



# ALS

Aboriginal Legal Service (NSW/ACT) Limited

13 February 2018

Mr Geoff Provest MP  
Chairperson  
Portfolio Committee on Law and Safety  
Parliament of NSW

Email: [lawsafety@parliament.nsw.gov.au](mailto:lawsafety@parliament.nsw.gov.au)

Dear Mr Provest,

***Re: NSW Parliamentary Inquiry into the adequacy of youth diversion programs***

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**). The ALS thanks the Committee for the opportunity to provide a submission in relation to the *Inquiry into the adequacy of youth diversion programs*.

The ALS is the peak legal services provider to Aboriginal and Torres Strait Islander men, women and children in NSW and the ACT. We provide this submission based on our direct involvement with and representation of clients who interact with the justice system, many of whom are young people.

This submission is informed by discussions at a series of state-wide community forums held in November and December 2017, and a complementary survey of community members. The forums were convened by ALS staff and attended by community leaders and stakeholders. Input was sought on the issues raised in the Terms of Reference. The feedback received indicated the importance of community-designed and community-led solutions to divert young Aboriginal people in NSW from the criminal justice system. In particular, participants argued that solution must also involve Aboriginal young people, ideally with a range of life experiences. Based on this feedback, the ALS has provided a number of recommendations to the Committee in relation to the Terms of Reference for the inquiry.

Thank you for the opportunity to contribute to this Inquiry.

Yours sincerely,



**Lesley Turner**  
Chief Executive Officer

**Aboriginal Legal Service (NSW/ACT) Limited**

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## Introduction

The ALS is pleased to provide this submission to the inquiry into the adequacy of youth diversion programs. Our submission focuses on the following terms of reference for the inquiry:

- a. *the way in which youth diversionary efforts work with:*
  - *the Police*
  - *Juvenile Justice*
  - *Community Corrections*
  - *the Courts*
  - *Health, Housing and children's services*
  - *schools and educational authorities*
  - *non-government organisations and the local community*
- b. *Aboriginal over-representation in the Juvenile Justice system*
- c. *evaluating outcomes and identifying areas for improvement*
- d. *staff capacity and training requirements*
  
- h. *Any other related matter.*

In November and December 2017, the ALS conducted a series of state-wide community forums with ALS staff, community leaders and stakeholders to seek their input on the issues raised in the Terms of Reference. Over 230 people attended community forums in Redfern, Tweed Heads, Grafton, Wollongong, Mount Druitt, Tamworth, Broken Hill, Walgett and Dubbo.

A survey on youth diversionary programs was also provided to community members who were unable to attend the forums. The ALS received 91 responses to the survey. The majority (63%) of survey respondents identified as Aboriginal. 43% of survey respondents indicated that they or their family had experience with youth diversionary programs. A vast majority of survey respondents identified as female (78%). 43% of respondents indicated that they live in a rural or remote town/community in NSW/ACT, with 30% of respondents in a large city and 21% living in a medium size city/town. The survey included a combination of Yes/No and short answer responses relating to the questions in the Terms of Reference.

Key findings from the survey:

- An overwhelming 88% of respondents said they thought **youth diversionary programs help to stop offending behaviour.**
- 89% of respondents said that there are **not enough youth diversionary programs to meet the demand.**
- 90% of respondents said that there are **not enough youth diversionary programs offered in rural, regional and remote NSW.**

This submission is based on further analysis of the content acquired through the forums and the survey and is complemented throughout with direct quotes from either the forums or the short answer responses in the survey.

The number of forum attendees and survey responses demonstrates the high level of engagement Aboriginal communities wish to have in this Inquiry.

*Note: forum attendees and survey respondents are collectively referred to as 'participants' throughout the document.*

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## Recommendations:

