



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

2008

**Preventing Crime
and Promoting
Rights for Indigenous
Young People with
Cognitive Disabilities
and Mental Health
Issues**

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Preventing Crime and Promoting
Rights for Indigenous Young
People with Cognitive Disabilities
and Mental Health Issues



A report by Tom Calma
Aboriginal and Torres Strait Islander
Social Justice Commissioner
Australian Human Rights Commission

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Indigenous Justice and Legal Assistance Division

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Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues
Australian Human Rights Commission, Sydney, March 2008

Report prepared by Emilie Priday

We thank all of the stakeholders who generously gave their time and expertise to assist in this research project.

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Totem art depicting the journey of the inaugural participants of Tirkandi Inaburra Cultural and Development Centre
© Tirkandi Inaburra Cultural and Development Centre.



About the Social Justice Commissioner's logo

The right section of the design is a contemporary view of traditional Dari or head-dress, a symbol of the Torres Strait Island people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commission. The dots placed in the Dari represent a brighter outlook for the future provided by the Commission's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.

The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Commission and the support, strength and unity which it can provide through the pursuit of Social Justice and Human Rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander Social Justice expressing the hope and expectation that one day we will be treated with full respect and understanding.

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Foreword

We know that Indigenous young people in the criminal justice system are some of the most disadvantaged young people in Australia but Indigenous young people with cognitive disabilities and mental health issues face an even greater burden of disadvantage. They are faced with institutions that fail to pick up on their disabilities, services that do not cater to their needs and a culture where they are simply forgotten or put in the 'too hard' basket.

We decided to undertake this research because so little attention is paid to this group of young people whose needs are so great.

We have approached this problem with optimism that through early intervention and diversion we can do these young people's needs justice rather than defaulting to a law and order position that results in further criminalisation of the vulnerable.

This report will look at the evidence on Indigenous young people with cognitive disabilities, map some of the services available and then based on consultations with experts, look at a variety of programs that show promise in helping these young people. This provides the basis for our best practice principles and recommendations.

I am glad to have brought some of these issues to light and look forward to sharing our findings with government departments, service providers and workers to develop a future for these forgotten young people.



Tom Calma

August 2008



Tom Calma

Aboriginal and Torres Strait Islander
Social Justice Commissioner and Race
Discrimination Commissioner



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Part 1: Why do we need this research? Arguing for protection, prevention and knowledge for Indigenous young people with cognitive disabilities and mental health issues

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a) Introduction

This report provides an investigation of early intervention and diversionary practices aimed at preventing offending behaviour in Indigenous young people with a cognitive disability¹ and/or a mental health problem. It builds on our previous report, *Indigenous young people with cognitive disabilities and the Australian juvenile justice system*.² Specifically, it examines what is available for these young people, identifies systemic service delivery gaps and points to promising interventions that have the capacity to prevent offending behaviour.

I decided to prepare this report as there is a lack of literature, evidence and interventions for this group of young people. Sadly, what commonly comes to light are stories of young people with cognitive disabilities or mental health issues falling through the cracks of community social services and ending up in custody. Once in custody, young people with a disability are more vulnerable than other detainees. They can face additional difficulties in adapting to a custodial environment that is rarely able to meet their needs and they face ridicule and adverse attention by other detainees who do not understand their medical predicament.

A publicly known, real life example, where all of these things have gone wrong is the case of Corey Brough. Corey Brough is an Indigenous young man with a mild intellectual disability, troubled background, limited communication skills and diagnosis of Attention Deficit Disorder. When he was only 16 years of age he was placed in solitary confinement in an adult prison. He was held in solitary confinement for 25 days, stripped of all clothing, belongings and bedding and administered antipsychotic drugs without a proper medical assessment.

Corey Brough made a complaint about his treatment under the International Covenant on Civil and Political Rights that went to the United Nations Human Rights Committee. The United Nations Human Rights Committee found the NSW Government contravened Corey Brough's right to be treated with respect for his dignity and did not have due regard for his vulnerability as a person with a disability and his Indigenous status in light of the Royal Commission into Aboriginal Deaths in Custody.³

Corey Brough's story may have gone all the way to the United Nations, but there are elements of his story that are repeated day in and day out in the juvenile justice system. The scenario is all too familiar. An Indigenous young person with either a cognitive disability or mental health problem slips through all the nets of early detection and assessment. They struggle at school and act up in class. Their presentation is simply attributed to bad behaviour. Rather than address the cause of the problem, the education system deals with the young person through punishment and exclusion. Not surprisingly, the young person drifts out of education and into poor peer relationships, boredom and offending behaviour. From there they are fast tracked into the juvenile justice system because they most likely lack the skills and support to succeed in early intervention or diversionary measures. This trajectory is set against a

1 In this report cognitive disability is commonly defined as any sort of cognitive disorder that impairs understanding and functioning. Cognitive disabilities include intellectual disabilities, learning difficulties, acquired brain injury, foetal alcohol syndrome, dementia, neurological disorders and autism spectrum disorders. A more comprehensive definition of cognitive disability can be found on page 3.

2 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems*, Human Rights and Equal Opportunity Commission, Sydney, 2005.

3 New South Wales Council of Social Services, *Briefing Note: Children (Detention Centres) Amendment Bill 2006*, May 2006, available at www.ncoss.org.au/bookshelf/law/articles/Briefing-note-children-detention-may-06.pdf, accessed 18 March 2008.



backdrop of marginalised families and communities, social and economic disadvantage, poor access to services, the transgenerational effects of the Stolen Generations, racism and high levels of trauma, grief and loss.

The scenario above paints a picture of systemic failure. However, this report will set out to analyse various points of critical intervention and propose an alternative framework based on effective and holistic intervention. At every juncture where a young person can potentially slip through the cracks, there is equally a challenge to develop an alternative, culturally and developmentally appropriate intervention that can prevent offending behaviour.

Contents of the Report

Part 2: What do we know about Indigenous young people with cognitive disabilities and/or mental health issues? provides a literature review which considers Australian and international research on the problems facing Indigenous young people with cognitive disabilities or mental health issues, as well as different intervention models.

Part 3: Stories from the Field is based on our consultations with community members and experts in the field. In some cases, these sorts of positive interventions are already occurring. A selection of case studies showing promising practice is also included in this section.

Part 4: Conclusion and Recommendations draws together best practice principles based on the consultations, case studies and literature. It also provides targeted recommendations.

Appendix 1 provides a list of consultations.

Appendix 2 collates the data and responses on Indigenous young people with cognitive disabilities/mental health problems provided by relevant government agencies.

Appendix 3 provides a list of government respondents.

b) Methodology

There is little research about Indigenous young people with cognitive disabilities and/or mental health issues and there is next to nothing about how we practically keep this group of young people out of the juvenile justice system. For these reasons, this is an exploratory, qualitative research project built on close review of the literature, consideration of existing service provision and targeted case studies and consultations.

Information from government departments

To map service provision to this group, a letter was sent to state juvenile justice, health, education, disability services and crime prevention departments as it was considered that these agencies would most likely have direct service provision involvement in early intervention and diversionary programs for this client group. Information was requested about:

- data that the department/agency may collect on the numbers of Indigenous young people who have been assessed as having a cognitive disability and/or mental health issues;
- a break down of this data by age, sex and location;
- any information of relevant early intervention or diversionary programs that they run for the target group of young people; and
- any other research or stakeholder who is working in the field.

A summary of the responses, found in **Appendix 2**, provides a snapshot of reported services available to Indigenous young people with cognitive disabilities (to a lesser degree mental health issues) at various points when they are either considered 'at risk' or actually involved in the juvenile justice system.

Consultations and case studies

There is a divide between the government policy, programs and the real world where these young people live. For this reason, we have consulted with a selected group of service providers and experts to get 'on the ground' expertise. A list of consultations is provided in **Appendix 1**.

These stakeholders are strategically placed at points of intervention or responsible for promising practices with Indigenous young people. This is by no means a comprehensive consultation but even this small sample highlights some of the common factors and approaches relevant to Indigenous young people with these issues.

The consultations map some of the common pathways of these young people into crime, as well as the junctures or interventions along the way that have the potential to divert them from offending behaviour and the juvenile justice system.

Each of the case studies represent a promising practice which has the potential to develop healthy, pro social alternatives to offending for Indigenous young people with cognitive disabilities and/or mental health issues. Selection of case studies was based on the information provided by government departments and suggestions from stakeholders.

c) Definitional Issues

Concepts around disability and mental illness can be confused and contested. The following definitions are used in this report and discussed in terms of their relevance to Indigenous communities.

Cognitive Disability

The category of cognitive disabilities includes a range of disorders relating to mental processes of knowing, including awareness, attention, memory, perception, reasoning and judgement. Cognitive disabilities include intellectual disabilities, learning difficulties, acquired brain injury, foetal alcohol syndrome, dementia, neurological disorders and autism spectrum disorders.

People with intellectual disabilities and some people with cognitive disabilities experience:

Significantly lower than average intellectual ability and deficits in social and adaptive functioning, that is, limitations in such areas as communication, social, daily living or movement skills.⁴

There was a conscious decision to use a broad definition of cognitive disability to capture the range of different conditions which may affect Indigenous young people. In particular, there is a growing awareness in Australia about prevalence of Foetal Alcohol Syndrome in Indigenous communities. Similarly, acquired brain injury, particularly from substance use (especially petrol sniffing) may also have links to offending behaviour.

Mental Illness

We found that a lot of the Indigenous young people in the juvenile justice system were suffering from mental health problems. Although cognitive disabilities and mental illness can be very different, in terms of early intervention and diversion from the juvenile justice system, the impact of interventions is similar. For this reason, we have decided to expand our research parameters to look at both of these conditions.

Cognitive disabilities and mental illness are two separate conditions. However, in the first phase of this research we found that there is a connection between the two. Some young people have a cognitive disability as well as a mental health condition (which may or may not be associated with substance use) that can make their lives and the interventions they require, more complex.

A mental illness is a condition that:

Severely impairs (temporarily or permanently) the mental functioning of the person and is characterised by the presence of one or more of the following symptoms: delusions, hallucinations, serious disorder of thought, a severe disorder of mood, and sustained or repeated irrational behaviour.⁵

4 NSW Law Reform Commission, *People with Intellectual Disability and the Criminal Justice System: Courts and Sentencing Issues*, 1994, Discussion Paper 35, p2.

5 Freeman, K., 'Mental Health and the Criminal Justice System', *Crime and Justice Bulletin: Contemporary Issues in Crime and Justice*, NSW Bureau of Crime Statistics and Research, No 38. October 1998, p2.

Indigenous definition of health

Our first report also noted that Western medical definitions don't necessarily reflect an Indigenous view of health. The Indigenous view of health is 'holistic, encompassing mental health and physical, cultural and spiritual health'.⁶

Holistic health acknowledges the impact of colonisation on Indigenous health:

Any delineation of mental health problems and disorders must encompass recognition of the historical and socio-political context of Aboriginal mental health including the impact of colonisation; trauma; loss and grief; separation of families and children; the taking away of land; and the loss of culture and identity; plus the impact of social inequality, stigma, racism and ongoing losses.⁷

This holistic view of health has contextualised the way we have approached the issues of cognitive disability/mental health issues with Indigenous young people.

Diversion

This report adopts a broad definition of diversion that looks beyond 'front end' diversion. 'Front end' diversion takes place through Police, court and alternative processes that aim to decrease the incidence of young people being formally charged with offences in the first place.

We are also looking at the issue of diversion from custody. Firstly, because there seems to be some positive actions that can be taken once a young person has become involved with the juvenile justice system. For instance, this may be the first time a cognitive disability is actually assessed and there is an opportunity for assistance.

Secondly, based on the youthful and rapidly expanding Indigenous population, over representation is projected to worsen in the future.⁸ We have an obligation to look at all available diversionary options to try and avert this source of national shame and promote social justice for our communities and young people.

Obviously, the earlier a diversionary option is applied the better, but we can't give up on finding solutions for young people once they are formally involved in the juvenile justice system. We know the likely consequences of juvenile detention: graduation to the adult criminal justice system; poor life outcomes; and the intergenerational transmission of disadvantage. These are compelling reasons for continued commitment to diversion and rehabilitation options.

6 Swan, P and Raphael, B., *Ways Forward - A National Consultancy Report on Aboriginal and Torres Strait Islander Mental Health*, National Mental Health Strategy, AGPS, 1995, p13.

7 Swan, P and Raphael, B., *Ways Forward - A National Consultancy Report on Aboriginal and Torres Strait Islander Mental Health*, National Mental Health Strategy, AGPS, 1995, p2.

8 Victorian Department of Justice and Jones, R., *Diversion: A model for reducing Indigenous criminal justice over-representation*, Paper prepared for consideration at the Second National Indigenous Justice Forum November 2006, p3.

Part 2: What do we know about Indigenous young people with cognitive disabilities and/or mental health issues?

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This section outlines current knowledge around Indigenous young people with cognitive disabilities and/or mental health issues. It introduces concepts and best practice models from Australia and internationally.

As previously stated, cognitive disabilities and mental health problems are not interchangeable. The specific dynamics of each in relation to 'at risk' or offending behaviour may therefore be different. Where possible, cognitive disabilities and/or mental health issues will be delineated throughout the literature review.

a) Human Rights and Indigenous young people with cognitive disabilities and/or mental health issues

Human rights are an important point of reference for considering what should happen for Indigenous young people with cognitive disabilities and/or mental health issues.

The first attempt to provide an international human rights framework to the operation of juvenile justice was the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) in 1985. In 1990 the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the JDL Rules) were adopted.

However, more significantly, in 1990 the United Nations Convention on the Rights of the Child (UNCRC) established minimum standards of treatment for all children. 192 countries have ratified the UNCRC making it the most widely adopted international convention.⁹ Many of the articles directly relate to children in conflict with the law.

According to the United Nations Committee on the Rights of the Child who monitor the implementation of the UNCRC, the leading principles relevant to juvenile justice are:

- *Non discrimination (article 2)* – States must take necessary action to ensure that children are treated equally with particular attention to 'defacto discrimination and disparities'¹⁰ that effect vulnerable groups of children such as 'children who are indigenous...children with disabilities and children who are repeatedly in contact with the law (recidivists)'.¹¹
- *Best interests of the child (article 3)* – must be the primary consideration in the context of juvenile justice. It recognises that children differ from adults in their 'physical and psychological developments, and their emotional and educational needs'¹² and as such the primary objectives of the juvenile justice system should be 'rehabilitation and restorative justice objectives'.¹³

9 Goldson, B. and Muncie, J., 'Rethinking Youth Justice: Comparative Analysis, International Human Rights and Research Evidence' (2006) 6 (20) *Youth Justice*, pp91-106.

10 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children's Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p2.

11 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children's Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p2.

12 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children's Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p3.

13 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children's Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p3.



- *The right to life, survival and development (article 6)* – juvenile justice should support the child’s development. Therefore, article 37 (b) explicitly states that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of the last resort and for the shortest appropriate period of time.¹⁴
- *Dignity (article 40 (1))* – Treatment should be consistent with the ‘the child’s sense of dignity and worth. Treatment should ‘reinforce the child’s respect for the human rights and freedoms of others’.¹⁵ ‘If police, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedoms of others?’¹⁶ Treatment should take the child’s age into account and promote reintegration into society. More broadly, this places a requirement on juvenile justice workers to be ‘knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being and the pervasive forms of violence against children’.¹⁷ Finally, all forms of violence against children in contact with the juvenile justice system should be prohibited and prevented.

These minimum standards are of direct relevance to the lives of Indigenous young people with cognitive disabilities and/or mental health issues. We have already seen how the treatment of Corey Brough, at the time an Indigenous juvenile with an intellectual disability, was upheld as a violation of his right to be treated with dignity. Given the anecdotal evidence from our consultations, this case could well be just the tip of the iceberg.

For instance, every time an Indigenous child with a cognitive disability or mental health issues is held in custody because there is nowhere else for them to go, this is discrimination. Every time the juvenile justice system fails in their knowledge of the developmental and mental health issues and places an Indigenous child in an inappropriate and unsupported placement, this is undermining their sense of dignity and worth.

The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990) establishes the necessity of crime prevention in dealing with juvenile crime. The Riyadh Guidelines also set out fundamental principles around:

- general prevention;
- socialisation processes (through family, education and community support);
- social policy;
- legislation and juvenile administration; and
- research, policy development and coordination.¹⁸

This reinforces the need for early intervention and diversionary options for all children, drawing particular attention to vulnerable groups like Indigenous young people with cognitive disabilities and/or mental health issues. Relevant provisions of the guidelines are found in **Text Box 1**.

14 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children’s Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p3.

15 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children’s Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p2.

16 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children’s Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p2.

17 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children’s Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p2.

18 United Nations Committee on the Rights of the Child, *General Comment No.10 (2007) Children’s Rights in Juvenile Justice*, United Nations, Geneva, UN Doc CDC/C/GC/10, p2.

Text Box 1: United Nations Guidelines for the Prevention of Juvenile Delinquency: (The Riyadh Guidelines)

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should include:
- a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of care and protection;
 - b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;
 - c) Official intervention be pursued primarily in the overall interest of the young person and guided by fairness and equity;
 - d) Safeguarding the well-being, development, rights and interests of all young persons;
 - e) Consideration that youthful behaviour or conduct that does not conform to overall societal norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;
 - f) Awareness that, in the predominant opinion of experts, labelling a young person as 'deviant', 'delinquent' or 'pre-delinquent' often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

The Declaration on the Rights of Mentally Retarded Persons (1971) and the Declaration on the Rights of Disabled People (1975) are also relevant to the rights of Indigenous young people with cognitive disabilities and/or mental health issues. These instruments set out basic rights such as equal access to education, employment and promote integration of disabled people wherever possible.

The newly adopted Convention on the Rights of People with Disabilities comprehensively sets out rights which are relevant to Indigenous young people with cognitive disabilities and/or mental health issues. The Convention was adopted by the General Assembly on 13 December 2006 and is in the process of being signed and ratified by governments before it comes into force. The Australian Government signed the Convention on 30 March 2007. Some pertinent provisions are found in **Text Box 2**.

Text Box 2: Convention on the Rights of Persons with Disabilities

Article 7 – Children with disabilities

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 13 – Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 16 – Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 24 – Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:
The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
2. In realizing this right, States Parties shall ensure that:
 - a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - c) Reasonable accommodation of the individual's requirements is provided;
 - d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

b) Indigenous young people with cognitive disabilities and/or mental health issues and the juvenile justice system: What are the connections?

There is a long standing contention in the literature that cognitive disabilities and/or mental health issues are connected to offending behaviour and delinquency. There is evidence that these groups of young people are over represented in the juvenile justice system. However, there is no real consensus on how or why this is the case. In particular, there is even less known about how this affects groups such as Indigenous young people.

▪ *Incidence of cognitive disabilities/mental health issues in the criminal justice system*

Establishing the incidence of cognitive disability and/or mental health issues amongst young people in contact with the criminal justice system is not a simple task. Unlike other personal and social characteristics that are routinely measured in statistical studies, cognitive disability and/or mental health issues are not always observable or stable. They require specialist assessment to confirm a diagnosis. Few criminal justice agencies formally collect disability data on a regular basis and even fewer research studies have been undertaken in this area.

The only comprehensive health status study of a juvenile offending population conducted in Australia has been a collaborative project between the University of Sydney, NSW Department of Juvenile Justice and Justice Health. The Young People in Custody Health Survey¹⁹ and Young People on Community Orders Health Survey²⁰ provided detailed health data, including cognitive disability/mental health status for young people in custodial facilities and on community based supervision orders in NSW.

Based on a culture fair estimate, 10% of the Indigenous sample in custody could be diagnosed with an intellectual disability.²¹ On community based orders, a culture fair estimate of Indigenous young people with an intellectual disability represents 8% of the sample.²² Given that at least 2-3% of the general population is estimated to have an intellectual disability,²³ this means that Indigenous young people in contact with the juvenile justice system are 4 to 5 times more likely to have an intellectual disability than the general population.

These figures could be an under representation of intellectual disability as several participants did not complete the full assessment.²⁴ Furthermore, the survey sample for community based orders was predominantly drawn from urban areas, leading to an under representation of the large number Indigenous clients living in rural and remote parts of NSW.

The Young People in Custody Health Survey and Young People on Community Based Orders Health Survey both found a high level of mental illness amongst their population sample. Of the young people in custody:

- 88% reported mild, moderate or severe symptoms consistent with a clinical disorder,²⁵ and
- 8% of males, and 12% of females in custody reported attempting suicide.²⁶

19 NSW Department of Juvenile Justice, *NSW Young People in Custody Health Survey Key Findings Report*, Haymarket, 2003.

20 Kenny, D.T., Nelson, P., Bulter, T., Lennings, C., Allerton, M. and Champion, U., *NSW Young People of Community Based Orders Health Survey 2003-2006: Key Findings Report*, University of Sydney, 2006.

21 NSW Department of Juvenile Justice, *NSW Young People in Custody Health Survey Key Findings Report*, Haymarket, 2003, p19.

22 Kenny, D.T., Nelson, P., Bulter, T., Lennings, C., Allerton, M. and Champion, U., *NSW Young People of Community Based Orders Health Survey 2003-2006: Key Findings Report*, University of Sydney, 2006 p24.

23 NSW Law Reform Commission, *People with Intellectual Disability and the Criminal Justice System: Courts and Sentencing Issues*, 1994, Discussion Paper 35, section 2.5.

24 Kenny, D.T., Nelson, P., Bulter, T., Lennings, C., Allerton, M. and Champion, U., *NSW Young People of Community Based Orders Health Survey 2003-2006: Key Findings Report*, University of Sydney, 2006, p24.

25 NSW Department of Juvenile Justice, *NSW Young People in Custody Health Survey Key Findings Report*, Haymarket, 2003, p19.

26 NSW Department of Juvenile Justice, *NSW Young People in Custody Health Survey Key Findings Report*, Haymarket, 2003, p27.

For the young people on community based orders:

- 40% reported severe symptoms consistent with a clinical disorder;²⁷ and
- 9% had attempted suicide in the past 12 months.²⁸

These surveys did not provide a breakdown for mental health issues amongst Indigenous participants.²⁹

Research on intellectual disability amongst adult prison populations also contributes to our knowledge about this group, given that most offenders would have had a cognitive disability from an early age. The NSW Law Reform Commission report, *People with an Intellectual Disability and the Criminal Justice System* found that people with an intellectual disability are over represented as offenders in the criminal justice system.³⁰ At least 12-13% of the NSW prison population have an intellectual disability, equating to four to five times the rate in the general population.³¹

The NSW Law Reform Commission research also shows that people with intellectual disabilities are over represented at all stages of the criminal justice system. Hayes found that more than one in three people appearing before a local court on criminal charges experienced significant intellectual deficits.³²

Offenders with mental illness are over represented in the adult prison population. A NSW Corrections Health Survey found that 46% of reception inmates and 38% of sentenced inmates had suffered a mental disorder in the previous 12 months.³³ When a broader definition of 'any psychiatric disorder' was used, it was found that 74% of the NSW inmate population was affected.³⁴ A study by the Schizophrenia Fellowship of NSW estimated 60% of people entering prison had an active mental illness.³⁵ Once again, there is no breakdown for Indigenous offenders available.

- *Incidence of Indigenous young people with cognitive disabilities/mental health issues 'at risk' of entering the juvenile justice system*

Indigenous young people are already at a much greater risk of contact with the criminal justice system. Nationally, Indigenous young people are 23 times more likely to be placed in detention than non-Indigenous young people.³⁶ Adding cognitive disabilities and/or mental health issues into the mix increases a young person's disadvantage, and therefore, risk of contact with the criminal justice system.

Progression into the criminal justice system is not a fait accompli. Not all young people with cognitive disabilities or mental health problems go on to become offenders. However, they do appear to be over represented in the offending population. Possible explanations for over representation in the criminal justice system will be discussed in detail later.

The incidence of cognitive disabilities and mental health problems in the Indigenous community may shed some light on the extent of these issues, but once again the data is fragmentary.

27 Kenny, D.T., Nelson, P., Bulter, T., Lennings, C., Allerton, M. and Champion, U., *NSW Young People of Community Based Orders Health Survey 2003-2006: Key Findings Report*, University of Sydney, 2006, p25.

28 Kenny, D.T., Nelson, P., Bulter, T., Lennings, C., Allerton, M. and Champion, U., *NSW Young People of Community Based Orders Health Survey 2003-2006: Key Findings Report*, University of Sydney, 2006, p28.

29 The 'Key Findings Reports' only represent a summary of both health survey findings. Further analysis is being conducted by the Young People on Community Orders Health Survey Team to provide a break down of data on Indigenous status and is forthcoming.

30 NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System*, Report 80, 1996.

31 NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System*, Report 80, 1996.

32 NSW Law Reform Commission, *People with Intellectual Disability and the Criminal Justice System: Courts and Sentencing Issues*, 1994, Discussion Paper 35 and NSW Law Reform Commission *People with Intellectual Disability and the Criminal Justice System: Two Rural Courts*, Research Report 5, 1996.

33 Mental disorder was defined as a psychosis, affective disorder or anxiety disorder.

34 Butler, T. and Allnut, S., *Mental Illness among Prisoners in NSW*, NSW Corrections Health Service, 2003, p2.

35 Schizophrenia Fellowship of NSW Inc. *Report on the Criminal Justice System in Australia*, 2001 available at www.sfnsw.org.au/publications/The%20Australian%20Criminal%20Justice%20System%20PDF.pdf, accessed 20 March 2008.

36 Taylor, N., *Juveniles in detention in Australia, 1981-2005*, Technical Background Paper No.22, Australian Institute of Criminology, Canberra, 2006, p6.

The most comprehensive study of the mental health and well being of Indigenous children and young people is the Western Australian Aboriginal Child Health Survey (WAACHS). Based on a sample of 5,289 Aboriginal children and young people up to 17 years of age, it provides data on the social and emotional well being of Aboriginal children throughout Western Australia.³⁷

By administering the Strengths and Difficulties Questionnaire, the WAACHS measured a young person's risk of emotional and behavioural difficulties. This does not actually measure the number of young people with diagnosed mental health problems but is indicative of areas of concern that could lead to diagnosis. The Western Australian Aboriginal Child Health Survey found that:

An estimated 26% of Aboriginal children aged 4-11 years were at high risk of clinically significant emotional or behavioural difficulties, compared with 17% of children in the non-Aboriginal population from the same age group.

For Aboriginal children aged 12-17 years, 21% were at high risk of clinically significant emotional or behavioural difficulties, compared with 13% of children in the non-Aboriginal population from the same age group.³⁸

Also related to mental health status, the survey found that over one in six of the Indigenous young people aged 12-17 years had seriously thought about committing suicide in the 12 months prior to the survey. Within this, 39% had actually attempted suicide during the same period of time.³⁹

Literature about the incidence of cognitive disability in the Indigenous population is equally sparse. Again in Western Australia, an analysis by Glasson, Sullivan, Hussain and Bittles of the Disability Services Commission database of clients dating back to 1953 provides some assessment of intellectual disability in the Western Australian context.⁴⁰ They found that Indigenous people constituted 7.4% of all the cases registered for Intellectual Disability support services, although Indigenous people only represent 3.5% of the population.⁴¹ This is approximately double the expected rate given the population size. While this data is not specific to young people, the authors note that most of the clients were referred to Disability Services Commission during their early school years.⁴²

Consistent with the over representation found by Glasson et al., another study of Western Australian children born between 1983-1992 found that Indigenous children were twice as likely as non-Indigenous children to have an intellectual disability.⁴³ This study also considered data collected from schools, as well as disability services.

