

## CHAPTER 6

### CHILDREN AND YOUNG PEOPLE IN JUVENILE JUSTICE AND DETENTION CENTRES

#### Children and young people in juvenile justice centres

6.1 The Committee received evidence relating to children and young people in juvenile justice centres. The following discussion provides a broad outline of some of the many issues facing children and young people in the juvenile justice system.

#### *Legislative framework*

6.2 Across Australia, State and Territory legislation provides a framework to deal with young people who are suspected or convicted of committing a criminal offence and applies to situations where young people may be placed in a juvenile justice centre. As with aspects of Australia's mainstream care and protection laws for children and young people, their provisions vary among jurisdictions. Examples of legislative provisions outlined to the Committee include the following. The Tasmanian Commissioner for Children noted that under s.124(1) of the Tasmanian *Youth Justice Act 1997*, children and young people in custody at a juvenile justice facility, either on remand or for a conviction, are the responsibility of the Secretary of the Department of Health and Human Services.<sup>1</sup> The Western Australian Department of Justice submitted that that State's *Young Offenders Act 1994* recognises that juvenile offending is transitory and minor, and that young offenders should not be given a greater punishment than an adult for a similar offence.<sup>2</sup>

6.3 The Commonwealth has direct responsibility for young federal offenders, who are dealt with by procedures laid down under the *Crimes Act 1914* (Cth). Offences for which a young person may be charged under the *Crimes Act 1914* (Cth) include damaging federal government property. The Commonwealth has also assumed responsibilities relevant to juvenile justice processes under international instruments. Articles 37 and 40 of the United Nations Convention on the Rights of the Child have set down principles for the treatment of young suspects and offenders and require States Parties to develop and maintain a separate juvenile justice system.<sup>3</sup>

6.4 The Australasian Juvenile Justice Administrators endorsed the Standards for Juvenile Custodial Facilities in March 1999.<sup>4</sup> The standards are based on the United

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1 *Submission 277*, p.1 (Office of the Commissioner for Children Tasmania).

2 *Submission 177*, p.8 (WA Department of Justice).

3 Australian Law Reform Commission (ALRC), *Seen and heard: priority for children in the legal process*, Report No. 84, Human Rights and Equal Opportunity Commission, 1997, p.467.

4 Australian Institute of Criminology – <http://www.aic.gov.au>

Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the UN Convention. Included in the standards' objectives are those to ensure a safe and secure environment where detainees can be assisted to address their offending behaviour. For example, Western Australia's Department of Justice advised that it had adopted the Standards for Juvenile Custodial Facilities in July 2000 and managed juveniles in detention in line with such principles.<sup>5</sup>

6.5 The Queensland Commission for Children and Young People advised of its legislative responsibility to receive, seek to resolve, monitor and investigate complaints about services provided to children under child protection or juvenile justice orders, in government and non-government organisations which are in receipt of government funding. As such, services received by children in youth detention centres are matters of complaint which may be received by the Commission. The Commission advised that under its Community Visitor Program, 24 community visitors State wide visit children in out-of-home facilities such as youth detention centres and authorised mental health services.<sup>6</sup>

6.6 Jurisdictions have a range of options for dealing with young offenders who come before a court. These include community-based and custodial orders. Custodial orders result in young offenders being sent to a variety of juvenile justice facilities.

### ***Children and young people in the juvenile justice system***

6.7 Young people may be in a juvenile justice centre for a number of reasons. They could be on remand and awaiting a court appearance and as such, have not been sentenced. Alternatively, they have been sentenced for an offence.

6.8 Over the years, that children who had not committed offences have often been placed in juvenile justice centres in Australia, is well known, as noted in *Forgotten Australians*:

Children could be placed in juvenile detention centres despite not having committed a criminal offence...the mixing of welfare and criminal cases in detention centres became a hallmark of dealing with young people in the juvenile system...the by-product of such indiscriminate mixing of children in detention centres 'bred' criminals.<sup>7</sup>

6.9 Submissions commented that nowadays young people are at times placed in juvenile justice centres because there is nowhere else for them or because of system failure, as the following excerpt demonstrates:

I was 13 when I went to stay at Minali for what was to have been one night and turned into 8 and a half months of hell. The co-ordinator who escorted

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5 *Submission 177*, p.8 (WA Department of Justice).

6 *Submission 72*, p.2 (Queensland Commission for Children and Young People).