1. *The recommendations from Royal Commission into the Protection and Detention of Children in the Northern Territory be closely examined by the Committee and, where relevant, adapted for NSW.*
2. *The NSW Government provide judicial officials with training and resources to promote understanding of the availability of youth diversion programs.*
3. *The NSW Government resource Aboriginal community-controlled organisations to deliver Community Legal Education (CLE) about the juvenile justice system to Aboriginal communities*
4. *The NSW Government increase investment in early intervention services and supports for families with children and young people at risk.*
5. *The NSW Government ensure youth diversion programs are better integrated with school suspensions and the education system.*
6. *The NSW Government prioritise funding for youth diversion programs in regional, rural and remote communities.*
7. *The NSW Government ensure funding for programs before and after school hours, over weekends and during school holidays.*
8. *The NSW Government prioritise Aboriginal community-controlled organisations for the delivery of programs to Aboriginal communities.*
9. *The NSW Government ensure children are consistently represented in decision-making bodies and processes with respect to youth diversion programs.*
10. *The NSW Government work with service providers to improve coordination of service delivery through a model similar to safety action meetings.*
11. *The NSW Government improve transparency of funding allocations for youth diversion programs.*
12. *The NSW Government ensure all officials interacting with Aboriginal and Torres Strait Islander children and young people in the criminal justice system receive adequate cultural competency training.*
13. *The NSW Government support providers to include trauma informed practice into their youth diversion programs.*
14. *The NSW Government should repeal sections 20(7) and 37(6) of the Young Offenders Act 1997, which limit the number of cautions or conferences a young person is entitled to be dealt with.*

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## Background

There is a clear policy imperative to divert children and young people from custody. Custody has adverse affects on an individual and serves to compound existing issues for vulnerable children and young people. The families and communities of children or young people in custody bear additional social and economic costs.<sup>1</sup> Finally, youth who come into contact with the criminal justice system at an early age tend to go on to have further and more severe interactions with police and courts than youth who have similar experiences at a later age.<sup>2</sup>

### ***Young Offenders Act 1997***

The objective of the *Young Offenders Act 1997* is to divert children (persons aged over 10 and less than 18 years) from the criminal justice system, by means of warnings, cautions and Youth Justice Conferences.<sup>3</sup> This objective specifically includes addressing the overrepresentation of Aboriginal and Torres Strait Islander children in the criminal justice system.

The NSW Bureau of Crime Statistics and Research has found that the system of cautions and conferences under the YOA has reduced the risk of young people, including Aboriginal people and Torres Strait Islanders, receiving a custodial sentence.<sup>4</sup> Diverting young offenders from the criminal justice system is also cheaper – for example, the average cost of diverting a young offender to Youth Justice Conferencing rather than proceeding to the Children’s Court is about 18 percent less.<sup>5</sup>

### ***Royal Commission into the Protection and Detention of Children in the Northern Territory***

The report of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* (‘the Royal Commission’) provided a range of recommendations to reform the youth justice and care and protection systems in the Northern Territory. The ALS encourages the NSW Government to consider the relevance of those recommendations for the youth justice and care and protection systems in NSW.

***Recommendation: The recommendations from the Royal Commission into the Protection and Detention of Children in the Northern Territory be closely examined by the Committee and where relevant adapted for NSW.***

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<sup>1</sup> McCarthy, P. Schiraldi, V. and Shark, M. (2016) The future of youth justice: a community-based alternative to the youth prison model, *New Thinking in Community Correction 2*: p1-36; Pricewaterhouse Coopers. *Indigenous Incarceration: Unlock the facts*, PwC Indigenous Consulting. May 2017. <<https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>>, p3

<sup>2</sup> H Blagg, 2008, *Crime Aboriginality and the Decolonisation of Justice*, Hawkins Press, Leichhardt, p. 58.

<sup>3</sup> (See *Young Offenders Act 1997*: s 3 (objectives), s 7 (principles), Part 3 (warnings), Part 4 (cautions) and Part 5 (Youth Justice Conferences)).

<sup>4</sup> W Wan, W Moore and S Moffatt, The Impact of the NSW Young Offenders Act (1997) on Likelihood of Custodial Order, 2013, 166 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, p 8

<sup>5</sup> A Webber, Youth Justice Conferences versus Children’s Court: A comparison of cost-effectiveness, 2012, 164 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, p 4.

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## Responses to terms of reference

### a. *The way in which youth diversionary efforts work with:*

- *the Police*

Participants consistently commented on the need for Police to form better relationships with young people, their families and Aboriginal communities. Participants noted that, as a result of poor relationships, youth diversionary programs run by Police in many communities were not utilised extensively by young people. Where there is a lack of trust between Police and Aboriginal communities, youth enrolled in diversion programs are less engaged and less likely to be satisfied with programs.

*“The police are important to changing perceptions. How we perceive them as well as how they perceive and interact with us. Too many Indigenous people are not given the benefit of discretion. Better relationships could change this.”*

On the other hand, some participants cited examples of programs run by Police or with Police in attendance operating with high levels of participation and engagement by young Aboriginal people. These participants suggested that the time taken by Police to build meaningful connections with young people, their families and the community and the involvement of local Aboriginal youth workers were both key to success of the programs. These programs included:

- *Clean Slate Without Prejudice* in Redfern – regular boxing training, early in the morning, targeting Aboriginal and Torres Strait Islander youth at risk of offending. The program is organised by local Aboriginal leaders and organisations in partnership with the Redfern Police.
- *Breaking Barriers* in Mount Druitt - twice-weekly fitness and mentoring program overseen by Aboriginal and Torres Strait Islander Elders and Mount Druitt Police in Western Sydney.

