



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

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, 13 MAY 2010

CANBERRA

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

Thursday, 13 May 2010

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

Members in attendance: Mr Debus, Mr Laming, Ms Rea, Mr Trevor and Mr Turnour

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.

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Committee met at 12.23 pm

FERGUSON, Mr Geoffrey, Private capacity

FERNANDO, Ms Serene, Private capacity

HAINES, Miss Alice, Private capacity

CHAIR (Mr Debus)—Welcome. 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 Ngamberri people, traditional custodians of this land, and pay respects to their elders past, present and future. I note that these meetings are formal proceedings of the parliament so everything that is said should be factual and honest. It can be considered a serious matter to attempt to mislead the committee. I invite witnesses to make comments that will assist our inquiry. The hearing is open to the public and a transcript of what is said will be placed on the committee's website. I welcome the three of you. Perhaps you could make an opening statement which would allow us to discuss your proposals.

Mr Ferguson—I want to talk a bit about my background with juvenile justice and incarceration issues. I will also talk about cross-cultural relations generally. In the early nineties, I was involved with a group called Doonooch in New South Wales. We looked at what was needed to break the cycle of alcohol related arrests. A lot of this came as a consequence of the Royal Commission into Aboriginal Deaths in Custody. We saw that we needed culturally based healing to match any advance in political rights that we might get. We had to have some substance and some healing in our own communities. We also needed healing between the Aboriginal community and the non-Aboriginal community at a local level. So we undertook a whole range of programs that we started.

I know Bob because he was involved in the legislative work in New South Wales to back it up in terms of introducing circumstancing in Nowra. It was very disappointing in the Howard era to see that demolished, the hurt that came from the reasoning behind that and how that has left everyone feeling about the success of the program. We had the most successful program in Australia in dropping alcohol related arrests and there was a lot of healing in the community in Nowra. Now we are watching it ebb away again because those services no longer exist.

We are looking at how we might use that experience to help now. We have come together to try to give you some opportunity to involve us and use our experience and our knowledge. One of the things that need to happen is that relationships between the community and the justice system require us to have knowledge of each other. It is about using all the resources that are there and moving forward. We do not want to reinvent the wheel. We do not have quick-fix solutions, but we do have a solid understanding of why problems exist and how they are impacting on us and the kids. It is not just about custodial sentencing; it is also about youth suicide that cannot be the alternative and so on and so forth. We are here to move forward in a positive spirit.

CHAIR—Would anyone else like to make a statement before we discuss it?

Miss Haines—I primarily come from a performing arts background, basically 20 years of working in the industry. Through performing arts I have done workshops and I have been teaching Indigenous and non-Indigenous youth in detention centres and through going into women's jails and running workshops, primarily for Indigenous women, but we have left the programs open for non-Indigenous women as well. I find theme style workshops are very successful because they encourage integration and not segregation. That is where I come from—including the whole community even though we have Indigenous issues. I do believe that segregation is not going to help solve that sort of thing. I am pretty much about working with all problem people.

I used to run a studio in Perth, Western Australia. I had it on my heart for a number of years to start handing back some of my skills to the community, into the youth, because I have had quite a bit of training over the years. I went through the goldfields about four years ago—Kalgoorlie in Western Australia. When I hit Kalgoorlie I had job offers everywhere—'Please stay and help us.' The community was in high need for support. So I offered to teach at a couple of schools. I chose an Indigenous school in Coolgardie—38 kilometres out of Kalgoorlie. This school is a private school. It is also a boarding school where they bring in Indigenous children from all over Western Australia—Broome, Kununurra, Fitzroy Crossing and other mostly remote areas. This is where my interest in humanity, human rights and Indigenous children began. I secured a job as a teacher. I was completely shocked at the state of our Indigenous children in Australia, but primarily Western Australia at that time. They were in such bad shape. After working in jails and detention centres I thought I knew it all but I got slapped in the face basically in my first week. These kids were not incarcerated yet but they were high-risk candidates. They were in worse shape than the kids I had been working with in detention centres.

Over a three-year period of working with these children I watched the community deteriorate over the last few years to the point where we are seeing Indigenous youth suiciding. We lost a young girl last week, at the age of 16. She suicided. She was one of my students. She was also my niece. There were seven deaths in six months amongst the Indigenous youth from our school of 120. We have lost seven kids already. I basically did a cry for help on Facebook, and a press release on some of the issues, after speaking with community members. This is where Serene and Geoff and I connected. They put their hands up and said, 'Look, we want to help. How can we help? This is a human rights issue. We want to contribute.' That is basically how we connected—through Facebook and through me doing up a press release.

CHAIR—Really. The story about Coolgardie is amongst the worst we have heard. But, bearing in mind that we have got about half an hour, tell me in whatever way seems easiest for the three of you what you think are the important elements of decent rehabilitation and diversion programs.

Miss Haines—Prevention before it gets too late. The kids are left alone or unattended or whatever and then all of a sudden we are looking at them once they are breaking the law and committing crimes or what have you. By that stage it is almost too late. We can see the children at high risk behaviour before they have offended. Their behaviour might be not attending school or being disruptive at school and being suspended or expelled. They are the kids that are going to be incarcerated in time. We have to look at the warning signals and move in at that stage. We are going to save them having a record, but also save a lot of money in the justice system. We need to move in earlier rather than later.

