ initiative began on 3 September 2001, and the adult initiative on 1 October 2001. The initiative is intended to allow young people to be referred for assessment and appropriate treatment. A distinction is drawn between young people under 14, and those over 14 and under 18. As in most jurisdictions, cannabis use is distinguished from the use of ‘hard’ drugs. Prior drug offences will not necessarily exclude young offenders from the program. Three cautions are permitted within two years for cannabis offences, and two cautions for other illicit drugs. Non-compliance with drug diversion will cause referral of the offender back into the juvenile justice system.

Other COAG NIDS-funded initiatives include the Aboriginal Kinship Program, which is still in its planning stages in the Department of Human Services. It is to operate alongside existing service agencies. The program will involve the offender, their family and extended family to identify gaps in the young person’s treatment, and act as a referral service. Various referral points are anticipated, including the user, their family, police or the courts.109

3.7.1.4 Youth Court

In general, specialist police youth officers determine which type of action is to be taken against an offender. However, more serious offences automatically invoke court proceedings. The Youth Court can nevertheless refer an offender back for cautioning or conferencing.

Juvenile drug offenders are dealt with in the Youth Court. The Department of Human Services (Family and Youth Services) deals with all young offenders who are refused bail or remanded. It runs two secure care training centres in South Australia. Once remanded there, young offenders are assessed for their suitability for bail or treatment, or both. A range of community-based programs is available, with a legislative basis and attached to various orders (such as community service orders). In addition, there is a series of internal referrals that may be made through a case management process to other programs, such as those overseen by the Metropolitan Aboriginal Youth Team. These have no legislative basis, but fall within the Department’s broader social welfare obligations.110

---

109 Informant interview.
110 Informant interviews.
3.7.1.5 Other services

The Metropolitan Aboriginal Youth Team (MAYT) provides a range of services for Aboriginal youths aged 10–18 years living in the metropolitan area. Services include a specialist team of mainly Aboriginal staff delivering targeted interventions and programs to reduce the over-representation of Aboriginal youth in the juvenile justice system. Programs include a placement service that provides safe, family-based alternative care for Aboriginal youth at risk of homelessness; intensive one-to-one support through positive Aboriginal role models as mentors; ongoing case planning and support for Aboriginal youth and their families through Juvenile Justice Case Workers; recreational alternatives to offending behaviour; and access to mental health services for Aboriginal youth and their families through a partnership between MAYT and Child and Adolescent Mental Health Services.

The Kumangka Youth Service Aboriginal Corporation provides a service in the city area of Adelaide to improve the health, safety and welfare of Aboriginal young people while they are in the inner city area; increase the number of Aboriginal young people diverted from the criminal justice system; decrease the number engaging in criminal activity; and increase their access to appropriate support services, including accommodation, health, education and training.

Kumangka is funded jointly by the Commonwealth Department of Family and Community Services and the Aboriginal Health Division of the South Australian Health Commission on the basis of a joint health agreement. Services are provided to young people aged 10–25 years and include primary health care programs, street work services, a crisis response service and a case management program. The philosophy of the service is to gather and use the knowledge and wisdom held in the Aboriginal community for the benefit of Aboriginal youth to strengthen their Aboriginal identity, increase self-esteem, encourage and support unity and enable young people to move towards a positive future. Specific objectives of the service include acting to divert Aboriginal youth from the criminal justice system through intervention on the streets and in locations where Aboriginal youth congregate, with particular focus on the Hindley Street area, and providing a mediation role between Aboriginal youth and police on the streets to minimise contact with the criminal justice system.
When the street worker teams began in 1995, they would go up to police and speak to them about their interaction with a juvenile, but found themselves in danger of arrest for hindering the police. In 1997, Kumangka and other youth agencies that work on the streets in Adelaide convinced police of the need to work collaboratively and to develop a better working relationship to produce better outcomes for youths. The Commissioner of Police authorised five half-day workshops for police and youth agencies. All police were encouraged to attend. One outcome of the workshops was the development of a protocol which became part of legislation in 1998. The protocol sets out a process for police and youth workers to work together to consider how best to deal with situations on the streets. Now Kumangka workers report to the police station at the beginning of their shift to make police aware of their intended locations throughout the night and provide mobile phone numbers should police wish to contact them. Kumangka workers often sit in on police interviews and work with police after the interview to negotiate a process for dealing with the issue quickly. This may involve taking the person home or to a safe place such as a detox centre or hospital. Drug-related offences form a major part of the issues that bring young people into contact with police.

Operation Flinders is a wilderness adventure program that gives young men and women who have either breached the law or are at risk of breaching the law demanding outdoor challenges, and also support to help them develop personal attitudes and values. Participants are referred from a number of agencies and authorities including Family and Community Services, the Youth Court, Aboriginal Support and other community groups. Participants have generally been identified by the agencies as being ‘youth at risk’ — that is, young people who, without some active intervention, are likely to become offenders or leave school or home. Operation Flinders does not accept young people with active drug dependence or serious or debilitating psychological disorders. About 10 per cent of the participants are Aboriginal. Teams of 8–10 young people aged 13–18 years are formed to complete an exercise. Exercises are of eight days duration, and take place on Moolooloo Station in the far north Flinders Ranges. The exercise route is a 100 km circuit. Teams walk that distance over the eight days, camping at night and participating in a number of team challenges. Towards the end of the exercise, they are asked to identify four specific objectives for change in their lives. Six weeks after the exercise, team counsellors meet with them again and discuss their progress against their four intended changes. Progress continues to be monitored by submission of forms. Other more intensive and formal follow-up programs are being developed in association with client agencies.
3.7.2 Data about drug- and alcohol-related offences by Indigenous juveniles

In 1998/1999 there were 45 Aboriginal young people charged with cannabis offences and four charged with ‘other illicit drug’ offences. Aboriginal young people accounted for approximately 10 per cent of the possession/use offences for young people, although they only constitute 2.5 per cent of the population of young people under 18 years of age. Discussions with Aboriginal communities and Aboriginal service providers have indicated a high usage of cannabis and other illicit drugs, often accompanied with alcohol, by both Aboriginal young people and adults.\textsuperscript{111}

Except where noted, the following additional statistics are taken from *Crime and Justice in South Australia: Juvenile justice 1999*.\textsuperscript{112} This document notes that these statistics do not account for numbers of juveniles dealt with by way of informal caution. Some statistics rely on a classification of youth as Aboriginal or non-Aboriginal according to the ‘opinion of the apprehending police officer as to the appearance of the apprehended person’. Although the family conference team amend police entries they consider incorrect, there are few other checks to counteract the lack of precise measures of Aboriginality within the document. Better statistics are likely to be forthcoming about Indigenous juveniles and drug diversion. Young offenders in the program must complete a form that asks them to nominate their ethnicity, and specifically lists Aboriginal/Torres Strait Islander as an option.\textsuperscript{113} The report says:

During 1999 there were 8753 police apprehension reports involving young people. Aboriginal youths accounted for 16.8 per cent of those apprehension reports where this information was recorded. A higher proportion of Aboriginal than non-Aboriginal apprehensions involved relatively young individuals (with just under two-thirds aged 15 years and under compared with under one-half of non-Aboriginals).

Aboriginal involvement in the criminal justice system thus begins earlier than for non-Aboriginal youths. The level of referrals to the Youth Court varied depending on the nature of the charge involved, as well as the age and racial appearance of the young person. Older youths generally, and Aboriginal youths specifically, were more likely to be referred to court and less likely to be diverted to a police caution. Nearly seven in ten Aboriginal apprehensions (69 per cent) were directed to court compared with just over four in ten non-Aboriginal apprehensions (45 per cent).

---

\(111\) South Australia’s NIDS Grant Proposal Summary, provided by the Alcohol Strategy and Illicit Drug Interventions Group, Commonwealth Department of Health and Aged Care, 14 November 2001.


\(113\) Drug Diversion Referral Notice, South Australian Police.
In 1999, 11 per cent of all apprehensions were for drug offences (6 per cent of these were for possession), compared with 12 per cent in 1998. As the report notes:

Overall, the patterns of recorded offending by Aboriginal and non-Aboriginal people were similar. However, a lower proportion of Aboriginal than non-Aboriginal apprehensions involved drug offences (4.4 per cent compared with 12.1 per cent respectively). Conversely, a higher proportion involved burglary, break and enter (16.9 per cent compared with 11.6 per cent respectively).

Aboriginal youths were much more likely to be arrested than non-Aboriginal youths. Police opted to arrest, rather than merely report, young offenders in 32 per cent of cases in 1999. In both 1999 and 1998, one in two Aboriginal apprehensions were arrest-based compared with one in three non-Aboriginal apprehensions (31 per cent).

3.7.2.1 Formal cautions

There were 2776 referrals to a formal caution in 1999: formal cautions were administered in 2753 cases. This represents 34 per cent of the 8106 apprehensions for which the follow-up action was recorded (in 7 per cent of cases it was not recorded). Drug offences accounted for 18 per cent of all formal cautions. Sixteen per cent of Aboriginal apprehensions received a formal caution compared with just over one-third (36 per cent) of non-Aboriginal cases.

3.7.2.2 Family conferences

Of the 93 per cent of apprehensions where information is available about the type of post-apprehension action, 17 per cent were diverted to a family conference. Strang noted that, over the first four years after the introduction of the Act, about 17 per cent of all juvenile matters (representing about 1500 cases and 1800 offenders) went to a conference. About half of all juvenile apprehensions resulted in court appearances, and about one-third were dealt with by caution.\(^{114}\)

Referrals involving Indigenous youths were ‘proportionately less likely to result in a “successful” conference than those involving non-Indigenous youths’.\(^{115}\) Seventy-six per cent of Aboriginal referrals were resolved at a conference, compared with 90 per cent of non-Aboriginal referrals. ‘Undertakings agreed to by Aboriginal youths’ at family conferences ‘were less likely than non-Aboriginal undertakings to involve apologies, compensation or community work, but were more likely to involve “other” conditions’. Referral back to police for non-compliance was slightly higher for Aboriginal youths, at 20 per cent, compared with 15 per cent for non-Aboriginal youths. In sum:

The level of positive finalisation was lower for Aboriginal than non-Aboriginal referrals (60.3 per cent compared with 68.8 per cent respectively) largely because of the higher level of non-compliance with undertakings and the higher proportion of cases where no conference was convened because the youth failed to attend or could not be located.

\(^{114}\) Strang, *Restorative Justice Programs in Australia*, p.12.

\(^{115}\) *Crime and Justice in South Australia: Juvenile justice 1999.*
Informants suggest that possible contributors to these higher levels of non-compliance include extended families of Aboriginal youths who do not want to be part of the process, and difficulties in locating youths to attend conferences or to meet the conditions of their conferences. More Aboriginal people than non-Aboriginal people have no telephone contact, so that following them up is sometimes problematic. It is often necessary to rely on community networks to find people and encourage them to attend their appointments.

Early Indigenous involvement in the criminal justice system is also indicated in family conference statistics:

A much higher proportion of Aboriginal than non-Aboriginal conferencing cases involved young people aged 10–12 years. Conversely, while four in ten non-Aboriginal cases involved youth aged 16 and over, this age group accounted for only one-quarter of the Aboriginal cases. The proportion of Aboriginal cases involving very young individuals was higher in 1999 than in 1998, when 21.5 per cent were recorded in the 10–12 year age bracket.

Family conferences were used as a response to drug offending in 8.5 per cent of cases in 1999. Drug offences accounted for a higher proportion of non-Aboriginal than Aboriginal cases (94 per cent compared with 4 per cent respectively).

Indigenous and non-Indigenous offender undertakings at conferences showed differing degrees of compliance. Levels of compliance were high for both groups:

Of 159 Aboriginal and 1129 non-Aboriginal cases which resulted in an undertaking in 1999, information on undertaking compliance status was available for 93.1 per cent and 85.8 per cent respectively... Of note, however, is that the proportion of Aboriginal cases referred back to police has decreased over the past three years while the level of non-Aboriginal compliance has increased marginally. Hence, the gap between the two figures is reducing. To illustrate, in 1999, there was a 5.5 percentage point difference, compared with a 14.8 percentage point difference in 1997.

3.7.2.3 Youth Court

The Office of Crime Statistics report notes that ‘the Youth Court finalised 2975 cases in 1999, which was 7.1 per cent fewer than the 3203 finalised in 1998’. As in previous years, a substantially higher proportion of Aboriginal than non-Aboriginal apprehensions resulted in referral to the Youth Court. Where relevant information was recorded, nearly seven in ten (69 per cent) Aboriginal apprehensions were ultimately referred to court compared with just over four in ten (45 per cent) non-Aboriginal matters. For those cases where racial appearance and type of referral were recorded, Aboriginal young people accounted for 24 per cent of all court referrals. Where Aboriginal youths have been apprehended for drug offences, for example, they were referred in 50 per cent of cases to the Drug Court, as compared with 30 per cent of their non-Aboriginal counterparts.
Early Indigenous involvement in the criminal justice system is again indicated in Youth Court statistics.