7 *Forgotten Australians*, p.38.

me kept telling me to stop crying and shut up...[my caseworker said] I would only be there for the night and to calm down. This caseworker left a week later...and my case file was not handed on to anyone else, and as my computer file is a secure file it is locked with a password and most people cannot access it.<sup>8</sup>

### *Numbers and background of children and young people in detention*

6.10 Evidence indicates that there was a general decline in the number of young people aged 10 to 17 years in juvenile detention in 1994-2003. At 30 June 1981, there were 1352 young people detained in juvenile detention facilities, whereas at 30 June 2003 only 640 juveniles were recorded as detained.<sup>9</sup> The NSW Commissioner for Children and Young People noted that 'a greater awareness of the limited rehabilitative power of detention for children and youth and great legal protections for them are reflected in the declining numbers detained'.<sup>10</sup>

6.11 The ALRC has noted that many children and young people in the juvenile justice system have had extensive experience of the care and protection system.<sup>11</sup> Youth Off The Streets stated that 'the difficulties encountered by children and youth placed within the child protection system (often shared clients with juvenile justice involvement) are mirrored within the juvenile justice system'.<sup>12</sup> The NSW Commission for Children and Young People cited 1993-1994 figures from the Community Services Commission that males were 13 times more likely and females 35 times more likely to be admitted to detention centres if they were state wards, than if they were not.<sup>13</sup> Centacare-Sydney noted studies showing a strong link between the care system and the juvenile justice system and a subsequent link between the juvenile and adult justice system.<sup>14</sup> Evidence from the WA Department of Justice cited statistics showing a high likelihood of juvenile detainees later becoming adult detainees in the justice system.<sup>15</sup>

6.12 Significant numbers of children who have come under the care of the State and Territories' care and protection systems because of child abuse and maltreatment, may have a 'direct path' to instances of juvenile offending. An Australian Institute of Criminology (AIC) study of 41 700 Queensland children who had been the subject of substantiated cases of child maltreatment or classified as being 'at risk' found that

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8 *Submission 69*, p.9 (CREATE Foundation)

9 Australian Institute of Criminology (AIC) 'Juvenile detention rates 1994-2003', *Crime Facts Info*, No 87, 14.12.04.

10 *Submission 35*, p.7 (NSW Commission for Children and Young People).

11 ALRC 1997, p.103.

12 *Submission 81*, p.4 (Youth Off The Streets).

13 *Submission 35*, p.7 (NSW Commission for Children and Young People).

14 *Submission 82*, p.6 (Centacare-Sydney) quoting Vinson 1974 and CAMA Report 1996.

15 *Committee Hansard 9.12.03*, p.77 (WA Department of Justice).

children who have suffered maltreatment, particularly physical abuse and neglect are more likely to offend than other children. The AIC examined situations for indigenous and non-indigenous offenders, taking account of factors such as gender, types of abuse, children's and young people's ages when abused and children's particular vulnerability. The study acknowledged that many incidents of maltreatment are not reported or do not proceed to court (which has obvious effects on the data). Its findings included that:

- children with one or more substantiated maltreatment notifications were more likely (17 per cent) than children with no substantiated maltreatment (10 per cent) to have a later offending record;
- children with out-of-home placements, likely to be predictive of severity of maltreatment, are more likely to offend than children who do not receive an out-of-home placement; and
- while maltreatment did not seem to account for differences in male and female offending...more females than males experienced persistent maltreatment or maltreatment only in adolescence.<sup>16</sup>

6.13 In the light of the above AIC research, the following excerpt aptly describes the circumstances that often provide a pathway to juvenile detention for young people:

If you were interested in creating a criminal you would have a pretty good chance if you took a young person from a seriously troubled home, put them into a series of foster or group homes, changed their primary worker on a regular basis, let them run away from 'home' at an early age, allowed them to drop out of school and enabled them to develop a drug and/alcohol addiction. Your chances would improve if, somewhere in their lonely and painful existence, they had been sexually, physically or emotionally abused. If in those few instances that they sought help you would ensure that there were no accessible services, that the workers they encountered were rushed and overwhelmed by heavy caseloads, and that they would be seen first and foremost as trouble rather than troubled, is it surprising then that these young people would become perpetrators or victims of crime?<sup>17</sup>

6.14 As a 1990 South Australian study found, most of the young people in custody on remand, came from a '...chaotic social background and were without education and family support'.<sup>18</sup>

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16 Stewart A, Dennison S & Waterson E, 'Pathways from child maltreatment to juvenile offending', *Trends and Issues*, No 241, AIC, October 2002, pp.1-6.

