
NSW ABORIGINAL JUSTICE PLAN
DISCUSSION PAPER
Chris Cunneen
Aboriginal Justice Advisory Council

CONTENTS

Abbreviations

ABS Australian Bureau of Statistics
ATSIC Aboriginal and Torres Strait Islander Commission
AJAC Aboriginal Justice Advisory Council
CAN Court Attendance Notice
COAG Council of Australian Governments
FCAN Field Court Attendance Notice
NAJAC National Aboriginal Justice Advisory Council

This Discussion Paper was written by Associate Professor Chris Cunneen, Sydney University Institute of Criminology, with research assistance by Lisa Briscoe, Julia Grix and Mark McMillan. The Issues Based Working Group, comprising Karen Freeman, Peter Goth, Scott Hawkins, Carolyn Marsden Carmen Parter, Peter Swain, Maureen Tangney, Brendan Thomas provided expert comment.

26 August 2002

1. INTRODUCTION

This Discussion Paper is divided into five sections. The Introduction contains background information regarding the Aboriginal Justice Plan and the policy context in which it will operate**.** A Background section provides a short discussion of the historical implications of colonisation and a picture of the New South Wales Aboriginal community's well-being, including demography, socio-economic and health indicators. Where possible, information has also been provided by ATSIC region.

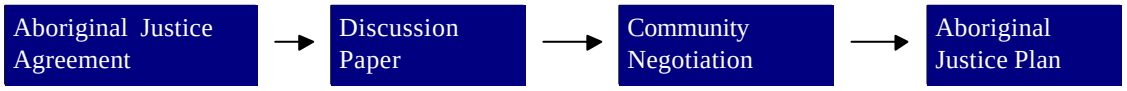
Section Three is a picture of the criminal justice situation facing the community. This discussion includes such issues as major offence categories, types of penalties imposed, types of interventions currently used, representation and experience at various stages of the criminal process, imprisonment rates, victimisation rates, current barriers to effective access to justice and underlying causes of offending.

Section Four provides an identification and discussion of evidence based approaches to dealing with the problem of Aboriginal over-representation in the criminal justice system. There is a particular focus on community based programs and strategies. Section Five is an analysis of the key issues in the context of developing the Aboriginal Justice Plan.

1.1 Why is there a need for a Discussion Paper?

The purpose of this Discussion Paper is to provide the foundation for community negotiations on the development of an Aboriginal Justice Plan. Community negotiations is an important step in developing an Aboriginal Justice Plan that is responsive to the specific needs of Aboriginal people throughout New South Wales.

This Discussion Paper is a further stage in the development of an Aboriginal Justice Plan, and follows the signing of an Aboriginal Justice Agreement by the Attorney-General and the Aboriginal Justice Advisory Council (AJAC) in June 2002.



The Aboriginal Justice Plan will be completed and implemented in 2003.

1.2 The Aboriginal Justice Agreement

The Aboriginal Justice Agreement provided formal recognition of the relationship between the Attorney-General and AJAC and their joint role in working to reduce the involvement of Aboriginal people with the criminal justice system. The Agreement sets out a set of principles to guide policy-making with Aboriginal people and a set of actions.[1] Four general principles are set out in the Aboriginal Justice Agreement. These are

- Accepting that Aboriginal people know their own problems and issues and that Aboriginal people are best situated to solve those problems

[1] The full text of the Aboriginal Justice Agreement can be found at http://www.lawlink.nsw.gov.au/ajac

- Actively encouraging and supporting local and community innovation which aim to address justice problems and concerns
- Recognising and respecting the significant cultural diversity in the New South Wales Aboriginal community and that each Aboriginal community has its own distinct problems and needs
- Acknowledging that crime in Aboriginal communities has a deep set of underlying causes and that we share responsibility in addressing these causes.

The set of actions established in the Aboriginal Justice Agreement fall within four areas:

- Achieving ongoing policy and structural change
- Working in partnership with Aboriginal people
- Encouraging and supporting Aboriginal community justice
- Encouraging local Aboriginal community innovation.

The Aboriginal Justice Plan follows on from the Aboriginal Justice Agreement and community consultations. The Aboriginal Justice Plan is the key component in achieving ongoing policy and structural change aimed at reducing Aboriginal contact with the criminal justice system.

1.3 What will the Aboriginal Justice Plan Achieve?

The priorities of the Aboriginal Justice Plan are to reduce Aboriginal over-representation in the criminal justice system and to develop safer communities for Aboriginal people. It will do this by

- providing a framework for government and Aboriginal communities to work cooperatively together to identify and address issues
- providing a whole of government framework for action
- developing ways to empower Aboriginal communities working with criminal justice agencies and to develop local solutions to local problems
- providing direction for the allocation and investment of resources, which may include the examination of pooled resourcing, resource sharing and funding issues.

The Aboriginal Justice Plan will focus on achieving outcomes negotiated between government and Aboriginal communities, on establishing mechanisms to achieve greater cooperation and resource sharing at state, regional and local levels, and on developing ways to empower Aboriginal communities to devise local solutions to local problems.

1.4 Why is there a need for a Justice Agreement and Justice Plan?

The need for the development of an Aboriginal Justice Agreement and Plan arose from a national meeting of government and Indigenous leaders in 1997. As a result of the ongoing high level of Indigenous deaths in custody, an Indigenous Summit was called by ATSIC and the National Aboriginal Justice Advisory Council (NAJAC). The Summit was held in Canberra in February 1997 and focussed on four issues: juvenile justice, coronial investigations, policing, and prisons. Concern was raised at the Indigenous Summit about the failure to resolve the underlying issues identified by the Royal Commission into Aboriginal Deaths in Custody and recommended that these be discussed at a Commonwealth, State and Territory Ministerial Summit which followed the Indigenous Summit.

The Indigenous Summit outlined principles and recommendations to be adopted in relation to policing, standards of custodial care, juvenile justice, underlying issues, diversionary strategies, and post-death investigations. Many of these recommendations entailed a renewed commitment to existing recommendations from the Royal Commission into Aboriginal Deaths in Custody. However, an important new policy development which emerged from the Indigenous Summit was the need to develop Justice Agreements for each jurisdiction as a way of improving the delivery of justice programs and services to Indigenous people.

Indigenous parties to the Summit recommended that Commonwealth, State and Territory Governments develop bilateral agreements on justice issues (Justice Agreements) under the National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal and Torres Strait Islander People. The Summit also recommended that Governments negotiate with AJACs in the development of the Agreements.

Particular emphasis was placed on utilising the National Commitment framework primarily because it provided a process endorsed by the Council of Australian Governments (COAG), a framework which respected Indigenous self-determination, and a process with established precedents in the areas of health, housing and education. Its principles have a particular emphasis on empowerment, self-determination, the need to negotiate, and to maximise Aboriginal and Torres Strait Islander participation.

The Ministerial Summit was held in Canberra on 4 July 1997 and was attended by twenty Commonwealth, State and Territory Ministers, as well as Indigenous representatives from NAJAC, various AJACs, ATSIC and the Aboriginal and Torres Strait Islander Social Justice Commission. The discussion at the Ministerial Summit focussed on the underlying issues of why Indigenous people are over-represented in the criminal justice system. The main outcome of the Summit was that the States and Territories (except the Northern Territory) agreed to develop strategic plans for the coordination, funding and delivery of Indigenous programs and services. The strategic plans would include 'working towards the development of multi-lateral agreements between Commonwealth, State and Territory Governments and Indigenous peoples and organisations to further develop and deliver programs' (Ministerial Summit Resolution).

The Outcomes Statement from the Ministerial Summit was signed by Commonwealth, State and Territory Governments (except the Northern Territory). AJAC representatives also signed the Outcomes Statement. It was agreed that Aboriginal Justice Agreements and Plans would address the following

- underlying social, economic and cultural issues
- justice issues
- customary law
- law reform
- funding levels.

It was agreed that the plans will also include

- jurisdictional targets for reducing the rate of Indigenous over-representation in the criminal justice system
- planning mechanisms
- methods of service delivery, and
- monitoring and evaluation.

Agreements have been concluded in Victoria, Western Australia and Queensland. A draft plan for the ACT is also available.

Aboriginal Justice Agreements also operate within the broader national context set by COAG. In response to the work by the Council for Aboriginal Reconciliation, COAG in November 2001agreed upon a new framework through which Australian governments would continue their efforts to advance reconciliation and address Indigenous disadvantage. The three priority areas for government are

- investing in community leadership and governance initiatives
- reviewing and re-engineering programmes and services to ensure they deliver practical measures that support families, children and young people. COAG also agreed that governments should look at measures for tackling family violence, drug and alcohol dependency and other symptoms of community dysfunction
- forging greater links between the business sector and Indigenous communities to help promote economic independence.

Aboriginal justice initiatives and the development of Aboriginal Justice Agreements and Plans provide an important way of addressing these priority areas.

1.5 The policy context in which the Aboriginal Justice Plan will operate

The Aboriginal Justice Agreement provides the overall policy framework within which the Aboriginal Justice Plan will operate in New South Wales. There are also other government policy frameworks which impact on the proposed Plan. These include the New South Wales Government *Statement of Commitment to Aboriginal People*, and the Premier's statement *Partnerships: a New Way of Doing Business with Aboriginal People* and proposed Partnerships' plan. In particular the Partnerships' plan will include

- establishment and monitoring of performance indicators for New South Wales Government Chief Executives Officers
- an annual audit report measuring the progress of targets and timetables across all agencies for the delivery of government services and infrastructure to Aboriginal and Torres Strait Islander people and communities
- development of a formal agreement with ATSIC to promote co-operation and co-ordination and avoid duplication
- support for development of Aboriginal leadership in communities
- working with business representatives to help in creating a strong Aboriginal small business sector .

In addition, Aboriginal Strategic Plans, developed by various justice agencies including police and juvenile justice, also provide a policy context in which an Aboriginal Justice Plan will be developed.

A key issue is that at present there is no coordinated policy formulation or regular public reporting process on justice issues. Local initiatives by Aboriginal organisations also often fall outside specific departmental responsibilities. In addition, there has been inadequate attention paid to the policies and programs of agencies outside of the justice system, such as education, health, etc., which can have a significant impact on addressing the underlying issues which bring Aboriginal people into the criminal justice system.

1.5.1 Planning problems following the Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal Deaths in Custody found that:

- the number of Aboriginal deaths in custody was relative to the over-representation of Aboriginal people in custody
- there was little understanding of the duty of care owed by custodial authorities and there were many system defects in relation to exercising care
- in some cases these failures in the duty of care were causally related to the deaths in custody
- using imprisonment as a last resort, reducing arrest rates and decriminalising public drunkenness (along with establishment of community-based sobering-up facilities) would significantly reduce custody rates
- the most significant contributing factor to bringing Indigenous people into contact with the criminal justice system was their disadvantaged and unequal position within the wider society
- the elimination of Indigenous disadvantage would only be achieved through empowerment, self-determination and reconciliation.

The Royal Commission made 339 recommendations. These recommendations reflected the major findings of the Royal Commission. They were designed to reduce Aboriginal deaths in custody by improving standards of care within custody, and, more importantly, by reducing the number of Aboriginal people in custody. The recommendations to reduce the number of Aboriginal people going into custody included both reforms to the criminal justice system, as well as recommendations to address underlying issues. Overarching all of these was the central recommendation (188) relating to the importance of Indigenous self-determination.

A key issue is the planning problems on justice issues which have been identified in the wake of the Royal Commission into Aboriginal Deaths in Custody. Two points are of particular importance in relation to the development of an Aboriginal Justice Plan.

Firstly, the Royal Commission reporting process led to a practice of simply reporting on the implementation of recommendations, rather than reporting on whether specific and agreed upon outcomes were being met.

Secondly, there was no central planning and reporting mechanism or agency with overall responsibility for determining, measuring and assessing either the implementation of recommendations or their outcomes. The proposed Aboriginal Justice Plan provides the opportunity to overcome these previous shortcomings.

1.5.2 Aboriginal Impact Statements

The Aboriginal Justice Agreement provides that all legislative and cabinet proposals developed by the Attorney-General will contain an assessment of their impact on Aboriginal people. The statements will assess the potential impact on issues such as Aboriginal arrest, imprisonment, social disadvantage, Aboriginal victims' needs and community well-being.

SUMMARY: THE ABORIGINAL JUSTICE PLAN

The Aboriginal Justice Plan provides the opportunity to develop a new approach to planning around Aboriginal justice issues. Specifically, improved justice planning might include

- recognition of the importance of planning, coordinating and reporting across justice agencies
- recognition of the importance of local Aboriginal initiatives in dealing with justice issues, particularly those that incorporate a holistic approach
- recognition of the importance of policies and programs of agencies such as health, education, employment, sport and recreation in reducing Aboriginal over-representation in the criminal justice system
- recognition of the importance of issue or problem based planning, the use of commonly defined objectives (which may cross several agencies as well as including community initiatives), and reporting processes which assess outcomes in achieving common goals

- recognition of the need for flexibility in the allocation of resources and funding for Aboriginal programs, particularly when they are operated by Aboriginal community organisations

- utilisation of Aboriginal Impact Statements to assess the likely impact of legislative and policy changes.

2. BACKGROUND

At the 2001 Census there were 119,900 Aboriginal and Torres Strait Islander people living in New South Wales. This was 29% of the total Australian Indigenous population and the largest number of Indigenous people living in any Australian state or territory. Indigenous people comprised 1.9% of the total New South Wales population. The median age (the age at which half the population is younger and half is older) of the Aboriginal and Torres Strait Islander population was 20 years. This compares with a median age for the non-Indigenous population of 35 years.

Aboriginal and Torres Strait Islander people are the most disadvantaged of any group in Australia. On all the major indicators, such health, housing, education, employment and contact with the justice system, Indigenous people are significantly worse off than other Australians.

Aboriginal disadvantage derives from the nature of colonisation and successive government policies. Of particular consequence has been the loss of land - the economic, spiritual and cultural basis of Indigenous society, as well as other policies such as the forced removal of children. In New South Wales many Aboriginal people were moved onto reserves and missions, with every aspect of their lives regulated by government until the 1970s. Many Aboriginal people became dependent on the dominant economy, but were excluded from participation. High levels of criminalisation and incarceration are also connected to the impact of colonisation – both directly through intervention policies and indirectly as a result of the loss of land and an economic base.

2.1 General Socio-Economic Indicators

Indigenous adults are less likely than non-Indigenous adults to have a post-school educational qualification (11% versus 31%). Only 46% of Aboriginal and Torres Strait Islander young people aged 15-19 were attending school or a post-school educational institution, compared with 73% of non-Indigenous young people of the same age.