Aboriginal youth dealt with by the Youth Court in 1999 tended to be younger than their non-Aboriginal counterparts. Where age was recorded, 11.3 per cent of Aboriginal cases involved young people aged 12 years or under compared with only 2.4 per cent of non-Aboriginal cases. At the other end of the scale, approximately two-thirds of non-Aboriginal cases involved youths aged 16 and over, compared with less than one-half of the Aboriginal cases.

3.7.2.4 Juveniles in custody

In 1999 there were 1242 admissions to the State’s two youth training centres. This figure was 8 per cent lower than the 1342 admissions recorded in 1998, and 19 per cent lower than in 1993, the year preceding the introduction of the Young Offenders Act.

Aboriginal youths comprised 29 per cent of admissions where racial identity was known (the same as in 1998). However, this figure was higher than during the period 1993–1997. Further, there was a higher proportion of Aboriginal admissions involving younger individuals aged 15 and under (49 per cent compared with 38 per cent of non-Aboriginal admissions).

3.7.3 Comments from informants about diversion of Indigenous juveniles

An informant in the SA Police emphasised the success of diversionary programs that extend to juveniles with prior convictions. Drug and alcohol problems cannot be treated in isolation, and even if the child did not value the educational material, the diversionary process brought them into contact with services to help with the range of other challenges they face, such as unsafe home environments and mental health problems.

Police and Human Services staff stress the distinction between criminal and health issues, and the need to deal with substance abuse problems outside the criminal justice system. Early criminalisation of drug users is likely to cause greater long-term drug offending. Human Services staff note a lack of resources available for the treatment and rehabilitation of juvenile drug users, whether detected by the juvenile justice system or not. This is particularly chronic for users of illicit drugs such as heroin, especially those between the ages of 15 and 18. Diversion depends on good alternatives to detention. There is, however, a lack of treatment options for juvenile drug users in South Australia.116

A number of informants noted that most of the existing diversion programs operated in the Adelaide metropolitan area. There were very few services available for people in rural and remote areas of the State. The Departments of Health, Education, Police and Corrections are now discussing collaborative efforts to develop a diversion program for petrol sniffing in rural and remote regions.

116 Informant interviews.
3.8 Tasmania

3.8.1 Diversionary options and programs currently implemented

3.8.1.1 Cautions — formal and informal

The *Youth Justice Act 1997* provides a system of informal and formal cautions for young offenders. Police issue informal cautions where the offence is trivial or the youth is a first-time offender. Police may administer more formal cautions where the youth has committed a previous offence or the gravity of the offence warrants more formal action. In practice, formal cautions operate as a type of community conference.

In 1995 the Tasmanian Police trained 30 officers to take part in police conferencing (formal caution) programs. Since that time, police have trained a further 60 officers, and the program has continued under the *Youth Justice Act* proclaimed in February 2000. The Act allows police to invite the victim to attend a formal caution. The process seeks an outcome that may require the offender to make good the damage to the victim. Police may refer a juvenile to developmental, drug or alcohol programs or anything else they consider appropriate for the young person. It should be noted that outcomes are not enforceable under the Act.\(^{117}\) Where the offender is Indigenous, and if the offender and their family agree, a senior Indigenous person whom the offender trusts may administer the caution.\(^{118}\) If the parties cannot settle a matter at the conference, police will refer it to court.

3.8.1.2 Youth conferencing

The *Youth Justice Act* also makes provision for the Community Youth Justice (CYJ) Conferencing Program. Its administration is the responsibility of the Department of Health and Human Services and its facilitators, rather than the police. This community conferencing program is a pre-court diversion, and both police and the courts may refer juveniles to it. It is for offenders aged 10–17 who have admitted their offence. Drug offences come within its ambit. Police refer juveniles to this program who have already received a formal caution. It may also be court-referred.

3.8.1.3 Cannabis/illicit drug diversion

In Tasmania, juvenile cannabis and illicit drug diversion is as follows:

- Police will caution a first-time cannabis offender.
- Police will refer a second-time cannabis offender to intervention by a health service provider. This is an education and information session done with the individual face to face.
- The third cannabis or a first other illicit drug offence invokes a compulsory health assessment and some form of compulsory treatment, by Aboriginal service providers if appropriate.

The injection of COAG funding is intended to significantly boost the health services available to diverted drug offenders. Distribution of COAG funding differs between States. In Tasmania, it is distributed between Premier and Cabinet (the lead agency), Police, and

\(^{117}\) Strang, *Restorative Justice Programs in Australia*, p.22.

\(^{118}\) Informant interview.
Health and Human Services. Funding was provided to relevant departments following their expressions of interest.

The Department of Health has used its COAG funds to retain non-government organisations (NGOs), most of which are youth-oriented. There are about ten such private service providers (e.g. Link Youth). Some of these agencies employ a worker one or two days a week, while others provide assessment and a brief intervention. Amongst these NGOs are two new Aboriginal diversion services.

One officer believes that there is not much point prosecuting a chronic juvenile cannabis offender. There are generally other issues such as housing, schooling and mental health that the Department of Health is better equipped to address than the police or the courts.119

3.8.1.4 Other services

The Tasmanian Aboriginal Centre describes two diversionary programs:

- its own Youth Diversion Program
- the Ashley Detention Centre — Clarke (Lungtalnanana) Island Diversionary Program.120

Youth diversion is an informal ‘word of mouth’ scheme developed by the Tasmanian Aboriginal Centre, an Indigenous community organisation. Its emphasis is on early intervention. The program is aimed at young people before they get involved in the juvenile justice system. It is community-based: legal and field officers go into homes and talk to communities, and if possible assist them directly or refer them to services available to help them. The scheme relies on interpersonal links between the officers and the communities. The officers tend to know communities and families, and which situations involve alcohol and drug problems. No statistics are available about the numbers or ages of young people.

The Ashley Detention Centre (Tasmanian Departments of Community Corrections and Justice) has authorised the use of Lungtalnanana Island as a diversionary option. The emphasis is on Indigenous young people, but the program has accepted non-Indigenous offenders as well. Agricultural skills, animal husbandry, fencing, shearing and Aboriginal culture are taught. There are visits to neighbouring islands, counselling and medical treatment. The optimal number of young people is four. The court has discretion to divert young Indigenous offenders there from Ashley House.

A Youth Justice Worker from Tasmania’s Aboriginal Centre noted that almost invariably young people who take part in the program on Lungtalnanana Island have problems with drugs and/or alcohol. Nevertheless, young people are referred to the program mostly because they have committed other crimes, such as burglary, theft or property offences. The program is funded by both Indigenous organisations and the State Government. The worker noted that the program is successful in that there are low re-offending rates, and credits the Island manager for their care and skill with the young people, many of whom stay in contact after they leave, as well as the skill of other workers involved with the young offenders.

119 Informant interview.
120 Informant interview.

Programs and services available to Indigenous youth...
3.8.2 Data about drug- and alcohol-related offences by Indigenous juveniles

Child and Family Services in Tasmania provided statistics subject to the non-identifying rule.\(^{121}\) Community Youth Justice (CYJ) in Tasmania provided statistics on young people under its supervision. These data exclude police and court diversions that did not require CYJ’s involvement. Since February 2000, when the Youth Justice Act 1997 came into operation, 683 youths have been placed under different kinds of orders. Of these young people 18 were Aboriginal, two were Torres Strait Islander, and three were both Aboriginal and Torres Strait Islander.\(^{122}\)

To date, the Health and Human Services’ juvenile conferencing program has been used unevenly. As Strang notes, ‘there is considerable variability across the State in the pick-up rate for the new program, as well as for the continuing formal caution/police conference arrangement. As a guide, in the Eastern District which comprises about one-quarter of Tasmania’s population and deals with around 400 juvenile cases annually, over the past year almost two-thirds were dealt with by a formal caution, around 20 per cent went to court, 15 per cent to an informal caution, and 7 per cent to a conference’.\(^{123}\)

Tasmania Police are currently upgrading their data collection systems. The current data collection is ‘inefficient or requires IT/IM to write special programs to extract it’. Tasmania Police were nevertheless able to provide the following statistics regarding diversionary activity across Tasmania for the financial year 2000–01. Police prosecuted 1427 juveniles. They convened juvenile conferences in 495 cases. Police administered 1527 juvenile formal cautions. They note that the ‘data collection does not distinguish between Indigenous and non-Indigenous’. They add that ‘the only way this could be obtained is to manually examine each file to see if the offender declared whether or not they are Indigenous’. There were 255 young offenders (born after 31 December 1982) in Tasmania Police’s Drug Diversion database. Six of these had declared an Indigenous status.\(^{124}\)

\(^{121}\) Email correspondence, Department of Health and Human Services, Tasmania, 8 October 2001.

\(^{122}\) The orders represented are: Community Service, CC Police, CC Court, Suspended Detention Order, Release and Adjourn with Conditions, Probation Order, Conditional Suspended Detention, Pre-Sentence Report.

\(^{123}\) Strang, Restorative Justice Programs in Australia, p.23, citing Tasmanian police documents.

\(^{124}\) Email correspondence, Tasmania Police, 12 November 2001.
3.9 Australian Capital Territory

3.9.1 Diversionary options and programs currently implemented

3.9.1.1 Cautions — formal and informal

The Children and Young Persons Act 1999 provides for a system of formal cautions that extends to drug offences. There is no explicit provision for informal cautions; but police officers have discretion not to take formal action against a juvenile. In practice, police use this discretion, and in doing so consider factors such as the seriousness of the offence and the best interests of the child. The police officer records details of each encounter in the police database, and the nature of the activity, including whether it was drug-related, and notes that they took no further action.

3.9.1.2 Youth conferencing

The Australian Federal Police introduced a pre-court diversion program in the Australian Capital Territory in 1994. It is entirely police-conducted. Drug offenders are excluded. The Australian National University (ANU) together with the Australian Federal Police have reviewed juvenile conferencing through a Re-integrative Shaming Experiment (RISE) study. Youth conferencing does not appear to be well known or widely promoted in the Australian Capital Territory. The ANU's youth conferencing program does not extend to drug offenders.

Rosemary Bennet, solicitor at the Aboriginal Legal Service, argues that if youth conferences could be extended to include drug offences, they would be a positive diversionary initiative. Conferencing can nevertheless be very problematic for Aboriginal young people. Many offending Indigenous juveniles have chronic self-esteem problems, and view a conferencing process as too humiliating for them. Youths would be more likely to take part successfully if good pre-conference work were carried out, and the youth had a sense of support through the process (i.e. there is an adult with them whom they trust). There are insufficient resources at present to allow this to happen.

3.9.1.3 Cannabis/illicit drug diversion

The Drugs of Dependence Act 1989 provides for a Simple Cannabis Offence Notice (SCON) program, by which persons (including juveniles) in possession of up to five cannabis plants or less than 25 grams of cannabis may be fined. Payment of the fine expiates the offence, and no record is kept. An education and health component is being added to the SCON program, completion of which will expiate the fine. Under the extended scheme, police are to refer offenders to an agency that will assess the juvenile and refer them for treatment if required. If the offender fails to complete the education and health component, they may be referred back to police. This extension of the SCON program is being funded through the National Illicit Drugs Strategy, and operates from 1 December 2001.

125 Strang, Restorative Justice Programs in Australia, p.24.

126 Informant interview.
The Australian Capital Territory has appointed an Aboriginal liaison officer specifically for the adult cannabis diversion project. Informants anticipate that the liaison officer will also be available to assist Indigenous juveniles.

The Australian Federal Police and ACT Health are also working together on a new Early Illicit Drug Intervention Program from 1 December 2001. It is a police-referred early intervention for both juveniles and adults, and aims to divert illicit drug users into education and health treatment programs. It is limited to first- and second-time offenders, unless they are court-referred.

3.9.1.4 Children’s Court

The Australian Capital Territory has no juvenile drug court, but operates several juvenile diversionary programs through its Children’s Court. One informant says that as long as there are effective provisions in legislation and in practice to deal with juvenile drug and alcohol problems, there is no need for a Youth Drug Court.

The Magistrates Court has a drug diversion program called the Court Alcohol and Drug Assessment Service (CADAS), staffed by the Department of Community Care. It began as a pilot in October 2000, and is in the process of being extended to juveniles though the Children’s Court. CADAS is based on Victoria’s CREDIT program, with some variations. In particular, employees of the Department of Health deal with the health aspects of the program, rather than court employees. Further, it will deal with juvenile offenders. The success of the CADAS program has depended to some extent upon the Chief Magistrate’s strong support for a treatment-focused approach to substance abuse. The Children’s (and Magistrates) Court may at any time divert offenders back to earlier stage intervention programs.