17 Korn Y, 'Strategic directions in the prevention of youth crime', Paper presented at the juvenile crime and juvenile justice: Towards 2000 and beyond conference, AIC, Adelaide, 26-27 June 1997, p.2, citing Youth Voice from the National Youth in Care Network quoted in 'Young People Say' NCPC 1997, p.1.

18 Kosky R, Sawyer M & Gowland J, 'Adolescents in custody: hidden psychological morbidity?', *Medical Journal of Australia*, vol 53, July 1990, p.24.

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*Experiences of children and young people prior to detention*

6.15 As has been widely documented, including in *Forgotten Australians*, many young people in juvenile justice centres, had experienced situations of having no one to turn to for help in the face of abuse, neglect, family tragedy or serious disruption to their lives. The following example of a child's experiences of neglect and family breakdown where the children were dispersed to institutions after their mother died, exemplifies the many stories received about how children and young people became involved in situations that led to their detention. Once in an abusive and harsh institution and without proper care and attention, many children got into further trouble:

...I was fostered out for a short time...I was sent to Mittagong Boys' Home...Mr Saville was cruel, and he used to cane up the hand and across, he opened my wrist on one caning...After absconding I was sent to Albion Street, then to Glebe from Glebe to Mount Penang, a high security boys' home. At this time I was about 13 years old...I was transferred to Muswellbrook Boys' Home...I was not accepted by the inmates or the management...I ran away...next morning I was sent back to Mount Penang, from where I was transferred to Tamworth Boys' Home, which was a former prison for men...I was sent to Tamworth to be 'broken', that's what it was used for by the child Welfare Department of NSW...I was about 14½ at the time.<sup>19</sup>

6.16 The correlation between a child's life experiences and entry to the justice system has been recognised and it would be worthwhile for centre managers to know about young people's prior abuse and life circumstances so that treatment and support can be provided. However, the Western Australian Department of Justice emphasised the difficulties in obtaining such data including young people's reluctance to disclose information, a lack of exchange of information across departments and privacy rules.<sup>20</sup> Youth Off The Streets noted that:

Community placement and support options, and sentences in detention often do not adequately take account of the young person's history of abuse and the emotional problems driving their criminal behaviour.<sup>21</sup>

*Indigenous children and young people in juvenile justice centres*

6.17 Many reports into child protection across Australia have revealed that a significant proportion of detainees are people from indigenous backgrounds. Figures from a 2003 ACT Legislative Assembly inquiry showed that the Territory's crime trends are broadly on a par with national trends and also noted, that as with other

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19 *Submission* 463, pp.1-4.

20 *Committee Hansard* 9.12.03, pp.75-76 (WA Department of Justice).

21 *Submission* 81, p.4 (Youth Off The Streets).

jurisdictions, indigenous youth are grossly over represented in crime statistics.<sup>22</sup> At February 2003, indigenous detainees represented 74 per cent of the 125 juvenile detainees aged 10-18 years in Western Australia. In the same period there were 579 juvenile justice community-based court orders for 541 distinct juveniles. Aboriginal males (41 per cent) had the highest number of orders followed by non-Aboriginal males (29 per cent) with Aboriginal and non-Aboriginal females recording lower rates.<sup>23</sup> The AIC noted that while the rate of detention of indigenous young people had declined between 1994 and 2003, 'the ratio of over-representation has remained relatively stable; with indigenous persons aged 10 to 17 years still almost 20 times more likely to be in detention than non-indigenous persons of the same age group'.<sup>24</sup> The large number of indigenous young people in juvenile detention across Australia varies according to the concentration of indigenous communities in particular jurisdictions. As well, in some States such as Queensland and Western Australia, it may be necessary to place a young person facing charges in custody, in order to ensure that he or she is taken to court.<sup>25</sup>

6.18 Various welfare agency workers outlined their first-hand experience of the high numbers of indigenous young people in Australia's juvenile detention centres:

...[in] the Brisbane Youth Detention Centre you would probably find that 60 per cent of the young people there at this moment are of Aboriginal and Torres Strait Islander descent. We criminalise these young people a lot earlier and we prolong their criminal career because of that.<sup>26</sup>

