



**Australian Government**  
**Australian Institute of  
Health and Welfare**

*Authoritative information and statistics  
to promote better health and wellbeing*

Committee Secretary  
Senate Finance and Public Administration Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

### **Access to legal assistance services**

Dear Sir/Madam

The Australian Institute of Health and Welfare (AIHW) welcomes the opportunity to make a submission to the Senate Finance and Public Administration References Committee's inquiry into access to legal assistance services, with particular reference to the Aboriginal and Torres Strait Islander experience of law enforcement and justice services. This submission highlights information available from AIHW that may be of relevance to this inquiry, and is therefore mostly focussed on data for Aboriginal and Torres Strait Islander young people. Data on Indigenous and non-Indigenous adults in the justice system are available from the Australian Bureau of Statistics' National Prisoner Census. AIHW information on adults in the justice system is limited to the Prisoner Health collection, which is not the focus of this inquiry.

The AIHW is a major national agency set up by the Australian Government in 1987 as an independent corporate Commonwealth entity within the Health portfolio. Our mission is to provide authoritative information and statistics to promote better health and wellbeing. We provide timely, reliable and relevant information and statistics on hospitals and other health services, aged care, child care, services for people with disabilities, housing assistance, youth justice and other community services.

We collect data and manage national data collections in these areas, producing over 140 public reports each year. Our work is frequently referenced by the media. We also provide information to other government bodies and cross-jurisdictional councils, to external researchers and also directly back to data providers. We report in formats that suit their purposes and allow them to place their service provision in a wider context.

We also develop, maintain and promote data standards to ensure that data collected are nationally consistent. In all these activities we enable governments and the community to make better informed decisions to improve the health and wellbeing of Australians.

### **The Juvenile Justice National Minimum Data Set**

The Juvenile Justice National Minimum Data Set (JJ NMDS) is a national data collection administered by the AIHW. The JJ NMDS contains person-level information on children and young people in Australia who were supervised by state and territory youth justice agencies because they committed or allegedly committed an offence. It includes data on young people who were supervised when they were unsentenced – that is, when awaiting the outcome of their legal matter or sentencing – or who were sentenced to a period of supervision by a court.



The JJ NMDS contains demographic information on young people under supervision and service episode information relating to their supervision. It includes all the supervised legal arrangements and orders that youth justice agencies administer (both community-based and detention orders) and all periods of detention in youth justice detention centres. It contains information about each young person's date of birth, sex, and Indigenous status.

Geographical information collected includes the postcode, suburb/locality and state of the person's last known address for each order and detention period. It does not include information about unsupervised orders or access to legal or other services. More information about the data collected under the JJ NMDS is available at

<http://www.aihw.gov.au/youth-justice/jj-nmds-background>.

Each year, state and territory government departments responsible for youth justice supply data for the JJ NMDS to the AIHW under a memorandum of understanding between the Australasian Juvenile Justice Administrators (AJJA) and the AIHW.

JJ NMDS data are available from 2000–01, although data availability varies among the states and territories. It should be noted that both Western Australia and the Northern Territory have not contributed to the JJ NMDS since 2007–08, although Western Australia has recently committed to the provision of JJ NMDS data in future collections. In 2013–14, the AIHW included non-standard data supplied by Western Australia and the Northern Territory in annual reporting, where possible.

The quality of data in the JJ NMDS is good and the levels of missing data are very low. Less than 7% of all young people in the JJ NMDS since 2000–01 have an unknown Indigenous status, and similar proportions of records in each of the order (7%) and detention (6%) files have unknown or missing information for the postcode and suburb of the young person's usual residence (AIHW 2015). In 2013–14, just under 5% of all young people under supervision during the year had an unknown Indigenous status. Among the states and territories, this ranged from less than 1% in Victoria, Western Australia and South Australia, to 13% in New South Wales. For all other variables in the JJ NMDS, the proportion of missing data is 1% or less.

In 2011, an AIHW review of Indigenous data quality in community services data collections noted that in the JJ NMDS, there were variations among the states and territories in the use of the Australian Bureau of Statistics standard for collecting and recording Indigenous status data. However, some jurisdictions had recently made improvements to data collection forms and information systems (AIHW 2012a).

The AIHW publishes the report *Youth justice in Australia* each year, which provides a comprehensive summary of both youth justice community-based supervision and detention. In addition, the annual report *Youth detention population* gives an in-depth analysis of recent trends in detention. These annual reports include analysis of the numbers, rates, trends and issues relating to Aboriginal and Torres Strait Islander young people. Occasional thematic bulletins such as *Indigenous young people in the juvenile justice system 2010–11* also focus on specific topics in youth justice supervision.