The median weekly income for Indigenous people is $231 compared to $387 for non-Indigenous people. On the basis of the 2001 Census, the gap in income appears to be growing. Since 1996 the average income of Indigenous people rose by 22%, while the average income for non-Indigenous people rose by 31%.

Indigenous people are much less likely than other Australians to own their home. Only 31% of Indigenous households live in homes that are owned or being purchased by their occupants, compared with 71% of other Australian households.

The unemployment rate for Indigenous people is around 40 per cent nationally, but in some areas it is as high as 100 per cent. This compares to an unemployment rate of 8 per cent for the rest of Australia.

Approximately one quarter of all Indigenous employment is 'work-for-the-dole', under the Community Development Employment Projects (CDEP) scheme, administered by ATSIC, which is often the only source of employment in a community.

Almost a third of all households living in improvised dwellings in Australia are Indigenous households. Almost 7% of Indigenous people in Australia live in dwellings with 10 or more residents - more than 50 times greater than the proportion of other Australians living in such conditions.
Source: DAA 2002a, Australian Bureau of Statistics (ABS) Census 2001

2.2 Comparative health status of the Aboriginal and general population in NSW

Indicator	Aboriginal	General
Still births per 1,000 births	14.7	7.5
Neonatal deaths per 1,000 births	9.0	5.1
Perinatal deaths per 1,000 births	23.5	12.5
Full term babies born with low birth weight (i.e. <2500 grams)	4.4%	2.1%
Babies born prematurely – under 37 weeks gestation	10.1%	7.0%
Babies admitted to a Special Care Nursery or Neonatal Intensive Care Unit	22.2%	18.5%
Life Expectancy at birth		
Males	54 years	73 years
Females	65 years	79 years
Asthma – all ages		
Males	15%	8%
Females	16%	7%
Asthma – people less than 15 years old		
Males	17%	13%
Females	15%	10%
Diabetes – people over 35 years		
Males	11%	2%
Females	11%	2%
Kidney disease – people over 35 years		
Males	7%	1%
Females	7%	2%
Ear and hearing problems – 15 years and under		
Males	11%	2%
Females	11%	3%

Source: DAA (2002b)

While there have been improvements in areas like Aboriginal education attainment and health over recent years, it is clear from the data that Aboriginal people are significantly behind non-Aboriginal people on all key social, economic and health indicators.

2.3 ATSIC Regional Demographics

There are six ATSIC regions in New South Wales. These are Sydney, Binaal Billa (Wagga Wagga), Kamilaroi (Tamworth), Murdi Paaki (Bourke), Many Rivers (Coffs Harbour) and Queanbeyan. The following data is taken from the 2001 Census (ABS 2002), and provides regional information on population, age, education, family size and income.

2.3.1 Population Characteristics

The following table shows the size of the Indigenous population in ATSIC region, their percentage of the total population and the percentage growth since 1996 census. The table also shows the comparative percentage of Aboriginal and non-Aboriginal populations under the age of 25 years and the median age of both populations.

ATSIC Region	Indigenous Population	% of total Population	% growth since 1996	% of population under 25 years		Median Age (Years)	
				Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal
Binaal Billa	21,460	4.1	19.0	59.9	35.3	18	36
Kamilaroi	12,830	6.5	19.7	58.5	34.3	19	37
Many Rivers	32,530	2.5	29.8	58.7	32.5	18	39
Murdi Paaki	7,540	13.6	2.7	54.7	29.8	21	40
Queanbeyan	11,180	1.8	22.6	58.0	34.8	19	36
Sydney	38,090	1.0	11.1	56.0	34.1	21	34

Population data shows that Sydney and Many Rivers ATSIC regions have the largest Aboriginal populations, although in the case of Sydney, Aboriginal people comprise a relatively small proportion of the total population (1%). Murdi Paaki region has the smallest Aboriginal population, but it comprises a significant proportion of the region's total population (13.6%). Population growth varied significantly between the regions with the lowest in Murdi Paaki (2.7%) and the greatest in Many Rivers (29.8%).

In all ATSIC regions there are significant differences between the age structure of the Aboriginal population compared to the non-Indigenous population. On average the Aboriginal population has around 25% more people in the under 25 years age bracket than the non-Indigenous population. The median age of the Aboriginal population is around half that of the non-Indigenous population in nearly all regions, except Sydney where the difference is slightly less.

2.3.2 Family Size

The following table shows the average number of people in Aboriginal and non-Aboriginal households and the percentage of Aboriginal and non-Aboriginal couples with and without dependent children.

ATSIC Region	Average No of People per Household		Couple Families w/out Children		One Parent Families With Children	
	Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal
	No	No	%	%	%	%
Binaal Billa	3.3	2.6	18.4	38.4	28.4	10.1
Kamilaroi	3.4	2.5	17.5	39.5	28.0	10.5
Many Rivers	3.2	2.5	20.3	39.9	26.8	12.2
Murdi Paaki	3.5	2.4	16.1	41.4	28.8	10.0
Queanbeyan	3.2	2.6	23.3	38.4	23.6	11.0
Sydney	3.1	2.7	23.3	32.2	25.2	9.3

In all regions the average number of people in Aboriginal households is greater than in non-Indigenous households. The greatest difference is in Murdi Paaki and the least difference is in the Sydney region. Sydney region also has the lowest average number of people in Aboriginal households of any of the ATSIC regions in New South Wales. The proportion of non-Indigenous families without dependent children is much greater than Aboriginal families without children. This difference is pronounced in all regions, but is greatest in Murdi Paaki. Conversely, the ATSIC region with the least difference is Sydney.

All ATSIC regions have a much greater proportion of Aboriginal single parent families with dependent children than non-Indigenous families. Queanbeyan and Sydney regions have the smallest proportion of Aboriginal single parent families with dependent children, but the difference between the ATSIC regions is not great, and around one in four or more Aboriginal families fit this structure.

2.3.3 Income and Education

The following table shows the median weekly income ($) for Aboriginal and non-Aboriginal individuals. The table also shows the percentage of Aboriginal and non-Aboriginal people who have completed Year 12 high school.

ATSIC Region	Median Weekly Individual Income		% People who Completed Yr 12	
	Aboriginal	Non-Aboriginal	Aboriginal	Non-Aboriginal
	$	$	%	%
Binaal Billa	250	355	12.2	27.6
Kamilaroi	215	339	10.8	28.4
Many Rivers	241	307	15.0	27.4
Murdi Paaki	214	320	8.0	22.5
Queanbeyan	281	436	22.3	46.0
Sydney	327	456	22.5	47.0

Aboriginal median weekly income is lower than non-Indigenous income in all regions. Murdi Paaki has the lowest median Aboriginal income ($214) and Sydney has the highest ($327).

Aboriginal educational attainment, as measured by Year 12 completion, varies between ATSIC regions. Murdi Paaki has the lowest proportion of the Aboriginal population who have completed Year 12 (8.0%) and Queanbeyan and Sydney the highest (22.3% and 22.5%). The proportion of Aboriginal people who have completed Year 12 is less than half that of non-Indigenous people in all regions except Many Rivers.

2.3.4 National Measures of Disadvantage by ATSIC Region

There have been various attempts at rating the relative disadvantage of ATSIC regions and local government areas.[2] Recently the ABS have developed an Indigenous socio-economic disadvantage index[3] and ranked each of the ATSIC regions according to 'least disadvantaged', 'less disadvantaged', 'more disadvantaged' and 'most disadvantaged' (ABS 2000).

Queanbeyan and Sydney regions are categorised in the least disadvantaged group, and rank fourth and seventh of all the 36 ATSIC regions in Australia. Binaal Billa, Many Rivers and Kamilaroi are ranked among the less disadvantaged ATSIC regions (ranking tenth, thirteenth and fifteenth respectively out of the 36 regions in Australia). Murdi Paaki is among the more disadvantaged ATSIC regions nationally, and ranks the lowest of all the New South Wales ATSIC regions. It is ranked twenty fourth in terms of disadvantage out of the 36 ATSIC regions (ABS 2000:73).

Thus, on the basis of the ABS scale, Queanbeyan and Sydney are the least disadvantaged and Murdi Paaki is the most disadvantaged of the ASTIC regions in New South Wales.

[2] Including the ARIA index, the Vinson report, the AHURI report and the SEIFA index.
[3] Developed for the Commonwealth Grants Commission. The index utilises Census, NATSIS and national perinatal data.

3. A PICTURE OF THE CRIMINAL JUSTICE SITUATION FACING THE ABORIGINAL COMMUNITY

This section of the Discussion Paper provides a picture of the criminal justice situation facing the community. It includes a discussion of issues relating to major offence categories, types of penalties imposed, the types of interventions, representation and experience at various stages of the criminal process and current barriers to effective access to justice. Also covered are victimisation rates and the underlying causes of offending. With the exception of one table which shows offences by Aboriginal people before the higher courts in New South Wales, most of the data and discussion relates to offences and outcomes before the New South Wales local courts. The reason for this focus is that the vast majority of criminal matters are dealt with at a local court level.

3.1 Offences

The three tables below show, firstly, a comparison of the types of offences for Aboriginal and non-Aboriginal people were found guilty before the Local Courts in New South Wales in 2000. The second and third tables show the offences for which Aboriginal people came before the local and higher courts in New South Wales by their ATSIC region of residence.[4]

3.1.1 Proven Offences by Aboriginal and Non-Aboriginal Offenders

Table 3.1.1 shows proven offences by Aboriginal and non-Aboriginal people before the local courts. The greatest proportion of offences before the local courts relate to road traffic and motor vehicle offences. These offences account for almost four in ten offences by non-Aboriginal people and almost one in four offences by Aboriginal people before the court.

Table 3.1.1 New South Wales Local Criminal Court Statistics, Finalised Appearances 2000 Persons Found Guilty in Local Court by Principal Offence

	Aboriginal		Non-Aboriginal	
Offences	No	%	No	%
Homicide and related offences	0	0	26	0.0
Acts intended to cause injury (assaults, etc.)	1667	20.7	9744	10.7
Sexual assault and related offences	19	0.2	196	0.2
Acts endangering persons	94	1.2	4284	4.7
Abduction and related offences	1	0	2	0.0
Robbery, extortion and related offences	10	0.1	63	0.1
Unlawful entry, burglary, break and enter	258	3.2	1416	1.6
Theft and related offences	1041	12.9	10587	11.6
Deception and related offences	101	1.3	2716	3.0
Illicit drug offences	427	5.3	6829	7.5
Weapons and explosives offences	30	0.4	875	1.0

[4] Note Table 3.1.1 and Table 3.1.2 are not strictly compatible, hence differences in some columns. Table 3.1.1 relates to proven matters only, Table 3.1.2 relates to all finalised matters for Aboriginal or Torres Strait Islander persons appearing in the local court.

Property damage and environmental pollution	519	6.5	3351	3.7
Public order offences	1045	13.0	6597	7.2
Road traffic/motor vehicle regulatory offences	1835	22.8	35456	38.8
Offences against justice procedures	840	10.4	7588	8.3
Miscellaneous offences	152	1.9	1589	1.7
Total	8039	100.0	91321	100.0

Source: New South Wales Bureau of Crime Statistics and Research (unpublished data request)

Table 3.1.1 is also important for showing some of the key differences in types of offences for which Aboriginal people are convicted before the local courts compared to non-Aboriginal people. Among the higher volume offence categories, Aboriginal people have a much greater proportion of assault and public order offences. Aboriginal people also have a greater proportion of property damage and offences against justice procedures.

3.1.2 Proven Offences by ATSIC Region of Residence of Aboriginal Offenders: Local Courts

Table 3.1.2 shows the number of offences by Aboriginal people before the local courts, by the ATSIC region where the offender was resident.

Table 3.1.2 New South Wales Local Criminal Court Statistics, Finalised Appearances 2000 Offence Type for Aboriginal & Torres Strait Islander Persons Charged in Local Court by ATSIC Region of Residence

Offences	Murdi Paaki	Many Rivers	Queanbeyan	Sydney	Binaal Billa	Kamilaroi
	No	No	No	No	No	No
Homicide and related offences	0	1	0	0	1	0
Acts intended to cause injury (assaults, etc.)	646	794	258	917	796	523
Sexual assault and related offences	17	27	3	19	19	15
Acts endangering persons	27	56	19	94	54	30
Abduction and related offences	0	0	0	1	1	1
Robbery, extortion and related offences	7	4	3	33	12	12
Unlawful entry, burglary, break and enter	37	153	42	240	107	70
Theft and Related Offences	116	522	141	1351	389	195
Deception and related offences	13	66	33	122	50	42
Illicit drug offences	30	215	70	367	170	100
Weapons and explosives offences	17	25	6	36	24	18
Property damage and environmental pollution	126	228	98	324	242	167
Public order offences	298	402	181	615	422	308
Road traffic/motor vehicle regulatory offences	472	1100	304	1099	745	524
Offences against justice procedures	332	554	130	491	427	309
Miscellaneous offences	58	98	33	107	98	53
Total	2196	4245	1321	5726	3557	2367
Rate per 1000 Aboriginal population	**291.2**	**130.5**	**118.2**	**150.3**	**165.7**	**184.5**

Source: New South Wales Bureau of Crime Statistics and Research (unpublished data request)

The rates above are calculated on the basis of the Aboriginal population for each ATSIC region and the residence of Aboriginal people who had matters proven before the local courts. Of importance is the much higher rate for Murdi Paaki than any other ATSIC region in New South Wales. Murdi Paaki is also the ASTIC region classified as the most disadvantaged in New South Wales. Kamilaroi region has the second highest rate of Aboriginal people appearing for local court matters and is the second most disadvantaged ATSIC region in New South Wales.

3.1.3 Proven Offences by ATSIC Region of Residence of Aboriginal Offenders: Higher Courts

Table 3.1.3 provides information on higher court appearances by Aboriginal people. The data was only available on the location of the court registry and not the residence of the offender.