When I was working in the women's jail at Bandyup Prison in Perth, some of the women—both Indigenous and non-Indigenous—just broke my heart. It was like, 'Oh, my gosh.' They were broken-hearted women, just really broken spirited, and all they needed was a little help earlier on—just encouragement. Their crimes were just driving without a licence or alcohol related, because they were not coping so they would just drink-drive or something. It was really ridiculous behaviour, not actually serious crimes. I guess there are some badly behaved people who do need to go through the system, but I would say probably a good 90 per cent of the people who are getting incarcerated are not serious and there could be intervention at an earlier stage.

Mr Ferguson—I think that a culturally based start was really important as, in terms of identity, it is really hard for Aboriginal kids to believe in the opportunities—'Oh yeah, you can become a ballet dancer.' All our kids are getting caught up with this—'Be a pop star.' There is one opportunity in a thousand. Even the secretariat has allocated \$50 million to renovating boarding schools. That is good for the one per cent who are going to get there, but we are talking about the other 99 per cent of kids, who are not going to get into that elite group. Those are the sorts of issues that we really need to look at in terms of overall policy of government too. It is: what are you doing? Why are you putting it all into one per cent? What about the other 99 per cent, because they are the ones who are going to jail?

I know that with Doonooch one of the really important things was this cultural stuff. We had the Doonooch dancers come out of that. What we had was groups of kids fighting police or coming into conflict with police in town. That had been going on for a hundred years. It was just a hangover, almost, on both sides. When we were sober, clear and had a cultural base, the young men started dancing for their identity. They danced the Olympics open. That turned out to be a stronger introduction to manhood than fighting with cops in the main street of Nowra. It is that elevation of—

CHAIR—They were the ones that were dancing when Peter Garrett was singing?

Mr Ferguson—No, they opened. They broke ground. They were the first on the ground. They opened for the whole opening ceremony for New South Wales. They were as close as we could get to an opening dance on behalf of that country. We welcomed and broke open the ground for everybody. But these guys have danced in Edinburgh; they have danced in New York. They go home and are an example to the community. They did Chicka Dixon's funeral. They have high status now. They have led a whole generation of young men in Nowra out of that; those young men have an aspiration to be like them rather than to be like the fighting men that did time in jail in the past, which is a lost cause now. It is a nothing cause. That was a really important part of it. What Alice is saying, too, is that it is about getting back to that point.

One of things with these kids is that they get caught in circles of depression, but they are not sitting with the old women who can pull them out of that. Where is the cultural centre? There are empty buildings in Coolgardie. There is money available. Where is the coordination? That is one of the things that are really missing. It is not that the resources are not there. It is that no-one is pulling it together. It is not that there is not goodwill on both sides, but no-one is standing there and actually bringing those troublesome police. One of the things we did in Nowra was make the boys play football with the police—touch football on Friday afternoons. Guess what: there was no trouble on Friday nights anymore because, when they met in the street, they had already had it out in that cultured sense—that cultured competition. These are the sorts of things—

Mr LAMING—I just ask because I have not been to Nowra: what is the difference between a mainstream kid who has had the same upbringing and an Aboriginal kid in Nowra? I can see that, in an Indigenous remote Australian setting, there are these Indigenous overlays that are highly complex and dominate the picture but, as you move more into towns and cities, I am trying to see the difference between a young Indigenous youth and a non-Indigenous youth and whether the same solution would work for both of them.

Mr Ferguson—My feeling is that solutions that work for Aboriginal kids will work for everybody. I believe we could shut down the juvenile justice system; we would take them for half the money. We would sort out all the problems, all the problem kids. We have seen this in schools: where it is good for Aboriginal kids, it is good for all kids—because that is the Aboriginal way too; that is our cultural way. You never remove Aboriginal genetic memory from Aboriginal people, regardless of how long they live in a city.

CHAIR—Can you just explain that to us a bit more. I do not doubt you—

Mr Ferguson—Look at what we had to face in the early nineties. We had the Royal Commission into Aboriginal Deaths in Custody. We had cameras in the jails. The bashings, the assaults, had stopped in the cells because of the cameras. We had meetings with the police, we had football problems. We had all these things happening. But the reason boys wanted to fight the police in the streets was that they were proud of resisting because there were people being bashed. They were bashing cops back. It was like a cycle of gang warfare. It might look to you like one gang is legitimate and one is not, but from an Aboriginal point of view it is not like that. This is what is happening in Coolgardie. The police are still hunting Aboriginal people, kids, and putting them in cages. It is barbaric.

Miss Haines—What is happening too is that, after the police train their cadets, when the cadets leave the academy they throw them out into the country towns to get experience; they do not put them in the city. It should be the other way around, because in country towns you need a lot of expertise. I think there is a fear factor between the non-Indigenous community and the Indigenous community. For example, the white police do not know how to communicate with the Indigenous community, so out of fear they act abruptly, and then the Indigenous community kicks back, so you have this back and forth reaction. There is no collaboration happening; there is separation.

