

Indigenous youth and the criminal justice system: an overview

- 2.1 The disproportionately high level of Indigenous juveniles (aged between 10 and 17 years) and young adults (aged between 18 and 24 years) in the criminal justice system is a major challenge confronting the Council of Australian Government's (COAG's) commitment to 'Closing the Gap' in Indigenous disadvantage.
- 2.2 Tragically, Indigenous juveniles and young adults are more likely to be incarcerated today than at any other time since the release of the *Royal Commission into Aboriginal Deaths in Custody* final report in 1991. This rise has occurred despite increased funding and the concern and efforts of community members, government officials, non-government organisations and the judiciary around Australia.
- 2.3 Contact with the criminal justice system represents a symptom of the broader social and economic disadvantage faced by many Indigenous people in Australia. We have reached the point of intergenerational family dysfunction in many Indigenous communities, with problems of domestic violence, alcohol and drug abuse, inadequate housing, poor health and school attendance, and a lack of job skills and employment opportunities impacting on the next generation of Indigenous Australians. Additionally, there has been a loss of cultural knowledge in many Indigenous communities, which has disrupted traditional values and norms of appropriate social behaviour from being transferred from one generation to the next.
- 2.4 The overrepresentation of Indigenous youth in the criminal justice system is a national crisis and Commonwealth, state and territory governments must respond rapidly and effectively to prevent current and future generations of young Indigenous people from entering into the criminal justice system. This is a long term challenge that will require sustained

commitment and rigour from all jurisdictions to address the root causes of Indigenous disadvantage, and to rehabilitate young Indigenous people currently in the criminal justice system.

The critical need for early intervention

- 2.5 The detention rate for Indigenous juveniles is 397 per 100 000, which is 28 times higher than the rate for non-Indigenous juveniles (14 per 100 000). In 2007, Indigenous juveniles accounted for 59 percent of the total juvenile detention population.¹
- 2.6 There is a strong link between the disproportionate rates of juvenile detention and the disproportionate rates of adult imprisonment. Although Indigenous Australians make up only approximately 2.5 percent of the population, 25 percent of prisoners in Australia are Indigenous.²
- 2.7 Prisoner census data shows that between 2000 and 2010, the number of both Indigenous men and women in custody has increased markedly:
- Indigenous men by 55 percent, and
 - Indigenous women by 47 percent.³
- 2.8 The Committee finds that the escalation of the number of Indigenous women in detention is disturbing. Indigenous women are critical to the future strength of Indigenous families and communities. They play an important role in the care of children, providing the future generation with a stable upbringing. Continued growth in the number of Indigenous women being imprisoned will have a long lasting and negative impact on the wellbeing of Indigenous families and communities.
- 2.9 Between 2000 and 2009, the imprisonment rate of Indigenous Australians increased 66 percent (from 1 248 to 1 891 per 100 000). Figure 2.1 shows this dramatic increase in the rate of imprisonment for Indigenous people over the last decade, in comparison to a steady imprisonment rate for non-Indigenous Australians. These figures highlight both a concerning pattern

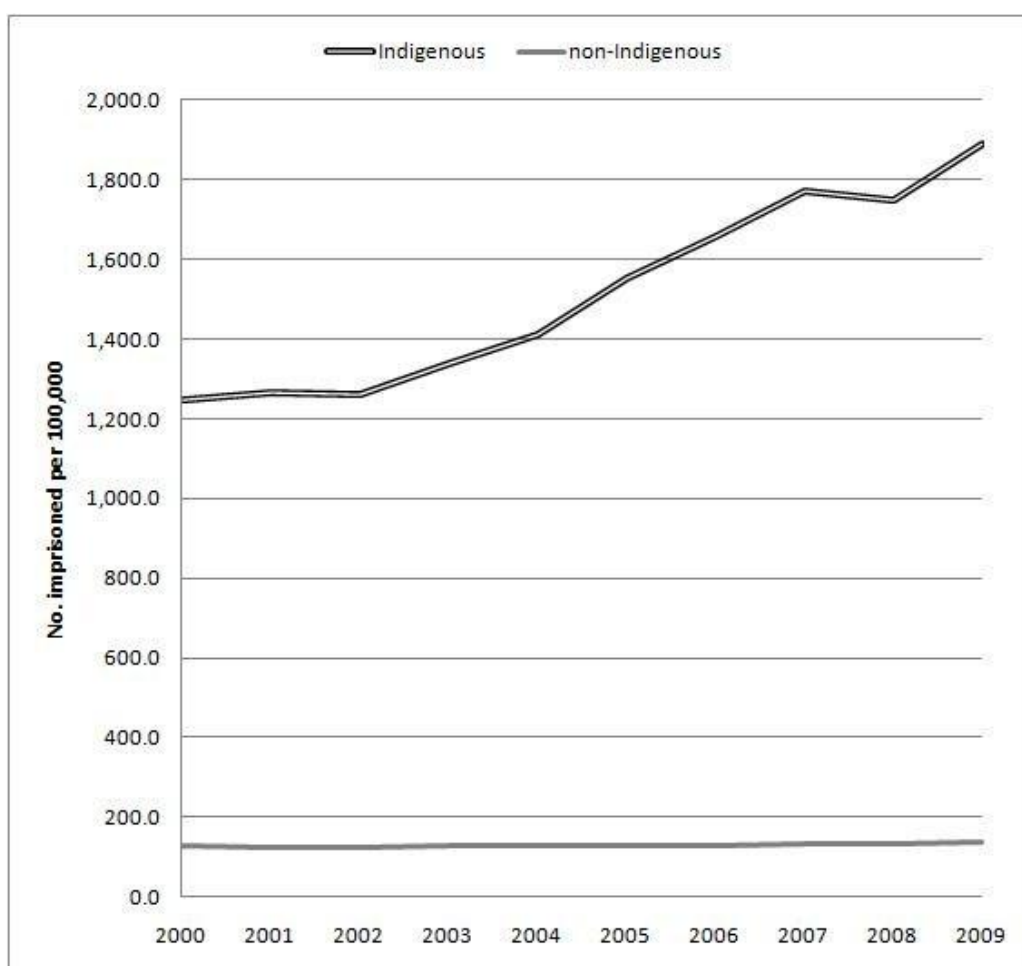
1 Australian Institute of Criminology (AIC), 'Juvenile detention', 30 June 2007, <www.aic.gov.au/statistics/criminaljustice/juveniles_detention.aspx> accessed 24 February 2011.

2 Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Social Survey 2008*, Canberra.

3 Figures derived from total Indigenous prisoner numbers by sex in 2000 and 2010. ABS 2000, *Prisoners in Australia 4517.0*, Canberra, p.11; ABS 2010, *Prisoners in Australia 4517.0*, Canberra, p. 52.

of generational entrenchment for some Indigenous Australians in the criminal justice system over a long period of time, and the critical need for early intervention.⁴

Figure 2.1 Age standardised Indigenous and non-Indigenous imprisonment rates in Australia (2000-09)⁵