3.9.1.5 Bail diversion, suspended sentencing, rehabilitation

An alternative stream of juvenile drug diversion is treatment referral through the Drugs of Dependence Act 1989 scheme (DODA), which extends to juveniles as well as adult offenders. It is a court-referred treatment program that operates as a post-sentencing possibility. Juveniles may expect between six months and two years of compulsory treatment depending on their circumstances, and their eventual sentencing will be influenced by the outcome of the treatment.127

The Aboriginal Legal Service (ALS) notes a lack of sentencing and bail options for young offenders in the Australian Capital Territory. No facilities exist for girls in either the Territory or New South Wales, so that unless alternatives can be found, they may have to be detained. There is a facility in the ACT to which boys may be bailed. The ALS and the ACT Corrective Services have established Isabella House, to which young male offenders may be sentenced or bailed. It is a 24-hour secure care facility, and has a house parent and a case manager from Corrective Services. Youths participate in educational, health and other programs run from the House.

The Aboriginal Legal Service notes that magistrates may order suspended sentencing provided the Service puts an option together for the offender. This entails a concentrated effort in trying to locate vacancies. Sometimes young people are detained until a vacancy is available. The ALS tries to include a health component in the option it presents to the magistrate to try to avoid the young person’s detention. There is a lack of treatment facilities available for young Indigenous drug offenders, and ALS spends significant

127 Informant interview.
time ringing around (sometimes all day for one client, and sometimes Australia-wide) to find places in rehabilitation or diversionary programs for young offenders. There is a need for a directory with information about sentencing and bail options, accommodation and support services, and drug and alcohol support services.128

The Nirrabaai Cultural Program is funded through the Aboriginal and Torres Strait Islander Commission’s Young Offenders Program and operated in conjunction with the South East Aboriginal Legal Service. It was developed and is operated by a Youth Officer. It previously operated for two days a week, but now operates one day a week. Magistrates often set participation in the program as a condition of bail or as an alternative to detention or remand orders. The content of the program varies in accordance with the case plans or needs of the youths attending at the time. The program is conducted in a bush environment and regularly includes sessions by drug and alcohol counsellors, cultural education, talks by medical staff and anger management education. Participation in the program can result in a lighter sentence or expiation of an offence. Generally youths participate in the program over a 3–4 month period.129

The Galilee Day Program is an alternative education program for young people in the Australian Capital Territory who are in substitute care or are not attending school. It is funded by the ACT Department of Education, Training and Children’s, Youth and Family Services Bureau. The program tries to maximise the educational potential of participants and encourage them into the mainstream. An Indigenous worker first works with Indigenous juveniles in their own group until they are ready to progress to a mainstream group within the program, and later into mainstream schooling. The program features a focus on learning through information technology. Most academic work is performed on computers. The program provides a safe climate for learning that involves interaction using non-coercive strategies. It incorporates opportunities for personal and social development and provides vocational skills in addition to a scholastic learning program.130

Informants noted that the lack of appropriate treatment options will need to be addressed, and that outreach programs need to link in better with the administering agencies. A young person’s rehabilitation centre has just opened, with funding for detoxification accessed through the Ted Noffs Foundation (which also operates in Sydney). This is the only young person-specific program in the Australian Capital Territory. A key informant noted that, in their experience, Indigenous communities prefer to direct their own treatment through Indigenous health services (e.g. Winnungah), rather than trying to access mainstream services, which may be inappropriate for them.

---

128 Informant interview.
129 Informant interview.
130 http://www.abc.net.au/ola/citizen/stories/trans/program13.htm
3.9.2 Data about drug- and alcohol-related offences by Indigenous juveniles

Statistics about drug- and alcohol-related offences by Indigenous juveniles were not available. Federal Police said there were difficulties with transferring information from an old database to a new one. In any case, Indigenous indicators have not been recorded.

3.9.3 Comments from informants about diversion of Indigenous juveniles

The Aboriginal Legal Service believes conferencing agreements need to be appropriate: written apologies, for example, are a nonsense where the offender is illiterate. There is also a sense of knowing the other young people in detention, and preferring to go there rather than what they perceive as a poorly conceived conferencing scheme. It is important to understand how fractured the lives of these young people are. Many are effectively street kids, with no space of their own and no family. This lack of support puts them at even greater risk of failing to complete diversion programs.  

A major difficulty for young offenders in the Australian Capital Territory is the fact that many have outstanding warrants over the border in New South Wales. There is no concurrency in sentencing between the jurisdictions, which means that juveniles may be released and then must serve another sentence for a different offence over the border. This extends the amount of time the young person spends in detention.

A police informant noted that relations between police and the Indigenous community are poor. Officers do not consider diversion options as often as they might. The participation of Indigenous young people in diversion programs is sometimes exacerbated by parental mistrust or apathy towards the processes. Legal advice not to plead guilty also reduces diversion options.

In the informant’s experience, conferencing does not work well for juvenile cannabis offenders. Conferencing is based on bringing the victim and offender together, and a ‘shame’ factor, which results from the involvement of the offender’s family in the process. For cannabis offences, there is usually no victim, and many youths are not embarrased by their marijuana use. Neither does the informant see any point in issuing SCON notices. This informant prefers to use a referral scheme for juvenile cannabis offenders, which diverts young people into community centres where they can be treated for their drug and other problems. The informant emphasises the importance of coordinating drug treatment and education and other service agencies. The informant described a program called Rec-link, which the Police Citizens Youth Club manages (a police and Education Department initiative), whereby they identify young people misusing their leisure time. They then provide recreational activities and at the same time give them educational information (life skills etc).

131 Informant interview.
3.10 Northern Territory

3.10.1 Diversionary options and programs currently implemented

3.10.1.1 Cautions — formal and informal

Verbal warnings: Northern Territory Police may administer verbal warnings where the offence is of a trivial or minor nature. Usually they are used for first-time juvenile offenders, although they may be used more than once for the same offender. If appropriate and practicable, police may inform a parent/guardian of the juvenile that the child was given a verbal warning. Police note such warnings but no criminal offence is recorded.

Written warnings: A written or ‘red’ warning is intended for situations where the offence is trivial or minor, ‘but the juvenile is at greater risk because of his/her behaviour and a higher level of intervention is necessary’. They are given to the offender in the presence of a parent or responsible adult, ‘to inform them of the behaviour of the juvenile and to further encourage parental responsibility’.

Formal cautions: Formal cautions may be administered where there are ‘more serious circumstances involved including circumstances where verbal or written warnings have previously proven to be ineffective’. Police may judge them to be appropriate for some first-time offenders, where they consider that a more formal intervention at an early stage would be effective in deterring the child from re-offending. Formal cautions may also be called family conferences, and their benefit is that they allow the emotions of the child and family to be discussed, and provide an opportunity for the group together to help the child solve the problem. This may be contrasted with the formality of the court environment. A police officer or a respected person in the juvenile’s community, such as an Aboriginal Elder or a religious leader or other suitable person, can carry out formal cautions. Conditions may be placed upon the child, such as a requirement that they work for the victim, apologise or restore the damage.

3.10.1.2 Diversionary conferencing

Northern Territory Police trialed a series of 34 youth conferences in Alice Springs and Yuendumu in 1995–1996. The program excluded more grave offences such as serious violence, sexual offences and domestic violence. It included drug offences. The offender had to have admitted the offence, and both the victim and the offender had to have consented to the conference. An evaluative report recommended that the conference program be implemented across the Territory.

Northern Territory Police have recently introduced a comprehensive juvenile pre-court diversion scheme. It extends to drug offences, with the exception of trafficking, and does

---


133 Northern Territory Police, *Juvenile Pre-court Diversion Scheme*.

134 Informant interview.

135 Northern Territory Police, *Juvenile Pre-court Diversion Scheme*.

not exclude juveniles with prior convictions. To complement the scheme, the Government passed legislation on 1 July 2000 to raise the age of a juvenile to include 17 year olds. The Territory and the Commonwealth signed a formal agreement on 27 July 2000 under which the Commonwealth is to fund the Juvenile Pre-Court Diversion Scheme, and the Northern Territory and the Commonwealth are to fund jointly an Aboriginal Interpreter Service. The Commonwealth’s commitment is for four years, beginning on 1 September 2000.\(^\text{137}\)

Under the agreement, $5m is to be provided annually, $4m of which is for diversionary programs, and $1m for the Indigenous interpreter services.\(^\text{138}\) The program has funded a Juvenile Diversion Division and staffing of two Juvenile Diversion Units (JDUs) in Darwin and Alice Springs. The \textit{Police Administration Act} was amended in October 2000 to provide for four levels of pre-court juvenile diversion. The amendments gave legal effect to the substance of the Commonwealth/Northern Territory Agreement.

The scheme is intended to incorporate ‘widespread consultation with relevant stakeholders within the community, particularly Aboriginal people’. It also ‘encourages groups and organisations to develop suitable programs for juveniles at risk’.\(^\text{139}\)

These pre-court diversion programs are intended to deal with juveniles before they get to the court system. An impetus for the program was to side-step the effects of the mandatory sentencing regime, although these have been partially eased with the repeal on 18 October 2001 of the Northern Territory’s mandatory sentencing legislation.

Diversionary conferencing is intended to provide a flexible diversion option that may be adapted according to the type and seriousness of the offence, as well as the particular needs of the offender and victim. They may be conducted independently with the juvenile and parents/guardians or with the juvenile, parent/guardian and victim of the offence. Essentially the conference is intended to be relatively informal where the offender and his/her family are brought together with the victim, the victim’s supporters and any other relevant parties to discuss the offending and negotiate an appropriate response. In consultation with police, families can choose their own procedures, the time and place of the meeting, and the creation of outcomes that reflect appropriate cultural responses.\(^\text{140}\)

### 3.10.1.3 Diversion and community-based programs

The \textit{Pre-court Diversion Scheme Overview} sets out a range of community diversion programs that may operate in conjunction with the pre-court conferencing program, or separate from it. Some of these programs are still in their early stages. Communities throughout the Northern Territory are encouraged to develop their own programs, subject to guidelines, and they may include programs devised for juveniles by the Northern Territory Correctional Services.

\(^{137}\) Northern Territory Police, \textit{Juvenile Pre-court Diversion Scheme}.

\(^{138}\) Informant interview.

\(^{139}\) Northern Territory Police, \textit{Juvenile Pre-court Diversion Scheme}.

\(^{140}\) Northern Territory Police, \textit{Juvenile Pre-court Diversion Scheme}.
Any such program will not be considered where it may involve contact with adult offenders. Programs are to be flexible and take into account any appropriate cultural, religious or community requirements. It is recognised that a program suitable for one community may not necessarily be appropriate in another community.

Officers in charge of police stations are to monitor the success of such programs. ‘The emphasis is on working with existing organisations or local community groups where possible with the flexibility to develop new programs quickly in consultation with the community.’

At present, there are 92 programs registered throughout the Northern Territory. Of these programs, 36 are registered in 20 communities outside Darwin and Alice Springs. Extensive continuing consultation is occurring with the aim of developing programs in every community. Communities experiencing significant juvenile problems have offered large-scale proposals involving development of three Community Youth Development Units. The Northern Territory Government assessed these substantial proposals for funding in June–July 2001, and the programs were implemented during the second half of the year.

There are also diversion programs for juvenile drug offenders that focus on drug, alcohol or substance abuse programs, to which a Juvenile Diversion Unit may refer a juvenile in consultation with a NT Health Services coordinator or other service provider. The Anyinginyi Youth Development Program seeks to educate young offenders about the alternatives to offending behaviour, alcohol and drug consumption, and substance abuse. The program provides access to education in numeracy, literacy and life skills and facilitates character building and responsible citizenship. It also seeks to increase communication between police, offenders and families and improve understanding by the Aboriginal community of the diversion process and the importance of education and parental support of young people in the Aboriginal community.

Young offenders are exposed to drug and alcohol harm minimisation education and other behaviour management counselling. They undertake a range of educational and training activities, both compulsory and elective, including reading, writing, woodwork, mechanics, pottery, horse riding and handling, gardening, cooking, sewing, computers and the Internet. The program also includes a number of recreational elements including gymnasium circuits, basketball, soccer, canoeing, bush trips and outstation camps. Participants engage in community assistance activities such as clean-up and maintenance projects. Program content is constantly under review taking into account clients’ needs. Offenders engage with the program for about 16 hours per week over a three-month period.

