



Commissioner for Children and Young People
Western Australia

All enquiries

Telephone: (08) 6213 2223
Email: alexa.wilkins@ccyp.wa.gov.au
Our reference: 17/5631

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Sir/Madam

Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander Peoples

Thank you for the opportunity to provide a submission to the Australian Law Reform Commission's Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (Discussion Paper No 84).

As Commissioner for Children and Young People in Western Australia (WA) I have a statutory responsibility under the *Commissioner for Children and Young People Act 2006* to monitor and promote the wellbeing of all children and young people under the age of 18 years. In undertaking these responsibilities, I must give priority to Aboriginal¹ children and young people and those who are vulnerable or disadvantaged for any reason. I must also have regard for the United Nations Convention on the Rights of the Child.²

It is of grave concern to me that Aboriginal children and young people are disproportionately represented in the youth justice system. Given the profound impact that contact with the criminal justice system can have on Aboriginal children and young people's wellbeing and capacity to lead productive lives, as well as the general vulnerability of such children and young people, youth justice is a priority area of work for my office.

Last year, my office undertook a consultation with 92 young people in the youth justice system to hear their views about why young people get into trouble with the law and what support and assistance they need to help them develop positive behaviours and navigate away from criminal behaviour. Two-thirds of these young people were Aboriginal. I released a report on the consultation findings titled

¹ For the purposes of this submission, the term 'Aboriginal' encompasses Australia's diverse language groups and also recognises those of Torres Strait Islander descent. The use of the term 'Aboriginal' in this way is not intended to imply equivalence between Aboriginal and Torres Strait Islander cultures, though similarities do exist.

² United Nations 1989, *Convention on the Rights of the Child*.

“Speaking Out About Youth Justice” (available from <https://www.cyp.wa.gov.au/our-work/projects/youth-justice-consultation/>).

Overwhelmingly the young people who participated in this consultation indicated that serious dysfunction at home, disengagement from school and the broader community, and personal struggles with mental health or alcohol and drug use, underpinned much of their involvement in crime. Consultation participants highlighted the importance of respectful, trusting and long-term mentoring relationships with professionals, including youth justice workers and police, as crucial to exploring and sustaining behavioural changes, participating in education and employment, and to building a more positive future.

I note the Inquiry’s terms of reference are comprehensive in their scope, however do not explicitly identify Aboriginal children and young people as a key population group to be consulted as part of the Inquiry. It is within the context of my roles as an independent, statutory officer and the functions outlined above that I provide the following comments to draw attention to the needs, experiences and views of Aboriginal children and young people with experience of the youth justice system, for consideration in this Inquiry.

Bail and Remand Population

Proposal 2–1

The Bail Act 1977 (Vic) has a standalone provision that requires bail authorities to consider any ‘issues that arise due to the person’s Aboriginality’, including cultural background, ties to family and place, and cultural obligations. This consideration is in addition to any other requirements of the Bail Act.

Other state and territory bail legislation should adopt similar provisions.

As with all other bail considerations, the requirement to consider issues that arise due to the person’s Aboriginality would not supersede considerations of community safety.

Response: I note the drivers of overrepresentation of Aboriginal people in remand, including children and young people, explored in the Discussion Paper. The underlying factors leading to the overrepresentation of Aboriginal young people in the justice system are complex and stem from the broader social and economic disadvantage they experience. These factors include family and community dysfunction and violence, drug and alcohol abuse, cyclical disadvantage and poverty and disengagement from education and training. Importantly, a comprehensive response needs to include a range of services and supports including child protection, police, health (mental health and drug and alcohol) and education, as well as community-led programs.

The consultation my office undertook with 92 young people in the WA youth justice system highlighted that a child or young person’s vulnerability, including the factors canvassed under the heading “child protection and adult incarceration” in the

Discussion Paper, significantly increase the likelihood of offending; not race. I therefore prefer the approach adopted in NSW to the extent that it focuses on factors of vulnerability or special needs, including cognitive or mental health impairment, rather than focusing on race.

A mother who participated in the youth justice consultation highlighted how race alone is not a 'causal' factor.

"Not only for Aboriginals, the lower class people too, cos there is lot of wadjella, white kids that are not Aboriginal and they just as winyarn (bad) as an Aboriginal kid and cos there is nothing really for the kids like that. They need to get them up and lift them out of the rut, unna?"

I support a consideration of Aboriginality to the extent that it leads to a consideration of the appropriateness of bail terms, and the context of low level offending particularly where it is linked to disadvantage, such as under the current Victorian and NT provisions.

In relation to young people's vulnerability, I am also concerned by the lack of representation and support for Aboriginal children and young people in the court process, particularly given the likelihood of complex family circumstances such as alcohol and drug abuse, family violence, and historical trauma from contact with the justice system, which may mean that there is not a responsible adult present to support the child or young person. An inability to locate a responsible adult demonstrates that a child or young person is in need of care and support, and it is unacceptable that such children are incarcerated by virtue of their circumstances. It is deeply concerning that children who are eligible for bail are being held in detention simply because there is nowhere else for them to go. I ask that particular attention be given to these issues in the proposal and recommend these factors are also taken into consideration in the proposal wording.

Proposal 2–2

State and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to identify service gaps and develop the infrastructure required to provide culturally appropriate bail support and diversion options where needed.

Response: I support the proposal for culturally appropriate bail support and diversion options but also recommend programs aimed at rehabilitating offenders, particularly young offenders, are added to the form of services being considered in this proposal. The lack of support services in any of the three forms identified and explored in the Discussion Paper in regional and remote areas is particularly concerning for vulnerable Aboriginal children and young people in these areas who are at risk of offending or who have offended. In my office's youth justice consultation we were told:

"Kids need more support. Lots of people want to change their life, but it's really hard, you know?" 16 year-old male.

In my consultation five key themes emerged from participants' responses to why young people get into trouble:

- problems with family
- friends who were involved in criminal behaviour
- disengagement from school
- disconnection from the broader community
- personal issues including, crime as a normal habit, drug and alcohol use, cognitive disorders and mental health issues.

Support programs targeting young offenders need to be responding to these drivers of offending in a coordinated, sustainable and culturally appropriate way.

In my youth justice consultations, some families expressed feeling overwhelmed by the system and highlighted the need for a more streamlined provision of service.

"You know how (my son) is involved with justice system, so you have Corrective Services or whatever generally for education, housing and DCP, that's a bit confusing but there's like 20 different people every day. Well maybe there could be a service that's involved in that area, where they can get one person to deal with that family and their issues, have one person allocated to that family because it does get overwhelming and communication can be done by that one person because it does get overwhelming." Mother

Young people and families recognised that offending behaviours could be prevented when they were able to access appropriate supports and services. These included:

- positive role models
- living in safe and stable homes
- participating in education or employment
- being involved in activities and having fun things to do
- support to change behaviour and cope with personal challenges.