What I think would help, basically, is if, when police cadets first come to the country towns, the elders or the community took them out bush and they introduced themselves, got to know the community and shared information. The community could let them know who are the problem families or the problem children to keep an eye on, and, if that kid acts up, to please let certain families members know or maybe child protection, DOCS or whoever—because sometimes these children who are acting out need to be apprehended by DOCS or child protection, not jailed, because they are neglected or whatever. Some of that information can come from the community to the police, and they can work together to solve problems. But what is happening at the moment is that the police are coming in and they do not know how to react to the community. So the scenario in Coolgardie looks like one of racist cops locking up 12-year-old kids, but what is happening is that they just do not know how to cope; they have not been trained in the area of higher-needs, higher-risk children and they freak out. They burn out and then they get aggressive, and there is a chain reaction—and it is just not helping.

Mr Ferguson—Yes. That is true. It can be as simple as this: a 12-year-old boy is on the streets, a policeman comes up and they look each other in the eye. The Aboriginal boy thinks, ‘I am a proud Aboriginal boy.’ They are taught to be proud of who they are. The policeman looks at him and thinks, ‘You should be afraid of me.’ There is a different power thing happening. Without either of them knowing it, they are upsetting each other, because they look at each other in different ways and that can cause conflict. We need to get those people together. We need to get people communicating, we really do. What Alice is saying about integration and what Serene is doing with community triangulation—we need to look at things from different angles.

Mr LAMING—What stops the justice group getting that started in the local community?

Mr Ferguson—It is just that the problems are so overwhelming. What makes a person stay sober when everybody is drinking?

CHAIR—There may not be one in Coolgardie.

Mr Ferguson—There is a circle court in Kalgoorlie.

Miss Haines—I guess it is similar to circle sentencing, but my nanna, Nanna Elsie Walker, sits down with the magistrate, and so that is the Aboriginal court. All the heat goes onto one elder, and she is overwhelmed. She is expected to have all the solutions without the training, without the education, just because she knows people in the community.

There was an article in the *Melbourne Age*, I think about three or four weeks ago, about the Indigenous courts in Kalgoorlie and how they do not work. I rang her the other night and inquired, in relation to today, about what she thought about why it did not work. She does not have the vocabulary to express what the problems are, but she said that half the fellas that she sees should not be there in the courts in the first place because they are alcoholics and they need to be rehabilitated. If there was a rehabilitation centre maybe they would not see them in the court in the first place. They are actually sick; they need help.

Mr Ferguson—Another thing is that it is very difficult to go back to the Aboriginal people and say: ‘How do we deal with someone who has been locked up or caught in the system when that person is a 15-year-old girl who has been dragged off the street for no reason, tasered, charged and strip-searched?’ Those stories are horrific, absolutely unforgivable behaviour by police. On that day the girl reported a sexual assault to police in Coolgardie, as she would have been encouraged to do by her mother and the community. Those same police that she reported the assault to picked her up off the street that night, drove her to Kalgoorlie and strip-searched her in a cell.

Miss Haines—And tasered her.

Mr Ferguson—It is unforgivable. If it happened to my daughter I seriously do not know what I would do. That girl wanted to join the police service. She has been robbed of her career, robbed of everything all because she would not get into a police car.

Miss Haines—She panicked after she was tasered and freaked out. So she has been charged with obstructing police and assault. She was actually just walking home from the shops when

she was apprehended by the police. She told the police that she was going home but there was the town curfew, which apparently is not legal—it is not in a by-law and it has not been placed in the legislation or anything. She basically was tasered when she attempted to walk away and then she panicked. Then she was hit with an assault charge after she was tasered. There are a lot of issues that we need to look at too. Taserings should not be happening to any youth at all; it is dangerous. Close range taserings—

CHAIR—Roughly when did these events happen?

Miss Haines—This happened in the last few months. I did press releases and we have copies here. This is going through the courts at the moment.

Mr Ferguson—If the police find a kid on the street they should be going to the community. We are an identified people; they should be coming to us if there is a problem, not taking them to a cell in Kalgoorlie. Why is a 12-year-old child removed from parental care when the community—

CHAIR—To put it bluntly this is the kind of stuff that we very rarely hear about when we go around the country. I do not doubt a word you say. There is a range of ways in which government should respond and relate to communities. Can we talk about Nowra, somewhere where there is a different kind of issue. I am very interested to know what you think about the Circle Court. Alice, you talked about the evidence that has emerged about Circle courts and Koori courts in Victoria not really reducing rates of recidivism. I am very interested in your reaction to that news and what you think we should do in response to it.

Mr Ferguson—The principle of restorative justice is about balance. It is a little like the whole victim thing and confrontation. What I saw in Canada was that the stronger the traditional structure and the family structure, the better the circumstance in court works. It is harder sometimes if kids come before a group of people, where they do not necessarily have that. The more we can, we should respect and support traditional structure and family structure. How does the government support young women to sit with older women and weave? It sounds silly, and it will be funded by Arts, but it is not an arts project. It is a health project; it is about mental health because that is where the girls get talked out of suicide without them knowing it while they are weaving baskets.

It is the same with the dancers. When we were successful as a health project we had 10 workers in the community making it work. As soon as we were healthy we were told we were not going to be funded by Health anymore, we were going to be funded by Arts—and instead of having an \$800,000 budget we got a \$25,000 budget. What does that mean? We lost it.

CHAIR—All the time there is a kind of tension between the kinds of programs advocated by some people which will be put in place by a department of something or other, with all sorts of neat administrative categories and programs written down—which I think will sometimes do some good—and, on the other side, the kind of program that you are implicitly talking about all the time which is actually Aboriginal controlled and directed and does not talk about rehabilitation but talks about healing.