Data from the education system is a potentially useful indicator of the incidence of Indigenous young people for cognitive disabilities. Based on a review of Aboriginal education in NSW conducted by the New South Wales Aboriginal Education Consultative Group, Indigenous students comprised 20% of all behaviour disorder classes and 14% of classes for mild intellectual disability.⁴⁴

The review went to point out that the over representation of Indigenous young people assessed as having disabilities was so extreme that:

The proportion of Aboriginal students placed in specialist classes and units is greater than the proportion of Aboriginal students in the student population as a whole.⁴⁵

37 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey - The Social and Emotional Wellbeing of Aboriginal Children and Young People*, West Perth, 2005.

38 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey - The Social and Emotional Wellbeing of Aboriginal Children and Young People Summary Booklet*, West Perth, 2005, p8.

39 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey - The Social and Emotional Wellbeing of Aboriginal Children and Young People Summary Booklet*, West Perth, 2005, p24.

40 Glasson, E., Sullivan, S., Hussain, R. and Bittles, A., 'An assessment of intellectual disability among Aboriginal Australians' (2005), 49 (8), *Journal of Intellectual Disability Research*, pp626-634.

41 Glasson, E., Sullivan, S., Hussain, R. and Bittles, A., 'An assessment of intellectual disability among Aboriginal Australians' (2005), 49 (8), *Journal of Intellectual Disability Research*, p626.

42 Glasson, E., Sullivan, S., Hussain, R., and Bittles, A., 'An assessment of intellectual disability among Aboriginal Australians' (2005), 49 (8), *Journal of Intellectual Disability Research*, p628.

43 Leonard, H., Petterson, B., Bower, C. and Sanders, R., 'Prevalence of intellectual disability in Western Australia', (2003), *17 Paediatric and Perinatal Epidemiology*, pp58-67.

44 New South Wales Aboriginal Education Consultative Group, *Freeing the Spirit: Dreaming an equal future (Yanigurra Muya: Ganggurinyama Yaarri Guurulaw.gurray)* NSW Department of Education, Darlinghurst, 2004, p131.

45 New South Wales Aboriginal Education Consultative Group, *Freeing the Spirit: Dreaming an equal future (Yanigurra Muya: Ganggurinyama Yaarri Guurulaw.gurray)* NSW Department of Education, Darlinghurst, 2004, p130.

▪ *Limitations of the data: Identification and Indigenous concepts of disability*

The reported incidence of cognitive disabilities and/or mental health issues is intrinsically linked to how these conditions are assessed or diagnosed. As alarming as these rates of mental health and cognitive disabilities are, some experts argue that it is likely that they are an under representation of the extent of the problem in Indigenous communities. On the other hand, real concerns around the cultural appropriateness of assessment tools and processes have the potential to artificially inflate these numbers. This contradiction means that the true rates of cognitive disabilities and/or mental health issues are not currently known.

The cultural meanings ascribed to disabilities and mental illness can affect the number of young people identified as having either a cognitive disability or mental health problem. It is argued that Indigenous communities are less likely to label problematic behaviour as a cognitive disability or mental health problem.⁴⁶ Instead, the behaviour is accepted as part of the person's personality or seen in terms of their relationships with others rather than a medical problem.⁴⁷

Disability issues are secondary to cultural identity. Consultations with Indigenous people in Western Australia with disabilities, their families, carers and service providers support this view. This statement from one family member is representative of this finding:

My daughter's Aboriginality comes before her disability. It is very important to me that services providers understand that she is Aboriginal first and then has a disability.⁴⁸

This has implications for accessibility of disability specific services for Indigenous people.

Consultations with Indigenous people in Western Australia found that Indigenous families considered themselves more accepting and supportive of people with disabilities than non Indigenous people. Due to these perceptions of inclusion and support, those consulted also stated that they were less likely to see the need for disability support services:

Family members provide support. In our house there are three generations - they all provide care to my two sons. The family felt that because of this we did not need a lot of contact with the Disability Services Commission.⁴⁹

This supports other research that problematises the reported incidence of cognitive disability/mental health problems based on the number of people accessing disability or mental health services.

In terms of mental health issues, Vicary and Westerman argue that Indigenous concepts of mental health are holistic. They are more likely to attribute sickness to external forces or cultural reasons. This prevents people from presenting for service and being counted in service delivery statistics. Fear of Western mental health treatment may also be a barrier to accessing services. This is particularly pertinent when Indigenous people have seen community members taken from their communities and 'institutionalised away from their country and family'.⁵⁰

Identification and assessment of cognitive disabilities and/or mental health issues also impacts on data collection. A significant barrier is the masking of disability by a range of cultural factors such as:

- English as a second language;
- hearing impairment;
- immediate effects of alcohol and/or other drugs;
- cultural factors such as shame influencing the type of interaction with criminal justice staff;

46 Simpson, J. and Sitori, M., *Criminal Justice and Indigenous People with Cognitive Disabilities*, 2004, available at www.beyondbars.org.au; Vicary, D. and Westerman, T., 'That's just the way he is: Some implications of Aboriginal mental health beliefs' (2004) *Australian E-Journal for the Advancement of Mental Health*, Vol 3, no. 3.

47 Sloane, G., 'Changing Perceptions of Disability' (2003) *Aboriginal and Islander Health Worker Journal*, March/April, pp17-19.

48 Disability Services Commission, *Aboriginal People with Disabilities: Getting Services Right*, Government of Western Australia, 2006, p7.

49 Disability Services Commission, *Aboriginal People with Disabilities: Getting Services Right*, Government of Western Australia, 2006, p7.

50 Vicary, D. and Westerman, T., 'That's just the way he is: Some implications of Aboriginal mental health beliefs' (2004) *Australian E-Journal for the Advancement of Mental Health*, Vol 3, no. 3

- the impact of inadequate educational opportunities with regard to literacy and numeracy; and
- racism.⁵¹

In effect, if a young Indigenous person with an unidentified cognitive disability comes into contact with the juvenile justice system; it is likely that their inability to comprehend the process may be attributed to one of the factors above, rather than provoking suspicion that a young person may actually have a disability which is impeding their understanding.

At the other end of spectrum, there is concern that the incidence of cognitive disability for Indigenous young people is inflated due to culturally inappropriate assessment tools which measure intelligence in a profoundly anglo-centric fashion. Because Indigenous children do not possess the assumed cultural knowledge of the dominant culture, they are disadvantaged in testing and likely to score lower.

These conflicting views highlight the partial, contingent nature of the data about cognitive disabilities and/or mental health issues among Indigenous young people. However, at the end of the day, some experts argue that prevalence is essentially a red herring issue.⁵² The real issues for consideration are the reasons behind over representation in the special education and juvenile justice in the first place, and consequent provision of appropriate early interventions, diversionary programs and treatments to meet the needs of these young people.

c) Indigenous young people with cognitive disabilities and mental health problems in context: Issues in development, education and the juvenile justice system

- *Developmental and social determinants of cognitive disabilities and/or mental health issues in Indigenous communities*

While the data regarding the incidence of cognitive disabilities and/or mental health issues in the Indigenous community should be treated with caution, there is more agreement in the literature about why a disproportionate number of Indigenous young people experience these issues.

There is no denying the significant social, economic and health inequality facing the Indigenous community. International studies have shown the link between lower socioeconomic status and increased risk of mild to moderate intellectual disability, with Glasson et al arguing:

The degraded physical environments in which many Indigenous Australians live confer a further increased risk of general infections (some of which can lead to ID, eg. Meningitis).⁵³

Based on their sample, Glasson et al also found non genetic prenatal and perinatal risk factors known to be associated with cognitive disability in 36% of cases. These factors included maternal substance use, physical trauma, low birth weight and infections.⁵⁴

Based on Western Australian data Foetal Alcohol Syndrome is estimated to affect 2.97 Indigenous children per thousand live births.⁵⁵ Children affected by Fetal Alcohol Syndrome can experience neurological damage, which is expressed as hyperactivity, behavioural problems, learning problems, learning disabilities, and a general inability to function normally.

Foetal Alcohol Syndrome was raised as a concern during consultations for phase one of this project.⁵⁶ Foetal Alcohol Syndrome is a relatively new research area in Australia, with very little data collected (partly due to the lack of paediatric expertise to actually diagnose the condition).

51 Simpson, J. and Sitori, M., *Criminal Justice and Indigenous People with Cognitive Disabilities*, 2004, available at <http://www.beyondbars.org.au>, accessed 20 March 2008.

52 Hayes, S., 'People with Intellectual Disabilities in the Criminal Justice System: When is disability a crime?' Lock 'Them' Up? Disability and Mental Illness Aren't Crimes Conference, Sisters Inside, Brisbane, 17-19 May 2006.

53 Glasson, E., Sullivan, S., Hussain, R. and Bittles, A., 'An assessment of intellectual disability among Aboriginal Australians', (2005), 49 (8), *Journal of Intellectual Disability Research*, p631.

54 Glasson, E., Sullivan, S., Hussain, R. and Bittles, A., 'An assessment of intellectual disability among Aboriginal Australians', (2005), 49 (8), *Journal of Intellectual Disability Research*, p631.

55 Glasson, E., Sullivan, S., Hussain, R. and Bittles, A., 'An assessment of intellectual disability among Aboriginal Australians', (2005), 49 (8), *Journal of Intellectual Disability Research*, p631.

56 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems*, Human Rights and Equal Opportunity Commission, Sydney, 2005, p20.

However, Foetal Alcohol Syndrome has received more attention in Canada and the United States of America with some studies in Canada estimating that FAS in Indigenous children may be as high as 189 per 1,000; that is nearly 20% of all births.⁵⁷ This is an area for further investigation in Australia.

An explanation of the high levels of mental health issues amongst Indigenous young people also draws on the social, economic and cultural context. Or in other words, we can explain the higher incidence of mental illness and cognitive disability in Indigenous young people through the social determinants of health⁵⁸ and social exclusion of Indigenous young people. Things such as education, housing, transport, employment, working conditions, enough money, clean drinking water, sanitation, and a good start to life are just some of the social determinants of health. The broad social environment that children and young people live in are intrinsically linked to their cognitive and mental health outcomes.

Shaped by these social circumstances, the family is the social unit which seems to have the greatest impact on child development and wellbeing. The Western Australian Aboriginal Child Health Survey publication, *The Social and Emotional Wellbeing of Aboriginal Children and Young People* empirically demonstrates the interaction between family, household factors and risk of clinically significant emotional or behavioural difficulties.

This study measured major life stress events which included illness, family break-up, arrests or financial difficulties. Over one in five Indigenous children had experienced seven or more major life stress events in the preceding 12 months and were subsequently five and a half times more likely to be at high risk of significant emotional or behavioural difficulties than children who experienced less stress.⁵⁹

Family circumstances and parenting contributed to the risk of significant emotional or behavioural difficulties. Of the one in four children in the sample who were living in homes with a poor level of parenting, these children were four times as likely to be in the high risk group as compared to those children living with good quality parenting.⁶⁰ One in five children were living in families that functioned poorly (based on description of communication, decision making, emotional support, time spent together and family cooperation) and were twice as likely to be at high risk as children living in well functioning families.⁶¹

Family circumstances are influenced by financial difficulty, family conflict, substance use, arrests and poor health, but are also affected by the intergenerational trauma caused by the forced separations of the Stolen Generation. The Western Australian Aboriginal Child Health Survey found that 12% of their sample was looked after by a carer who had been forcibly removed. These children were 2.3 times more likely to be at high risk of clinically significant emotional or behavioural difficulties.⁶² This is consistent with the findings and recommendations of the *Bringing them home* report which highlighted the devastating intergenerational effects of forced removals.

Collective health determinants also impact on the mental health of Indigenous young people. Experiences of racism have been linked to mental health issues, with a 2003 review of 53 studies in the United States finding that mental health declined as experiences of racism increased.⁶³ We know that Indigenous young people can face racism and discrimination in a number of arenas; from peers, school, interaction with police and broader society. These interactions can decrease sense of self worth and generate anger, leading to both internalising and externalising mental health issues.

57 Williams, N., 'Foetal Alcohol Syndrome - What is it and what are the possible implications?', paper presented at Best Practice Interventions in Corrections for Indigenous People Conference, Australian Institute of Criminology, Adelaide, 13-15 October 1999.

58 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission, Sydney, 2005, p23.

59 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey - The Social and Emotional Wellbeing of Aboriginal Children and Young People*, West Perth, 2005 p11.

60 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey - The Social and Emotional Wellbeing of Aboriginal Children and Young People*, West Perth, 2005, p12.

61 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey - The Social and Emotional Wellbeing of Aboriginal Children and Young People*, West Perth, 2005, p12.

62 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey - The Social and Emotional Wellbeing of Aboriginal Children and Young People*, West Perth, 2005, p25.

63 Williams, R., Neighbours, H. and Jackson, J., 'Racial/Ethnic Discrimination and Health: Findings from Community Studies' 2003 93 (2) *American Journal of Public Health*, p200.

▪ *Education and cognitive disabilities: Foundation for success of pathway to offending?*

There is a very clear body of evidence that links low educational achievement to involvement in the criminal justice system. The NSW Bureau of Crime Statistics and Research analysed the 2002 National Aboriginal and Torres Strait Islander Social Survey and found a relationship between educational attainment and involvement with the criminal justice system.⁶⁴ Not surprisingly, respondents who stayed at school until year 12 were less likely to be charged or imprisoned. Their chance of being charged was only one in five and chance of imprisonment was one in thirty. In contrast, respondents who completed year nine or below had a one in 2.4 chance of being charged with an offence and one in ten chance of being imprisoned.⁶⁵

When we look at these grim statistics, we need to consider the potential impact of cognitive disability or mental health on a young person's experience of education. Cognitive disabilities by their very nature, lead to difficulties in learning, comprehending and managing behaviour in structured environments such as school. The Western Australian Aboriginal Child Health Survey found that children with a high risk of emotional or behavioural problems were almost three times as likely as other children to have low academic performance.⁶⁶

Therefore, these young people will require additional support and possibly special educational assistance to be able to achieve good education outcomes. These issues have not been dealt with systematically. The Western Australian Aboriginal Child Health Survey found that no real gains had been made to achieve equality in educational outcomes between Indigenous and non Indigenous children in the past 30 years.⁶⁷

Correct assessment and diagnosis of a cognitive disability is the first step to improve the poor state of educational outcomes for these children. There are significant concerns about the cultural appropriateness of standard intelligence tests which are used to identify an intellectual disability. Many of these tests of intelligence, social and language abilities are culturally biased, disadvantaging Indigenous young people. These difficulties are further compounded when English may be the second or third language spoken for some Indigenous children, especially from remote communities.⁶⁸

The cultural bias inherent in the testing processes causes real problems for Indigenous children. If 'culture fair' measures are not adopted, children can be inaccurately diagnosed as having a cognitive disability. Because of this, some experts argue that Indigenous young people are over-diagnosed with cognitive disabilities and placed in special education classes. The NSW Review of Aboriginal Education found that Indigenous young people are grossly over represented in special education. Based on population statistics, Indigenous students should comprise of 3.5% of all the children in special schooling in NSW. Instead, they make up 20% of all students in behaviour disorder classes, 14% of all students in classes for mild intellectual disability. They also make up the majority of students in juvenile justice classes.⁶⁹

64 Weatherburn, D., Snowball, L. and Hunter, B., 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the NATSISS survey' (2006) No. 104 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, p5.

65 Weatherburn, D., Snowball, L. and Hunter, B., 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the NATSISS survey' (2006) No. 104 *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, p5.

66 Zubrick, S., Silburn, S.R., De Maio, J., Shepard, C., Griffin, J., Dalby, R., Mitrou, F., Lawrence, D., Hayward, C., Pearson, G., Milroy, H., Milroy, J. and Cox, A., *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, Perth, Curtin University of Technology and Telethon Institute of Child Health Research, 2006, p6.

67 Zubrick, S., Silburn, S.R., De Maio, J., Shepard, C., Griffin, J., Dalby, R., Mitrou, F., Lawrence, D., Hayward, C., Pearson, G., Milroy, H., Milroy, J. and Cox, A., *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, Perth, Curtin University of Technology and Telethon Institute of Child Health Research, 2006, p2.

68 Ministerial Advisory Committee: Students with Disabilities, *Aboriginal Students with Disabilities*, Adelaide, 2003, p47.

69 New South Wales Aboriginal Education Consultative Group, *Freeing the Spirit: Dreaming an equal future (Yanigurra Muya: Ganggurinyama Yaari Guurulaw Yirringin.gurray)* Darlinghurst, 2004, NSW Department of Education and Training, p130.

Loretta De Plevitz has argued that these alarming figures are a result of systemic discrimination and cultural bias in assessment. Her comparison the Aboriginal Education data with the NSW Young People in Custody Health Survey data highlighted some interesting disparities.⁷⁰ The NSW Young People in Custody Health Survey used the standard intelligence test, the Wechsler Abbreviated Scale of Intelligence (WASI) on all the participants (57% were Indigenous). 74% of the participants scored below average, compared to an expected 25% on a general sample.⁷¹ Assuming that the low scores were evenly spread across Indigenous and non Indigenous participants, approximately three quarters would be assessed as below averaged intelligence.

A further measure of actual academic achievements in literacy and numeracy, found that 85% of participants fell below the average range, and 37% had scores consistent with an intellectual disability. However, when the NSW Young People in Custody Health Survey researchers used a culture fair assessment of intelligence, using the Performance (non verbal) IQ scale, the average score of Indigenous participants was much closer to Australian norms. When all of these measures are balanced out, 10% of Indigenous detainees could actually be diagnosed with an intellectual disability.⁷²

What this all means, is that despite the majority of these young people having difficulty 'comprehending, communicating and problem solving using language and numbers'⁷³ their practical reasoning was close to mainstream norms for most of the participants. Low achievement is a product of poor engagement with education, transience and other compounding factors (such as Otis Media), not necessarily an intellectual disability.

A similar argument can be put forward around the over representation of Indigenous young people in special behaviour schools. The parents' submission to the NSW Education Review expressed the view that:

too many of their students were disciplined, suspended or referred to behaviour programmes because schools did not have the cultural knowledge to respond appropriately to behaviour that was acceptable in Indigenous communities.⁷⁴

Problem behaviour consigns Indigenous young people to the 'too hard basket', rather than being dealt with it in a holistic manner, looking at the causes of behaviour.

The over representation of Indigenous students in special schooling may have more to do with how the education system assesses these young people and inadequate support in mainstream education, rather than higher rates of intellectual or cognitive disability. That is not to ignore their need for remedial education to bring levels of literacy and numeracy up to a higher standard. However, labelling a young person with an intellectual disability may further damage their self confidence, make school another failure, and increase the likelihood of disengagement from education.

It can also constitute indirect discrimination with de Plevitz arguing that current discrimination law may apply to this situation. There are three elements of indirect discrimination which need to be met:

- 1) Has a term of condition been imposed? This means that in order to obtain mainstream education a 'student has to conform to Eurocentric cultural norms embedded in intelligence tests, and educators expectations.'⁷⁵
- 2) Can Indigenous students comply with the requirements? There is judicial support for a broad definition of compliance which takes cultural background and abilities into account (for instance *Mandla v Dowell Lee*, House of Lords 1983, *State Housing Commission v Martin*, Court of Appeal, Western Australia, 1998 and *Waters v Public Transport Corporation*, High Court 1991).

70 De Plevitz, L., 'Special Schools for Indigenous Students: A new form of racial discrimination', (2006) 35 *The Australian Journal of Indigenous Education*, pp44-53.

71 De Plevitz, L., 'Special Schools for Indigenous Students: A new form of racial discrimination', (2006) 35 *The Australian Journal of Indigenous Education*, p47.

72 De Plevitz, L., 'Special Schools for Indigenous Students: A new form of racial discrimination', (2006) 35 *The Australian Journal of Indigenous Education*, p47.

73 New South Wales Department of Juvenile Justice, *Young People in Custody Health Survey*, 2003, p17.

74 De Plevitz, L., 'Special Schools for Indigenous Students: A new form of racial discrimination', (2006) 35 *The Australian Journal of Indigenous Education*, p45.

75 De Plevitz, L., 'Special Schools for Indigenous Students: A new form of racial discrimination', (2006) 35 *The Australian Journal of Indigenous Education*, p49.

The most relevant recent precedent, *Hurst v State of Queensland* (Full Court Federal Court, 2006) found that just because a hearing impaired student could cope in class did not mean that they had the opportunity to 'reach his or her full potential'.⁷⁶ de Plevitz argues:

This could apply to an Indigenous student placed without justification in special schooling.

Those circumstances would deny the student the opportunity to reach his or her full potential and would constitute a serious disadvantage.⁷⁷

- 3) Can a higher proportion of non-Indigenous school students meet the criteria?

If these elements are met, de Plevitz suggests that a case for indirect discrimination could be mounted for Indigenous students who have been wrongly allocated to special education.

If these elements are met, de Plevitz suggests that a case for indirect discrimination could be mounted for Indigenous students who have been wrongly allocated to special education.

But leaving aside problems of assessment, once a young person is identified with a cognitive disability, the next key issue is what is actually put in place to support the young person and how the system accommodates their needs. What research there is, suggests that the education system is not doing this well at all, evidenced by the low retention rate of Indigenous young people in education.

Indigenous children with cognitive disabilities have the same need for culturally appropriate and inclusive environments as other children. Yet the South Australian Ministerial Task Group found that:

Aboriginal children with disabilities are often culturally isolated in their schooling, whether in a regular classroom, special class or special school. This can occur when their disability related needs are seen as more important than their Aboriginality and need for cultural connection... The resultant cultural isolation can adversely affect the child's social and psychological development as well as their educational learning.⁷⁸

There is clearly a need for greater staff awareness of specific cultural needs and Aboriginal education strategies which recognise that 'school is not a comfortable place for many Aboriginal children, with or without a disability'.⁷⁹

- *Explanations for the over representation of people with cognitive disabilities in the criminal justice system*

Most experts in the area acknowledge the over representation of people with cognitive disabilities in the criminal justice system but there is no real consensus about why this is the case. Hayes identifies the main explanations as:

- school failure hypothesis;
- susceptibility hypothesis;
- differential treatment hypothesis;
- socio demographic characteristics hypothesis; and
- response bias hypothesis.⁸⁰

Each of these explanations implies their own solution to the problem of over representation and are therefore very important in any analysis of policy and practice.

The school failure hypothesis suggests that due to difficulties with learning usually associated with cognitive disabilities, these young people are more likely to leave school early. As discussed above, criminologists have shown that young people who leave school early are more likely to drift towards anti social peers and delinquent behaviour.⁸¹ Therefore, appropriate interventions should support young people with cognitive disability to remain in school, through special education (where appropriate) and support programs.

76 *Hurst v State of Queensland* (2006) FCAFC 100.

77 De Plevitz, L., 'Special Schools for Indigenous Students: A new form of racial discrimination', (2006) 35 *The Australian Journal of Indigenous Education*, p50.

78 Ministerial Advisory Committee: Students with Disabilities, *Aboriginal Students with Disabilities*, Adelaide, 2003, p34.

79 Ministerial Advisory Committee: Students with Disabilities, *Aboriginal Students with Disabilities*, Adelaide, 2003, p42.

80 Hayes, S., 'Learning and Intellectual Disabilities and Juvenile Crime' in Borowski, A. and O'Connor, I., (eds) *Juvenile Crime Justice and Corrections*, Addison Wesley Longman, Sydney, 1997, pp190-205.

81 Weatherburn, D., Snowball, L. and Hunter, B., 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey', 104 *Crime and Justice Bulletin*, Sydney, 2006, p6.

The susceptibility hypothesis suggests that young people with cognitive disabilities are more likely to become involved in delinquent or offending behaviour due to:

personality attributes, including impulsivity, emotional liability, inadequate understanding of causal relationships, and poor reception of social cues.⁸²

In some cases, this vulnerability can be exploited by more sophisticated delinquent peers who involve them in offending. A desire to 'belong' to a peer group, especially after previous experiences of bullying due to disability, can also motivate young people with cognitive disabilities to commit crime in order to 'fit it'.

The differential treatment hypothesis argues that young people with cognitive disabilities are not necessarily more delinquent than other young people, but are dealt with differently by the criminal justice system. Some evidence suggests that these young people are more likely to be arrested and brought before court. Professor Hayes gave evidence at the NSW Legislative Standing Committee on Law Justice, stating:

I do not think police deliberately set out to victimise or harass people who have intellectual disabilities. I just think they often see them as smart, uncooperative recidivists. They see their poor behaviour as being smart rather than being an aspect of a disability. Of course, the person who has the disability has spent many years trying to hide their disability, so they would rather appear smart and streetwise than disabled.⁸³

Other factors that can result in differential treatment for young people with cognitive disabilities are that they:

- may not have their rights explained in a way they can understand;
- may be more easily persuaded to confess to a crime they haven't committed;
- may be more often refused bail due to previous non breaches of bail (which may be due to lack of support, or a lack of understanding of their obligations); and
- may be more likely to receive a custodial sentence due to the lack of alternative placements in the community.⁸⁴

The last two points highlight the potential criminalisation of welfare needs of young people with cognitive disabilities. That is, their social circumstances may incline the court to take more restrictive action in an attempt to keep young people 'safe', even if this means placing them in juvenile custody.

Combating differential treatment requires a two pronged attack. Firstly, training and awareness programs need to ensure criminal justice professionals deal sensitively with young people. Secondly, there needs to be adequate welfare, accommodation and support services to prevent the inappropriate drift into the criminal justice system due to lack of support in the community.

The response bias hypothesis proposes that young people with cognitive disabilities commit crime at the same rate as young people without cognitive disabilities but are more likely to get caught. The NSW Legislative Standing Committee on Law and Justice about Crime Prevention Through Social Support (2000) heard evidence from the Guardianship Tribunal that people with cognitive disabilities:

Simply get caught, to be perfectly honest. People with intellectual disabilities lack the sophistication and tend to be caught out in the more street - type offences or petty theft because they do it so obviously and they often do it in groups with other people who are better intellectually equipped who know when to disappear.⁸⁵

Finally, the socio-demographic characteristics hypothesis attempts to explain over representation through the greater number of young people with cognitive disabilities in disadvantaged groups, who are in turn are more likely to commit crime. While the actual evidence for this claim is contested, we do know that people with cognitive disabilities in the criminal justice system seem to experience a greater burden of disadvantage.

82 Hayes, S., 'Learning and Intellectual Disabilities and Juvenile Crime' in Borowski, A. and O'Connor, I. (eds) *Juvenile Crime Justice and Corrections*, Addison Wesley Longman, Sydney, 1997 p195.

83 Parliament of NSW Legislative Council Standing Committee on Law and Justice, *First Report on the Inquiry into Crime Prevention Through Social Support*, 1999, p164.

84 NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System*, Report 80, 1996.

85 Parliament of NSW Legislative Council Standing Committee on Law and Justice, *First Report on the Inquiry into Crime Prevention Through Social Support*, NSW Government, 1999, p164.

Literature linking cognitive disabilities to broader socio-economic, cultural and even historical factors highlights the extreme marginalisation that these young people face. The NSW Law Reform Commission argued that many people with intellectual disability were in fact 'doubly disadvantaged':

Apart from the fact that many people with an intellectual disability may belong to the lowest socio-economic classes, people with an intellectual disability may also be doubly disadvantaged by their youth (juveniles), indigenous status (Aborigines), ethnicity (people from non English speaking backgrounds), mental illness, drug or alcohol addiction, physical disability, homosexuality or gender.⁸⁶

Further, the NSW Law Reform Committee report on Crime and People with an Intellectual Disability also cited a Victorian study looking at adult offenders in specialist prison units for people with intellectual disabilities. Researchers found that prisoners with intellectual disabilities are:

even more than the 'mainstream' prison population, experience unemployment, major educational disadvantages, childhood institutionalisation, disrupted or disturbed families of origin, frequent contact with psychiatric services, alcoholism, drug addiction and poor social skills.⁸⁷

We also know that people with cognitive disability are more likely to be victims of crime, with Simpson and Rogers suggesting that between 50-90% of women with intellectual disabilities have experienced sexual assault or sexual exploitation.⁸⁸

Young Indigenous people with cognitive disabilities or mental illness are therefore not only doubly disadvantaged, but multiply disadvantaged. According to Sitori, 'cognitive disability is likely to be viewed as simply one more hardship that Indigenous people must endure'.⁸⁹ Within this overwhelming set of circumstances, cognitive disabilities and/or mental health issues are less likely to be picked up, particularly at an early stage when preventative interventions can be put in place. This also means that interventions, which only target cognitive disability, are likely to be ineffective for Indigenous young people. Instead, interventions need a broad, holistic base and long term focus if they are going to make a difference.