While a response was not specifically requested on the "policing bail conditions" section of the Discussion Paper, it is important to raise the views of young people relevant to this issue. For some young people, the inflexibility of the youth justice system was a significant challenge and they explained that it was often too difficult to meet the required bail conditions.

"When I was on curfew, I was one minute late. And boy yeah, I walked around the corner, and the cops was sitting there, boy yeah. I got locked up and went straight back to Banksia. I was one minute late! I was coming home! It was one minute! I was one minute home! They didn't give me time to get into my house." 17 year-old male

"People break their curfews, they break, some people they just break it for fun, but if you have a curfew and one of your nans or something is sick then what are you supposed to do? You gotta stay back." 16 year-old male

It is very concerning that many young people are unnecessarily held on remand or returned to custody due their failure to comply with onerous or unreasonable bail conditions, which can ultimately perpetuate the cycle of involvement in the youth justice system.

Sentencing and Aboriginality

Question 3–1

*Noting the decision in *Bugmy v The Queen* [2013] HCA 38, should state and territory governments legislate to expressly require courts to consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples when sentencing Aboriginal and Torres Strait Islander offenders?*

If so, should this be done as a sentencing principle, a sentencing factor, or in some other way?

Response: As I noted in response to Question 2.1, I support the need to recognise the underlying socioeconomic, environmental and individual vulnerability factors that lead to offending and for these to be taken into consideration during sentencing.

Question 3–2

Where not currently legislated, should state and territory governments provide for reparation or restoration as a sentencing principle? In what ways, if any, would this make the criminal justice system more responsive to Aboriginal and Torres Strait Islander offenders?

Response: I recommend that where appropriate, state and territory governments provide for reparation or restoration as a sentencing principle, as this provides the opportunity for Aboriginal young people to take responsibility for their actions in a positive way that emphasises social responsibility and rehabilitation. This is consistent with principles set out in the Young Offenders Act 1994 (WA).

I recommend that reparation or restoration approaches, although keeping young people accountable for their actions, are achievable and flexible in their application. As previously noted in my response to Proposal 2.2, comments from young people in my office's consultation demonstrate that young offenders found it stressful to comply with some of the requirements of certain orders and they felt that the youth justice system was inflexible. It concerns me that given for most young people offending behaviour occurs in the context of complex social issues, if reparation/restoration requirements are too onerous or beyond the capacity of the young person, they may be too difficult to comply with and may set that young person up to fail. For example, reparations in the form of monetary fines must be financially feasible for young people and not further disadvantage them.

Given the profound impact that contact with the criminal justice system can have on Aboriginal young people's wellbeing and capacity to lead productive lives, as well as the vulnerability of these young people including their significant overrepresentation in

the justice system, all opportunities to reduce or avoid sentences of incarceration must be explored. This includes understanding and promoting models of early intervention and rehabilitation strategies that are effective in preventing Aboriginal people entering the justice system and reforming their offending behaviour so they can go on to lead productive, positive lives.

Question 3–3

Do courts sentencing Aboriginal and Torres Strait Islander offenders have sufficient information available about the offender's background, including cultural and historical factors that relate to the offender and their community?

Response: Given the diversity of Aboriginal people, addressing their historical and cultural disadvantage must be done on an individual and contextual basis consistent with the nature of the *Gladue* principles. The need for an individualised response was recognised by young people in my youth justice consultation:

"It depends on their personality, their background, their family. So maybe you need to ask them a lot of questions so that you know them. Get to know them better and they'll get to know you better. And you'll find what they need later in life." 17 year-old female

As I commented previously in respect to bail conditions, it does not seem that courts have sufficient background information about an individual offender in relation to their vulnerability factors, including any cognitive and/or behavioural issues the accused may have. This could include, for example, factors such as language proficiency and the need for interpreters so that the accused may properly understand the charges they are facing and the consequences as well as the nature of the proceedings and options available to them. These may be the drivers for offending as well as being factors impacting the accessibility and fairness of the justice system and its ability to achieve its functions – including punishment and rehabilitation - with individual offenders.

A clear example of where this occurs is among offenders with Fetal Alcohol Spectrum Disorder (FASD). The Telethon Kids Institute's research into knowledge, attitudes and practice regarding FASD among professionals in the WA justice system demonstrated that:

- most indicated a need for more information about FASD, including information to improve the identification of individuals in need of specialist assessment, and guidelines on how to deal with people with FASD
- widespread agreement that the assessment and diagnosis of FASD would improve the possibilities of appropriate consequences for unacceptable behaviour
- strong support for the development of appropriate alternative or diversionary sentencing options for people with FASD.³

³ Telethon Kids Institute 2013, *Fetal Alcohol Spectrum Disorder: Knowledge, attitudes and practice in the Western Australian justice system*, available from: <https://alcoholpregnancy.telethonkids.org.au/our->

A report to the Education and Health Standing Committee 2012 inquiry, titled 'Fetal Alcohol Spectrum Disorders: the invisible disability' details Chief Justice Wayne Martin's comments in his address to the Committee, highlights the significant disadvantage experienced by people with FASD in the court process.

"There are also symptoms of FASD that will place a person at a significant disadvantage when they enter the criminal justice system. Those symptoms include high levels of suggestibility, which means that people with FASD are very likely to agree with propositions that are put to them by police in their interview. Other symptoms include memory deficit. That obviously is going to place a person at a disadvantage when trying to explain their behaviour to police or when giving instructions to defence lawyers or when giving evidence to a court in defence of a charge brought against them. FASD sufferers also have considerable difficulty understanding sarcasm, idiom or metaphor, and these are all common characteristics of language used in the courtroom process. Hearing impediment is another feature of FASD... Those factors in combination, together with language difficulties and low socioeconomic status, almost inevitably place FASD sufferers at a very significant disadvantage in their dealings with police, in securing adequate legal representation, in comprehending the court process, deciding upon the strategy to be adopted in response to the charges that are laid and in either defending themselves or placing relevant material before the court in relation to a sentence to be imposed."⁴

In my youth justice consultation, young people and their families discussed cognitive and behavioural issues such as Attention Deficit Hyperactivity Disorder (ADHD) and trauma as factors driving young people's involvement with the youth justice system.

"They see the dysfunction of their families and they don't feel normal so they have something to prove, they get all tough. My grandson has ADHD and trauma. He has temper tantrums and beats holes in my doors. I had to call the cops because I didn't know what else I could do." Grandmother

"So we need to stop this thing of young kids getting in trouble. Something needs to stop them because it's hard for them growing up and being a silly person with mental issues and stuff like that." 16 year-old female

A few young people discussed FASD as a contributing factor to criminal behaviour.