Mr Ferguson—Yes.

Miss Haines—Yes.

CHAIR—These need not be regarded as just exclusive categories, but there is often a kind of confrontation between those ideas. I am interested in your observations about them and why it is, as I presume, that you say that healing programs are more important than anything else.

Miss Haines—Yes. It is a holistic approach too. Take the scenario of a 12-year-old boy who breaks the law and ends up in court, then he gets slapped on the wrist and told, ‘Go home and don’t do it again.’ If that little boy is acting out from trauma or an unsettled background, of course he is going to act out again. Sometimes kids get away from the home to be safer. So there needs to be someone overseeing the situation and asking, ‘Is this boy likely to offend again because of the home environment?’ There needs to be an overview of the whole situation, not just the crime but their safety and home environment. I am not supporting removal of children or anything like that, but we have to be real here: some of our children are not safe at home, whether Aboriginal or white. I think it is too narrow to just look at the crime all the time and then sentencing for the crime. Children have the right to be protected as well, and sometimes they need to be placed with another carer within the family or what have you. So I think situations with our youth need to be overviewed and looked at holistically. That is what I would support.

CHAIR—Do you happen to know about what is called the Family Responsibilities Commission that is operating now in North Queensland, on Cape York and the Gulf of Carpentaria?

Mr Ferguson—A little bit. We have heard some things about it.

Miss Haines—It has come under a lot of criticism from a lot of Indigenous people.

CHAIR—This is not the Northern Territory intervention.

Miss Haines—A lot of Indigenous people perceive that as steamrolling off the Northern Territory intervention and it is not very well supported by community.

Mr Ferguson—One of the tensions that you were talking about, Bob, and the accountability issues when you come to an Aboriginal run organisation like this, is to do with the depth of cultural understanding. We would have to put all you fellows through law for you to really understand what we are doing, and I do not know whether you would want to drop out of your parliamentary careers for seven years.

Mr LAMING—Most of us are lawyers.

Mr Ferguson—No, I am talking about Aboriginal law and an understanding of Aboriginal law.

Mr LAMING—Okay.

Mr Ferguson—You need to take seven years out to focus on it. It is harder than law. I have been to science at Sydney university, and it is harder to do Aboriginal law. In spite of the fact

that people think Aboriginal law is dead, it is not. Those dancers are dancing properly and in a sober space because of law and because of their understanding of themselves as men. What happened was that bureaucrats wanted to understand everything and have it all codified. It is very hard to codify this because it is family too. It is not something that can be taken away and given to the Salvation Army to be funded there. That is what the government wanted to happen because there were problems with accountability. There were senior people in Doonooch who were unwilling to be financially accountable, and part of that is to do with control and part of it is not. But we want to solve those problems and I think we have moved past that.

You have to remember that when we started Doonooch we were doing it in the garage of a rented house with our own money. We would not be allowed to do that anymore. You are not allowed to detox people in a garage in a funded organisation—you would have occupational health and safety problems, and if someone died you would be sued. Times have changed. We are available as an organisation now. We want to help. We want to come in and we want to accept these contracts. We want to advance our own lives and look after our own children. We cannot do this in busted cars on the dole. We cannot just do it on social networking sites. We will, but we would like some support and we would like to integrate staff. We would like to go to the Goldfields and spend three months there. We would like to follow it up, and in five years time we can fix this. Alice has great connections in the Western Australian government for funding. We are capable of doing this. Serene is a brilliant researcher. She has already gone into communities and done it with education.

Mr LAMING—Did you want to say something, Ms Fernando?

Ms Fernando—I will just talk a bit about my own background. I am an Indigenous researcher, now a PhD candidate with the ANU looking at the history of the Kamilaroi people, which is my family. The community asked me to come in and look at why young people were not finishing high school, so it was a community driven research project. I developed a methodology around working with the community to fully grasp and understand the issues. I worked in three different areas of the community with the young people and the service providers and did a lot of data collection to understand what was really happening.

Mr LAMING—What have you found so far?

Ms Fernando—For a lot of the young people, drug and alcohol problems are devastating. For a lot of them, peer pressure pulls them down that path. A lot of them were not encouraged by their peers to go through the education system. A lot of them were told tall poppy stuff and were pulled down if they actually went down the education path. They had to be quite strong to break away from their peer group to do that sort of stuff. Also, crime and violence in the community were often part of their life, so they had to deal with the trauma of that.

In schools there was the sheer frustration of having to discipline children that were seen as the school's responsibility. Often the unsettled adolescents would spiral downhill. They would be good at school up to that point, and then in adolescence they would just fall off the rails. There were a lot of issues around that for the males especially. They would act out more. With the females around adolescence, a lot of them would move into motherhood roles in the community. The males were more predisposed to coming into contact with the law, acting out—that sort of behaviour. The community are pretty frustrated with having to guide these children into

education and away from that sort of path, so they are crying out for support and help. Those are some of the issues that came out of what I have done.

CHAIR—We apologise for all this coming and going. It is a busy time now in the political cycle and a lot of people are very busy. What kind of support do you think would be the best?

Ms Fernando—For children?

CHAIR—For families.