Source ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

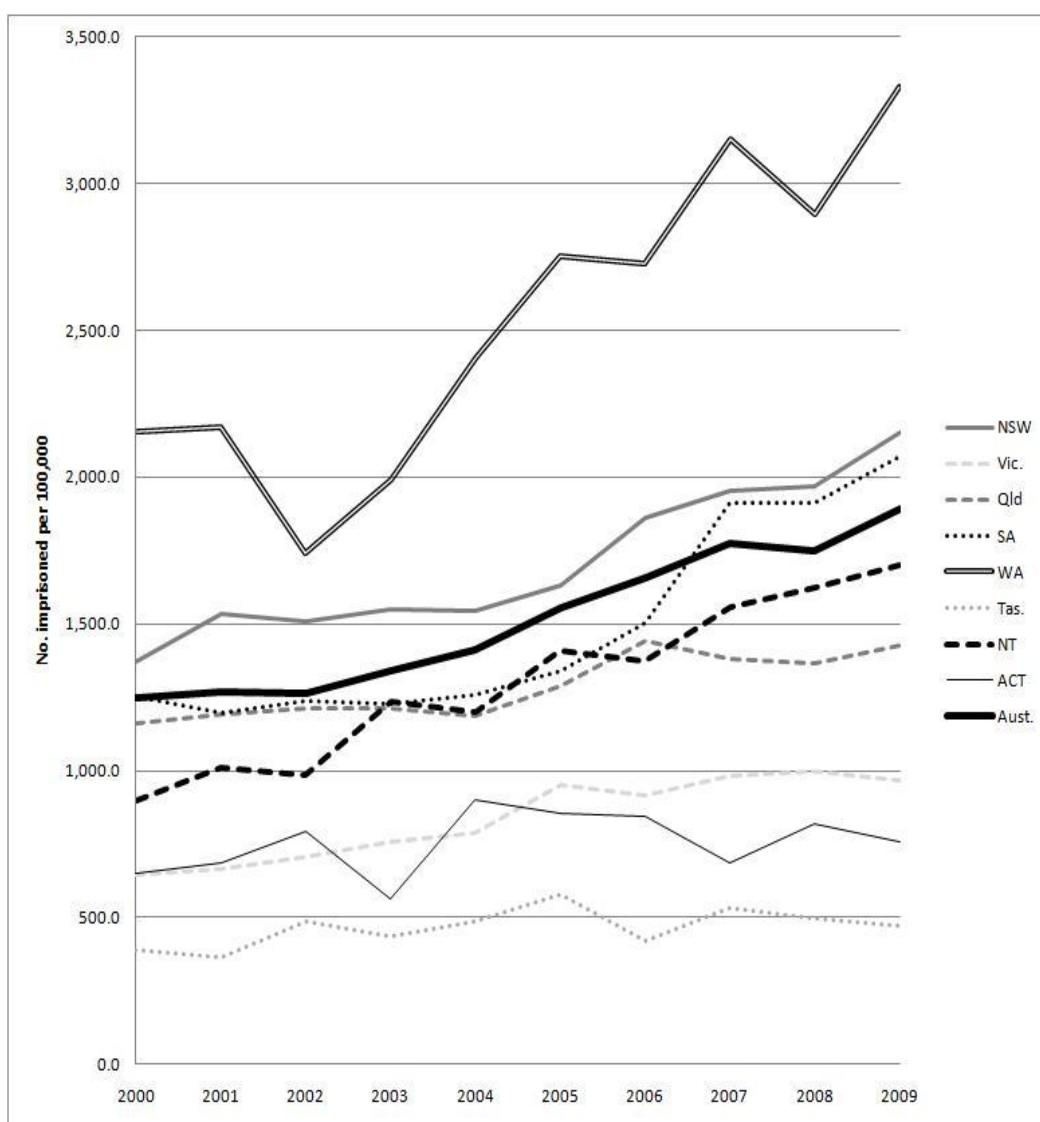
- 2.10 Statistics demonstrate that adult imprisonment rates differ between states and territories (see Figure 2.2).
- 2.11 New South Wales has the highest total number of Indigenous people in prison (2 139), compared with Western Australia (1 552) and Queensland (1 495). However Figure 2.2 shows that Western Australia has the highest number of Indigenous people in prison per capita than any other state or

⁴ ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

⁵ Age standardisation is a statistical method used by the ABS that adjusts crude rates to account for age differences between study populations. For more information, see the explanatory notes, paragraphs 34-39, at <www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Explanatory%20Notes12010?OpenDocument> accessed 11 May 2011.

territory, increasing from 2155.7 per 100 000 in 1999 to 3 328.7 per 100 000 in 2009. That figure represents at least three Indigenous people in jail for every 100 Western Australian residents.

Figure 2.2 Age standardised per capita Indigenous imprisonment rates by state and territory, 1999-2009



Source ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

2.12 The steepest increase in Indigenous imprisonment rates in the 2000-09 period was 90 percent for the Northern Territory, while significant increases were recorded in South Australia (65 percent), New South Wales (57 percent), Western Australia (54 percent), Victoria (50 percent), and Queensland (23 percent).⁶

6 ABS 2009, *Prisoners in Australia 4517.0*, Canberra.

- 2.13 Indigenous juveniles and young adults are much more likely to come into contact with the police in comparison with their non-Indigenous counterparts. In 2008, over 40 percent of all Indigenous men in Australia reported having been charged formally with an offence by police before they reached the age of 25.⁷
- 2.14 Indigenous juveniles are overrepresented in both community and detention-based supervision. Indigenous juveniles make up 53 percent of all juveniles in detention and 39 percent under community supervision. Indigenous juveniles in detention are younger on average than their non-Indigenous counterparts. Twenty-two percent of Indigenous juveniles in detention were aged 14 years or less, compared with 14 percent of non-Indigenous juveniles.⁸
- 2.15 The overrepresentation of Indigenous juveniles in the criminal justice system varies greatly according to state and territory, offence type and by the type of interaction (including being cautioned, charged or detained). However, data is not presently available to accurately compare types of contact across state and territory jurisdictions. The Australian Institute of Criminology (AIC) found that differing levels of representation can partly be attributed to different counting measures to record contact with the police across jurisdictions. The AIC recognised that data relating to the Indigenous status of juveniles may not adequately capture the extent of Indigenous juveniles' contact with the criminal justice system.⁹
- 2.16 Adverse contact with the criminal justice system is not confined to offenders. Community safety is a vital pre-condition to achieve COAG's targets in health, education and housing. Governments agreed at a 2009 roundtable on Indigenous community safety that if there is not action to address serious problems in community safety, it will not be possible to make improvements in other areas.¹⁰
- 2.17 Indigenous people are more likely to be victims of crime, especially violent crime, than non-Indigenous people.¹¹ Women are more likely to be the victims of crime than men, and most violent offending against Indigenous women is committed by Indigenous men.¹²

7 ABS 2009, *National Aboriginal and Torres Strait Islander Social Survey 2008*, Canberra.

8 AIC, *submission 67*, p. 2.

9 AIC 2007, *Juveniles' contact with the criminal justice system in Australia*. AIC, Canberra p. 1.

10 Communiqué, Indigenous Community Safety Roundtable, Sydney, 6 November 2009.

11 ABS, *Recorded Crime – Victims*, Cat. No. 4510.0, June 2010, pp. 38-9.

12 Jacqueline Fitzgerald & Don Weatherburn, 'Aboriginal Victimisation and Offending: The Picture from Police Records', *Crime and Justice Statistics Bureau Brief*, NSW Bureau of Crime Statistics and Research (BOCSAR), December 2001, p. 2.

- 2.18 Between 2006 and 2007, Indigenous women were 35 times more likely to be hospitalised as a result of spouse or partner violence than non-Indigenous women.¹³
- 2.19 The Committee recognises that Indigenous victimisation rates must be addressed in conjuncture with offending rates, and that both are symptoms of the disadvantage and social dysfunction that pervades many Indigenous communities.
- 2.20 The Committee found that gaps in data collection are impeding government responses to this issue, and that better data is needed to track trends and better identify patterns of offending and victimisation. A discussion of the relevant gaps in data collection is included in chapter 8 of this report.

High rates of offending and disadvantage

- 2.21 Prominent amongst the reasons for the high proportion of Indigenous people in the criminal justice system is the broader social and economic disadvantage faced by many Indigenous people. An analysis of the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) identified a number of economic and social factors that underpin Indigenous contact with the criminal justice system. The analysis demonstrated that respondents to the national survey were far more likely to have been charged with, or imprisoned for, an offence if they left school early or performed poorly at school, were unemployed, or abused drugs or alcohol. The study found that the risk of Indigenous people being charged or imprisoned increased if the respondent was experiencing financial stress, lived in a crowded household, or had been taken away from their natural family.¹⁴
- 2.22 One of the key findings of the 1991 Royal Commission was that:
- The more fundamental causes of over-representation of Aboriginal people in custody are not to be found in the criminal justice system but those factors which bring Aboriginal people into conflict with the criminal justice system in the first place ... [and] the most

13 Steering Committee for Review of Government Services (2009), *Overcoming Indigenous Disadvantage: Key Indicators 2009 – Report*, p. 4.131.