Table 3.1.3 New South Wales Higher Criminal Courts Statistics 2000
Offences by ATSIC Region of Court Registry of Aboriginal Offenders

Offences	Murdi Paaki	Many Rivers	Quean-beyan	Sydney	Binaal Billa	Kamilaroi
	No	No	No	No	No	No
Homicide and related offences		3		12	2	
Acts intended to cause injury (assaults, etc.)	19	28	10	36	21	18
Sexual assault and related offences	5	16		10	17	14
Acts endangering persons		2		2		
Abduction and related offences	2	1	1	3	3	
Robbery, extortion and related offences	4	25	2	98	27	14
Unlawful entry, burglary, break and enter	11	18	6	47	12	5
Theft and Related Offences	1	10	2	25	1	2
Deception and related offences			2	2		
Illicit drug offences		3	1	6	8	5
Weapons and explosives offences				1	9	1
Property damage and environmental pollution	1	6		2	1	5
Public order offences		2	2	1	1	3
Road traffic/motor vehicle regulatory offences				3		
Offences against justice procedures	4	3	2	9		2
Miscellaneous offences		3		0	2	
Total	47	120	28	257	104	69
Rate per 1000 Aboriginal population	**6.2**	**3.7**	**2.5**	**6.7**	**4.8**	**5.4**

Source: New South Wales Bureau of Crime Statistics and Research (unpublished data request)

The rates for each ATSIC region for the higher courts is not based on the same data as the local courts (ie court registry rather than residence of offender). For this reason, the rate for Sydney can be expected to be inflated because of the location of the Supreme Court and the transfer of matters from rural areas to Sydney courts. However, it may also reflect more serious offences in the Sydney area. Leaving aside

the Sydney region, Murdi Paaki, Kamilaroi and Binaal Billa are the ATSIC regions which have the highest rate of Aboriginal higher court appearances.

3.2 Legal Process

3.2.1 Type of Intervention: Summons v Arrest

Police exercise a range of discretions when deciding how to intervene when they suspect a criminal offence has occurred. These discretions relate to such issues as to whether to warn an offender, whether to arrest and charge an offender, whether to proceed by way of summons or court attendance notice (CAN) or field court attendance notice (FCAN). Additional discretionary decisions apply when dealing with young people including the use of official cautions, or referral to a youth justice conference.

The use of discretion can be influenced by many legal and non-legal variables including the type of offence, whether the person admitted the offence, whether they received legal advice, or their prior record. An issue of particular concern has been the apparent low rate at which summons have been used, particularly for public order offences.

The New South Wales Supreme Court again reiterated the importance of proceeding by way of summons instead of arrest in a case involving an Aboriginal man who had been arrested for offensive language and also charged with resisting police, assault police and intimidate police. The Supreme Court stated, 'This Court... has been emphasising for many years that it is inappropriate for powers of arrest to be used for minor offences where the defendant's name and address are known, there is no risk of him departing and there is no reason to believe that a summons will not be effective. Arrest is an additional punishment involving deprivation of freedom and frequently ignominy and fear' (*DPP v Carr* (2002) NSWSC 194).

3.2.2 Bail

There has been concern for over a decade on the issues of bail refusal and unrealistic conditions attached to bail. Luke and Cunneen (1995:24) found Aboriginal young people were more likely to be refused bail, but this was largely accounted for by a greater likelihood of a prior record. The Royal Commission into Aboriginal Deaths in Custody and the International Commission of Jurists (1990:38) have also expressed concern over bail conditions particularly for public order offences.

Research conducted by the NSW AJAC found that Aboriginal people were generally less likely to receive bail than the general population, and when granted bail, conditions were often unrealistic or difficult to accept, and therefore breached at a high rate. One in ten Aboriginal people who were refused bail were either found not guilty or had their cases dismissed; 45% of Aboriginal people who were refused bail did not receive a custodial sentence.

Some 70% of Aboriginal women interviewed in New South Wales prisons said they had been refused bail. Of the 30% of Aboriginal women in custody who had been granted bail at some stage, 67% said that they had breached their bail conditions. Placing sureties of money appears unreasonable for many of the Aboriginal women seeking bail, who are either unemployed, mothers and may not be receiving a Centrelink benefit (Lawrie 2002:27).

3.2.3 Aboriginal Women and Men in Custody 2001 Prison Census

Table 3.2.3 is based on the 2001 Prison Census and provides information concerning the legal status and proportion of Aboriginal and non-Aboriginal men and women in prison who were remanded in custody and unconvicted of an offence, those who awaiting the outcome of an appeal, those who had been sentenced to imprisonment and 'other' (including awaiting deportation, governor's pleasure, etc.).

Table 3.2.3 Legal Status	Aboriginal Women		Non-Aboriginal Women		Aboriginal Men		Non-Aboriginal Men	
	No	%	No	%	No	%	No	%
Remand (Unconvicted)	38	29.2	103	26.8	216	19.4	1176	19.4
Awaiting Appeal	8	6.1	43	11.2	58	5.2	453	7.5
Sentenced	82	63.1	235	61.2	832	74.7	4320	71.4
Other	2	1.5	3	0.8	8	0.7	97	1.6
Total*	130	100.0	384	100.0	1114	100.0	6046	100.0

*Excludes 1 woman and 60 men where Aboriginality was 'unknown'

The same proportion of Aboriginal and non-Aboriginal men (19.4%) were unconvicted of an offence and remanded in custody. Aboriginal men comprised 15.5% of all men unconvicted and remanded in custody.

The proportion of Aboriginal women in custody unconvicted and on remand was higher than non-Aboriginal women (29.2% compared 26.8%). Aboriginal women comprised 27% of all women unconvicted and remanded in custody.

Juveniles

The proportion of Aboriginal young people on remand is also a serious concern. Monthly data from the Department of Juvenile Justice covering the period August 2001 to April 2002 showed that the proportion of all juveniles on remand who are Aboriginal ranged from 35% to 46%.

3.3 Legislative issues

3.3.1 Offensive Behaviour/ Offensive Conduct

Aboriginal people in New South Wales are massively over-represented in prosecutions for offensive language and offensive behaviour. Research by AJAC found that in 1998 some 20% of all prosecutions for these offences involved Aboriginal people, and 14.3% of all Aboriginal people appearing in New South Wales Local Courts had at least one charge of offensive language or offensive conduct. In one out of four cases where an Aboriginal person was charged with offensive language or offensive conduct, they were also charged with offences against the police such as resist arrest or assault police (AJAC 1999).

3.3.2 Children (Protection and Parental Responsibility) Act

The *Children (Protection and Parental Responsibility) Act* provides police with the power to remove children from public places under particular conditions. Research by AJAC indicates that the legislation has been overwhelmingly used against Aboriginal children – in Moree 91 of the 95 children removed from public places in the first six months of the legislation's operation were Aboriginal children. According to AJAC, 'the Act has impacted almost solely on Aboriginal people to the extent that it may be grounds for a complaint of indirect racial discrimination to domestic and international bodies... Young people have been incorrectly told there are curfews in place and areas of town are "no-go zones"' (AJAC 2000a:19).

3.3.3 Police and Public Safety Legislation

A New South Wales Ombudsman's report on the *Crimes Amendment (Police and Public Safety) Act* shows that Aboriginal people are massively over-represented in the use of the new powers which the legislation conferred on police. The report showed that 22% of people in New South Wales given a direction to move-on were Aboriginal, more than half of the Aboriginal people moved-on were 17 years old or younger. The four police commands with the highest rate of use of the move-on powers were areas with large Aboriginal populations.[5]

These areas also recorded increased use of offensive behaviour, offensive language and associated charges at the same time (1997/98 compared to 1998/99). These increases were greater than the average increase for the State (New South Wales Ombudsman 1999:40).

Offensive behaviour charges rose

- by 42% in Darling River (1319 move-on directions given, offensive behaviour offences up from 55 to 82)
- by 49% in Castlereagh (754 move-on directions given, offensive behaviour offences up from 84 to 121)
- by 73% in Barrier (415 move-on directions given, offensive behaviour offences up from 71 to 123).

Offensive language charges rose

- by 38% in Castlereagh (up from 91 to 126)
- by 64% in Barrier (up from 88 to 149)
- by 40% in Barwon (up from 107 to 150).

Hinder/resist police charges rose

- by 52% in Barrier (up from 75 to 114)
- by 86% in Darling River (up from 45 to 84)

(Source: New South Wales Ombudsman 1999:233).

3.4 Penalties and Outcomes

3.4.1 New South Wales Local Criminal Court Statistics 2000
Penalties for Principal Offence by Aboriginal and Non-Aboriginal Offenders

Table 3.4.1 shows the proportion of sentencing outcomes for Aboriginal and non-Aboriginal people determined in the New South Wales local courts in 2000.

Table 3.4.1 Penalty	Aboriginal (%)	Non-Aboriginal (%)
Imprisonment	15.0	5.6
Home Detention	0.1	0.3
Periodic Detention	1.1	1.2
Suspended Sentence	3.2	1.6
Community Service Order	7.5	5.5
Bond	20.7	22.5
Fine	48.4	56.3

[5] The four police Local Area Commands were Darling River (which includes Bourke, Brewarrina and Cobar), Castlereagh (which includes Walgett and surrounding towns), Barwon (which includes Moree and surrounding towns to the Queensland border) and Barrier (which includes Broken Hill, Wilcannia and Menindee).

Other	3.9	7.1
Total	100.0	100.0

Source: New South Wales Bureau of Crime Statistics and Research (unpublished data request)

Table 3.4.1 shows that the principal offence by Aboriginal people resulted in imprisonment in 15% of matters compared 5.6% for non-Aboriginal people. Aboriginal people were less likely to receive home detention, periodic detention, a bond or a fine. They were more likely to receive a suspended sentence or a community service order than non-Aboriginal people.

Specifically in regard to home detention, it is worth noting that Corrective Services research showed that only 4% of all Aboriginal men and 5% of all Aboriginal women who were technically eligible for a home detention assessment and serving a full-time custodial sentence were placed on home detention. This was compared to 11% of all men and 23% of all women who were technically eligible for a home detention assessment and serving a full-time custodial sentence who were placed on home detention (Heggie 1999:viii-ix).

3.4.2 Offences Leading to Imprisonment

Table 3.4.2 show imprisonment as a percentage of all outcomes by Aboriginal and non-Aboriginal offenders. It also shows the average length of imprisonment for offences for Aboriginal and non-Aboriginal people.

Table 3.4.2	**Aboriginal**		**Non-Aboriginal**	
New South Wales Local Criminal Court Statistics 2000 Offences	**Imprisonment % of All Outcomes**	**Average Length (Months)**	**Imprisonment % of All Outcomes**	**Average Length (Months)**
Homicide and related offences	-	-	7.7	8.5
Acts causing injury (assaults)	17.8	4.9	6.3	4.7
Sexual assault and related offences	36.8	13.9	15.2	7.5
Acts endangering persons	20.2	5.1	3.1	5.2
Abduction and related offences	-	-	50.0	8.0
Robbery, extortion and related	50.0	4.8	20.6	5.6
Unlawful entry, burglary, break/ enter	52.7	7.2	39.3	7.4
Theft and Related Offences	25.5	4.3	14.5	4.5
Deception and related offences	17.8	5.2	8.3	5.4
Illicit drug offences	6.6	3.3	3.4	4.5
Weapons and explosives offences	23.3	9.3	6.4	7.7
Property damage and environmental	7.3	3.0	3.0	3.5
Public order offences	2.6	4.7	2.4	4.5
Road traffic/motor vehicle regulatory	8.3	5.1	2.3	5.3
Offences against justice procedures	20.5	3.6	7.8	3.4
Miscellaneous offences	23.0	4.3	4.0	3.9

Total	15.0	4.8	5.6	4.9

Source: New South Wales Bureau of Crime Statistics and Research (unpublished data request)

Table 3.4.2 shows little difference in the average length of imprisonment imposed on Aboriginal people and the general population (4.8 months compared to 4.9 months). However, it does show that in *all* offence categories where Aboriginality was recorded, a greater proportion of outcomes for Aboriginal people resulted in a sentence of imprisonment than for non-Aboriginal people. Half of robbery and related offences lead to a sentence of imprisonment for Aboriginal people, and this was more than twice the proportion for non-Aboriginal people. Similar results have been reported elsewhere (Baker 2001).

The use of alternative sanctions to imprisonment is also likely to be helpful in reducing Aboriginal over-representation in higher volume matters like assaults (acts intended to cause injury) and theft and related offences – see Table 3.1.1 above – and where there is significant use of custodial sanctions (17.8% for assaults and 25.5% for theft). Offences against justice procedures and even road traffic and motor vehicle regulatory offences might be considered in this regard.

National data shows that Indigenous people are over-represented in virtually all offence categories leading to imprisonment. They are most over-represented in offences involving violence, public order, motor vehicle offences and property damage (ATSIC 1997:68). Some 40 per cent of people gaoled in Australia for assaults are Indigenous. However, there is also an array of less serious matters which lead to Indigenous imprisonment. Nearly one in three people imprisoned for public order offences are Indigenous, and one in four people gaoled for car licence and registration offences are Indigenous (ATSIC 1997:67).

Based on arrest data, Weatherburn et al have argued that Aboriginal people are much more likely than non-Aboriginal people to commit offences likely to result in imprisonment. The offence categories selected below are those for which conviction is most likely to result in imprisonment. Decreasing arrest rates for these offences is likely to impact on levels of Aboriginal imprisonment.

Table 3.4.3 Arrest Rates for Offences Likely to Lead to Imprisonment

Offence Type	Aboriginal Rate*	Non-Aboriginal Rate*
Murder	9.7	1.7
Sexual Assault	133.8	35.5
Sexual Assault Against a Child	65.5	19.2
Robbery	402.1	65.7
Assault (Domestic Violence Related)	1993.2	280.1
Assault (GBH)	228.3	20.6
Break and Enter	1895.9	191.7
Motor vehicle theft	689.7	92.0

*Rate per 100,000. Source: Weatherburn et al 2002:8

3.5 Prior Convictions and Prior Imprisonment

There is considerable research to show that Aboriginal people are more likely to have a criminal history than non-Aboriginal people when appearing before the courts (for an overview see Cunneen 2001a:28). Interviews with Aboriginal women in prison showed that the majority of Aboriginal women (98%) in custody had a prior conviction as an adult, and 60% had prior convictions as children. Three quarters of the female Aboriginal prison population has previously spent time in gaol (Lawrie 2002:32).

New South Wales local court data suggests that Aboriginal people appearing in court for violent or serious theft offences are significantly more likely to have a prior record for such offences than non-Aboriginal people. This difference increases the likelihood of sentences for imprisonment rather than the use of alternatives (Baker 2001; Weatherburn et al 2002:9).

While prior record influences the court's decision to impose a custodial sentence, it is not known whether imprisonment is imposed at the same stage of offending history for Aboriginal and non-Aboriginal offenders. Some research from the Northern Territory suggests that shorter periods of imprisonment may be imposed on Aboriginal people at an earlier stage in their offending history (Luke and Cunneen 1998).