Ms Fernando—Lot of these young kids grow themselves up. From the age of 12 to 15 they are pretty independent but often also vulnerable to what happens in the street. There could be a number of reasons why they are out of the house and living on their own. Often a lot of them form relationships very young. They live as couples away from their mother and father. There is very little support to help them live independently and safely on their own. In some ways they are little adults. They pretty much care for themselves. But there is no support for that in the community. They are left sleeping at somebody's house or sleeping where they can, to get by. The accommodation in the communities could be youth crisis accommodation or youth hostels that care for kids and allow them to live independently.

Mr Ferguson—We talked about Coolgardie and the need for a safe house. Alice's was a de facto safe house but being picked up three times on the streets of Coolgardie, Alice has left for the sake of her own kids.

Miss Haines—That is what is happening in communities when there is not a designated safe house. The community members create their own. Children know where to go when they need to be safe. There could be some communities where no house is safe. My house became a safe house when I was in Coolgardie. I had kids flowing through. I had one kid in my care for three months. She was six years of age and the mother never went looking for her. I sent her to the hospital to get evaluated and then child protection moved in and apprehended her and moved her back to the mother. Eventually all the children were removed because of the high neglect. She was eating out of rubbish bins. It was completely out of hand.

CHAIR—Some of the programs that we have mentioned, like the Family Responsibility program, focus it back on the parents and demand more of them.

Miss Haines—There needs to be some parenting support. If you are looking at Stolen Generation families you are looking at children who have been removed and have not had parenting. They have raised children without actually knowing what parenting is. They have not done a very good job of it and it goes on to their grandchildren—it gets worse and worse each generation. We are looking at two generations down the line. We are looking at dysfunctional families because the parenting training was never there in the first place. They were not taught how to be parents in the missions. So we need parenting support for our parents.

Mr Ferguson—There are those programs there but they are not being accessed. The police are not referring people to these programs. They are taking the kids to jail instead. We would like you to recognise that these problems that Alice is talking about are real. We cannot just abandon the children because we have a breakdown within our community. If there is breakdown we need

to have safe houses and save places for these children to grow up so that the next generation is okay. What did we do with Doonooch? We did not teach ourselves to dance; we taught the next generation to dance. We had to raise a generation up from sorrow and blame and alcohol. They are now 35-year-old clear men who can run cross-cultural things. They have got jobs and businesses and things.

CHAIR—Thank you. It has been very nice to talk to you. Perhaps, that is not the right word, is it? It is a bit stressful talking with you, really, but thank you for taking the trouble.

Mr Ferguson—Thank you, Bob. I know that you helped set up this stuff and you want to see it work. We want to help on an ongoing basis as well. That is one of the things that we really want to let you know here.

CHAIR—Thank you.

[1.05 pm]

APPLEBEE, Mr Wayne, Private capacity

COLLIS, Mr Paul, Private capacity

DEKLIN, Dr Tony, Private capacity

LITTLE, Mr Rod, Private capacity

CHAIR—Welcome. You have heard everyone go through the procedure so I will not go through that again. Would one of you like to start? And, perhaps, Wayne, you could give us a bit of an explanation of how you are all together too.

Mr Applebee—Thank you. I am studying at the University of Canberra, doing a double degree—Bachelor of Social Science in Justice Studies, in Law. The reason I came here, and our group came here, was that we have a problem here in Canberra. I am a panel member of the Circle Court here, the Ngamberri Court, and our problem is that we have no options with the magistrate for sentencing. That is the real concern that we have. Rod is on the advisory board for the ACT government, and he will speak a bit on that, and this is Paul Collis who is doing a PhD at UC, and Dr Tony Deklin is a senior lecturer in the law at UC.

Basically, we are trying to inform people about the problem we have here in Canberra, because we have no options about sentencing. We have got a really good system here. We have got a Circle Court which works effectively—and everything works fine—but we are still limited in the options that we have got for sentencing. You may not be aware but per head of population we have probably got the highest criminal figures for young people, both white and black, here in Canberra. That is a real concern to us and we need to do something about it. I might hand over to Paul for a moment. We are trying to work out what the problems are and Paul is probably better at it than I am, and about the ‘enemy’ problem we have got as well.

Mr Collis—I am a student at the University of Canberra. I am a Barkindji person originally from Burke. I have got a long and extensive history dealing with Aboriginal communities—

CHAIR—I have seen you before, Paul, haven’t I?

Mr Collis—Yes, Bob, we are old mates. We have met a couple of times in the past. I have worked for many years in jails and the juvenile detention centres as well. I have worked as an arts officer and as a youth worker—

CHAIR—I should say for the benefit of the committee that the Barkinji own the Darling River.

Mr Collis—We did not bother about challenging the name of the Darling River when it was changed to ‘Darling’ because its original name was Barker, and ‘Barker’ in Barkinji language means ‘darling one’. So there is something that we can share together—or our darling one.

This is a community response to young Aboriginal people and crime. We have quite a unique program—which is not unique in Aboriginal communities, for it has been used forever as a way of ‘growing people up’. I use that phrase as opposed to ‘mentoring’, although this basically is a mentoring-type program. With the limited options for sentencing that Wayne spoke about, sometimes people are overprogrammed. Every time we talk about blackfellas there has to be a program for this and a program for that. I am sick of the word, to tell you the truth, and I am sick of us being described as dysfunctional. The kids come from dysfunctional families; that is why they are before the court. There are all sorts of reasons why people are before the court. The other group that spoke here quite elegantly informed you about some of those intricacies.

