

Introduction

- 1.1 April 15, 2011 marked the twenty year anniversary of the release of the final report of the *Royal Commission into Aboriginal Deaths in Custody*. The Commission was established due to public concern that Indigenous Australians were dying too regularly under custodial sentences, and that those deaths were too poorly explained. The Commission's terms of reference enabled it to take into account the various social, cultural and legal factors that contributed to Indigenous deaths in custody, and the final report made 339 recommendations.¹
- 1.2 Twenty years on, Aboriginal and Torres Strait Islander juveniles and young adults are far more likely to come into contact with the criminal justice system, and are more likely to remain in custody. This is a national tragedy, and questions must be raised as to why the situation has worsened so dramatically after the sweeping reforms recommended by the Royal Commission.
- 1.3 Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, is concerned that many of the Royal Commission's main findings were ignored:

There's an over-representation of Aboriginal prisoners, as there was back in 1991, and therefore a greater chance of Aboriginal and Torres Strait Islander people dying in prison...How do we stop Aboriginal people going to jail in the first place? And I think if we look at that as a measure, we've failed miserably in the last 20 years.²

1 Commonwealth of Australia, *Royal Commission into Deaths in Custody*, 1991, <www.austlii.edu.au/au/other/IndigLRes/rciadic/> accessed 1 June 2011.

2 Andrew Geoghegan, *Black deaths in custody continue despite Royal Commission*, ABC AM, <www.abc.net.au/am/content/2011/s3188699.htm> accessed 19 April 2011.

- 1.4 Many of the issues addressed in the report of this Committee reflect the core underlying factors that the Royal Commission identified as explaining the disproportionate number of Indigenous people in custody, including poor relations with police, alcohol and substance abuse, poor education, unemployment, inadequate housing and entrenched poverty. The Committee finds it concerning that these same factors have been identified two decades later, and that the overrepresentation of Indigenous juveniles and young adults in the criminal justice system has increased.
- 1.5 The Committee agrees that this situation is a national disgrace and recognises that all governments, including the Commonwealth, states and territories, have failed to adequately address this problem. The Committee strongly urges all governments and jurisdictions to be rigorous in implementing the recommendations contained in this report.
- 1.6 The Committee recognises that Aboriginal and Torres Strait Islander peoples have diverse languages, cultures and communities and live in urban, rural and remote settings. Throughout this report the use of the word 'Indigenous' respectfully refers to Aboriginal and Torres Strait Islander people of Australia.

Conduct of the inquiry

- 1.7 On 19 November 2009 the Minister for Families, Housing, Community Services and Indigenous Affairs requested the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquire and report into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.
- 1.8 The Inquiry lapsed when the House of Representatives was dissolved on Monday 19 July 2010 for a general election which was held on Saturday 21 August 2010.
- 1.9 On 8 November 2010, the Minister, the Hon. Jenny Macklin MP, re-referred the inquiry to the Committee for completion.
- 1.10 With a particular focus on prevention and early intervention, the Committee was asked to investigate and report on:
- 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, and
 - the extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional wellbeing of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.
- 1.11 The Committee received 110 submissions and a number of exhibits from a variety of sources, including Commonwealth, state and territory government departments, representatives of the judiciary, police, Indigenous legal services, non-profit organisations, Indigenous rights' advocacy groups, Indigenous representative organisations and academics. A list of submissions received by the Committee is at Appendix A, and a list of exhibits received by the Committee is at Appendix C.
- 1.12 The Committee conducted 18 public hearings in Canberra, Sydney, Adelaide, Cairns, Darwin, Brisbane, Fitzroy Crossing, Perth and Melbourne. A list of public hearings is at Appendix B.
- 1.13 Submissions received and transcripts of evidence can be found on the Committee's website: <<http://www.aph.gov.au/house/committee/atsia/sentencing/index.htm>>
- 1.14 During the inquiry, the Committee visited three detention centres – Juniperina Juvenile Justice Centre (Sydney, New South Wales), Orana Juvenile Justice Centre (Dubbo, New South Wales), and Brisbane Youth

Detention Centre, (Queensland) – and held discussions with staff, youth and visitors.

- 1.15 The Committee attended a delegation to New Zealand and met with a range of people and representatives of organisations aiming to reduce the overrepresentation of Maori youth in the criminal justice system. Observations from this delegation visit have informed some of the Committee responses in this report.