*“I think Shane Phillips (Clean Slate Without Prejudice) is doing a great job in Redfern. Part of the success is the willingness of the police to engage and the connection to the community.”*

Finally, some participants expressed concern that Juvenile Justice workers, Aboriginal Community Liaison Officers or other support workers were not present at the local Police station while children were held in custody overnight.

- **Juvenile Justice**

Participants consistently expressed particular concern for young people entering juvenile detention. They were concerned that placing children in detention functioned to label young people as ‘bad’ or ‘criminal’ and set them down a path of criminalisation and repeated institutionalisation. The participants expressed scepticism towards any rehabilitative benefits of juvenile detention and noted the criminogenic effects of incarceration. This reflected a broader preference among participants for attention on and investment in early intervention services, rather than programs and services for youth once they have been locked up.

*‘Young people respond better to care than custody.’*

Participants were of the view that juvenile offenders are more likely to make negative connections with other troubled youth in detention than they are in the community. Participants were concerned that there was no differentiation between first time offenders and other young offenders with more extensive criminal history in both out-of-home care and juvenile detention facilities.

Participants stated that the basic transitional requirements for people leaving juvenile detention and re-entering the community are not being met. They noted that many Aboriginal young people are leaving detention without the appropriate welfare support (for example, their Medicare Card, proof of Aboriginality and Centrelink details) prior to being released. This lack of support exacerbates other issues associated with leaving detention and adds to the challenges of reintegration into community.

- **Community Corrections**

Some participants expressed strong support for expanding the number of Juvenile Justice Officers in community. It was envisaged that this would allow for increasing rates of diversion of youth to YJCs as opposed to custody.

- **The Courts**

Some participants, particularly those in regional and remote locations, stated that Magistrates in their community rarely refer young offenders to youth diversionary programs. Some participants suggested that, rather than being used to divert juveniles from the court system, diversionary options were used by some Magistrates to intimidate and target young people.

Other participants were of the view that under-utilisation of diversionary options by the Court was due to a lack of awareness of the availability of diversionary programs. This included a lack of awareness of particular programs available in the local community, and in some cases a lack of awareness among Magistrates that they could refer a child to a YJC.

Many participants agreed that judges, magistrates and lawyers involved in the juvenile justice system should be better educated about diversionary options available in their region and that this awareness would increase instances of youth diversion.

***Recommendation: The NSW Government provide judicial officials with training and resources that promote understanding of the availability of youth diversion programs in their communities.***

Participants consistently noted the need for community legal education (CLE) about the juvenile justice system for Aboriginal families and communities. In particular, participants stated that the community needed to be educated about the rights and responsibilities of children and young people in relation to Police. Other participants noted that YJCs were under-utilised as families are either unaware of the option or do not understand the process, so they opt to have the matter heard in the Children's Court. Participants requested that CLE on the juvenile justice system be delivered by Aboriginal community-controlled organisations who the community trust.

***Recommendation: The NSW Government resource Aboriginal community-controlled organisations to deliver Community Legal Education (CLE) about the juvenile justice system to Aboriginal communities.***

Some participants praised the Youth Koori Court currently operating in Parramatta. The Youth Koori Court adopts a deferred sentencing model which allows the court, prior to sentencing, to develop a plan which links young Indigenous offenders to services that help to address the underlying issues associated with their offending. Participants suggested that the court was successful because it links participants into appropriate services, mandates service participation, includes local Elders and is informed by cultural practices. Those participants expressed their support for expanding the court to other communities.

- **Health, Housing and Children's Services**

Participants noted a significant overlap between young people who come into contact with children's services and those who come into contact with the criminal justice system. There was particular concern regarding the number of young people in the juvenile justice system coming from out-of-home care. Removal of children from communities and in to out-of-home care was characterised by participants as a major contributor to the problem of youth offending.