▪ *Explanations for the over representation of people with mental health problems in the criminal justice system*

The over representation of people with mental illness in the criminal justice system has been the topic of a number of reports and inquiries since the report of National Inquiry into the Human Rights of People with Mental Illness (the Burdekin Report) in 1993. Since then, HREOC has released Not For Service Report: Experiences of injustice and despair in mental health care in Australia in 2005 that outlines a desperate lack of services and coordination for people with mental illness. Also in 2005, the Senate Standing Committee of Mental Health considered the interaction between mentally ill people and the criminal justice system. In all of these reports, the common theme has been that the lack of mental health and associated services has left people 'consigned to incarceration rather than treatment'.⁹⁰

Deinstitutionalisation of people with mental illness been identified as a cause of over representation. People who would have previously been held in mental hospitals are now held in prison instead because of a lack of community supports and accommodation for people with mental illness. In effect, the over representation of people with mental illness in the prison system is in fact, a re-institutionalisation of this group.⁹¹

86 NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System*, Report 80, 1996.

87 NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System*, Report 80, 1996.

88 Simpson, J. and Rogers, L., *Hot Topic 39: Intellectual Disability and Criminal Law*, Legal Information Access Centre, available at http://www.austlii.edu.au/au/other/liac/hot_topic/hotopic/2002/4/, accessed 20 March 2008.

89 Simpson, J. and Sitori, M., *Criminal Justice and Indigenous People with Cognitive Disabilities*, 2004, available at <http://www.beyondbars.org.au>, accessed 20 March 2008.

90 Human Rights and Equal Opportunity Commission, *Human Rights and Mental Illness: Report of the National Inquiry into the Human Rights of People with Mental Illness (the Burdekin Report)*, Sydney, 1993, p634.

91 Human Rights and Equal Opportunity Commission, *Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia*, Mental Health Council of Australia, Canberra, 2005.

Issues of homelessness cannot be ignored. Homelessness puts people with mental illness at greater risk of contact with the police, particularly for minor public order offences. Living on the streets without secure income can also lead to theft and crimes in order to survive. Lack of secure accommodation is also associated with a lower likelihood of obtaining bail.

The effect of incarceration can cause or exacerbate mental health problems, leading to a vicious revolving door between custody and the community. It has been argued since the Royal Commission into Aboriginal Deaths in Custody that these effects are more pronounced for Indigenous people who suffer away from family, community and country.

▪ *Substance use, cognitive disabilities and mental health issues*

Substance drug and alcohol use bears special attention in relation to both cognitive disabilities and/or mental health issues. The link between acquired brain injury, a permanent cognitive disability and petrol sniffing is well known. Petrol sniffing has been a major problem for remote Indigenous communities where other drugs are much harder to obtain. Brain damage can occur from early stages of abuse. This neurological damage causes difficulties in memory, concentration, attention, learning and behaviour management.

The Commonwealth government subsidises Opal fuel (a type of petrol that doesn't produce a high) into 70 different Indigenous communities. More resources have also been put into education and rehabilitation programs. Since the introduction of Opal there has been a significant reduction in petrol sniffing⁹² although there is concern that young people are shifting to other substances such as paint, glue, cannabis and alcohol. These substances are also likely to lead to mental health issues.

The general consensus in the literature is that there is a relationship between drug use and mental illness. This is not necessarily a causal relationship and is dependant on other moderating genetic and environmental factors, but nonetheless suggests an area for concern and consideration. For instance, a 2005 study of remote Indigenous Northern Territory communities found that nearly one in two cannabis users experienced mental health effects related to cannabis use and 46% showed symptoms such as:

memory impairment, fragmented thought processes and confusion, indications of tolerance to the effects of the drug, withdrawal effects and difficulties in controlling consumption.⁹³

These findings have been replicated for a number of other substances, including alcohol and amphetamines.

There is now long overdue attention being paid to dual diagnosis issues. Dual diagnosis commonly refers to a combination of mental illness and substance use disorder (although many people have more than two diagnoses, which can also include cognitive disabilities).⁹⁴ The Senate Standing Committee on Mental Health goes as far as to suggest that dual diagnosis is the 'expectation not the exception'⁹⁵ within the criminal justice system and that an overwhelming number of Indigenous young people are affected.

Self medication, where an individual uses drugs or alcohol to manage their mental illness symptoms is also well documented. It may be even more prevalent in Indigenous communities where there is mistrust, or poor access to mental health services. For young people, the Select Committee on Mental Health also found that some young people 'assume an identity as drunk or drugged rather than mad because this is socially acceptable'.⁹⁶

Studies have shown that people with dual diagnosis come into contact with the criminal justice system more often than those with only a mental illness.⁹⁷ Substance use is also a contributing factor in violent crime committed by mental ill people. The Victorian Institute of Forensic Mental Health found:

92 'One Scourge Down', *The Australian*, 19 March 2007.

93 Mental Health Council of Australia, *Where there's smoke... Cannabis and Mental Health*, 2006, p25.

94 Senate Select Committee on Mental Health, *A National Approach to Mental Health - from crisis to community First Report*, Commonwealth of Australia, 2005 p366.

95 Senate Select Committee on Mental Health, *A National Approach to Mental Health - from crisis to community First Report*, Commonwealth of Australia, 2005 p365.

96 Senate Select Committee on Mental Health, *A National Approach to Mental Health - from crisis to community First Report*, Commonwealth of Australia, 2005 p366.

97 Senate Select Committee on Mental Health, *A National Approach to Mental Health - from crisis to community First Report*, Commonwealth of Australia, 2005 p368.

Just as substance abuse alone is a significant risk factor for violence, those who have both a substance abuse or dependence disorder and a major mental illness (ie. those with a so called dual diagnosis) also have been found to have an increased level of risk for violence. Dual diagnosis has been associated with high rates of violence and criminal behaviour.⁹⁸

d) What works: Interventions for Indigenous young people with cognitive disabilities and/or mental health issues

▪ *Crime Prevention*

Early intervention and diversionary practices for Indigenous young people with cognitive disabilities and/or mental health issues fall within the broad category of crime prevention. Crime prevention is commonly defined as:

A wide range of models and techniques, variously aimed at reducing opportunities for crime, enhancing social opportunities for individuals and groups, and facilitating social empowerment and institutional change.⁹⁹

Significant research has been conducted on models of crime prevention in Australia in recent years. Perhaps the most influential study is the Pathways to Prevention report¹⁰⁰ by National Crime Prevention. Pathways to Prevention surveyed literature and developed a policy framework that has been implemented through Australian government funding.

The Pathways to Prevention report divides crime prevention strategies into four broad categories:

- Criminal justice crime prevention;
- Situational crime prevention;
- Social crime prevention; and
- Developmental crime prevention.

Criminal justice crime prevention includes strategies such as 'traditional deterrence, incapacitation and rehabilitation strategies operated by law enforcement and criminal justice agencies'.¹⁰¹ For young Indigenous people with cognitive disabilities or mental health issues this could include diversion from formal criminal justice proceedings through cautions or conferencing, special court procedures or specialist rehabilitation programs administered by juvenile justice agencies.

Situational crime prevention includes strategies to make crime harder to commit through improving physical security and environmental design. This includes 'target hardening' such as improved lighting, locks, and increased opportunities for surveillance.

Social crime prevention includes community development approaches that seek to change the community people live, in order to change people's behaviour. This leads to broad scope for intervention and can include 'political action at the local level to empower residents, provide opportunities to young people, strengthen social infrastructure, and promote social justice'.¹⁰² Examples relevant to Indigenous young people with cognitive disabilities or mental health problems could include mentoring programs, recreational activities and educational support, as well as initiatives to increase the capacity of the entire community to prevent crime, such as Indigenous night patrols or justice groups.

Developmental crime prevention, the focus of the Pathways to Prevention report, is defined as:

Interventions to reduce the risk factors and increase protective factors that are hypothesised to have a significant effect on an individual's adjustment at later points of development.¹⁰³

98 Victorian Institute of Forensic Mental Health cited in Senate Select Committee on Mental Health, *A National Approach to Mental Health – from crisis to community First Report*, Commonwealth of Australia, 2005, p368.

99 Cunneen, C. and White, R., *Juvenile Justice: Youth and Crime in Australia*, Oxford University Press, 1st edition, Melbourne, 2002, p329.

100 National Crime Prevention, *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney-General's Department, Canberra, 1999.

101 Farrington, D., 'Early developmental prevention of juvenile delinquency', *Childhood Behaviour and Mental Health*, 4, pp209-227.

102 National Crime Prevention, *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney-General's Department, Canberra, 1999, p8.

103 National Crime Prevention, *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney-General's Department, Canberra, 1999, p8.

Developmental crime prevention specifically sets out to intervene at critical life transitions to prevent involvement in crime. Developmental crime prevention theorists argue that life is characterised by pathways that ‘fork out’ in a number of directions given the choices and opportunities along the way. At each ‘fork in the road’ an individual can successfully make a transition to the next stage of life or remain behind and go down a less successful path so that:

A person may follow an easy path to respectable middle age, or a painful path through teenage substance abuse, homelessness and early death.¹⁰⁴

Developmental crime prevention strategies use early intervention to assist children and young people to make these transitions successfully and thus, reduce the chances of them being involved in crime. Many early intervention strategies look at the very early years to try and give children a good start by decreasing ‘risk factors’ and increasing ‘protective factors’.

▪ *Crime prevention in Indigenous communities*

The preceding section has sketched the main concepts in crime prevention, however, we need to consider how, or indeed whether, they will be applicable in Indigenous communities.

Cunneen conducted an extensive review of the impact of crime prevention on Indigenous communities, drawing on examples from Australia, New Zealand, Canada and the United States.¹⁰⁵ The three key themes in successful crime prevention strategies in Indigenous communities were the need for:

programs that enhance self determination, that are holistic in their approach and that result in empowerment rather than dependency.¹⁰⁶

The importance of self determination was also recognised by the NSW Standing Committee on Law and Justice (2000) report on Crime Prevention Through Social Support:

The starting point for effective crime prevention must be to give greater control over decision making and methods of prevention to the Aboriginal communities themselves. Solutions imposed from the outside are likely to, at best, further disempower already disadvantaged communities, and at worst lead to increases in crime as anger and alienation increases.¹⁰⁷

These lessons are just as relevant when we consider ways of working with Indigenous young people with cognitive disabilities or mental health issues.

▪ *Early Intervention*

Early intervention strategies fit within the developmental crime prevention perspective put forward by the Pathways to Prevention report. It is worth noting that early intervention ‘means intervention early in the pathway. This may or may not mean early in life.¹⁰⁸ This depends on individual circumstances. For instance, for an adolescent who has had an otherwise supportive and health upbringing but becomes involved in trouble with peers and is arrested, then a referral to a youth justice conference would be an example of an early intervention. On the other hand, if a young person comes from a context of community and intergenerational disadvantage and family conflict, they may benefit from early intervention such as family support from their very early years.¹⁰⁹

Essentially, programs should be put in place when a child or young person is at a difficult life transition point and may need extra assistance. Examples of life transitions phases are:

- early childhood;
- transition to primary school;
- transition to high school; and

104 National Crime Prevention, *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney-General’s Department, Canberra, 1999, p9.

105 Cunneen, C., *The Impact of Crime Prevention on Aboriginal Communities*, NSW Crime Prevention Division and Aboriginal Justice Advisory Council, Sydney, 2001.

106 Cunneen, C., *The Impact of Crime Prevention on Aboriginal Communities*, NSW Crime Prevention Division and Aboriginal Justice Advisory Council, Sydney, 2001, p20.

107 Legislative Council Standing Committee on Law and Justice, *Second Report on the Inquiry into Crime Prevention Through Social Support Second Report*, NSW Government, 1999, p39.

108 National Crime Prevention, *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney-General’s Department, Canberra, 1999, p9.

109 National Crime Prevention, *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney-General’s Department, Canberra, 1999, p9.

- adolescence encompassing issues around peers, recreational opportunities, identity development.

Early intervention programs are based on reducing risk factors and increasing protective factors. The risk factors associated with youth offending are:

- prenatal and perinatal factors (e.g. low birth weight, young age of parent);
- low intelligence;
- disability;
- hyperactivity and impulsivity;
- poor parental supervision and discipline;
- family conflict and broken homes;
- large family size;
- parental criminality;
- socio-economic disadvantage;
- peer influences;
- substance misuse;
- poor educational attainment; and
- community disadvantage.

Protective factors include:

- social competence;
- school achievement;
- above average intelligence;
- problem solving skills;
- supportive family;
- small family size;
- prosocial peers;
- attachment to community; and
- strong cultural identity.¹¹⁰

Early intervention strategies are different for each circumstance. However, the literature does show that interventions are more likely to be effective if they target multiple risk factors. For instance, it is not much use to provide a school based early intervention program that doesn't look at the family and community context that a child lives in.

They are also likely to be successful and sustainable if a holistic and participative approach to solution development and implementation are adopted and practiced.

There is strong support for the efficacy of early intervention both in Australia and overseas. Evidence suggests that early intervention can achieve reduction across a broad range of social disadvantages such as involvement in crime, child abuse and substance abuse. On the flip side, it is also linked to better educational outcomes, employment and income.¹¹¹

Early intervention is also cost effective. Research from the United States has shown that for every dollar spent on the Perry Preschool Project, \$13 was saved. This occurred through reductions in the need for welfare assistance, special education, costs associated with the criminal justice system (including costs to victims, as well as increases in tax revenue due to the higher wage contributions of participants.¹¹² These positive results were built on a long term investment of time and money. Given all of this, early intervention is not a silver bullet, but is certainly very promising.

▪ *Early intervention and Indigenous communities: the risks of early intervention*

Early intervention crime prevention strategies, like any social policy, need to be considered for their particular impact on Indigenous communities. It is acknowledged in the literature that a lot of what we know about early intervention is based on non-Indigenous populations. Specific work therefore needs to be undertaken to tailor these programs to meet the needs of Indigenous peoples.

110 National Crime Prevention, *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney-General's Department, Canberra, 1999, p138.

111 Homel, R., 'Developmental Crime Prevention' in Tilley, N., (ed) *Handbook of Crime Prevention and Community Safety*, Willan, Devon, 2005, pp71-106

112 Australian Institute of Criminology, *Cost effectiveness of early intervention, 2007*, AICrime Reduction Matters, No 54. Canberra.

This potential bias can be seen with risk factors that guide early intervention practices. A way to bridge this may be to adopt Indigenous specific risk and protective factors. Homel et al. argue that although the standard risk and protective factors apply to Indigenous young people, they need to be seen within a culturally, historically specific 'lens'.¹¹³

Homel et al. identify additional risk and protective factors for Indigenous young people. Relevant risk factors include:

- forced removal, including parental forced removal;
- dependence - meaning the erosion of self determination;
- institutional racism, particularly in the form of over policing of Indigenous people;
- cultural factors, for instance use of public space that often draws police attention; and
- alcohol use.¹¹⁴

Protective factors include cultural resilience, strong family bonds and personal controls.¹¹⁵ In terms of personal controls, they cite a study which shows that Indigenous youth scored higher on self esteem and self worth than other young people with similar socioeconomic backgrounds.¹¹⁶ This may explain high levels of resilience.

Developmentally significant transition points may also be different for Indigenous young people. Based on the experience of setting up crime prevention programs with Indigenous youth, Armitage and Collins illustrate this point:

Our experience of working with Indigenous young people on early intervention/crime prevention projects demonstrates that relatively few young Aboriginal people attend primary school, let alone move into high school, higher education and the workforce. If these transition points are seen as critical periods for one's development what are the ramifications for those who fail to experience these key milestones?¹¹⁷

There is clearly a need to map culturally specific transition points, and in turn develop more responsive early intervention programs that ensure that young people, who do not follow traditional pathways, do not miss out on service provision.

Finally, there is a growing cynicism about early intervention in the United Kingdom, which cautions that early intervention can potentially:

justify a whole paraphernalia of surveillance and intervention based on the assumption that youth crime is an outcome of dysfunctional individuals and communities and that these individuals can be identified through an assessment process determined by experts.¹¹⁸

While not wishing to undermine all the potential good that early intervention can play in the lives of Indigenous young people, this does reiterate the importance of community involvement. Community ownership of early intervention programs can avoid programs becoming another government imposition on communities, and undermine the potential for empowerment and crime prevention.

The implication that risk factors are inherent within dysfunctional individuals and communities also attributes blame to the individual and community rather than looking at the broader spectrum of social, cultural, economic, historical and political factors. We know that there is a need to develop positive stories and identities in Indigenous communities, not perpetuate negative, accusatory perceptions.

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- 113 Homel, R., Lincoln, R. and Herd, B., 'Risk and Resilience: Crime and violence prevention in Aboriginal communities', (1999) 32 (2) *The Australian and New Zealand Journal of Criminology*, pp182-196.
- 114 Homel, R., Lincoln, R. and Herd, B., 'Risk and Resilience: Crime and violence prevention in Aboriginal communities', (1999) 32 (2) *The Australian and New Zealand Journal of Criminology*, pp182-196.
- 115 Homel, R., Lincoln, R. and Herd, B., 'Risk and Resilience: Crime and violence prevention in Aboriginal communities', (1999) 32 (2) *The Australian and New Zealand Journal of Criminology*, p189.
- 116 Homel, R., Lincoln, R. and Herd, B., 'Risk and Resilience: Crime and violence prevention in Aboriginal communities', *The Australian and New Zealand Journal of Criminology*, (1999) 32 (2) p190. 83% of Indigenous youth expressed confidence that they were able to change most or some things in their lives and were the most satisfied with their current position and 37% indicating they never wished to be someone else and 77% expressed a strong sense of self worth.
- 117 Armitage, J. and Collins, G., 'Early Intervention in Indigenous Crime Prevention', presented at the Beyond the Rhetoric of Early Intervention Conference, 26-28 March 2003, Adelaide.
- 118 Armstrong, D., 'A Risky Business? Research, Policy, Governmentality and Youth Offending', (2004) 4 (2) *Youth Justice*, p104.

▪ *Early intervention for Indigenous young people with cognitive disabilities or mental health issues?*

A review of the literature showed no evaluations or reports of any early intervention programs exclusively aimed at Indigenous young people with cognitive disabilities or mental health issues, within a crime prevention framework. However, a number of commentators and reports identify what early intervention should look like for this group.

Just as the causes of cognitive disabilities and/or mental health issues are diverse and complex, so too are the preventative interventions. Phase One of this research project consulted with community and stakeholders to look at points of early intervention for young people with cognitive disabilities. There was a consensus that socioeconomic circumstances impacted on poor childhood outcomes.¹¹⁹ There was also a strong desire for programs to tackle issues of Foetal Alcohol Syndrome, petrol sniffing, violence and poor nutrition and school retention.¹²⁰ It recommended that any intervention which increases support and school retention to Indigenous students with cognitive disabilities has the potential to prevent crime, given the strong link between involvement with the criminal justice system and disengagement from education.

Table 1 below shows examples of early intervention projects from the literature and how they may work with Indigenous young people with cognitive disabilities and/or mental health issues. For consistency, it is organised according to the developmental approach found in the Pathways to Prevention report.

This is by no means an exhaustive list of the options and but gives an idea of the breadth of early interventions and the connections with Indigenous young people with cognitive disabilities and mental health problems.

Table 1: Examples of Early Intervention Strategies			
Developmental Phase	Early Intervention Strategies	How does it assist Indigenous young people with cognitive disabilities or mental health problems?	Best Practice Examples from the literature
<i>Prenatal/ Perinatal</i>	<ul style="list-style-type: none"> ▪ Family support ▪ Maternity/ women’s health services 	Can reduce the risk of disability through non genetic factors such as FAS and increase general levels of mother and child health.	<p><i>Strong Babies - Strong Culture Project</i> - (Northern Territory):</p> <ul style="list-style-type: none"> ▪ Developed by Aboriginal women and health workers and adopted a cultural family model rather than medical model for antenatal care. ▪ Involved a “strong women’s story” and resource kit highlighting the importance of nutrition during pregnancy and factors which interfere with a healthy pregnancy and birth.

119 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems*, Human Rights and Equal Opportunity Commission, Sydney, December 2005.

120 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems*, Human Rights and Equal Opportunity Commission, Sydney, December 2005.

			<ul style="list-style-type: none"> ▪ An evaluation found that low birth rate decreased from 17% to 5%. ▪ More best practice examples can be found in <i>Aboriginal Best Start: Status Report</i>¹²¹
<p><i>Early childhood</i></p>	<ul style="list-style-type: none"> ▪ Parent training ▪ Family support ▪ Early education 	<p>As well as providing support and parental skill development, this form of early intervention can possibly identify any developmental delays that may require further assessment.</p> <p>Early diagnosis of cognitive disability means earlier referral and access to specialist services.</p>	<p><i>Hunter Aboriginal Preschool Project (NSW):</i></p> <ul style="list-style-type: none"> ▪ Aims to increase the participation of Aboriginal children aged 3-6 years in preschool services through the coordination of mobile preschool sessions and supported playgroups. ▪ The Awabakal Newcastle Aboriginal Corporation provides a flexible weekly supported playgroup or mobile preschool session in the Port Stephens, Cessnock and Lake Macquarie areas. ▪ The project will also work with the Indigenous Coordination Centre, with Federal Government funding to employ five child care trainees and a family worker in support of the project. ▪ The child care trainees will work with services delivering supported playgroups and mainstream preschool services, to increase usage by Aboriginal families. ▪ The family worker will work specifically with families to promote the benefits of quality early childhood experiences for children.¹²²

121 Community Care Division, *Aboriginal Best Start: Status Report*, Department of Human Services, Melbourne, 2004.

122 Department of Community Services, *Annual Report 2005-2006*, NSW Government, 2006.

Part 2: What do we know about Indigenous young people?

<p><i>School age</i></p>	<ul style="list-style-type: none"> ▪ Education support programs ▪ Special Education ▪ Assessment/identification of cognitive disabilities/mental health problems ▪ Family support ▪ Parent training to manage challenging behaviour 	<p>Culturally appropriate assessments Special education</p>	<ul style="list-style-type: none"> ▪ Aboriginal Education Workers and Aboriginal Teacher Assistants – make school a more comfortable, inclusive experience for Indigenous students and have the capacity to provide a link between school and communities and families. This is particularly important for Indigenous young people with cognitive disabilities and/or mental health issues, who may need additional support. ▪ Schools as Community Centres – make schools more accessible and can provide a range of educational support and recreational programs to children and communities.
<p><i>Adolescence – encompassing issues around peers, recreation, identity development</i></p>	<ul style="list-style-type: none"> ▪ School retention programs ▪ Mentoring Programs ▪ Cultural Programs ▪ Vocational training and options ▪ Mental health early intervention ▪ Suicide prevention ▪ Joint case management 	<p>Adolescence is just as confusing and complicated a time for young people with these issues. General interventions which promote positive relationships, behaviour and goals have the potential to assist these young people as well, although consideration needs to be given to whether they are appropriate – ie:</p> <ul style="list-style-type: none"> ▪ Are they pitched at their level of ability? ▪ Will they put them at risk of “contamination” by more sophisticated peers and thus undoing any protective value? <p>In terms of mental health issues, this is the danger period for suicide, especially for males in remote areas.</p>	<p><i>Panyappi</i> – Indigenous Youth Mentoring Project (SA):</p> <ul style="list-style-type: none"> ▪ Targeting young people aged 10-18 years at risk or involved in offending behaviours. ▪ Employ Indigenous mentors who provide support, friendship and positive role modelling.

Text Box 3 illustrates some international best practice examples of early interventions. They are drawn for New Zealand and Canada and are either specifically target Indigenous communities, or work with a high proportion on Indigenous people and have adopted culturally sensitive practices.

Text Box 3: International Early Intervention Best Practice Examples

Canada

Aboriginal Head Start Program – national early intervention programme for First Nations, Inuit and Metis children. Designed in consultation with local Aboriginal groups, implemented and controlled by parents and the local community.

Provide intervention for children 0-6 years. Program components are: culture and language, education, health promotion, social support and parental involvement. Preschool is a central part of service delivery. Very well received program in the communities, with all sites reporting that demand far out weighs supply.

The Outdoor Classroom Gwich'in Tribal Council – culture based crime prevention project which seeks to increase school retention and improve school experience for Gwich'in young people.

Project has implemented: a traditional outdoor classroom as an alternative teaching environment, especially for those having difficulties in school; support and training about crime prevention for teachers, community resource people and parents; social skills development for high risk children. There is also a weekly Elders program and before school programs including community members.

After the first year there was a 30% reduction in anti social behaviour, improved school attendance and improved parental/community relations with the school.

Restitution Peace Project – School based project for children and young people from year 5 to year 12, especially focusing on Aboriginal communities. Uses a Peace Circle model based on restorative justice to deal with school conflict and behavioural issues in a culturally appropriate way to prevent school drop out and expulsions.¹²³

New Zealand

High and Complex Needs Intersectoral Strategy – funded by the Ministries of Health and Education and Child Youth and Family Services. The Strategy promotes collaboration between these three sectors to improve outcomes for children and young people with high and complex needs. Funds *Joint Service Response Plans* for children and young people with severe behaviours and/or mental health needs.

Nga Ara Totika – a Joint Service Response Plan Project which addresses the needs of children and young people aged 10-13 years in Rotura at risk of suspension and exclusion as a result of their behavioural/mental health needs. Maori people were consulted and part of the governance structure.

Facilitators assist young and their families to access appropriate support and coordinate intersectoral services for the specific needs of the young person and their family.

An evaluation showed an increase in educational and health outcomes for participants. Many young people received assessment and treatment for health needs which had been unaddressed. Local agencies developed better working relationships and the program was well regarded by the community.

It should also be noted that early intervention programs do not need to specifically target young people or children with cognitive disabilities or mental health problems to be effective. For instance, a mainstream home visiting service may assist a parent in developing confidence in their parenting skills, but it might also help identify any developmental delays early and lead to appropriate referral to specialist services.¹²⁴

123 Capobianoc, L. and Shaw, M., *Crime Prevention and Indigenous Communities: Current International Strategies and Programmes*, International Centre for Crime Prevention, 2003.

124 Hayes, S., 'A Review of Non-custodial Interventions with Offenders with Intellectual Disabilities' (2005) 17 (1) *Current Issues in Criminal Justice*, p71.

Another example is Panyappi Indigenous Youth Mentoring Program. An outline of the evaluation can be found in **Text Box 4** below. This is one of the very few Indigenous mentoring programs that has been evaluated and offers some lessons for other services.

Text Box 4: Panyappi Indigenous Youth Mentoring Program: Evaluation of a promising early intervention project

While Panyappi isn't specifically aimed at Indigenous young people with cognitive disabilities and/or mental health problems, the individually tailored support from mentors certainly has the capacity to deal with the complex needs presented by this group. An external evaluation of Panyappi was completed in 2004.