It is commonly recognised that young people from Aboriginal and Torres Strait Islander and Culturally Linguistically Diverse backgrounds are over represented in national statistics on school dropout rates and within the care and criminal justice systems.<sup>27</sup>

6.19 The Corrections Health Service referred to a study of inmates in NSW correctional centres, which included 235 indigenous inmates, that found that indigenous people removed in childhood had almost double the imprisonment rate of those not removed. The Service expressed concern that while the study did not show why the children were removed, the fact that 82 per cent of the removed indigenous prisoners were removed before the age of 10 years, suggests that juvenile justice

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22 Australian Capital Territory Legislative Assembly: Standing Committee on Community Services and Social Equity, *The rights, interests and well-being of children and young people*, Report No 3, August 2003, p.71.

23 *Submission 177*, pp.2-4 (WA Department of Justice).

24 AIC, 'Juvenile detention rates 1994-2003', *Crime Facts Info*, No 87, 14.12.04.

25 Norden Fr Peter, 'Are some states or territories more delinquent than others? Inter-jurisdictional comparisons', Paper presented at: Juvenile justice: from lessons of the past to a road map for the future conference, AIC in conjunction with the NSW Department of Juvenile Justice, Sydney, 1-2 December 2003.

26 *Committee Hansard* 12.03.04, p.46 (Father Dethlefs).

27 *Submission 81*, p.6 (Youth Off The Streets).

proceedings were not a primary reason. The organisation also noted that the HREOC report, *Bringing them home*, documented the over-representation of indigenous children in removals for welfare reasons which in most jurisdictions were not subject to legal review.<sup>28</sup>

*Children and young people with disabilities in juvenile justice centres*

6.20 A large percentage of juvenile detainees have a disability. People with Disability Australia (PWD) noted many reports indicating that children with disability, particularly those with mental illness and/or intellectual disability are over-represented in the juvenile justice system. PWD stated that in 1993 HREOC found that the lack of assessment, treatment and services for children with mental illness means that many of these children fall through a range of service systems and end up in the juvenile justice system, 'consigned to incarceration rather than treatment'.<sup>29</sup> A 1997 South Australian Government study, noted that many of the young people then entering that State's juvenile justice system could be classified as intellectually impaired; 28 per cent were of borderline or below average intellectual functioning.<sup>30</sup> PWD noted the links between systems failures and the placement of young people with disabilities in juvenile detention:

These findings link failures in the mental health, child protection, disability and community service system with the increased risk of children entering the juvenile justice system. These failures include lack of support services, appropriate treatment and behaviour intervention programs, family based care services and accommodation options; the use of inappropriate and harmful service practices, such as physical restraint and medication; the risk or actual occurrence of physical and sexual assault; and the reliance on the police to resolve challenging behaviour. There is also evidence to suggest that the lack of support services for children and appropriate policies and practices to deal with challenging behaviour often leads services to rely on or view juvenile justice facilities as 'providing a stable and secure care environment and...as a solution to a complex problem'.

Once in the juvenile justice system, the emphasis is on punishment of the crime and rehabilitation rather than on appropriate assessment, intervention and support services. Many children with disability are not even identified, which means their specific support needs are not addressed. The design of facilities and the environment can also contribute to a decreasing emotional and mental state.<sup>31</sup>

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28 *Submission 80*, p.2 (Corrections Health Service).

29 *Submission 165*, p.17 (People With Disability Australia Inc).

30 ALRC 1997, p.109.

31 *Submission 165*, pp.17-18 (People With Disability Australia Inc).

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*Longer term health issues*

6.21 A study of young offenders in custody in 1988-1999 in Victoria showed that such youth are likely to have many health problems, ranging from mental and behavioural disorders to blood-borne infectious diseases including Hepatitis C. One in 25 were dead within three years of leaving custody. The mortality rates were almost 10 times higher in the young males than that of their counterparts in the mainstream population and in females 40 times higher than a comparison group. Drug overdoses accounted for deaths in about half the instances while suicide and accidental injury made up the remainder.<sup>32</sup>

***Treatment of children and young people in detention***

6.22 The Western Australian Department of Justice reported very few cases of substantiated abuse of children and young people in that State's centres.<sup>33</sup> The Department also noted that:

I think it is fair to say that in juvenile custodial services we deal with the most volatile of young people who are at the most crucial stage of their lives. When they come to us, quite often in a state of great stress, it can often be related to their own situation, their family situation or, indeed, to drugs – which is the case with a large majority of the young people we deal with...in caring for these young people, there are often conflictive situations with staff where the staff have the responsibility to ensure that these young people, who are often in conflict with each other on the outside, do not pursue that on the inside of the detention centres. So there are, from time to time, occasions where it is necessary to restrain a young person. In those cases, if there is any thought that that restraint has not been carried out in a proper way or any comment has been made by the young person regarding that restraint, the internal investigations unit is requested to investigate that matter.<sup>34</sup>

6.23 Senators were concerned at evidence presented by the Western Australian Department of Justice that investigations of alleged sexual or physical abuse are undertaken by the department rather than by an external body. As well, a senator found it 'inconceivable' that in the last 50 or 60 years that there would have been no cases of mistreatment in Western Australian juvenile detention centres.<sup>35</sup>

6.24 The Victorian Government submitted that in its young offenders' corrective centres, punishments are expressly forbidden that involve unreasonable physical force,

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32 *Submission 19*, p.1 (Centre for Adolescent Health) - based on: Coffey C, Veit F, Wolfe R, Cini E & Patton G, 'Mortality in young offenders: retrospective cohort study', *British Medical Journal*, vol 326, 17.5.03.

33 *Submission 177*, p.6 (WA Department of Justice).

34 *Committee Hansard 9.12.03*, pp.72-73 (WA Department of Justice).

35 *Committee Hansard 9.12.03*, pp.74-75 (WA Department of Justice) and Senator Humphries.

corporal punishment, psychological pressure to intimidate or humiliate, physical or emotional abuse and discrimination. Punishments may entail withdrawal of privileges such as accessing television, but not of rights such as having visitors, food or clothing. The Government emphasised the 'numerous checks in the system' nowadays in its juvenile justice centres:

As part of deliberate policy, the detention centres are not closed systems. People from outside the centre regularly visit and provide a range of services...recreation activities are provided by the YMCA, an external agency provides health services at the Melbourne Juvenile Justice Centre and Parkville Youth Residential Centre, volunteer visitors are encouraged and mentors are provided through external agencies. Staff from the office of the Ombudsman in Victoria visit all detainees on a monthly basis. Each centre also has a chaplaincy service. Detainees all have a community-based case manager. Those who have been sentenced are regularly reviewed by the Youth Parole Board and most are paroled to serve part of their sentence in the community under the guidance and supervision of a parole officer.<sup>36</sup>

### *Experiences of children and young people in detention*

6.25 The Committee received many submissions describing significant abuse and cruelty in juvenile justice centres. The following information from a 43-year-old man provides some insight into his experience, albeit 30 years ago:

I was 11 years old when I was first sentenced to nine months detention at Mittagong Training School for Boys. The second time I was sentenced was at the age of 13 to again nine months at Daruk Training School for Boys at Windsor near Penrith now the John Moroney Jail...this "hell hole"...worse than a concentration camp...I was degraded, tortured, starved and deprived of any human rights at the age of 13 like all the other boys...[I tried to escape once]. I was hunted down like a wild animal, being chased by screaming "store boys" with madness in their eyes, like a contest to see who gets you first.<sup>37</sup>

6.26 This former detainee went on to describe many experiences of a 13-year-old boy's torture such as having to stand or sit in the one place for 24 hours at a time in extremely harsh conditions, wearing very few clothes and with only a blackboard and a piece of chalk 'to amuse your diminishing mind'. His other descriptions include:

You are checked every hour and must be standing at attention with your face to the wall as soon as you hear the keys or you have a bucket of cold water thrown over you. No blankets, no heating, just left there to freeze...[or] lined up in a graveyard full of flies and forced to drink the next cup in line whether it had a fly in it or not...[being] lined up with no clothes on.<sup>38</sup>

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36 *Submission* 173, p.22 (Victorian Government).

37 *Submission* 480, p.1.

38 *Submission* 480, p.1.