3.5.1 Aboriginal Women and Men in Prison by Prior Custody
2001 Prison Census

Table 3.5.1 Prior Custody	Aboriginal Women		Non-Aboriginal Women		Aboriginal Men		Non-Aboriginal Men	
	No	%	No	%	No	%	No	%
No Prior Custody	20	15.4	110	28.6	126	11.3	1732	28.6
F/T Custody	79	60.8	170	44.3	810	72.7	3104	51.3
Periodic Detention	8	6.1	4	1.0	4	0.3	64	1.1
Fine Default	1	0.8	12	3.1	37	3.3	117	1.9
Remand in Custody	22	16.9	88	22.9	137	12.3	1029	17.0
Total*	130	100.0	384	100.0	1114	100.0	6046	100.0

*Excludes 1 woman and 60 men where Aboriginality was 'unknown'

We also know from prison data that there is a larger proportion of Aboriginal people than non-Aboriginal people in prison who have been previously incarcerated. Table 3.5.1 shows that almost 85% of Aboriginal women in prison have previously been in custody compared to 71% of non-Aboriginal women; 89% of Aboriginal men have been in custody previously compared to 71% of non-Aboriginal men. Given these facts there is little optimism that imprisonment will prevent further offending. It is suggested that Aboriginal community generated alternatives to prison might provide solutions.

3.6 Imprisonment

In 2000/2001, New South Wales had the second highest rate of Indigenous imprisonment in Australia (after Western Australia) (SCRCSSP 2002, Vol 1:519). According to the Department of Corrective Services (2002:15)

- Indigenous prisoners comprise 16% of the total inmate population

- Indigenous women comprise 26% of the female inmate population
- The number of Indigenous prisoners has increased by 30% over six years compared to a 17% increase for the non-Indigenous prison population

The increase in the Indigenous prison population over the last six years is a matter of serious concern. The New South Wales Select Committee into the Increase in the Prison Population (2001) found that the most significant contributing factor was the increase in the remand population. There was no evidence to suggest that an increase in actual crime accounted for the prison increase, although increases in police activity and changes in judicial attitudes to sentencing were also important.

Juveniles
The proportion of Aboriginal young people in detention centres is also a serious concern. Monthly data from the Department of Juvenile Justice covering the period August 2001 to April 2002 shows that the proportion of all juveniles incarcerated who are Aboriginal ranged from 39% to 47%.

3.6.1 Community Corrections

In 2000/2001, New South Wales had the fifth highest rate of Indigenous people on community corrections in Australia (after the ACT, South Australia, Queensland and Western Australia) (SCRCSSP 2002, Vol 1:521). According to the Department of Corrective Services, Indigenous inmates comprise 10% of the community-based offender population.

Data from the Department of Juvenile Justice also shows that the proportion of Aboriginal young people on community service orders is lower than the proportion of Aboriginal young people incarcerated.

A key issue therefore is how to increase the proportion of Aboriginal people on community corrections and decrease the proportion incarcerated, while taking into account the needs for improving safety in Aboriginal communities.

3.6.2 Sentence Length for Aboriginal Men and Women: Prison Census Data 2001 Census

Table 3.6.2 shows the percentage of Aboriginal and non-Aboriginal men and women under various sentence lengths for imprisonment.

Table 3.6.2 Sentence Length	Aboriginal Women		Non-Aboriginal Women		Aboriginal Men		Non-Aboriginal Men	
	No	%	No	%	No	%	No	%
Unsentenced	38	29.2	104	27.1	216	19.4	1210	20.0
Less than 6 months	12	9.2	36	9.4	82	7.4	330	5.5
6 months < 1 year	21	16.1	65	16.9	227	20.4	791	13.1
1 year < 2 years	18	13.8	51	13.3	127	11.4	675	11.2
2 years < 5 years	27	20.8	68	17.7	206	18.5	1132	18.7
5 years < 10 years	8	6.1	37	9.6	162	14.5	1110	18.4
10 years and more	4	3.1	21	5.5	86	7.7	735	12.2

Forensic	2	1.5	2	0.5	8	0.7	63	1.0
Total*	130	100.0	384	100.0	1114	100.0	6046	100.0

*Excludes 1 woman and 60 men where Aboriginality was 'unknown'

Aboriginal men and women tend to be more concentrated among those serving sentences less than five years than non-Aboriginal people. This difference is particularly apparent for Aboriginal men serving sentences of less than twelve months (27.8% compared to 18.6% for non-Aboriginal men). Prison census data over-estimates long term prisoners compared to short term prisoners because it does provide information on the number of people who flow-through the system.

Although the abolition of six month sentences would only provide for 82 less Aboriginal male prisoners and 12 less Aboriginal women prisoners on a particular day, we could expect that the overall significance to be considerably greater on the number of Aboriginal people entering the prison system. **Other research has indicated that if Aboriginal people given sentences of six months or less were given non-custodial sanctions instead, then the number of Aboriginal people sentenced to prison would be reduced by 54% over a twelve month period (Baker 2001:8).**

3.6.3 The Home Location of Aboriginal Prisoners in New South Wales

Table 3.6.3 shows the last known address of Aboriginal inmates at the time of their imprisonment by each of the six ATSIC regions.

Table 3.6.3 ATSIC Region of Last Known Address	Aboriginal Inmates Census 2001					
	Male		Female		Total	
	No	Rate*	No	Rate*	No	Rate*
Binaal Billa	176	1624.4	16	150.5	192	894.7
Kamilaroi	104	1623.2	5	77.9	109	849.6
Many Rivers	221	1370.3	20	121.9	241	740.8
Murdi Paaki	77	2030.0	6	160.0	83	1100.8
Queanbeyan	41	725.9	2	36.2	43	384.6
Sydney	412	2212.6	68	349.3	480	1260.2
Other (Outside the State)	83	n/a	13	n/a	96	n/a
Total**	1114	1730.7	130	194.0	1244	957.7

* Rate per 100,000 of the respective Indigenous population
** Rates calculated without including Indigenous people resident elsewhere than New South Wales

Table 3.6.3 shows both the Sydney region and Murdi Paaki have higher rates that other ATSIC regions for the home location of Indigenous prisoners. This data corresponds with earlier data concerning local and higher court appearances.

3.6.4 The Experience of Imprisonment

A recent report by AJAC interviewed Aboriginal women in New South Wales prisons. The results of the survey provide an insight into both women's experience and the Aboriginal experience of prison.

Mothers and Families
Approximately 86% of Aboriginal women in custody are biological mothers to between one and six children; 46% of Aboriginal women in custody are the "regular" carers of their children as single parents; 14% of Aboriginal mothers in custody normally provided care to other family members and 12% of Aboriginal mothers normally provided care to both other children and family members (Lawrie 2002:21).

Mental Health
Approximately 16% of Aboriginal women in prison said they had been diagnosed with a mental illness and need specific medication, care and services whilst they are in custody. This includes appropriate medication, counselling and regular review of medication and health needs. In particular, these mental health issues should be raised in the context of sentencing (Lawrie 2002: 36).

Health
Aboriginal women in prison have complained that their health care is often neglected because of the difficulty in accessing Aboriginal Health Services (Lawrie 2002:48).

Assessment and Programs
Aboriginal women expressed concern that case plans were not well managed nor individually based (Lawrie 2002:47). Only half of the Aboriginal women interviewed in New South Wales prisons had been able to access or participate in Aboriginal run programs (Lawrie 2002:53).

Probation and Parole
AJAC has identified the need for parole boards to be more in tune with Aboriginal offenders and to understand and respect cultural difference when making decisions. There appeared to be a lack of trust between Aboriginal women prisoners interviewed and the Probation and Parole service, and many suggested it would be better to have more Aboriginal probation and parole workers employed in regional towns and cities where the majority of the inmate population have lived (Lawrie 2002:28).

3.6.5 Post Release Issues

Some 78% of Aboriginal women in prison had not used Aboriginal post release services available to them in the past (Lawrie 2002:62). Most women (80%) suggested that drug and alcohol programs would be suitable for Aboriginal women leaving custody, 68% felt that parenting programs would support them and 60% said relationship programs would assist them in leaving custody and returning to the community**.** Most Aboriginal women (84%) interviewed in prison would like to be employed after they are released from custody (Lawrie 2002:63).

Housing needs are a major concern for Aboriginal people generally and especially an issue for inmates. This need is often increased as inmates prepare to leave custody, many of whom have to find or relocate because their housing or accommodation has been neglected, or lost because they have not been able to meet rental or other conditions whilst in custody (Lawrie 2002:24). Many Aboriginal women interviewed in prison commented on the need for additional rehabilitation and housing options which are cultural and run for and by Aboriginal people, and are available for women who are released from custody (Lawrie 2002:63).

3.7 Access to Justice: Legal Representation and Advice

Table 3.7 shows the number and percentage of Aboriginal and non-Aboriginal people appearing before the local courts who were represented by lawyers.

Table 3.7 New South Wales Local Courts 2000

Representation	Aboriginal		Non-Aboriginal	
	No	%	No	%
Represented	6934	63.4	55800	49.6
Unrepresented	4001	36.6	56636	50.4
Total	10935	100.0	112436	100.0

Source: New South Wales Bureau of Crime Statistics and Research (unpublished data request)

Data from the local courts indicate that Aboriginal people are less likely to appear unrepresented than non-Aboriginal people.

Approximately 86% of Aboriginal women in custody pleaded guilty for their most recent charge at the time of sentencing (Lawrie 2002:26). Some 90% of Aboriginal women in custody stated that they had legal representation in court; 32% of

Aboriginal women in custody had not received any legal advice after being placed in custody (Lawrie 2002:30).

3.8 Aboriginal People as Victims of Crime

National data on violence shows that Indigenous people are 8.1 times more likely to be victims of homicide than non-Indigenous people (Mouzos 2000). Violence as a cause of hospitalisation for young people between the ages of 15 and 24 is at a rate 2.7 times higher for Indigenous males than non-Indigenous males, and 15 times higher for Indigenous women than non-Indigenous women (Australian Institute of Health and Welfare 1999).

3.8.1 Reported Offences by Local Government Area

The top ten Local Government Areas in country New South Wales, in terms of their assault rate were Central Darling, Bourke, Brewarrina, Walgett, Junee, Coonamble, Moree Plains, Guyra, Wentworth and Lachlan. In these LGAs the percentage of assault incidents which were recorded by police as alcohol-related were around forty per cent. In general, these are LGAs with significant Indigenous populations. The top ten Local Government Areas in the Sydney metropolitan area, in terms of their assault rate, were Sydney, South Sydney, Campbelltown, Blacktown, Botany Bay, Marrickville, Parramatta, Penrith, Leichhardt and Wyong. In these LGAs the percentage of assault incidents which were recorded by police as alcohol-related were around 18 per cent (Briscoe and Donnelly 2001). Many of the city LGAs referred to above have significant Indigenous populations.

The New South Wales Bureau of Crime Statistics and Research also reports on murder, sexual assault, robbery, break and enter, motor vehicle theft and other offences by New South Wales regions (Doak 2000). Many of the regions with higher proportions of Aboriginal people, such as the north west of the State, have higher reported incidents of crime although this is not a uniform phenomenon for all offence categories.

Other New South Wales research shows that Aboriginal people are between 2.7 and 5.2 times more likely than other people in New South Wales to be victims of violent crime (Fitzgerald and Weatherburn 2001).

3.8.2 Aboriginal Victims by ATSIC Region

Table 3.8.2 shows the recorded number of Aboriginal victims for various offence categories in the different New South Wales ATSIC regions, as well as the rate of victimisation by region.

Table 3.8.2 Aboriginal status of victims by ATSIC region, offence type NSW Recorded Crime Statistics 2001

	Murdi Paaki	Many Rivers	Queanbeyan	Sydney	Binaal Billa	Kamilaroi
	No	No	No	No	No	No
Abduction and kidnapping	2	0	1	8	1	2
Against justice procedures	26	37	5	40	34	17
Arson	8	9	1	12	5	3
Assault*	1176	1075	279	809	1160	636

Demand money with menaces	0	2	0	3	2	1
Driving offences	21	17	3	6	12	8
Extortion	0	1	0	0	0	0
Homicide	4	1	1	5	2	2
Malicious damage to property*	190	208	66	156	215	163
Other offences*	91	89	28	75	146	71
Other offences against the person	42	48	15	33	67	22
Robbery	5	8	3	41	3	4
Sexual offences	64	96	22	81	96	72
Theft*	294	308	81	329	394	248
Weapons offences	0	0	1	0	0	1
Total	1923	1899	506	1598	2137	1250
Rate per 1,000 Aboriginal Pop.	**255.0**	**58.4**	**45.3**	**42.0**	**99.3**	**97.4**

* These categories have a large number of victims where Aboriginality was unrecorded. They may be subject to substantial error.
Source: New South Wales Bureau of Crime Statistics and Research

Limitations of the victimisation data need to be noted. However, it is worth highlighting the distinct differences between ATSIC regions in the rate of victimisation. Murdi Paaki has well over twice the rate of victimisation compared to the next two regions Binaal Billa and Kamilaroi, and between four and six times the rate of the other three ATSIC regions. As noted previously, Murdi Paaki also has a high rate of Aboriginal offenders before the local courts.

3.8.3 Aboriginal Women and Violence

A nine year study of homicide and Indigenous women between 1989 and 1998 showed that the rate of homicide for Indigenous women was 11.7 compared to a non-Indigenous rate of 1.1. Thus Indigenous women were more than 10 times more likely to be a victim of homicide than other women in Australia (Mouzos 1999). Indigenous women were also more likely to be killed by an intimate partner than non-Indigenous women (75 per cent for Indigenous women compared to 54 per cent for non-Indigenous women). Conversely, very few Indigenous women were killed by strangers (1.5 per cent of Indigenous women compared to 17.2 per cent of non-Indigenous women) (Mouzos 1999). Approximately 95 per cent of Indigenous women killed were killed by Indigenous men (Mouzos 1999).

Research in New South Wales shows that Aboriginal women are between 2.2 and 6.6 times more likely to be victims of crime than other women. Rates of sexual assault for Aboriginal women were 251.7 per 100,000 compared to 101.4 for women generally (Fitzgerald and Weatherburn 2001).

Under-reporting of violence against Aboriginal women appears to be a significant problem, with Aboriginal women less likely to report than non-Aboriginal women (Harding et al, 1995:18, Memmot et al 2001:7). Numerous reports have considered the issue of why Aboriginal women are less likely to report offences to police (see, for example, Criminal Justice Commission 1996, Aboriginal and Torres Strait Islander Women's Task Force on Violence 2000).