The participants' concerns were reflected in a recent study by the Australian Institute of Health and Welfare (AIHW), where it was found that, nationwide, young people in the child protection system were 12 times as likely to also be under youth justice supervision and that young Indigenous Australians were 16 times as likely to have contact with child protection and youth justice supervision.<sup>6</sup>

Participants frequently expressed the view that vulnerable young people were more likely to come into contact with and learn the behavioural patterns of other troubled young people in residential and institutional settings rather than at home. Participants noted that, rather than seeking to rehabilitate troubled young people, they are removed either into out-of-home care or into children's detention which served to further criminalise them.

Participants stated that there was a lack of support for families with children at risk of offending, and that if these families were given more support then less young people would offend.

*'Families need support, help with cleaning and meals and getting children to school. Instead children are removed for neglect and become angry, anxious and homeless.'*

Participants identified a number of early intervention programs operating effectively in Aboriginal communities, including:

- *Youth on Track* – a NSW Government scheme for 10–17 year-olds that identifies and responds to young people at risk of long-term involvement in the criminal justice system. The program provides the Police and Education with an opportunity to refer young people, known to be at medium to high risk of offending, to a support service without requiring a mandate.
- *Deadly Thinking workshops* – workshops covering alcohol and other drug abuse, mental wellbeing, suicide prevention and other related issues. The workshops are aimed at 13-28 year olds and cover the Katoomba, Nepean, Lithgow and Hawkesbury areas.

***Recommendation: The NSW Government increase investment in early intervention services and supports for families with children and young people at risk.***

- **Schools and Educational authorities**

Participants consistently commented on the need for better integration of youth diversion programs with the school system. Many participants suggested there is a link between systemic or institutional racism in the school system and negative behaviour, low attendance and low performance of some Aboriginal young people in classrooms. Some participants suggested that some school or education officers have low expectations of Aboriginal and Torres Strait Islander students, and this affects the way they relate to those students. Other participants, however, noted instances of Aboriginal students achieving well at school where schools and staff provided appropriate support to students and engaged with families and communities.

Two thematic issues permeated participant's discussion of the relationship between schools / educational authorities and youth diversion programs: the use of suspensions in response to

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<sup>6</sup> Australian Institute of Health and Welfare, 2017 *Young people in child protection and under youth justice supervision 2015–16*, Cat. no. CSI 25, Canberra.

bad behaviour and; the content of school curriculums, programs offered and the ways in which schools are resourced.

### *Suspensions*

Participants expressed significant concern about the overuse of suspensions as punishment for bad behaviour in schools. They were of the view that suspending young people from school was an inappropriate response to bad behaviour. They stated that, rather than sanctioning youth and acting as a deterrent, suspensions reduced engagement of youth in their education and school processes and procedures. Removing young people from the classroom means they spend more time in the street and are more likely to offend.

Participants noted the burden suspensions placed on parents and carers. Arranging adequate care and supervision for children where families are employed during the day was a significant challenge cited by participants. Schools often provide little notice before suspensions are given, and

Many participants were of the view that young people were receiving suspensions that were too long and that it was during these suspension periods that young people often got into trouble and committed crimes.

*'Suspension from schools removes protective factors and increases a kid's chance of getting in trouble.'*

***Recommendation: The NSW Government ensure youth diversion programs are better integrated with school suspensions and the education system.***

### *Curriculum & Programs & Resourcing*

Participants overwhelmingly responded that schooling and education provided to young Aboriginal and Torres Strait Islander people was not culturally appropriate and, as a result, failed to properly engage with these children. They argued that education institutions need to promote a greater awareness of Indigenous culture among students. Participants commented that this applies to all levels of education, with topics targeted at particular stages of development.

*"Giving these young kids knowledge of culture and connection to land to support their identity and sense of belonging"*

*"Embedding language as part of literacy will provide good building blocks for life."*

Some participants noted that Indigenous cultural programs in schools were often the first to be cut due to lack of funding. There was also support for more opportunities for Indigenous children and young people to participate in leadership programs at school.

*'Schools are lacking in supporting these kids, more resources are needed.'*

Participants stated that the lack of training for teachers in cultural competence has a negative effect on Indigenous students (see 'staff capacity and training requirements' for further information). Participants stated that more Indigenous teachers would be beneficial for both Indigenous and non-Indigenous students. Some respondents noted that strict criminal record checks and working with children background checks acted as an impediment to more Indigenous staff being employed in schools.

- **Non-government organisations and the local community**

While there was general support expressed amongst participants for non-government organisations and community run youth diversion programs, there were also concerns raised regarding the consistency of these programs, which at times run intermittently due to lack of funding.

As with education and schooling, participants were of the view that non-government organisations working with families or involved with case management need to be more culturally competent. They stated that these programs worked best when they are delivered in a culturally appropriate way.

