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**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON ABORIGINAL AND TORRES
STRAIT ISLANDER AFFAIRS

**Reference: Involvement of Indigenous juveniles and young adults in the criminal
justice system**

THURSDAY, 11 FEBRUARY 2010

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**HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS**

Thursday, 11 February 2010

Members: Mr Debus (*Chair*), Mr Laming (*Deputy Chair*), Mr Andrews, Ms Campbell, Ms Rea, Mr Kelvin Thomson, Mr Trevor, Mr Turnour and Mrs Vale

Members in attendance: Ms Campbell, Mr Debus, Mr Laming, Ms Rea, Mr Turnour and Mrs Vale

Terms of reference for the inquiry:

To inquire into and report on:

High levels of involvement of Indigenous juveniles and young adults in the criminal justice system. With a particular focus on prevention and early intervention, the Committee will identify:

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement;
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;
- Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;
- The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;
- Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;
- The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;
- The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

WITNESSES

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Committee met at 12.43 pm**RICHARDS, Dr Kelly May, Research Analyst, Australian Institute of Criminology****TOMISON, Dr Adam, Director, Australian Institute of Criminology**

CHAIR (Mr Debus)—I declare open this public hearing of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system. I acknowledge the Ngunawal and Ngambri people, the traditional custodians of the land, and also the Aboriginal and Torres Strait Islander people who currently reside in this area.

Welcome. I apologise to both of you that there are so few people here, but one of the significant ironies in our present circumstance is that the Prime Minister has just made his annual statement on closing the gap, which means that some of our colleagues from the Labor side are in the chamber and all of our colleagues from the Liberal side are there, because the Leader of the Opposition is responding. But, if we do not start now, you will not get to give your evidence.

These meetings are formal proceedings of the parliament, so everything that is said should of course be factual and honest. It would be considered a serious matter if any of us should mislead the committee. I invite witnesses to make comments that will assist us in our inquiry. The hearing is open to the public and a transcript of what is said will be placed on the committee's website. You have already submitted a written paper, which we do not need to go through line by line, but it is a good basis on which we might conduct a bit of a dialogue. Would you like to make an opening statement?

Dr Tomison—I would like to thank the committee for allowing us to come here and present today. The Australian Institute of Criminology is Australia's knowledge centre on crime and justice. Not surprisingly perhaps, we have focused our evidence, our submission, around providing data on young Indigenous people's contact with the criminal justice system. That was certainly a focus of the submission that we sent in.

The AIC currently runs two juvenile justice monitoring programs. I do not intend to go through the nature of those programs line by line, Chair, but I will just describe them briefly for the record. The first of the two programs we run is 'Juveniles in detention', a program that has been going for almost 30 years. It looks at how young people have contact with the corrections system. The second involves a monitoring report we have undertaken called *Juveniles' contact with the criminal justice system*. It is a broader report and it looks at Indigenous and non-Indigenous juvenile contact with police, courts and corrections, so it gives us much more of a picture of how young people are engaging around the criminal justice system. This report was first released in September 2009, and we expect it will be the basis for an ongoing monitoring program.

I thought it might be helpful to give a little bit of information about our professional backgrounds before I hand over to Dr Richards to give some more comments about the nature of the data we have. I am a child protection and family violence specialist. Prior to my appointment at the institute in July 2009, I spent five years in the Northern Territory government running the

child protection system, and I was involved in writing a lot of the *Little children are sacred* report. If I can answer questions using my professional background as well, that might assist you.

Dr Richards—I am a criminal justice researcher. I have been at the AIC for two years. Prior to that, I worked for a number of universities, doing crime and justice research in the academic sector. My current area of focus is around juveniles and young people in the criminal justice system. I am responsible for those two monitoring programs that Dr Tomison just talked about.

I want to make a few comments around some of the issues that we have with getting data on young people, particularly with regard to Indigenous status. Essentially I want to answer the question around why we do not know some of the drivers for overrepresentation. We know that overrepresentation of Aboriginal young people is incredibly entrenched. We know, for example, that Aboriginal juveniles are 28 times more likely than non-Aboriginal juveniles to be detained. It might seem odd that we do not know the reasons behind that, so I just want to talk through some of the data gaps that perhaps would help us to better answer that question.

One of those issues is around how the police in each jurisdiction collect and record data on Indigenous status. Some of the jurisdictions ask young people whether they identify as being Indigenous, and that is how they record those data. In other jurisdictions, it is based on a police assessment of the young person's appearance. In those jurisdictions, we are not really talking about Indigenous status; we are talking about Aboriginal appearance, whatever that might mean. So there is a disjuncture between the jurisdictions—and there are obviously a number of issues around making a visual assessment of somebody's Indigenous background.