"It's a circle of life to us, for me...their mum or dad, smoke drugs... mum's smoking and drinking when their baby was in their guts and changes their brain...damage their brain, I think. Cos they're dumb... they can't control the stealing." 15 year-old male

[research/research-projects/previous-projects/fasd-knowledge-attitudes-and-practice-in-the-western-australian-justice-system/](https://www.research-reports.com.au/research/research-projects/previous-projects/fasd-knowledge-attitudes-and-practice-in-the-western-australian-justice-system/)

⁴ Chief Justice Wayne Martin, In an address to Committee 20 June 2012, in Final Report of the Western Australian Education and Health Standing Committee 2012 inquiry, *Foetal Alcohol Spectrum Disorders: the invisible disability*, p. 75.

These cognitive issues impact an individual's capacity to understand the consequences of their actions and regulate their behaviour as well as to participate in the legal system in an informed and equal manner; as a result these conditions and individual's complex personal backgrounds should be known to the court and taken into consideration during sentencing.

Question 3–4

In what ways might specialist sentencing reports assist in providing relevant information to the court that would otherwise be unlikely to be submitted?

Response: Specialist reports by Aboriginal organisations, service providers familiar with the offender and their community, and independent mental health/health assessors can assist to provide the court with a full picture of an individual's background and drivers for offending including social and systemic factors. This information can assist in a fair representation of the offender in court and to identify options for forms of sentencing which may be more effective than imprisonment or other conditions, and serve to rehabilitate the offender.

Young people involved in the youth justice consultation discussed the value of being offered access to mental health and drug and alcohol support services while in detention or on return to the community, to support their rehabilitation.

"Get 'em to see a psychologist/therapist or whatever like three times a week, regularly and then they could help us like, then the psychologist or whatever it is, could like write it down and then, what they're saying and stuff and...then give it to the person that like treats us...say, 'this kid has this' and you be diagnosed." 14 year-old

"Yeah my friend went to drug and alcohol DAYS, down in Perth...And yeah, he's been out, he's completed and now he's been put in a unit, and he's stayed clean for the whole time, so yeah." 17 year-old male

"I still see the same psych as when I was in jail, yeah they do help, I didn't want to see another one, starting all over again, so they gave me the same one. They come every [week]...it's a bit full on at the start, you get used of it though." 18 year-old male

Using what is known to service providers and professionals about a young person's mental and physical health and personal background to inform sentencing reports can provide vital information to enable the most appropriate sentencing options with a focus on prevention, diversion and rehabilitation. This should include appropriate through care, as I discuss in more detail in my response to Proposal 5-3, with professionals, family and community members whom young people trust and have strong relationships, and collaboration between child protection, family support and education services.

Question 3–5

How could the preparation of these reports be facilitated? For example, who should prepare them, and how should they be funded?

Response: These reports should be facilitated from the outset of the legal process to allow for longer preparation time as they can have greater implications than only affecting sentencing. Where the alleged offender is already known to service providers, those service providers should take responsibility for transparently and comprehensively providing the necessary background information to support the individual to be properly assessed by the justice system. Where the individual has not had recent contact with services, an assessment of their language competency should be undertaken by their legal representative (or one should be appointed by the court for this purpose) and a mental and physical health assessment should also be completed in order to identify any cognitive or physical disabilities that could impede their capacity to hear and comprehend the proceedings.

Sentencing Options

Question 4–1

Noting the incarceration rates of Aboriginal and Torres Strait Islander people:

(a) should Commonwealth, state and territory governments review provisions that impose mandatory or presumptive sentences; and

(b) which provisions should be prioritised for review?

Response:

(a) Yes, with a view to repeal for the reasons outlined at 4.24 of the Discussion Paper and a lack of substantiation of the reasons in support of mandatory sentencing outlined at 4.27.

The Young Offenders Act 1994 (WA) includes provisions relating to the use of detention as a last resort and custodial sentences only being enforced if the court is satisfied that there is no other appropriate way to handle the matter. It is clear that to the extent that mandatory sentencing regimes are applicable to children they do not have the best interest of the child as a priority.

(b) The 'three-strike laws' in Western Australia – for the reasons similar to those outlined in the examples in the Discussion Paper at 4.11 and 4.12 and the concerns raised at 4.14, this approach to sentencing removes discretion from the judiciary to address the individual circumstances and seriousness of typically low end offending. This only serves to further contribute to the overrepresentation of Aboriginal people in the justice system as these offences are commonly committed by Aboriginal people (indicated in the Australian Bureau of Statistics, Prisoners in Australia, 2016, Cat No 4517.0(2016) table 15), including by preventing a sentence from being suspended where appropriate.

Question 4–2

Should short sentences of imprisonment be abolished as a sentencing option? Are there any unintended consequences that could result?

Response: Any term of imprisonment should only be given as a last resort. The need for a custodial sentence for the safety of the community must always be weighed against the impact on the offender being sentenced (such as the concerns listed at 4.46 of the Discussion Paper) and their capacity for rehabilitation. At 1.32 of the Discussion Paper there is a reference to prisons being “universities of crime”; short term sentences indicate minor or low level offending, the causes of which may not be best addressed through a custodial sentence.

In the youth justice consultation, young people identified the need to address the cycle of recidivism that is often strengthened by periods in detention.

“I remember there was this one bloke in Banksia and he was going on about how he was planning all these crimes before he got out again, so I think it’s just being surrounded by everyone, lots of criminals in one little compound I guess...if they’re locking lots of people up...young kids...go into jail and hear all these stories about how these people stole all this stuff and that, they go, ‘oh that sounds really fun’.” 17 year-old male

“When young people are locked up for a long period of time it’ll make them come out and want to do it again. I reckon that if they keep locking them up and let’s just say they’ve been in here for quite a while, they’re gunna get used to it. They’re gunna keep coming back in because they like it.” 17 year-old female

Question 4–3

If short sentences of imprisonment were to be abolished, what should be the threshold (eg, three months; six months)?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People’s office to provide comment.

Question 4–4

Should there be any pre-conditions for such amendments, for example: that non-custodial alternatives to prison be uniformly available throughout states and territories, including in regional and remote areas?

Response: Regardless of whether or not short sentences of imprisonment are abolished, non-custodial alternatives to prison should be uniformly available throughout states and territories, particularly in regional and remote areas.

In Western Australia, the recent report into Banksia Hill Detention Centre (the state’s sole centre for detained youth both on remand and sentenced) by the Inspector of Custodial Services titled ‘Behaviour management practices at Banksia Hill Detention

Centre (June 2017) emphasised the need for localised justice responses and for reduced use of custody as a sentence for children and young people “to keep young people close to their families and networks, and to increase the prospects of successful rehabilitation”.⁵

In my office’s youth justice consultation, some young people identified that the structure provided by a community-based order supported them to stay out of trouble.