Panyappi works with Indigenous young people at risk of contact with the juvenile justice system. The client group face multiple disadvantages, with most:

disengaging or already disengaged from education, have a high rate of social-emotional issues, and often engage in substance misuse. At least half of these young people are involved with FAYS¹²⁵ and/or the juvenile justice system.¹²⁶

In addition, these young people are unlikely to engage with mainstream youth services and require long term, consistent support 'in order to build trust, foster their personal resilience, and assist them to gain stability'.¹²⁷

Panyappi is based on a formal mentoring model, with Indigenous mentors:

- Modelling appropriate behaviours
- Providing one-on-one engagement with a young person to build a trusting relationship with a commitment to maintaining the relationship over an extended period of time
- Assisting young people to access educational, training and recreational services to facilitate young persons transition into the community
- Promoting, encouraging and ensuring positive relationships with parents, family members, significant others and the community
- Provide care, guidance, support and supervision of young people...
- Developing and implementing programs that teach young people practical living skills, how to make choices and decisions and how to take responsibility for their actions
- Assisting young person who are moving towards independence by providing regular support and linking with appropriate services
- Escorting and supervising young people when attending relevant appointments in the community
- Providing opportunities for young people to experience success and to realise their full potential.¹²⁸

This can involve up to 15-20 hours of week in the early engagement phase of the program.

Consistent with culturally appropriate practice with Indigenous young people, relationships with families are a central focus with the aim of rebuilding and strengthening connections. The mentor coordinator works closely with the families of young people to assist them to develop better ways to deal with their young person, manage other issues and provide linkages to appropriate services.

125 Family and Youth Services, responsible for child protection services.

126 Beyond... (Kathleen Stacey and Associates) *Panyappi Indigenous Youth Mentoring Program: External Evaluation Report*, Metropolitan Aboriginal Youth Team, South Australia Department of Human Services, Adelaide, 2004, p3.

127 Beyond... (Kathleen Stacey and Associates) *Panyappi Indigenous Youth Mentoring Program: External Evaluation Report*, Metropolitan Aboriginal Youth Team, South Australia Department of Human Services, Adelaide, 2004, p3.

128 Beyond... (Kathleen Stacey and Associates) *Panyappi Indigenous Youth Mentoring Program: External Evaluation Report*, Metropolitan Aboriginal Youth Team, South Australia Department of Human Services, Adelaide, 2004, p20.

The evaluation found Panyappi decreased a young people's contact with the juvenile justice system, based on qualitative data from young people, family and workers, and confirmed through official juvenile justice records.¹²⁹ The holistic focus of mentoring and case management also lead to a variety of positive changes in the young people's lives such as re engaging with education, development of interests and friendships with peers who were not offending and improved family relationships.

One of the reasons for the success of Panyappi, according to the evaluation, seems to be that it provides a service beyond the time when the young person is first in trouble. They argue that:

This could be called **mentoring beyond the trouble zone** (emphasis in the original). This reverses the common experience for Panyappi's target group. Often they only receive support *because they are in trouble*, rather than when they are doing well, which can work against long term change.¹³⁰

Sustainability is also a key theme in the success of Panyappi, not just in maintaining support for the young people, but maintaining and building the capacity of the organisation. All mentors are paid for their work (mentoring programs such as Big Brother and Big Sister are staffed by volunteers). There is also a focus on providing training and professional supervision to all mentors. In fact, Panyappi has developed a secondary focus on mentoring the mentors to address the need to recruit and retain skilled Indigenous workers in community service delivery.¹³¹

■ *Diversion*

Diversion refers to any 'instances where young people are turned away from the more formal processes, procedures and sanctions of the criminal justice system',¹³² Diversion occurs pre-arrest, pre-trial and pre-sentence. These diversions are often called the 'front end' diversions of the criminal justice system.

However, it would be remiss to exclude diversion from custody. Although the literature shows that young people should be diverted as early as possible, there is still a great deal of positive intervention that can occur once a young person is under the supervision of a juvenile justice agency. The involvement of a juvenile justice agency can be crucial in addressing cognitive disability or mental health issues. It is often the first time they may have been actually assessed as having a disability and have had the opportunity for intervention and support.

A background paper to the Second National Indigenous Justice Forum¹³³ supports this broader view of diversion, calling for a five stage approach to diversion of Indigenous offenders. **Table 2** outlines this approach to diversion.

129 Beyond... (Kathleen Stacey and Associates) *Panyappi Indigenous Youth Mentoring Program: External Evaluation Report*, Metropolitan Aboriginal Youth Team, South Australia Department of Human Services, Adelaide, 2004, p7.

130 Beyond... (Kathleen Stacey and Associates) *Panyappi Indigenous Youth Mentoring Program: External Evaluation Report*, Metropolitan Aboriginal Youth Team, South Australia Department of Human Services, Adelaide, 2004, p19.

131 Beyond... (Kathleen Stacey and Associates) *Panyappi Indigenous Youth Mentoring Program: External Evaluation Report*, Metropolitan Aboriginal Youth Team, South Australia Department of Human Services, Adelaide, 2004, p22.

132 Cunneen, C. and White, R., *Juvenile Justice: Youth and Crime in Australia*, Oxford University Press, 1st edition, Melbourne, 2002, p247.

133 Victorian Department of Justice and Jones, R., *Diversion: A model for reducing Indigenous criminal justice over-representation*, Paper prepared for consideration at the Second National Indigenous Justice Forum November 2006.

Stage of the criminal justice process	Goals of diversion	Examples of diversion
1. Prior to first contact with the police	Reduce exposure to criminogenic influences and strengthen resilience and protection of Indigenous persons at risk of police contact, especially youth	Primary prevention programs that reduce risk factors and increase protection, eg educational support, sports, cultural strengthening activities
2. Law enforcement	Reduce the rate at which apprehended Indigenous persons are arrested and charged with an offence	Police cautioning instead of arrest, referral to appropriate community services, intensified primary prevention programs
3. Court processing	Reduce the likelihood of conviction and/or severity of sentencing outcomes for Indigenous people who have been charged with an offence	Bail support programs with relevant service linkages, Koori Court or Circle Sentencing processes
4. After sentencing	Reduce Indigenous re-offending rates by addressing criminogenic needs of convicted offenders in custody or under Community Correctional supervision	Community based sentences with special conditions as an alternative to prison, offender rehabilitation programs in prisons and community
5. Pre- and post- release	Reduce Indigenous re-offending rates by facilitating successful community reintegration of convicted Indigenous offenders	Integrated pre-release transition and post-release support programs, including linkages to housing, health, employment and other essential services

Source: Indigenous Issues Unit, Department of Justice Victoria and Jones, R. *Diversion: A model for reducing Indigenous criminal justice over representation*, Paper prepared for consideration at the Second National Indigenous Justice Forum November 2006, p5.

It argues that:

This five-stage approach to diversion advances the idea that it is never too late to invest in diversion, and that the responsibility for diversion is not limited to the front end of the criminal justice process.¹³⁴

Phase One of this research report provided an overview of the diversionary schemes operating in Australia. In summary, the main mechanisms for diversion for young people are:

- oral or written warnings from Police;
- formal cautions from Police instead of arrest;
- victim-offender or family conferencing;
- referral to a community based program (intersecting with early intervention programs such as mentoring, social support, case management, recreation and cultural awareness);
- conditional bail, or supervised bail programs;

134 Indigenous Issues Unit, Department of Justice Victoria and Jones, R. *Diversion: A model for reducing Indigenous criminal justice over representation*, Paper prepared for consideration at the Second National Indigenous Justice Forum November 2006, p6.

- youth drug courts (using ‘Griffith remand’ bail procedures to provide treatment prior to sentencing, with positive participation leading to more lenient sentencing and diversion away from custody); and
- Indigenous courts, including Circle Sentencing.¹³⁵

Some diversionary programs are based on ideas around reducing labelling and stigma. If a young person can be diverted from formal criminal justice systems they are less likely to be labelled as an ‘offender’ and in turn take on this criminal identity and offend further. Diversion recognises that the criminal justice system is not best placed to address a range of welfare and health issues and tries to connect young people with more appropriate community based services and aims for the least intrusive intervention.

Restorative justice principles, as seen in victim-offender conferencing and family conferencing have been very influential in program development in Australia. Restorative justice sees crime as:

A violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in search of solutions that promote repair, reconciliation and reassurance.¹³⁶

This holistic, community wide approach has led many to assume that restorative justice diversionary practices will be well suited to Indigenous communities.

It is also worth noting that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state:

Consideration should be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.¹³⁷

- *Impact of diversion*

Diversionary practices, in particular warnings, cautions and conferencing, have been partially responsible for a sharp decrease in the number of young people in custody since the 1980s. The rate of juvenile detention has declined from a total of 1 352 young people in custody in 1981 to 605 2005 (a 55% decline).¹³⁸ The rate for Indigenous young people has also decreased since 1994 with a 25% reduction.¹³⁹ However, the rate of over representation of Indigenous young people has been relatively stable. We will consider the disappointing state of diversion with Indigenous young people later.

Despite the generally positive regard for diversion in the literature there is some concern about its ‘net widening’ potential. Net widening occurs when the actual diversionary intervention leads to more young people being involved in the criminal justice system, or facing more consequences.¹⁴⁰ An Australian National Council on Drugs report outlines the following scenarios:

- Diversion may be considered more burdensome than a criminal sanction and may be applied to a young person who would not have received any sanction at all.
- Some innocent young people may admit guilt in order to receive a caution rather than face court, although the requirements may be more onerous and a charge may not have proceeded in any event due to lack of evidence.
- A young person may receive a conference but fail to meet the agreed outcomes and consequently face harsher court sanctions.¹⁴¹

135 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission, Sydney, 2005.

136 Cunneen, C. and White, R., *Juvenile Justice: Youth and Crime in Australia*, Oxford University Press, 1st edition, Melbourne, 2002, p362.

137 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Herein the Beijing Rules) 1985, Rule 11.

138 Taylor, N., *Juveniles in Detention in Australia, 1981-2005*, Technical and Background Paper No. 22, Australian Institute of Criminology, Canberra, 2006, p8.

139 Taylor, N., *Juveniles in Detention in Australia, 1981-2005*, Technical and Background Paper No. 22, Australian Institute of Criminology, Canberra, 2006, p16.

140 Siggins Miller Consultants, *Diversion of Aboriginal and Torres Strait Islander youth from juvenile detention: a report to the Australian National Council on Drugs*, Australian National Council on Drugs, Canberra, 2003, p29.

141 Siggins Miller Consultants, *Diversion of Aboriginal and Torres Strait Islander youth from juvenile detention: a report to the Australian National Council on Drugs*, Australian National Council on Drugs, Canberra, 2003, p29.

▪ *Diversion and Indigenous Young People*

There is a comparatively well developed literature on how diversion works with Indigenous young people. The 2001 Social Justice Report, in the context of the Northern Territory mandatory sentencing regime and Western Australian ‘three strikes’ sentencing laws, developed a set of best practice principles for juvenile diversion. These are reproduced at **Text Box 5**.

Text Box 5: Best practice principles for juvenile diversion

Viable alternatives to detention: Diversion requires the provision of a wide range of viable community-based alternatives to detention. Diversion programs should be adequately resourced to ensure they are capable of implementation, particularly in rural and remote areas. Diversion should be adapted to meet local needs and public participation in the development of all options should be encouraged. There should be adequate consultation with Indigenous communities and organisations in the planning and implementation stages.

Availability: Diversionary options should be available at all stages of the criminal justice process including the point of decision-making by the police, the prosecution or other agencies and tribunals. Diversion should not be restricted to minor offences but rather should be an option wherever appropriate. The decision-maker should be able to take into account the circumstances of the offence. The fact that a juvenile has previously participated in a pre-court diversionary program should not preclude future diversion. A breach of conditions should not automatically lead to a custodial measure.

Criteria: Agencies with the discretionary power to divert young people must exercise that power on the basis of the established criteria. The introduction, definition and application of non custodial measures should be prescribed by law.

Training: All law enforcement officials involved in the administration of juvenile diversion should be specifically instructed and trained to meet the needs of young people. Justice personnel should reflect the diversity of juveniles who come into contact with the system.

Consent and participation: Diversion requires the informed consent of the child or his or her parents. Young people should be given sufficient information about the option. They should be able to express their views during the referral process and the diversion process. Care should be taken to minimise the potential for coercion and intimidation of the young person at all levels of the process.

Procedural safeguards: Diversionary options must respect procedural safeguards for young people as established in CROC and the ICCPR. These include direct and prompt information about the offences alleged, presumption of innocence, right to silence, access to legal representation, access to an interpreter, respect for privacy of the young person and their family and the right to have a parent or guardian present. A child should not acquire a criminal record as a result of participating in the scheme.

Human rights safeguards: CROC also requires that the best interests of the child will be a guiding factor; the child’s rehabilitation and social reintegration be promoted, with attention to their particular vulnerability and stage of maturation; the diversionary option applies to all children without any discrimination of any kind, including on the basis of race, sex, ethnic origin and so on; the diversionary option is culturally appropriate for Indigenous children and children of ethnic, religious and cultural minority groups; and the diversionary option is consistent with prohibitions against cruel, inhuman or degrading punishment.

Complaints and review mechanisms: The child should be able to make a complaint or request a review about the referral decision, his or her treatment during the diversionary program and the outcome of his or her participation in the diversionary option. The complaint and the review process should be administered by an independent authority. Any discretion exercised in the diversion process should be subject to accountability measures.

Monitoring: The diversionary scheme should provide for independent monitoring of the scheme, including the collection and analysis of statistical data. There should be regular evaluation conducted of the effectiveness of the scheme. In reviewing options for diversion, there should be a role for consultation with Indigenous communities and organisations.¹⁴²

It is widely acknowledged that Indigenous young people do not access diversionary options at the same rate as non Indigenous young people and are under represented in cautions and conferencing.¹⁴³ For instance, in a Western Australian study, Indigenous young people made up only 24% of the Police referrals to a juvenile justice team for a conference, whilst they made up 35% of the young people appearing before Court and 36% of young people arrested.¹⁴⁴ In NSW, Indigenous young people were also more likely to appear before court, with 64% of Indigenous young people appearing before court as opposed to 48% of non-Indigenous young people. Furthermore, Indigenous young people were half as likely to be cautioned as non Indigenous young people.¹⁴⁵ The ultimate failure for diversion of Indigenous young people is the over representation in custody, with Indigenous young people making up over 50% of all young people in custody.

Also concerning is the danger of net widening for Indigenous young people. For instance, since the introduction of cautioning in Western Australia, arrest rates have remained relatively stable although the level of contact with the police increased by 30%.¹⁴⁶ This led the Social Justice Commissioner to state:

This means that cautioning has occurred on top of, rather than instead of, arresting young Aboriginal people. While some Aboriginal youths are clearly being given another chance by police, it is of concern that many Aboriginal youths are still being arrested, but in addition, the cautioning system seems to be netting them and some other, younger, less delinquent young people on other occasions for trivial offences that may have been ignored.¹⁴⁷

Explanations for under representation in diversion consider institutional and process issues. One commonly cited reason is the requirement of an admission of guilt. The Australian National Council on Drugs report found that many Indigenous young people were advised by the Aboriginal Legal Services not to admit guilt.¹⁴⁸ This was coupled with a mistrust of police, effectively blocking their pathway to diversionary options.

The central role of police as gatekeepers of the diversionary system (at least in regard to cautions and conferences in many jurisdictions) has been critiqued by Cunneen¹⁴⁹ and Blagg.¹⁵⁰ Research has shown that police are less likely to use their discretion to divert Indigenous young people, resulting in a criminal record at an earlier age. Cunneen concludes:

The manner in which these programs have been introduced has ignored Aboriginal rights to self-determination and has grossly simplified Indigenous mechanisms for resolving conflicts. In most jurisdictions, community conferencing has reinforced the role of state police and done little to ensure greater control over police discretionary decision-making.¹⁵¹

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- 142 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Human Rights and Equal Opportunities Commission, Sydney, 2001, p185.
- 143 Cunneen, C. and White, R., *Juvenile Justice: Youth and Crime in Australia*, Oxford University Press, 1st edition, Melbourne, 2002, p172.
- 144 Ferrante, A., Fernandez, J. and Loh, N., *Crime and Justice Statistics for Western Australia: 2000*, Crime Research Centre, University of Western Australia, Perth, 2001 p44,11,122.
- 145 Chan, J. and Luke, G., 'The Impact of the Young Offenders Act' in Chan, J. (ed) *Reshaping Juvenile Justice: The Young Offenders Act 1997*, Institute of Criminology, Sydney, 2005, p179.
- 146 Ferrante, A., *An Analysis of police arrest statistics*, Crime Research Centre, University of Western Australia, Perth, (unpublished) 2001 cited in Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Human Rights and Equal Opportunities Commission, p184.
- 147 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Human Rights and Equal Opportunity Commission, Sydney, 2001, p185.
- 148 Siggins Miller Consultants, *Diversion of Aboriginal and Torres Strait Islander youth from juvenile detention: a report to the Australian National Council on Drugs*, Australian National Council on Drugs, Canberra, 2003 p34.
- 149 Cunneen, C., 'Community Conferencing and the fiction of Indigenous control' (1997) 30 *Australian and New Zealand Journal of Criminology*, pp124-138.
- 150 Blagg, H., 'A just measure of shame? Aboriginal youth and conferencing in Australia' (1997) 37, *British Journal of Criminology*, pp481-501.
- 151 Cunneen, C., 'Community Conferencing and the fiction of Indigenous control' (1997) 30 *Australian and New Zealand Journal of Criminology*, pp124-138.

As with the analysis of possible challenges of early intervention strategies, these comments are not meant to dismiss the very positive contribution of diversionary practices, but ensure that thorough consideration is given to the needs of Indigenous communities. In fact, where Indigenous communities have been actively involved in the process, there has been great success. While not yet targeting young people, the NSW Circle Sentencing scheme has been very favourably evaluated.¹⁵² Similarly, Indigenous courts have also provided good alternatives to mainstream criminal justice institutions.

▪ *Diversion and Indigenous young people with cognitive disabilities and mental health problems*

In addition to needs identified for all Indigenous young people, those with cognitive disabilities and mental health problems may require further assistance to ensure access and equity. For instance, young people with cognitive disabilities may find a conference quite difficult if appropriate modifications are not made.

Similarly, young people with cognitive disabilities or mental health problems may be ineligible for drug court programs if they are not assessed as capable of coping with treatment options such as group therapy and individual cognitive behavioural or motivational counselling. Ultimately, finding young people with cognitive disabilities or mental health problems not suitable for diversionary programs may 'be masking the need for the program to be more flexible and offer people with cognitive disabilities a greater level of support'.¹⁵³

Diversion is often linked to meeting the welfare needs that lead to offending. For Indigenous young people with cognitive disabilities or mental health problems, these needs are significant. Multi disciplinary, joint case management can be a very effective way of coordinating multiple services and preventing the siloing of services. This option was raised in stage one of this research project with the Orana Joint Case Management Pilot led by the NSW Department of Juvenile Justice in 2005.¹⁵⁴

The literature does mention some specific diversionary initiatives for people with cognitive disabilities or mental health problems. None of these are Indigenous specific and few extend eligibility to young people but nonetheless are promising developments. A summary of some of these initiatives, both Australian and international is provided in **Table 3** below.

Program	Description	Youth Participation
Disability Diversionary Court (Western Australia)	Alternative to mainstream sentencing for people with intellectual disabilities.	No
Mental Impairment Court (South Australia)	Unlike other mental health courts which operate as 'quasi-tribunals', the SA court monitors and sentences offenders with mental impairment.	No

152 Potas, I., Smart, J. Brignell, G., Thomas, B. and Lawrie, R., *Circle Sentencing in NSW: A review and evaluation*, Judicial Commission of NSW and Aboriginal Justice Advisory Council, Sydney, 2003.

153 Simpson, J. and Sitori, M., *Criminal Justice and Indigenous People with Cognitive Disabilities*, 2004, available at <http://www.beyondbars.org.au>, accessed 20 March 2008.

154 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous young people with cognitive disabilities and Australian juvenile justice systems*, Sydney, Human Rights and Equal Opportunity Commission, 2005, p33.

	<p>The aims are to reduce offending, improve general health and improve the criminal justice response to the mental illness. Participants undergo treatment with their progress monitored by a specialist magistrate.</p> <p>Formally evaluated in 2004 and found significant reduction in offending.</p>	
Forensicare (VIC)	<p>Dedicated statutory agency that provides forensic mental health care in the community as well in a secure facility (but not a prison). Provides court liaison, outpatient programs and transitional housing in the community.</p>	No
Forensic diversion service (Birmingham, UK)	<p>Mental health worker is situated at Police stations to interview the offender, gather information about their offence, history and propose diversion and treatment options. Also work with remandees to interview all new detainees and identify support needs. A bail hostel is provided as an alternative to remand.</p>	No
Juvenile Mental Health Court (California, USA)	<p>First US juvenile mental health court. If a young person is assessed as eligible they are provided 'wrap around' holistic case management as part of their probation but can also include residential and outpatient treatment.</p>	Yes

Another interesting area of intervention is support services which work with intellectually disabled offenders. For instance, in NSW the Criminal Justice Support Network, part of the Intellectual Disability Rights Service, provides a 24 hour support service, allocating a worker to assist people through the police system. As well as assisting the young person through the process, these programs acknowledge that 'police generally receive little training about intellectual disability, and often experience difficulty interviewing a person with an intellectual disability'.¹⁵⁵ Implicitly, the more comfortable and skilled police feel, the more likely they are to use their discretion wisely. Although this is somewhat outside of conventional definitions of diversionary options, it can still have a crucial role in reducing the number of young people with cognitive disabilities that are inappropriately dealt with by police.

This support role can also extend to support through out the conferencing process. An evaluation of the NSW Criminal Justice Support Network illustrates how this can work with Indigenous young people with cognitive disabilities.¹⁵⁶ One case study focusing on an Indigenous young woman with an intellectual disability (**Text Box 6** below) shows the positive impact that these services can have.

155 Hayes, S, 'A Review of Non-custodial Interventions with Offenders with Intellectual Disabilities' (2005) 17 (1) *Current Issues in Criminal Justice*, p71.

156 West Wood Spice Consultants, *Evaluation of the Criminal Justice Support Network (CJSN) Intellectual Disability Rights Service Inc.*, October 2005

Text Box 6: Emma's story: from graffitist to Aboriginal traditional artist

Emma is considered by CJSN to be a model study for the way in which they manage juvenile cases. 17 years of age at the time of her case, Emma had experienced learning difficulties throughout her primary and high school years as a result of her intellectual disability.

Emma began experimenting with alcohol and drugs and soon ran away from home. Her parents tried in vain to obtain support and assistance from the Department of Community Services (DoCS), as they claimed there was little they could do. Emma had also been charged with malicious damage, following a series of arrests for damage and graffiti to public buildings. She was referred to Youth Justice Conferencing.

Emma's mother approached the Aboriginal Legal Service to get information about Emma's rights and available support. ALS staff identified that Emma had an intellectual disability and referred her to the CJSN.

Emma attended the Youth Justice Conference and CJSN provided support to Emma throughout the process. Emma felt very reassured that she had a support person there just for her.

The Youth Justice Conference was a major turning point for Emma. She attended a three day camp as part of the Nimbak Koorie Youth Diversion program – a cultural awareness program developed by local police and Aboriginal services. On this camp Emma discovered that she had a talent in creating Aboriginal art. Additionally, she met police officers in a non-threatening environment, which helped her self esteem.

As a result of the support of CJSN, coupled with her rehabilitation and discovery of her talent for art, Emma commenced studying a course as part of the Koori art program...Her work is exhibited at the NSW Premier's Office and hangs in the foyer of the local police station.¹⁵⁷

e) Summary of key findings and issues from the literature

There is a no comprehensive body of research around Indigenous young people with cognitive disabilities/mental health problems in the criminal justice system. However, by piecing together the fragmentary evidence a picture emerges about a group that is severely disadvantaged and lacking in appropriate service delivery.

The key findings are:

- We don't know exactly how many Indigenous young people either at risk or involved with the criminal justice system have a cognitive disability or mental health issue. However, the best evidence so far suggests that they are 4 to 5 times more likely to have a cognitive disability than the general population.
- Indigenous conceptions of cognitive disability and mental illness are different from Western definitions and depend more on relationships with others and cultural explanations.
- Disability issues are always secondary to cultural identity. This means that many Indigenous people are very uncomfortable with mainstream disability and mental health services and substantial changes must be made to ensure accessibility.
- The high incidence of mental illness and cognitive disability in Indigenous young people relates to the social determinants of health, including social, economic and cultural factors.
- The education system is failing all Indigenous young people. This is especially the case for Indigenous young people with cognitive disabilities or mental health problems. There are also young people being incorrectly diagnosed and placed in special education when in fact, they do not have a cognitive disability.
- There are a range of explanations for the over representation of young people with cognitive disabilities and mental health problems in the criminal justice system. These relate to school failure, susceptibility of involvement with the criminal justice system, differential treatment in the criminal justice system (including a lack of services), that

157 West Wood Spice Consultants, *Evaluation of the Criminal Justice Support Network (CJSN) Intellectual Disability Rights Service Inc.*, October 2005

these young people are simply more likely to get caught and that they face significant socio-demographic disadvantage.

- Substance use is an intervening factor in the offending of many Indigenous young people with cognitive disabilities or mental health problems but can also be the cause of the actual disability or mental illness as well.
- There are no specific early intervention or diversion programs that target Indigenous young people with cognitive disabilities and/or mental health problems but there are promising crime prevention initiatives which are flexible enough to deal with the complexity of needs presented by these young people.

Gaps in literature

The extent of our knowledge around this group is largely based on research regarding adult populations. The characteristics of young people involved with juvenile justice, the dynamics of their offending, and the criminal justice institutions that deal with them, are different from the adult offending populations. It is likely that the experience of young people with cognitive disabilities and mental health problems will also be subtly different.

Furthermore, most of the research considers Indigenous issues or cognitive disability/mental health issues, rather than the interplay between these factors. This is a very significant gap as it limits the development of culturally appropriate, effective interventions for this group.

Relatively little is known about 'what works' to prevent Indigenous young people with cognitive disabilities or mental health issues from becoming involved with the criminal justice system. Evaluations of the impact of interventions on the Indigenous young people are few and far between. But the evaluations that look specifically at Indigenous young people with cognitive disabilities or mental health problems; are non-existent.

A review of the literature raises more questions than answers. Crucially:

- What early intervention/diversionary options work best with young people with cognitive disabilities/mental health problems?
- Are existing general early intervention/diversionary options effective for Indigenous young people with cognitive disabilities/mental health problems?
- How can general early intervention/diversionary options be made more accessible and effective for young people with cognitive disabilities/mental health problems?
- What are the most appropriate early intervention/diversionary models for this group?

The following section will attempt to answer these questions.

Part 3: Stories from the field: A life course approach to Indigenous young people with cognitive disabilities and mental health issues

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The literature review pulls together some of the main concepts and findings about Indigenous young people with cognitive disabilities and/or mental health issues from involvement with the juvenile justice system. However, we are also interested in finding out what is actually happening on the ground for these young people.

To do this, we have selected some promising programs and practices as case studies. These will help answer our questions about what is working now, what needs to change and ways forward to assist Indigenous young people with cognitive disabilities and/or mental health issues. These case studies are supplemented by information, opinions and ideas from our consultations with a range for experts and those working in the field.¹⁵⁸

The literature and consultations clearly showed that preventing offending behaviour amongst Indigenous young people with cognitive disabilities and/or mental health issues is very complex. Some of the causes can be tracked back to early childhood development but continue throughout the life course. Importantly, they need to be understood in the specific social, cultural, historical and economic context of Indigenous communities. Interventions are not just about helping individuals but building the capacity of the communities that they live in. The earlier services and supports are provided, the stronger the community and social base, the better the outcomes will be.