14 D Weatherburn, L Snowball & B Hunter, The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey. *Crime and Justice Bulletin*, No. 24.

significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in society - socially, economically and culturally.¹⁵

2.23 This section provides a brief discussion and general overview of the relationship between aspects of disadvantage and the overrepresentation of Indigenous juveniles and young adults in the criminal justice system based on the evidence gathered in this inquiry, including:

- social norms and individual family dysfunction
- connection to community and culture
- health
- education
- employment, and
- accommodation

Social norms and family dysfunction

2.24 FaHCSIA's submission stressed that individual family dysfunction was a significant contributing factor to high rates of juvenile offending and identified the following key concerns:

- The extent of alcohol abuse and consequential problems such as family breakdown, family violence, financial and legal problems, child abuse and neglect and psychological distress among family and friends of the drinker
- There is a strong link between alcohol consumption and drug misuse and the risk of imprisonment
- A further consequence of alcohol misuse is an increase in the risk of Foetal Alcohol Spectrum Disorder (FASD), which itself is linked to a range of long term behavioural problems
- The presence of family violence. This is a strong predictor of child abuse, and partner violence has a damaging effect on children's emotional, behavioural and cognitive development. Family violence is strongly associated with a high risk of clinically significant emotional or behavioural difficulties in Indigenous children, and
- Child neglect and abuse.¹⁶

15 Commonwealth of Australia, *Royal Commission into Deaths in Custody*, 1991, Vol. 1, p. 1.7.1.

16 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *submission 79*, p. 3.

- 2.25 The Courts Administration Authority (CAA) of South Australia reported in its submission that the link between child abuse and neglect, and offending behaviour is now well established. The CAA urged that:

The proven impact of child abuse and neglect on youth offending suggests that prevention strategies and effective intervention in child abuse and neglect should be priority areas for youth crime prevention.¹⁷

- 2.26 Chapter 3 discusses family dysfunction and negative social norms, which are characteristic of the background of many young Indigenous youth who find themselves in contact with the criminal justice system.

Connection to community and culture

- 2.27 Through a variety of historical processes, many young Indigenous people risk becoming disconnected from their families and their elders, language, law and country. This represents a loss of wellbeing, accountability and culture, as norms of appropriate social and cultural behaviour are not transferred from one generation of people to the next. Many young Indigenous people risk being caught between two worlds, as Anthony Watson (a *Yiriman* cultural boss) explained:

It's not having a sense of direction that is such a problem. A lot of young people live in another culture; it's not mainstream, it's not traditional; they are lost in the wind. When they're lost in the wind is when they could end up in jail; they could end up dead, end up not contributing anything to the community, but becoming a lot of trouble.¹⁸

- 2.28 Chapter 3 of this report provides a discussion of the evidence relating to community and family development of positive social norms and positive social engagement, while chapter 7 examines a number of diversion programs that incorporate Indigenous cultural knowledge, norms and values.

Health

- 2.29 The *Overcoming Indigenous Disadvantage Key Indicators 2009 Report* found that:

17 Courts Administration Authority (CAA), *submission 69*, p. 9.

18 Kimberley Aboriginal Law and Culture Centre (KALACC), *exhibit 5*, p. 6.

Indigenous people experience very high rates of a variety of physical and mental illnesses, which contribute to poorer quality of life and higher mortality rates. Physical health outcomes can be related to various factors, including a healthy living environment, access to health services, and lifestyle choices. Health risk behaviours, such as smoking and poor diet, are strongly associated with many aspects of socioeconomic disadvantage. Mental health issues can be related to a complex range of medical issues, historical factors, the stressors associated with entrenched disadvantage and drug and substance misuse.¹⁹

2.30 A range of physical and mental health issues directly relate and contribute to the overrepresentation of Indigenous youth in the criminal justice system. The Committee has heard evidence that these concerns include:

- mental health issues
- alcohol, drug and substance misuse²⁰
- foetal alcohol spectrum disorder (FASD), and
- hearing loss.

2.31 The Royal Australasian College of Physicians informed the Committee that young people in the justice system are much more likely to suffer from mental health disorders than the general population. In addition, the College advised that:

Indigenous Australians are also more likely to have higher hospital admissions for conditions classified as 'mental and behavioural disorders' and have higher rates of suicide and deliberate self injury than non-Indigenous Australians.²¹

2.32 The College further noted that:

- Young people who have a childhood history of social and psychological adversity are more likely to abuse alcohol and illicit drugs; and
- Mental disorders due to psychoactive substance use are reportedly diagnosed in Indigenous Australians at a greater frequency than the general population.²²

19 SCRGSP, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 7.1.

20 Substance misuse refers to a range of harmful activities including petrol sniffing and chroming (inhaling a range of chemical products to produce a high feeling).

21 Royal Australasian College of Physicians, *submission 53*, p. 5.

22 Royal Australasian College of Physicians, *submission 53*, p. 5.

- 2.33 Clearly alcohol, drug and substance abuse contributes to young people coming into adverse contact with the criminal justice system. In New South Wales, a study reported that, on average, detained youth began to use substances for non-medical purposes at 11 years and commenced using illicit drugs about two years later.²³ Related research found that 63 percent of detained youth had engaged in binge drinking in the two weeks prior to being detained, while 56 percent had used amphetamines, 50 percent had used opioids, and 24 percent had injected an illicit drug.²⁴
- 2.34 An analysis of the 2002 NATSISS found that illicit drug use and high risk alcohol consumption were the strongest predictors of both criminal prosecution and imprisonment.²⁵
- 2.35 Alcohol misuse has harmful and often tragic consequences across generations of people. FASD describes a range of permanent birth defects caused by the consumption of alcohol during pregnancy. Primarily, prenatal alcohol exposure causes damage to the central nervous system and is linked to growth deficiencies (low birth weight) and facial abnormalities. The Committee has heard that the incidence of FASD is extremely high in many Indigenous communities and that children who are born with FASD have an increased risk of coming into adverse contact with the justice system.
- 2.36 The Committee has heard that Indigenous Australians are far more likely to experience hearing impairment than non-Indigenous people. The damage caused by persistent ear disease leaves between 40 percent (urban) and 70 percent (remote) of Indigenous adults with hearing loss and auditory processing problems.²⁶ Juveniles with undiagnosed hearing problems have an increased risk of adverse contact with the police.
- 2.37 These health issues that are related to the overrepresentation of Indigenous juveniles and young adults in the justice system are examined in detail in chapter 4 of this report.

23 J Howard, & E Zibert, 1990, 'Curious, bored and waiting to feel good: the drug use of detained young offenders', *Drug and Alcohol Review*, no. 9, pp. 225-31.

24 J Hando, J Howard & E Zibert, 1997, 'Risky drug practices and treatment needs of youth detained in New South Wales Juvenile Justice Centres', *Drug and Alcohol Review*, vol 16, no. 2, pp. 137-45.

25 D Weatherburn, L Snowball, & B Hunter, 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey', *Crime and Justice Bulletin*, no. 24.