There is also an issue across the board with data on juvenile justice about unknown Indigenous status. When data come to us, they are broken down into young people being either Indigenous or non-Indigenous, and then there is this unknown category. That is important because recent research has shown that that unknown proportion can heavily influence the outcomes that we are reporting on. The rates of over-representation that we report are likely to be underestimates. The research has shown that a lot of the people in that unknown category are likely to be Indigenous. Although the rates of over-representation that we report on seem extremely high, it is highly possible that they are underestimates of the real rate of over-representation.

Another point I would like to make is that most of the jurisdictions collect data on alleged juvenile offenders as opposed to distinct alleged juvenile offenders. We get this data for the number of juveniles who come into contact with the police, but we do not know whether that represents an actual number of young people or a much smaller number of young people who are repeatedly coming into contact with the criminal justice system, if that makes sense.

CHAIR—That is significant; that is really important.

Dr Richards—It is really important. Presumably, there is a smaller number of young people who comprise a core group of repeat offenders. And I think that is important in terms of resource allocation and targeting the appropriate groups of young people. That is a real limitation that we face with the data. Another limitation that we face is that data on the children's courts which the Australian Bureau of Statistics are responsible for rarely give us that Indigenous/non-Indigenous

breakdown. We essentially lose Indigenous status as we trace young people through the criminal justice system. We can get a breakdown at the police level—so we know the proportion of Indigenous young people coming into contact with the police and the proportion who are non-Indigenous—but when we get to court some of that data is missing. It is difficult for us to see the sorts of offences that Indigenous versus non-Indigenous are being sentenced for in court. Offence seriousness is really important. It would be good to be able to look at those data and say: ‘Are we comparing apples with apples? Are Indigenous and non-Indigenous young people committing the same sorts of offences or is there in fact a problem of bias?’—for example. That is something else we do not know.

Finally, there is a lack of data on whether young people are arrested by the police or reported to the police. We have those data for South Australia. I think that could provide an insight into the use of police discretion, which is something that we imagine is part of the problem of over-representation, but we simply do not have those data to make a clear call about that. That is a summary of the issues.

CHAIR—Within the important limitations that you have described, from your statistics what can you tell us about patterns of recidivism? Can you even begin to venture a suggestion about why it appears to be that the proportion of people who are of Indigenous background within the corrections and juvenile justice systems has been increasing over the last decade? The first issue for us to confront as you no doubt hardly need to be told is that we had the famous Royal Commission into Aboriginal Deaths in Custody and many important things were decided and many apparently appropriate recommendations were made. Large parts of Australian bureaucracies devoted themselves to fulfilling those recommendations and in some cases they failed but a big effort was put in. When it is all over, things are apparently worse. I am not sure they are, but they are apparently worse. Any insight that you can from your perspective give us into that paradox is obviously massively important to us.

Dr Tomison—The NT experience is quite a good one around the importance of community and government awareness of problems and investment in solutions. What I mean by that is essentially there has been surveillance of a problem and investment of police resources to actually address crime. As part of the Northern Territory emergency response one of the key measures was to have police stationed 24 hours a day in particular communities that prior to that had had a police officer visiting on rounds roughly every week or so. My understanding is that one of the things that has resulted from that change is that communities are reporting a lot more crime and the police are able to lay charges and to engage with offenders and also victims because they are present in a community. That would explain some of the difference essentially with the ability to go out there, surveil a community, work with them to identify criminal behaviour and make a response to it. That would be part of the rural solution at any rate.

CHAIR—That would not be a relevant explanation in the southern states.

Dr Tomison—No.

CHAIR—But rates are increasing there too apparently.

Dr Tomison—Yes. In my view there are probably a range of factors that are involved. Obviously criminal behaviour, definitions and legislative requirements change over time. There

may have been some increase in certain types of crime or new legislation that has come up which has produced new offences which has led to some of that increase. It may also be that some crimes are literally being committed more often and we are addressing that. One of the arguments that we have made previously in other fora has been that in communities that are suffering from a whole range of disadvantages you are going to get a higher crime rate. One of the things we were interested in looking at would be to compare, for example, disadvantaged Indigenous communities with disadvantaged other Australian communities to see whether it is really about culture and race or whether it is about remoteness or a range of dysfunctions that are affecting criminal behaviour. I think that is one of the issues we need to explore as part of looking at that solution.

Mr TURNOUR—I represent Leichhardt which includes Cairns, Cape York and the Torres Strait. One of the issues that is regularly brought to me as a main reason for a higher proportion of Indigenous people ending up in incarceration is because of the minor offences whether they are to do with licensing and not paying fines, particularly in terms of the license and the vehicle operation points of view. The Queensland government has made some changes in the number of hours that people have to do when learning to drive. Do you have any comments about the increased risk that that might have? Do you have any statistics about whether we can improve the situation in that area and hopefully keep some people out of jail that will not need to go to jail because of the whole issue around licensing?