Different interventions are required at different stages of life. To illustrate some of the different needs at different points in time and their relationship to offending behaviour, this section will map case studies across the life course. Each life stage will be accompanied by some of our consultation findings, some current service delivery challenges and case studies of programs or services. This plots a continuum of holistic service delivery aimed at preventing crime amongst Indigenous young people with cognitive disabilities and/or mental health issues.

a) Common Themes

- *Building on solid foundations through holistic services*

Indigenous young people with cognitive disabilities and/or mental health issues share many of the same needs as other Indigenous young people. They come from the same families, the same communities but face additional disadvantage due to their cognitive disability or mental health issue. For this reason, the overwhelming response from our consultations was that Indigenous young people with cognitive disabilities or mental health issues need to be viewed holistically. Unless the entire spectrum of needs is addressed in a culturally appropriate way, it is unlikely that specialist disability or mental health services will effect much, if any change.

Similarly, there are good reasons to integrate capacity to deal with cognitive disabilities and/or mental health issues in accessible, culturally appropriate services. Many of our consultations pointed out that Indigenous young people don't need another label and can suffer adverse consequences if they are singled out from peers for special treatment. Furthermore, many of the people consulted agreed that most of these young people would not attend a service that was based on their mental health or cognitive disability status. So, while it might seem like an easy fix to provide services specifically for this group of young people, based on our consultations, tightly targeted service provision is not the answer.

158 A list of consultations can be found at Appendix 1.



Overwhelmingly, participants suggested a holistic model of service to assist all Indigenous young people, including those with cognitive disabilities and/or mental health issues. Associate Professor Helen Milroy, an Indigenous child and adolescent psychiatrist, outlined this approach, encompassing physical, psychological, social and spiritual/cultural needs. Below is Professor Milroy's assessment of what is particularly relevant for all Indigenous young people including those with cognitive disabilities and/or mental health problems at risk of juvenile justice involvement.

- *Physical:* Screening for chronic diseases such as rheumatic fever, kidney damage, anaemia, blood sugar levels. Screening and assessment of any development delay, indicating cognitive disability.
- *Psychological/Emotional:* Consideration of experiences of trauma, loss, identity issues. An assessment of coping styles, autonomy and emotional regulation, as well as awareness that most young people with cognitive disabilities do not have emotional language so may be acting out to express themselves.
- *Social:* Understanding of family and where the young person fits in society. This requires Indigenous mentors and role models to help young people find their place in their communities. We need to help young people understand the story of Indigenous people, so that young people don't keep thinking that the problems in communities are due to fact that they are simply 'bad'. Instead, need to help them understand the history and turn negatives around to instil pride in their identity.
- *Spiritual/Cultural:* Need to validate culture and experiences and promote connection to ancestry through healing and culture camps.¹⁵⁹

These principles should act as a checklist for all services for Indigenous young people and have guided the selection of our case studies.

Holistic service delivery for Indigenous people is not a new idea and has long been part of Indigenous health policy. However, according to Professor Milroy, there are few programs that actually meet all of these needs. Indigenous programs tend to meet social and spiritual/cultural needs well. Mainstream services deal better with physical and psychological/emotional needs but neither seems to be able to balance all of these areas of concern.

Holistic service delivery also means an interagency, whole of government approach. The complex needs of Indigenous young people with cognitive disabilities or mental health problems means that they are likely to be involved with a range of government and non government services. Despite a whole raft of policy documents and guidelines extolling the importance of interagency cooperation, our consultations found that this is rarely the case on the ground.

▪ *Appropriate Assessments*

At every stage, assessment and identification of children and young people with cognitive disabilities and/or mental health issues is crucial. Without identification, children and young people are likely to have their needs ignored or misinterpreted. This in turn, leads to poor outcomes. Despite the importance of early identification of special needs, consultations suggested that Indigenous young people with cognitive disabilities and/or mental health issues slipping through the gaps was the norm, rather than the exception.

Consistent with the literature review, there were real concerns about the cultural bias in psychological assessments for cognitive disabilities and/or mental health issues. Although there is greater validity for visual tests, according to workers from the Disability Services Commission in Western Australia, 'you may as well throw away the tests when you are working with remote communities.'¹⁶⁰ Instead, workers ask parents or caregivers to compare the child or young person to others the same age to get a sense of appropriate development. Assessment is less clinical and 'really a series of educated guesses'.¹⁶¹

Low confidence in assessment tools, continuing cultural bias, low expectations of Indigenous children and low recognition amongst Indigenous families and communities about possible cognitive and mental health all lead to fewer assessments. Assessment is the gate keeping process so fewer assessments equal lower levels of service provision.

159 Milroy, H., Communication with the Social Justice Commissioner's Office, 22 March 2007.

160 Stopher, K., Communication with the Social Justice Commissioner's Office, 19 March 2007.

161 Stopher, K., Communication with the Social Justice Commissioner's Office, 19 March 2007.

To be eligible for disability support services a young person must have an IQ less than 70. This knocks out a large group in the borderline intellectually disabled range. Further, there was a belief amongst those we consulted that this is an arbitrary line. Many young people with higher IQs may be functionally well below the diagnostic mark. This is because any cognitive deficits are compounded by living in disadvantaged environments.

Mental health assessments also function poorly with Indigenous young people. Mental health assessments do not contextualise behaviour and symptoms within an awareness of Indigenous history and experience. The magnitude of trauma in the Indigenous community suggests that we need to seriously consider child and adolescent behaviour in this context. Across the board, experts, workers and community members felt that trauma and pain was at the root cause of most mental health issues.

From a clinical point of view, Professor Milroy suggested that there is a gross under diagnosis of Post Traumatic Stress Disorder (PTSD) in Indigenous communities. PTSD is a psychological condition following exposure to a stressful or traumatic experience. It has been recognised as a particular issue for indigenous peoples around the world as:

the common experiences of childhood and adult trauma, removal of children from families, interpersonal violence, substance abuse, and early death all result in generations of people more likely to suffer from PTSD.¹⁶²

The most commonly known symptom of PTSD is flash backs but also include restlessness, insomnia, aggressiveness, hyper-arousal and hyper-vigilance, depression, dissociation, emotional detachment and nightmares.

Many Indigenous young people are never diagnosed with PTSD. Instead, their behaviour is usually labelled as a conduct disorder. Alternatively, young people who report hearing, seeing or speaking to ancestors are often diagnosed with psychotic illnesses such as schizophrenia when Professor Milroy believed that for the most part they are likely to have suffered from PTSD or depression. These diagnoses require very different treatments so there is no surprise that little progress is made with young people who are incorrectly diagnosed.

- *Indigenous Concepts of Disability*

Consultations affirmed the need to look at Indigenous concepts and experiences of disability. Workers from the Western Australian Disability Services Commission felt that some Indigenous families and communities did not recognise cognitive disability in the same way as non-Indigenous people. That is, signs of developmental delay were often attributed to the person being 'a bit slow' and not necessarily requiring further support.

Concepts of disability seem to be based on whether or not a person is functioning in the community context rather than diagnostic labels. For instance, Disability Services Commission staff related a case of a young person, who had been seen as 'slow', had struggled at school and didn't communicate well. However, it wasn't until his family found out that he didn't understand, and in fact transgressed cultural law, that they thought something might be wrong and sought assistance.

Indigenous disability advocates from the NSW Aboriginal Disability Network agreed that disability can mean different things in different communities and is often a 'difficult conversation'.¹⁶³ Nonetheless, disability causes real needs and ultimately diminishes a young person's ability to participate in society if they are not given appropriate support and access. For this reason, any attempt to address disability should be within a rights based framework, rather than highlighting deficits and conferring labels.

- *Different models of service delivery*

The different circumstances and needs of Indigenous people with cognitive disabilities and/or mental health issues require different models of service delivery. Many practitioners and experts in the field affirmed the vital role of Indigenous controlled services as a way to access culturally appropriate service but also help 'sell' their own services. Forming these sorts of partnerships can help make services, which may otherwise be viewed with suspicion, more accessible.

162 Raphael, B., Swan, P. and Martnek, N., "Trauma for Australian Aboriginal People", in Danieli (ed), *International Handbook of Multigenerational Legacies of Trauma*, Plenum Press, 1998, pp327-339.

163 Griffis, D., Communication with the Social Justice Commissioner's Office, 27 April 2007.

According to Shane Brown, South Sydney Youth Services, in terms of providing mental health care it is essential to place services outside of mainstream mental health services for young people.¹⁶⁴ There is still a lot of stigma around mental illness and many young people do not want to be labelled. Therefore, they are more likely to use a service at a generic youth service or other outreach method.

Given that some Indigenous people live in remote areas, there is a need for greater flexibility. The Disability Services Commission in Western Australia has extensive experience in meeting these challenges. For them, it is thinking about alternative ways to purchase services, co-location with other services and economies of scale. So, if there is only one person in Fitzroy Crossing that really needs service, it can pay to be more flexible with service eligibility in order to get more people utilising a service.

Text Box 7: Making disability services work in a remote location

An example of how these concepts can come together is seen in a case from the Disability Service Commission about an Indigenous young man with mild to moderate intellectual disability.

He had come into contact with the justice system. He tends to 'get into strife when led by non ID peers' which is compounded by drinking. He lives in a remote area with no easily accessible services, although he is clearly in need of support to try and prevent further offending.

To get around this, workers came up with a plan to use existing Aboriginal Health Services in the area and funded a disability worker for one day a week. The worker has identified triggers for offending, as well as his strengths, and found that he is ok when his family are around. The worker keeps an eye of the family situation, provides support and has tried to influence peers not to "stir him up". There have also been conversations with the Police about his behaviour and how best to manage him without escalating conflict. So far, he has not re-offended.¹⁶⁵

b) The early years and family support

It should be noted that while there is some consideration of the early years, this report is primarily focused on the particular circumstances around older children and young people. However, the common message through all of the consultations and case studies was the need to intervene early, providing a solid family and community base. When asked what needs to be done to prevent Indigenous young people with cognitive disabilities and/or mental health issues from offending, most of the people made the connection between keeping families together, happy supported childhoods and good outcomes for children and young people, regardless of cognitive disability or mental health status.

Unfortunately, consultations reinforced that families are struggling, often resulting in high levels of child protection involvement. According to Phillip Narkle, respected Aboriginal Elder and Aboriginal Team Advisor with the Western Australian Intensive Supervision Program, 'it is isolation and separation from family, friends and communities that really damages these kids.'¹⁶⁶ This is not news to anyone, but when we consider the extra complexity of disability or mental health issues on struggling families, we can see that this group of children and young people are at higher risk of being separated from their families. Based on stories from practitioners, a majority of the Indigenous young people with cognitive disabilities and/or mental health issues have had involvement with the juvenile justice system and the child protection system.

164 Brown, S., Communication with the Social Justice Commissioner's Office, 1 March 2007.

165 Gornall, D., Communication with the Social Justice Commissioner's Office, 19 March 2007.

166 Narkle, P., Communication with the Social Justice Commissioner's Office, 20 March 2007.

Understanding and meeting the needs of young children with disabilities or mental health issues is essential to support families. Our consultations confirmed the picture of extreme socio-economic disadvantage, a very heavy burden of loss, family dysfunction, alcohol and drug use, child abuse, poor health and trauma. This burden of stress impaired family and community capacity to identify cognitive disability or mental health issues early on. Put simply, within such urgent, competing priorities, a child's developmental milestones or early signs of mental health issues tend to go unnoticed until they reach crisis point. While families are struggling to meet basic needs, these issues remain unnoticed.

However, there was a consensus that more needs to be done to build Indigenous family capacity to pick up these early signs. A good suggestion from the Aboriginal Disability Network was to increase the capacity of Aboriginal Health Workers to screen for any issues during routine health checks. Theoretically, while this should be happening on the ground, due to the level of stress and under resourcing, many Aboriginal health workers are too stretched to undertake this work. Damian Griffis, from the Aboriginal Disability Network notes that many do not have the specific disability knowledge required.

Similarly, there is also a need for more skills and education to support screening for mental health issues. One positive initiative is Aboriginal and Torres Strait Islander Mental Health First Aid Course (AMHFA). The AMHFA comprises of a 14-hour Mental Health First Aid Course and a research and evaluation arm. The purpose of the training is to provide people that come into contact with people with mental illness with basic skills and knowledge around causes, symptoms and management of mental illness. Like physical first aid treatment, it provides non-medical professionals with the opportunity to intervene before professional help arrives and increase their confidence in dealing with serious situations. The AMHFA is still in the pilot phase but is already yielding some good results.

The location of screening services and interventions is also crucial. Based on extensive research with Indigenous people with disabilities around NSW, Mr Griffis believed that there is still a very real fear that any disability or mental health issues of a child will be interpreted as poor parenting. Given past and present experiences of Indigenous communities, this is likely to lead to child protection action and removal of children. Locating these types of services in more trusted Indigenous controlled services could help overcome this barrier.

Jenny Thomsen, from the Aboriginal Disability Network also suggested building awareness of disability and mental health issues amongst mothers and carers through 'informal and friendly' interactions such as mothers groups. There is also a role for family support and parenting programs to help families deal with cognitive disabilities and mental health problems. These children often act out and display difficult behaviours which are very difficult for parents.

Any such parenting support programs need to be sensitive to the interplay between Aboriginal child rearing practices and family strain. Professor Milroy explained that Indigenous children have autonomy from an early age:

This works if a family is functional and well buffered, so that a child can learn independence within boundaries but if a family is dysfunctional, the child gets independence with no boundaries. They are seen as adults by 10 years of age, have no trust for others and won't listen to adults. So what is adaptive in the first 10 years to keep them safe becomes maladaptive later on.¹⁶⁷

The challenge is the help parents learn how to set boundaries with children in a way that still fosters appropriate independence and respect.

167 Milroy, H., Communication with the Social Justice Commissioner's Office, 22 March 2007.

Text Box 8: Promising practice for Indigenous children in out of home care

Unfortunately, not all children are able to stay in the care of their families for child protection issues. We know that young people in care are very disadvantaged across a range of indicators including health, education and involvement with the criminal justice system.

While there is little Australian evidence, we know from United States and United Kingdom research that children entering out of home care have a high prevalence of health problems and developmental disabilities.¹⁶⁸ United States research shows that 84% of children in a sample of foster care have developmental or psychological problems.¹⁶⁹ Given the heavy burden of poor health on Indigenous populations, the Royal Australian College of Physicians state that:

Aboriginal and Torres Strait Islander children coming into out of home care suffer an adverse double effect of wellbeing.¹⁷⁰

Case study: Kari Clinic

Kari Aboriginal Resource Inc coordinates out of home care for Indigenous children across South Western Sydney. Children can be aged between 0-17 years, although the majority are between 4-12 years of age.

Kari found that many of the children needing foster care would come in and out of the system without having their health needs assessed or met. To address this gap, the CEO of Kari, Paul Ralph, approached Liverpool Hospital about provision of immediate health assessments of children being cared for by Kari.

Following negotiations with Kari, Health and Department of Community Services established a community clinic offering comprehensive health assessments to all children entering out of home care with Kari in 2003. Children are provided with:

- Initial clinic with assessment provided by a paediatrician or early childhood nurse;
- Developmental screening and full assessment if required;
- Referral to speech therapy, occupational therapy and physiotherapy if required; and
- Priority access to dental, hearing and vision checks.

A comprehensive care plan is developed for each child which can be easily accessed later to ensure continuity of care and avoid duplication of service and assessment.

At this stage there is complete data on 79 children who range in age from 2 months to 13 years. The average age is 4.6 years. The majority of the children have suffered chronic neglect, physical abuse, exposure to domestic violence and around 20% had concerns about sexual abuse. The parents of the children presented with significant substance use and incarceration. Impaired cognitive abilities were a factor for some parents and 23% were known have experienced psychosis recently.

Based on the data collection:

- 32% had global developmental delay (of these 25% were in the moderate to severe category for intellectual delay);
- 63% had speech delay;
- 32% had behavioural or learning problems;
- 53% had hearing problems; and
- 19% had vision problems.

168 Royal Australian College of Physicians, *Health of Children in Out of Home Care*, RACP, Sydney, 2006, available at <http://www.racp.edu.au/hpu/paed/index>

169 Royal Australian College of Physicians, *Health of Children in Out of Home Care*, RACP, Sydney, 2006, available at <http://www.racp.edu.au/hpu/paed/index>

170 Royal Australian College of Physicians, *Health of Children in Out of Home Care*, RACP, Sydney, 2006, available at <http://www.racp.edu.au/hpu/paed/index>

In terms of previous assessments, 42% had been seen by a paediatrician and 13% had undergone psychometric or school assessments. However, only 2 of the foster carers had copies of the previous reports, so there were gaps in their knowledge of the child's needs.

One of the strengths of the model, according to Paul Ralph, is that the health assessments are accompanied by recommendations that can be reviewed by the health clinic team. 30% of the children were reviewed in the clinic and received further intervention.

Good partnerships have been developed between carers, Kari, Health and Department of Community Services. However, there are still challenges to ensure the recommendations are met. An independent qualitative review has found that while identification is occurring there are obstacles around implementation of recommendations:

- It can be difficult to contact caseworkers or foster parents about recommendations and follow up;
- Caseworkers were relying on foster parents to follow through with recommendations;
- Foster parents were sometimes reluctant to attend clinic or follow up on recommendations;
- Placements can breakdown and clinic staff are not necessarily informed.

Despite these barriers, Paul Ralph is 'very proud' of the clinic and thinks that it has made a real difference to the lives of the children. It is a significant breakthrough that these young people are actually receiving full health and developmental checks, with good quality reports and recommendations provided to foster carers. This can empower foster parents to set the children on the right path.

c) The school years

School, particularly primary education should be the basis for good outcomes for all children. For Indigenous young people with cognitive disabilities or mental health issues it should be a chance to identify impairments that impact on learning and put appropriate supports in place.

The predominant focus of our consultations was primary school. Primary school sets the literacy, numeracy and skills foundation needed for high school. If these skills are not mastered, children are unlikely to cope with high school. We know that Indigenous young people who end up in the juvenile justice system have low educational outcomes, dropping out of school early. This means that most of their education is probably at a primary school level.

Associate Professor Colleen Hayward, Manager of the Kulunga Research Network felt that the findings of the Western Australian Aboriginal Child Health Survey confirm this picture. Their research showed that no real gains have been made in educational outcomes for Indigenous young people over the past thirty years. Aboriginal children start from behind and are never able to make up the ground.

One promising initiative being implemented, according to Professor Hayward, is the Australian Early Development Index. The Australian Early Development Index (AEDI) is a measurement of a child's development, based on scores from a teacher completed checklist. It is used for children in their first year of school to look at aspects of:

- physical health and wellbeing;
- social competence;
- emotional maturity;
- language and cognitive skills; and
- communication skills and general knowledge.¹⁷¹

The AEDI is currently being validated across the nation. The Telethon Institute is looking at a culturally appropriate adaptation for Indigenous young people. The AEDI is not designed to specifically diagnose children with specific learning disabilities or areas of developmental delay, it does act as a preliminary way of looking at what needs or areas for further consideration are present for children.

171 Royal Children's Hospital, *Australian Early Development Index: Building better communities for children*, 5 March 2008, available online at: http://www.rch.org.au/australianedi/edi.cfm?doc_id=6211, accessed 25 March 2008.

The inaccurate identification of Indigenous children as having cognitive disabilities seems to be a very real issue in Indigenous communities. That is, there are a large number of Indigenous young people who are being labelled as having a cognitive disability when in fact they don't, or have a mental health issue instead. For Dr Chris Sarra, Director of the Indigenous Education Leadership Institution, the issue is entwined with the negative perceptions and expectations of Indigenous children.

Dr Sarra draws his expertise from over twenty years in the education system as a teacher, guidance officer, academic and principal. He was the first Indigenous principal at Cherbourg State School. A lot has been written about how to improve Indigenous education outcomes, but Dr Sarra's leadership at Cherbourg seems to have actually put these principles into practice. A key part of the process was shifting attitudes of school staff, community and children.

Dr Sarra argued that mainstream Australia has very negative perceptions of Indigenous people. This filters down to those involved with the education system. Some teachers have lower expectations of Indigenous children based on the 'complexity'¹⁷² of Indigenous young people and perceptions that Indigenous families 'don't value education.'¹⁷³ Indigenous children and young people internalise these perceptions and low expectations to the extent that there is 'collusion between school and children's mind sets'¹⁷⁴ which ultimately produce failure. Judy Gould, a speech pathologist and doctorate researcher who has worked extensively with Indigenous young people in schools across Australia, characterised a 'culture of deficit'¹⁷⁵ in many schools.

In a context where schools regard Indigenous children and young people with low expectations and hold attitudes about children's capacity based on cultural assumptions, testing for intellectual disability is frequently misused. According to Ms Gould, testing for intellectual or cognitive disability can often be used to 'confirm what they think about kids'¹⁷⁶ rather than constructively investigating any actual disability issues. Young people who act out are often labelled as intellectually impaired without any consideration of other issues that may be impacting on their behaviour such as family stress, language problems and particularly, hearing problems. Based on her research, Ms Gould found that instead of a child's needs being considered holistically, the 'default setting is intellectual disability.'¹⁷⁷

A lack of contextual awareness creates a very limiting lens to look at Indigenous young people's experiences at school. As well as incorrectly assessing cognitive disabilities, Professor Milroy noted the potential to misunderstand young people with mental health issues. As previously mentioned, at least anecdotally, there appears to be a large number of young people who could be diagnosed with post traumatic stress disorder. There is a real risk that their behaviour will be interpreted as cognitive disability rather than ringing alarm bells about mental health and leading to appropriate treatment. Professor Milroy has worked with children who have been expelled from school as early as year one due to undiagnosed PTSD. This represents a failure of the education system to look behind behaviours to understand underlying issues.

Dr Sarra and Ms Gould observed a misplaced view amongst some staff that even if the young people do not actually have an actual cognitive disability or intellectual impairment, 'at least they are getting extra help at school'.¹⁷⁸ However, the fundamental flaw in this argument is that being labelled as having a cognitive disability or intellectual impairment often leads to worse, not better outcomes, for the child.

As previously noted in the literature review, incorrect diagnosis based on Indigenous status may raise a case for indirect discrimination. This may be covered under the Racial Discrimination Act 1975 even if being identified as having a disability lead to additional services. This is because the label and subsequent treatment are less favourable and detrimentally affect the child's rights.

172 Sarra, C., Communication with the Social Justice Commissioner's Office, 16 April 2007.

173 Sarra, C., Communication with the Social Justice Commissioner's Office, 16 April 2007.

174 Sarra, C., Communication with the Social Justice Commissioner's Office, 16 April 2007.

175 Gould, J., Communication with the Social Justice Commissioner's Office, 18 April 2007.

176 Gould, J., Communication with the Social Justice Commissioner's Office, 18 April 2007.

177 Gould, J., Communication with the Social Justice Commissioner's Office, 18 April 2007.

178 Sarra, C., Communication with the Social Justice Commissioner's Office, 16 April 2007.

For instance, Ms Gould recounted an all too common scenario, where a child in Year 1 was doing well at school but the family had come into hardship and were dealing with grief and loss issues. The child then started acting out in class and was soon treated as ‘naughty’ and assessed as having an intellectual impairment. The child was taken out of mainstream classes and placed in special education instead. There was no consideration of the family issues at play and the child was taken away from peers and the only teaching aid that was actually able to engage the child in learning.

Children are acutely aware of labels and categories. Even from Year 1, the children knew the special education class as the ‘dummies class’. This impacts on children’s self esteem, identity and most importantly, desire to attend school. Dr Sarra believes that children (and teachers) perform to expectations, which can have serious consequences for children who are labelled as ‘dummies’ and taken away from peers.

This particular child was only in the special education class for around a year but during that year lost track of the work and skills being learnt by the children in the mainstream classes (which was already way behind minimum standards). So while there probably wasn’t a good reason for the child be in the special class, the child ‘lost a year of learning opportunity, you can’t get that back.’¹⁷⁹ Ms Gould assessed that this may have damaged this young person’s chances. Without these foundational skills, children struggle to keep up and gradually disengage from school.

Another reason for the inappropriate labelling of children is tied to funding. Children with cognitive disabilities or requiring additional support obviously attract additional funding to schools. At least in Queensland, funding used to be allocated to individual students to purchase teacher’s aide hours and other support. It is now provided to schools without restriction and can be used to pay for additional teachers rather than support specific to the individual child. Anecdotally there is evidence of Indigenous children being assessed as intellectually impaired without even informing the parents or caregivers.

Aside from the enormous ethical issues, how can any positive change be made by the school, and with the family, if there is not basic communication and cooperation in the child’s best interest? Legally, it would seem that not consulting with the child or their parent(s) is in breach of the Disability Standards for Education under the Disability Discrimination Act 1992. These standards state:

Before the education provider makes an adjustment for the student, the education provider must consult the student, or an associate of the student, about:

- 1) whether the adjustment is reasonable; and
- 2) the extent to which the adjustment would achieve the aim in paragraph 4.2 (3) (b), 5.2 (2) (b), 7.2 (5) (b) or 7.2 (6) (b) in relation to the student; and
- 3) whether there is any other reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student.

Issues of incorrect assessment aside, data shows that there is still a group of Indigenous young people with cognitive disabilities and/or mental health issues. The question is how do we assist these children to enhance life chances? Once again, those we consulted with highlighted the similarities more than the differences of Indigenous children without cognitive disabilities. As the research has been telling us for the last 30 years, we need an education system that engages with families and communities; that provides a strong literacy and numeracy base early in life; and fosters a strong Indigenous identity. We heard that there are lots of strategies and policies but only pockets of practice where this is happening on the ground.

Teachers and practitioners recommended that getting assessment right is the first step. This means using standard IQ and other testing, but only as part of a ‘bigger picture that looks at young people holistically.’¹⁸⁰ After all of these things have been considered, if a cognitive disability is still found, there needs to be a conversation with parents or caregivers about what this means. One of the main advantages of identifying a cognitive disability early should be that it increases the chances of the family understanding and dealing with a young person’s behaviours.

In terms of school support, especially for Indigenous children, the preferred strategy is working with them in mainstream classes with a teacher’s aide wherever possible, rather than segregating them from peers.

179 Gould, J., Communication with the Social Justice Commissioner’s Office, 18 April 2007.

180 Sarra, C., Communication with the Social Justice Commissioner’s Office, 16 April 2007.

Text Box 9: What can be achieved: Cherbourg State School

Cherbourg State School is an Aboriginal Community School, 300kms out of Brisbane on the site of the former Cherbourg mission. It had the reputation of one of the most disadvantaged and dysfunctional schools in Queensland, with low literacy and numeracy outcomes and very high levels of absenteeism.

When Dr Chris Sarra arrived as the principal in 1998 he set about making fundamental changes to school. He challenged school staff to look at their attitudes towards students and raise their expectations of the children. He also challenged children to raise their own expectations and required them to meet higher standards of behaviour, attendance and learning.

This seems to have worked. Over an eighteen-month period unexplained absences dropped by 94%. Improved attendance also led to better educational outcomes. The diagnostic reading tests of year two students originally showed that 100% of children were below expected reading rates. Two years later, less than half were below expected reading levels. These shifts were also evident for older children. In 1999 all of the year 7 students were significantly below the state average for literacy, by 2004, 17 of 21 year 7 students were achieving within the state average range.¹⁸¹

The foundation for creating these changes was a promotion of positive models of Indigenous identity. Dr Sarra explains that:

When we talked about developing a positive identity, this meant for us being Strong. When we talked about achieving outcomes, this meant for us to being smart. So we developed a new motto - 'Strong and Smart'. Today everywhere you go in our school you will see that all of the behaviour of all of the pupils and of the staff hangs off being strong and smart.¹⁸²

To get the children to really take the new motto on board, a new school song based on a football song was adopted enthusiastically by the children:

Jingle Bells, Jingle Bells
Cherbourg School is here.
We're young and black and deadly,
Come and hear us cheer.
Bring of every challenge,
And put us to the test.
We're from Cherbourg State School,
And you know we're the best.