On referral to the program, juveniles are assessed in a one-to-one interview and through consultations with family members and other stakeholders such as police and Family and Children’s Services. Aboriginal leaders are consulted in relation to Aboriginal juveniles to ascertain whether any family or association conflicts exist. The individual

141 Northern Territory Police, Juvenile Pre-court Diversion Scheme.
needs of the juveniles are discussed and the nature of the programs available is explained. Upon completion of the assessment, an action plan is developed.\textsuperscript{142}

Another successful community-based program is the Mount Theo Petrol Sniffer Program, which has been operating since February 1994. The program aims to remove young people who are at risk (such as chronic petrol sniffers and young offenders) from Yuendumu to a safe environment in the bush where tribal Elders look after them. The program has been working closely with the local Yuendumu Police and the Northern Territory Correctional Services office in Alice Springs. Over the last three years, courts have bonded a number of young offenders to live at Mount Theo outstation and to take part in the rehabilitation program. This gives the young people the chance to detoxify and recover from petrol sniffing. They also become involved with gardening projects, the Community Development Employment Program and traditional activities such as making artefacts and hunting. A further advantage of the approach of taking young people out of their community for detoxification and recovery is that the approach prevents them from getting into trouble in the community and recruiting more young people to sniff with them. This is considered a very important aspect of the program that works to prevent a culture of petrol sniffing from becoming entrenched among the young people of Yuendumu.\textsuperscript{143}

Court bonds and police bail have been useful tools in dealing with the issue of petrol sniffing and the right to personal autonomy. Most young people who are chronic petrol sniffers usually end up in trouble with the law. The program works cooperatively with the local police and the local court to ensure that the bond and bail conditions for petrol sniffers include clauses that require youths not to sniff petrol and to reside at Mt Theo. Bond or bail conditions apply only when young people have been caught committing a crime.

A high level of community involvement and support for the Mt Theo program is critical to its success. Specific positive factors include the community’s confidence about tackling the issue of petrol sniffing (having dealt with it successfully before); those working on the program had a personal stake in its success (their own children were sniffing); Aboriginal people had appropriate support from non-Aboriginals who supported Aboriginal control of the program and ways of doing things; the program had the whole community’s support and results were quickly seen by the community; and there was low staff turnover and very high levels of motivation and commitment.

\textbf{3.10.1.4 Cannabis/illicit drug/substance abuse diversion}

The Northern Territory has a cannabis diversion scheme that uses drug infringement notices issued to offenders with less than two plants or 50 grams of cannabis. It decriminalises small-scale cannabis use in that offenders may expiate the offence by paying a fine. This scheme does not extend to juveniles.

\textsuperscript{142} http://www.nt.gov.au/pfes/police/units/jdu/anyinginyiexample.htm

The Territory has mooted new illicit drug diversion schemes to be implemented once the full $2.7m COAG-allocated funding for the National Illicit Drugs Strategy is released. After some delay, the Commonwealth agreed to allow COAG funding to be earmarked for community drug diversion initiatives dealing with petrol sniffing and alcohol abuse among juveniles, the incidence of which is much higher than illicit drug abuse. This funding has not yet been released to police and health services for distribution. For the most part, juvenile cannabis diversion continues to occur within the framework of already existing legislative provisions.

The Departments of Health, Police and Education jointly administer a school-based informal police diversion program (Drug Abuse Resistance — DARE), which is currently under review. It offers an informal diversion process for younger offenders (usually aged 10–13). Juveniles aged 13–15 are more likely to receive an official commissioned officer’s caution (see above), provided they have no prior offences. The commissioned officer may at any time during the cautioning process refer a child to assessment and treatment. There was some debate with the introduction of the pre-court diversion program as to whether the official commissioned officer’s caution should be dispensed with. The Northern Territory Government determined to retain the caution and extended it to allow administering commissioned officers to refer the young offender to health services. This provides access to treatment without requiring further contact with the criminal justice system.

3.10.2 Data about drug- and alcohol-related offences by Indigenous juveniles

A police source estimates that about half the juvenile drug apprehensions in the Northern Territory are of Indigenous youths. Juvenile drug apprehensions from July 1999 to June 2000 totalled 57, of which 54 were for cannabis. No Indigenous breakdown is provided.

The following statistics are taken from the Northern Territory Department of Correctional Services Annual Report. Of 171 receptions of juveniles in 1999–2000, 116 (68 per cent) were Indigenous. There was one juvenile drug offender who began detention in 1999–2000. The report does not indicate whether that offender was Indigenous. There were six drug offenders who were given Juvenile Community Service Order commencements in 1999–2000: six were for drug offences. The report does not indicate whether any of these juveniles were Indigenous.

Statistics about the first nine months’ operation of the Pre-court Diversion Scheme included no Indigenous indicators.

Verbal and written warnings: In 1999–2000 police gave verbal warnings to 477 juveniles, and written warnings to 268 juveniles. Police served written juvenile warnings on a parent or guardian. No Indigenous indicator was given.

Formal cautions/family conferences: A total of 241 juvenile apprehensions were resolved with the use of a formal caution/family conference. No Indigenous indicator was given.

144 The Council of Australian Governments (COAG) initially intended that this funding be earmarked for illicit drug diversion programs only. The Prime Minister ultimately came to the view that part of the Northern Territory’s COAG funding could be used to help address the chronic incidence of petrol sniffing and alcohol abuse in the Northern Territory.

145 Informant interview.
Victim/offender conferences: Police referred 57 juveniles to victim/offender conferences during the reporting period.

Programs: During the first nine months of the Pre-court Diversion Scheme, 58 juveniles were referred to programs. Of the 29 juveniles who have completed a program, seven did not successfully complete the requirements and were referred to court. Program referrals were generally for the more serious cases and generally originated from formal cautions/family conferences or victim/offender conferences. Inclusive of these referrals, 298 juveniles had ‘personal’ or tailored programs developed or included as part of their diversion.

During the reporting period, the Juvenile Diversion Units assessed, monitored, reviewed and finalised all 1302 apprehension cases. Apprehension cases, numbering 113 (with about 50 still active or being assessed at the time of reporting), were referred to the JDUs for full management. The JDUs managed 47 victim offender/conferences, 10 formal cautions/family conferences, and facilitated and monitored juveniles on 29 registered programs and 14 informal programs.

3.10.3 Comments from informants about diversion of Indigenous juveniles

An informant says there are 50 or 60 programs available in Darwin, but it is difficult to run diversionary programs in remote areas where there is little infrastructure. There is a great despondency in many Indigenous communities, which can lead in turn to a sense of local apathy in trying to get programs running. In such situations, a program will function only if there is a motivated person running it. When that person leaves, the program generally folds. ‘Stand alone’ programs are therefore not enough — a ‘whole community’ approach is needed.

This informant identifies exclusion of juveniles with previous offences, whether for drug or other offences, as a weakness of the National Illicit Drugs Strategy approach. Although the rate of juvenile apprehension for drugs in the Northern Territory is low, there are large numbers of marijuana users, and high levels of alcohol and other substance abuse and juvenile petrol sniffing. The stringency of the NIDS diversion criteria may exclude children who could otherwise benefit from diversionary intervention. The effect of stringent criteria is that (once a COAG diversionary program is established) the police are likely to use their own diversionary strategies to divert the child from detention. In any case, COAG funding for illicit drug diversion programs has not yet been released.

A senior police informant commented that good diversion schemes must be followed up with adequate police training, but the existence of adequate assessment and treatment facilities was even more important. The use of cannabis is growing in remote Indigenous communities, but sending juveniles away from their community into urban centres may stress them to an extent that exacerbates drug dependency. He said it was difficult to access funding for treatment of petrol sniffing. The Deaths in Custody Royal Commission recommended that detention of Indigenous juveniles escalated the range of potential harms so sharply that it was to be avoided. The apparent need to criminalise substance abuse in order to gain access to treatment/health funding was anomalous, the informant said.\textsuperscript{146}

\textsuperscript{146} Informant interview.
The NT Police Juvenile Diversion Division emphasises the need for flexible implementation of diversion strategy to suit the offender’s and victim’s needs:

Police are not locked into a particular sequence of providing pre-court diversion, i.e. the juvenile can receive a verbal warning or be referred to very formal types of diversion in the first instance. Furthermore, a combination of diversion types may be used on a single occasion, e.g. a victim offender conference, conditions and a program. The scheme has been designed to be flexible and to provide for maximum input both by police and by the community where the juvenile resides.

Broad consultation and good police training are essential:

Extensive consultation is continuing across the Northern Territory with community organisations, Indigenous leaders and organisations and other Northern Territory government agencies to develop partnerships and to identify suitable diversion programs. It is hoped that, in time, the total number of approved programs throughout the Territory will number well in excess of 200 (already more than 70). Training for police has commenced and every member will receive appropriate training in the diversion of juveniles with close to 200 also being taught how to manage diversionary family and/or victim–offender conferencing.

Since the commencement of the scheme, approximately 430 operational police officers have received formal classroom training in diversion procedures. 313 police officers and 33 Aboriginal Community Police Officers (ACPOs) have been trained in general diversion operation. Forty police and 2 civilian staff were trained as instructors in general diversion while recently a further 17 police were trained to instruct other members in conference facilitation. 175 police officers, 4 police civilian staff and 33 non-police have been trained in victim/offender conference facilitation. In excess of 50 per cent of the police force have now received formal classroom training. In addition to this formal training, all police officers have received significant advice and instructions in diversion via Police Gazette, General Orders, instructional documents, electronic copy and presentations or briefings.

The police assessment of the diversion initiative is positive, and police have shown willingness to treat juvenile offending in a ‘new way’. The ‘concept of victim/offender conferences’ has been well received by Aboriginals, with some tribal Elders stating that they were happy with ‘the new white fella way’ of dealing with young offenders because it was the ‘old Aboriginal way’.

One informant believes that criminalisation of young people is endemic in the Territory, but is the direct result of drug offences in only a few cases. Drug diversion (as currently operating) has a very limited role in addressing substance abuse problems. Substance abuse problems — petrol sniffing and alcohol — are a major issue among young people, and he described the delay in the release of COAG funding as ‘a political failure to understand the nature of the substance abuse problem’. Efforts to counter substance abuse in juveniles cannot be treated in isolation from the severe socio-economic disadvantage of most young Indigenous people in the Northern Territory. Further, the distri-

3.11 Summary of the current range of programs

Each jurisdiction has its own hybrid of juvenile offenders legislation. In most cases, it provides for a three-tiered system of juvenile justice — warning, conferencing and court. Commonly, this system does not operate hierarchically — that is, courts may refer juvenile offenders back ‘down’ the justice ladder for formal cautions or conferencing, even if they have committed previous offences. Typically, police divert young offenders to shorter, preliminary interventions, and courts refer repeated offenders to more intensive and long-term programs. However, rates of police diversion for similar offences across the jurisdictions vary enormously.

We have noted throughout this account that reliable Indigenous indicators are available in very few cases to allow a comprehensive analysis of Indigenous juvenile drug diversion in Australia.

3.11.1 Cautions

Warnings may be informal or formal, with varying degrees of family and community involvement. Drug offenders may be warned in most jurisdictions, although supply and trafficking are generally excluded. Prior convictions need not exclude young offenders from warning processes, although in practice police are less likely to caution a child with prior convictions. An admission of guilt is not usually necessary for an informal caution.

Formal cautions are administered by a variety of persons of authority, including in some cases a senior Indigenous person. In some jurisdictions, police must be specialist youth officers in order to administer cautions. Formal cautions may function as

---

a form of youth conference — in Tasmania, for example, a victim may attend a formal caution. In most jurisdictions, however, conferencing and cautioning are kept separate. The involvement of Indigenous representatives in warning processes varies between jurisdictions. This is available in most jurisdictions, but police practices and community involvement vary widely.

3.11.2 Youth conferencing

Across Australia, different departments oversee youth conferencing. Beyond the point of police referral, levels of police involvement vary. In Western Australia, for example, youth conferencing is a joint police and Ministry of Justice initiative. In Queensland it is administered by the Department of Families; in South Australia it is a joint police and Department of Human Services initiative; and in New South Wales it is the responsibility of the Department of Juvenile Justice. Admissions of guilt are generally necessary for the child to take part in a youth conference. In most jurisdictions (with the exception of the Australian Capital Territory), drug offenders may participate, although suppliers and traffickers are excluded.

The programs vary in their rate of Indigenous participation, and their emphasis on it. In some States, Indigenous liaison officers take part in the administration or running of the conferences (Western Australia, New South Wales), and Indigenous persons of authority are also included in some jurisdictions. Rates of juvenile Indigenous participation appear to reflect the inclusion of Indigenous representatives in the programs.

Net-widening concerns are being countered by efforts to expand the role of teams to deal with more serious offences and more persistent offenders. Conferencing programs that exclude youths with prior offences have limited impact on youth diversion.

Compared with court reference, rates of police reference to conferences also vary widely across Australia. This variation seems to depend first on the existence of a good conferencing program in the jurisdiction, and secondly on the degree of police awareness and training about conferencing. The two are clearly linked: good programs generally develop in close consultation with police. In New South Wales, for example, about half the referrals were from police, and there is continuing improvement. In Western Australia, the proportion of police as compared with court referral to juvenile conferencing is 65 per cent, which suggests that youths are being diverted to conferencing earlier in their offending careers.