Dr Tomison—I can make one quick comment around the nature of sanctions that are imposed as well. It is one of the aspects that fits in with the situation you are describing in the sense that there is no use imposing a significant fine on someone when they cannot pay it. There has been research done in some Indigenous communities where the problem is around making the sanction that is going to be put forward because of a criminal behaviour actually achievable by that person. If you leave aside going to jail or probation, what else can be used instead of, for example, a monetary fine to provide that sanction but not disadvantage the individual such that they end up in jail because they cannot meet the criteria, if you like.

Dr Richards—In relation to that question, that is a problem but, I suspect, in relation more to adults than to young people. Our data show that Indigenous young people tend not to be overrepresented among certain types of offences—things like some types of drug offences and traffic offences. While I recognise that it is an issue, I do not know that it is—

Mr TURNOUR—I have had it said to me anecdotally that a large number of people in Lotus Glen prison in the tablelands are there because they have had traffic offences. The Queensland government has a program now to teach people how to drive, but if we actually provided it in Aboriginal communities in the Cape and the Torres Strait Islander then we would have more chance of keeping people out of prison for traffic offences. If you do not have any data, that is fine, but we might ask for it to be taken on notice, Chair, and the secretariat might follow it up. It is an anecdotal thing that, because I am a backbencher, people come and talk to me about.

CHAIR—It is anecdotal everywhere—the procedures that lead, I think in a number of states, to virtually mandatory disqualification of a driver's licence after a certain number of offences, which are nevertheless inevitably committed by some people in very remote communities without means.

I understand that your research suggests that on the one hand cautioning and conferencing can reduce the contact of Indigenous kids with the criminal justice system but on the other hand some more elaborate diversionary measures seem to have worked better for non-Indigenous people than for Indigenous people. Can you elaborate on that? Is it maybe that there are fewer diversionary measures available in more remote places?

Dr Richards—That is certainly the suggestion that has been made. There has been a body of research that the AIC has put out on diversionary options for young people in Queensland, New South Wales and another jurisdiction. That research looked at the differences between Indigenous and non-Indigenous young people and it controlled for a range of factors. The researchers applied a statistical analysis that said: ‘If we control for offending history and offence type, which are the sorts of things that are likely to see a young person progress through the criminal justice system more quickly, then is there a real difference between Aboriginal and non-Aboriginal young people?’ That research has consistently shown that there is a difference, which suggests that either there is an access to justice issue and that, as you mentioned, perhaps Aboriginal young people are just not being afforded the opportunity to go to these types of processes or there is an issue around discretion or bias.

Dr Tomison—If I could add to that, when we put this report out, in September last year, a couple of police members contacted us to indicate they felt we were not doing their work justice in the sense that they worked very hard to keep young Aboriginal people out of the system. I think one thing about which we do not have much information—I think it is a fair point—is what informal work is done by police prior to using the formal system to take action because of offending. Young Aboriginal people are certainly committing offences at a younger age in the formal system and they are committing more offences. Perhaps one of the issues around not using diversionary responses is that by the time you go to the formal system a number of other measures have been tried informally. It is almost like you have reached a particular threshold and therefore when we go to the formal system we will not start with diversion, we do not think that is going to work; we will put you in the formal system. Or, as Kelly suggested, the offence is more severe and really requires access to the formal system. But I think access to diversion is a real problem. In a lot of remote areas there really is no diversionary program available.

CHAIR—It is very important for us to be able to understand whether there are significant differences in rates of offending and levels of recidivism from region to region. There is a certain commonsense proposition that says that there is a substantial absence of diversionary alternatives in more remote areas and a certain commonsense observation can be made that there are an awful lot of boys from remote places in jails around the coast of Australia. I just wondered whether you have some more thoughts on that, however closely they may or may not be backed by statistical analysis.

Dr Richards—Another argument that gets put forward—and Adam would probably be better placed to comment on this—is that Aboriginal young people are, firstly, encouraged to decline to be diverted, which young people can do. Then they are encouraged, for a variety of reasons, to plead guilty. There is also an issue about parents. In some jurisdictions parents can decline on behalf of their children. They can decline to go to diversion. So in these jurisdictions where you have restorative justice processes, which usually involve parents, parents can say, ‘Actually, we are not going to do that for a number of reasons,’ and the young person therefore goes to court. There is not great data on that, but the limited data that we have had a look at seemed to show

that this occurs more often in Indigenous families. That might be because Indigenous parents do not want to participate in some type of youth justice conferencing process where they could be put on trial, as they might see it. It could be an access thing. They might not want to travel to the nearest big town to participate in that type of process. Adam, do you want to add to that?