Participants emphasised the importance for non-government organisations working in communities to partner with local service providers who are respected by the community and by the sector generally. They also noted the lack of co-ordination between different organisations which provide activities, programs and support for young people. Participants noted that if various non-government organisations communicated and worked better together, then young people would be better supported and diversionary programs would function better.

Some participants noted that non-government organisations could work with businesses in communities. They suggested that this could help young people to gain tangible skills through work experience which in turn improves their employability.

*'Allowing young people to contribute to their community and not ostracising them will make them feel valued.'*

#### **b. Aboriginal over-representation in the Juvenile Justice system**

The overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system is one of NSW and Australia's most significant social problems. The rates of detention of young Aboriginal people in the juvenile justice system are particularly concerning. As at September 2017, there were 130 Indigenous juveniles in custody in NSW, making up 45 percent of the juvenile custody population.<sup>7</sup> This included 112 Indigenous males (44 percent of total juvenile males in custody) and 18 Indigenous females (58 percent of total juvenile females in custody).<sup>8</sup> While rates of both Indigenous and non-Indigenous young people under supervision fell over the 5-year period to 2015–16, the decrease was proportionally greater for non-Indigenous young people.<sup>9</sup>

#### ***Diversion rates for offending Aboriginal and Torres Strait Islander young people***

In NSW it has been found that young Indigenous offenders are significantly less likely than non-Indigenous offenders to be diverted from appearing in court.<sup>10</sup> Indigenous offenders are also more likely to be referred to a YJC than receive a caution, and non-Indigenous offenders are significantly more like to receive a police caution.<sup>11</sup> When controls are introduced for age, sex, characteristics of the current case and the prior criminal history of the offender, the discrepancy between Indigenous and non-Indigenous offenders in rates of diversion decreases but still

<sup>7</sup> NSW Bureau of Crime Statistics and Research, *NSW Custody Statistics Quarterly Update*, September 2017, [http://www.bocsar.nsw.gov.au/Documents/custody/NSW\\_Custody\\_Statistics\\_Sept2017.pdf](http://www.bocsar.nsw.gov.au/Documents/custody/NSW_Custody_Statistics_Sept2017.pdf)

<sup>8</sup> Ibid.

<sup>9</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2015-2016*, Bulletin 139 March 2017

<sup>10</sup> C Ringland and N Smith, 'Police use of court alternatives for young persons in NSW', (2013) *Contemporary Issues in Crime and Justice*, Bureau of Crime Statistics and Research, 167; L Snowball, 'Diversion of Indigenous juvenile offenders', (2009) *Trends & issues in crime and criminal justice*, Bureau of Crime Statistics and Research, 355.

<sup>11</sup> L Snowball, 'Diversion of Indigenous juvenile offenders', (2009) *Trends & issues in crime and criminal justice*, Bureau of Crime Statistics and Research, 355.

remains statistically significant. This indicates that young Indigenous offenders are less likely to be diverted than non-Indigenous offenders simply because of their Indigenous status.

### ***Risk factors for offending by Aboriginal and Torres Strait Islander young people***

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs and the Australian Institute of Criminology have each identified the following risk factors for offending by Aboriginal and Torres Strait Islander young people:

- *Child Protection*: High incarceration rates have been linked to youth who have been in out of-home care – see material under ‘Health, Housing and Children’s Services’ above.
- *Alcohol and Drug Abuse*: An analysis of the 2002 NATSISS found that illicit drug use and high risk alcohol consumption were the strongest predictors of both criminal prosecution and imprisonment.<sup>12</sup>
- *Education*: Indigenous children are less likely than non-Indigenous children to have access to this quality education, especially in early childhood.<sup>13</sup>
- *Employment*: Data collected in the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) showed that nearly 60 percent of Indigenous people who had been charged with an offence were unemployed. Further research from the 2006 NATSISS showed that Indigenous youth aged between 15 and 24 were three times less likely to be either employed or undertaking some kind of formal education.<sup>14</sup>
- *Exposure to violence and abuse, particularly family violence*: Rates of violent victimisation among Indigenous Australians are two to three times higher than rates among non-Indigenous Australians and this rises to four to six times higher in the case of family violence.<sup>15</sup>
- *Housing/Accommodation*: The 2008 NATSISS reported that almost one third of Indigenous children in Australia under the age of 14 lived in overcrowded accommodation. Aboriginal and Torres Strait Islander peoples accounted for 25% of all persons who were homeless on Census night in 2011.<sup>16</sup>

*‘We need to change the perception it’s a rite of passage for young black fullas to go to jail. Youth incarceration only makes adult incarceration an easier transition, our mob need to heal and have real self determination, building strong resilient healthy families and communities to raise our young people up. Keep our youth out of the jail systems break the institutionalisation of Aboriginal people. We need whole of family/community holistic recovery and prevention programs.’*

### ***c. Evaluating outcomes and identifying areas for improvement***

Key areas identified by participants for improvement were:

<sup>12</sup> D Weatherburn, L Snowball, & B Hunter, ‘The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey’, *Crime and Justice Bulletin*, no. 24.