Conferencing rates vary enormously, as do rates of Indigenous participation in them. In Western Australia there were about 2380 referrals, 487 (20.5 per cent) of which were Indigenous. In New South Wales, 2021 juveniles were referred to conference in 2000–01, 444 (22 per cent) of which were Indigenous youths. In Queensland, in a three-month period (April–June 2001), there were 199 referrals, an increase from 133 in the same period the previous year (no Indigenous indicators are available). Averaged over the year, this is about a third of Western Australian conferencing figures. The fraction is smaller still when relative population sizes are accounted for. In Victoria, the Juvenile


150 Informant interview. These figures do not represent all districts in Western Australia where conferencing occurs.

151 Statistics from New South Wales Department of Juvenile Justice.
Justice Group’s Conferencing Pilot held 40 conferences in two years (Indigenous indicators are not available). In South Australia, 17 per cent of juvenile offenders went to conference. In Tasmania, about 6 per cent of young offenders went to conference. In the Australian Capital Territory, the conferencing program was not well known or used by the juvenile Indigenous offending population.

3.11.3 Diversion

Diversion programs vary greatly among Australian jurisdictions. Most referrals to diversion are at the discretion of police, rather than mandatory, though there are exceptions. Many are also dependent on an admission of guilt.

Informants expressed concern about the exclusion from diversion programs of juveniles with previous offences. The stringency of these criteria sometimes excludes children who might otherwise benefit from diversionary intervention. One informant noted that one of the advantages of the diversionary process is that it often brings juveniles who are facing a range of challenges into contact with the services that have the capacity to assist them in many aspects of their lives.

Most diversion programs operated in metropolitan areas. There are very few services available for people in rural and remote areas despite quite significant involvement in petrol sniffing and drug use in some of these areas. Informants commented on the difficulty of conducting diversionary programs in remote areas where there is little infrastructure.

Diversion projects tend to be managed across departments, usually with the police, juvenile justice and health services doing most of the administration. Further, the responsibility for diversion is handled very differently across States, and depends in many cases upon the location of the State’s juvenile justice branch. Their success depends to a large extent on good coordination among departments. Coordinated community responses appear to work best.

3.11.4 Children’s Courts/ Drug Courts

Juvenile Drug Courts have been established in New South Wales and Western Australia, and are in their pilot stages. Otherwise, Children’s Courts are responsible for court diversion programs.

Bail diversion and sentencing options are not invoked in South Australia for juvenile drug offenders, because the latter are diverted into assessment and treatment programs. In the absence of a universal juvenile drug diversion scheme, good bail and sentencing options are crucial. They vary greatly between the States and Territories. In many cases the options exist, but the absence of the necessary accommodation or treatment facilities prevents their invocation.

3.11.5 Treatment services

Informants in all jurisdictions who work in Indigenous health or legal aid comment on the lack of appropriate treatment options to which Indigenous juveniles with substance abuse problems can be diverted. This deficiency may be remedied to some extent by funding from the Council of Australian Governments for treatment services. However, given the acute lack of treatment facilities accessible to young Indigenous
substance abusers, the degree of improvement necessary to confront the depth of the problem may be well beyond the scope of the National Illicit Drugs Strategy (NIDS) initiative (especially when the abuse of alcohol, tobacco, petrol and solvents are all considered). For example, on Cape York Peninsula and in Far North Queensland there are currently no functioning treatment facilities for juvenile Indigenous substance abusers. The picture is almost as grim in the Northern Territory.

3.11.6 Police training on diversion

Police carry a large part of the responsibility for juvenile diversion initiatives, particularly early interventions. Increased rates of juvenile diversion in part depend on good police understanding of the diversion options available to them, particularly where a young Indigenous drug offender presents. It seems clear that continuous police training is likely to lead to higher levels of diversion. Levels of police training and commitment to juvenile diversion are inconsistent across Australia, as are police–Indigenous youth relations. Although training programs have begun on the NIDS initiative (such as the Queensland Illicit Drug Diversion Initiative police training), the reach of these programs is likely to be small, given their restrictive criteria and the fact that few Indigenous juveniles are apprehended for illicit drug offences. As a general proposition, consistent police training on diversion options is likely to decrease numbers of juveniles in detention, particularly Indigenous juveniles.

Inconsistent police and judicial cultural awareness and comprehension of the Indigenous juvenile experience are likely to hamper attempts to divert them from the criminal justice system. We noted varying degrees of police responsiveness to our questions and the aims of this project, but also noted the positive individual responses of dedicated police officers. Good police training in diversion and cultural awareness are clearly essential. The effectiveness of police training cannot be assessed without closer analysis of the Indigenous juvenile experience of diversion processes across Australia. It is beyond the scope of this review to make this analysis, but we stress the importance of such an examination in any efforts to improve rates of Indigenous juvenile diversion in Australia.

A common concern raised by informants was lack of familiarity with diversion options for Indigenous juvenile offenders on the part of police. Some informants suggested that good police training was essential to ensure they are aware of the options for diverting juveniles. Failure to refer Indigenous youths was also considered a problem and was attributed by some to poor relations between police and Aboriginal communities.

3.11.7 Council of Australian Governments

Although State evaluations of COAG initiatives are pending, in many cases the programs themselves have only just begun to run. In South Australia, for example, the COAG diversionary initiative for youths was implemented in September 2001. At the time of writing, no State had completed a review of the COAG diversion initiatives. A breakdown of Indigenous/youth participation in COAG-funded programs was nevertheless possible in some cases.
3.11.8 Aboriginal community involvement

Informants to this study considered the involvement of Aboriginal communities in developing and implementing diversion programs very important. ‘Governments need to sit down with Aboriginal people and talk about diversion to develop processes that will work.’ Many noted that the best strategies tended to be those developed and operated locally and often involve collaborative efforts between the Aboriginal community, police and other relevant government and not-for-profit organisations.

They also emphasised that efforts to counter substance abuse in juveniles could not be treated in isolation from the severe socio-economic disadvantage of many young Indigenous people. Encouraging Indigenous young people to stay at school for as long as possible was also crucial in keeping them drug-free and out of the criminal justice system. Informants drew a distinction between criminal and health issues, and said substance abuse problems should be dealt with outside the criminal justice system. Early criminalisation of drug users was likely to cause greater long-term drug offending.

Informants suggested several factors as contributors to the low levels of Aboriginal participation in diversion programs:

**The regimented nature of programs:** Informants said that programs needed to be realistic, accessible and flexible. Many youths did not have a sufficiently structured life to enable them to stick to the program. Many were effectively street kids, with no space of their own and no family. Lack of access to private transport made it more difficult for them to attend appointments. Often contact by phone was not easy and community networks needed to be called on.

**Lack of adult support** put them at greater risk of failing to complete diversion programs. It was sometimes just assumed that they attended appointments, but unless there was someone to take them and walk them through it and provide positive persuasion to get them involved, many would drop out. Failure to complete programs could exacerbate self-esteem problems for juveniles. The establishment of Diversion Liaison Officer positions was suggested. These officers would make contact with people who have been diverted before they need to attend for an appointment. The officer would talk to them and explain the benefits of getting involved and look at the barriers to involvement. They could also have an active role in linking people with the services they need.

**Parental mistrust or apathy towards the processes:** Informants said there had to be real trust between children and adults for the system to work. Getting community support for diversion programs had been shown to be an effective strategy for increasing participation by juveniles.

**Legal advice not to plead guilty:** Informants said that Indigenous offenders were generally advised not to indicate any guilt, and this reduced their options for diversion. As a result, many became ineligible for diversion programs.
4. Existing programs and key principles of diversion and treatment

4.1 Key principles

Based on our review of the literature, we earlier proposed some key principles for diversion and treatment of Indigenous juvenile offenders.

**Diversion strategies and treatment services** for Indigenous adolescents should be culturally and developmentally appropriate, meaningfully involve Indigenous people, families and communities, and be community-based wherever possible.

**Treatment services** for Indigenous adolescents should be multi-modal, addressing multiple risk and protective factors (such as counselling, education and skills training), and intervention should be commensurate with drug use behaviour (that is, brief intervention when drug use does not constitute a psychoactive substance use disorder (PSUD); intense and long-term interventions for PSUD).

**Diversion strategies** for Indigenous adolescents should include increasing the intensity of treatment with increasing offending history and PSUD; mechanisms for preventing net widening; mechanisms for monitoring the use of discretion; and restorative justice principles.

**Previous reviews in this area must be acknowledged**, including the Royal Commission into Aboriginal Deaths in Custody, and the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, both of which stress the importance of self-determination. The latter report proposed the establishment of national minimum standards, including principles relating to the best interests of the child; requirements for representation of the juvenile by a person of the juvenile’s choice, or an accredited Aboriginal organisation if the child is incapable of choosing; and rules relating to Indigenous juvenile justice.

In light of the number of treatment and diversion programs we have identified, and the limited detail available about many of them, we are able to make some general observations about how far the range of existing programs appears to be consistent with these key principles.

**4.1.1 Application of the principles to diversion and treatment programs**

**4.1.1.1 Culturally appropriate**

The literature records the desire of Aboriginal people for greater control over criminal justice issues, and some success when this has happened. Some of the problems of cultural appropriateness in diversion programs for Indigenous youth have been lack of adequate resources, police control over access to diversion options, and failure to involve Aboriginal communities adequately in planning and implementing diversionary systems.

One informant commented: ‘No diversions are culturally appropriate in themselves — their appropriateness depends on how they are administered’. Few juvenile diversion programs are specifically Indigenous, but in some places a person respected by an Indigenous juvenile offender may be present during a formal caution (Queensland) or administer the caution (Tasmania and Northern Territory). In New South Wales and Western Australia, Indigenous administrators/ coordinators have been employed to increase participation in...
youth conferencing programs. In Victoria, if offenders identify themselves as Koori, they may choose either an Aboriginal-specific agency or a mainstream service for treatment. Indigenous-specific group conferencing in Victoria and pre-court diversion schemes in the Northern Territory are being developed.

One informant said that Indigenous communities needed to be appropriately engaged in youth conferencing to gain confidence in the process. Western Australia is discussing involving Aboriginal police officers in meetings, and taking the meetings into communities. In the Northern Territory’s Pre-court Diversion Scheme, families can choose their own procedures and the time and place of the meeting in consultation with police. They may also create outcomes that reflect appropriate cultural responses.

4.1.1.2 Developmentally appropriate

Two of the diversion strategies we have documented make a distinction between the management of adolescents at different ages. South Australia’s Police Diversion Initiative makes a distinction between the management of 10–14 year olds and of 14–18 year olds; and the school-based informal police diversion program (Drug Abuse Resistance — DARE) in the Northern Territory offers an informal diversion process for younger offenders (usually aged 10–13) while juveniles aged 13–15 are more likely to receive an official commissioned officer’s caution if they have no prior offences.

A few of the alcohol and other drug intervention projects listed in Appendix 2 by or for Indigenous Australians indicate they are developing programs to meet the personal and social abilities of individual youths, or to conduct a pre-program assessment of young people’s behaviours, knowledge and skills to identify their specific education, training and support needs.

4.1.1.3 Meaningful (not tokenistic) involvement of Aboriginal people

Informants considered the involvement of Aboriginal communities in developing and implementing diversion programs to be very important, but the extent to which Indigenous people are involved in diversion and treatment activity varies across jurisdictions. Obtaining community support for diversion programs is an effective strategy for increasing juveniles’ participation.

Currently the Northern Territory Pre-court Diversion Scheme appears to be involving Aboriginal people in the most comprehensive way by encouraging groups and organisations to develop suitable programs for juveniles at risk and allowing a high degree of flexibility in the conferencing process.

Emerging models for sentencing Indigenous people, such as the Nunga Court in South Australia, provide a greater opportunity for involvement of Aboriginal people in sentencing decisions. The application of this model to juveniles should be investigated.

4.1.1.4 Involvement of family and community

Most jurisdictions said families were involved in cautioning and conferencing processes. Police generally encourage the attendance of parents when cautioning children, and attempts are made to include family in all conferencing processes. Some of the alcohol and other drug intervention projects involve family and community in their design and implementation. The proposed South Australian Aboriginal Kinship Program will provide an innovative model for engaging family and community in the treatment of young offenders.
The Young Offenders Act 1993 (SA) contains statutory policies that must be applied if the circumstances of the case allow: family relationships between a youth, the youth’s parents and other members of the youth’s family should be preserved and strengthened; a youth should not be withdrawn unnecessarily from the youth’s family environment; there should be no unnecessary interruption of a youth’s education or employment; and a youth’s sense of racial, ethnic or cultural identity should not be impaired.\(^{152}\)

4.1.1.5 Community-based, where possible

Of the 61 alcohol and other drug intervention projects identified in Appendix 2, 38 (62 per cent) are classified as community-based. A strong community approach is evident in most of the youth conferencing programs. For example, one of the objectives of the New South Wales youth conferencing scheme is to develop community-based negotiated responses to offenders. Informants view the ground-up approach as critical to the success of the program.