Dr Tomison—One of the things the institute is exploring at the moment—and it is early days—is geospatial analysis of crimes to see where crime is occurring and the range of crimes occurring across the country. There are issues with the quality of data around that. For example, I think at one point Alice Springs was seen as the murder capital of the country, partly because of the high rate per capita but also because for an offence committed 900 kilometres away Alice Springs was where the court sat and the offender would come into Alice Springs. So you have to take a lot of care around geographical analysis of where crime is occurring. In the little work that I am aware of that we have done to date there are issues, again, around areas of high disadvantage being identified as having higher crime rates as well.

There are also some transference or displacement effects. One study done in the western suburbs of Melbourne, for example, and in Melbourne looking at CBD based crime indicated that a lot of the offenders were not living in the CBD; they were coming in from outer suburbs, committing crimes and then going home where they may or may not have been committing crimes as well. We are intent on exploring what we can do around particular crime types to try to get that breakdown of where a crime is occurring and some of the underlying factors of why that might be happening. It really is early days for us. There is a bit of interest in the process. We are starting a project with Western Australian data sometime soon but we have not actually got anything available at this point. That will be looking at violent crime.

CHAIR—You have mentioned an organisation called CRYPAR—Coordinated Response to Young People at Risk—which is an initiative in Queensland. Can you elaborate a little on what you see to be the significance of that project.

Dr Richards—We included that as an example of a best-practice program for a couple of reasons. One of those is that it is collaborative in nature, and there is a body of evidence that clearly shows that collaborative policing responses work better. This is very much an example of police working with the community. The other key reason is that this program is committed to providing responses quickly. That is really, really important for young people.

If a young person who commits an offence goes to court in three months or six months, which is very often the case, it is an eternity in a young person's life. So there is not therefore in their mind a clear and timely response to their offending. It would be better—and the evidence clearly shows—to provide a response to a young person very quickly, so that in their mind there is a clear link between what they have done wrong and the consequence. Even if that consequence is quite minor—an apology to the victim, for example—those two things should be clearly linked. Those are a couple of the major reasons we listed that program.

Dr Tomison—It is a really good example of the need for multifaceted intervention to prevent crime or other social ills. This is my 20 years of prevention experience speaking. Most social ills are caused by a range of factors, some structural like unemployment or attitudes to violence and others more localised like you cannot access services, the services do not meet your needs or you have a language problem. Then there are obviously individual and family factors—the level of

violence in the family, drug and alcohol abuse, mental health problems et cetera. It is well recognised that prevention is important and while police clearly have to make a response to crime when it occurs, it is much easier to try to divert people into a healthy, positive outlook rather than into a criminal behaviour pathway. This program for me represents an approach where a young person has gone himself into a bit of trouble; rather than ignoring that we have taken the appropriate sanctions. They are also referring that family, as well as the child, to appropriate support, to try to intervene, to address the underlying problems which may have led that young person there. Maybe they are not going to school, there is a learning difficulty, a mental illness in the family or a drug and alcohol abuse problem, or an unemployment problem. Some of that may be addressed and hopefully then reduce the risk of that young person coming back into contact.

For the majority of young people who come into contact with the criminal justice system it is only infrequent—once or twice and they are gone again. It is the ones who stay in for whom you are trying to reduce their recidivism rates and their involvement with the criminal justice system, and their transition into the stringent sanctions. It is a really good program around working holistically across government or between governments into the NGO sector. Let us create something beyond the police's ability where we try to look at those underlying problems and then, at the same time, we can address the inappropriate criminal behaviour.

CHAIR—I have always noticed the circumstance in which we hear of a good program that really works—and this one is somewhere in Queensland—then the good program disappears. Maybe there is a good program somewhere else.

Dr Tomison—This is one of the most frustrating elements of working in the intervention fields, again across a whole range of areas. The bigger programs are often evidence based to the extent that they actually have a very good quality, experimental evaluation done. That costs a lot of money and there are not that many of them done in Australia or overseas, for that matter. So when you hear about things like the Elmira home visiting program which showed after 15 years all these great benefits for the child and for the family, we think governments should latch onto those and do them in some sense. In most places, the local agency on the ground will attempt to do something. They often will not have the resources to research it properly but they will do the best they can. Some of those work really well and they might have a bit of information which shows that these young people are coming back into contact with the criminal justice system and their families; they are doing better. They may be able to promote that within their own network, if they can.