“Orders, I guess...the freedom that we used to have was, kinda, pretty bad criminal activity, like doing drugs and stuff like that, they stop us from doing that with, um, urinalysis, it’s kind of a good thing though.” 17 year-old male

“The support and the reporting as well, cos you’re not doing your own thing all the time, you have to do stuff that you have to, so you don’t have too much time on your hands and then like after you report, you’re like oh yeah I’ll just finish this up and I’m not going to go out and get into trouble again.” 18 year-old male

“My curfew...it’s 8:00pm to 5:00am. It just stops...cos most crime is committed at night, so if they make sure people are, like, they’re home...I have to. Or else I’ll go back jail.” 18 year-old male

Where young people are detained, I consider that independent oversight of detention facilities critical to protecting the rights of vulnerable young people, ensuring compliance with human rights standards, and identifying issues as early as possible, and providing robustness and confidence in detention services and systems. Important to meeting a basic need to be treated fairly and justly, young people’s access to effective procedures to raise complaints and concerns in detention is essential.

Proposal 4–1

State and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to ensure that community-based sentences are more readily available, particularly in regional and remote areas.

Response: I support the above proposal and endorse the need for alternative sentences, such as community-based, diversionary options, particularly in regional and remote areas.

Young people who live in rural and remote Western Australia have limited options and current practice is for these young people to be removed from their communities and sent to detention many thousands of kilometres away. Thus, a community-based order that allows these young people to remain in their communities and includes integrated support services and strategies is supported.

⁵ Office of the Inspector of Custodial Services 2017, *Behaviour management practices at Banksia Hill Detention Centre*, Government of Western Australia. Available from: <http://www.oics.wa.gov.au/reports/behaviour-management-practices-at-banksia-hill-detention-centre/>

I would also recommend that Aboriginal children and young people and their families are consulted before the introduction of any new community-based order or other sentencing options. Seeking the views of Aboriginal children and young people to guide the development and implementation of these orders is important to their acceptability and effectiveness.

Question 4–5

Beyond increasing availability of existing community-based sentencing options, is legislative reform required to allow judicial officers greater flexibility to tailor sentences?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Prison programs, Parole and Unsupervised Release

Proposal 5–1

Prison programs should be developed and made available to accused people held on remand and people serving short sentences.

Response: I support the above proposal, particularly given the lack of support generally available to Aboriginal young people on remand or serving short sentences. Opportunities for young people in detention or on remand to engage with education must be a priority focus. This should include culturally appropriate supports and services for young offenders to:

- attend school or educational programs that are designed for students who experience difficulties engaging in mainstream schooling
- connect young people to employment vocational training and/or academic study courses
- address changeable criminogenic factors including attitudes to education, peer associations, use of drugs, attitude to authority, behaviour in the work place, and inter-personal relationships
- provide local community-based support and parental training for disadvantaged families that can assist them to support their young people to engage with education.

Some of the young people and their families in my office's consultation recommended more intensive support for young people to reengage with education and greater opportunities for culturally relevant, alternative education and rehabilitation options.

"I would make Banksia different so like every kid that comes in probably gets more like cultural, like Aboriginal education." 16 year-old male

"There's still no support from the system...yeah, the schools, networks, programs, educational. I remember it took so long for my son to get engaged in another school...that's why he just fell through the cracks." Mother

"I feel like just make opportunities to go to school and inform them all about the bad stuff and how to make good choices and bad choices and how to make them involved in good stuff rather than bad stuff." 18 year-old male

"Probably go back to school, yeah and just go to school and then you won't be in that trap system, going to Banksia." 16 year-old male

"Yeah my CARE (Curriculum and Reengagement in Education) school was alright, we did metal work and wood work and all that...[they had] Aboriginal officers and that out there and they picked you up on the bus and they work with you." 17 year-old male

"I would give them a chance to figure out what they wanted to do instead of locking them up...They have brains to go and get a job...a course to study." 18 year-old female

Question 5–1

What are the best practice elements of programs that could respond to Aboriginal and Torres Strait Islander peoples held on remand or serving short sentences of imprisonment?

Response: Programs must ultimately aim to reduce Aboriginal young people's contact with the youth justice system through a focus on diversion and rehabilitation. Best practice principles include:

- being culturally appropriate
- addressing the underlying issues such as family dysfunction and alcohol and drug use that lead young people into contact with the youth justice system
- adopting trauma-informed approaches and provision of effective mental health care to children and young people who have contact with the youth justice system
- reengaging young people with school and learning
- meaningful community engagement so that communities can more effectively own and address the offending and underlying causes.

I also recommend young people are always consulted and participate in the development of programs designed to support their diversion away from the youth justice system and their rehabilitation.

Proposal 5–2

There are few prison programs for female prisoners and these may not address the needs of Aboriginal and Torres Strait Islander female prisoners. State and territory corrective services should develop culturally appropriate programs that are readily available to Aboriginal and Torres Strait Islander female prisoners.

Response: I support the above proposal, and emphasise the need for particular focus on Aboriginal young women in the justice system who are a particularly vulnerable group in the prison population. The WA Inspector of Custodial Services Report on

Banksia Hill Detention Centre highlighted significant issues with inappropriate housing of females at the centre and stressed the importance of females being housed in facilities separate to male prisoners.⁶ I agree that to support young women's rehabilitation it is imperative they are housed in separate, appropriate facilities.

Some of the female young people in my office's youth justice consultation described the types of programs and supports they would like access to and the need for more Aboriginal staff in detention centres to provide culturally appropriate support.

"I would do something like Banksia but programs. Like music programs, sport programs. I would actually find out individually what they were really interested in, what they really like doing, or what's their hobby. Yeah, something different you know." 17 year-old female

"I'd say if there were more Noongar people working [at Banksia Hill] then the kids would have more fun and speak more...it's more better for us to just have Aboriginal peoples here, like staff, not just like them staff...They should welcome us in...they have got a lot of stress and it's hard for them looking at white people here every day so it's better for them to have Indigenous people...They should have Aboriginal people in here cos like some of them Aboriginal boys and girls, they are not feeling right cos they get picked on every day and I can see it in their face, every kid in here, they've got something going on. I think they need more help." 15 year-old female

There is a clear need for programs and services that specifically target the mental health, wellbeing and education needs of young female offenders and to support their rehabilitation. I recommend that young women with current or prior experience in the youth justice system are consulted and involved in the design and development of any programs aimed at addressing the underlying drivers of their offending and rehabilitation, to ensure such programs are responsive to young women's specific needs and preferred modes of support.

Question 5–2

What are the best practice elements of programs for Aboriginal and Torres Strait Islander female prisoners to address offending behaviour?