Information from the JJ NMDS may also be enhanced through data linkage which can be a cost-effective way of improving or developing new information. Some linkage projects with the JJ NMDS data have been undertaken, allowing for analysis of young people who access multiple community services, see for example *Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice* (AIHW 2012b).

In addition to the JJ NMDS national and jurisdictional data sets, which contain data on service-provision programs and may be suitable for data linkage include child care, education, homelessness, housing, health services, and disability services. The AIHW is



currently working on a project to link the JJ NMDS with the Child Protection NMDS, in order to analyse the experiences of individuals involved in both sectors. However, more opportunities exist, and more work is needed in order to realise the full benefits of data linkage, whilst enhancing statistical information about the use of justice services.

### **Aboriginal and Torres Strait Islander young people under youth justice supervision**

Aboriginal and Torres Strait Islander young people have a long history of over-representation in both the youth and adult justice systems in Australia (first identified by Johnston 1991).

The AIHW bulletin *Indigenous young people in the juvenile justice system: 2010–11* examines the numbers and characteristics of Indigenous young people in the youth justice system and the types and amount of supervision they experience (AIHW 2012c). It includes a summary of the findings of recent research into the factors influencing the over-representation of Indigenous young people in the youth and adult justice systems. However, research in this area is limited and substantial gaps remain.

The JJ NMDS provides accurate and up-to-date information about the experiences of young people under youth justice supervision. Indigenous young people are substantially over-represented in supervision, and this over-representation is greatest in detention. Despite accounting for only about 6% of young people aged 10–17 in Australia, close to half (45%) of young people aged 10–17 under youth justice supervision on an average day in 2013–14 were Indigenous (AIHW 2015). In detention, this proportion increased to 58%.

The rate of Indigenous young people aged 10–17 under supervision on an average day in 2013–14 was 189 per 10,000 Indigenous young people, compared with 13 per 10,000 for non-Indigenous young people. Indigenous young people aged 10–17 were therefore about 15 times as likely as non-Indigenous young people to be under supervision on an average day. This level of Indigenous over-representation (as measured by the rate ratio) was higher in detention (24 times as likely) than in community-based supervision (14 times).

Data from the JJ NMDS supports research suggesting that the pathways of Indigenous and non-Indigenous young people through the youth justice system differ. A recent AIHW study found that Indigenous young people had pathways through supervision that were longer and more complex, varied and serious (that is, containing detention) than their non-Indigenous counterparts (AIHW 2014). Indigenous young people experienced a greater number of supervision periods, on average, when aged 10–17 than non-Indigenous young people (6.8 compared with 4.1) and spent more time under supervision, in total (median 458 days compared with 274 days). They were more likely to experience pathways that contained multiple types of supervision, and twice as likely to have experienced sentenced detention.

### **Programs and services for Indigenous young people under supervision**

The AIHW collates and publishes information provided by each state and territory on the services and programs available to young people under youth justice supervision. State and territory youth justice agencies provide a range of services and programs to young people under youth justice supervision to help reduce their risk of re-offending. These include education and training programs, assistance in returning to school, help with finding employment or accommodation, and programs focused on specific offending behaviours or issues such as drug and alcohol use, violence and aggressive behaviour, and relationships (AIHW 2012c). Programs may be available in the community or within a detention centre and some are designed specifically for Indigenous young people under youth justice supervision.

More information about the programs and services available to young people under youth justice supervision in each state and territory, including programs specifically for Indigenous young people, is available from the AIHW website at <<http://www.aihw.gov.au/youth-justice/states-territories/>>.

### **Evidence based research from the Closing the Gap Clearinghouse**

The Closing the Gap Clearinghouse supported policy-makers and service providers by collecting, analysing and synthesising research and evaluation evidence on 'what works' to close the gap in Indigenous disadvantage. It operated for 5 years, from June 2009 to June 2014. The online collections include:

- over 60 published Issues papers, Resource sheets and annual summary papers;
- summaries of over 780 research and evaluations that are the key pieces of evidence presented in issues papers and resource sheets;
- a directory of over 1,200 government research and evaluations (published and underway)  
[http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Research\\_and\\_Evaluation/research\\_directory\\_2002-14.pdf](http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Research_and_Evaluation/research_directory_2002-14.pdf)
- over 5,600 general research and evaluation items  
<http://www.aihw.gov.au/closingthegap/collections/>

Three papers from the Clearinghouse are highlighted for relevance to the inquiry. These deal with issues around community safety, diversion from the criminal justice system, and youth crime prevention.