### ***Prevention and support measures for children and young people***

6.27 As noted above, young people in juvenile justice detention may be on remand awaiting a court appearance and not sentenced, or they may have been sentenced for an offence. An experienced advocate in Victoria's juvenile justice system, Father Peter Norden, has noted that situations where young people are incarcerated for non-serious offences but have not taken the option for release on bail are often strong indicators of factors including a young person's socio-economic status and homelessness. Such instances can also be an illustration of a lack of community support services outside the criminal justice system. Father Norden has emphasised that lessons might be learnt from Victoria where the rate of indigenous detainees aged 10-17 years is relatively low compared to the national rate, figures which Father Norden has attributed to a wide network of alternative community services in that State. These measures include school-based and housing support and accessible community mental health diagnosis and treatment which are likely to have positive results for the young person and the wider community.<sup>39</sup>

### ***Intervention Programs***

6.28 The WA Department of Justice submitted details of its juvenile detention centres and programs to address offending behaviour and substance abuse including those to break offending cycles, deal with anger and take account of victims' situations. The department also cited mechanisms for detainees to register complaints including processes that involve the Ombudsman or Minister for Justice. The department's programs for indigenous children and young people include supervised programs at Bell Spring, East Kimberly, and Banana Well, West Kimberly, accommodating young people on bail with supervision in their own communities as well as the Yandeyarra Regional Supervised Bail Program in the Pilbara Region which is managed by the Mugarinya Community and monitored by the community and the local Department of Justice. It aims to minimise the incidence of the removal of young people from regional areas if they are involved in the justice system.<sup>40</sup>

### ***Diversionary, restorative justice and conferencing programs***

6.29 The following information illustrates the workings of diversionary programs to assist in keeping young people out of detention. Jurisdictions provide many options for dealing with young offenders both before entering a custodial facility and while in custody. In Victoria, a strong 'diversionary focus' exists in juvenile justice legislation. This includes, where appropriate, diversion from court, diversion from statutory orders, diversion from juvenile custody and diversion from the adult custodial system. Police, through the police cautioning program, can divert young offenders from the court system resulting in about only 25 per cent of police contacts proceeding to court. Of those who appear in the Children's Court, only about one in five are placed on

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39 Norden 2003.

40 *Submission 177*, pp.2-5 (WA Department of Justice).

orders that require statutory supervision. Other forms of diversion in Victoria include the Group Conferencing Program, court advice, the Youth Parole Board, the Koori Justice Program, bail support and the legislatively-based sentencing hierarchy.<sup>41</sup>

6.30 While the welfare and justice models of the past emphasised rehabilitation and accountability for offenders, the restorative justice model encourages offenders to accept responsibility for their criminal behaviour and the consequences for other people. It focuses on the involvement of the victims in dealing with the offence and subscribes to the rationale that offenders owe a debt to the victim, for which restitution might be made.<sup>42</sup>

6.31 Restorative justice encompasses a variety of practices at different stages of the criminal process, including diversion from court prosecution, actions taken in parallel with court decisions, and meetings between victims and offenders at any stage of the criminal process. Most jurisdictions have introduced legislation incorporating conferencing in their responses to youth crime.<sup>43</sup> For example, the *Juvenile Offenders Act 1997* (NSW) diverts all but the most serious offender from court and ultimately from custody and provides opportunities for community groups and individuals to participate in cautions and youth justice conferences, in ways that are rarely present in formal legal processes. The Act also recognises the high representation of indigenous young people in criminal justice settings and sets out a graduated scheme of responses for increasingly serious offending behaviour by children and young people.<sup>44</sup>

#### *Restorative justice and conferencing - effectiveness*

6.32 There are various schools of thought about diversionary programs. Critics may consider that such programs are aimed mainly at early to mid-adolescent clients who essentially self select themselves into the programs. Yet, other criminology professionals emphasise the importance of early intervention assistance for families to help prevent young people's gravitation to crime, particularly where at-risk families have ongoing comprehensive support.<sup>45</sup>

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41 Thompson J & Carrol M, 'Program Initiatives within Juvenile Justice Victoria', Paper presented at the Juvenile Justice: From lessons of the past to a road map for the future conference convened by the AIC in conjunction with the NSW Department of Juvenile Justice, Sydney, December 2003.

42 ALRC 1997, p.476.

43 Daly K & Hennessey H, 'Restorative justice and conferencing in Australia', *Trends and Issues*, No 186, AIC, February 2001, p.1.