The relationship between Aboriginal women and violence also highlights how the separation between 'victim' and 'offender' is not at all clear. In reality many

Aboriginal people in the criminal justice system are both offenders and victims. For example, some 78% of Aboriginal women in prison have been victims of violence as adults. More than four in ten Aboriginal women in prison were victims of a sexual assault as an adult (44%) (Lawrie 2002:41). Another example of the fact many people are both victims and offenders is that being a victim of assault or abuse is strongly associated with the likelihood of arrest for Aboriginal people (Hunter 2001).

3.9 Underlying Causes of Offending

What factors can we draw on to explain the over-representation of Aboriginal people? Broad-brushed approaches at explanation have included analysis of different treatment by the criminal justice system, different offending patterns and different frequency in offending. Some explanations have looked to the similarities with non-Indigenous explanations for criminal behaviour and stressed criminogenic factors deriving from socio-economic disadvantage (Walker and McDonald 1995). Some recent explanations have looked at the effect of cultural conflict and spatiality (Broadhurst 1997), and the differential impact of criminal justice system policies on Aboriginal people because of their socio-economic position (LaPrairie 1997).

There is a need for a multifaceted conceptualisation of Aboriginal over-representation which goes beyond single causal explanations (such as poverty, racism, etc.). An adequate explanation involves analysing interconnecting issues which include historical and structural conditions of colonisation, of social and economic marginalisation, and systemic racism, while at the same time considering the impact of specific (and sometimes quite localised) practices of criminal justice and related agencies (Cunneen 2001a).

Some important and specific factors necessary to explain Aboriginal over-representation include

- offending patterns (particularly over-representation in offences likely to lead to imprisonment such as serious assaults, sexual assaults and property offences)
- the impact of policing (particularly the adverse use of police discretion and 'over-policing' in Aboriginal communities)
- legislation (particularly the impact of laws giving rise to indirect discrimination such as the *Summary Offences Act*, the *Children's (Protection and Parental Responsibility) Act*)
- factors in judicial decision-making (particularly bail conditions, the weight given to prior record, the availability of non-custodial options)
- environmental and locational factors (particularly the social and economic effects of living in small rural communities)
- cultural difference (such as different child-rearing practices, the use of Aboriginal English, vulnerability during police interrogation)
- socio-economic factors (in particular, high levels of unemployment, poverty, lower educational attainment, poor housing, poor health)
- marginalisation (in particular, drug, alcohol and other substance abuse; alienation from family and community)
- the impact of specific colonial policies (in particular, the forced removal of Aboriginal children).

By analysing the interconnections between these various factors, debates around simplistic dichotomies (such as police behaviour versus Aboriginal criminal offending) can be avoided. It is beyond the scope of this report to review in detail the evidence in all of the areas referred to above. However, the previous discussion has touched on differing offending patterns, and the greater likelihood of a prior record for Aboriginal people. There has also been discussion on the impact of the legislation like the *Summary Offences Act*, the *Children's (Protection and Parental Responsibility) Act* and the *Crimes Amendment (Police and Public Safety) Act*.

Research from the Royal Commission into Aboriginal Deaths in Custody and many others afterwards have raised the issue of the impact of adverse use of discretion by

police officers and its effect on bringing Aboriginal people in areas such as access to juvenile diversionary schemes, and use of alternatives to arrest, bail refusal and bail conditions.

In the remaining discussion, attention is drawn to a small number of factors where recent policy initiatives have been developing and there are direct connections with Aboriginal crime and arrest rates. Hunter (2001) has identified removal from family, alcohol and substance abuse, unemployment and low educational attainment as key issues distinguishing Aboriginal arrests. Memmot (2001) has also stressed the role of alcohol in understanding violence in Aboriginal communities, but emphasises the need to consider broader and varied causes.

3.9.1 The Impact of the Stolen Generations

The Stolen Generations Inquiry (NISATSIC 1997, in particular Chapter 11) examined the effects of forced removals and found that this particular colonial policy had lead to the destabilisation and/or destruction of kinship networks and the destabilisation of protective and caring mechanisms within Indigenous culture. It lead to the social and legal construction of Aboriginal child-rearing as socially incompetent and Aboriginal culture as worthless. It lead to a legal regime without procedural justice and which has been defined as genocide within international law. It lead to the economic and sexual exploitation of Aboriginal children. It has contributed to a culture of resistance within Indigenous communities to welfare and criminal justice authorities. It has contributed to the generation of higher levels of mental illness, psychiatric disorders and alcohol and substance abuse among those removed. It has contributed to the creation of a new generation of Aboriginal adults ill-equipped for parenting (Cunneen 2001a:43).

Children removed from their families are more likely to come to the attention of the police as they grow into adolescence; are more likely to suffer low self-esteem, depression and mental illness; are more vulnerable to physical, emotional and sexual abuse; and they have been almost always taught to reject their Aboriginality and Aboriginal culture.

The effects of this policy continue to reverberate through the Aboriginal community. Recent research has shown that at least 52% of Aboriginal women interviewed in New South Wales prisons said they had come from a family affected by the stolen generation and a further 27% were not sure (Lawrie 2002:43). Some 70% of Aboriginal women in prison revealed they had been victims of child abuse, and at least 70% were sexually assaulted as children. A further 14% said they were incest survivors (Lawrie 2002:39). The interviews also revealed a relationship between child sexual assault, unresolved trauma and adult drug abuse – in particular heroin. Drug use was also directly linked to offending behaviour (Lawrie 2002:40).

Indigenous children and young people experience higher rates of abuse and neglect than non-Indigenous children (Australian Institute of Health and Welfare 2000), although this finding also needs clarification because of identification and definitional issues (NISATSIC 1997).

3.9.2 Unemployment and Poverty

Evidence presented at the beginning of this paper shows the high levels of unemployment and poverty among Aboriginal people. Numerous studies have indicated the links between the socio-economic position of Aboriginal people and

the level of offending by Aboriginal people, including Cunneen and Robb (1987), Devery (1991) and Beresford and Omaji (1996). An Australian Institute of Criminology study has also noted the importance of considering the links between offending levels (as measured by imprisonment figures) and employment and educational disadvantage (Walker and McDonald 1995). The authors identify the association of social problems such as crime, with unemployment and income inequalities. They suggest that the reason crime is so problematic in Aboriginal communities is because of the lack of employment, educational and other opportunities. The authors argue that social policies aimed at improving these conditions are likely to have a significant effect on the reduction of imprisonment rates (Walker and McDonald 1995:6). More recently, Hunter and Borland (1999) found that the high rate of arrest of Aboriginal people, often for non-violent alcohol-related offences, is one of the major factors behind low rates of employment. Hunter (2001) has argued that improving labour market options for Aboriginal people would markedly reduce arrest rates.

Recent interviews with Aboriginal women show how poverty translates into crime. Some 43% of Aboriginal women in custody who had dependent children did not receive an income from paid employment nor from Centrelink payments. One quarter of Aboriginal women in custody have relied on crime to support themselves and/or family members. Some women felt that crime was an opportunity to provide the basic needs to family members, such as stealing clothes for their children (Lawrie 2002:23).

3.9.3 Drug and Alcohol Issues

Contrary to popular stereotypes, on a per capita basis more Indigenous people do not drink alcohol as compared to non-Indigenous people. Thirty two per cent of Indigenous people do not drink alcohol compared to 16 per cent of non-Indigenous people. However, Indigenous people are more likely to consume alcohol at more dangerous levels and are consequently more likely to be admitted to hospital (DAA 2002b).

Alcohol and substance abuse is also directly related to offending behaviour. According to Hunter (2001), alcohol consumption is one of the largest single factors underlying overall Indigenous arrest rates.

In interviews with Aboriginal women in New South Wales prisons, approximately 68% of Aboriginal women stated they were on drugs at the time of the offence, 14% were under the influence of alcohol and 4% were on both drugs and alcohol at the time of committing the offence. Approximately 50% of Aboriginal women reported heroin as their main choice of drug (Lawrie 2002:36).

4. IDENTIFICATION AND DISCUSSION OF EVIDENCE BASED APPROACHES

This section of the Discussion Paper provides information on some of the key community-based strategies which have been developed and some of the key elements and lessons learnt from these experiences. Where possible, evidence based approaches have been highlighted. However, the evaluation of crime prevention initiatives in Aboriginal communities has proved a difficult issue. There have been specific problems including the transient nature of many programs, lack of ongoing funding, lack of data on effectiveness, and a tendency to describe 'successful' programs without stating the criteria for success, and a lack of clarity about the goals of particular programs.

This section considers some of the major programs in Australian and overseas jurisdictions including community-based crime prevention programs, community-based policing strategies, community-based and controlled sanctioning and corrections. To begin with it is worth considering the possible intervention and diversion points within the criminal process.

Diagram 4.1 Points of Diversion and Some Possible Intervention Options

Stage	Diversion	Issue and Some Possible Options
Pre-arrest		
	Police discretion to not take action	Police observe offence but decide not to take any action.
	Infringement notice	Fine issued, no record: Aboriginal people appear not to benefit from this option.
	Legislative or policy requirement to use sobering-up shelter	Person taken to shelter: Need for Adequate Aboriginal–run programs. Role for Aboriginal night patrols.
	Warning	Warnings take place 'on-the-spot' without further legal repercussions. Warnings are also required under some legislation as part of a directive such as a 'move-on' direction.
	Formal caution	A verbal warning, no referral to intervention, record kept. Should be developed to involve Aboriginal Community Justice Groups. Need to ensure that Aboriginal young people have the opportunity of this diversionary option.
Pre-court		
	Behavioural restrictions or treatment as condition of bail	Treatment a condition of bail, no conviction is recorded if an offender successfully completes the undertakings. New legislation enables greater bail conditions restricting movement and contact to be set. Possible involvement of Community Justice Groups in working with courts on setting suitable bail conditions.

	Youth Conferencing	In place of a trial, victims of crime and other members of the community, including family members, become involved in determining an appropriate outcome. Need to ensure that Aboriginal young people have the opportunity of attending a conference instead of court.
	Community Justice Group	Possible statutory role in determining appropriate course of actions for dealing with Aboriginal offenders.
Pre-sentence		
	MERIT Anti-violence programs (including sexual assault)	Magistrates might refer individuals into drug and alcohol treatment programs, or perpetrator programs for offenders of sexual assault against children or violence against women. Need to ensure that Aboriginal offenders receive benefit of the option and process for Aboriginal input into decision-making.
Post-sentence		
	Circle sentencing	Circle court participants include the judge, the offender, defence and prosecutor, the offender's family and/or support people, the victim and his/her support people, and community representation. Offender must plead guilty to be eligible. Participants discuss the case in a circle. Goals are set for the offender such as curfew, work programs, abstention of alcohol, and/or drug-treatment programs. The requirements set by the circle become part of the sentence imposed by the judge.
	Drug court	Courts specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction or court-enforced drug treatment program.
	Non-custodial sentence / supervised order	A magistrate or judge specifies that offenders participate in a specific treatment or other program as part of their sentence. This could include Aboriginal run drug treatment or anti-violence programs.
	Mentoring	Greater involvement of Aboriginal community organisations in mentoring
	Aboriginal Community Supervision	Greater involvement of Aboriginal community organisations in community supervision
Pre-release		
	Transfer to Community-Based Custody	An inmate could be transferred to a low security facility specifically designed for Aboriginal inmates
	Transfer to Aboriginal Operated Facility. Transfer could be by release to home detention, work release and other options.	An inmate could be transferred to a low security facility operated under contract by an Aboriginal community and/or organisation.

	Transfer to treatment. Transfer options as above.	An inmate could be transferred to an Aboriginal community-based treatment program that provides 24-hour supervision.
	Early release to treatment	An inmate may be eligible for early release from detention into a structured, supervised treatment program to address their offending behaviour, drug problems and other issues and assist with re-integration into the community.
Post – Release	Reintegration strategies	Greater involvement of Aboriginal community organisations in post release support

Source: Table developed from Siggins Miller et al (2002) and Cunneen (2001c).

Diagram 4.1 shows there are many points in the criminal justice system where intervention might occur. There are avenues for Aboriginal organisations to be involved in various strategies including initial diversion, as well as providing programs and alternatives to incarceration. Aboriginal crime prevention programs can take on a holistic approach which includes dealing with primary prevention (that is, preventing offending behaviour before it occurs) as well as tertiary prevention (that is, providing programs which are aimed to stop re-offending by individuals already sentenced by the criminal justice system).

Holistic Approaches

What do we mean when we talk about using a holistic approach?

Holistic models and services focus on the social, emotional, physical and spiritual wellbeing of people. They combine these different elements in an overall approach for finding solutions to problems.

Holistic models develop Indigenous-specific programs that stress issues relating to Indigenous culture and history.

Holistic models look to the development of the Aboriginal individual, family and community by providing culturally sensitive programs and services, by using Aboriginal concepts where appropriate, and by promoting the fair and equitable treatment of Aboriginal people

A continuing thread in Aboriginal holistic approaches is the recognition of Aboriginal self-determination. Thus programs are designed with an objective of enabling Aboriginal people to take charge of all aspects of their own lives.

Achieving a holistic approach may require input and assistance from a range of government agencies.

In summary, a holistic approach assumes
- It is under Indigenous control
- It uses traditional Indigenous cultural approaches to healing
- It works with families and communities, not just individuals
- It sees policies and programs as part of a broader community objective of well-being rather than an isolated program designed to address a particular issue.

It is not the purpose of this Discussion Paper to provide comprehensive information on crime prevention strategies. Much greater detail on crime prevention programs in

Indigenous communities in Australia and internationally can be found in a recent AJAC report (Cunneen 2001b). The discussion in the following section draws on this earlier report to present information on programs that have been positively evaluated or show promise.

There is also significant research, particularly from North America, which outlines 'what works' in crime prevention. This literature is not specific to Indigenous communities and people, however it can be helpful (Sherman et al 1998; Aos et al 2001). The literature suggests that the most consistent and largest benefits from intervention can be gained from particular programs (such as treatment and therapy) designed for juvenile offenders. On the other hand, some types of programs (such as boot camps) are ineffective, or others (such as 'scared straight' programs) are actually associated with increased levels of crime.

The international literature also suggests we need to be realistic about the likely impact of crime prevention programs. The best programs are likely to reduce recidivism (or crime rates, depending on the measure) by 20% to 30%. Typically, 'good' adult offender programs may lower the chance of re-offending by 10% (Aos, et al 2001:6).

4.1 Community based crime prevention programs

Two majors areas where crime prevention programs have been focussed is on drug and alcohol and family violence issues. There have been many programs developed to deal with these problems and consequently there has been some evaluation of the results.