To come back to what you were asking before about whether or not these mainstream programs could work, Mr Laming, let me say this: everything about Aboriginals is different. A really simple example is the death of somebody. We may or may not hear that person. We may see them for a number of months. But if you are unlucky enough to be caught talking to yourself—or seemingly talking to yourself—you can end up in a psych unit. The first things you and the doctor will say are: ‘How you going? What’s going on?’ ‘I was just talking to my mother.’ ‘Oh? Where’s your mother?’ ‘She died last week.’ The whole process of knowing yourself is different. It is a very different way, and those cultural things take a lifetime. You are born into it; it is almost inscribed as Aboriginal. I think that is also part of the historical response towards the law, in particular because of one of the arguments by Chris Kineen, a criminologist in Sydney, says that because there is no declared war police took on those issues, so the police have been seen primarily as a stumbling block for community development.

Having said that, one of the roles that I have performed where I could see where communities come together really effectively—though short lived—is in sport. But sport alone is not going to solve bigger issues. I do not know if you are aware, but Newcastle has what they call Surfest, the biggest surfing contest in the Southern Hemisphere. Newcastle is lucky enough to have Mark Richards, four-time world champion, working there. A few years ago, while I was working as arts officer, a young policeman said to me: ‘We ought to do something about this crime rate with the young people. How can the police come to talk to them?’ He was a surfer. I cannot swim, although I come from the river country. He got me drunk one night and said, ‘Let’s have a surf contest between the Kooris and the cops’—which we did. It was the opening event of Surfest. It is now in its 15th year. They want to bring us back together—me, Andrew Collins and a couple others who helped set it up—for some kind of big service thing this year. What happened was that out on the water, just like on the football field, there was no cultural difference. There was just the sport.

Nowra heard about it and some fellas came up from Nowra. They rang Andrew at his police station on the Monday. They said: ‘Can you send those coppers down here, mate? We’ve got a real problem. Our kids surf too; it might be one way for our communities to come together.’ But that is not what we are on about. It is along the lines of culture, but I am saying that Aboriginal kids basically do not know how to be Aboriginal. We know how to be black, we know how to be First Nation, we know how to be whatever you want to call us and whatever we call ourselves, and that gang mentality and culture is the thing that is problematic. The behaviour becomes problematic. We cannot cope with it, and the community ought not be expected to cope with it. That is the wider community as well. You can see the extreme situation in Western Australia, where it is three strikes and you’re out. People have had enough of feeling like they are under

threat—but ‘under threat’ for stealing a carton of milk? When you look deeper into the issue it is not as cut and dry as it might first seem.

I took some kids to Brewarrina from here about 10 years ago. They were young men—17 and 18. All the way up they were listening to hip-hop—‘I’m going to rape your mother,’ and do-da-da-da. I hated all that crap in this bus, and for eight hours I put up with it. I am an initiated man, and I went back to my father’s country—Ngamberri at Bree—and took Paul Gordon, who was a senior Ngamberri man. We put these blokes through a rebirthing program, back through the earth. All the way back they wanted to find out, ‘What does this mean? What does that mean? Talk to me about this.’—things about their culture which were missing. None of those kids have been presented before the court again. They are now going on 30, and responsible people.

We are on about restorative behaviour. I do not know how you can judge this stuff or assess it. I know that it works—I cannot tell you how you will change, but if you come through it you will feel completely unconditional love.

Mr LAMING—Are you saying the problems at the moment are that the courts do not have the flexibility to recognise that? Can you just go through some of your issues in the ACT? It is only because I want to know how we can improve things with the current legal system.

Mr Applebee—We are trying to develop a program, and there are five modules in the program that we are developing. We call the program Project Circuit Breaker—

Mr LAMING—Yes, I have read about that. But I just want to ask if you are proposing that as a replacement, or something to follow—

Mr Collis—As part of the Circle—

Mr Applebee—As an adjunct to the Circle Court.

Mr LAMING—And they are not allowing you to implement that inside sentence?

Mr Collis—They are happy to have it to come up, but we have no money to run it. We do not have a bus and we have no petrol money. I have got a little Laser, so I cannot take them.

Mr LAMING—So it is only resourcing that is the issue?

Mr Collis—That is the issue.

Mr LAMING—And what about the high level of remand? Is that a problem in the ACT? Are there large numbers of people on remand who end up not being incarcerated?

Mr Applebee—Yes.

Mr LAMING—They are sort of held in remand—

Mr Applebee—They are held in remand centres, yes.

Mr LAMING—For how long?

Mr Applebee—Sometimes for months.

Mr LAMING—Do you have an alternative proposal there?

Mr Collis—We have been looking at first offenders, with the idea that once you are in the system you are actually corrupted by it. There is a whole culture that you then need to break down outside. You come out bent and almost another gang member—you are tough, and there is all that drama that goes with it.

The beauty of this is that you can actually target young people almost before they get to court. You could see these kids who are absconding from school or who are disruptive at school and say, ‘That person would be very good in this time out program. Let’s run it and see what happens—see if their behaviour changes.’ We want to look exclusively at young Aboriginal boys, partly because we do not have women involved in this program. I am looking more towards those boys going through initiation later on down the track, hopefully.

There have been more than 130 young people put through the first stage of law in Newcastle—

Mr LAMING—The first stage of Aboriginal law?