Often the funding rounds, which can be quite limited, mean that to be refunded they may have to change the nature of the program or to address some other particular concern. Often it morphs into something else and the lessons are not necessarily learnt. So that nice little program is put on the shelf or is put to the history. Somewhere else across the other side of the country someone does the same thing without knowing about this and not learning those lessons. So the communication of evidence is a really important element of improving the overall prevention of crime and other social ills across the country. Organisations like ours and the Institute of Family Studies do a lot of work to promote that knowledge.

At the end of the day, though, programs often have limited budgets with limited evaluation moneys. So you have circumstances where something is put in place, it works for a bit if they are

lucky, and then people move on to something else because that is how you get more funding. New funding rounds have new criteria. It can be quite debilitating to learn the lessons and take those lessons forward in a preventative sense and to draw up a more comprehensive strategy.

Having COAG strategies and whole-of-government approaches is really important so that you have something to sit those little things in—to have the best-practice principles that people should be aspiring to use in their programs. I think that is a really positive development.

But, again, through experience over 20 years and having done national reports looking at prevention programs across the country, I have learnt that the tendency is still towards the short term. The best programs may get bigger and survive but mostly they do not; they disappear and something similar will happen somewhere else. To be fair to programs and to NGOs and other agencies, often it is a matter of tailoring a particular approach—say, a parenting program—to a particular need. A program might be tailored to a particular community, like an Aboriginal community or a non-English speaking background community or it might be tailored to a community that might have high unemployment but with good access to the environment, or whatever it might be. So there is a bit of tailoring needed. You cannot say that one size fits all.

Reinforcing the need for agencies to take a best-practice approach which uses core principles and tries to incorporate those into programs is a very important element of any crime prevention but also of prevention of any social ill. That was a bit of a lecture, sorry!

CHAIR—Thank you very much for it.

Mrs VALE—It was interesting to hear what you say. Do you have a reason; do you understand why some of these really good programs that really do work are abandoned? Is it just lack of funding or is it the lack of some champion within an NGO or a government department to carry it forward?

Dr Tomison—Unfortunately, sometimes it comes down to the lack of a champion for the idea and also to the failure of agencies, because they are so busy doing the work, to actually document their work effectively—and therefore, if you like, promote it. That can be a real skill for some agencies and the bigger ones—often it is the bigger ones—can do that. If they get good media—through a local MP, a local sports figure or someone who can push it—that will often help get them over the line. There are a range of factors as to why agencies get funding. It really does help to have good quality evidence behind you, and often you will see, these days, partnerships between bigger NGOs in particular and academic agencies, to try to do the evaluation work because they want it for their academic purpose and also to inform the agency as to how they are going. So they can say, ‘Look, I’ve got a good quality evaluation from the University of Queensland.’ It helps having that there but the projects do not have a large amount of money to put towards evaluation. They rightly want to focus on their program delivery. So it is a real challenge.

Mrs VALE—Before I came to this place I was a lawyer and I actually did juvenile justice law. One of the things we started up at Sutherland local court was a community aid panel for first offenders, because people generally do not go out and start with a serious violent crime. They usually begin with the broken window scenario. We had a program with two people from the community plus a police officer, and a lawyer was present with the young people. The judge

would suspend the sentence. The person would come and plead guilty but would be sent towards the community panel. They would discuss the issue with the members of the community. Their parents could be involved if they wanted to. The young people were asked to do some work within the community—even, maybe, doing to lawns at the local nursing home or something. Many of the young people actually went and helped out at the local police youth citizens club and helped with classes.

However, what actually happened was that they would come back and bring their yellow sheet to go before the court for sentencing and the magistrate would not give them a criminal record. They were, of course, released and there was no bond or anything else other than that. It seemed to work exceptionally well. According to the records that we had at the local court the recidivism rate was about three of four per cent of those people. That did not cost anything because it was all done on a voluntary basis. Often the community representatives were teachers and sometimes they were Rotarians or mothers or whatever. Do you think something like that would work in Indigenous communities, where the community representatives were members of the local community?

We found that the most important thing was giving the young person the opportunity to think about what they did and then come up with understanding the consequences of their actions. It seems to me that not too many of us are born with a sense of consequence. It is part of the growing experience. As we grow up we learn that if we do A and do B it will equal C. From your experience, do you think there would be any value in having something like that, by which the Indigenous community could send representatives to such a panel with a local solicitor representing the boy or the girl, and with a local policeman so that it is not just an afternoon tea party?

Incidentally, this system, which did not cost the government anything, was eventually pulled because the state government came in with a new conferencing system which was a little bit more sophisticated. But this community aid panel for first offenders was very grassroots. I would like to hear your thoughts on that. In your submission some of the studies that you cite show that Indigenous juveniles are less likely to be diverted. Is that because there is not enough local input with the juvenile, and is there any conferencing? I am concerned to hear from Kelly that parents may be reluctant to actually attend conferencing. Conferencing is supposed to be very friendly. It is a concern if the parents do not particularly want to get involved at that level. I would like your thoughts on having something very local and very grassroots.