4.1.1 Drug and Alcohol

Gray et al (2000) reviewed treatment, health promotion education, acute interventions and supply reduction interventions for reducing excessive consumption of alcohol, and related harm, among Indigenous people. They found few systematic evaluations, but were able to draw the following conclusions:

- The impact of most interventions had been limited. The poor outcomes were attributed, in the main, to inadequate resourcing, staff expertise and program support.
- One intervention that did appear promising, particularly as a diversion intervention, was sobering up shelters. Sobering up shelters were described as acceptable to the community and to police, providing a more dignified, cost-effective alternative to police lock ups.
- Community-based field workers and after care were described as 'essential' to residential treatment programs.
- Any single intervention cannot solve a community's alcohol problem. They concluded that 'there is a need to redress the fundamental inequalities faced by Aboriginal people'.

Brady (1998) discusses the appropriateness of different types of alcohol interventions for Indigenous people and notes that

- Harm reduction strategies such as night patrols and sobering up shelters were seen as being within the Aboriginal culture of looking after each other.
- The idea of 'tough love', in which families are asked to not support drinkers (for example, by giving money) so they are not supporting their drinking, is difficult for Aboriginal people as helping each other is part of Aboriginal culture.

More recently there has been criticism of harm reduction models compared to supply control and addiction treatment approaches (D'Abbs 2001). Supply control can be effective where there is community support. Hunter et al (1999) have produced national recommendations for the clinical management of alcohol-related problems in Indigenous primary care settings. They note that treatment models need to be adapted to Aboriginal people and communities. Respectfulness and flexibility were recommended for effective intervention. Confrontation was not recommended, as it is culturally inappropriate.

In relation to drug and alcohol programs there appears to be consensus that culturally appropriate and community-based programs which utilise multiple modes of intervention and involve the family and community in treatment are most successful. Harm reduction, treatment and supply control should not be seen as mutually exclusive approaches – for example coordinated approaches between night patrols, sobering-up shelters and treatment facilities might bridge all three approaches. If there is community-based supply control, night patrols might work to police this as well as operating on a harm minimisation model.

How can communities develop drug and alcohol strategies in the context of the Aboriginal Justice Plan?

4.1.2 Family Violence

In recent years there has been a significant growth in the number of programs addressing issues of family violence. For example, a recent report on violence in Australian Indigenous communities identified 130 anti-violence programs that had been implemented, were being implemented, or were planned for implementation in Aboriginal communities (Memmott et al 2001:3). These programs are aimed at a range of different interventions types. They include:

- support programs (counselling, advocacy)
- strengthening identity programs (sport, education, arts, cultural activities, group therapy)
- behavioural reform programs (men's and women's groups)
- policing programs (night patrols, wardens)
- shelter/protection programs (refuges, sobering-up shelters)
- justice programs (community justice groups)
- mediation programs (dispute resolution)
- education programs (tertiary courses, miscellaneous courses, media awareness)
- composite programs (comprising elements from all programs) (Memmott et al 2001:3).

The common themes in evaluations of family violence programs include the need for holistic approaches, the utilisation of community development models which emphasise self determination and community ownership, the provision of culturally sensitive treatment which respects traditional law and customs and involves existing structures of authority such as elders, including women (Partnerships Against Domestic Violence 2000).

The key findings from preliminary research on successful anti-violence programs aimed at Indigenous men includes:

- A structured program should be delivered to groups within an empowering and innovative learning framework that combines cognitive, behavioural and re-socialisation approaches.
- Programs for offenders should not be based on models of support or therapy, but must have results that focus on complete behavioural and attitudinal changes in the offenders.
- Program topics for Indigenous offenders need to be culturally sensitive. Program topics were developed to include information on the cultural context of Indigenous family violence, change motivators relevant to Indigenous offenders and an exploration of Aboriginal spiritual healing.
- Programs should have the flexibility to be undertaken in a range of settings for Indigenous groups and be facilitated by elders within Indigenous communities.
- Education sessions should be included for offenders on the problems of excessive alcohol consumption.
- Offering support to children who witness domestic violence is a crucial component of the program (Cunneen 2001b).

Key issues include the development and funding of community-based family violence programs and whether a court-mandated system could be introduced.

4.2 Community-based policing strategies: Night Patrols

One of the longest running crime prevention programs in Indigenous communities has been night patrols. They are also one of the few types of initiatives that have been evaluated at a more systematic level. Generally the evaluations have been very positive (Grabosky and James 1995, Hearn 2000, SaferWa 2001, Centre for Peace and Conflict Studies 2000, Lui and Blanchard 2001).

Evaluations of night patrols indicate they can achieve

- A reduction in juvenile crime rates on the nights the patrol operates, including for offences such as malicious damage, motor vehicle theft and street offences
- An enhancement of perceptions of safety
- Minimisation of harm associated with drug and alcohol misuse
- An encouragement of Aboriginal leadership, community management and self-determination
- An encouragement of partnerships and cultural understanding between Indigenous and non-Indigenous communities

There are eleven night patrols (or Aboriginal Community Patrols) funded by the New South Wales Attorney-General's Department. There are also 'Street Beats' operating in Forster and Ballina.

Key issues include operational matters such as protocols with local police, support from and coordination with other Aboriginal organisations, and concerns about stable ongoing funding.

4.3 Community based and controlled sanctioning

4.3.1 Community Justice Groups

Different types of Aboriginal Justice Groups have been established in several jurisdictions. Perhaps the most successful and certainly best evaluated have been the Aboriginal Justice Groups in Queensland (Urbis Keys Young 2001, DATSIPD 1999; Chantrill 1998).

Evaluations of justice groups indicate they can

- Achieve a reduction in juvenile offending and school truanting
- Achieve a reduction in family and community disputes and violence
- Increase the more effective use of police and judicial discretion
- Increase community self-esteem and empowerment
- Provide better support for offender reintegration
- Generate cost-savings for criminal justice agencies

Aboriginal Community Justice Groups are being established in New South Wales, as well as community justice forums. Aboriginal Community Justice Groups can work with police to issue cautions, establish diversionary options, support offenders, assist in access to bail, provide assistance to courts, and develop crime prevention plans.

Key issues include resourcing and protocols with police. Development issues might include the need for development of operational guidelines or legislative base.

4.3.2 Circle Sentencing

Circle sentencing originated in Canada based on Aboriginal dispute resolution mechanisms. One of the key differences between sentencing circles and conferences is that circles allow for input beyond the victim and offender to include more directly community representatives. Sentencing circles have been operating in parts of Canada for a decade. Circle sentencing began in Nowra in February 2002. Planning is underway to expand the program to Dubbo, Walgett and Brewarrina.

The literature shows that circle courts have demonstrated a number of benefits. The New South Wales AJAC has summarised these benefits in a recent discussion paper. Some relevant points include

- The court receives information about the whole community, the background to the offenders, the impact of the offence on the victim, and the problems experienced by the local community. This information is received to a level rarely available through written pre sentence reports.
- The input of the community in determining the sentence greatly improves the potential for workable solutions and promotes the sharing of responsibility between the community and the criminal justice system. The Circle Court attempts to address the causes of criminal behaviour and to implement broader solutions to the issues raised, actively involving the community in solving its own problems.
- The circle court allows the community to be collectively responsible for determining the outcome. The shared responsibility is carried beyond the determination of the sentence and into the implementation of it. The success or failure of the sentence becomes the concern of all the participants and not the offender alone.

- Circle courts allow the values of Indigenous people and the structure of the western justice system to be merged. While still operating in the setting of a court, circle courts allow for greater community participation and are able to incorporate the values and culture of the local community (New South Wales AJAC 2000b).

Key issues which emerge in relation to circle sentencing include resourcing and expansion of the scheme, development of guidelines and referral processes, integration with other Aboriginal-run or supported programs and sentencing alternatives.

4.3.3 Community Supervision

There are great potential's for Aboriginal community-operated supervision of offenders. Two models from other States might be worth considering. The Victorian Koori Justice Program (VKJP) operates out of Aboriginal organisations (usually Aboriginal Co-ops). The key strategy used is culturally specific casework by a Koori Justice Worker with offenders who are on juvenile justice orders. The VKJP has been designed to engage and resource Aboriginal communities to

- develop Aboriginal community involvement in the supervision of young Kooris on community based orders
- help prevent Aboriginal youths from offending (prevention) and re-offending, and to minimise the need for serious justice intervention (diversion)
- support young Kooris re-establish their place and goals in their community on release from custodial orders
- strengthen links between Aboriginal communities, the Juvenile Justice Program and other relevant services
- further develop or advise on relevant community support strategies for young Kooris

According to the Victorian Department of Human Services, the operation of the program over the last decade has been the main reason for the significant reduction in the over-representation of Aboriginal youth placed on custodial orders. Data from the Australian Institute of Criminology shows that between March 1993 and June 1994, following the period when most of the VKJP programs were implemented (1992/1993), there was a 61% reduction in the rate of Aboriginal young people aged 10-17 years in Victorian juvenile justice institutions (Urbis Keys Young 2001).

In Western Australia 40 Aboriginal communities in the Kimberley and Eastern Goldfields have contractual arrangements so that communities can supervise adult offenders on community based orders. The Community Supervision Agreement provides the framework for the supervision of offenders in participating communities. Rates of payment to the community are subject to negotiation and are set out in a Schedule to the Agreement. There is considerable flexibility in how the payments are structured according to what best meets the needs of the case. The scheme has had a number of important effects including a dramatic improvement in the rate at which Aboriginal people successfully complete some orders. In the Kimberley region of Western Australia, where the largest single number of Community Supervision Agreements operate, the home detention program has a success rate exceeding 80%.

A key issue is how Aboriginal communities might exercise greater control and responsibility over the supervision of offenders within their community.

4.4 Community based and controlled residential corrections

There are three broad models of residential alternatives which emerge from existing facilities and programs in Australia at present (for further discussion see Cunneen 2001c).

4.4.1 Drug and Alcohol Residential Treatment

First, there are residential centres which are primarily for detoxification and treatment. These are run by Indigenous organisations and adopt an holistic philosophy to treatment and develop Indigenous-specific programs that stress issues relating to Indigenous culture and history. Many of these programs include the whole family rather than only the person seeking treatment.

These programs can accept referrals from people already within the criminal justice system either by way of court order (through, for example, a drug court) or as a release option from prison (through, for example, release to home detention).

4.4.2 Corrective Services Operated, Indigenous-Specific Residential Alternatives

Secondly, there are low security Indigenous residential 'alternatives' to prison which are operated by correctional departments. These facilities are designed for Indigenous prisoners who have a low security rating and are moving towards the end of their sentence. The facilities are staffed predominantly by Indigenous people and they may include Aboriginal community members in programs, such as elders. Programs are specifically designed for Indigenous inmates, including cultural programs, health, education and employment.

Referrals to the program are generally only open to those already sentenced to a period of imprisonment.

4.4.3 Indigenous Controlled Residential Alternatives

A third alternative is a residential program which is operated by an Indigenous organisation under contract to correctional departments. At present these facilities are designed for Indigenous prisoners who have a low security rating and are moving towards the end of their sentence. They operate essentially the same in terms of programs and clients as in the example above, except that the facility is privately operated under contract.

These facilities can receive clients as front-end referrals straight from the court as part of a sentencing order, or they can receive clients as a form of rear-end release from the prison system.

4.4.4 International Examples

The North American literature provides evidence of a wide spectrum of custodial or service delivery arrangements for the care and custody of Aboriginal inmates. In particular, the Canadian *Corrections and Conditional Release Act* makes legal provision for an Aboriginal offender to be transferred to an Aboriginal community facility at any time in his or her sentence and can include supervision of offenders on conditional release.

There are many Canadian examples of successful 'healing lodge' type facilities operated by both Canadian Corrections and Aboriginal communities. Initial evaluations of recidivist rates are positive (see Cunneen 2001b:121). In particular the Canadian models have emphasised the necessity of a holistic approach which strengthens native cultural and responsibility.

In New South Wales the development of Community Managed 'Outstation' Facilities could provide an opportunity for Aboriginal young people to receive drug and alcohol treatment and cultural and vocational education in an Aboriginal–operated setting.

4.5 Diversion programs

4.5.1 Conferencing

Most Australian jurisdictions have some form of youth /family conferencing. Conferencing also exists in parts of Canada, the USA and New Zealand. In most Australian states conferencing is one part of an integrated, hierarchical legislated scheme of responses to juvenile offending which include police warnings, cautions and court. The young offender/s, the victims and their families and support people are brought together to talk about the incident and how justice for all parties may be achieved and family and community harmony restored.

The first evaluation of conferencing and the Young Offenders Act in New South Wales showed that Aboriginal young people had lower diversion rates than non-Aboriginal youth (24.3% compared to 37.2%). Referral to conferences were lower for Aboriginal youth, but generally low overall (Hennessy 1999). A further report by Trimboli (2000) surveyed victims, offenders and offender's support persons – these included 24% of offenders who were Aboriginal. Around 90% of those interviewed expressed satisfaction with the process. Further research shows that Aboriginal young people are less likely to re-offend if brought before a Youth Justice Conference than the Children's Court. One third (31.3%) re-offended within one year of a conference; half (52.4%) within two years. Re-offending rates were higher for Aboriginal young people than non-Aboriginal young people (Luke and Lind 2002).

The potential benefits of conferencing include

- Potential to reduce rates of imprisonment and the social costs associated with imprisonment
- Ability to deal with the specific needs of offenders
- Participation by offenders in the process
- The ability to provide a greater range of alternatives to gaol
- Values the place and role of victims, and family in the process
- Impact positively on community confidence in the justice process

On the basis of the research, the key issue appears to be ensuring that Aboriginal youth have the advantage of being referred to Youth Conferences, rather than court. This raises the subsidiary issue of greater control by Aboriginal organisations in key discretionary decisions – as recommended by the Stolen Generations Inquiry (NISATSIC 1997).

Associated issues are the need to ensure that Aboriginal young people receive referrals to cautioning and that Aboriginal Community Justice Groups have involvement in the cautioning process.

4.5.2 Drug Court and MERIT

Evaluations of the New South Wales Drug Court program suggests that the program is more cost effective than imprisonment in reducing the number of drug offences and equally cost effective in delaying the onset of further offending. A recognised area in need of reform is improved access for Aboriginal offenders who were considered to be disproportionately excluded from entry into the Drug Court program because of prior offending and previous offences of violence as defined under the Drug Court Act 1998.

Similarly, some Aboriginal women prisoners have commented on the lack of sentencing options for Aboriginal women with serious drug problems and a notable interest in completing programs. Whilst the establishment of the Drug Court and recently the Magistrates Early Referral into Treatment Program pilots have been largely successful, these particular programs have quite strict eligibility. Entry relies heavily on the residence or location of the offender. Many Aboriginal women either have lived on the streets or in the inner city regions, which means they do not get the option of the Drug Court (or MERIT where established). What is needed is a supported accommodation service that actively rehabilitates drug usage by Aboriginal women, that can support the connection between Aboriginal families (Lawrie 2002:38).