Mr Collis—Aboriginal law, yes. And similar to the stories you heard before, the changes in behaviour are night and day. Blokes who could not stop drinking, who would not stop certain kinds of behaviours, suddenly no longer had the need for it. They found something else, and I think that what they found in that program is their own identity. They found respect for themselves and that found a sensible place for them in the communities.

At the end of it, you can have all the programs you like, but these people have still got to come back to community. For the guys who are in their last 12 months of sentence at Cessnock jail, I suggested that we take them up to where the initiation place is once every week with a view to putting them through the first stage at the end of that 12 months. The infrastructure problems were that we would have to send a prison officer, what if somebody absconds and all that kind of thing; and that is fair enough—they are in jail. In Canada and in North America they have some different sorts of programs where they have got sweat lodges in the jail. We do not do sweat lodge, but it is not a bad idea.

Mr LAMING—What are they?

Mr Collis—A sweat lodge is almost like a sauna—

CHAIR—The Indian habit.

Mr Collis—They are able to bring that into the incarceration centre, perform those rituals and get these guys into a frame of mind where they come out with a healthy body and a healthy mind. But with this initiation stuff you actually need to take them to ground that is sacred and all that kind of stuff. Not that any ground is not sacred, but there are sites where men go.

Basically, that is it in a nutshell—we need funding for the stuff. I know that—

CHAIR—Can we just talk about that a bit more. All over Australia, there are people who are making some form or other of this argument. In most places that we have been to, there is also a complaint that there is not enough money for it. There are different names for it—culture camps and all of the others. I know that your first concern was about what was happening here, but have you got an idea about the way in which this kind of program might be put into effect generally?

Mr Collis—Absolutely.

CHAIR—Can you talk about that in a few minutes.

Mr Collis—Yes. In our program, I am looking at the cultural side. There are other aspects to it—you could learn to read, learn to type or do whatever you want as part of the other part of the program—but the cultural shift, that change in your identity and your responsibility, in this case is getting people to understand that when we talk about Mother Earth we just use it as a term, and it is so commonly used now that it almost has no meaning or relevance. If you ask a young person, ‘Where are you from, brother?’ they might say, ‘I’m from Canberra.’ ‘So are you Ngunawal?’ ‘Yes, I’m Ngunawal?’ ‘What do you do that’s Ngunawal?’ ‘I don’t know.’ ‘What’s Ngunawal?’ ‘I don’t know.’ So what about Mother Earth?

CHAIR—This is what you mean about Aboriginality?

Mr Collis—That is about it, yes. It is not knowing yourself under yourself. Part of this program is this rebirthing program. Bobby McLeod, when he was alive, was taken as a young man through a similar form of initiation. It is a preliminary part of initiation.

CHAIR—Was that on the South Coast?

Mr Collis—Yes. He was associating with people through trees and stuff like that—connecting back to earth through trees. Where this can work collectively across the country is that every community group can decide on whatever cultural ritual they want to perform as the basis of the change for their kids. It does not have to be rebirthing; it could be something else. The thing that I most like about it is that it is not reliant upon me or Wayne, it is sustainable and communities can take this on for themselves.

CHAIR—It does rely on someone, though.

Mr Collis—It does, but it does not rely on me being that community person in every community. The community can make their own model and put their own rituals to it.

CHAIR—Rod and Tony have not spoken yet, and I do not think we are going to hold them back much longer.

Mr Little—My involvement with this comes from a lengthy career as a public servant—nearly 20 years. I am a Wajuk-Amangu person from Western Australia—that is, Perth and Geraldton. I previously was the CEO of the Aboriginal Justice Centre here in the ACT, so Wayne had approached me about the programs. In the period of time when I was the CEO, we did some

research. In partnership, we commissioned some research from the ACT Council of Social Service, looking at the justice, prevention and diversion programs within the ACT and seeing what sort of impact they have been having for our people. We found that these programs were not really having an impact, so we were looking for something that would have that impact and decrease the number of incarcerations in the youth centre, to begin with—but we also now have a prison, and we can see that there is an increase in Indigenous people being incarcerated.

My other role in this, as Wayne mentioned, is that I am a member of the ACT Aboriginal and Torres Strait Islander Elected Body, which is the only Indigenous representative body at a jurisdictional level in the country at the moment. I am also a member of the Circle centre, so I am a very busy person doing a lot of things. I have seen a lot of these programs. I have been in the public service for such a long time and have not seen measurement with all of these programs. Bob, you mentioned earlier the silo workings of programs and departments. It happens and is a continual issue. We do not see anything that is really out there measuring the impact or effectiveness of programs. We count the numbers of people going into prisons or attending a workshop or program, and then what? We do not measure what that social impact afterwards has been.

I think that it is very critical to be able to do that. Somebody participating in an effective program needs to be of sound mind and wellbeing. At the moment I am heavily involved in education, so it is the prevention, front end stuff before they get to the circuit breaker situation. It is clearly about what we and the previous speakers have talked about with respect to identity—acknowledging what it really means to be an Aboriginal or Torres Strait Islander person and working out where you fit into this world and the other world.

The point that you made, Andrew, was about where these programs work. It is about having relationships, building trust and acceptance of one another and of being a member of our broader society. We have heard stories about police being involved. That is about relationship building, understanding and building trust by the division and, I believe, by the quarantining of programs and who funds what. We heard earlier that once it has been a health program then health will not fund it any more because they think it is an arts program.