Response: Please see my response to Question 5-1 and the comments from young females in my office's youth justice consultation highlighted in my response to Proposal 5-2.

Proposal 5–3

A statutory regime of automatic court ordered parole should apply in all states and territories.

⁶ Office of the Inspector of Custodial Services 2017, *Behaviour management practices at Banksia Hill Detention Centre*, Government of Western Australia. Available from: <http://www.oics.wa.gov.au/reports/behaviour-management-practices-at-banksia-hill-detention-centre/>

Response: I support the above proposal and recommend the inclusion of culturally appropriate release orders that are embedded in a comprehensive throughcare system. Throughcare is a consistent and progressive case management approach to young offender rehabilitation and begins when a young person enters detention, continues through the period of detention and ends sometime after release from detention when that young person is able to live supported by their community. Policy and practice need to prepare and support young offenders leading up to and upon release from detention to ensure that their human rights are protected, but also to avoid recidivism.

My consultation with young people in the youth justice system found that better access to supports and services was seen as essential to addressing criminal behaviours. Breaking the cycle was difficult and young people identified a critical need for ongoing support and opportunities to reengage in positive activities in this process. Young people appreciated the practical support provided by programs that are designed for young people in youth justice.

"[Staff at White Lion]...they helped me do my Order. They took me there. They took me to the counsellor and all that...urinalysis. Yeah transport. That was really helpful."
16 year-old male

Supportive, mentoring relationships with workers at these programs was said to be integral to young people's engagement.

"Get a mentor and get the mentor to have a talk with them and see what goes from there...I need that support from [my mentor] as much as I can, yeah. Yeah, they tell me some good things, they helped me out. Like in my attendance I stopped coming for a while and they kept on talking to me and I got back on, and I need to commit my attendance for a while, so they can help me out with what I want... they just kept on telling me and telling me, got it through my head, 'got to stick at it' to get what I want, like my licence and stuff like that. I went to the licensing centre and passed it, yeah." 19 year-old male

Young people and family members were grateful for the support of dedicated workers and suggested if they could change anything they would have more role models for young people in youth justice.

"I would hire more staff members. So, let's say I had so many kids who need help, I would get, like, hire more staff members, for each single one of them, one-on-one time with them, more time, would be great." 17 year-old male

On the other hand, a number of young people told us that lack of support meant they reoffended.

"Yeah, no support...and that's what I mean! That's why I've been here four times."
18 year-old male

Question 5–3

A statutory regime of automatic court ordered parole applies in NSW, Queensland and SA. What are the best practice elements of such schemes?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Proposal 5–4

Parole revocation schemes should be amended to abolish requirements for the time spent on parole to be served again in prison if parole is revoked.

Response: I support the above proposal which reflects the current position in WA, and endorse the proposal for a nationally consistent approach modelled on the NSW, Queensland, SA and WA approaches as desirable to prevent state-based inconsistencies and adverse consequences of the ACT, NT, Tasmanian and Victorian models. However, further reform is required to support Aboriginal young people with suitable post-release accommodation, particularly where they may not have a responsible adult whose care they can be released to.

Fines and Driver Licences

Proposal 6–1

Fine default should not result in the imprisonment of the defaulter. State and territory governments should abolish provisions in fine enforcement statutes that provide for imprisonment in lieu of unpaid fines.

Response: I support this proposal, particularly given the disproportionate impact of unpaid fines on Aboriginal young people who may be unable to pay public transport fares or who may be driving unlicensed due to regional and remote barriers to obtaining licenses, the financially restrictive nature of obtaining licenses, or driving unlicensed to escape family violence or neglect discussed at 6.87 and 6.88 of the Discussion Paper.

Given these underlying causes of young people driving unlicensed and receiving fines, I recommend greater investment in programs that support Aboriginal young people to overcome the financial, literacy and access barriers to obtaining their driver's licence. Enabling more age-ready Aboriginal young people to obtain their driver's license can have a direct impact on reducing the number of fines issues and subsequent fine default and potential imprisonment.

Question 6–1

Should lower level penalties be introduced, such as suspended infringement notices or written cautions?

Response: I support the proposal for lower level penalties to be introduced. As I have noted in my earlier responses, monetary penalties, particularly with high fixed

amounts, disproportionately impact Aboriginal young people who are more likely to be on a low income, be homeless or transient and have complex needs.

Question 6–2

Should monetary penalties received under infringement notices be reduced or limited to a certain amount? If so, how?

Response: I support the proposal to reduce monetary penalties received under infringement notices given the lifelong impact fines can have on young people as the debt remains with them and continues to collect interest until it is paid. The examples at 6.36 and 6.37 of the Discussion Paper clearly demonstrate the disproportionate and long-term negative impact of large fines for young people.

Question 6–3

Should the number of infringement notices able to be issued in one transaction be limited?

Response: I support the proposal to limit the number of infringement notices that can be issued in one transaction. I specifically support the recommendation at 6.40, dot point 2 of the Discussion Paper, which would require issuing officers to consider whether the issuing of multiple penalty notices in response to a single set of circumstances would unfairly or disproportionately punish a person in a way that does not reflect the totality, seriousness or circumstances of the offending behaviour.

Question 6–4

Should offensive language remain a criminal offence? If so, in what circumstances?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Question 6–5

Should offensive language provisions be removed from criminal infringement notice schemes, meaning that they must instead be dealt with by the court?

Response: Aboriginal people and in particular young people may be particularly targeted for criminal infringement notices (CIN). I am concerned by the disproportionately high amount of the fines for CINs in WA compared to other states, and as discussed in my response to Question 6-1, the way in which such fines can compound disadvantage for Aboriginal young people.

Question 6–6

Should state and territory governments provide alternative penalties to court ordered fines? This could include, for example, suspended fines, day fines, and/or work and development orders.

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Proposal 6–2

Work and Development Orders were introduced in NSW in 2009. They enable a person who cannot pay fines due to hardship, illness, addiction, or homelessness to discharge their debt through:

- *community work;*
- *program attendance;*
- *medical treatment;*
- *counselling; or*
- *education, including driving lessons.*

State and territory governments should introduce work and development orders based on this model.

Response: I support the proposed model which recognises the individual circumstances and capacity of a juvenile offender as well as providing for further rehabilitation, rather than taking a purely punitive approach. I further emphasise and support the need for government to work with and resource local Aboriginal communities and organisations to provide such schemes in regional and remote areas.

Question 6–7

Should fine default statutory regimes be amended to remove the enforcement measure of driver licence suspension?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Question 6–8

What mechanisms could be introduced to enable people reliant upon driver licences to be protected from suspension caused by fine default? For example, should:

(a) recovery agencies be given discretion to skip the licence suspension step where the person in default is vulnerable, as in NSW; or

(b) courts be given discretion regarding the disqualification, and disqualification period, of driver licences where a person was initially suspended due to fine default?