A key policy issue is to consider how existing drug referral programs can be made accessible to, or be redesigned to meet the needs of Aboriginal people.

4.6 Community Support Programs

4.6.1 Mentoring

Mentoring programs are premised on the belief that positive developmental relationships with adults will assist young people to stop offending. Mentors are utilised to act as role models where crime prevention may lack a positive relationship with a significant adult. Aboriginal community members are recruited, trained and matched with clients to provide the mentor support. In New South Wales the aims of the program are to:

- provide assistance and support to Aboriginal juvenile offenders;
- assist young Aboriginal offenders to successfully reintegrate into their community by encouraging community members to participate in the provision of culturally appropriate services to young Aboriginal people;
- encourage the active participation of local communities in the support of Aboriginal offenders through the community networking of mentors;
- empower Aboriginal communities through their involvement in the rehabilitation process of young Aboriginal people; and
- improve the provision of departmental services to Aboriginal juvenile offenders

The New South Wales program was reviewed in 2001 and is now a key support service for all clients with high needs.

4.6.2 Post Release Support/Reintegration Programs

These strategies seek to reduce offending through effectively facilitating the reintegration of offenders into the community. Aims can include placing offenders in full time jobs, traineeships or apprenticeships, developing employment skills and raising awareness among local industry of the difficulties Aboriginal offenders have in obtaining employment. They might also address education, drug and alcohol problems, family issues and housing needs.

A particularly successful program has been *'Rekindling the Spirit'* operating from the Lismore Probation and Parole Office. The focus is a holistic approach to the problems of Aboriginal families who have male family members who are clients of the Probation and Parole Service or DOCS. Specific attention is given to issues of domestic violence, drug and alcohol abuse and child abuse or neglect. The program has won a Silver Medal at the Premier's Public Sector Awards 1999, and an award and Certificate of Merit at the Australian Violence Prevention Awards 2000, and a CAPAM Certificate of Achievement 2000.

The Department of Juvenile Justice operates a Post Release Support Program (PRSP) in partnership with the community to provide post release support services to assist young offenders to reintegrate into their communities. The PRSP is a structured twelve-week program designed to achieve a reduction in the number of clients who re-offend after release from a juvenile justice centre. The Department outsources client services to community-based agencies, who are responsible for meeting the post-release needs of the client group. These needs include employment, education, training, income support, accommodation and personal development. The PRSP also uses a brokerage system that supports clients not readily accessible by the PRSP service providers, and in particular clients in rural and remote areas.

A key issue is how to integrate post release support services with Aboriginal organisations. For example what role might an Aboriginal Community Justice Group play in partnership with justice agencies in post release support – for example a register of local Aboriginal organisations likely to be able to effectively offer services?

5. KEY ISSUES FOR THE ABORIGINAL JUSTICE PLAN

This final section of the Discussion Paper draws out the major themes, and proposes a set of priority areas that need to be addressed by an Aboriginal Justice Plan. These include issues of planning, monitoring and reporting, the setting out of principles underpinning the Plan, the need to develop strategic directions, and the need to identify key program and policy areas within those strategic directions.

5.1 How do we coordinate and improve planning processes around justice issues?

5.1.1 Improving Services

There is a need to design and provide services in a way which the local community or individual concerned can effectively access them. Removing structural impediments and negotiating with communities and Aboriginal organisations can significantly improve the accessibility and delivery of services. Some key questions which need to be addressed include the following.

- *What structures need to be put in place to overcome the structural barriers to effective service delivery?*
- *Should Aboriginal Impact Statements be required by Ministers other than the Attorney-General where proposals impact on, or are related to, matters of justice?*
- *How do we move from consultation to negotiation between government and Aboriginal communities and organisations, and establish appropriate processes to enable this change ?*
- *How do we improve service delivery through a whole-of-government approach?*

5.1.2 Structures for Reporting

There is also a need for the Aboriginal Justice Plan to consider the structures that could be put in place for improved planning and coordination on justice issues.

- *For example, should the Justice Plan provide for a greater community role in developing and monitoring the Aboriginal Strategic Plans that are developed by justice agencies?*
- *Should justice agencies be required to develop Aboriginal Strategic Plans which coordinate with and enhance the strategic directions of the Aboriginal Justice Plan?*
- *How do we ensure that Aboriginal Strategic Plans are seen as central to the corporate planning process?*

The Aboriginal Justice Plan could also consider the need to improve the status of reporting mechanisms.

- *For example, should the AJAC become a statutory body with reporting functions to parliament? Should AJAC report to parliament on the progress in meeting the outcomes determined by the Aboriginal Justice Plan?*

5.1.3 Setting Targets and Goals as Measurable Outcomes

The Aboriginal Justice Plan has the potential to set specific targets to be achieved in the reduction of Aboriginal over-representation in the criminal justice system and the enhancement of community safety. For example, the Queensland Aboriginal Justice Plan has set as a 'broad outcome indicator' a reduction by 50% in the rate Aboriginal and Torres Strait Islander peoples are incarcerated in prison and juvenile detention centres by 2011. A number of supporting indicators include reductions in the number of Indigenous people being arrested, coming before the courts, and being given custodial sentences; and an increase in the proportion of Indigenous people receiving diversionary outcomes (such as cautioning and community service orders).

- *Should the Aboriginal Justice Plan set specific targets (such as a reduction in imprisonment rates) and, if so what should these targets be?*
- *Should these targets cover a range of areas such as increased diversion rates for Aboriginal juveniles and adults, decreased bail refusals, decreased Aboriginal adult and juvenile incarceration rates, increased rates of Aboriginal people on community corrections orders?*
- *What targets are suitable for measuring decreases in victimisation?*
- *Should the Plan develop and set targets for improvements in outcomes in other key areas such as health, education and employment?*

5.2 Is it important that the Aboriginal Justice Plan set out a number of key principles? And if so, what should they be?

Four general principles are set out in the New South Wales Aboriginal Justice Agreement and referred to at the beginning of this Discussion Paper. These are

- Accepting that Aboriginal people know their own problems and issues and that Aboriginal people are best situated to solve those problems
- Actively encouraging and supporting local and community innovation which aim to address justice problems and concerns
- Recognising and respecting the significant cultural diversity in the New South Wales Aboriginal community and that each Aboriginal community has its own distinct problems and needs
- Acknowledging that crime in Aboriginal communities has a deep set of underlying causes and that we share responsibility in addressing these causes

Both the Queensland and Western Australian Aboriginal Justice Plans set out a series of principles. In addition to the types of principles identified above they include explicit reference to

- Acknowledgment of past policies, practices and philosophies by government and their negative impact on Indigenous people
- Recognition of equality before the law
- Empowerment and self-determination for Indigenous people, particularly in accordance with principles set out in the *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal and Torres Strait Islanders*
- Acknowledgment of the continued commitment by government to the implementation of the recommendations from the Royal Commission into Aboriginal Deaths in Custody.

An issue which requires discussion is whether the Aboriginal Justice Plan needs reference to principles and what they should cover. Other examples, in addition to those principles mentioned above, might include respect for human rights, including Indigenous, children and women's rights, civil and political rights, principles of non-discrimination and self-determination.

5.3 Developing Strategic Directions

The Aboriginal Justice Plan provides the opportunity to develop a number of key strategic directions aimed at reducing Aboriginal over-representation and increasing community safety. It will be necessary to decide what will be the most effective strategic directions. The Victorian Aboriginal Justice Agreement provides an example of this approach with its six strategic directions, identified as follows:

- Achieve maximum Aboriginal community participation in the processes for legislative, policy, program development, service delivery, monitoring and review
- Development of culturally appropriate programs and services
- Development of a coordinated and strategic approach
- Delivery of fair and equitable justice services
- Increasing community safety, security and well-being
- Reducing the risk for Aboriginal children and youth

The draft ACT Aboriginal Justice Strategic Plan identifies strategic areas including police, prosecution/courts, adult corrections, juvenile justice, family violence, women's issues, men's issues and youth issues.

Another approach might for the Plan be to target a few areas and not attempt to be comprehensive. For example, these might include broad strategic directions tied to the general objectives of the Aboriginal Justice Plan (reducing Aboriginal over-representation and increasing community safety). Such broad objectives might include

- reducing violence against women
- reducing the contact of children and young people with juvenile justice agencies
- increasing Aboriginal-operated community-based sanctioning processes (residential, non-residential, circle sentencing and the role of Community Justice Groups, for example)
- reduce Aboriginal male and female imprisonment rates

These strategic directions might then be reviewed after, say, 3-5 years. There is a need for communities to discuss the various possible approaches which could be undertaken, and to prioritise particular strategies.

5.3.1 What are the key justice program areas that need attention or development, and where would they fit within the strategic directions which have been developed?

After deciding on the strategic directions it will be necessary to identify which programs, policies and initiatives are likely to ensure the objectives are met. Some of the most successful and promising programs were identified in section four of this Discussion Paper. Some program areas include the following.

- Diversion/conferencing for juveniles

- Mentoring for juveniles
- Effective access to chamber magistrates
- Night patrols
- Community Justice Groups
- Drug programs for Aboriginal offenders
- Family violence programs for Aboriginal offenders
- Specific services for Aboriginal victims of crime
- Circle sentencing
- Aboriginal-run residential alternatives
- Post-release support for Aboriginal people

All of these programs and policies need to be seen within a holistic and cultural approach which is acceptable to Aboriginal communities in New South Wales.

5.3.2 How do we coordinate and implement programs which address the underlying causes of offending behaviour, and where do they fit within the overall strategic directions of the Aboriginal Justice Plan?

Given that underlying issues are so important in creating criminogenic situations and bringing Aboriginal people into contact with the criminal justice system, how do we address the following in a way which is likely to have a sustained impact in reducing the over-representation of Aboriginal people?

- Unemployment and poverty
- Lack of adequate housing
- Poor educational attainment
- Drug and alcohol-related issues
- Violence and, in particular, family violence
- Parenting, counselling and other programs for people suffering the trauma from forced removals

In addition, there is a need for the Aboriginal Justice Plan to consider the best way to overcome the structural barriers, in areas like decision-making and funding, which inhibit the development of effective policy for Aboriginal communities. How can communities and government work towards greater flexibility in developing policy which is meaningful to communities?

5.3.3 Is reform of the criminal law required as part of the Justice Plan, and if so, which laws need particular attention?

There has been ongoing concern about the impact of certain legislation like the *Summary Offences Act* on Aboriginal people. A raft of relatively new legislation has come into operation over the last few years which also raise concerns over potential discriminatory impacts on Aboriginal people. The question which needs addressing is whether law reform should be a component of the Aboriginal Justice Plan. Some of the legislation which has been of concern is identified below.

- Summary Offences Act
  (Section 4 relating to offensive language and offensive conduct)
  (Section 28 relating to police 'move on' powers)
- Children (Protection and Parental Responsibility) Act
  (Children in public places)
- Crimes Legislation Amendment (Police and Public Safety) Act
  (Police powers to search for prohibited weapons)
- Bail Amendment Legislation

(Provisions removing the presumption in favour of bail for certain categories of people who are repeat offenders, fail to appear or breach bail).

- Justice Legislation (Non-Association and Places Restriction) Act 2001
  Provide for bail and other conditions restricting movement and association of people (adult and juveniles) charged with offences
- Children's (Criminal Proceedings) Amendment (Adult Detainees) Act 2001
- Children (Detention Centres) Amendment Act 2002
  Provisions relate to dealing with time accrued during escapes and transferring young people from juvenile detention to adult prison

There may be other legislation, in addition to the above, which needs amending.

There may also be a need to consider positive law reform to enable Aboriginal organisations to take a more active role in decisions and services within the criminal justice system. Some examples might include the following legislative changes in Queensland and Canada.

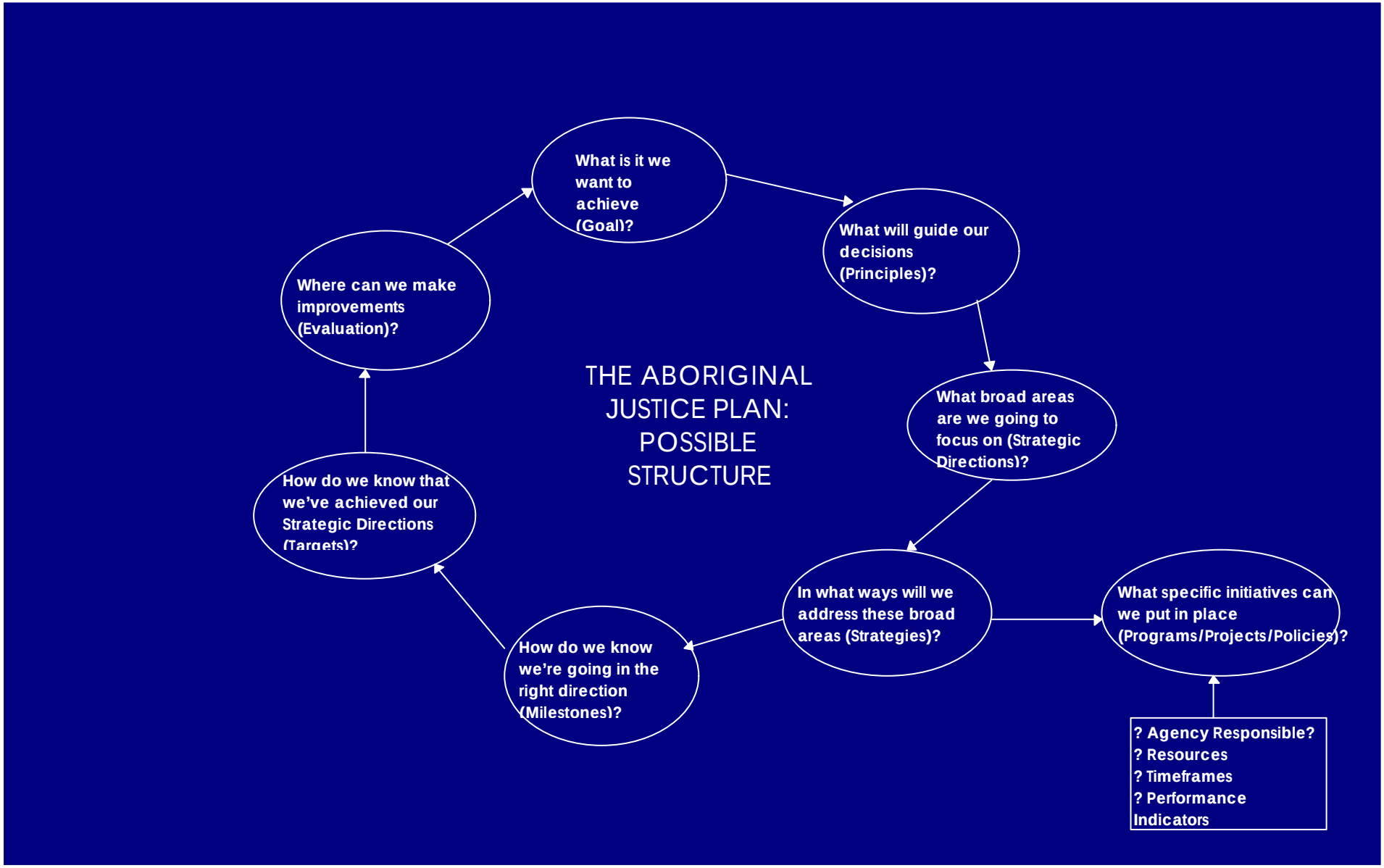
- Amendments to the Queensland *Penalties and Sentences Act 1992*, the *Juvenile Justice Act 1992* and the *Children's Court Act 1992* enable elders and community justice groups to formally assist judges and magistrates when sentencing Indigenous people.
- The Queensland *Juvenile Justice Act 1992*specifically provides for Indigenous elders to caution juveniles instead of, or in conjunction with, police.
- Two sections of the Canadian *Corrections and Conditional Release Act (CCRA)* provide communities with the opportunity to be active partners in the care and custody of offenders by allowing transfer of Aboriginal prisoners to Aboriginal facilities (see Cunneen, 2001b:115-116).
- Section 718 of the Canadian *Criminal Code* sets outs out principles in regard to sentencing. Section 718.2(e) requires that 'all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders'. Case has developed which interprets this provision to include both the *process* of sentencing as well as the outcomes of sentencing, thus justifying the use of circle sentencing and input from elders (McNamara 2000).