Dr Tomison—We talked a little bit before about the problems of access to some diversion programs. Often they are set up in the urban environments, and even there you can have problems with access. So that is one issue to consider. The idea that you are proposing is a really good one. There are attempts already to put those sorts of models in place in different ways across the country. It also fits in nicely with the specialist courts programs, at a more senior level obviously. That is more about involving community in sentencing approaches, really. What you are suggesting is prior to that, and I agree with the idea. Most Aboriginal communities that I have been into—and most communities of any sort that I have been into, for that matter—are very keen to have a say in what happens with their young people. They want to be involved and to have a local aspect where community meaning can be put onto these sorts of criminal matters.

Mrs VALE—Part of the request for the young person to make a commitment to the community could be even to learn some of the traditional law or to participate in some ritual or ceremony. I have actually heard from Indigenous communities that the hardest thing is to try and get their young people to be involved in the traditions.

Dr Tomison—In the Northern Territory I was involved in a number of these conferences, including one in which I was the victim—so I have some understanding! Often the punishment is quite a constructive thing. It is more about engaging with community rather than punishing, as such.

Dr Richards—Mrs Vale, what you have described would work and is a very good idea. I have a couple of points on the restorative justice conferencing stuff that is now legislated in every jurisdiction. When those sorts of programs were introduced, all of the hype around the programs was about, ‘These will be very appropriate for Indigenous young people.’ That was a little bit misguided. I think the assumption was, because some of these processes had been appropriate for indigenous people in New Zealand and Canada, that they would therefore be inappropriate for Indigenous people in Australia. That is misguided. Another issue was that there was not enough consultation and involvement of Indigenous people in the early days. You have to get buy-in in Indigenous communities, so that was another mistake. The idea is good, but some of the implementation could have been better. Another huge issue is the involvement of police. In some jurisdictions police are almost always involved in restorative justice conferencing for young people; in other jurisdictions they are not. Given the history of poor relations between Aboriginal people and the police, that is an issue. There has been a lot of debate about it, and it is a huge issue. There is very likely to be less buy-in by Indigenous communities where the police are seen to be the central figure in those restorative processes.

Mrs VALE—It probably also gets down to personalities and relationships as they exist at any given location.

Dr Richards—Sure, particularly in small communities. I have a couple of other points. One of them is about the fact that some of these programs were very grassroots and were then jumped on, legislated and got backing—which is terrific. But they were perhaps also co-opted a little and became a routine sort of rubber-stamp approach rather than—

Mrs VALE—Was that because the community did not have the ownership that it had before?

Dr Richards—Yes, exactly. So they lost some of their grassroots, organic sort of localised nature. Initially restorative processes were supposed to be very open and one restorative conference would be very different from the next depending on the young person, the offence and a whole bunch of factors. I think to some extent they have turned into more of a cookie cutter, in and out type of approach. Again, I think the idea is great; but some of the implementation could use a bit more thought.

Going back to the issue of parents, there is evidence to suggest, particularly from the UK, that, although these processes are not necessarily designed to put parents on trial, parents can very much feel like they are on trial during the restorative process. So if the young person is 13 or in that younger age bracket then in the restorative circle or in the restorative conference there can be blame apportioned to the parent. What was your child doing out at night with other youths?

The process should act in a very supportive way to help parents to be better parents to their children often, and often those parents really want to have more control over their children. Often the parents are struggling economically. They might be single parents. It should be a forum where the parents can put their hands up and say, 'I'm really struggling here'. There is evidence to suggest that those processes have had really positive impacts and that the parents have been able to get assistance and get support to be a better parent. There is also evidence that it can go the other way and become very much a blaming session for the parent, which obviously does not help the parent to be a better parent and does not help the young person. This issue around parents is very rarely talked about. I think it needs to be fleshed out. I think there need to be some clear guidelines put into place that say, 'This is a forum in which we are talking about parenting,' and if it is then it should say, 'These are the sort of things we need to do to make sure that this is a supportive, constructive process rather than simply being about blaming the parent.'

CHAIR—I would like to go back to the last observation you made in your conclusion, which was one which supports a proposition put to me by a lecturer in criminology a long time ago. He said there was only one certain way to reduce crime—that is, to allow people to grow older. Is that in fact, at a statistical level, a partial explanation of the rate of offending amongst the Indigenous community—that the Indigenous community is so young?

Dr Richards—I imagine so. That is why I put that point in.