Dr Sarra describes these changes as 'simple yet complex'.¹⁸³ The reason for success was that it provided 'leverage' to address thinking and behaviour. Dr Sarra could then challenge the children to put it into practice:

It has to be more than words coming out of your mouth...the things that come out of your mouth have to match the way you behave...so you can't say to me that you are 'strong and smart' and then go missing from school... You can't tell me that you are young and black and deadly, and then play up and give the teacher a hard time!¹⁸⁴

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- 181 Sarra, C., 'Stronger Smarter School Outcomes through Aboriginal perceptions of being Aboriginal' (2006) 11 *Griffith Review*.
- 182 Sarra, C., 'Stronger Smarter School Outcomes through Aboriginal perceptions of being Aboriginal' (2006) 11 *Griffith Review*.
- 183 Sarra, C., 'Stronger Smarter School Outcomes through Aboriginal perceptions of being Aboriginal' (2006) 11 *Griffith Review*.
- 184 Sarra, C., 'Stronger Smarter School Outcomes through Aboriginal perceptions of being Aboriginal' (2006) 11 *Griffith Review*.

The other crucial component in giving children pride in their identity was an Aboriginal studies program for all students. Importantly, it tried to balance and explain some of the problems facing the community so that:

Our children had to understand that while such ugly issues were prominent in Indigenous communities, including Cherbourg, they are unquestionably the legacy of other historical and sociological processes, and not the legacy of being Aboriginal.¹⁸⁵

This quality of leadership and the principles for teaching provided a foundation for all Indigenous children. From Dr Sarra's experience at Cherbourg State School, unless we manage to get these things right we can't really begin to address the specific needs of Indigenous young people with cognitive disabilities and/or mental health issues 'in a meaningful way'.¹⁸⁶

Since Dr Sarra has left the school, some of the progress has been maintained and Cherbourg is now a much more positive place than before. Dr Sarra acknowledges that there is no single, easy fix to Indigenous education as it requires attitude change rather than just programs.

d) Early Adolescence and Offending

So far we have seen that struggling community and family backgrounds, lack of early identification and support, the systemic failure of the school system and disengagement from education all mark a steady progression into offending for many Indigenous young people with cognitive disabilities or mental health problems. By the time they reach late childhood and early adolescence, our consultations have found that many are already involved in anti-social or offending behaviour.

▪ *Causes of Offending and Early Intervention*

The reasons for involvement in offending are similar again, to other Indigenous young people. However, this group is more vulnerable and less understood by police and other criminal justice workers. For young people who have struggled at school due to a cognitive disability or mental health issue, offending often relates to the child development principle of 'mastery'. Professor Milroy stated that because many of these young people didn't master skills at school, they keep trying until they find something that they are good at. For many of these young people, being 'tough' and then getting into trouble is something that fills that gap. Conversely, if support and encouragement was given to these young people to channel their strengths and energies into something more positive, they could also achieve a sense of mastery and increased self esteem without offending and anti-social behaviour.

Identity was a common theme in all of our consultations. As previously stated, Indigenous young people often struggle to find role models and cultural identity. Linda Bamblett, Manager of the Victorian Aboriginal Community Services Association Limited (VACSAL) that provides support to young Kooris involved with the juvenile justice system believed that many of their clients are 'like fringe dwellers on Koori and mainstream society'¹⁸⁷ and are seeking some sort of belonging.

One way of creating belonging and identity is the formation of groups. For instance in Melbourne, Ms Bamblett argued that a group of Koori young people have, 'taken it upon themselves to make their own cultural identity, belonging and acceptance'¹⁸⁸ through the formation of the 'Koori Kripps'. This group of young people is involved in offending and fights other similar groups of young people. Workers felt that young people with cognitive disabilities were especially susceptible to joining these groups as they may already have lower self-awareness and self esteem.

The situation has caused considerable concern in the community and people have come together to try and address the reasons that have led these young people into this group rather than more positive ways of expressing their identity. Without condoning the bad behaviour and potential for violence, there was a real acknowledgment that these groups can form in response to perceived or real threats from other groups. Due to low confidence in police protection, these young people reportedly decide to protect themselves.

185 Sarra, C., 'Stronger Smarter School Outcomes through Aboriginal perceptions of being Aboriginal' (2006) 11 *Griffith Review*.

186 Sarra, C., Communication with the Social Justice Commissioner's Office, 16 April 2007.

187 Bamblett, L., Communication with the Social Justice Commissioner's Office, 30 March 2007.

188 Bamblett, L., Communication with the Social Justice Commissioner's Office, 30 March 2007.

All of the workers on the ground noted the need to deal with the issue of groups of young people, or 'gangs' with great sensitivity. There is the potential for the perception of 'criminal gangs' to be politicised and create demonising images of Indigenous young people. The media portrayal of the Adelaide 'Gang of 49' was cited as testament to the danger of reinforcing of negative stereotypes. If young people are forming these groups because they feel alienated and marginalised from society, such approaches are insensitive and counter productive.

We also can't underestimate the impact of poverty on these young peoples' involvement in offending. We heard many stories of Indigenous young people, especially in rural and remote areas stealing to survive. Young people with cognitive disabilities can lack the skills to negotiate 'the system' and engage in rather reckless offences to get money for food and basic necessities.

Another recurrent theme in the consultations was the impact of family violence, leading to offending and also mental health problems. Lester Corning, manager of the Victorian Aboriginal Health Service Family Counselling Service, told us of his experience working with children who were stealing to survive as their parents were off gambling or drinking. The children would then get caught; often the father would hold the mother responsible, resulting in severe abuse and violence. The children would witness this violence, often impacting on their own mental health. Mr Corning described this cycle:

These kids are on a roundabout of floggings and hurt. They get flung off occasionally, we call that suicide or mental health but not much happens to stop it.¹⁸⁹

Many of these young people find themselves in need of mental health services. However, we heard from practitioners that there is a severe lack of mental health services. For instance, Anthony Brown, Indigenous family counsellor at the Victorian Health Service, estimated that they would receive about thirty referrals for service in a month, whilst they are only resourced to work with around thirty families in a year. Many of these young people are involved with juvenile justice or at extreme risk of involvement.

Text Box 10: Promising Practice: Tirkandi Inaburra Cultural and Development Centre

Tirkandi Inaburra is an Aboriginal community controlled early intervention centre in Coleambally, Central Southern NSW, which provides a culturally based residential program for Aboriginal boys between 12-15 years of age. The aim of the centre is to reduce the likelihood of Indigenous youth becoming involved in the criminal justice system.

Tirkandi Inaburra means 'learn to dream' in the Wiradjuri language and the centre's vision is 'Boys to Men Learning to Live their Dream'.

Tirkandi is the only program of its kind in Australia. Funded by the NSW Attorney General's Department, it has been operating since January 2006. While it is still in the pilot phase there seems to be some very promising results and changes in the participants.

Tirkandi Inaburra's program provides educational, recreational, life and living skills and cultural awareness activities which develop a participant's skills and abilities and strengthens his self-worth, resilience and cultural identity.

At any one time, up to 16 boys can participate in program. The program runs for three to six months and is voluntary. The program targets boys who are at risk of becoming involved in the juvenile justice system.

School based education is an integral part of the program, with a school provided on site. Intensive support and learning is facilitated by three teachers and two teacher's assistants.

There is a strong strength based therapeutic element running throughout the program. Each participant has an individual case plan. Case planning includes planning for exit following the young person 'graduation' from the centre.

189 Corning, L., Communication with the Social Justice Commissioner's Office, 30 March 2007.

While Tirkandi Inaburra doesn't specifically target young people with cognitive disabilities or mental health issues, the Executive Officer Colleen Murray is of the opinion that a significant number of the young people that come to the centre have undiagnosed and untreated cognitive issues which have effected their education. All of the boys present with challenging behaviours which are often labelled as Attention Deficit Hyperactivity Disorder. The reality is that many of these behaviours are 'learned' responses and need to be unlearned. The centre takes the time to consider the unacceptable behaviours displayed and attempts to address the underlying issues which have caused such behaviours.

Tirkandi Inaburra is structured around school terms. For many participants, their time on the program is only time in their lives that they have attended a whole term of school.

All Tirkandi Inaburra's activities, including school based education are delivered using a Connected Outcome Groups framework (COGS). The participants are challenged to learn and are provided with intensive support.

The dedicated and experienced staff at the centre take the time to identify any possible cognitive issues that may impact on learning.

Attending school consistently is not the only new experience for the boys. The program provides the participants with many opportunities to engage and learn from new experiences.

For instance, in cultural activities they learn to make and play didgeridoos, do Aboriginal dances and learn about Aboriginal history. In life and living skills activities they learn how to cook and clean and take care of themselves and are empowered to make better decisions by increasing their emotional intelligence in subjects such as positive thinking, conflict resolution, problem solving, respect etc. In the sport and recreation activities they are exposed to the concept of team and trust and encouraged by the rule of 'have a go and try your best'.

It has become patently obvious to the staff that the vast majority of the boys have been denied attention, praise and positive reinforcement and have significant self esteem and self image issues. In particular the boys view their time at school as a failure, they are often labelled as 'bad kids' and are placed in remedial classes which in essence are behavioural classes and are expected to achieve little. In addition they receive little support and encouragement from family members.

The program and all the interactions with staff are built on recognising strengths and developing mutual respect. Aboriginal workers play a huge role in helping the boys understand their culture and connections. Many of the boys don't know where they fit in. At the centre they are supported in a safe, secure and positive environment and are taught to be proud of their identity.

Tirkandi Inaburra is well linked into the broader community with relationships with government and non government agencies including Department of Education, Juvenile Justice, Police, Department of Community Services, Greater Southern Area Health Service and the Griffith Aboriginal Medical Service.

At the centre the boys are introduced to rigor, boundaries and expectations. They are expected to conform to the rules of the centre which are:

- Have Respect
- Behave Well
- Keep Clean
- Stay Safe
- Have a Go and Try Your Best

The participants are 'invited to take responsibility' for their own decisions and the consequences of those decisions. They are rewarded for good choices and penalised by way of a consequence for poor choices. This strategy, coupled with strength based communication, an increased emotional intelligence and a nurturing environment has demonstrated that overtime a participant can make better decisions, "unlearn" his inappropriate responses and modify his own behaviours.

Not all of the participants who are accepted into the program graduate from the program. As this is a 'voluntary' program some leave of their own volition and others are sent home for continual non-compliance or exhibiting unacceptable levels of violent or threatening behaviour. Introducing rigor and boundaries into the lives of boys who have had little exposure to these concepts and confronting challenging and unacceptable behaviours does cause an escalation of poor behaviour in the initial weeks of the program. But in order to change the pathway in life for participants these anti-social behaviours must indeed be challenged.

At the end of each school term a formal graduation ceremony is held for those boys that do rise to the challenge and do commit to changing their pathway in life. The ceremony is a celebration of the achievements of the boys and is always well attended by family and community members.

Tirkandi Inaburra is currently being evaluated but anecdotally, at least, it seems to be making some big changes. The Executive Officer estimates that close to 90% of the graduates of the centre have re-engaged with school and community life and families are seeing positive changes in their young people. As one said, 'I think I brought the wrong kid home with me but I'm keeping this one!'

Tirkandi Inaburra is an innovative program with the potential to prevent offending of Indigenous young people, including those with mental health and cognitive disabilities. The only concern now is sustainability.

The Executive Officer is convinced that Tirkandi Inaburra is making a difference. But she is also acutely aware that for a participant to remain resilient and to sustain the personal change he has worked so hard to achieve, he needs the ongoing support of the significant others in his life.

Family members, schools and communities need to now match the conviction of this centre and its graduates and continue to support and guide these young men throughout their lives beyond this centre

As Professor Cunneen pointed out, they are essentially doing all the work of the Department of Juvenile Justice but with a fraction of the resources.¹⁹⁰ This highlights the importance of meaningful support from government agencies and partners to ensure success.

▪ *Police Contact*

Consistent with the literature review, in the field it was reported that Indigenous young people with cognitive disabilities and/or mental health issues are more likely to have involvement with the police. Notably, in Western Australia, the Western Australian Aboriginal Legal Service found that the Northbridge curfew and move on laws disproportionately affect Indigenous people and people with mental health issues. This was due to greater use of public space and high levels of homelessness. In their experience, when young people were asked to move on by police, often for trivial reasons, the situation quickly escalates, leading to further charges. Adding mental illness or cognitive disability to this volatile mix and the 'trifecta' of offensive behaviour or offensive language plus resist arrest and assault police officer, often brought these young people into the juvenile justice system.

Police act as gatekeepers of the juvenile justice system. Police have great discretion to either charge or divert young people. While all agreed that diversion was the ultimate goal, unless something is done to assist young people at the point of police diversion or contact, it is highly likely that they will be in trouble again. Although some young people get in trouble as a one off, many of the Indigenous young people with complex needs, including cognitive disabilities and/or mental health issues, continue offending. So while Police must use cautions and warning and other diversionary options, there is an argument for providing some sort of 'help and not just a slap on the wrist', as an early intervention. However, this must be balanced with net widening concerns and be voluntary.

190 Cunneen, C., Communication with the Social Justice Commissioner's Office, 19 April 2007.

Text Box 11: Promising Practice: Killara Youth Support Services

Killara Youth Support Services is an early intervention service run by the Western Australian Department of Corrective Services. Killara provides an outreach service to young people and their families who have been involved with the Police, or may be at risk of Police involvement. Killara operates from 8am to 1am seven days a week.

Most of the young people who work with Killara have been cautioned by the Police. Caseworkers look at all the police cautions issued to young people in the metropolitan area and contact young people and families to offer assistance. Referrals can also be received from schools and young people and families themselves.

Killara offers short term counselling and support on a purely voluntary basis. They offer assistance with issues such as family conflict, drug and alcohol use, school and behaviour problems. Work usually occurs in the young person's or family home. Staff are often involved in assisting parents with parenting skills such as setting boundaries and managing conflict. As well as counselling, staff provide referrals and links to other services and have a dedicated education worker who helps with transitions back into the school system.

Killara staff report that around 15% of their client group is Indigenous. Killara employs some Indigenous caseworkers who tend to work with any Indigenous young people and their families.

Given the very high levels of over representation of Indigenous young people in the custody, only 15% seems a relatively low rate. This may be reflective of the lower usage of cautions with Indigenous young people and that the service is voluntary. Staff acknowledge that it can be very difficult to 'sell' Killara to Indigenous young people and their families when they know it is associated with the Department of Corrective Services. However, Indigenous staff go some way to breaking down these barriers.

In an acknowledgement of the success of the Killara model, a new program is being developed in Geraldton. It is anticipated that the Geraldton program will service much larger numbers of Indigenous young people at risk given the demographics of the area. The service is being developed in consultation with the Geraldton Community Reference Group which includes a range of Indigenous community members and leaders.

- *Formal Diversion and Court Contact*

Many Indigenous young people miss out on the early intervention services and positive school experiences which foster positive identity and provide opportunities to a better life. If these services have failed, the next point of intervention usually comes at formal diversion and court contact.

Supported by the research, those we consulted with found that Indigenous young people mostly offending at an earlier age. Tirkandi Inaburra workers reported that many of their clients may have been offending even before the age of criminal responsibility, so by the time they reached 10 years of age police already perceived them as 'a menace and come down hard'.¹⁹¹ Cautions and warnings all get used up much earlier and young people are referred to diversionary options such as conferencing sooner than non-Aboriginal children, if at all.

Dr Harry Blagg, of the Crime Research Centre in Western Australia was critical of the impact that conferencing has had on Indigenous young people. He believes that diversion is 'still failing Aboriginal kids'¹⁹² and very little improvement has been made over the past 15 years. As long as the police remain the gatekeepers of this system and there is little transparency at the level of discretionary decision making, this will remain the case. In fact, the diversion of so many non-Aboriginal offenders through conferencing, leaving an over represented group of Indigenous offenders behind, further stigmatises Indigenous people and feeds into negative stereotypes of Indigenous people as offenders.

191 Seymour, M., Communication with the Social Justice Commissioner's Office, 3 April 2007.

192 Blagg, H., Communication with the Social Justice Commissioner's Office, 22 April 2007.

Within this dynamic, Indigenous young people with cognitive disabilities or mental health issues are once again considered especially disadvantaged. Most had very little confidence in police being able to pick up on these issues and there seems to be little reported capacity to adapt the process to meet their needs. This is disappointing because a conference run along a restorative justice model has the potential to ‘make things right’ with the offender, victim and community and develop a plan which can help the offender find their place in the community.

Text Box 12: Promising Practice: Awareness and Sensitivity in Youth Justice Conferencing

A promising exception to this perception is a pilot program conducted by the Youth Justice Conferencing division of the NSW Department of Juvenile Justice. Conference convenors in the Fairfield area trialled a screening tool designed to pick up on any cognitive disability issues of conference participants.

Developed in consultation with the Criminal Justice Support Network, Department of Disability, Ageing and Home Care and other stakeholders, the screening tool provided a straight forward checklist for convenors, aware that many had no expertise in these issues. Convenors are not required to make an assessment of the nature or extent of a person’s condition, but they are required to try and make the conference equitable for everyone to maximise participation.

Checklist for Additional Support Needs in Youth Justice Conferencing

Indicators of intellectual disability, cognitive disability or mental health issues:

- More difficulty following and remembering instructions
- More difficulty understanding explanations – but may cover up that they don’t understand – you need to continually check
- More difficulty reading everyday language
- More limited writing skills
- More difficulty concentrating for the time you’d expect, easily distracted
- Difficulty understanding questions
- Many be slow to respond to questions or try and avoid them
- More than usual difficulty communicating ideas
- Difficulty with abstract concepts like time and dates, their thinking may be more concrete
- More likely to look at the whole ‘big picture’ and find it difficult to focus on a specific issue
- More difficulty weighing up options and being able to think or plan ahead
- May have inflexible thinking – getting stuck on a particular idea and be repetitive
- More difficulty remembering information
- May display inappropriate social behaviour, like not observing personal space
- Person’s body language and expression many not match their words
- Compulsive or repetitive in their actions eg. Rituals in certain tasks, ie. Hand washing, lining up objects, or there could be something more obvious like pulling their hair, rubbing arm for no reason etc.
- Avoiding eye contact. This needs to be in the context of their cultural background as some cultures consider it rude to make direct eye contact. So it needs to be considered in the context of their general appearance, ie. Slouched shoulders, body withdrawn, and presentation of voice, tone, etc, while making note of any cultural differences that are the norms for that culture
- The person may seem to be responding to stimuli not present in the room. This could be noted by being distracted, difficulty following conversations, talking to someone not present etc
- In the course of the conference preparation, you may discover that there have been changes in the person’s mood, or behaviours, sleep or eating patterns for no apparent reason that makes sense.

Basic training and tips for working with people with cognitive disabilities was also provided to ensure that conference convenors could then make necessary adaptations to the process. If any participants were identified as having issues, convenors could then try and accommodate their needs within the conference process. Links were made with the Criminal Justice Support Network, a specialist support agency for people with intellectual disability involved with the criminal justice system, to provide additional assistance to convenors or participants if appropriate.

The pilot received good feedback from convenors who appreciated the prompts of the screening tool and education and support of disability support services. According to Lynn Davie, Manager, Fairfield Youth Justice Conferencing, it also increased their general effectiveness as it made them consider special needs and contextual issues of all participants, whether they had a disability or not.

The pilot did not include many Indigenous young people, primarily due to the geographic boundaries. However, Christine Sheeley, Youth Justice Conferencing project manager, feels that it could be an equally successful tool to skill up convenors dealing with Indigenous young people. The development group were also conscious of problems with hearing that we know effect many Indigenous young people. Training has been provided to conference convenors.

The pilot is now being evaluated but will be rolled out across the state and it is hoped it will be especially useful in country areas of NSW where there are larger numbers of Indigenous young people come into contact with Police. This is an instance of a simple adaptation to practice that has the capacity to increase service access for people with cognitive disabilities and/or mental health issues.

Our consultations found that the situation didn't improve as the young person moved to more formal proceedings. Aboriginal Legal Services felt that legal staff often lacked the knowledge and resources appropriately deal with Indigenous young people with cognitive disabilities or mental health issues. A former NSW ALS solicitor reported:

everyone knows the factual things about Aboriginal people and mental health and have statistics in their head, but some magistrates find it very difficult to apply it in real life... I have seen otherwise very insightful magistrates making some bad decisions.¹⁹³

Aboriginal Legal Services staff expressed a need for practically based training aimed at magistrates and legal professionals to increase their awareness of these issues, the prevalence of mental health and cognitive disabilities and a basic understanding of some of the signs. Of course, this is no replacement for proper assessment but it helps build recognition of the issue.

We heard that Indigenous young people seem to be missing out on diversion from the juvenile justice system under mental health provisions. For instance, in NSW there is a provision for diversion under the Mental Health (Criminal Procedure) Act. Section 32 of the Act applies if:

it appears to the Magistrate that the defendant is (or was at the time of the alleged commission of the offence):

- (a) developmentally disabled; or
- (b) suffering from a mental illness; or
- (c) suffering from a mental condition for which treatment is available in a hospital;

but who is not a mentally ill person within the Mental Health Act.¹⁹⁴

If this applies, the Magistrate can divert the offender by dismissing the charge and discharging the person:

- (a) into the care of a responsible person, unconditionally or subject to conditions;
- (b) on the condition that the defendant attend a certain place for assessment and/or treatment; or
- (c) unconditionally.¹⁹⁵

This should be a good way of dealing with Indigenous young people with cognitive disabilities and/or mental health issues as it has the capacity to order treatment but doesn't necessarily involve the young person in the juvenile justice system.

193 Rothman, C., Communication with the Social Justice Commissioner's Office, 2 March 2007.

194 *Mental Health (Criminal Procedure) Act 1990* (NSW), s32.

195 *Mental Health (Criminal Procedure) Act 1990* (NSW), s32.

Anecdotally, this is being under utilised for Indigenous young people. Firstly, because of the appalling gaps in service there is no confidence among magistrates that the person will actually receive treatment. Secondly, the reports required can be up to \$600 and therefore beyond the budget of stretched Aboriginal legal services unless the young person is facing custody. Finally, many of the young people with these complex issues are likely to breach bail in the time that it takes to prepare the report due to inadequate support. In a way, going through this process can be setting them up to fail.

Text Box 13: Promising Practice: Justice Health Court Liaison Scheme

The large number of young people with mental health issues in the juvenile justice system has prompted the development of a Court Liaison Scheme in NSW. It is run by NSW Justice Health, the government agency responsible for the health care provision to adult prisoners and juvenile detainees.

The Court Liaison Scheme commenced in January 2006 and was initially based at Cobham Children's Court in Western Sydney. This site was originally chosen as it takes in most of Western Sydney. It includes Blacktown Local Government Area, the highest Indigenous population in the state.

The program is essentially an assessment and referral service for young people before the court that may have mental health issues. Very few young people present with confirmed diagnoses, instead there is often a general sense from workers and legal practitioners that something is 'not quite right' and then referred to the on site Justice Health mental health practitioner.

The Justice Health worker then prepares a detailed assessment with the young person. If a young person has a mental health issue the worker will present a treatment plan to the court. An integral part of the assessment is checking if the young person is known to any other mental health services to ensure collaboration and consistency. However, it is estimated that about half of the young people have no support in place, especially as any mental health issues are only starting to emerge.

The treatment plan includes both community and custodial options, as it is not the place for workers to tell the Courts what to impose. Nonetheless, according to workers, most of the time the community based treatment recommendations are followed. In terms of diversion, charges can either be dismissed with recommendations for the treatment plan to be followed, or can be imposed through a supervised bail arrangement. For many magistrates, the advantage of a supervised bail arrangement is that some support is provided by juvenile justice to ensure the treatment plan is met. The deferral of sentence also provides a good incentive for the young person to make changes to avoid further consequences.

It is not specifically within Justice Health's mandate to work with young people with a cognitive disability. This responsibility lies with the Department of Disability, Ageing and Home Care (DADHC). Staff note that some of their young people do present with borderline intellectual disability issues and Aspergers syndrome. The capacity to conduct assessments about risk to the community may pick up on some of the risk behaviours of these young people. Recommendations can still be made but it is the responsibility of DADHC to follow up on these.

In addition to the Court Liaison Scheme, Justice Health also run community clinics that provide very detailed assessment, recommendations and consultancy to young people involved with the Department of Juvenile Justice and the Department of Community Services.

At October 2006, over 60% of the young people that went through the Court Liaison Scheme and Community Clinics identified as Indigenous. There have been conscious attempts to engage Indigenous communities. When the program was set up, workers consulted with the community and involved local Elders in the program. Workers explained what the program was about and then sought feedback and guidance on how they should work with Indigenous young people. There is a commitment to involve families wherever possible and strong links have been made with local Aboriginal Medical Services and the Aboriginal Legal Services.

Justice Health is recruiting an Aboriginal identified mental health trainee. The traineeship will include support to complete a health worker course through Charles Sturt University. It is planned that the identified Aboriginal trainee position will work with young people as well as having the capacity to engage with the community and build the organisational capacity to address Indigenous issues.

The Court Liaison Scheme has since expanded to Parramatta Children's Court. Given the good results so far, there are also plans to extend the service to other metropolitan court locations.

Since the 1990s there have been a range of alternative court models and processes. Notably, these have included Indigenous courts and mental impairment/intellectual disability courts. By and large, those we consulted with were positive about the developments. There was a sense that traditional courts may misinterpret the behaviours of Indigenous young people with cognitive disabilities or mental health issues, often attributing non-compliance and particular presentations to cultural reasons. Juvenile justice practitioners saw the greater likelihood of these courts to notice and intervene in cognitive disability or mental health issues, as they had greater cultural understanding and awareness of 'where the kids are coming from'.¹⁹⁶

The process of sitting around a table and discussing the offence and options is also more likely to achieve engagement with Indigenous young people with cognitive disabilities according to juvenile justice workers. Unlike other court proceedings, the less formal nature means that there are opportunities to check whether the young person actually understands what is going on and subsequently any outcomes or orders which they need to abide by. The role of Elders and recognition of culture is also important in achieving accountability and demonstrating that offending is not acceptable to the Indigenous community either. For young people with cognitive disabilities this concrete display had the potential to really sink in.

Text Box 14: Promising Practice: Intellectual Disability/Mental Impairment Court Based Diversions

In an acknowledgment of the large number of people with intellectual disabilities and cognitive disabilities in the justice system court based diversion programs have been developed in some jurisdictions (Western Australia, South Australia and Queensland). At this stage only adult offenders are eligible but it may be an option worth considering for young people as well.

In Western Australia, the Intellectual Disability Diversion Program (IDDP) is characteristic of these programs. According to Amanda Perlinski, Program Coordinator, IDDP has had success in working with Indigenous offenders. The program was developed in 2002 and is now a permanent program funded by the Department of Corrective Services.

The IDDP works along a therapeutic jurisprudence model. Magistrates, prosecutors and lawyers work to case manage an offender and solve problems that impact on offending. It is about diversion into treatment rather than traditional criminal justice options.

The IDDP, based at Perth Magistrates Court, receives referrals from lawyers, family members, carers, health professionals, police, court staff and community corrections officers. When a person is accepted, a detailed case plan is developed which links them in with service providers. Many have not received service in the past. The person is regularly reviewed at court to make sure they are complying with their plan and continuing to meet with service providers. Reports are provided by the IDDP coordinator.