44 Barga J, 'Diverting ATSI young offenders from court and custody in New South Wales – practices, perspectives and possibilities under the *Young Offenders Act 1997*', Paper presented at the best practice interventions in corrections for indigenous people conference, convened by the AIC, Sydney, 8-9 October 2001, pp.4-5.

45 Korn 1997, pp.3-4.

6.33 The benefits of diverting young people from the courts via cautioning and family group conferences include a reduction in trapping young people with unblemished records in the juvenile justice system.<sup>46</sup> Youth justice conferences have also been shown to be beneficial for young indigenous people, and their families and victims including occasions where young offenders have worked on local projects and connected with their Aboriginal cultural heritage and victims have been given the opportunity to illustrate their stories and the harm which they have experienced.<sup>47</sup>

6.34 However, the *Bringing them home* report noted that Australian models fail to understand the complexities of indigenous communities and ignore fundamentally the principle of self determination and that the level of police involvement in most conferencing is problematic for indigenous communities.<sup>48</sup> Other factors can affect indigenous youth. For example, services identified in the conferences are not always available especially in rural areas. At times, Aboriginal legal service lawyers advise Aboriginal children not to admit to offences, resulting in Aboriginal youth missing out on opportunities to be cautioned by police or respected community members under the *Young Offenders Act 1997*, which is contrary to the Act's aims of diverting young offenders from the courts. Some indigenous youth are unable to complete outcome plans when they have agreed to write apologies to victims but have not disclosed to the conference their inability to read and write.<sup>49</sup>

6.35 An evaluation of the effects of diversionary restorative justice conferences on repeat offenders in the Australian Capital Territory undertaken in 1995-2000 showed positive aspects. The Reintegrative Shaming Experiments (RISE) considered recidivism among 1 300 cases and compared the effects of standard court processing with that of restorative justice intervention (diversionary conferencing) for: drink driving (over .08 blood alcohol content) by offenders at any age; juvenile property offending with personal victims by offenders aged under 18 years; juvenile shoplifting offences by offenders aged under 18 years detected by shop security staff; and youth violent offences by offenders aged under 30 years.<sup>50</sup>

6.36 The evaluation drew on various theories including those regarding the effects of formal court processes in stigmatising offenders and subsequent difficulties for offenders' capacity to live responsibly in the community. It took account of many factors including what might contribute to the levels of re-offending by court-assigned

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46 ALRC 1997, pp.477-478.

47 Bagen 2001, p.11.

48 ALRC 1997, pp.484-485, citing National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families (*Bringing them home*), HREOC, Sydney, 1997, pp.521 & 525.

49 Bagen 2001, pp.9-11.

50 Sherman LW, Strang H & Woods DJ, *Recidivism patterns in the Canberra reintegrative shaming experiments (RISE)*, Centre for Restorative Justice, Research School of Social Sciences, Australian National University, November 2000, pp.3-4.

and conference-assigned offenders and the types of offenders who were included in the RISE tests. The study also analysed repeat offending effects and before-after differences in offending rates. The team factored in many elements and variables that could distort findings or give false readings that could mask differences in the volume of crime in the community.<sup>51</sup>

6.37 The study's results varied. Youth violence offenders who were assigned to conference subsequently offended at substantially lower levels (38 fewer offences per year per 100 offenders in the first year after conference) than those assigned to the courts. This was not true for the other experiments. For drink-driving offenders, a very small increase in detected re-offending was found for the conferenced offenders, relative to court. Across all experiments, conference-assigned offenders reported that their treatment was more procedurally fair than did court-assigned offenders. However this translated into higher levels of compliance with the law only in one out of four offence categories, at least in the one year before and after standardised comparison periods. This experiment concluded that the dynamics of each type of offence may create a different emotional climate and basis for legitimacy of legal intervention using court or conference processes. It substantively concluded that restorative justice can work and even reduce crime by violent offenders but it is not guaranteed to work for all offence types.<sup>52</sup> As well, Father Norden has noted the ineffectiveness of punitive approaches in their ability to assist young people to modify their behaviour, and has cited Victoria's successful restorative responses that work towards social cohesion and the recognition that young people's problematic behaviour is often an indication of their social exclusion and disadvantage.<sup>53</sup>

## Conclusion

6.38 As discussed above, many factors can precipitate a child or young person's incarceration in juvenile detention. Many youth experience a wide range of unjust and abusive situations which may lead to their gravitation to criminal activities. Once in the system, problems can escalate and circumstances come into play including the propensity to mix with already seasoned offenders and learn further criminal activities. While in detention, many young people experience serious health problems, miss out on an education and start on the ever-spiralling road to negative events, which could see their continuous return to detention or graduation to the adult prison system. Given that initially the nature of juvenile offending tends to be for petty offences, the results from an AIC study based on NSW data from 1991-1996 are particularly pertinent. That study found that early intervention and supportive programs are vital in stopping an escalation to more violent offences.<sup>54</sup>

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51 Sherman, Strang & Woods 2000, pp.5-7.