26 Damien Howard, *submission 87*, p. 5.

Education

- 2.38 Children who have access to a good quality education and who are supported and directed by their parents to attend school are likely to develop the necessary knowledge, skills and social norms for a productive and rewarding adult life.
- 2.39 The difference in educational attainment between Indigenous and non-Indigenous Australians is a powerful determinant of the overrepresentation of Indigenous youth in the justice system.
- 2.40 Indigenous children are less likely than non-Indigenous children to have access to, or participate in early childhood education. The gap in preschool learning opportunities means that many Indigenous students will be disadvantaged from their very first day at school.
- 2.41 This disadvantage is demonstrated by a substantially lower proportion of Indigenous students across all year levels achieving the national minimum standards for literacy and numeracy in 2008, compared to non-Indigenous students.²⁷
- 2.42 Similarly, year 12 completion rates indicate poor educational outcomes for Indigenous students. In 2006, the proportion of Indigenous 19 year olds who had completed year 12 or equivalent (36 percent) was half that of non-Indigenous 19 year olds (74 percent).²⁸
- 2.43 The New South Wales Department of Education and Training emphasised the link between poor education outcomes and contact with the justice system, noting that 'there is a strong correlation between expulsion from school and incarceration in the juvenile justice system'²⁹. The Department acknowledged that student outcomes were influenced by a range of factors including:
- ... other family members' educational experiences and the capacity of the education system to engage and support students to develop their individual strengths. Poor nutrition and poor health status, complex family issues resulting in violence or abuse, poor housing or overcrowding, poverty and unemployment are all

27 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 4.3.2.

28 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 4.5.0.

29 New South Wales Department of Education and Training, *submission 43*, p. 2.

factors which impact on a student's capacity to engage in and succeed at learning.³⁰

- 2.44 Chapter 5 of this report examines in detail the need to increase both school attendance and school achievement in order to reduce the representation of young Indigenous people in the criminal justice system.

Employment

- 2.45 There is a strong relationship between unemployment and criminal behaviour, particularly when offenders come from low socioeconomic backgrounds. A study of the 2002 NATSISS found that nearly 60 percent of Indigenous people who had been charged with an offence were unemployed.³¹
- 2.46 In 2006, Indigenous youth aged between 15 and 24 years were three times more likely than their non-Indigenous counterparts to be neither employed nor studying. This figure worsened by remoteness: nearly 40 percent of Indigenous youth in remote areas aged between 15 and 24 years were neither employed nor studying, compared with around 25 percent in major cities.³²
- 2.47 Chapter 6 of this report examines in detail the evidence relating to effective transitioning from education to employment, and measures to secure and retain employment.

Accommodation

- 2.48 Inadequate accommodation in many Indigenous communities is a key contributing factor for high rates of juvenile offending. The 2008 NATSISS reported that:
- almost one third of Indigenous children in Australia under the age of 14 lived in overcrowded accommodation
 - in remote areas, this figure increased to 59 percent for children aged 4 -14 years and 54 percent for children aged 0-3 years
 - 39 percent of Indigenous Australians living in remote areas lived in dwellings that had major structural problems, and

30 New South Wales Department of Education and Training (NSWDET), *submission 43*, p. 2.

31 D Weatherburn, L Snowball, & B Hunter, 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey', *Crime and Justice Bulletin*, no. 24.

32 SCRGSP *Overcoming Indigenous Disadvantage: Key Indicators 2009 Report*, p. 6.32.

- 28 percent of Indigenous Australians living in remote areas lived in dwellings that either lacked or reported problems with basic household facilities. Basic household facilities considered important for a healthy living environment include those that assist in washing people, clothes and bedding; safely removing waste; and enabling the safe storage and cooking of food.³³
- 2.49 The Northern Territory Legal Aid Commission made the following comments in relation to the impact of inadequate housing on children's wellbeing and youth justice:
- Appropriate safe and affordable housing is the cornerstone for all other social functioning including health, education and having children grow up in caring, respectful and thriving communities let alone building towns, jobs, roads and other infrastructure. Adequate housing offers safety and security which impacts on social and physical development, growth and learning.³⁴
- 2.50 High incarceration rates have been linked to youth who have been in out-of-home care. This is discussed further in chapter 3. Inadequate accommodation options for Indigenous youth on bail and after they have been released from detention are discussed in chapter 7.

Overrepresentation and Closing the Gap

- 2.51 While primarily the states and territories are responsible for developing and administering criminal justice policy, a national approach is required to address the causes of young Indigenous people coming into contact with the criminal justice system. Overcoming Indigenous disadvantage is both a national responsibility and a significant national challenge. It requires an ongoing commitment and collaboration between all levels of government working in partnership with Indigenous Australians, the corporate sector and community organisations. Currently this national approach is represented by the Council of Australian Government's (COAG's) Closing the Gap program of generational change.
- 2.52 Closing the Gap requires governments to address decades of ineffective investment in services and infrastructure in ways that are specifically designed to directly benefit Indigenous Australians. FaHCSIA asserts that:

33 ABS 2009, *National Aboriginal and Torres Strait Islander Social Survey 2008*, Canberra.

34 Northern Territory Legal Aid Commission (NTLAC), *submission 45*, p. 3.

This agenda is important in both addressing the underlying causes of much Indigenous juvenile offending and incarceration and also reducing re-offending and improving life prospects after initial contact with the justice system.³⁵

2.53 Understanding the age profile of Australia's Indigenous population is vital to ensure that efforts to overcome Indigenous disadvantage are directed in the most appropriate way. This profile is very different to the rest of Australia's population. Australia's Indigenous population is growing at twice the rate of the total Australian population. Indigenous Australians are, on average, much younger than non-Indigenous people. In 2006 half of all Indigenous Australians were aged 21 years or younger, while half of all non-Indigenous Australians were aged 37 or younger. Children aged less than 15 years comprised 38 percent of the Indigenous population, compared with 19 percent in the non-Indigenous population.³⁶

2.54 Another challenge facing the Closing the Gap commitment is that Australia's Indigenous population is so dispersed geographically across urban, regional and remote areas. The Prime Minister's 2011 report on Closing the Gap stated that:

Almost one third (32 percent) of the Indigenous population live in major cities. 43 percent of Indigenous Australians live in regional areas and some 25 percent in remote Australia. In contrast, 69 percent of non-Indigenous Australians live in major cities and less than 2 percent in remote and very remote Australia.

Over half of Indigenous people live in either New South Wales (30 percent) or Queensland (28 percent). Approximately 14 percent reside in Western Australia and 12 percent in the Northern Territory.

Closing the gap will require that policies and programs focus on both remote areas, where levels of disadvantage are usually higher and major cities and regional areas where the majority of Indigenous Australians live, and which also suffer from significant levels of disadvantage.³⁷

2.55 The targets of the COAG commitment to Closing the Gap are to:

- close the gap in life expectancy between Indigenous and non-Indigenous Australians by 2031

35 FaHCSIA, *submission 79*, p. 7.

36 *Closing the Gap Prime Minister's Report 2011*, p. 10.

37 *Closing the Gap Prime Minister's Report 2011*, p. 11.

- halve the gap in mortality rates for Indigenous children under five by 2018
 - ensure access to early childhood education for all Indigenous four year olds in remote communities by 2013
 - halve the gap in reading, writing and numeracy achievement for Indigenous children by 2018
 - halve the gap in Year 12 or equivalent attainment rates by 2020, and
 - halve the gap in employment outcomes between Indigenous and non-Indigenous Australians by 2018.
- 2.56 These targets are ambitious and serve to focus policy and government activity over the long term. They are interrelated, with progress in one area having a positive influence on others. Ensuring children have a positive start in life and receive a high quality education means they are less likely to come into contact with the criminal justice system, and more likely to be employed and healthy as adults, and are better placed to raise their own families in the future. For that reason, the Closing the Gap targets address Indigenous disadvantage both over an individual's life cycle and across generations of people.³⁸
- 2.57 COAG has agreed that these targets will only be achieved through a sustained commitment towards improving the following strategic areas or 'Building Blocks':
- Early Childhood
 - Schooling
 - Health
 - Economic Participation
 - Healthy Homes
 - Safe Communities, and
 - Governance and Leadership
- 2.58 FaHCSIA identified that the main elements of this strategy relevant to reducing juvenile offending are:
- giving children a better start in life through early childhood education and better schools and better housing. On average, Indigenous juvenile offenders commit their first crimes at an earlier age, from ten onwards,

38 *Closing the Gap Prime Minister's Report 2011*, p. 9.