<sup>13</sup> Australian Parliament, *Doing Time – Time for Doing*, Chapter 2, p. 17, <https://www.aph.gov.au/binaries/house/committee/atsia/sentencing/report/chapter2.pdf>

<sup>14</sup> Australian Parliament, *Doing Time – Time for Doing*, Chapter 2, p. 18, <https://www.aph.gov.au/binaries/house/committee/atsia/sentencing/report/chapter2.pdf>

<sup>15</sup> Australian Institute of Criminology 2017, *Indigenous Justice in Focus*, [http://www.aic.gov.au/crime\\_types/in\\_focus/indigenousjustice.html](http://www.aic.gov.au/crime_types/in_focus/indigenousjustice.html)

<sup>16</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness, 2011*, <http://abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0Main%20Features22011>

(Note: the Australian Bureau of Statistics will release the 2016 Census estimates of homelessness in 2018)

- Availability of programs in regional, rural and remote locations
- Admission requirements for entering programs
- Timing and consistency of programs
- Cultural appropriateness of programs
- Involvement of Aboriginal community-controlled organisations and Aboriginal youth in decision-making
- Coordination of services
- Transparency and allocation of funding

#### *Availability of programs in regional, rural and remote locations*

One key issue identified by many participants was the lack of local youth diversion programs particularly in regional, rural and remote areas of NSW. The lack of available services in these areas means that many young people have to travel outside of their communities, away from family and support networks.

Anecdotal evidence from respondents suggested a pattern has emerged for those young people travelling to diversionary programs outside of their communities. Initially young people engage well with the programs, but that engagement declines over the duration of the program as the young people begin to miss their family or become homesick. Attendance at programs outside of communities meant young people were unable to participate in events in their home town or, in some cases, had to leave the program to fulfil familial obligations.

Participants noted that the financial burden of travelling to visit young people participating in youth diversionary programs out of communities fell on families. Some participants noted that this could be ameliorated by arranging better means for families to visit young people outside of the community or alternatively through offering semi-residential programs allowing participants to visit home regularly.

*'Keeping kids close to community, connected with culture and country is paramount in healing. Teaching self-respect in communities rather than taking kids away.'*

*'Children should not have to go off country to access services to improve their outcomes.'*

Participants noted that rural and remote areas tended to be on the tail end of larger regions, and therefore only received partial support. In one town, participants noted that while there was a caseworker working with young people, they were only present once a week. Participants commented that a lack of funding reduced chances of consistent staffing and of organisations building long term relationships with communities. Many services that are funded for particular areas do not actually get regular workers and some do not stay in the area for long term. Participants saw the high turnover of staff, programs and services as problematic, as the kind of work required by people in this sector requires building relationships of trust with communities which takes time.

***Recommendation: The NSW Government prioritise funding for youth diversion programs in regional, rural and remote communities.***

#### *Admission requirements for entering programs*

Participants were of the view that youth diversion mechanisms were under utilised by young offenders for a variety of reasons. As mentioned above many participants recognised a lack of awareness amongst the broader community as preventing youth from being referred to diversion programs.

Some participants also noted the cost of some youth diversion programs was at times prohibitive especially given many young offenders come from lower socio-economic backgrounds.

The admission requirements for some programs at times resulted in some young offenders being excluded. Some participants noted that YJCs were not available for youth aged 16-17 years in their region. This resulted in a gap in diversionary options for this age group as there was there is no alternate program or service offered in place. The eligibility criteria for admission into some programs means that not all young people who seek access can participate. This is problematic for young people that are at risk of entering the criminal justice system but do not have a criminal history or are not deemed high risk enough.

*'Criteria is part of the problem in relation to the success of programs in terms of how participants are selected or deemed eligible'*

***Recommendation: Broaden admission criteria for existing youth diversion programs to increase admission rates.***

#### *Timing and consistency of programs*

A lack of consistent activities at key times was characterised as a key contributor to offending behaviour in young people. Many participants stated that youth diversionary programs did not run consistently so did not completely service the needs of young people and communities. Instability in funding means programs might run intermittently or only for a brief period before being shut down. Many participants also lamented a lack of services run before and after school hours and during school holidays.