5.4 Developing the Aboriginal Justice Plan

Based on the discussion above, one way of developing the Aboriginal Justice Plan is to identify the key principles underpinning the Plan, followed by an identification of the key strategic directions required for reducing Aboriginal over-representation.

It will then be necessary to identify the particular strategies and programs/projects necessary for achieving those directions. Each of these strategies could be matched with agency responsibility, resources required, timeframe for development and implementation, performance indicators and funding.

The development of appropriate milestones and targets which measure success in achieving the broad strategic directions is necessary, as well as an evaluation mechanism. Consideration may also need to be given to the integration of monitoring and reporting processes. The diagram below demonstrates further this possible structure.


THE ABORIGINAL JUSTICE PLAN: POSSIBLE STRUCTURE
What is it we want to achieve (Goal)?
What will guide our decisions (Principles)?
What broad areas are we going to focus on (Strategic Directions)?
In what ways will we address these broad areas (Strategies)?
What specific initiatives can we put in place (Programs/Projects/Policies)?
? Agency Responsible?
? Resources
? Timeframes
? Performance Indicators
How do we know we're going in the right direction (Milestones)?
How do we know that we've achieved our Strategic Directions (Targets)?
Where can we make improvements (Evaluation)?

References

Aboriginal and Torres Strait Islander Advisory Board (2001) *Queensland Aboriginal and Torres Strait Islander Justice Agreement*, Queensland Government, Brisbane.

Aboriginal and Torres Strait Islander Women's Task Force on Violence (2000) *Final Report*, DATSIPD, Brisbane.

Aboriginal Justice Advisory Committee (2001) *Draft Aboriginal Justice Strategic Plan*, ACT Aboriginal Justice Advisory Committee, Canberra.

Aboriginal Justice Advisory Council (1999) *Policing Public Order, Offensive Language and Behaviour. The Impact on Aboriginal People*, New South Wales Aboriginal Justice Advisory Council, Sydney.

Aboriginal Justice Advisory Council (2000a) *A Fraction More Power. Review of the Impact of the Children (Protection and Parental Responsibility) Act on Aboriginal People in Moree and Ballina*, New South Wales Aboriginal Justice Advisory Council, Sydney.

Aboriginal Justice Advisory Council (2000b) *Circle Sentencing Discussion Paper*, New South Wales Aboriginal Justice Advisory Council, Sydney.

Aboriginal Justice Council and the Justice Coordinating Council, Western Australia, (2002) *Aboriginal Justice Plan 2000*, Government of Western Australia, Perth.

ABS (2000) *Report on Experimental Indigenous Socio-economic Disadvantage Indexes*, Commonwealth Grants Commission Canberra.

ABS (2002) *2001 Census in Brief. Early Bird Report*, ABS, Canberra.

Aos, S., Phipps, P., Barnoski, R. and Lieb, R. (2001) *The Comparative Cost and Benefits of Programs to Reduce Crime*, Washington State Institute for Public Policy, Olympia.

ATSIC (1997) *Five Years On. Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, 3 Vols, AGPS, Canberra.

Australian Institute of Health and Welfare (1999) *Australia 's Young People: Their Health and Wellbeing 1999*, Australian Institute of Health and Welfare, Canberra.

Australian Institute of Health and Welfare (2000) *Child Protection Australia 1998-99.* Child Welfare Series, Australian Institute of Health and Welfare, Canberra.

Baker, J. (2001) 'The Scope for Reducing Indigenous Imprisonment Rates', *Crime and Justice Bulletin No 55*, New South Wales Bureau of Crime Statistics and Research, Sydney.

Beresford, Q. and Omaji, P. (1996) *Rites of Passage. Aboriginal Youth, Crime and Justice*, Fremantle Art Centre Press, South Fremantle.

Brady, M. (1998) *The Grog Book: Strengthening Indigenous Community Action on Alcohol*, Commonwealth Department of Health and Family Services, Canberra.

Brady M. (1999) 'Dealing with alcohol. Indigenous usage in Australia, New Zealand and Canada', *Oceania,* No 70, pp201-203.

Briscoe, S. and Donnelly, N. (2001) 'Temporal and Regional Aspects of Alcohol-Related Violence and Disorder', *Alcohol Studies Bulletin No 1*, New South Wales Bureau of Crime Statistics and Research, Sydney.

Broadhurst, R. (1997) 'Aborigines and Crime in Australia' in M. Tonry (ed) *Ethnicity, Crime and Immigration: Comparative and Cross-National Perspectives, Crime and Justice*, Vol. 21, University of Chicago, Chicago.

Centre for Peace and Conflict Studies and Koori Centre (2000) *The Impact of Aboriginal Night Patrols as a Juvenile Crime Prevention Strategy. An Evaluation of four Pilot Programs in New South Wales*, Centre for Peace and Conflict Studies and Koori Centre, University of Sydney, Sydney.

Chantrill, P. (1998) 'Community Justice in Indigenous Communities in Queensland: Prospects for Keeping Young People Out of Detention', *Australian Indigenous Law Reporter*, Vol 3, No 2, pp. 163-179.

Criminal Justice Commission (1996) *Aboriginal Witnesses in Queensland Criminal Courts*, GoPrint, Brisbane.

Cunneen, C. and Robb, T. (1987) *Criminal Justice in North-West NSW*, NSW Bureau of Crime Statistics and Research, Attorney-General Department, Sydney.

Cunneen, C. (2001a) *Conflict, Politics and Crime*, Allen and Unwin, Sydney.

Cunneen, C. (2001b) *The Impact of Crime Prevention on Aboriginal Communities*, New South Wales Crime Prevention Division and Aboriginal Justice Advisory Council, Sydney.

Cunneen, C. (2001c) *Review of Best Practice Models for Indigenous Diversion Programs*, Report for Corrective Services Commission Victoria, Melbourne.

D'Abbs, P. (2001) 'Silence of the Sociologists: Indigenous Alcolohl Use, Harm Minimisation and Social Control', *Health Sociology Review*, vol 10, no 2, 33-52

DATSIPD [Department of Aboriginal and Torres Strait Islander Policy and Development] (1999) *Local Justices Initiatives Program. Interim Assessment of the Community Justice Groups*. Queensland Government, Brisbane.

Department of Aboriginal Affairs, New South Wales (DAA) (2002a) *Introducing Indigenous Australia: Socio-Economic Status*, http://www.daa.nsw.gov.au/daa/media_1.html

Department of Aboriginal Affairs, New South Wales (DAA) (2002b) *Health: Comparative health status of the Aboriginal and general population in New South Wales*, http://www.daa.nsw.gov.au/daa/media_3.html;

Department of Corrective Services (2002) *Annual Report 2000/20001,* Department of Corrective Services, Sydney.

Department of Justice and Victorian Aboriginal Justice Advisory Council (2000) *Victorian Aboriginal Justice Agreement*, State Government of Victoria, Melbourne.

Devery, C. (1991) *Disadvantage and Crime in New South Wales,* New South Wales Bureau of Crime Statistics and Research, Sydney.

Doak, P. (2001) *New South Wales Recorded Crime Statistics 2000*, New South Wales Bureau of Crime Statistics and Research, Sydney.

Fitzgerald, J. and Weatherburn, D. (2001) 'Aboriginal Victimisation and Offending: The View from Police Records', *Crime and Justice Statistics Brief*, New South Wales Bureau of Crime Statistics and Research, Sydney.

Grabosky, P. and James, M. (1995) *The Promise of Crime Prevention: Leading Crime Prevention Programs*, Australian Institute of Criminology, Canberra.

Gray, D., Saggers, S., Sputore, B. and Bourbon, D. (2000) 'What Works? A Review of Evaluated Alcohol Misuse Interventions among Aboriginal Australians', *Addiction*, no 95, pp11-22.

Harding, R., Broadhurst, R., Ferrante, A. and N. Loh (1995) *Aboriginal Contact with the Criminal Justice System and the Impact of the Royal Commission into Aboriginal Deaths in Custody*, Hawkins Press, Annandale.

Hearn, L. (2000) *Gosnells Community Justice Program Evaluation Report*, Centre for Police Research, Edith Cowan University, Perth.

Heggie, K. (1999), *Review of the New South Wales Home Detention Scheme*, New South Wales Department of Corrective Services, Sydney.

Hennessy, N (1999) *Review of the Gatekeeping Role in the Young Offenders Act 1997*, Report to Youth Justice Advisory Committee, Sydney.

Hunter, E, Brady, M., Hall, W. (1999) *National Recommendations for the Clinical Management of Alcohol-Related Problems in Indigenous Primary Care Settings*, Cairns.

Hunter, B. (2001) *Factors Underlying Indigenous Arrest Rates*, New South Wales Bureau of Crime Statistics and Research, Sydney.

International Commission of Jurists (1990) *Report of the Aboriginals and Law Mission,* Australian Section, Sydney.

LaPrairie, C. (1997) 'Reconstructing Theory: Explaining Aboriginal over-representation in the criminal justice system in Canada', *The Australian and New Zealand Journal of Criminology*, Vol 30, No 1, March 1997, pp. 39-54.

Lawrie, R (2002) (Unpublished) *Speak Out Strong: Researching the Needs of Aboriginal Women in Custody*, New South Wales Aboriginal Justice Advisory Council, Sydney.

Luke, G. and Cunneen, C. (1995) *Aboriginal Over-Representation and Discretionary Decisions in the NSW Juvenile Justice System*, Juvenile Justice Advisory Council of NSW, Sydney.

Luke, G. and Cunneen, C. (1998) *Sentencing Aboriginal people in the Northern Territory: A Statistical Analysis*, NAALAS, Darwin.

Luke, G. and Lind, B. (2002) *Reducing Juvenile Crime: Conferencing versus Court*, New South Wales Bureau of Crime Statistics and Research, Sydney.

Lui, L. and Blanchard, L (2001) 'Citizenship and Social Justice: Learning from Aboriginal Night Patrols in New South Wales', *Indigenous Law Bulletin*, vol 5, no 5.

McNamara, L. (2000) 'The Locus of Decision-Making Authority in Circle Sentencing: The Significance of Criteria and Guidelines', *Windsor Yearbook of Access to Justice*, vol 18, pp.60-114.

Memmott, P., Stacy, R., Chambers, C. and Keys, C. (2001) *Violence in Aboriginal Communities,* Attorney-General's Department, Canberra.

Mouzos, J. (1999) 'New Statistics Highlight High Homicide Rate for Indigenous Women' *Indigenous Law Bulletin*, vol 4, no 25, pp.16-17

Mouzos, J. (2000) 'Homicidal Encounters 1989-1999', Research and Public Policy Series No 28, Australian Institute of Criminology, Canberra.

New South Wales Ombudsman (1999) *Policing Public Order*,

New South Wales Select Committee into the Increase in the Prison Population (2001) *Final Report*, New South Wales Parliament, Sydney.

NISATSIC (1997) *Bringing Them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, HREOC, Sydney.

Partnerships Against Domestic Violence (2000) *Key Findings: Projects With Indigenous Communities*, June 2000, Office of Status of Women, Department of Prime Minister and Cabinet, Canberra. http://www.padv.dpmc.gov.au/partner.htm.

SaferWa Project Register (2001) http://www.saferwa.wa.gov.au/html/fs03pro.htm

Sherman, L., Gottfredson, D., MacKenzie, D., Eck, J., Reuter, P. and Bushway, S. (1998) 'Preventing Crime: What Works, What Doesn't, What's Promising', *National Institute of Justice Research in Brief*, US Department of Justice, Washington DC.

Siggins Miller Consultants, & Catherine Spooner Consulting. (2002). *Diversion of Aboriginal and Torres Strait Islander youth from juvenile detention (ANCD Research Paper)*. Canberra: Australian National Council on Drugs.

Steering Committee for the Review of Commonwealth/State Service Provision (SCRCSSP) (2002) *Report on Government Services*, Vol 1, Productivity Commission, Melbourne.

Trimboli, L. (2000) *An Evaluation of the New South Wales Youth Justice Conferencing Scheme*, New South Wales Bureau of Crime Statistics and Research, Sydney.

Urbis Keys Young (2001) *Aboriginal Child Welfare and Juvenile Justice Good Practice Project Final Report*, ATSIC, Canberra.

Walker, J. and McDonald, D. (1995) 'The Over-representation of Indigenous people in Custody in Australia', *Trends and Issues in Crime and Criminal Justice*, No. 47, Australian Institute of Criminology, Canberra.

Weatherburn, D., Fitzgerald, J. and Hua, J (2002) 'Reducing Aboriginal Over-representation in Prison', unpublished.