*Programs to improve interpersonal safety in Indigenous communities: evidence and issues – Closing the Gap Clearinghouse Issues paper No. 4 (released July 2013)*

A wide variety of programs and interventions have attempted to improve aspects of community safety, however the diversity of these programs, and the limited data documenting their outcomes, makes it difficult to determine which are effective. An evidence-based approach is essential if the long-term aim of the Closing the Gap initiative is to be achieved. This requires:

- the development of evaluation methods assessing program impacts and long-term outcomes
- integration of information about program outcomes with information about effective program delivery and community knowledge.

*Diverting Indigenous offenders from the criminal justice system - Closing the Gap Clearinghouse Resource sheet No. 24 (released 6 December 2013)*

Despite their over-representation in the juvenile and criminal justice systems, access to and use of diversion programs by Indigenous Australians is low. This is particularly the case for mainstream programs. Barriers to program access and completion include:

- strict eligibility criteria (including the requirement of no previous offending)
- preparedness to admit guilt
- inadequate understanding of the legal system and its diversionary processes
- difficulty accessing programs, due to remoteness, limited legal support or cultural issues
- a tendency for programs to focus on illicit drugs, when alcohol abuse is the major underlying problem for Indigenous offenders
- lack of culturally appropriate programs
- the need for separation from family and community.



The evidence-base regarding the effectiveness of diversionary programs is sketchy. Most programs have not been evaluated, and many current programs do not have an inbuilt evaluation strategy. It is also difficult to establish the effectiveness of mainstream programs for Indigenous Australians when many do not record Indigenous status.

Adequate time and robust data are required in order to complete an adequate assessment of program effectiveness. Integral to this system should be data about the Indigenous access to and use of various programs. A national surveillance and monitoring system would support this. The Australian Government are currently undertaking a range of evaluation projects for Indigenous law and justice programs, which will assist in identifying best practice approaches.

<http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2013/ctgc-rs24.pdf>

*Law and justice: prevention and early intervention programs for Indigenous youth (released 28 July 2014)*

Despite the implementation of a range of policies and programs aimed at reducing and preventing youth crime, Indigenous young people remain significantly over-represented in the Australian juvenile criminal justice system.

Programs that are considered to be effective, and to achieve some if not all of their intended outcomes, share a number of common features and best practice factors that contribute to their success. There are, however, gaps in the evidence base, some of which arise from numerous challenges in the evaluation phase, particularly in relation to the lack of solid and reliable data on the topic.

An international meta-analysis of prevention programs found the strongest evidence for family-based programs lay in reducing delinquency and antisocial behaviour in children. There is a strong evidence base for the efficacy of behavioural parent training for reducing adolescent behaviour problems. The evidence is also strong that these interventions can be built into a public health approach to improving parenting capacity.

[http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Our\\_publications/2014/ctg-rs34.pdf](http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Our_publications/2014/ctg-rs34.pdf)

Yours sincerely

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## References

AIHW (Australian Institute of Health and Welfare) 2012a. Aboriginal and Torres Strait Islander identification in community services data collections: an updated data quality report. Cat. no. AIHW 80. Canberra: AIHW.

AIHW 2012b. Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice. Data linkage series no. 13. Cat. no. CSI 13. Canberra: AIHW.

AIHW 2012c. Indigenous young people in the juvenile justice system: 2010-11. Bulletin no. 109. Cat. no. JUV 11. Canberra: AIHW.

AIHW 2014. Pathways through youth justice supervision. Juvenile justice series 15. Cat. no. JUV 40. Canberra: AIHW.

AIHW 2015. Youth justice in Australia 2013-14. Bulletin no. 127. Cat. no. AUS 188. Canberra: AIHW.

Closing the Gap Clearinghouse (AIHW & AIFS) 2013. Diverting Indigenous offenders from the criminal justice system. Produced for the Closing the Gap Clearinghouse. Resource sheet no. 24. Canberra: Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies.

Day A, Francisco A & Jones R 2013. Programs to improve interpersonal safety in Indigenous communities: evidence and issues. Issues paper no. 4. Produced for the Closing the Gap Clearinghouse. AIHW Cat. no. AIHW 98. Canberra: Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies.

Higgins D and Davis K 2014. Law and justice: prevention and early intervention programs for Indigenous youth. Resource sheet no. 34. Produced by the Closing the Gap Clearinghouse. Canberra: Australian Institute of Health and Welfare & Melbourne: Australian Institute of Family Studies.

Johnston E 1991. Royal Commission into Aboriginal Deaths in Custody National Report Volumes 1-5. Canberra: AGPS.