CHAIR—I suppose from our point of view the fact there is an apparent increase in the rate of offending is not the only thing that we are worried about; from the point of view of the wider community it is a rather crucial thing that we need to attempt to explain.

Dr Richards—It is very clearly established that 15 to 24 years of age is the peak period of offending. That has been the same across generations and the same across countries. So that it is one of the few concrete facts we have as criminologists to work with. That is the peak period in which people offend. Certainly the Indigenous population is on average younger than the non-Indigenous population. So, yes, I put that point in to raise that as a potential partial explanation. But I am not a statistician. Perhaps Alan has more to add around that.

Dr Tomison—I am just going to say—and I am not singling out the Indigenous population on this matter—if people are starting to offend at a younger age too, misdemeanours or whatever, you could take the argument that if 15 to 24 is the peak offending age for the population as a whole then the history of offending will go for a longer period of time potentially; in other words, you are starting at 12 rather than 15. Again, if people are essentially coming out of the criminal behaviour they are committing mainly by the age of 24, that is a longer period of time for people to be engaged in criminal offences. I am extrapolating. I do not have any data to prove that. We do know that younger people generally offend at a younger age and the population is younger as a whole. So it is a factor to be taken into account.

Mr LAMING—With respect, that is one of the things that are of fascinating intellectual value but almost no practical value whatsoever. We are still left with ratios of offending that are 10 or 20 times. Even if you do a control for age, it just brings it down by a few. It is still out of the ballpark.

CHAIR—That is true, but, in the same way as criminologists know at least that young men between the ages of 15 and 24 are vastly more likely to commit crime than anyone else, it does begin to draw attention to the fact that a rational policy response would be to particularly focus on that group, doesn't it?

Dr Tomison—In those younger age groups the men and women are also more likely to be the victims of crime.

Mr LAMING—Flip it around and say there is just less of the other age groups in Indigenous Australia for a range of reasons, so it does not make it any bigger or smaller a problem; they are just dying earlier from other causes and that itself is distorting the figures. You are still left with the cohort who are high risk—10 or 20 times the risk—and you have to direct the resources there.

CHAIR—That is where the resources ought to be in terms of crime prevention and diversion to the system.

Mr LAMING—They are just falling off the perch in their 50s for a whole host of other health reasons. It does not change the 15 to 24 problem.

Dr Tomison—The AIC would certainly say that early intervention is the best form of prevention. Whether young people are offending at 12 or 15, the best chance we have to prevent that occurring is to work on the structural and other factors that influence the committing of crimes. Leaving aside the 15 to 24 group as the most common group for committing crimes just in general—and all of those are not major crimes; let us face it, they are property offences and other things which they do not go on to repeat—and particular looking at crime in disadvantaged areas what you want to do as much as possible is prevent the crime from occurring by addressing those underlying factors. That is not easy, and I am not suggesting it is—it is a big job—

CHAIR—People draw a pyramid, don't they?

Dr Tomison—Absolutely.

CHAIR—The pre-offending rung is the lowest, but at that stage of pre-offending, minor offending until ultimately even imprisonment there are systems of diversion and rehabilitation that may be applied, so you are at least saying that it is rational for government to focus a lot of resources on the lowest rungs of that pyramid?

Dr Tomison—Absolutely. That does not mean that one agency is responsible for that, because it is a whole-of-government or a whole-of-community approach for that matter—the community has to be engaged. The very famous *Pathways to prevention* report from the National Crime Prevention group made the same argument. Essentially you want to put a lot of your investment at the bottom of the pyramid where you are looking at a whole range of health and wellbeing, education and employment elements of society and that will produce a range of benefits. One of the offshoots is less crime. The other one is less violence and another one might be better mental health.

These things interrelate in terms of the outcomes. The middle level you are essentially looking at the risk, the vulnerable populations, and working more intensively with them. And then you have the hard end responding to crime—the police services and our court systems—and how we can stop the recidivism. This is typically the approach that is advocated by most across a range of disciplines and areas, whether it be child protection, young people's health, the education sector and the criminal sector, which has a lot resonance across those fields.

Mr LAMING—Has there been significant research on the much maligned suspended sentences? Taking the chair's argument there: if you can delay an offence by one year or two years then age is on your side and you are reducing the odds of recidivism. Is there any research done that shows that, all things controlled for and held constant, simply by implementing a good behaviour bond or a suspended sentence is in some way effective simply because you are delaying potentially by a small amount the likelihood of reoffending next year? Has there ever been any evidence to support that? They are very unpopular in the general community.

Dr Richards—They are not widely used. I have to confess that I am not much of an expert, although we do have an expert on suspended sentences in the office, so we could certainly—

Mr LAMING—Good behaviour bonds, suspended sentences and probation—all of them are creeping and becoming a popular fallback for magistrates. Victoria is already moving in the direction of looking at policies to restrict the options for magistrates to use those options.