Response: I support the discretionary approaches outlined above in order to prevent the unintended negative consequences for children and young people in families who are impacted by suspended licences, among whom Aboriginal people are

overrepresented, and who are more likely to be reliant on licences in regional and remote areas.

Question 6–9

Is there a need for regional driver permit schemes? If so, how should they operate?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People’s office to provide comment.

Question 6–10

How could the delivery of driver licence programs to regional and remote Aboriginal and Torres Strait Islander communities be improved?

Response: Programs such as the Aboriginal Justice Program (AJP) in Western Australia, managed through the Department of the Attorney General, should be sustainably funded and expanded to regions beyond the identified “priority locations”. The AJP works to reduce the overrepresentation of Aboriginal people in the justice system with a focus on raising community awareness and knowledge and providing support services in relation to motor drivers licensing issues and fines enforcement. The projects within the AJP receive funding through the Royalties for Regions program in WA, which I note has been significantly wound back under the new WA government.

Justice Procedure Offences – Breach of Community-based Sentences

Proposal 7–1

To reduce breaches of community-based sentences by Aboriginal and Torres Strait Islander peoples, state and territory governments should engage with peak Aboriginal and Torres Strait Islander organisations to identify gaps and build the infrastructure required for culturally appropriate community-based sentencing options and support services.

Response:

I support the proposal for building infrastructure to provide culturally appropriate community-based sentencing options and support services.

In contrast to the information provided in response to Question 4-4, some young people in my youth justice consultation described the stress of completing an order and expressed a need for more chances. This is consistent with the developmental stage of young people and their maturing capacity in regard to executive functioning.

“They just need to give people a second chance or a third chance. Everyone’s not perfect. I know I’m not perfect. You’re not going to complete the Order you know. It’s like if we just chucked them an Order. You know, bang! You’ve got an Order. You’ve got to report everyday...before they gave me two orders I had to ring up three times a week and I had to go in there three times a week. Like, I had to ring

them up and go straight into report every three days, I was thinking what the f***...it was too much you know, then they want you to do all these things, they expect you to do all on your own." 16 year-old male

"They need less pressure. It's hard enough when you're on an order then you're stressed and everything and think, 'oh no I'm gunna stuff up'." 18 year-old male

This highlights how critical it is that community-based orders are achievable for young people and offer opportunities for rehabilitation rather than disadvantaging them further. I therefore recommend that in the development of new or alternative community-based sentencing options and services that Aboriginal young people and their families are consulted and involved in the process.

Some of the community-based options described in Chapter 7 of the Discussion Paper could assist in addressing the above. Young people in my youth justice consultation also had many ideas about how to improve the support services available to them.

Suggestions to improve the existing system included a more youth-focused approach to working with young people.

"I'll make a rule like staff members must be professional, not fake professional, they must always like protect the kids no matter what. I'll properly train all my workers and that, and each week, or each month or each fortnight, I'll organise a big thing with all the high bosses like myself, and all...the lower guys and all the kids as well. We all come along and have like a big...party but not a proper party, you know? Dancing with the CEO there." 17 year-old male

Aboriginal young people in custody recommended more opportunities for culturally relevant education and rehabilitation.

"I would make Banksia different so like every kid that comes in probably gets more like cultural, like Aboriginal education." 16 year-old male

Young people also suggested alternatives to detention, particularly as a way to prevent recidivism.

"In a way, I do think that the system is still a bit unbalanced, unstable... they do get caught, they do get put on orders, and they do breach, which they do go to lockup, they come out and do the same thing over and over...there's not that much kids that do get into trouble and learn their lesson...Being locked up...is mainly a badder influence than being on the street and stealing and stuff, like us boys we have been locked up we have, like we seen everything." 18 year-old male

Alcohol

Question 8–1

Noting the link between alcohol abuse and offending, how might state and territory governments facilitate Aboriginal and Torres Strait Islander communities, that wish to do so, to:

(a) develop and implement local liquor accords with liquor retailers and other stakeholders that specifically seek to minimise harm to Aboriginal and Torres Strait Islander communities, for example through such things as minimum pricing, trading hours and range restriction;

(b) develop plans to prevent the sale of full strength alcohol within their communities, such as the plan implemented within the Fitzroy Crossing community?

Response: State and territory governments should provide guidance to communities on how to implement alcohol restrictions using the various mechanisms available, and support communities to gather the evidence required to determine harm and to challenge and restrict alcohol supply, including strengthening alcohol accords. Improved coordination between communities with alcohol restrictions is required to create consistency across regions and prevent or reduce people from one community travelling to another community to access alcohol. I support the analysis at 8.45 of the Discussion Paper which notes that liquor restrictions are a useful circuit breaker to address alcohol related harm and offending, but do not address the underlying causes of excessive drinking and addiction.

In 2016 my office sought the views of children and young people in the Fitzroy Valley on the use of alcohol in their communities to inform my advocacy work in monitoring the wellbeing of children and young people across WA. Excessive alcohol use has a significant impact on the health and wellbeing of children and young people including 'modelling of poor drinking behaviours, family arguments, injury, neglect, abuse and violence'.⁷ To address alcohol-related harm the Fitzroy Valley introduced a variety of strategies including restrictions of the sale and supply of alcohol. Even though the current liquor restrictions have been in place for almost nine years in the Fitzroy Valley, it is clear that the children and young people my office consulted spoke from personal experience about the impact of alcohol in their daily lives and expressed that life was much better without alcohol.

'When there is more grog in town I don't feel safe' – girl, 9 years

Children and young people spoke about their experiences of drunk people in their community and at home, and that when people were drunk they swore, fought, littered, and drove unsafely:

'I don't feel safe when I am in a car and the driver is drunk' – girl, 7 years

⁷ Laslett AM, Mugavin J, Jiang H, Manton E, Callinan S, MacLean S & Room R, 2015, *The hidden harm: Alcohol's impact on children and families*. Canberra: Foundation for Alcohol Research and Education.

'Drunk people fight and bust bottles' – girl, 11 years

'Walking around drinking and punching and fighting their wife' – girl 10 years

As part of the consultation children and young people were asked directly about the current restrictions - what they thought about them, whether they should be changed and how their lives would be affected if restrictions were changed to allow sale of mid-strength beer as takeaway. In general, they echoed community sentiment that not everyone agrees the restrictions should remain in place but the majority believe the restrictions are a good thing. Many said there would be more trouble in communities if the restrictions were lifted and that people were better off with the restrictions remaining in place.