than non-Indigenous juveniles, reflecting disengagement from other options. This earlier start translates over time into a longer criminal career which leads to a much greater possibility of incarceration. Reducing overcrowding in housing, which often creates high levels of stress and inability to cope with school or other pressures, is a major element of Closing the Gap

- creating opportunities for parents through improved employment opportunities and better health outcomes. The consequences of current life expectancy in Indigenous communities is illustrated by one study that showed that just under 12 percent of Indigenous offenders had a parent deceased. Parents debilitated by chronic disease or having substance abuse issues find it difficult to guide and manage teenage behaviours, and
- improving delivery of services to Indigenous people that may help reduce the risk of offending by young people. There is general recognition that Indigenous people frequently access various services at a lower level than their needs justify. This can be because of geographic isolation or cultural or trust issues. COAG is committed to improving access through the Remote Service Delivery National Partnership Agreement and the agreed Urban Regional Service Delivery Strategy.³⁹

- 2.59 Consequently, COAG has agreed to a range of National Frameworks and National Partnership Agreements, and a National Indigenous Law and Justice Framework.
- 2.60 The Prime Minister's 2011 report on Closing the Gap announced that some progress is being made, however due to data limitations and the sheer length of time required to meet specific targets, it is too early to accurately gauge the success of the commitment.
- 2.61 Progress towards the Closing the Gap targets is expected to lead to improvements in justice outcomes for Indigenous people, however substantial reductions in Indigenous overrepresentation in the criminal justice system are only likely to occur in the long term.

The need for justice targets

- 2.62 While all of the Building Blocks, and any activity under them, is relevant to this inquiry, of most relevance is the Safe Communities Building Block.

39 FaHCSIA, *submission 79*, p. 8.

The Committee finds it striking that none of the Closing the Gap targets address the Safe Communities Building Block.

- 2.63 Wes Morris, from the Kimberley Aboriginal Law and Culture Centre (KALACC), claimed that the absence of a National Partnership Agreement linked with the Safe Communities Building Block was an anomaly in the Closing the Gap strategy which limited the capacity of governments and non-government organisations to implement Indigenous justice specific initiatives:

It is almost the perverse irony that most of those building blocks do have national partnership agreements, but of course one does not. The one that does not is the safe communities building block ... it happens to be the one with no national partnership agreement and thus no funding.⁴⁰

- 2.64 Emilie Priday from the Australian Human Rights Commission, called for the inclusion of justice targets in the Closing the Gap strategy to not only address people entangled in the criminal justice system, but to increase the likelihood of meeting the existing targets:

One of the things we have argued for in the last Social Justice Report is that there should be targets around criminal justice as well. Obviously targets around criminal justice and reducing Indigenous imprisonment are going to then support the other targets that have been set in the Closing the Gap agenda as well.⁴¹

- 2.65 Ms Priday expressed her frustration that criminal justice targets were not incorporated into the broader Closing the Gap commitment:

At the moment, we have Closing the Gap and a whole heap of targets in terms of education, health and employment. Yet we do not have anything around criminal justice targets. When we are looking at the overrepresentation that we have, it seems crazy that we are not including that. It is really important for us to put this forward to the committee as a Closing the Gap issue and also as a human rights issue.

I guess really what that also means is that then we can have some sort of platform for integrating some of these issues into COAG processes. The thing about juvenile justice issues – and I am sure everyone here has mentioned it and I think we would all agree – is

40 Wes Morris, KALACC, *Committee Hansard*, Perth, 30 March 2010, p. 60.

41 Emilie Priday, Australian Human Rights Commission, *Committee Hansard*, Sydney, 4 March 2010, p. 31.

that they are quite siloed. The beauty of the Closing the Gap process is that it is bringing together state, territory and Commonwealth levels of government and departments – all the different departments. I think that could be one practical step that we could take in a big picture approach to where we need to be going in terms of overrepresentation.⁴²

2.66 Similarly, the Australian Children’s Commissioners and Guardians emphasised that:

... it will be impossible to meet the ‘closing the gap’ targets around health, education and employment without also addressing the high level of Indigenous imprisonment which compounds individual and community disadvantage.⁴³

2.67 Katherine Jones from the Attorney-General’s Department, advised the Committee that work was underway on the development of justice targets:

... with the intention of including the targets relating to that in any future COAG reform packages. We are working with the states and the territories through the Standing Committee of Attorneys-General Working Group on Indigenous justice to develop the targets. We hope that the targets will be considered by the Standing Committee of Attorneys-General at its next meeting on 23 July [2010].⁴⁴

2.68 While the Standing Committee of Attorneys-General (SCAG) is working on justice targets for possible inclusion in the Closing the Gap strategy, there is no guarantee that COAG will adopt the target(s) that SCAG develops. At the time of tabling this report, the Attorney-General’s Department informed the Committee that no further developments have been made on Indigenous justice targets.

2.69 Ms Jones advised the Committee that ‘whilst there [had been] some negotiations towards a separate National Partnership Agreement on community safety, there [was] not one being progressed at the moment’.⁴⁵

2.70 COAG has agreed previously (in May 2009) that the Safe Communities Building Block, rather than being addressed through a National

42 Emilie Priday, Human Rights Commission, *Committee Hansard*, Sydney, 28 January 2011, p. 80.

43 Australian Children’s Commissioners and Guardians, *submission 59*, p. 5.

44 Katherine Jones, Attorney-General’s Department, *Committee Hansard*, Canberra, 27 May 2010, p. 2.

45 Katherine Jones, Attorney-General’s Department, *Committee Hansard*, Canberra, 27 May 2010, p. 21.

Partnership Agreement, would instead be addressed through three national policy vehicles, including:

- the National Indigenous Law and Justice Framework 2009-2015
- the National Council's Plan to Reduce Violence against Women and their Children 2009-2021, and
- the National Framework for Protecting Australia's Children 2009-2020.⁴⁶

2.71 These three policy vehicles and a range of state and territory Aboriginal justice agreements or equivalent strategies will be discussed in the following section of this chapter.

The National Indigenous Law and Justice Framework

2.72 In November 2009, the Commonwealth and state and territory governments, through SCAG, endorsed the National Indigenous Law and Justice Framework (the Indigenous Justice Framework). The Indigenous Justice Framework represents the first nationally agreed approach to addressing the issues underpinning adverse contact with the criminal justice system common to many Indigenous people.

2.73 The five goals of the Indigenous Justice Framework are:

- improve all Australian justice systems so that they comprehensively deliver on the justice needs of Aboriginal and Torres Strait Islander peoples in a fair and equitable manner
- reduce over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims in the criminal justice system
- ensure that Aboriginal and Torres Strait Islander peoples feel safe and are safe within their communities
- increase safety and reduce offending within Indigenous communities by addressing alcohol and substance abuse, and
- strengthen Indigenous communities through working in partnership with government and other stakeholders to achieve sustained improvements in justice and community safety.⁴⁷

2.74 The Indigenous Justice Framework identifies options for action that address each of these goals to assist government and non-government service providers in the development of Indigenous justice initiatives.

2.75 Commonwealth, state and territory governments are not compelled to implement any of the Indigenous Justice Framework's strategies or

46 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 6.

47 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 10.

actions. Instead, governments can choose what to implement according to their priorities and resource capacity.⁴⁸

- 2.76 The Indigenous Justice Framework includes a Good Practice Appendix containing a catalogue of good and promising practice identified by the Commonwealth, state and territory governments. It is expected that the Appendix will be updated annually to reflect positive Indigenous justice program developments.
- 2.77 In August 2009, the Attorney-General, the Hon. Robert McClelland MP announced a \$2 million investment for Indigenous Justice Program Evaluations.⁴⁹ Twenty of the programs identified in the Good Practice Appendix are being evaluated over two years from December 2010 to December 2012.⁵⁰
- 2.78 SCAG's *National Indigenous Law and Justice Framework 2009-2015* stated that reports on progress under the Framework will be provided to SCAG on an annual basis.⁵¹ The Attorney-General's Department advised the Committee that no review of activity under the Framework was undertaken in 2010.⁵²

National Plan to Reduce Violence against Women and their Children

- 2.79 In March 2009, an 11-member National Council released the National Plan for Australia to Reduce Violence against Women and their Children (the National Plan). The National Plan focuses on preventative measures to challenge the values and attitudes that sustain violence in the community. The National Plan emphasises the need to help people develop respectful relationships that are non-violent and based on equality and mutual respect.⁵³
- 2.80 The six objectives of the National Plan are:

- communities that are safe and free from violence

48 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 4.