Informants also identified community involvement and support as critical success factors in projects such as the Mt Theo outstation (Yuendumu community, Northern Territory) and the Giyaali Project at Walgett, New South Wales. The Northern Territory’s Pre-court Diversion Scheme recognises that a program suitable for one community may not necessarily be appropriate in another community, and encourages communities to develop their own programs.

4.1.2 Application of the principles to treatment services for Indigenous adolescents

Many informants commented on the lack of available drug treatment and rehabilitation options for young drug offenders. This concern echoes the National Drug Research Institute’s report,\(^ {153}\) which commented on the small number of programs available for Indigenous people relative to their population. The absence of practical options for drug diversion could result in young people being ‘pushed up the sentencing tree’, one informant said.

Another informant commented that the distinction between juveniles (10–18 year olds) and adolescent young people (up to 25 years old) was often artificial in Indigenous cultural terms. Young people of these ages tended to mix, and access to treatment programs should be broad, and reflect the young people’s social reality.

4.1.2.1 Multi-modal

The Kanpa Substance Abuse Bail Centre operated by the Warburton Community Corporation in Western Australia appears to provide a multi-modal approach to treatment. Young offenders and substance abusers are referred to the Centre by the local Court of Petty Sessions, or are admitted voluntarily, to reside at Kanpa while they take part in appropriate treatment programs. Clients and their families are given counseling, information and education about alcohol and other drugs and their associated risks. Training is also offered to young people to develop the skills they need to gain


employment. The program works in conjunction with ‘Breakaway Camps’ coordinated by local police. The camps aim to build the self-esteem and confidence of young people. Community leaders also work with the families of petrol sniffers in preparation for their return to the community.\textsuperscript{154}

4.1.2.2 Address multiple risk and protective factors

Interventions for psychoactive substance use disorders (PSUDs) can have only limited impact while Aboriginal people remain socio-economically disadvantaged. Broader social justice programs are needed for sustained and significant improvements in PSUDs among Aboriginal youth. Many of the identified alcohol and other drugs projects incorporate social and cultural components, including skills training. Similarly, many of the youth conferencing programs seek to understand and acknowledge the range of risk factors that may have contributed to offending behaviour.

One informant said it was necessary not only for the treatment programs to address the range of risk and protective factors, but to be realistic, flexible and accessible for a target population who experience significant social and economic disadvantage.

4.1.2.3 Intervention commensurate with drug use behaviour

A brief intervention is appropriate when drug use does not constitute a PSUD; but intense and long-term interventions are needed for PSUD. It is difficult to tell from information about the range of treatment services how far this principle is currently applied.

4.1.3 Application of the principles to diversion strategies for Indigenous adolescents

4.1.3.1 Increasing the intensity of treatment with increasing offending history and PSUD

Increasing sanctions with increasing offending history is evident in the diversionary options and programs now implemented in each jurisdiction. Cautions are often used for early or minor offending behaviour, after which youth conferences or drug diversion programs are invoked. Non-compliance with conference outcomes or drug treatment generally leads to referring the offender back into the juvenile justice system. The intensity of treatment is generally not mandated, but some provisions require offenders to undergo assessment after a particular number of offences (for example, in South Australia a young person must face a group of assessors after three cannabis offences).

4.1.3.2 Mechanisms to prevent net widening

The training provided to police officers in New South Wales by the Specialist Youth Officers Program includes awareness of the impact on juveniles of being charged with an offence. Only officers who have undertaken this training are allowed to decide whether to charge juveniles. In Western Australia the Juvenile Justice Team provides a half-day’s training to new police recruits at the Police Academy and also trains other serving police. The team is aware of the possible net-widening effect of conferencing in situations where a caution would have been more appropriate. Referrals may be sent back to police where other diversionary measures, in particular cautions, are

\textsuperscript{154} http://www.db.ndri.curtin.edu.au/php/php.exe/projdet.html
more appropriate. Net widening is also being countered in Western Australia by efforts to expand the role of Juvenile Justice Teams to deal with more serious offences and more persistent offenders. Other training programs for police, such as the State-wide training that has been conducted in Queensland to implement the Queensland Illicit Drug Diversion Initiative, provide an opportunity for education about net widening.

An informant from South Australia commented that their drug diversion program seeks to minimise contact with police and emphasises treatment. The program was valuable in increasing the number of drug users receiving treatment. Another informant commented that, where diversion initiatives require an admission from the young person, there is a potential for some to end up in court when they might have been eligible for diversion, because of advice from their legal representatives to admit nothing during police interview. The informant suggested that legal representatives needed to be familiar with the full range of diversion and treatment options, and offer their clients the alternative of admitting the offence and taking part in a diversion program.

4.1.3.3 Mechanisms for monitoring the use of discretion

An informant said that a lawyer may make an application under the Juvenile Justice Act in Queensland for a magistrate to dismiss a charge and caution a young person if the court considers a police officer should have issued a caution rather than beginning legal proceedings. Similarly, in South Australia the Youth Court can overturn any court referral decision made by a Police Youth Officer and send the matter back for either a caution or a conference.\textsuperscript{155}

Juvenile justice legislation in all States and Territories, except Victoria and Tasmania, requires arresting officers to consider other alternatives before prosecution.\textsuperscript{156} No mechanisms for monitoring the use of discretion were identified, although informants often cited the discretion available to police and magistrates as a concern. Many commented on the fact that limited knowledge of diversion options restricted the ability of police and magistrates to divert young offenders.

4.1.3.4 Restorative justice principles

Restorative justice principles are particularly evident in youth conferencing processes. In some cases a juvenile may be required to make undertakings about future conduct or reparation as part of a caution.


\textsuperscript{156} Queensland Department of Families, Youth and Community Care (1998) \textit{Juvenile Justice Legislation: Comparative table of Australian State and Territory legislation.} Brisbane: Juvenile Justice Program, the Department.
4.1.4 Acknowledgement of previous reviews

Until at least 2000, the consensus of observers was that governments in Australia had not adequately implemented specific recommendations about the administration of the criminal justice system from the Royal Commission into Aboriginal Deaths in Custody and from the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

Informants to this study also believe response to the recommendations is not yet at an acceptable level, but are confident that recent policies and programs have gone some way to acknowledging these authoritative reviews. They point to these recent developments in drug diversion:

- The parents or family of offenders are now encouraged to be involved in cautioning, conferencing or other diversion activities whenever possible.
- Most young people are now summonsed or given attendance notices rather than arrested.
- As a matter of course, juveniles are bailed, and detention of juveniles in police cells is avoided unless the police have no alternative accommodation. In South Australia, neither bail nor detention is used. In Queensland, the *Juvenile Justice Act* stipulates that detention must be a last resort for the shortest possible period, and requires the sentencing court to provide written reasons.
- Indigenous Elders are increasingly involved in successful community-based programs, and communities are encouraged to develop their own programs within diversion scheme guidelines.

In general, the informants say, any diversion from legal proceedings or from incarceration is in the best interests of the child.
5. Recommendations for future diversion and treatment services

**Recommendation 1**

We recommend development of a greater number and range of culturally appropriate diversion options that specifically target Aboriginal and Torres Strait Islander youth in areas of high need, and increased capacity to deal appropriately with Aboriginal and Torres Strait Islander youth in mainstream diversion programs in areas where the numbers of young offenders may not warrant specific youth or Aboriginal and Torres Strait Islander programs.

**Recommendation 2**

On the basis of a comprehensive review of literature and consultation with informants throughout the Australian jurisdictions, we recommend that future diversion and treatment services for Indigenous juveniles be designed in accordance with these key principles:

1. Diversion strategies and treatment services for Aboriginal and Torres Strait Islander young people should be culturally and developmentally appropriate, with meaningful involvement of Indigenous people, families and communities, and where possible be community-based.

2. Treatment services should address multiple risk and protective factors, and offer interventions proportional to the behaviour — brief interventions when drug use is not a psychoactive substance use disorder (PSUD); long-term interventions for PSUD.

3. Diversion strategies should increase the intensity of treatment with increasing offending history and PSUD, prevent net widening, monitor the use of discretion, and adopt restorative justice principles.

**Recommendation 3**

In designing and implementing future diversion activity, increased efforts should be made to enhance the knowledge of police and magistrates about diversion options for Indigenous juveniles, and specific programs implemented to increase Indigenous participation in diversion programs where it is currently low.

There is an obvious need for suitable treatment options to be more readily available for Indigenous youths who have committed drug- or alcohol-related offences. No matter what non-custodial options are available in juvenile justice legislation, the central issue is how far they can be applied in practice. Arguments for and against Indigenous-specific services are beyond the scope of this report, but given the reality that Indigenous young people will present to mainstream services, we must consider how these services can be made attractive, appropriate and effective for them. Possible strategies include having Indigenous as well as non-Indigenous workers on staff, the use of Indigenous liaison officers, ensuring that the environment in these services makes them accessible to Indigenous youths, and training non-Indigenous workers to increase awareness of racism and knowledge of appropriate strategies for dealing with it.

Effective treatment of substance abuse among Aboriginal and Torres Strait Islander young people requires ensuring that access to Indigenous treatment and support services is possible without contact with the juvenile justice system. Nevertheless, once the young person has contact with the police, it is essential that police divert juveniles as early in the contact process as possible. This requires good police knowledge of and
commitment to juvenile diversion — there is no point in having diversion programs if the police do not use them. Presently there appear to be gaps in police knowledge about diversion options, and in practice the onus is on Indigenous representatives in some areas to suggest diversionary options. This makes improvement in rates of diversion unlikely. Specific training of Specialist Youth Officers and Youth Liaison Officers in New South Wales, incorporating recognition of the impact on juveniles of being charged with an offence, is said to be improving the rates of police referral, although improvement in diversion rates of Indigenous youths is relatively smaller than for the general population. Similar large-scale efforts to train police and Aboriginal Community Police Officers in diversion procedures have also been undertaken in the Northern Territory. Other types of activities that involve collaboration between Aboriginal communities/organisations and police such as Kumangka in South Australia have also shown potential in enhancing knowledge among police about diversion options for indigenous youths.

Rates of participation are higher where programs have employed deliberate strategies to reach Indigenous youths, for example by employing Indigenous facilitators and team members (as in New South Wales), and by making programs available to remote communities (Western Australia’s mobile conferencing teams).

Examination of the applicability of the principles of operation of the Nunga Court in South Australia to sentencing juvenile Aboriginal offenders appears warranted, particularly if evaluations of the Nunga, Koori and the proposed Murri Courts indicate improvements in diversion rates and decreased rates of detention.

**Recommendation 4**

Policies that exclude juvenile offenders from diversion programs on the basis of prior convictions should be revised to increase the availability of diversion to Aboriginal and Torres Strait Islander young people.

A striking feature of current approaches to juvenile diversion in Australia is the differences among the jurisdictions, enshrined in differing juvenile justice laws. In some States, prior convictions, including non-drug convictions, automatically exclude juvenile offenders. The effect is particularly marked for Indigenous juveniles, who tend to accrue criminal convictions at a younger age than their non-Indigenous counterparts. Those jurisdictions that restrict cautioning to first offenders only effectively limit the availability of the option to Aboriginal and Torres Strait Islander young people. In Victoria, the Department of Human Services is developing a Koori-specific group conferencing program: previous convictions will not automatically rule young people out of this program.
Recommendation 5

All jurisdictions should collect identifying data to enable monitoring of the involvement of Indigenous young people in the full range of diversion options available in their jurisdictions, and to inform future policy and program development.

In some jurisdictions, few data enable identification of Indigenous status. Availability of these data is important in monitoring net widening, the use of discretion in offering diversion alternatives, and the accessibility and cultural appropriateness of diversion programs for Indigenous young people. In a number of jurisdictions, the lower take-up by Indigenous youths of diversion options has prompted additional strategies to make these programs more readily available to these young people. Elders should encourage young people to disclose their Aboriginality, and help them understand that it is in their own interests to do so.

Recommendation 6

Broader social justice programs are required for sustained and significant improvements in PSUD interventions among Aboriginal and Torres Strait Islander youth.

Finally, PSUD interventions can have only limited impact while Aboriginal people remain socio-economically disadvantaged. Effective early intervention presupposes a broad-based approach that accepts that good community services such as schooling, health and policing services, and access to a ‘real economy’ and economic opportunity are crucial.