Structure of the report

- 1.16 The Committee heard about the range of factors which contribute to the overrepresentation of Indigenous juveniles and young adults in the criminal justice system. The Committee heard of a range of measures that can be taken to reduce young Indigenous people's contact with the criminal justice system, to improve diversion, to better rehabilitate offenders in returning to their communities, and to reduce recidivism. The Committee concludes that, while this is a serious and complex issue, there are a number of initiatives that would assist in reducing the overrepresentation of young Indigenous people in the criminal justice system.
- 1.17 Chapter 2 provides an overview of the main issues relating to the overrepresentation of Indigenous juveniles and young adults in the criminal justice system. It includes statistics that demonstrate the critical need for early intervention to prevent present and future generations of young Indigenous people from coming into contact with the criminal justice system. The chapter examines Indigenous disadvantage as an underlying cause of overrepresentation, specifically discussing education, health, accommodation, employment, social norms and individual family dysfunction, and connection to culture. The chapter examines the Closing the Gap strategy for overcoming Indigenous disadvantage, and a range of current Commonwealth, state and territory frameworks for reducing the overrepresentation of young Indigenous people in the criminal justice system.
- 1.18 Chapter 3 considers the importance of developing positive social norms and behaviours amongst Indigenous juveniles and young adults, and amongst the communities in which they live. The chapter examines a number of programs that aim to promote positive social engagement, assist individuals and families to change their behaviours, provide positive leadership and become community role models. Emphasis is

given in the chapter to the importance of mentoring, community and cultural connection, sport and the provision of safe accommodation.

- 1.19 Chapter 4 examines the link between poor health and the overrepresentation of young Indigenous people in the criminal justice system. The chapter discusses evidence the Committee received about alcohol and substance abuse, alcohol reforms and the worrying incidence of Foetal Alcohol Spectrum Disorder (FASD) in Indigenous communities. The chapter examines links between mental health and emotional wellbeing with overrepresentation in the criminal justice system, and considers programs that can assist people with healing and reconnecting with culture. The chapter includes a detailed discussion of the high incidence of hearing loss in Indigenous communities and the considerable influence this epidemic has on overrepresentation in the criminal justice system. The chapter emphasises that early intervention and a holistic approach to health are required to address this concerning aspect of Indigenous disadvantage.
- 1.20 Chapter 5 considers how improving education for Indigenous juveniles and young adults can improve justice outcomes for Indigenous people directly. The chapter examines current Commonwealth, state and territory education frameworks and initiatives, and a range of specific programs designed to boost Indigenous community engagement with schools, and improve school readiness and school attendance. The chapter emphasises the importance of programs and initiatives that provide incentives for school attendance, including breakfast and lunch programs, after school activities and sporting programs.
- 1.21 Chapter 6 considers ways that can improve young Indigenous people's transition from education to employment as a method for reducing overrepresentation in the criminal justice system. It examines current Commonwealth, state and territory frameworks and programs, and initiatives that build local capacities in Indigenous communities. The chapter discusses a range of physical and behavioural obstacles that impact on the ability of many young Indigenous people to find and retain employment.
- 1.22 Chapter 7 traces an offender's pathway through the criminal justice system and considers areas that need to be improved in order to reduce the overrepresentation of young Indigenous people in the system. The chapter examines issues relating to police relations, over-policing and diversion by police, and urgent challenges including language barriers and a lack of interpreters, and adequate and appropriate legal representation. The chapter considers a range of issues relating to young

Indigenous people and the court process, including the development and implications of a sentencing culture. The chapter discusses bail laws, the lack of suitable accommodation options for Indigenous youth on bail, and a high incidence of driver licensing offences and fine defaults that ultimately lead to the imprisonment of many young Indigenous people. The chapter considers a range of existing court alternatives and methods to reduce recidivism, including in prison education, post-release education, training, accommodation and support, and transitioning services.

- 1.23 Chapter 8 considers current government policy and coordination frameworks, the service delivery model and issues of program funding and monitoring change. It examines the Closing the Gap policy framework to overcome Indigenous disadvantage and discusses a number of significant gaps that will impede future efforts to reduce Indigenous offending, recidivism and victimisation. The chapter considers a number of data gaps that were identified during the inquiry, and how government accountability can be improved through better program evaluation, monitoring and reporting. Finally, the chapter examines a range of successful initiatives, ways that can boost Indigenous people's involvement in service delivery and programs that can bring about change within communities.