49 Hon. Robert McClelland MP, 'Indigenous Young People Crime and Justice Conference', August 2009, p. 8.

50 Attorney-General's Department, *Evaluation of Indigenous justice programs in support of the National Indigenous Law and Justice Framework*, <www.ema.gov.au/www/agd/agd.nsf/Page/Indigenous_law_and_native_titleIndigetitl_la_w_programs> accessed 5 May 2011.

51 SCAG, *National Indigenous Law and Justice Framework 2009-2015*, p. 31.

52 The advice was received from the Attorney-General's Department on 28 April 2011.

53 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021*, March 2009, p. iv.

- relationships that are respectful
 - services that meet the needs of women and their children
 - responses that are just
 - perpetrators who stop their violence, and
 - systems that work together effectively.⁵⁴
- 2.81 Although the National Plan recognises that Indigenous women are more likely to 'report higher levels of physical violence during their lifetime ... [and] experience sexual violence and sustain injury'⁵⁵ than non-Indigenous women, it is not an Indigenous specific plan for action, nor is the issue of violence against Indigenous women addressed through a single outcome area or strategy.
- 2.82 The National Plan is only a set of recommended strategies and actions, and does not compel the Commonwealth, state or territory government to implement any of the suggested initiatives.
- 2.83 In April 2009, the Commonwealth Government released its response to the National Plan, outlining 20 priority actions to address each of the six outcome areas, only two of which had an Indigenous specific focus, including:
- an agreement to build on current activities to reduce overcrowding in Aboriginal and Torres Strait Islander communities, and
 - an agreement to consult with States and Territories to develop national responses to fund healing centres for Indigenous communities.⁵⁶

National Framework for Protecting Australia's Children

- 2.84 In April 2009, COAG endorsed the National Framework for Protecting Australia's Children 2009-2020 (the Child Protection Framework). The Child Protection Framework seeks to deliver a more integrated response to the issues affecting the safety and wellbeing of children.
- 2.85 The Child Protection Framework does not alter the responsibilities of governments. State and territory governments retain responsibility for

54 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021*, March 2009, pp. 16-20.

55 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009-2021*, March 2009, p. 9.

56 Commonwealth of Australia, *The National Plan to Reduce Violence Against Women, Immediate Government Actions*, April 2009, p. 15.

statutory child protection and the Commonwealth Government retains responsibility for income support payments.⁵⁷

2.86 The six supporting outcomes of the Child Protection Framework are:

- children live in safe and supportive families and communities
- children and families access adequate support to promote safety and intervene early
- risk factors for child abuse and neglect are addressed
- children who have been abused or neglected receive the support and care they need for their safety and wellbeing
- Indigenous children are supported and safe in their families and communities, and
- child sexual abuse and exploitation is prevented and survivors receive adequate support.⁵⁸

2.87 The Child Protection Framework is ‘supported by rolling three year action plans identifying specific actions, responsibilities and timeframes for implementation’.⁵⁹

2.88 The Child Protection Framework recognises that Indigenous children are especially disadvantaged and require additional responses to the issues they face in terms of their safety and wellbeing, however it is not an Indigenous specific framework for action.

State and Territory Indigenous justice agreements

2.89 Aboriginal justice agreements or equivalent strategic documents exist in New South Wales (New South Wales Aboriginal Justice Plan), the Australian Capital Territory (ACT Aboriginal and Torres Strait Islander Justice Agreement), Victoria (Victorian Aboriginal Justice Agreement), Western Australia (WA State Justice Plan), and South Australia (Aboriginal Justice Action Plan). Queensland’s agreement lapsed in 2010 and a draft of the new agreement has been released for public consultation. These agreements and documents provide strategic plans, at state and territory level, to address community safety and rates of Indigenous offending.

57 Commonwealth of Australia, *National Framework for Protecting Australia’s Children 2009-2020*, p. 9.

58 Commonwealth of Australia, *National Framework for Protecting Australia’s Children 2009-2020*, p. 11.

59 Commonwealth of Australia, *National Framework for Protecting Australia’s Children 2009-2020*, p. 5.

- 2.90 The Committee noted that Tasmania and the Northern Territory do not have Aboriginal justice agreements or equivalent strategic documents.

The Australian Capital Territory

- 2.91 The ACT Aboriginal and Torres Strait Islander Justice Agreement 2010-2013 has five goals, which are to:
- improve community safety and improve access to law and justice service for Aboriginal and Torres Strait Islander people in the ACT
 - reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system as both victims and offenders
 - improve collaboration between stakeholders to improve justice outcomes and service delivery for Aboriginal and Torres Strait Islander people
 - facilitate Aboriginal and Torres Strait Islander people taking a leadership role in addressing their community justice concerns, and
 - reduce inequalities for Aboriginal and Torres Strait Islander people in the justice system.
- 2.92 The agreement was developed by the ACT government in partnership with the ACT Aboriginal and Torres Strait Islander Elected Body and the ACT Aboriginal Justice Centre.
- 2.93 Importantly, the agreement has a reporting framework that is based on a range of performance measures, including:
- the long term reduction of the number of adults in custody
 - the number of staff undertaking cultural awareness and cultural competency training with justice agencies
 - the number of Indigenous staff employed within key justice agencies, and
 - a range of data sources that include the number of Indigenous children, young people and adults who come into contact with the criminal justice system and the nature of that contact.
- 2.94 The agreement requires:
- annual reporting on performance measures by the relevant ACT agencies, which may be subject to the ACT Aboriginal and Torres Strait Islander Elected Body estimate style hearings

- an alignment of territory reporting with national reporting on work towards the broader Closing the Gap targets, and
- the provision of a public report card on the performance measures of each agency after two years.⁶⁰

New South Wales

- 2.95 Until recently New South Wales had an Aboriginal Justice Plan which set out the following goals:
- reduce the number of Aboriginal people coming into contact with the criminal justice system
 - improve the quality of services, and
 - develop safer communities.⁶¹
- 2.96 Under the goals were seven strategic direction areas, each with their respective objectives and actions:
- Aboriginal children
 - Aboriginal young people
 - community wellbeing
 - sustainable economic base
 - criminal justice system
 - systemic reform, and
 - leadership and change.⁶²
- 2.97 However, the New South Wales Aboriginal Justice Advisory Council no longer exists, with the New South Wales Government now ‘consulting with the network of 20 Aboriginal Community Justice Groups on law and justice issues affecting Aboriginal people in NSW’.⁶³ The Committee was advised that the New South Wales Department of Aboriginal Affairs are

60 ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body, *ACT Aboriginal and Torres Strait Islander Justice Agreement 2010-2013*, p.23.

61 NSW Aboriginal Justice Advisory Council, *NSW Aboriginal Justice Plan: Beyond Justice 2004-2014*, p. 8.

62 NSW Aboriginal Justice Advisory Council, *NSW Aboriginal Justice Plan: Beyond Justice 2004-2014*, p. 10.

63 New South Wales Government, *Crime Prevention Division*, <www.lawlink.nsw.gov.au/ajac> accessed 13 July 2010.

monitoring the implementation of the New South Wales Aboriginal Justice Plan under the Two Ways Together process.