*'Boredom leads to drugs, leads to crime, leads to jail, leads to learning worse behaviours, and then the cycle continues throughout life.'*

***Recommendation: NSW Government ensure funding for programs before and after school hours, over weekends and during school holidays.***

#### *Cultural appropriateness of programs*

A frequent observation by participants was the lack of culturally appropriate programs available to Indigenous young people. Participants stated that the most effective programs are those that teach troubled youth about language, culture and (self) respect. Participants noted that where these programs did exist, they only ran intermittently due to lack of funding, or had fees associated with them which restricted young people from lower socio-economic backgrounds from participating.

*'One stop shop will not fit the diversity of needs across geographical and language groups.'*

*'Limited Aboriginal community controlled orgs doing Aboriginal youth specific work is an issue; need to enhance good partnerships with non-Aboriginal youth services that have runs on the board with our mob'*

This evidence from participants is corroborated by the findings and recommendations of the Royal Commission. The Commission emphasised the importance of culturally appropriate services.

*Again in country, keeping this generation connected to land, language and culture. Be good if the Elders started teaching the next generation true culture, dream time, men and women's business. Teach the young ones that they have to EARN these sacred rites but be just handed down to them. Start it from scratch, traditional way*

#### *Involvement of Aboriginal community-controlled organisations and Aboriginal youth in decision-making*

Many participants emphasised the importance of Aboriginal-led organisations leading solutions in their communities. Geographical (and ideological/cultural) distance makes it difficult for organisations based in Sydney or regional centres to understand community-specific needs. Some participants argued that devolution of control over services to local Aboriginal-controlled organisations would contribute to genuine self-determination.

*'The community has to tell government how they want diversionary programs to be implemented'*

#### ***Recommendation: The NSW Government prioritise Aboriginal community-controlled organisations for the delivery of programs to Aboriginal communities.***

Some participants also advocated for the inclusion of childrens' voices and perspectives in decision making processes and project/program design. This was supported by the findings and recommendations of the Royal Commission. Some participants cited the La Perouse Youth Haven as an example of a successful program that leverages off young leaders in the community to inspire others'

*Different ways for the youth to have input into the programs themselves'*

*'Should be driven by the youth and not by anyone else. '*

*'Makes sense to include the families in this process.'*

#### ***Recommendation: The NSW Government ensure children are consistently represented in decision-making bodies and processes with respect to youth diversion programs.***

#### **Coordination of services**

Almost all survey respondents thought there is a need for a co-ordinated approach at a regional and local level for community and government organisations (such as police, schools, health, housing, children's services and other local community organisations) to work together to divert at risk Aboriginal and Torres Strait Islander youth before they are formally involved with the justice system.

Participants were concerned that there was a failure to acknowledge the link between offending behaviour with other factors affecting young people including mental health issues, learning difficulties, other medical conditions including screening for FADS, PTSD. For complex cases, wraparound services would benefit young people and family. As with comments regarding early intervention, participants agreed that these services should be available to vulnerable/at-risk youth from an early age.

Many participants suggested the possibility of facilitating round table meetings to help facilitate greater communication between these different groups. Some participants suggested developing a similar model to that recently developed by the NSW Government in response to domestic violence, where all parties are involved in safety action meetings. A similar model was proposed in findings and recommendations of the Royal Commission.

*'Limited Aboriginal community controlled orgs doing Aboriginal youth specific work is an issue; need to enhance good partnerships with non-Aboriginal youth services that have runs on the board with our mob '*

*'Programs that work well: WEAVE, strong cultural programs, from local communities. Cultural Aboriginal teachers, programs like the language ones are growing so fast and there is a connection – embedding language as part of literacy will provide good building blocks for life*

***Recommendation: The NSW Government work with providers to improve coordination of service delivery through a model similar to safety action meetings.***

### **Transparency of and accountability for funding**

Participants were concerned about the lack of funding available for early intervention programs working young people at risk of offending. Participants were concerned that funding was particularly limited for Aboriginal community-controlled organisations.

Participants also advocated for greater transparency of and accountability for the allocation of funds for youth diversion programs. Participants were of the view that large amounts were being spent but these funds were not being applied on the ground level, and that this was partially due to mismanagement. With greater access to data and information on the allocation of funding to youth diversion programs, participants suggested they could better advocate for funding to be directed to the places it is most needed.