52 Sherman, Strang & Woods 2000, pp. 15, 18-19.

53 Norden 2003.

54 Carcah C and Leverett S, 'Juvenile offending: specialisation or versatility', *Trends and Issues*, No. 108, AIC, April 1999.

6.39 That administrators are placing young people with mental illness and disabilities in detention further compounds already serious problems. Therefore, it would be logical to institute prevention programs to ensure that children are not involved with the justice system in the first place.

Given the links between childhood abuse and social disadvantage and children's contact with the juvenile justice system, a need exists for specific prevention and intervention programs to assist families in this regard. As AIC research on the correlation between childhood abuse and juvenile offending concluded:

Preventing child maltreatment in the first place is likely to produce a larger reduction in offending. By directing attention to those children who are maltreated and ensuring that the maltreatment is not repeated, significant benefits in crime reduction and outcomes for children can also be obtained. Understanding more about what maltreatment experiences lead to offending would help direct crime prevention approaches to transition points in the child's life or to risk factors so that greater success might be achieved. It is anticipated that further analysis with the present data will make a significant contribution to these important endeavours.<sup>55</sup>

6.40 Conferencing schemes may help to prevent such large numbers of children and young people entering the system but warnings and cautions are also significant. The development of culturally appropriate conferencing programs for indigenous youth would have merit. However, diversionary criminal justice measures alone cannot claim to 'control' or significantly reduce juvenile crime.

6.41 The Committee notes the opinion of some experts in diversionary justice programs that many measures including those that help to improve the social capital in disadvantaged and dispossessed communities, will, in the long run, be more effective and appropriate and that efforts are required to keep young people in school and in programs that provide opportunities for employment and activities that engender self esteem. For Aboriginal young people and families and communities, measures that respect and support their full participation in the framing and operation of these measures at all levels are critical in addressing the over representation of Aboriginal young people in criminal justice interventions.<sup>56</sup>

6.42 It is also critical to assist the health issues of youth in juvenile justice centres, especially since many health problems would be caused by inappropriate practices such as inmates using the same needles for drugs. The Committee considers that programs to inform young people about health issues are critical.

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55 Stewart A, Dennison S and Waterson E, 'Pathways from child maltreatment to juvenile offending', *Trends and Issues*, No 241, AIC, October 2002, p.6.

56 Bagen 2001, p.11.

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## Recommendation 16

**6.43 That the Commonwealth Government take note of the merits of restorative justice programs in helping to keep young people out of the juvenile justice system (and later gravitation to the adult prison system), and increase its involvement, support and funding for such programs, to ensure that the coverage of such programs across Australia is wider than is presently the case. It is recommended that the Commonwealth Government introduce restorative justice programs that would assist in reducing the high numbers of indigenous youth in juvenile justice centres.**

### **Children and young people in immigrant detention centres**

6.44 The Committee received a number of submissions relating to children and young people in immigration detention centres and expressing concern at the potential for damaging outcomes for children in immigration detention.<sup>57</sup>

6.45 The Committee noted that the Human Rights and Equal Opportunity Commission (HREOC) was at the time conducting a National Inquiry into Children in Immigration Detention and presented its report in April 2004.<sup>58</sup>

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57 *Submissions* 29, p.2 (ChilOut); 35, pp.25-26 (NSW Commissioner for Children and Young People); 74, pp.3-4,31-36 (Western Young People's Independent Network and Catholic Commission for Justice Development and Peace); 165, pp.19-21 (People with Disability Australia Inc); 396, pp.5-6 (A Van Boeyen).

58 Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Detention Centres*, April 2004. The report may be accessed at: [http://www.hreoc.gov.au/human\\_rights/children\\_detention\\_report/index.html](http://www.hreoc.gov.au/human_rights/children_detention_report/index.html)