Victoria

2.98 The Victorian Aboriginal Justice Agreement Phase 2 (AJA2) has two aims, which are to:

- minimise Koori over-representation in the criminal justice system by improving accessibility, utilisation and efficacy of justice-related programs and services in partnership with the Koori community, and
- have a Koori community, as part of the broader Victorian community, that has the same access to human, civil and legal rights, living free from racism and discrimination and experiencing the same justice outcomes through the elimination of inequities in the justice system.⁶⁴

2.99 Under the aims there are six objectives with a range of strategies and initiatives, including:

- crime prevention and early intervention
- diversion and stronger alternatives to prison
- reduced re-offending
- reduced victimisation
- responsive and inclusive services, and
- stronger community justice responses.⁶⁵

2.100 Andrew Jackomos from the Department of Justice Victoria, emphasised the issue of partnership between the Victorian Government, the judiciary, and the Victorian Indigenous community as fundamental to the success of the AJA2:

What makes our Aboriginal Justice Agreement work – and I believe it works – is this strong partnership. It is a dynamic partnership that is regularly tested. But it is a continuing partnership, and it brings together a government, judiciary and community ... We have a network of regional Aboriginal justice advisory committees – I think we now have nine across the state – that bring together community and bring together justice agencies

64 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, p. 19.

65 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, p. 20.

at the regional and local level to identify what the issues are and also to identify locally based responses.⁶⁶

- 2.101 The success of the AJA2 is measured by improvements in the headline indicator which is to reduce the rate of Koori imprisonment and a large number of intermediary indicators. The AJA2 acknowledges that:

Because Koori over-representation is heavily influenced by conditions beyond the control of the justice system, the headline indicator is unlikely to be sensitive enough to measure decreases in over-representation caused by AJA2 initiatives. The intermediary indicators ... are far more able to do this because factors outside the influence of the AJA2 have less impact on them. Further, they all contribute to the performance of the headline indicator.⁶⁷

- 2.102 The intermediary indicators are worth noting as they reveal how developed the monitoring framework of the AJA2 is. The intermediary indicators include:

- number of times Koori youth are processed by police
- proportion of Kooris cautioned when processed by police
- proportion of Kooris remanded in custody
- proportion of Kooris in maximum security prisons
- proportion of adult Kooris sentenced to prison rather than other orders
- proportion of Koori youth sentenced to juvenile detention rather than other orders
- proportion of Koori prisoners released on parole
- proportion of Koori adults/youth who return to prison/juvenile detention within two years
- proportion of Koori adults/youth who are convicted within two years of their previous conviction
- proportion of people accessing positive criminal justice system-related services who are Koori
- number of Kooris employed in criminal justice system-related agencies
- number of Kooris on intervention orders
- number of Kooris convicted for violent offences against persons
- number of Kooris who are victims of crime (by offence category)

66 Andrew Jackomos, Department of Justice, Victoria, *Committee Hansard*, Melbourne, 3 March 2010, p. 22.

67 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, p. 26.

- number of Koori volunteers involved in programs
- number of community initiated and implemented programs, and
- number of Koori organisations delivering programs.⁶⁸

2.103 Mr Jackomos advised the Committee that following the introduction of the AJA2, there had been sustained improvements in some of the intermediary indicators:

The response from the Victorian Aboriginal Justice Agreement has been a reduction in the rate in which young Kooris come into contact with police, from 75.6 per thousand in 2004-05 down now to 71.6. So our contact is decreasing. There has been an increase in young Kooris in the 10 to 17 age group cautioned when processed by police. This is an initiative that the Victorian Aboriginal Legal Service has led for us in partnership with the Koori communities and Victoria Police. So that is an increase from 27.9 up to 34. We see that we are making improvement. There is a huge way to go but we see that in partnership – and it has to be a strong partnership – we can make a difference.⁶⁹

Western Australia

2.104 Western Australia's State Justice Plan (the Justice Plan) was developed by the State Aboriginal Justice Congress (the State Congress). It is not a government plan, but sets out some 'key priorities for negotiation with Government'.⁷⁰ Those key priorities are:

- reform the criminal justice system to achieve fair treatment for Aboriginal people
- tackle alcohol, drug abuse and mental health issues contributing to crime, and
- strengthen families and communities to build identity and help prevent violence and other crime.⁷¹

2.105 Under each of these priority areas, the State Congress will seek to negotiate specific agreements with State and Commonwealth government agencies, drawing upon identified strategies and actions under each of the priority areas.⁷²

68 Victorian Government, *Victorian Aboriginal Justice Agreement Phase 2*, 2006, pp. 26-27.

69 Andrew Jackomos, *Committee Hansard*, Melbourne, 3 March 2010, p. 22.

70 Government of Western Australia, *State Justice Plan 2009-2014*, p. 7.

71 Government of Western Australia, *State Justice Plan 2009-2014*, p. 8.

72 Government of Western Australia, *State Justice Plan 2009-2014*, p. 8.

- 2.106 Leza Radcliffe from the State Congress, told the Committee that the strength of the Justice Plan was that it drew on the voices of Aboriginal people:

This is one of the better true representations of the Aboriginal voice with regard to justice issues ... We access a lot of people at a regional level and a local level because the issues are current and relevant to people. In our different areas we have come up with our strategies for our region and they have been combined in that one document. That is a good representation of what we hope to achieve at a state level.⁷³

- 2.107 Review and evaluation of the Justice Plan is expected to occur at two levels. The first focuses on the individual agreements negotiated with State and Commonwealth government agencies, while the second looks at the Justice Plan as a whole. Review of the individual agreements will occur annually, while the review of the Justice Plan will occur either in 2011 or 2012.⁷⁴

South Australia

- 2.108 South Australia's Aboriginal Justice Action Plan 2008-14 (the Action Plan) has five goals, including:

- to ensure all South Australians have access to democratic, fair and just services
- to ensure that crime is dealt with effectively
- to improve public safety through education, prevention and management
- to contribute towards building sustainable communities, and
- to excel in service delivery innovation and government efficiency.⁷⁵

- 2.109 The priority actions in the plan are drawn from implementation plans from South Australia's Strategic Plan targets.⁷⁶ Each priority action is supported by a lead agency, and identifies key performance indicators, timeframes for action, and contributing agencies.

73 Leza Radcliffe, State Aboriginal Justice Congress, *Committee Hansard*, Perth, 30 March 2010, p. 55.

74 Government of Western Australia, *State Justice Plan 2009-2014*, 2009, p. 9.

75 Government of South Australia, *Aboriginal Justice Action Plan*, 2009, p. 3.

76 Government of South Australia, *Aboriginal Justice Action Plan*, 2009, p. 2.

Queensland

- 2.110 A draft of the new Queensland Aboriginal and Torres Strait Islander Justice Strategy has been released for public consultation (closing 30 May 2011). The *Aboriginal and Torres Strait Islander Justice Strategy 2011-2014* is a three year program that aims to reduce Indigenous offending and re-offending in Queensland.
- 2.111 The key features of the strategy are:
- a place-based approach, focusing on select locations in urban, regional and remote Queensland (these include Cairns, Townsville, Mount Isa, Rockhampton and Brisbane and discrete Aboriginal communities and the Torres Strait Islands)
 - an ongoing assessment of Indigenous justice (and justice-related) programs and services, in consultation with Aboriginal and Torres Strait Islander people and other key stakeholders
 - an annual report to Parliament on progress
 - actions which link with the government's work relating to the Crime and Misconduct Commission report, *Restoring Order: Crime prevention, policing and local justice in Queensland's Indigenous communities*, including:
 - ⇒ the commitment to review the Community Justice Group program, local law and order laws, and the use of local Indigenous people in policing roles
 - consistency with the national approach to Indigenous justice and community safety issues agreed under the National Indigenous Law and Justice Framework, and
 - a program of action to make on-the-ground changes that will reduce over-representation and improve community safety for Aboriginal and Torres Strait Islander people.⁷⁷
- 2.112 A Queensland Aboriginal and Torres Strait Islander Justice Taskforce will be established to monitor the implementation, direction and progress of the Strategy. The Taskforce will:
- ... be chaired by an Indigenous community leader and include representatives from Aboriginal and Torres Strait Islander communities (including a representative from Queensland

77 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014 Summary*, p. 1.