From the beginning to the end the impact of what this has done for a number of people are the sorts of things that you can replicate as a program right across the board. We can pull out this the certain tools or the certain make-up of a person who can run this program. We know the qualities of the person and the leadership qualities that we want to run a particular program and we search for those sorts of people in another program or another area that we can replicate the program. We have to have a look at what it is that makes this thing a successful program. If it was run by Paul, Wayne or me, you are not going to have another Paul or Wayne but you know what it was that made this a success.

CHAIR—You are saying that there is no point in just having a template kind of program where nobody pays any attention to the qualities that people have who are working in it and the kind of relationships they are able to develop with people going through the program. It is not really rocket science is it but nevertheless it is a big issue.

Mr Little—We do not have the things there to say. ‘This is why it worked and this is why it didn’t work.’

CHAIR—For what it is worth when we were in Darwin just 10 days ago some of us visited a healing centre called Balunu. It was noticeable that the men running this program could all have easily gone in the pack for the Waratahs although one of them was too big for it I think. They were taking kids who were in a really bad way indeed and keeping them in a camp and beginning the kind of discussion that you have just described. They take them out of dangerous situations and let them get calm for a while. The very important thing that we found out was that somebody from the Menzies school within the Charles Darwin University in the Northern Territory is developing an evaluation tool for them. The tool allows you to go beyond the question of deciding, when measuring the program, whether somebody offended again and instead allows you to judge the change in the person's attitude and at the crudest level the withdrawal from suicidal thoughts, for instance, but you can make it much more sophisticated than that. That seemed to be the kind of promising thing that would help everybody think about the personal impact of a program of this nature on its participants without being obsessed about whether they offended again. It is not an irrelevant consideration but it is not necessary to be obsessed with it.

Mr Little—That is the same as a parole officer sitting there listening to somebody and understanding what a person is personally willing to commit to not to reoffend and then saying, 'We don't think you're ready yet.' So, all of a sudden, that person thinks: 'What's the point in coming before you? I want to do this. I want to get out of here. I don't want to reoffend.' It is about building trust in that relationship with a person. Even though you are sitting across the table from them, it is really important to the individual to have some faith and for some wellbeing to be rebuilt in that individual.

CHAIR—I am conscious of the time and I am conscious that Tony has been modestly quiet. Did you want to say anything to us?

Dr Deklin—Just to thank you, Chair, for giving us the time to come and present our views and listen, particularly to Wayne, Paul and Rod. I have one or two comments. As a bit of background, I teach law at the University of Canberra. I teach human rights law. I am a Papua New Guinean.

CHAIR—From what part of the country?

Dr Deklin—From West Sepik, Sandaun Province. I have been teaching at the University of Canberra for 20 years. I taught at the University of PNG before that. I have three law degrees—a Bachelor of Laws from the University of PNG, a Master of Laws from York University in Toronto, Canada, and a PhD from ANU. On a personal level I have an affinity with the Indigenous cause, and so I have been involved as part of the thinking process, although it is their initiative and I am only working as a kind of brother to help them process the ideas. Secondly, because I teach human rights law, naturally this area is of particular concern to me professionally. In my teaching I have covered indigenous human rights and so from that perspective I am interested in it.

I have one or two points about Project Circuit Breaker. It is their proposal, and all they are asking for is a chance to run with it. They need resources, so I give them support for that. The importance of this program is its emphasis on prevention, and prevention is better than cure, as you know. But beyond the program is community, and the problem as I see it is that, like PNG,

the Aboriginal culture is dying out and there is a real need to prevent that culture dying out. I returned to my old village earlier this year and I can see that is happening—in the Vanim village where I come from. So culture plays a very important role here.

Equally important is the Indigenous law, the customary law. I think customary law, both in PNG and in Australia, is poorly resourced and it really needs to be supported. This is where Indigenous people themselves need to be encouraged to develop customary law and, fundamentally, to see the bridge between customary law and the modern law of the majority.

Equally important is the question of family. Not only is community a problem among Indigenous people here but family is also not being protected and promoted. I think these kids coming through the schools and through the courts particularly lack personal responsibility. It is the family that nurtures that, and if you do not have the family, as a matter of logic, you cannot expect the kids to pick up a sense of personal responsibility. That is what is missing. What we need to do is restore that personal responsibility to kids, and you cannot do that without family support. What they really need, what everybody needs, is a fair chance to run the race of life at all levels—in the outlying areas, in urban centres and wherever else they happen to be. The vision is to ensure there are responsible individuals, and you cannot achieve that in five years time if you do not have that social background of family and community.

Equally important is the need to develop intellectual culture among Indigenous people so they can talk about their problems. This is where I would draw an analogy with PNG, for example. Australia created the University of PNG, the first colonial power to create a university in a colony. Through that, we were able to develop our own intellectual ability to solve problems. There is no reason why Australia cannot set up an Indigenous university to encourage intellectual culture so Indigenous people get their own intellectuals to debate their own ideas and see their own solutions. That is one way to really look to the future.

CHAIR—That is a very interesting idea to end our session. Paul will be the first professor of arts there! Wayne, what degree are you doing?

Mr Applebee—A Bachelor of Social Science in Justice Studies, and I am doing law as well.

CHAIR—There is a job for you too then! Thank you all for giving us your time.

Resolved (on motion by **Mr Turnour**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 1.37 pm