'Families will be better off with no alcohol and drugs and better future for the children and have a job'

'Good – because it stopped most people from drinking'

'There will be more trouble in town and communities' (if the laws change) – girl, 13 years

'Living in an alcohol free community is happy' – girl, 10 years

'Alcohol free homes are safe!' – girl, 13 years (lives in a Section 152 alcohol restricted home)

The consultation showed that the children and young people have a clear understanding of how alcohol impacts the community and the benefits of reducing alcohol consumption, and provided ideas on how to address the issues:

'No alcohol in Fitzroy because there will be more violence more drink driving more abuse more break-ins. Also there will be more young mums drinking and more kids with alcohol syndrome. Even if the alcohol is lifted they will still go to Derby or Broome and bring back alcohol to sell because the alcohol cost too much in Fitzroy'.

Like the adults in their communities, not all children and young people agree on what should be done to target alcohol abuse in their communities, but the overwhelming majority agreed that there should not be any changes to the current restrictions on alcohol sales for the foreseeable future. Informed by these views, I submitted a strong objection (available at <https://www.ccyp.wa.gov.au/our-work/resources/alcohol/>) to the changes to alcohol licencing and noted that unless we can ensure that no further harm comes from changes to existing alcohol restrictions, the restrictions should remain as they are.

It is important that liquor control legislation prioritise harm minimisation over the interests of the liquor, tourism and hospitality industries. As higher rates of consumption are associated with high rates of alcohol-related harm, reducing the overall consumption rate of alcohol is critical. Minimising harm to Aboriginal

communities can be achieved by restricting the availability of alcohol through legislative strategies including:

- Secondary supply legislation – prohibiting the supply of alcohol to children and young people on private premises without parental consent and requiring the responsible supervision of young people consuming alcohol.
- Controlled purchase operations – enforcement of controlled purchase operations to support the monitoring and enforcement of existing laws prohibiting the sale of alcohol to young people
- Controlled outlet density – requires licensing authorities to consider outlet density and the cumulative impact of licenced premises when deciding licensing applications in the public interest.
- Minimum floor pricing – introducing minimum floor pricing legislation (a minimum price per standard drink of alcohol) to prevent the sale of cheap, discounted alcohol.

For further details on these and other strategies, please see my 'Submission to the Review of the Liquor Control Act 1988' (February 2013) on my website:
<https://www.ccyp.wa.gov.au/our-work/resources/alcohol/>.

Question 8–2

In what ways do banned drinkers registers or alcohol mandatory treatment programs affect alcohol-related offending within Aboriginal and Torres Strait Islander communities? What negative impacts, if any, flow from such programs?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Female Offenders

Question 9–1

What reforms to laws and legal frameworks are required to strengthen diversionary options and improve criminal justice processes for Aboriginal and Torres Strait Islander female defendants and offenders?

Response: There is a strong need for a range of diversionary programs tailored to the needs of young female offenders and those at high risk of offending. As young female offenders represent only a small proportion of young offenders they are often overlooked for dedicated programs and services, however their high vulnerability for harm and exploitation must be recognised and given due attention. As I described in my response to Proposal 5-2, young females who participated in my office's youth justice consultation identified the need for culturally appropriate programs and services to better support their mental health, wellbeing and education needs and their overall rehabilitation.

More could also be done to make legal services more accessible to young Aboriginal women by ensuring they are culturally secure, including being delivered by Aboriginal

people and organisations, being safe and confidential and providing access to interpreters where required.

Aboriginal Justice Agreements

Proposal 10–1

Where not currently operating, state and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to renew or develop Aboriginal Justice Agreements.

Response: I support the concept of state and territory governments working with peak Aboriginal organisations to establish what is relevant within their respective state / territory. I agree Aboriginal Justice Agreements can contribute to efforts to reduce the overrepresentation of Aboriginal people in the justice system by creating the infrastructure to facilitate collaborative, culturally appropriate and effective criminal justice approaches.

Question 10–1

Should the Commonwealth Government develop justice targets as part of the review of the Closing the Gap policy? If so, what should these targets encompass?

Response: I support the development of justice targets, particularly targets that aim to reduce Aboriginal youth detention rates and create safer communities. These should be developed in consultation with Aboriginal young people with current or prior experience in the youth justice system and with the service providers who work with these young people.

I also recommend state and territory governments work towards improved coordinated collection and use of data to support improvements in the youth justice system. I agree with the comments made by Amnesty International Australia on this issue:

“There are many inconsistencies and gaps between states and territories in collecting data on contact with the youth justice system. The inadequacy of this information is one of the barriers preventing policy makers from more effectively responding to the over-representation of Indigenous young people in detention.”⁸

Access to Justice Issues

Proposal 11–1

Where needed, state and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to establish interpreter services within the criminal justice system.

⁸ Amnesty International Australia 2015, *A brighter tomorrow: keeping Indigenous kids in the community and out of detention in Australia*. Amnesty International Australia, NSW.

Response: A lack of interpretive services accompanied by a lack of support through court proceedings undoubtedly contributes to the overrepresentation of Aboriginal people in the justice system. I therefore support the proposal for government to work with peak Aboriginal organisations to fund and establish more interpreter services within the criminal justice system, with a particular focus on access for people who live in regional and remote areas.

Question 11–1

What reforms to laws and legal frameworks are required to strengthen diversionary options and specialist sentencing courts for Aboriginal and Torres Strait Islander peoples?

Response: Mandatory sentencing laws are of serious concern to me particularly due to the disproportionate impact on Aboriginal young people. I do not support mandatory sentencing for young offenders in any form as these laws violate Australia's human rights obligations.⁹ I support giving judges and magistrates discretion in sentencing that provides them with the discretion to consider individual circumstances and other mitigating factors. Mandatory sentencing for young people shifts discretion from the courts to police and prosecutors. Further, mandatory sentencing affects the most marginalised communities, such as Aboriginal young people, disproportionately and has not been found to reduce crime.¹⁰ I recommend mandatory sentencing laws that apply to young people should be repealed and instead there should be much greater investment in culturally secure prevention, intervention and diversionary strategies and programs that target vulnerable children and young people with the support and involvement of their families and community.

Proposal 11–2

Where not already in place, state and territory governments should provide for limiting terms through special hearing processes in place of indefinite detention when a person is found unfit to stand trial.

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Question 11–2

In what ways can availability and access to Aboriginal and Torres Strait Islander legal services be increased?

Response: Increasing availability and access to Aboriginal legal services plays an important role in improving Aboriginal people's experience of and outcomes in the justice system, which can ultimately serve to reduce incarceration rates of Aboriginal

⁹ Article 37(b) of the CROC states: "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort for the shortest appropriate period of time"; Article 40(4) provides that punishment must be in proportion with the circumstances of the offence.

¹⁰ Victorian Sentencing Advisory Council (2011) Does Imprisonment Deter? A Review of the Evidence, April 2011, Melbourne, 15.

people. This is particularly so for Aboriginal young people who may often lack the support and advocacy of a responsible adult and be disempowered in their interactions with the justice system.