Aboriginal and Torres Strait Islander Advisory Council (QATSIAC) and from community justice groups), State and local governments (including Directors-General of key State Government agencies), the community sector and the private sector.⁷⁸

- 2.113 The Strategy has been devised to reduce the statistical overrepresentation of Indigenous people in the criminal justice system. It has more immediate targets to be achieved within three years, including a commitment to ensure that:

100 high-risk Indigenous young people, including those who have had contact with the Youth Justice system, will be transitioned to employment after receiving a qualification, mentoring and other assistance in the building of the recreational Active Trail between Kingaroy and Theebine (132 km).⁷⁹

- 2.114 The Strategy aims to put in place policy measures that will improve outcomes in the longer term to increase early intervention and prevention support, and to improve the treatment and rehabilitation of offenders. These long term targets include ensuring that:

- all parents or carers of young Indigenous people who come into contact with the youth justice and child safety systems will be offered parenting and/or family support
- all Indigenous people in prison or detention who are in need of literacy and numeracy training will receive it, including those on short stays (i.e. less than 12 months), and
- all prisons and detention centres will provide driver education support to assist people to get their licence, or to regain it, including those on short stays (i.e. less than 12 months).⁸⁰

Committee comment

- 2.115 The Committee was disturbed to hear that not only do Indigenous juveniles and young adults continue to be overrepresented in detention centres and prisons, but that levels of incarceration are increasing despite

78 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014*, p. 27.

79 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014*, p. 29.

80 Government of Queensland, *Draft Aboriginal and Torres Strait Islander Justice Strategy 2011-2014*, p. 29.

ongoing effort and funding in this area. It is shameful that in 2011 Indigenous people are more likely to be detained or imprisoned than at any other time since the 1991 *Royal Commission into Aboriginal Deaths in Custody* report.

- 2.116 The Committee is concerned deeply that Indigenous people, especially Indigenous women, are at such a high risk of being the victims of violent crime.
- 2.117 The Committee recognises that the overrepresentation of Indigenous juveniles and young adults in the criminal justice system is a consequence of the chronic disadvantage experienced by many Indigenous communities.
- 2.118 The Committee acknowledges the need to provide for and support safe and healthy communities that empower Indigenous youth and their families to be strong and self-determining, and to equip young Indigenous people with a positive sense of identity, educational attainment and the appropriate life skills to make positive choices for their future. The Committee recognises the critical need for early intervention to nurture the next generation of young Indigenous people and prevent them from coming into adverse contact with the criminal justice system.
- 2.119 The Committee notes that the majority of states and territories have Indigenous justice agreements or equivalent strategic documents in place - the exceptions are Tasmania and the Northern Territory. The Committee notes the importance of such agreements and the need for each state and territory to shape agreements appropriate to the issues and communities in their jurisdiction.
- 2.120 While supportive of the variations this will bring to each agreement, the Committee considers there is a need for some states and territories to provide greater detail in their agreements and to ensure appropriate Indigenous involvement in the design and implementation of the agreement.
- 2.121 The Committee considers that such agreements should be viewed as dynamic and elements should be reviewed regularly and updated following monitoring and evaluation of area outcomes. Victoria and Western Australia appear to have a sound Indigenous partnership approach and Victoria has a well developed system of monitoring. The Committee is encouraged by Queensland's draft strategy approach to including Indigenous representation in its implementation and monitoring framework.

- 2.122 The Committee urges other states and territories to re-evaluate their own agreements and be willing to build on the work of others. In particular, the Committee urges Tasmania and the Northern Territory to develop appropriate justice agreements in partnership with their Indigenous communities.
- 2.123 The Committee is supportive of COAG's Closing the Gap strategy. The existing Closing the Gap targets and the National Partnership Agreements that focus activity on the Building Blocks provide a sound foundation for addressing Indigenous disadvantage.
- 2.124 While the Closing the Gap strategy, in the Committee's view, establishes a sound foundation for addressing Indigenous disadvantage, the Committee is concerned about both the lack of activity under the Safe Communities Building Block and the absence of an Indigenous justice target to complement the existing targets in the areas of health, education and employment.
- 2.125 The Committee commends Commonwealth and state and territory governments on the development and endorsement of the National Indigenous Law and Justice Framework. Insofar as it provides stakeholders with a coherent strategy for pursuing improvements in justice outcomes for Indigenous people, it is a comprehensive document of value to those who choose to use it in this manner.
- 2.126 The Committee is encouraged by the development of the National Plan for Reducing Violence against Women and their Children. The actions in the National Plan that specifically address Indigenous women and children are well considered, and likely to lead to improvements in safety, if implemented.
- 2.127 The Committee commends COAG on the endorsement of the National Framework for Protecting Australia's Children. It is pleasing to see that the issue of Indigenous community safety is being addressed in a specific outcome area.
- 2.128 However, the Committee has some concerns with aspects of the National Indigenous Law and Justice Framework, the National Plan to Reduce Violence against Women and their Children, and the National Framework for Protecting Australia's Children.
- 2.129 Foremost amongst those concerns is that the National Indigenous Law and Justice Framework, while comprehensive in its identification of Indigenous justice issues, does not compel any jurisdiction to implement its strategies and actions, and is unlikely to lead to any coordinated and sustained activity in this area.

- 2.130 Neither the National Plan to Reduce Violence against Women and their Children nor the National Framework for Protecting Australia's Children is Indigenous specific. Where Indigenous issues do receive focused attention, as they do in the National Framework for Protecting Australia's Children, that attention is restricted to issues relating to Indigenous community safety rather than the full spectrum of issues affecting Indigenous people's contact with the criminal justice system.
- 2.131 The Committee does not accept that the Safe Communities Building Block is being well served by these three policy vehicles as suggested by COAG.
- 2.132 The Committee is of the view that Closing the Gap in the identified target areas between Indigenous and non-Indigenous people can only be achieved if the Safe Communities Building Block is addressed in a nationally coordinated and sustained manner with attention focused not only on Indigenous prevention and diversion, but also on rehabilitation.
- 2.133 The Committee does not accept the view that investment in education, health, housing and employment initiatives are sufficient to close the gap in Indigenous justice outcomes. Certainly, initiatives in these areas will have a positive impact on Indigenous imprisonment rates in the long term. However, the idea that initiatives in these areas are all that are needed to be successful fails to recognise intergenerational patterns in which a significant number of Indigenous people are entangled already within the criminal justice system. These people return to their communities upon release, often without improved prospects and with the capacity to negatively influence others in their communities.
- 2.134 Therefore, the Committee considers that the most effective means of focusing activity on the Safe Communities Building Block and for supporting activity under the other Building Blocks is through the development of a National Partnership Agreement dedicated to improving Indigenous justice and community safety outcomes.
- 2.135 Although the Commonwealth Government and state and territory governments will be responsible for developing the details of the National Partnership Agreement, the Committee considers it necessary that prevention, diversion and rehabilitation are equally addressed as part of that agreement.
- 2.136 The Committee considers it vital that justice targets are included in the COAG Closing the Gap strategy. The Committee recommends that the Commonwealth endorse the justice targets developed by SCAG and strongly urges all states and territories to support the inclusion of a Safe

Communities Building Block related Partnership Agreement and justice targets in the Closing the Gap strategy.

Recommendation 1 - National Partnership Agreement

- 2.137 The Committee recommends that the Commonwealth Government develop a National Partnership Agreement dedicated to the Safe Communities Building Block and present this to the Council of Australian Governments by December 2011 for inclusion in the Closing the Gap strategy.

Recommendation 2 - Justice targets

- 2.138 The Committee recommends that the Commonwealth Government endorse justice targets developed by the Standing Committee of Attorneys-General for inclusion in the Council of Australian Governments' Closing the Gap strategy. These targets should then be monitored and reported against.