In particular, there is a clear need for health services and justice services to work in cooperation and partnership at all levels, but especially at local levels, to ensure that young Aboriginal and Torres Strait Islander people receive appropriate justice, care and support.
6. References


12. Cunneen, C. & D. McDonald (1997) *Keeping Aboriginal and Torres Strait Islander People out of Custody: An evaluation of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody*. Canberra: Aboriginal and Torres Strait Islander Commission.


## Appendix 1

### List of informants

#### Queensland

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrew Putt</td>
<td>Queensland Health</td>
</tr>
<tr>
<td>Jan Parr</td>
<td>Queensland Health</td>
</tr>
<tr>
<td>Sue Bell</td>
<td>Juvenile Justice Branch, Department of Families, Youth and Community Care</td>
</tr>
<tr>
<td>Pam Phillips</td>
<td>Juvenile Justice Branch, Department of Families, Youth and Community Care</td>
</tr>
<tr>
<td>Natalie Lewis</td>
<td>Indigenous Program Development Officer, Logan Youth Justice Service</td>
</tr>
<tr>
<td>Michael Meehan</td>
<td>Senior Statistics Officer, Queensland Police</td>
</tr>
<tr>
<td>Rochelle Jesser</td>
<td>Queensland Police</td>
</tr>
<tr>
<td>Phillip Hall</td>
<td>Solicitor, Aboriginal Legal Service, Brisbane</td>
</tr>
<tr>
<td>Professor Ernest Hunter</td>
<td>Professor of Public Health, North Queensland Clinical School, University of Queensland</td>
</tr>
<tr>
<td>Bob Aldred</td>
<td>Chief Executive Officer, Alcohol and Drug Foundation of Queensland</td>
</tr>
<tr>
<td>Dr Rob Lewis</td>
<td>Yarrabah Hospital</td>
</tr>
<tr>
<td>Craig Carmichael</td>
<td>Queensland Alcohol and Drug Research and Education Centre</td>
</tr>
<tr>
<td>Louise Paulson</td>
<td>Solicitor, Logan Youth Centre</td>
</tr>
</tbody>
</table>

#### New South Wales

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Karina Schack</td>
<td>Youth Liaison Officer, Redfern Police Station</td>
</tr>
<tr>
<td>Bruce Flaherty</td>
<td>Crime Prevention Division, Attorney General’s Department</td>
</tr>
<tr>
<td>Nora Bodkin</td>
<td>Statistics Officer, Strategic Policy and Planning, Department of Juvenile Justice</td>
</tr>
<tr>
<td>Pam King</td>
<td>Manager, Strategic Policy and Planning, Department of Juvenile Justice</td>
</tr>
<tr>
<td>Jane Mills</td>
<td>Crime Prevention, Department of Juvenile Justice</td>
</tr>
<tr>
<td>Jenny Bargen</td>
<td>Director, Youth Justice Conferencing, Department of Juvenile Justice</td>
</tr>
<tr>
<td>Mark Allerton</td>
<td>Director, Psychological and Specialist Services, Department of Juvenile Justice</td>
</tr>
<tr>
<td>Natalie Short</td>
<td>Assistant Registrar, Youth Drug Court</td>
</tr>
<tr>
<td>Richard Osborne</td>
<td>Senior Constable, Walgett Police — Giyaali Project</td>
</tr>
<tr>
<td>Anthony Doherty</td>
<td>Senior Constable, Youth Liaison Officer, Redfern Local Area Command</td>
</tr>
<tr>
<td>Jo Schultz</td>
<td>Sergeant, Education Services, New South Wales Police Academy</td>
</tr>
</tbody>
</table>
### Victoria

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greg Denham</td>
<td>Drug Education and Training, Victorian Police</td>
</tr>
<tr>
<td>Steve James</td>
<td>Inspector, Victorian Police</td>
</tr>
<tr>
<td>Marion Simmons</td>
<td>Department of Human Services</td>
</tr>
<tr>
<td>Peter Ghys</td>
<td>Senior Koori Programs Officer, Department of Human Services</td>
</tr>
<tr>
<td>Terrie Lehman</td>
<td>Alcohol and Drug Program Coordinator, Department of Human Services</td>
</tr>
<tr>
<td>Tom Monroe</td>
<td>Police Liaison Officer, Aboriginal Legal Service</td>
</tr>
<tr>
<td>Joe Shields</td>
<td>Magistrates Court</td>
</tr>
</tbody>
</table>

### South Australia

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phil Warrick</td>
<td>Inspector, Drug and Alcohol Policy Unit, South Australian Police</td>
</tr>
<tr>
<td>Josephine Monk</td>
<td>Youth Court Liaison Unit, Department of Human Services</td>
</tr>
<tr>
<td>Steve Mather</td>
<td>Senior Project Officer, Department of Human Services</td>
</tr>
<tr>
<td>John Forward</td>
<td>Department of Human Services</td>
</tr>
<tr>
<td>Tony</td>
<td>Youth Lawyer, Aboriginal Legal Rights</td>
</tr>
<tr>
<td>John Sheppard</td>
<td>Operation Flinders</td>
</tr>
<tr>
<td>Frank Nam</td>
<td>Kumangka, Youth Service Aboriginal Corporation</td>
</tr>
<tr>
<td>Stephany McGarrigan</td>
<td>Case Management Consultant, Metropolitan Aboriginal Youth Team (MAYT)</td>
</tr>
<tr>
<td>Peter Mildren</td>
<td>Chief Superintendent, AP Lands Program</td>
</tr>
<tr>
<td>Isabelle Norvill</td>
<td>Elder and member of the Aboriginal Justice Advocacy Committee, Murray Bridge</td>
</tr>
<tr>
<td>Andrew Biven</td>
<td>Aboriginal Drug and Alcohol Council (SA) Inc.</td>
</tr>
<tr>
<td>Colleen Welch</td>
<td>Aboriginal Justice Office, Nunga Court, Port Adelaide</td>
</tr>
<tr>
<td>Rodney Welch</td>
<td>Youth Justice Coordinator, Family Conference Team, Courts Administration Authority</td>
</tr>
</tbody>
</table>

### Western Australia

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Susan Alarconi</td>
<td>WA Drug Abuse Strategy Office</td>
</tr>
<tr>
<td>Harriet Marshall</td>
<td>Solicitor, Aboriginal Legal Service</td>
</tr>
<tr>
<td>Gary Winestock</td>
<td>Coordinator, Juvenile Justice Team, Ministry of Justice</td>
</tr>
<tr>
<td>Gabrielle Bell</td>
<td>Acting Manager, Aboriginal Policy, Ministry of Justice</td>
</tr>
<tr>
<td>Gill Wilson</td>
<td>Officer in Charge, Alcohol and Drug Coordination Unit, WA Police</td>
</tr>
<tr>
<td>Justice Valerie French</td>
<td>President of the Children’s Court and District Court Judge</td>
</tr>
</tbody>
</table>
### Tasmania

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Les Drelich</td>
<td>Director, Corrective Services</td>
</tr>
<tr>
<td>Kylie Jackson</td>
<td>Department of Health and Human Services</td>
</tr>
<tr>
<td>Michael Beeton</td>
<td>Youth Justice Worker, Tasmanian Aboriginal Centre</td>
</tr>
<tr>
<td>Lin MacQueen</td>
<td>Department of Health and Human Services</td>
</tr>
<tr>
<td>Steve Bayliss</td>
<td>Child and Family Services, Department of Health and Human Services</td>
</tr>
<tr>
<td>Stephen Biggs</td>
<td>Alcohol and Drug Policy Coordinator, Tasmanian Police</td>
</tr>
<tr>
<td>Kate Ford</td>
<td>Constable, Tasmanian Police</td>
</tr>
</tbody>
</table>

### Australian Capital Territory

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rosemary Bennet</td>
<td>Lawyer, Aboriginal Legal Service</td>
</tr>
<tr>
<td>Russell Styche</td>
<td>Youth Worker, Aboriginal Legal Service</td>
</tr>
<tr>
<td>Bob Sobey</td>
<td>Constable, Australian Federal Police</td>
</tr>
<tr>
<td>Kylie Hemiak</td>
<td>Australian Federal Police</td>
</tr>
<tr>
<td>Dr Heather Strang</td>
<td>ANU Reintegrative Shaming Experiment</td>
</tr>
<tr>
<td>Glenda McCarthy</td>
<td>Manager, Alcohol and Drug Service Program, Department of Health and Community Care</td>
</tr>
</tbody>
</table>

### Northern Territory

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Graham Pearce</td>
<td>Assistant Director, NT Correctional Services</td>
</tr>
<tr>
<td>Nick Gill</td>
<td>Manager, Drugs and Alcohol Services Association</td>
</tr>
<tr>
<td>Graham Waite</td>
<td>Superintendent of Police, NT Police Department</td>
</tr>
<tr>
<td>Scott Mitchell</td>
<td>Senior Policy Adviser, Drug and Alcohol Policy, NT Police Department</td>
</tr>
<tr>
<td>Stephen Jackson</td>
<td>Director, Criminal Justice Statistics Group, Attorney-General’s Department</td>
</tr>
<tr>
<td>Rod Silburn</td>
<td>Project Officer, National Centre for Aboriginal and Torres Strait Islander Statistics</td>
</tr>
<tr>
<td>Jo Sangster</td>
<td>Manager, Social and Economic Unit, National Centre for Aboriginal and Torres Strait Islander Statistics</td>
</tr>
<tr>
<td>Samantha Cook</td>
<td>Injartnama Village</td>
</tr>
<tr>
<td>Andrew Stojanovski</td>
<td>Mt Theo–Yuendumu Substance Misuse Aboriginal Corporation</td>
</tr>
</tbody>
</table>
## National

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr Maggie Brady</td>
<td>Centre for Aboriginal Economic Policy Research, Australian National University</td>
</tr>
<tr>
<td>Professor Chris Cunneen</td>
<td>Institute of Criminology, University of Sydney</td>
</tr>
<tr>
<td>Dr John Howard</td>
<td>Ted Noffs Foundation</td>
</tr>
<tr>
<td>Sue Gordon</td>
<td>Director, Alcohol Strategy and Illicit Drugs Interventions Group, Department of Health and Ageing</td>
</tr>
<tr>
<td>John Munro</td>
<td>Alcohol Strategy and Illicit Drugs Interventions Group, Department of Health and Ageing</td>
</tr>
<tr>
<td>Jim Hales</td>
<td>Health Outcomes International</td>
</tr>
</tbody>
</table>
## Appendix 2
Projects that include children or adolescents in their primary or secondary target groups