***Recommendation: The NSW Government improve transparency of funding allocations for youth diversion programs.***

### **d. staff capacity and training requirements**

#### *Cultural Competency*

Survey respondents consistently stated that staff working with Indigenous young people needed to be trained in working in a culturally competent way. 96% of survey respondents thought that cultural competency and cultural awareness training can assist staff to deliver better services to Aboriginal and Torres Strait Islander youth and communities. 89% responded that it was very important for any person or agency that is working with Aboriginal and Torres Strait Islander youth or communities to undertake regular mandatory cultural competency training

*'Lack of culturally competent staff in rehab centres; as well as having the desire to help and to empathise with clients'*

***Recommendation: The NSW Government ensure all officials interacting with Aboriginal and Torres Strait Islander children and young people in the criminal justice system receive adequate cultural competency training.***

#### *Trauma Informed Practice*

Participant consistently emphasised the importance of incorporating trauma informed practice into any programs involving young offenders. This view is supported by the findings and recommendations of the Royal Commission. Participants commented that many young offenders are affected by trauma and therefore anyone working with these young people should be trained in ensuring their interactions are trauma informed. This includes understanding complex trauma and how intergenerational events might impact an individual.

***Recommendation: The NSW Government support providers to include trauma informed practice into their youth diversion programs.***

***h. any other related matter.***

*Raising the age of criminal responsibility*

In NSW, section 5 of the *Children (Criminal Proceedings) Act 1987* provides that a child under the age of ten years cannot commit an offence. This statutory presumption is irrebuttable. The common law presumes that a child between the ages of 10 and 14 does not possess the necessary knowledge to have a criminal intention. This common law presumption of *doli incapax* is a rebuttable presumption.

The Royal Commission recommended that the statutory age of criminal responsibility in the Northern Territory be raised. The ALS supports calls for the age when children can be held criminally liable to be raised to 14 years in NSW, to ensure primary school aged children are not entangled in the criminal justice system.

*Communication with Aboriginal communities*

Participants provided guidance on effective modes of communication with Aboriginal communities and individuals for the NSW Government and youth diversion program providers. Some participants noted that they usually heard about 'good' and 'bad' programs through 'the Koori grapevine' / word of mouth. As such, they suggested that to determine the effectiveness of a program for Aboriginal people the NSW Government should speak with Aboriginal community members.

Some participants also noted that many young Aboriginal people, like other young people, regularly use social media. This was the case for metro, regional and remote communities. Participants suggested that this mode of communication may be most effective for communicating directly with Aboriginal young people.

*Amending the Young Offenders Act 1997*

The *Young Offenders Act 1997* creates a hierarchy of sanctions, including warnings, cautions and YJCs. A young person is not entitled to be dealt with by caution (section 20(7)) or conference (section 37(6)) in relation to an offence if the young person has been dealt with by caution on three or more occasions. This exemption applies whether the caution is sought for offences of the same or of a different kind to the previously administered cautions.

Aboriginal and Torres Strait Islander people are over policed relative to non-Indigenous people. Recent research by the Bureau of Crime Statistics and Research (BOCSAR) found that, in NSW, Aboriginal and Torres Strait Islander people are six times more likely to be arrested for any offence than non-Indigenous Australians.<sup>17</sup> Aboriginal young people are also significantly

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<sup>17</sup> D Weatherburn and S Ramsey, 'Trends in Indigenous offending NSW: 2001-2015', (August 2016) *Crime and Justice Statistics* 117.

overrepresented as targets of the NSW Police Suspect Targeting Management Plan (STMP).<sup>18</sup> Young people targeted on the STMP experience a pattern of repeated contact with police in confrontational circumstances such as through stop and search, move on directions and regular home visits.<sup>19</sup>

Given this over policing, limits on the number of cautions or conferences a young person is entitled to be dealt with unfairly impact Aboriginal young people. The ALS submits that an investigating official should apply the relevant sanction of the *Young Offenders Act 1997* based on the offence committed by a young person, without reference to the number of times the child has been dealt with under the Act.

***Recommendation: The NSW Government should repeal sections 20(7) and 37(6) of the Young Offenders Act 1997, which limit the number of cautions or conferences a young person is entitled to be dealt with.***

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<sup>18</sup> V Sentas and C Pandolfini, *Policing Young People in NSW A study of the Suspect Targeting Management Plan* (2017), Public Interest Advocacy Centre.

<sup>19</sup> Ibid.