196 Bamblett, A., Communication with the Social Justice Commissioner's Office, 30 April 2007.

Ms Perlinski describes the participants on the IDDP as a ‘very challenging group of clients who frequently fall between the gaps’¹⁹⁷ of available services. For many, particularly Indigenous participants, this may be the first time any cognitive disability is ever identified. A typical example for Ms Perlinski is an Indigenous young adult who has recently joined the program. Despite having been in juvenile custody for extended periods of time, no one managed to pick up on his very obvious cognitive disability. In fact, it was only by chance that Ms Perlinski overheard a conversation between a legal aid solicitor and the person, and offered assistance, that he was even identified at this point.

This lack of appropriate identification and service for Indigenous people is not unusual. In Ms Perlinski’s opinion it filters back to juvenile justice and education systems who don’t value Indigenous young people. Often:

nobody bothers with the Aboriginal kids sitting up the back of the class because there is an attitude that they don’t do well and will just leave anyway.¹⁹⁸

From the example mentioned, this young adult was in considerable need when we started on the program. He had little family support and was desperately needing accommodation. The IDDP was able to find him temporary accommodation and get him basics like bank accounts and Centrelink payments. These things are a concrete start but there is a lot more to be done to prevent reoffending.

There are some concerns that programs like the IDDP can have a net widening effect and draw people into the criminal justice system when they should be treated in the community. However, practically they do seem to offer alternatives to a group of people who have few options. Given the extreme likelihood of Indigenous people becoming caught up in the criminal justice system, it seems better that there is another point of diversion.

■ *Involvement with Juvenile Justice*

By the time Indigenous young people with cognitive disabilities or mental health problems actually come in contact with the juvenile justice, they have usually suffered a range of systemic failures. Instead of using opportunities to intervene, many young people have fallen into the ‘too hard basket’ that leads to custody. However, there is a strong commitment not to give up on these young people. Just because they have progressed through to the extreme end of the juvenile justice system, there are still opportunities for positive change.

Consistent with the statistics, we heard that Indigenous young people are more likely to be entering custody, either on remand or a custodial sentence. We heard many stories about institutionalisation and the desperate circumstances where some Indigenous young people even committed offences with the express aim of going into custody as it was preferable to their lives on the outside.

Young people with cognitive disabilities may also be more prone to institutionalisation. Practitioners working with Indigenous people with disabilities found that some young people were actually more functional when they were in custody. This was because they responded to the structure, routine and certainty of custody, compared with their chaotic lives on the outside.¹⁹⁹ This is not a justification for custody but it does show that strategies and structure can work to support young people in the community.

Conversely, Indigenous young people with mental health problems often deteriorated in custody and in fact, some mental health issues were context dependant, according to Professor Milroy. We heard that mental health needs in custody were not always met, with few forensic services for juveniles across the country.

There was a call for greater screening of cognitive disabilities and/or mental health issues by the juvenile justice system, although there was some concern raised about the specific disability and mental health knowledge of juvenile justice workers. Nonetheless, it makes sense that these issues

197 Perlinski, A., Communication with the Social Justice Commissioner’s Office, 20 March 2007.

198 Perlinski, A., Communication with the Social Justice Commissioner’s Office, 20 March 2007.

199 Fishburn, K., Communication with the Social Justice Commissioner’s Office, 7 March 2007.

be seriously considered as they have the likelihood to impact on what sort of case plan is developed and how it is implemented. Once again, there was a call for more culturally appropriate services as a base of any assessment or intervention for Indigenous young people with cognitive disabilities or mental health issues.

Text Box 15: Promising Practice: Koori Juvenile Justice Program

The Koori Juvenile Justice Program was established in Victoria in 1992 in response to the findings of the Royal Commission into Aboriginal Deaths in Custody. Since then the Koori Juvenile Justice Program has evolved as a more comprehensive way of working with Koori young people and is an integral part of the Victorian Aboriginal Justice Agreement.

The Koori Juvenile Justice Program is a self managed model, with funding provided to local Aboriginal Co-operatives that have responsibility for the employment, supervision and support of the Koori Juvenile Justice Program workers. This model has been instrumental in shaping the program. Overall the Aboriginal cooperatives seem to be well established in local communities and with broad knowledge and resources to assist young people.

The separation of the Koori Juvenile Justice Program workers from the juvenile justice workers is also seen as a good thing by workers according to workers at the Bert William Centre, (VACSAL) as it helps build rapport with young people and build trusting relationships.

The Koori Juvenile Justice Program now covers most of Victoria. Workers are available at all stages of contact with the juvenile justice system, as well as some capacity to provide diversionary options. All workers are Indigenous.

There are 16 Koori Juvenile Justice Worker positions based in the community across Victoria. They provide diversionary and rehabilitative services for Indigenous young people on juvenile justice orders or who are at risk of entering/re-entering the juvenile justice system. Their role includes:

Diversionsary strategies:

- Developing and initiating culturally appropriate programs and strategies;
- Providing support for Aboriginal young people and their families at court and to advocate on their behalf;
- Providing secondary consultation to juvenile justice case managers to ensure the culturally appropriate information is provided to courts;
- Providing advice to court as required;
- Supporting or gaining support for Aboriginal young people detained by police and offer advice to police to ensure fair and reasonable outcomes for Aboriginal young people as required.

Working with Statutory Clients:

- Attending client case planning and case management meetings;
- Developing and reviewing Aboriginal Cultural Support Plans;
- Providing cultural supervision, programs and support for Aboriginal people on court orders;
- Providing secondary consultation to case managers of Aboriginal young people to ensure culturally relevant client assessment plans are implemented; and
- Visiting Aboriginal young people in custody to ensure linkages with their Aboriginal community are established/re-established.²⁰⁰

Koori Juvenile Justice Program workers are based in each of the juvenile custodial facilities. Their role is to ensure Indigenous young people maintain (or reconnect) with community and families whilst incarcerated. As well as providing the same sort of general culturally appropriate support as community based workers, they also:

- assist Indigenous young people on remand access diversionary program;
- initiate contact with community based Koori Justice Program workers; and
- develop networks to ensure Indigenous young people have access to culturally appropriate services, especially when they are leaving custody.²⁰¹

A recent addition to the way juvenile justice services in Victoria works with Indigenous young people is through Aboriginal Cultural Support Plans. Aboriginal Cultural Support Plans are provided for each young person. With the young person, juvenile justice worker and family, information is gathered about the young person.

This includes:

- the Aboriginal community group that the young person identifies with;
- tribal/family origin group;
- identification of contacts to support cultural links;
- a contact plan for Aboriginal services;
- ways to maintain ongoing cultural links for a young person's community; and
- significant family information.²⁰²

The rationale for Aboriginal Cultural Support Plans is to systematically ensure that all Indigenous young people have access to the Koori Juvenile Justice Program. More broadly it is prefaced on the need to build pride in Indigenous identity and connection to community.

On the ground, workers from the Bert Williams Centre value the new Aboriginal Cultural Support Plans. Although it is 'nothing new'²⁰³ in terms of how they work with young people, it has created some safeguards in the system. It strengthens their ability to increase young people's 'sense of belonging'²⁰⁴ especially when young people have come from fractured communities. Some young people haven't had the opportunity to learn about their culture. This can be a good chance to gain these experiences if they are ready and willing.

Phase 2 of the Victorian Aboriginal Justice Agreement has enhanced the Koori Juvenile Justice Program.²⁰⁵ There is now provision for a Koori Preventative Early School Leaver and Youth Employment Program. Based on an outreach model, it will provide intensive support to assist Koori young people involved/or at risk of involvement with the juvenile justice system to remain at school, look at alternative education and employment options. To increase the number of Indigenous young people who are granted bail, a Koori Youth Intensive Bail Support Program has also commenced to provide support to meet bail conditions and improve chances for diversion from custody.

The fact that the Koori Juvenile Justice Program operates across the offending continuum, from 'at risk' clients all the way through to young people in custody is also a strength of the model. It provides multiple opportunities for engagement and can create lasting connections with young people. According to workers at the Bert Williams Centre, their door is always open to young people. They recognise that sometimes they may be sowing the seeds to change later. This helps develop a context where young people can really feel valued and accepted.

While the Koori Juvenile Justice Program doesn't specifically target Indigenous young people with cognitive disabilities or mental health issues, unlike mainstream juvenile justice programs it does build on a strong cultural base. Further, there seems to be a growing awareness of the specificity of cognitive disabilities and mental health needs in Victorian juvenile justice. These are noted in the Victorian Offender Needs Indicator for Youth (Victoria is the only state to systematically identify cognitive/mental health status of young people in juvenile justice).

201 Report provided to author on 29 April 2007.

202 Report provided to the Social Justice Commissioner's Office on 29 April 2007.

203 Bamblett, L., Communication with the Social Justice Commissioner's Office, 30 April 2007.

204 Bamblett, L., Communication with the Social Justice Commissioner's Office, 30 April 2007.

205 Victorian Department of Justice, *Victorian Aboriginal Justice Agreement Phase 2*, Melbourne, June 2006.

Together, these factors seem to have created an environment where staff are able to work well with Indigenous young people with cognitive disabilities or mental health issues. Workers at the Bert Williams Centre relayed one typical case where they were able to make a difference with a young person with a cognitive disability. The young person came from a background of family violence, had been taken into care, was homeless and could not read or write when he ended up in juvenile justice system. He has now achieved his forklift license, is working and has his own home and family. For this young person, the key was building his identity, self esteem and ‘telling him, you are strong’²⁰⁶ coupled with stability and showing care. This helped him maximise his potential and shift away from offending.

Of course, not all stories have such a happy ending but it does reaffirm that with the right support some of the ‘hardest kids’ make it through the system to positive ends.

Text Box 16: Promising Practice: Intensive Supervision Program

The Intensive Supervision Program (ISP) run by Department of Corrective Services in Western Australia is a multi systemic therapy (MST) program for young people who commit serious and/or repeat offences or whose severe anti social behaviour places them on a trajectory towards serious offending. The first ISP teams commenced in 2005 in Perth. Since then over half of the referrals have been for Indigenous young people.

MST is an empirically based international model which tries to prevent offending by looking at the range of systems which impact on the young person. These systems include family, peers, school, local community and support services. MST comes from a strengths based perspective but uses specific psychological and family therapies.

MST has been extensively evaluated overseas and there is evidence to suggest that it significantly reduces recidivism amongst participants. An interim evaluation of the ISP shows of 43 cases that have been out of the program for at least six months, the reduction in total days in custody was 32% and the reduction in the number of convicted offences was 73%.²⁰⁷ This is a very small sample but promising nonetheless.

According to Phillip Narkle, Aboriginal Team Advisor, work has been done to make sure the MST was adapted to meet the needs of Indigenous families. The response of the Aboriginal community was initially very suspicious. However, Mr Narkle believes that there have now been enough positive results and adaptations to gain some community support.

The position of Aboriginal Team Advisor (ATA) was added to the original team of clinicians (social workers or psychologists). The ATA:

- is responsible for team cultural sensitivity and learning;
- meets with Indigenous families and gives an overview of ISP;
- introduces and vouches for clinicians to gain greater acceptance and trust with family and young person;
- works together with the clinician to help engage the family in the early stages;
- is continually consulted by the team to ensure cultural appropriateness of assessments and interventions and
- conducts community development and linkages.

Although the ISP is multi systemic in intent, the majority of the work is done with the young person and their family in their own home. There is a strong parenting component. The program aims to provide parents with the skills to deal with their children’s behaviour and prevent offending.

206 Bamblett, L., Communication with the Social Justice Commissioner’s Office, 30 April 2007.

207 Department of Corrective Services, *Interim Intensive Supervision Program Evaluation Report*, November 2006, provided to the author.

ISP is a very intensive program with clinicians and families meeting three to five times a week and workers are available on call for any crisis situations. Due to the intensity, the program lasts between 3 to 6 months, depending on the progress and needs of the particular family. According to Mairead McCoy, Manager, ISP, the research shows that after 4-6 months there are 'diminishing returns'²⁰⁸ on interventions.

It is not clear whether this is also the case for Indigenous young people with very complex needs against an intergenerational background of disadvantage. There was some scepticism about this approach amongst the other practitioners we consulted, although it is too early to make any firm findings.

ISP is a purely voluntary program. Mr Narkle believes that this is part of the reason for its success with Indigenous families as they are 'sick of being driven into programs.'²⁰⁹ This means that the Courts cannot make a young person participate in ISP. There have been attempts to make this happen but it has been resisted as it could change the dynamics of the program. Another reason for keeping the program voluntary is that a lot of the work is actually done with the parents and families. It is not the parents that have committed the offence and therefore it is not fair to impose a program condition on them.

The fact that parents and families set the goals means that a lot of the work is around helping people access services and sort out the necessities of everyday life. Ms McCoy states that few of their clients are connected to universal services, so there is a lot of practical work around housing, health and income support.

The strengths based approach was also considered integral in engaging Indigenous families. Mr Narkle explains that most of the families have had extensive involvement with child protection services and other institutions that have reinforced low self worth and blame. Instead, they work from the perspective that 'families are doing the best they can'²¹⁰ and build on resilience and strengths that they may not have even acknowledged themselves.

Through the ATA, ISP has the capacity to work with some broader community issues which impact on the offending behaviour of individual Indigenous young people. For instance, feuding between different groups with the Indigenous community was identified as a problem for a number of young people on the program. A lot their offences were assaults related feuding or carrying weapons for protection. One young person carried a machete with him at all times to protect himself based on quite real fears that he was at risk of serious harm from others. Obviously carrying a weapon was in breach of his order and could have led to an escalation of conflict and serious assault charges. In order to try and diffuse the situation, Mr Narkle worked closely with Aboriginal Elders and Police in the community to reduce family feuding and violence at a systemic level, to communicate that 'feuding is fighting, not culture.'²¹¹

ISP does not specifically target Indigenous young people with cognitive disabilities or mental health issues although they have worked with quite a lot of young people with these issues. In particular, they estimate a large proportion have had mental health issues, brought on by high levels of trauma and resulting in suicidal ideation and suicide attempts. Mr Narkle believes that the effects of the Stolen Generation as well as abuse and neglect in their own lives perpetuates profound trans-generational trauma for Indigenous young people.

ISP staff believe that the program is flexible enough to work well with the needs of these young people and have had success in assisting families develop more confidence and awareness about cognitive disability. At the same time, they have also worked with the Disability Services Commission to teach them to be more culturally appropriate through the expertise of the Aboriginal Team Advisors. Cognitive disability is also a factor for families, with high levels of deficit and disability amongst parents often due to substance use.

208 McCoy, M., Communication with the Social Justice Commissioner's Office, 20 April 2007.

209 Narkle, P., Communication with the Social Justice Commissioner's Office, 20 April 2007.

210 Rochester, T., Communication with the Social Justice Commissioner's Office, 20 April 2007.

211 Narkle, P., Communication with the Social Justice Commissioner's Office, 20 April 2007.

For instance, Mr Narkle and Ms Rochester recounted one case of an Indigenous young man they worked with who presented with Tourettes Syndrome as well as psychotic symptoms. Through the combined expertise of the Aboriginal Team Advisor and clinician, the intervention was able to look at the cultural and spiritual reasons for the episodes leading to a traditional spiritual cleansing process, as well as the medical and neurological reasons. This approach recognised the:

fine line between looking at cultural reasons and making sure an organic mental condition is diagnosed and treated.²¹²

Mr Narkle comments, ‘it’s not rocket science, it’s just sitting down and looking at the problem and thinking of some solutions.’²¹³ However, it seems that enough consideration and hard work has taken place to bring some good results to Indigenous young people.

212 Rochester, T., Communication with the Social Justice Commissioner’s Office, 20 March 2007.

213 Narkle, P., Communication with the Social Justice Commissioner’s Office, 20 March 2007.

Part 4: Conclusion and Recommendations

Indigenous young people with cognitive disabilities and/or mental health issues in contact with the juvenile justice system get very little attention in literature, in policy and arguably in practice as well. We have seen that this is a forgotten group of young people who are frequently labelled as 'complex' (code for too hard to work with) and often receive inadequate or inappropriate service. Despite the fact that many of the causes of offending behaviour lie in the early school years, all too often, early identification and early intervention opportunities pass these young people by. It is not until they are in crisis that they stand a chance of assistance. All of these factors increase the likelihood that these young people will progress to the juvenile justice system.

However, we have found that there is no shortage of commitment, enthusiasm and good ideas about how to help these young people. Although they might not be supported by policy or large scale programs, there are a number of dedicated professionals on the ground that work tremendously hard with these young people to prevent offending and involvement in the juvenile justice system.

Our case studies focused on some areas of promising practice in this area. Our approach was to look at programs that have the capacity to work well with this group of young people, even if they don't specifically target this group. Many of the programs were relatively new so our assessment of the impact was based on consultations with workers and preliminary evidence. Taken together, we can see that there are a wide range of intervention points that present for Indigenous young people with cognitive disabilities and/or mental health issues, from the early years, through to school, early adolescence and offending stages. This continuum of assessment and service shows the opportunity and capacity for a range of early intervention and diversionary strategies that can reduce offending amongst this group.

Based on these skills and expertise, we have developed a set of best practice principles that guide policy and practice with Indigenous young people with cognitive disabilities and/or mental health issues.

Best practice principles:

- *Indigenous young people with cognitive disabilities and/or mental health issues have many of the same needs as Indigenous young people without these conditions*
They come from the same families and same communities but face the additional disadvantage due to their cognitive disability or mental health issue. This means that policies and programs need to go beyond the cognitive disability or mental health issue to look at cultural needs as well.
- *The social determinants of health need to be met to improve outcomes for Indigenous young people with cognitive disabilities and/or mental health issues*
Social determinants of health are factors in society or in our living conditions that affect our health, for better or for worse, throughout life. Things such as education, housing, transport, employment, working conditions, enough money, clean drinking water, sanitation, and a good start to life are just some of the social determinants of health. These basic preconditions provide the solid foundation that specific disability or mental health interventions must be built on. Equally, if this foundation is not strong, further disability or mental health interventions will collapse.
- *Service delivery must be holistic*
This means that interventions should address physical, psychological, emotional, social, spiritual and cultural aspects of wellbeing.
- *Intervention must be culturally aware and appropriate*
This means that workers and policy makers need to examine their own perceptions and expectations of Indigenous children, young people, families and communities. This is critical during assessment but will also lead to better



relationships and service delivery. Cultural awareness also needs to encompass an understanding of history and current community challenges such as family violence and abuse which impact on young people with mental health problems and contact with the juvenile justice system.

- *Communities need to be involved and have control over programs*

In particular this means engaging with Indigenous concepts of disability and mental health, as well as consulting with communities to understand service barriers and gaps. Indigenous communities have the knowledge about the problems as well as the solutions, so active partnerships should be formed when developing and implementing programs.

This principle should extend all the way through to juvenile justice services, with government juvenile justice agencies drawing on Indigenous services and community networks. This means Indigenous workers and organisations should be at the centre of interventions for these young people and involved on a systematic rather than ad hoc way.

- *Interventions should build on strengths and positive identity*

Many Indigenous young people grow up confronted by negative stereotypes which can decrease their self confidence and self esteem. Pride in cultural identity should be fostered at all stages of intervention.

- *Service needs to be rights based*

Indigenous young people do not need another label or further stigmatisation. A rights based model can help frame services in terms of rights, entitlements and equality rather than to focus on deficits.

The other side of a rights based model is that it implies that firm benchmarks, targets and timeframes are put in place to make governments and service providers accountable and ensure that improvements are progressively made.

- *Flexible service*

Indigenous young people are less likely to come into offices and clinics or keep strict appointments. Outreach is the preferred model of service delivery.

- *It's never too late*

There are points of diversion and intervention throughout the life course. We can't give up on young people just because they have gotten in trouble or are challenging to work with.

Future directions and recommendations

The best practice principles provide some broad guidelines for thinking about working with Indigenous young people with cognitive disabilities and/or mental health issues but there are some more directed recommendations that can improve early intervention and diversion for this group. These are all achievable recommendations which can lead to concrete outcomes.

Knowledge

- That further work be undertaken to develop culturally appropriate assessments of cognitive functioning and mental health issues.
- That research needs to be conducted around the incidence and appropriate treatment of Foetal Alcohol Syndrome and Post Traumatic Stress Disorder amongst Indigenous young people. This also intersects with some of the findings of the Bringing them home report.

Education and awareness

- That education packages are developed in consultation with Indigenous communities and Indigenous health professionals about cognitive disabilities and/or mental health issues. These should be initially targeted at Aboriginal Health Workers to increase their ability to screen early for any cognitive disability but then provided to other service providers involved with assessment of this client group, including those in the education system.

- That there are expanded screening and health clinics like the Kari model (page 44) targeted to all children in the child protection system.
- That further research is conducted on Indigenous young people being inappropriately placed in special education programs, including community consultations and consideration of human rights issues.
- That education packages are developed for Police and legal professionals (including Magistrates) about cognitive disabilities and/or mental health issues in Indigenous young people. This could help identify the needs of this group and increase the likelihood of fair treatment and diversion.
- That a 'common sense' screening tool for cognitive disabilities and/or mental health issues is developed to be used by youth workers and Indigenous services, based on the checklist used by the NSW Youth Justice Conferencing coordinators (page 54) and the First Aid Mental Health handbook under development by the Oxygen group at Melbourne university (page 43). Many workers acknowledge needs but have difficulty naming them as a cognitive disability or mental health issue. This can mean that a young person misses out on the resources, funding and support of specialised disability services.

Support for what works

- That governments continue support for holistic early intervention programs such as Tirkandi Inaburra (page 50) and investigate the possibility of piloting a similar model in another location.
- That Indigenous community controlled services are resourced to provide service to all Indigenous young people in the juvenile justice system or at risk of entering the juvenile justice system. They should have a systematic role in supporting these young people and providing expert advice to non-Indigenous workers at all points of intervention.
- That pilot programs are developed for Indigenous young people at risk of entering juvenile justice that target physical, psychological, emotional, social, cultural and spiritual needs. An additional condition should be that these pilot programs also have some experience in working with young people with disabilities or mental health issues so that they can tailor their service to this client group.
- That Cultural Support Plans as used in the Victorian juvenile justice system (page 60) are rolled out for all Indigenous young people in the juvenile justice system.

Policy Processes

- That consideration of the issues and strategies raised in this report inform the National Indigenous Law and Justice Framework and state and regionally based Indigenous Justice Agreements.
- That this report is circulated to all organisations involved with juvenile justice and in the development of National Indigenous Law and Justice Framework, and state and regionally based Indigenous Justice Agreements.
- That all juvenile justice organisations include consideration of how they will meet the specific needs of Indigenous young people with cognitive disabilities and mental health issues in their strategic planning. This may be through Disability Action Plans or other policy processes that ensures that consideration is given to the specific needs of this group in all service provision.

Appendix 1: List of consultations

Dr Eileen Baldry	School of Social Work, University of NSW
Linda Bamblett	Victorian Aboriginal Community Services Association
Les Bamblett	Victorian Aboriginal Community Services Association
Garry Bamblett	Victorian Aboriginal Community Services Association
Dr Harry Blagg	Crime Research Centre, University of Western Australia
Lester Bostock	Aboriginal Disability Network
Tonia Brajeich	Western Australian Aboriginal Legal Service
Anthony Brown	Victorian Aboriginal Health Service Family Counselling Service
Shane Brown	South Sydney Youth Services
Julie Carter	NSW Justice Health
Dr Joe Clare	Crime Research Centre, University of Western Australia
Lester Corning	Victorian Aboriginal Health Service Family Counselling Service
Professor Chris Cunneen	Global Chair in Criminology, University of NSW
Loretta De Plevitz	Faculty of Law, Queensland University of Technology
Leanne Dowse	University of NSW
Kelly Fishburn	Department of Ageing, Disability and Home Care, NSW
Carolyn Frazer	NSW Justice Health
Matt Frize	Department of Ageing, Disability and Home Care, NSW
David Gornall	Disability Services Commission, Western Australia
Judy Gould	Phd candidate
Damian Griffis	Aboriginal Disability Network
Associate Professor Colleen Hayward	Kulunga Research Network
Lisa Hema	Juvenile Justice and Youth Services, Victoria
Associate Professor Dianna Kenny	University of Sydney
Yvonne Luke	Juvenile Justice and Youth Services, Victoria
Mairead McCoy	Intensive Supervision Program, Western Australia
Brett McMerrin and staff	Killara Youth Support Services, Western Australia
Associate Prof Helen Milroy	Centre for Aboriginal Medical and Dental Health, University of Western Australia
Colleen Murray	Tirkandi Inaburra
Phillip Narkle	Intensive Supervision Program, Western Australia
Amanda Perlinski	Intellectual Disability Diversion Program, Western Australia
Julian Pocock	Secretariat of National Aboriginal and Islander Child Care



Indigenous Young People with Cognitive Disabilities and Mental Health Issues

Paul Ralph	Kari Aboriginal Resources
Suzanne Reynolds	NSW Justice Health
Cristina Ricci	Disability Unit, Australian Human Rights Commission
Tiffany Rochester	Intensive Supervision Program, Western Australia
Carli Rothman	NSW Aboriginal Legal Service
Dr Chris Sarra	Indigenous Education Leadership Institute
Joanne Scott	Indigenous Disability Advisory Service
Maryanne Seymour	Tirkandi Innaburra
Phillip Snoyman	NSW Department of Corrective Services/University of NSW
Kerry Stopher	Disability Services Commission, Western Australia
Jenny Thomsen	Aboriginal Disability Network
Narelle Wickham	NSW Justice Health

Appendix 2: Government responses

In order to establish what is provided for Indigenous young people with cognitive disabilities and/or mental health problems, information was requested from all relevant government departments across Australia.²¹⁴ A letter was sent to departments requesting:

- data that the department/agency may collect on the numbers of Indigenous young people who have been assessed as having a cognitive disability and/or mental health issues;
- a break down of this data by age, sex and location;
- any information of relevant early intervention or diversionary programs that they run for the target group of young people; and
- any other research or stakeholder who is working in the field.

As a result of the government responses, this section will provide further data regarding the incidence of cognitive disabilities and/or mental health issues and a map of services for this group of young people.

Data

Accurate data collection is essential for planning and delivering services to the right people and in the right places. Collection of data shows a commitment to grappling with the issue of Indigenous young people with cognitive disabilities and/or mental health issues. Of the 28 agencies that provided responses, 15 provided data.²¹⁵

Many of the responses noted the limitations of the data and were cognisant of particular challenges around diagnosing cognitive disability and/or mental health problems amongst Indigenous young people. Nonetheless, this data provides a more detailed picture of Indigenous young people either in, or at risk of entering the juvenile justice system.

Education

Education agencies appear to collect the most comprehensive data, particularly on intellectual disabilities and other learning difficulties. A summary of the data provided is shown in **Table 4**. This data was usually drawn from the number of Indigenous young people receiving additional support funding or enrolled in special education programs.

Agency	State	Number of Indigenous Young People with Cognitive Disabilities	Number of Indigenous young people with mental health problems
Department of Education and Children's Services	South Australia	158 Indigenous students with verified intellectual disabilities.	Not collected.

²¹⁴ Information was requested primarily from state juvenile justice, health, education, disability services and crime prevention departments as it was considered that these agencies would most likely have direct service provision involvement in early intervention and diversionary programs for this client group. A full list of respondents can be found at Appendix 1.

²¹⁵ The Tasmanian Department of Health and Human Services provided data provided data but given the small numbers it is not to be reported in case individuals can be identified.