Ensuring Aboriginal legal services are youth-friendly can significantly improve accessibility for young people. This includes the services being: confidential; open at hours young people are available; staffed by people who are experienced working with youth, culturally competent and can develop trusting, respectful relationships with young people; located in a place that is safe and can be accessed easily by public transport; and information and resources provided in language that is appropriate for young people. I recommend young people are consulted and involved in the design of youth-friendly legal services so their views and ideas are incorporated to maximise the accessibility of such services.

Further to improving the youth-friendly operations of legal services, some other critical components to ensuring legal services are available and accessible to Aboriginal young people include: providing interpreter services so that Aboriginal people can communicate in their local language and with the use of sign language if required; providing more legal services in regional and remote areas; and increasing the number of Aboriginal people employed in legal services and correction facilities to support culturally secure practice.

As I have noted in previous sections, many young people who participated in my office's youth justice consultation commented on the importance of having respectful, trusting relationships with youth justice staff and of employing more Aboriginal people in the youth justice system to ensure young people's cultural safety.

Proposal 11–3

State and territory governments should introduce a statutory custody notification service that places a duty on police to contact the Aboriginal Legal Service, or equivalent service, immediately on detaining an Aboriginal and Torres Strait Islander person.

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Police Accountability

Question 12–1

How can police work better with Aboriginal and Torres Strait Islander communities to reduce family violence?

Response: In my office's youth justice consultation young people spoke about their relationships with justice professionals including police. Young people explained that if they were treated with respect by police, they were more likely to reciprocate positive behaviour and stay out of trouble.

"I find most cops are younger and more chilled back and more understanding you know? If they listen to you and they talk like proper, you know? If I know that they give me respect, so I show them respect back." 15 year-old female

Young people and family members predominantly described distrustful relationships with police and gave suggestions on how police could engage with young people and divert them from offending behaviour.

"They [police] should be helping young children and stuff. Like helping them stay out of trouble, speak to them about what's happening in their lives and stuff, not just picking them up, arresting them and stuff... Instead of sitting in the police station and saying nothing they should go out driving around in the car, checking if the kids are okay, speak to them and make them go back home early instead of just staying in town." 17 year-old male

Some young people had positive experiences with police and were supported to stay out of trouble with the support of youth crime intervention officers.

"[The youth crime intervention officer] is moorditj (good)...He just cares. He sees where we're coming from. He sees how hard it is. He sees how life can be. He has eyes to see where we are coming from, like family issues and what not. So he has helped us out. Doing everything yeah...When he was working in one of the police stations they wouldn't give me bail but he talked to the boss and said, 'give him bail, I know he will stay within his curfew' and they were like, 'no he won't, no he won't!' and I did it." 16 year-old male

These comments from young people highlight the important role police can play in diverting young people from the youth justice system and the positive outcomes possible when relationships between police and young people are respectful, trusting and genuinely supportive.

Question 12–2

How can police officers entering into a particular Aboriginal or Torres Strait Islander community gain a full understanding of, and be better equipped to respond to, the needs of that community?

Response: It is important for anyone entering into an Aboriginal community to first take the time to learn about and understand the community context, such as the local history, politics, culture and practices.

Having early discussions with, and seeking advice from, local Aboriginal Elders, community leaders and families, and Aboriginal staff members and local Aboriginal organisations is an important step. This can provide police with a good starting point from which to develop relationships with the Aboriginal community and can help to identify the existing strengths, capabilities and resources in the community. In particular, it is useful to be aware of potential family and community dynamics that may exist, to avoid misunderstandings or unintentionally causing offence.

Taking the time to build relationships with people in the community more broadly, to foster mutual respect, trust and reciprocal exchange, is essential. These networks will enhance engagement, improve uptake access to the programs or services developed, and help to manage any issues that arise.

In order to respond to the needs of the community, police must create opportunities for community members, including both young people and adults, to have a say about the issues that concern them and to share their views and ideas on how issues can be addressed. These views must be listened and responded to, and the subsequent strategies and programs must be designed and delivered collaboratively, in a genuine partnership between police and the community.

Question 12–3

Is there value in police publicly reporting annually on their engagement strategies, programs and outcomes with Aboriginal and Torres Strait Islander communities that are designed to prevent offending behaviours?

Response: I support the above proposal. It is important there is transparency and accountability across all layers of the criminal justice system, particular as it relates to young people given the inherent imbalance of power. The justice system, including the activity of police, should be open to scrutiny with appropriate oversight mechanisms in place.

Question 12–4

Should police that are undertaking programs aimed at reducing offending behaviours in Aboriginal and Torres Strait Islander communities be required to: document programs; undertake systems and outcomes evaluations; and put succession planning in place to ensure continuity of the programs?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Question 12–5

Should police be encouraged to enter into Reconciliation Action Plans with Reconciliation Australia, where they have not already done so?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Question 12–6

Should police be required to resource and support Aboriginal and Torres Strait Islander employment strategies, where not already in place?

Response: This question is beyond the expertise of the WA Commissioner for Children and Young People's office to provide comment.

Justice Reinvestment

Question 13–1

What laws or legal frameworks, if any, are required to facilitate justice reinvestment initiatives for Aboriginal and Torres Strait Islander peoples?

Response: What is clear from the work of my office over the last decade is that programs that divert young people away from the justice system and address underlying causes of offending are crucial to addressing the high incarceration rate of Aboriginal young people. Such approaches must be culturally secure, place-based and involve meaningful community engagement so that communities can more effectively own and address the offending and underlying causes.

The young people who participated in my office's youth justice consultation expressed their desire to overcome the challenges they were experiencing and their hopes for the future including being engaged in a constructive pathway, finishing school and getting a job.

"I want a life for myself and I want a job when I get out of [Banksia Hill] cos I'm sick of it. Like, this life we live is not sustainable, if you get what I mean. Like, we can't keep going the way we go. You can't keep on doing crime, cos this is the way we end up, in here...we're all young still and got time. I have a lot of time." 17 year-old female

"I might get a job and that...I might go back to school when I get out and finish year 12...I just wanna be a good dad to my baby and get a job as a diesel mechanic. I don't wanna come back here [in Banksia Hill] that's for sure!" 16 year-old male

Justice reinvestment programs can provide the opportunity for young people to realise these aspirations. Such programs must be continually monitored and evaluated to ensure they are reducing contact with the justice system and recidivism, and achieving the positive outcomes young people wish for.

For more information on the work of my office in youth justice including a policy brief, an issues paper and submissions to relevant committees and inquiries please visit www.cyp.wa.gov.au/out-work/resources/youth-justice.

Yours sincerely



COLIN PETTIT
Commissioner for Children and Young People

24 August 2017