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Organisation</th>
<th>Project Name</th>
<th>Project Type</th>
<th>Target Drugs</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Walgett Aboriginal Medical Service</td>
<td>Drug and Alcohol School Education Program</td>
<td>Health education</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>NSW</td>
<td>Redfern Aboriginal Medical Service</td>
<td>HIV Education</td>
<td>Life skills counselling</td>
<td>Heroin; Amphetamines; secondary alcohol, cannabis, volatile substances focus</td>
</tr>
<tr>
<td>NSW</td>
<td>Aboriginal Resource Centre and Western Sydney Drug and Alcohol Resource Centre</td>
<td>Koori Kook School-based Education and Cultural Program</td>
<td>Health education; Media campaigns</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>NSW</td>
<td>Peer Support Foundation Ltd</td>
<td>Peer Support Program for Primary and Secondary Schools</td>
<td>Health education</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>NSW</td>
<td>Peer Support Foundation Ltd</td>
<td>Student Leadership Training</td>
<td>Health education</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>NSW</td>
<td>Peer Support Foundation Ltd</td>
<td>Transition Education Program</td>
<td>Health education; secondary life skills counselling focus</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>State/Territory</td>
<td>Organisation</td>
<td>Project Name</td>
<td>Project Type</td>
<td>Target Drugs</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>NSW</td>
<td>Aboriginal Corporation for Homeless and Rehabilitation Community Services</td>
<td>Youth Detention Visitation</td>
<td>Support services</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td></td>
<td>Fact Tree</td>
<td>Youth Program</td>
<td>Health education; Recreation</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>VIC</td>
<td>Murray Valley Aboriginal Cooperative</td>
<td>Counselling Service</td>
<td>Therapeutic counselling</td>
<td>Alcohol; secondary cannabis focus</td>
</tr>
<tr>
<td></td>
<td>Gunditjmara Aboriginal Cooperative Ltd</td>
<td>Cultural Program</td>
<td>Recreation; Cultural initiatives</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td></td>
<td>Lake Tyers Aboriginal Trust</td>
<td>Drug and Alcohol Program</td>
<td>Counselling; Referral services; Health education</td>
<td>Multi-drug focus; Alcohol; Cannabis; Tobacco</td>
</tr>
<tr>
<td></td>
<td>Rumbalara Aboriginal Cooperative Ltd</td>
<td>Education and Counselling Service</td>
<td>Counselling; Health education; Recreation</td>
<td>Alcohol; Cannabis; Amphetamines</td>
</tr>
<tr>
<td></td>
<td>Mildura Aboriginal Corporation</td>
<td>Life-skills Farm</td>
<td>Counselling; Cultural initiatives</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td></td>
<td>Winda Mara Aboriginal Corporation</td>
<td>Preventative Activities and Substance Abuse Support Program</td>
<td>Recreation</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>QLD</td>
<td>Milbi Incorporated</td>
<td>Alcohol and Substance Abuse Early Intervention</td>
<td>Counselling; Referral services; Health education; Recreation; Cultural initiatives</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>State/Territory</td>
<td>Organisation</td>
<td>Project Name</td>
<td>Project Type</td>
<td>Target Drugs</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
<td>--------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>QLD</td>
<td>Aboriginal and Islanders Alcohol Relief Services Limited</td>
<td>Alcohol Awareness Kit</td>
<td>Health education; Media campaigns; secondary staff development focus</td>
<td>Alcohol; Multi-drug focus</td>
</tr>
<tr>
<td></td>
<td>Care Goondiwindi Association Inc</td>
<td>Youth Development Initiative</td>
<td>Alternatives to drug use</td>
<td>Alcohol; Cannabis</td>
</tr>
<tr>
<td>SA</td>
<td>Dunjiba Community Council Inc</td>
<td>Awareness Education</td>
<td>Health education</td>
<td>Cannabis; Alcohol</td>
</tr>
<tr>
<td>SA</td>
<td>Port Augusta Substance Misuse Services</td>
<td>Counselling and Education Program</td>
<td>Counselling; Health education; secondary referral service focus</td>
<td>Alcohol; secondary multi-drug focus</td>
</tr>
<tr>
<td>SA</td>
<td>Umoona Tjutagku Health Service Inc</td>
<td>Drug and Alcohol Program: Needs Assessment</td>
<td>Research</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>SA</td>
<td>Drug and Alcohol Services Council (DASC)</td>
<td>Ending Offending: Alcohol Education Course for Aboriginal Offenders</td>
<td>Life skills counselling</td>
<td>Alcohol</td>
</tr>
<tr>
<td>SA</td>
<td>Aboriginal Sobriety Group of SA Inc</td>
<td>Frahn’s Farm Youth Program</td>
<td>Life skills counselling; Therapeutic counselling</td>
<td>Alcohol; Cannabis; Volatile substances; Amphetamines</td>
</tr>
<tr>
<td>SA</td>
<td>Nunkuwarrin Yunti of South Australia Inc</td>
<td>HIV/AIDS Education Program</td>
<td>Health education; Health services</td>
<td>Heroin; Amphetamines</td>
</tr>
<tr>
<td>State/Territory</td>
<td>Organisation</td>
<td>Project Name</td>
<td>Project Type</td>
<td>Target Drugs</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>SA</td>
<td>Aboriginal Drug and Alcohol Council SA Inc (ADAC)</td>
<td>Petrol Sniffing Program</td>
<td>Education; Employment</td>
<td>Petrol</td>
</tr>
<tr>
<td>SA</td>
<td>Yalata/ Maralinga Health Service</td>
<td>Recreation for Abuse Prevention Program</td>
<td>Recreation; Cultural initiatives</td>
<td>Alcohol; Petrol</td>
</tr>
<tr>
<td>SA</td>
<td>Dunjiba Community Council Inc</td>
<td>School Education</td>
<td>Health education</td>
<td>Alcohol; Cannabis; Volatile substances</td>
</tr>
<tr>
<td>SA</td>
<td>Nganampa Health Council Inc</td>
<td>Solvent Abuse Prevention Service</td>
<td>Supply reduction; Recreation; Health education; Cultural initiatives; secondary research, community development focus</td>
<td>Petrol</td>
</tr>
<tr>
<td>SA</td>
<td>Riverland Aboriginal Alcohol Program Inc</td>
<td>Substance Abuse, Rehabilitation and Prevention Program</td>
<td>Counselling; Referral services; secondary after-care service focus</td>
<td>Alcohol; Cannabis; Amphetamines</td>
</tr>
<tr>
<td>SA</td>
<td>Dunjiba Community Council Inc</td>
<td>Youth Substance Abuse Program</td>
<td>Health education; Recreation</td>
<td>Alcohol; Cannabis</td>
</tr>
<tr>
<td>WA</td>
<td>Noongar Alcohol and Substance Abuse Service (NASAS)</td>
<td>Alcohol and Substance Abuse Clinical Counselling</td>
<td>Referral services; Counselling</td>
<td>Alcohol; Volatile substances; secondary multi-drug focus</td>
</tr>
<tr>
<td>State/Territory</td>
<td>Organisation</td>
<td>Project Name</td>
<td>Project Type</td>
<td>Target Drugs</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>WA</td>
<td>Pilbara Public Health Unit</td>
<td>Alcohol-related Child Abuse Prevention: Community Service Announcement</td>
<td>Media campaigns</td>
<td>Alcohol</td>
</tr>
<tr>
<td>WA</td>
<td>Ngnowar–Aewah Aboriginal Corporation</td>
<td>Community Education and Training Project</td>
<td>Health promotion; Community development</td>
<td>Alcohol; Multi-drug focus</td>
</tr>
<tr>
<td>WA</td>
<td>Lake Jasper Project Aboriginal Corporation</td>
<td>Education and Personal Development Program</td>
<td>Support services</td>
<td>Alcohol; Cannabis; Amphetamines; Volatile substances</td>
</tr>
<tr>
<td>WA</td>
<td>Jungarni–Jutiya Alcohol Action Council Aboriginal Corporation</td>
<td>Halls Creek Night Patrol</td>
<td>Patrols</td>
<td>Alcohol</td>
</tr>
<tr>
<td>WA</td>
<td>Warburton Community Corporation</td>
<td>Kanpa Substance Abuse Bail Centre</td>
<td>Counselling; Detoxification programs</td>
<td>Petrol; Alcohol</td>
</tr>
<tr>
<td>WA</td>
<td>Centacare</td>
<td>Lands Training of Indigenous Community Members in Working with Alcohol and Other Drug Users</td>
<td>Community development; Staff development</td>
<td>Alcohol; Petrol</td>
</tr>
<tr>
<td>WA</td>
<td>Nindlingarri Cultural Health Centre</td>
<td>Marrala Patrol</td>
<td>Patrols</td>
<td>Alcohol</td>
</tr>
<tr>
<td>WA</td>
<td>Jungarni–Jutiya Alcohol Action Council Aboriginal Corporation</td>
<td>School Education Program</td>
<td>Health education</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>State/Territory</td>
<td>Organisation</td>
<td>Project Name</td>
<td>Project Type</td>
<td>Target Drugs</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------------------------------</td>
<td>-------------------------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>WA</td>
<td>Pilbara Public Health Unit</td>
<td>Solvent Use Workbook</td>
<td>Health education</td>
<td>Petrol</td>
</tr>
<tr>
<td>WA</td>
<td>South West Aboriginal Medical Service</td>
<td>Stolen Generation Project</td>
<td>Therapeutic counselling</td>
<td>Alcohol; Cannabis</td>
</tr>
<tr>
<td>WA</td>
<td>Nindilingarri Cultural Health Centre</td>
<td>Substance Abuse Prevention Program</td>
<td>Community development; Support services; secondary referral service focus</td>
<td>Alcohol</td>
</tr>
<tr>
<td>WA</td>
<td>Noongar Alcohol and Substance Abuse Service (NASAS)</td>
<td>Youth Discos</td>
<td>Recreation</td>
<td>Alcohol; Volatile substances; secondary multi-drug focus</td>
</tr>
<tr>
<td>WA</td>
<td>Noongar Alcohol and Substance Abuse Service (NASAS)</td>
<td>Youth Outreach Program</td>
<td>Patrons; Referral services; Advocacy</td>
<td>Volatile substances; Amphetamines; Cannabis; Alcohol</td>
</tr>
<tr>
<td>NT</td>
<td>Aboriginal and Islander Alcohol Awareness and Family Recovery Inc</td>
<td>Community-based Activities</td>
<td>Community development; After-care services; Refuges; Health education; Advocacy</td>
<td>Alcohol; Multi-drug focus</td>
</tr>
<tr>
<td>NT</td>
<td>Daly River Roadside Inn</td>
<td>Community Night Patrol</td>
<td>Patrols</td>
<td>Alcohol</td>
</tr>
<tr>
<td>NT</td>
<td>Kalano Community Association Inc</td>
<td>Education and Prevention</td>
<td>Health education</td>
<td>Alcohol</td>
</tr>
<tr>
<td>NT</td>
<td>Holyoake</td>
<td>Heart Talk Program — Train the Trainer</td>
<td>Professional development</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>State/Territory</td>
<td>Organisation</td>
<td>Project Name</td>
<td>Project Type</td>
<td>Target Drugs</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>NT</td>
<td>Mutijulu Health Service</td>
<td>Men’s Night-Time Clinic</td>
<td>Recreation</td>
<td>Petrol; Alcohol; Cannabis</td>
</tr>
<tr>
<td>NT</td>
<td>Mount Theo – Yuendumu Substance Misuse Aboriginal Corporation</td>
<td>Mount Theo Yuendumu Youth Diversionary Program</td>
<td>Treatment; Health education</td>
<td>Petrol; secondary volatile substances focus</td>
</tr>
<tr>
<td>NT</td>
<td>Rrumburriya Malandari Council Aboriginal Corporation</td>
<td>Night Patrol</td>
<td>Patrols</td>
<td>Alcohol; Volatile substances</td>
</tr>
<tr>
<td>NT</td>
<td>Yirrkala Sober Women’s Group</td>
<td>Night Patrol</td>
<td>Patrols; Sobering-up shelters</td>
<td>Alcohol; secondary kava and multi-drug focus</td>
</tr>
<tr>
<td>NT</td>
<td>Holyoake</td>
<td>Parent Talk Program</td>
<td>Life skills counselling</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>NT</td>
<td>Gapuwiyak Community Inc</td>
<td>Petrol Sniffing Program</td>
<td>Patrols; Supply reduction; Health education; Recreation; Cultural initiatives</td>
<td>Petrol</td>
</tr>
<tr>
<td>NT</td>
<td>Ngaanyatjarra Pitjantjara Yankunytatjara</td>
<td>Petrol Sniffing Program</td>
<td>Employment; Cultural initiatives; Education</td>
<td>Petrol</td>
</tr>
<tr>
<td>NT</td>
<td>Kaltjiti Community Corporation</td>
<td>Petrol Sniffing Program</td>
<td>Detoxification programs; Education; Employment</td>
<td>Petrol</td>
</tr>
<tr>
<td>NT</td>
<td>Yirrkala Dhanbul Association, Sport and Recreation Department</td>
<td>Sport and Recreation Program</td>
<td>Recreation; Cultural activities</td>
<td>Alcohol; Cannabis; secondary kava focus</td>
</tr>
<tr>
<td>State/Territory</td>
<td>Organisation</td>
<td>Project Name</td>
<td>Project Type</td>
<td>Target Drugs</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>NT</td>
<td>Ilpurla Aboriginal Corporation</td>
<td>Substance Abuse Program</td>
<td>Employment; Education; secondary detoxification programs</td>
<td>Volatile substances; Alcohol; Cannabis</td>
</tr>
<tr>
<td>NT</td>
<td>Angurugu Community Government Council</td>
<td>Substance Misuse, Family and Youth Treatment, and Cultural Training Program Camp and Community-Based Substance Abuse Program</td>
<td>Counselling; Life skills counselling; Recreation; Cultural initiatives</td>
<td>Volatile substances; Alcohol; Kava; Cannabis</td>
</tr>
<tr>
<td>NT</td>
<td>Territory Health Services, Alcohol and other Drugs Program</td>
<td>Tobacco Action Project (TAP)</td>
<td>Purchase restrictions; Health education; Media campaigns</td>
<td>Tobacco</td>
</tr>
<tr>
<td>NT</td>
<td>Yuendumu Women’s Centre Aboriginal Corporation</td>
<td>Women’s Night Patrol</td>
<td>Patrols</td>
<td>Alcohol</td>
</tr>
<tr>
<td>NT</td>
<td>Holyoake</td>
<td>Young People’s Education and Awareness Program</td>
<td>Counselling; Life skills counselling; Health education</td>
<td>Multi-drug focus</td>
</tr>
<tr>
<td>NT</td>
<td>Anyinginyi Congress Aboriginal Corporation</td>
<td>Youth Program: Needs Assessment</td>
<td>Recreation</td>
<td>Alcohol; Cannabis; secondary volatile substances focus</td>
</tr>
</tbody>
</table>

Source: National Drug Research Institute’s Database on Indigenous Australian Alcohol and Other Drug Projects: current projects with adolescents and/or children as primary or secondary target group.