Indigenous Young People with Cognitive Disabilities and Mental Health Issues

Department of Education and Training (TAFE NSW)	New South Wales	Does not collect reliable data on number of Indigenous young people with cognitive disabilities in schools. TAFE NSW report 62 Indigenous students between the ages of 15-19 with intellectual disabilities; 257 Indigenous 15-19 year olds with learning disabilities; and 16 Indigenous 15-19 year olds with neurological disabilities.	Does not collect reliable data on number of Indigenous young people with mental health problems in schools. TAFE NSW report 63 Indigenous young people between the ages of 15-19 years with mental illness.
Department of Education and Training	Australian Capital Territory	55 Indigenous students with Intellectual disabilities. 6.5% of Indigenous students have a disability.	2 Indigenous students with mental illness.
Department of Education and Training	Northern Territory	75 Indigenous students with intellectual disabilities in mainstream schools (13% of students with disabilities with disabilities) and 68 Indigenous students with intellectual disabilities in special schools (39% of special schools).	35 Indigenous students with a diagnosed mental health issue.
Department of Education, Training and the Arts	Queensland	930 Indigenous students with intellectual impairment. Represents 11% of all students with intellectual impairment.	Not collected.
Department of Education	Tasmania	32 Indigenous students with intellectual disabilities, 9 with autism and 5 with multiple disabilities.	2 Indigenous students with psychiatric disabilities.
Department of Education and Training	Western Australia	576 Indigenous young people with intellectual disabilities.	8 Indigenous young people with psychiatric disabilities.

Of all the government data received in response to the request, the education departments seemed to be the most aware of the difficulty in diagnosing and measuring the number of Indigenous young people with cognitive disabilities. The Northern Territory Department of Education and Training qualified their data, stating that:

there is very little published information available that considers how Indigenous students may perform on quantitative measurement tools. There are no published norms for Indigenous students and without appropriate norms the accuracy of information may be compromised. In many remote communities, with methods of teaching and the requirements of learning based on a western cultural context, an Indigenous students progress and level of educational achievement may not reflect their cognitive potential or how they are viewed from a cultural perspective.²¹⁶

The South Australian Department of Education and Children’s Services echoes some of these concerns about the accuracy and reliability of the data:

1. There is reluctance among many Indigenous families to refer students for assessment, as there are cultural and labelling issues, including a fear of being taken from the family.
2. The diagnosis of Aboriginal students with intellectual disability is challenging, as there are many factors which could impact adversely upon performance during assessments of intellectual ability.
3. Mental health issues may be misinterpreted as intellectual impairment and vice versa.
4. In South Australia, assessment tools used to determine intellectual functioning in the non-indigenous student population as used with indigenous students with caution. This is due to concerns with validity of the instruments for Indigenous students, and the delivery of assessments in spoken or written English when English may not be the student’s first language.
5. There is difficulty in obtaining a medical diagnosis for students believed to have foetal alcohol syndrome, as paediatric expertise is not readily available.²¹⁷

Juvenile Justice

The only juvenile justice agency that reported that they currently record any data on cognitive disability and/or mental health status is the Western Australian Department of Corrective Services (which has responsibility for both juvenile and adult offenders).

The Western Australian Department of Corrective Services provided data on the number of young people in custody with recorded psychiatric or intellectual disability, below in **Table 5**. Based on snap shot data from January 2007, 11 Indigenous young people had a psychiatric diagnosis and 4 Indigenous young people had a dual psychiatric and intellectual disability diagnosis. All of the Indigenous young people were males.²¹⁸

Table 5: Western Australian Corrective Services, Number of Young People in Custody with Psychiatric or Intellectual Disability			
	Psychiatric	Intellectual Disability	Dual Diagnosis
Indigenous	11	0	4
Non-Indigenous	12	2	0

216 Northern Territory Department of Employment, Education and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, Feb 2007, p5.

217 South Australian Department of Education and Children’s Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 3 January 2007, p1.

218 Western Australian Department of Corrective Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, Email, 6 February 2007.

It must be noted that this is snapshot data and therefore it may or may not be representative of the levels of intellectual disability and mental illness over a longer period of time. While these numbers seem relatively small, given that the average number of young people in custody is 133,²¹⁹ this suggests that approximately 20% of the custodial population are diagnosed with either a psychiatric or intellectual disability and around half of these are likely to be Indigenous young people.

The Victorian Department of Human Services which includes juvenile justice services report that that cognitive disabilities and/or mental health issues can be identified within the Victorian Offending Needs Indicator for Youth (VONIY). From December 2006, VONIY information will be included in the new juvenile justice data system and will enable this sort of data to be collected.²²⁰ This will involve young people both in custody and in the community.

The NSW Department of Juvenile Justice participated in the Young People in Custody Health Survey and Young People on Community Orders Health Survey, as outlined in the literature review. However, they do not collect this data on a regular basis.²²¹

Disability Services

Disability Services agencies and departments reported data on the number of Indigenous young people with intellectual disabilities. A summary of the data is provided below at **Table 6**. However, as discussed in the literature review, this may not be an under representation of Indigenous young people as they are less likely to actually access disability services.

Table 6: Disability Services Data		
Agency	State	Indigenous young people with cognitive disabilities
Disability Services Commission	Western Australia	<ul style="list-style-type: none"> ▪ 131 between the ages of 12-18 years ▪ 44 females and 87 males ▪ 12 years = 15 (6 female, 9 male) ▪ 13 years = 20 (9 female, 11 male) ▪ 14 years = 25 (6 female, 19 male) ▪ 15 years = 24 (11 female, 13 male) ▪ 16 years = 17 (4 female, 13 male) ▪ 17 years = 20 (4 female, 16 male) ▪ 18 years = 10 (4 female, 6 male)²²²
Department of Ageing, Disability and Home Care	New South Wales	<ul style="list-style-type: none"> ▪ 515 under 25 years of age. ▪ Intellectual disability = 322 (189 males, 133 females) ▪ Autism = 39 (28 males, 11 females) ▪ Developmental delays = 154 (106 males, 48 females)²²³

219 Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2000-2001 to 2003-2004*, Canberra, 2006.

220 Victorian Department of Human Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 10 January 2007.

221 NSW Department of Juvenile Justice, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 22 January 2007.

222 Western Australian Disability Services Commission, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 16 January 2007.

223 NSW Department of Ageing, Disability and Home Care, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 18 January 2007.

Department of Human Services	Victoria	<ul style="list-style-type: none"> ▪ 394 (258 males, 135 females, 1 missing) ▪ 0-4 years = 13 ▪ 5-9 years = 87 ▪ 10-14 years = 144 ▪ 15-18 = 142 ▪ Missing = 8²²⁴
Department of Communities, Disability Services	Queensland	<ul style="list-style-type: none"> ▪ 278 Indigenous young people with a cognitive disability or psychiatric disability accessing disability services between 2005-2006. ▪ Acquired Brain Injury = 16 (11 males, 5 females) ▪ Autism= 56 (45 males, 11 females) ▪ Developmental delay = 21 (17 males, 4 females) ▪ Intellectual disability = 145 (79 males, 66 females) ▪ Neurological = 27 (15 males, 9 females) ▪ Psychiatric = 4 ▪ Specific learning, ADD = 4

Mental Health Services

Not all mental health services were contacted as the scope of the project expanded as our consultations begun. However, due to the structure of some larger government departments, information is provided for Victoria and Queensland. **Table 7** shows data reported by Victoria and **Table 8** shows data from Queensland.

Table 7: Indigenous young people (0-24 years) accessing Child and Adolescent Mental Health Services or Adult Mental Health Services in Victoria²²⁵	
Diagnosis	Total
Autism	8
Behavioural and emotional disorders	40
Disorders due to other psychoactive substance use	22
Disorders due to use of alcohol	2
Disorders of adult personality and behaviour	9
Eating disorders	2

224 Victorian Department of Human Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 15 January 2007.

225 Victorian Department of Human Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 15 January 2007.

Mental retardation	1
Mood disorders	31
Neurotic, stress related and somatoform disorders	56
Other and unspecified	32
Examination and investigation only	29
Diagnosis not recorded	36

Table 8: Annual average number of Indigenous patients admitted to hospital due to mental behaviour disorders by age group and remoteness in Queensland, 2001/02-2005/06²²⁶

Location	0-4 years	5-9 years	10-14 years	15-19 years
Major cities/inner regional/outer regional	54	74	231	755
Remote	23	14	71	328
Total	77	88	302	1083

Based on analysis provided by Queensland Health:

- There is no statistical significance between the rates of Indigenous patients admitted due to mental/behavioural disorders compared to other Queenslanders for age groups 0-4 and 5-9. However, the rates of mental health related admissions for Indigenous people are statistically higher compared with other Queenslanders for age groups 10-14 and 15-19 years.
- The difference is greater as the age group increases, with the Indigenous admission rate more than double for other Queenslanders in the 20-24 age group.
- The admission rates of Indigenous patients in age group 15-19 years, and who live in remote and very remote areas are much higher than those Indigenous patients within the same age groups who live in major cities and regional areas of Queensland.²²⁷

226 Queensland Health, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 1 March 2007.

227 Queensland Health, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 1 March 2007.

Location	0-4 years	5-9 years	10-14 years	15-19 years
Major cities/inner regional/outer regional	1549	10852	20866	26149
Remote	89	1108	2308	2789
Total	1638	11960	23174	28938

Analysis provided by Queensland Health shows:

- The rates of Indigenous community service contacts for age groups 0-4 years and 5-9 years is statistically lower than the corresponding rates for other Queenslanders.
- The differences were reversed for age groups 10-14 years and 15-19 years, where the rates of contacts for Indigenous are statistically higher than other Queenslanders.
- The rates of service contacts for all age groups for Indigenous in remote and very remote areas are much higher than those Indigenous living in major cities and regional areas of Queensland.²²⁹

Police

No police departments reported that they collect information related to cognitive disability or mental health status of either victims or offenders.

Child Protection

The NSW Department of Community Services was the only child protection agency to provide a response for the number of children with a cognitive disability and/or mental health problem under their care. Of the Indigenous children in out of home care, 108 were recorded as having either a cognitive disability or mental health problem. A further break down according to type of disability is provided in **Table 10** below.

Disability	Number of Indigenous children
Acquired brain injury	5
Autism	4

228 Queensland Health, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 1 March 2007.

229 Queensland Health, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 1 March 2007.

230 NSW Department of Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 30 January 2007.

Developmental delay	43
Intellectual disability	23
Learning disorder/Attention Deficit Disorder	26
Psychiatric	7

Summary of Data

The data provided by government agencies gives us a snap shot of some of the cognitive disabilities and/or mental health issues faced by Indigenous young people across a range of different service providers. However, it is still only a partial picture, given that not all agencies collect this data, and those that do have identified significant limitations.

Of all the government responses received, education agencies seem to undertake the most comprehensive data collection of Indigenous young people with cognitive disabilities and/or mental health problems. This is related to a greater awareness, particularly of cognitive disability issues through their requirement to provide special education and support to this group.

One thing that stands out from the education data is that Indigenous young people with cognitive disabilities are a small group. Even in the Northern Territory, where there are approximately 14 007 Indigenous students (40% of all enrolments), there are only 143 Indigenous young people with identified cognitive disabilities.²³¹ Based on anecdotal evidence, it is likely that there are a significant number of Indigenous children and young people whose cognitive disability remains unassessed, or are simply not attending school.

There are also implications for service delivery with such small numbers, with students potentially spread across large geographic areas. The challenge is how to provide developmentally and educationally appropriate services where small numbers may compromise culturally appropriate support.

As previously discussed, Indigenous students with a disability may be isolated when their disability needs are seen as more important than their cultural needs. In some cases Indigenous young people may receive an excellent level of special education and support to accommodate for their cognitive disability, but may be placed in a situation where there are no other Indigenous students, staff or programs. Indigenous students with cognitive disabilities need holistic service which recognises both cultural and disability needs.

Perhaps the most glaring omission is the lack of data systematically collected by juvenile justice agencies, with Western Australia being the only state that collects data on disability/mental health status of Indigenous young people in custody. It is promising that Victoria seems to be heading down the path of greater data collection.

Early intervention and diversionary programs for Indigenous young people with cognitive disabilities and mental health problems

All of the departments contacted were asked to provide information about relevant programs targeting this group of young people. None of the departments reported any programs exclusively aimed at Indigenous young people with cognitive disabilities and/or mental health problems at risk of entering the juvenile justice system, or already involved with the juvenile justice system.

However, many of the departments do provide services that may assist this group whilst not specifically targeting them. Some reported instances where they were aware of this target group successfully accessing these services.

²³¹ Northern Territory Department of Employment, Education and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 14 February 2007.

Juvenile Justice

The role of juvenile justice agencies across Australia varies.²³² Some provide early intervention for young people at risk of contact with the juvenile justice system, some provide diversionary programs. All provide support and supervision for young people on community based orders and custodial services.

Juvenile justice agencies all have a role to play in the diversion of Indigenous young people with cognitive disabilities and/or mental health issues from the criminal justice system, if not the provision of early intervention services. Some agencies would argue that early intervention should be the role of other departments to avoid any labelling or stigmatisation of young people, as well as potential ‘contamination’ of less experienced young people with more entrenched young offenders. **Table 11** shows a summary of the programs outlined in the responses.

Table 11: Summary of Relevant Juvenile Justice programs		
Agency	State	Program/Intervention
Department of Human Services	Victoria	<ul style="list-style-type: none"> ▪ Koori Juvenile Justice Program ▪ Children’s Koori Court ▪ Culturally appropriate quality health services eg. Health assessment within 12 hours of entering custody (24 hours for non-Aboriginal detainees).²³³
Department of Juvenile Justice	NSW	<ul style="list-style-type: none"> ▪ No specific programs – but all interventions are designed for delivery to young people with low literacy levels²³⁴ (consistent with cognitive disabilities).
Department of Corrective Services	Western Australia	<ul style="list-style-type: none"> ▪ Aboriginal Family Support Program – mentoring program providing Indigenous mentors to young people on community supervision. ▪ Killara Youth Support Services – early intervention for young people at risk. ▪ Juvenile Justice Teams for conferencing including options to make more accessible for remote area Indigenous young people. ▪ Intensive Supervision Program.²³⁵

232 The structure of juvenile justice agencies also vary, with some as stand alone departments (NSW Department of Juvenile Justice), some are part of a broader Human Services or community services type department, and some are located within Corrective Services Departments which service adult and juvenile offenders.

233 Department of Human Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 10 January 2007.

234 Department of Juvenile Justice, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 22 January 2007.

235 Wells, A., Communication with the Social Justice Commissioner’s Office.

Department of Corrective Services	Northern Territory	<ul style="list-style-type: none"> No specific programs but the Cogstate screening tool for cognitive disabilities has been trialled at Darwin Correctional Centre. A mental health screening tool (MAYSI-2) is being trialled with juvenile detainees.²³⁶
Department of Disability, Housing and Community Services	ACT	<ul style="list-style-type: none"> No programs reported.
Department of Communities	Queensland	<ul style="list-style-type: none"> No programs reported.
Department of Children, Youth and Family Services	South Australia	<ul style="list-style-type: none"> No specific programs.

Crime Prevention

Crime prevention programs, usually run by NGOs but funded through the state or federal crime prevention grants, have the capacity to assist Indigenous young people with cognitive disabilities and or mental health issues, during the ‘at risk’ stage. As stated in the literature review, this can involve anything from a recreation program, to mentoring, family support or residential services, depending on the aims of the project, all of which can potential build on individual strengths and prevent offending behaviour.

However, again, there are no specific programs that target this group. A list of relevant reported crime prevention projects are provided in **Table 12** below.

State	Program	Description
South Australia	Panyappi youth mentoring program	<p>Indigenous youth mentoring service for young people who experience multiple problems that lead them to frequent inner city or other suburban hangouts, placing them at risk of being a victim of crime or engaging in offending behaviour.</p> <p>Panyappi aims to:</p> <ul style="list-style-type: none"> Intervene in pathways of offending behaviour and bring about a positive shift in each young person’s attitude toward offending and in their behaviour. Decrease each young participant’s contact with the juvenile justice system and/or agencies associated with this system.

²³⁶ Northern Territory Department of Corrective Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 11 January 2007.

		<ul style="list-style-type: none"> ▪ Promote self-discovery and self-determination by young people participating in the program their family and wider community. ▪ Work collaboratively with all agencies that have mutual responsibility for resolving the young person's difficulties.
WA	Recreational, Educational, Arts and Lifeskills (REAL) Program for Kiara/ Lockridge	A coordinator works closely with other government and non-government agencies to link the project into other project to support a collaborative approach to addressing the broader issues impacting local at risk youth. ²³⁷
	Roebourne Girls Group	To provide a recreational and developmental program for at risk Indigenous females in the Roebourne and surrounding areas. ²³⁸
	Kutjunka Region Youth Services Program	To reduce boredom by offering structured recreational and developmental activities; to improve the life skills of "at risk" and offending youth and address the level of substance abuse within the region. ²³⁹
	Indigenous Children's Leisure Activities Program	Recreational and development/mentoring activities for at-risk youth in Mirrabooka/Balga area. ²⁴⁰
	Service Pathways for Children Experiencing Delayed Development	Development of interagency shared care/ clinical pathways between local service providers in Bunbury. ²⁴¹

237 Office of Crime Prevention, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 31 January 2007.

238 Office of Crime Prevention, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 31 January 2007.

239 Office of Crime Prevention, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 31 January 2007.

240 Office of Crime Prevention, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 31 January 2007.

241 Office of Crime Prevention, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 31 January 2007.

	HYPE - Kununurra and Fitzroy Crossing	Workers to engage with at risk 'street-present' young people. ²⁴²
ACT	Aboriginal Justice Centre	Aboriginal controlled organisation that provides integrated case management for young people at risk or involved with the juvenile justice. ²⁴³

Education

All education departments provide special education programs and support to young people with disabilities. They also provide some form of culturally appropriate support for Indigenous students. This ranges from the use of Aboriginal Education Workers to the Western Australian 'Aboriginal Perspectives Across the Curriculum' which acknowledges and endorses Indigenous world views and promotes greater understanding and respect for Indigenous peoples, cultures, histories and languages to make school more welcoming. School counsellors also have a role to play in assessing and supporting young people with disabilities and behaviour difficulties.

However, once again, there are no specific programs identified that target Indigenous young people with cognitive disabilities and/or mental health problems. **Table 13** shows a list of relevant programs that may nonetheless assist the target group, in addition to mainstream special education schools and support programs. However, it is unclear whether they are sufficiently responsive and resourced to address the complex needs of Indigenous young people with cognitive disabilities and/or mental health issues.

Table 13: Relevant Education Programs		
State	Program/Initiative	Description
Northern Territory	MindMatters, KidsMatter, You Can Do It, Tribes, Rock and Water	Early intervention programs that seek to address and target behaviours that are indicative of the development of mental health issues. ²⁴⁴
	School Counsellors Project	Provision of 19 counsellors to support students with social and emotional issues. Anecdotal evidence suggests that mental health issues are predominate in counsellor caseloads. In 2007 the project will be establishing an online data collection tool that will enable monitoring of mental health issues being dealt with by school counsellors, how many clients are Indigenous, types of mental health issues, ages of clients and interventions.

242 Office of Crime Prevention, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 31 January 2007.

243 ACT Department of Disability, Housing & Community Services. Children and Youth, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 19 January 2007.

244 Northern Territory Department of Employment, Education and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 14 February 2007.

		Counsellors will undertake training with Tracey Westerman, Indigenous psychologist, about how to work effectively with Indigenous youth and mental health issues. ²⁴⁵
	Alternative Education Provision (AEP)	Case management of students 10-15 years who have disengaged from education or are at risk of disengagement (chronic truancy and non-enrolment in school), aiming to get them back into school, training or employment. Workers use a community outreach model and develop individual plans for each young person. In 2006, 172 young people were involved in the program, approximately 54% were Indigenous. ²⁴⁶
	Harley Unit	Support for students with extreme behaviours, working towards entry to mainstream school. Due to the intensive nature of the program, only 5 clients per year. ²⁴⁷
South Australia	Gateways Program	Targets Indigenous students at risk of disengaging with school. In 2006, 18% of clients had a disability and 12% were Indigenous. ²⁴⁸
	Behavioural Intervention Service	Jointly managed by Child and Adolescent Mental Health Service, Families SA and Department of Education and Children's Services to provide clinical mental health services and curriculum links for 5-12 year olds with mental health difficulties. The program includes Aboriginal students. ²⁴⁹
	Adult Services Enfield Campus	Day program for youth not engaged with education due to mental health issues. This program includes mental health issues. ²⁵⁰

245 Northern Territory Department of Employment, Education and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 14 February 2007.

246 Northern Territory Department of Employment, Education and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 14 February 2007.

247 Northern Territory Department of Employment, Education and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 14 February 2007.

248 South Australian Department of Education and Children's Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 3 January 2007.

249 South Australian Department of Education and Children's Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 3 January 2007.

250 South Australian Department of Education and Children's Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006*, 3 January 2007.

Queensland	MindMatters	All staff working with Indigenous students attend a two day MindMatters workshop specifically designed to increase awareness of mental health promotion among Indigenous students. Trialling KidsMatter, similar mental health training project for primary school age Indigenous children. ²⁵¹
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Given the negative experiences that many Indigenous young people with cognitive disabilities and/or mental health issues face in the school system, more flexible options such as TAFE may be more accessible for this group. TAFE NSW, with the largest Aboriginal enrolment of any training provider in Australia, provides a comprehensive range of programs and supports which may assist the target group. As well as Aboriginal and disability support to participate in TAFE courses, a number of outreach programs aim to reengage at risk young with education and training. A summary is provided in **Table 14** below.

Table 14: Relevant TAFE NSW Programs	
Program	Description
Young Endeavours Program (New England)	Partnership between TAFE NSW and Department of Juvenile Justice, designed to create positive learning experiences for young people in juvenile justice who has disengaged from education. The program involved Aboriginal mentors - an artist, video producer and a textile designer - who worked with the young people and provided positive role models.
Guraki-thrawa (Taree)	Collaboration between TAFE Outreach, Taree City Council, Department of Juvenile Justice, the Police and Citizen's Youth Club and Mission Australia. Program included literacy, computer skills, a selection of practical vocational learning programs, gymnastics and Aboriginal art. Nineteen students completed the program and are now role models for young people in the area.
KOOL - Koori Outreach Options for Learning (Riverina)	Course aimed to reengage young people in education. Participants developed literacy and numeracy skills, cultural awareness, interpersonal skills, life skills and employment skills.
COOL - Coomealla Outreach Options for Learning (Riverina)	Collaboration between local schools, Wentworth Shire Council, Dareton Police, Far West Area Health Service, RTA, Department of Juvenile Justice, Centrelink, Community Action Team and local Barkindji elders. In addition to improving literacy and computer skills, developing work skills and gaining driver's licenses, the COOL students made a film 'Three Strong Women' which won awards at the 'Thong on the Roof' Film Festival.

251 Queensland Department of Education, Training and the Arts, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information on Indigenous young people with cognitive disabilities and/or mental health problems 2006, 2 February 2007.*

<p>Personal grooming</p>	<p>A number of personal grooming programs have been run for Indigenous single mothers and at risk Indigenous young women including those with mental health and behavioural issues in La Perouse, Redfern and Glebe.</p> <p>Nine courses have been offered to young women in detention at Sunninghill School in Yasmar Juvenile Justice Centre in 2005. Approximately 85% of these young women were Indigenous.</p>
<p>Yalmambirra (Western NSW)</p>	<p>Course aimed at reengaging Aboriginal boys in education, incorporating music, dance and horticulture and run in conjunction with the local Aboriginal Men’s Group.</p>
<p>Deadly Bay @ Induna</p>	<p>Program designed to engage Juvenile Justice detainees in education through a Foundation and Vocational Skills course.</p>

Disability/Mental Health Services

All disability services departments reported that while they do not run programs specifically for Indigenous young people with cognitive disabilities and/or mental health problems at risk of offending, existing programs could be adapted to meet the individual needs of Indigenous young people and their families and carers.

Based on the information provided, Western Australian Disability Services Commission deserves special mention for its work in making services more welcoming and accessible to Indigenous people with disabilities. Based on consultations with over 300 Indigenous people with disabilities, family members and disability staff, they produced research, policy documents and promotional material on Indigenous people with disabilities.

Disability South Australia have a small Indigenous disability team that work within the broader disability system that operates across metropolitan and country areas including remote communities, to identify, assess and broker disability and other services for individuals with cognitive (brain injury and intellectual) disabilities. This service has also broadened its criteria to include people with a psychiatric disability that are homeless and not engaged with a mental health service.

Appendix 3: List of Government responses

Ms Robyn McKerihan General Manager Access and Equity	Department of Education and Training – NSW
Ms Margaret Banks Chief Executive	Department of Employment, Education and Training – Northern Territory
Mr Chris Robinson	Department of Education and Children’s Services – South Australian
Mr David McKie Regional Manager Access and Equity	Department of Education and Training – NSW
Ms Michele Bruniges Chief Executive	Department of Education and Training – ACT
Mr Andrew Whale Director Disability ACT	ACT Department of Disability, Housing and Community Services and Children and Youth – ACT
Ms Rachel Hunter Director General	Department of Education, Training and the Arts – Queensland
Ms Sharyn O’Neill Acting Director General	Department of Education and Training – Western Australian
Mr John Smyth Secretary	Department of Education – Tasmania
Ms Wendy Murray Director	Office of Crime Prevention – Western Australian
Ms Kylie O’Connell Acting Director	Department of Justice – South Australia
Mr Dick Conder Acting Commissioner	Queensland Police Service
Mr J Johnston Acting Commissioner of Police	Department of Police and Public Safety – Tasmania
Mr Reg Mahoney Assistant Commissioner	NSW Police
Mr Reg Mahoney Assistant Commissioner	NSW Police
Mr Silvio Amoroso Chief Superintendent	South Australia Police
Mr Karl J O’Callaghan Commissioner of Police	Western Australia Police
Dr Neil Shepard Director General	Department of Community Services – NSW
Mr Jens Tolstrup Executive Director	Department of Justice – Northern Territory
Ms Jennifer Mason Director General	Department of Juvenile Justice – NSW



Indigenous Young People with Cognitive Disabilities and Mental Health Issues

Ms Bernie McGinnes Acting Director Youth Justice	Department for Families and Communities – South Australia
Ms Pamela Muth Acting Director Statewide Outcomes for Children Branch Office for Children	Department of Human Services – Victoria
Ms Jeanette James Policy Officer Aboriginal Health	Department of Health and Human Services – Tasmania
Mr Claude Bruno Director of Disability SA	Department for Families and Communities – South Australia
Ms Uschi Schreiber Director General	Queensland Health
Ms Linda A Apelt Director General	Department of Communities – Queensland
Dr Ron Chalmers Acting Director General	Disability Services Commission – Western Australia
Ms Carolyn Burlew Acting Director General	Department of Ageing, Disability and Home Care – NSW
Mr Arthur Rogers Executive Director Disability Services Division	Department of Human Services – Victoria

Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues

A report by Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner

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Indigenous young people with cognitive disabilities and/or mental health issues are some of the most disadvantaged and vulnerable young people in Australia. Instead of getting the support they need, they often face systemic failures and discrimination. This contributes to the unacceptably high number of Indigenous young people with cognitive disabilities and/or mental health issues involved with the juvenile justice system.

Despite these high needs, there is very little research about the needs and specific interventions that can help Indigenous young people with cognitive disabilities and/or mental health issues. This report starts to address this knowledge gap.

This report considers the evidence on Indigenous young people with cognitive disabilities and/or mental health issues; maps some of the services currently available; and looks at a variety of case studies that point to a framework for early intervention and diversion.

Our research studies show that early intervention and diversion have the potential to prevent crime and promote the human rights of Indigenous young people with cognitive disabilities and/or mental health issues.