Dr Tomison—There was a recent study by, I think, the NSW Bureau of Crime Statistics and Research, which indicated, I believe, that there was not any additional value in actually incarcerating individuals versus suspending the sentence or diverting them out of the criminal justice system in that way. That said—and a number of commentators made this point at the time—some individuals are committing crimes, the most serious of crimes, whereby they have to be in jail. So no-one was suggesting that every individual male, female, adult or young person should be out.

Mr LAMING—It would exclude them from the study, but it is still not randomised, is it?

Dr Tomison—No.

Mr LAMING—So that is your problem. It is just two cohorts.

Mrs VALE—The community panel for first offenders that I spoke about, which operated at Sutherland Local Court, operated for about 10 years. It operated under suspended sentences. The magistrate would suspend the sentence until the person had the conference, had done the community commitment and come back. It offered the magistrates an alternative sentence and an alternative mechanism that they did not otherwise have. I understand that the magistrates are trying to get it back again, even though there are still the conferences now.

CHAIR—What happens now is that there is a Commonwealth program—certainly in local courts in New South Wales and I am almost certain that it is also in other places—called MERIT, the Magistrates Early Referral Into Treatment program. There, the magistrate may either suspend a sentence or grant bail.

Mrs VALE—Is this just for drug offences?

CHAIR—Yes, and the conditions are around an offender fulfilling an obligation that the court gives them for rehabilitation or what have you.

Mrs VALE—So the suspended sentence does have some mechanism—

CHAIR—I think we should ask if there are any evaluations of that particular program, because, at an everyday level, the magistrates really like it.

Mrs VALE—They do.

CHAIR—They really like it, but it is not available in remote areas; it is only available in metropolitan areas.

Mrs VALE—It does give them some hands-on and it also keeps it within the community. That is what I think the magistrates liked at Sutherland Local Court—that it was very much in the community. That might have an application to Indigenous remote communities.

Dr Richards—In Victoria they have what they call ‘deferral of sentencing’. I think we are talking about two separate things here. We are talking about a ‘suspended sentence’, which is a sentence where—

Mrs VALE—You still have to come back to court after a time.

Dr Richards—Correct. Whereas a ‘deferral of sentencing’ is something that occurs in Victoria with juveniles. In all the other jurisdictions youth justice conferencing is a police diversionary measure. So the police and/or the courts can divert a young person into a restorative process. In Victoria that does not happen. The police have no capacity whatsoever to divert a young person to a restorative conference. Only the court has that capacity. So that means that, when a young person is up in front of the court, the magistrate can defer sentencing. That is not handing out a suspended sentence; that is saying, ‘We are putting sentencing on hold while you participate in this restorative process,’ which sounds very much like a community panel.

Mrs VALE—Yes. I think it is just a different use of the word.

Dr Richards—Absolutely. The accusation has been made that, where the police can divert young people into a restorative process, they divert young people whom they might otherwise only have cautioned. We call that a ‘net-widening process’. It actually just draws more people into the system. In Victoria, because the young person has to be before the court before this can occur, that problem of net widening essentially does not exist, so it is being used at the slightly harder end—

Mrs VALE—That was the case at Sutherland too. It was only the court that could suspend the sentence. Only the court could ask the child to go to the conference. It was exactly the same thing.

Dr Richards—It appears to be operating very effectively.

Dr Tomison—We will go back and check if we can find some evaluation work on the Sutherland program that you are describing. It is the sort of program on which you would have liked to see an evaluation years ago.

Mrs VALE—Yes. It is a shame that it does not exist anymore. It did operate for 10 years, and I think they closed down only about five or six years ago. I understand that the magistrates want to bring it back again because it was very hands-on for the community. The community was very much involved and it did not cost anything.

CHAIR—That is good. We are very grateful for the time that you have given us. Before we close, is there anything that crosses your minds that you wish to say?

Dr Richards—One thing I will very quickly draw your attention to, because you mentioned recidivism a number of times, is that recidivism is surprisingly difficult to measure. It is very difficult to measure in a comparable way across the jurisdictions in Australia. The AIC is currently involved in a national research project to develop national counting rules that will allow us to more effectively measure recidivism and to break that down by Indigenous status. So we hope that in the future we will have better data for you on that.

CHAIR—You are working on that project, are you?

Dr Richards—That is correct.

CHAIR—That is significant.

Dr Tomison—That is probably all we need to say, thank you.

Dr Richards—We would like to table some documents for you as well, if that is appropriate.

CHAIR—Yes, thank you both very much.

Resolved (on motion by **Mrs Vale**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 1.41 pm